

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**SEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

FORMAL PROCEEDINGS DOCKET ENTRIES

Date of Document

1. April 27, 2015 - [Notice of Formal Proceedings and Charges](#)
2. May 12, 2015 - [Response by Steven D. Combs](#)
3. May 14, 2015 - [Entry of Appearance](#)
4. June 2, 2015 - [Amended Notice of Formal Proceedings and Charges](#)
5. June 2, 2015 - [Order and Notice of Hearing on Temporary Suspension](#)
6. June 3, 2015 - [Amended Order and Notice of Hearing on Temporary Suspension](#)
7. June 16, 2015 - [Order of Temporary Suspension from Duties Pending Final Adjudication](#)
8. June 23, 2015 - [Amended Response by Steven D. Combs](#)
9. June 23, 2015 - [Notice of Time and Place for Hearing](#)
10. July 2, 2015 - [Notice of Entry of Appearance](#)
11. July 7, 2015 - [Notice of Withdrawal of Counsel](#)
12. August 7, 2015 - [Second Amended Notice of Formal Proceedings and Charges](#)
13. August 11, 2015 - [Order](#)
14. August 24, 2015 - [Answer and Affirmative Defenses to Second Amended Notice of Formal Proceedings and Charges](#)
15. September 4, 2015 - [Motion to Dismiss Counts, Memorandum in Support of Motion to Dismiss Counts, and Appendix of Exhibits in Support of Motion to Dismiss Counts](#)
16. September 8, 2015 - [Motion for Order Disqualifying Commission's Prosecutor and Memorandum in Support of Motion to Disqualify Commission's Prosecutor](#)
17. September 8, 2015 - [Motion to Close Courtroom or Otherwise Exclude the Public from Hearing Certain Evidence at the Hearing](#)

18. September 8, 2015 - Notice of Respondent to Take the Videotaped Deposition of Marc Whitsett, MD
19. September 10, 2015 - Renotice of Respondent to Take the Videotaped Deposition of Marc Whitsett, MD
20. September 10, 2015 - Notice of Respondent to Take the Videotaped Deposition of Frank Justice
21. September 10, 2015 - Order on Pending Motions
22. September 11, 2015 - Motion of the Respondent for Leave to Take Pre-Hearing Deposition of Gene Weaver
23. September 16, 2015 - Supplemental Memorandum in Support of the Motion of The Respondent for Leave to Take Pre-Hearing Deposition of Gene Weaver
24. September 16, 2015 - Response in Opposition to Motion to Dismiss
25. September 16, 2015 - Response in Opposition to Motion to Disqualify
26. September 16, 2015 - Response in Opposition to Motion to Close Courtroom or Otherwise Exclude the Public from Hearing Certain Evidence at the Hearing
27. September 16, 2015 - Response in Opposition to Motion for Leave to Take Pre-Hearing Deposition of Gene Weaver
28. September 17, 2015 - Order on Motion for Leave to Take Pre-Hearing Deposition of Gene Weaver
29. September 21, 2015 - Order on Motion to Dismiss, Motion to Disqualify the Commission's Prosecutor and Motion to Close the Courtroom or Otherwise Exclude the Public from Hearing Certain Evidence at the Final Hearing
30. October 1, 2015 - Agreed Order of Suspension
31. May 24, 2016 - Motion Under Seal of the Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit, For Declarations as to KYLAP-Mandated Abstinence and Testing
32. May 24, 2016 - Memorandum in Support of Motion Under Seal of the Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit, For Declarations as to KYLAP-Mandated Abstinence and Testing
33. May 26, 2016 - Response in Opposition for Declarations as to KYLAP-Mandated Abstinence and Testing
34. June 1, 2016 - Order on Motion for Declarations as to KYLAP-Mandated Abstinence and Testing

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

NOTICE OF FORMAL PROCEEDINGS AND CHARGES

Notice is hereby given of the initiation of formal proceedings under Rule 4.180 of Rules of the Supreme Court. At the times set out in this Notice, you were Circuit Court Judge for Kentucky's 35th Judicial Circuit located in Pike County. The Charges are as follows:

COUNT I

From April 25, 2011, until September 3, 2014, you presided over Pike Circuit Court Case No. 11-CI-00567 styled *Danny Potter v. Blue Flame Energy Corporation, et al.* despite the fact that you had an oil and gas lease agreement with EQT Production Company, which was a defendant in the case. Additionally, while presiding over the case you made direct contact with EQT officials on the following occasions:

- On April 1, 2014 you contacted the EQT's corporate office and spoke with Division Order Analyst, Thomas Gagliardino. You accused Gagliardino of perpetrating a fraud relative to royalties you were owed by EQT. You demanded payment of embezzlement funds recovered by EQT from a former employer. You accused EQT of violating the lease agreement and threatened to lock them out of your property. All of these statements and accusations were made in a belligerent and hostile manner.
- On or about the spring of 2014, you contacted Chris Grim, EQT's Assistant Superintendent of Production to demand that EQT place gravel on your property despite the fact that EQT was under no contractual obligation to do so. After the work was performed, you nevertheless prevented EQT employees from entering your property and advised EQT to send additional gravel to your property.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Furthermore, your actions violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 3B(8)** which requires a judge to dispose of a matter promptly, efficiently, and fairly.
- **Canon 3E(1)** which requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.
- **Canon 4A(1)** which requires judges to conduct their extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge.
- **Canon 4A(2)** which requires a judge to conduct their extra-judicial activities so that they do not demean the judicial office.
- **Canon 4A(3)** which requires a judge to conduct their extra-judicial activities so that they do not interfere with the proper performance of judicial duties.

COUNT II

During your tenure as Circuit Judge, you made numerous inappropriate telephone calls to the City of Pikeville Police Department including:

- On November 7, 2013, you called looking for Chief Phillip Reed. When told that Chief Reed was at the airport and not available you responded, "That's a good waste of time. My mother's house got broken in last Friday. It's now Wednesday, and you all have not reported back to me yet. I do not appreciate it." When the call was transferred to Officer Addison Baisden, you chastised him for not reporting back to you and criticized the Police Department for an arrest made at a concert. You then told Officer Baisden, "Tell Phillip (Reed) to call me if he's not too damn busy playing airport tomorrow."

- On December 11, 2014, you engaged in a verbal confrontation with Officer Aaron Thompson about people parking in the private parking lot of the church you attend. During this call, you criticized the Pikeville City Attorney and demanded that the Police Department cite individuals who parked in the parking lot for criminal trespass.
- On December 12, 2014, you spoke with Officer Dave Adkins to again complain about individuals parking in the private parking lot of the church you attend. You stated that it was your duty as a judge to call and report criminal trespass.
- On December 16, 2014, you spoke with Chief Reed regarding Pike District Court Case No. 14-M-02239 styled *Commonwealth v. Johndra Coleman*. During the call, you criticized the arresting officers' actions in arresting the Defendant for public intoxication and accused them of making an unlawful arrest. You further alleged that the Police Department had made unlawful arrests in the past. You again complained that the Police Department was not arresting people for parking in the church parking lot and complained about Officer Thompson's reaction to your December 11, 2014 call.
- On December 22, 2014, you again spoke with Chief Reed complaining that he had not followed up with you on the Johndra Coleman case. You again criticized the arresting officers' actions and claimed that it was an unlawful arrest. You informed Chief Reed that you would contact the Commonwealth Attorney to indict any officer who you felt made an unlawful arrest. You threatened to contact the ACLU and encourage them to file civil lawsuits against the Police Department. You claimed that the Police Department had inadequate training because they did not obtain breathalyzer test results for public intoxication charges. You stated to Chief Reed, "If you think you can arrest somebody for drinking on their private property, come on down here and try it with me." You accused the Police Department of engaging in excessive force in a previous case and said you did not trust the Police Department. You indicated that you were going to subpoena Pikeville Police Officers for hearings they were otherwise not required to attend because you did not trust their decision-making. You alleged that the Exposition Center could not sell tickets to concerts because of false arrests made by the Police Department. You accused the Police Department of arresting a City Commission candidate for political purposes. You also indicated that the members of your church contacted you to address the issue of parking in their lot and that is what prompted your calls to the Police Department.
- On December 30, 2014, you contacted Captain Chris Edmonds demanding an investigation on automated calls you received regarding drinking and driving during the holidays. You then said that the next officer who pulled you over would get a "bullet in the head." When confronted with this statement you

replied, "I'm elected by the people and not pieces of trash like you all." You then referred to the Police Department as a "bunch of thieves."

- On numerous occasions, you contacted Captain Edmonds and demanded that a Police Officer be terminated for being involved in an accident with his daughter in the back seat of a squad car. You also called Captain Edmonds to complain about Officer Steve Adkins, referring to him as a "liar."

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office.

Furthermore, your actions violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the Judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 3B(4)** which requires judges to be dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.
- **Canon 4A(1)** which requires judges to conduct their extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge.
- **Canon 4A(2)** which requires a judge to conduct their extra-judicial activities so that they do not demean the judicial office.
- **Canon 4A(3)** which requires a judge to conduct their extra-judicial activities so that they do not interfere with the proper performance of judicial duties.

COUNT III

During your tenure as Circuit Judge, you engaged in multiple instances of inappropriate interactions with elected officials and employees of the City of Pikeville including:

- You have made numerous harassing and contentious phone calls to City of Pikeville employees including, but not limited to, the City Manager and City Clerk.
- You have made numerous harassing and contentious phone calls to City of Pikeville elected officials.
- You referred to Pikeville City Commissioner Jerry Keith Coleman as “coke-head.”
- You referred to Pikeville Mayor Jimmy Carter as “fish face.”
- You referred to City Manager Donovan Blackburn as “Dumbo.”
- On August 28, 2008, you sent an open records request to the City of Pikeville on your official judicial letterhead regarding the use of a public athletic field, a matter unrelated to your judicial duties.
- On April 21, 2009, you sent an open records request to the City Manager asking for ordinances relating to the City’s supervision of the Pikeville Police Department.
- On March 4, 2011, you wrote a letter to the Pikeville City Manager on your official judicial letterhead regarding a personal matter unrelated to your judicial duties, accusing the Pikeville City Manager of libel and threatening prosecution against individuals who inspected property in Pikeville, Kentucky.
- You wrote multiple letters on your official judicial stationary to the Pikeville City Manager regarding personal matters unrelated to your judicial duties.
- On April 16, 2012, you threatened to take legal action against City employees for enforcing a local ordinance that resulted in a fine levied against your mother-in-law. You also indicated that you would rule against the City in any actions to enforce the ordinance brought before you in Pike Circuit Court. The City Administrator ultimately waived the fine.
- On October 15, 2012, you called the City Clerk and accused City employees of pulling up political signs for candidates opposing incumbent City Commissioners. You then threatened to file a complaint against a city employee.
- On November 8, 2012, you made multiple calls to the Pikeville City Clerk complaining of a sewer issue. During these calls, you threatened to contact the U.S. Attorney’s office to file a formal complaint.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions furthermore violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 4A(1)** which requires judges to conduct their extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge.
- **Canon 4A(2)** which requires a judge to conduct their extra-judicial activities so that they do not demean the judicial office.
- **Canon 4A(3)** which requires a judge to conduct their extra-judicial activities so that they do not interfere with the proper performance of judicial duties.

COUNT IV

During your tenure as Circuit Judge, you made numerous inappropriate communications with Pike TV Channel Manager Albert Greenfield, including:

- In the spring of 2011 or 2012 you contacted Greenfield to complain about a program featuring various elected officials speaking about coal severance funds. During the call you claimed the program was politically motivated and would violate the station's license. You also said you would ensure the program was pulled from the airwaves.
- On or about June 2013, you contacted Greenfield demanding that a program featuring Pikeville City Commissioner Barry Chaney be pulled from the airwaves claiming that the program broke the law and was politically motivated.
- On June 11, 2013, you called Greenfield to complain that the program featuring Commissioner Chaney was still airing. When Greenfield refused to remove the program, you threatened to go to the Internal Revenue Service for the purpose of revoking the Pike TV's license to broadcast.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions furthermore violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 4A(1)** which requires judges to conduct their extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge.
- **Canon 4A(2)** which requires a judge to conduct their extra-judicial activities so that they do not demean the judicial office.
- **Canon 4A(3)** which requires a judge to conduct their extra-judicial activities so that they do not interfere with the proper performance of judicial duties.

COUNT V

During your tenure as Circuit Judge, you made numerous inappropriate phone calls to Pikeville Attorney Ray Jones who regularly practices before you in Pike Circuit Court. During these calls, you left voice messages in which you referred to Jones as a "coward" and "prick." You then demanded that Jones return your call.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions also violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.

- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 3B(4)** which requires judges to be dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.

COUNT VI

During your tenure as Circuit Judge, you engaged in inappropriate political activity including:

- In 2010, you contacted the City of Pikeville City Manager Donovan Blackburn and accused him of supporting Darryl Pugh, a candidate for County Magistrate. When Blackburn denied the accusation, you called him a liar.
- On or about April 2014, you contacted Pikeville Police Chief Phillip Reed and requested a permit for Mayoral candidate TJ Litafik to operate a golf cart during the Hillbilly Days festival.
- On or about October 2014, you contacted Attorney Ray Jones and chastised him for having a political sign in his front yard in support of Mayoral candidate Jimmy Carter.
- On or about November 2014 you contacted Greg May, owner of the Utility Management Group, and chastised him for assisting Mayoral candidate Jimmy Carter and an incumbent City Commission candidate in filming a television commercial.
- Prior to the 2014 General Election, you contacted Sheriff-elect Rodney Scott and asked him to attend a political fundraiser for a Mayoral candidate TJ Litafik.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions also violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.

- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 4A(1)** which, requires judges to conduct their extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge.
- **Canon 4A(2)** which requires a judge to conduct their extra-judicial activities so that they do not demean the judicial office.
- **Canon 5A(1)(c)** which prohibits a judge from publicly endorsing or opposing a candidate for public office.

COUNT VII

During your tenure as Circuit Judge, you made numerous inappropriate statements on Topix including:

- On December 27, 2014, you commented on a post entitled "New Judge Mayor" under the username "LOL" in which you said: "Fishface will do whatever a certain commissioner tells him to do."
- On January 14, 2015, you commented on a post entitled "JK Coleman Is Stupid" under the username "Better Call Wusty" in which you said: "Better watch our little babies will get mad. How much paper have the City Crybabies wasted at City Hall printing threads off Topix so they can cry about it to each other and so Little Donovan can plead with Attorney General Wusty to do something to stop this shamefulness toward the Great City Commission and Anointed Town Puppets?!?"
- On January 15, 2015, you commented on a post entitled "City Puppets Beware" under the username "Imma Tellin you" in which you said: "Dumbo Donovan, Ratfink Rusty, Fishface Jimmy, Jerry Keith the Stupid Bartender and Retarded Reed the Little Police Chief..."
- On January 16, 2015, you commented on a post entitled "City Puppets Beware" under the username "City Hall Patrol" in which you said: "The Puppets had best beware and not do things most little town councils would not dare."

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions also violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 4A(1)** which requires judges to conduct their extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge.
- **Canon 4A(2)** which requires a judge to conduct their extra-judicial activities so that they do not demean the judicial office.

COUNT VIII

On April 4, 2012, you presided over a status hearing in Pike Circuit Court, Case No. 11-CI-01455 styled *Nicole Hall v. Unknown Defendants* more than two months after the case was voluntarily dismissed. During the hearing you questioned Attorney Kevin Keene as to his motivations behind bringing the lawsuit. You then accused Keene of engaging in unethical behavior by issuing improper subpoenas. You also engaged in ex-parte communications with Michael DeBourbon, an attorney involved in the case prior to the hearing.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions also violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 3B(2)** which prohibits judges from being swayed by partisan interests.
- **Canon 3B(4)** which requires judges to be dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.
- **Canon 3B(7)** which prohibits a judge from engaging or considering ex-parte communications.
- **Canon 3B(8)** which requires a judge to dispose of a matter promptly, efficiently, and fairly.

COUNT IX

On or about November 2014, you presided over Pike Circuit Court Case No. 14-CI-01224 styled *Joshua Huffman, et al. v. Lillian Pearl Elliott, et al.* which involved a challenge to the outcome of the 2014 general election for City Commission. Despite expressing an interest in the outcome of the City Commission race and criticizing incumbent candidates on multiple occasions, you entered a Final Judgment and Permanent Injunction disqualifying a candidate for City Commission and naming another candidate as the successful candidate.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions also violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.

- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 3B(2)** which prohibits judges from being swayed by partisan interests.
- **Canon 3E(1)** which requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.
- **Canon 3B(8)** which requires a judge to dispose of a matter promptly, efficiently, and fairly.

COUNT X

During your tenure as Circuit Judge, you solicited financial contributions from Attorneys Ray Jones, Gary Johnson, Billy Johnson, and other attorneys who regularly appear before you in Pike Circuit Court for the local high school golf team.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions also violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.

JURISDICTION

The jurisdiction of the Judicial Conduct Commission in this matter is under SCR 4.020(1)(b)(i) and (v), and (1)(c) which read, in pertinent part, as follows:

- (1) Commission shall have authority:
 - (b) To impose the sanctions separately or collectively of (1) admonition, private reprimand, public reprimand or

censure; (2) suspension without pay or removal or retirement from judicial office, upon any judge of the Court of Justice or lawyer while a candidate for judicial office, who after notice and hearing the Commission finds guilty of any one or more of the following:

- (i) Misconduct in office.
- (v) Violation of the code of Judicial Conduct, Rule 4.300.
- (c) After notice and hearing to remove a judge whom it finds to lack the constitutional statutory qualifications for the judgeship in question.

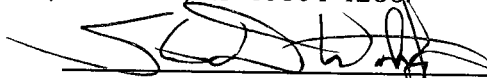
For your information, the Commission calls your attention to the following Supreme Court Rule:

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.

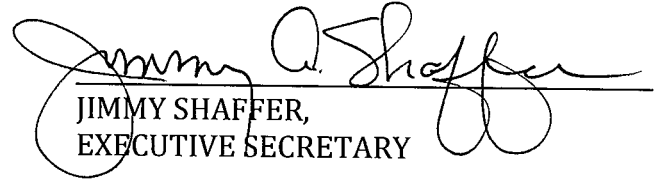
Please mail your Answer to: Ms. Jimmy Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, KY 40604-4266.

April 27, 2015


STEPHEN D. WOLNITZEK, CHAIRMAN
KENTUCKY JUDICIAL CONDUCT COMMISSION

Judge Janet Stumbo and Judge Eddy Coleman recused themselves from any consideration of this matter.

I hereby certify that copy hereof was served on Steven D. Combs, Pike Circuit Court Judge, by mailing same to his attorney, Hon. Kent Wicker, 321 West Main Street, Suite 2100, Louisville, KY 40202 this 27th day of April, 2015.


JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

RESPONSE BY STEVEN D. COMBS

Steven D. Combs, Circuit Court Judge, responds to the allegations of the Notice of Formal Proceedings and Charges as follows:

Count I

1. Judge Combs admits that he presided over the case of *Danny Potter v. Blue Flame Energy Corp., et al.*, No. 11-CI-00567, until he recused from the case. He disclosed to the parties at the outset of the case that he had a contractual relationship with EQT Production Company ("EQT").

2. Judge Combs admits he had a disagreement with EQT about its dispersal of waste oil on his property and its destruction of roads on his property, and he further admits that he asked EQT to contribute gravel to the road in the same amount as all others who use the road. He denies that the discussions were in a belligerent or hostile manner.

Count II

Judge Combs admits that he made the calls in question, but he disagrees with the characterizations of the calls.

Count III

Judge Combs admits that between 2008 and 2012, he made several calls and wrote several letters to Pikeville City officials about matters of concern.

Count IV

Judge Combs states that he recalls making only one telephone call to Pike TV Channel Manager Albert Greenfield. In that call, Judge Combs inquired whether the station was permitted to broadcast partisan political content. Mr. Greenfield replied that he had obtained a legal opinion supporting his actions, and there was no further discussion on the matter.

Count V

Judge Combs admits leaving the messages in question.

Count VI

1. Judge Combs does not recall making the call to Mr. Blackburn, Mr. Jones or Mr. May set out in Count VI.
2. Judge Combs admits that he called Pikeville Police Chief Phillip Reed to determine how a permit to operate a golf cart could be obtained.
3. Judge Combs admits contacting Sheriff Rodney Scott about a political fundraiser. Judge Combs later called Sheriff Scott and told him that he should not attend.

Count VII

Judge Combs denies making the posts set out in Count VII.

Count VIII

1. Judge Combs admits that he presided over a status hearing in the case of *Nicole Hall v. Unknown Defendants*, 11-CI-01455, and that he inquired about whether plaintiff's counsel's actions violated court rules and abused the subpoena power of the Court.

2. Judge Combs denies engaging in ex parte conversations with Michael DeBourbon.

Count IX

1. Judge Combs admits that he presided over the case of *Huffman v. Elliott, et al.*, No. 14-CI-01224, and that he entered a Final Judgment and Permanent Injunction.

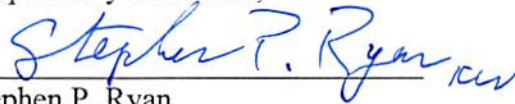
2. Judge Combs denies that he had expressed any interest in the outcome of the City Commission race or criticized incumbent candidates in any public forum.

Count X

Judge Combs denies that he solicited financial contributions for the local high school golf team.

WHEREFORE, Judge Combs requests that the Judicial Conduct Commission should dismiss the Formal Proceedings and Charges.

Respectfully submitted,



Stephen P. Ryan
7104 Hillcircle Court
Louisville, KY 40214
(502) 551-1083



Kent Wicker
Dressman Benzinger LaVelle psc
2100 Waterfront Plaza
321 West Main Street
Louisville, KY 40202
(502) 572-2500

Certificate of Service

I hereby certify that a copy of the foregoing was served upon Ms. Jimmy Shaffer, Executive Secretary of the Judicial Conduct Commission, this 12th day of May, 2015, by electronic and first class mail.



Kent Wicker

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

**IN RE THE MATTER OF: STEVEN D. COMBS, CIRCUIT COURT JUDGE, 35TH
JUDICIAL CIRCUIT**

ENTRY OF APPEARANCE

Please take notice that Stephen P. Ryan hereby enters his appearance as co-counsel with Hon. Kent Wicker for Judge Steven D. Combs. Please include copies of all pleading, notices, Orders and correspondence to the attention of the undersigned.

Respectfully Submitted,



**Stephen P. Ryan
7104 Hillcircle Court
Louisville, KY 40214**

**(502) 551-1083
Stephen_ryan@rocketmail.com**

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

AMENDED NOTICE OF FORMAL PROCEEDINGS AND CHARGES

Notice is hereby given of the initiation of formal proceedings under Rule 4.180 of Rules of the Supreme Court. At the times set out in this Notice, you were Circuit Court Judge for Kentucky's 35th Judicial Circuit located in Pike County. The charges in the Notice of Formal Proceedings and Charges filed on April 27, 2015 (hereinafter referred to as the "Original Notice"), are adopted by reference in this Amended Notice. The Charges are as follows:

COUNTS I - X

The charges in Counts I – X in the Original Notice are adopted by reference as Count I of this notice.

COUNT XI

During your tenure as Circuit Judge, you made numerous inappropriate communications with employees of the Appalachia News Express, including:

- On or about August 20, 2013, you contacted Appalachia News Express Publisher, Jeff Vanderbeck, to complain about an article published under the headline, "Felony assault charge against teenager dismissed by grand jury." During your conversation you used profanities and called Mr. Vanderbeck derogatory names. You also threatened Mr. Vanderbeck stating, "I'm going to come to your house and shoot you and run your family out of town."
- In the fall of 2013, you contacted sports editor, Randy White, to complain that your son was not receiving enough coverage in the sports section. During this conversation you raised your voice and used profanities.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions furthermore violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 4A(1)** which requires judges to conduct their extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge.
- **Canon 4A(2)** which requires a judge to conduct their extra-judicial activities so that they do not demean the judicial office.
- **Canon 4A(3)** which requires a judge to conduct their extra-judicial activities so that they do not interfere with the proper performance of judicial duties.

JURISDICTION

The jurisdiction of the Judicial Conduct Commission in this matter is under SCR 4.020(1)(b)(i) and (v), and (1)(c) which read, in pertinent part, as follows:

- (1) Commission shall have authority:
 - (b) To impose the sanctions separately or collectively of (1) admonition, private reprimand, public reprimand or censure; (2) suspension without pay or removal or retirement from judicial office, upon any judge of the Court of Justice or lawyer while a candidate for judicial office, who after notice and hearing the Commission finds guilty of any one or more of the following:
 - (i) Misconduct in office.
 - (v) Violation of the code of Judicial Conduct, Rule 4.300.

- (c) After notice and hearing to remove a judge whom it finds to lack the constitutional statutory qualifications for the judgeship in question.

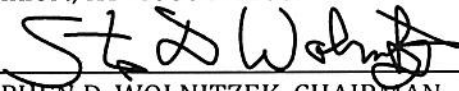
For your information, the Commission calls your attention to the following Supreme Court Rule:

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 Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, KY 40604-4266.

June 2nd, 2015


STEPHEN D. WOLNITZEK, CHAIRMAN
KENTUCKY JUDICIAL CONDUCT COMMISSION

Judge Janet Stumbo and Judge Eddy Coleman recused themselves from any consideration of this matter.

I hereby certify that copy hereof was served on Steven D. Combs, Pike Circuit Court Judge, by mailing same to his attorneys, Hon. Kent Wicker, 321 West Main Street, Suite 2100, Louisville, KY 40202; Stephen P. Ryan, 7104 Hillcircle Court, Louisville, KY 40214 this 2nd day of June, 2015.


JIMMY SHAFFER,
EXECUTIVE SECRETARY

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT

ORDER AND NOTICE OF HEARING
ON SUSPENSION FROM DUTIES PENDING FINAL ADJUDICATION

Pursuant to SCR 4.020(1)(a)(ii) it is hereby ORDERED that a hearing will be held on the 16th day of June, 2015, at the time of 9:00 a.m., in Courtroom E on the 3rd Floor of the Fayette County Courthouse, Lexington, Kentucky, as to whether it will be in the best interest of justice that Judge Combs be suspended temporarily 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 formal proceedings.

Date: June 2, 2015


STEPHEN D. WOLNITZEK, CHAIR

Judge Janet Stumbo and Judge Eddy Coleman recused themselves from any consideration of this matter.

I hereby certify that copy hereof was served on Steven D. Combs, Pike Circuit Court Judge, by mailing same to his attorneys, Hon. Kent Wicker, 321 West Main Street, Suite 2100, Louisville, KY 40202; Stephen P. Ryan, 7104 Hillcircle Court, Louisville, KY 40214 this 2nd day of June, 2015.


JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

**AMENDED ORDER AND NOTICE OF HEARING
ON SUSPENSION FROM DUTIES PENDING FINAL ADJUDICATION**

Pursuant to SCR 4.020(1)(a)(ii) it is hereby ORDERED that a hearing will be held on the 16th day of June, 2015, at the time of 9:00 a.m., in Courtroom E on the 3rd Floor of the Fayette Circuit Court, 120 N. Limestone, Lexington, Kentucky, as to whether it will be in the best interest of justice that Judge Combs be suspended temporarily 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 formal proceedings.

Date: June 3, 2015


STEPHEN D. WOLNITZEK, CHAIR

Judge Janet Stumbo and Judge Eddy Coleman recused themselves from any consideration of this matter.

I hereby certify that copy hereof was served on Steven D. Combs, Pike Circuit Court Judge, by mailing same to his attorneys, Hon. Kent Wicker, 321 West Main Street, Suite 2100, Louisville, KY 40202; Stephen P. Ryan, 7104 Hillcircle Court, Louisville, KY 40214 this 3rd day of June, 2015.


JIMMY SHAFFER,
EXECUTIVE SECRETARY

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT

ORDER OF TEMPORARY SUSPENSION FROM DUTIES
PENDING FINAL ADJUDICATION

This matter, having come before the Commission on June 16, 2015, on hearing pursuant to SCR 4.020(1)(a)(ii), upon consideration thereof, and of the entire record in this matter, the Commission finds that it will be in the best interest of justice that Judge Combs be suspended temporarily 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 formal proceedings, it is by the Commission:

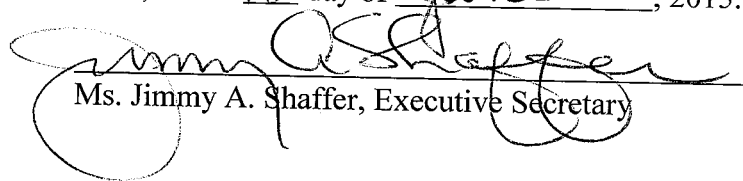
ORDERED that Steven D. Combs, Circuit Court Judge, be and hereby is suspended from acting in his official capacity as a judge and from the performance of his duties, without affecting his pay status, until final adjudication of the pending formal proceedings.

Date: June 16, 2015


STEPHEN D. WOLNITZEK, CHAIR

Judge Janet Stumbo and Judge Eddy Coleman recused from any consideration of this matter.

I hereby certify that copy hereof was served on Steven D. Combs, Pike Circuit Court Judge, by mailing same to his attorneys, Hon. Kent Wicker, 321 West Main Street, Suite 2100, Louisville, KY 40202; Hon. Stephen P. Ryan, 7104 Hillcircle Court, Louisville, KY 40214; and on counsel for the Judicial Conduct Commission, Hon. Jeffrey C. Mando and Hon. Louis D. Kelly, 40 West Pike Street, Covington, KY 41011, on the 16th day of June, 2015.


Ms. Jimmy A. Shaffer, Executive Secretary

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

AMENDED RESPONSE BY STEVEN D. COMBS

Steven D. Combs, Circuit Court Judge, responds to the allegations of the Amended Notice of Formal Proceedings and Charges as follows:

1. Judge Combs adopts his prior response to the Notice of Formal Proceedings and Charges.
2. Judge Combs denies the allegations of Count 11.

WHEREFORE, Judge Combs requests that the Judicial Conduct Commission should dismiss the Formal Proceedings and Charges.

Respectfully submitted,

/s/ Kent Wicker
Kent Wicker
Dressman Benzinger LaVelle psc
2100 Waterfront Plaza
321 West Main Street
Louisville, KY 40202
(502) 572-2500

Certificate of Service

I hereby certify that a copy of the foregoing was served upon Ms. Jimmy Shaffer, Executive Secretary of the Judicial Conduct Commission, this 23rd day of June, 2015, by electronic and first class mail.

/s/ Kent Wicker
Kent Wicker

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

NOTICE OF TIME AND PLACE FOR HEARING

NOTICE is hereby given that the hearing in these formal proceedings will be held commencing September 21, 2015, at 9:00 a.m. in the Appellate Courtroom on the 3rd Floor of the Pike County Judicial Center, 175 Main Street, Pikeville, Kentucky.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by first class mail and electronically upon Judge Steven D. Combs, Pike Circuit Court Judge, by mailing same to his attorneys, Kent Wicker, 321 West Main Street, Suite 2100, Louisville, KY 40202; and Stephen P. Ryan, 7104 Hillcircle Court, Louisville, KY 40214; and upon counsel for the Judicial Conduct Commission, Jeffrey C. Mando and Louis D. Kelly, 40 West Pike Street, Covington, KY 41011, this 23rd day of June, 2015.


JIMMY A. SHAFFER
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

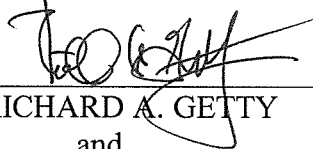
IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

**NOTICE OF ENTRY OF APPEARANCE
OF COUNSEL FOR HON. STEVEN D. COMBS**

PLEASE TAKE NOTICE that Richard A. Getty, Danielle H. Brown and The Getty Law Group, PLLC hereby enter their appearance in the above proceedings as counsel for the Respondent, Hon. Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit. Hereafter, copies of all notices, pleadings, or other papers should be served on Mr. Getty, Ms. Brown and their firm at the address noted below.

Respectfully submitted,



RICHARD A. GETTY

and

DANIELLE H. BROWN

THE GETTY LAW GROUP, PLLC
1900 Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507
Telephone: (859) 259-1900
Facsimile: (859) 259-1909
E-Mail: rgetty@gettylawgroup.com
E-Mail: dbrown@gettylawgroup.com

COUNSEL FOR RESPONDENT
HON. STEVEN D. COMBS

CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Entry of Appearance of Counsel for Hon. Steven D. Combs was served on the following by e-mail and regular U.S. mail, postage prepaid, on this the 2nd day of July, 2015:

Ms. Jimmy Shaffer,
Executive Secretary
Judicial Conduct Commission
P.O. Box 4266
Frankfort, Kentucky 40604-4266
jimmyshaffer@kycourts.net

Jeffrey C. Mando, Esq.
Adams, Stepner, Woltermann & Dusing, PLLC
40 W. Pike Street
P.O. Box 861
Covington, Kentucky 41012-861
jmando@aswdlaw.com

Kent Wicker, Esq.
Dressman Benzinger LaVelle psc
2100 Waterfront Plaza
321 West Main Street
Louisville, Kentucky 40202
kwicker@dbllaw.com

Stephen P. Ryan, Esq.
7104 Hillcircle Court
Louisville, Kentucky 40214
stephen_ryan@rocketmail.com



COUNSEL FOR RESPONDENT

dhbpld1425

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

NOTICE OF WITHDRAWAL OF COUNSEL

Kent Wicker hereby gives notice of his withdrawal as counsel for Steven D. Combs, Circuit Court Judge. Mr. Wicker serves as counsel for the plaintiffs in the case of *Holt v. Griffin*, No. 13-cv-32-WOB (E.D. Ky.), consolidated with *Osborn v. Griffin*, No. 11-89-WOB (E.D. Ky.). That case is set for trial from September 14, 2015, to September 28, 2015, including the time set for the hearing in this matter. It would be detrimental to the interests of either client to have their trial or hearings delayed.

Consequently, Mr. Wicker gives notice of his withdrawal. Mr. Steven Ryan remains as counsel for Judge Combs, and Mr. Richard Getty and Ms. Danielle Brown have entered their appearance as co-counsel.

Respectfully submitted,

/s/ Kent Wicker _____
Kent Wicker
Dressman Benzinger LaVelle psc
2100 Waterfront Plaza
321 West Main Street
Louisville, KY 40202
(502) 572-2500

Certificate of Service

I hereby certify that a copy of the foregoing was served upon Ms. Jimmy Shaffer, Executive Secretary of the Judicial Conduct Commission, and to Jeffrey Mando, Adams, Steiner, Woltermann & Dusing, PLLC, 40 W. Pike St., P.O. Box 861, Covington, KY 41012, this 7th day of July, 2015, by electronic and first class mail.

/s/ Kent Wicker _____

Kent Wicker

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

SECOND AMENDED NOTICE OF FORMAL PROCEEDINGS AND CHARGES

Notice is hereby given of the initiation of formal proceedings under Rule 4.180 of Rules of the Supreme Court. At the times set out in this Notice, you were Circuit Court Judge for Kentucky's 35th Judicial Circuit located in Pike County. The charges in the Notice of Formal Proceedings and Charges filed on April 27, 2015 (hereinafter referred to as the "Original Notice") and the Amended Notice of Formal Proceedings and Charges (hereinafter referred to as the "First Amended Notice") are adopted by reference in this Second Amended Notice. The Charges are as follows:

COUNTS I - XI

The charges in Counts I – X in the Original Notice and Count XI in the First Amended Notice is adopted by reference as Counts I – XI of this notice.

COUNT XII

During your tenure as Circuit Judge, you presided over the following cases in which EQT Production Company, or one of its subsidiaries, was a party to the action despite the fact that you had a financial relationship with EQT Production Company and without disclosing such relationship on the record:

- 09-CI-431, Fleming, et al. v. Equitable Production Co.;
- 09-CI-660, Justice, et al. v. EQT Production Co.;
- 09-CI-1179, Johnson, et al. v. EQT Production Co.;
- 10-CI-116, Edmiston et al. v. EQT Production Company;
- 10-CI-722, May, et al. v. EQT Production Co.;
- 10-CI-926, Pilgrim Energy, Inc. v. EQT Production Co.;

- 10-CI-1840, Roberts, et al. v. EQT Production Co.;
- 11-CI-352, Hopkins, et al. v. Childers, et al.
- 11-CI-546, Potter, et al. v. EQT Production Co.;
- 11-CI-567, Potter v. Blue Flame Energy;
- 11-CI-615, Johnson v. EQT Production Co.;
- 11-CI-899, Coleman v. EQT Production Co.;
- 11-CI-939, EQT Production Co. v. Johnson;
- 11-CI-1161, Wright v. EQT Production Co.;
- 11-CI-624, Stalnaker v. EQT Production Co.;
- 13-CI-680, Williamson, et al v. EQT Gathering, LLC;
- 13-CI-1258, EQT Gathering, LLC v. Robinson

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions furthermore violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 3B(8)** which requires a judge to dispose of a matter promptly, efficiently, and fairly.
- **Canon 3E(1)** which requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.

COUNT XIII

During a temporary suspension hearing held before the Commission on June 16, 2015, you testified under oath that you had disclosed, on the record, your financial relationship with EQT Production Company in all cases which you presided as judge. A review of all pleadings and recorded hearings in the cases identified in Count XII failed to identify any disclosures of your relationship with EQT Production Company on the record.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions furthermore violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

JURISDICTION

The jurisdiction of the Judicial Conduct Commission in this matter is under SCR 4.020(1)(b)(i) and (v), and (1)(c) which read, in pertinent part, as follows:

- (1) Commission shall have authority:
 - (b) To impose the sanctions separately or collectively of (1) admonition, private reprimand, public reprimand or censure; (2) suspension without pay or removal or retirement from judicial office, upon any judge of the Court of Justice or lawyer while a candidate for judicial office, who after notice and hearing the Commission finds guilty of any one or more of the following:
 - (i) Misconduct in office.
 - (v) Violation of the code of Judicial Conduct, Rule 4.300.
 - (c) After notice and hearing to remove a judge whom it finds to lack the constitutional statutory qualifications for the judgeship in question.

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

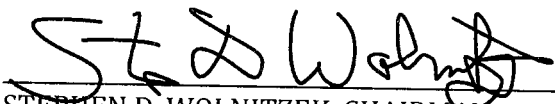
RULE 4.180 FORMAL PROCEEDINGS

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.

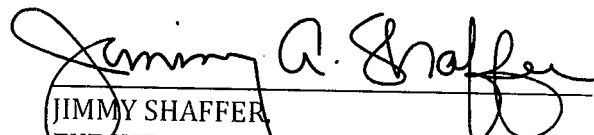
Please mail your Answer to: Ms. Jimmy Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, KY 40604-4266.

August 7, 2015


STEPHEN D. WOLNITZEK, CHAIRMAN
KENTUCKY JUDICIAL CONDUCT COMMISSION

Judge Janet Stumbo and Judge Eddy Coleman recused themselves from any consideration of this matter.

I hereby certify that copy hereof was served on Steven D. Combs, Pike Circuit Court Judge, by mailing same to his attorneys, Richard A. Getty and Danielle H. Brown, 1900 Lexington Financial Center, 250 West Main Street, Lexington, KY 40507; and Stephen P. Ryan, 7104 Hillcircle Court, Louisville, KY 40214 this 7th day of August, 2015.


JIMMY SHAFFER
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

ORDER

The Kentucky Judicial Conduct Commission, having issued a Notice of Formal Proceedings and Charges against Steven D. Combs, Circuit Judge on April 27, 2015, and having further issued an Order on July 16, 2015 temporarily suspending Judge Combs from his duties pending final adjudication of the Charges, IT IS HEREBY ORDERED that Judge Combs shall not use his office at the Pike County Judicial Center for any purpose until further order of this Commission. The Commission further Orders, as a result of his temporary suspension, that Judge Combs forbear from using his secure courthouse access pass and shall turn in any access passes, keys, or credentials to court security pending final adjudication of the Charges.


Dated: August 11, 2015


STEPHEN D. WOLNITZEK, CHAIRMAN
KENTUCKY JUDICIAL CONDUCT COMMISSION

Judge Janet Stumbo and Judge Eddy Coleman recused themselves from any consideration of this matter.

CERTIFICATION

I hereby certify that copy hereof was served on Steven D. Combs, Pike Circuit Court Judge, by mailing same to his attorneys, Richard A. Getty and Danielle H. Brown, 1900 Lexington Financial Center, 250 West Main Street, Lexington, KY 40507; Stephen P. Ryan, 7104 Hillcircle Court, Louisville, KY 40214 this 11th day of August, 2015.



JIMMY SHAFFER,
EXECUTIVE SECRETARY

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT

ANSWER AND AFFIRMATIVE DEFENSES
TO SECOND AMENDED NOTICE OF
FORMAL PROCEEDINGS AND CHARGES

The Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit (“Judge Combs”), by counsel, for his Answer and Affirmative Defenses to the Second Amended Notice of Formal Proceedings and Charges (the “Second Amended Notice”), respectfully states as follows:

ANSWER

**Count I – *Potter v. Blue Flame Energy Case And*
Contacts With EQT Production Company Representatives**

1. Judge Combs adopts by this reference his Response to Count I of the Notice of Formal Proceedings and Charges (the “First Notice”) and his Response to the Amended Notice of Formal Proceedings and Charges (the “First Amended Notice”).
2. In further response to Count I, set forth at length in the First Notice and adopted by reference in the First Amended Notice and the Second Amended Notice, Judge Combs respectfully states affirmatively that any and all comments he made to the referenced representatives of EQT Production Company were made in Judge Combs’ private capacity as a Director and Vice President of Buffalo Development, Inc. (“Buffalo Development”) and represented an exercise of Judge Combs’ right to freedom of speech protected by the First

Amendment to the United States Constitution and Sections One and Eight of the Kentucky Constitution. Judge Combs further denies that he presided over any cases involving an EQT entity without disclosing his interest in Buffalo Development and its lease agreements with Equitable Gas Company or one of its affiliated entities, and states affirmatively that making those disclosures went beyond what is required under the Supreme Court Rules, the Kentucky Code of Judicial Conduct and the interpreting Opinions. Such disclosures by Judge Combs, as well as the knowledge of such disclosures and the acquiescence of attorney Michael J. Schmitt, acting as counsel for an EQT entity, has been and will be verified under oath by multiple attorneys who practiced before Judge Combs in certain of the cases listed in the Second Notice. Judge Combs further states affirmatively that his and his family's relationship with an EQT entity, through Buffalo Development, is widely known among the Pike County Bar and others who practice before Judge Combs and such disclosure has been included in every Financial Disclosure Report filed by or on behalf of Judge Combs with the Kentucky Registry of Election Finance and available to the public, including the attorneys who practice before Judge Combs.

3. Judge Combs denies that he has violated SCR 4.020(1)(b)(1), that he has engaged in misconduct in office, that he has violated SCR 4.300 and that he has violated Canons 1, 2A, 2D, 3B(8), 3E(1), 4A(1), 4A(2) and 4A(3) of the Canons of the Code of Judicial Conduct.

Count II – Communications With Pikeville Police Department

1. Judge Combs adopts by this reference his Response to Count II of the First Notice and his Response to the First Amended Notice but further specifically denies certain of the statements he is alleged to have made to Captain Chris Edmonds, including that “the next officer who pulled [Judge Combs] over would get a ‘bullet in the head.’” See First Notice, p. 3 (purporting to quote comments allegedly made by Judge Combs to Captain Edmonds).

2. In further response to Count II, set forth at length in the First Notice and adopted by reference in the First Amended Notice and the Second Amended Notice, Judge Combs respectfully states affirmatively that any such telephone calls, and in particular those calls related to a break-in at Judge Combs' mother's house and illegal parking in the United Methodist Church parking lot, were made in Judge Combs' individual/personal capacity, were not threatening and represented an exercise of Judge Combs' right to freedom of speech protected by the First Amendment to the United States Constitution and Sections One and Eight of the Kentucky Constitution, as well as an exercise of Judge Combs' right to inquire about and to comment upon personal matters unrelated to his role as a Circuit Court Judge.

3. Judge Combs denies that he has violated SCR 4.020(1)(b)(1), that he has engaged in misconduct in office, that he has violated SCR 4.300 and that he has violated Canons 1, 2A, 2D, 3B(4), 4A(1), 4A(2) and 4A(3) of the Canons of the Code of Judicial Conduct.

Count III – Communications With Pikeville Employees And Officials

1. Judge Combs adopts by this reference his Response to Count III of the First Notice and his Response to the First Amended Notice.

2. In further response to Count III, set forth at length in the First Notice and adopted by reference in the First Amended Notice and the Second Amended Notice, Judge Combs denies that any of his interactions with elected officials and employees of the City of Pikeville have been "inappropriate." Judge Combs denies the characterization of his interactions with and statements about City of Pikeville employees and City of Pikeville elected officials as "harassing and contentious," and denies making any pejorative comments to or about City employees and officials. Judge Combs respectfully states affirmatively that any and all such interactions with City employees and elected officials represented an exercise of Judge Combs' right to freedom

of speech protected by the First Amendment to the United States Constitution and Sections One and Eight of the Kentucky Constitution, as well as an exercise of Judge Combs' right to inquire about and to comment upon personal matters unrelated to his role as a Circuit Court Judge.

Judge Combs further states that, as asserted by the City Attorney for the City of Pikeville, the Complaints presented to the Judicial Conduct Committee that in part resulted in this action were made by the Mayor of Pikeville and certain members of the Pikeville City Commission in their individual capacities. The City of Pikeville, through the City Attorney, has stated that the JCC Complaint was filed by individuals and not on behalf of or by the City of Pikeville or the Pikeville City Commission, further evidencing that the conversations and resulting allegations are not seen as an issue by the City of Pikeville but instead are deemed personal matters.

3. Judge Combs denies that he has violated SCR 4.020(1)(b)(1), that he has engaged in misconduct in office, that he has violated SCR 4.300 and that he has violated Canons 1, 2A, 2D, 4A(1), 4A(2) and 4A(3) of the Canons of the Code of Judicial Conduct.

Count IV – Communications With Albert Greenfield

1. Judge Combs adopts by this reference his Response to Count IV of the First Notice and his Response to the First Amended Notice.

2. In further response to Count IV, set forth at length in the First Notice and adopted by reference in the First Amended Notice and the Second Amended Notice, Judge Combs denies that any of his communications with Mr. Greenfield have been "inappropriate," and further affirmatively states that a significant amount of time has lapsed since any communication between Judge Combs and Mr. Greenfield occurred, calling into question the accuracy of Mr. Greenfield's recollection of events that occurred so far in the past. Judge Combs respectfully states affirmatively that any and all such communications represented an exercise of Judge

Combs' right to freedom of speech protected by the First Amendment to the United States Constitution and Sections One and Eight of the Kentucky Constitution, as well as an exercise of Judge Combs' right to inquire about and to comment upon personal matters unrelated to his role as a Circuit Court Judge.

3. Judge Combs denies that he has violated SCR 4.020(1)(b)(1), that he has engaged in misconduct in office, that he has violated SCR 4.300 and that he has violated Canons 1, 2A, 2D, 4A(1), 4A(2) and 4A(3) of the Canons of the Code of Judicial Conduct.

Count V – Communications With Ray Jones

1. Judge Combs adopts by this reference his Response to Count V of the First Notice and his Response to the First Amended Notice.

2. In further response to Count V, set forth at length in the First Notice and adopted by reference in the First Amended Notice and the Second Amended Notice, Judge Combs denies that the phone calls at issue were "inappropriate." Judge Combs respectfully states affirmatively that any and all such communications represented an exercise of Judge Combs' right to freedom of speech protected by the First Amendment to the United States Constitution and Sections One and Eight of the Kentucky Constitution.

3. Judge Combs denies that he has violated SCR 4.020(1)(b)(1), that he has engaged in misconduct in office, that he has violated SCR 4.300 and that he has violated Canons 1, 2A, 2D and 3(B)(4) of the Canons of the Code of Judicial Conduct.

Count VI – Political Activity

1. Judge Combs adopts by this reference his Response to Count III of the First Notice and his Response to the First Amended Notice.

2. In further response to Count VI, set forth at length in the First Notice and adopted by reference in the First Amended Notice and the Second Amended Notice, to the extent any of the described communications took place, Judge Combs denies that said communications were “inappropriate.” Judge Combs respectfully states affirmatively that any and all such communications represented an exercise of Judge Combs’ right to freedom of speech protected by the First Amendment to the United States Constitution and Sections One and Eight of the Kentucky Constitution, as well as an exercise of Judge Combs’ right to inquire about and to comment upon personal matters unrelated to his role as a Circuit Court Judge.

3. Judge Combs denies that he has violated SCR 4.020(1)(b)(1), that he has engaged in misconduct in office, that he has violated SCR 4.300 and that he has violated Canons 1, 2A, 2D, 4A(1), 4A(2) and 5(A)(1)(c) of the Canons of the Code of Judicial Conduct.

Count VII – Topix Posts

1. Judge Combs adopts by this reference his Response to Count VII of the First Notice and his Response to the First Amended Notice.

2. In further response to Count VII, set forth at length in the First Notice and adopted by reference in the First Amended Notice and the Second Amended Notice, Judge Combs not only reiterates his denial that he made any of the Topix posts set forth therein, but states further that the prosecution has not presented any evidence that those posts were made by Judge Combs.

3. Judge Combs denies that he has violated SCR 4.020(1)(b)(1), that he has engaged in misconduct in office, that he has violated SCR 4.300 and that he has violated Canons 1, 2A, 2D, 4A(1) and 4A(2) of the Canons of the Code of Judicial Conduct.

Count VIII – Hall v. Unknown Defendants Case

1. Judge Combs adopts by this reference his Response to Count VIII of the First Notice and his Response to the First Amended Notice and in further response not only denies that he engaged in ex parte conversations about the *Hall* case with Michael DeBourbon but further states affirmatively that Mr. DeBourbon has likewise denied having any such ex parte conversations about the *Hall* case. Judge Combs further states affirmatively that his actions in reviewing the subpoenas issued in the *Hall* case were undertaken in his official capacity in a good faith effort to preserve justice.

2. In further response to Count VIII, set forth at length in the First Notice and adopted by reference in the First Amended Notice and the Second Amended Notice, Judge Combs denies that he has violated SCR 4.020(1)(b)(1), that he has engaged in misconduct in office, that he has violated SCR 4.300 and that he has violated Canons 1, 2A, 2D, 3B(2), 3B(4), 3B(7) and 3B(8) of the Canons of the Code of Judicial Conduct.

Count IX – Huffman v. Elliott Case

1. Judge Combs adopts by this reference his Response to Count IX of the First Notice and his Response to the First Amended Notice and states further that a JCC Complaint is not the appropriate avenue for addressing dissatisfaction with perceived errors in judicial decisions and rulings that were made in good faith and consistent with the applicable rules and laws, as was the case in this situation.

2. In further response to Count IX, set forth at length in the First Notice and adopted by reference in the First Amended Notice and the Second Amended Notice, Judge Combs denies that he has violated SCR 4.020(1)(b)(1), that he has engaged in misconduct in office, that he has

violated SCR 4.300 and that he has violated Canons 1, 2A, 3B(2), 3E(1) and 3B(8) of the Canons of the Code of Judicial Conduct.

Count X – Soliciting Financial Contributions

1. Judge Combs adopts by this reference his Response to Count X of the First Notice and his Response to the First Amended Notice.

2. In further response to Count X, set forth at length in the First Notice and adopted by reference in the First Amended Notice and the Second Amended Notice, Judge Combs not only reiterates his denial that he solicited financial contributions from Attorneys Ray Jones, Gary Johnson, Billy Johnson and unnamed “other attorneys” who appear before Judge Combs, he affirmatively states that, upon information and belief, neither Gary Johnson nor Billy Johnson were ever contacted by the Commission’s investigator about these allegations, that neither made the allegations, and that both deny that Judge Combs ever solicited them for donations of any kind. Judge Combs further states affirmatively that, upon information and belief, in her previous role as a manager for the high school golf team and as a member of the team’s booster club, Judge Combs’ wife has in the past sought donations for the high school golf team from various members of the Pikeville community, all of which activities are appropriate.

3. Judge Combs denies that he has violated SCR 4.020(1)(b)(1), that he has engaged in misconduct in office, that he has violated SCR 4.300 and that he has violated Canons 1, 2A and 2D of the Canons of the Code of Judicial Conduct.

Count XI – Communications With Representatives Of Appalachian News-Express

1. Judge Combs adopts by this reference his Response to Count XI of the First Amended Notice and states further that, to the extent he has had communications with employees of the Appalachian News-Express they have not been contentious, harassing,

threatening, or inappropriate, that at least one such conversation has been described as “benign” by Jeff Vanderbeck and further represent an exercise of Judge Combs’ right to freedom of speech protected by the First Amendment to the United States Constitution and Sections One and Eight of the Kentucky Constitution, as well as an exercise of Judge Combs’ right to inquire about and to comment upon personal matters unrelated to his role as a Circuit Court Judge. Judge Combs states further that a significant amount of time has lapsed since any communication between Judge Combs and Messrs. Vanderbeck and White, calling into question the accuracy of these individuals’ recollection of events that occurred so far in the past.

2. In further response to Count XI, set forth at length in the First Amended Notice and adopted by reference in the Second Amended Notice, Judge Combs denies that he has violated SCR 4.020(1)(b)(1), that he has engaged in misconduct in office, that he has violated SCR 4.300 and that he has violated Canons 1, 2A, 2D, 4A(1), 4A(2) and 4A(3) of the Canons of the Code of Judicial Conduct.

Count XII – Cases Involving EQT Production Company

1. In response to Count XII, set forth in the Second Amended Notice, Judge Combs admits that he presided over the listed cases but denies that he did so without disclosing his interest in Buffalo Development and its lease agreements with Equitable Gas Company or one of its affiliated entities, and states affirmatively that making those disclosures went beyond what is required under the Supreme Court Rules, the Kentucky Code of Judicial Conduct and the interpreting Opinions. Such disclosures by Judge Combs, as well as the knowledge of such disclosures and the acquiescence of attorney Michael J. Schmitt, acting as counsel for an EQT entity, has been and will be verified under oath by multiple attorneys who practiced before Judge Combs in certain of the cases listed in the Second Notice. Judge Combs further states

affirmatively that his and his family's relationship with an EQT entity, through Buffalo Development, is widely known among the Pike County Bar and others who practice before Judge Combs and such disclosure has been included in every Financial Disclosure Report filed by or on behalf of Judge Combs with the Kentucky Registry of Election Finance and available to the public, including the attorneys who practice before Judge Combs. Finally, Judge Combs states that his relationship with Buffalo Development has been known to Mr. Schmitt since the early 1990s, when Mr. Schmitt represented an EQT predecessor in litigation filed against it by Buffalo Development, in which case Judge Combs represented Buffalo Development and also participated in informal mediation of the matter as a principal of Buffalo Development.

2. Judge Combs denies that he has violated SCR 4.020(1)(b)(1), that he has engaged in misconduct in office, that he has violated SCR 4.300 and that he has violated Canons 1, 2A, 2D, 3B(3) and 3E(1) of the Canons of the Code of Judicial Conduct.

Count XIII – Testimony At Temporary Suspension Hearing

1. In response to Count XIII, set forth in the Second Amended Notice, Judge Combs denies that he made any false statements during his testimony under oath at the June 16, 2015 temporary suspension hearing.

2. Judge Combs denies that he has violated SCR 4.020(1)(b)(1), that he has engaged in misconduct in office, that he has violated SCR 4.300 and that he has violated Canons 1 and 2A of the Canons of the Code of Judicial Conduct.

General Denial

Any and all allegations set forth in the First Notice, the First Amended Notice and the Second Amended Notice not specifically admitted in Judge Combs' Responses to those Notices are hereby denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. The First Notice, the First Amended Notice and the Second Amended Notice fail to state claims against Judge Combs upon which relief may be granted, and should therefore be dismissed.

SECOND AFFIRMATIVE DEFENSE

2. The First Notice, the First Amended Notice, the Second Amended Notice and the proceedings of the Commission related thereto, including but not limited to the use of a prosecuting attorney who also serves as an attorney in a matter pending before Judge Combs, are in violation of Judge Combs' Due Process and Equal Protection Rights, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

THIRD AFFIRMATIVE DEFENSE

3. Judge Combs' communications and interactions with individuals and entities at issue herein represented exercises of Judge Combs' right to freedom of speech protected by the First Amendment to the United States Constitution and Sections One and Eight of the Kentucky Constitution.

FOURTH AFFIRMATIVE DEFENSE

4. The assertion and prosecution of these claims by the Judicial Conduct Commission is in violation of Sections Twenty-Seven and Twenty-Eight of the Kentucky Constitution governing the Distribution of the Powers of Government.

FIFTH AFFIRMATIVE DEFENSE

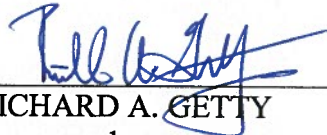
5. The affirmative defenses of the applicable statute of limitations, estoppel and waiver are a complete or partial bar to the claims set forth in the First Notice, the First Amended Notice and the Second Amended Notice.

SIXTH AFFIRMATIVE DEFENSE

6. Judge Combs pleads any and all other affirmative defenses set forth in the Kentucky Rules of Civil Procedure which are supported by the facts, whether known or unknown at this time, as a complete or partial bar to the recovery by the Plaintiff.

WHEREFORE, Judge Combs respectfully requests that the Second Amended Notice, including the First Notice and the First Amended Notice as incorporated therein, be dismissed and held for naught, and that the Order of Temporary Suspense be rescinded.

Respectfully submitted,



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and

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COUNSEL FOR RESPONDENT
HON. STEVEN D. COMBS

CERTIFICATE OF SERVICE

A copy of the foregoing Answer And Affirmative Defenses To Second Amended Notice Of Formal Proceedings And Charges was served on the following by e-mail and regular U.S. mail, postage prepaid, on this the 24th day of August, 2015:

Ms. Jimmy Shaffer,
Executive Secretary
Judicial Conduct Commission
P.O. Box 4266
Frankfort, Kentucky 40604-4266
jimmyshaffer@kycourts.net

Jeffrey C. Mando, Esq.
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COUNSEL FOR RESPONDENT

dhbpld1441

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

**MOTION OF THE RESPONDENT,
STEVEN D. COMBS, CIRCUIT COURT JUDGE,
35TH JUDICIAL CIRCUIT, TO DISMISS
COUNTS I, II, IV, VII, VIII, IX, X, XI, XII AND XIII
OF THE NOTICE OF FORMAL PROCEEDINGS
AND CHARGES, AS AMENDED**

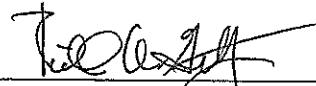
* * * * *

The Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit (“Judge Combs”), by counsel, respectfully requests that the Judicial Conduct Commission dismiss, with prejudice, Counts I, II, IV, VII, VIII, IX, X, XI, XII and XIII set forth in the Notice of Formal Proceedings and Charges, First Amended Notice of Formal Proceedings and Charges and Second Amended Notice of Formal Proceedings and Charges filed against Judge Combs by the Commission. The grounds for this Motion are set forth in the Memorandum in Support filed herewith.

REQUEST FOR HEARING

The Respondent respectfully requests that the Commission set this Motion to Dismiss for hearing at a date and time prior to the final hearing in this matter scheduled to commence on September 21, 2015.

Respectfully submitted,



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and

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COUNSEL FOR RESPONDENT

HON. STEVEN D. COMBS

CERTIFICATE OF SERVICE

A copy of the foregoing was served on the following by e-mail and regular U.S. mail, postage prepaid, on this the 4th day of September, 2015:

Ms. Jimmy Shaffer
Executive Secretary
Judicial Conduct Commission
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COUNSEL FOR RESPONDENT

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**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

**MEMORANDUM IN SUPPORT OF
MOTION OF THE RESPONDENT,
STEVEN D. COMBS, CIRCUIT COURT JUDGE,
35TH JUDICIAL CIRCUIT, TO DISMISS
COUNTS I, II, IV, VII, VIII, IX, X, XI, XII AND XIII
OF THE NOTICE OF FORMAL PROCEEDINGS
AND CHARGES, AS AMENDED**

* * * * *

The Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit (“Judge Combs”), by counsel, in support of his request that the Judicial Conduct Commission dismiss, with prejudice, Counts I, II, IV, VII, VIII, IX, X, XI, XII and XIII set forth in the Notice of Formal Proceedings and Charges, Amended Notice of Formal Proceedings and Charges and Second Amended Notice of Formal Proceedings and Charges filed against Judge Combs by the Commission, respectfully states as follows:

INTRODUCTION

By virtue of the Notice of Formal Proceedings and Charges dated April 27, 2015 (the “Original Notice”), the Amended Notice of Formal Proceedings and Charges dated June 2, 2015 (the “First Amended Notice”) and the Second Amended Notice of Formal Proceedings and Charges dated August 7, 2015 (the “Second Amended Notice”), the Judicial Conduct Commission (the “Commission”) has asserted thirteen (13) charges against Judge Combs, each of which alleges that he has engaged in misconduct in office and violated specified Canons of the

Code of Judicial Conduct.¹ Presumably the ultimate result sought by the Commission, or at least by the prosecuting attorney retained by the Commission, is the permanent removal of Judge Combs from the Bench. However, as described in detail below, certain of the allegations and resulting charges are based not on any action or omissions by the Judge in his official capacity but instead reflect Judge Combs' exercise and protection of the rights he holds as a private citizen – including the right to protect his property and that of his friends and family, his right to freedom of expression, his right, as recognized in the Canons and their commentary, to attend political events and his right, as verified in certain published opinions, to voice his concern about the manner in which law enforcement officials have performed their duties.

Judge Combs has also been denied certain of the procedural safeguards included within the applicable Supreme Court Rules, including the right to be provided with the evidence gathered by or on behalf of the Commission. These failures warrant the dismissal of the charges based upon that evidence. Finally, the “factual allegations” that underlie yet others of the charges either have no support in any of the evidence provided by or on behalf of the Commission and its prosecutor, and/or have been denied, under oath, by the attorneys who practice before Judge Combs.

For ease of reference, and admittedly at the risk of some unavoidable repetition, Judge Combs will address each of the referenced charges included in the Original Notice, the First Amended Notice or the Second Amended Notice, in turn, and for each such charge set forth the grounds for dismissal. First, however, a short factual history is in order.

¹ By moving for dismissal of these ten counts, Judge Combs does not suggest that there is sufficient evidence to support the remaining three counts, and does not waive his right to seek dismissal of any one, more or all of these additional counts prior to or during the course of the final hearing on September 21, 2015.

FACTUAL BACKGROUND

I. JUDGE COMBS' CAREER PRIOR TO TAKING THE BENCH.

Steven D. Combs graduated from the University of Kentucky School of Law and was admitted to the Kentucky Bar in 1986. See Transcript of June 16, 2015 temporary suspension hearing, testimony of Michael Pack, Michael de Bourbon and Judge Combs (the “June Hearing Transcript”), pp. 8-9 (testimony of Judge Combs).² Thereafter, Judge Combs practiced law with his brothers as part of Combs & Combs until 2003. See Affidavit of Steven D. Combs (“Combs Aff.”), attached as Exhibit A, ¶2.³ Judge Combs also served as a Pikeville City Commissioner and Mayor Pro-Tem from 1989 until 1990 and again from 2001 until he was appointed to the Bench in 2003, and as Mayor of Pikeville from 1994 until 1998. Combs Aff., ¶4. He was appointed to the Pike Circuit Court by then-Governor Paul Patton in 2003 and was re-elected in 2003, 2006 and 2014. See id., ¶3.

Judge Combs obtained the rank of Eagle Scout, is a member of the University of Kentucky Lafferty Society and is a Fellow of the University of Kentucky. See id., ¶¶5, 6. While serving as a City Commissioner he also served as Chairman of the Pikeville Housing Authority Board and served on the inaugural Board of the Pikeville College School of Osteopathic Medicine. He was Vice-President and Secretary/Treasurer of the Pike County Bar Association in 1987-1988. See id., ¶5. Judge Combs' dedication to his family, his community and his faith is also clearly demonstrated through his lifelong membership in the Pikeville United Methodist Church and through his involvement in his children's activities, including his service as the Assistant Coach for the traveling Reds baseball team (2003-2008), the Coach of the local Cal

² The June Hearing Transcript was provided to counsel by the Commission and a copy is therefore not attached to this Motion.

³ The Exhibits to this Memorandum are included in a separate Appendix of Exhibits.

Ripkin baseball team (2009-2010), the Assistant Coach for the Pikeville Independent School Junior High Baseball team (2010) and the Coach for the Pikeville Independent School Junior High (2010-2012) and High School (2013-2014) golf teams. See id., ¶6.

II. JUDGE COMBS' SERVICE AS A CIRCUIT COURT JUDGE.

From the beginning of his tenure as a Circuit Court Judge, Judge Combs has served the people of Pike County and elsewhere with dignity and fairness. Even among those who have given statements to the Commission's investigator, Judge Combs' impartiality, wisdom and even-handed application of the law has been noted:

He has a very good temperament on the Bench. He's very knowledgeable. He's a smart man. He's always been a very common sense, practical Judge. I mean, he, he's one of the better, in terms of his legal ability, he's probably one of the better Judges I've ever practiced in front of. ... I've never seen him do anything that I thought to be illegal, unethical or anything like that from the Bench.

March 8, 2015 Statement of Senator Ray Jones to Gene Weaver, p. 3.⁴

Well, in general, I can tell you that Judge Combs' reputation has been very good on the Bench. I've not heard of him taking any kind of money, bribes [sic], handling cases for political purposes or doing any of those kind of things that every now and then we hear that a Judge might have done, frankly. ... I've never seen him improperly handle [my] cases for any reason, other than I think he might have just misconstrued the law, but I've never thought that he handled one of my cases for political purposes or to gain some kind of political advantage. And so his reputation on the Bench is actually pretty good.

February 26, 2015 Statement of Rick L. Bartley to Gene Weaver ("Bartley Statement"), pp. 32-33.

The two attorneys who testified on Judge Combs' behalf at the temporary suspension hearing likewise praised Judge Combs' demeanor and professionalism:

Q. Has he ever been discourteous to anyone that you've seen?

A. No, sir.

⁴ The transcribed statements taken by Gene Weaver were provided to Judge Combs' counsel by Mr. Mando or the Commission, and are presumably also in the possession of the Commission and are therefore not attached.

Q. On the bench?

A. On the bench or off, no.

Q. How would you rate him as a judge?

A. Based on my experience and the education aspect of my job at AOC and observing judges there, ten out of ten, I mean, he's a great judge. His demeanor is always professional and he's always kind.

June Hearing Transcript, Testimony of Michael Pack, Hearing Transcript p. 4.

Q. What have you observed about Judge Combs on the bench?

A. Taking notes primarily. When testimony is presented, he doesn't leave to memory, he doesn't lean back and just close his eyes, he takes notes, and I found that very diligently. Key parts of testimony and of evidence he is very diligent, almost like an engineer type of a judge.

Q. How would you describe his demeanor on the bench?

A. Very good, very cordial, very nice. He treats attorneys and witnesses very kindly, but at the same time the respect you have to have in this circuit courtroom, he demands that as well.

June Hearing Transcript, Testimony of Michael de Bourbon, p. 6.

Other attorneys who have practiced extensively before Judge Combs and who will be called by Judge Combs to testify at the final hearing on September 21, 2015, if necessary, will likewise testify as to Judge Combs' competence, knowledge of the law and the Rules of Evidence, professionalism, kindness and widely-respected reputation as a Judge. Affidavits obtained to date include such praise:

I have practiced a number of cases before Judge Combs and I have always found him to be a fair and even-handed judge. I believe Judge Combs is a fair and honest Judge and has always conducted himself in a professional manner in the many cases that I have practiced in his Court.

Affidavit of Adam Collins ("Collins Aff."), attached as Exhibit B, ¶6.

I have practiced numerous cases over the years before Judge Combs and have found him to be highly competent, knowledgeable of the law and of the Rules of

Evidence and to always treat litigants and counsel before him with the utmost dignity and respect. In my opinion it would be beneficial if the Commonwealth of Kentucky had more Circuit Judges of the caliber of Judge Combs.

Affidavit of Adam S. Hall (“Hall Aff.”), attached as Exhibit C, ¶6.

I have practiced a number of cases before Judge Combs. It is my opinion Judge Combs has always conducted himself professionally and civilly and is as competent a trial judge in terms of his knowledge of the law and of the rules of evidence. Based upon my personal experiences, it is my opinion that Judge Combs is a competent and honest trial judge. I have no personal knowledge of any reason that he should not remain on the bench in the Pike Circuit Court.

Affidavit of Robert J. Patton (“Patton Aff.”), attached as Exhibit D, ¶¶7-9.

See also July 28, 2015 Sworn Statement of Billy G. Slone (“Slone Statement”), attached as Exhibit E, pp. 5-6; July 27, 2015 Sworn Statement of Michael Shane Hall, attached as Exhibit F, p. 4; July 27, 2015 Sworn Statement of William Roy Johnson, Jr. (“Billy Johnson Statement”), attached as Exhibit G, pp. 4, 12-13; Affidavit of Phil A. Stalnaker (“Stalnaker Aff.”), attached as Exhibit H, ¶¶5-6; Affidavit of Gary C. Johnson (“Gary Johnson Aff.”), attached as Exhibit N, ¶3.

Even non-lawyers recognize Judge Combs’ proficiency and efficiency as a Judge:

Other than that, I’ve always thought the Judge was fair. He moves his cases along. He allows both sides of the parties, the plaintiff and the defendant, to speak their mind. I find him empathetic and I also believe he sometimes is conflicted with doing the right thing, but I’ve never not known him to do the right thing...

May 21, 2015 Statement of Jeff Vanderbeck to Gene Weaver (“Vanderbeck Statement”), p. 17.

Finally, the unsupported allegation that Judge Combs actively supports political candidates is disputed, under oath, by well-respected attorneys in Pikeville. Among the statements under oath provided to counsel are the following:

- Q. Have you ever known him to actively support any political candidates?
- A. Not to my knowledge.

Q. You think that if he did, that would come to your attention as a member of the bar?

A. Well, as a resident of Pikeville, I think if it was – I think I would have known that. I think I would have.

Slone Statement, Exhibit E, pp. 14-15.

Q. Has he ever asked you to support a particular political candidate?

A. He has not.

Q. Have you ever known him to actively support any political candidate?

...

A. Not since he's been on the bench.

Billy Johnson Statement, Exhibit G, p. 10.

Judge Combs' reputation as a lawyer and as a private citizen is quite positive, and is certainly not as represented by the Commission and its prosecutor in the charging documents. Judge Combs respectfully submits that the Commission should therefore dismiss the charges asserted against Judge Combs as unsupported by the facts.

III. BUFFALO DEVELOPMENT, INC.

A. Judge Combs' Role In The Company.

One of the matters at issue in these proceedings is Judge Combs' role in Buffalo Development, Inc. ("Buffalo Development"), a landholding corporation that is successor to a 1937 oil and gas lease (the "Lease"). See June Hearing Transcript, Testimony of Judge Combs, p. 9. Buffalo Development is owned by Judge Combs and his two brothers. See Combs Aff., Exhibit A, ¶7. Judge Combs and his brothers are the three directors of the company, and all corporate decisions must be by majority vote of the directors. No individual officer or director can dictate the operations of the company. See id. The Lease was originally entered into between Harry L. Laws, as Lessor, and Piney Oil and Gas Company, as Lessee. Buffalo

Development took over the Lease as Lessor effective January 1, 1989.⁵ See id., ¶8. In the early 1990s the Lessee was Ashland Exploration, Inc. (“Ashland Exploration”). See id.

Of particular importance for this Motion, and as described in more detail below, is the fact that attorney Michael Schmitt represented Ashland Exploration earlier in litigation captioned Buffalo Development, Inc. v. Ashland Exploration, Inc., et al., Case No. 90-CI-1596 (Pike Circ. Ct.) (the “Buffalo Development Litigation”). During those proceedings, and with Mr. Schmitt remaining as counsel for the Lessee, the ownership of Ashland Exploration changed hands more than once. See Buffalo Development Motion To Dismiss Without Prejudice, filed November 5, 1999 in the Buffalo Development Litigation, attached as Exhibit I, p. 1. The Lessee is now EQT Production Company (“EQT Production”), which has also been represented in some cases by Mr. Schmitt. Upon information and belief, EQT Production succeeded as Lessee under the Lease in or around 1996. The Lease has not been renegotiated or amended since that transfer. See Combs Aff., Exhibit A, ¶8.

B. Judge Combs’ Role In The Company Is Well-Known.

As the Commission is aware, Judge Combs asserts that he has always made parties and their counsel aware of the Lessor/Lessee relationship between Buffalo Development and EQT Production in matters that come before him involving EQT Production, generally in informal preliminary conferences early in the case. Judge Combs has also always disclosed his ownership interest in Buffalo Development, through the required Financial Disclosure Statements filed by Judge Combs (and all Circuit Court Judges) and available to the public. See Representative Financial Disclosure Statement, attached as Exhibit J. Any attorney with a case before Judge Combs who is concerned about or even simply interested in the conflicts that the Judge might

⁵ Although it may seem obvious, it apparently warrants specific mention that the Lease is between EQT Production and Buffalo Development. Judge Combs is not an individual party to the Lease.

have with that attorney's clients can easily answer those questions by reviewing these Financial Disclosure Statements.

Further, and contrary to the sworn Affidavit provided to the Commission by Mr. Schmitt, attorneys involved in cases before Judge Combs that have included EQT Production and have had Mr. Schmitt acting as counsel for EQT as a party have stated under oath that Judge Combs disclosed that information:

I was counsel for Western Construction, Inc. in an action styled Fleming, et al. v. Equitable Production Company, Civil Action No. 09-CI-431 (Pike Cir. Ct.). Judge Steven D. Combs was the presiding Trial Judge over this litigation in Pike Circuit Court. On the morning of trial various motions were faxed to the Judge's office by EQT for ruling prior to the commencement of the Trial. Hon. Adam Collins, Hon. Mike Schmitt and myself were present in the Judge's chambers obtaining copies and initially reviewing the new Motions for the first time. In my presence, Judge Combs stated his family had some type of a business relationship with EQT either a lease arrangement, property dispute or something to that effect. During the discussions, no one, including myself, raised any objection to Judge Combs continuing to sit as the trial judge. Neither my client nor myself had any objection with Judge Combs continuing in the case as the Trial Judge and therefore asserted no objection to his presiding over this matter. I believe Mr. Schmitt and Mr. Collins, were present during Judge Combs disclosure. I am unaware of any objection to Judge Combs continuing to sit as the trial judge.

Patton Aff., Exhibit D, ¶¶2-6.

Mr. Collins' recollection of the disclosure is in line with Mr. Patton's:

Previously, I was counsel of record for several members of the Fleming/Bentley family in an action styled Fleming, et al. v. Equitable Production Company, Civil Action No. 09-CI-431 (Pike Cir. Ct.), an action which was litigated in the Pike Circuit Court before the Hon. Steven D. Combs. During the course of that litigation, on the morning of the first day of the trial, I specifically recall discussions with all counsel in which Judge Combs raised the issue of his family having leased their property to EQT Production ("EQT") and that there was a dispute about the leased property. That disclosure took place during a conference in which both Mike Schmitt, counsel for EQT, and Joe Patton, counsel for another contractor joined as a defendant participated. This discussion with Judge Combs and other counsel in the Fleming case was an informal conference that took place before the trial began. When Judge Combs raised the matter of the family having a business relationship with EQT or an affiliated entity, no one expressed any objection. I indicated that I would have to discuss it with my client and did so.

After that discussion, my client agreed to go along with my recommendation that Judge Combs remain as the trial judge because of my belief that he is a fair, even-handed and competent trial judge. During the discussion that took place, Mike Schmitt, who then represented EQT, never raised any objection to Judge Combs continuing to sit as the trial judge and was clearly aware of what was said. I specifically recall the discussion outlined above on the morning of trial but also believe that the issue of a lease arrangement between a Combs family company and EQT may have come up at a time earlier in the litigation.

Collins Aff., Exhibit B, ¶¶1-5 (Emphasis added).

Judge Combs' stated practice of disclosing the relationship between Buffalo

Development and EQT Production is demonstrated in two other cases by attorney Adam Hall:

I was involved as counsel in several cases in which EQT Production Company ("EQT") or an affiliate was joined as a party. In Harlan Johnson, et al. v. EQT Production Co., Civil Action No. 09-CI-1179 (Pike Cir. Ct.) (the "Johnson Litigation"), I acted as counsel for the Plaintiff. Also involved in that case was Marty Osborne. In the Johnson Litigation Judge Combs made it clear to all the lawyers that his family had a lease or business interest with EQT. It is my firm recollection that Judge Combs brought up this point in that case and it is my recollection that Marty Osborne was aware of that potential conflict and raised no objection to Judge Combs continuing to act as the trial judge in the case. At no time did anyone object to Judge Combs continuing to preside over the Johnson Litigation and at no time did anyone request his recusal.

Hall Aff., Exhibit C, ¶¶2-3.

Another case in which I was involved where an EQT entity was a party was John Williamson, et al. v. L&B Oil & Gas, Inc., Civil Action No. 13-CI-680 (Pike Cir. Ct.) (the "Williamson Litigation"). An EQT entity was brought into that case as a Third-Party Defendant shortly before the matter was dismissed as settled. I was counsel for Plaintiff in the Williamson Litigation. Mike Schmitt represented the EQT entity. In the Williamson Litigation, it is my recollection that EQT Gathering, LLC ("EQT Gathering"), represented by Mr. Schmitt, was brought into the case as a Third-Party Defendant by the Defendant L&B Oil & Gas, Inc. ("L&B"), represented by Dale Golden. Because EQT Gathering, LLC had previously settled with my clients, and because my clients reached a settlement with L&B not long after EQT Gathering came into the case, the various claims were all dismissed by Agreed Orders. It is my recollection that Judge Combs noted his family's business connection with an EQT entity. Again, no one objected to Judge Combs presiding in the Williamson Litigation.

Id., ¶¶4-5.

Mr. Hall also verifies that the relationship between the Combs family business and EQT Production is well-known in the legal community:

In my experience, it is widely known among members of the Pike County Bar and others who practice before the Pike Circuit Court that Judge Combs' family has a business relationship with EQT. In any case that I have been involved in which EQT has been a party, Judge Combs has raised that issue and in every instance no one has asked that he step aside. I believe this to be the case because Judge Combs is an honest and fair trial judge and that a family business arrangement with EQT would have no effect upon his impartiality or his rulings. ... I have provided this Affidavit with respect to Judge Combs' disclosure of his family's interest with respect to EQT and the acquiescence of all counsel to Judge Combs continuing in both litigation matters. It is my best recollection that Judge Combs disclosed his family's interest with EQT in preliminary conferences in each case. I am absolutely certain that Mike Schmitt was aware of such disclosure in the Williamson Litigation and that he too had no objection to Judge Combs continuing to preside in the litigation in which Mr. Schmitt was representing an EQT entity.

Id., ¶¶6-7.

Attorney Phil A. Stalnaker also confirms that Judge Combs' family business and its relationship with EQT is very well known:

During the course of my practice, I have appeared on numerous occasions before the Hon. Steven D. Combs, Pike Circuit Judge, since Judge Combs has been on the bench. Included among the cases in which I have appeared before Judge Combs are Wright v. EQT Production Co., Civil Action No. 11-CI-1161 (Pike Cir. Ct.), and Stalnaker v. EQT Production Co., Civil Action No. 11-CI-624 (Pike Cir. Ct.), an action in which I represented my wife as a property owner. In the Wright action, Mike Schmitt represented EQT and in the Stalnaker case, Kevin West represented EQT. I believe in each of those cases, as I do frequently in other matters, I would have filed a Motion for a Preliminary Conference after an Answer had been filed and would have asked for a trial date. Judge Combs usually holds Preliminary Conferences off the record in an informal setting and at that time discussions regarding scheduling and other matters that counsel may bring up are addressed. The Preliminary Conferences that Judge Combs typically conducts are not videotaped. I recall having a Preliminary Conference in each of the EQT cases noted above but do not recall specifically whether the issue of Judge Combs' family having some sort of lease arrangement with an EQT entity came up or not. However, if it came up, I would have had no objection to Judge Combs continuing to handle the matter. It is widely known that Judge Combs' family has mineral and property interests in Pike County. Neither of the EQT

cases noted above in which I was involved had anything to do with any property interests involving the Combs family.

Stalnaker Aff., Exhibit H, ¶¶2-4.

Finally, and as alluded to above, Mike Schmitt has been aware of the lease arrangement between Buffalo Development and EQT Production since the 1990s, through his involvement in the Buffalo Development Litigation. Judge Combs' testimony at the June Hearing clearly evidenced Mr. Schmitt's long-time knowledge of the relationship:

Q. Okay. And there's an affidavit from a Mr. Schmitt, who is an attorney, and he says that he was not familiar with your connection to Buffalo Development. Is that accurate?

A. Well –

...

Q. Well, let me ask it a different way. ... Are you familiar with Mr. Schmitt?

A. Yes, sir.

Q. And has he had interaction with you that would cause him to have knowledge of your relationship with Buffalo Development?

A. Yes, sir.

Q. And tell us about that.

A. There was a dispute when Ashland Exploration had the lease in the late '90s about locations of wells because there was some flat available property, and obviously those were the most favorable well sites to them because they were the cheapest. So basically they proceeded against Buffalo to get well permits where they wanted them, and when we proceeded against them, it went to Pike Circuit Court. Later Buffalo was represented by Gary Johnson to try to resolve the matter. I don't know if he ever entered an appearance, but to mediate the matter. Somewhere in the intervention, EQT, which was then called Equitable Gas Company ... they bought out Ashland's interest, and Mr. Schmitt and Mr. Johnson along with my older brother and younger brother came to a settlement of the lawsuit, and so they could go in and drill the wells where they wanted.

...

Q. And Mr. Schmitt was representing EQT at that time?

A. Yes.

June Hearing Transcript, Testimony of Judge Combs, pp. 9-11.

In other words, Judge Combs acted not only as counsel for Buffalo Development but as a director and officer with authority, along with his brothers, to negotiate and execute a settlement of the Buffalo Development Litigation, and Mike Schmitt was well aware of Judge Combs' role in the company.

Assuming this was the first time that Mr. Schmitt became aware of Judge Combs' role in Buffalo Development and of Buffalo Development's lease with EQT Production, it is clear that Mr. Schmitt has had that knowledge for at least sixteen years and has appeared in numerous cases involving EQT before Judge Combs. The relationship was again disclosed to Mr. Schmitt during the Fleming litigation, a case filed in 2009, and during the Williamson litigation, a case filed in 2013. Mr. Schmitt sought (and was granted) recusal of Judge Combs in the Potter case, a matter filed in 2011. Review of the cases cited in the Second Amended Notice indicates that Mr. Schmitt was counsel for an EQT entity in ten of those matters, during the first of which both Mr. Collins and Mr. Patton have stated under oath that Judge Combs disclosed the family relationship with EQT Production. Mr. Schmitt's Affidavit is in direct contravention to all of these facts, calling into question the validity of his Affidavit, to say the least.

THE APPLICABLE JUDICIAL CANONS

The Original Notice, First Amended Notice and Second Amended Notice of course rely heavily on Judge Combs' alleged failures to uphold the Canons set forth in the Kentucky Code of Judicial Conduct. It is therefore important to note certain of those Canons, and their accompanying commentaries. For example, in the Preamble to the Canons it is pointed out that

“the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.” See Kentucky Code of Judicial Conduct (the “Judicial Conduct Code”), Ky. SCR 4.300, Preamble. Likewise:

Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

Id.

An economic interest that mandates disclosure by a Judge is specifically defined to mean an economic interest in a party to litigation that is before the Judge:

“Economic interest” denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party...

Judicial Conduct Code, Terminology. (Emphasis added).

In determining whether a Judge has violated Canon 2, regarding the appearance of impropriety, the Commentary makes clear that the question relates to the appearance of the Judge’s ability to carry out his judicial duties:

The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge’s ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

Judicial Conduct Code, Canon 2, Commentary.

Pikeville City Police Department Chief Reed and Captain Edmonds have alleged that they will not be able to get a fair hearing before Judge Combs because of negative statements he is alleged to have made about them on a personal level (an assertion that the Commonwealth Attorney for Pike County, Rick Bartley, did not find credible after meeting with Judge Combs). Ray Jones and Rusty Davis likewise assert that negative personal statements made to them and/or to

officials of the City of Pikeville will impact their abilities to obtain fair and impartial treatment by Judge Combs.⁶ However, personal animus is not grounds for disqualification of a Judge. “Dislike of a party or a party’s lawyer does not, by itself, constitute a personal bias or prejudice.” Judicial Code of Conduct, Canon 3E, Commentary.

Finally, there has been no credible evidence presented that Judge Combs has ever actively supported a candidate for elected office. The only concrete “offense” seems to be his attendance at a political roundtable forum for candidates for City of Pikeville offices, presented along with innuendo that Judge Combs is known to have told private individuals which candidates he supports. Nothing about these actions (even those that are completely unsupported by any evidence, such as Judge Combs’ “known” support for candidates) is untoward:

A judge or a candidate for election to judicial office retains the right to participate in the political process as a voter. A judge or a candidate for election to judicial office may publicly affiliate with a political organization but may not campaign as a member of a political organization. ... Section 5A(1) does not prohibit a judge or candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

Judicial Conduct Code, Canon 5A(1), Commentary.

In light of these facts and directives, Judge Combs respectfully requests that the Commission review and dismiss the following-described Counts on the grounds that the Commission’s prosecutor cannot demonstrate by clear and convincing evidence that these Counts demonstrate misconduct in office by Judge Combs. See Gormley v. Judicial Conduct

⁶ On the other hand, Mr. Davis has specifically denied that any Complaints have been filed with the JCC by the City of Pikeville or the Pikeville City Commission, and asserts that any Complaints filed were done in the parties’ individual capacities: “Neither the City of Pikeville or its Board of Commissioners have filed a Complaint with the Judicial Conduct Commission. However, this response does not address any actions that may have been taken by a Commissioner(s) of the City of Pikeville in their personal capacity.” See July 30, 2015 e-mail from City Attorney Russell H. Davis to Danielle H. Brown, attached as Exhibit K. The Commission should therefore not consider the City of Pikeville or its Commission as complaining parties seeking redress against Judge Combs.

Comm'n, 333 S.W.3d 717, 725 (Ky. 2009) (citations omitted) (“the evidence to sustain the charges before the Commission must be ‘clear and convincing.’”).

SPECIFIC REQUESTS FOR DISMISSAL

I. COUNT I.

Count I, set forth at length in the Original Notice, alleges that Judge Combs presided over the Potter litigation described therein, which case included EQT Production Company as a Defendant, and that Judge Combs made direct contact with two EQT officials during that time. This Count should be dismissed for numerous reasons. First, Judge Combs recused from the case as soon as one of the parties requested that he do so. See June Hearing Transcript, pp. 12-13. In addition, and as demonstrated above, Mr. Schmitt – who requested the recusal – has clearly known about Judge Combs’ family business and its relationship with EQT Production since at least the late 1990s.

While Judge Combs acknowledges that he had conversations with EQT representatives about royalty payments and about the placement of gravel on Buffalo Development’s property, the Original Notice does not draw any connection between either of those matters and the claims at issue in the Potter litigation. Judge Combs’ calls to EQT were of a strictly personal nature, involving his family’s property – which had nothing to do with the dispute involving EQT before the Court. As set forth at length in Section II below, a Judge is not required to stop being a private citizen when he dons the judicial robe. There is simply no reason to suggest that Judge Combs acted improperly in making legitimate complaints to EQT while a completely unrelated matter was pending before him.

Under the applicable Canons, Judge Combs’ actions do not constitute misconduct in office. It must be noted that the Lease at issue is between EQT Production and Buffalo

Development, rather than Judge Combs personally; that Buffalo Development has never been a party in a matter presided over by Judge Combs; that Judge Combs has only a one-third ownership interest and voting power in the company; and that the Commission has not drawn a single connection between any of the Equitable/EQT cases at issue (including the Potter case) and the Buffalo Development Lease. The inevitable conclusion is that Judge Combs' repeated disclosures of his interest in Buffalo Development was actually above and beyond what the Canons require. "Neither receiving royalty payments from a party nor leasing a mineral estate to a party qualifies as a 'financial interest' in a party, which is defined in Canon 3C(3)(c) as 'ownership of a legal or equitable interest, however small, ... in the affairs of a party.'" Guide to Judiciary Policy, Vol. 2B, Ch. 2, Committee on Codes of Conduct Advisory Opinion No. 94 ("Fed. Advisory Op. 94"), p. 2 (quoting Canon 3C(3)(c) of the Code of Conduct for United States Judges) (other citations omitted).⁷

Nothing in the evidence provided by or on behalf of the Commission suggests that any of the Equitable/EQT cases at issue – including the Potter case – involved the risk of substantial damages being assessed against the EQT entity, another factor that must be considered:

However, unless the suit before the judge was of such a magnitude that it could realistically impact the party's financial ability to pay royalties to the judge, the 'interest that could be affected substantially' clause of Canon 3C(1)(c) is not implicated. Moreover, even if the suit were of that magnitude, it might not have the potential to substantially affect the judge's royalty interest if it is clear that the oil or gas could and would be marketed to others at a comparable price in the eventuality that the purchaser/party before the judge no longer remained a viable purchaser as a result of the suit.

Fed. Advisory Op. 94, pp. 2-3.

⁷ Kentucky Canon 3E(1)(c) is nearly identical to Canon 3C(3)(c) of the Code of Conduct for United States Judges. The Committee on Codes of Conduct Advisory Opinions regarding the Federal Canons are therefore instructive when interpreting a Kentucky Canon that parallels its Federal counterpart.

Even that portion of the referenced Advisory Opinion that describes a scenario when recusal would be appropriate is distinguishable from the matters at issue. That scenario assumes a Lessee party which has “entered into a mineral lease with the judge who held the executory rights to lease those minerals for production.” See Advisory Opinion 94, p. 4. In this case, Judge Combs is not the Lessor and he does not hold the right to lease the subject mineral. That right is held by Buffalo Development, whose actions require a majority vote of its three owners. Judge Combs cannot make executory decisions for Buffalo Development and it is the company, not the Judge, which holds the real property and related mineral rights.

Count I of the Formal Proceedings and Charges does not state a claim against Judge Combs for which he can be found by clear and convincing evidence to have engaged in misconduct in office, and that Count should therefore be dismissed.

II. COUNT II.

Count II of the Formal Proceedings and Charges relates to “numerous inappropriate telephone calls to the City of Pikeville Police Department.” See Original Notice, p. 2. However, the calls that were recorded clearly all related to personal matters or to the actions and omissions of members of the Pikeville Police Department and are not actionable under the Canons. The Commonwealth Attorney investigated all of the calls and determined that there was no reason to believe Judge Combs should recuse from matters involving the City of Pikeville. Significantly, certain of the calls were not recorded and therefore cannot be verified, making this a “he said/he said” situation. None of the calls rises to the level of judicial misconduct under the Canons. Finally, prosecuting Judge Combs for statements of his opinions and for statements made about private matters runs afoul of both the United States and Kentucky Constitutions.

The First Amendment to the United States Constitution, and Section 1 of the Kentucky Constitution, guarantee all citizens freedom of speech. Nothing in those sacred documents carves out members of the Judiciary from their protections, and any attempt to oust Judge Combs from the Bench because of his exercise of this right is simply unwarranted. Because Count II is based entirely on legitimate telephone calls involving personal matters such as the break-in at his mother's house, that Count should be dismissed.

A. Calls By A Judge About Private Matters Are Not Inappropriate.

By calling into question the propriety of Judge Combs discussing issues related to a break-in at his mother's house and unauthorized parking in his church's parking lot, the Commission has overlooked or ignored the fact that a Judge does not cease to be a private citizen when he takes the Bench. It is unreasonable to suggest that a Judge (here a former City Commissioner and Mayor obviously concerned about the city he lives in) is precluded from voicing complaints about private matters to the Police Department, City officials and others, as recognized by the Federal Committee on Codes of Conduct:

In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with governmental officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of the judicial office.

Guide to Judiciary Policy, Vol. 2B, Ch. 2, Advisory Opinion No. 50, p. 3 (interpreting Canon 4A of the Code of Conduct for United States Judges) (quoting Model Code of Judicial Conduct, Rule 3.2 Comment [3], (ABA 2007 Edition)).⁸

It is particularly interesting to note that the Commissions' investigator, Mr. Weaver, either chose not to speak to the three Pikeville Police Officers who received the recorded calls about Judge

⁸ Canon 4A of the Federal Canons is comparable to Kentucky Canon 4.

Combs' mother's home and the church parking issue, or in speaking with them did not find their comments helpful to the Commission's case and therefore did not record those conversations.

If Officer Addison Baisden, Officer Aaron Thompson or Office Dave Adkins felt intimidated or threatened by Judge Combs, or felt that Judge Combs was using his office inappropriately, why is there no recorded and transcribed interview with these three Officers by Mr. Weaver? The actual recordings of the calls do not demonstrate that the Judge "chastised" Officer Baisden or engaged in a "verbal confrontation" with Officer Thompson, whatever those characterizations by the Commission might mean. Neither do they include clear and convincing evidence that Judge Combs was attempting to use his judicial office to influence any of these Officers' actions. These three calls represented Judge Combs' legitimate complaints, made as a private citizen, and they should be stricken from the record in this case.

B. A Judge Is Required To Report Police Wrongdoing.

Kentucky's own Judicial Ethics Committee has likewise recognized that a Judge is not only allowed to report to government official when he notices wrongdoing, but is indeed required to do so:

Question 2: May a judge write a letter to a law enforcement officer's supervisor(s) criticizing or applauding said officer's conduct, disposition, demeanor, etc. in the courtroom?

Answer 2: Yes.

...

For many of the same reasons, the answer to question 2 is also yes. However, the committee also believes that a judge has a duty pursuant to his administrative responsibilities to write such letters.

Kentucky Judicial Ethics Opinion JE-87 (August 27, 1996) (Emphasis added).

In the case of Johndra Coleman, Judge Combs' belief that the arrest had been improper is borne out by the attorney who represented Ms. Coleman in the bond revocation hearing:

The proceeding that you're referencing that I was involved in was a bond revocation hearing. Johndra had been arrested by the Pikeville police department for public intoxication. From the citation and from what Jonda [sic] had told me, she was on her – I think on her porch, standing in her doorway, actually, and the citation indicated that she had been calling the police department.

Slone Statement, Exhibit E, p. 8.

Q. And do you believe his hearing was improper in any way in terms of the result?

A. Not at all. No. I think it was absolutely proper.

Q. Is that consistent with your understanding, that you cannot arrest someone for public intoxication on their own property?

A. Yeah, I'd say that's true. In this situation where she was, yes.

Q. And do you believe his ruling was correct?

A. I do. I don't think she was endangering herself or others where she was.

Id., p. 10.

If a Judge is mandated to report on inappropriate conduct of a Police Officer in the courtroom, surely he is also required to do so regarding the Police Officer's out-of-court actions in performing his duties? Judge Combs' calls to Chief Reed about recent and past actions by the Pikeville Police Department (including their actions related to the Johndra Coleman matter) were therefore entirely appropriate (as were his discussions with Chief Reed about the parking and break-in private matters). The calls to Chief Reed should also be stricken from the record.

C. The Alleged Calls To Captain Edmonds Were Not Recorded And Were Not Deemed Significant By The Commonwealth Attorney.

Finally, the calls allegedly made to Captain Chris Edmonds, and the statements allegedly made during those calls, are not recorded and their contents simply cannot be verified. Of more importance, however, is that when Commonwealth Attorney Rick Bartley sat down with Judge Combs after receiving Chief Reed's complaint about the subject calls, including the unrecorded

calls to Chris Edmonds, he clearly walked away reassured that Judge Combs' actions were not threatening or otherwise indicative of inappropriate animosity on the part of Judge Combs against the Police Department:⁹

I just asked him right up front, do you have such animosity toward the city police that I need to, as we say, swear you off the cases, or ask him to recuse, and he assured me that no, he had no personal animosity toward them, that he would treat them fairly in court and I said okay, I just want to let you know that they're concerned and I'm aware of it.

Bartley Statement, pp. 10-11.

Mr. Bartley also advised Chief Reed in writing that he did not intend to ask Judge Combs to recuse from City of Pikeville cases, and assured Chief Reed that Judge Combs would be fair in such cases. See id., p. 11. He did not see the alleged statement about shooting Police officers as a direct threat. See id., p. 14. Once again, the calls to Chris Edmonds, assuming the content is as stated by Caption Edmonds, should not be considered in this matter.

All of the calls at issue represent Judge Combs' exercise of his First Amendment right to freedom of speech, his duty to report on inappropriate Police behavior and his legitimate actions as a private citizen. Each of the three categories of calls described above should be stricken, and in so doing, the grounds for Count II will have been eradicated. There is no clear and convincing evidence that these calls constitute misconduct in office or are otherwise violative of the Canons, and Count II should therefore be dismissed.

III. COUNT IV.

Count IV of the Formal Proceedings and Charges relates to calls allegedly made by Judge Combs to Pike TV Channel Manager Albert Greenfield. The first issue of importance about Count IV is that the Commission characterizes the calls as "numerous," but Mr. Greenfield

⁹ If the Commonwealth Attorney made a decision that no basis existed to pursue the matter further, the Commission should be bound by that prosecutorial determination.

clearly stated during his statement to Mr. Weaver that he received only three calls. See February 25, 2015 Statement by Albert Greenfield to Gene Weaver, p. 5. Next, Mr. Greenfield, by his own admission, cannot even recall if the first call he alleges he received occurred in 2011 or 2012. See Original Notice, p. 6. See also February 25, 2015 Statement by Albert Greenfield to Gene Weaver, p. 5. If Mr. Greenfield truly believed that the calls rose to the level of harassing behavior by a Judge, why did he sit silent all these years? He said nothing for nearly four years until apparently enlisted by others to complain. This delay alone should be fatal to this charge. Moreover, the Commission's prosecutor has presented no evidence that Mr. Greenfield ever complained himself to the Judicial Conduct Commission or to any other authority about these calls. Finally is the fact that the calls all related to the question of the legality of the programming at issue and whether it could result in the station losing its license.

Judge Combs is compelled to uphold the law. Just as a Judge is duty-bound to report wrongful actions by the Police, is not a Judge also duty-bound to question a citizen when the Judge believes that citizen is about to or has violated the law? Finally is the freedom of speech guaranteed to Judge Combs just as to any other citizen. Mr. Greenfield did not complain about the calls he alleges he received, he does not have a distinct memory as to when at least one of those calls took place and the calls represent Judge Combs' efforts to abide by his duties and to be a good citizen. There is no clear and convincing evidence of judicial misconduct related to Mr. Greenfield, and Count IV should be dismissed.

IV. COUNT VII.

Count VII relates to Judge Combs' alleged postings on the Topix website. The fact that Topix posts are anonymous (regardless of the wisdom of that policy) completely countermands the Commission's allegation that the posts at issue call into question Judge Combs' integrity,

impartiality and demeanor. How could anonymous posts lead the public to any conclusions about Judge Combs?¹⁰ Perhaps more damning, however, is that the Commission's prosecutor has presented no concrete evidence that Judge Combs made the posts at issue. Ray Jones claimed that Kelly Edmonds (Judge Combs' assistant) told Kevin Keene that she had seen Judge Combs on Topix. See March 8, 2015 Statement of Senator Ray Jones to Gene Weaver, p. 10. Kevin Keene's statement also indicated his source of this information was Ms. Edmonds. See March 9, 2015 Statement of Kevin Keene to Gene Weaver, pp. 8-10.

Ms. Edmonds' statement about this subject, and any others, if one has been taken, has never been provided to Judge Combs. Police Caption Chris Edmonds stated that Commonwealth Attorney Rick Bartley said he had seen Judge Combs on Topix behind the Bench. See February 23, 2015 Statement of Chris Edmonds to Gene Weaver, p. 29. Gene Weaver took a statement from Mr. Bartley three days later, but did not ask Mr. Bartley about the Topix issue (or, if he did ask, he did not do so during the transcribed portion of their conversation – which would be entirely inconsistent with his obligation to report what he found and not to pick and choose what would be provided to Judge Combs and the Commission). Clearly the Commission's investigator and its prosecutor have been unable to verify the source of the Topix posts, which are denied and disputed by Judge Combs, and the allegation that they were made by Judge Combs cannot be sustained. Count VII should be dismissed.

V. **COUNT VIII.**

Count VIII relates to the Hall litigation, in which Judge Combs conducted a hearing regarding the propriety of Kevin Keene's issuance of subpoenas and indeed the propriety of the litigation itself. Judge Combs was in this instance again upholding his duty to enforce the

¹⁰ Unfortunately, by asserting Count VII and making the unsubstantiated claim that the quoted Topix posts were authored by Judge Combs, the public may now be under a false impression about Judge Combs created by the Commission's charging document, rather than by any actions taken by Judge Combs.

applicable Rules of Civil Procedure, and in making a good faith effort to ensure that the attorneys who practice before him do so in accordance with those mandates. A review of the hearing DVD provided by the Commission's prosecutor does not reveal any words or actions by the Judge that could be deemed demeaning or disrespectful (something that cannot be said of Mr. Keene's demeanor during the hearing). Even erroneous decisions by a Circuit Court Judge that are made in good faith are not subject to Commission review. See SCR 4.020(2). Nothing in the evidence presented by the Commission's prosecutor demonstrates impropriety on the part of Judge Combs – what is instead at stake is apparently the hurt feelings of an attorney who did not appreciate having his actions questioned from the Bench.

The assertion that Judge Combs and Mr. de Bourbon engaged in an ex parte communication about the Hall case is completely unsubstantiated. By contrast, Mr. de Bourbon has now, under oath, denied that any such communication took place.¹¹ In his July 27, 2015 Sworn Statement, attached as Exhibit L, Mr. de Bourbon was unequivocal:

Q. The statement has been made that Judge Combs' assistant, Kelly Edmonds, told Kevin Keene that you had been in Judge Combs' office, without anyone else there, talking about this [Topix] case.

A. That is not so.

Q. Okay. You have not had any ex parte communications with the judge about that case?

A. I have not, nor has he had any with me.

Q. And – or on any other case?

A. No, I have never.

Exhibit L, pp. 4-5.

¹¹ In Mr. de Bourbon's Sworn Statement, the Hall case was incorrectly referred to as the Mullins case, but the discussion clearly demonstrates that the subject was the Hall case.

The Commission's prosecutor cannot sustain its burden of proof as to the allegation of an ex parte communication, and that allegation must be dismissed. Likewise, there has been no demonstration of misconduct by Judge Combs in recalling the Hall case to discuss its merits and the issuance of subpoenas by Mr. Keene, and the remainder of Count VIII must therefore also be dismissed.

VI. COUNT IX.

The Commission asserts in Count IX that Judge Combs should not have presided over the Huffman matter because he had “[expressed] an interest in the outcome of the City Commission race” and “[criticized] incumbent candidates on multiple occasions.” As summarized above, the Commission's prosecutor has not provided any credible evidence that Judge Combs has actively supported any candidates for elected office. Sworn testimony obtained by Judge Combs from members of the Pike County Bar demonstrates that Judge Combs is not known to actively support candidates for political office. Further, the Canons and their accompanying commentary specifically allow a Judge to privately express his views on candidates and to participate in the political process. See Canon 5A(1), Commentary, quoted supra. See also State Bd. for Elementary & Secondary Educ. v. Howard, 834 S.W.2d 657, 661 (Ky. 1992) (citing Commonwealth v. Foley, 798 S.W.2d 947 (Ky. 1990)) (“This Court has previously noted that among the most fundamental of constitutional rights is the right of citizens to involve themselves in the electoral process.”). There was simply no reason for Judge Combs to recuse from the Huffman case and the important matters at issue in that case.

In addition, and to the extent that the Commission's allegations and consideration include the Complaint filed with the JCC by Mr. Davis and his wife, this is simply not the forum for them to address their dissatisfaction with the outcome of the case. Mr. Davis withdrew his

candidacy for Pikeville City Commissioner then attempted to “rejoin” the race. KRS 118.212 does not allow for this, and Judge Combs properly so ruled and did so in good faith. The Davis’ chose not to appeal Judge Combs’ decision. They should not be permitted to challenge Judge Combs’ ruling by claiming improper actions by Judge Combs to this Commission.

The Commission does not have the authority to review a case for judicial error or to direct a different result in the case. These functions are to be handled through the appeals process available through the state’s appellate courts. If you want to change the outcome of your case, discuss this with an attorney without delay. In addition, allegations stemming from a judge’s rulings or the exercise of judicial discretion do not provide a basis for action by the Commission. Personal dissatisfaction alone cannot be the grounds for a judicial investigation.

Judicial Conduct Commission, Frequently Asked Questions
(<http://courts.ky.gov/commissionscommittees/JCC/Pages/FAQs.aspx>)
(Emphasis added).

Judge Combs was not required to recuse from the Huffman matter and his ruling was proper and could have been appealed had the Davis’ chosen to do so. There is no clear and convincing evidence of any impropriety on Judge Combs’ part related to the Huffman matter, and Count IX should be dismissed.

VII. COUNT X.

The Commission alleges in Count X that Judge Combs directly solicited contributions to his son’s high school golf team from three Pikeville lawyers. Ray Jones has provided a statement to Mr. Weaver that includes not only the unsubstantiated claim that Judge Combs directly solicited a donation from Mr. Jones, but claims that Judge Combs also solicited donations from attorneys Billy Johnson and Gary Johnson. Once again, the evidence not presented speaks much more loudly than that relied upon by the Commission. The evidence provided by the Commission’s prosecutor does not include statements from Billy Johnson or

Gary Johnson verifying (or debunking) the hearsay claims of Mr. Jones. By contrast, Judge Combs has obtained sworn denials of the claim from both Billy Johnson and Gary Johnson.

Q. One of the allegations in the complaint ... is that Judge Combs directly solicited you to make a donation to the Pike County high school, I guess it was, golf boosters club. Are you familiar with that allegation?

A. I'm familiar with the allegation.

Q. Is it true?

A. No.

Q. Has Judge Combs ever asked you for a donation?

A. Never.

Q. Okay. Why do you think somebody would say that?

A. Honestly, I have no idea. No one asked me about it, and the first I heard of it, it was in the charge. I was never asked about it by any investigative arm or any person.

Q. So no one on behalf of the judicial conduct commission has reached out to you about this charge?

A. No. ... No one has.

Billy Johnson Statement, Exhibit G, pp. 5-6.

Gary Johnson's testimony is to the same effect:

I have never been solicited by the Hon. Steven D. Combs, Pike Circuit Court Judge, for any contribution of any sort, including but not limited to, a contribution to the Pikeville High School Golf Boosters Club. Moreover, if there was ever any allegation by some third party that such an event took place, no one from the Judicial Conduct Commission ever contacted me, or to my knowledge ever attempted to contact me, to determine whether any such allegation was truthful. Had I been contacted, I would have confirmed that no such solicitation by Judge Combs ever took place.

Gary Johnson Aff., Exhibit N, ¶2 (Emphasis added).

The claims set forth in Count X have been refuted in two of the three instances of claimed direct solicitation of contributions by Judge Combs. At a minimum, Mr. Jones' statement must be viewed skeptically. In any event, the Commission's prosecutor cannot demonstrate by clear and convincing evidence that the Judge has engaged in a pattern of improperly soliciting money from attorneys, and Count X must be dismissed.

VIII. COUNT XI.

Count XI, set out in the First Amended Notice, references two calls allegedly made by Judge Combs to Jeff Vanderbeck and Randy White of the Appalachian News-Express, characterizing these two calls as "numerous." See First Amended Notice, p. 1. Judge Combs respectfully asserts that Count XI must be dismissed for failure to adhere to the procedural rules that govern the Commission and the assertion of claims against Judges. SCR 4.170(4) provides:

After the preliminary investigation is completed and before formal proceedings are initiated under Rule 4.180, the Commission shall afford the judge under investigation an opportunity to examine all factual information, including the name of the complainant if relevant, and shall afford the judge an opportunity to furnish to the Commission any information the judge may desire bearing on the investigation.

(Emphasis added).

The First Amended Notice is dated June 2, 2015. Counsel for Judge Combs received transcripts of the three statements taken by Gene Weaver that allegedly support Count XI on June 4, 2015, simultaneous with the receipt of the new charging document. See Affidavit of Kent Wicker, attached as Exhibit M, ¶10. The statements of Russ Cassady, Jeff Vanderbeck and Randy White were taken by Gene Weaver on May 21, 2015, but they were not provided to Judge Combs until June 4, 2015. In other words, this critical factual information was not provided to Judge Combs before Count XI was formally asserted against him. This is in contravention of SCR 4.170(4), and Count XI must therefore be dismissed.

In the alternative, it is clear from the allegations asserted in Count XI that once again Judge Combs is being prosecuted for statements he made as a private citizen.¹² Judge Combs' right to discuss articles and editorials that appear in a newspaper – even when those items relate to civil or criminal litigation – was not eradicated when he took the Judicial oath of office. When a citizen believes a publication includes erroneous or incomplete information, that citizen is entitled to bring that matter to the attention of the author or publisher of the offending publication. In this case, Mr. White acknowledged in his statement that Judge Combs was calling him in his capacity as a parent, i.e., a private citizen, rather than as a Judge:

Well, I think he called as a parent. I don't, I mean that's what I think he was calling as, just as an upset parent. I get upset parents all the time. You know, if they feel their kid does something that needs highlighted, I get that all the time, so I felt he was a parent when he called.

May 21, 2015 Statement of Randy White to Gene Weaver, pp. 6-7.

Count XI is also based on factually inaccurate information, asserting that “[o]n or about August 20, 2013” Judge Combs contacted Jeff Vanderbeck about an article published in the Appalachian News-Express. Mr. Vanderbeck's statement, and the article at issue attached to that statement, demonstrate that the call is actually alleged by Mr. Vanderbeck to have taken place on August 20, 2010, three years earlier than asserted in Count XI. See Vanderbeck Statement, pp. 8-9 and copy of article attached to the Statement.

This is not a “form over substance” issue. Over five years have passed since the call to Mr. Vanderbeck, during which time nothing was said to Judge Combs and no complaints were filed against Judge Combs. Just as was the case with Mr. Greenfield, if Mr. Vanderbeck truly believed that the calls rose to the level of harassing behavior by a Judge, why did he sit silent all

¹² Judge Combs does not by citing the statements of Messrs. Vanderbeck and White in this Motion, nor by presenting this alternative argument for dismissal of Count XI, waive his primary argument that Count XI should be dismissed because of procedural flaws on the part of the Commission and/or its investigator or prosecutor.

these years? The answer is simple – Mr. Vanderbeck (and Mr. White) never intended to assert any claims against Judge Combs and never felt threatened or harassed by Judge Combs. Mr. White knew Judge Combs was calling him as a parent. It was the Commission’s investigator who approached Mr. Vanderbeck nearly five years after the fact, quite clearly after having been directed to Mr. Vanderbeck and not after being solicited by Mr. Vanderbeck himself. There is no clear and convincing evidence of misconduct by Judge Combs. Count XI should be dismissed for all of these reasons, including the procedural failings under the applicable Supreme Court rules.

IX. COUNTS XII AND XIII.

Counts XII and XIII, set forth in the Second Amended Notice, suffer from the same procedural flaws as Count XI. The Second Amended Notice is dated August 7, 2015 and was received by the undersigned by mail on August 10, 2015, along with a disk of documents. Receipt of supporting evidence simultaneous with these new charges is contrary to the mandates of SCR 4.170(4) set forth in Section VIII above. This is not the end of the procedural failings, however. On August 21, 2015, two weeks after the new charging document was filed, the Commission’s prosecutor, Mr. Mando, sent a letter to the undersigned. The e-mail copy of that letter did not include any enclosures. The hard copy of the letter, received on or about August 24, 2015, included three reports from another Commission investigator, Nell Weer. These reports, all related to the allegations in Counts XII and XIII, are dated July 6, 2015, August 3, 2015 and August 5, 2015. Thus, the Commission unquestionably had evidence that purportedly supports Counts XII and XIII as much as one month before those charges were filed, but that evidence was not provided to Judge Combs until some two weeks after the charges were filed. At the risk of repetition, SCR 4.170(4) provides that a Judge must receive the evidence that

supports a charge before that charge is filed. This did not happen as to Count XI and it did not happen as to Counts XII and XIII. The Second Amended Notice should therefore be dismissed in its entirety.

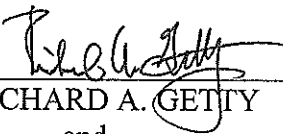
In the alternative, and again without waiving the procedural argument set forth above, Counts XII and XIII are not supported by clear and convincing evidence and must therefore be dismissed on this ground as well. Judge Combs asserts that he disclosed the relationship between his family's business and EQT Production in matters before him in which an EQT entity was a party – this despite the fact that there is no significant connection between any of those cases and the Buffalo Development/EQT Production Lease. That Judge Combs has been diligent in disclosing the relationship is borne out by the sworn Affidavits of Messrs. Collins, Hall and Patton, quoted above and attached as Exhibits B, C and D, respectively. That the relationship between Buffalo Development and EQT Production is well-known among the attorneys who practice before Judge Combs is also borne out by the Affidavits provided herein. Further testimony to this effect will, if necessary, be presented at the final hearing by Judge Combs and additional Pike County attorneys as well as those who have submitted Affidavits herein. Finally, the only Affidavit provided by the Commission's prosecutor – that of Mr. Schmitt – is simply not in line with the facts surrounding Mr. Schmitt's long-time representation of EQT entities and his involvement in the Buffalo Development Litigation throughout the 1990s. At best, Mr. Schmitt was confused; at worst, he was pressured into hurriedly signing an Affidavit that was not accurate in any respect.

Counts XII and XII were not filed in accordance with SCR 4.170(4). These Counts are also not supported by clear and convincing evidence, especially in light of the contrary evidence presented in this Motion by Judge Combs. These Counts must therefore also be dismissed.

CONCLUSION

Judge Combs has more than amply demonstrated that Counts I, II, IV, VII, VIII, IX, X, XI, XII and XIII are not supported by clear and convincing evidence, are not in compliance with the applicable Rules, and/or do not demonstrate violations of the applicable Canons. The remaining three Counts include innocuous and largely hearsay allegations related to telephone calls, the unfortunate (but isolated and ultimately innocent) use of Judicial letterhead in 2008, 2009 and 2011 and alleged but not proven political activity, none of which rise to the level of misconduct or impropriety under the Canons and all of which will be vigorously challenged and overcome at the final hearing of this matter. The Commission's investigators and prosecutor have managed to locate a handful of disgruntled citizens with personal animosity toward Judge Combs and obvious axes to grind against him, and have bootstrapped their generally unsubstantiated anecdotes about supposed wrongs into three charging documents that paint Judge Combs as one step away from the Devil himself. Careful and thoughtful review of the actual evidence, however, and the placement of that evidence against the applicable Canons and Rules, leads to but one conclusion – the Commission's prosecutor cannot demonstrate by clear and convincing evidence that Judge Combs has committed the violations asserted in Counts I, II, IV, VII, VIII, IX, X, XI, XII and XIII. Judge Combs therefore respectfully requests that those Counts be dismissed, in their entirety with prejudice and that his reputation be cleared by the Commission.

Respectfully submitted,



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and
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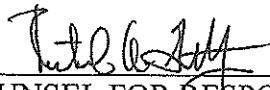
COUNSEL FOR RESPONDENT
HON. STEVEN D. COMBS

CERTIFICATE OF SERVICE

A copy of the foregoing was served on the following by e-mail and regular U.S. mail, postage prepaid, on this the 4th day of September, 2015:

Ms. Jimmy Shaffer,
Executive Secretary
Judicial Conduct Commission
P.O. Box 4266
Frankfort, Kentucky 40604-4266
jimmyshafter@kycourts.net

Jeffrey C. Mando, Esq.
Adams, Stepler, Woltermann & Dusing, PLLC
40 W. Pike Street
P.O. Box 861
Covington, Kentucky 41012-861
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COUNSEL FOR RESPONDENT

dhbpld1447

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT

APPENDIX OF EXHIBITS TO
MEMORANDUM IN SUPPORT OF
MOTION OF THE RESPONDENT,
STEVEN D. COMBS, CIRCUIT COURT JUDGE,
35TH JUDICIAL CIRCUIT, TO DISMISS
COUNTS I, II, IV, VII, VIII, IX, X, XI, XII AND XIII
OF THE NOTICE OF FORMAL PROCEEDINGS
AND CHARGES, AS AMENDED

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Affidavit of Steven D. Combs
B	Affidavit of Adam Collins
C	Affidavit of Adam S. Hall
D	Affidavit of Robert J. Patton
E	Sworn Statement of Billy G. Slone
F	Sworn Statement of Michael Shane Hall
G	Sworn Statement of William Roy Johnson, Jr.
H	Affidavit of Phil A. Stalnaker

EXHIBIT

DESCRIPTION

I	Buffalo Development Motion To Dismiss Without Prejudice
J	Financial Disclosure Statement
K	E-Mail from Russell H. Davis to Danielle H. Brown
L	Sworn Statement of Michael de Bourbon
M	Affidavit of Kent Wicker
N	Affidavit of Gary C. Johnson

dhbpld1451

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT

AFFIDAVIT OF STEVEN D. COMBS

I, Steven D. Combs, having been first duly sworn, do depose and state as follows:

1. I graduated from the University of Kentucky School of Law in 1986 and was admitted to membership in the Kentucky Bar Association that same year.
2. After graduating law school I practiced with my two brothers as part of Combs & Combs until 2003.
3. In 2003 I was appointed to the Pike Circuit Court by then-Governor Paul Patton. I was re-elected to that position three times, in 2003, 2006 and 2014.
4. In addition to practicing law, and prior to becoming a Circuit Court Judge, I also served as a Pikeville City Commissioner and as Mayor Pro-Tem from 1989 until 1990 and again from 2001 to my appointment in 2003. I served as Mayor of Pikeville from 1994 until 1998.
5. Among my professional accomplishments are the following: I am a member of the University of Kentucky Lafferty Society and am a Fellow of the University of Kentucky. During my service as a Pikeville City Commissioner I also served as Chairman of the Pikeville Housing Authority Board. I served on the inaugural Board of the Pikeville College School of Osteopathic Medicine. I was Vice-President and Secretary/Treasurer of the Pike County Bar Association in 1987-1988.

EXHIBIT A

6. On a personal level, in my youth I obtained the rank of Eagle Scout. I am a lifelong member of the Pikeville United Methodist Church. For my children, I have served as the Assistant Coach for the traveling Reds baseball team (2003-2008), the Coach of the local Cal Ripkin baseball team (2009-2010), the Assistant Coach for the Pikeville Independent School Junior High Baseball team (2010) and the Coach for the Pikeville Independent School Junior High (2010-2012) and High School (2013-2014) golf teams.

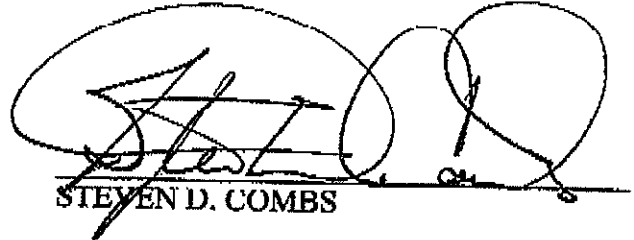
7. Buffalo Development, Inc. ("Buffalo Development") is a landholding company that I own along with my two brothers, Don and Bobby. Each of us owns a 1/3 interest in Buffalo Development, and we are the three sole directors of the company. By virtue of Buffalo Development's Bylaws, all corporate decisions must be by majority vote of the directors. No individual officer or director can dictate the operations of the company.

8. Buffalo Development is party to a mineral lease with EQT Production (the "Lease"), pursuant to which EQT Production leases oil and gas owned by Buffalo Development. The Lease was originally entered into between Harry L. Laws, as Lessor, and Piney Oil and Gas Company, as Lessee. Buffalo Development took over the Lease as Lessor effective January 1, 1989. In the early 1990s the Lessee was Ashland Exploration, Inc. ("Ashland Exploration"), which transferred its rights under the Lease to EQT Production, upon information and belief in or around 1996. The Lease has not been renegotiated since EQT Production became the Lessee.

9. I earlier represented Buffalo Development in litigation captioned Buffalo Development, Inc. v. Ashland Exploration, Inc., et al., Case No. 90-CI-1596 (Pike Circ. Ct.) (the "Buffalo Development Litigation"). Attorney Michael Schmitt represented Ashland Exploration and its successors under the Lease in that litigation throughout the 1990s. Mr. Schmitt was counsel for the Lessee when the parties finally reached a settlement of their disputes. The

eventual settlement was reached after Gary Johnson stepped in to act as informal mediator. I negotiated for Buffalo Development both as its counsel and as a 1/3 owner, and Mr. Schmitt was aware of my ownership interest in Buffalo Development at least as early as those 1999 negotiations.

Further Affiant sayeth naught.



STEVEN D. COMBS

COMMONWEALTH OF KENTUCKY)
COUNTY OF PIKE)

Subscribed and sworn to before me by Steven D. Combs on this the 4th day of September, 2015.

My Commission expires: 10/19/2015

Amber H. Hauer-Shader
NOTARY PUBLIC
NOTARY NO.: _____

dhbpld1450

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

AFFIDAVIT OF ADAM COLLINS

* * * * *

I, Adam Collins, having first been duly sworn, and state as follows:

1. I am a member of the Kentucky Bar and practice law in Hindman, Knott County, Kentucky and throughout Eastern Kentucky. Previously, I was counsel of record for several members of the Fleming/Bentley family in an action styled Fleming, et al. v. Equitable Production Company, Civil Action No. 09-CI-431 (Pike Cir. Ct.), an action which was litigated in the Pike Circuit Court before the Hon. Steven D. Combs.

2. During the course of that litigation, on the morning of the first day of the trial, I specifically recall discussions with all counsel in which Judge Combs raised the issue of his family having leased their property to EQT Production ("EQT") and that there was a dispute about the leased property. That disclosure took place during a conference in which both Mike Schmitt, counsel for EQT, and Joe Patton, counsel for another contractor joined as a defendant participated. This discussion with Judge Combs and other counsel in the Fleming case was an informal conference that took place before the trial began.

3. When Judge Combs raised the matter of the family having a business relationship with EQT or an affiliated entity, no one expressed any objection. I indicated that I would have to discuss it with my client and did so. After that discussion, my client agreed to go along with my recommendation that Judge Combs remain as the trial judge because of my belief that he is a fair, even-handed and competent trial judge.

EXHIBIT B

4. During the discussion that took place, Mike Schnitt, who then represented EQT, never raised any objection to Judge Combs continuing to sit as the trial judge and was clearly aware of what was said.

5. I specifically recall the discussion outlined above on the morning of trial but also believe that the issue of a lease arrangement between a Combs family company and EQT may have come up at a time earlier in the litigation.

6. I have practiced a number of cases before Judge Combs and I have always found him to be a fair and even-handed judge. I believe Judge Combs is a fair and honest Judge and has always conducted himself in a professional manner in the many cases that I have practiced in his Court. I am prepared to testify as to the foregoing matters under oath before the Judicial Conduct Commission at any hearing involving charges brought against Judge Combs.

Further Affiant sayeth naught.




 ADAM COLLINS

COMMONWEALTH OF KENTUCKY)
)
 COUNTY OF KNOTT)

Subscribed and sworn to before me by Adam Collins on this the 14th day of August, 2015.

My Commission expires: November 24, 2018



 NOTARY PUBLIC
 NOTARY NO.: 522693

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT

AFFIDAVIT OF ADAM S. HALL

I, Adam S. Hall, having been first duly sworn, do depose and state as follows:

1. I am a member of the Kentucky Bar and practice in Pikeville, Kentucky with the firm of Vanover, Hall & Bartley, PSC.
2. I was involved as counsel in several cases in which EQT Production Company (“EQT”) or an affiliate was joined as a party. In Harlan Johnson, et al. v. EQT Production Co., Civil Action No. 09-CI-1179 (Pike Cir. Ct.) (the “Johnson Litigation”), I acted as counsel for the Plaintiff. Also involved in that case was Marty Osborne.
3. In the Johnson Litigation Judge Combs made it clear to all the lawyers that his family had a lease or business interest with EQT. It is my firm recollection that Judge Combs brought up this point in that case and it is my recollection that Marty Osborne was aware of that potential conflict and raised no objection to Judge Combs continuing to act as the trial judge in the case. At no time did anyone object to Judge Combs continuing to preside over the Johnson Litigation and at no time did anyone request his recusal.
4. Another case in which I was involved where an EQT entity was a party was John Williamson, et al. v. L&B Oil & Gas, Inc., Civil Action No. 13-CI-680 (Pike Cir. Ct.) (the “Williamson Litigation”). An EQT entity was brought into that case as a Third-Party Defendant

EXHIBIT C

shortly before the matter was dismissed as settled. I was counsel for Plaintiff in the Williamson Litigation. Mike Schmitt represented the EQT entity.


5. In the Williamson Litigation, it is my recollection that EQT Gathering, LLC (“EQT Gathering”), represented by Mr. Schmitt, was brought into the case as a Third-Party Defendant by the Defendant L&B Oil & Gas, Inc. (“L&B”), represented by Dale Golden. Because EQT Gathering, LLC had previously settled with my clients, and because my clients reached a settlement with L&B not long after EQT Gathering came into the case, the various claims were all dismissed by Agreed Orders. It is my recollection that Judge Combs noted his family’s business connection with an EQT entity. Again, no one objected to Judge Combs presiding in the Williamson Litigation.

6. In my experience, it is widely known among members of the Pike County Bar and others who practice before the Pike Circuit Court that Judge Combs’ family has a business relationship with EQT. In any case that I have been involved in which EQT has been a party, Judge Combs has raised that issue and in every instance no one has asked that he step aside. I believe this to be the case because Judge Combs is an honest and fair trial judge and that a family business arrangement with EQT would have no effect upon his impartiality or his rulings. I have practiced numerous cases over the years before Judge Combs and have found him to be highly competent, knowledgeable of the law and of the Rules of Evidence and to always treat litigants and counsel before him with the utmost dignity and respect. In my opinion it would be beneficial if the Commonwealth of Kentucky had more Circuit Judges of the caliber of Judge Combs.

7. I have provided this Affidavit with respect to Judge Combs’ disclosure of his family’s interest with respect to EQT and the acquiescence of all counsel to Judge Combs

continuing in both litigation matters. It is my best recollection that Judge Combs disclosed his family's interest with EQT in preliminary conferences in each case. I am absolutely certain that Mike Schmitt was aware of such disclosure in the Williamson Litigation and that he too had no objection to Judge Combs continuing to preside in the litigation in which Mr. Schmitt was representing an EQT entity. In addition to providing this sworn Affidavit, I am willing to testify with respect to the foregoing matters at any hearing before the Judicial Conduct Commission on behalf of Judge Combs.


Further Affiant sayeth naught.



COMMONWEALTH OF KENTUCKY)
)
COUNTY OF PIKE)

Subscribed and sworn to before me by Adam S. Hall on this the 21st day of August, 2015.

My Commission expires: 8-12-2016



NOTARY PUBLIC
NOTARY NO.: 8-12-2016
#470491

ragpld3647

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT

AFFIDAVIT OF ROBERT J. PATTON

* * * * *

I, Robert J. Patton, having first been duly sworn, do depose and state as follows:

1. I am a member of the Kentucky Bar. I maintain an office in Prestonsburg, Kentucky and practice in the jurisdiction of Floyd County, Pike County and other surrounding counties in Eastern Kentucky.

2. I was counsel for Western Construction, Inc. in an action styled Fleming, et al. v. Equitable Production Company, Civil Action No. 09-CI-431 (Pike Cir. Ct.). Judge Steven D. Combs was the presiding Trial Judge over this litigation in Pike Circuit Court.

3. On the morning of trial various motions were faxed to the Judge's office by EQT for ruling prior to the commencement of the Trial. Hon. Adam Collins, Hon. Mike Schmitt and myself were present in the Judge's chambers obtaining copies and initially reviewing the new Motions for the first time. In my presence, Judge Combs stated his family had some type of a business relationship with EQT either a lease arrangement, property dispute or something to that effect. .

4. During the discussions, no one, including myself, raised any objection to Judge Combs continuing to sit as the trial judge.

5. Neither my client nor myself had any objection with Judge Combs continuing in the case as the Trial Judge and therefore asserted no objection to his presiding over this matter. I believe Mr. Schmitt and Mr. Collins, were present during Judge Combs disclosure.

EXHIBIT D

6. I am unaware of any objection to Judge Combs continuing to sit as the trial judge.

7. This is the only Trial, I have conducted with Judge Combs presiding. I have practiced a number of cases before Judge Combs. It is my opinion Judge Combs has always conducted himself professionally and civilly and is as competent a trial judge in terms of his knowledge of the law and of the rules of evidence.

8. Based upon my personal experiences, it is my opinion that Judge Combs is a competent and honest trial judge.

9. I have no personal knowledge of any reason that he should not remain on the bench in the Pike Circuit Court,

10. I have voluntarily agreed to provide this Affidavit and, if necessary, will testify as to the contents herein at any hearing before the Judicial Conduct Commission.

Further Affiant sayeth naught.




ROBERT J. PATTON

COMMONWEALTH OF KENTUCKY
COUNTY OF FLOYD

Subscribed and sworn to before me by Joe Patton on this the 13 day of August, 2015.

My Commission expires: 4-14-18



NOTARY PUBLIC

ORIGINAL

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35th JUDICIAL CIRCUIT

The sworn statement of BILLY G. SLONE was taken before Tamela T. Lewis, Kentucky Certified Court Reporter and Notary Public in and for the Commonwealth of Kentucky at Large, on Tuesday, July 28, 2015, commencing at the hour of 10:15 a.m. at the Hilton Garden Inn, 849 Hambley Boulevard, Pikeville, Kentucky.

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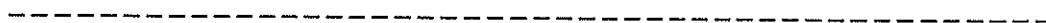
EXHIBIT E

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A P P E A R A N C E S

On behalf of Judge Combs:

Richard A. Getty, Esquire
Danielle H. Brown, Esquire
THE GETTY LAW GROUP, PLLC
1900 Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507



EXAMINATION INDEX

BILLY G. SLONE	
BY MR. GETTY	3
CERTIFICATE OF REPORTER	16

BILLY G. SLONE, WITNESS, SWORN
EXAMINATION

BY MR. GETTY:

1
2
3
4 Q. Bill, would you please state your
5 full name for the record.

6 A. My name is Billy G. Slone,
7 S-l-o-n-e.

8 Q. And what's your address?

9 A. Well, my mailing address is Post
10 Office Box 447, Pikeville, Kentucky 41502. My
11 residence is 192 Bowles Park Drive, Unit A-2,
12 and that also is Pikeville.

13 Q. And how old are you, sir?

14 A. I'm 61.

15 Q. Okay. You are an attorney
16 licensed in Kentucky. You practice here in
17 Pikeville, I guess?

18 A. Yes, sir.

19 Q. And give me an idea, sort of a
20 short summary, of your background, educational,
21 and professional experience.

22 A. Okay. I go back a long way. I'm
23 a veteran of the United States Army. Then I
24 was discharged, and I attended Pikeville
25 College, master's degree from Pikeville College

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF BILLY G. SLONE
JULY 28, 2015

1 in business administration. Also attended
2 University of Kentucky and Eastern Kentucky
3 University working on a police administration
4 degree. I liked a few hours completing that.

5 Worked on the city police here in
6 Pikeville for six years from '76 to '82. At
7 that point I entered the Kentucky State Police
8 Academy in 1982. I was with the Kentucky State
9 Police until, I think, 1990 -- 1989 or '90.

10 I resigned, went into private
11 business, and actually owned and operated
12 Mr. Gatti's restaurants -- pizza restaurants
13 for nearly 20 years.

14 And went to law school in, I
15 think, 2010. I went to Salmon Chase Law School
16 at Northern Kentucky University and graduated
17 in December of 2012, and took the bar and
18 became a member of the bar in April of 2013.

19 Q. And since then you have practiced
20 continuously here?

21 A. I have practiced here in
22 Pikeville.

23 Q. As a result of practicing here in
24 Pikeville, have you had occasion to appear in
25 Steve Combs' division?

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF BILLY G. SLONE
JULY 28, 2015

1 A. Yes, numerous times.

2 Q. What has been your observance of
3 Judge Combs' demeanor and his competency?

4 A. Judge Combs has always been very
5 respectful. I think that he showed the dignity
6 and the -- you know, what the Court should be.
7 He's always been courteous to every attorney
8 that I've seen him engage with, whether it be
9 in civil cases, plaintiffs, defendants
10 attorneys. I've never seen anything other than
11 even-handed unbiased decisions.

12 I've been involved in both civil
13 and criminal cases. In criminal cases, same
14 thing: He's always been respectful to the
15 defendant, the defense attorneys, and the
16 commonwealth attorneys.

17 Q. Have you observed him to be well
18 prepared?

19 A. Certainly. I've never -- he's
20 always been prepared for whatever the case may
21 be. He was ready for the hearing.

22 Q. I've tried matters in front of
23 him myself, and I found him the same way.

24 I also found him to be well
25 conversant with the rules of evidence.

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF BILLY G. SLONE
JULY 28, 2015

1 A. I would agree with that, yes.

2 Q. Something that many circuit
3 judges, unfortunately, in this state don't seem
4 to have the sufficient background with.

5 Have you found him to be tolerant
6 of lawyers in general?

7 A. Yes, definitely.

8 Q. In fact, my recollection is every
9 time I've come to a motion hour, he's reached
10 out to shake my hand as I approach the bench.

11 A. Every motion hour I think I can
12 say he shook hands with practically every
13 attorney, I think, that went to the bench. If
14 it was someone he didn't know, he specifically
15 introduced himself and wanted to know who it
16 was.

17 Q. Have you ever seen him to be
18 intolerant or intemperant beyond reasonability?

19 A. No, absolutely not.

20 Q. I found him to be extremely well
21 prepared. What's been your observation?

22 A. I think he's always been
23 extremely well prepared.

24 Q. Does he read the files
25 beforehand, based on your observations?

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF BILLY G. SLONE
JULY 28, 2015

1 A. I think it's obvious that he had
2 in the ones that I recall. I was involved in a
3 rather complicated case that had -- we probably
4 had three plaintiffs attorneys and six defense
5 attorneys representing four or five different
6 defendants. I recall at least one three-hour
7 hearing, and he would have had to have prepared
8 before that hearing, and he was well prepared.

9 Q. I've had injunctions -- my
10 recollection is I think I've had an injunction
11 proceeding maybe in front of him, and he was
12 well prepared on short notice.

13 A. Yes.

14 Q. You were counsel of record in a
15 case involving a Johndra Ford Coleman. Can you
16 tell me a little bit about those proceedings?
17 What was involved? My understanding is she was
18 arrested for public intoxication, had been on a
19 bond, and there was a bond revocation
20 proceeding that he handled that I believe you
21 represented Ms. Coleman; correct?

22 A. That is true.

23 Q. Just tell me in your own words
24 what you recall about those proceedings or what
25 you observed.

1 A. Okay. Johndra Coleman had been
2 charged with trafficking, charged with a
3 felony, indicted by the grand jury. I was
4 appointed as a conflict attorney from the
5 public defenders office to represent Johndra.

6 The proceeding that you're
7 referencing that I was involved in was a bond
8 revocation hearing. Johndra had been arrested
9 by the Pikeville police department for public
10 intoxication. From the citation and from what
11 Jonda had told me, she was on her -- I think on
12 her porch, standing in her doorway, actually,
13 and the citation indicated that she had been
14 calling the police department. At any rate --

15 Q. She complained to the police?

16 A. She was calling in a complaint.
17 That's my understanding of it.

18 So she was arrested for public
19 intoxication. I don't remember if I
20 represented her in that, but she was out on
21 bond for that. But the problem was that she
22 was under a bond in circuit court in Judge
23 Combs' division in which she wasn't to have
24 alcohol.

25 Commonwealth Attorney's office

1 had filed a motion to revoke her bond, and this
2 was strictly a bond revocation hearing. During
3 that hearing, Jonda Coleman was present.

4 Judge -- we called the case. I
5 think he probably read the citation and the
6 motion. He questioned me a little bit about
7 the circumstances, asked where she was
8 specifically. She was on her property, I think
9 inside the doorway, if I remember that
10 correctly. And --

11 Q. Who was counsel? Was there
12 adverse counsel?

13 A. The Commonwealth Attorney's
14 Office. I believe it was Ms. Chamberlin. Kind
15 of believe it was Ms. Chamberlin. Pretty sure
16 about that.

17 He asked a couple of questions,
18 like I said, about was she on her property or
19 where was she specifically. And I think he
20 asked did they give her -- was there a
21 breathalyzer administered. According to the
22 record, it was not. According to the
23 defendant, it was not.

24 From that point he said something
25 to the effect of I told the city policemen even

1 back when I was mayor that you can't arrest
2 someone for public intoxication on their own
3 property. And he denied the bond revocation
4 hearing. My recollection is that was the end
5 of the story.

6 Q. Was anyone else there on behalf
7 the city or the police at that hearing?

8 A. I don't recall the arresting
9 officer or anyone from the city police
10 department being present at that hearing.

11 Q. And do you believe his hearing
12 was improper in any way in terms of the result?

13 A. Not at all. No. I think it was
14 absolutely proper.

15 Q. Is that consistent with your
16 understanding, that you cannot arrest someone
17 for public intoxication on their own property?

18 A. Yeah, I'd say that's true. In
19 this situation where she was, yes.

20 Q. And do you believe his ruling was
21 correct?

22 A. I do. I don't think she was
23 endangering herself or others where she was.

24 Q. Did that ruling cause any kind of
25 controversy or consternation after the fact to

1 your knowledge?

2 A. Not to my knowledge.

3 Q. Simple, regular case? Regular
4 ruling?

5 A. I thought nothing else about it
6 until I --

7 Q. Yeah.

8 A. Months later.

9 Q. And if it did cause any
10 consternation on the part of the police or the
11 city, do you believe that was appropriate or
12 inappropriate?

13 A. Well, I think it would have been
14 inappropriate if they were upset about it, you
15 know, on the city's part, yes.

16 Q. Right.

17 A. Yes.

18 Q. What you're saying is you believe
19 it was a proper ruling?

20 A. I think it was a proper ruling.

21 Q. And shouldn't have upset anybody
22 too much?

23 A. I don't think it should have
24 upset anybody at all.

25 Q. The other thing I want to ask you

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF BILLY G. SLOANE
JULY 28, 2015

1 is -- there have been allegations or references
2 to the fact that Steve has a drinking
3 problem -- have you ever observed him to be
4 intoxicated or quasi intoxicated?

5 A. I have not. I've been in court
6 many times, and I've never thought for a
7 moment. I've seen Judge Combs out in public.
8 And, you know, in the last three years since
9 I've been back in Pikeville, on many occasions
10 I've seen him. His son played golf. I have a
11 stepson that plays golf. I've seen him at the
12 golf tournaments. Even at that -- in that kind
13 of venue, I've never seen him even drinking in
14 public.

15 Q. Never seen him intoxicated or
16 anywhere near?

17 A. I have not.

18 Q. There's been some allegation, I
19 guess, that there were some donations solicited
20 for the golf team, something of that sort.
21 Have you ever known him to solicit any kind of
22 donations for anything?

23 A. Not directly, I do not.

24 Q. When you say not directly --

25 A. Well, he's never said anything to

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF BILLY G. SLONE
JULY 28, 2015

1 me and no one else has.

2 Q. You've never heard of it
3 otherwise?

4 A. No.

5 Q. And --

6 A. Nothing other than what I read in
7 the paper, you know. I mean, nothing other
8 than that knowledge.

9 Q. Sometimes what you read in the
10 paper is not true.

11 A. I don't put a lot of stock in it,
12 no.

13 Q. He served previously as a mayor
14 and as a city commissioner. Have you known
15 Judge Combs to retain a keen interest in
16 politics since he's been on the bench? Follow
17 them? Read the paper? Try and stay current?
18 Things of that sort?

19 A. I think so, yeah.

20 Q. And that's pretty normal, isn't
21 it?

22 A. Yeah.

23 Q. Is there anything wrong with
24 trying to keep an interest in politics or
25 follow what's going on publicly?

1 A. No. I think there's a lot right
2 about that. I think he should.

3 Q. And he previously was the mayor.
4 Have you known him to have ever been openly
5 critical of any politics involving the city?

6 A. I've never heard it directly, no.

7 Q. Have you ever heard him to be
8 critical in any regard with respect to the city
9 police department?

10 A. I've never heard it from him, no.

11 Q. Anytime that you've observed any
12 court proceedings, whether it be a city
13 issue -- city involved or the police department
14 like in the instance with Johndra Coleman, have
15 you ever seen him act in any manner that was
16 biased, prejudiced, or not even-handed?

17 A. I have not.

18 Q. Okay. Have you ever known him to
19 actively support any political candidates?

20 A. Not to my knowledge.

21 Q. You think that if he did, that
22 would come to your attention as a member of the
23 bar?

24 A. Well, as a resident of Pikeville,
25 I think if it was -- I think I would have known

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that. I think I would have.

Q. Are you willing to come and testify under oath at the hearing on September 21?

A. Certainly.

MR. GETTY: Okay. Well, I appreciate it. I don't think I have anything else. We'll have this typed up, and we'll get you a copy.

MR. SLONE: Okay.


(SWORN STATEMENT CONCLUDED)

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF BILLY G. SLONE
JULY 28, 2015

1 STATE OF KENTUCKY }
2 COUNTY OF FAYETTE } ss.
3

4 I, TAMELA T. LEWIS, Court Reporter and
5 Notary Public, State of Kentucky at Large,
6 whose commission as such will expire March 19,
7 2019, do hereby certify that the foregoing
8 sworn statement was taken by me at the time,
9 place, for the purpose and with the appearances
10 set forth herein; that the same was taken down
11 by me in stenotype in the presence of the
12 witness and thereafter correctly transcribed
13 under my direction and supervision upon
14 computer; that the witness was duly placed
15 under oath by me prior to giving testimony.

16 Given under my hand this 18th day of
17 August, 2015.
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23 
24 TAMELA T. LEWIS
25 Certified Court Reporter
Notary Public, State-at-Large,
Notary ID 530125

ORIGINAL

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35th JUDICIAL CIRCUIT

The sworn statement of MICHAEL SHANE HALL was taken before Tamela T. Lewis, Kentucky Certified Court Reporter and Notary Public in and for the Commonwealth of Kentucky at Large, on Monday, July 27, 2015, commencing at the hour of 9:40 a.m. at the Hilton Garden Inn, 849 Hambley Boulevard, Pikeville, Kentucky.

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A P P E A R A N C E S

On behalf of Judge Combs:

Danielle H. Brown, Esquire
THE GETTY LAW GROUP, PLLC
1900 Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507

EXAMINATION INDEX

MICHAEL SHANE HALL	
BY MS. BROWN	3
CERTIFICATE OF REPORTER	11

1
2
3
4
5
6
7
8
9
10
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12
13
14
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MICHAEL SHANE HALL, WITNESS, SWORN

EXAMINATION

BY MS. BROWN:

Q. What's your name?

A. Michael Shane Hall.

Q. And you're an attorney here in Pikeville?

A. Yes.

Q. How long have you practiced law here?

A. 16 years.

Q. Is that how long you've practiced?

A. Yes.

Q. Did you do anything before law -- practicing law?

A. I was in public accounting for a year and a half.

Q. And you've volunteered to come in here and talk to me today and give us a statement in support of -- well, of what you know about Judge Combs -- let's put it that way -- is that correct?

A. What I know, yes.

Q. All right. How long have you

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF MICHAEL SHANE HALL
JULY 27, 2015

1 practiced in front of Judge Combs?

2 A. As long as he's been on the
3 bench.

4 Q. All right. Tell me your general
5 impressions about his demeanor on the bench.

6 A. Judge Combs, in my opinion, has
7 always been somebody that was very welcoming to
8 any attorney that was in front of him, whether
9 he be from Pike County or any other place.
10 Matter of fact, first thing he did was extend
11 his hand and welcome you there.

12 I've been in hearings with him
13 with complex legal issues. I've been in
14 hearings with him with some not so complex
15 legal issues. And I just have always found him
16 to be very fair and right down the middle,
17 impartial.

18 Q. What about his treatment of
19 attorneys even if -- we've all been in cases
20 where we can tell the other attorney doesn't
21 quite know what they're doing or isn't quite up
22 to speed. Is Judge Combs equally polite and
23 civil to them as he is to other attorneys?

24 A. That's one of the things I love
25 about practicing in Pike County, is that both

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF MICHAEL SHANE HALL
JULY 27, 2015

1 of these judges will, in my opinion, bend over
2 backwards to try to avoid something that could
3 be potentially damaging to a practitioner from
4 happening.

5 Q. Uh-huh.

6 A. It's not that way everywhere.

7 Q. No. That's true.

8 A. My -- my opinion of Judge Combs
9 is that he is very fair to anybody that just --
10 regardless of their experience level, he was
11 fair.

12 Q. Great. Have you ever known him
13 to engage in improper ex parte communications
14 with parties and lawyers?

15 A. Never.

16 Q. Has he ever communicated with you
17 about a case away from the courtroom?

18 A. Never.

19 Q. Have you ever heard of him doing
20 that with anybody else?

21 A. I have not.

22 Q. What's his reputation with the
23 Pike County Bar, in general, would you say?

24 A. I think Judge Combs is very well
25 respected and liked.

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF MICHAEL SHANE HALL
JULY 27, 2015

1 Q. Has Judge Combs ever talked to
2 you about ongoing political races, either local
3 or state or national and candidates that he
4 supports?

5 A. Never.

6 Q. Has he ever asked you to support
7 a candidate?

8 A. Never.

9 Q. Has he ever solicited any kind of
10 donation from you for a candidate or a booster
11 club or anything along those lines?

12 A. I mean, not that I can recall
13 Judge Combs ever being involved in it, yeah. I
14 can tell you, as a sole practitioner, it's not
15 uncommon for me to donate to any of the schools
16 here locally in the county. So to say that I
17 didn't donate to a Pikeville High School
18 function that one of his children may have been
19 involved in, I can't say that because I donate
20 regularly to all these schools.

21 Q. As do several of the businessmen;
22 right?

23 A. Sure.

24 Q. You were a city commissioner for
25 a while; is that right?

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF MICHAEL SHANE HALL
JULY 27, 2015

- 1 A. Two years.
- 2 Q. When was that?
- 3 A. You know, I'm not certain of the
4 year. I will say it was in the early 2000s.
- 5 Q. Was Judge Combs on the bench at
6 that time?
- 7 A. He was not --
- 8 Q. What he was doing?
- 9 A. -- I don't believe.
10 I think he was practicing law.
- 11 Q. Okay. Did he ever, to your
12 recollection, come to a city commission
13 meeting?
- 14 A. I never recall seeing him there.
- 15 Q. Ever reach out to you to -- about
16 city commission issues.
- 17 A. No. The only thing that I can
18 think -- I could ever remember Judge Combs ever
19 discussing with me was just him simply saying,
20 hey, you know, if you ever need, you know,
21 to -- because I had no -- you have to
22 understand, when I went in, I had no background
23 whatsoever on city government and --
- 24 Q. Uh-huh.
- 25 A. -- you know. And I don't even

1 remember this for certain, but I think that he
2 may have said to me, if you -- you know, if you
3 ever have any questions about what -- a city
4 management form of government or, you know,
5 what I -- I think he may have reached out on
6 something like that. But as far as telling me
7 one way or the other, no, nothing at all. The
8 only thing he was was helpful.

9 Q. All right. And you've told me
10 that you've read the -- the commission charges
11 against Judge Combs?

12 A. I have read them one time.

13 Q. Okay. And none of the things
14 that were listed in there were -- and you're
15 telling me that you're not familiar with any of
16 those types of events happening?

17 A. I have no personal knowledge of
18 any of that. I was actually, frankly,
19 surprised by a lot of those allegations.

20 Q. Anything else you'd like to -- to
21 share today?

22 A. I -- no. I -- just in summary, I
23 always felt like that, you know, Judge Combs'
24 family are very well thought of in our
25 community, you know, from Leslie on to Bobby

1 and to Steve and Teresa.

2 His children have always been
3 exemplary, you know, which as a parent, I
4 think, speaks a lot to Steve and Teresa as
5 parents. You know, he's got a son that plays
6 college golf. You don't just get those, you
7 know.

8 Q. Uh-huh.

9 A. There's got to be some sort of
10 structure there. So -- no, I mean, I just -- I
11 think Judge Combs has been -- is a fine man and
12 a fine judge, and I don't have anything bad to
13 say about him.

14 Q. It would be a loss if he weren't
15 to return to the bench?

16 A. I think it would be a loss to the
17 Pike County Bar if any judge were removed like
18 this, but, you know, especially -- you know, I
19 think Judge Combs -- it would be a loss for our
20 community and for the bar.

21 MS. BROWN: Okay. If you
22 think of anything else, just give
23 me a call.

24 MR. HALL: I will.

25 MS. BROWN: I appreciate

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF MICHAEL SHANE HALL
JULY 27, 2015

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your time.


MR. HALL: Thank you. I
thank you.

SWORN STATEMENT CONCLUDED

1 STATE OF KENTUCKY }
2 COUNTY OF FAYETTE } ss.
3

4 I, TAMELA T. LEWIS, Court Reporter and
5 Notary Public, State of Kentucky at Large,
6 whose commission as such will expire March 19,
7 2019, do hereby certify that the foregoing
8 sworn statement was taken by me at the time,
9 place, for the purpose and with the appearances
10 set forth herein; that the same was taken down
11 by me in stenotype in the presence of the
12 witness and thereafter correctly transcribed
13 under my direction and supervision upon
14 computer; that the witness was duly placed
15 under oath by me prior to giving testimony.

16 Given under my hand this 18th day of
17 August, 2015.
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ORIGINAL

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35th JUDICIAL CIRCUIT

The sworn statement of WILLIAM ROY JOHNSON, JR., was taken before Tamela T. Lewis, Kentucky Certified Court Reporter and Notary Public in and for the Commonwealth of Kentucky at Large, on Monday, July 27, 2015, commencing at the hour of 2:45 p.m. at the Hilton Garden Inn, 849 Hambley Boulevard, Pikeville, Kentucky.

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A P P E A R A N C E S

On behalf of Judge Combs:

Danielle H. Brown, Esquire
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EXAMINATION INDEX

WILLIAM ROY JOHNSON, JR.	
BY MS. BROWN	3
CERTIFICATE OF REPORTER	24

WILLIAM ROY JOHNSON, JR., WITNESS, SWORN

EXAMINATION

BY MS. BROWN:

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4 Q. What's your name?
5 A. William Roy Johnson, Jr.
6 Q. And you're a lawyer here in Pike
7 County?
8 A. I'm a lawyer in Pikeville.
9 Q. How long have you practiced law?
10 A. I was sworn in in 1998.
11 Q. And have you practiced
12 continuously in Pike County since that time?
13 A. Yes.
14 Q. All right. And you're familiar
15 with Judge Combs, obviously?
16 A. Yes.
17 Q. Practiced before him before?
18 A. Yes.
19 Q. I think you told me you've had
20 five or six trials, if not more, before Judge
21 Combs over the years.
22 A. I think so, yes.
23 Q. Let's start with Judge Combs'
24 demeanor on the bench. Tell me how you find
25 him to be as a judge.

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

- 1 A. As good as any other judge.
2 Topnotch.
- 3 Q. Okay.
- 4 A. Very good demeanor, very cool.
5 I've never seen an outburst out of him.
- 6 Q. All right. And would you say
7 that he's even-handed and treats all lawyers
8 the same even those he rules against?
- 9 A. Yes.
- 10 Q. Even the lawyers from out of
11 town?
- 12 A. Yes.
- 13 Q. Because I think we all know we go
14 places sometimes and get hometowned.
- 15 A. That's right. He's ruled for me.
16 He's ruled against me.
- 17 Q. Uh-huh. What about his
18 reputation with the bar here in Pikeville -- in
19 Pike County?
- 20 A. Except for -- I mean, for the
21 most part, as much as I know, it's topnotch.
- 22 Q. Okay.
- 23 A. I think he's well -- well-known,
24 well-respected, and well-liked.
- 25 Q. Know anything about his general

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

1 reputation in the community other than as a
2 judge?

3 A. It's good.

4 Q. Good reputation?

5 A. Yes. I've known the Combs family
6 since '93. I always had a great deal of
7 respect for them.

8 Q. Okay.

9 A. That includes his mother.

10 Q. Okay.

11 A. I knew his mother quite well.

12 Q. Is that right?

13 A. Yes.

14 Q. One of the allegations in the
15 complaint -- let's just jump right to that --
16 is that Judge Combs directly solicited you to
17 make a donation to the Pike County high school,
18 I guess it was, golf boosters club. Are you
19 familiar with that allegation?

20 A. I'm familiar with the allegation.

21 Q. Is it true?

22 A. No.

23 Q. Has Judge Combs ever asked you
24 for a donation?

25 A. Never.

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

1 Q. Okay. Why do you think somebody
2 would say that?

3 A. Honestly, I have no idea. No one
4 asked me about it, and the first I heard of it,
5 it was in the charge. I was never asked about
6 it by any investigative arm or any person.

7 Q. So no one on behalf of the
8 judicial conduct commission has reached out to
9 you about this charge?

10 A. No.

11 Q. Okay.

12 A. No one has.

13 Q. Never heard from anyone called
14 Gene Weaver, who's an investigator they're
15 using?

16 A. I never have.

17 Q. Okay. Anybody else? Jeff Mando,
18 who's the prosecutor, have you ever heard
19 anything from him?

20 A. No.

21 Q. Okay.

22 A. I've -- I've never heard anything
23 from anybody.

24 Q. All right.

25 A. The only way I knew about it

1 was -- in fact, I believe a lawyer in
2 Louisville that I know that I'm friends with
3 sent -- emailed it to me.

4 Q. Oh, okay.

5 A. And I think that's how I first
6 saw it.

7 Q. Okay.

8 A. I opened the email and it was an
9 attachment and I read it.

10 Q. Wow. Okay.

11 A. So I don't know. I -- it -- I
12 wondered why my name was in that.

13 Q. Uh-huh. And, of course, Gary
14 Johnson's name was mentioned --

15 A. Uh-huh.

16 Q. -- the same way. Have you talked
17 to Gary --

18 A. I have.

19 Q. -- about that? What has Gary
20 told you?

21 A. He told me it was not true about
22 him either.

23 Q. Now, did you give money to the
24 golf booster club ever? Do you know?

25 A. Yes.

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

1 Q. Okay. How did that come about?

2 A. I'm not really sure because I
3 don't handle that in my office. My wife is
4 over that.

5 Q. Uh-huh.

6 A. And -- but I have since looked
7 into it, and my understanding is -- is Judge
8 Combs' wife Teresa, who is a member on the
9 school board --

10 Q. Right.

11 A. -- for the Pikeville school
12 system --

13 Q. Uh-huh.

14 A. -- had called the office and that
15 message was forwarded to my wife, and my wife
16 spoke to her.

17 Q. All right.

18 A. And a contribution was given to
19 the golf team. I don't know how much. It was
20 probably 2- or \$300.

21 Q. Okay.

22 A. I'm not -- I don't know.

23 Q. All right. And that -- it would
24 have been a couple of years ago, I gather,
25 because Judge Combs' son is graduated.

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

1 A. Yeah.

2 Q. Hasn't he?

3 A. Yeah. I -- I -- honestly, I
4 don't know when it was. I do know that it
5 happened.

6 Q. Uh-huh.

7 A. And seems like somebody said that
8 I had given a thousand dollars.

9 Q. Yeah, that's what they've said.

10 A. I don't think we gave anywhere
11 near that.

12 Q. All right.

13 A. And I think Gary said he didn't
14 either.

15 Q. Okay.

16 A. I think he told me he didn't give
17 anywhere near that.

18 Q. Uh-huh. All right. And Ray
19 Jones never asked you about being solicited to
20 give money; is that correct?

21 A. That's absolutely -- he never
22 asked me anything about it.

23 Q. All right. Has he asked you
24 anything about Judge Combs at all?

25 A. Never. He's never asked me

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

1 anything about Judge Combs.

2 Q. Okay. Have you been asked by the
3 Judge to donate money for any cause?

4 A. No.

5 Q. Have you ever had him contact you
6 ex parte about a case that you had in front of
7 him?

8 A. No.

9 Q. Have you ever heard him accused
10 of doing that --

11 A. No.

12 Q. -- on any case that you've been
13 involved in?

14 A. I have not.

15 Q. Has he ever asked you to support
16 a particular political candidate?

17 A. He has not.

18 Q. Have you ever known him to
19 actively support any political candidate?

20 A. Have I known of Judge Combs --

21 Q. Judge --

22 A. -- to?

23 Q. -- Combs, uh-huh.

24 A. Not since he's been on the bench.

25 Q. Okay.

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

- 1 A. I can't think of any.
- 2 Q. Okay.
- 3 A. No, I can't think of any. I
4 can't think of him supporting any political
5 candidate. If he did, I don't -- I certainly
6 don't remember it.
- 7 Q. Okay. Fair enough. Have you
8 ever made a motion that he be recused from a
9 case that you had in front of him?
- 10 A. No.
- 11 Q. Hypothetically I know, but since
12 it's a sworn statement, we'll do some
13 hypotheticals, if you felt there was some
14 reason to ask Judge Combs to recuse, would you
15 hesitate to do that?
- 16 A. I would not hesitate any judge to
17 ask them to recuse if I --
- 18 Q. You feel like you would face
19 repercussions from him if you did?
- 20 A. No.
- 21 Q. What about if you appealed one of
22 his rulings? You feel a possibility of
23 repercussions?
- 24 A. No.
- 25 Q. Have you ever not filed an appeal

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

1 because it was Judge Combs and you didn't want
2 to face his wrath for having done that?

3 A. No. No.

4 Q. All right. I know some of these
5 questions seem ridiculous, but these are some
6 of the allegations that are out there.

7 You ever seen him treat another
8 attorney that was in front of him that you were
9 there too in any way unfairly or --

10 A. No.

11 Q. -- inappropriately?

12 A. No.

13 Q. Ever seen him be belligerent or
14 bullying on the bench?

15 A. No.

16 Q. What about parties that are not
17 represented? What's your experience? Have you
18 seen that happen?

19 A. Like someone pro se?

20 Q. Uh-huh.

21 A. Oh, very respectful because some
22 judges aren't. Some -- some judges can be very
23 demeaning to -- I've -- I've seen it before,
24 and I don't like it.

25 Q. Uh-huh.

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

1 A. He's always been very kind and
2 very respectful to folks who appear in the
3 courtroom pro se.

4 Q. All right. Have you ever known
5 him to be involved in city commission meetings
6 or anything? Do you know anything about city
7 commission meetings?

8 A. No.

9 Q. Does he go?

10 A. I know years ago -- and that may
11 have even been before I came back from law
12 school. I know he was mayor at one time --

13 Q. Right.

14 A. -- of Pikeville.

15 Q. Right.

16 A. Other than that, I don't know
17 anything about it.

18 Q. Okay. Have you ever sat in his
19 office, you know, in between hearings or on a
20 break from trial or anything and just, you
21 know, chatted with him in general?

22 A. Yes.

23 Q. Okay. What -- is it ever about
24 the cases that you're -- that you're on?

25 A. No. It would typically be about

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

1 a tractor or a piece of equipment. You know,
2 he has a farm.

3 Q. Right.

4 A. He farms.

5 Q. Right.

6 A. And I had a farm and have some
7 equipment. Talk about a tractor or baling hay
8 or he might ask me something about my airplane
9 and flying.

10 Q. Oh, okay.

11 A. Just general talk.

12 Q. Okay.

13 A. But I can't remember ever talking
14 to him --

15 Q. How about the police department?
16 Have you ever heard him complain about the
17 police department?

18 A. No. I can't remember.

19 Q. City commission? Ever complain
20 to you about that?

21 A. I don't -- no.

22 Q. Okay.

23 A. I can't think of him ever
24 saying -- I don't remember it if he did.

25 Q. Have you ever known him to be

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

1 what you considered to be impaired while he's
2 on the bench?

3 A. Never.

4 Q. Okay.

5 A. Not at all.

6 Q. Never?

7 A. No, not at all.

8 Q. Have you ever seen him impaired
9 in public?

10 A. No, I haven't.

11 Q. You don't have to answer this if
12 you don't want to and I'll not care at all.

13 Do you have any thoughts on
14 what's behind all this?

15 A. In reading the paper, following
16 the paper -- and I'm talking about the
17 Herald-Leader.

18 Q. Uh-huh.

19 A. I think the Courier Journal's had
20 some articles.

21 Q. Uh-huh.

22 A. And the Express has had articles.
23 It seems to -- I don't know. It seems like it
24 all kind of coincided with -- or picked up
25 around the time the commissioner's race was

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

1 going on and he ruled that Gene Davis was not
2 an actual candidate in the race.

3 Q. Gene Davis, as I understand it,
4 had been a candidate, went in and officially
5 withdrew his candidacy, and then came back and
6 said "I changed my mind. I want to run after
7 all." And wasn't allowed to do so.

8 A. That's my understanding of what
9 happened.

10 Q. All right. And there was a --
11 some sort of motion or litigation filed related
12 to that when the election was over?

13 A. That's right. I think Josh --

14 Q. Josh Huffman, uh-huh.

15 A. -- Huffman filed something. And
16 I'm not clear on who filed what. Seems like
17 the city filed something too.

18 Q. Uh-huh.

19 A. But I -- I don't really remember.
20 But seems like that's -- a lot of it came
21 around about that time.

22 Q. That's about when everything sort
23 of hit?

24 A. Yeah. Yeah.

25 Q. I would agree with that.

1 We're going to -- I told you this
2 already. I'm going to talk to Chris Harris
3 tomorrow, but I'd like, if you don't care, just
4 a little bit for you to relate some of the
5 background about the UMG and water department.
6 A. Well, I know there's bad blood
7 between Chris Harris and those folks --
8 Q. Right.
9 A. -- because of the commercials
10 they ran.
11 Q. Uh-huh.
12 A. And my understanding was when he
13 got to the bottom of it, it was a political
14 pack that was formed with -- if I remember
15 correctly, it was UMG or maybe their people --
16 Q. Uh-huh.
17 A. -- Greg May or Leonard Lawson and
18 Ray Jones. I'm not sure about that, but that's
19 what I recall from the stories I read.
20 Q. Okay.
21 A. And seemed that it all had to do
22 with Chris wanting the financial records
23 disclosed. And then they ran some very
24 derogatory ads -- television ads about him, if
25 I remember right, that had to do with

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

1 prostitutes --

2 Q. I believe that's right.

3 A. -- and state money.

4 Q. State money, prostitutes --

5 A. Which I understood --

6 Q. -- hookers.

7 A. Which I understood none of that
8 was true.

9 Q. Correct. I believe that's how it
10 all came out in the end --

11 A. And so --

12 Q. -- in the investigation.

13 A. -- I don't know. I don't know
14 what all went on with that, and I don't really
15 remember -- I remember reading the articles.

16 Q. Be fair to call that evidence of
17 what happens if you cross the wrong people in
18 Pike County?

19 A. Could very well be.

20 Q. Tell me a little bit about -- and
21 then I'm going to let you go because I know
22 you've got work to do, but this YouTube Hitler
23 video. You've seen this?

24 A. I did.

25 Q. What's your understanding of how

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

1 that came about?

2 A. My understanding was it was about
3 T.J. Latafik --

4 Q. And he was running for mayor;
5 right?

6 A. He was running for mayor. And I
7 did not support him. I did not support the
8 other candidate.

9 Q. Okay.

10 A. I -- I had no dogs in that fight.
11 If I remember correctly, it was put on -- I
12 think it was put on Facebook. It was a YouTube
13 video that was put on Facebook, and it likened
14 T.J. Latafik to Hitler.

15 Q. Okay.

16 A. I can't remember how it went
17 about, but it obviously -- because of his
18 running for mayor. It was mayor he was running
19 for; right?

20 Q. Yeah.

21 A. Mayor?

22 Q. Uh-huh.

23 A. He was running for mayor.

24 Q. Uh-huh. What -- or could you
25 tell from seeing it who -- who posted it or

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

1 who -- who made the video?

2 A. It was well done.

3 Q. Was it?

4 A. I mean, the -- the quality of it.
5 I'm not saying -- it wasn't -- I didn't like
6 it.

7 Q. Right.

8 A. But it was --

9 Q. The content was not --

10 A. The quality was -- I mean,
11 somebody who -- whoever put it together knew
12 what they were doing.

13 Q. Did you know who did it?

14 A. I think a -- do I know who made
15 the video --

16 Q. Yes. Uh-huh.

17 A. -- or who put it on Facebook?

18 Q. Do you know who made the video?
19 Let's start with that.

20 A. No, I don't.

21 Q. Do you know who put it on
22 Facebook?

23 A. I think it was Jerry Keith
24 Coleman, who's the city commissioner --

25 Q. Okay.

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

1 A. -- put it on.
2 Q. Okay.
3 A. I think. Now, I don't -- I don't
4 remember. I don't do Facebook.
5 Q. Sure.
6 A. Someone else saw it on Facebook
7 and showed --
8 Q. Showed it to you?
9 A. -- it to me.
10 Q. Uh-huh.
11 A. That's how I saw it. But it
12 seemed like it was Jerry Keith, who's a friend
13 of mine --
14 Q. Right. Okay.
15 A. -- who -- who put it on there.
16 You could look it up and see.
17 Q. Oh, yeah. Yeah. We've seen it.
18 Another example, fair to say, of
19 what happens if you cross the wrong people in
20 Pike --
21 A. Yeah. I think that was --
22 Q. -- Pike County?
23 A. -- definitely inappropriate or
24 out of context.
25 Q. Uh-huh. Okay. What about the

1 other allegations you've read about Judge
2 Combs? Do you have any thoughts one way or the
3 other on whether it makes sense to you what
4 they're saying?

5 A. It doesn't make sense to me.

6 Q. Based on your knowledge of Judge
7 Combs?

8 A. On my knowledge of Judge Combs,
9 it does not make sense.

10 Q. So, unfortunately, would it be
11 fair to say it does makes sense that Judge
12 Combs may be -- is experiencing what other
13 people have experienced in don't cross the
14 wrong people?

15 A. Could be, yeah.

16 Q. Do you think it would be a loss
17 to Pike County if Judge Combs doesn't get to go
18 back on the bench?

19 A. Absolutely.

20 Q. Be a loss to the judiciary in
21 general?

22 A. It'd be -- yes. It would be bad
23 for the people in this community. He's a good
24 judge, and it's hard to get them.

25 Q. Yeah, it is. Anything else we

1 haven't covered that you want to talk about
2 today?

3 A. No.

4 MS. BROWN: I appreciate you
5 coming in.

6 MR. JOHNSON: Thank you.

7 -----

8 (SWORN STATEMENT CONCLUDED)

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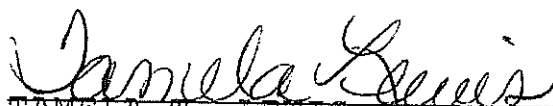
RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF WILLIAM ROY JOHNSON, JR.
July 27, 2015

1 STATE OF KENTUCKY }
2 COUNTY OF FAYETTE } ss.

3 I, TAMELA T. LEWIS, Court Reporter and
4 Notary Public, State of Kentucky at Large,
5 whose commission as such will expire March 19,
6 2019, do hereby certify that the foregoing
7 sworn statement was taken by me at the time,
8 place, for the purpose and with the appearances
9 set forth herein; that the same was taken down
10 by me in stenotype in the presence of the
11 witness and thereafter correctly transcribed
12 under my direction and supervision upon
13 computer; that the witness was duly placed
14 under oath by me prior to giving testimony.

15 Given under my hand this 18th day of
16 August, 2015.

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TAMELA T. LEWIS
Certified Court Reporter
Notary Public, State-at-Large,
Notary ID 530125

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT

AFFIDAVIT OF PHIL A. STALNAKER

I, Phil A. Stalnakar, having been first duly sworn, do depose and state as follows:

1. I am a member of the Kentucky Bar and have practiced law in Pikeville, Kentucky for the last forty years.
2. During the course of my practice, I have appeared on numerous occasions before the Hon. Steven D. Combs, Pike Circuit Judge, since Judge Combs has been on the bench. Included among the cases in which I have appeared before Judge Combs are Wright v. EQT Production Co., Civil Action No. 11-CI-1161 (Pike Cir. Ct.), and Stalnakar v. EQT Production Co., Civil Action No. 11-CI-624 (Pike Cir. Ct.), an action in which I represented my wife as a property owner.
3. In the Wright action, Mike Schmitt represented EQT and in the Stalnakar case, Kevin West represented EQT. I believe in each of those cases, as I do frequently in other matters, I would have filed a Motion for a Preliminary Conference after an Answer had been filed and would have asked for a trial date. Judge Combs usually holds Preliminary Conferences off the record in an informal setting and at that time discussions regarding scheduling and other matters that counsel may bring up are addressed. The Preliminary Conferences that Judge Combs typically conducts are not videotaped.
4. I recall having a Preliminary Conference in each of the EQT cases noted above but do not recall specifically whether the issue of Judge Combs' family having some sort of lease

EXHIBIT H

PAC

arrangement with an EQT entity came up or not. However, if it came up, I would have had no objection to Judge Combs continuing to handle the matter. It is widely known that Judge Combs' family has mineral and property interests in Pike County. Neither of the EQT cases noted above in which I was involved had anything to do with any property interests involving the Combs family.

5. Judge Combs is highly respected within the Pike County Bar and by others from surrounding counties that practice before him. I have found him to be a highly competent trial judge. He has always appeared to be well prepared, fully conversant of the facts and issues in any case in which I have appeared before him. He reads the file before conducting hearings and is fair and even-handed in his rulings. I have always observed him to be highly professional and courteous to counsel and he conducts his courtroom in a dignified and respectful manner.

6. In fact, I ran against Judge Combs during his first election for Circuit Judge and lost. I have never observed Judge Combs to be anything but fair to me when I have appeared before him after that election. I have always been treated fairly in all instances when I appeared before Judge Combs, which include numerous cases.

7. I have agreed to provide this Affidavit in the above proceedings and I am willing to testify on behalf of Judge Combs before the Judicial Conduct Commission.

Further Affiant sayeth naught.



PHIL A. STALNAKER

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF PIKE)

Subscribed and sworn to before me by Phil A. Stalnaker on this the 2nd day of
September, 2015.

My Commission expires: 02-26-2016

Glema D. Payne
NOTARY PUBLIC
NOTARY No.: 02-26-2016
Exp.

ragpld3648

PIKE CIRCUIT COURT
DIVISION NO. II

Civil Action No. 90-CI-1596

BUFFALO DEVELOPMENT, INC.

Plaintiff

FILED
NOV 05 1999
DAVID J. EDWARDS, CLERK
PIKE CIRCUIT DISTRICT COURT
D.C.

vs.

ASHLAND EXPLORATION, INC.,
(now THE EASTERN GROUP);
COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF MINES AND
MINERALS, DIVISION OF OIL
AND GAS

Defendants

MOTION TO DISMISS
WITHOUT PREJUDICE

Comes the Plaintiff, Buffalo Development, Inc. ("BDI"), by and through the undersigned Counsel and for its Motion to Dismiss without prejudice herein states as follows:

1. This Civil Action was originally filed to prevent the issuance of several drilling Permits.
2. During the course of this Civil Action the ownership of the Defendant, Ashland Exploration, Inc. has changed hands more than once. Presently the Oil and Gas Lease Agreement in question is held by Eastern States Oil and Gas Company, Inc.

32 ✓

3. The Plaintiff and Eastern States Oil and Gas Company, Inc. have worked together to resolve the numerous issues which have arisen in this matter and have been able to settle several of those matters.

4. In furtherance, thereof, the parties have agreed to dismiss the Civil Action, without prejudice in hopes that any remaining issues are mute and that any further matters do not require litigation.

WHEREFORE, this Plaintiff prays for appropriate Orders of the Court as follows:

1. That the Civil Action be dismissed, without prejudice.
2. That this Plaintiff recover any and all further and proper relief to which it may appear entitled including, but not limited to, a reasonable attorney's fees and its costs herein expended.

This the 5th day of November, 1999.

COMBS & COMBS, P.S.C.
P.O. Drawer 31
Pikeville, Kentucky 41502
606-437-6226

By: 

Steven D. Combs, Esq.
Attorney for Plaintiff

NOTICE

This matter will come before hearing at the next regular Motion Hour of the Pike Circuit Court on Friday, November 12th at the hour of 9:00 a.m.

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing motion has been mailed

this day to the following individuals:

L. Eugene Dickinson, Esq.
824 13th Street
Ashland, Kentucky 41101-2638

Michael J. Schmitt, Esq.
P.O. Box 1179
Paintsville, Kentucky 41240

Eugene D. Attkisson, Esq.
P.O. Box 14080
Lexington, Kentucky 40512-4080

This 5th day of November, 1999.

A handwritten signature in black ink, appearing to read "S. D. Combs", is written over a horizontal line. The signature is stylized with large loops and a prominent initial "S".

Steven D. Combs, Esq.



KENTUCKY REGISTRY OF ELECTION FINANCE
140 WALNUT STREET
FRANKFORT, KENTUCKY 40601-3240
TELEPHONE (502) 573-2226
FAX (502) 573-5622

FINANCIAL DISCLOSURE REPORT

KRS CHAPTER 61
PLEASE TYPE OR PRINT

Steven D. Combs, January 11, 1960, Circuit Judge, 35th Circuit, Division II
(Name of Incumbent/Candidate) (Date of Birth) (Office Held/Seeking, including District/Division)
145 Main Street, Pikeville, KY 41501
(Address where individual receives mail) (City-State-Zip)

Teresa H. Combs, 114 East Cedar Drive, Pikeville, KY 41501
(Name of Spouse) (Address where spouse receives mail) (City-State-Zip)

If you need more space, please attach separate sheets.

SECTION I, FINANCIAL INTERESTS: Describe your financial interests in the categories listed below. You are not required to list deposits in banks, savings and loan associations or credit unions.

Section I-A, STOCKS: List all stocks valued at more than \$1,000 owned by you, your spouse, and your dependents. You are not required to list the name of the entity whose stock is held nor the value of the stock. However, you must provide a description of the nature of business and types of products or services manufactured or sold by the subject entity.

Table with 2 columns: DESCRIPTION OF STOCKS and RELATIONSHIP OF OWNER TO INCUMBENT/CANDIDATE. Content: (SEE ATTACHED LIST)

Section I-B, BONDS: List all bonds valued at more than \$1,000 owned by you, your spouse, and your dependents. You are not required to list the name of the entity whose bonds are held nor the value of the bonds. However, you must provide a description of the nature of business and types of products or services manufactured or sold by the subject entity.

Table with 2 columns: DESCRIPTION OF BONDS and RELATIONSHIP OF OWNER TO INCUMBENT/CANDIDATE. Content: (SEE ATTACHED LIST)

Section I-C, *Real Estate and Credit Interests (Notes, Etc)*: List all real estate and credit interests valued at more than \$1,000 owned by you, your spouse, and your dependents in any business enterprise whether it be a corporation, partnership, proprietorship or otherwise. You are not required to list the name of the entity or the amount of the interest. However, you must provide a description of the nature of business and types of products or services manufactured or sold by the subject entity.

DESCRIPTION OF REAL ESTATE
AND CREDIT INTERESTS

RELATIONSHIP OF OWNER TO
INCUMBENT/CANDIDATE

(SEE ATTACHED LIST)

SECTION II, OFFICE, DIRECTORSHIPS AND EMPLOYMENT: List every office, directorship, or employment held by you, your spouse, and your dependents in any entity regardless of the income received or equity held, excepting such activities in political, religious or charitable entities if compensation of less than \$1,000 per year is received. You are not required to list the name of the entity in which the office, directorship or employment is held or the amount of the income received. However, you must provide a description of the nature of business and types of products or services manufactured or sold by the subject entity.

DESCRIPTION OF OFFICES, DIRECTORSHIPS
AND EMPLOYMENT HELD

RELATIONSHIP OF OWNER TO
INCUMBENT/CANDIDATE

(SEE ATTACHED LIST)

SECTION III, COMPENSATED SERVICES: List all entities to whom you furnished compensated services valued at more than \$1,000 during the period covered by this report. You are not required to list the entity by name or the amount of compensation. However, you must provide a description of the nature of business and types of products or services manufactured or sold by the subject entity. Where disclosure is required because of legal services rendered to it, such entity may also be described by the type of legal service it received.

DESCRIPTION OF ENTITY SERVED

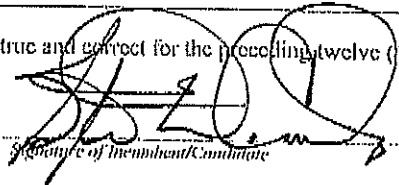
NATURE OF SERVICES PERFORMED

N/A

I hereby certify that the above and foregoing statement is complete, true and correct for the preceding twelve (12) months.

Date

3/16/15


Secretary of Incumbent/Candidate

Reprinted 02/06

Kentucky
UNBRIEDED SPIRIT

SECTION 1-A

STOCKS:

DESCRIPTION OF STOCKS

RELATIONSHIP OF OWNER
TO INCUMBENT/CANDIDATE

American Electric Power

Southern Company

SECTION I-CDESCRIPTION OF
REAL ESTATE AND
CREDIT INTERESTSRELATIONSHIP OF OWNER
TO
INCUMBENT/CANDIDATE

Buffalo Development	Mineral/Surface/Farming Development Coal, Oil and Gas Leasing/Subleasing
C. Corp	Mineral/Surface/Farming Development Coal, Oil and Gas Leasing/Subleasing
Dark Hollow, LLC	Mineral Development Oil and Gas Leasing
Combs Brothers Investments Company	Mineral/Real Estate/Development/ Commercial and Residential Leasing
Basin Energy Company	Various Oil and Gas Partnerships

SECTION II

Director/Vice President	Combs Brothers Investments Company
Director/Vice President	Buffalo Development, Inc.
Member	Dark Hollow, LLC
Director/Vice President	C. Corp.

2/23/2012 02:29:32 PM

Account Name:
Username:

Account: Workbook
Positions
Filter Set: Detail Rows Only
CONBS STEVEN D
KIM HACKER
Account Number:

Account Information

LZ24

HILLIARD LYONS CUST FOR
STEVEN D CONBS SIMPLE-IRA
PO DRAWER 31
PIKEVILLE KY 41502-0031

Details

CSF 40-Street Name: Ho d/Hold All Funds
MNF Code GOV-Federated Government Cash Sells
Investment Objective G-Growth & Income

Balances

Total Act Val
Flucts Available
MNF Bal

Contact Information

Home Phone
Business Phone
Cell Phone
Fax Phone

SSN/Tax ID
Birth Date
E-Mail Address
Secondary E-Mail Address

Quantity	Name	CLSP	Symbol
	AMERICAN ANGELO BUNDS	0210Z1101	A3AEX
	DNP SELECT INCOME FD INC	2332SP-10-4	DNP
	DELL INC	247CZR-10-1	DELL
	DRYRUS RESH GRWTH SHS A	262C3H-20-1	DWOAX
	MICROSOFT CORP	594918-10-4	MSFT

2/23/2012 02:25:55 PM

Account Workbook

Positions

Filter Set: Detail Rows Only

COMBS STEVEN D

Kim Hacker

Account Number:

Account Name:
Use Name:

Account Information

LZ24

HILLIARD LYONS CUST -OR
STEVEN D COMBS IRA
PO DRAWER 31
PIKEVILLE KY 41502-6031

Contact Information

Home Phone
Business Phone
Cell Phone
Fax Phone

Details

CS 4C-Steve Name-Hold/Hold All Funds
MMF Code GOV-Federated Government Cash Series
Investment Objective G-Growth & Income

Balances

Total Acct V/e
Funds Available
MMF Bal

SSN/TaxID
Birth Date
E-Mail Address
Secondary E-Mail Address

Quantity	Name	CUSIP	Symbol
1	FEDERAL GOVERNMENT BOND	298205300	01AEECX
2	INCOME FUND OF AMER CL A	453320-10-3	AMECX

Danielle Brown

From: Russell Davis [rdavis@bairdandbaird.com]
Sent: Thursday, July 30, 2015 4:54 PM
To: Danielle Brown
Cc: Rebecca Hamilton (rebecca.hamilton@pikevilleky.gov)
Subject: Open Records Request -Judge Steve Combs

Ms. Brown,

The City Manager ask me to respond to your July 30, 2015 letter to the City Clerk re the above. The City Clerk's July 27, 2015 response to your open records request is fully responsive to the request. No minutes are taken or recorded during executive sessions including the executive session held on Jan 12, 2015. No action was taken by the Commission for City of Pikeville regarding a complaint with the Judicial Conduct Commission at that meeting or any other.

The confusion here is evident by your statement that the "*Complaint filed with the Judicial Conduct Commission by the City of Pikeville Board of Commissioners against Judge Steven D. Combs.*" Neither the City of Pikeville or its Board of Commissioners have filed a Complaint with the Judicial Conduct Commission. However, this response does not address any actions that may have been taken by a Commissioner(s) of the City of Pikeville in their personal capacity.

RUSSELL H. DAVIS
Office of City Attorney
P.O. Box 351
Pikeville, KY 41502
606 437-6276



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EXHIBIT K

ORIGINAL

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35th JUDICIAL CIRCUIT

The sworn statement of MICHAEL DeBOURBON was taken before Tamela T. Lewis, Kentucky Certified Court Reporter and Notary Public in and for the Commonwealth of Kentucky at Large, on Monday, July 27, 2015, commencing at the hour of 11:00 a.m. at the Hilton Garden Inn, 849 Hambley Boulevard, Pikeville, Kentucky.

ASSOCIATED REPORTING SERVICES, INC.
Freelance Court Reporters & Video Services
177 North Upper Street Suite 100 - P.O. Box 85
Lexington, Kentucky 40588-0085 arsi@windstream.net
(859) 233-9272 (800) 882-3197 fax (859) 225-4802

EXHIBIT L

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A P P E A R A N C E S

On behalf of Judge Combs:

Danielle H. Brown, Esquire
THE GETTY LAW GROUP, PLLC
1900 Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507

EXAMINATION INDEX

MICHAEL DeBOURBON	
BY MS. BROWN	3
CERTIFICATE OF REPORTER	6

MICHAEL DEBOURBON, WITNESS, SWORN

EXAMINATION

BY MS. BROWN:

- 1
2
3
4 Q. What's your name?
5 A. Michael DeBourbon.
6 Q. And you've practiced law in
7 Pikeville for how long?
8 A. About 39 years.
9 Q. And is that how long you've
10 practiced law --
11 A. Yes.
12 Q. -- in general? Only here in
13 Pikeville?
14 A. Yes.
15 Q. And you previously testified at a
16 hearing regarding Judge Combs; is that right?
17 A. That's correct.
18 Q. And you and I have talked about
19 that today. And the one thing we talked about
20 was the fact that you were not asked during
21 that hearing about the allegation that you had
22 ex parte communications with Judge Combs about
23 a particular case.
24 A. That's correct.
25 Q. So we want to make sure and get

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF MICHAEL DEBOURBON
JULY 27, 2015

1 this on the record with you today. And that
2 was a case that related to some allegations --
3 or subpoenas that were issued to try and get
4 the identities of people who had made Topix
5 posts --

6 A. Correct.

7 Q. -- is that right?

8 A. Correct.

9 Q. And apparently it has been stated
10 that you were -- what was it -- that --
11 Mullins? Was that the name of that case?

12 A. I don't recall.

13 Q. I think it was. I think it's --
14 Valerie Mullins was maybe the plaintiff in that
15 case. Anyway, it's a case.

16 There was hearing about the
17 subpoenas after the case had been dismissed
18 that you and Kevin Keene attended.

19 A. Yes.

20 Q. Do you recall that?

21 A. I recall that.

22 Q. The statement has been made that
23 Judge Combs' assistant, Kelly Edmonds, told
24 Kevin Keene that you had been in Judge Combs'
25 office, without anyone else there, talking

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF MICHAEL DEBOURBON
JULY 27, 2015

1 about this Mullins case.

2 A. That is not so.

3 Q. Okay. You have not had any ex
4 parte communications with the judge about that
5 case?

6 A. I have not, nor has he had any
7 with me.

8 Q. And -- or on any other case?

9 A. No, I have never.

10 Q. And, in fact, I think I asked you
11 and you said no. Have you ever known there to
12 be even an allegation that Judge Combs was
13 engaged in ex parte communications about
14 ongoing cases?

15 A. I have no -- no knowledge of
16 that.

17 Q. You've never heard anything to
18 that effect?

19 A. I have not.

20 Q. All right. Anything else you
21 want to add?

22 A. That's all.

23 MS. BROWN: Thank you.

24 (SWORN STATEMENT CONCLUDED)

25

RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF MICHAEL DEBOURBON
JULY 27, 2015

1 STATE OF KENTUCKY }
2 COUNTY OF FAYETTE } ss.

3 I, TAMELA T. LEWIS, Court Reporter and
4 Notary Public, State of Kentucky at Large,
5 whose commission as such will expire March 19,
6 2019, do hereby certify that the foregoing
7 sworn statement was taken by me at the time,
8 place, for the purpose and with the appearances
9 set forth herein; that the same was taken down
10 by me in stenotype in the presence of the
11 witness and thereafter correctly transcribed
12 under my direction and supervision upon
13 computer; that the witness was duly placed
14 under oath by me prior to giving testimony.

15 Given under my hand this 18th day of
16 August, 2015.

17
18
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TAMELA T. LEWIS
Certified Court Reporter
Notary Public, State-at-Large,
Notary ID 530125


RE STEVEN D. COMBS, CIRCUIT COURT JUDGE
SWORN STATEMENT OF MICHAEL DEBOURBON
JULY 27, 2015

1 STATE OF KENTUCKY }
2 COUNTY OF FAYETTE } ss.

3 I, TAMELA T. LEWIS, Court Reporter and
4 Notary Public, State of Kentucky at Large,
5 whose commission as such will expire March 19,
6 2019, do hereby certify that the foregoing
7 sworn statement was taken by me at the time,
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15 Given under my hand this 18th day of
16 August, 2015.

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TAMELA T. LEWIS
Certified Court Reporter
Notary Public, State-at-Large,
Notary ID 530125

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

AFFIDAVIT OF KENT WICKER

I, Kent Wicker, hereby state under oath as follows:

1. My name is Kent Wicker. I am over the age of twenty-one, and I make this affidavit of my personal knowledge.

2. I formerly served as counsel to Judge Steven D. Combs in this matter.

3. In late May 2015, I learned that Jeffrey Mando, counsel for the Judicial Conduct Commission, was serving as counsel for a party in a case before Judge Combs, *Mullins v. Southern Financial Life Insurance Co.* In that case, Mr. Mando's client had filed a series of appeals and petitions for writs of prohibition opposing rulings by Judge Combs. Shortly after charges were filed against Judge Combs by the Judicial Conduct Commission, Mr. Mando filed a motion asking Judge Combs to recuse from the *Mullins* case.

4. I believed that Mr. Mando's dual roles created a serious conflict of interest. As counsel for the Judicial Conduct Commission, he had a role much like a criminal prosecutor in weighing evidence discovered in the investigation and deciding whether charges should be brought. Mr. Mando's discretion in deciding whether charges

EXHIBIT M

should be brought could be affected by the desire of his private client to remove Judge Combs from the case.

5. I called Mr. Mando about the subject, and I asked him whether he believed he had a conflict. He told me that there would be no conflict if Judge Combs recused from the case. I was offended by the remark, and I took it to mean that Mr. Mando was either insensitive to his own conflict of interest or intentionally attempting to influence Judge Combs' decision on recusal. I told Mr. Mando that "I don't tell judges how to decide cases."

6. I spoke to Mr. Mando again about the subject several days later, on June 10, 2015, while driving back from a deposition in Cincinnati. He told me that he had discussed the conflict issue with Steve Wolnitzek, the Chairman of the Judicial Conduct Commission, and the two of them did not believe that Mr. Mando had a conflict. I was surprised and concerned that he had made an *ex parte* contact with the Chairman of the body that would rule on any motion to disqualify him. Mr. Mando also cited a case to me, *Marcum v. Scorson*, 457 S.W.3d 710 (Ky. 2015), and he later sent me an email with a citation to the case.

7. When I finished driving, I read the *Marcum* case. It addressed the "appearance of impropriety" standard, which had largely been discarded with the replacement of the old Code of Ethics by the Rules of Professional Responsibility. My concern was different – that Mr. Mando was acting as a prosecutor, and he should be subject to the rules and standards of someone making discretionary charging decisions.

8. I never told Mr. Mando that I agreed with his position, and I have never changed my position that Mr. Mando should disqualify himself. We have never

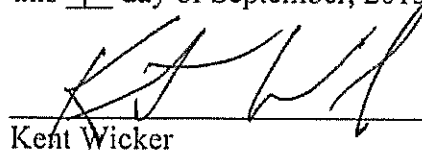
acquiesced or waived our objection to his ethical conflict. We did not file a motion to disqualify him because the press of time made us unable to do so before the June 16, 2015, hearing.

9. It is my understanding that current counsel for Judge Combs has also requested that Mr. Mando recuse from the Judicial Conduct Commission proceedings, further evidencing that Judge Combs has not acquiesced to or waived Mr. Mando's ethical conflict.

10. The Amended Notice of Formal Proceedings and Charges dated June 2, 2015 was received by mail in my office on June 4, 2015. On that same date we also received transcripts of three statements taken by Gene Weaver on May 21, 2015 – the statements of Jeff Vanderbeck, Russ Cassady and Randy White. We had not previously been provided with copies of these three statements.

11. Prior to my withdrawal as counsel for Judge Combs, my office never received the recordings of the statements taken by Mr. Weaver.

Signed under the penalties of perjury this 4th day of September, 2015.



Kent Wicker

COMMONWEALTH OF KENTUCKY)
)
Jefferson COUNTY)

Subscribed and sworn to before me by Kent Wicker on this the 4th day of September, 2015.

My Commission expires: 9/18/2018



NOTARY PUBLIC

Notary ID No. _____

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

AFFIDAVIT OF GARY C. JOHNSON

* * * * *

I, Gary C. Johnson, having been first duly sworn, do depose and state as follows:

1. I am a member of the Kentucky Bar and practice primarily in Pikeville, Kentucky.

I have been a practicing attorney licensed in Kentucky for over forty years.

2. I have never been solicited by the Hon. Steven D. Combs, Pike Circuit Court Judge, for any contribution of any sort, including but not limited to, a contribution to the Pikeville High School Golf Boosters Club. Moreover, if there was ever any allegation by some third party that such an event took place, no one from the Judicial Conduct Commission ever contacted me, or to my knowledge ever attempted to contact me, to determine whether any such allegation was truthful. Had I been contacted, I would have confirmed that no such solicitation by Judge Combs ever took place.

3. I have practiced regularly before Judge Combs since he was elevated to the bench in 2003 and have always found him to be highly professional and civil in his conduct of court proceedings and his demeanor has always been respectful of lawyers practicing before him. Judge Combs has always been well prepared, has reviewed the file and has been conversant with the law and the facts in any case in which I have appeared before him. I believe he is one of the best Trial Judges in Kentucky. During trials in which he has been the presiding Judge, he has demonstrated himself to be a competent and professional trial judge who knows the Rules of Evidence and who always conducts his courtroom in a fair and even-handed manner.

EXHIBIT N

4. I have agreed to provide this Affidavit concerning the foregoing matter and I am willing to testify on behalf of Judge Combs before the Judicial Conduct Commission with respect to any charges brought against him.


Further Affiant sayeth naught.


GARY C. JOHNSON

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF PIKE)

Subscribed and sworn to before me by Gary C. Johnson on this the 4th day of September, 2015.

My Commission expires: 11-21-2017


NOTARY PUBLIC
NOTARY NO.: _____

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

**MOTION OF THE RESPONDENT,
STEVEN D. COMBS, CIRCUIT COURT JUDGE,
35TH JUDICIAL CIRCUIT, FOR AN ORDER
DISQUALIFYING THE COMMISSION'S PROSECUTOR**

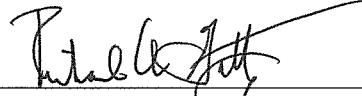
* * * * *

The Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit (“Judge Combs”), by counsel, respectfully requests that the Judicial Conduct Commission enter an Order disqualifying Jeffrey C. Mando, Esq. and the firm Adams, Stepner, Woltermann & Dusing, PLLC from serving as prosecutor for the Commission in this matter. As grounds for this Motion, Judge Combs respectfully submits that Mr. Mando’s conflict of interest and acts of prosecutorial misconduct require that he and his firm be disqualified. A Memorandum in Support of this Motion is filed herewith.

REQUEST FOR HEARING

The Respondent respectfully requests that the Commission set the foregoing Motion of the Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit, for an Order Disqualifying the Commission’s Prosecutor for hearing at a date and time prior to the final hearing in this matter scheduled to commence on September 21, 2015.

Respectfully submitted,



RICHARD A. GETTY

and

DANIELLE H. BROWN

THE GETTY LAW GROUP, PLLC
1900 Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507
Telephone: (859) 259-1900
Facsimile: (859) 259-1909
E-Mail: rgetty@gettylawgroup.com
E-Mail: dbrown@gettylawgroup.com

And

STEPHEN P. RYAN
7104 Hillcircle Court
Louisville, Kentucky 40214
Telephone: (502) 551-1083
E-Mail: stephen_ryan@rocketmail.com

COUNSEL FOR RESPONDENT
HON. STEVEN D. COMBS

CERTIFICATE OF SERVICE

A copy of the foregoing was served on the following by e-mail and regular U.S. mail, postage prepaid, on this the 8th day of September, 2015:

Ms. Jimmy Shaffer
Executive Secretary
Judicial Conduct Commission
P.O. Box 4266
Frankfort, Kentucky 40604-4266
jimmyshaffer@kycourts.net

Jeffrey C. Mando, Esq.
Adams, Stepner, Woltermann & Dusing, PLLC
40 W. Pike Street
P.O. Box 861
Covington, Kentucky 41012-861
jmando@aswdlaw.com



COUNSEL FOR RESPONDENT

dhbpld1453

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

**MEMORANDUM IN SUPPORT OF MOTION OF THE RESPONDENT,
STEVEN D. COMBS, CIRCUIT COURT JUDGE, 35TH JUDICIAL CIRCUIT,
FOR AN ORDER DISQUALIFYING THE COMMISSION'S PROSECUTOR**

* * * * *

The Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit (“Judge Combs”), by counsel, respectfully moves the Commission for an Order Disqualifying the Commission’s Prosecutor in these proceedings because of a conflict of interest and because of acts of prosecutorial misconduct. The grounds supporting this Motion are addressed below:

I. INTRODUCTION.

Judge Combs submits that the prosecutor chosen by the Commission in this matter, Jeffrey C. Mando, and his firm, Adams, Stepner, Woltermann & Dusing, PLLC, have a significant conflict of interest in prosecuting this matter, such that Mr. Mando should have declined the request that he serve as prosecutor for the Commission and should now be disqualified by the Commission. In addition, Judge Combs has now discovered certain acts of prosecutorial misconduct on the part of Mr. Mando, such that the continued service by Mr. Mando and his firm as the Commission’s prosecutor would be inappropriate.

II. THE CONFLICT OF INTEREST.

Mr. Mando is one of the lawyers representing Southern Financial Life Insurance Company (“Southern Financial”) in a Pike Circuit Court case that was pending before Judge Combs prior to his temporary suspension, captioned Mullins v. Southern Financial Life

Insurance Company, Case No. 07-CI-114 (Pike Cir. Ct.) (the “Mullins Litigation”). Southern Financial has unsuccessfully sought review of three of Judge Combs’ rulings in that case, with a fourth ruling affirmed by the Court of Appeals and now pending before the Supreme Court on Southern Financial’s Petition for Discretionary Review.

A. The History Of Appeals In The Mullins Litigation.

The Appellate history in the Mullins Litigation is as follows:¹

On November 23, 2009 Southern Financial filed a Petition for Writ of Prohibition (Court of Appeals Case No. 2009-CA-2183). That Petition was denied on March 8, 2010. Southern Financial then filed an Appeal to the Kentucky Supreme Court (Supreme Court Case No. 2010-SC-244-MR). On or about September 23, 2010 the Supreme Court issued its Memorandum Opinion affirming the Court of Appeals’ denial of the Petition. On June 18, 2012, Southern Financial filed another Petition for Writ of Prohibition (Court of Appeals Case No. 2012-CA-1080). That second Petition was also denied, and resulted in Southern Financial again filing an Appeal with the Kentucky Supreme Court (Supreme Court Case No. 2012-SC-642-MR). The Supreme Court affirmed the Court of Appeals’ decision in a November 21, 2013 Opinion.

Also on June 18, 2012, Southern Financial filed a Notice of Appeal (Court of Appeals Case No. 2012-CA-1086). The Court of Appeals granted the Appellees’ Motion to Dismiss this Appeal as Interlocutory on or about September 13, 2013, and the Supreme Court denied Southern Financial’s Motion for Discretionary Review on or about April 9, 2014 (Supreme Court Case No. 2013-SC-716-D). Southern Financial again filed a Notice of Appeal on February 6, 2015 (Court of Appeals Case No. 2015-CA-235). The Court of Appeals, on its own Motion, dismissed this appeal for lack of subject matter jurisdiction, leading to Southern Financial’s

¹ These matters are all public record, available on the Court of Appeals and Supreme Court of Kentucky’s AOC websites.

present August 7, 2015 Motion for Discretionary Review to the Supreme Court (Supreme Court Case No. 2015-SC-427). That Motion presumably awaits a ruling on whether or not the Kentucky Supreme Court will accept the case on Discretionary Review.

B. Mr. Mando's Refusal To Recuse From This Proceeding.

As counsel for Southern Financial, Mr. Mando has taken the position that Judge Combs' rulings have been erroneous on at least four occasions. It would seem obvious to even a casual observer that Southern Financial believes it would be in a better position in the Mullins Litigation if Judge Combs no longer had decision-making power in the case, something Mr. Mando is attempting to achieve as prosecutor for the Commission. In other words, if Mr. Mando is successful in his prosecutorial role before the Commission, his client Southern Financial will reap an added benefit of no longer facing a Judge whose decisions it so clearly believes are erroneous – decisions which it has incessantly attempted to set aside despite multiple rejections by Kentucky's appellate courts.²

Judge Combs has formally requested that Mr. Mando recuse himself as the Commission's prosecutor in this matter,³ but Mr. Mando has refused to do so (and has indicated that he has the support of Mr. Wolnitzek in choosing not to step down). However, upon determining that there have been acts of prosecutorial misconduct by Mr. Mando, the conflict is simply too significant to ignore and Judge Combs therefore brings this matter before the entire Commission for review.

² Russell Davis is also counsel of record for Southern Financial in the Mullins Litigation. Mr. Davis has given a statement against Judge Combs to the Commission's investigator and of course also serves as City Attorney for the City of Pikeville. Stites and Harbison also represents Southern Financial in the Mullins Litigation, and the potential impact on that firm of rulings by Judge Combs in the Purdue Pharma case have been brought to the Commission's attention through the statement that Commonwealth Attorney Rick Bartley gave to Mr. Weaver. None of the rulings at issue in these cases are before the Commission, but it is difficult to ignore the benefit that these entities and their counsel stand to receive if Judge Combs is no longer on the Bench.

³ See August 12, 2015 Letter from Richard A. Getty to Jeffrey C. Mando, attached as Exhibit A.

C. The Argument For Disqualification On The Basis Of Conflict Of Interest.

1. Judge Combs Has Not Waived His Objection To Mr. Mando Serving As Prosecutor.

In his August 17, 2015 letter to Judge Combs' current counsel regarding this matter, Mr. Mando stated "it is fair to conclude that Kent Wicker and Judge Combs concurred [that recusal was not mandated] since I brought my position ... to their attention prior to the suspension hearing and they did not raise recusal as an issue at the June 16, 2015 hearing." See August 17, 2015 letter from Mr. Mando to Mr. Getty, attached as Exhibit B. However, Mr. Wicker has confirmed, under oath, that Mr. Mando's characterization of Judge Combs' position and that of his counsel is entirely inaccurate:

I never told Mr. Mando that I agreed with his position, and I have never changed my position that Mr. Mando should disqualify himself. We have never acquiesced or waived our objection to his ethical conflict. We did not file a motion to disqualify him because the press of time made us unable to do so before the June 16, 2015, hearing.

Affidavit of Kent Wicker ("Wicker Aff."), Exhibit M to Judge Combs' Memorandum in Support of Motion to Dismiss (the "Dismissal Memo"), ¶8.

Mr. Wicker's Affidavit further demonstrates the history of his attempts to obtain Mr. Mando's voluntary recusal:

In late May 2015, I learned that Jeffrey Mando, counsel for the Judicial Conduct Commission, was serving as counsel for a party in a case before Judge Combs, *Mullins v. Southern Financial Life Insurance Co.* In that case, Mr. Mando's client had filed a series of appeals and petitions for writs of prohibition opposing rulings by Judge Combs. Shortly after charges were filed against Judge Combs by the Judicial Conduct Commission, Mr. Mando filed a motion asking Judge Combs to recuse from the *Mullins* case. I believed that Mr. Mando's dual roles created a serious conflict of interest. As counsel for the Judicial Conduct Commission, he had a role much like a criminal prosecutor in weighing evidence discovered in the investigation and deciding whether charges should be brought. Mr. Mando's discretion in deciding whether charges should be brought could be affected by the desire of his private client to remove Judge Combs from the case. I called Mr. Mando about the subject, and I asked him whether he believed he had a conflict. He told me that there would be no conflict if Judge Combs recused

from the case. I was offended by the remark, and I took it to mean that Mr. Mando was either insensitive to his own conflict of interest or intentionally attempting to influence Judge Combs' decision on recusal. I told Mr. Mando that "I don't tell judges how to decide cases." I spoke to Mr. Mando again about the subject several days later, on June 10, 2015, while driving back from a deposition in Cincinnati. He told me that he had discussed the conflict issue with Steve Wolnitzek, the Chairman of the Judicial Conduct Commission, and the two of them did not believe that Mr. Mando had a conflict. I was surprised and concerned that he had made an *ex parte* contact with the Chairman of the body that would rule on any motion to disqualify him.

Wicker Aff., ¶¶3-6.

2. The Marcum Case Is Not On Point.

Also in response to both Mr. Wicker's and Mr. Getty's requests that he recuse from this matter, Mr. Mando has cited to Marcum v. Scorsone, 457 S.W.3d 710 (Ky. 2015). Again as described by Mr. Wicker:

Mr. Mando also cited a case to me, *Marcum v. Scorsone*, 457 S.W.3d 710 (Ky. 2015), and he later sent me an email with a citation to the case. When I finished driving, I read the *Marcum* case. It addressed the "appearance of impropriety" standard, which had largely been discarded with the replacement of the old Code of Ethics by the Rules of Professional Responsibility. My concern was different – that Mr. Mando was acting as a prosecutor, and he should be subject to the rules and standards of someone making discretionary charging decisions.

Wicker Aff., ¶¶6-7.

See also Exhibit B. The Marcum case, however, does not support Mr. Mando's position that he is not required to recuse.

In Marcum, the Supreme Court of Kentucky determined that the appearance of impropriety standard is no longer applicable in deciding lawyer disqualification questions, and that the standard should instead be a showing of actual conflict of interest. See Marcum v. Scorsone, 457 S.W.3d 710, 718 (Ky. 2015). However, the current situation is not akin to that in Marcum, nor indeed in most lawyer disqualification matters. As the Marcum Court clearly

recognized, the parameters of its ruling apply to cases where a lawyer's former client ("Party A") objects to that same lawyer representing another party against Party A:⁴

Disqualification under [the appearance of impropriety] standard is 'little more than a question of subjective judgment by the former client.' In essence, all the former client has to do is claim discomfort with the subsequent representation to create the appearance that something untoward is going on and thus that there is an appearance of impropriety.

Id. (quoting SCR 3.130-1.9) (emphasis added).

In this matter, by contrast, there is no allegation that Mr. Mando has previously represented Judge Combs, nor that his role as counsel in the Mullins Litigation runs afoul of any prior or subsequent representation of a client. As stated by Mr. Wicker in his Affidavit, this is a question of the propriety of Mr. Mando making "discretionary charging decisions" against a Judge that he and his client clearly believe has made erroneous decisions from the Bench (and who, if Mr. Mando is unsuccessful in his prosecutorial duties, could potentially make further correct decisions that are unfavorable to Mr. Mando's client). And while it is undoubtedly true that the JCC proceedings are not criminal in nature, Mr. Mando's role in those proceedings is that of a prosecutor, and the rules and guidelines governing criminal prosecutors are therefore strongly instructive, mandating Mr. Mando's disqualification.

3. Mr. Mando's Business Relationship With Southern Financial Requires That His Involvement In This Matter Be Terminated.

In undertaking the prosecution of a criminal defendant, it is generally accepted that the prosecutor act objectively and impartially as to all parties involved – the state, the victim and the accused. "The prosecutor speaks not only for the victim, or the police, or those who support them, but for all citizens. Both the accused and the public have a legitimate expectation that the prosecutor's zeal will be objective and impartial in each individual case." State v. Cope, 50 P.3d

⁴ In Marcum, the firm at issue was claimed to have effectively acted as counsel for a corporation's Board of Directors and also against that same Board of Directors. Marcum, supra, 457 S.W.3d at 714.

513, 515 (Kan. App. 2002) (citing People v. Eubanks, 14 Cal. 4th 580, 589-590, 927 P.2d 310 (1996) (emphasis added)).

Kentucky likewise recognizes the importance of the appearance of objectivity and impartiality on the part of a prosecutor, and requires disqualification of a prosecutor on various grounds. Included among the grounds for disqualification is when the prosecuting attorney “[h]as a financial interest in the subject matter in controversy or in a party to the proceedings, or any other interest that could be substantially affected by the outcome of the proceeding.” KRS 15.733(2)(f) (emphasis added). The ABA is clear in this regard as well:

The prosecutor should not permit the prosecutor’s professional judgment or obligations to be affected by the prosecutor’s personal, political, financial, professional, business, property, or other interests or relationships. A prosecutor should not allow interests in personal advancement or aggrandizement to affect judgments regarding what is in the best interests of justice in any case.

American Bar Association, Criminal Justice Standards for the Prosecution Function (4th ed.), Standard 3-1.7(f).

The interests of Mr. Mando’s private practice client, Southern Financial, in having Judge Combs removed from the Bench are obvious. Southern Financial has unsuccessfully challenged three of Judge Combs’ rulings, with a fourth appeal pending. This alone seriously calls into question Mr. Mando’s ability to impartially and objectively prosecute Judge Combs, when his client’s interests are so clearly at odds with those of providing Judge Combs a fair hearing. Disqualification based on this conflict of interest should be required by the Commission. Unfortunately, Mr. Mando’s apparent conflict of interest has now been concretely demonstrated by several instances of his withholding evidence from Judge Combs, or specifically choosing not to pursue exculpatory evidence, both thereby hampering Judge Combs’ ability to thoroughly and effectively defend against the Commission’s charges. The conflict of interest must be examined in light of the prosecutorial misconduct, and disqualification is the only appropriate result.

III. THE PROSECUTORIAL MISCONDUCT.

Mr. Mando's has demonstrated an inability to act in an impartial and objective manner in his duties as the Commission's prosecutor. As set forth at length in Judge Combs' recently-filed Dismissal Memo, and as summarized and described further in this Motion, Mr. Mando has – directly or through the Commission's investigator, Gene Weaver – withheld evidence from Judge Combs and has consciously chosen not to pursue exculpatory evidence that would have exonerated Judge Combs and avoided certain of the charges that were filed against him by the Commission.

In so doing, Mr. Mando has failed in his duties as a prosecutor.

Prosecutorial misconduct is “[a] prosecutor’s improper or illegal act . . . involving an attempt to . . . persuade the jury to wrongly convict a defendant or assess an unjustified punishment.” Prosecutorial misconduct may result from a variety of acts, including improper questioning and improper closing argument. “Any consideration on appeal of alleged prosecutorial misconduct must center on the overall fairness of the entire trial.”

Noakes v. Commonwealth, 354 S.W.3d 116, 122 (Ky. 2011) (citations omitted).

Judge Combs has requested that that evidence be stricken and the resulting charges be dismissed, but even that relief, if granted, does not address and remedy Mr. Mando's role in allowing the “errors” to happen in the first place and in failing to ensure a fair process and objective hearing. As demonstrated above, Mr. Mando represents a client with a clear interest in having Judge Combs removed from the Bench, and that interest has just as clearly impacted Mr. Mando's ability to act appropriately in his role as the Commission's prosecutor.

A. Evidence Withheld By Or With The Knowledge Of Mr. Mando.

1. Evidence Related To Counts XI, XII And XIII.

In contravention of SCR 4.170(4), Judge Combs was not provided with the information obtained during the preliminary investigations of the claims that led to Counts XI, XII and XIII until after those charges were filed. In the case of Count XI, transcripts of statements taken by Gene Weaver from Russ Cassady, Jeff Vanderbeck and Randy White on May 21, 2015 were not produced to Judge Combs until June 4, 2015, simultaneous with his counsel's receipt of the First Amended Notice that included Count XI. See Dismissal Memo, p. 29 and Exhibit M thereto (Wicker Aff.), ¶10.

As to Counts XII and XIII, the Second Amended Notice is dated August 7, 2015 and was received by counsel on August 10, 2015, along with a disk of documents. Two weeks later, Mr. Mando sent a letter to Judge Combs' counsel by e-mail and mail, the mailed copy of which included no less than three reports from another Commission investigator, Nell Weer, dated July 6, 2015, August 3, 2015 and August 5, 2015. See Dismissal Memo, p. 31. Finally, in a letter dated August 28, 2015, Mr. Mando sent yet another report from Ms. Weer related to counts XII and XIII to Judge Combs' counsel. See August 28, 2015 letter from Mr. Mando to Mr. Getty, letter only attached as Exhibit C. By failing to provide evidence to Judge Combs in accordance with SCR 4.170(4), Mr. Mando has demonstrated his bias against Judge Combs and his inability to prosecute this matter within the applicable rules and in keeping with his obligation to be objective and impartial as to all parties, including the accused.

2. Statement Of Rebecca Hamilton.

Even more significant is the conduct of Messrs. Mando and Weaver in withholding a recorded statement containing favorable, if not exculpatory, evidence regarding the charges

against Judge Combs. It has recently come to the attention of counsel for Judge Combs that Mr. Weaver, with the knowledge and presumably the consent of Mr. Mando, withheld from Judge Combs' counsel one of the recorded statements that he took in pursuing the Commission's claims. Specifically, on or about August 20, 2015, Mr. Getty requested that Mr. Mando provide the recordings of statements taken by Mr. Weaver. See August 20, 2015 letter from Mr. Getty to Mr. Mando, attached as Exhibit D. These recordings should have been provided to Judge Combs with the transcripts of those statements, but were instead knowingly withheld by Mr. Mando until they were specifically requested. See Wicker Aff., Dismissal Memo Exhibit M, ¶11 (confirming that he never received the recordings of Mr. Weaver's statements). The reason these recordings were withheld is clear – included in the recordings is the statement given by Pikeville City Clerk Rebecca Hamilton, a statement that Mr. Weaver and/or Mr. Mando chose not to have transcribed and which was not produced along with the transcripts of other recorded statements which were transcribed.⁵

Calls allegedly made by Judge Combs to various employees and officials of the City of Pikeville make up a majority of the basis for Count III, where those calls are characterized as “harassing and contentious.” See Original Notice, p. 5. However, Ms. Hamilton's characterization of those same calls is quite to the contrary.⁶ Ms. Hamilton describes Judge Combs calls as ordinary, related to issues of a personal nature and not threatening or harassing. It is simply astounding that neither Mr. Weaver nor Mr. Mando had this particular recording

⁵ The episode involving the failure to (1) transcribe the Hamilton statement, and (2) the withholding of the tape of the interview raises the question of what other statements, if any, were taken, proved to be equally helpful to Judge Combs but were also “deep sixed” and never transcribed or produced.

⁶ Judge Combs' counsel has sent a copy of the Hamilton recording to a court reporter to be transcribed, a copy of which transcript will be provided to the Commission when it is complete. In the meantime, presumably the Commission has or can obtain copies of the recordings and can verify the comments herein about Ms. Hamilton's statement by listening to that statement.

transcribed, and that Mr. Mando chose to withhold the recording until counsel requested it. On its own, this act (and omission) by Mr. Mando would call into question Mr. Mando's objectivity and absolutely mandate his disqualification. When coupled with his interest as a private attorney seeking to remove Judge Combs from the Bench all doubt regarding his inability to act as a prosecutor in this matter disappears.

B. Evidence Intentionally Not Pursued.

1. Statements Of Billy Johnson And Gary Johnson.

It must next be noted that neither Mr. Weaver nor anyone from Mr. Mando's office⁷ bothered to seek out what Judge Combs has easily discovered through his counsel's efforts – evidence that absolutely exonerates Judge Combs as to certain of the claims brought against him. Attorney Ray Jones claimed in his statement to Mr. Weaver that Judge Combs had directly solicited contributions for his son's high school golf team from Mr. Jones but also from attorneys Billy Johnson and Gary C. Johnson. See Dismissal Memo, p. 27. Count X of the Original Notice specifically asserts that Judge Combs directly solicited contributions from both Messrs. Johnson. However, Billy Johnson and Gary C. Johnson have both provided sworn testimony refuting that allegation, and confirming that no one from or at the behest of the Commission – including Mr. Mando – has contacted them about the allegations. See Billy Johnson Statement, Dismissal Memo Exhibit G, pp. 5-6, and Gary C. Johnson Affidavit, Dismissal Memo Exhibit N, ¶2. If Mr. Mando was truly interested in justice, rather than in his own personal interest in

⁷ Mr. Mando has confirmed that another attorney from his office, Louis D. Kelly, has conducted interviews with witnesses in Pikeville. See Exhibit B. Apparently, however, Mr. Mando did not find it important to insist that these interviews include those whose names have been mentioned in the charging documents but who were not previously approached by Mr. Weaver or Mr. Mando. If he had acted with the required due diligence, the truth from Billy Johnson and Gary Johnson would have been known. Such intentional ignorance of the facts should not be sanctioned by the Commission.

protecting his client Southern Financial, surely he would have insisted on verifying Ray Jones' unsworn, hearsay statements?⁸

2. Statement Of Michael de Bourbon.

Count VIII of the Original Notice charges that Judge Combs engaged in an improper ex parte communication with Michael de Bourbon about the Hall litigation described in the Notice and in the Dismissal Memo. Once again, however, instead of seeking out Mr. de Bourbon about this allegation, Mr. Mando instead relied on unsubstantiated hearsay and allowed the charge to stand as written. Of course, Mr. de Bourbon has since denied, under oath, that the alleged conversation took place. Other well-respected Pikeville attorneys have also denied that Judge Combs is known to engage in ex parte communications about ongoing cases:

Q. Okay. Have you ever sat in his office, you know, in between hearings or on a break from trial or anything and just, you know, chatted with him in general?

A. Yes.

Q. Okay. What – is it ever about the cases that you're – that you're on?

A. No. It would typically be about a tractor or a piece of equipment. ... Just general talk.

Billy Johnson Statement, Dismissal Memo Exhibit G, pp. 13-14.

Q. Great. Have you ever known him to engage in improper ex parte communications with parties and lawyers?

A. Never.

Q. Has he ever communicated with you about a case away from the courtroom?

A. Never.

⁸ Why would Ray Jones make such an untrue and unsupported statement? One answer is that certain people believe that Mr. Jones and others close to him politically fear that Judge Combs might run against State Senator Jones and defeat him. Destroying Judge Combs' reputation would appear to be helpful in that regard.

Q. Have you ever heard of him doing that with anybody else?

A. I have not.

Statement of Michael Shane Hall, Dismissal Memo Exhibit F, p. 5.

Thoughtful, diligent investigative tactics by Mr. Weaver and – in such clear absence of that – by Mr. Mando and his office, would have avoided this spurious charge and the resulting negative publicity, and would have demonstrated Mr. Mando’s dedication to a fair and impartial proceeding. Instead, Mr. Mando allowed his conflict to cloud his prosecutorial judgment.

3. The EQT Cases.

Finally, not only did Mr. Mando fail to ensure that all of the investigative information related to Counts XII and XIII was provided to Judge Combs before those charges were filed, he also again failed to ensure that a thorough investigation of those charges was undertaken. By reviewing the cases at issue, determining the identities of counsel involved in those cases, and reaching out to those individual attorneys, Judge Combs has, to date, obtained three sworn Affidavits that contradict the allegation that Judge Combs never disclosed his family business’ lease arrangement with EQT Production. See Affidavits of Adam Collins, Adam S. Hall, Robert J. Patton and Phil A. Stalnaker, attached to the Dismissal Memo as Exhibits B, C, D and H, respectively.

Even after Judge Combs testified about the Buffalo Development litigation and about attorney Michael Schmitt’s involvement in that case and the knowledge of the family relationship at least as early as the late 1990s, Mr. Mando apparently opted against talking to attorneys actually involved in the cases at issue. Had he done so, he would have realized that the review of materials undertaken by Ms. Weer did not tell the entire story. In the alternative, any such efforts undertaken by Mr. Mando or at his direction revealed holes in that story that he

found unpalatable and therefore chose not to pursue further. Under either scenario, and at the risk of repetition, Mr. Mando's bias created by the Mullins Litigation has demonstrably impacted his ability to act in a neutral and even-handed manner in making discretionary charging decisions.

IV. CONCLUSION.

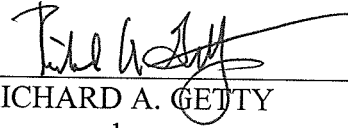
The supposed purpose of these proceedings is to determine if Judge Combs has failed to uphold the applicable Canons of Judicial Conduct and if any such failings warrant discipline. It is not supposed to be a forum for the display of "political axes" hurled at Judge Combs by those who resent his criticism of their management of the City of Pikeville or as a place for all who harbor resentment to defame him with impunity. It is instead supposed to be a forum where truth, honesty and integrity are of the utmost importance and where such interests are to be rebuffed summarily.

Any determination by this Commission absolutely must be made based solely upon a fair and unbiased hearing that includes all relevant facts and laws. Unfortunately, and apparently because of Mr. Mando's overriding interest in achieving the goals of his client Southern Financial, even at the expense of the truth and in derogation of his prosecutorial duties, the charges hurled at Judge Combs have been based on hearsay, innuendo and half-truths, all of which could have been corrected and/or avoided entirely if Mr. Mando had insisted that the investigation and prosecution of Judge Combs be conducted fairly and even-handedly as he is obligated to do.

Mr. Mando has a clear conflict of interest in acting as the Commission's prosecutor, and he has allowed that conflict to override his obligation to act in the best interest of the Commission, the complainants, the public and Judge Combs. For all these reasons, Judge

Combs respectfully submits that the Commission must enter an Order disqualifying Mr. Mando and his firm from any further involvement in this matter.

Respectfully submitted,



RICHARD A. GETTY

and

DANIELLE H. BROWN

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COUNSEL FOR RESPONDENT
HON. STEVEN D. COMBS

CERTIFICATE OF SERVICE

A copy of the foregoing was served on the following by e-mail and regular U.S. mail, postage prepaid, on this the 8th day of September, 2015:

Ms. Jimmy Shaffer
Executive Secretary
Judicial Conduct Commission
P.O. Box 4266
Frankfort, Kentucky 40604-4266
jimmyshaffer@kycourts.net

Jeffrey C. Mando, Esq.
Adams, Stepler, Woltermann & Dusing, PLLC
40 W. Pike Street
P.O. Box 861
Covington, Kentucky 41012-861
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COUNSEL FOR RESPONDENT

dhbpld1455

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E-MAILED AND MAILED
jmando@aswdlaw.com

August 12, 2015

Jeffrey C. Mando, Esq.
Adams, Stepner, Woltermann & Dusing, PLLC
40 W. Pike Street
P.O. Box 861
Covington, Kentucky 41012

Re: In Re The Matter Of: Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit
(Judicial Conduct Commission)

Dear Jeff:

I have attempted to reach you by telephone this week but thus far I have been unable to speak with you. We have unfortunately traded messages. I did speak briefly with Lewis Kelly of your firm and asked him to have you call me. Several issues have arisen that require immediate attention, all as described in detail below. Please give me a call at your earliest convenience once you have reviewed this letter.

Judge Combs' Use Of His Office And Parking Space

Danielle Brown relayed your recent conversation regarding Judge Combs' use of his parking space and office at the Pike County Hall of Justice. She tells me you advised that the Judicial Conduct Commission (the "Commission") believes this creates an impression with the public that Judge Combs is still handling cases and that the Commission asked if Judge Combs would therefore agree to stop using his parking space and office. Frankly, I feel certain that anyone with an "ear to the ground" in Pikeville is well aware of the charges brought against Judge Combs, of his temporary suspension and the transfer of his cases to other Judges. I would be interested to know who "reported" to the Commission about this matter – is there a member of the public crying foul because they believe Judge Combs continues to rule on cases simply because he has been seen in his office or using his parking space or is it someone else in the Courthouse that contacted the Commission?

EXHIBIT A

THE GETTY LAW GROUP_{PLLC}

Jeffrey C. Mando, Esq.
August 12, 2015
Page 2

While Judge Combs does occasionally stop by his office, it is for the purposes of catching up with his staff (people with whom he has developed close relationships over the years) and to pick up his mail. He is not doing anything to even suggest that he is involved with ongoing cases, and he does not have any interactions with the public at large while he is there. In addition, the Commission did not impose any restrictions on Judge Combs' use of his parking space and office in the temporary suspension Order. I therefore see no reason for the Judge to stop doing what he is doing – making occasional visits to his office and using his reserved parking space and parking access card while he is at his office. It would seem that such access would help to make it less obvious when he has visited for ten or fifteen minutes to pick up mail or pay bills.

Payment For Copies

Regarding your discussion with Danielle about Judge Combs' obligation to pay for copies at the Pike Circuit Clerk's office, Judge Combs inquired at the Clerk's office about his alleged \$300+ balance for copies. He was told that he has no outstanding balance. If you have an unpaid invoice or other documentation of amounts allegedly due, please forward them to us as soon as possible so that we can clear up this discrepancy.

30-Day Rehabilitation Program

The final matter that I understand you and Danielle discussed was whether Judge Combs had gone into a rehabilitation program as I had earlier told you he was planning to do. As Danielle advised, Judge Combs did in fact go to a facility in Milford, Ohio but was sent home after a detailed assessment that determined he does not have a substance abuse problem. I will be happy to provide you with the written report if you will confirm, in writing, that the report will be kept confidential and will not be utilized or filed in any forum that is available to the public.

Interviews In Pike County

When we last spoke, you confirmed that additional witness interviews were being conducted in Pike County. I would appreciate you providing any tapes and transcripts of those interviews as soon as possible.

Mullins v. Southern Financial Life Insurance Company

Finally, I must raise a matter of utmost importance that I believe warrants immediate attention and discussion. In reviewing this matter and digging into underlying documents and facts, it has come to our attention that you are counsel of record for Southern Financial Life

THE GETTY LAW GROUP PLLC

Jeffrey C. Mando, Esq.
August 12, 2015
Page 3

Insurance Company (“Southern Financial”) in a Pike Circuit Court case that was pending before Judge Combs prior to his temporary suspension, captioned Mullins v. Southern Financial Life Insurance Company, Case No. 07-CI-114 (Pike Cir. Ct.). It appears that Southern Financial has unsuccessfully sought review of three of Judge Combs’ rulings in that case, with a fourth ruling affirmed by the Court of Appeals and now pending before the Supreme Court on Southern Financial’s Petition for Discretionary Review. Specifically, the Appellate history is as follows:

- On November 23, 2009 Southern Financial filed a Petition for Writ of Prohibition (Court of Appeals Case No. 2009-CA-2183). When that Petition was denied, Southern Financial filed an Appeal to the Kentucky Supreme Court (Supreme Court Case No. 2010-SC-244-MR). On or about September 23, 2010 the Supreme Court issued its Memorandum Opinion affirming the Court of Appeals’ denial of the Petition.
- On June 18, 2012, Southern Financial filed another Petition for Writ of Prohibition (Court of Appeals Case No. 2012-CA-1080). That Petition was also denied, and resulted in Southern Financial again filing an Appeal with the Kentucky Supreme Court (Supreme Court Case No. 2012-SC-642-MR). The Supreme Court affirmed the Court of Appeals’ decision in a November 21, 2013 Opinion.
- Also on June 18, 2012, Southern Financial filed a Notice of Appeal (Court of Appeals Case No. 2012-CA-1086). The Court of Appeals granted the Appellees’ Motion to Dismiss this Appeal as Interlocutory on or about September 13, 2013, and the Supreme Court denied Southern Financial’s Motion for Discretionary Review on or about April 9, 2014 (Supreme Court Case No. 2013-SC-716-D).
- Southern Financial again filed a Notice of Appeal on February 6, 2015 (Court of Appeals Case No. 2015-CA-235). The Court of Appeals, on its own Motion, dismissed this appeal for lack of subject matter jurisdiction, leading to Southern Financial’s present August 7, 2015 Motion for Discretionary Review to the Supreme Court (Supreme Court Case No. 2015-SC-427). That Motion presumably awaits a ruling on whether or not the Kentucky Supreme Court will accept the case on Discretionary Review.

As counsel for Southern Financial, you have taken the position that Judge Combs’ rulings have been erroneous on at least four occasions. It would seem obvious to even a casual observer that your client believes it would be in a better position in this litigation if Judge Combs no

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Jeffrey C. Mando, Esq.

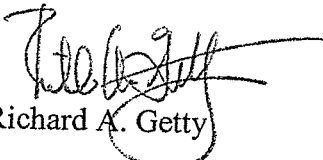
August 12, 2015

Page 4

longer had decision-making power in the case, something you are attempting to achieve as prosecutor for the Commission. Stated another way, if you are successful in your prosecutorial role before the Commission, your client Southern Financial will reap an added benefit of no longer facing a Judge whose decisions it so clearly believes are erroneous.¹ In light of this history and your continued representation of Southern Financial, I respectfully submit that it would be appropriate for you to recuse yourself as the Commission's prosecutor of Judge Combs. This matter was brought to our attention recently and after learning of it and carefully considering the matter, we are of the opinion that the appearance of impropriety is simply too stark to be ignored any longer – which has led us to make the above request.

Should you wish to discuss the matter directly, please feel free to call me at your earliest convenience. Thanking you in advance for your attention and prompt response, I remain

Sincerely yours,


Richard A. Getty

RAG/dhb

cc: Hon. Stephen P. Ryan
Danielle H. Brown, Esq.
Hon. Steven D. Combs

ragltr9642

¹ I note that Russell Davis is also counsel of record for Southern Financial in the Mullins case. Mr. Davis has given a statement against Judge Combs to your investigator and of course also serves as City Attorney for the City of Pikeville, which entity, through its City Commission, filed a formal charge against Judge Combs with the Commission. Stites and Harbison also represents Southern Financial in the Mullins matter, and the potential impact on that firm of rulings by Judge Combs in the Purdue Pharma case have been brought to your attention through the statement that Commonwealth Attorney Rick Bartley gave to your investigator. None of the rulings at issue in these cases are being questioned by the Commission, yet it is difficult to ignore the benefit that these entities and their counsel stand to receive if Judge Combs is no longer on the Bench.

August 17, 2015

VIA ELECTRONIC MAIL AND U.S. MAIL

Richard A. Getty, Esq.
1900 Lexington Financial Center
250 West Main Street
Lexington, KY 40507

RE: *Kentucky Judicial Conduct Commission v. Hon. Steven D. Combs*

Dear Rich:

Per your request, the following is a response to the issues raised and requests made in your letters of August 12 and 13, 2015, respectively.

The Commission provided Judge Combs with written notice of the Charges, and the evidence in its possession that supported those Charges pursuant to Supreme Court Rules. In addition, Judge Combs was provided with advance notice of the June 16, 2015 hearing in which the Commission suspended him as the Pike Circuit Court Judge. At that hearing, Judge Combs had the opportunity to challenge the evidence presented and to present evidence as to why he should not have been suspended from office. Once the Commission issued its Order suspending Judge Combs, he was prohibited from using state resources, such as his office, secure parking pass, and courthouse access pass. This history further demonstrates that Judge Combs was provided with due process before the Commission suspended him and before issuing its August 11, 2015 Order which simply stated what should have been apparent from his suspension from office.

With respect to any personal property that Judge Combs' has in his office, please provide me with a list of that property and Commission staff will make immediate arrangements to have it personally and promptly delivered to him. To the extent that Judge Combs maintains any personal records and/or files on his state computer, he should contact AOC and ask them to retrieve and download any personal records or files for delivery to him. Per the Commission's Order, Judge Combs is prohibited from accessing any state-issued computer directly while suspended.

Captain Chris Edmonds of the Pikeville Police Department contacted the Commission and registered the post-suspension complaint after he observed Judge Combs' vehicle in his secure parking spot at the Justice Center. Judge Eddie Coleman did *not* call the Commission to complain about Judge Combs.

You also requested copies of any tapes and transcripts of additional interviews of witnesses in Pikeville that were recently performed. Those interviews were conducted by

EXHIBIT B

Richard A. Getty, Esq.
August 17, 2015
Page 2

my partner, Louis Kelly, in preparation for the September 21, 2015 hearing. Unlike the interviews conducted during the preliminary investigation, any work done by my office, and any tapes or notes generated as a result of that work, in preparation for the September 21, 2015 hearing constitutes attorney-work product that is not subject to production under the Supreme Court Rules. In contrast, any and all witness interviews, complaint letters, and other evidence in support of the charges have previously been provided to Judge Combs.

Finally, you requested that I recuse from my representation of the Commission in this matter because of my representation of Southern Financial Life Insurance Company in the *Mullins* litigation pending in the Pike Circuit Court. Kent Wicker first brought this concern to my attention in May, prior to the June 16, 2015 suspension hearing. We informed Kent that we found no ethical rule or opinion that would require my recusal in this case. We also directed Kent to the Kentucky Supreme Court's decision in *Marcum v. Scorsone*, 457 S.W.3d 710 (Ky. 2015) that discusses the standard for disqualifying a parties' chosen legal counsel. I believe that decision clearly places me on solid ground and underscores that I have not violated any ethical rule by representing the Commission in this matter. Moreover, it is fair to conclude that Kent Wicker and Judge Combs concurred since I brought my position and this decision to their attention prior to the suspension hearing and they did not raise recusal as an issue at the June 16, 2015 hearing.

I trust that this correspondence has addressed all of your concerns. If you have any questions, however, or would like to discuss any of these issues in more detail, please feel free to contact me at your convenience.

Sincerely,
ADAMS, STEPNER,
WOLTERMANN & DUSING, PLLC

/s/ Jeffrey C. Mando
Jeffrey C. Mando

JCM/clw

cc: Ms. Jimmy Shaffer (via email)
Louis D. Kelly, Esq. (via email)

August 28, 2015

VIA ELECTRONIC AND U.S. MAIL

Richard A. Getty, Esq.
1900 Lexington Financial Center
250 West Main Street
Lexington, KY 40507

RE: *Kentucky Judicial Conduct Commission v. Hon. Steven D. Combs*

Dear Rich:

Enclosed please find the report of Nell T. Weer regarding the above-referenced matter. If you should have any questions, please contact me at your convenience.

Sincerely,

ADAMS, STEPNER,
WOLTERMANN & DUSING, PLLC

/s/ Jeffrey C. Mando
Jeffrey C. Mando

JCM/clw
Attachment

cc: Ms. Jimmy Shaffer (via email)
Louis D. Kelly, Esq. (via email)

THE GETTY LAW GROUP^{PLLC}

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E-MAILED AND MAILED

jmando@aswdlaw.com

August 20, 2015

Jeffrey C. Mando, Esq.
Adams, Stepper, Woltermann & Dusing, PLLC
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P.O. Box 861
Covington, Kentucky 41012

Re: In Re The Matter Of: Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit
(Judicial Conduct Commission)

Dear Jeff:

I received your August 17, 2015 letter and am once again astounded by your non-responsive responses. In particular, you have provided no substantive justification for the Commission's second Order regarding Judge Combs' use of his office, his parking space and his secure access to the Courthouse. You state, "[o]nce the Commission issued its Order suspending Judge Combs, he was prohibited from using state resources, such as his office, secure parking pass, and courthouse access pass." Under what authority do you claim that the Commission is entitled to enhance an earlier-issued penalty without providing Judge Combs notice and the opportunity to be heard? The June 16, 2015 Order temporarily suspending Judge Combs provided "that Steven D. Combs, Circuit Court Judge, be and hereby is suspended 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 formal proceedings." See June 16, 2015 Order. Nothing in this Order references or suggests that the suspension from "acting in his official capacity as a judge" or from "the performance of his duties" includes Judge Combs not utilizing his office, parking and access privileges. The August 11, 2015 Order does not, as you suggest, "simply [state] what should have been apparent from his suspension from office."

Further, our review of the June 16, 2015 hearing tape indicates no argument or discussion regarding the propriety of Judge Combs' continued use of his office. The matter was neither discussed nor decided, there has been no notice or opportunity to be heard on this issue, and we therefore respectfully submit that the Order should be rescinded. I trust you will pass this

EXHIBIT D

THE GETTY LAW GROUP^{PLLC}

Jeffrey C. Mando, Esq.
August 20, 2015
Page 2

request along to the Commission and let me know their response as soon as possible. In the meantime, and as you and I discussed yesterday morning, Judge Combs will be at his office briefly today at noon to pick up any mail, pay bills or handle other personal matters. I trust that we can continue this arrangement as necessary at least until the Commission responds to our request that the August 11, 2015 Order be rescinded.

Also on the issue of Judge Combs' personal property in his office, your earlier offer to have those items delivered to him is nothing more than a (very) thinly-veiled indication that Judge Combs' suspension will be permanent. I will assume your comments are simply a reflection of your personal belief about the eventual outcome of this case; however, I feel compelled to point out to you that, given your direct interactions with the members of the Commission regarding this matter, such statements could easily be interpreted as coming from the Commission, or at the very least as reflections of your discussions with the Commission about how this case will be decided. You did not hesitate to share with us your belief, and that of the Commission, that Judge Combs' use of his office was creating a false impression with the public – you will therefore forgive me for sharing with you my belief that statements from you suggesting knowledge of what the Commission will ultimately decide tends to create the impression that this is not a just, even-handed process.

A final issue related to the August 11, 2015 Order is your statement that Captain Chris Edmonds "registered the post-suspension complaint after he observed Judge Combs' vehicle in his secure parking spot at the Justice Center." Please provide us with a copy of this complaint or, if you assert that the complaint was verbal, the date that Captain Edmonds' made the complaint, how it was made, to whom, and copies of any notes or other investigative documents that resulted. In addition, Captain Edmonds' alleged observation of Judge Combs' vehicle at the Courthouse does not answer my question as to who reported that Judge Combs was utilizing his office and in whose eyes this created the impression that Judge Combs was continuing to hear cases. I will look forward to receiving this information forthwith.

You state that the interviews recently conducted by Louis Kelly and any notes, tapes and the likes generated therefrom are protected from production as attorney work product. However, you earlier acknowledged your obligation to turn over any exculpatory evidence and in your most recent letter tacitly acknowledged your obligation to provide evidence in support of the charges lodged against Judge Combs. To the extent that Mr. Kelly's interviews revealed exculpatory evidence and/or evidence that purportedly supports the charges against Judge Combs, I believe we are entitled to receive that evidence and reiterate my request that you provide any such evidence immediately. In addition, we have never received copies of the recorded statements taken by Gene Weaver. We have the transcripts, but not the actual recordings, which are necessary to determine if portions of the tapes were omitted from transcription. Please forward those recordings to us as soon as possible.

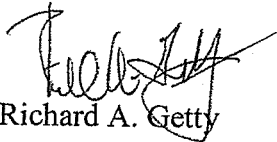
THE GETTY LAW GROUP_{PLLC}

Jeffrey C. Mando, Esq.
August 20, 2015
Page 3

Finally, we are not in agreement with your statement that Judge Combs and Kent Wicker “concurred” that you are not required to recuse from this matter. We have asked Kent Wicker to provide us with his recollection of any such discussions that occurred before the June 16, 2015 suspension hearing and will follow up with you and/or with the Commission as appropriate.

Thanking you in advance for your attention and cooperation to the requests herein, I remain

Sincerely yours,


Richard A. Getty

RAG/dhb

cc: Hon. Stephen P. Ryan
Danielle H. Brown, Esq.
Hon. Steven D. Combs

ragltr9653

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT

MOTION OF THE RESPONDENT,
STEVEN D. COMBS, CIRCUIT COURT JUDGE,
35TH JUDICIAL CIRCUIT, TO CLOSE THE
COURTROOM OR OTHERWISE EXCLUDE THE PUBLIC
FROM HEARING CERTAIN EVIDENCE AT THE FINAL HEARING

* * * * *

The Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit (“Judge Combs”), by counsel, respectfully requests that the Judicial Conduct Commission close the courtroom or otherwise exclude the public from hearing certain confidential medical information expected to be presented at the final hearing set for September 21, 2015. In support of this Motion, the Respondent respectfully states as follows:

INTRODUCTION

The Commission is well-aware of the pending charges against Judge Combs as well as the details of the allegations referenced in the formal charging documents. The Commission is also well-aware that the charges and allegations have been broadly disseminated to the public. Beyond the publication of the formal charges against Judge Combs, a variety of news sources, including the Lexington Herald-Leader, the Appalachian News Express, and the Louisville Courier-Journal, have covered the allegations in depth. To be sure, the public, and particularly the residents in and around Pikeville, have an interest in the proceedings, and it is anticipated that many will be in attendance at the upcoming final hearing.

Yet, despite the public's legitimate interest in judicial misconduct proceedings, there comes a time where that interest must yield to the statutorily protected privacy concerns of the Respondent. At the final hearing, Judge Combs expects to present evidence and testimony concerning "protected health information" that is protected from disclosure and dissemination by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. 104-191. Such protected health information, while neither appropriate nor suitable for broad public disclosure, is necessary for the Commission's consideration as well as the protection of Judge Combs's due process rights to be heard and to present a defense to the current charges. Therefore, the presentation, submission, and discussion of such evidence should remain protected from disclosure to any members of the public attending the final hearing.

ARGUMENT

Confidentiality plays a critical role in Commission's investigation and consideration of judicial misconduct allegations. Indeed, "[d]uring the investigatory phase of an inquiry into alleged misconduct, confidentiality is mandated." In re Disciplinary Proceeding Against Deming, 736 P.2d 639, 644 (Wash. 1987) (emphasis added). As the Washington Supreme Court observed in Deming, "[d]isclosed allegations, even though groundless, could prove damaging not only to a judge's reputation, but also the administration of justice by adversely affecting a judge's ability to perform his or her duties." Id. That Court also aptly noted that "exoneration rarely commands the same public attention as a charge of wrongdoing." Id. (quoting Rushford v. Civiletti, 485 F. Supp. 477, 479 (D.D.C. 1980)).

There can be little doubt that the widely disseminated allegations against Judge Combs have already caused considerable damage to his reputation both on and off the Bench.¹ At this

¹ In light of the extensive publicity already given to this matter, and the resulting damage from that publicity to Judge Combs' reputation, Judge Combs would prefer that the entire proceedings be closed to the public

point, even a complete exoneration (which both counsel and Judge Combs believe is appropriate) of course will not receive nearly the same publicity as the original allegations and will not afford complete relief.

These facts reflect the tension between two competing interests: “On the one hand there is the interest in maintaining the effectiveness of the judiciary; on the other hand, there is a desire that hearings concerning the qualifications of public officials be conducted in public.” Deming, supra, at 644-45. Courts have suggested that once a probable cause determination has been made, the balancing of these interests shifts—“the solicitude for the protection of the judiciary lessens while the concern for the interests of the public increases.” Id. at 645; see also Landmark Comms., Inc. v. Virginia, 435 U.S. 829, 835-36 (1978) (noting that maintaining confidentiality before the commencement of formal proceedings involving judicial performance serves legitimate state interests). But even if the balance shifts, the legitimate concern for confidentiality is not eliminated.

Here, the public’s interest in the hearing is established as described above. And, now that the allegations have been widely disseminated, Judge Combs welcomes the opportunity to respond to the charges.² Notwithstanding the need for a public forum, however, there is limit on what the public is entitled to see and hear. Judge Combs retains a reasonable expectation of privacy in his protected health information. He must be permitted to present a complete defense and submit all relevant evidence to the Commission. Some of the evidence and/or testimony

in order to allow him and his family to retain some modicum of dignity. But as the existing rules and precedent do not appear to allow for that, Judge Combs respectfully submits that at minimum the Commission should take all steps necessary to maintain the privacy of Judge Combs’s protected health information.

² In fact, Judge Combs has filed an extensive Motion to Dismiss virtually all of the charges against him and has asked for a hearing on that Motion on a date in advance of the September 21, 2015 hearing set before the Commission.

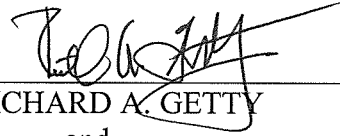
Judge Combs expects to present relates to confidential medical information that is otherwise protected from public disclosure.

While there is little harm to the public in being removed from the courtroom during the presentation and discussion of certain evidence, there is considerable harm to Judge Combs if he is forced to choose between publicly disclosing protected health information or presenting less than all of his relevant evidence to the Commission. Under these circumstances, Judge Combs's legitimate privacy interest in his confidential medical information must override the public's interest—at least for those discrete points during the final hearing when such information is admitted or discussed. Accordingly, and for the foregoing reasons, Judge Combs respectfully requests that the Commission clear the courtroom or otherwise exclude the public from the final hearing during any point at which evidence or testimony concerning Judge Combs's protected health information is presented, submitted, or discussed. Judge Combs further respectfully requests that such information be redacted from any recordings or transcriptions of the proceedings that are available to the public, and that any documentary evidence introduced at the final hearing and that is protected health information be filed under seal or otherwise kept out of the public record.

REQUEST FOR HEARING

The Respondent respectfully requests that the Commission set the foregoing Motion of the Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit, for an Order Disqualifying the Commission's Prosecutor for hearing at a date and time prior to the final hearing in this matter scheduled to commence on September 21, 2015.

Respectfully submitted,



RICHARD A. GETTY

and

DANIELLE H. BROWN

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E-Mail: dbrown@gettylawgroup.com

And

STEPHEN P. RYAN
7104 Hillcircle Court
Louisville, Kentucky 40214
Telephone: (502) 551-1083
E-Mail: stephen_ryan@rocketmail.com

COUNSEL FOR RESPONDENT
HON. STEVEN D. COMBS

CERTIFICATE OF SERVICE

A copy of the foregoing was served on the following by e-mail and regular U.S. mail, postage prepaid, on this the 8th day of September, 2015:

Ms. Jimmy Shaffer,
Executive Secretary
Judicial Conduct Commission
P.O. Box 4266
Frankfort, Kentucky 40604-4266
jimmyshaffer@kycourts.net

Jeffrey C. Mando, Esq.
Adams, Stegner, Woltermann & Dusing, PLLC
40 W. Pike Street
P.O. Box 861
Covington, Kentucky 41012-861
jmando@aswdlaw.com



COUNSEL FOR RESPONDENT

mwepld0427

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

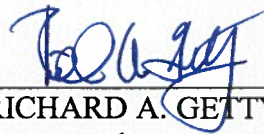
IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

**NOTICE OF RESPONDENT TO TAKE THE
VIDEOTAPED DEPOSITION OF MARC WHITSETT, MD**

The Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit (“Judge Combs”), by counsel, submits his Notice To Take The Videotaped Deposition Of Marc Whitsett, M.D. on Friday September 11, 2015 beginning at 8:00 a.m. in the office of Dr. Whitsett, 50 West Techne Center Drive, Suite B-5, Milford, Ohio 45150, in lieu of the live testimony of Dr. Whitsett at the hearing set to commence on September 21, 2015. The deposition will be taken before an officer authorized to administer oaths and for all purposes permitted by the Kentucky Rules of Civil Procedure pursuant to SCR 4.160. The deposition will be used for the Hearing before the Judicial Conduct Commission on September 21, 2015.

Respectfully submitted,



RICHARD A. GETTY

and

DANIELLE H. BROWN

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and

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Louisville, Kentucky 40214
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E-Mail: stephen_ryan@rocketmail.com

COUNSEL FOR RESPONDENT
HON. STEVEN D. COMBS

CERTIFICATE OF SERVICE

A copy of the foregoing Notice Of Respondent To Take The Videotaped Deposition Of Marc Whitsett, M.D. was served on the following by e-mail and regular U.S. mail, postage prepaid, on this the 8th day of September, 2015:

Ms. Jimmy Shaffer
Executive Secretary
Judicial Conduct Commission
P.O. Box 4266
Frankfort, Kentucky 40604-4266
jimmyshaffer@kycourts.net

Jeffrey C. Mando, Esq.
Adams, Stepner, Woltermann & Dusing, PLLC
40 West Pike Street
P.O. Box 861
Covington, Kentucky 41012-861
jmando@aswdlaw.com



COUNSEL FOR RESPONDENT

amspld0371

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

**RENOTICE OF RESPONDENT TO TAKE THE
VIDEOTAPED DEPOSITION OF MARC WHITSETT, MD**

PLEASE TAKE NOTICE that the Videotaped Deposition Of Marc Whitsett, M.D., previously noticed by the Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit, by counsel, to take place on Friday September 11, 2015 beginning at 8:00 a.m. in the office of Dr. Whitsett, 50 West Techne Center Drive, Suite B-5, Milford, Ohio 45150, will instead commence at 2:00 p.m. on the same date and at the same location as previously noticed. The deposition will be taken before an officer authorized to administer oaths and for all purposes permitted by the Kentucky Rules of Civil Procedure pursuant to SCR 4.160. The deposition will be used for the Hearing before the Judicial Conduct Commission on September 21, 2015.

Respectfully submitted,



RICHARD A. GETTY

and

DANIELLE H. BROWN

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Louisville, Kentucky 40214
Telephone: (502) 551-1083
E-Mail: stephen_ryan@rocketmail.com

COUNSEL FOR RESPONDENT
HON. STEVEN D. COMBS

CERTIFICATE OF SERVICE

A copy of the foregoing Renotice Of Respondent To Take The Videotaped Deposition Of Marc Whitsett, M.D. was served on the following by e-mail and regular U.S. mail, postage prepaid, on this the 10th day of September, 2015:

Ms. Jimmy Shaffer
Executive Secretary
Judicial Conduct Commission
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Frankfort, Kentucky 40604-4266
jimmyshaffer@kycourts.net

Jeffrey C. Mando, Esq.
Adams, Stepner, Woltermann & Dusing, PLLC
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COUNSEL FOR RESPONDENT

dhbpld1457

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

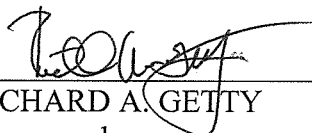
**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

**NOTICE OF RESPONDENT TO TAKE THE
VIDEOTAPED DEPOSITION OF FRANK JUSTICE**

* * * * *

The Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit (“Judge Combs”), by counsel, submits his Notice To Take The Videotaped Deposition Of Frank Justice on Tuesday, September 15, 2015 beginning at 2:00 p.m. at The Getty Law Group, PLLC, 1900 Lexington Financial Center, 250 West Main Street, Lexington, Kentucky 40507, in lieu of the live testimony of Mr. Justice at the hearing set to commence on September 21, 2015. The deposition will be taken before an officer authorized to administer oaths and for all purposes permitted by the Kentucky Rules of Civil Procedure pursuant to SCR 4.160. The deposition will be used for the Hearing before the Judicial Conduct Commission on September 21, 2015.

Respectfully submitted,



RICHARD A. GETTY
and
DANIELLE H. BROWN

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Louisville, Kentucky 40214
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COUNSEL FOR RESPONDENT
HON. STEVEN D. COMBS

CERTIFICATE OF SERVICE

A copy of the foregoing Notice Of Respondent To Take The Videotaped Deposition Of Frank Justice was served on the following by e-mail and regular U.S. mail, postage prepaid, on this the 10th day of September, 2015:

Ms. Jimmy Shaffer
Executive Secretary
Judicial Conduct Commission
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jimmyshaffer@kycourts.net

Jeffrey C. Mando, Esq.
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COUNSEL FOR RESPONDENT

dhbpld1458

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

ORDER ON PENDING MOTIONS

Upon consideration of motions by Judge Combs to dismiss Counts I, II, IV, VII, VIII, IX, X, XI, XII, and XIII of the Notice of Formal Proceedings and Charges as Amended, to disqualify the Commission's prosecutor and to close the courtroom or otherwise exclude the public from hearing certain evidence at the final hearing, it is by the Commission

ORDERED that counsel for the Commission shall file a response to the pending motions on or before September 16, 2015;

FURTHER ORDERED that all pending motions shall be heard at 9:00 a.m. on September 21, 2015, in the Appellate Courtroom on the 3rd Floor of the Pike County Judicial Center, 175 Main Street, Pikeville, Kentucky. The Commission will make a determination whether to hear oral arguments on any pending motions at that time.

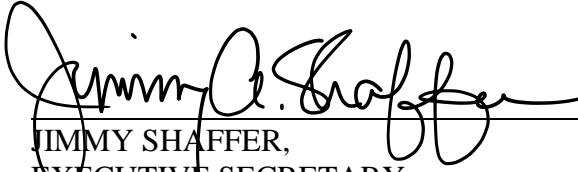
SO ORDERED this 10th day of September, 2015.


Stephen D. Wolnitzek, Chair

Judge Janet Stumbo and Judge Eddy Coleman recused from any consideration of this matter.

CERTIFICATION

I hereby certify that copy hereof was served on Steven D. Combs, Pike Circuit Court Judge, by mailing same to his attorneys, Richard A. Getty and Danielle H. Brown, 1900 Lexington Financial Center, 250 West Main Street, Lexington, KY 40507; Stephen P. Ryan, 7104 Hillcircle Court, Louisville, KY 40214; and on counsel for the Judicial Conduct Commission, Jeffrey C. Mando and Louis D. Kelly, 40 West Pike Street, Covington, KY 41011, this 10th day of September, 2015.


JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

**MOTION OF THE RESPONDENT,
STEVEN D. COMBS, CIRCUIT COURT JUDGE,
35TH JUDICIAL CIRCUIT, FOR LEAVE TO
TAKE PRE-HEARING DEPOSITION OF GENE WEAVER**

The Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit (“Judge Combs”), by counsel, respectfully requests that the Judicial Conduct Commission enter an Order granting him leave to take the pre-hearing deposition of the Commission’s investigator, Gene Weaver (“Mr. Weaver”). The grounds supporting the Motion of Judge Combs are addressed below.

As outlined at length in Judge Combs’ Memorandum in Support of his Motion to Dismiss (the “Memo to Dismiss”) certain of the Counts asserted against him, as well as in Judge Combs’ Memorandum in Support of his Motion to Disqualify the Commission’s prosecutor, Jeffrey C. Mando (the “Memo to Disqualify”), it has come to the attention of Judge Combs and his counsel that Mr. Weaver’s investigative methods have been clearly biased, if not unethically skewed, in favor of the prosecution and against Judge Combs, to say the least. Examples described in the listed pleadings include the following:

1. Mr. Weaver took a recorded statement from City Clerk Rebecca Hamilton, but chose (or was directed) not to have that statement transcribed. See Memo to Disqualify, pp. 9-11.¹ The Hamilton interview took place on February 24, 2015 –

¹ The recording of Ms. Hamilton’s statement has been transcribed. Among the more relevant information provided by Ms. Hamilton is the following: Some of Judge Combs’ calls were cordial and nice, and “[t]here were times he was upset.” See Rebecca Hamilton transcript, attached as Exhibit A, p. 5. “I don’t

nearly eight months ago – and because portions of such testimony are favorable to Judge Combs (and contradictory of certain of the charges besought), it was never transcribed and the tape was withheld from counsel for Judge Combs. If this was a criminal proceeding, such conduct might warrant obstruction of justice charges against all guilty of such tactics.

2. Mr. Weaver chose (or was directed) not to interview Billy Johnson or Gary C. Johnson to determine whether they were indeed asked by Judge Combs to give donations to his son's golf team, an allegation that has been denied, under oath, by both Messrs. Johnson. See Memo to Disqualify, pp. 11-12; Memo to Dismiss, pp. 27-28.
3. Mr. Weaver chose (or was directed) not to interview Michael de Bourbon regarding the allegation that Judge Combs engaged in an improper ex parte communication with Mr. de Bourbon regarding the Hall litigation, an allegation that Mr. de Bourbon has denied under oath. See Memo to Disqualify, p. 12; Memo to Dismiss, p. 25.
4. Mr. Weaver chose (or was directed) not to contact attorneys of record in the various EQT cases at issue to determine whether Judge Combs disclosed the Lease relationship between a business owned by Judge Combs and his two brothers and EQT Production Company. Mr. Weaver also chose (or was directed) not to inquire about whether this relationship is well-known when he took statements from local attorneys. Judge Combs and several Pikeville attorneys have provided sworn testimony in this regard that directly contradicts the Commissions' charges. See Memo to Disqualify, p. 13.
5. Mr. Weaver chose (or was directed) not to interview the three Pikeville Police Officers who received recorded calls from Judge Combs, despite allegations that these calls were intimidating and threatening. See Memo to Dismiss, pp. 19-20.
6. Mr. Weaver chose (or was directed) not to interview Kelly Edmonds about the allegation that she claims to have seen Judge Combs on Topix. Mr. Weaver likewise chose (or was directed) not to ask Rick Bartley about allegations that he has seen Judge Combs on Topix while at the Bench – all of which charges lack any admissible evidence at all and which have been denied by Judge Combs. See Memo to Dismiss, p. 24.²

think he was argumentative with me." Id., p. 8. She does not recall if any of the open records requests at issue were delivered by a deputy. See id., p. 12. "[H]e's never been disrespectful to me. He just doesn't like the issue that he's trying to get his point across to me." Id., p. 16. The issue about removing a sign from a yard was not about a political sign, but about a yard sale sign. Id., pp. 17-18. The overall tenor of Ms. Hamilton's statement regarding Judge Combs' calls to her office is in direct contradiction to the characterization presented in the charging documents.

² Of course, another possibility is that Mr. Weaver did interview the three Pikeville Police Officers but found their testimony unfavorable to the prosecution and therefore did not take recorded statements. Also possible is that Mr. Weaver did ask Mr. Bartley about the Topix allegations before taking Mr. Bartley's

7. It is patently obvious in reviewing the transcripts of the statements taken by Mr. Weaver that he conducted “off the record” discussions with the witnesses before the recorded statements. Mr. Weaver leads witnesses into topic areas they obviously would not have raised independently, and when an answer is not to his liking attempts to reframe his questions in order to get the answer he is looking for – after giving “short shrift” to any answers that might be favorable to Judge Combs.

There can be no question but that Mr. Weaver had a clear agenda – or was provided with one – in the selection of witnesses to interview, in the topics covered in those interviews and in the decisions about which interviews to transcribe. In light of these demonstrated infirmities in Mr. Weaver’s investigative procedures, one must also wonder how many people he interviewed but chose not to record. Did he delete any recordings, or portions of recordings? And at whose direction did he make these decisions? This information is highly relevant and is absolutely necessary in order for Judge Combs to be able to present a thorough, well-informed defense to the charges leveled against him. The Commission’s prosecutor has acknowledged to Judge Combs’ counsel that he is required to turn over all exculpatory evidence to Judge Combs, and Judge Combs respectfully submits that Mr. Weaver’s tactics, described above and in previously-filed pleadings, were instead intended to avoid and cover up exculpatory evidence. As the Commission is well-aware from the earlier Alred proceedings, this is not the first time that Mr. Weaver’s questionable methods have been brought to light – unfortunately, the Commission appears to have done nothing to determine whether Mr. Weaver’s conduct has consistently violated the principles of fairness and justice that underlie these very proceedings. His conduct as to the charges leveled against Judge Combs is pervasive and undermines the very foundation of the charges so hurriedly, so sloppily and so nefariously patched together to tell a story

recorded statement, but because the answer was not what he wanted to hear, chose not to ask about it during the recorded statement. Judge Combs should be able to determine “what Mr. Weaver knew and when he knew it” as to all of these issues before the final hearing on September 21, 2015.

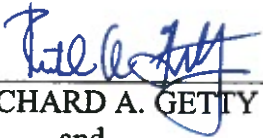
nowhere near the truth. Indeed, Mr. Weaver's conduct has so tainted these proceedings that dismissal of all of the charges against Judge Combs should result.

Judge Combs has requested that Mr. Mando agree to a pre-hearing deposition of Mr. Weaver, but Mr. Mando has refused that request. For all these reasons, Judge Combs therefore respectfully requests that the Commission forthwith enter an Order granting him leave to take Mr. Weaver's deposition prior to the final hearing in this matter.

REQUEST FOR HEARING

Because this matter seeks relief that can only be realized before the commencement of the September 21, 2015 final hearing, Judge Combs respectfully requests that the Commission set the foregoing Motion of the Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit, for Leave to Take Pretrial Deposition of Gene Weaver for hearing at its earliest convenience so that Mr. Weaver's deposition, if leave is granted, can be accomplished prior to September 21, 2015.

Respectfully submitted,



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and
DANIELLE H. BROWN

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And

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Louisville, Kentucky 40214
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COUNSEL FOR RESPONDENT
HON. STEVEN D. COMBS

CERTIFICATE OF SERVICE

A copy of the foregoing Motion of the Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit, for Leave to Take Pre-Hearing Deposition of Gene Weaver was served on the following by e-mail and regular U.S. mail, postage prepaid, on this the 11th day of September, 2015:

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COUNSEL FOR RESPONDENT

dhbpld1459

TAPE RECORDED INTERVIEW

OF REBECCA HAMILTON

IN RE: STEVEN D. COMBS

FEBRUARY 24, 2015
(12:37 P.M.)

CONDUCTED BY GENE WEAVER

No Court Reporter present. Transcribed from audio only.

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EXHIBIT A

COPY

Tape Recorded Interview
Rebecca Hamilton
February 24, 2015

1 MR. WEAVER: This is a tape
2 recorded interview being conducted on February 24, 2015.
3 The time is 1:37 -- correction, 12:37 p.m. The interview
4 is being conducted by myself, Gene Weaver, concerning
5 matters that have been presented to the judicial conduct
6 commission concerning Judge Steven Combs of the Pike
7 Circuit Court.

8 Before we get started, ma'am, you are
9 aware that this interview is being recorded?

10 MS. HAMILTON: Yes.

11 MR. WEAVER: And you are
12 willingly and voluntarily providing the information in
13 this statement?

14 MS. HAMILTON: Yes.

15 **EXAMINATION**

16 Q. If you would, would you please state your
17 first and last name and spell your last name?

18 A. Rebecca Hamilton, H-a-m-I-l-t-o-n.

19 Q. And, Ms. Hamilton, are you currently
20 employed?

21 A. Yes.

22 Q. And by whom are you employed?

23 A. City of Pikeville.

24 Q. And in what capacity are you currently
25 assigned as an employee of the City of Pikeville?

Tape Recorded Interview
Rebecca Hamilton
February 24, 2015

1 A. City clerk, HR and utility director.
2 Q. And how long have you worked for the City?
3 A. Since October of 2001.
4 Q. So coming up on 14 years, I guess.
5 A. Yes.
6 Q. Okay. Are you familiar with Judge Steven
7 Combs?
8 A. Yes.
9 Q. And how do you know Judge Combs?
10 A. He's a customer and a resident of the City
11 of Pikeville.
12 Q. Were you employed with the city at any
13 time while Judge Combs was either mayor or a city
14 commissioner for the City of Pikeville, if you can
15 remember?
16 A. I don't think he was a commissioner. He
17 was definitely not the mayor when I started.
18 Q. Okay. You have multiple titles, HR
19 director, city clerk and what was the third?
20 A. Utility.
21 Q. Utility. Okay. Director of utilities.
22 A. Yes.
23 Q. In any of those capacities do you ever
24 have an occasion to speak either personally or by
25 telephone with Judge Combs?

Tape Recorded Interview
Rebecca Hamilton
February 24, 2015

1 A. I have.

2 Q. Any idea of how many times you have spoken
3 with him by telephone?

4 A. Several.

5 Q. Several. Have you ever had any face-to-
6 face conversations with him about city business? He ever
7 come to City Hall and say, Ms. Hamilton, can you help me
8 with this or that?

9 A. No.

10 Q. Okay. So your conversations with him have
11 all been by telephone?

12 A. Correct.

13 Q. Tell me a little bit about his general
14 demeanor and the content of some of the phone calls, if
15 you can remember.

16 A. Sometimes when he called, he had a
17 complaint or he would want to speak with the city
18 manager.

19 Q. Okay. Do you ever engage him in
20 conversation?

21 A. I would ask him if I could help him if no
22 one was available. But then he would tell me what his
23 complaint was at that time where I would address him to
24 call back or I would transfer him to the city manager's
25 voice mail.

Tape Recorded Interview
Rebecca Hamilton
February 24, 2015

1 Q. Okay. And that's Mr. Blackburn?

2 A. Yes.

3 Q. On the times that you actually talked to
4 him about an issue was he polite and cordial or was he
5 some different tone of voice? How would you describe his
6 telephone demeanor?

7 A. There were times he was cordial and nice.
8 There were times he was upset. It depended on the
9 circumstances of when he called and what he wanted to --
10 I guess his general complaint was.

11 Q. If the city manager, Mr. Blackburn, or
12 whoever else he called wanting to speak with, if they
13 were unavailable did he ever make any derogatory comments
14 or anything about their unavailability or about them
15 personally?

16 A. He would complain about the phones going
17 into voice mail. He would complain that he could never
18 get a hold of anyone or nobody would ever return his
19 phone calls.

20 Q. Okay.

21 A. He would complain if there was an issue
22 that, I guess, he didn't like the answer and he
23 complained about Mayor Justice.

24 Q. What did he say about Mayor Justice?

25 A. Something to do with an issue on the

1 drainage at a neighbor's house and what a bad job we did
2 at fixing it.

3 Q. Did you have any knowledge of that repair
4 for that project?

5 A. I did put him on hold and I called to
6 speak with UMG to see what we had done so I could get
7 back with him to let him know that we had put rock and
8 that we had fixed it appropriately.

9 Q. Was that OMG?

10 A. UMG.

11 Q. UMG. Okay. That's a company that
12 provides utility service to the city, correct?

13 A. Correct.

14 Q. Okay. And was Judge Combs receptive to
15 the information you provided or what was his -- what was
16 the outcome of that call?

17 A. No. He did not like what I told him.

18 Q. Okay. Was -- you know, you can help me
19 here a little bit. You know, was he angry? I don't want
20 to make it like I'm pulling your teeth out but --

21 A. He disagreed very much with what I had
22 told him had happened.

23 Q. Okay.

24 A. And said that that's not what had happened
25 and that it was not fixed correctly and he was not very

Tape Recorded Interview
Rebecca Hamilton
February 24, 2015

1 professional about telling me how it was fixed.

2 Q. Okay. So he challenged even though what
3 you were telling him as being incorrect?

4 A. Yes.

5 Q. Okay. Was that usually the tone of the
6 phone calls, that he was challenging and, I guess, didn't
7 want to hear what you would have to say or whatever?

8 A. Usually.

9 Q. And I know you can't remember to the exact
10 phone call but how many times you think you've talked to
11 Judge Combs over your -- let's say the last five years or
12 so?

13 A. Gosh. I would say 10 to 20.

14 Q. Is that pretty much comparable to what you
15 do with other customers and residents? Do you talk to
16 them that frequent or is he more of a frequent caller
17 than some others?

18 A. He had periods that he was.

19 Q. Is there any particular like time of the
20 year that seems like he calls more often than other times
21 or is it just kind of splattered around throughout the
22 year?

23 A. I would say it's not the same time. I
24 couldn't really put a time frame on it but like if he is
25 upset with something and he calls it would probably be,

Tape Recorded Interview
Rebecca Hamilton
February 24, 2015

1 we could say, a few calls later. Do you know what I
2 mean? If he -- he would leave a message but he is very
3 prompt to call back if he doesn't get an answer. Or, I
4 guess, if he doesn't get a live person he would be prompt
5 to call back.

6 Q. Okay. So I'm not trying to put words in
7 your mouth but is he pretty persistent in his phone
8 calls?

9 A. Yes.

10 Q. And he keeps calling back until he either
11 gets the person he wants to talk to or gets an answer?

12 A. Correct.

13 Q. He may not agree with the answer but he'll
14 get an answer eventually?

15 A. Correct.

16 Q. On the times like the one time you
17 discussed when you called UMG and he was, I guess, trying
18 to, I'll say, argue, he tried to present another side of
19 an issue, did you feel that he was argumentative, rude?
20 How would you describe his demeanor in that call and
21 others?

22 A. I don't think that he was argumentative
23 with me. He was more argumentative with the city and the
24 mayor and the city manager. He wasn't directly at me but
25 he was upset that the procedure that had been -- what had

Tape Recorded Interview
Rebecca Hamilton
February 24, 2015

1 happened was not correct and was not the correct way to
2 have done it. And he was a little vocal about how it
3 should have been done.

4 Q. He was more upset with the city manager,
5 the mayor and the city and it wasn't a direct attack at
6 you.

7 A. Correct.

8 Q. You were just the messenger.

9 A. Yes.

10 Q. Okay. Like the old saying, don't kill the
11 messenger, right?

12 A. Right.

13 Q. Did you ever feel that the messenger was
14 being killed?

15 A. Several times.

16 Q. Okay. When you speak with Judge Combs on
17 the telephone, is he rational and make sense in his
18 conversations or did you ever feel that there was some
19 impairment or anything?

20 A. I never thought of that. I just thought
21 he was upset so I just tried to answer his questions.
22 And then, of course, I would always let the city manager
23 know that he had called and what his issue was and what I
24 had told him.

25 Q. I understand.

1 A. So, I mean, I always just tried to answer
2 him the best I could.

3 Q. Okay. I have previously shown you some
4 open records requests that have been filed by Judge
5 Combs. And on some of those he has actually put the
6 request on his court stationery; is that correct?

7 A. Yes, correct.

8 Q. Do you recall receiving any of these open
9 records requests? I mean, do you have independent
10 knowledge of receiving any of these letters yourself?
11 And you feel free to look at any of them again to refresh
12 your memory.

13 A. The one I noted because it's my
14 handwriting. I was given that one by the city manager,
15 Mr. Blackburn, at a commission meeting, the one on April
16 21, 2009.

17 Q. Okay. And that's just on a piece of
18 appears to be plain white paper and it just says, To:
19 Manager Blackburn and then there's a handwritten note at
20 the top, correct?

21 A. Yes, and that's my note.

22 Q. That's your note. Okay. And then I
23 believe there's another document, open records request on
24 Judge Combs' judicial stationery dated August 28, 2008.
25 Did you make a note on that?

Tape Recorded Interview
Rebecca Hamilton
February 24, 2015

1 A. I did. It said: Delivered 9/4/08, 11:42
2 a.m. And that's my initials and my writing.

3 Q. Okay. And if you want to look at any of
4 these others you're certainly welcome to, Ms. Hamilton.
5 Do you specifically recall receiving these open records
6 requests? And I think there are some others in there
7 also to the City.

8 A. I can't say that I specifically remember
9 those. I mean, I could tell you that they were there
10 because I handle them. But I couldn't have told you like
11 how I got them. I don't know if I got them through the
12 mail, I don't know how I got them.

13 Q. So you don't remember if someone hand
14 delivered them or if they came through the normal mail
15 system?

16 A. No, because we get things all the time. I
17 mean, the mayor gets things served. If anything comes I
18 usually sign for it so it's not unusual for me to get
19 papers.

20 Q. Okay. Do you ever recall an employee of
21 the sheriff's department, a bailiff, a sheriff's deputy,
22 someone in uniform, delivering documents on behalf of
23 Judge Combs?

24 A. We usually have two officers that bring
25 things over from the -- the ones that come over is, I

Tape Recorded Interview
Rebecca Hamilton
February 24, 2015

1 want to think, a Conley, a Deputy Conley, I'm thinking,
2 if I can remember his name correctly. And then we have a
3 Harris that worked at the sheriff's department. Usually,
4 if they bring anything over for the mayor or us in
5 general, because we get different things, those would be
6 the two that would deliver them, because they know us and
7 -- yeah.

8 Q. But that would be like a --

9 A. It would be anything.

10 Q. Like a lawsuit where the city's been named
11 or something like that so they -- this is kind of
12 their --

13 A. Territory.

14 Q. Territory.

15 A. Right.

16 Q. Good word. Thank you. But you can't
17 recall either of them delivering an open records request
18 to the city?

19 A. Not specifically, no. I couldn't tell you
20 what it would be. I mean, I couldn't say, yes, that came
21 through them. I can't tell you that because I don't
22 remember that.

23 Q. Okay. That's fair. Are you familiar with
24 Judge Combs' legal assistant or secretary?

25 A. No.

Tape Recorded Interview
Rebecca Hamilton
February 24, 2015

- 1 Q. So you don't know who that is?
- 2 A. No.
- 3 Q. Have you ever had conversations away from
4 work with Judge Combs about the city?
- 5 A. No.
- 6 Q. Do you know Judge Combs in a social
7 setting or through church or anything of that nature?
- 8 A. If I would see him out for lunch or
9 anything it would be a cordial hello, how are you, but
10 not anything other than that.
- 11 Q. Okay. So if you ran into him at the
12 grocery you all know by face. Beyond that not much,
13 right?
- 14 A. Right.
- 15 Q. Is there anything else that you can think
16 of, ma'am?
- 17 A. No.
- 18 Q. Let me ask you, when Judge Combs calls on
19 the times that you have spoken with him, how does he
20 identify himself? Does he say this is Steve Combs or
21 this is Judge Combs or do you remember?
- 22 A. Judge Combs.
- 23 Q. He refers to himself as Judge Combs?
- 24 A. Yes.
- 25 Q. So he's calling in his official capacity?

Tape Recorded Interview
Rebecca Hamilton
February 24, 2015

1 A. Yes.

2 Q. Even though he's talking to you about city
3 business?

4 A. Yes.

5 Q. Okay. How do you refer to him? Do you
6 call him Judge, Mr. Combs, Steve? How do you --

7 A. I think I refer to him more as Steve
8 Combs --

9 Q. Okay.

10 A. -- because I knew him prior to coming to
11 the city. So him being a judge doesn't -- it didn't --
12 that's not how I would -- I know that he's a judge but I
13 know him as Steve Combs. So --

14 Q. So you knew him before you ever worked for
15 the City of Pikeville?

16 A. Correct.

17 Q. Okay. Maybe through other employment or
18 something like that?

19 A. Correct. So I would address him as Steve.

20 Q. Okay. But when he calls, he says this is
21 Judge Combs?

22 A. Well, because when he calls, if he doesn't
23 get to speak -- if he didn't get to speak to Donovan in
24 the times that he was upset he ended up -- I mean, you
25 know, the clerks will put him on hold and find me because

1 they want somebody that can answer his questions or they
2 wanted me to -- you know, to see if I could help him.

3 Q. Okay.

4 A. So like he may not have gotten to me but
5 he would have asked for me because I was in that capacity
6 that, I guess, I could help him. I was the city clerk or
7 the utilities, whatever he needed at that time.

8 Q. So if one of your coworkers answered the
9 phone they would put him on hold and find you?

10 A. Correct.

11 Q. So you're kind of the go-to person?

12 A. Right.

13 Q. In the absence of the city manager, I
14 assume? Or even in the presence of the city manager
15 sometimes?

16 A. Maybe I was the person they thought that
17 could get to the city manager to get an answer.

18 Q. Okay. Let me ask you this. What is Judge
19 Combs' reputation here within the city building with your
20 coworkers and subordinates, the people that work for you
21 when he calls? Does he have a reputation of being
22 challenging, threatening, happy-go-lucky, cordial guy? I
23 mean --

24 A. I take it as the clerks don't want to be
25 on the phone with him. They don't want to be challenged

1 by him. So they don't really know how to react to him so
2 they just put him on hold. If he calls, usually, if I'm
3 on the phone they'll come and knock on my door and say,
4 Judge Combs is on the phone, can you help him, and I'll
5 say, I will try.

6 Q. Okay. Is it hard sometimes to help him?

7 A. I don't think he may like the outcome of
8 what I have to tell him but, I mean, I can usually get
9 him -- I mean, I can get the phone conversation to a
10 point. Whether he likes what I've told him is a
11 different story.

12 Q. But you can reason with him?

13 A. He's been -- even when he is upset, he's
14 never been disrespectful to me. He just doesn't like the
15 issue that he's trying to get his point across to me.

16 Q. Well, that brings up a good point. Is he
17 the kind of person that his point matters and the other
18 point doesn't matter? Is he always trying to get his
19 way?

20 A. I think he just -- there's things that
21 when he calls or whatever his issue is, I guess maybe he
22 has more knowledge of it because he used to be the mayor.
23 I don't know but -- and he lives in the city. So does he
24 always like my answers or what Mr. Blackburn has told me
25 to tell him or, you know? And I don't really know but

Tape Recorded Interview
Rebecca Hamilton
February 24, 2015

1 sometimes he doesn't like them so, you know, he'll just
2 say, okay, I'll call Mr. Blackburn back or I'll --
3 whatever he's going to do will usually end the phone
4 conversation.

5 Q. Kind of ends there?

6 A. Uh-huh.

7 Q. Okay. But it sounds as though that the
8 other employees don't want to talk to him so they make an
9 effort to find you to talk to him.

10 A. He had called in a complaint on a previous
11 employee at one time and I think that kind of put
12 employees gun shy on taking a phone call from him.

13 Q. Tell me about that phone call. Did you
14 take that phone call or did someone else take it?

15 A. I took it.

16 Q. Tell me about that phone call.

17 A. It was on a previous project manager. He
18 was upset with him for maybe taking down a sign, a yard
19 sale sign. I'm not sure. But I told him I would address
20 it with the employee and I did. The employee said that
21 it was against the city ordinance. And I think I called
22 Mr. Combs back to tell him that we were just following
23 the ordinance.

24 Q. Did he accept that explanation or --

25 A. He was not happy. He said that that was

1 not correct, that -- it seems to me like it was a church
2 yard sale sign is what I'm trying to think.

3 Q. Could it have been a political sign?

4 A. No. No, it was not during election.

5 Q. Okay.

6 A. It was spring or summer because it was
7 warm outside. I do remember because I had to call the
8 project manager and he was out and about.

9 Q. Okay. What is that lady or gentleman's
10 name, the project manager?

11 A. It's Tommy McClanahan.

12 Q. Tommy McClanahan.

13 A. Uh-huh. And he -- he retired.

14 Q. So Mr. McClanahan has since retired?

15 A. Yes.

16 Q. And Judge Combs disputed the explanation
17 that he was provided?

18 A. Yes. I don't know why I'm remembering
19 that but something about -- I just remember after that
20 incident any time that he would call employees really
21 kind of -- you know, you're kind of shy because, you
22 know, nobody wants to be complained on. So he was -- I
23 did talk to the employee about that and he said that he
24 just took it down because it wasn't supposed to be there.

25 Q. So I assume that Judge Combs doesn't have

1 the greatest reputation among the employees here in the
2 city building because they have a fear of retribution or
3 being complained upon.

4 A. Yes.

5 Q. In any conversation you've ever had with
6 Judge Combs -- has he ever been threatening, threatening
7 in the sense that, well, if you don't do this I'm going
8 to do that or anything of that nature?

9 A. I don't know if you would say threatening.
10 I mean, he's like, you know, he better -- on this
11 incident I do remember him saying, well, you know, he
12 better put the sign back. And I let him know that I
13 would see what was -- where the sign -- I just remember
14 the conversation and I said -- when I called him back,
15 I'm like he can't put the sign back, it can't go there.

16 Q. And did he accept that explanation?

17 A. He must have. I mean, I don't remember.
18 I don't remember if he said goodbye or, you know, I don't
19 remember the end of the conversation. I just remember he
20 was very upset about it.

21 Q. Okay. And he's calling you during the
22 normal work day?

23 A. Yes.

24 Q. And what are your office hours?

25 A. We are open from 8:30 till five. I

Tape Recorded Interview
Rebecca Hamilton
February 24, 2015

1 usually get here some days early. Some days I'm here
2 till six or unless we have a meeting.

3 Q. Okay. But he would be calling during
4 normal working hours?

5 A. Yes.

6 Q. Which are 8:30 to five. When you have to
7 return a call to him, do you call him at home, the
8 courthouse, where do you call him back?

9 A. Whatever number showed up on the caller ID
10 that he called in from is where I would return the call.

11 Q. Okay. But when he calls, he generally
12 refers to himself as Judge Combs?

13 A. Yes.

14 Q. Okay. Anything else, Ms. Hamilton, you
15 can think of?

16 A. No.

17 Q. Okay. Once again you were aware that this
18 interview was being recorded.

19 A. Yes.

20 Q. And you willingly and voluntarily provided
21 the information in this statement.

22 A. Correct.

23 Q. And, to the best of your knowledge, you
24 were truthful and honest in all statements and answers
25 provided.

Tape Recorded Interview
Rebecca Hamilton
February 24, 2015

1 A. Yes.

2 Q. I'd like to remind you that matters of the
3 judicial conduct commission are confidential at this
4 stage and I would ask you to honor that confidentiality.
5 This will conclude the interview with Rebecca Hamilton.
6 Today's date is February 24, 2015. The time is 1:03 p.m.
7 End of interview.

8

(END OF INTERVIEW)

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
THE MOTION OF THE RESPONDENT,
STEVEN D. COMBS, CIRCUIT COURT JUDGE,
35TH JUDICIAL CIRCUIT, FOR LEAVE TO
TAKE PRE-HEARING DEPOSITION OF GENE WEAVER

The Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit (“Judge Combs”), by counsel, in further support of his Motion for leave to take the pre-hearing deposition of the Commission’s investigator, Gene Weaver (the “Motion for Leave to Depose Mr. Weaver”), respectfully states as follows:

INTRODUCTION

Since filing the Motion for Leave to Depose Mr. Weaver on Friday, September 11, 2015, new, highly relevant information has come to the attention of counsel for Judge Combs, prompting this brief Supplemental Memorandum. Specifically, because of he is unavailable during the week of the final hearing, Frank Justice gave his deposition, under oath, on September 15, 2015, during which certain information about Mr. Weaver’s tactics was discussed and will be described below. In addition, and perhaps of more importance, Michael J. Schmitt, Esq., counsel for EQT Production Company (“EQT Production”), called the undersigned about efforts to serve Mr. Schmitt with a Subpoena for the final hearing in this matter. See Affidavit of Richard A. Getty, attached as Exhibit A, ¶¶ 2, 3.¹ During the course of their conversation, Mr. Getty learned

¹ A copy of Mr. Getty’s Affidavit was transmitted by e-mail to Mr. Schmitt for review and comment on September 15, 2015. Mr. Getty also left messages for Mr. Schmitt at Mr. Schmitt’s office and on his cell

several important facts, none of which were shared with Judge Combs by the Commission's prosecutor or investigator and all of which call into further question the integrity and impartiality of the Commission's investigator, Gene Weaver.

MR. WEAVER'S INVESTIGATION OF THE POTTER LITIGATION

During his discussion with Mr. Schmitt on September 15, counsel for Judge Combs learned that neither Mr. Schmitt nor, to his knowledge, anyone from EQT Production reached out to the Commission or its investigator with a complaint about Judge Combs. See Exhibit A, ¶8. The contact with Mr. Schmitt was initiated by Mr. Weaver. Id., ¶¶ 5, 8. Further, it was clear from the conversation that both Mr. Schmitt and EQT have long been aware of the lease relationship that exists between Judge Combs' family's business, Buffalo Development, Inc. and EQT Production, and that until the events that prompted the Motion for Judge Combs to recuse in the Potter litigation, described in detail below, EQT Production never had an objection to Judge Combs presiding over cases in which EQT Production was a party. Id., ¶ 6.

The decision to seek Judge Combs' recusal in the Potter litigation resulted not from its sudden realization of a business relationship never before disclosed, as the Commission's charges suggest, but instead from a new circumstance that caused EQT Production to rethink its earlier, apparently long-standing position against seeking Judge Combs' recusal:

When I asked Mr. Schmitt what prompted his client to seek Judge Combs' recusal in the Potter litigation, he advised me that after an EQT representative received a call from Judge Combs about whether Buffalo Development was receiving all of the royalties to which it was entitled under the lease with EQT Production, the EQT legal department determined it might be in their best interest to seek Judge Combs' recusal. As the records indicate, Judge Combs agreed to recuse from the Potter litigation and the matter was transferred out of Judge Combs' Division on the same day Mr. Schmitt's Motion to Recuse was filed. In other words, prior to the alleged complaint by Judge Combs about the payment of royalties to Buffalo Development, EQT Production did not object to Judge Combs presiding over the

phone, including a message on Mr. Schmitt's cell phone today asking that Mr. Schmitt let Mr. Getty know if he had any objection to anything included in the Affidavit. Mr. Schmitt has not responded with any comments or objections to the Affidavit.

Potter litigation; after the issue arose and EQT Production sought recusal, Judge Combs immediately complied.

Exhibit A, ¶ 7.

Remarkably, Mr. Weaver apparently never inquired about the reasons behind the Motion to Recuse in the Potter litigation, or about the knowledge held by Mr. Schmitt, EQT Production and others about the lease between Buffalo Development and EQT Production:

When I asked Mr. Schmitt if he had explained this series of events to Mr. Weaver, he indicated that Mr. Weaver did not ask for any information other than a copy of the file. Mr. Schmitt was adamant that he did not reach out to the Commission about this matter, and he indicated his belief that no one from EQT had initiated the Commission's investigation into the Potter litigation.

Id., ¶8.

This information, which it is believed Mr. Schmitt will verify during his testimony at the final hearing, if necessary, raises several questions that Judge Combs should be entitled to explore in order to fully and thoroughly rebut the Commission's case against him. First, at whose direction did Mr. Weaver seek out information about cases presided over by Judge Combs that included an EQT entity as a party? Judge Combs has previously provided sworn Affidavits of attorneys that Judge Combs disclosed the Buffalo Development/EQT Production relationship during the course of cases involving EQT, and that no one, including Mr. Schmitt, who was then representing EQT, objected to Judge Combs continuing to hear the cases. The implication in the Commission's use of the Schmitt Affidavit is that it was Mr. Schmitt or EQT Production that claimed to have been in the dark about the Buffalo Development lease, which we now know is not correct. If someone felt that Judge Combs violated a Judicial Canon by failing to properly disclose a financial relationship, Judge Combs is entitled to know who that person is in order to question them about it and have the benefit of all the evidence; Mr. Weaver has that information and should be required to disclose it to Judge Combs prior to the final hearing. In other words,

who raised this matter, when did they raise it and what was their motive in doing so – particularly given that neither Mr. Schmitt nor EQT did so.

Second, once again Mr. Weaver has carefully constructed what he asks (and what he doesn't) – in this case, choosing not to ask Mr. Schmitt about the history of the Potter litigation, his knowledge and that of his client about Judge Combs' business relationship with EQT Production, and the reason EQT Production sought Judge Combs' recusal in the Potter case. Judge Combs is entitled to an explanation from Mr. Weaver as to who directed his questions and why he did not seek out the truth. Even more important is the question – if Mr. Weaver did not seek the truth, why then did not the Commissioner's prosecutor seek the complete facts regarding this matter?

MR. WEAVER'S INTERVIEW WITH FRANK JUSTICE

During the course of Frank Justice's pre-hearing deposition conducted on September 15, 2015, counsel for Judge Combs questioned Mr. Justice extensively about his interactions with Mr. Weaver.² Unfortunately, but by now not surprisingly, one thing that was abundantly clear is that Mr. Weaver carefully limited the questions he asked in order to avoid obtaining exculpatory evidence. For example, Mr. Weaver's questions did not reveal what Mr. Justice readily acknowledged during his deposition – that he believes Donovan Blackburn prepared the Complaint that was filed by Messrs. Carter, Coleman, Justice and Chaney. Mr. Weaver's questions did not reveal that Mr. Justice signed the Complaint in his individual capacity, not as a member of the Pikeville City Commission.³ Mr. Weaver's questions did not reveal that Mr.

² The transcript of Mr. Justice's deposition is not yet available but is being expedited. Judge Combs will provide a copy to the Commission immediately upon its receipt if the Commission indicates it would like to review it in considering this Motion.

³ It remains unclear who filed the January 20, 2015 Complaint. Mr. Blackburn asserts in his statement to Mr. Weaver that he drafted the Complaint and attachments at the direction of the City Commission. The City Attorney, Rusty Davis, asserts that the Complaint was filed by individuals, not by or on behalf of the City of Pikeville or the City Commission, a position that Mr. Justice also took during his deposition. If the

Justice did not read the Complaint and attachments in detail before he signed it. Mr. Weaver's questions did not reveal that Mr. Justice's primary concern was the tone of Judge Combs' calls to City employees and police officers, and that he believes that Judge Combs had the right to make those calls and to voice his complaints.

Finally, after the interview with Mr. Weaver, Mr. Justice heard nothing else about the matter from anyone – not from Mr. Weaver, not from any other Commission investigator, and not from the Commission's prosecutor. Remarkably, Mr. Justice was not even provided with a copy of his statement until the day before his deposition, at which point he received it from the attorney he retained to represent him at the deposition, who also happens to be the City Attorney and a witness in this matter, Rusty Davis. All of these matters brought to light during Mr. Justice's deposition warrant explanation from Mr. Weaver and more than justify Judge Combs' counsel being given access to Mr. Weaver in a deposition.

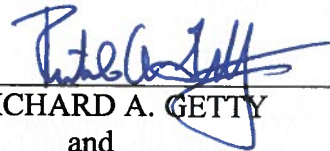
CONCLUSION

There can now be no question but that Mr. Weaver has acted with an agenda in this investigation. Whether that agenda was self-directed or dictated to him from above, the bottom line is that his mission was to find anything that could potentially be characterized as negative about Judge Combs, while at the same time very intentionally not seeking out or ignoring anything that would be to Judge Combs' benefit. If the true purpose of the Commission is to find the truth and to make a fully informed, impartial and well-reasoned decision, all evidence should be brought to light. The only way for this to happen is for Judge Combs to be permitted to take Mr. Weaver's deposition before the final hearing in this matter commences. For these

Complaint is not the act of the City of Pikeville or its Commission, but was filed by individuals in their individual capacities, why did Mr. Blackburn fail to sign it? Why can these individuals raise issues on behalf of Mr. Blackburn, Pikeville city employees, and members of the Pikeville Police Department? How did these claims by four individual citizens lead to the assertion of claims related to local attorneys, EQT Production and media outlets? Mr. Weaver never asked these questions, but they are all questions that merit response.

reasons, and for those set forth in the Motion for Leave to Depose Mr. Weaver, Judge Combs again respectfully requests that the Commission enter an Order granting Judge Combs leave to take the pre-hearing deposition of Mr. Weaver.

Respectfully submitted,



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COUNSEL FOR RESPONDENT
HON. STEVEN D. COMBS

CERTIFICATE OF SERVICE

A copy of the foregoing Supplemental Memorandum in Support of Motion of the Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit, for Leave to Take Pre-Hearing Deposition of Gene Weaver was served on the following by e-mail and regular U.S. mail, postage prepaid, on this the 16th day of September, 2015:

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dhbpld1464

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

AFFIDAVIT OF RICHARD A. GETTY

I, Richard A. Getty, having first been duly sworn, do depose and state as follows:

1. I am a member of the Kentucky Bar and the Ohio Bar, as well as various Federal District and Appellate Courts. I am counsel of record for the Respondent in these proceedings, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit (“Judge Combs”).

2. In advance of the final hearing in this matter, scheduled to commence on September 21, 2015, my office caused numerous Subpoenas for appearance at the final hearing to be transmitted to a process server for service. Included among the individuals to be served with Subpoenas was attorney Michael J. Schmitt, Esq. (“Mr. Schmitt”).

3. On September 15, 2015, I received a call from Mr. Schmitt, who I understood was calling to advise me that he is not available to testify on September 21, 2015. I advised Mr. Schmitt that we will arrange for his testimony to be taken after September 21, 2015, after which we had some general conversation about our respective law practices.

4. The conversation then came around again to the charges leveled against Judge Combs, the Motion to Dismiss that was filed on behalf of Judge Combs and, in particular, Mr. Schmitt’s Affidavit relied upon by the Commission’s prosecutor at the Temporary Suspension Hearing in this matter. It had been my assumption up to this point that Mr. Schmitt had reached out to the Commission about Judge Combs, and I was curious as to why he had done so.



5. Mr. Schmitt quickly disabused me of my erroneous assumption. My understanding of the course of events leading up to Mr. Schmitt's Affidavit is that Mr. Schmitt received a call from the Commission's investigator, Gene Weaver. According to Mr. Schmitt, the call was brief (3-4 minutes) and was directed by Mr. Weaver. Also according to Mr. Schmitt, Mr. Weaver asked Mr. Schmitt about the Motion to Recuse filed by Mr. Schmitt as counsel for EQT Production Company in the matter at issue in Count I of these proceedings, Danny Potter v. Blue Flame Energy Corp., et al., Civil Action No. 11-CI-567 (Pike Cir. Ct.), Mr. Schmitt acknowledged that he had filed the Motion to Recuse and agreed, at Mr. Weaver's request, to provide Mr. Weaver with a copy of Mr. Schmitt's file in that matter.

6. According to Mr. Schmitt, both he and his client, EQT Production Company, were well aware of the lease arrangement between Judge Combs' family's business, Buffalo Development, Inc. ("Buffalo Development"), and EQT Production Company ("EQT Production") throughout the Potter litigation. Mr. Schmitt confirmed what other attorneys who practice before Judge Combs have also stated under oath, that the relationship between Judge Combs' family and EQT Production is well-known in the local legal community. Mr. Schmitt also confirmed that, until the issue arose in the Potter litigation, in any cases in which he represented EQT Production, EQT Production never had any objection to Judge Combs presiding over cases in which EQT Production was a party.


7. When I asked Mr. Schmitt what prompted his client to seek Judge Combs' recusal in the Potter litigation, he advised me that after an EQT representative received a call from Judge Combs about whether Buffalo Development was receiving all of the royalties to which it was entitled under the lease with EQT Production, the EQT legal department determined it might be in their best interest to seek Judge Combs' recusal. As the records indicate, Judge Combs agreed to recuse from the Potter litigation and the matter was transferred out of Judge Combs'

Division on the same day Mr. Schmitt's Motion to Recuse was filed. In other words, prior to the alleged complaint by Judge Combs about the payment of royalties to Buffalo Development, EQT Production did not object to Judge Combs presiding over the Potter litigation; after the issue arose and EQT Production sought recusal, Judge Combs immediately complied.

8. When I asked Mr. Schmitt if he had explained this series of events to Mr. Weaver, he indicated that Mr. Weaver did not ask for any information other than a copy of the file. Mr. Schmitt was adamant that he did not reach out to the Commission about this matter, and he indicated his belief that no one from EQT had initiated the Commission's investigation into the Potter litigation.

9. Mr. Schmitt confirmed that his testimony at the final hearing, if required, will be to the effect set forth herein.

Further Affiant sayeth naught.

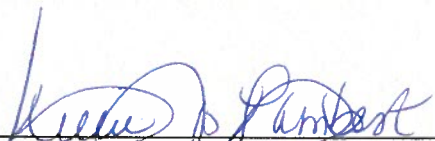


RICHARD A. GETTY

COMMONWEALTH OF KENTUCKY)
)
FAYETTE COUNTY)

Subscribed and sworn to before me by Richard A. Getty on this the 16th day of September, 2015.

My Commission expires: 11/30/18



NOTARY PUBLIC
NOTARY NO.: 522814

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT

RESPONSE IN OPPOSITION TO MOTION TO DISMISS

In response to Judge Combs' Motion to Dismiss Counts I, II, IV, VII, XIII, IX, XI, XII AND XIII, Counsel for the Commission states as follows:

I. PUBLIC KNOWLEDGE OF JUDGE COMBS' RELATIONSHIP WITH EQT PRODUCTION COMPANY DOES NOT EXCUSE HIS OBLIGATION TO RECUSE IN THOSE CASES AND DISCLOSE HIS RELATIONSHIP ON THE RECORD

Counts I, XII and XIII allege, *inter alia*, that Judge Combs presided over cases involving EQT Production Company despite the fact that he had a financial relationship with the company and without disclosing the relationship on the record. Judge Combs does not dispute that he has a business relationship with EQT or that he presided over the cases. (Motion, p. 16) However, Judge Combs claims that the Commission cannot, as a matter of law, find him in violation of the Canons of Judicial Conduct because his relationship with EQT was well known among the Pike County bar. (*Id.* at pp. 8 – 13) He also argues that there is no conflict of interest because the contract with EQT is with Buffalo Development, a company in which Judge Combs holds a one-third ownership interest. (*Id.* at pp. 16-17) Lastly, Judge Combs argues that he did, in fact, disclose his relationship in the EQT cases. (*Id.* at p. 32) In making these arguments, however, Judge Combs misinterprets the nature of the violations and the Judicial Canons at issue.

Counts I, XII, and XIII allege that Combs violated, among others,¹ Canons 1, 2A, and 3E(1), which state, in part:

- Canon 1 – 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.
- Canon 2A – 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 3E(1) - A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.

All of these canons highlight a judge's duty to conduct himself or herself in a manner that promotes confidence in the judiciary. Preserving judicial integrity is a compelling state interest inasmuch as "the authority of the judiciary relies upon public faith in the integrity of its judges." *Family Trust Found., Inc. v. Wolnitzek*, 345 F. Supp. 2d 672 (E.D. Ky. 2004). The United States Supreme Court recently reiterated the importance of maintaining judicial integrity, stating:

We have recognized the "vital state interest" in safeguarding "public confidence in the fairness and integrity of the nation's elected judges." The importance of public confidence in the integrity of judges stems from the place of the judiciary in the government. Unlike the executive or the legislature, the judiciary "has no influence over either the sword or the purse; . . . neither force nor will but merely judgment." The judiciary's authority therefore depends in large measure on the public's willingness to respect and follow its decisions. As Justice Frankfurter once put it for the Court, "justice must satisfy the appearance of justice." It follows that public perception of judicial integrity is "a state interest of the highest order."

Williams-Yulee v. Fla. Bar, 135 S. Ct. 1656 (U.S. 2015) (internal citations omitted)

By presiding over cases involving a company from which he receives royalty payments, the Charges assert that Judge Combs has acted in a manner that comprises

¹ Judge Combs is also accused of violating Canons 2D, 3B(8), 4A(1), (2), and (3).

public confidence in the judiciary. Likewise, the Charges allege that his failure to disclose his relationship with EQT on the record does the same. In his Motion, Judge Combs' does not address these important concerns and for that reason alone his Motion should be denied.

Judge Combs argues that his actions are excused because it is well known in the community that he has a financial relationship with EQT. However, even assuming the truth of that assertion, that fact does not remove Judge Combs' responsibility to recuse in cases in which his impartiality might be reasonably questioned. If anything, the public's knowledge of Judge Combs' financial relationship with EQT only exacerbates his need to disclose his relationship with EQT on the record and recuse in cases in which they are a party.

Judge Combs' other arguments for dismissal are equally unavailing. The fact that Judge Combs only maintains a one-third ownership interest in Buffalo Development does not lessen his obligation to recuse in the EQT cases, it mandates it. His financial interest in the lease with EQT was enough that he admits to contacting EQT employees to discuss royalties owed to him while he was presiding over their cases. During the June 16, 2015 suspension hearing, Judge Combs admitted as much, stating:

- A. I recall a conversation with someone in Pittsburgh or Baltimore that they weren't paying royalties that were owed.
- Q. And you were doing this while you were still presiding over a case in which you were going to be adjudicating claims against EQT, correct?
- A. Yes, sir.

(Transcript of June 16, 2015 Suspension hearing, p. 21) If Judge Combs' interest in the EQT lease is such that he felt compelled to complain about money owed, then it was enough to compel recusal.

Finally, Judge Combs' claim that he disclosed his relationship with EQT is not persuasive and does not compel dismissal of the charge. These disclosures were allegedly made to attorneys in his chambers or during "informal conferences" that were off the record. (Motion, pp. 9, 11) The fact that these alleged disclosures were held off of the record does nothing to address the public concerns regarding integrity of the judiciary as set forth in Canons 1, 2A, and 3E(1).

Since Judge Combs has failed to establish that he is entitled to judgment as a matter of law on Counts I, XII, and XIII, his motion to dismiss those charges must be denied.

II. JUDGE COMBS' CLAIM THAT HE WAS ACTING IN HIS PRIVATE CAPACITY DOES NOT EXCUSE HIS OBLIGATIONS UNDER THE CODE OF JUDICIAL CONDUCT

Counts I, II, IV and XI involve interactions between Judge Combs and various individuals that occurred outside of official court proceedings. Judge Combs argues that the Canons of Judicial Conduct do not apply to these situations because he claims he was acting as a private citizen and not as a judge. (See, e.g., Motion, pp. 16, 18, 19, 22, and 30). However, Counts I, II, IV, and XI all allege, among others,² violations of Canons 4A(1), (2), (3) which states:

4A. Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

² These Counts also allege violations of Canons 1, 2A, 2D, 3B(4), 3B(8), and 3E(1),

(3) interfere with the proper performance of judicial duties.

As the plain language of these Canons illustrate, a judge is not excused from observing the Canons of Judicial Conduct merely because he is not in a courtroom exercising official judicial functions. Indeed, these canons coincide with the notions of promoting public confidence in the judiciary required in Canons 1, 2A, 3E1 and 4A.

Moreover, Judge Combs cannot simply remove himself from his judicial position whenever it suits him. The allegations contained in Count I involve Judge Combs contacting employees from EQT Production Company while an EQT case was pending before him. Count II involves statements regarding a criminal case pending before him and discussion on interpretation of the law. Count IV alleges that Combs threatened to file legal actions against a television station for violating the law. Lastly, Count XI involves, *inter alia*, harassing comments directed towards a news editor involving a criminal case that Judge Combs presided over. All of these charges involve matters that are either directly or closely related to Judge Combs' official status as a judge. As such, he cannot argue that the statements were made in his individual capacity or expect the recipients of his comments to ignore the fact that they are being made by a Circuit Court Judge.

III. COUNSEL FOR THE COMMISSION HAS NO OBJECTION TO JUDGE COMBS' MOTION TO DISMISS COUNT VII

Judge Combs has admitted to making posts on Topix under anonymous pseudonyms.³ However, in light of the evidence regarding the specific posts outlined in Count VII, Counsel for the Commission has no objection to Judge Combs' Motion to Dismiss this Count.

³ See April 15, 2015 letter from Attorney Kent Wicker attached as Exhibit 1.

IV. BECAUSE THERE IS A MATERIAL DISPUTE AS TO THE PROPRIETY OF JUDGE COMBS' ACTIONS REGARDING COUNT VIII, HIS MOTION TO DISMISS MUST BE DENIED

Count VIII alleges that on April 4, 2012 Judge Combs presided over a status hearing in Pike Circuit Court Case No. 11-CI-01455 styled *Nicole Hall v. Unknown Defendants* despite the fact that the case was voluntarily dismissed by the plaintiff two months prior to the hearing. Count VIII further alleges that Judge Combs questioned plaintiff's counsel about his motivations for bringing the lawsuit and accused him of engaging in unethical behavior.

There is no real question as to whether or not this occurred. Judge Combs admits that he held the hearing despite the fact that the case had already dismissed. He cannot deny the statements he made during the hearing which were captured on a video recording. However, Judge Combs argues that the hearing was held in good faith and that all of his actions were proper. (Motion, p. 25) The Charge alleges that Judge Combs' actions were improper and in violation of Canons 1, 2A, 2D, 3B(2), (4), (7), and (8). This is essentially a question that must be resolved by the Commission as the entity responsible for rendering findings of fact and conclusions of law after it hears the evidence. For these reasons, Judge Combs' Motion to Dismiss Count VIII must be denied.

V. COUNSEL FOR THE COMMISSION HAS NO OBJECTION TO DISMISSING THE PORTION OF COUNT VIII RELATING TO JUDGE COMBS' ALLEGED EX PARTE COMMUNICATION WITH ATTORNEY MICHAEL DE BOURBON

As to the specific portion of Count VIII that alleges Judge Combs made *ex parte* statements to attorney Michael de Bourbon, Counsel for the Commission has no objection to Combs' Motion to Dismiss this portion of Count VIII.

VI. BECAUSE THERE IS A MATERIAL DISPUTE AS TO THE PROPRIETY OF JUDGE COMBS' ACTIONS REGARDING COUNT IX, HIS MOTION TO DISMISS MUST BE DENIED

Count IX alleges that Judge Combs presided over Pike Circuit Case No. 14-CI-01224 styled *Joshua Huffman, et al. v. Lillian Pearl Elliott, et al.*, which involved a challenge to the outcome of the 2014 general election for City Commission. Count IX further alleges that Judge Combs entered a Final Judgment and Permanent Injunction in the case despite expressing an interest in the outcome of the City Commission race and criticizing incumbent candidates on the City Commission on multiple occasions.

Judge Combs argues that this charge should be dismissed because there is no evidence that he “actively supported any candidates for elected office.” (Motion, p. 26) He also argues that a judge is allowed to privately express his views on candidates and to participate in the political process. (*Id.*)

Judge Combs misconstrues the basis for Count IX. The charge does not allege that Combs violated the Canons by privately expressing an opinion. Rather, the charges alleges that Judge Combs once again refused to recuse himself in a case in which he had made statements that would clearly question his impartiality. Judge Combs has made multiple comments, either recorded or corroborated by witnesses, expressing a bias against incumbent elected officials of the City of Pikeville. His actions and statements towards the City of Pikeville prompted the City to formally move for his recusal in the *Huffman* case. However, Judge Combs denied the motion and ruled in favor of the plaintiff. As such, there is ample evidence to allow this charge to proceed to a hearing and for the Commission to determine if Judge Combs violated the Code of Judicial Conduct.

VII. WHETHER OR NOT JUDGE COMBS SOLICITED CONTRIBUTIONS FROM ATTORNEYS FOR THE LOCAL HIGH SCHOOL GOLF TEAM IS A QUESTION THAT MUST BE DECIDED BY THE COMMISSION

Count X alleges that Judge Combs solicited financial contributions from Attorneys who regularly appeared before him for a local high school golf team. Judge Combs argues that this charge should be dismissed because two individuals signed an affidavit claiming that they were never solicited by Judge Combs. However, Judge Combs ignores the fact that the Commission has a statement from Attorney Ray Jones⁴ stating that Judge Combs specifically solicited a contribution from him and told him that other attorneys were contributing as well. Even if the other attorneys deny that such a solicitation occurred, it presents a question of material fact that the Commission must decide at the hearing.

VIII. BECAUSE JUDGE COMBS WAS GIVEN ALL PROCEDURAL DUE PROCESS PROTECTION UNDER THE SUPREME COURT RULES, HIS MOTION TO DISMISS COUNTS XI, XII, AND XIII MUST BE DENIED

On June 2, 2015, the Commission issued an Amended Notice of Formal Proceedings and Charges adding Count XI, which involved allegations of in appropriate statements made by Judge Combs to employees of the Appalachian News Express. On August 7, 2015, the Commission issued a Second Amended Notice of Formal Proceedings adding Counts XII and XIII, charges against Judge Combs for presiding over the EQT cases and for statements made during his June 16, 2015 suspension hearing.

Judge Combs argues that the Commission cannot bring these charges against him because he was not provided with the factual information supporting the charges prior to the issuance of the amended notices. (Motion, pp. 29, 31) Judge Combs misinterprets the applicable rules.

⁴ Ray Jones Statement attached as Exhibit 2.

SCR 4.170(4) is a procedural rule that applies prior to the initiation of formal proceedings. It states that after the preliminary investigation is completed and before formal proceedings are initiated, the Commission shall afford the judge under investigation an opportunity to examine all factual information in the Commission's possession. In compliance with that Rule, the Commission provided Judge Combs with the factual file consisting of 1,193 pages on March 25, 2015 and April 2, 2015 prior to initiating formal proceedings on April 27, 2015.⁵ Thus, the Commission has provided Judge Combs all of the relevant information pursuant to SCR 4.170(4).

With respect to the subsequent Charges, SCR 4.190 states that a Notice of Formal Proceedings may be amended to conform to proof or set forth additional facts, whether occurring before or after the commencement of the hearing. The rule further states that the judge shall be given reasonable time to both answer the amendment and to prepare and present his defense against the matters charged thereby.

The first Amended Notice of Formal Proceedings was filed on June 2, 2015 and Combs was provided the evidence that formed the basis of those charges on June 4, 2015.⁶ The Second Amended Notice of Formal Proceedings was filed on August 7, 2015. The Commission provided Judge Combs with the certified copies of the EQT cases in question on August 19, 2015, August 21, 2015, and August 24, 2015.⁷ This undisputed procedural history demonstrates that Judge Combs was provided all relevant information with time to prepare and present his defense for both of the amended charges prior to the September

⁵ March 25, 2015 and April 2, 2015 letters attached as Exhibit 3.

⁶ See Combs' Motion to Dismiss, p. 29.

⁷ August 19th, 21st and 24th communications attached as Exhibit 4.

21, 2015 hearing. The Commission has, therefore, fully complied with SCR 4.190 and Judge Combs' Motion to dismiss Counts XI, XII, and XIII on procedural grounds must be denied.

IX. CONCLUSION

Based upon the foregoing, Counsel for the Commission respectfully requests that Judge Combs' Motion to Dismiss be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that true and correct copy of the foregoing has been served via electronic mail on this the 16 day of September, 2015, upon the following:

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By electronic and first class mail

April 15, 2015

Stephen D. Wolnitzek
Chair, Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266

*Re: Complaints against Judge Steven D. Combs
JCC Case Numbers 2015-035, 2015-040, and 2015-050*

Dear Chairman Wolnitzek:

I write in response to the April 2, 2015, letter from Ms. Jimmy Shaffer, regarding an additional complaint filed against Judge Steven D. Combs. As we discuss in more detail below, Judge Combs recused from the case in question when it became clear that his partiality could reasonably be questioned.

This set of accusations relate to the case of *Danny Potter v. Blue Flame Energy Corporation, et al.*, No. 11-CI-00567. This case was assigned to Judge Combs when it was filed in 2011. One of the defendants in that action, EQT Production Company ("EQT") has been a litigant in a number of cases in Pike Circuit Court since Judge Combs took the bench. EQT at some point purchased a lease on property in which Judge Combs has an interest from the prior leaseholder. Neither he nor his partners had any negotiations with EQT over its purchase of the lease.

Since that time, Judge Combs has routinely announced to litigants in cases with EQT that he has an interest in property containing oil leases to EQT, and he did so in this case. EQT, presumably, had already been aware.

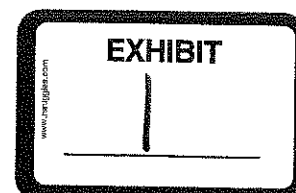
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Stephen Wolnitzek, Esq.
April 15, 2015
Page 2

When a dispute arose between Judge Combs and EQT in 2014, Judge Combs recused from the *Potter* case. A copy of the order is enclosed. The docket sheet, which we have also included with this letter, indicates that Judge Coleman presided at the next hearing after the motion to recuse was filed and at all subsequent hearings.

There would have been no reason for Judge Combs to recuse before the dispute arose in 2014. He had no pecuniary interest in or personal knowledge of the dispute. When he became aware of circumstances which might cause his impartiality to be questioned, he promptly recused from the action. Judge Combs did not rule on any issues in the action after the dispute arose in April 2014. He therefore complied with the duties required under the Rules of Judicial Conduct.

Turning to the Commission's questions about Judge Combs' posts on Topix, he has posted under the following screen names:

Wrong
Fix News
Fox News Lied 85 Times
Black Angus
WTF

Judge Combs believes that his use of the Black Angus and WTF screen name was many years ago, and he believes that others have used the WTF screen name in addition to him. Judge Combs has remained interested in national and community issues, and he has used Topix to state his perspective. The Commentary to Canon 4 of the Kentucky Code of Judicial Conduct notes that "Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives."

Judge Combs has never posted on Topix while performing his judicial duties. When he does post, he does so under a screen name to avoid the appearance that he is using his judicial prestige improperly. The Commission's Formal Judicial Ethics Opinion JE-119 makes clear that a judge who publicly identifies himself on social media could create an unwarranted appearance that particular persons are in a position to influence the judge. Posting under screen names avoids that appearance.

In light of the concern over these issues, however, Judge Combs will make no further postings on Topix or any other social media. He will also not initiate any contact with City of Pikeville officials or employees, and he will recuse in all cases in which the City is a party.

We look forward to discussing these issues with the Commission further.

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April 15, 2015
Page 3

Very truly yours,

Kent Wicker

Kent Wicker
DRESSMAN BENZINGER LA VELLE PSC

encl

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STATEMENT OF SENATOR RAY JONES

March 8, 2015

TAKEN BY:

Gene Weaver
Gene Weaver & Associates
11 East Tenth Street
Covington, KY 41011

TRANSCRIBED BY:
JUDY V. COGSWELL
1023 PARKCREST LANE
PARK HILLS, KY 41011



(The following is the typewritten transcript of the tape-recorded statement of Senator Ray Jones, being taken by Gene Weaver, Gene Weaver & Associates, on March 8, 2015).

This is a recorded interview being taken on March 8, 2015. The time is 5:54 p.m. The interview is being conducted by myself, Gene Weaver, concerning matters that have been presented to the Judicial Conduct Commission concerning Judge Steven D. Combs. Before we get started, sir, you are aware this interview is being tape-recorded?

A. I am.

Q. And you're willingly and voluntarily providing the information in this statement?

A. I am.

Q. If you would, would you please state your first and last name and spell your last name?

A. Ray Jones, J O N E S.

Q. And what is your profession, Mr. Jones?

A. I'm an attorney.

Q. And you also have other responsibilities, are you an elected official?

A. I am.

Q. And what capacity are you elected?

A. State Senator, 31st District, Pike, Martin, Lawrence, Elliott and Morgan Counties.

Q. So you have multiple county

A. I have.

Q. Okay. Senator, do you have an occasion, well, are you familiar with Judge Combs?

A. Very well.

Q. And how do you know Judge Combs, just through your professional life?

A. I've known Judge Combs since probably, I've been practicing law here since 1994, so sometime thereafter. I didn't know him before I returned home from law school.

Q. So 20 years plus.

A. 20 years roughly.

Q. And does your practice take you before Judge Combs and his court?

A. It does, from time to time, yes. Substantial number of cases we have in Pike Circuit Court.

Q. How would you describe Judge Combs' judicial demeanor and so forth in the courtroom?

A. He has a very good temperament on the Bench. He's very knowledgeable. He's a smart man. He's always been a very common sense, practical Judge. I mean, he, he's one of the better, in terms of his legal ability, he's probably one of the better Judges I've ever practiced in front of.

Q. So you'd describe him as a good Judge then.

A. He's knowledgeable, and I've never, you know, I've never seen him do anything that I thought to be illegal, unethical or anything like that from the Bench.

Q. Do you know anything about his demeanor off of the Bench?

A. I do.

Q. Can you describe a little bit to me what you know about that?

A. I believe he has a substance abuse problem.

Q. Can you explain to me why you think that?

A. He has repeatedly called me when he's been intoxicated, and going back, you know, before I even was elected, in the late '90's, I've, you know, seen him drink excessively, and I've, you know, even followed him home from the golf course. I'm not sure if it's been since he's been on the Bench. It may have been. But I've seen him, you know, intoxicated to where I was concerned about him driving. And that's been, of course, that's been years ago, and I've not, I've not witnessed that behavior in some time, but I have received several phone calls. None recently. Probably the most recent would have been back November, December, October,

Q. Of last year?

A. Of last year.

Q. So four or five months then.

A. Uh, yeah, three, four months ago.

Q. I'm sorry, I didn't mean to interrupt you.

A. It was to the, is to the point where I won't answer his calls in the evening when he calls.

Q. And I assume that's because of what he says and his actions on the phone when you do talk to him?

A. That's true, yes.

Q. Tell me about the calls that you were receiving in the, I guess, the early fall, or early fall and winter of 2014.

A. Well, I mean, it would repeated phone calls. This time last year, I was in, March, April of last year, I was in Florida fishing with Greg May, and we were standing on the balcony, the phone rings. I don't answer it because I know it's late at night, and he's typically intoxicated. As soon as I my phone quits ringing, he calls Greg. Five minutes later, my phone

rings. I don't answer it. He calls Greg. And to the point where, when he, I received one phone call the same night that the Safe Halloween event took place at the exposition center, and this is in October of 2014, when he, and I answered the phone, and he be, I had my children and my wife at the expo center for the City of Pikeville's Halloween event, and, you know, it was a long, fifteen, twenty, thirty minute phone call, and I'm in a crowd of people and he's, you know, berating me for having a political sign in front of my office for current Pikeville Mayor Jimmy Carter, then City Commissioner, who was, who was running for Mayor. And, you know, he just read me the riot act, why are you for a guy that, you know, and I explained for him why I was for Jimmy Carter, not that I should have, and he, you know, went on to say well, you know, he doesn't even have a college degree and, you know, referred to him, I can't remember the exact words, but he, you know, in a derogatory manner. And just, you know, just really awkward. So from that point on, I quit taking his phone calls at night.

Q. Did he indicate if he was supporting Mr. Carter's opponent?

A. He, he, he, it was obvious he was from the standpoint of, you know, he was berating me for having a Jimmy Carter sign up, and I explained why I couldn't be for Mr. Litafik. Mr. Litafik's dad is a close personal friend and client of mine, but he knew that I wasn't for T. J. Litafik because of his, you know, the kid's never, he's got a law degree, he can't pass the Bar exam. I mean, you know, he's a nice kid. He's very smart. But he's just not, he does not need, in my opinion, did not need to be Mayor of the City of Pikeville, and it was obvious that the Judge was interested in the race and what, you know, because he obviously was upset that I had put Jimmy Carter's sign up.

Q. Did he ever, either in that conversation or any previous conversations, ever try to solicit your support for Mr. Litafik?

A. Well, that was the whole purpose I thought the call was for, you know. He was mad because I was supporting Carter, instead of Litafik.

Q. Okay. Did he ever say anything about Josh Huffman, supporting him for a Commission seat?

A. No. I, I never engaged in any kind of conversation with him over that, no.

Q. Do you believe that he was supporting Josh Huffman?

A. I have no way to know that. I've got an opinion, but I don't have any factual information.

Q. Well, what's your opinion?

A. I would rather not give an opinion, because it's not factual.

Q. Okay. Does Judge Combs have a tendency to

(Knock on door)

Q. Do you want to stop for a second?

A. Yeah, let's stop for a second.

Q. This is a continuation of the interview. I was getting ready to ask you, does Judge Combs get involved in local, state elections, opening supporting candidates and so forth?

A. I believe he was openly involved in the last Pikeville Mayor's race, in that there was a debate that he, I was told that he was at a public debate between the Mayoral candidates. I do believe he gets involved in political, politically, you know. I do believe that because, you know.

Q. Has he ever solicited you, you as an elected official, I assume you have a lot of contacts and people that have supported you. Has Judge Combs ever solicited you to encourage

your supports and so forth to support county elected officials or candidates for any office, state, county?

A. He has not contacted me directly, no.

Q. I don't mean to digress, but you talked about the calls that you received that were one right after the other or in close proximity to one another. I believe you have maintained those recordings?

A. I have one series of those phone calls that he left, left four, four voice mails over the span of a couple of hours.

Q. Can I get a copy of those at some point?

A. I will see if we can get those for you.

Q. Okay. How would you describe those, you know, as the person that received them?

A. He was obviously intoxicated, and then the night of the election, T. J. Litafik sent some derogatory text messages to me, and basically, someone sent me a text message with a picture of T. J. Litafik and Steve Combs together, election night, at current Pike County Judge-Executive Bill Deskins' home. He was apparently at Judge Deskins' home for a victory party.

Q. And Litafik sent you derogatory

A. Sent me a derogatory text message, and then someone, the next day, showed me a picture of Steve Combs and T. J. Litafik and then Pike County Magistrate Jeff Anderson, at, it appeared to be at Judge Bill Deskins' home election night. Bill Deskins ran against Wayne T. Rutheford and, who was the incumbent, and defeated him, and the rumor went around that, you know, Steve Combs, I was told that he had made the statement up there that he was going to run against me for State Senate, and then a few days later he calls me here at the office and says, you

know, I heard this rumor about, you know, somebody's starting this rumor that I'm going to run against you for Senate, and I just wanted you to know there's no truth to that. But, you know, I truly believe that, if he said it, he probably was, you know, intoxicated.

Q. Okay.

A. Because the last, the four phone conversations I've had, they were, seemed to be, he seemed to be more impaired as the conversations went on.

Q. So as the evening went on, the conversations went on, his level of impairment

A. Yes.

Q. increased. Are you familiar with the case that Josh Huffman filed against Gene Davis?

A. Just what I read in the paper, and maybe what I've spoken to, just among the lawyers. Just general nothing. I don't have any, you know, I've never represented either one of them. I know Josh Huffman. I know Gene Davis.

Q. But you weren't there that day and have no knowledge of the handling of the case?

A. No. None.

Q. Do you have, do you know how the case was assigned to Judge Combs?

A. No, no clue. They're usually on a rotating basis. It would be easy to determine that, most likely, if you could find the Civil Action number in some of the cases before and after, to see if they were rotated or not.

Q. Oh, okay. That make sense. You, you discussed that you believe that Judge Hall, or excuse me, Judge Combs, has a substance abuse problem. Have you ever suspected it was anything more than alcohol?

A. I have, I have no, no, I mean all I know is he's in, he has called me numerous times impaired, and I say he's impaired. I didn't observe him. I just know how he sounded and I'm 45 years old, and I've, I know how he is, how he is when he's on the Bench. I know how he is in a conversation, and this is obviously something with slurred speech and usually he's mad about something or complaining about something or calling to, you know, get on to me over something I've done.

Q. And I know you don't have a register of how many calls, but how many calls would you think there has been over say the last five years?

A. A lot. I mean, it, it's sporadic. It just depends, it just depends. The last couple of years, there's been quite a few, to the point where, if he calls at night, my wife just, you know, I don't answer the phone because it's going to be a 20 or 30 minute phone call.

Q. I know there was a lawsuit filed in the case of Nicole Hall vs. Unknown Defendants, involving the Topix posting, or postings. Did you personally have involvement in that case?

A. I, I let Kevin Keene, let me give you the background.

Q. Okay.

A. There was a post that talked about people in my office being drug, you know, smoking dope in the parking lot and there were a lot of what I felt to be defamatory and derogatory comments about me, about the office, about Bill Hickman, who's my former law partner, who is Of Counsel, is Chairman of the Airport Board. And Nicole was offended by it, and Nicole, Kevin filed suit on her behalf, cause that way the law office name wouldn't be involved. I wouldn't be involved, and we were going to find out who was making the posts. We sent sub, we had a Warning Order Attorney appointed to notify these posters. The Warning

Order Attorney didn't, when they filed their report, and keep in mind that there's no, there's no procedure, trying to use the existing Rules of Civil Procedure, to try to find out who is doing this. And we subpoenaed several posts, so that way, once we determined who made the posts, we could amend the lawsuit to assert the claims on behalf of the law firm, and me and/or Bill Hickman, individually, because I had to sue one poster who made a statement that I was involved in a fatal wreck where a drunk, intoxicated pedestrian ran out in front of me in 1998. And this poster put on the internet that I was intoxicated, which is clearly not true. There's a police report, toxicology, etc. So we ended up suing that poster, getting a public apology and so forth. But we filed the lawsuit with plans to identify the posters and then amend the suit to where I would assert claims on behalf of the law office, particularly, because this is how I make my living. Kevin comes to me, and I told something, I mean this is something after, Kevin talked to Roy Downey, and maybe to Judge Coleman's secretary, Kelly Edmonds.

Q. Judge Coleman?

A. Combs, I'm sorry.

Q. Okay.

A. Judge Combs' secretary, and there's a lot of speculation about whether Judge Combs had been doing some of these Topix posts. Now I don't have any proof that he did or not, but some of the stuff that was being said read, some of the people, and I can't even remember what the posts were. I mean this was a couple of years go. So Kelly tells Kevin Keene that Judge Combs posts under that moniker WTF on Topix. I think it was WTF. He was making all these posts on Topix. That is what Kelly told Kevin. We believed, we believed that, so what we ended up doing is we dismissed the suit because we were thinking, okay, if it is, if that's true, that we have subpoenaed posts made by, cause what happens is once you subpoena,

once a Warning Order Attorney files their report, then you issue a subpoena to the Topix for the IP address of the user. You issue another subpoena to the internet provider to get the names of the people making the posts, okay?

Q. Okay.

A. So we felt that we potentially had, based upon what Kelly Edmonds told Kevin Keene and Roy Downey, that we potentially had served a subpoena on an internet provider for Judge Combs, okay.

Q. Okay.

A. So we voluntarily dismissed the suit and you can voluntarily dismiss a lawsuit any time prior to a responsive pleading being filed. So we voluntarily dismissed the lawsuit.

Subsequently, a Motion to Quash the subpoena was filed by Michael deBourbon, okay? Michael deBourbon did not identify who his client was. He just filed this on behalf of John Doe. Now at this point, it's my understanding that the suit had already been voluntarily dismissed, okay?

After the suit's voluntarily dismissed, Judge Combs sets a hearing on it, okay? And proceeds to rake Kevin Keene over the coals, okay? And we followed the rules of procedure. We, everybody was given notice because we, we fully intended to pursue the people who were saying this stuff, okay? If nothing else, I'm a public figure, and you can say things about me, but you can't disparage my business. You can't disparage me in a way that borders on harassment, okay?

And some of the stuff that's been said about me and my family is just, it's out there. I mean, stuff's been said about my wife, my employees were smoking dope in the parking lot, and that's, I mean, if you know anything about my record, that's something I have no tolerance for. I mean I have been one of the most vocal opponents of drug abuse and have led the fight, you know, for treatment, for stiffer sentences, etc. I was on the conference committee (Inaudible), you know, to

crack down on prescription drugs, and but they were saying my employees were smoking dope in the parking lot. They were saying a lot of disparaging things about me, to the point where, it's one thing when you're a public official, but I also have a business to run, and these things they're putting out there, you know, damage my business. There's no question that you can say that things they've put out there. But it really shocked me that a Judge would have, first of all, I don't believe that a Judge has jurisdiction over any case that's been dismissed, pursuant to the rules. Cause once it's dismissed, a Judge has no jurisdiction. If the Judge had thought something had been done improperly, then a Bar complaint should have been filed, or something of that nature, you know what I'm saying? But not to just go out here and have a hearing on a matter that had been dismissed, okay?

Q. Yes. Okay.

A. And it was clearly an effort to intimate Kevin Keene and myself. There is currently pending another Topix case. Bill Hickman, who is the Chair of the Airport Board, has a case that has been filed against four or five different posters on Topix. Bill Hickman was General Counsel for Community Trust Bank for many years. In 2005 left to come in private practice with me. He has never had a Bar complaint. He has never been in any kind of, he has never been in anything, he's probably one of the most respected commercial and bank lawyers in Kentucky. But he was appointed by Mayor Frank Justice to serve as Chairman of the Pike County, or serve on the Airport Board, and after he was appointed, everyone thought that I had something to do with that, and I really, I mean, that was a decision that was made by, you know, I, I didn't influence that decision. I'm not sure I ever had any conversations. If I did, I don't remember them. But, but Bill's done a fantastic job at the Airport Board. I mean, he's, but Michael deBourbon, who was the lawyer for this John Doe defendant in the Topix case that

Nicole Hall had filed, Michael deBourbon was on the Airport Board. He was Chairman of the Airport Board, and was not reappointed.

Q. So Mr. Hickman took Mr. deBourbon's

A. I (Inaudible) he took his place, but deBourbon was removed. Hickman become Chairman of the Airport Board, where deBourbon had formerly been Chairman. So now, these posts are getting filed about Frankie, little Frankie, and Bill Hickman, talking about the Mayor, former Mayor Frank Justice, you know, diverting money. Accusing Bill of committing felonies and all this unethical conduct. And Bill Hickman has spent thousands of hours and never been paid a penny for what he's done for the airport. And so there's a Topix case filed. It's in Judge Coleman's division.

Q. And that's currently going through the system?

A. It's currently going through the system. A Writ of Prohibition was filed by Attorney Larry Webster. That Writ of Prohibition ver, almost verbatim mirrored the Motion to Quash that Michael deBourbon filed in the, in the Nicole Hall case, because it, it wasn't even correct. There was a pleading in there that basically recited the same things, and it was tying all this stuff back to me, as far as, you know, that one of the things that Judge Combs said during the hearing with Kevin in the Nicole Hall case was that this was just Ray Jones' way of getting back at his political enemies. Well, I didn't go, I wasn't trying to get back at anybody. I'm trying to protect my reputation. And I hadn't even entered an appearance in the case, but you have a lady like Nicole Hall, who is a good woman, is a grandmother, and she's the office manager.

Q. And she works for you?

A. She works here. She, when you're saying that, you know, it's a direct reflection on her and everybody else, that my employees are smoking dope in the parking lot. And, but

what ended up happening is that Bill Hickman's case goes to the Court of Appeals, and the Court of Appeals issued a ruling that gives the guidelines, it gives guidelines for how to file suit on these Topix cases, okay? It comes back to Judge Coleman. Judge Coleman has an evidentiary hearing where he takes evidence, and then issues a ruling saying that Mr. Hickman was entitled to this information on who these posters were, and it gave the lawyer so many days to identify their client. Larry Webster then asks, files another petition for Writ of Prohibition and it's in the Court of Appeals right now. But I believe that Mike deBourbon is involved in that, as well, because of, of the conversations with some, because the pleading was so similar.

Q. Okay.

A. They either shared pleadings or Michael deBourbon is directing what Larry Webster is doing on the case. We believe that there are a couple, at least one Airport Board member, and maybe some other people that just hang out at the airport, who are stirring all this stuff up because Michael deBourbon is not on the Airport Board and Bill Hickman is the Chairman, okay?

Q. Okay.

A. But what Bill Hickman's done is he got a \$4 million grant to get a (Inaudible) taxi way, commercial air service, new hangars, new AWO system, you know, Automatic Weather Observation system. He's moved the airport to where it's the nicest airport east of Lexington. It's the only airport, besides London, that has the IOS system, and, you know, we, we have commercial air service, and it would never have happened if Bill Hickman hadn't, you know, taken the role he did, and the city and myself, Congressman Rogers and Governor Beshear to get roughly \$1.5 million to try to start this, to try to open eastern Kentucky up. But Bill's been called a felon. He's been called a criminal. They've made references to me. I didn't, I didn't get

involved in that lawsuit. I said, you know, I've had enough of it. Yeah, I've got pretty thick skin, but, you know, at some point, it, it's really weighed heavily on Bill. But we believe the same WTF, if my memory serves me correct, we may have made some posts against Mr. Hickman and/or the people at the city. But that case is still in the Court of Appeals right now and it's pending in front of Judge Coleman.

Q. So it could take some time then before there's ever any

A. It, it could. But Kevin Keene told me that he had a conversation with Kelly Edmonds that Michael deBourbon, and I don't know how she would know this, I'm just telling you what we were told, that, and Kevin can, you can ask him this. I don't know the full gist of the conversation that took place, but she told him that Kevin and Michael deBourbon, I'm sorry, Kelly told Kevin Keene that Judge Combs and Michael deBourbon had had discussions over the Topix lawsuit in his office. How she knows that, I don't know, but that's what we were told, and she told Kevin that Judge Combs posts under the WTF moniker. So, I mean it raises a serious question is, you know, you know, is he involved in this, and it sort of looked even more suspicious as to why a Judge would have a hearing on a case that had been voluntarily dismissed. I've never seen that in 21 years of practice, almost 21 years.

Q. It was, it was after the dismissal was filed and

A. Right. Yes.

Q. Approximately what was the time frame on the Nicole Hall

A. I, I, you'd have to ask Kevin. I don't know. The documents would speak for themselves.

Q. Sure. Okay. And then subsequent to that, Mr. Hickman filed an unrelated lawsuit?

A. My, my lawsuit may have been, or the lawsuit I had may have been, I'm not sure if it was before or after that one, the one where I was basically called a murderer, and then the one that Bill Hickman filed is still pending.

Q. Okay.

A. Somebody obviously doesn't want their identity disclosed because they've been to the Court of Appeals twice to keep that information from, from becoming public.

Q. Over the basic same issue.

A. The same issue, but they're basically saying that Bill Hickman committed a felony, felony revenue diversion, I think, is part of the term. I'm not sure if that's exactly

Q. That would be in their pleadings, though.

A. It would be in the pleadings on, on defenses. So William Hickman vs., William Hickman vs. Unknown Defendants, or, you know, I'm not sure how it's styled.

Q. Sure. Anything else concerning the Topix litigation or

A. I really didn't have anything to do with it. I just told Kevin that, I basically had had Kevin represent me on it because I was tired of being just ridiculed, slammed, called names and stuff on public, you know, I thought, I thought it went beyond just protected speech. I think it was pretty, it was almost harassment, you know, and there's only so much of that any person can take.

Q. Well, harassment raises a question, the phone call you receive, the just repeated phone calls and the, the tenor of those calls, does it rise to that level of harassment?

A. I think it does. I think it's, it's to the point where, I'm thinking the last time that I went over to the Judge's office, I ended up spending 30 or 40 minutes with him in his chambers, with him complaining about the City of Pikeville, you know. It started out as a pleasant

conversation, and just chit chat, and, you know, he, he wanted to complain about Donovan Blackburn and the city and Greg May and all this stuff, and, you now obviously, there's several people that know this. I'm not telling anything that's, apparently there was somebody filed an anonymous complaint with the AOC about the Judge, and he was basically saying that, you know, Rick Bartley, if he finds out that who filed that anonymous posting, he is going to indict whoever filed that anonymous complaint, and I don't know what was in the anonymous complaint. I've never seen it. The Judge told me about it. He's told a lot of people about it. It's not anything that's a secret. But, you know, the thing that surprised me is that he would say well, Rick Bartley, the Commonwealth Attorney, he's going to indict whoever filed that complaint with AOC. Now I don't know if, why he would tell me that, because unless he thought I knew who did it and was going to run back and tell them, but, you know, I mean, it's not, at least with the Bar Association, it, it's clearly privileged whoever brings a complaint against a lawyer. And I suspect the same would be true for Judicial Conduct. And I can't believe the Commonwealth Attorney would, you know, would threaten to indict someone over a complaint against a Judge cause, you know, I'm sure that happens quite frequently.

Q. Does, does Judge Combs use the threat of indictment against

A. That's the only, that's the only time I've ever heard it brought up was he said Rick Bartley was going to indict whoever, if they found out who made the anonymous complaint, Rick Bartley would indict them for intimidating a Judge or something like that. I can't remember exactly what the charge was going to be, and I'm sitting there thinking, you know, what, what are you going to indict them for.

Q. So it started off as a, a pleasant conversation that escalated to

A. And I told him, I said why do you worry about who's the Mayor, or who's on the City Commission? I said you're here for eight years. You've got a complete, a new term. I said there's going to be a lot of people leave office, come and go, you're the Circuit Judge, I mean, you know, they're going, you know, you show up, you do your job, you get paid every two weeks. You got an eight year term. I said I may not be State Senator in eight years. I mean, there's going to be a lot of politicians that are in office that won't even be in office in eight years. Why are you, but, and I can't remember the gist of it, but he was really upset with the City of Pikeville, and Frankie Justice and Donovan and, you know, the whole City Commission. I can't remember the gist of it. I just remember there was a, that I, I'd go back and say why do you care. I mean, that's what was just so bizarre to me is why do you care. It would almost be like if I were elected Governor, why would you care who's the Mayor in this city or that city, you know what I mean. I mean, it's beyond your control. You know, it's all I can do to worry about taking care of the political responsibilities I have, much less what anybody else has.

Q. Does, does he ever answer that question, why he's so

A. I, I don't know.

Q. concerned or agitated with the city operation?

A. I don't know. Frank, Frankie Justice, he is, he has made statements to me numerous times that he's, about Frankie Justice, comments that are critical of him, and I can't tell you exactly what over, but he's, it's his next door neighbor. Greg May, who has been, you know, at one time was like a brother to him, he has been, you know, he, he tried to tell me on the phone that he thought Greg May was the person that filed the anonymous complaint against him.

Q. There's talk of this anonymous complaint but whatever came of the complaint?

A. Now you're asking me something, I have no clue.

Q. And he never said

A. I don't even know what was in the complaint. He, I'm not sure if it involved him drinking or what it involved. He may have told me that, the gist of it, and I don't remember. He told me that there had been an anonymous complaint and I heard that from other people, too.

Q. And this last conversation

A. I think the complaint, I was told the complaint went to the Chief Justice or to AOC, I'm not sure.

Q. What time frame was that conversation?

A. Probably this time last year.

Q. So it's been a year or so.

A. Sometime in, sometime in 2014, I would think.

Q. Do you have knowledge or are you aware of Judge Combs engaging in ex parte communication with either parties before his court, attorneys?

A. Never.

Q. You have

A. He has never done that with me.

Q. Okay.

A. But I, I very rarely go to, I mean he's never engaged in ex parte communication with me, and I've tried several cases in front of him.

Q. Okay.

A. And I can't criticize anything I've ever seen him do from the Bench.

Q. It's what's happening

A. Outside.

- Q. after, after work hours.
- A. Uh-huh. At least with the cases I've been involved in, I've never seen him do anything
- Q. Anything inappropriate.
- A. inappropriate.
- Q. You mentioned, when we first started to talk, you said that there was something at the golf course one time, or country club, I forget
- A. I saw him, I saw him, I mean this was several years ago, you know, I saw him drinking to where, excessively, to where I felt, that I followed him home.
- Q. Has there ever been issues at the country club, the golf course about his
- A. I can't, I can't answer that.
- Q. Nothing that you've seen.
- A. Nothing that I've been involved in. You'd have to ask some people that have been involved. I'm not on the board of the country club. I just go play golf and leave.
- Q. Escape from everything else, right?
- A. It doesn't work too well, but I try.
- Q. The candidates that recently ran for Commission, there was the incumbents, and then there was a group of individuals that were challenging the incumbents.
- A. Uh-huh.
- Q. Do you know if they ran as a slate, or
- A. I have no way to know that.
- Q. You don't know. I mean,
- A. I don't know that.

Q. And the reason I ask is, you know, sometimes in mailers, you know, support the four of us, you didn't

A. No, I didn't pay any attention to it. I supported the incumbents, because I, I'm getting ready to move out of the city, but I lived in the city. It's great police and fire protection. The streets are always clean. The water and sewer systems, you know, excellent management. It's a great little city and, you know, there's no reason not to support them, and I work close politically with the people on the Commission and the City Manager and the Mayor, to try to move the city forward because it's, it's the most progressive small city in, in eastern Kentucky. Medical school, college, (Inaudible) Medical Center, soon to be optometry school, so.

Q. And, and you have a good working relationship with, as well as a resident, you're pleased with the services they provide.

A. I am.

Q. In your practice, do you ever have any dealings with the, the police, the Pikeville Police Department?

A. Unless it's a car wreck case that they would have worked, but as far as occasionally we depose a police officer, but rarely.

Q. So it's not like you have a criminal practice where you see a lot

A. I don't, I do not do any criminal work to speak of, unless it's a personal injury client that needs, you know, I won't use the word favor, but if they need counsel, if it's not a serious offense, I think I've done one felony criminal case in 21 years. I'm not a criminal lawyer.

Q. So you're more of a personal injury

A. I do personal injury and business and civil litigation.

Q. Okay. What's the reputation of the police department among the local Bar? Do they have a good reputation?

A. I can't tell about the Bar, but my wife and I, you know, when I'm in Frankfort, I sleep better knowing that there's an officer two minutes away at the most.

Q. Did you receive a phone call, or did you have conversation with Judge Combs at some point about the city doing advertising in programs, school activity type literature, things of that nature?

A. He may have said something to me about, at some point, about the legality of the City Commission doing ads, I'm trying to, at some point he may have said something to me about, and I can't remember the timeframe, about the city running ads, that he sort of felt that that was a political, it broke campaign finance laws because it was trying to influence the election or something like that. It's been a while back. I vaguely remember that conversation. Like I said, usually, his conversations, when he called me, it went in one ear and out the other because it was just the same, you know, just nit picking at the city, complaining about, you know, and, and he, he's made these calls to me even before, I'm not really sure what year he was put on the Bench, but I remember, before he became Judge, I think he called me one time about the, John Doug Hays, Assistant County Attorney, was running for District Judge, I think it was, against Darrel Mullins, and he called and got mad at me because I was for Darrel Mullins. And this is before he became a Judge, so these conversations go back even before then.

Q. So they're going back twelve, fifteen years.

A. 2001, 2002, I'm not sure when he went on the Bench.

Q. So we're talking almost fifteen years then. Did you receive solicitation from Judge Combs to make a donation to the local high school golf team?

A. I did.

Q. Can you tell me about how that came about and what the conversation, as best you can recall.

A. It's been a couple, three years ago. He called me and said, you know, I need you to make a contribution to the golf team, and he named some other lawyers that had donated, and said are you going to donate, and I said well, sure, I'll be happy to help, and he always, at, at one point in time I was a pretty avid golfer and, you know, always tried to help a lot of the schools, so it wasn't a request that was out of line with anybody else that would have called, you know. I get calls from every school and every, you know, and I didn't think much about it at the time but, you know, he did call and make that request.

Q. And did he say so and so's given this amount or that amount?

A. He did.

Q. Did he say who was contributing?

A. He said Gary Johnson gave \$1,000.00 and Billy Johnson, he's another attorney in town, gave \$1,000.00, and he asked if I could give \$1,000.00, if I was going to give \$1,000.00.

Q. Did you feel like you had any alternative other than to contribute?

A. Well, I gave \$1,000.00.

Q. And that was, you say was within the last two or three years, some, somewhere in that timeframe?

A. His son, his son was probably a senior in high school. He's a freshman in college now. Freshman or sophomore. It's been within the last two, three years.

Q. Okay. Did you make the donation direct to the school, or did you just give a check to the Judge?

A. (Inaudible) Pikeville High School. I'm not, I'm not sure. I told the office manager to take care of it. I, I usually tell her, and she takes care of it.

Q. She makes sure it, follows through. And that's Ms. Hall?

A. She would have done that, but I could go back and find it probably.

Q. If I could get a copy of that check, I

A. I can't tell you the timeframe, I'm not sure. We'd have to get the cancelled check from the bank cause it's all

Q. Yeah, I know now, the more I think through it, I know exactly what you're saying, yeah, everything's electronic now. But yeah, if we can just get a timeframe, if nothing else. But he said Gary Johnson and Billy Johnson were giving \$1,000.00, and would you give the same?

A. Uh-huh. Yes.

Q. Did, do you know if anyone else

A. I have no, I have no clue.

Q. Is that the only time you were solicited by Judge Combs?

A. It is.

Q. I know you said that a lot of schools and civic organizations and stuff, did you find it

A. If his wife had called, I would have done the same thing.

Q. Okay. Or if

A. His wife may have called me, I don't remember if she's called. She may have. I'm not sure, but if she had, I would have done it.

Q. But you know that he definitely made the phone call?

A. Yes.

Q. Are you familiar with if Judge Combs has a golf cart or not, now that we're talking about golf?

A. At one time I'm pretty sure he did.

Q. Do you know what it looked like, or anything like that?

A. No, I wouldn't, I mean, I just know that at one time there was a bunch of kids that used to ride in our neighborhood, I live in the same neighborhood.

Q. Oh, so you live in his neighborhood.

A. Yeah. At one time, there was an issue about kids riding golf carts down there.

Q. We talked about the candidate forum, and I think you said you did not attend that forum?

A. No. I was told that he sat on the, he was there, I'm not sure who with, but I was told he was there. I don't have any proof of that.

Q. Let me look at my notes here, I think I'm just about done. We'll stop the recording for a second.

This is a continuation of the interview with Senator Jones. Senator, after looking at my notes, I think we have covered everything I wanted to discuss. In conclusion, you were aware that this matter was being tape-recorded?

A. Yes.

Q. And you willingly and voluntarily provided the information in this statement?

A. Yes.

Q. And to the best of your knowledge, you were truthful and honest to all statements and answers provided?

A. To the best of my knowledge, yes.

Q. This will conclude the interview with Senator Jones. Today's date is March 8, 2015. The time is 6:45 p.m. End of interview.

MEMBERS:

STEPHEN D. WOLNITZEK, CHAIR
COVINGTON
COURT OF APPEALS JUDGE
VANET L. STUMBO
RESTONSBURG
CIRCUIT JUDGE EDDY COLEMAN
PIKEVILLE
DISTRICT JUDGE DAVID P. BOWLES
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COMMONWEALTH OF KENTUCKY
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ALTERNATES:

J. DAVID BOSWELL
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CIRCUIT JUDGE JEFFREY M. WALSON
WINCHESTER
DISTRICT JUDGE KAREN A. THOMAS
NEWPORT

EXECUTIVE SECRETARY
MS. JIMMY SHAFFER

CONFIDENTIAL

March 25, 2015

Mr. Kent Wicker
Dressman Benzinger LaVelle PSC
321 West Main Street
Suite 2100
Louisville, KY 40202

RE: JCC Case Numbers 2015-035, 2015-040 and 2015-050

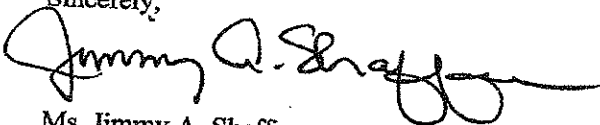
Dear Mr. Wicker:

The Commission directed that I, pursuant to SCR 4.170(4), provide you with the factual information that has been accumulated to date regarding the issues under investigation in the matter involving Judge Combs. On the enclosed disk you will find a PDF file with bookmarks to each individual item. Also, the Commission received two copies of the video record in the *Hall* case. We have provided the video from the certified copy of the record. Please note that the Commission has consolidated an additional complaint with 2015-035 and 2015-040, which is JCC complaint number 2015-050. The allegations made in 2015-050 were provided in my letter of March 11, 2015.

SCR 4.170(4) also affords you and Judge Combs an opportunity to provide any additional information that bears on the investigation. Please submit this information to the above address on or before April 15, 2015.

Thank you for your assistance and please contact me if you have any questions.

Sincerely,



Ms. Jimmy A. Shaffer
Executive Secretary



MEMBERS:

STEPHEN D. WOLNITZKE, CHAIR
COWINGTON

COURT OF APPEALS JUDGE
JANET L. SLEDDO
PRESTONSPURGE

CIRCUIT JUDGE EDDY COLEMAN
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WINCHESTER

DISTRICT JUDGE KAREN A. THOMAS
NEWPORT

EXECUTIVE SECRETARY
MS. JIMMY SHAFER

CONFIDENTIAL

April 2, 2015

Mr. Kent Wicker
Dressman Benzinger LaVelle PSC
321 West Main Street
Suite 2100
Louisville, KY 40202

RE: JCC Case Numbers 2015-035, 2015-040 and 2015-050

Dear Mr. Wicker:

During its investigation, the Commission received the attached motion filed in 11-CI-00567, *Danny Potter v. Blue Flame Energy Corporation, et al.*, which raises new allegations to which the Commission requests a response. The motion has been added to the factual file. I have also attached an updated legend for the factual file to include the motion and this letter.

The new allegations are that Judge Combs:

- Presided over the case despite the fact he had a financial relationship with and is an officer of a company which may be a competitor of one of the defendants, EQT Production Company.
- On April 1, 2014, made direct contact with the defendant's corporate office and accused the defendant of perpetrating a fraud relative to royalties, threatened to lock the defendant out of certain property, threatened to file a lawsuit against the defendant, exhibited hostility toward the defendant and spoke to the defendant's employee in a belligerent manner.
- On or about the Spring of 2014, contacted another employee of the defendant to request the defendant perform gravel work on his property and after the work was performed, prevented the employee from entering his property and demanded the defendant send additional gravel to the property.

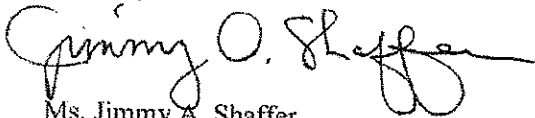
Additionally, the Commission asked me to remind you that at the informal conference you and Judge Combs stated the Judge's intention to provide the "handles" he has used when posting on Topix. The Commission understands Judge Combs may have been posting under the following non-inclusive list of handles: Beaver Blackburn, City Hall Patrol, Commission Clowns, Take Advice, Cloud 9, Joker Man, Hasta la Vista JK, Wall Street Donnie, No Name Hillbilly, Did Wusty Pass the Bar, Ima Tellinyou, Black Angus, WTF, Litafik for Mayor, I cant spell its and City Criminals.

Please respond in writing to the additional allegations and clarify for the Commission what handles the Judge has used on Topix. The Commission requests a response on or before April 15, 2015.

Thank you for your assistance and please contact me if you have any questions.

Please note that Judge Coleman and Judge Stumbo have recused from any consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Jimmy A. Shaffer". The signature is written in black ink and is positioned above the typed name.

Ms. Jimmy A. Shaffer
Executive Secretary

Att.

MEMBERS:

STEPHEN D. WOLNITZER, CHAIR
COVINGTON
COURT OF APPEALS JUDGE
JANET L. STUMBO
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DISTRICT JUDGE KAREN A. THOMAS
NEWPORT

EXECUTIVE SECRETARY
Ms. JIMMY SHAFFER

August 19, 2015

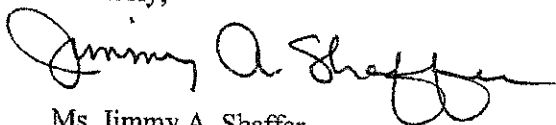
Richard A. Getty
Danielle H. Brown
1900 Lexington Financial Center
250 West Main Street
Lexington, KY 40507

In Re: The Matter of: Steven D. Combs

Dear Mr. Getty:

Please find enclosed copies of the EQT case files as certified and transmitted by the Clerk of the Pikeville Circuit Court. Please note that some of the hearing records are duplicates of records the Commission transmitted to you on August 7, 2015. There is still one case record the Commission has not received - Pikeville Circuit Court case number 11-CI-00939, *EQT v. Johnson*. I will transmit the record as soon as possible after I receive it.

Sincerely,



Ms. Jimmy A. Shaffer
Executive Secretary

cc: Steve Ryan
Jeff Mando
Louis Kelly



August 21, 2015

VIA ELECTRONIC MAIL AND U.S. MAIL

Richard A. Getty, Esq.
1900 Lexington Financial Center
250 West Main Street
Lexington, KY 40507

RE: *Kentucky Judicial Conduct Commission v. Hon. Steven D. Combs*

Dear Rich:

The following is in response to your August 20, 2015 letter:

First, as you may recall, I indicated to you that Judge Combs was allowed to come to the Pike County Judicial Center on one occasion to retrieve any personal items that he needed. However, your letter indicated that he intends to “pick up any mail, pay bills or handle other personal matters.” You further state that Judge Combs intends to “continue this arrangement as necessary.” Please note that the Commission’s August 11, 2015 Order is clear and unambiguous. After picking up his personal items, Judge Combs needs to abide by the Commission’s Order and refrain from using or entering his office. This includes turning in his courthouse access passes and credentials. I trust you will communicate this to your client immediately.

With respect to Louis Kelly’s recent trip to Pikeville, you suggest that we are in possession of exculpatory evidence that has not been turned over. Mr. Kelly’s discussions with witnesses were expressly for the purpose of preparing for the September hearing. He further informed me that his discussions did not yield any new or exculpatory evidence. Should any additional relevant evidence, exculpatory or otherwise, come to our attention, we will provide it to you promptly. However, we maintain our right to prepare for the hearing. The Commission does not review any notes or memorandum made by counsel in preparation for trial. As such, there is no obligation to produce this information to you.

As to your request for the audio recordings of Gene Weaver’s interviews, I have compiled the audio files and have attached them to the hard copy of this letter that will be placed in the mail. I am also including reports from the Commission’s investigator, Nell Weer, who compiled and examined the EQT cases that formed, in part, the basis of Counts XII and XIII of the Commission’s Second Amended Notice of Formal Proceedings and Charges. The Commission has placed hard copies of the EQT cases in question in the mail and you should receive them shortly. Please note that upon receipt of this information, you will be in possession of all factual information that supports the underlying charges brought against Judge Combs.

Lastly, you reference a request that the Commission’s August 11, 2015 Order be rescinded. Please note that I am not authorized to amend or rescind the Commission’s Orders. If

Richard A. Getty, Esq.
August 21, 2015
Page 2

you desire relief or modification of an Order, you need to file a formal motion for the Commission to review.

Thank you for your time and attention to this matter. If you have any questions or would like to discuss any of these issues in more detail, please feel free to contact me at your convenience.

Sincerely,

ADAMS, STEPNER,
WOLTERMANN & DUSING, PLLC

/s/ Jeffrey C. Mando
Jeffrey C. Mando

JCM/clw

Attachments

cc: Ms. Jimmy Shaffer (via email)
Louis D. Kelly, Esq. (via email)

Shaffer, Jimmy

From: noyes, jrachel
Sent: Monday, August 24, 2015 10:48 AM
To: Danielle Brown
Cc: Shaffer, Jimmy
Subject: EQT Certified Record
Attachments: 11-CI-939.pdf

Danielle,

Please find attached the file referenced in Ms. Shaffer's letter, dated August 19, 2015, which had not yet been received, 11-CI-00939, *EQT v. Johnson*.

Thank you,

J. Rachel Noyes
Executive Assistant
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
(502) 564-1231
(502) 564-1233 -- FAX
<http://courts.ky.gov/commissionscommittees/JCC>

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**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

RESPONSE IN OPPOSITION TO MOTION TO DISQUALIFY

In response to Judge Steven D. Combs' Motion to Disqualify the Commission's Prosecutor, Counsel for the Commission states as follows:

I. INTRODUCTION

In a tactical move designed to delay the hearing on his disciplinary proceedings, Judge Combs argues that Counsel for the Commission (hereinafter referred to as "Counsel") must be disqualified based upon a conflict of interest and because Counsel engaged in "prosecutorial misconduct." Both arguments have no basis in fact or law. As shown below, the allegations in Judge Combs' Motion are, at best, misleading; others are outright false.

II. COUNSEL FOR THE COMMISSION HAS NO CONFLICT OF INTEREST IN THIS CASE

In his Motion, Judge Combs first argues that Counsel has exercised "discretionary charging decisions" in bringing the pending Charges against him. Second, he asserts, that Counsel is using that discretion for the purpose of removing him from serving as a judge in *Mullins v. Southern Financial Life Insurance Co.*, a pending Pike Circuit Court civil case. Neither contention is true. There is no conflict of interest and there is no grounds for disqualification of Counsel.

A. COUNSEL FOR THE COMMISSION HAS NO DISCRETIONARY AUTHORITY TO BRING CHARGES AGAINST A JUDGE

The Kentucky Judicial Conduct Commission is governed by the Supreme Court Rules. SCR 4.110 allows the Commission to retain an attorney to “gather and present evidence before the commission and before the Supreme Court.” The Rule does not provide Counsel with any authority, duty or discretion to issue charges against a judge. Instead, the authority to conduct a preliminary investigation and issue formal charges is given to the Commission under SCR 4.170 and 4.180.

Judge Combs claims that Counsel decided to bring the pending Charges against him in order to gain an advantage in the *Mullins* litigation. This argument, however, is based on an entirely false premise – that Counsel was responsible for bringing the charges against Judge Combs. The premise is false because Supreme Court Rules 4.100, 4.170 and 4.180 establish that Counsel cannot bring charges against a judge.

Because Counsel has no authority, duty or discretion to bring or dismiss charges, Judge Combs’ citation to recusal standards for criminal prosecutors is totally inapplicable. Notwithstanding the fact that recusal standards in criminal prosecutions are completely different than standards for lawyers in administrative cases, and that this proceeding is an administrative matter as opposed to a criminal prosecution, the prosecutorial standards cited by Combs deal specifically with the fact that criminal prosecutors have independent authority and discretion to bring and dismiss charges. In this case, Counsel does not possess the same independent authority or discretion. That power rests squarely with the Commission. Because Counsel cannot independently initiate, amend or dismiss charges against a judge, Judge Combs’ attempt to label Counsel as a criminal prosecutor with an ulterior motive should be summarily dismissed.

B. JUDGE COMBS CANNOT SHOW THAT COUNSEL HAS AN ACTUAL CONFLICT IN THIS CASE

Contrary to Judge Combs' Motion, the Supreme Court's decision in *Marcum v. Scorsone*, 457 S.W.3d 710 (Ky. 2015) is directly on point. Because Counsel is not a prosecutor with independent authority to bring, amend, or dismiss charges against a judge, Judge Combs is essentially asking that Counsel be disqualified because the Commission selected him. In *Marcum*, the Supreme Court dealt with the appropriate standard for disqualifying legal counsel, stating:

Before a lawyer is disqualified based on a relationship with a former client or existing clients, the complaining party should be required to show an actual conflict, not just a vague and possibly deceiving appearance of impropriety. And that conflict should be established with facts, not just vague assertions of discomfort with the representation.

Id. at 718.

Judge Combs is asking the Commission to disqualify Counsel based solely on Counsel's representation of the Defendant in the *Mullins* action pending in Pike Circuit Court. (Motion, p. 1) However, Judge Combs does not provide any facts to support his assertion that there is an actual conflict. He claims "it would seem obvious" that Counsel does not want Judge Combs to preside over *Mullins*. (*Id.* at p. 3) But, because Counsel has no independent authority to initiate, amend or dismiss charges, Counsel's opinion of Judge Combs' rulings in *Mullins* is wholly irrelevant. In short, there is no prosecutorial authority that creates a conflict in the first place. Stated differently, since Counsel has no independent authority to bring, amend, or dismiss charges, Judge Combs defense is not impaired in any way by Counsel's gathering and presentation of evidence at the hearing.

In sum, because there is no actual conflict of interest, there is no need for Counsel to recuse in this case and Judge Combs' Motion to Disqualify should be denied.

C. JUDGE COMBS HAS WAIVED THE ISSUE

Notwithstanding the fact that there is no conflict or grounds for disqualification, Judge Combs has failed to timely raise the issue. Kent Wicker, Judge Combs' prior counsel, first raised the issue with Counsel on June 9, 2015.¹ During that conversation, Counsel advised Mr. Wicker that he did not have authority to bring or dismiss charges and that he did not believe there was a conflict. (Mando Affidavit, ¶ 3) On June 10, 2015, Counsel had a second conversation with Mr. Wicker where he again raised the issue of whether Counsel should be disqualified. (Mando Affidavit, ¶ 5) During that conversation, Counsel asked Mr. Wicker for authority to support his concern, which was never provided. (Mando Affidavit, ¶ 5) In addition, Counsel advised Mr. Wicker that he felt that the *Marcum* decision from the Supreme Court was on point. (Mando Affidavit, ¶ 5) When Counsel did not hear any more on the issue from Mr. Wicker after providing him with the explanation and the citation to authority, and when Judge Combs did not seek to disqualify counsel at the temporary suspension hearing, Counsel deemed the matter resolved. Under these circumstances, Judge Combs has not timely raised the issue.

III. COUNSEL FOR THE COMMISSION HAS NOT ENGAGED IN ANY MISCONDUCT

As if conjuring up a spurious conflict of interest was not enough, Combs doubles down on this tactic by recklessly accusing Counsel of intentionally withholding evidence and engaging in prosecutorial misconduct. Judge Combs' accusations are completely baseless.

¹ See Affidavit of Counsel attached as Exhibit 1.

First, Judge Combs contends that Counsel demonstrated bias against Judge Combs by failing to provide documents relating to the amended charges in Counts XI, XII, and XIII. (Motion, p. 8) Had Judge Combs bothered to read SCR 4.190, he would know that the Commission is allowed to amend its charges, and can do so even after commencement of the hearing. If charges are amended, the Commission is required to give the judge a reasonable time to answer them and to prepare and present his defense. *Id.* As stated in the Commission's Response in Opposition to the Motion to Dismiss, Judge Combs was given a chance to respond to the amended charges and he has been provided with all relevant documents and evidence relating to the amended charges. Thus, there has been no withholding of evidence, much less intentional misconduct by counsel.

Judge Combs also claims that Counsel intentionally withheld a statement of Pikeville City Clerk Rebecca Hamilton and chose not to have her interview with the Commission's investigator transcribed. This is simply not true. Commission Executive Secretary Jimmy Shaffer has stated in a sworn affidavit that Rebecca Hamilton's statement to the Commission's investigator, Gene Weaver, was transcribed along with all of Weaver's other interviews.² She further stated that she inadvertently omitted Hamilton's statement from the 1,193-page factual file provided to Judge Combs on March 25, 2015 and April 2, 2015, and that there was no intentional decision to withhold it.³ More importantly, this inadvertent failure to provide Hamilton's statement has not prejudiced Judge Combs inasmuch as her statement did not form the primary basis for any of the pending charges and the statement was promptly produced once the oversight was discovered.

² See affidavit of Jimmy Shaffer attached as Exhibit 2.

³ *Id.*

Finally, Judge Combs argues that Counsel intentionally failed to pursue evidence that he claims exonerates his client. (Motion, pp. 11 – 14) Specifically, he points to statements from Billy Johnson and Gary Johnson regarding Count X; a statement from Michael de Bourbon regarding Count VIII; and, statements from attorneys who were involved in cases with EQT Production Company in Pike Circuit Court regarding Counts XII and XIII. (*Id.*) None of these alleged statements exonerate Judge Combs. At best, they create a question of fact that must ultimately be resolved by the Commission at the hearing. Regardless, the fact that the Commission’s investigator did not obtain written or oral statements from them before Charges were issued does not constitute misconduct on the part of Counsel.

Much like his claim of a conflict of interest, Judge Combs’ argument that Counsel engaged in misconduct is based on the faulty premise that Counsel conducted or is responsible for conducting the preliminary investigation. Under SCR 4.170, that responsibility lies with the Commission, not Counsel. Furthermore, the Supreme Court Rules give the Commission the discretion to conduct its preliminary investigation to determine whether or not sufficient facts exist to bring charges. The Rules do not give Judge Combs’ the right to dictate how the investigation is to be conducted. *See, e.g., Euro Tech, Inc. v. Commonwealth*, 2014 Ky. App. Unpub. LEXIS 424, 11-13 (Ky. App. 2014)⁴ (holding that Ky. Real Estate Commission had discretion to determine manner and scope of investigation to determine whether or not to bring charges.)

In his Motion, Judge Combs acts as though he has never had the opportunity to present evidence to the Commission, himself. He fails to mention, or address the fact, that

⁴ Opinion attached as Exhibit 3.

he was given the opportunity to speak to the Commission during an informal conference pursuant to SCR 4.170(2). He also fails to mention, or address the fact, that he was given an opportunity to furnish the Commission with any information that he felt was relevant under SCR 4.170(4). The record reflects that Judge Combs presented written responses to the Commission on March 13th, March 18th, and April 15th of this year.⁵ Judge Combs was free to obtain and provide the statements and affidavits he has collected to the Commission prior to the initiation of formal proceedings, but chose not to do so.

Additionally, Judge Combs still has an opportunity to present this evidence at the final hearing on September 21, 2015. In *Alred v. Commonwealth*, 395 S.W.3d 417 (Ky. 2012), the Kentucky Supreme Court dismissed a similar argument regarding the Commission's investigation, stating:

Moreover, the investigator was not a party or attorney in Judge Alred's proceedings. In a somewhat unorthodox maneuver, Judge Alred called the investigator as a witness to testify at the formal hearing concerning his investigatory techniques. Among other accusations, Judge Alred claimed the investigator engaged in devious investigative practices because he did not interview Judge Alred's witnesses. But the investigator was not a key witness at the formal hearing. An investigator's role in judicial conduct proceedings is to take witness statements and perform information-gathering services for the commission. ***The commission determined that Judge Alred violated the Code of Judicial Conduct based on the witnesses' testimony and evidence presented at the formal hearing, not based on the investigator's conduct. Judge Alred was free to present witnesses on his own behalf at the formal hearing, even those whom the investigator did not interview.***

(Emphasis Added) Much like the *Alred* case, it is irrelevant who was or was not interviewed. The Commission will ultimately base its decision on the testimony and evidence presented at the formal hearing where Judge Combs is free to present witnesses and evidence on his behalf. Thus, the manner and scope of the Commission's preliminary

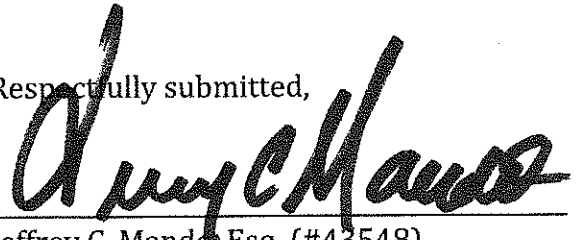
⁵ Letters attached as Exhibit 4.

investigation does not constitute misconduct, much less misconduct by Counsel, and does not prejudice Judge Combs in any way.

IV. CONCLUSION

Based upon the foregoing, Counsel for the Commission respectfully requests that Judge Combs' Motion to Disqualify be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey C. Mando", written over a horizontal line.

Jeffrey C. Mando, Esq. (#43548)

Louis D. Kelly, Esq. (#92094)

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Counsel for Judicial Conduct Commission

CERTIFICATE OF SERVICE

This is to certify that true and correct copy of the foregoing has been served via electronic mail on this the 16 day of September, 2015, upon the following:

Richard A. Getty
Danielle H. Brown
1900 Lexington Financial Center
250 West Main Street
Lexington, KY 40507

Stephen P. Ryan
7104 Hillcircle Court
Louisville, KY 40214

Counsel for Judge Steven D. Combs

Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604


Jeffrey C. Mandel, Esq.

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35th JUDICIAL CIRCUIT

AFFIDAVIT OF JEFFREY C. MANDO

I, Jeffrey C. Mando, hereby state under oath as follows:

1. My name is Jeffrey C. Mando, I am an attorney licensed to practice law in the Commonwealth of Kentucky, and I make this affidavit of my own personal knowledge.

2. In September, 2010, I was contacted by the Judicial Conduct Commission and asked to represent the Commission on charges brought by the Commission against Judge Tamara Gormley. Since that time, I have represented the Commission on other matters. My main role is to draft charges as directed by the Commission, to gather and present evidence at any hearings scheduled by the Commission, and to prepare Agreed Orders on cases that are resolved between the Commission and a judge. I do not attend Commission meetings, investigate complaints before charges are filed, nor do I have any authority to bring or dismiss charges against a judge under the Supreme Court Rules.

3. After the Commission filed charges against Judge Steven Combs, I received a telephone call from Kent Wicker, counsel for Judge Combs on June 9, 2015. During the call, we discussed issues related to the June 16, 2015 suspension hearing. Mr. Wicker stated he felt there might be a conflict of interest in my representation of the Commission and my representation of the Defendant in the *Mullins v. Southern Financial Life Insurance Company*, a civil action pending in the Pike Circuit Court before Judge Combs. The *Mullins*

case is the only action that I have pending in Pike County. After briefly discussing the *Mullins* litigation, I explained to Mr. Wicker that I did not believe there was an actual or perceived conflict of interest because I did not have the authority to bring or dismiss charges against a judge for violation of the Canons and that I did not bring the charges against Judge Combs, in particular. I also told Mr. Wicker that I did not believe there was an actual or perceived conflict in representing the Commission and Southern Financial under Supreme Court Rule 1.7.

4. After the telephone call with Mr. Wicker, I notified the Commission of the issue that Mr. Wicker had raised. I also reevaluated the issue, researched it and did not find anything that altered my assessment.

5. On June 10, 2015, I had another discussion with Mr. Wicker regarding the June 16, 2015 temporary suspension hearing. During this conversation, Mr. Wicker again raised the issue of whether I should be disqualified. I told him I had made the Commission aware of the issue, again explained my role, reiterated that I was not a criminal prosecutor, and that I did not see any grounds for recusal or disqualification. I asked Mr. Wicker to provide me with authority to support his concern which he was unable to do. I also pointed Mr. Wicker to the *Marcum v. Scorsone* case, which I later sent to him in an email as further support for my position. After the conversation, I called and notified the Commission of the conversation.

6. After my June 10, 2015 discussion with Mr. Wicker, and after I sent him the email with the *Marcum* citation, I never heard from him again regarding the alleged conflict. In my mind, I thought the issue had been resolved, particularly when it was not raised by Mr. Wicker at the temporary suspension hearing on June 16, 2015.

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35th JUDICIAL CIRCUIT

AFFIDAVIT OF JIMMY SHAFFER

Having first been duly cautioned and sworn, the Affiant, Jimmy Shaffer, states for her Affidavit as follows:

1. I, Jimmy Shaffer, am the duly appointed Executive Secretary for the Kentucky Judicial Conduct Commission.

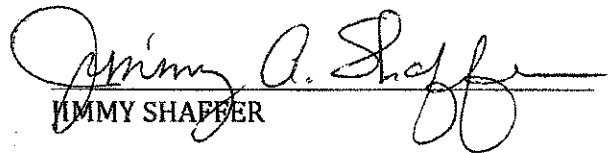
2. As part of my official duties and pursuant to SCR 4.170(4), I compiled the factual information provided to Judge Combs on March 25, 2015 and June 2, 2015. Total documents produced during on these two dates totaled 1,193 pages.

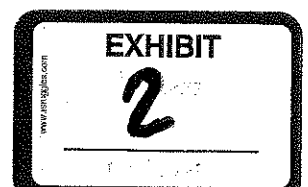
3. In compiling this voluminous record, I inadvertently omitted a transcript of a recorded interview of Rebecca Hamilton conducted by the Commission's investigator.

4. The omission of the transcript was purely accidental and there was no intentional decision to withhold it.

5. The production of information to Judge Combs pursuant to SCR 4.170(4) was handled by Commission staff and was not aided or directed by Counsel for the Commission.

FURTHER AFFIANT SAYETH NAUGHT.


JIMMY SHAFFER



COMMONWEALTH OF KENTUCKY)
) :SS
COUNTY OF FRANKLIN)

14th Sworn to before me, and subscribed in my presence by JIMMY SHAFFER on this the
day of September, 2015.

Dana Robinson

NOTARY PUBLIC

My commission expires: 2/18/2017

Notary ID: 483618



EURO TECH, INC.; AND NEVILLE P.E. BARRETT, APPELLANTS v. COMMONWEALTH OF KENTUCKY, KENTUCKY REAL ESTATE COMMISSION; JULIA A. SMITH; AND PATRICIA A. PARKS, APPELLEES

NO. 2013-CA-001620-MR

COURT OF APPEALS OF KENTUCKY

2014 Ky. App. Unpub. LEXIS 424

June 13, 2014, Rendered

NOTICE: THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, *CR 76.28(4)(c)*, THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

PRIOR HISTORY: [*1]

APPEAL FROM JEFFERSON CIRCUIT COURT. HONORABLE MARY M. SHAW, JUDGE. ACTION NO. 12-CI-000666.

COUNSEL: ORAL ARGUMENT AND BRIEF FOR APPELLANT: John R. Tarter, Louisville, Kentucky.

BRIEF FOR APPELLANT: Kyle P. Williams, Louisville, Kentucky.

ORAL ARGUMENTS AND BRIEFS FOR APPELLEES: Virginia L. Lawson, Lexington, Kentucky; Ronnie Harris, Louisville, Kentucky.

BRIEFS FOR APPELLEES: Y. Denise Payne Wade, Louisville, Kentucky; Vincent J. Eiden, Lexington, Kentucky.

JUDGES: BEFORE: JONES, LAMBERT, AND STUMBO, JUDGES. ALL CONCUR.

OPINION BY: JONES

OPINION

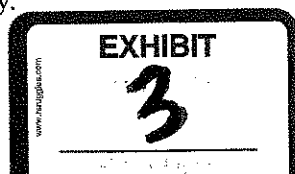
REVERSING AND REMANDING

JONES, JUDGE: This matter is on appeal from the Jefferson Circuit Court's order affirming the Kentucky Real Estate Commission's dismissal of a complaint filed by Euro Tech, Inc. and Neville P.E. Barrett, against Julia A. Smith and Patricia A Parks. For the reasons more fully explained below, we reverse.

I. INTRODUCTION

Euro Tech, Inc. owns two residential condominium units in the Villa Condominiums, a condominium complex located in Louisville, Kentucky. Barrett is the president of Euro Tech. Barrett's disabled son lives in one of the units. Sometime in 2007, Euro Tech and Barrett's records regarding payment of the condominium association fees began to diverge from [*2] those maintained by Kentucky Realty, the entity managing Villa Condominiums at the time.

In 2008, Parks and Smith took over as property managers for Villa Condominiums. The disputes over the proper amount of fees continued despite the change in management. Eventually, a foreclosure action was insti-



tuted on behalf of Villa Condominiums against Euro Tech in Jefferson Circuit Court as related to the allegedly unpaid association dues. The foreclosure action was eventually settled. As part of the settlement, Euro Tech agreed to pay a set amount to the association in exchange for dismissal of the foreclosure. The foreclosure action was formally dismissed by order entered on October 13, 2010.

On October 3, 2011, Euro Tech and Barrett filed an administrative complaint against Parks and Smith with the Kentucky Real Estate Commission ("Commission"). In their complaint, Euro Tech and Barrett alleged that Parks and Smith violated *KRS' 324.160(4)-(5)*.² Specifically, they alleged that Smith and Parks' gross negligence, improper and dishonest dealings, and financial management resulted in a threat of and the filing of unjustified foreclosure proceedings and that their actions were motivated by an illegal, [*3] discriminatory intent to evict Barrett's disabled son from one of the units.

- 1 Kentucky Revised Statutes
- 2 The relevant portions of this section provide:

(4) The commission shall impose sanctions set out in subsection

(1) of this section against a licensee for:

....

(p) Publishing or circulating an unjustified or unwarranted threat of legal proceedings or other action;

....

(u) Any other conduct that constitutes improper, fraudulent, or dishonest dealing; or

(v) Gross negligence.

(5) Any conduct constituting a violation of the Federal Fair Housing Act, including use of scare tactics or blockbusting, shall be considered improper conduct as referred to in subsection (4)(u) of this section.

The Commission directed Smith and Parks to file an answer to the complaint. Smith and Parks filed their joint sworn answer with the Commission on November 21, 2011. On January 5, 2012, the Commission entered an

order dismissing Euro Tech and Barrett's complaint. The order states:

At its December 15, 2011 meeting, the Kentucky Real Estate Commission ("Commission") reviewed and considered the Sworn Statement of Complaint, along with the jointly-filed Sworn Answer to the Complaint, and the jointly-filed Motion [*4] for Extension of Time to Respond filed by Respondent Julia A. Smith and her principal broker, Respondent Patricia A. Parks, seeking an extended filing dealing for their Sworn Answer in this proceeding.

Having considered all of this information and being otherwise sufficiently advised, the Commission FINDS good cause exists to grant the aforementioned motion. Accordingly, the Commission hereby ORDERS that the request for an extension be, and it hereby is, GRANTED. The Commission FURTHER FINDS that a prima facie case of a license law violation does not exist. Accordingly, the Commission FURTHER ORDERS that this case be, and hereby is, DISMISSED.

Appellants filed a timely appeal of the Commission's order with the Jefferson Circuit Court. By order rendered August 14, 2013, the circuit court affirmed the Commission's dismissal order. This appeal followed.

II. STANDARD OF REVIEW

Where administrative decisions are being considered, our standard of review is the same as the trial court's standard. We are limited to the question of arbitrariness. An administrative decision may be considered arbitrary if: (1) it was not within the scope of the agency's granted powers; (2) the agency failed to provide [*5] procedural due process; or (3) the agency's decision was not supported by substantial evidence. *Commonwealth Revenue Cab. v. Liberty Nat'l Bank of Lexington*, 858 S.W.2d 199, 201 (Ky. App. 1993). "If the findings of fact are supported by substantial evidence of probative value, then they must be accepted as binding and it must then be determined whether or not the administrative agency has applied the correct rule of law to the facts so found." *Kentucky Unemployment Ins. Comm'n v. Landmark Comm'ty Newspapers of Kentucky, Inc.*, 91 S.W.3d 575, 578 (Ky. 2002) (citing *Southern Bell Tel. & Tel. Co. v. Kentucky Unemployment Ins. Comm'n*, 437 S.W.2d 775, 778 (Ky. 1969)).

III. ANALYSIS

A. Procedural Due Process

Appellants contend that the Commission acted arbitrarily by failing to provide them with an opportunity to amend their complaint prior to dismissal and by dismissing their complaint before a hearing on the merits in violation of its statutory duties. We disagree.

We begin our review with the relevant statute, *KRS 324.151 (1)-(3)*; this statute governs the complaint and answer process before the Commission. It provides:

(1) All complaints against licensees shall be submitted to the commission [*6] on forms furnished by the commission. The complaint shall state facts which, if true, would constitute a prima facie case that the licensee has violated the provisions of *KRS 324.160*. If the complaint does not constitute a prima facie case, the commission shall allow the complainant ten (10) days to revise and supplement the complaint in order to cure any defect. If the complainant fails to respond within ten (10) days or if the revised and supplemented complaint does not constitute a prima facie case that the licensee has violated the provisions of *KRS 324.160*, the commission shall dismiss the matter without requiring the licensee to file or serve a response.

(2) If the complaint constitutes a prima facie case that a licensee has violated the provisions of *KRS 324.160*, a copy of the complaint, exhibits attached thereto, and any subsequent pleadings, shall be served on the licensee, by the commission, at the licensee's last known address and shall show certification that there has been service by writing to the last known address.

(3) If the commission serves the complaint upon the licensee, the licensee shall file with the commission an answer to the complaint, properly notarized, on [*7] forms secured from commission offices. The answer shall be returned to the commission within twenty (20) days. The licensee shall deliver to the complainant at his or her last known address a copy of the answer, exhibits attached thereto, and any subsequent pleadings. All further

pleadings in the matter filed with the commission by either party shall show that a copy has been furnished to the opposing party or parties.

Our inquiry does not end with the statute, however, because the General Assembly directed the Commission "to promulgate administrative regulations." *KRS 324.281(1)*. Pursuant to its statutory authority, the Commission adopted *201 KAR 11:190*, which sets forth the rules of practice and procedure before it. These regulations are binding. "Administrative regulations of any kind which have been duly adopted and properly filed have the full effect of law." *Flying J Travel Plaza v. Com., Transp. Cabinet, Dept. of Highways, 928 S.W.2d 344, 347, 43 4 Ky. L. Summary 23 (Ky. 1996)*.

3 Kentucky Administrative Regulations

In relevant part, the regulations provide:

(2) If the commission staff review determines the Sworn Statement of Complaint does not allege a prima facie case of a specific violation of *KRS 324.160*, [*8] the aggrieved party shall file a Sworn Supplement to Complaint in accordance with *KRS 324.151*.

(3) A respondent shall file a Sworn Answer to Complaint if a complaint is filed against him in accordance with the requirements of *KRS 324.151(3)*. The answer shall: (a) Identify the respondent; (b) State his responses to the complaint; (c) Be notarized by a notary public; and (d) Include a copy of the following documents: 1. Listing contract; 2. Purchase contract; 3. Seller's disclosure form; 4. Agency disclosure form; and 5. Settlement statement.

(4) Upon completion of an investigation following the submission of a complaint and answer, the commission shall: (a)1. Dismiss the case without an administrative hearing if the facts or evidence do not indicate a prima facie case for a violation of *KRS Chapter 324*; or 2. Schedule an administrative hearing pursuant to *KRS Chapter 13B, 324.151, and 324.170*; and (b) Notify the complainant and respondent of its decision in writing. The notification shall include a brief

statement explaining the commission's reasons for the decision.

Both *KRS 324.151* and 201 KAR 11:190 make clear that upon receiving a complaint, the Commission's first duty is to review [*9] the complaint and determine whether it alleges a prima facie "case that the licensee has violated the provisions of *KRS 324.160*." If so, the Commission must cause a copy of the complaint to be served on the respondents, who then have 20 days to file an answer. If the Commission determines that the complaint does not allege a prima facie cause of action, it must notify the complainant and allow him/her 10 days to "revise and supplement the complaint in order to cure any defect."

Upon receipt of the answer, the Commission is required to complete an "investigation." 201 KAR 11:190 (4). The Commission may conduct a number of activities while investigating allegations of alleged unlawful practices:

- (a) Issue subpoenas to compel attendance of witnesses and the production of books, papers, documents, or other evidence;
- (b) Administer oaths;
- (c) Review evidence;
- (d) Enter the office or branch office of any principal broker for the purpose of inspecting all documents required by the commission to be maintained in the principal broker's office or branch office which relate to the allegations of practices violating the provisions of this chapter;
- (e) Examine witnesses; and
- (f) Pay appropriate witness [*10] fees.

KRS 324.150 (1).

After completion of its investigation, the Commission can either "dismiss the case without an administrative hearing if the facts or evidence do not indicate a prima facie case for a violation of *KRS Chapter 324*; or 2. Schedule an administrative hearing."

With this framework in mind, we turn to the instant appeal. In this case, the Commission received the complaint on October 4, 2011. The administrative record indicates that on October 18, 2011, the Commission sent letters to Parks and Smith via certified mail enclosing the complaint and directing them to file answers within 20 days. Parks and Smith filed a joint sworn answer. At-

tached to their answer, they included electronic mail correspondence dated August 1, 2008, showing that Euro Tech's unit was one of five units in Villa Condominiums that Smith directed the group's attorney to place a lien on for unpaid dues.

On January 5, 2012, the Commission issued its final dismissal order. The order states that the Commission had considered "all the information" and determined that a "prima facie case of license law violation does not exist."

Contrary to Appellant's assertion otherwise, we do not believe that the Commission [*11] erred when it dismissed their claim on January 5, 2012, without providing them with an opportunity to supplement their complaint. The administrative regulations make clear that the right to supplement only arises in cases where the Commission determines that the complaint is so deficient that it is subject to dismissal *prior to service* on the respondents.

Appellants' complaint met this first minimal hurdle and the Commission served it on Smith and Parks with instructions for them to answer the complaint. After the answer was received, the Commission was required to undertake an "investigation," but not conduct a hearing. The regulations plainly give the Commission two options after conducting its investigation; it can either dismiss the complaint or it can schedule a hearing. Procedural due process does not mandate a hearing for every administrative complaint received by the Commission because the applicable regulations do not extinguish the plaintiff's right to seek further judicial review in the courts. Furthermore, the Rules of Civil Procedure do not apply in the administrative context, unless otherwise specified.

The statute sets forth a number of actions that the Commission may [*12] take while investigating a complaint of unlawful action including reviewing the evidence, issuing subpoenas, examining witnesses, and reviewing documents. The General Assembly used the permissive term "may" and not the mandatory term "shall" in describing these activities. As a result, we conclude that which of these activities the Commission decides to undertake, in a particular case, is discretionary. In some cases, the Commission may need to take every step to determine whether there is probable cause to believe that a violation has occurred and, therefore, that a hearing is required. In other cases, the Commission may be able to make its determination from reviewing the pleadings and other attached documentation.

The Commission's dismissal order states that the Commission reviewed the sworn pleadings before it and having done so determined that the complaint failed to state a prima facie claim. While the Commission cer-

tainly could have taken more investigatory steps, the statute does not require it to do so. The Commission, having reviewed the evidence and determined that it did not support a prima facie case, acted within its statutory authority in dismissing Appellant's complaint [*13] prior to a full evidentiary hearing. *See, e.g., Haslett v. Fischer, No. 2006-CA-001255-MR, 2007 Ky. App. Unpub. LEXIS 928, 2007 WL 3227122, at *3 (Ky. App. Nov. 2, 2007)* ("[T]he Commission may, after conducting an investigation, schedule a hearing. However, it is not required to do so.").

B. Substantial Evidence

The Appellants next contend that even if the Commission did not procedurally err, its dismissal is nonetheless erroneous as it is not supported by substantial evidence. We disagree.

As an initial matter, we reject Appellants' argument that in determining dismissal for purposes of 201 KAR 11:190 (4) the Commission is limited to determining only whether the complainant alleged facts that, if true, would support a viable cause of action as would be the case in analyzing a complaint under CR⁴ 12.02(f). In using the term "investigation" the Commission plainly meant for its members to consider and initially weigh, to some extent, evidence beyond the complaint in determining whether sufficient evidence exists to justify a hearing. Otherwise, every time the Commission ordered a complaint served, it would also order a hearing to be set.

4 Kentucky Rules of Civil Procedure

The basis of Appellant's complaint is set forth [*14] on page five of Barrett's sworn statement, attached to their complaint: "[Euro Tech] maintains that the entire purpose behind all of these proceedings was an attempt by the Association and their management company (Prudential) to force a 'problem' disabled tenant to leave by foreclosing on the landlord-[Euro Tech]. There can be no explanation for their totally ludicrous and indefensible actions." The email attached to Smith and Park's answer shows that Euro Tech's unit was one of several that they placed liens on during the relevant time period. The trial court found that this evidence refutes Euro Tech's speculative allegations that it was singled out and targeted due

to its tenant's disabled status and, therefore, comprises substantial evidence upon which the Commission was entitled to rely and which supported its dismissal order.

While this may be the case, we are simply unable to determine from the face of the order why the Commission dismissed the complaint. Pursuant to 201 KAR 11:190(4), the Commission was required to notify Appellants of any dismissal and that notification must explain "the Commission's reasons for the decision." While the Commission's order sets out a legal [*15] conclusion that no prima facie claim was stated, it is devoid of any reasoning to support this conclusion.

While we do not believe that the Commission is required to set out detailed factual findings, we do believe that due process requires some minimal rational explanation to support the ultimate conclusion. Otherwise, the trial court, and in turn this Court, are transformed into reviewing an entire record and guessing what evidence *might* support the administrative body's conclusions. "A court's function in administrative matters is one of review, not reinterpretation." *Pizza Pub of Burnside v. Com., Dept. of ABC, 416 S.W.3d 780, 787 (Ky. App. 2013)* (quoting *Thompson v. Kentucky Unemployment Ins. Com'n, 85 S.W.3d 621, 624 (Ky.App.2002)*).

Upon review, we conclude that the Commission's order lacks the requisite explanation for its decision to permit any meaningful judicial review. Accordingly we must vacate this matter and remand it. We point out that on remand, the Commission is not required to conduct an additional investigation or alter its ultimate conclusion. However, it must, at a minimum, explain in some fashion its reasoning. We also observe that although it is not statutorily [*16] mandated to do so, it would be helpful for the Commission to affirmatively set out in its dismissal orders the steps it undertook with respect to its investigatory obligations.

IV. CONCLUSION

In conclusion, for the reasons set forth above, we reverse the Jefferson Circuit Court and remand for action consistent with this Opinion.

ALL CONCUR.



Kent Wicker
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By electronic and first class mail

March 13, 2015

Stephen D. Wolnitzek
Chair, Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266

*Re: Complaints against Judge Steven D. Combs
JCC Case Numbers 2015-035 and 2015-040*

Dear Chairman Wolnitzek:

I write in response to the February 27, 2015, letter from Ms. Jimmy Shaffer, regarding complaints filed against Judge Steven D. Combs. We look forward to discussing these issues in more detail with the Commission at its meeting on March 20, 2015.

First, a bit of background. Judge Combs graduated from the University of Kentucky and University of Kentucky Law School. He practiced law in Pikeville from 1986 to 2003, when he was appointed to Circuit Court. He was re-elected to that position in 2004 and 2010, the last time without opposition. Before his appointment to the bench, Judge Combs served as Pikeville City Commissioner in 1989-1990 and 2000-2003, and as Mayor of Pikeville from 1994-1999. During 2000-2003, he also served as Mayor Pro Tem.

During his service as a City Commissioner and as Mayor, Judge Combs enjoyed good relations with city employees, including the Police Department. Until recently, he believed that those relations had continued to be positive ones. Judge Combs permits Pikeville Police Chief Phillip Reed and many officers in the department to hunt on land Judge Combs owns. Police Captain Chris Edmonds' aunt is Judge Combs' secretary, and he hired his father as Chief of Police when Judge Combs served as Mayor.

Dressman Benzinger LaVelle psc
Attorneys at Law

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Consequently, Judge Combs believed it appropriate to call city officials when he had questions or concerns about city business. In 2012, Judge Combs witnessed a city employee pulling up campaign signs from private property. Because the action was improper, he called the city manager to let him know what was happening. The employee was later discharged because of other misconduct. Judge Combs also called the station manager of the local public access station when he saw a guest on an interview program make a campaign speech because he believed the partisan display could affect the station's non-profit status. Similarly, Judge Combs called the city manager, who has in the past attempted to avoid partisan political activity, to report that he had heard there was a campaign sign in his yard. Judge Combs also called the police to express his concern about a highly-publicized arrest of a candidate for Pikeville City Commission that had been dismissed in another court for lack of probable cause.

These actions were intended to be helpful, not to harass or intimidate. The Commentary to Canon 4 of the Kentucky Code of Judicial Conduct notes that "Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives."

Judge Combs has also, from time to time, contacted city officials about issues affecting him and his family. In 2012, his mother-in-law received a letter from the city purporting to assess a \$500 fine. He called the city manager to ask whether she was entitled to a trial on the issue. He did not threaten to take any action with regard to tax summonses. Judge Combs also contacted the city manager in response to a letter about the drainage on his property to learn more about the issue. Ultimately, Judge Combs learned that a contractor he hired had not routed drainage lines properly, and he offered to correct the problem. In 2013, Judge Combs called the Police Chief to inquire about its investigation of a burglary at his mother's house, and he contacted the Pike County Judge Executive to alert him that county workers had been unlawfully crossing his property with heavy construction equipment.

All of these conversations were civil and productive. Judge Combs has never asked for special treatment or any right unavailable to any other citizen. He recognizes that he should not have used official stationery for some of these communications, and it will not happen again.

Judge Combs' relationship with certain Pikeville city officials changed dramatically in November 2014, however. At that time, suit was brought in Pike Circuit Court to disqualify Gene Davis, a candidate for Pikeville City Council, *Huffman v. Elliott*, Case No. 14-CI-1224. The case was assigned to Judge Combs, and he ruled that Mr. Davis had withdrawn from the

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Stephen Wolnitzek, Esq.
March 13, 2015
Page 3

race according to the procedure required by law. Consequently, he could not rescind his withdrawal. Judge Combs ordered that the Board of Elections could not count the votes.

The ruling caused great consternation within one faction of the Pikeville City Commission. Counsel for the City intervened to move to recuse Judge Combs, alleging that he had supported one of the candidates. He had not, and he denied the motion to recuse. There was no appeal of either ruling. Although the decision was an obvious one, it caused a great deal of public debate. It apparently caused a great deal of resentment within a faction of Pikeville city government.

Since that time, Judge Combs has been repeatedly harassed by the Pikeville Police Department. Officers have followed him in marked police cars on several occasions. He has received a number of prank calls from a city government number. When Judge Combs has called police officials to complain about the harassment, they have threatened that "we're going to get you," in angry, abusive tones. Admittedly, Judge Combs became angry as well.

The strained relationship has interfered with productive dialogue between Judge Combs and Police Department officials. In December, Judge Combs called Police Officer Aaron Thompson to alert the department to customers at a local restaurant who were leaving trash in his church's parking lot. Rather than accept the call as he would from any other citizen, Officer Thompson responded rudely and said he would not take any action about it. In the same month, Judge Combs called Chief Reed to tell him that a motion for revocation of bond in *Commonwealth v. Coleman*, No. 14-CR-00290, had been denied because of an apparent police department policy not to appear for revocation hearings. The call was an appropriate discussion of the workings of the court, not an improper discussion about the case.

We have also received additional accusations, to which we will respond separately. We look forward to addressing all of these issues with you.

Very truly yours,

Kent Wicker

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March 18, 2015

Stephen D. Wolnitzek
Chair, Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266

Re: *Complaints against Judge Steven D. Combs*
JCC Case Numbers 2015-035 and 2015-040

Dear Chairman Wolnitzek:

I write in response to the March 11, 2015, letter from Ms. Jimmy Shaffer, regarding a second complaint filed against Judge Steven D. Combs. These accusations are equally unfounded as the first. We look forward to discussing these issues in more detail with the Commission at its meeting on March 20, 2015.

This set of accusations relate to two cases before Judge Combs. The first, *Nicole Hall v. Unknown Defendants*, No. 11-CI-01455, was a defamation action brought against unknown defendants. Judge Combs set the case for a status conference when it became clear that plaintiff's counsel was using the process of the Court for an improper purpose. In particular, plaintiff's counsel did the following:

- Brought the action in the name of Nicole Hall, when it actually related to defamatory statements against her employer, attorney Ray Jones. She therefore had no standing to act as plaintiff.
- Caused service on the unknown defendants by a warning order notice, although it was clear the persons who had made critical posts about Mr. Jones would not have

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Stephen Wolnitzek, Esq.
March 18, 2015
Page 2

recognized that the suit by Ms. Hall sought relief for their comments about Mr. Jones.

- Caused multiple subpoenas to be issued to out of state internet providers and others requesting a broad range of confidential information, even though the subpoenas to out of state providers had no authority to compel the production of any documents.

Judge Combs became aware of the case when a defendant brought a motion to quash and enjoin subpoenas issued by the plaintiff, as well as for a motion for more definite statement. When confronted with the improper nature of the action and misuse of court process, the plaintiff filed a notice of voluntary dismissal pursuant to CR 41.01. Despite the dismissal, Judge Combs was concerned that plaintiff's counsel had misused the process of the court. A judge's duty to ensure compliance with the ethical rules does not end when the case ends.

You can see from the video of the status hearing, included with this letter, that Judge Combs presided over the hearing in a calm judicial manner. Judge Combs had no personal interest in the case. He did not attempt to determine the identity of any person who had made postings on Topix or attempt to intimidate any party or counsel. In fact, he told plaintiffs' counsel how he could pursue his action in a lawful manner. Judge Combs also did not engage in any ex parte conversation with counsel Mike DeBourbon.

The other case, *Huffman v. Elliott*, No. 14-CI-10224, has caused great emotions in Pikeville. The case was an election contest under KRS 120.155 related to the election of the Pikeville City Commission, in which six candidates battled for four positions. Mr. Huffman finished fifth in the balloting, and he challenged the decision of the Pike County Board of Elections to count the votes for the fourth-place finisher, Gene Davis. Mr. Davis had withdrawn from the race, although he later sought to rescind his withdrawal.

There was no dispute about the facts in the case. Mr. Davis had withdrawn from the race pursuant to KRS 118.212, on the form provided by the Kentucky Board of Elections. He later attempted to rescind his withdrawal, although there is no provision in Kentucky election law to do so. Counsel for Mr. Davis argued that the case should have been brought before the election under KRS 118.176. Judge Combs ruled, correctly, that there was no statutory provision permitting Mr. Davis to rescind his withdrawal, and KRS 83A.175(6) barred the Board of Elections from counting the votes for a candidate who had withdrawn.

The City of Pikeville moved to intervene, claiming that if the election for city commissioners was not valid, it would have no commissioners and could not do business. It

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also brought a motion to recuse both Pike Circuit Judges because they had presumably voted in the election and “may have privately supported, aided, assisted, encouraged or counseled candidates for City Office.” It made no specific allegations about Judge Combs. Judge Combs determined at the outset of the hearing that the plaintiff did not seek to overturn the results of the election of the mayor or other commissioners and then ruled, correctly, that the City was not a proper party to the action. The counsel for the city agreed. Judge Combs therefore denied the motion to intervene and ruled that the motion to recuse was moot. No other party stated any objection to his rulings, and no other party moved to recuse.

No party appealed any of Judge Combs’ rulings.

Judge Combs had no interest in the outcome of the election, or in the outcome of the case. No party or prospective party identified any particular reason Judge Combs had a disqualifying interest in the case. Judge Combs did not “pre-judge” the case, but read the briefs before the hearing and decided a legal question based on the briefs in front of him. All parties agreed there were no facts in dispute, and Judge Combs ruled correctly on the legal issues.

Nevertheless, supporters of Mr. Davis have erupted in a nearly hysterical display. One city commissioner created a video on Youtube depicting Judge Combs as Adolf Hitler. Other Davis supporters engaged in petty and uninformed attacks on Judge Combs on Facebook and other social media outlets.

Those unfounded attacks have continued in the latest set of accusations to the Commission. Judge Combs has never posted on Topix while performing his judicial duties. He has never made harassing phone calls to or harassing Topix posts about city officials. He has never used the prestige of his judicial office to harass, intimidate, or persuade any city officials, attorneys, or members of the media to take any action. In fact, when Judge Combs does occasionally post a comment on Topix, he does so under a screen name to avoid the appearance that he is using his judicial prestige improperly. The Commission’s Formal Judicial Ethics Opinion JE-119 makes clear that a judge who publicly identifies himself on social media could create an unwarranted appearance that particular persons are in a position to influence the judge.

The other charges are equally unfounded. Judge Combs did not support the candidacy of T.J. Litafik or attempt to persuade anyone else to do so. He loaned Mr. Litafik his golf cart, as he has done for others, after learning that Mr. Litafik could use it downtown if he had a handicapped sticker. He has never solicited donations to the high school golf team. He does not know who filed an anonymous complaint against him and consequently did not threaten anyone for doing so.

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Stephen Wolnitzek, Esq.
March 18, 2015
Page 4

As a final note, this set of accusations charges that Judge Combs made certain telephone calls after hours while intoxicated. Judge Combs does not believe that he has a drinking problem, but would be willing to be evaluated for such issues if the Commission so desires.

Very truly yours,

Kent Wicker

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April 15, 2015

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P.O. Box 4266
Frankfort, KY 40604-4266

*Re: Complaints against Judge Steven D. Combs
JCC Case Numbers 2015-035, 2015-040, and 2015-050*

Dear Chairman Wolnitzek:

I write in response to the April 2, 2015, letter from Ms. Jimmy Shaffer, regarding an additional complaint filed against Judge Steven D. Combs. As we discuss in more detail below, Judge Combs recused from the case in question when it became clear that his partiality could reasonably be questioned.

This set of accusations relate to the case of *Danny Potter v. Blue Flame Energy Corporation, et al.*, No. 11-CI-00567. This case was assigned to Judge Combs when it was filed in 2011. One of the defendants in that action, EQT Production Company ("EQT") has been a litigant in a number of cases in Pike Circuit Court since Judge Combs took the bench. EQT at some point purchased a lease on property in which Judge Combs has an interest from the prior leaseholder. Neither he nor his partners had any negotiations with EQT over its purchase of the lease.

Since that time, Judge Combs has routinely announced to litigants in cases with EQT that he has an interest in property containing oil leases to EQT, and he did so in this case. EQT, presumably, had already been aware.

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April 15, 2015
Page 2

When a dispute arose between Judge Combs and EQT in 2014, Judge Combs recused from the *Potter* case. A copy of the order is enclosed. The docket sheet, which we have also included with this letter, indicates that Judge Coleman presided at the next hearing after the motion to recuse was filed and at all subsequent hearings.

There would have been no reason for Judge Combs to recuse before the dispute arose in 2014. He had no pecuniary interest in or personal knowledge of the dispute. When he became aware of circumstances which might cause his impartiality to be questioned, he promptly recused from the action. Judge Combs did not rule on any issues in the action after the dispute arose in April 2014. He therefore complied with the duties required under the Rules of Judicial Conduct.

Turning to the Commission's questions about Judge Combs' posts on Topix, he has posted under the following screen names:

Wrong
Fix News
Fox News Lied 85 Times
Black Angus
WTF

Judge Combs believes that his use of the Black Angus and WTF screen name was many years ago, and he believes that others have used the WTF screen name in addition to him. Judge Combs has remained interested in national and community issues, and he has used Topix to state his perspective. The Commentary to Canon 4 of the Kentucky Code of Judicial Conduct notes that "Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives."

Judge Combs has never posted on Topix while performing his judicial duties. When he does post, he does so under a screen name to avoid the appearance that he is using his judicial prestige improperly. The Commission's Formal Judicial Ethics Opinion JE-119 makes clear that a judge who publicly identifies himself on social media could create an unwarranted appearance that particular persons are in a position to influence the judge. Posting under screen names avoids that appearance.

In light of the concern over these issues, however, Judge Combs will make no further postings on Topix or any other social media. He will also not initiate any contact with City of Pikeville officials or employees, and he will recuse in all cases in which the City is a party.

We look forward to discussing these issues with the Commission further.

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Page 3

Very truly yours,

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COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

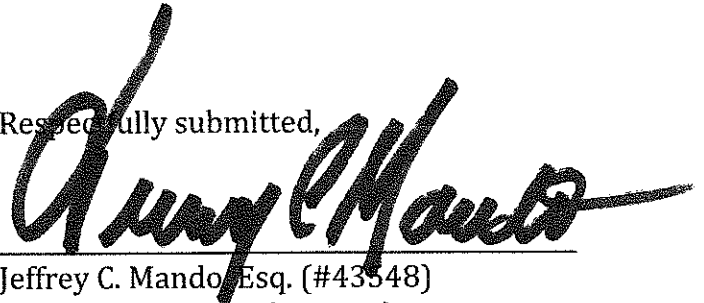
STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT

RESPONSE IN OPPOSITION TO MOTION TO CLOSE COURTROOM OR OTHERWISE
EXCLUDE THE PUBLIC FROM HEARING CERTAIN EVIDENCE AT THE FINAL HEARING

In response to Judge Steven D. Combs' Motion to Close the Courtroom or Otherwise Exclude the Public From Hearing Certain Evidence, Counsel for the Commission states as follows:

SCR 4.130(2) mandates that hearings in formal proceedings be public. As such, it would appear that the Commission does not have authority to conduct a hearing in a closed courtroom or otherwise exclude the public from the hearing. For this reason, Judge Combs' Motion to Close Courtroom or Otherwise Exclude the Public From Hearing Certain Evidence should be denied.

Respectfully submitted,



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Counsel for Judicial Conduct Commission

CERTIFICATE OF SERVICE

This is to certify that true and correct copy of the foregoing has been served via electronic mail on this the 16 day of September, 2015, upon the following:

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Jeffrey C. Mando Esq.

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT

RESPONSE IN OPPOSITION TO MOTION FOR LEAVE TO
TAKE PRE-HEARING DEPOSITION OF GENE WEAVER

In response to Judge Steven D. Combs' Motion to for Leave to Take Pre-Hearing Deposition of Gene Weaver, Counsel for the Commission states as follows:

I. SUPREME COURT RULES DO NOT PROVIDE FOR DISCOVERY DEPOSITIONS

In his Motion, Judge Combs asks the Commission for leave to take a pre-hearing discovery deposition of the Commission's investigator, Gene Weaver.

SCR 4.210 sets forth the procedural rights of a judge facing formal proceedings before the Commission. The Rule provides that judges are entitled to introduce evidence, to be represented by counsel, and to examine and cross-examine witnesses. It further affords judges the opportunity to subpoena witnesses to testify or produce evidence. The rights afforded a judge under SCR 4.210 mirror the general due process requirements afforded to parties in an administrative setting under Kentucky law. *See Hilltop Basic Resources, Inc. v. County of Boone*, 180 S.W.3d 464, 469 (Ky. 2005)

SCR 4.120 does not provide a judge with the right to take discovery depositions. For this reason and the fact that Judge Combs has been provided all due process required under the Supreme Court Rules, his Motion should be denied.

II. THE MANNER IN WHICH THE COMMISSION CONDUCTS PRELIMINARY INVESTIGATIONS IS NOT RELEVANT TO WHETHER OR NOT JUDGE COMBS VIOLATED THE KENTUCKY CODE OF JUDICIAL CONDUCT

Judge Combs argues that he needs to depose Weaver to inquire as to his “investigative methods” (Motion, p. 1), claiming they are “unethically skewed” against Judge Combs. This argument centers on the fact that Weaver did not interview or obtain statements from certain individuals. (*Id.* at pp. 1 – 3) Judge Combs continues this theme in his Supplemental Memorandum contending that Weaver had an “agenda” and that discovery is needed to find out if Weaver’s actions were “self-directed or dictated to him from above,” premising his request on Mr. Getty’s telephone conversation with Michael Schmitt and the September 15, 2015 trial testimony of Frank Justice.

SCR 4.170 gives the Commission authority and discretion to conduct a preliminary investigation to determine whether or not sufficient facts exist to bring charges. The Rule does not provide the judge under investigation with the right to dictate how the investigation is conducted. *See, e.g., Euro Tech, Inc. v. Commonwealth*, 2014 Ky. App. Unpub. LEXIS 424, 11 – 13 (Ky. App. 2014)¹ (holding that Ky. Real Estate Commission had discretion to determine manner and scope of investigation to determine whether or not to bring charges.)

More importantly, the method in which the Commission conducts a preliminary investigation is completely irrelevant to determining whether or not Judge Combs actually violated the Kentucky Code of Judicial Conduct. In *Alred v. Commonwealth*, 395 S.W.3d 417 (Ky. 2012), the judge under investigation brought an almost identical attack to the one

¹ Opinion attached as Exhibit 1.

advanced by Judge Combs against the Commission's investigator. The Supreme Court rejected the argument, stating:

Moreover, the investigator was not a party or attorney in Judge Alred's proceedings. In a somewhat unorthodox maneuver, Judge Alred called the investigator as a witness to testify at the formal hearing concerning his investigatory techniques. Among other accusations, Judge Alred claimed the investigator engaged in devious investigative practices because he did not interview Judge Alred's witnesses. But the investigator was not a key witness at the formal hearing. An investigator's role in judicial conduct proceedings is to take witness statements and perform information-gathering services for the commission. ***The commission determined that Judge Alred violated the Code of Judicial Conduct based on the witnesses' testimony and evidence presented at the formal hearing, not based on the investigator's conduct.*** Judge Alred was free to present witnesses on his own behalf at the formal hearing, even those whom the investigator did not interview.

Much like the *Alred* case, it is irrelevant who was or was not interviewed by the Commission or what questions Weaver asked or did not ask in interviewing witnesses because the Commission will ultimately base its decision on the witnesses' testimony and evidence presented at the formal hearing.

Notwithstanding the fact that who Weaver did not interview or the questions that he did not ask during his interviews is irrelevant to whether Judge Combs violated the Canons and committed the misconduct set forth in the Charges, Judge Combs is free to subpoena Gene Weaver to testify at the September 21, 2015 hearing.

Finally, Judge Combs has had numerous opportunities to present evidence that he thinks is relevant to his defense to the Commission. In accordance with SCR 4.170(2), he was given an opportunity to speak to the Commission during an informal conference. He was also given an opportunity to furnish evidence to the Commission pursuant to SCR 4.170(4). Indeed, Judge Combs provided written responses to the Commission on March 13th, March 18th, and April 15th of this year before the Commission initiated formal

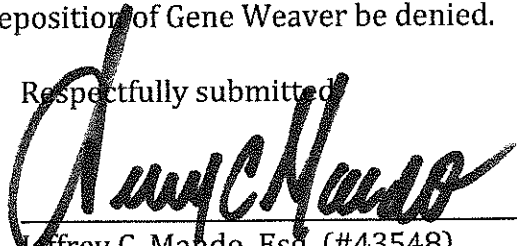
proceedings.² He is also free to call witnesses and present evidence at the hearing on September 21, 2015.

Because the Commission's investigative techniques are irrelevant, and because Judge Combs has the opportunity to present all relevant evidence in his defense at the September 21, 2015 hearing, there is no need, nor grounds, for a discovery deposition of Gene Weaver.

III. CONCLUSION

Based upon the foregoing, Counsel for the Commission respectfully requests that Combs' Motion for Leave to Take Pre-Hearing Deposition of Gene Weaver be denied.

Respectfully submitted,



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Counsel for Judicial Conduct Commission

² Letters attached as Exhibit 2.

CERTIFICATE OF SERVICE

This is to certify that true and correct copy of the foregoing has been served via electronic mail on this the 16 day of September, 2015, upon the following:

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Jeffrey C. Mando, Esq.



EURO TECH, INC.; AND NEVILLE P.E. BARRETT, APPELLANTS v. COMMONWEALTH OF KENTUCKY, KENTUCKY REAL ESTATE COMMISSION; JULIA A. SMITH; AND PATRICIA A. PARKS, APPELLEES

NO. 2013-CA-001620-MR

COURT OF APPEALS OF KENTUCKY

2014 Ky. App. Unpub. LEXIS 424

June 13, 2014, Rendered

NOTICE: THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, *CR 76.28(4)(c)*, THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

PRIOR HISTORY: [*1]

APPEAL FROM JEFFERSON CIRCUIT COURT. HONORABLE MARY M. SHAW, JUDGE. ACTION NO. 12-CI-000666.

COUNSEL: ORAL ARGUMENT AND BRIEF FOR APPELLANT: John R. Tarter, Louisville, Kentucky.

BRIEF FOR APPELLANT: Kyle P. Williams, Louisville, Kentucky.

ORAL ARGUMENTS AND BRIEFS FOR APPELLEES: Virginia L. Lawson, Lexington, Kentucky; Ronnie Harris, Louisville, Kentucky.

BRIEFS FOR APPELLEES: Y. Denise Payne Wade, Louisville, Kentucky; Vincent J. Eiden, Lexington, Kentucky.

JUDGES: BEFORE: JONES, LAMBERT, AND STUMBO, JUDGES. ALL CONCUR.

OPINION BY: JONES

OPINION

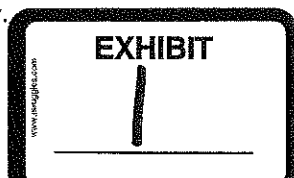
REVERSING AND REMANDING

JONES, JUDGE: This matter is on appeal from the Jefferson Circuit Court's order affirming the Kentucky Real Estate Commission's dismissal of a complaint filed by Euro Tech, Inc. and Neville P.E. Barrett, against Julia A. Smith and Patricia A Parks. For the reasons more fully explained below, we reverse.

I. INTRODUCTION

Euro Tech, Inc. owns two residential condominium units in the Villa Condominiums, a condominium complex located in Louisville, Kentucky. Barrett is the president of Euro Tech. Barrett's disabled son lives in one of the units. Sometime in 2007, Euro Tech and Barrett's records regarding payment of the condominium association fees began to diverge from [*2] those maintained by Kentucky Realty, the entity managing Villa Condominiums at the time.

In 2008, Parks and Smith took over as property managers for Villa Condominiums. The disputes over the proper amount of fees continued despite the change in management. Eventually, a foreclosure action was insti-



tuted on behalf of Villa Condominiums against Euro Tech in Jefferson Circuit Court as related to the allegedly unpaid association dues. The foreclosure action was eventually settled. As part of the settlement, Euro Tech agreed to pay a set amount to the association in exchange for dismissal of the foreclosure. The foreclosure action was formally dismissed by order entered on October 13, 2010.

On October 3, 2011, Euro Tech and Barrett filed an administrative complaint against Parks and Smith with the Kentucky Real Estate Commission ("Commission"). In their complaint, Euro Tech and Barrett alleged that Parks and Smith violated *KRS* 324.160(4)-(5).² Specifically, they alleged that Smith and Parks' gross negligence, improper and dishonest dealings, and financial management resulted in a threat of and the filing of unjustified foreclosure proceedings and that their actions were motivated by an illegal, [*3] discriminatory intent to evict Barrett's disabled son from one of the units.

- 1 Kentucky Revised Statutes
- 2 The relevant portions of this section provide:

(4) The commission shall impose sanctions set out in subsection

(1) of this section against a licensee for:

....

(p) Publishing or circulating an unjustified or unwarranted threat of legal proceedings or other action;

....

(u) Any other conduct that constitutes improper, fraudulent, or dishonest dealing; or

(v) Gross negligence.

(5) Any conduct constituting a violation of the Federal Fair Housing Act, including use of scare tactics or blockbusting, shall be considered improper conduct as referred to in subsection (4)(u) of this section.

The Commission directed Smith and Parks to file an answer to the complaint. Smith and Parks filed their joint sworn answer with the Commission on November 21, 2011. On January 5, 2012, the Commission entered an

order dismissing Euro Tech and Barrett's complaint. The order states:

At its December 15, 2011 meeting, the Kentucky Real Estate Commission ("Commission") reviewed and considered the Sworn Statement of Complaint, along with the jointly-filed Sworn Answer to the Complaint, and the jointly-filed Motion [*4] for Extension of Time to Respond filed by Respondent Julia A. Smith and her principal broker, Respondent Patricia A. Parks, seeking an extended filing dealing for their Sworn Answer in this proceeding.

Having considered all of this information and being otherwise sufficiently advised, the Commission FINDS good cause exists to grant the aforementioned motion. Accordingly, the Commission hereby ORDERS that the request for an extension be, and it hereby is, GRANTED. The Commission FURTHER FINDS that a prima facie case of a license law violation does not exist. Accordingly, the Commission FURTHER ORDERS that this case be, and hereby is, DISMISSED.

Appellants filed a timely appeal of the Commission's order with the Jefferson Circuit Court. By order rendered August 14, 2013, the circuit court affirmed the Commission's dismissal order. This appeal followed.

II. STANDARD OF REVIEW

Where administrative decisions are being considered, our standard of review is the same as the trial court's standard. We are limited to the question of arbitrariness. An administrative decision may be considered arbitrary if: (1) it was not within the scope of the agency's granted powers; (2) the agency failed to provide [*5] procedural due process; or (3) the agency's decision was not supported by substantial evidence. *Commonwealth Revenue Cab. v. Liberty Nat'l Bank of Lexington*, 858 S.W.2d 199, 201 (Ky. App. 1993). "If the findings of fact are supported by substantial evidence of probative value, then they must be accepted as binding and it must then be determined whether or not the administrative agency has applied the correct rule of law to the facts so found." *Kentucky Unemployment Ins. Comm'n v. Landmark Comm'ty Newspapers of Kentucky, Inc.*, 91 S.W.3d 575, 578 (Ky. 2002) (citing *Southern Bell Tel. & Tel. Co. v. Kentucky Unemployment Ins. Comm'n*, 437 S.W.2d 775, 778 (Ky. 1969)).

III. ANALYSIS

A. Procedural Due Process

Appellants contend that the Commission acted arbitrarily by failing to provide them with an opportunity to amend their complaint prior to dismissal and by dismissing their complaint before a hearing on the merits in violation of its statutory duties. We disagree.

We begin our review with the relevant statute, *KRS 324.151 (1)-(3)*; this statute governs the complaint and answer process before the Commission. It provides:

(1) All complaints against licensees shall be submitted to the commission [*6] on forms furnished by the commission. The complaint shall state facts which, if true, would constitute a prima facie case that the licensee has violated the provisions of *KRS 324.160*. If the complaint does not constitute a prima facie case, the commission shall allow the complainant ten (10) days to revise and supplement the complaint in order to cure any defect. If the complainant fails to respond within ten (10) days or if the revised and supplemented complaint does not constitute a prima facie case that the licensee has violated the provisions of *KRS 324.160*, the commission shall dismiss the matter without requiring the licensee to file or serve a response.

(2) If the complaint constitutes a prima facie case that a licensee has violated the provisions of *KRS 324.160*, a copy of the complaint, exhibits attached thereto, and any subsequent pleadings, shall be served on the licensee, by the commission, at the licensee's last known address and shall show certification that there has been service by writing to the last known address.

(3) If the commission serves the complaint upon the licensee, the licensee shall file with the commission an answer to the complaint, properly notarized, on [*7] forms secured from commission offices. The answer shall be returned to the commission within twenty (20) days. The licensee shall deliver to the complainant at his or her last known address a copy of the answer, exhibits attached thereto, and any subsequent pleadings. All further

pleadings in the matter filed with the commission by either party shall show that a copy has been furnished to the opposing party or parties.

Our inquiry does not end with the statute, however, because the General Assembly directed the Commission "to promulgate administrative regulations." *KRS 324.281(1)*. Pursuant to its statutory authority, the Commission adopted *201 KAR 11:190*, which sets forth the rules of practice and procedure before it. These regulations are binding. "Administrative regulations of any kind which have been duly adopted and properly filed have the full effect of law." *Flying J Travel Plaza v. Com., Transp. Cabinet, Dept. of Highways, 928 S.W.2d 344, 347, 43 4 Ky. L. Summary 23 (Ky. 1996)*.

3 Kentucky Administrative Regulations

In relevant part, the regulations provide:

(2) If the commission staff review determines the Sworn Statement of Complaint does not allege a prima facie case of a specific violation of *KRS 324.160*, [*8] the aggrieved party shall file a Sworn Supplement to Complaint in accordance with *KRS 324.151*.

(3) A respondent shall file a Sworn Answer to Complaint if a complaint is filed against him in accordance with the requirements of *KRS 324.151(3)*. The answer shall: (a) Identify the respondent; (b) State his responses to the complaint; (c) Be notarized by a notary public; and (d) Include a copy of the following documents: 1. Listing contract; 2. Purchase contract; 3. Seller's disclosure form; 4. Agency disclosure form; and 5. Settlement statement.

(4) Upon completion of an investigation following the submission of a complaint and answer, the commission shall: (a) 1. Dismiss the case without an administrative hearing if the facts or evidence do not indicate a prima facie case for a violation of *KRS Chapter 324*; or 2. Schedule an administrative hearing pursuant to *KRS Chapter 13B, 324.151, and 324.170*; and (b) Notify the complainant and respondent of its decision in writing. The notification shall include a brief

statement explaining the commission's reasons for the decision.

Both *KRS 324.151* and 201 KAR 11:190 make clear that upon receiving a complaint, the Commission's first duty is to review [*9] the complaint and determine whether it alleges a prima facie "case that the licensee has violated the provisions of *KRS 324.160*." If so, the Commission must cause a copy of the complaint to be served on the respondents, who then have 20 days to file an answer. If the Commission determines that the complaint does not allege a prima facie cause of action, it must notify the complainant and allow him/her 10 days to "revise and supplement the complaint in order to cure any defect."

Upon receipt of the answer, the Commission is required to complete an "investigation." 201 KAR 11:190 (4). The Commission may conduct a number of activities while investigating allegations of alleged unlawful practices:

- (a) Issue subpoenas to compel attendance of witnesses and the production of books, papers, documents, or other evidence;
- (b) Administer oaths;
- (c) Review evidence;
- (d) Enter the office or branch office of any principal broker for the purpose of inspecting all documents required by the commission to be maintained in the principal broker's office or branch office which relate to the allegations of practices violating the provisions of this chapter;
- (e) Examine witnesses; and
- (f) Pay appropriate witness [*10] fees.

KRS 324.150 (1).

After completion of its investigation, the Commission can either "dismiss the case without an administrative hearing if the facts or evidence do not indicate a prima facie case for a violation of *KRS Chapter 324*; or 2. Schedule an administrative hearing."

With this framework in mind, we turn to the instant appeal. In this case, the Commission received the complaint on October 4, 2011. The administrative record indicates that on October 18, 2011, the Commission sent letters to Parks and Smith via certified mail enclosing the complaint and directing them to file answers within 20 days. Parks and Smith filed a joint sworn answer. At-

tached to their answer, they included electronic mail correspondence dated August 1, 2008, showing that Euro Tech's unit was one of five units in Villa Condominiums that Smith directed the group's attorney to place a lien on for unpaid dues.

On January 5, 2012, the Commission issued its final dismissal order. The order states that the Commission had considered "all the information" and determined that a "prima facie case of license law violation does not exist."

Contrary to Appellant's assertion otherwise, we do not believe that the Commission [*11] erred when it dismissed their claim on January 5, 2012, without providing them with an opportunity to supplement their complaint. The administrative regulations make clear that the right to supplement only arises in cases where the Commission determines that the complaint is so deficient that it is subject to dismissal *prior to service* on the respondents.

Appellants' complaint met this first minimal hurdle and the Commission served it on Smith and Parks with instructions for them to answer the complaint. After the answer was received, the Commission was required to undertake an "investigation," but not conduct a hearing. The regulations plainly give the Commission two options after conducting its investigation; it can either dismiss the complaint or it can schedule a hearing. Procedural due process does not mandate a hearing for every administrative complaint received by the Commission because the applicable regulations do not extinguish the plaintiff's right to seek further judicial review in the courts. Furthermore, the Rules of Civil Procedure do not apply in the administrative context, unless otherwise specified.

The statute sets forth a number of actions that the Commission may [*12] take while investigating a complaint of unlawful action including reviewing the evidence, issuing subpoenas, examining witnesses, and reviewing documents. The General Assembly used the permissive term "may" and not the mandatory term "shall" in describing these activities. As a result, we conclude that which of these activities the Commission decides to undertake, in a particular case, is discretionary. In some cases, the Commission may need to take every step to determine whether there is probable cause to believe that a violation has occurred and, therefore, that a hearing is required. In other cases, the Commission may be able to make its determination from reviewing the pleadings and other attached documentation.

The Commission's dismissal order states that the Commission reviewed the sworn pleadings before it and having done so determined that the complaint failed to state a prima facie claim. While the Commission cer-

tainly could have taken more investigatory steps, the statute does not require it to do so. The Commission, having reviewed the evidence and determined that it did not support a prima facie case, acted within its statutory authority in dismissing Appellant's complaint [*13] prior to a full evidentiary hearing. *See, e.g., Haslett v. Fischer, No. 2006-CA-001255-MR, 2007 Ky. App. Unpub. LEXIS 928, 2007 WL 3227122, at *3 (Ky. App. Nov. 2, 2007)* ("[T]he Commission may, after conducting an investigation, schedule a hearing. However, it is not required to do so.")

B. Substantial Evidence

The Appellants next contend that even if the Commission did not procedurally err, its dismissal is nonetheless erroneous as it is not supported by substantial evidence. We disagree.

As an initial matter, we reject Appellants' argument that in determining dismissal for purposes of 201 KAR 11:190 (4) the Commission is limited to determining only whether the complainant alleged facts that, if true, would support a viable cause of action as would be the case in analyzing a complaint under CR 12.02(f). In using the term "investigation" the Commission plainly meant for its members to consider and initially weigh, to some extent, evidence beyond the complaint in determining whether sufficient evidence exists to justify a hearing. Otherwise, every time the Commission ordered a complaint served, it would also order a hearing to be set.

4 Kentucky Rules of Civil Procedure

The basis of Appellant's complaint is set forth [*14] on page five of Barrett's sworn statement, attached to their complaint: "[Euro Tech] maintains that the entire purpose behind all of these proceedings was an attempt by the Association and their management company (Prudential) to force a 'problem' disabled tenant to leave by foreclosing on the landlord-[Euro Tech]. There can be no explanation for their totally ludicrous and indefensible actions." The email attached to Smith and Park's answer shows that Euro Tech's unit was one of several that they placed liens on during the relevant time period. The trial court found that this evidence refutes Euro Tech's speculative allegations that it was singled out and targeted due

to its tenant's disabled status and, therefore, comprises substantial evidence upon which the Commission was entitled to rely and which supported its dismissal order.

While this may be the case, we are simply unable to determine from the face of the order why the Commission dismissed the complaint. Pursuant to 201 KAR 11:190(4), the Commission was required to notify Appellants of any dismissal and that notification must explain "the Commission's reasons for the decision." While the Commission's order sets out a legal [*15] conclusion that no prima facie claim was stated, it is devoid of any reasoning to support this conclusion.

While we do not believe that the Commission is required to set out detailed factual findings, we do believe that due process requires some minimal rational explanation to support the ultimate conclusion. Otherwise, the trial court, and in turn this Court, are transformed into reviewing an entire record and guessing what evidence *might* support the administrative body's conclusions. "A court's function in administrative matters is one of review, not reinterpretation." *Pizza Pub of Burnside v. Com., Dept. of ABC, 416 S.W.3d 780, 787 (Ky. App. 2013)* (quoting *Thompson v. Kentucky Unemployment Ins. Com'n, 85 S.W.3d 621, 624 (Ky.App.2002)*).

Upon review, we conclude that the Commission's order lacks the requisite explanation for its decision to permit any meaningful judicial review. Accordingly we must vacate this matter and remand it. We point out that on remand, the Commission is not required to conduct an additional investigation or alter its ultimate conclusion. However, it must, at a minimum, explain in some fashion its reasoning. We also observe that although it is not statutorily [*16] mandated to do so, it would be helpful for the Commission to affirmatively set out in its dismissal orders the steps it undertook with respect to its investigatory obligations.

IV. CONCLUSION

In conclusion, for the reasons set forth above, we reverse the Jefferson Circuit Court and remand for action consistent with this Opinion.

ALL CONCUR.



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March 13, 2015

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*Re: Complaints against Judge Steven D. Combs
JCC Case Numbers 2015-035 and 2015-040*

Dear Chairman Wolnitzek:

I write in response to the February 27, 2015, letter from Ms. Jimmy Shaffer, regarding complaints filed against Judge Steven D. Combs. We look forward to discussing these issues in more detail with the Commission at its meeting on March 20, 2015.

First, a bit of background. Judge Combs graduated from the University of Kentucky and University of Kentucky Law School. He practiced law in Pikeville from 1986 to 2003, when he was appointed to Circuit Court. He was re-elected to that position in 2004 and 2010, the last time without opposition. Before his appointment to the bench, Judge Combs served as Pikeville City Commissioner in 1989-1990 and 2000-2003, and as Mayor of Pikeville from 1994-1999. During 2000-2003, he also served as Mayor Pro Tem.

During his service as a City Commissioner and as Mayor, Judge Combs enjoyed good relations with city employees, including the Police Department. Until recently, he believed that those relations had continued to be positive ones. Judge Combs permits Pikeville Police Chief Phillip Reed and many officers in the department to hunt on land Judge Combs owns. Police Captain Chris Edmonds' aunt is Judge Combs' secretary, and he hired his father as Chief of Police when Judge Combs served as Mayor.

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Consequently, Judge Combs believed it appropriate to call city officials when he had questions or concerns about city business. In 2012, Judge Combs witnessed a city employee pulling up campaign signs from private property. Because the action was improper, he called the city manager to let him know what was happening. The employee was later discharged because of other misconduct. Judge Combs also called the station manager of the local public access station when he saw a guest on an interview program make a campaign speech because he believed the partisan display could affect the station's non-profit status. Similarly, Judge Combs called the city manager, who has in the past attempted to avoid partisan political activity, to report that he had heard there was a campaign sign in his yard. Judge Combs also called the police to express his concern about a highly-publicized arrest of a candidate for Pikeville City Commission that had been dismissed in another court for lack of probable cause.

These actions were intended to be helpful, not to harass or intimidate. The Commentary to Canon 4 of the Kentucky Code of Judicial Conduct notes that "Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives."

Judge Combs has also, from time to time, contacted city officials about issues affecting him and his family. In 2012, his mother-in-law received a letter from the city purporting to assess a \$500 fine. He called the city manager to ask whether she was entitled to a trial on the issue. He did not threaten to take any action with regard to tax summonses. Judge Combs also contacted the city manager in response to a letter about the drainage on his property to learn more about the issue. Ultimately, Judge Combs learned that a contractor he hired had not routed drainage lines properly, and he offered to correct the problem. In 2013, Judge Combs called the Police Chief to inquire about its investigation of a burglary at his mother's house, and he contacted the Pike County Judge Executive to alert him that county workers had been unlawfully crossing his property with heavy construction equipment.

All of these conversations were civil and productive. Judge Combs has never asked for special treatment or any right unavailable to any other citizen. He recognizes that he should not have used official stationery for some of these communications, and it will not happen again.

Judge Combs' relationship with certain Pikeville city officials changed dramatically in November 2014, however. At that time, suit was brought in Pike Circuit Court to disqualify Gene Davis, a candidate for Pikeville City Council, *Huffman v. Elliott*, Case No. 14-CI-1224. The case was assigned to Judge Combs, and he ruled that Mr. Davis had withdrawn from the

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March 13, 2015
Page 3

race according to the procedure required by law. Consequently, he could not rescind his withdrawal. Judge Combs ordered that the Board of Elections could not count the votes.

The ruling caused great consternation within one faction of the Pikeville City Commission. Counsel for the City intervened to move to recuse Judge Combs, alleging that he had supported one of the candidates. He had not, and he denied the motion to recuse. There was no appeal of either ruling. Although the decision was an obvious one, it caused a great deal of public debate. It apparently caused a great deal of resentment within a faction of Pikeville city government.

Since that time, Judge Combs has been repeatedly harassed by the Pikeville Police Department. Officers have followed him in marked police cars on several occasions. He has received a number of prank calls from a city government number. When Judge Combs has called police officials to complain about the harassment, they have threatened that "we're going to get you," in angry, abusive tones. Admittedly, Judge Combs became angry as well.

The strained relationship has interfered with productive dialogue between Judge Combs and Police Department officials. In December, Judge Combs called Police Officer Aaron Thompson to alert the department to customers at a local restaurant who were leaving trash in his church's parking lot. Rather than accept the call as he would from any other citizen, Officer Thompson responded rudely and said he would not take any action about it. In the same month, Judge Combs called Chief Reed to tell him that a motion for revocation of bond in *Commonwealth v. Coleman*, No. 14-CR-00290, had been denied because of an apparent police department policy not to appear for revocation hearings. The call was an appropriate discussion of the workings of the court, not an improper discussion about the case.

We have also received additional accusations, to which we will respond separately. We look forward to addressing all of these issues with you.

Very truly yours,

Kent Wicker

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March 18, 2015

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*Re: Complaints against Judge Steven D. Combs
JCC Case Numbers 2015-035 and 2015-040*

Dear Chairman Wolnitzek:

I write in response to the March 11, 2015, letter from Ms. Jimmy Shaffer, regarding a second complaint filed against Judge Steven D. Combs. These accusations are equally unfounded as the first. We look forward to discussing these issues in more detail with the Commission at its meeting on March 20, 2015.

This set of accusations relate to two cases before Judge Combs. The first, *Nicole Hall v. Unknown Defendants*, No. 11-CI-01455, was a defamation action brought against unknown defendants. Judge Combs set the case for a status conference when it became clear that plaintiff's counsel was using the process of the Court for an improper purpose. In particular, plaintiff's counsel did the following:

- Brought the action in the name of Nicole Hall, when it actually related to defamatory statements against her employer, attorney Ray Jones. She therefore had no standing to act as plaintiff.
- Caused service on the unknown defendants by a warning order notice, although it was clear the persons who had made critical posts about Mr. Jones would not have

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recognized that the suit by Ms. Hall sought relief for their comments about Mr. Jones.

- Caused multiple subpoenas to be issued to out of state internet providers and others requesting a broad range of confidential information, even though the subpoenas to out of state providers had no authority to compel the production of any documents.

Judge Combs became aware of the case when a defendant brought a motion to quash and enjoin subpoenas issued by the plaintiff, as well as for a motion for more definite statement. When confronted with the improper nature of the action and misuse of court process, the plaintiff filed a notice of voluntary dismissal pursuant to CR 41.01. Despite the dismissal, Judge Combs was concerned that plaintiff's counsel had misused the process of the court. A judge's duty to ensure compliance with the ethical rules does not end when the case ends.

You can see from the video of the status hearing, included with this letter, that Judge Combs presided over the hearing in a calm judicial manner. Judge Combs had no personal interest in the case. He did not attempt to determine the identity of any person who had made postings on Topix or attempt to intimidate any party or counsel. In fact, he told plaintiffs' counsel how he could pursue his action in a lawful manner. Judge Combs also did not engage in any ex parte conversation with counsel Mike DeBourbon.

The other case, *Huffman v. Elliott*, No. 14-CI-10224, has caused great emotions in Pikeville. The case was an election contest under KRS 120.155 related to the election of the Pikeville City Commission, in which six candidates battled for four positions. Mr. Huffman finished fifth in the balloting, and he challenged the decision of the Pike County Board of Elections to count the votes for the fourth-place finisher, Gene Davis. Mr. Davis had withdrawn from the race, although he later sought to rescind his withdrawal.

There was no dispute about the facts in the case. Mr. Davis had withdrawn from the race pursuant to KRS 118.212, on the form provided by the Kentucky Board of Elections. He later attempted to rescind his withdrawal, although there is no provision in Kentucky election law to do so. Counsel for Mr. Davis argued that the case should have been brought before the election under KRS 118.176. Judge Combs ruled, correctly, that there was no statutory provision permitting Mr. Davis to rescind his withdrawal, and KRS 83A.175(6) barred the Board of Elections from counting the votes for a candidate who had withdrawn.

The City of Pikeville moved to intervene, claiming that if the election for city commissioners was not valid, it would have no commissioners and could not do business. It

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also brought a motion to recuse both Pike Circuit Judges because they had presumably voted in the election and "may have privately supported, aided, assisted, encouraged or counseled candidates for City Office." It made no specific allegations about Judge Combs. Judge Combs determined at the outset of the hearing that the plaintiff did not seek to overturn the results of the election of the mayor or other commissioners and then ruled, correctly, that the City was not a proper party to the action. The counsel for the city agreed. Judge Combs therefore denied the motion to intervene and ruled that the motion to recuse was moot. No other party stated any objection to his rulings, and no other party moved to recuse.

No party appealed any of Judge Combs' rulings.

Judge Combs had no interest in the outcome of the election, or in the outcome of the case. No party or prospective party identified any particular reason Judge Combs had a disqualifying interest in the case. Judge Combs did not "pre-judge" the case, but read the briefs before the hearing and decided a legal question based on the briefs in front of him. All parties agreed there were no facts in dispute, and Judge Combs ruled correctly on the legal issues.

Nevertheless, supporters of Mr. Davis have erupted in a nearly hysterical display. One city commissioner created a video on Youtube depicting Judge Combs as Adolf Hitler. Other Davis supporters engaged in petty and uninformed attacks on Judge Combs on Facebook and other social media outlets.

Those unfounded attacks have continued in the latest set of accusations to the Commission. Judge Combs has never posted on Topix while performing his judicial duties. He has never made harassing phone calls to or harassing Topix posts about city officials. He has never used the prestige of his judicial office to harass, intimidate, or persuade any city officials, attorneys, or members of the media to take any action. In fact, when Judge Combs does occasionally post a comment on Topix, he does so under a screen name to avoid the appearance that he is using his judicial prestige improperly. The Commission's Formal Judicial Ethics Opinion JE-119 makes clear that a judge who publicly identifies himself on social media could create an unwarranted appearance that particular persons are in a position to influence the judge.

The other charges are equally unfounded. Judge Combs did not support the candidacy of T.J. Litafik or attempt to persuade anyone else to do so. He loaned Mr. Litafik his golf cart, as he has done for others, after learning that Mr. Litafik could use it downtown if he had a handicapped sticker. He has never solicited donations to the high school golf team. He does not know who filed an anonymous complaint against him and consequently did not threaten anyone for doing so.

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March 18, 2015
Page 4

As a final note, this set of accusations charges that Judge Combs made certain telephone calls after hours while intoxicated. Judge Combs does not believe that he has a drinking problem, but would be willing to be evaluated for such issues if the Commission so desires.

Very truly yours,

Kent Wicker

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April 15, 2015

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*Re: Complaints against Judge Steven D. Combs
JCC Case Numbers 2015-035, 2015-040, and 2015-050*

Dear Chairman Wolnitzek:

I write in response to the April 2, 2015, letter from Ms. Jimmy Shaffer, regarding an additional complaint filed against Judge Steven D. Combs. As we discuss in more detail below, Judge Combs recused from the case in question when it became clear that his partiality could reasonably be questioned.

This set of accusations relate to the case of *Danny Potter v. Blue Flame Energy Corporation, et al.*, No. 11-CI-00567. This case was assigned to Judge Combs when it was filed in 2011. One of the defendants in that action, EQT Production Company ("EQT") has been a litigant in a number of cases in Pike Circuit Court since Judge Combs took the bench. EQT at some point purchased a lease on property in which Judge Combs has an interest from the prior leaseholder. Neither he nor his partners had any negotiations with EQT over its purchase of the lease.

Since that time, Judge Combs has routinely announced to litigants in cases with EQT that he has an interest in property containing oil leases to EQT, and he did so in this case. EQT, presumably, had already been aware.

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April 15, 2015
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When a dispute arose between Judge Combs and EQT in 2014, Judge Combs recused from the *Potter* case. A copy of the order is enclosed. The docket sheet, which we have also included with this letter, indicates that Judge Coleman presided at the next hearing after the motion to recuse was filed and at all subsequent hearings.

There would have been no reason for Judge Combs to recuse before the dispute arose in 2014. He had no pecuniary interest in or personal knowledge of the dispute. When he became aware of circumstances which might cause his impartiality to be questioned, he promptly recused from the action. Judge Combs did not rule on any issues in the action after the dispute arose in April 2014. He therefore complied with the duties required under the Rules of Judicial Conduct.

Turning to the Commission's questions about Judge Combs' posts on Topix, he has posted under the following screen names:

Wrong
Fix News
Fox News Lied 85 Times
Black Angus
WTF

Judge Combs believes that his use of the Black Angus and WTF screen name was many years ago, and he believes that others have used the WTF screen name in addition to him. Judge Combs has remained interested in national and community issues, and he has used Topix to state his perspective. The Commentary to Canon 4 of the Kentucky Code of Judicial Conduct notes that "Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives."

Judge Combs has never posted on Topix while performing his judicial duties. When he does post, he does so under a screen name to avoid the appearance that he is using his judicial prestige improperly. The Commission's Formal Judicial Ethics Opinion JE-119 makes clear that a judge who publicly identifies himself on social media could create an unwarranted appearance that particular persons are in a position to influence the judge. Posting under screen names avoids that appearance.

In light of the concern over these issues, however, Judge Combs will make no further postings on Topix or any other social media. He will also not initiate any contact with City of Pikeville officials or employees, and he will recuse in all cases in which the City is a party.

We look forward to discussing these issues with the Commission further.

Dressman Benzinger LaVelle psc
Attorneys at Law

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NORTHERN KENTUCKY OFFICE: Thomas More Park * 207 Thomas More Parkway * Crestview Hills, Kentucky 41017-2596 * Phone (859) 341-1881 * Fax (859) 341-1469
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Stephen Wolnitzek, Esq.
April 15, 2015
Page 3

Very truly yours,

Kent Wicker

Kent Wicker
DRESSMAN BENZINGER LA VELLE PSC

encl

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**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

**ORDER ON MOTION FOR LEAVE TO TAKE
PREHEARING DEPOSITION OF GENE WEAVER**

Upon consideration of the motion by Judge Combs for leave to take the prehearing deposition of Gene Weaver, and the response thereto, and being otherwise fully advised and informed, it is by the Commission

ORDERED that the motion be, and it is hereby, OVERRULED. Mr. Weaver will be present at the hearing and Judge Combs has the opportunity to subpoena him and call him as a witness.

SO ORDERED this 17th day of September, 2015.

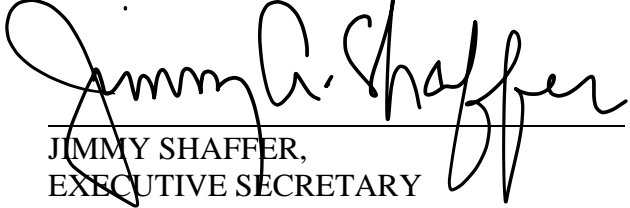

Stephen D. Wolnitzek, Chair

Judge Laurance B. VanMeter, Judge Jeffrey M. Walson, Judge David P. Bowles, Mr. Stephen D. Wolnitzek, Ms. Joyce King Jennings and Ms. Diane E. Logsdon, sitting. Judge Janet Stumbo and Judge Eddy Coleman recused from any consideration of this matter.

CERTIFICATION

I hereby certify that copy hereof was served on Steven D. Combs, Pike Circuit Court Judge, by mailing same to his attorneys, Richard A. Getty and Danielle H. Brown, 1900

Lexington Financial Center, 250 West Main Street, Lexington, KY 40507; Stephen P. Ryan, 7104 Hillcircle Court, Louisville, KY 40214; and on counsel for the Judicial Conduct Commission, Jeffrey C. Mando and Louis D. Kelly, 40 West Pike Street, Covington, KY 41011, this 17th day of September, 2015.



JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

**ORDER ON MOTION TO DISMISS, MOTION TO DISQUALIFY THE
COMMISSION'S PROSECUTOR AND MOTION TO CLOSE THE
COURTROOM OR OTHERWISE EXCLUDE THE PUBLIC
FROM HEARING CERTAIN EVIDENCE AT THE FINAL HEARING**

On September 21, 2015, the Commission considered the motions by Judge Combs to dismiss Counts I, II, IV, VII, VIII, IX, X, XI, XII, and XIII of the Notice of Formal Proceedings and Charges as Amended, to Disqualify the Commission's Prosecutor and To Close the Courtroom or Otherwise Exclude the Public from Hearing Certain Evidence at the Final Hearing and the responses thereto. The Commission, in open court,

ORDERED that the Motion to Disqualify the Commission's Prosecutor be, and it was OVERRULED. The Commission found that there was no basis in fact or law requiring Mr. Mando's disqualification.

FURTHER ORDERED that the Motion to Dismiss Count VII and that part of Count VIII alleging improper ex parte communication be, and it was GRANTED.

FURTHER ORDERED that the Motion to Dismiss the remaining counts be, and they were OVERRULED.

FURTHER ORDERED that the Motion to Close the Courtroom or Otherwise Exclude the Public from Hearing Certain Evidence at the Final Hearing be and it was OVERRULED. The Commission noted that SCR 4.130(2) requires that hearings in formal proceedings be public.


SO ORDERED the 21st day of September, 2015.


Stephen D. Wolnitzek, Chair

Judge Janet Stumbo and Judge Eddy Coleman recused from any consideration of this matter.

CERTIFICATION

I hereby certify that copy hereof was served on Steven D. Combs, Pike Circuit Court Judge, by mailing same to his attorneys, Richard A. Getty and Danielle H. Brown, 1900 Lexington Financial Center, 250 West Main Street, Lexington, KY 40507; Stephen P. Ryan, 7104 Hillcircle Court, Louisville, KY 40214; and on counsel for the Judicial Conduct Commission, Jeffrey C. Mando and Louis D. Kelly, 40 West Pike Street, Covington, KY 41011, this 30th day of September, 2015.


JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

AGREED ORDER OF SUSPENSION

Steven D. Combs ("Judge Combs") is a Circuit Court Judge for Kentucky's 35th Judicial Circuit, consisting of Pike County. On the morning of September 21, 2015, prior to the commencement of the final hearing in this matter, the parties reached an agreement to resolve the matter. Judge Combs has waived formal proceedings and Judge Combs, the Judicial Conduct Commission (the "Commission") and the Commission's Counsel have agreed to entry of this Order.

The Commission received Complaints and other information, conducted a preliminary and subsequent investigations, and ultimately filed a Notice of Formal Proceedings and Charges (the "Original Notice"), an Amended Notice of Formal Proceedings and Charges (the "First Amended Notice") and a Second Amended Notice of Formal Proceedings and Charges (the "Second Amended Notice") (the Original Notice, First Amended Notice and Second Amended Notice referred to collectively as the "Notices") against Judge Combs. Judge Combs timely filed Responses to each of the Notices. The Notices asserted thirteen (13) charges against Judge Combs.

Prior to the scheduled final hearing, Judge Combs filed a Motion to Dismiss Counts I, II, IV, VII, VIII, IX, X, XI, XII and XIII of the Notices. The Commission's Counsel, in Response to the Motion to Dismiss, did not object to dismissal of Count VII and of that portion of Count VIII that alleged Judge Combs had engaged in ex parte communications with attorney

Michael de Bourbon about the case at issue in Count VIII. Having reviewed the Motion and Response, the Commission dismissed Count VII and the portion of Count VIII that alleged Judge Combs engaged in an ex parte communication with Attorney Michael de Bourbon. As part of the agreement reached between Judge Combs and the Commission's Counsel, the Commission also dismissed Count X in its entirety.

On the morning that the final hearing was scheduled to commence, Judge Combs, by counsel, and the Commission's Counsel, reached agreement on a resolution of this matter, as described below. The Commission's Counsel recommended that the Commission accept the agreement reached with Judge Combs, and the Commission, by a vote of 5-1 (with one voting member of the Commission not in agreement as to the length of the suspension to be imposed) approved the agreement, resulting in this Agreed Order of Suspension:

1. Judge Combs will take the following steps regarding the Kentucky Lawyers Assistance Program ("KYLAP"): enroll in the Kentucky Lawyers Assistance Program ("KYLAP") for evaluation and assessment within 30 days of the date of this Order; follow the instructions and procedures recommended by KYLAP; and waive the confidentiality of the KYLAP reports only as to the Commission, so that the Commission can be informed as to any and all results of such evaluation and assessment and as to his progress in following any instructions and procedures recommended for him. Judge Combs' failure to comply with the provisions of this paragraph will constitute a breach of this Agreed Order of Suspension.

2. Judge Combs agrees that he will not retaliate against any witness, complainant or person involved in these proceedings regarding their statements, actions or other conduct prior to the date of this Agreed Order of Suspension, and further agrees that if he does commit any such acts of retaliation as to such prior statements, acts or conduct, it will constitute a breach of this Agreed Order of Suspension.

3. Judge Combs agreed to, and did, make an allocution on the record and in open court on September 21, 2015, as follows:

- a. As to Count I of the Notices, Judge Combs admits that he committed the acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct.
- b. As to Count II of the Notices, Judge Combs admits that he committed the first through fifth and the seventh acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct. As to the sixth act set forth in Count II, Judge Combs does not admit to the act but admits that the Commission has a good faith basis and proof to support Count II related to this act.
- c. As to Count III of the Notices, Judge Combs admits that he committed the first, second and sixth through twelfth acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct. As to the third, fourth and fifth acts set forth in Count III, Judge Combs does not admit the acts but admits that the Commission has a good faith basis and proof to support Count III related to these acts.
- d. As to Count IV of the Notices, Judge Combs admits that he committed the acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct.
- e. As to Count V of the Notices, Judge Combs admits that he committed the acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct.

- f. As to Count VI of the Notices, Judge Combs admits that he committed the acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct.
- g. Judge Combs Motion to Dismiss Count VII of the Notices is sustained, and Count VII is dismissed in its entirety.
- h. Judge Combs Motion to Dismiss that portion of Count VIII of the Notices that alleges Judge Combs engaged in ex parte communications with attorney Michael de Bourbon prior to the hearing that is at issue in Count VIII is sustained, and that portion of Count VIII is dismissed. As to the remainder of Count VIII of the Notices, Judge Combs admits that he committed the acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct.
- i. As to Count IX of the Notices, Judge Combs admits that he committed the acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct.
- j. By agreement of Judge Combs and the Commission's Counsel, and on the recommendation of the Commission's Counsel, Count X of the Notices is dismissed in its entirety.
- k. As to Count XI of the Notices, Judge Combs admits that he committed the first act set forth therein, except as to the last sentence thereof, and that this act constitutes a violation of the Canons of the Kentucky Code of Judicial Conduct. As to the last sentence of the first act set forth in Count XI, Judge Combs does not admit this act but admits that the Commission has a good faith basis and proof to support Count XI related to this act. As

to the second act set forth in Count XI, Judge Combs admits that he committed the act set forth therein and that this act constitutes a violation of the Canons of the Kentucky Code of Judicial Conduct.

l. As to Count XII of the Notices, Judge Combs admits that he committed the acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct.

m. As to Count XIII of the Notices, Judge Combs does not admit the acts but admits that the Commission has a good faith basis and proof to support Count XIII.

Therefore, in light of the foregoing, Judge Combs is hereby suspended from his duties as Pike Circuit Court Judge, without pay, for a period of one hundred eighty (180) days, beginning October 1, 2015 and ending March 29, 2016.

Judge Laurance B. VanMeter, Judge Jeffrey M. Watson, Judge David P. Bowles, Mr. Stephen D. Wolnitzek, Ms. Joyce King Jennings and Ms. Diane Logsdon, sitting. Judge Janet Stumbo and Judge Eddy Coleman recused from any consideration of this matter.

Date: October 1, 2015

Stephen D. Wolnitzek
Stephen D. Wolnitzek, Chair

Agreed to: Richard A. Getty
Richard A. Getty, Co-Counsel for Judge Combs

Stephen Ryan
Stephen Ryan, Co-Counsel for Judge Combs

Steven D. Combs
Steven D. Combs, Judge

Jeffrey C. Mando
Jeffrey C. Mando, Counsel for the Commission

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

NOTICE OF FORMAL PROCEEDINGS AND CHARGES

Notice is hereby given of the initiation of formal proceedings under Rule 4.180 of Rules of the Supreme Court. At the times set out in this Notice, you were Circuit Court Judge for Kentucky's 35th Judicial Circuit located in Pike County. The Charges are as follows:

COUNT I

From April 25, 2011, until September 3, 2014, you presided over Pike Circuit Court Case No. 11-CI-00567 styled *Danny Potter v. Blue Flame Energy Corporation, et al.* despite the fact that you had an oil and gas lease agreement with EQT Production Company, which was a defendant in the case. Additionally, while presiding over the case you made direct contact with EQT officials on the following occasions:

- On April 1, 2014 you contacted the EQT's corporate office and spoke with Division Order Analyst, Thomas Gagliardino. You accused Gagliardino of perpetrating a fraud relative to royalties you were owed by EQT. You demanded payment of embezzlement funds recovered by EQT from a former employer. You accused EQT of violating the lease agreement and threatened to lock them out of your property. All of these statements and accusations were made in a belligerent and hostile manner.
- On or about the spring of 2014, you contacted Chris Grim, EQT's Assistant Superintendent of Production to demand that EQT place gravel on your property despite the fact that EQT was under no contractual obligation to do so. After the work was performed, you nevertheless prevented EQT employees from entering your property and advised EQT to send additional gravel to your property.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Furthermore, your actions violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 3B(8)** which requires a judge to dispose of a matter promptly, efficiently, and fairly.
- **Canon 3E(1)** which requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.
- **Canon 4A(1)** which requires judges to conduct their extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge.
- **Canon 4A(2)** which requires a judge to conduct their extra-judicial activities so that they do not demean the judicial office.
- **Canon 4A(3)** which requires a judge to conduct their extra-judicial activities so that they do not interfere with the proper performance of judicial duties.

COUNT II

During your tenure as Circuit Judge, you made numerous inappropriate telephone calls to the City of Pikeville Police Department including:

- On November 7, 2013, you called looking for Chief Phillip Reed. When told that Chief Reed was at the airport and not available you responded, "That's a good waste of time. My mother's house got broken in last Friday. It's now Wednesday, and you all have not reported back to me yet. I do not appreciate it." When the call was transferred to Officer Addison Baisden, you chastised him for not reporting back to you and criticized the Police Department for an arrest made at a concert. You then told Officer Baisden, "Tell Phillip (Reed) to call me if he's not too damn busy playing airport tomorrow."

- On December 11, 2014, you engaged in a verbal confrontation with Officer Aaron Thompson about people parking in the private parking lot of the church you attend. During this call, you criticized the Pikeville City Attorney and demanded that the Police Department cite individuals who parked in the parking lot for criminal trespass.
- On December 12, 2014, you spoke with Officer Dave Adkins to again complain about individuals parking in the private parking lot of the church you attend. You stated that it was your duty as a judge to call and report criminal trespass.
- On December 16, 2014, you spoke with Chief Reed regarding Pike District Court Case No. 14-M-02239 styled *Commonwealth v. Johndra Coleman*. During the call, you criticized the arresting officers' actions in arresting the Defendant for public intoxication and accused them of making an unlawful arrest. You further alleged that the Police Department had made unlawful arrests in the past. You again complained that the Police Department was not arresting people for parking in the church parking lot and complained about Officer Thompson's reaction to your December 11, 2014 call.
- On December 22, 2014, you again spoke with Chief Reed complaining that he had not followed up with you on the Johndra Coleman case. You again criticized the arresting officers' actions and claimed that it was an unlawful arrest. You informed Chief Reed that you would contact the Commonwealth Attorney to indict any officer who you felt made an unlawful arrest. You threatened to contact the ACLU and encourage them to file civil lawsuits against the Police Department. You claimed that the Police Department had inadequate training because they did not obtain breathalyzer test results for public intoxication charges. You stated to Chief Reed, "If you think you can arrest somebody for drinking on their private property, come on down here and try it with me." You accused the Police Department of engaging in excessive force in a previous case and said you did not trust the Police Department. You indicated that you were going to subpoena Pikeville Police Officers for hearings they were otherwise not required to attend because you did not trust their decision-making. You alleged that the Exposition Center could not sell tickets to concerts because of false arrests made by the Police Department. You accused the Police Department of arresting a City Commission candidate for political purposes. You also indicated that the members of your church contacted you to address the issue of parking in their lot and that is what prompted your calls to the Police Department.
- On December 30, 2014, you contacted Captain Chris Edmonds demanding an investigation on automated calls you received regarding drinking and driving during the holidays. You then said that the next officer who pulled you over would get a "bullet in the head." When confronted with this statement you

replied, "I'm elected by the people and not pieces of trash like you all." You then referred to the Police Department as a "bunch of thieves."

- On numerous occasions, you contacted Captain Edmonds and demanded that a Police Officer be terminated for being involved in an accident with his daughter in the back seat of a squad car. You also called Captain Edmonds to complain about Officer Steve Adkins, referring to him as a "liar."

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office.

Furthermore, your actions violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the Judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 3B(4)** which requires judges to be dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.
- **Canon 4A(1)** which requires judges to conduct their extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge.
- **Canon 4A(2)** which requires a judge to conduct their extra-judicial activities so that they do not demean the judicial office.
- **Canon 4A(3)** which requires a judge to conduct their extra-judicial activities so that they do not interfere with the proper performance of judicial duties.

COUNT III

During your tenure as Circuit Judge, you engaged in multiple instances of inappropriate interactions with elected officials and employees of the City of Pikeville including:

- You have made numerous harassing and contentious phone calls to City of Pikeville employees including, but not limited to, the City Manager and City Clerk.
- You have made numerous harassing and contentious phone calls to City of Pikeville elected officials.
- You referred to Pikeville City Commissioner Jerry Keith Coleman as “coke-head.”
- You referred to Pikeville Mayor Jimmy Carter as “fish face.”
- You referred to City Manager Donovan Blackburn as “Dumbo.”
- On August 28, 2008, you sent an open records request to the City of Pikeville on your official judicial letterhead regarding the use of a public athletic field, a matter unrelated to your judicial duties.
- On April 21, 2009, you sent an open records request to the City Manager asking for ordinances relating to the City’s supervision of the Pikeville Police Department.
- On March 4, 2011, you wrote a letter to the Pikeville City Manager on your official judicial letterhead regarding a personal matter unrelated to your judicial duties, accusing the Pikeville City Manager of libel and threatening prosecution against individuals who inspected property in Pikeville, Kentucky.
- You wrote multiple letters on your official judicial stationary to the Pikeville City Manager regarding personal matters unrelated to your judicial duties.
- On April 16, 2012, you threatened to take legal action against City employees for enforcing a local ordinance that resulted in a fine levied against your mother-in-law. You also indicated that you would rule against the City in any actions to enforce the ordinance brought before you in Pike Circuit Court. The City Administrator ultimately waived the fine.
- On October 15, 2012, you called the City Clerk and accused City employees of pulling up political signs for candidates opposing incumbent City Commissioners. You then threatened to file a complaint against a city employee.
- On November 8, 2012, you made multiple calls to the Pikeville City Clerk complaining of a sewer issue. During these calls, you threatened to contact the U.S. Attorney’s office to file a formal complaint.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions furthermore violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 4A(1)** which requires judges to conduct their extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge.
- **Canon 4A(2)** which requires a judge to conduct their extra-judicial activities so that they do not demean the judicial office.
- **Canon 4A(3)** which requires a judge to conduct their extra-judicial activities so that they do not interfere with the proper performance of judicial duties.

COUNT IV

During your tenure as Circuit Judge, you made numerous inappropriate communications with Pike TV Channel Manager Albert Greenfield, including:

- In the spring of 2011 or 2012 you contacted Greenfield to complain about a program featuring various elected officials speaking about coal severance funds. During the call you claimed the program was politically motivated and would violate the station's license. You also said you would ensure the program was pulled from the airwaves.
- On or about June 2013, you contacted Greenfield demanding that a program featuring Pikeville City Commissioner Barry Chaney be pulled from the airwaves claiming that the program broke the law and was politically motivated.
- On June 11, 2013, you called Greenfield to complain that the program featuring Commissioner Chaney was still airing. When Greenfield refused to remove the program, you threatened to go to the Internal Revenue Service for the purpose of revoking the Pike TV's license to broadcast.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions furthermore violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 4A(1)** which requires judges to conduct their extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge.
- **Canon 4A(2)** which requires a judge to conduct their extra-judicial activities so that they do not demean the judicial office.
- **Canon 4A(3)** which requires a judge to conduct their extra-judicial activities so that they do not interfere with the proper performance of judicial duties.

COUNT V

During your tenure as Circuit Judge, you made numerous inappropriate phone calls to Pikeville Attorney Ray Jones who regularly practices before you in Pike Circuit Court. During these calls, you left voice messages in which you referred to Jones as a "coward" and "prick." You then demanded that Jones return your call.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions also violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.

- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 3B(4)** which requires judges to be dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.

COUNT VI

During your tenure as Circuit Judge, you engaged in inappropriate political activity including:

- In 2010, you contacted the City of Pikeville City Manager Donovan Blackburn and accused him of supporting Darryl Pugh, a candidate for County Magistrate. When Blackburn denied the accusation, you called him a liar.
- On or about April 2014, you contacted Pikeville Police Chief Phillip Reed and requested a permit for Mayoral candidate TJ Litafik to operate a golf cart during the Hillbilly Days festival.
- On or about October 2014, you contacted Attorney Ray Jones and chastised him for having a political sign in his front yard in support of Mayoral candidate Jimmy Carter.
- On or about November 2014 you contacted Greg May, owner of the Utility Management Group, and chastised him for assisting Mayoral candidate Jimmy Carter and an incumbent City Commission candidate in filming a television commercial.
- Prior to the 2014 General Election, you contacted Sheriff-elect Rodney Scott and asked him to attend a political fundraiser for a Mayoral candidate TJ Litafik.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions also violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.

- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 4A(1)** which, requires judges to conduct their extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge.
- **Canon 4A(2)** which requires a judge to conduct their extra-judicial activities so that they do not demean the judicial office.
- **Canon 5A(1)(c)** which prohibits a judge from publicly endorsing or opposing a candidate for public office.

COUNT VII

During your tenure as Circuit Judge, you made numerous inappropriate statements on Topix including:

- On December 27, 2014, you commented on a post entitled "New Judge Mayor" under the username "LOL" in which you said: "Fishface will do whatever a certain commissioner tells him to do."
- On January 14, 2015, you commented on a post entitled "JK Coleman Is Stupid" under the username "Better Call Wusty" in which you said: "Better watch our little babies will get mad. How much paper have the City Crybabies wasted at City Hall printing threads off Topix so they can cry about it to each other and so Little Donovan can plead with Attorney General Wusty to do something to stop this shamefulness toward the Great City Commission and Anointed Town Puppets?!?"
- On January 15, 2015, you commented on a post entitled "City Puppets Beware" under the username "Imma Tellin you" in which you said: "Dumbo Donovan, Ratfink Rusty, Fishface Jimmy, Jerry Keith the Stupid Bartender and Retarded Reed the Little Police Chief..."
- On January 16, 2015, you commented on a post entitled "City Puppets Beware" under the username "City Hall Patrol" in which you said: "The Puppets had best beware and not do things most little town councils would not dare."

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions also violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 4A(1)** which requires judges to conduct their extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge.
- **Canon 4A(2)** which requires a judge to conduct their extra-judicial activities so that they do not demean the judicial office.

COUNT VIII

On April 4, 2012, you presided over a status hearing in Pike Circuit Court, Case No. 11-CI-01455 styled *Nicole Hall v. Unknown Defendants* more than two months after the case was voluntarily dismissed. During the hearing you questioned Attorney Kevin Keene as to his motivations behind bringing the lawsuit. You then accused Keene of engaging in unethical behavior by issuing improper subpoenas. You also engaged in ex-parte communications with Michael DeBourbon, an attorney involved in the case prior to the hearing.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions also violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 3B(2)** which prohibits judges from being swayed by partisan interests.
- **Canon 3B(4)** which requires judges to be dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.
- **Canon 3B(7)** which prohibits a judge from engaging or considering ex-parte communications.
- **Canon 3B(8)** which requires a judge to dispose of a matter promptly, efficiently, and fairly.

COUNT IX

On or about November 2014, you presided over Pike Circuit Court Case No. 14-CI-01224 styled *Joshua Huffman, et al. v. Lillian Pearl Elliott, et al.* which involved a challenge to the outcome of the 2014 general election for City Commission. Despite expressing an interest in the outcome of the City Commission race and criticizing incumbent candidates on multiple occasions, you entered a Final Judgment and Permanent Injunction disqualifying a candidate for City Commission and naming another candidate as the successful candidate.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions also violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.

- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 3B(2)** which prohibits judges from being swayed by partisan interests.
- **Canon 3E(1)** which requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.
- **Canon 3B(8)** which requires a judge to dispose of a matter promptly, efficiently, and fairly.

COUNT X

During your tenure as Circuit Judge, you solicited financial contributions from Attorneys Ray Jones, Gary Johnson, Billy Johnson, and other attorneys who regularly appear before you in Pike Circuit Court for the local high school golf team.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions also violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.

JURISDICTION

The jurisdiction of the Judicial Conduct Commission in this matter is under SCR 4.020(1)(b)(i) and (v), and (1)(c) which read, in pertinent part, as follows:

- (1) Commission shall have authority:
 - (b) To impose the sanctions separately or collectively of (1) admonition, private reprimand, public reprimand or

censure; (2) suspension without pay or removal or retirement from judicial office, upon any judge of the Court of Justice or lawyer while a candidate for judicial office, who after notice and hearing the Commission finds guilty of any one or more of the following:

- (i) Misconduct in office.
- (v) Violation of the code of Judicial Conduct, Rule 4.300.
- (c) After notice and hearing to remove a judge whom it finds to lack the constitutional statutory qualifications for the judgeship in question.

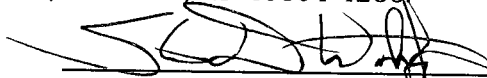
For your information, the Commission calls your attention to the following Supreme Court Rule:

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.

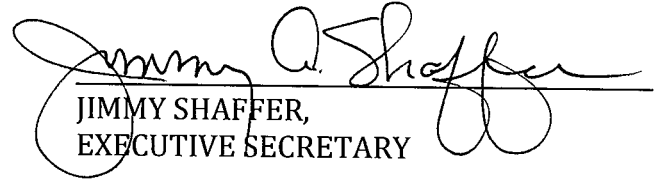
Please mail your Answer to: Ms. Jimmy Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, KY 40604-4266.

April 27, 2015


STEPHEN D. WOLNITZEK, CHAIRMAN
KENTUCKY JUDICIAL CONDUCT COMMISSION

Judge Janet Stumbo and Judge Eddy Coleman recused themselves from any consideration of this matter.

I hereby certify that copy hereof was served on Steven D. Combs, Pike Circuit Court Judge, by mailing same to his attorney, Hon. Kent Wicker, 321 West Main Street, Suite 2100, Louisville, KY 40202 this 27th day of April, 2015.


JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

AMENDED NOTICE OF FORMAL PROCEEDINGS AND CHARGES

Notice is hereby given of the initiation of formal proceedings under Rule 4.180 of Rules of the Supreme Court. At the times set out in this Notice, you were Circuit Court Judge for Kentucky's 35th Judicial Circuit located in Pike County. The charges in the Notice of Formal Proceedings and Charges filed on April 27, 2015 (hereinafter referred to as the "Original Notice"), are adopted by reference in this Amended Notice. The Charges are as follows:

COUNTS I - X

The charges in Counts I – X in the Original Notice are adopted by reference as Count I of this notice.

COUNT XI

During your tenure as Circuit Judge, you made numerous inappropriate communications with employees of the Appalachia News Express, including:

- On or about August 20, 2013, you contacted Appalachia News Express Publisher, Jeff Vanderbeck, to complain about an article published under the headline, "Felony assault charge against teenager dismissed by grand jury." During your conversation you used profanities and called Mr. Vanderbeck derogatory names. You also threatened Mr. Vanderbeck stating, "I'm going to come to your house and shoot you and run your family out of town."
- In the fall of 2013, you contacted sports editor, Randy White, to complain that your son was not receiving enough coverage in the sports section. During this conversation you raised your voice and used profanities.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions furthermore violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 4A(1)** which requires judges to conduct their extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge.
- **Canon 4A(2)** which requires a judge to conduct their extra-judicial activities so that they do not demean the judicial office.
- **Canon 4A(3)** which requires a judge to conduct their extra-judicial activities so that they do not interfere with the proper performance of judicial duties.

JURISDICTION

The jurisdiction of the Judicial Conduct Commission in this matter is under SCR 4.020(1)(b)(i) and (v), and (1)(c) which read, in pertinent part, as follows:

- (1) Commission shall have authority:
 - (b) To impose the sanctions separately or collectively of (1) admonition, private reprimand, public reprimand or censure; (2) suspension without pay or removal or retirement from judicial office, upon any judge of the Court of Justice or lawyer while a candidate for judicial office, who after notice and hearing the Commission finds guilty of any one or more of the following:
 - (i) Misconduct in office.
 - (v) Violation of the code of Judicial Conduct, Rule 4.300.

- (c) After notice and hearing to remove a judge whom it finds to lack the constitutional statutory qualifications for the judgeship in question.

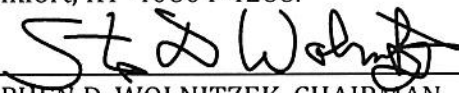
For your information, the Commission calls your attention to the following Supreme Court Rule:

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 Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, KY 40604-4266.

June 2nd, 2015


STEPHEN D. WOLNITZEK, CHAIRMAN
KENTUCKY JUDICIAL CONDUCT COMMISSION

Judge Janet Stumbo and Judge Eddy Coleman recused themselves from any consideration of this matter.

I hereby certify that copy hereof was served on Steven D. Combs, Pike Circuit Court Judge, by mailing same to his attorneys, Hon. Kent Wicker, 321 West Main Street, Suite 2100, Louisville, KY 40202; Stephen P. Ryan, 7104 Hillcircle Court, Louisville, KY 40214 this 2nd day of June, 2015.


JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

SECOND AMENDED NOTICE OF FORMAL PROCEEDINGS AND CHARGES

Notice is hereby given of the initiation of formal proceedings under Rule 4.180 of Rules of the Supreme Court. At the times set out in this Notice, you were Circuit Court Judge for Kentucky's 35th Judicial Circuit located in Pike County. The charges in the Notice of Formal Proceedings and Charges filed on April 27, 2015 (hereinafter referred to as the "Original Notice") and the Amended Notice of Formal Proceedings and Charges (hereinafter referred to as the "First Amended Notice") are adopted by reference in this Second Amended Notice. The Charges are as follows:

COUNTS I - XI

The charges in Counts I – X in the Original Notice and Count XI in the First Amended Notice is adopted by reference as Counts I – XI of this notice.

COUNT XII

During your tenure as Circuit Judge, you presided over the following cases in which EQT Production Company, or one of its subsidiaries, was a party to the action despite the fact that you had a financial relationship with EQT Production Company and without disclosing such relationship on the record:

- 09-CI-431, Fleming, et al. v. Equitable Production Co.;
- 09-CI-660, Justice, et al. v. EQT Production Co.;
- 09-CI-1179, Johnson, et al. v. EQT Production Co.;
- 10-CI-116, Edmiston et al. v. EQT Production Company;
- 10-CI-722, May, et al. v. EQT Production Co.;
- 10-CI-926, Pilgrim Energy, Inc. v. EQT Production Co.;

- 10-CI-1840, Roberts, et al. v. EQT Production Co.;
- 11-CI-352, Hopkins, et al. v. Childers, et al.
- 11-CI-546, Potter, et al. v. EQT Production Co.;
- 11-CI-567, Potter v. Blue Flame Energy;
- 11-CI-615, Johnson v. EQT Production Co.;
- 11-CI-899, Coleman v. EQT Production Co.;
- 11-CI-939, EQT Production Co. v. Johnson;
- 11-CI-1161, Wright v. EQT Production Co.;
- 11-CI-624, Stalnaker v. EQT Production Co.;
- 13-CI-680, Williamson, et al v. EQT Gathering, LLC;
- 13-CI-1258, EQT Gathering, LLC v. Robinson

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions furthermore violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- **Canon 2D** which prohibits judges from lending the prestige of judicial office to advance private interests of the judge or others.
- **Canon 3B(8)** which requires a judge to dispose of a matter promptly, efficiently, and fairly.
- **Canon 3E(1)** which requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.

COUNT XIII

During a temporary suspension hearing held before the Commission on June 16, 2015, you testified under oath that you had disclosed, on the record, your financial relationship with EQT Production Company in all cases which you presided as judge. A review of all pleadings and recorded hearings in the cases identified in Count XII failed to identify any disclosures of your relationship with EQT Production Company on the record.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions furthermore violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

- **Canon 1** which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.
- **Canon 2A** which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

JURISDICTION

The jurisdiction of the Judicial Conduct Commission in this matter is under SCR 4.020(1)(b)(i) and (v), and (1)(c) which read, in pertinent part, as follows:

- (1) Commission shall have authority:
 - (b) To impose the sanctions separately or collectively of (1) admonition, private reprimand, public reprimand or censure; (2) suspension without pay or removal or retirement from judicial office, upon any judge of the Court of Justice or lawyer while a candidate for judicial office, who after notice and hearing the Commission finds guilty of any one or more of the following:
 - (i) Misconduct in office.
 - (v) Violation of the code of Judicial Conduct, Rule 4.300.
 - (c) After notice and hearing to remove a judge whom it finds to lack the constitutional statutory qualifications for the judgeship in question.

For your information, the Commission calls 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 Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, KY 40604-4266.

August 7, 2015


STEPHEN D. WOLNITZEK, CHAIRMAN
KENTUCKY JUDICIAL CONDUCT COMMISSION

Judge Janet Stumbo and Judge Eddy Coleman recused themselves from any consideration of this matter.

I hereby certify that copy hereof was served on Steven D. Combs, Pike Circuit Court Judge, by mailing same to his attorneys, Richard A. Getty and Danielle H. Brown, 1900 Lexington Financial Center, 250 West Main Street, Lexington, KY 40507; and Stephen P. Ryan, 7104 Hillcircle Court, Louisville, KY 40214 this 7th day of August, 2015.


JIMMY SHAFFER
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

**MOTION UNDER SEAL OF THE RESPONDENT,
STEVEN D. COMBS, CIRCUIT COURT JUDGE,
35TH JUDICIAL CIRCUIT, FOR DECLARATIONS
AS TO KYLAP-MANDATED ABSTINENCE AND TESTING**

* * * * *

The Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit (“Judge Combs”), by counsel, respectfully moves this Commission to enter an Order declaring that certain portions of the Kentucky Lawyer Assistance Program Confidential Recovery Agreement are invalid and should be stricken from that Agreement. The grounds for this Motion are set forth in the Memorandum in Support filed herewith. This Motion and the accompanying Memorandum in Support are filed under seal because they include confidential medical records of Judge Combs which information is not appropriate for inclusion in the public record of this case.

REQUEST FOR HEARING

Judge Combs respectfully requests that the Commission set this Motion for hearing at its May 27, 2016 meeting, at the 11:00 a.m. time slot previously assigned to this matter, or such other, earliest time available prior to the next scheduled meeting of the Commission on July 1, 2016.

Respectfully submitted,



RICHARD A. GETTY

and

DANIELLE H. BROWN

THE GETTY LAW GROUP, PLLC
1900 Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507
Telephone: (859) 259-1900
Facsimile: (859) 259-1909
E-Mail: rgetty@gettylawgroup.com
E-Mail: dbrown@gettylawgroup.com

And

STEPHEN P. RYAN
7104 Hillcircle Court
Louisville, Kentucky 40214
Telephone: (502) 551-1083
E-Mail: stephen_ryan@rocketmail.com

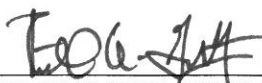
COUNSEL FOR RESPONDENT
HON. STEVEN D. COMBS

CERTIFICATE OF SERVICE

A copy of the foregoing was served on the following by e-mail only on this the 24th day of May, 2016:

Ms. Jimmy Shaffer
Executive Secretary
Judicial Conduct Commission
P.O. Box 4266
Frankfort, Kentucky 40604-4266
jimmyshaffer@kycourts.net

Jeffrey C. Mando, Esq.
and
Louis D. Kelly, Esq.
Adams, Stepner, Woltermann & Dusing,
PLLC
40 W. Pike Street
P.O. Box 861
Covington, Kentucky 41012-861
jmando@aswdlaw.com
lkelly@aswdlaw.com



COUNSEL FOR RESPONDENT

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT

MEMORANDUM IN SUPPORT OF
MOTION UNDER SEAL OF THE RESPONDENT,
STEVEN D. COMBS, CIRCUIT COURT JUDGE,
35TH JUDICIAL CIRCUIT, FOR DECLARATIONS
AS TO KYLAP-MANDATED ABSTINENCE AND TESTING

* * * * *

The Respondent, Steven D. Combs, Circuit Court Judge, 35th Judicial Circuit (“Judge Combs”), by counsel, in support of his Motion Under Seal for Declarations as to KYLAP-Mandated Abstinance and Testing (the “Motion for Declarations”), respectfully states as follows:

PROCEDURAL AND FACTUAL BACKGROUND

1. The Suspension Order.

As the Commission is well aware, on or about October 1, 2015, Judge Combs entered into an Agreed Order of Suspension (the “Suspension Order”), the terms of which were agreed to by the Commission, its prosecutor and Judge Combs prior to the commencement of the final hearing in this matter on September 21, 2015. Among the provisions of the Suspension Order was that Judge Combs would enroll in KYLAP and follow its instructions and recommendations. Judge Combs has now signed an Agreement with KYLAP, described in detail below, but has done so under protest in light of the overreaching and unnecessarily restrictive requirements set forth therein. KYLAP, acting through its director, Yvette Hourigan, has taken the position that Judge Combs has a substance abuse problem and has imposed harsh requirements that reflect that position, despite the fact that three different professionals have found to the contrary. It is for this reason that Judge Combs seeks the input and assistance of the Commission.

2. The Dalton Report.

Prior to the Suspension Order, and indeed very early in the Commission's proceedings, starting on or about June 3, 2015 and in additional sessions thereafter, Judge Combs participated in an assessment by a KYLAP-recommended counselor, Paul D. Dalton, MS, LPCC, CADAC, whose records¹ are attached as Exhibit A.² Mr. Dalton's report included the following findings:

The decision rules classify [Judge Combs] as having a low probability of having a moderate to severe substance use disorder.

Dalton Report, at Dalton 003 (emphasis added).

The profile does not contain sufficient evidence to warrant classifying the client as likely to have a moderate to severe substance use disorder. In addition, this client's scores do not meet the guidelines for mild substance use disorder. However, if there is external evidence of substance misuse, it is recommended that the client be referred to a substance use education program. Since psychoactive substance use is difficult to rule out entirely, ongoing assessment is indicated if the client continues to present with problems related to substance usage.

Id. at Dalton 004 (emphasis added).

These two excerpts from Judge Combs' profile results demonstrate little to no indication of even a mild substance abuse disorder, and recommend a substance use education program or ongoing assessment if problems continue to present. Mr. Dalton acknowledges the importance of further assessment "by a qualified provider skilled in substance abuse issues..." See Exhibit A, at Dalton 0026. Upon receipt of this report, Judge Combs spoke with Ms. Hourigan, who verbally advised that Judge Combs should follow Mr. Dalton's recommendations and that Judge Combs was in full compliance with KYLAP's expectations of him.

¹ In order to preserve the confidentiality of Judge Combs' medical records and information, the Motion for Declarations and Memorandum in Support, including all exhibits, are filed with the Commission under seal.

² The Dalton Report and the Whitsett Report and Whitsett deposition, discussed below, were provided to the Commission's prosecutor well in advance of the scheduled commencement of the final hearing in this matter on September 21, 2015. Nothing in those reports is new, but they are of utmost importance to this matter.

3. The Whitsett Report.

Judge Combs subsequently did precisely what Mr. Dalton suggested – he located and presented himself for a twenty-four hour “Alcohol Use Evaluation” at The Ridge Addiction Recovery Center in Milford, Ohio on or about July 17-18, 2015. Dr. Marc Whitsett, a “qualified provider skilled in substance abuse issues” (as specifically recommended by Mr. Dalton), found the following, as memorialized in his July 22, 2015 report, attached as Exhibit B:

On admission to The Ridge Judge Combs underwent a full Bio-Psycho-Social assessment which failed to identify a Substance Use Disorder.

Whitsett Report, p. 3 (emphasis added).

There is insufficient objective evidence to establish an alcohol use disorder based on available records and provided information. Reviewing his biopsychological history, substance use history, clinical assessment and examination there is insufficient evidence to support an alcohol use disorder. Judge Combs has a history of average frequency and volume of alcohol use with an isolated legal consequence in 2005 without a pattern of alcohol obsession, alcohol use escalation, tolerance, withdrawal history prior failed attempts to quit, medical consequences, documented occupational impairment, or social or family issues/altercations due to drinking.

Id. at p. 4 (emphasis added).

Indeed, Dr. Whitsett confirmed in his deposition that making a diagnosis of alcohol use disorder would have constituted malpractice:

A. Well, I concluded with him that – the following day, I believe, I spoke to him and his wife. And I – I told them that I was unable to establish a diagnosis of alcohol use disorder and, therefore, I didn't make any recommendation for formal treatment.

...

Q. Okay. And based upon the test results and your personal eval – medical evaluation, you made a determination it was medically unnecessary to make that diagnosis?

A. Correct, yes.

Q. I mean, in fact, if you had made that diagnosis given what you had, would that be malpractice?

A. That would be considered unacceptable. It would be considered malpractice because I'd be recommending a treatment for a medical diagnosis that didn't exist.

See Whitsett Deposition, attached as Exhibit C, at pp. 18-19.

As such, Dr. Whitsett did not recommend to Judge Combs that he undergo treatment:

There is no formal recommendation for treatment of a substance/alcohol use disorder. I have no further recommendations for treatment. We have reviewed and encouraged responsible alcohol use. There is no requirement for total alcohol abstinence other than when utilizing prescription sedative use, in this case diazepam, as simultaneous use with both alcohol and diazepam is medically contraindicated.

Id. (emphasis added).³

Tests conducted by or at the direction of Mr. Dalton, the KYLAP-recommended counselor, indicated low to no risk of a substance abuse problem. Despite these test results, Mr. Dalton nevertheless also carefully recommended assessment by a more qualified provider. That more qualified provider, Dr. Whitsett, found no indication of an alcohol disorder and no basis for ongoing treatment. However, on his own initiative Judge Combs has ongoing, weekly sessions with Lovonne Fleming-Richardson, LPCC, CADC, NCC, RPT, M.Ed., a Kentucky Certified Alcohol Drug counselor, and will also see her for eight professional coaching sessions as required by Ms. Hourigan and KYLAP.

4. The Clarity Assessment.

Despite these thorough assessments, KYLAP, acting through Ms. Hourigan, nevertheless insisted that Judge Combs be evaluated again and at his sole expense – at a cost of over \$8,000. To that end, Judge Combs presented himself at Clarity, in Nashville, Tennessee, in February 2016 for an extensive, intensive three-day evaluation and screening –physical, medical and psychological testing of Judge Combs. Not surprisingly, the findings of Dr. Walker at Clarity

³ As evidenced in Paragraph 2 of the KYLAP Agreement, described below, Judge Combs no longer takes diazepam.

were in line with those of Mr. Dalton and Dr. Whitsett. Dr. Walker found “insufficient indication of substance use disorder.” See Clarity Report, attached as Exhibit D, p. 14. The Clarity Report also concluded that Judge Combs is fully fit for duty as an attorney and a judge, and that “[c]ognitively and emotionally, we believe that Judge Combs is well suited for his position.” Id., p. 15. In a subsequent letter, Dr. Walker again emphasized that Judge Combs does not have an alcohol or drug use disorder:

It is our considered opinion that there is insufficient evidence to conclude that you have a significant alcohol use disorder. We performed a thorough assessment, including evaluation by addictionologist, extensive medical testing, record review, and interviews by multiple mental health professionals. We did not detect the presence of an alcohol use disorder on your part.

See April 7, 2016 Walker letter, attached as Exhibit E.

5. The Agreed Order And Judge Combs’ Cooperation With KYLAP.

The Commission is of course aware that on the day the final hearing of this matter was scheduled to commence, September 21, 2015, the parties reached an agreement that ultimately resulted in the entry of the Agreed Order of Suspension. Among the provisions of that Agreed Order was the following:

Judge Combs will take the following steps regarding the Kentucky Lawyers Assistance Program (“KYLAP”): enroll in the Kentucky Lawyers Assistance Program (“KYLAP”) for evaluation and assessment within 30 days of the date of this Order; follow the instructions and procedures recommended by KYLAP; and waive the confidentiality of the KYLAP reports only as to the Commission, so that the Commission can be informed as to any and all results of such evaluation and assessment and as to his progress in following any instructions and procedures recommended for him. Judge Combs’ failure to comply with the provisions of this paragraph will constitute a breach of this Agreed Order of Suspension.

Agreed Order of Suspension, p. 2.

As acknowledged by Ms. Hourigan in correspondence to Judge Combs and to this Commission, Judge Combs has complied with this provision. He timely enrolled in KYLAP, has met with Ms. Hourigan (although he has never been offered the opportunity to meet with anyone else involved

in the operation and administration of KYLAP, Ms. Hourigan having apparently made this her own private project) and, at significant personal cost, participated in the Clarity assessment as required by Ms. Hourigan.

Ultimately, KYLAP, through Ms. Hourigan, insisted that Judge Combs enter into a “Confidential Recovery Agreement” (the “KYLAP Agreement”), presumably based on Ms. Hourigan’s belief that a person enrolled in KYLAP is a person who requires recovery. For the Commission’s convenience, a copy of the KYLAP Agreement as executed by Judge Combs and previously provided is attached as Exhibit F. It is this KYLAP Agreement, and Ms. Hourigan’s refusal to give any credence to the opinions of the professionals described above (including her two hand-picked evaluators, Mr. Dalton and Clarity), that brings Judge Combs back before this Commission seeking its guidance and input.

6. The KYLAP Agreement.

In order to report to the Commission that Judge Combs is in full compliance with the Agreed Order of Suspension, Ms. Hourigan insisted that Judge Combs enter into the KYLAP Agreement. Admittedly, Ms. Hourigan did agree to certain modifications to the KYLAP Agreement she originally provided to Judge Combs. However, the KYLAP Agreement as executed by Judge Combs (under protest) nevertheless imposes requirements on Judge Combs that are arbitrary, capricious, contrary to his civil rights and completely unwarranted in light of the overwhelming agreement of all the professionals who have evaluated Judge Combs.

Specifically, Ms. Hourigan insisted that the KYLAP Agreement⁴ include a complete ban on the consumption of alcohol by Judge Combs and regular testing to ensure his compliance with that ban:

⁴ It is interesting to note that, although the KYLAP Agreement is captioned “Kentucky Lawyer Assistance Program Confidential Recovery Agreement,” it is referred to throughout as a “Supervision Agreement,” begging the question of whether its overall intent is about controlling Judge Combs’ life or improving it.

I agree to remain abstinent from all alcohol and other mind altering drugs except on an occasion when medications are prescribed by an attending physician and when taken in accordance with such prescription.

The term “alcohol” includes alcohol in foods, hygiene products or OTC medications containing alcohol, such as vanilla extract, mouthwash containing alcohol, Nyquil, cough syrups, Communion wine, topical gels and/or medications containing alcohol to be used on skin or mucous membranes, as these items may render a false positive for alcohol on tests. I have also been advised that ingesting poppy seeds may render a false positive for opiates on drug tests. I understand that if I choose to use these items containing alcohol listed above, or ingest poppy seeds, that the use of same cannot be used as a defense to a positive test results (breath, urine, blood or other tests), and will be considered a violation of this Agreement.

...

I agree to submit to and pay for random non-DOT 7-panel + EtG urine alcohol/drug screens. I have requested that test randomization of the non-DOT 7-panel + EtG urine alcohol/drug screens will be generated through a separate agreement with Affinity Online Solutions (AOS), at the drug testing center specified in the request. Failure to present at such site for a random drug screen within the time specified in any request (no more than 24 hours) shall be a violation of this Supervision Agreement. A copy of the drug test results shall be *prima facie* evidence of its validity and content and any chain of custody is waived. ...

KYLAP Agreement, ¶¶2, 5.

In addition, and again at Ms. Hourigan’s insistence, the KYLAP Agreement requires that Judge Combs report to Ms. Hourigan about all of his prescriptions (and, thereby, about all of his medical conditions that required prescriptions), regardless of whether those prescriptions and conditions have any relation to his supposed alcohol abuse issues:

A list of my current medications are as follows: ... If any other medications are prescribed, I agree to immediately inform the Director of the name of the drug prescribed, the name and phone number of the prescribing physician, and the medical illness necessitating the use of the medication. I agree to provide KYLAP with a copy of said prescription(s). I further agree, upon request of the Director, to take any action or execute any documents, authorizations and releases necessary to allow the Director to obtain information directly from any health provider.

KYLAP Agreement, ¶2.

Judge Combs respectfully submits that neither the abstinence and testing requirements in the KYLAP Agreement, nor the requirement that he allow Ms. Hourigan unfettered access to his medical information, are reasonable under the circumstances, and that they are violative of his fundamental civil rights and right of privacy.

ARGUMENT

1. KYLAP, Through Ms. Hourigan, Has Substituted Its Judgment For That Of Three Medical Professionals.

KYLAP seeks to prohibit Judge Combs from having even a single alcoholic beverage for an entire year, to subject him to monthly testing to confirm this mandated abstinence and to have complete access to his personal medical records and prescriptions. Such conditions, which would of course be appropriate where there is evidence of abuse or addiction, are completely unnecessary and unwarranted based on the uncontradicted evidence in this case, including the professional opinions of three separate addiction specialists, that Judge Combs does not have a substance abuse problem. KYLAP, through Ms. Hourigan, has nonetheless insisted that Judge Combs endure treatment and monitoring for an addiction that multiple medical professionals have concluded does not exist. In other words, KYLAP, through Ms. Hourigan, has substituted its own judgment for that of the experts who have examined Judge Combs and determined that he does not have an alcohol abuse problem. KYLAP's decision to demand compliance with wholly unnecessary restrictions and conditions is in violation of Judge Combs' fundamental rights.

“[I]t is a promise of the Constitution that there is a realm of personal liberty which the government may not enter.” Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 847 (1991). The concept of substantive due process acts to protect those “fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and tradition,’ and ‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist

if they were sacrificed.”” Washington v. Glucksberg, 521 U.S. 702, 720-21 (1997) (citations omitted). The government therefore may not infringe upon a fundamental right unless the infringement is narrowly tailored to serve a compelling state interest. Id. at 721.

Here, the conditions imposed by KYLAP upon Judge Combs unquestionably, unreasonably and unwarrantedly intrude upon his personal liberty. KYLAP has forced Judge Combs to pledge to abstain from consuming any alcohol, including cough syrup and Communion wine, for a period of one year. During that time, KYLAP has further required that he submit to periodic testing to confirm his abstinence, and that he grant KYLAP unfettered access to all of his medical records. Incredibly, KYLAP has insisted on Judge Combs’ agreement to these conditions despite having been provided with the opinions of Mr. Dalton, Dr. Whitsett and Dr. Walker, who all agree that Judge Combs does not have a substance abuse problem.

By disregarding these expert opinions, KYLAP has infringed upon Judge Combs’ fundamental rights. The United States Supreme Court has held that the rights to personal control of one’s medical treatment, see Cruzan v. Director, Mo. Dep’t of Health, 497 U.S. 261 (1990), and to bodily integrity, see Rochin v. California, 342 U.S. 165 (1952), are both fundamental rights. Further, the Kentucky Supreme Court has “recognized that private possession and consumption of intoxicating liquor was a liberty interest beyond the reach of the state.” Commonwealth v. Wasson, 842 S.W.2d 487, 495 (1992) (discussing Commonwealth v. Campbell, 117 S.W. 383 (1909)). Taken together, it is clear that KYLAP’s restrictions, while perhaps well-intentioned,⁵ are over-reaching, unnecessary and plainly violate Judge Combs’ fundamental and constitutional rights.

⁵ Frankly, it is equally arguable that Ms. Hourigan is taking a “one size fits all” approach to her assignment from this Commission. Alcohol abuse has been alleged, and therefore Judge Combs must be an alcoholic and must follow the typical KYLAP approach to assisting addicted lawyers – abstinence and testing. In this case, however, the square peg – an individual who the medical professionals agree does not have a problem – simply does not fit in the round hole – the standard KYLAP testing and abstinence program.

2. There Is No Reasonable Relationship Between The Conduct At Issue And The KYLAP Restrictions.

The restrictions imposed by KYLAP are problematic for another reason as well – they bear no reasonable relationship to the conduct to which Judge Combs admitted in the Agreed Order. In the analogous context of criminal sentencing, a court has broad discretion to impose special supervised release conditions, provided that they are reasonably related to the statutory sentencing factors and involve no greater deprivation of liberty than is reasonably necessary. For instance, in United States v. Woodall, 782 F.3d 383 (8th Cir. 2015), the Eighth Circuit Court of Appeals vacated a special condition of Woodall’s supervised release that prohibited him from consuming any alcohol. According to that Court, “if Woodall is not dependent on his use of marijuana and has no history of alcohol influencing him to be a danger to society, the alcohol prohibition would be a greater deprivation of liberty than necessary[.]” Id. at 386. The Supreme Court of Montana reached a similar conclusion in State v. Ashby, 179 P.3d 1164 (Mont. 2008). There, the Court noted that “[i]n imposing conditions of a sentence, a sentencing judge may impose a particular condition of probation so long as the condition has a nexus to either the offense for which the offender is being sentenced, or to the offender himself[.]” Id. at 1167. The Montana Supreme Court concluded that, “[s]imply put, an alcohol and drug prohibition will not assist in rehabilitating Ashby because there is no evidence that he has a drug or alcohol problem.” Id. at 1168.

That reasoning applies with overwhelming force here. In fact, the record is even more clear in this case. It is not simply the absence of evidence of an alcohol problem that makes KYLAP’s conditions unnecessary. Instead, the record contains the unanimous opinions of three separate addiction experts all of whom agree that Judge Combs does not have an alcohol abuse problem. Under these circumstances, KYLAP’s insistence on requiring alcohol abstinence and

random testing for a problem that does not exist bears no reasonable relationship to any legitimate goals.

The record is likewise clear that the restrictions sought by KYLAP result in a significantly greater deprivation of Judge Combs' liberty than necessary. Aside from having no medical basis, KYLAP's recommendations required Judge Combs to agree to and sign up for Affinity Testing/Screening, which he did. Affinity provides the random testing service to confirm KYLAP's mandated term of abstinence. Judge Combs must, pursuant to the terms of the agreement with Affinity, call in to Affinity every day for the next year.⁶ On a presumably random basis, Affinity will then occasionally direct Judge Combs to report for testing within twenty-four (24) hours of such a call. Requiring Judge Combs to call in to Affinity every day is burdensome enough. But, forcing him to appear for testing on less than twenty-four (24) hours' notice is incredibly onerous. It will significantly restrict, if not outright preclude, his ability to enjoy some of his favorite pastimes, including traveling to observe his son play in golf tournaments for Eastern Kentucky University at different locations throughout this region. Such a restriction certainly results in a greater deprivation of liberty than necessary.

CONCLUSION

Judge Combs unquestionably agreed to follow the instructions and procedures recommended by KYLAP – however he did so under protest in Order to protect his rights. Implicit in that agreement is that the KYLAP's recommendations bear some reasonable relationship to the charged conduct. Because such a nexus is absent here, KYLAP's unwarranted requirements of abstinence, testing and access to medical records should be eliminated. Judge Combs therefore respectfully requests that the Commission enter an Order declaring that the referenced provisions of the KYLAP Agreement, requiring abstinence, alcohol testing, that

⁶ Convicted felons typically do not have to report to their probation officers with this kind of frequency.

Judge Combs report to KYLAP regarding medications prescribed for him and that he allow KYLAP unfettered access to his medical records be stricken from the KYLAP Agreement.

Respectfully submitted,



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and

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COUNSEL FOR RESPONDENT

HON. STEVEN D. COMBS

CERTIFICATE OF SERVICE

A copy of the foregoing was served on the following by e-mail only on this the 24th day of May, 2016:

Ms. Jimmy Shaffer
Executive Secretary
Judicial Conduct Commission
P.O. Box 4266
Frankfort, Kentucky 40604-4266
jimmyshaffer@kycourts.net

Jeffrey C. Mando, Esq.
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COUNSEL FOR RESPONDENT

dhbpld1590

EXHIBIT A

Progress Notes: Steven Combs

Monday, June 15, 2015 **CPT: QNote**

Discussed need for pharmacy records regarding diazepam previously requested and the need to view a copy of his judicial complaint which I have not received. Judge combs verbally agreed after some discussion and clarification which I was happy to provide. Expected date is 6/17/15

Monday, June 8, 2015

CPT code: DOTSA

Appointment Time: 9:00 AM through 9:50 AM on 6/8/2015

Notes: DOT SAP EVALUATION. CHARGE FEE. SEE DETAILS UNDER DOCUMENTS.

SASSI-3

Name: Steven Combs	Date: 6/8/2015
Age: 55	Sex: Male
Marital Status: Married	Blood Alcohol Level:
DWI/DUI Arrests: 1	
Total Arrests: 1	Client ID Number: stevencombs
Prior Treatments: Education	Highest Grade Completed: Graduate Degree
Employment Status: Full-Time	Race/Ethnicity: White
Weekly Family Net Income:	Family Members in Household: 2

SASSI-3 Screening Results Overview

Random Responding:	Results Indicate No Evidence of Random Responding
Alcohol and/or Other Drug Problem:	Low Probability of Moderate to Severe Substance Use Disorder
Acting Out:	Results Indicate No Evidence of Risk
Defensiveness:	Results Indicate No Evidence of a Problem
Indication of Emotional Pain:	Results Indicate No Evidence of a Problem

The alcohol and drug frequency responses are based on The Client's Entire Life.

Note: In addition to screening results, supplemental clinical information is required to meet the accepted standards for a DSM-5 clinical diagnosis of a Substance Use Disorder.

SASSI-3

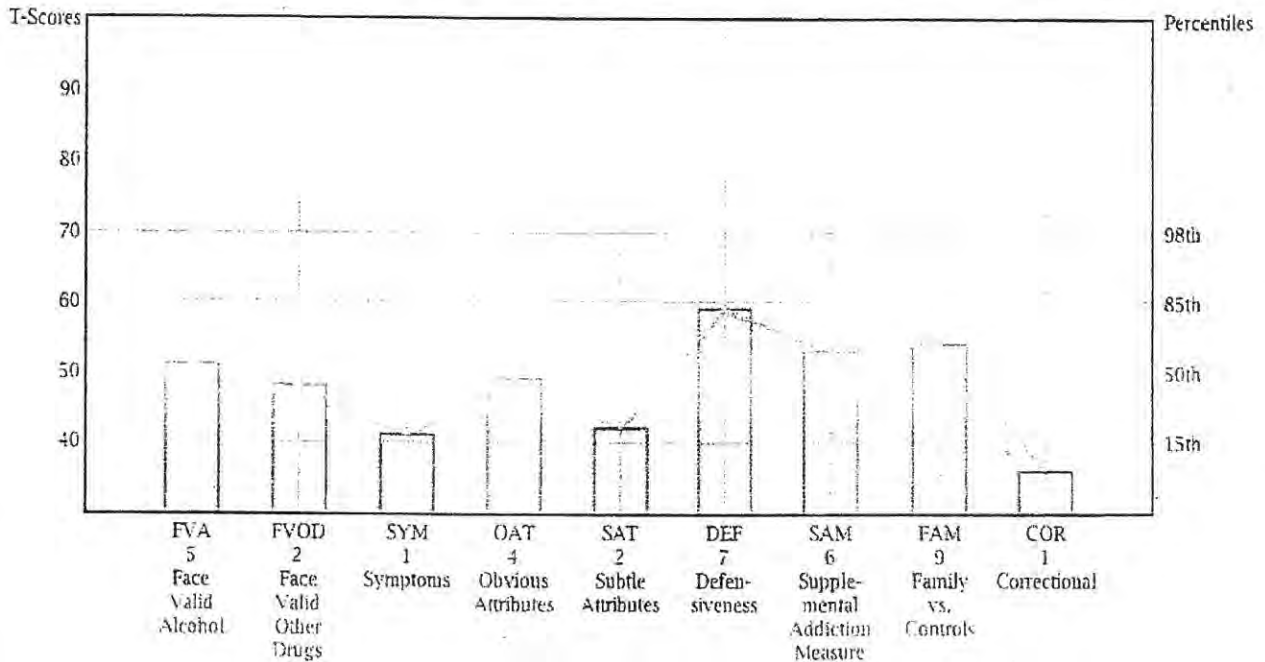
Name: Steven Combs

Sex: Male

Age: 55

Client ID: stevencombs

RAP: 0



SASSI-3 RESULTS FOR THIS CLIENT: The decision rules classify him as having a low probability of having a moderate to severe substance use disorder.

READING THE GRAPH: This client's actual scores are plotted on the graph in relation to a normative sample (i.e., individuals who were not being evaluated or treated for addictions or other clinical problems). For each scale, a T score of 50 on the graph above represents the average score for this normative sample. Any scale score can be compared to the normative sample by referring to the T scores on the left of the graph and the percentiles on the right. Only 15% of this normative population would score lower than a T of 40. Similarly, only 15% would score higher than a T of 60, and only 2% would score higher than a T of 70.

ABOUT THE SASSI-3 SCALES: FVA, FVOD, and SYM are "face valid" scales that are used in the decision rules to identify adults who are likely to have a substance use disorder. They measure acknowledged substance misuse and its consequences. OAT, SAT, DEF, and SAM are "subtle" scales that are part of the decision rules. OAT, SAT, and DEF can also be used to develop hypotheses about clinical issues - ability to acknowledge problematic behavior, insight into personal problems, defensiveness, low self-esteem. RAP is used to identify individuals who may not have responded to the SASSI in a meaningful way. COR and FAM are not part of the decision rules. COR provides an indication of the relative risk for having involvements with the legal/judicial system. FAM can be used to identify individuals who may have a tendency to focus on the needs of other people, while being relatively unable to identify and take care of their own needs. Please refer to the SASSI-3 Online User's Guide for more detailed information on the meaning of each scale and how to interpret report profiles.

SASSI-3

3 of 3

Name: Steven Combs

Sex: Male

Age: 55

Client ID: stevencombs

RAP: 0

LOW PROBABILITY OF MODERATE TO SEVERE SUBSTANCE USE DISORDER

The profile does not contain sufficient evidence to warrant classifying the client as likely to have a moderate to severe substance use disorder. In addition, this client's scores do not meet the guidelines for mild substance use disorder. However, if there is external evidence of substance misuse, it is recommended that the client be referred to a substance use education program. Since psychoactive substance use is difficult to rule out entirely, ongoing assessment is indicated if the client continues to present with problems related to substance usage.

SASSI  online

For a free consultation with a SASSI Clinician
call 1-888-297-2774

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New Client Intake Paperwork

Information is required before any services are rendered

...therapyappointment.com If you do so, you must complete the
Description, Credit Card Form, and Fee Agreement online or in
person.

...all that apply): Client Minor Client Insured Responsible Party Other

Full Name: Steven Daniel Combs

Patient's Date of Birth (mm/dd/yyyy): [REDACTED]

Patient's Social Security Number: [REDACTED]

Patient's Street Address: [REDACTED]

Patient's City, State, & Zip Code: [REDACTED]

Patient's Home Phone Number: [REDACTED]

Patient's Gender: Male Female

Marital Status: Single Married Divorce Pending Divorced

Patient's Employment Status: Full time Unemployed Part time Student

First Date of Symptoms? (mm/dd/yyyy) N/A

Is this related to an accident or worker comp? No Yes Explain:

What Kind of Reminders Would You Prefer? Text Phone Email
Please keep in mind reminders may be intercepted on your phone/email
and we cannot be responsible for that issue.

Patient's Home Phone Number (required for phone reminders unless you use a cell #): [REDACTED]

Patient's Cell Phone Number (required for text/phone reminders): [REDACTED]

Emergency Contact (name and number): [REDACTED]

Secondary Cell Phone Number:

Patient's/Parents Work Number: 606 433-7551

The following information allows you to login at www.therapyappointment.com, schedule and reschedule appointments, and
communicate or receive statements via our secure system. We will not communicate via regular email or text message in
order to keep your information private. You will create a login name and password. Please remember these.

Patient's Current Email Address (required for email reminders): [REDACTED]

Desired Login Name (6 letters/numbers): [REDACTED]

Desired Password (6 letter/numbers): [REDACTED]

Remember, this password and login information allows you to make appointment changes on your own.

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For insurance or an employee assistance visit (the sessions are at no cost to you) please have the proper authorization numbers and or paperwork completed prior to your visit. An EAP or insurance company will not back date their authorizations. **WE DO NOT ACCEPT MEDICARE OR MEDICAID PLANS! WE DO NOT ACCEPT WORKER'S COMP. YOU WILL BE BILLED THE FULL FEE EVEN IF YOU HAVE A SUPPLEMENTAL PLAN. WE DO NOT ACCEPT OR BILL SECONDARY INSURANCE.**
 We will need a copy of your insurance card front and back. Thank you!

Primary Insurance Company:		
Insurance ID Number:		
Insurance Group Number:	Effective Date of Policy:	
Phone Number for Mental Health Benefits:		
Insurance Company Claims Address:		
Co-pay Amount:	Yearly Deductible Amount:	
Deductible met to date:	If deductible is not met see clinician for contract rates.	
EAP Referral? : Yes <input type="checkbox"/> No <input type="checkbox"/>	EAP company name:	
EAP phone number:	EAP authorization Number:	
Prior Authorization Required: Yes <input type="checkbox"/> No <input type="checkbox"/>	Number of Session Authorized:	
Prior Authorization Number:		
Referring Physician (Rarely Needed):		
Referring Physician NPI (Tricare Only):		
Patient's Relationship to Insured:	Self <input type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>	
Insured's Name (If not patient):		Insured's DOB:
Insured's Street Address (if different):		
Insured's City, State, & Zip Code:		
Insured's Phone Number:	Insured's Gender: Male <input type="checkbox"/> Female <input type="checkbox"/>	
Insured's Employer:		
Responsible Party (If not insured or patient):		
Responsible Party's Date of Birth:		Phone Number:
Responsible Party's Address:		
Responsible Party City, State, & Zip:		

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Informed Consent & Permission for Treatment

We respect your legal right to confidentiality and will protect your information with the proper care. All records will be maintained in a confidential manner. Consent forms will be required for the release of any information except in certain situations. State and Federal laws may require the release of information without written or verbal consent in the following specific situations:

1. Medical or Mental Health Emergencies
2. Clients become a danger to themselves (Suicidal thoughts/behaviors/attempts, severe depression, etc.)
3. Clients become a danger to others (Homicidal thoughts/behaviors/attempts) ** The person threatened and the police will be notified.
4. Any report or suspected child abuse or neglect (Physical or sexual).
5. Any report or suspected domestic violence.
6. A court order or subpoena directing the release of information or testimony in a court proceeding.
7. Any litigation initiated by the client related to treatment or complaints.
8. Any abuse of the elderly, with mental illness or who cannot care for themselves properly.

Fees are due at the time of service delivery. Prices may be reduced for shorter time periods. Cash and check are accepted forms of payment. Clients are responsible for payment of delivered services. We will make an attempt to bill your insurance when authorized to do so. Any payments not made by your insurance provider will be your responsibility including, but not limited to: deductibles, co pays, and any other fees not covered by your insurance provider. Assessment fees are not covered by insurance in most cases.

I consent to release any personal or clinical information required to process my claim to my insurance or my EAP provider. I also authorize any payments made by my insurance company or EAP provider to be paid directly to Paul D. Dalton, MS, LPCC, CADC/S.A.P KY PLLC. This form will be considered a signature on file for all future insurance claims. I understand that Paul D. Dalton, MS, LPCC, CADC/ S.A.P KY PLLC is a Professional Limited Liability Company and not the individual Paul D. Dalton.

I understand and agree to the limits of confidentiality as indicated above. I agree to hold any clinician working under contract and the offices of Paul D. Dalton, MS, LPCC, CADC/S.A.P KY PLLC, harmless for any loss, cost and or damages sustained by my spouse, child or me. By signing this form, I hereby authorize all contracted clinicians of Paul D. Dalton, MS, LPCC, CADC/S.A.P KY PLLC to assess, diagnose and treat mental health and or substance abuse problems for myself, my family and or my child. I understand appointment reminders, if I choose to receive those, could be intercepted.

Steven D. Combs
Client Name-Printed

6/5/15
Date

[Signature]
Client Signature

Parent Signature for minors under 18

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Fee Agreement

Service Type	Charge
Individual Assessment 50-55 minutes	\$125.00-\$175.00 (Psychiatric \$175)
Individual Session-45-55minutes	\$100.00
Family Session-45-55 minutes	\$125.00
Marital Therapy-50-55 minutes	\$125.00
Medication Management 10-20 minutes	\$80.00
Returned Check Fee	\$50.00 minimum
Fail To Keep Appointment	\$75.00 minimum
Cancelation Without 24 Hour Notice	\$37.50-\$75.00
Substance Abuse Assessment Tools	\$75-\$225 Testing Fee
ADHD Assessment Regular Fees Plus	\$50-\$125 Testing Fee
Deposition	\$250 plus \$200 per hour
Substance Abuse Evaluation	\$275.00 minimum
DOT SAP ASSESSEMENT	\$500.00 minimum
Court Appearance	\$500 plus \$175 per hour
<i>Any matter in which we must hire an attorney to assist or protect our office involving your case, the case of a minor or a related case and any action brought upon our office by any attorney for any reason related to your case.</i>	<i>All attorneys' fees billed to us by our attorney, plus any regular fees that we charge.</i>
Medical Records	\$.50 per page after free copy
Letters, phone calls, reviewing testing, or any work related to your case not covered in a session.	\$100 per hour billed in \$25 increments for ¼ of an hour minimum.
<p>Any and all work our office does on your part will be discussed prior to performing the service. By signing this form, I agree that all fees not paid by my insurance will be my responsibility. All bills not paid within 60 days will accrue a 10% interest charge and will likely be turned over to a collection agency. I also agree to allow any fees not paid in full at the time of service to be billed to my debit/credit card on file. By signing this form I agree to the financial responsibility of payment for the services I receive at the costs indicated above.</p> <p>ALL APPOINTMENT CHANGES MADE WITHOUT 24 HOURS PRIOR NOTICE WILL INCUR A CHARGE.</p>	
Client Signature 	Date <u>6/5/15</u>
Parent if a minor _____	Date _____

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Credit Card Authorization Form

NO SERVICES WILL BE RENDERED WITHOUT A COPY OF THIS FORM ON FILE.

Your information is confidential and protected by federal and state privacy laws. This form is not intended for primary method of payment. **Our office prefers cash or check.** Our primary goal is to have expenses paid during your visit.

We keep a copy in your confidential record for the reasons below.

To bill **any unpaid charges** that may accrue as a result of having a deductible, co-payment, or coinsurance and or any other fees agreed upon that were not paid at the time of service delivery. To collect fees for individual, family, marital or assessment procedures that were not paid in full at the time of service or that were not paid by your insurance company or an EAP program or managed care company. Additionally, these charges may include: Fail to Keep Appointment fees or cancellation Fees, any NSF or returned unpaid check amount plus returned check fees from your bank.

By providing the information below you agree to allow our offices to bill unpaid fees in the Fee Agreement and any other agreed upon fees located in the Informed Consent or Fee Agreement not paid by you at the time of service delivery, in person, or by regular billing. You also agree that all NSF or unpaid checks will be charged an extra \$50.00 charge. Your signature is authority to release your billing statement to your credit card company/bank for the purpose of collecting the appropriate fees charged to your credit card. Please note refunds take 3-4 days to process.

Name exactly as it appears on card _____

Type of Card (Visa and MC ONLY): Visa MC Am Exp Discover

Card Number: _____

Expiration Date: Month _____ Year _____ CCV/Security Number (3 digits on back of card) _____

Billing address for card Same as home address? Yes No Insert address below

Street Address: _____

City, State, Zip: _____

Phone number for card Same as Home Phone Cell Phone Other _____

Cardholder Signature _____

Date _____

Thank you!

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This form is optional unless you are intending for us to communicate information to or collect information from another party. HIPAA Privacy Authorization Form/Authorization for Use or Disclosure of Protected Health Information (Required by the Health Insurance Portability and Accountability Act – 45 CFR Parts 160 and 164). This is a voluntary form used by our office to collect or release information that may be used to improve or communicate your treatment here. If you have more than one practitioner, please complete the form for each practitioner. Thank you.

1. I hereby authorize: **Paul D. Dalton, MS, LPCC, CADC/Substance Abuse Professionals of KY, PLLC**
Or (different provider) _____
Name, address, phone & fax # of Individual or Health Care Provider disclosing/releasing information

To release my protected health information described below to: **Paul D. Dalton, MS, LPCC, CADC/SAP, KY, PLLC**
Or (different provider) _____
Name, address, phone & fax # of Individual or Health Care Provider receiving information

2. Authorization for Release of Information. Covering the period of health care from:
All past, present and future periods or dates _____ to _____

a. I hereby authorize the release of my complete health record (including records relating to mental health care, communicable diseases, HIV or AIDS, and treatment of alcohol/drug abuse). Or
b. I hereby authorize the release of my complete health record with the exception of the following information:
Mental health records Communicable diseases (including HIV and AIDS) Alcohol/drug abuse treatment
Other (please specify): _____

3. This medical information may be used by the person I authorize to receive this information for medical treatment, mental health treatment, substance abuse treatment, or consultation for treatment, assessment and recommendation, billing, claims payment, referral from or to another agency, or other purposes as I may direct which include:

4. This authorization is valid 1 year from today's date or this authorization expires _____ (date). The release will automatically expire 1 year after our last appointment.

5. I understand that I have the right to revoke this authorization, in writing, at any time. I understand that a revocation is not effective to the extent that any person or entity has already acted in reliance on my authorization or if my authorization was obtained as a condition of obtaining insurance coverage and the insurer has a legal right to contest a claim.

6. I understand that treatment, payment, enrollment or eligibility for benefits is not conditional to signing this authorization.

7. I understand that information used or disclosed pursuant to this authorization has the potential to be disclosed by the recipient and may no longer be protected by federal or state law.

PRINTED NAME OF CLIENT

Date of birth for client

Client Signature

Date

Parent Signature for Minor

Date

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Presenting Problem

Who gave you a referral or recommended our practice? *Yvette Hourigan*

Please describe in detail the **symptoms** of the problem for which you are seeking services with our practice?

3rd Party alleged Alcohol problems

What do you believe may contribute to the problem? List specific behaviors, thoughts, feeling, people, places, or attitudes contributing to the problem:

None that I am aware of presently.

Do you and or any family members or extended family members have a history of any type of mental illness? If so please list and include the type of problems, hospitalizations, with dates and the providers.

No/Other than my Mother had Alzheimers.

Do you and or any family members or extended family members with a history of any type of substance abuse issues? If so please list and include the type of problems, hospitalizations, with dates and the providers.

No.

Have you had any recent stressors or live events that have contributed to your reason for coming here not listed above?

Yes. Mother's recent Death, Wife's recent major health issues and Surgery.

Please list all medical problems past and present.

Hyper Tension / High Cholesterol

Have you ever thought about or attempted to harm yourself in anyway? Yes No

If yes please list the details, including dates, circumstances, and outcomes:

Do you currently feel like harming yourself now or in the near future? Yes No

Have you thought about harming anyone else? Yes No

If yes, please list the person and circumstances:

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(859) 338-0466

L C P LEXINGTON
COUNSELING & PSYCHIATRY

5011 Atwood Drive
Richmond, KY 40475
(859) 314-1281

105 Diagnostic Drive, Suite B
Frankfort, KY 40601
(502) 352-2208

The Offices of
Paul D. Dalton, MS, LPCC, CADC

1092 Duval St.
Suite 250
Lexington, KY 40515
(859) 523-7383

Bio Psychosocial History

Please rate the following from a 1-5 scale (1 being very poor or not good & 5 being excellent or great) and please describe any rating of 2 or below.

Diet/Nutrition: 3	Alcohol: 4	Coping Ability: 5
Exercise: 4	Drugs: 5	Tobacco Use: 5
Sleep: 3	Sexual activity: 4	Nicotine Use: 5
Family support: 5	Financial Condition: 5	Weight: 3
Social support: 5	Mental Health: 4	Marriage/Relationship: 5
Hobbies/Activities: 5	Physical Health: 4	Parental Relationships: N/A
Spiritual Involvement: 3	Work/Career: 5	Sibling Relationships: 3/5

Rating Descriptions if applicable:

Current prescription medication types, dosage, provider prescribing, and date of first use:

Will provide: Lisinopril, Amlodopine, Crestor, HCTZ, Carvedolol, Venlafaxine

Illegal Drugs-List types

None

amounts and frequency

None

date of first and last use

None

Alcohol- List types

Vodka

amounts and frequency

2-3 nights/week

date of first and last use

Beer in College/Last Week

Nicotine- List types

None

amounts and frequency

None

date of first and last use

None

Caffeine- List types,

None

amounts and frequency

Have you experienced any significant loss in your life? If yes, please explain.

Yes. My Father died when I was 23 and in Law School.
It was only 10 Months after my Grandfather.
Mother died in late March after 5 year illness.

If you now see or have been to a psychiatrist, medical doctor or therapist for this or a related mental health or medical problem please list the name, address and telephone number of the health professional on the release of information form.

501 Darby Creek Road, Suite 11
Lexington, KY 40509
(859) 338-0466

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Privacy Practices information for the offices of: Paul D. Dalton, MS, LPCC, CADC & Substance Abuse Professionals of KY, PLLC, 501 Darby Creek Road, Suite #11, Lexington, KY 40509, and 105 B Diagnostic Drive, Frankfort, KY 40601, 859.338.0466 & 5011 Atwood Drive, Richmond, KY 40475, 859.314.1281 & 1092 Duval, Suite 250, Lexington, KY 40515, 859.338.0466.

Effective Feb 25, 2013

This notice describes how health related information about you may be used and disclosed and how you can access this information. This notice applies to all of the records of your care generated by our office whether created by our office or an associated facility. This notice describes our practices policies which extend to: All employees, staff and other personnel that work for or with our practice (billing clerk, therapists, etc.). All office areas (front desk, waiting area, etc.); our business associates (billing service, clearinghouse, covering therapists, etc.)

We are required by law to:

Make sure that medical information that identifies you is kept private, except in certain situations where we are allowed to disclose information under the protection or direction of state or federal law. Give you this notice of our legal duties and privacy practices with respect to medical information about you. Follow the terms of this notice now in effect.

Responsibilities:

Maintain the privacy of your health information as required by law, provide you with a notice of our duties and privacy practices as to the information we collect and maintain about you, abide by the terms of this notice and notify you if we cannot accommodate a requested restriction or request. Accommodate your reasonable requests regarding methods to communicate health information with you. We reserve the right to change our practices and to make the new provisions effective for all protected health information we maintain. We will keep a posted copy of the most current notice in our office containing the effective date. In addition, each time you visit our office for treatment, you may obtain a copy of the current notice in effect upon request. We will not use or disclose your health information without your authorization except as described in this notice or in situations that can be reasonably inferred from the intended uses listed in this notice. We will also discontinue using or disclosing your health information after we have received a written revocation of the authorization according to the procedures included in the authorization.

Patient Health Information Rights:

The health record we maintain and billing records are the physical property of the practice. The information in it, however, belongs to you. You have the right to:

Request a restriction on certain uses and disclosures of your health information by delivering the request in writing to our office. We are not required to grant the request but we will comply with any request granted; Request that you be allowed to inspect and copy your health record and billing record— you may exercise this right by delivering the request in writing to our office; File a statement of disagreement if your amendment is denied, and require that the request for amendment and any denial be attached in all future disclosures of your protected health information; Obtain an accounting of disclosures of your health information as required to be maintained by law by delivering a written request to our office. An accounting will not include internal uses of information for treatment, payment, or operations, disclosures made to you or made at your request, or disclosures made to family members or friends in the course of providing care; Request that communication of your health information be made by alternative means or at an alternative location by delivering the request in writing to our office; and,

Revoke authorizations that you made previously to use or disclose information except to the extent of information or action has already been taken by a written revocation to our office.

With your consent, the practice is permitted by federal privacy laws to make use and disclosure of your health information for purposes of treatment, payment and health care operations. Protected health information is the information we create and obtain in providing our services to you. Such information may include documenting your symptoms, assessment and test results, diagnoses, treatment and future care or treatment. You have a right to review this notice before signing the consent authorizing use and disclosure of your protected health information for treatment, payment and health care operations purposes.

How we use and disclose health information:

For Treatment: We may use your health related information to you to provide initial, ongoing, or referral services for you. This may mean discussing your case or collecting records from a previous provider or disclosing your records to collaborate with a previous, current or future provider, such as psychiatrists, psychiatric hospitals and or doctors or other healthcare professionals. The owners of the practice, management, and or clinical supervisors may collaborate with your clinician(s) and review your information for supervision, customer services, payment collections or other purposes. If you are a minor healthcare information may be disclosed to your parents or guardian during or after treatment.

For Payment: We may use and disclose health related information in billing and insurance operations needed to collect payment for the services you have received. This information may be shared with your insurance, EAP, and or managed care company and will be viewed by our billing department. You may receive a bill at your address for services rendered. Your healthcare plan may require ongoing and updated detailed

10

Dalton 0013

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information of your treatment in order to provide payment as permitted by KY and USA laws. Individuals involved in your care or in payment of your care may also be informed of your healthcare.

For Healthcare Operations: We may use or disclose information about you for practice operations. These uses and disclosures are necessary to run the operations efficiently and increase the quality of care we provide. For example, we may use your healthcare information to review our treatment and service and to evaluate our performance of our staff in providing your care. We may also use this information to determine the need for new services and to train students, billing personnel and other employees of the practice. We may remove data that identifies you personally before others view it or use it to study healthcare delivery without identifying patients. We may mail performance improvement surveys. Appointment Reminders: We may send reminders in the mail, by text, or leave phone messages both or which could be intercepted by others. If you do not wish for us to leave messages please indicate this with your therapist or counselor. Emergency Situations: We may disclose medical information about you to an organization assisting with an emergency medical or mental health condition or crisis so that you may receive the proper health care and or so that your family can be notified about your condition. Law Enforcement: We may release healthcare information if asked to do so by a law enforcement official in response to a court order, to protect and individual or yourself from imminent harm or danger, in emergency situations to report a crime or in the process of facilitating a transfer to a hospital of any kind.

Department of Community Based Services: We may disclose healthcare as required by KY law in order to report suspected child abuse or domestic violence of any kind.

Judicial/Administrative Proceedings, Probations Officers, Court designated Workers, Parole offices and Judges: Healthcare information may be disclosed to these individuals with a written consent, court order, or subpoena to do so. We disclose detailed information including date and time of appointments, clinical progress and treatment compliance as well as other information requested and listed on the consent. This may include privileged information.

Complaints/Lawsuits: Your information will be used to defend any complaint, lawsuit, liability or similar claim brought on by you and or a family member on your behalf.

Other situations will arise where we can have been unable to document or identify that will likely occur.

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To Report a Problem please notify Paul Dalton by telephone at 859.338.0466

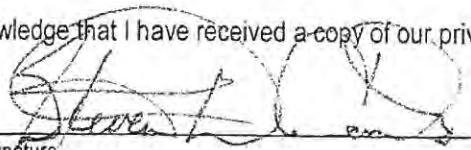
If you believe your privacy rights have been violated, you can file a complaint with the Office for Civil Rights, U.S. Department of Health and Human Services, 200 Independence Ave, SW, Washington, D.C. 20201 or email to www.hhs.gov. There will be no retaliation for filing a complaint. The address for OCR is listed as follows

Office for Civil Rights:

U.S. Department of Health and Human Services
200 Independence Ave., S.W.
Room 509F, HHH Building
Washington, D.C. 20201

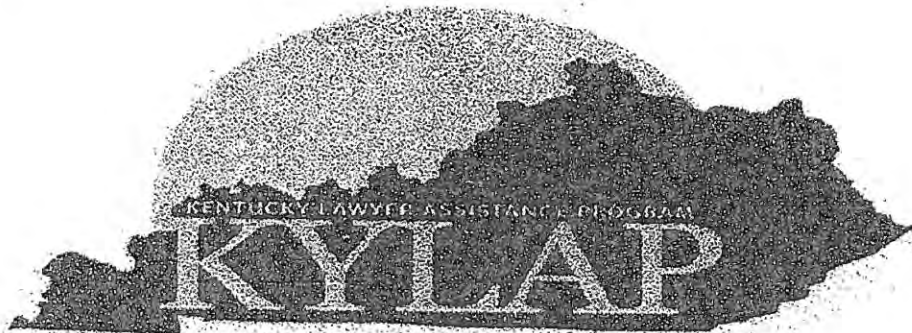
We cannot, and will not, require you to waive the right to file a complaint with the Secretary of Health and Human Services (HHS) as a condition of receiving treatment.

I acknowledge that I have received a copy of our privacy practices and that I understand them.



Client Signature

6/5/15
Date



**KENTUCKY LAWYER ASSISTANCE PROGRAM
HIPAA COMPLIANT AUTHORIZATION FOR RELEASE OF INFORMATION**

I, STEVEN COMBS, ESQ., do hereby authorize the offices of: Paul Dalton,
Lexington, Ky (the
Provider), or its representatives, to communicate with the Director of the Kentucky Lawyer Assistance
Program (KYLAP) or its representatives, in evaluating and addressing any actual or potential
impairment that may be relevant to KYLAP's evaluation or consideration of me and for providing drug/
alcohol and cognitive testing results.

I authorize and request the disclosure of all protected information for the purpose of review and evaluation in
connection with my relationship with KYLAP. I expressly request that the designated record custodian of all
covered entities under HIPAA identified above disclose full and complete protected medical information
including all medical records, meaning every page in my record, including but not limited to: office notes,
face sheets, history and physical, consultation notes, inpatient, outpatient and emergency room treatment, all
clinical charts, reports, order sheets, progress notes, nurse's notes, social worker records, clinic records,
treatment plans, admission records, discharge summaries, requests for and reports of consultations,
documents, correspondence, test results, statements, questionnaires/histories, correspondence, and
photographs, mental health records, and drug and alcohol records.

This authorization is given in compliance with the federal consent requirements for release of alcohol or
substance abuse records of 42 CFR 2.31, the restrictions of which have been specifically considered and
expressly waived.

You are authorized to release the above records to the KYLAP or its representatives.
This Authorization Expires on December 31, 2016.

Date: 6/3/15 Signature: [Handwritten Signature]
Witness: Teresa Helmer Combs

Please fax medical records to our confidential fax line: 1-866-364-7254
Or Email to: vhourigan@kylap.org
Pursuant to SCR 3.990, all contact with KYLAP is confidential

D. start relatives - maybe / 2 brothers not getting along - older may have problem

AUDIT

→ EDU/Infant Classes

Client STEVE COMBS
 Date 6/8/15
 Score 4

~~2005 - stopped - for brotherly year - June Depression~~
~~8:30pm - 9pm~~

1. How often do you have a drink containing alcohol (Score)
- Never (0)
 - Monthly or less (1)
 - Two to four times a month (2)
 - Two to three times a week (3)
 - Four or more times a week (4)

(3)
 3-4x per week

6. How often during the last year have you needed a first drink in the morning to get yourself going after a heavy drinking session?
- Never (0)
 - Less than monthly (1)
 - Monthly (2)
 - Weekly (3)
 - Daily or almost daily (4)

2. How many drinks containing alcohol do you have on a typical day when you are drinking?
- 1 or 2 (0)
 - 3 or 4 (1)
 - 5 or 6 (2)
 - 7 to 9 (3)
 - 10 or more (4)

3-4x per week
 vodka & grapefruit

7. How often during the last year have you had a feeling of guilt or remorse after drinking?
- Never (0)
 - Less than monthly (1)
 - Monthly (2)
 - Weekly (3)
 - Daily or almost daily (4)

3. How often do you have six or more drinks on one occasion?
- Never (0)
 - Less than monthly (1)
 - Monthly (2)
 - Weekly (3)
 - Daily or almost daily (4)

not prob
 last year
 Christmas

8. How often during the last year have you been unable to remember what happened the night before because you had been drinking?
- Never (0)
 - Less than monthly (1)
 - Monthly (2)
 - Weekly (3)
 - Daily or almost daily (4)

4. How often during the last year have you found that you were not able to stop drinking once you had started?
- Never (0)
 - Less than monthly (1)
 - Monthly (2)
 - Weekly (3)
 - Daily or almost daily (4)

9. Have you or someone else been injured as a result of your drinking?
- No (0)
 - Yes, but not in the last year (2)
 - Yes, during the last year (4)

5. How often during the last year have you failed to do what was normally expected from you because of drinking?
- Never (0)
 - Less than monthly (1)
 - Monthly (2)
 - Weekly (3)
 - Daily or almost daily (4)

10. Has a relative or friend, or a doctor or other health worker been concerned about your drinking, or suggested you cut down?
- No (0)
 - Yes, but not in the last year (2)
 - Yes, during the last year (4)

Probably - too much daily - grades

wife says he has too many 6-7 drinks
 more drinking when kids were in school
 was started then at a lot

of Alhambra

Beck Anxiety Inventory

Below is a list of common symptoms of anxiety. Please carefully read each item in the list. Indicate how much you have been bothered by that symptom during the past month, including today, by circling the number in the corresponding space in the column next to each symptom.

	Not At All	Mildly but it didn't bother me much.	Moderately - it wasn't pleasant at times	Severely - it bothered me a lot
Numbness or tingling	(0)	1	2	3
Feeling hot	0	(1)	2	3
Wobbliness in legs	(0)	1	2	3
Unable to relax	(0)	1	2	3
Fear of worst happening	0	(1)	2	3
Dizzy or lightheaded	(0)	1	2	3
Heart pounding/racing	(0)	1	2	3
Unsteady	(0)	1	2	3
Terrified or afraid	(0)	1	2	3
Nervous	0	(1)	2	3
Feeling of choking	(0)	1	2	3
Hands trembling	(0)	1	2	3
Shaky / unsteady	(0)	1	2	3
Fear of losing control	(0)	1	2	3
Difficulty in breathing	(0)	1	2	3
Fear of dying	(0)	1	2	3
Scared	(0)	1	2	3
Indigestion	0	(1)	2	3
Faint / lightheaded	(0)	1	2	3
Face flushed	0	(1)	2	3
Hot/cold sweats	(0)	1	2	3
Column Sum	0	5		

Scoring - Sum each column. Then sum the column totals to achieve a grand score. Write that score here 5.

Interpretation

A grand sum between 0 - 21 indicates very low anxiety. That is usually a good thing. However, it is possible that you might be unrealistic in either your assessment which would be denial or that you have learned to "mask" the symptoms commonly associated with anxiety. Too little "anxiety" could indicate that you are detached from yourself, others, or your environment.

A grand sum between 22 - 35 indicates moderate anxiety. Your body is trying to tell you something. Look for patterns as to when and why you experience the symptoms described above. For example, if it occurs prior to public speaking and your job requires a lot of presentations you may want to find ways to calm yourself before speaking or let others do some of the presentations. You may have some conflict issues that need to be resolved. Clearly, it is not "panic" time but you want to find ways to manage the stress you feel.

A grand sum that exceeds 36 is a potential cause for concern. Again, look for patterns or times when you tend to feel the symptoms you have circled. Persistent and high anxiety is not a sign of personal weakness or failure. It is, however, something that needs to be proactively treated or there could be significant impacts to you mentally and physically. You may want to consult a physician or counselor if the feelings persist.

Beck Depression Inventory

Choose one statement from among the group of four statements in each question that best describes how you have been feeling during the **past few days**. Circle the number beside your choice.

1	<p>0 I do not feel sad.</p> <p><input checked="" type="radio"/> 1 I feel sad.</p> <p>2 I am sad all the time and I can't snap out of it.</p> <p>3 I am so sad or unhappy that I can't stand it.</p>	8	<p><input checked="" type="radio"/> 0 I don't feel I am any worse than anybody else.</p> <p>1 I am critical of myself for my weaknesses or mistakes.</p> <p>2 I blame myself all the time for my faults.</p> <p>3 I blame myself for everything bad that happens.</p>
2	<p><input checked="" type="radio"/> 0 I am not particularly discouraged about the future.</p> <p>1 I feel discouraged about the future.</p> <p>2 I feel I have nothing to look forward to.</p> <p>3 I feel that the future is hopeless and that things cannot improve.</p>	9	<p><input checked="" type="radio"/> 0 I don't have any thoughts of killing myself.</p> <p>1 I have thoughts of killing myself, but I would not carry them out.</p> <p>2 I would like to kill myself.</p> <p>3 I would kill myself if I had the chance.</p>
3	<p><input checked="" type="radio"/> 0 I do not feel like a failure.</p> <p>1 I feel I have failed more than the average person.</p> <p>2 As I look back on my life, all I can see is a lot of failure.</p> <p>3 I feel I am a complete failure as a person.</p>	10	<p><input checked="" type="radio"/> 0 I don't cry any more than usual.</p> <p>1 I cry more now than I used to.</p> <p>2 I cry all the time now.</p> <p>3 I used to be able to cry, but now I can't cry even though I want to.</p>
4	<p><input checked="" type="radio"/> 0 I get as much satisfaction out of things as I used to.</p> <p>1 I don't enjoy things the way I used to.</p> <p>2 I don't get any real satisfaction out of anything anymore.</p> <p>3 I am dissatisfied or bored with everything.</p>	11	<p><input checked="" type="radio"/> 0 I am no more irritated by things than I ever am.</p> <p>1 I am slightly more irritated now than usual.</p> <p>2 I am quite annoyed or irritated a good deal of the time.</p> <p>3 I feel irritated all the time now.</p>
5	<p><input checked="" type="radio"/> 0 I don't feel particularly guilty.</p> <p>1 I feel guilty a good part of the time.</p> <p>2 I feel quite guilty most of the time.</p> <p>3 I feel guilty all of the time.</p>	12	<p><input checked="" type="radio"/> 0 I have not lost interest in other people.</p> <p>1 I am less interested in other people than I used to be.</p> <p>2 I have lost most of my interest in other people.</p> <p>3 I have lost all of my interest in other people.</p>
6	<p>0 I don't feel I am being punished.</p> <p><input checked="" type="radio"/> 1 I feel I may be punished.</p> <p>2 I expect to be punished.</p> <p>3 I feel I am being punished.</p>	13	<p><input checked="" type="radio"/> 0 I make decisions about as well as I ever could.</p> <p>1 I put off making decisions more than I used to.</p> <p>2 I have greater difficulty in making decisions than before.</p> <p>3 I can't make decisions at all anymore.</p>
7	<p><input checked="" type="radio"/> 0 I don't feel disappointed in myself.</p> <p>1 I am disappointed in myself.</p> <p>2 I am disgusted with myself.</p> <p>3 I hate myself.</p>	14	<p>0 I don't feel that I look any worse than I used to.</p> <p><input checked="" type="radio"/> 1 I am worried that I am looking old or unattractive.</p> <p>2 I feel that there are permanent changes in my appearance that make me look unattractive.</p> <p>3 I believe that I look ugly.</p>

15	<p>0 I can work about as well as before.</p> <p>1 It takes an extra effort to get started at doing something.</p> <p>2 I have to push myself very hard to do anything.</p> <p>3 I can't do any work at all.</p>	19	<p>0 I haven't lost much weight, if any, lately.</p> <p>1 I have lost more than five pounds.</p> <p>2 I have lost more than ten pounds.</p> <p>3 I have lost more than fifteen pounds. (Score 0 if you have been purposely trying to lose weight.)</p>
16	<p>0 I can sleep as well as usual.</p> <p>1 I don't sleep as well as I used to.</p> <p>2 I wake up 1-2 hours earlier than usual and find it hard to get back to sleep.</p> <p>3 I wake up several hours earlier than I used to and cannot get back to sleep.</p>	20	<p>0 I am no more worried about my health than usual.</p> <p>1 I am worried about physical problems such as aches and pains, or upset stomach, or constipation.</p> <p>2 I am very worried about physical problems, and it's hard to think of much else.</p> <p>3 I am so worried about my physical problems that I cannot think about anything else.</p>
17	<p>0 I don't get more tired than usual.</p> <p>1 I get tired more easily than I used to.</p> <p>2 I get tired from doing almost anything.</p> <p>3 I am too tired to do anything.</p>	21	<p>0 I have not noticed any recent change in my interest in sex.</p> <p>1 I am less interested in sex than I used to be.</p> <p>2 I am much less interested in sex now.</p> <p>3 I have lost interest in sex completely.</p>
18	<p>0 My appetite is no worse than usual.</p> <p>1 My appetite is not as good as it used to be.</p> <p>2 My appetite is much worse now.</p> <p>3 I have no appetite at all anymore.</p>		

SCORING

- 1 - 10: These ups and downs are considered normal.
- 11 - 16: Mild mood disturbance
- 17 - 20: Borderline clinical depression
- 21 - 30: Moderate depression
- 31 - 40: Severe depression
- Over 40: Extreme depression



Death of (m) recent - a few months ago.
 Family health issues. @ - the (m) - (yay)
 health issues (m)

Substance Abuse Screening Instrument (04/05)

The Drug Abuse Screening Test (DAST) was developed in 1982 and is still an excellent screening tool. It is a 28-item self-report scale that consists of items that parallel those of the Michigan Alcoholism Screening Test (MAST). The DAST has "exhibited valid psychometric properties" and has been found to be "a sensitive screening instrument for the abuse of drugs other than alcohol."

The Drug Abuse Screening Test (DAST)

Directions: The following questions concern information about your involvement with drugs. Drug abuse refers to (1) the use of prescribed or "over-the-counter" drugs in excess of the directions, and (2) any non-medical use of drugs. Consider the past year (12 months) and carefully read each statement. Then decide whether your answer is YES or NO and check the appropriate space. Please be sure to answer every question.

- | | YES | NO |
|---|-------------------------------------|-------------------------------------|
| 1. Have you used drugs other than those required for medical reasons? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Have you abused prescription drugs? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Do you abuse more than one drug at a time? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. Can you get through the week without using drugs (other than those required for medical reasons)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 5. Are you always able to stop using drugs when you want to? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 6. Do you abuse drugs on a continuous basis? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 7. Do you try to limit your drug use to certain situations? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 8. Have you had "blackouts" or "flashbacks" as a result of drug use? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 9. Do you ever feel bad about your drug abuse? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 10. Does your spouse (or parents) ever complain about your involvement with drugs? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 11. Do your friends or relatives know or suspect you abuse drugs? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 12. Has drug abuse ever created problems between you and your spouse? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 13. Has any family member ever sought help for problems related to your drug use? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 14. Have you ever lost friends because of your use of drugs? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 15. Have you ever neglected your family or missed work because of your use of drugs? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 16. Have you ever been in trouble at work because of drug abuse? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 17. Have you ever lost a job because of drug abuse? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 18. Have you gotten into fights when under the influence of drugs? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 19. Have you ever been arrested because of unusual behavior while under the influence of drugs? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 20. Have you ever been arrested for driving while under the influence of drugs? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 21. Have you engaged in illegal activities in order to obtain drug? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 22. Have you ever been arrested for possession of illegal drugs? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 23. Have you ever experienced withdrawal symptoms as a result of heavy drug intake? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 24. Have you had medical problems as a result of your drug use (e.g., memory loss, hepatitis, convulsions, bleeding, etc.)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 25. Have you ever gone to anyone for help for a drug problem? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 26. Have you ever been in a hospital for medical problems related to your drug use? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 27. Have you ever been involved in a treatment program specifically related to drug use? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 28. Have you been treated as an outpatient for problems related to drug abuse? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Scoring and interpretation: A score of "1" is given for each YES response, except for items 4,5, and 7, for which a NO response is given a score of "1." Based on data from a heterogeneous psychiatric patient population, cutoff scores of 6 through 11 are considered to be optimal for screening for substance use disorders. Using a cutoff score of 6 has been found to provide excellent sensitivity for identifying patients with substance use disorders as well as satisfactory specificity (i.e., identification of patients who do not have substance use disorders). Using a cutoff score of <11 somewhat reduces the sensitivity for identifying patients with substance use disorders, but more accurately identifies the patients who do not have a substance use disorders. Over 12 is definitely a substance abuse problem. In a heterogeneous psychiatric patient population, most items have been shown to correlate at least moderately well with the total scale scores. The items that correlate poorly with the total scale scores appear to be items 4,7,16,20, and 22.

Substance Use History

Substances Used (complete all that apply)	First Use Age	Last Use Age	Current Use (Yes/No)	Frequency	Amount
alcohol	<u>18</u>	<u> </u>	<u>Yes</u>	<u>2-3 week</u>	<u>1-2</u>
amphetamines/ speed	<u>No</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
barbiturates/ owners	<u>No</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
caffeine	<u>No</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
cocaine	<u>No</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
crack cocaine	<u>No</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
hallucinogens	<u>No</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
inhalants	<u>No</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
marijuana/hashish	<u>No</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
nicotine/cigarettes	<u>No</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
PCP	<u>No</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
prescription	<u>No</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
other	<u>N/A</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

teeth after oral surgery
transferred

1 cancer - drug dependent
Consequences of Substance Use (check all that apply):

- hangovers
- withdrawal symptoms
- suicidal impulse
- seizures
- medical conditions
- relationship conflicts
- blackouts
- tolerance changes
- binges
- overdose
- loss of control amount used
- arrests
- assaults
- sleep disturbances
- job loss
- other _____

Effect → 5-6 years - anxiety disorder
Dr. Reid - 35 hr - says he is not fully
→ as needed, only parent

Family History

Present During Childhood:

	Present entire childhood	Present part of childhood	Not present at all
Mother	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Father	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stepmother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stepfather	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brother(s)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sister(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Maternal Grandparents / ~~Paternal~~ Father's Mother

Parents' Current Marital Status

- | | |
|---|---|
| <input type="checkbox"/> married to each other | <input type="checkbox"/> mother involved with someone |
| <input type="checkbox"/> separated for ___ years | <input type="checkbox"/> father involved with someone |
| <input type="checkbox"/> divorced for ___ years | <input checked="" type="checkbox"/> mother deceased for ___ years <i>1 1/2 Months</i> |
| <input type="checkbox"/> mother remarried ___ times | <input checked="" type="checkbox"/> father deceased for <u>32</u> years |
| <input type="checkbox"/> father remarried ___ times | |

Describe Childhood Family Experience

- Outstanding home environment
- normal home environment
- chaotic home environment
- witnessed physical/verbal/sexual abuse towards others
- experienced physical/verbal/sexual abuse from others

Describe any past or current significant issues in intimate relationships:

My wife had a Major illness requiring Surgery 11/14.
2 Month Recovery

Describe any past or current significant issues in other immediate family relationships:

My Mother had Alheimers for ± 5 years / In and
out of Hospital past several Months. Passed away
late in March at Home.

Legal History:

Yes No

- Have you ever been arrested for a DUI?
- Have you ever been arrested for public intoxication?
- Have you ever been arrested for alcohol intoxication (not DUI)?
- Have you ever been arrested for drug possession?
- Have you ever had any other legal problems due to your drug/alcohol use?

If yes, please explain: 2005 DUI charged / but not proved

Took a North Carolina v. Alford Plea

which means I did not admit any Guilt
and it is not treated as a Conviction
and could not have been used against
me.

Family Alcohol and Drug Abuse History:

- | | | |
|--------------------------------------|--|---|
| <input type="checkbox"/> father | <input type="checkbox"/> sibling(s) | <input type="checkbox"/> spouse/significant other |
| <input type="checkbox"/> mother | <input type="checkbox"/> stepparent(s) | <input type="checkbox"/> children |
| <input type="checkbox"/> grandfather | <input type="checkbox"/> uncle(s) | <input type="checkbox"/> other _____ |
| <input type="checkbox"/> grandmother | <input type="checkbox"/> aunt(s) | |

Marital Status:

- | | |
|---|--|
| <input type="checkbox"/> single, never married | <input type="checkbox"/> engaged ___ months |
| <input checked="" type="checkbox"/> married for <u>29</u> years | <input type="checkbox"/> divorced for ___ years |
| <input type="checkbox"/> separated for ___ years | <input type="checkbox"/> divorce in process ___ months |
| <input type="checkbox"/> live-in for ___ years | <input type="checkbox"/> ___ prior marriages (self) |
| <input type="checkbox"/> ___ prior marriages (partner) | |

Intimate Relationship

- never been in a serious relationship
- not currently in a relationship
- currently in a serious relationship

Relationship Satisfaction

- very satisfied with relationship
- satisfied with relationship
- somewhat satisfied with relationship
- dissatisfied with relationship
- very dissatisfied with relationship

Steven Daniel Combs
114 East Cedar Drive
Pikeville, KY 41501



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Page | 2 **Social/Work History/**

Judge Steven Combs presented for a substance abuse assessment as recommended by his attorney after being served notice of formal charges of misconduct against him by the Judicial Conduct Commission on April 27, 2015. I requested a formal copy of the charges that might include any reference to substance use/misuse. I have not, to date, received a copy of those formal charges.

Steven Combs has been a judge in the 35th Judicial Circuit, Pike County since 2003. Previously, Judge Combs worked as a mayor, commissioner, and an attorney. He currently runs a family business with his brothers and a farm. He has been married for 29 years and has adult children. Judge Combs reported his father died while Judge Combs was attending law school only 10 months after he had lost his grandfather. His mother died in March of 2015 after a 5 year battle with Alzheimer's disease. He also reported having difficulty with his wife's health problems occurring in November, 2014.

He reports his sibling relationship, weight, diet & nutrition, spiritual involvement, and sleep to be areas currently needing improvement. He is currently on several other medications for cholesterol, blood pressure, and unrelated health concerns. Judge Combs brought his medications to our assessment. His favorite hobby includes a hard day of work on the farm and enjoys that part of his life greatly. He described in detail the daily grind of being a circuit judge, the disadvantages of being in that position, and the negative comments, scrutiny, and interactions he is exposed to on a regular basis.

Family History-Judge Combs reports no family history of current or past substance abuse or mental health problems.

Chemical Use

Alcohol - Judge Combs reports beginning his drinking in college with beer. He stated that drinking had a minor effect on his grades for a short time while at the fraternity he attended. He stated it has not been a problem in any way since. He currently reports drinking vodka and grapefruit juice 3-4x per week, usually 2-3 drinks at a time, almost exclusively at home to avoid public scrutiny and rumors. Judge Combs reports drinking up to 6-7 drinks on Christmas last year where his wife reported to him he had probably drank too much. Judge Combs reported drinking socially at a higher level than currently prior to having children and naturally slowed down and went out less as a result.

Prescription Drugs- He denies ever abusing or using these types of drugs recreationally.

Judge Combs reports taking venlafaxine 150mg (Effexor), an antianxiety/antidepressant drug, for the last 5-6 years to help cope with his mother's illness and associated symptoms which he described.

He did not report the medication diazepam (valium) on his intake form or bring this medication to our office during his visit. Upon further questioning, he did report being prescribed the medication, provided a full account of the prescription history, and informed us the medication was prescribed to help him during his wife's health issues. He was prescribed and filled over 300 pills from February 2014 until May, 2015, He did not however, by his report and evidenced by the bottle he delivered to our office on a later date, take any of the last 60 pills. He denied mixing this prescription with alcohol at any time.

Judge Combs denies using or trying any other legal or illegal substance for recreational purposes.

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Page | 3 **Legal-**Judge Combs reported being arrested for a DUI in 2005 and being charged with same. He described taking an Alford Plea, not admitting guilt, but not fighting the charge to trial. He denied any other legal charges or convictions.

Psychological Status

Judge Combs was oriented to time, place, date, and to his surroundings. He did not appear under the influence of chemicals at the time of the interview. He was cooperative during the interview and mostly cooperative during the assessment and information gathering process. Judge Combs appeared to be mostly reliable in his approach to the interview.

Prior Treatment-Judge Combs denies any prior treatment history for substance abuse or mental health issues.

Testing (Results included to KYLAP)

The following instruments are self-report measures. The measures rely heavily on the report of the individual giving the information. They are only reliable to the extent that the information reported was accurate.

DAST results indicate a score of 0 indicating no current issues by self-report with drugs. .

AUDIT results show a score of 5- Not normally associated with hazardous drinking.

Beck Anxiety indicated **very low anxiety**.

Beck Depression indicated **no mood disturbance**.

SASSI-3 Screening Results Overview

Random Responding:	Results Indicate No Evidence of Random Responding
Alcohol and/or Other Drug Problem:	Low Probability of Moderate to Severe Substance Use Disorder
Acting Out:	Results Indicate No Evidence of Risk
Defensiveness:	Results Indicate No Evidence of a Problem
Indication of Emotional Pain:	Results Indicate No Evidence of a Problem

Diagnoses, Clinical Facts and Impression:

Judge Combs appears to meet criteria for Alcohol Use Disorder-Mild according to his interview, SASSI profile, and self-report measures, assuming accuracy of data collected. More information should be obtained through continued assessment by a qualified provider skilled in substance abuse issues as outlined below. Judge combs also appears to have Mild Anxiety and Mild Depressive symptoms indicated by his current prescription of diazepam (valium-reports not taking any longer) and venlafaxine (Effexor), both of which are anti-anxiety medications and Effexor is an antidepressant medication.

The diagnosis of an alcohol issue is based on:

Self-report that he regularly drinks 2-3 drinks of vodka, 3-4 nights per week, alone (meaning he is not drinking socially, although others may be present, no one else is drinking with him).

His reason for drinking is to take the stress of the day off, to relax and to cope with other issues.

The drinking has led to allegations, misconduct charges, and suspension of his job as a Circuit Court Judge.

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Page | 4 **Diagnoses, Clinical Facts and Impression-Continued:**

He has given up healthier activity that could improve a variety of concerns, including blood pressure, overall stress, sleep, and improved functioning in the areas he self-reported in his biopsychosocial history (included above).

Judge Combs continued drinking after the charges of misconduct were filed. I made a suggestion, given these charges, that he stop drinking immediately on the day of our assessment meeting.

Other concerns are that Judge Combs was drinking regularly while taking 2 different medications to help with his anxiety and depressive symptoms. Alcohol would be counterproductive to anyone attempting to reduce anxiety and depressive symptoms. He denied ever taking valium while drinking. He did fill 240 doses of valium between February 21, 2014 to October 2014, according to his own pharmacy records that he provided to our office. The use of 2 anti-anxiety medications recently and 1 currently, the list of losses and personal issues reported including complicated grief, may be causing and or contributing to the problems Judge Combs is experiencing with his alleged misconduct and the need for alcohol use in the evening. Again, I would recommend he give up alcohol use.

With limited contact, my evaluation and recommendation needs to be confirmed. Please refer to item #1.

Recommendations:

1. Continued ongoing assessment and counseling by either a qualified program or a Master's level Certified Alcohol and Drug Counselor in Kentucky.
2. Following all recommendations of such provider or program, except when the recommendation is less intensive than these recommendations.
3. Any future psychotropic medications, scheduled and nonscheduled, be prescribed by a psychiatric professional (psychiatric nurse practitioner) vs. a family physician, which should include a psychiatric assessment.
4. Discontinued use of benzodiazepine drugs for ongoing or chronic anxiety.
5. Ongoing counseling for personal life problems, coping with loss, stress on the job, and alcohol issues to be recommended by the provider after 5 sessions or an intensive interview #1.

Completed by:

Paul D. Dalton, MS, LPCC, CADC

From: 01/01/2013 Through: 06/08/2015

Record Of Prescriptions For:

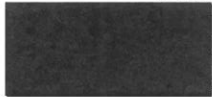


Dalton 0028

Rx#	Dispense	Item	Strength	NDC	Prescriber	NPI #	QtyD	Rfl#	Pat Pay	Price Coverage
1751913	03/25/2013	AMLODIPINE 10MG TABLET	10 MG	31722-0239-10	BHAGRATH, RAVINDER MD	1629181458	30.000	2	\$11.00	\$21.29 ESI
1798639	05/17/2013	AMLODIPINE 10MG TABLET	10 MG	31722-0239-10	BHAGRATH, RAVINDER MD	1629181458	30.000	0	\$11.00	\$21.10 ESI
1804860	11/15/2013	AMLODIPINE 10MG TABLET	10 MG	31722-0239-10	BHAGRATH, RAVINDER MD	1629181458	30.000	1	\$11.00	\$15.85 ESI
1804860	07/11/2013	AMLODIPINE 10MG TABLET	10 MG	31722-0239-10	BHAGRATH, RAVINDER MD	1629181458	30.000	0	\$11.00	\$17.57 ESI
1822891	03/25/2014	AMLODIPINE 10MG TABLET	10 MG	31722-0239-10	REED, MARK MD	1992768261	30.000	0	\$10.00	\$10.40 ESI
1822891	08/13/2014	AMLODIPINE 10MG TABLET	10 MG	31722-0239-10	REED, MARK MD	1992768261	30.000	3	\$10.00	\$10.89 ESI
1822891	05/30/2014	AMLODIPINE 10MG TABLET	10 MG	31722-0239-10	REED, MARK MD	1992768261	30.000	1	\$10.00	\$11.00 ESI
1822891	07/07/2014	AMLODIPINE 10MG TABLET	10 MG	31722-0239-10	REED, MARK MD	1992768261	30.000	2	\$10.00	\$11.00 ESI
1822891	09/17/2014	AMLODIPINE 10MG TABLET	10 MG	31722-0239-10	REED, MARK MD	1992768261	30.000	4	\$10.00	\$11.00 ESI
1822891	11/14/2014	AMLODIPINE 10MG TABLET	10 MG	31722-0239-10	REED, MARK MD	1992768261	30.000	5	\$10.00	\$11.00 ESI
C 1872741	06/02/2015	AMLODIPINE 10MG TABLET	10 MG	31722-0239-10	REED, MARK MD	1992768261	30.000	3	\$0.00	\$0.00 ADV
1872741	03/31/2015	AMLODIPINE 10MG TABLET	10 MG	31722-0239-10	REED, MARK MD	1992768261	30.000	2	\$1.36	\$1.36 ADV
1872741	01/08/2015	AMLODIPINE 10MG TABLET	10 MG	31722-0239-10	REED, MARK MD	1992768261	30.000	0	\$1.45	\$1.45 ADV
1872741	02/17/2015	AMLODIPINE 10MG TABLET	10 MG	31722-0239-10	REED, MARK MD	1992768261	30.000	1	\$1.45	\$1.45 ADV
1872741	08/02/2015	AMLODIPINE 10MG TABLET	10 MG	31722-0239-10	REED, MARK MD	1992768261	30.000	3	\$3.00	\$3.00 CHG
1882530	03/27/2015	AMOXICILLIN 500MG CAPS	500 MG	16714-0299-04	WILLIAMS, MARC MD	1750413340	40.000	0	\$3.80	\$3.80 ADV
1825600	12/24/2013	AZITHROMYCIN 250MG TAB (ZPACK)	250 MG	00781-1496-68	CRUM, AARON MD	1427034057	6.000	0	\$9.82	\$9.82 ESI
1825854	12/27/2013	BENZONATATE 200MG	200 MG	65162-0537-10	RATLIFF, BILLIE MD	1184688855	30.000	0	\$11.00	\$17.95 ESI
1767416	01/11/2013	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	BHAGRATH, RAVINDER MD	1629181458	60.000	2	\$11.00	\$25.49 ESI
1788577	03/02/2013	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	BHAGRATH, RAVINDER MD	1629181458	60.000	0	\$11.00	\$21.20 ESI
1788871	05/19/2013	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	BHAGRATH, RAVINDER MD	1629181458	60.000	1	\$11.00	\$21.01 ESI
1788871	06/28/2013	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	BHAGRATH, RAVINDER MD	1629181458	60.000	2	\$11.00	\$21.01 ESI
1788871	04/10/2013	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	BHAGRATH, RAVINDER MD	1629181458	60.000	0	\$11.00	\$21.80 ESI
1809249	09/26/2013	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	BHAGRATH, RAVINDER MD	1629181458	60.000	1	\$11.00	\$16.53 ESI

From: 01/01/2013 Through: 06/08/2015

Record Of Prescriptions For:



Dalton 0029

Rx#	Dispense	Item	Strength	NDC	Prescriber	NPI #	QtyD	Rfl#	Pat Pay	Price Coverage
1809249	11/07/2013	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	BHAGRATH, RAVINDER MD	1629181458	60.000	2	\$11.00	\$16.53 ESI
1809249	08/16/2013	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	BHAGRATH, RAVINDER MD	1629181458	60.000	0	\$11.00	\$17.51 ESI
1822892	03/17/2014	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	REED, MARK MD	1992768261	60.000	2	\$9.86	\$9.86 ESI
1822892	01/23/2014	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	REED, MARK MD	1992768261	60.000	1	\$9.96	\$9.96 ESI
1822892	04/29/2014	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	REED, MARK MD	1992768261	60.000	3	\$10.00	\$10.76 ESI
1822892	06/13/2014	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	REED, MARK MD	1992768261	60.000	6	\$10.00	\$10.80 ESI
1822892	09/17/2014	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	REED, MARK MD	1992768261	60.000	7	\$10.00	\$11.16 ESI
1822892	10/29/2014	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	REED, MARK MD	1992768261	60.000	8	\$10.00	\$11.40 ESI
1822892	06/10/2014	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	REED, MARK MD	1992768261	60.000	4	\$10.00	\$11.67 ESI
1822892	07/10/2014	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	REED, MARK MD	1992768261	60.000	5	\$10.00	\$11.91 ESI
1822892	12/03/2013	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	REED, MARK MD	1992768261	60.000	0	\$11.00	\$14.91 ESI
1867979	12/04/2014	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	REED, MARK MD	1992768261	60.000	0	\$10.00	\$12.93 ESI
1873348	01/13/2015	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	REED, MARK MD	1992768261	60.000	0	\$3.00	\$3.00 ADV
1877703	02/17/2015	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	REED, MARK MD	1992768261	60.000	0	\$3.00	\$3.00 ADV
1881325	03/19/2015	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	REED, MARK MD	1992768261	60.000	0	\$2.77	\$2.77 ADV
1886740	04/29/2015	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	REED, MARK MD	1992768261	60.000	0	\$2.77	\$2.77 ADV
1886740	06/06/2015	CARVEDILOL 25 MG TABLET	25 MG	00093-7296-01	REED, MARK MD	1992768261	60.000	1	\$3.00	\$3.00 ADV
1883179	04/02/2015	CHLORHEXIDINE RINSE 0.12% 473ML	0.12%	50383-0720-16	STREET, CHAD MD	1992715288	473.000	0	\$3.76	\$3.76 ADV
1777965	01/02/2013	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	METTU, RAMANARAO MD	1679568281	30.000	0	\$26.00	\$157.44 ESI
1777965	05/19/2013	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	METTU, RAMANARAO MD	1679568281	30.000	4	\$26.00	\$166.15 ESI
1777965	06/17/2013	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	METTU, RAMANARAO MD	1679568281	30.000	5	\$20.00	\$166.15 ESI
1777965	02/09/2013	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	METTU, RAMANARAO MD	1679568281	30.000	1	\$26.00	\$166.83 ESI
1777965	03/17/2013	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	METTU, RAMANARAO MD	1679568281	30.000	2	\$26.00	\$166.83 ESI
1777965	04/16/2013	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	METTU, RAMANARAO MD	1679568281	30.000	3	\$26.00	\$166.83 ESI
1777965	07/11/2013	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	METTU, RAMANARAO MD	1679568281	30.000	6	\$20.00	\$176.27 ESI
1609993	08/23/2013	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	METTU, RAMANARAO MD	1679568281	30.000	0	\$20.00	\$176.27 ESI
1809993	09/26/2013	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	METTU, RAMANARAO MD	1679568281	30.000	1	\$20.00	\$176.27 ESI

This report contains confidential and protected health information under the HIPAA Act of 1996.

From: 01/01/2013 Through: 06/08/2015

Record Of Prescriptions For:



Dalton 0030

Rx#	Dispense	Item	Strength	NDC	Prescriber	NPI #	QtyD	Rfl#	Pat Pay	Price Coverage	
	1809993	10/28/2013	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	METTU, RAMANARAO MD	1679568261	30.000	2	\$20.00	\$176.27 ESI
C	1822893	02/09/2014	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	3	\$0.00	\$0.00 ESI
C	1822893	04/07/2014	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	5	\$0.00	\$0.00 ESI
	1822893	12/03/2013	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	0	\$20.00	\$176.27 ESI
	1822893	12/28/2013	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	1	\$20.00	\$176.27 ESI
	1822893	01/23/2014	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	2	\$35.00	\$186.79 ESI
	1822893	03/07/2014	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	3	\$35.00	\$186.79 ESI
	1822893	04/07/2014	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	4	\$35.00	\$186.79 ESI
	1822893	05/07/2014	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	5	\$35.00	\$186.79 ESI
	1822893	06/07/2014	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	6	\$18.00	\$186.79 ESI
	1822893	07/09/2014	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	7	\$18.00	\$191.80 ESI
	1822893	08/09/2014	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	8	\$18.00	\$191.80 ESI
	1822893	09/08/2014	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	9	\$18.00	\$191.80 ESI
	1822893	10/09/2014	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	10	\$18.00	\$191.80 ESI
	1822893	11/14/2014	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	11	\$18.00	\$191.80 ESI
C	1869424	01/08/2015	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	1	\$0.00	\$0.00 ADV
C	1869424	01/16/2015	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	2	\$0.00	\$0.00 ADV
	1869424	12/16/2014	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	0	\$18.00	\$191.80 ESI
	1869424	01/08/2015	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	1	\$18.00	\$208.48 ADV
	1869424	02/14/2015	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	2	\$18.00	\$208.48 ADV
	1869424	03/16/2015	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	3	\$18.00	\$208.48 ADV

This report contains confidential and protected health information under the HIPAA Act of 1996.

Patient Profile Brief

Patient Profile Brief (1)
FAMILY DRUG

From: 01/01/2013 Through: 06/08/2015

Record Of Prescriptions For:



Dalton 0031

Rx#	Dispense	Item	Strength	NDC	Prescriber	NPI #	QtyD	Rfl#	Pat Pay	Price Coverage
1869424	04/16/2015	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	4	\$18.00	\$208.48 ADV
1869424	05/18/2015	CRESTOR 20MG TABLETS	20 MG	00310-0752-90	REED, MARK MD	1992768261	30.000	5	\$18.00	\$208.48 ADV
1832554	02/21/2014	DIAZEPAM 10 MG BLUE	10 MG	00603-3215-32	REED, MARK MD	1992768261	60.000	0	\$10.00	\$10.37 THE ESI
1832554	05/07/2014	DIAZEPAM 10 MG BLUE	10 MG	00603-3215-32	REED, MARK MD	1992768261	60.000	1	\$10.00	\$10.87 THE ESI
1832554	06/25/2014	DIAZEPAM 10 MG BLUE	10 MG	00603-3215-32	REED, MARK MD	1992768261	60.000	2	\$10.00	\$10.87 ESI
1849535	10/03/2014	DIAZEPAM 10 MG BLUE	10 MG	00603-3215-32	REED, MARK MD	1992768261	60.000	0	\$10.00	\$10.61 ESI
1889321	05/19/2015	DIAZEPAM 10 MG BLUE	10 MG	00603-3215-32	REED, MARK MD	1992768261	60.000	0	\$1.64	\$1.64 ADV
1781644	03/17/2013	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	BHAGRATH, RAVINDER MD	1629181458	30.000	2	\$9.13	\$9.13 ESI
1781644	02/15/2013	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	BHAGRATH, RAVINDER MD	1629181458	30.000	1	\$9.45	\$9.45 ESI
1781644	01/11/2013	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	BHAGRATH, RAVINDER MD	1629181458	30.000	0	\$9.46	\$9.46 ESI
1794021	04/13/2013	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	BHAGRATH, RAVINDER MD	1629181458	30.000	0	\$6.27	\$6.27 ESI
1798372	05/15/2013	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	BHAGRATH, RAVINDER MD	1629181458	30.000	0	\$6.27	\$6.27 ESI
1801806	06/14/2013	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	BHAGRATH, RAVINDER MD	1629181458	30.000	0	\$6.27	\$6.27 ESI
1804859	07/11/2013	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	BHAGRATH, RAVINDER MD	1629181458	30.000	0	\$6.27	\$6.27 ESI
1804859	09/13/2013	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	BHAGRATH, RAVINDER MD	1629181458	30.000	1	\$6.27	\$6.27 ESI
1804859	10/14/2013	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	BHAGRATH, RAVINDER MD	1629181458	30.000	2	\$6.27	\$6.27 ESI
1821667	11/21/2013	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	BHAGRATH, RAVINDER MD	1629181458	30.000	0	\$6.27	\$6.27 ESI
1822894	03/28/2014	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	3	\$5.99	\$5.99 ESI
1822894	02/23/2014	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	2	\$6.07	\$6.07 ESI
1822894	04/29/2014	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	4	\$6.17	\$6.17 ESI
1822894	08/29/2014	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	8	\$6.18	\$6.18 ESI
1822894	11/03/2014	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	10	\$6.25	\$6.25 ESI
1822894	10/03/2014	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	9	\$6.26	\$6.26 ESI
1822894	12/22/2013	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	0	\$6.27	\$6.27 ESI
1822894	01/23/2014	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	1	\$6.27	\$6.27 ESI
1822894	07/30/2014	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	7	\$6.41	\$6.41 ESI

This report contains confidential and protected health information under the HIPAA Act of 1996.

From: 01/01/2013 Through: 06/08/2015

Record Of Prescriptions For:



Dalton 0032

Rx#	Dispense	Item	Strength	NDC	Prescriber	NPI #	QtyD	Rfl#	Pat Pay	Price Coverage
1822894	05/30/2014	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	5	\$6.46	\$6.46 ESI
1822894	06/28/2014	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	6	\$6.46	\$6.46 ESI
C 1867840	01/05/2015	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	1	\$0.00	\$0.00 ESI
1867840	03/08/2015	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	3	\$2.90	\$2.90 ADV
1867840	04/08/2015	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	4	\$2.90	\$2.90 ADV
1867840	05/09/2015	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	5	\$2.90	\$2.90 ADV
1867840	01/06/2015	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	1	\$3.15	\$3.15 ADV
1867840	02/05/2015	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	2	\$3.15	\$3.15 ADV
1867840	12/04/2014	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	0	\$6.61	\$6.61 ESI
1891362	06/06/2015	HCTZ 12.5 CAPSULE	12.5 MG	29300-0130-05	REED, MARK MD	1992768261	30.000	0	\$3.15	\$3.15 ADV
1883188	04/02/2015	HYDROCO/APAP TAB 7.5-325	7.5-325	00406-0124-05	STREET, CHAD MD	1992715288	12.000	0	\$3.76	\$3.76 ADV
1882531	03/27/2015	IBUPROFEN 600MG TABLET	600 MG	53746-0465-05	WILLIAMS, MARC MD	1750413340	30.000	0	\$2.12	\$2.12 ADV
1883176	04/02/2015	IBUPROFEN 800MG TABLET	800 MG	55111-0684-05	STREET, CHAD MD	1992715288	30.000	0	\$2.38	\$2.38 ADV
C 1781643	03/02/2013	LISINAPRIL 40MG TABS	40 MG	00603-4214-32	BHAGRATH, RAVINDER MD	1629181458	30.000	2	\$0.00	\$0.00 ESI
1781643	01/11/2013	LISINAPRIL 40MG TABS	40 MG	00603-4214-32	BHAGRATH, RAVINDER MD	1629181458	30.000	0	\$9.67	\$9.67 ESI
1781643	02/09/2013	LISINAPRIL 40MG TABS	40 MG	00603-4214-32	BHAGRATH, RAVINDER MD	1629181458	30.000	1	\$9.67	\$9.67 ESI
1781643	03/03/2013	LISINAPRIL 40MG TABS	40 MG	00603-4214-32	BHAGRATH, RAVINDER MD	1629181458	30.000	2	\$11.00	\$12.98 ESI
C 1791496	03/24/2013	LISINAPRIL 40MG TABS	40 MG	00603-4214-32	BHAGRATH, RAVINDER MD	1629181458	30.000	0	\$0.00	\$0.00 ESI
1791651	03/25/2013	LISINAPRIL 40MG TABS	40 MG	00603-4214-32	BHAGRATH, RAVINDER MD	1629181458	30.000	0	\$11.00	\$12.98 ESI
1794544	05/15/2013	LISINAPRIL 40MG TABS	40 MG	00603-4214-32	BHAGRATH, RAVINDER MD	1629181458	60.000	1	\$11.00	\$24.80 ESI
1794544	06/28/2013	LISINAPRIL 40MG TABS	40 MG	00603-4214-32	BHAGRATH, RAVINDER MD	1629181458	60.000	2	\$11.00	\$24.80 ESI
1794544	04/17/2013	LISINAPRIL 40MG TABS	40 MG	00603-4214-32	BHAGRATH, RAVINDER MD	1629181458	60.000	0	\$11.00	\$25.47 ESI
1809992	10/11/2013	LISINAPRIL 40MG TABS	40 MG	00603-4214-32	BHAGRATH, RAVINDER MD	1629181458	60.000	1	\$11.00	\$21.02 ESI
1609992	08/23/2013	LISINAPRIL 40MG TABS	40 MG	00603-4214-32	BHAGRATH, RAVINDER MD	1629181458	60.000	0	\$11.00	\$21.85 ESI
1822621	12/02/2013	LISINAPRIL 40MG TABS	40 MG	00603-4214-32	BHAGRATH, RAVINDER MD	1629181458	60.000	0	\$11.00	\$19.66 ESI
1822895	10/17/2014	LISINAPRIL 40MG TABS	40 MG	00603-4214-32	REED, MARK MD	1992768261	60.000	5	\$8.54	\$8.54 ESI
1822895	04/24/2014	LISINAPRIL 40MG TABS	40 MG	00603-4214-32	REED, MARK MD	1992768261	60.000	2	\$9.52	\$9.52 ESI

This report contains confidential and protected health information under the HIPAA Act of 1996.

Patient Profile Brief

Patient Profile Brief (1)
FAMILY DRUG

From: 01/01/2013 Through: 06/08/2015

Record Of Prescriptions For:



Dalton 0033

Rx#	Dispense	Item	Strength	NDC	Prescriber	NPI #	QtyD	Rfl#	Pat Pay	Price Coverage
1822890	10/03/2014	VENLAFAXINE 150MG ER CAPSULE	150 MG	00093-7386-98	REED, MARK MD	1992768261	30.000	2	\$10.00	\$19.31 ESI
1822890	12/03/2013	VENLAFAXINE 150MG ER CAPSULE	150 MG	00093-7386-98	REED, MARK MD	1992768261	30.000	0	\$11.00	\$24.69 ESI
1849534	07/10/2014	VENLAFAXINE 150MG ER CAPSULE	150 MG	00093-7386-98	REED, MARK MD	1992768261	30.000	0	\$10.00	\$20.98 ESI
1868251	12/07/2014	VENLAFAXINE 150MG ER CAPSULE	150 MG	00093-7386-98	REED, MARK MD	1992768261	30.000	0	\$10.00	\$22.59 ESI
1872739	01/08/2015	VENLAFAXINE 150MG ER CAPSULE	150 MG	00093-7386-98	REED, MARK MD	1992768261	30.000	0	\$8.22	\$8.22 ADV
1876722	02/07/2015	VENLAFAXINE 150MG ER CAPSULE	150 MG	00093-7386-98	REED, MARK MD	1992768261	30.000	0	\$8.22	\$8.22 ADV
1879813	03/09/2015	VENLAFAXINE 150MG ER CAPSULE	150 MG	00093-7386-98	REED, MARK MD	1992768261	30.000	0	\$7.51	\$7.51 ADV
1879813	04/08/2015	VENLAFAXINE 150MG ER CAPSULE	150 MG	00093-7386-98	REED, MARK MD	1992768261	30.000	1	\$7.51	\$7.51 ADV
1879813	05/09/2015	VENLAFAXINE 150MG ER CAPSULE	150 MG	00093-7386-98	REED, MARK MD	1992768261	30.000	2	\$7.51	\$7.51 ADV
1879813	06/06/2015	VENLAFAXINE 150MG ER CAPSULE	150 MG	00093-7386-98	REED, MARK MD	1992768261	30.000	3	\$8.22	\$8.22 ADV
C 1891361	06/06/2015	VENLAFAXINE 150MG ER CAPSULE	150 MG	00093-7386-98	REED, MARK MD	1992768261	30.000	0	\$0.00	\$0.00 ADV
1804740	10/28/2013	VIAGRA 100MG TABS	100 MG	00069-4220-30	BHAGRATH, RAVINDER MD	1629181458	7.000	1	\$208.00	\$208.00 CHG
1804740	07/13/2013	VIAGRA 100MG TABS	100 MG	00069-4220-30	BHAGRATH, RAVINDER MD	1629181458	15.000	0	\$385.00	\$385.00 CASH
1849898	07/11/2014	VIAGRA 100MG TABS	100 MG	00069-4220-30	BHAGRATH, RAVINDER MD	1629181458	10.000	0	\$350.00	\$350.00 CHG
Total:									\$2,718.36	\$8,627.49

Sort Order: FacilityGroup,PatNameGroup,DispensedItemName,ExternalRxID,AuthorizedAmount

Criteria:

Steven D. Combs

Steven D. Combs is a circuit judge for the 35th Judicial Circuit. It serves Pike County, Kentucky.^[1] He was appointed to the court by former Democratic Governor Paul Patton in 2003, and he was re-elected without opposition in 2014.^{[2][3]} His current eight-year term expires on January 1, 2023.^[4]

Contents

- 1 Elections
 - 1.1 2014
- 2 Education
- 3 Career
- 4 In the news
 - 4.1 Formal misconduct charges levied against Combs
- 5 See also
- 6 External links
- 7 References

Elections

2014

See also: Kentucky judicial elections, 2014

Combs ran for re-election to the 35th Judicial Circuit.

General: He was unopposed in the general election on November 4, 2014.^[3]

Education

Combs received both his undergraduate and his J.D. degrees from the University of Kentucky.^[5]

Career

Before his judicial career, Combs was a former commissioner and mayor for the City of Pikeville, Kentucky.^[2]

In the news

Formal misconduct charges levied against Combs

On April 27, 2015, the Kentucky Judicial Conduct Commission filed a notice of formal proceedings and charges against Combs on 10 counts. The first charge involved cases that Combs presided over in which he had a contractual business relationship with one of the parties. The other counts detail a number of inappropriate phone calls made to the Pikeville Police Department, whereby he criticized a number of the police officers' actions. On one specific phone call, he told an officer that "the next officer that pulled [him] over would get a 'bullet in the head.'" Combs then proceeded to call the police department a "bunch of thieves" and retorted that he was "elected by the people of Dalton 0034 trash like yo

Steven D. Combs



Do you have a photo that could go here? Submit it for this profile by emailing us!
(mailto:submitphoto@lucyburns.org)

Circuit judge

Kentucky Circuit Court 35

In office

2003-2023

Elections and appointments

Appointed by Gov. Paul Patton (D)

Education

Bachelor's University of Kentucky

J.D. University of Kentucky

Past experience

Mayor, City of Pikeville
Commissioner, City of Pikeville

all."[6][7]

The notice also detailed Combs' inappropriate phone calls made to other officials and employees of the City of Pikeville Kentucky, and described incidences where Combs called the city commissioner a "cokehead," the mayor of Pikeville a "fish face," and the city manager as "Dumbo." [6]

Combs in his answer to the formal charges, denied all the allegations, stated that he recused himself from the cases in which he had an interest, denied that the phone calls made were done in a "belligerent or hostile manner," and disagreed with the "characterization of the calls." [6][7]

See also


- Pike County, Kentucky
- Kentucky Circuit Courts
- Judicial selection in Kentucky

External links

- *Kentucky Court of Justice*, "Circuit Court Overview" (<http://courts.ky.gov/courts/Pages/CircuitCourt.aspx>)

References

1. *Kentucky Court of Justice*, "Kentucky Circuit Court Judges," accessed November 11, 2014 (<http://apps.courts.ky.gov/ContactList/Addresslist.aspx?Cat=CCJ>)
2. *WLKY.com*, "Pike Co. Judge Publicly Reprimanded Over DUI Arrest," August 11, 2006 (http://www.zoominfo.com/CachedPage/?archive_id=0&page_id=1676590714&page_url=//www.wlky.com/news/9667852/detail.html&page_last_updated=2006-08-13T22:18:00&firstName=Steven&lastName=Combs) (*timed out*)
3. *Kentucky Secretary of State*, "Election: 2014 Primary Election: Circuit Judge," accessed January 29, 2014 (<http://apps.sos.ky.gov/elections/candidatefilings/statewide/default.aspx?id=16>)
4. Judicial selection in Kentucky
5. *Martindale.com*, "Judge Profile: Steven Daniel Combs," accessed November 18, 2014 (<http://www.martindale.com/Steven-Daniel-Combs/585981-lawyer.htm>)
6. *Kentucky Judicial Conduct Commission*, "In re the matter of: Steven D. Combs," April 27, 2015 (http://courts.ky.gov/commissionscommittees/JCC/Documents/Public_Information/formalproceedingsCombs.pdf)
7. *WOWKTV*, "Pike County, KY judge under investigation for misconduct," May 13, 2015 (<http://www.wowktv.com/story/29056089/pike-county-ky-judge-under-investigation-for-misconduct>)

	<h1>KENTUCKY COURTS</h1>	
STATE COURTS	FEDERAL COURTS	STATE RES
• Kentucky Supreme Court • • Court of Appeals • • Circuit Courts • • District Courts • Family Courts •	• US District Court for the Eastern District • • US District Court for the Western District • • US Bankruptcy Court for the Eastern District • • US Bankruptcy Court for the Western District • • 6th Circuit Court of Appeals •	• Kentucky C • Kentucky • Kentucky Judic • Judicial Selection

Categories: Male | Kentucky candidate, Kentucky Circuit Court 35, 2nd Division, 2014
| Successful Kentucky judicial candidates, 2014 | 2014 incumbents | Unopposed candidates, November 2014
| 2014 general election (judicial) | Kentucky circuit court judges, Circuit 35 | Appointed judges, 2003
| Paul Patton, Circuit Court | Term expiring 2023, Kentucky | Misconduct allegations, May 2015

EXHIBIT B



50 W. Techne Center Dr.

Suite B-5

Milford, Ohio 45150

Ph: (513) 753-9964

July 22, 2015

To: Richard Getty, Esq.
The Getty Law Group
1900 Lexington Financial Center
250 West Main Street
Lexington, KY 40507

From: Marc Whitsett MD

Re: Judge Steven D. Combs

DOB: [REDACTED]

24 Hour Alcohol Use Disorder Evaluation: 07/17/15 through 07/18/15

Dear Mr. Getty:

This is a summary letter regarding the 24 Hour Alcohol Use Evaluation performed at The Ridge on Judge Steven D. Combs between July 17, 2015 and July 18, 2015.

Judge Steven D. Combs was evaluated at our program after being referred by his attorney after being served a formal charge of misconduct by the Judicial Conduct Commission related to alcohol use on April 27, 2015. He has had 2 prior Substance Use Evaluations performed; the first by Paul Dalton, MS, LPCC, CADC on 02/16/15 [report provided to me] and a second evaluation by Lovonne Fleming-Richardson, CADC, M. Ed. in the past week [report not provided]. A letter from his primary care physician Mark Reed, M.D. was rendered on 6/11/15 regarding past prescribing of diazepam with no evidence of misuse noted [letter provided].

Alcohol History:

Judge Combs relates that his first alcohol use was at age 19 years. He denies any issues related to his drinking in college except possibly briefly with grade attenuation, in law school or during any of his training. He states that he drank socially and without consequence.

He did suffer a consequence related to drinking when he was arrested for a DUI in 2005 at which time he pled an Alford plea. He did complete an alcohol course at that time. He has had no other legal issues related to drinking or substance use. He relates an incident when he left a voicemail on a [Kentucky] State Senator's voice mail in December 2013. Based on the voicemail Judge Combs has been told that he sounded drunk but he denies that he was intoxicated, although he admits that he was drinking at the time.

He does drink at home alone and states that his wife does not drink [he states she is a teetotaler]. He has had no withdrawal signs or symptoms. He has no history of DTs. He denies any significant hangover effects and drinks 3-4 times a week maybe 2-4 mixed drinks a night. He denies obsessive drinking patterns, denies morning drinking, and denies any medical complications related to alcohol use such as liver abnormalities, tremors, or being told by a physician to quit drinking. He has never been referred to or attended a 12-step meeting. He denies any occupational complaints related to drinking. His last use of alcohol was June 17, 2015.

Psychotropic Medications:

He is prescribed venlafaxine by his primary care physician related to anxiety. He has also been prescribed diazepam [Valium] by his family physician on occasion related to stress issues. He has taken prescription diazepam prescribed by his primary care physician Dr. Mark Reed M.D. He was initially provided diazepam related to his mother's death and recently was prescribed diazepam for stress due to anxiety. He denies misuse of his medication or drinking while on his medication. There has been no indication of his substance use disorder with benzodiazepines. His physician Dr. Reed indicates in his letter dated 6/11/15 that there is no clinical indication of a substance use disorder [letter reviewed].

Illicit Drug Use:

Judge Combs's illicit drug use history is unremarkable. He denies ever using illicit drugs. He denies use of CNS stimulants such as cocaine, amphetamines and methamphetamines. He denies use of inhalants or illegal drugs including heroin or prescription pain pills. He has never used marijuana or hallucinogens.

His clinical examination revealed no stigmata of chronic alcohol use.

His screening drug screen was positive for benzodiazepines. GC/ MS confirmation showed the presence of Ethyl glucuronide at 558 ng/mL, and the absence of Ethyl sulfate consistent with no alcohol use in the prior 3-5 days.¹ Metabolites for prescribed diazepam [Nordiazepam, oxazepam and Temazepam] were noted at low levels. These findings are consistent with prescribed medication use and no recent alcohol use.

His OARRS was unremarkable except for a recent diazepam prescription by his family physician Dr. Mark Reed, MD on 5/19/15.

On admission to The Ridge Judge Combs underwent a full Bio-Psycho-Social assessment which failed to identify a Substance Use Disorder.

Screening Tests in Addition to the Biopsychosocial Questionnaire:

SASSI-3 Substance Abuse Subtle Screening Inventory: Zero, Low Probability of Substance Use Disorder

CAGE: Score: 0

AUDIT questionnaire: screen for alcohol misuse: 5

A score of 8 or more is associated with harmful or hazardous drinking, a score of 13 or more in women, and 15 or more in men, is likely to indicate alcohol dependence.

MAST: Michigan Alcoholism Screening Test: 3

A score of 5 or more is associated with a problem drinker (alcoholic).

Diagnostic formulation DSM IV/V:

Axis I: Clinical disorder: V79.09: No Diagnosis

Axis II: Personality disorders and mental retardation: 799.9 diagnosis deferred on Axis II

Axis III: General medical conditions: Allergy to PNC, HBP, high cholesterol.

Axis IV: Psychosocial and environmental problems: DUI.

Axis V: Global assessment of functioning scale: GAF: 78

Discussion: Judge Steven Combs has a past history significant for being arrested for an OVI in 2005 with an Alford plea. He has been served a formal charge of misconduct by the Judicial Conduct Commission related to alcohol use on April 27, 2015. He was recently referred for a 28 Day Residential Treatment Program at The Ridge and arrived at The Ridge on 7/17/15. Judge Combs was cooperative and

¹ Remote toxicology consult obtained with Dr. Les Edinboro, MS, PhD, DABFT [Toxicologist at Quest Laboratories] on 7/20/15 with findings discussed and reviewed.


compliant throughout the evaluation. His demeanor was not evasive or manipulative, and he provided responses in a transparent fashion.

Impression: There is insufficient objective evidence to establish an alcohol use disorder based on available records and provided information. Reviewing his biopsychosocial history, substance use history, clinical assessment and examination there is insufficient evidence to support an alcohol use disorder. Judge Combs has a history of average frequency and volume of alcohol use with an isolated legal consequence in 2005 without a pattern of alcohol obsession, alcohol use escalation, tolerance, withdrawal history, prior failed attempts to quit, medical consequence, documented occupational impairment, or social or family issues/ altercations due to drinking.

Recommendation: There is no formal recommendation for treatment of a substance/ alcohol use disorder. I have no further recommendations for treatment. We have reviewed and encouraged responsible alcohol use. There is no requirement for total alcohol abstinence other than when utilizing prescription sedative use, in this case diazepam, as simultaneous use with both alcohol and diazepam is medically contraindicated.

Should you have further questions regarding this matter, please feel free to contact me.

Yours Sincerely,



Marc Whitsett MD

ABIM, ABAM

Medical Director

mwhitsett@theridgeohio.com

EXHIBIT C

Marc Whitsett, MD

September 11, 2015

IN RE THE MATTER OF: STEVEN D. COMBS, CIRCUIT COURT JUDGE



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COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

_____)
IN RE THE MATTER OF:)
STEVEN D. COMBS,)
CIRCUIT COURT JUDGE)
_____)

Deposition of: MARC WHITSETT, MD
Pursuant to: Notice
Date and Time: Friday, September 11, 2015
2:15 p.m.
Place: Northland
50 West Techne Center Drive
Suite B-5
Milford, Ohio 45150
Reporter: Brenda Keyser, RDR, CRR,
CLR, CME
Notary Public - State
of Ohio
Videographer: Emily Chick

1 APPEARANCES OF COUNSEL:

2

3 For Steven D. Combs, Circuit Court Judge:

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1 I N D E X

2

3 MARC WHITSETT, MD PAGE

4 DIRECT EXAMINATION BY MR. GETTY 5

CROSS-EXAMINATION BY MR. KELLY 27

5 REDIRECT EXAMINATION BY MR. GETTY 38

6

7

EXHIBITS MARKED REFERENCED

8

WHITSETT EXHIBIT 1 6 6

9 WHITSETT EXHIBIT 2 10 10

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1 THE VIDEOGRAPHER: We are on the record
2 at 2:15 p.m. The date is September 11th,
3 2015.

4 We're located at the office of
5 Dr. Whitsett, 50 West Techne Center Drive,
6 Suite B-5, Milford, Ohio, 45150, for the
7 deposition of Marc Whitsett, MD.

8 We're here for the -- in the matter
9 of Steven D. Combs, Circuit Court Judge,
10 35th Judicial Circuit, pending in the
11 Commonwealth of Kentucky Judicial Conduct
12 Commission.

13 Would the counsel please introduce
14 themselves for the record?

15 MR. GETTY: Richard A. Getty on behalf
16 of Judge Combs.

17 MR. KELLY: Louis Kelly on behalf of
18 the Judicial Conduct Commission.

19 THE VIDEOGRAPHER: And, Madam Court
20 Reporter, would you please swear in the
21 witness?

22 MARC WHITSETT, MD
23 a witness herein, having been duly sworn, was
24 examined and deposed as follows:

25 MR. KELLY: Before we start, I'll just

1 note for the record that we'll reserve all
2 objections to the testimony, but
3 otherwise --

4 THE WITNESS: Okay.

5 MR. KELLY: Go ahead.

6 DIRECT EXAMINATION

7 BY MR. GETTY:

8 Q. Dr. Whitsett, would you please state
9 your full name and address for the record?

10 A. Marc William Whitsett. And my home
11 address or my office address?

12 Q. Office address is fine.

13 A. 50 West Techne Drive, Milford, Ohio.

14 Q. And how old are you, sir?

15 A. I'm 61 years old.

16 Q. Can you tell us your current position
17 here with the group?

18 A. I'm the medical director at Northland,
19 The Ridge. The Ridge is an inpatient
20 residential, and Northland is an outpatient
21 program.

22 Q. Okay. And are you the medical director
23 for this entire program?

24 A. Correct.

25 Q. Okay. What kind of work does the

1 Northland -- I'll call it the group -- do,
2 generally?

3 A. We treat substance use disorders.

4 Q. Is part of that treatment and
5 evaluation as to whether someone has a substance
6 abuse disorder or does not?

7 A. Correct.

8 Q. Okay. I've got your resume -- and I'd
9 like to go ahead and mark that as -- we'll mark
10 that as Whitsett Number 1.

11 (Whitsett Exhibit 1 was marked for
12 identification.)

13 BY MR. GETTY:

14 Q. I'll hand that to you.

15 Can you give us some sort of summary of
16 your background in terms of your medical
17 education and your work history, your board
18 certifications, things of that sort?

19 A. I went to Kenyon College, graduated
20 with a BA, with a chemistry major.

21 I went to University Hospital for my
22 residency after completing medical school here in
23 Cincinnati at the University of Cincinnati
24 Medical College, subsequently, completed my
25 internal medicine residency.

1 After that I spent two years in an
2 Indian reservation out west under the Public
3 Health Service and provided medical care to
4 Native Americans.

5 I then came back to Cincinnati,
6 practiced in an emergency medicine group.

7 And along that route, I became medical
8 director of a hospital detoxification and
9 substance abuse treatment clinic.

10 At that time, I became board certified
11 in addiction medicine and in -- in internal
12 medicine.

13 Subsequently, I joined a -- some
14 private practices. In the past seven years, I've
15 been working at the Clermont Recovery Center as a
16 consultant for pain, as well as addiction
17 services, and established an opioid treatment
18 program there.

19 This past April, I took this new
20 position as medical director here at the --
21 Northland, The Ridge.

22 Q. Okay. And prior to that, from 2009 to
23 2015, you were at the Clermont Recovery Center as
24 medical director?

25 A. Correct.

1 Q. Okay. I see you -- your medical
2 degree's in internal medicine and did a residency
3 also at the University of Cincinnati --

4 A. (Nodding head.)

5 Q. -- yeah -- in that area, too?

6 A. That's correct.

7 Q. Your board certifications, I think you
8 said addiction medicine. You're board certified
9 in addiction?

10 A. Yes. And in internal medicine.

11 Q. Okay.

12 A. Yes.

13 Q. There are other certifications here on
14 your resume. What -- what do these other
15 certifications entail?

16 A. Well, Suboxone certification is under
17 the DEA, what's known as the DATA Waiver Act of
18 2000. And I became Suboxone certified in 2009.

19 I've also had disability certification,
20 as well as I'm a certified medical review
21 officer, enabling me to review drug tests on
22 federal employees, as well as our patients here.

23 I've also been involved in the past
24 15 years with providing services for the Ohio
25 workers' compensation division, including

1 medication utilization and review of prescribed
2 drugs and including opioids.

3 I did some work with the workers'
4 compensation unit in Ohio with regards to the
5 fraud unit for a couple of years, as well.

6 Q. And I see that you've gradu -- you
7 graduated magna cum laude, I guess, from --

8 A. That was Kenyon College, uh-huh.

9 Q. That was Kenyon College. You're also a
10 Phi Beta Kappa?

11 A. Correct.

12 Q. Congratulations; not many achieve that.

13 Your professional memberships are
14 listed here also on -- on the resume along with
15 committee memberships. And I see you've -- there
16 are two pages of lectures and articles.

17 Do you lecture frequently?

18 A. Yes. I've been involved in lecturing.
19 I'm still active with it.

20 Here at this facility, I provide two to
21 three lectures a week to clinical staff and to
22 our patients. And it's just been my -- my
23 calling, I suppose.

24 Q. Okay. And how many years, then, have
25 you worked in the area of evaluating and dealing

1 with addiction and rehabilitation matters?

2 A. I became involved at Deaconess
3 Hospital, I believe, in 1994. And that includes
4 working for the Ohio State Medical Board doing
5 physician assessments for impaired physicians,
6 treating impaired physicians, monitoring impaired
7 physicians, and those in the state of Ohio under
8 the medical board.

9 Q. And do you consider yourself qualified
10 with respect to -- medically qualified as an
11 expert in terms of evaluation of addictions both
12 with respect to alcohol and drugs?

13 A. Yes.

14 Q. Okay. Did you have occasion to meet
15 Judge Steven Combs earlier?

16 A. Yes, I did.

17 Q. And I'm going to mark Exhibit 2 this
18 report that you rendered at my -- at my request.

19 (Whitsett Exhibit 2 was marked for
20 identification.)

21 BY MR. GETTY:

22 Q. Can you identify Exhibit 2 as a report
23 that was rendered summarizing your evaluation and
24 dealings with Judge Combs?

25 A. Yes. I recognize this as a letter that

1 was dated July 22nd, 2015 related to an
2 evaluation that was conducted July 17th through
3 July 18th of this year, 2015.

4 Q. Did Judge Combs present himself here at
5 your facility for the purpose of wanting to
6 enroll in a rehabilitation program?

7 A. Yes, he did.

8 Q. Okay. Did he appear to -- was he
9 ready, willing, and able to actually participate
10 in a -- in a long-term rehabilitation program?

11 A. Yes. He came with bags packed.

12 Q. Okay. And what -- if you could walk me
13 through step by step -- was there an evaluation
14 process that took place with respect to Judge
15 Combs?

16 A. There was an evaluation process.

17 Q. Was that the normal evaluation process
18 that you and your staff would utilize with
19 respect to determining whether or not a person
20 was a candidate or had the medical necessity for
21 a rehabilitation enrollment?

22 A. Yes. We routinely do professional
23 evaluations, whether it's for dentists,
24 physicians, attorneys, executives, related to
25 substance use disorder. And we have a fairly

1 specific protocol for how we do that.

2 Q. Your report has an alcohol history. It
3 summarizes here briefly information, I guess,
4 that was provided by Judge Combs?

5 A. Correct.

6 Q. Okay. And as part of this process,
7 just explain for us, so that the Commission and
8 we have on the record the -- the actual steps
9 that you went through in terms of evaluating
10 whether or not Judge Combs had a alcohol
11 addiction problem.

12 A. Well, prior to me seeing a patient, the
13 general format is that -- for a patient is we
14 collect a urine specimen, determine whether or
15 not a breathalyzer is positive.

16 We also subsequently have a clinical
17 assessor do what's known as a biopsychosocial
18 assessment that's independent of my evaluation
19 that utilizes a computer format for going through
20 a series of complex questions related to
21 substance use disorders and past history.

22 After that's completed, I generally,
23 then -- they'll bring the patient to me. And I
24 spend anywhere from two to two-and-a-half hours
25 with that client doing a thorough review.

1 I provide additional testing that I
2 want to do personally, which includes certain
3 kinds of questionnaires.

4 I do a physical exam and determine
5 whether or not there's any stigmata of chronic
6 alcohol abuse, which includes an examination of
7 the skin, determining whether or not there's
8 problems with the liver, as well as neurological
9 abnormalities, which are frequently seen in -- in
10 our clients that have alcohol use disorders.

11 Q. Would I be accurate in saying that you
12 have a standard protocol --

13 A. Yeah.

14 Q. -- that you follow step by step in
15 terms of blood, urine, psychological evaluation,
16 things of that sort?

17 A. Correct.

18 Q. Okay. And is that a protocol that is
19 standard within this area of -- of medicine, the
20 addiction certification that you hold?

21 A. It is standard.

22 It might vary with certain outpatients
23 versus a -- an evaluation such as this. This
24 tends to be a little bit more thorough, a little
25 more detailed.

1 Our outpatient evaluations, for many of
2 our outpatients, may not entail quite as much
3 testing as this.

4 Q. Would you characterize the testing that
5 was done with respect to Judge Combs, both from
6 the standpoint of physical observation, plus
7 withdrawal of blood, urine, et cetera, and the
8 laboratory testing of those substances, intensive
9 in nature?

10 A. Yes, I would describe it that way.

11 Q. Okay. And what kind of tests were done
12 with respect to Judge Combs's blood, urine, et
13 cetera --

14 A. We do --

15 Q. -- or his -- or his or -- organs?

16 A. Right. We do urinalysis. We do a
17 routine liver function testing. We look for
18 electrolyte abnormalities, a complete blood
19 count.

20 We look for evidence of whether or not
21 they have acute intoxication or signs of
22 withdrawal when they present to us.

23 This can include elevated blood
24 pressure, tremors, evidence that they have
25 impairment in their gait, their station.

1 We look for circumstantial evidence of
2 psoriasis, whether or not there is ascites
3 present, which is fluid accumulation in the
4 abdomen.

5 And then we subsequently send out the
6 blood testing and the urine testing for further
7 analysis.

8 Q. Okay. And through all those steps that
9 were utilized, including the laboratory testing
10 for blood and urine, would -- did you find any
11 indication that would support a conclusion that
12 Judge Combs was in any way addicted to alcohol?

13 A. No. We made no determination that he
14 had what's known as a substance use disorder, or
15 the two classifications that we use presently is
16 whether or not there's an alcohol use disorder.

17 Present criteria, according to DSM-V
18 criteria, which has changed in the last couple of
19 years from DSM-IV, includes the determination of
20 whether or not there is a use disorder and is it
21 mild or moderate or advanced.

22 Q. Okay.

23 A. And we did not find a substance use
24 disorder after we reviewed all of the testing
25 parameters, after I reviewed the biopsychosocial

1 assessment and the urine and blood test, as well
2 as his exam.

3 Q. Did he actually submit to tests?

4 A. Yes, willingly, without any difficulty.

5 Q. Okay.

6 A. No.

7 Q. And am I correct in understanding,
8 then, that the ultimate conclusion you reached,
9 that there was absolutely no evidence, either
10 physically, psychologically, or otherwise, that
11 he had a -- a substance abuse/alcohol problem of
12 any sort?

13 A. We concluded that he did not have an
14 alcohol use disorder.

15 We were aware that he had had issues
16 related to concerns by other people for -- that
17 prompted his evaluation.

18 But after we reviewed all of our
19 testing and our evaluation, I was unable to
20 conclude that he required treatment for an
21 alcohol use disorder.

22 Q. In other words, did he tell you that
23 there had been allegations, that he believed were
24 unfounded, that he had an alcohol problem by
25 others?

1 A. Correct.

2 Q. And when you evaluated the efficacy or
3 nonefficacy of those kinds of allegations, the
4 physical evidence from the testing and the -- the
5 battery of evaluations that your staff and
6 yourself went through led to the conclusion that
7 he did not have such a problem and that those
8 allegations, based on the evidence you had, were
9 unfounded?

10 A. Well, I could not confirm any of the
11 allegations.

12 After my evaluation, in reviewing
13 everything, I was unable to establish an alcohol
14 use disorder. And, therefore, I didn't make any
15 recommendations for treatment.

16 Q. Okay. Did he -- did he still, in your
17 dealings with him -- did he tell you, hey,
18 listen, I'm willing to -- I'm willing to go to,
19 you know -- to go through a rehab, you know, if
20 you think -- you know, if you think it would
21 help?

22 A. He was very transparent, very willing,
23 and basically told me that he would follow any
24 recommendations that I had.

25 Q. Okay.

1 A. And he was very forthright.

2 Q. And what did you tell him?

3 A. Well, I concluded with him that -- the
4 following day, I believe, I spoke to him and his
5 wife. And I -- I told them that I was unable to
6 establish a diagnosis of alcohol use disorder
7 and, therefore, I didn't make any recommendation
8 for formal treatment.

9 Q. Did not?

10 A. I did not.

11 Q. I mean, under -- given the evidence
12 that you had from testing results and your
13 evaluation of him personally -- incidentally, how
14 long did you spend evaluating him?

15 A. About two-and-a-half hours.

16 Q. Okay. And based upon the test results
17 and your personal eval -- medical evaluation, you
18 made a determination it was medically unnecessary
19 to make that diagnosis?

20 A. Correct, yes.

21 Q. I mean, in fact, if you had made that
22 diagnosis given what you had, would that be
23 malpractice?

24 A. That would be considered unacceptable.
25 It would be considered malpractice because I'd be

1 recommending a treatment for a medical diagnosis
2 that didn't exist.

3 Q. It would be sort of like a -- a guy
4 that does cardiac catheterizing somebody again
5 and again and again when it's medically
6 unnecessary?

7 A. Yeah. It would be similar.

8 Q. Okay. Is there any -- anything else --
9 I mean, if we go through your report, could --
10 maybe if there's -- if you could sort of
11 summarize the paragraphs and the conclusions that
12 you reached.

13 The bottom line, though, Doctor;
14 your -- your determination, as evidenced by this
15 report, is that Judge Combs, despite his
16 willingness to submit to a medical rehab --
17 alcohol rehabilitation program, that that was
18 medically unnecessary, would indeed be in --
19 inappropriate to do -- to subject him to that?

20 A. It would be medically inappropriate,
21 without a doubt.

22 Certainly, I have certain management
23 people that like me to admit patients because of
24 financial compensation.

25 But I'm a straight shooter, and I did

1 not see the need for him to come to our facility.

2 I couldn't establish a substance use disorder.

3 Q. And based upon your years of
4 experience, your expertise, and your -- your
5 personal evaluation, the test batteries that --
6 the tests that Judge Combs was subjected to and
7 your own personal medical evaluation, did you
8 reach a conclusion, then, that he was not -- he
9 did not have a -- an alcohol abuse disorder?

10 A. I did reach that conclusion.

11 Q. Okay.

12 A. I did not establish a substance use
13 disorder with alcohol.

14 Q. And is that your opinion, both then, as
15 evidenced by this report, and today?

16 A. Yes, uh-huh.

17 Q. Now, if you could just sort of
18 summarize what we have here.

19 A. Well, initially, I gave background
20 information related to -- as I indicated, it's a
21 summary letter. I briefly describe his alcohol
22 history.

23 He was an active drinker. But I kind
24 of gave background information related to his
25 presentation.

1 I talked about psychotropic medications
2 that he had been prescribed by his family
3 physician.

4 I reviewed his illicit drug history,
5 which is important with regards to whether or not
6 there might be other illegal drug use.

7 I was able to review his Ohio and
8 Kentucky OARRS report, which looks for illegal or
9 repetitive drug use or drug-seeking behavior with
10 physician shopping.

11 Q. Is that what we call KASPER?

12 A. KASPER, yes.

13 Q. In Kentucky, I think they call it
14 KASPER.

15 A. It's a similar kind of program.

16 Q. Yeah.

17 A. And we have the ability to check
18 Kentucky and other surrounding states. I think
19 it now includes seven other states surrounding
20 Ohio --

21 Q. All right.

22 A. -- so that we can be inclusive.

23 Q. So let me -- I mean, if I'm correct,
24 that -- what that does is it allows you now, as a
25 medical profession, to check online, because now

1 you have any prescriptions issued which will come
2 up --

3 A. That's correct.

4 Q. -- which will show the frequency; in
5 other words, whether a patient is doctor
6 shopping, in fact?

7 A. In Ohio we call it the OARRS, or the
8 Ohio Automated Rx Reporting System. And it
9 basically gives us that same information as
10 KASPER does.

11 Q. For example, like you could check and
12 find out how many times Mr. Kelly has been
13 prescribed a substance?

14 A. I would not do that, because he's not
15 my patient.

16 Q. No. If he were your patient.

17 A. If you came in to me to seek
18 treatment --

19 Q. Exactly.

20 A. -- I would certainly be willing to do
21 that and would be able to.

22 Q. It would tell you how many times he's
23 had Viagra prescribed?

24 A. It would not, because Viagra is not
25 listed.

1 MR. GETTY: Strike that from the
2 record. I'm just kidding.

3 THE WITNESS: Yes.

4 BY MR. GETTY:

5 Q. And your search of those records
6 concluded that -- concluded what, Doctor, with
7 respect to Judge Combs?

8 A. I concluded -- and I can read it here
9 from the report -- that I did not find that he
10 had an alcohol use disorder.

11 Q. Okay. And in terms of the KASPER
12 review, did that also con -- did you also
13 conclude he had no drug shopping or drug
14 problem?

15 A. It was what we call a consistent
16 report, meaning it was consistent with the
17 history obtained and consistent with the
18 findings, yes.

19 Q. I think your words here were, Judge --
20 Judge Combs' illicit drug use history is
21 unremarkable.

22 A. That's correct.

23 Q. Unremarkable, meaning it doesn't
24 exist?

25 A. Right. I was unable to establish any,

1 yeah.

2 Q. And over here, the screening test, does
3 this reflect the test scores? If you could sort
4 of give us a little better understanding in lay
5 terms of what that -- that is.

6 A. The SASSI-3 is a standard test that is
7 administered to people that have a consideration
8 for a substance use disorder. He scored low
9 probability of a substance use disorder.

10 CAGE is a very basic, but essential,
11 part of what's known as an alcohol screening
12 questionnaire. He scored a zero.

13 A little bit more intense is the AUDIT
14 questionnaire. And --

15 Q. Zero is a good score?

16 A. Zero is a very good score.

17 And the AUDIT questionnaire screen for
18 alcohol misuse was a five. And that is
19 considered to be below the threshold.

20 We start to get concerned over an
21 eight. And we establish a score of thirteen or
22 more, he needs further -- additional
23 consideration. And someone that scores a fifteen
24 or more would be likely to have alcohol
25 dependence. And he scored a five.

1 Q. Okay.

2 A. And the MAST, which is the Michigan
3 Alcoholism Screening Test, was a three. And
4 that's below the threshold of concern, so --
5 which is a five.

6 Q. Right. And then the next category
7 is -- it says, Diagnostic formulation DSM-IV/V.

8 A. Yeah. Now that's the DSM criteria.
9 And there were changes made in 2013.

10 We presently -- our biopsychosocial
11 assessment is done with the DSM-IV criteria.

12 My criteria that I use is the DSM-V,
13 because I use the most updated one. And there
14 are some subtle changes.

15 But essentially utilizing both formats
16 and looking at them, we were unable to establish
17 an alcohol use disorder.

18 Q. Okay. And just to read your
19 recommendation, impression, just reading it into
20 the record, you say, There is insufficient
21 objective evidence -- evidence to establish an
22 alcohol use disorder based upon available records
23 and provided information.

24 Reviewing biopsychosocial history,
25 substance use history, clinical assessment, and

1 examination, there is insufficient evidence to
2 support alcohol use disorder.

3 Judge Combs has a history of average
4 frequency and volume of alcohol use with an
5 isolated legal consequence in 2005, without a
6 pattern of alcohol obsession, alcohol use
7 escalation, tolerance, withdrawal history, prior
8 failed attempts to quit, medical consequences,
9 documented -- documented occupational impairment
10 or social or family issues, altercations due to
11 drinking.

12 A. That was my impression, yes.

13 Q. Okay. And your recommendation is,
14 There is no formal recommendation for treatment
15 of substance/alcohol use disorder. I have no
16 further recommendations for treatment. We have
17 reviewed and encouraged responsible alcohol use.
18 There's no requirement for total alcohol
19 abstinence other than when utilizing prescription
20 sedative use, in this case diazepam, as
21 simultaneous use with alcohol and diazepam is
22 medically contraindicated.

23 A. Correct.

24 MR. GETTY: I would move for the
25 introduction of both Exhibit 1 and

1 Exhibit 2.

2 MR. KELLY: No objection at this
3 time.

4 MR. GETTY: Okay. All right.

5 MR. KELLY: You ready for me?

6 MR. GETTY: Yeah.

7 CROSS-EXAMINATION

8 BY MR. KELLY:

9 Q. Okay. Good afternoon, Doctor. How are
10 you doing?

11 A. I'm doing well. Thank you.

12 Q. Just -- I want to ask you a couple of
13 questions.

14 Did your -- your report is dated
15 June 16th -- or -- excuse me -- July 2nd -- 22nd,
16 2015.

17 A. Yes.

18 Q. When did the actual evaluation occur?

19 A. If you look at the first page, under
20 his date of birth, it says, 24-hour alcohol use
21 disorder evaluation from July 17th through
22 July 18th of 2015.

23 Q. Great. Thank you.

24 A. Yes.

25 Q. I wanted to ask you -- you talked about

1 the testings and reviewing that you did. You
2 mentioned there was some physical components of
3 it; is that correct?

4 A. That's correct.

5 Q. Okay. Is it -- how much of the testing
6 involved you asking questions and getting
7 information from Judge Combs?

8 A. Probably about an hour and 20 minutes
9 is involved in talking, inquiry, and having him
10 fill out forms and questionnaires related to his
11 use disorder.

12 We then spent about at least a half an
13 hour to 40 minutes doing a physical examination,
14 which includes neurological assessment, mental
15 status exam, close scrutiny of the liver, looking
16 for signs or stigmata of the skin, whether or not
17 there's evidence that he has chronic alcohol use.

18 We -- there are certain physical
19 findings that we can look for in someone who
20 drinks too much -- telangiectasias, which are
21 certain kinds of varicosities on the skin.

22 We look for what's called glossitis,
23 which is a tongue abnormality that we see in
24 people that drink heavily and regularly.

25 We look for enlargement of the liver.

1 We look for fluid buildup as a result
2 of what's called portal hypertension.

3 We look for neurological ab --
4 neurological abnormalities, which includes
5 neuropathy, altered gait, cerebellar imbalance,
6 problems in terms of what's called perseveration,
7 also certain fine motor skill evaluations to
8 determine whether or not there's been damage as a
9 result of heavy drinking.

10 So these are the basic, fundamental
11 types of things that we look for.

12 Q. And you say that goes 20 to 40
13 minutes?

14 A. About that, yes.

15 Q. And then you do an hour and a half, an
16 hour of 20 minutes obtaining information from the
17 patient?

18 A. Yeah. And I think with him, we
19 probably spent about two hours and 20 to
20 30 minutes, if I recall. I didn't keep a time
21 log of it, but that's a general assessment of how
22 long it generally takes, which includes the
23 nursing assessment and whatnot.

24 Q. Sure. I want to ask you about some of
25 the information that's in your report.

- 1 A. Okay.
- 2 Q. On page 2 --
- 3 A. Yes.
- 4 Q. -- under Alcohol History --
- 5 A. Yes.
- 6 Q. -- the second paragraph --
- 7 A. Yes.
- 8 Q. -- if I'm reading -- in the middle --
- 9 I'll read this. Tell me if you -- if you follow
- 10 along. It says, He -- and I'm assuming that
- 11 means --
- 12 A. The judge.
- 13 Q. -- the judge.
- 14 A. Yes.
- 15 Q. He relates an incident when he left a
- 16 voicemail on a Kentucky state senator's voicemail
- 17 in December 2013. Based on the voicemail, Judge
- 18 Combs has been told that he sounded drunk, but he
- 19 denies that he was intoxicated, although he
- 20 admits that he was drinking at the time.
- 21 A. Yes.
- 22 Q. Did I -- did I read your report
- 23 correctly?
- 24 A. Yes.
- 25 Q. Can you tell me about -- do you recall

- 1 him talking about that?
- 2 A. I do.
- 3 Q. What did he say?
- 4 A. He said exactly that.
- 5 Q. Just that?
- 6 A. He really did. He just said that he
- 7 was -- he told me that he -- it was alleged that
- 8 he had called, and he admitted and told me that
- 9 he did leave a voicemail and that he -- I asked
- 10 him, I said, well, were you drinking at that
- 11 time?
- 12 And he says, I was.
- 13 I asked him, were you drunk?
- 14 He says, I was not.
- 15 And I said, well, there it is.
- 16 But he says that he was told that he
- 17 sounded drunk.
- 18 I don't know who said that to him, but
- 19 I'm assuming he was alluding to maybe the
- 20 Commission.
- 21 Q. And did he tell you it was just one
- 22 voicemail?
- 23 A. Yes. I think so.
- 24 Q. Okay.
- 25 A. And I don't remember additional

1 information about further voicemails, but he did
2 cite the one in December '13.

3 Q. Okay.

4 A. That's all I recall. That's what I've
5 documented.

6 Q. And you didn't hear it?

7 A. Oh, no.

8 Q. Okay.

9 A. I didn't hear it.

10 Q. Okay.

11 A. I didn't hear it, no.

12 Q. Okay.

13 A. He didn't play me a recording or
14 anything like that, no.

15 Q. Great.

16 I'd like to -- the following paragraph,
17 is -- so did he report to you as far as his
18 average drinking was, he would drink three to
19 four times a week and maybe two to four mixed
20 drinks a night?

21 A. Yeah. And that's always a very
22 difficult history to obtain from a drinker.
23 Because it's not always regular.

24 Now there's some people that say, yeah,
25 I drink two drinks every night seven days a week.

1 But most people are not like that.

2 And this is the information that he
3 provided me. He says, on average, three to four
4 times a week, maybe two to four, at most.

5 Now, with heavy drinking -- and, of
6 course, this definition gets bandied around a
7 lot -- but the National Institutes of Health on
8 alcohol abuse talk about, in a male, if you drink
9 a certain amount, then you might have a substance
10 use disorder.

11 That in and of itself, though, is not a
12 criteria for having an alcohol use disorder.

13 Generally, more than 14 to 15 drinks a
14 week is considered to be at-risk drinking.

15 And he fell well within -- pretty
16 much -- I mean, if you gave him 16 drinks at max,
17 he was at that threshold.

18 But we don't use that as a criteria for
19 diagnosing alcohol dependence or abuse. It's not
20 the volume. It has to do with the consequences,
21 the obsession, and the physical problems.

22 But this was the information he
23 provided to me.

24 Q. Okay. And it looks like he also told
25 you that his last use of alcohol was June 17th,

1 2015?

2 A. That's what he did tell me, yes.

3 Q. Okay. I'd like to look at page 4 under
4 Impression. I think that Mr. Getty read this to
5 you.

6 On the first sentence, where you say,
7 There is insufficient objective evidence to
8 establish an alcohol use disorder based on
9 available records and provided information, does
10 that mean -- when you say there's insufficient
11 objective evidence to establish an alcohol use
12 disorder, does that mean he doesn't have one or
13 you can't tell because there was insufficient
14 evidence?

15 A. It means, based on the information I
16 had and based upon my assessment, I could not
17 make that diagnosis.

18 Q. Okay. So you're saying it's possible
19 there's other information that could change that
20 one way or the other?

21 MR. GETTY: Objection.

22 A. And that would be true for any medical
23 condition.

24 For instance, if I'm evaluating someone
25 for cancer, I evaluate them and the following

1 week they get an MRI and that MRI shows that, oh,
2 my gosh, there's a spot on the liver we didn't
3 see -- so at any time medical information can
4 change, absolutely.

5 BY MR. KELLY:

6 Q. Sure. Sure.

7 I'm sorry. If we could backtrack for
8 one bit. On page 3 under the Discussion --

9 A. Okay.

10 Q. Under the Discussion, last paragraph,
11 towards the end, there's a sentence. He says,
12 He -- I guess, being Judge Combs --

13 A. Yes.

14 Q. -- was recently referred for a 28-day
15 residential treatment program at The Ridge and
16 arrived at The Ridge on 7/7/15.

17 Did I read that correct -- correctly?

18 A. Yes.

19 Q. Do you know who referred him to the
20 28-day residential treatment program?

21 A. I think it was maybe your -- the
22 lawyer. I believe so.

23 Q. Which lawyer?

24 MR. GETTY: Me.

25 A. Mr. Getty.

1 BY MR. KELLY:

2 Q. Okay. Okay.

3 A. I think it was him.

4 Q. Okay.

5 A. I don't see it written, but my
6 recollection is, because I always ask people, how
7 did you find us. And I think he said he was
8 referred by his lawyer.

9 Q. Okay.

10 A. But I can't --

11 Q. And --

12 A. I'm not exactly sure of that, but I
13 think that's correct.

14 Q. Okay. And whose decision was it not to
15 participate in the 28-day residential program?

16 A. That was my decision.

17 Q. Okay.

18 A. If I can state --

19 Q. Sure.

20 A. -- I usually keep people longer than
21 24 hours, particularly if I believe that they
22 have a use disorder.

23 I felt so strongly that he didn't, I
24 did not feel like there was any benefit from my
25 end, our program's end, or the judge's end, to

1 keep him any longer.

2 So after 24 hours, I discharged him.

3 Q. Okay. Did -- after your evaluation or
4 during it, did Judge Combs ever indicate whether
5 he had intended to resume drinking following his
6 evaluation?

7 A. I told him that I made no firm
8 recommendations for abstinence. And I don't
9 think he alluded to whether or not he was going
10 to drink or not.

11 I told him that there was no
12 recommendation for abstinence. I did not
13 recommend abstinence, because I didn't establish
14 an alcohol use disorder.

15 Q. Right.

16 A. And I don't remember if he said
17 anything to me about whether or not he was going
18 to drink or not.

19 Q. And that's what I wanted to know,
20 whether or not he said --

21 A. I don't know if he -- I don't remember
22 him saying anything to me to that effect.

23 Q. Okay. So --

24 A. I certainly recommended that he not be
25 drinking when he takes any of his medication from

1 his doctor in the form of the benzodiazepam.

2 But, otherwise, I did not make a
3 recommendation.

4 I don't remember him saying whether or
5 not he was going to drink or not.

6 MR. KELLY: Okay. That's all I have.

7 REDIRECT EXAMINATION

8 BY MR. GETTY:

9 Q. Just looking at page 2, it says he was
10 told by a physician to quit drinking.

11 Is that what you understood he told
12 you?

13 A. Where is that? I'm --

14 Q. Page 2, it says -- well, let me -- he
15 says -- you said -- you recounted, he denies
16 obsessive drinking patterns, denies morning
17 drinking --

18 A. Correct.

19 Q. -- denies any medical complications
20 related to alcohol use, such as liver abnormal --
21 abnormalities, tremors, or being told by a
22 physician to quit drinking. He has never been
23 referred to attend to a 12-step meeting. He
24 denies any occupational complaints related to
25 drinking. His last use of alcohol was July 7,

1 2000 --

2 A. June 17.

3 Q. -- June 17, 2015.

4 So, basically, when he presented
5 himself to you, he was telling that you he hadn't
6 had a drink for over a month --

7 A. Correct.

8 Q. -- right at a month?

9 A. That's what he said, yes.

10 Q. Okay. And I find this very
11 interesting.

12 Look a paragraph up. It says,
13 He relates an instance -- instance when he left a
14 voicemail on a Kentucky state senator's voicemail
15 in December 2013.

16 That -- that's a senator named Ray
17 Jones. Some refer to him in a different way, but
18 most people refer to him as Senator Ray Jones.

19 Do you have any information -- let's
20 see. You saw him on July of 2015, right?

21 A. Correct, July 17.

22 Q. And what was the day -- I think the
23 charges that were brought here after some
24 complaining around the first of the year in
25 2015 -- charges were brought against Judge Combs

1 sometime in May of 2015?

2 A. (Nodding head.)

3 Q. Do -- do you have any explanation for
4 why, if Senator Ray Jones was so upset about that
5 incident or -- and turned it in to the
6 commission -- do you have any idea why, from
7 December 2013 up until July of 2015 -- that would
8 be -- let's see -- 2014. That would be one year
9 and five months, almost a year and a half.

10 Do you have any knowledge that Senator
11 Jones was any -- under any kind of physical
12 disability that prevented him from complaining
13 about this?

14 A. No. I wouldn't have that
15 information.

16 Q. Do -- do you have any information
17 that -- that maybe certain other things happened
18 that made Judge -- or made Senator Jones angry
19 and he wanted to hurt or to retaliate against
20 Judge Combs in the interim?

21 MR. KELLY: I'm just going to object to
22 the line of questioning. I don't know that
23 he's qualified to answer.

24 BY MR. GETTY:

25 Q. Well, has anybody made you -- has

1 anybody made you aware of a ruling that Judge
2 Combs made sometime in 2015 that appears to have
3 prompted this year-and-a-half-later charge by
4 Senator Jones?

5 A. I have no such knowledge.

6 Q. Okay. But, to your knowledge, you
7 don't have any reason to believe that when he
8 told you that that incident happened for --
9 happened a year and a half or more earlier and
10 nobody complained for that period of time, you --
11 you don't have any information that would be
12 inconsistent with what's in your report?

13 A. Not that I know of, no.

14 MR. GETTY: Okay. That's all I have.

15 We would move for the introduction at
16 the hearing of the two reports and your
17 testimony.

18 And one thing I think I need to ask you
19 on the record. Do you waive signature? Do
20 you want to actually read this?

21 THE WITNESS: I waive signature, yes.

22 MR. GETTY: Okay. I just wanted to
23 make sure you didn't want to read it.

24 THE WITNESS: I do not.

25 MR. GETTY: Okay. Now, off the record,

1 do you want to know what Ray Jones's
2 nickname is?

3 THE REPORTER: Let's go off the
4 record.

5 THE VIDEOGRAPHER: Okay. We are off
6 the record at 2:51 p.m.

7

8 (Signature waived.)
9 MARC WHITSETT, MD

10

11

DEPOSITION ADJOURNED AT 2:51 P.M.

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1 C E R T I F I C A T E

2

3 STATE OF OHIO :
4 COUNTY OF HAMILTON : SS

5

6 I, Brenda Keyser, RDR, CRR, CLR, CME,
7 the undersigned, a duly qualified and
8 commissioned notary public within and for the
9 State of Ohio, do certify that before the giving
10 of his deposition, MARC WHITSETT, MD was by me
11 first duly sworn to depose the truth, the whole
12 truth and nothing but the truth; that the
13 foregoing is the deposition given at said time
14 and place by MARC WHITSETT, MD; that I am neither
15 a relative of nor employee of any of the parties
16 or their counsel, and have no interest whatever
17 in the result of the action.

18

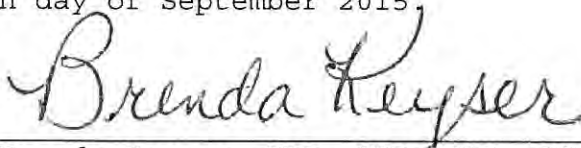
19 IN WITNESS WHEREOF, I hereunto set my hand
20 and official seal of office at Cincinnati, Ohio,
21 this 12th day of September 2015,

22

23

24

25



Brenda Keyser, RDR, CRR, CLR, CME
Notary Public - State of Ohio
My commission expires September 21, 2017.

EXHIBIT D



615.329.2408 (office)
615.691.7032 (fax)
www.claritypec.com

FITNESS TO PRACTICE EVALUATION REPORT

Name: Hon. Steven Combs
Date of Birth: [REDACTED]
Social Security Number: [REDACTED]
Dates of Evaluation: February 1 through 3, 2016

REFERRAL INFORMATION

Judge Steven Combs is a 56-year-old circuit court judge from Pike County, Kentucky. He is referred by the Kentucky Lawyer Assistance Program for Fitness for Duty Evaluation. We were told that Judge Combs had recently signed a consent agreement related to several instances of alleged judicial misconduct. We were told that concerns had been raised about the possibility of Judge Combs abusing alcohol or abusing privileges associated with his office. We were asked to evaluate him with regard to any conditions of potential impairment.

PROCEDURE FOR THIS EVALUATION

We reviewed a large set of records provided to us by the Kentucky Lawyers' Assistance Program, by Judge Combs' attorney, Richard Getty, Esq., and by Judge Combs, himself. On February 1, 2016, he appeared here at the Clarity offices for a comprehensive, multidisciplinary evaluation. At various times during the course of his three days with us, Judge Combs was interviewed by Steven Lepley, M.A., LPC, Yasmenn Iqbal, Psy.D., psychologist, Karen Milliner, Psy.D., psychologist, James Walker, Ph.D., ABPP, neuropsychologist and forensic psychologist, and Paul Ragan, M.D., psychiatrist and addictionologist. Judge Combs was also interviewed for two and a half hours by Richard Tennent, Esq., a Nashville criminal defense attorney associated with our center.

We interviewed Judge Combs' wife during the course of this evaluation, as well as his psychotherapist and chemical dependency counselor, Ms. Lovonne Fleming-Richardson.

Judge Combs was administered a large set of psychological and neuropsychological testing during the course of his time with us, the precise nature of which are detailed below. He also underwent various laboratory tests, including a professional panel urine drug screen, hair testing for drugs of abuse, PEth testing, and comprehensive metabolic testing. After completing these various evaluative procedures, we integrated this information, met as a team to discuss Judge Combs' situation, and prepared this report.

Upon evaluation, we explained to Judge Combs that this evaluation would not be confidential, but that a copy of it would be shared with the KYLAP program. We described to him the nature of the evaluative procedures that would be used during this evaluation. We told him that we would not be providing him with any treatment, but only evaluation services. We told him that we owed him and others a duty of providing a fair and objective evaluation. He was in agreement with these conditions, and cooperated fully with the evaluation.

Our evaluation team is not a formal investigating body, but does review collateral information and talks with parties familiar with the patient, if indicated. Our evaluation does not constitute an adjudicative fact-finding process. The finding of facts is an administrative or legal determination. Our role is to determine fitness while taking into consideration the data generated from our evaluation, allegations, and evidence that have come from others.

The diagnosis, conclusions, and recommendations offered here are stated within a reasonable degree of medical or psychological certainty unless otherwise indicated. If additional information exists which has not been disclosed to us, this could alter the findings and opinions outlined in this report. We reserve the right to amend our conclusions and recommendations if additional data becomes known to us.

REVIEW OF RECORDS

We reviewed the following records provided to us:

1. Notice of Formal Proceedings and Charges, Judicial Conduct Commission, April 27, 2015
2. Response by Steven Combs, Judicial Conduct Commission, May 12, 2015
3. Order and Notice of a Hearing, Judicial Conduct Commission, June 2, 2015
4. Amended Order and Notice of Hearing, Judicial Conduct Commission, June 3, 2015
5. Progress note, Paul Dalton, M.S., LPCC, CADC, June 15, 2015
6. SASSI-3 screening results overview, June 8, 2015
7. Beck Anxiety Inventory, June 8, 2015
8. Beck Depression Inventory, June 8, 2015
9. Drug Abuse Screening Test, June 8, 2015
10. Psychosocial history form, June 8, 2015
11. Substance Abuse Assessment, Paul Dalton, M.S., LPCC, CADC, June 8, 2015
12. Order of Temporary Suspension, Judicial Conduct Commission, June 16, 2015
13. Consultative examination, Lovonne Fleming-Richardson, LPCC, CADC, NCC, RPT, M.Ed., July 9, 2015
14. Alcohol Use Disorder Evaluation, The Ridge Recovery Center, July 17-18, 2015
15. Deposition, Marc Whitsett, M.D., September 11, 2015
16. Pharmacy records, Family Drug, January 1, 2013, to June 8, 2015
17. Formal Proceeding Docket entries, Judicial Conduct Commission, undated
18. Ballotpedia entry, undated

19. Affidavit, Steven Combs, October 19, 2015
20. Affidavit, Adam Collins, November 24, 2018
21. Affidavit, Adam Hall, August 21, 2015
22. Affidavit, Robert Patton, August 13, 2015
23. Sworn statement, Billy Slone, July 28, 2015
24. Sworn statement, Michael Hall, July 27, 2015
25. Sworn statement, William Johnson, July 27, 2015
26. Affidavit, Phil Stalnaker, September 2, 2015
27. Motion to Dismiss, November 5, 2015
28. Financial Disclosure Report, March 16, 2015
29. Email, Russell Davis, July 30, 2015
30. Sworn statement, Michael DeBourbon, July 27, 2015
31. Affidavit, Kent Wicker, September 4, 2015
32. Affidavit, Gary Johnson, September 4, 2015
33. Memorandum in Support of Motion, September 4, 2015
34. Motion of the Respondent, undated
35. Memorandum in Support of Motion, September 8, 2015
36. Letter to Jeffrey Mando, Richard Getty, August 12, 2015
37. Letter to Richard Getty, Jeffrey Mando, August 17, 2015
38. Letter to Jeffrey Mando, Richard Getty, August 20, 2015
39. Motion of the Respondent, September 8, 2015
40. Combined Reply Memorandum, September 18, 2015
41. Agreed Order of Suspension, October 1, 2015
42. Bloodwork test results, December 10, 2015
43. Letter to Clarity, Yvette Hourigan, Esq., December 23, 2015
44. Letter to Clarity, Richard Getty, Esq., January 7, 2016
45. Letter to Jimmy Shaffer, Richard Getty, Esq., December 21, 2015
46. Letter to Judge Combs, Judicial Conduct Commission, December 21, 2015
47. Letter to Clarity, Richard Getty, Esq., December 15, 2015

CHIEF COMPLAINT

Upon evaluation, Judge Combs reported that he had been referred for evaluation after judicial conduct complaints had been filed against him “by a group of politicians in Pikeville.” “After much litigation, they offered me a suspension and to remove the charges. I’ve already been evaluated three or four times. They wanted to litigate more, but I didn’t want to.” He commented that he felt that this evaluation was unwarranted, and that it represented an undue burden upon him. He complained that he had been forced to liquidate a portion of his retirement savings in order to cover its cost.

Judge Combs mentioned several areas of concern raised by the Judicial Conduct Commission, including that he had presided in cases in which he had a personal interest, that he had meddled in local political and police issues, that he had derided and denigrated individuals on social me-

dia, that he solicited money on behalf of children's organizations, and that he had inappropriate ex parte contact with an attorney about a case. Judge Combs readily provided explanations for each of the allegations listed above and maintained that his conduct had violated no laws or standards.

Judge Combs asserted that he was aware of no mental, physical, emotional, or substance-related issue that could impair his ability to function successfully as an attorney or judge.

PAST MEDICAL HISTORY

Judge Combs said that he suffers from various minor physical conditions, including hypertension, hypercholesterolemia, obesity, environmental allergies, and chronic dry cough. Past surgical treatment has included myringotomy tubes as an infant, tonsillectomy, orthodontic surgery, hair transplant, and Lasik eye surgery. He denied ever suffering from a serious head injury, loss of consciousness, seizure, stroke, or central nervous system infections.

Current medications include amlodipine, carvedilol, Crestor, HCTZ, and lisinopril.

PAST MENTAL HEALTH HISTORY

Judge Combs said that he presently sees Ms. Lovonne Fleming-Richardson, alcohol and drug counselor, on an infrequent basis, to which he attributed issues with her schedule rather than his. He last saw her the week before this evaluation. In the past, he said he saw her on a weekly basis, but now he typically sees her approximately once a month. He said that she had advised him that it was her belief that he had suffered from some stress issues around the time of his mother's death, as well as stress issues related to family conflict, but has no substance issues of concern.

Judge Combs said that he had been prescribed Effexor in 2003 related to stress issues after he had been targeted by the FBI regarding alleged wrongdoing. Eventually, he emerged from the scrutiny, but his physician recommended that he continue to take the medication. He said he was titrated off this medication approximately a month prior to this evaluation. He said he was also treated with Valium, which he took for a few months starting in fall of 2014. He said that he gave his doctor a bottle of 30 unused Valium in June 2015, and he has not used this substance since.

Judge Combs denied any history of major depression, unduly elevated mood, or undue anxiety. There is no history of obsessions or compulsions. He denied any history of personal trauma. He denied any problems with his temper or violent behavior. He owns several shotguns and pistols. He denied any history of delusions or hallucinations. He has not been having any suicidal thoughts of late, and has never tried to take his life. We rated his current suicide risk as minimal.

SUBSTANCE USE HISTORY

Judge Combs said that he liked to drink beer, preferably Miller Lite. He often has two to three beers in a given evening. In the past, he said that his alcohol use was much heavier, particularly before his children were born. Until last year, he used to drink vodka along with grapefruit juice, three to four drinks at a time, but he quit this practice upon Dr. Dalton's recommendation last summer. Approximately ten years ago, he was stopped for DUI and was tested twice with a breathalyzer, once blowing under the limit and the second time blowing over the limit. He said he took an Alford plea in relation to this experience. He said that his last drink was Wednesday or Thursday of the prior week, when he had three beers.

He denied any history whatsoever of recreational drug use. He has never had a problem with prescription drugs. He was not able to explain how his urine drug screen was positive for Valium during his Ridge evaluation in July 2015, since he had ceased all Valium use in June 2015. He denied ever going to alcohol or drug treatment. He did attend one AA meeting during his brief assessment at the Ridge Recovery Center last year.

Family mental health history is positive for a brother who has a serious drinking problem. A paternal uncle reportedly had an alcohol problem. His grandmother may have overconsumed alcohol, as well, but he is not sure about this.

EDUCATIONAL HISTORY

Judge Combs reported that he is a product of the Pikeville School District and he feels that he received a very good education, both in the primary and secondary grades. He graduated from high school in 1978 and ranked highly among the college-bound students. Only 10 of 80 graduating seniors from his school went to college.

He attended the University of Kentucky from 1978 to 1983 for his undergraduate degree. He originally majored in mining engineering, but when the program did not get accredited he took an extra year. He decided to seek law school admission and took courses in political science and graduate courses in history. He was accepted at the University of Kentucky Law School, attending from 1983 until 1986.

OCCUPATIONAL HISTORY

After graduating from law school, he had an opportunity to clerk in the State Supreme Court, but his older brother had an overly busy law practice and needed his help. He practiced with his brother for 16 or 17 years. He later served as city commissioner and mayor for Pikeville. In 2003, he was appointed as a circuit court judge, the 35th Judicial Court which serves Pike County. He was elected without opposition in 2014 for an eight-year term.

FAMILY/PERSONAL HISTORY

Judge Combs was born and raised in Pikeville, Kentucky. He grew up in an intact family where his father was the general counsel for the local hospital. His parents are now both deceased. He was in his first semester of law school when his father died of renal cell carcinoma. His mother died in March 2015.

His father was the youngest of seven children. His father served in the U.S. Army during World War II. His father served on the Italian Peninsula as a military police officer. His paternal grandfather was a coal operator and died of pneumonia when his father was eight years of age. There is an extensive family history of hypertension in his father, mother, maternal grandfather, and both brothers.

Judge Combs is the middle of three brothers. Both of his brothers are attorneys. There is some degree of conflict among the siblings.

Judge Combs married his wife, Teresa, in 1987 after a one-and-a-half year courtship. She was one year behind him in college. After she graduated, she lived with her parents in Pikeville and worked as an elementary school teacher. Theresa is a teetotaler.

Their first children were twin daughters born December 1989. One twin is presently in law school, and the other twin is now studying psychology. They also have a 28-year-old son who attends Eastern Kentucky University.

Judge Combs related the presence of many psychosocial stressors in the past several months. In 2014, his wife was diagnosed with a uterine tumor. Surgery was recommended, but she was extremely avoidant of discussing this situation or having the surgery. Judge Combs was very stressed by the prospect of his wife possibly having a cancerous tumor and her avoidance of surgery. Finally, in November 2014, she had surgery and the finding was that she had a benign fibroid tumor. He was enormously relieved at this outcome. During this same period of time, his mother was suffering from severe COPD and dementia. She died in March 2015. It was the following month that Judge Combs received the notice of charges from the Judicial Conduct Commission.

ACTIVITIES OF DAILY LIVING

Judge Combs described having a very active life. He enjoys farming, raising hogs, and running two farms. He cares for his animals, puts up fences, and generally cares for his property. He enjoys playing golf, which he does on a regular basis. He rides his bicycle, runs some, and fishes a little. He raises and trains bird dogs, a favorite pastime of his. He is able to dress himself and bathe himself without difficulty. He does his own shopping. He has a driver's license and drives himself where he needs to go. He manages his own money. He has no debt. He has seven close friends, including family members. He is a member of the Ruffed Grouse Society, the Ducks Unlimited Club, and the local country club. He attends the United Methodist Church every Sunday. He is not active on any boards or committees there, but his wife is very active.

BEHAVIOR OBSERVATIONS

Upon evaluation, Judge Combs was observed to be an overweight man appearing significantly older than his age, dressed in dress slacks and tie. Grooming and hygiene reflected that he was neat and clean. Psychomotor activity revealed no abnormalities. He was fully alert and oriented. Speech was fluent and articulate. Comprehension of language was intact. Apparent concentration was intact. His memory of recent events was intact and very detailed, as evidenced by his ability to share with us the events of the morning prior to arriving at our offices. His form of thought was logical and appropriately abstract. His apparent intelligence was at least high average. His content of thought was free of special preoccupations, obsessions, or delusions. His affect was of normal range. His apparent mood was normal. Social skills were excellent. Rapport was excellent. Psychological insight was good. Cooperation was good. His response style appeared to be entirely open and honest to us. Each of our team members felt they had a good rapport with Judge Combs, and he was a delight to work with.

COLLATERAL INFORMATION

Interview of Teresa Combs, Wife, February 1, 2016

We interviewed Ms. Combs during the course of this evaluation. Ms. Combs expressed her belief that her husband was doing very well from a mental and emotional point of view. However, she commented that scrutiny and conflicts over the last several months has been a "rough experience" for him and for the entire family. She said that the family has endured several stressors, including his complaints and charges, his mother's death, and her surgery. Despite this fact, she said that in her view he has not become depressed. He has not made any kind of hopeless comment or suicidal comment. He appears to be energetic and active with no unduly low mood.

Ms. Combs described her husband as rather opinionated and willing to speak his mind on issues. In the past, he has raised his voice and cursed during temper episodes. However, there is no history of threats, property damage, or assault. She said the thing that makes him the angriest is when someone lies to him. She feels that he deals with his difficulties and conflicts in a fairly assertive fashion, but not aggressively.

Ms. Combs related her belief that the source of his current difficulties is the fact that there is a lot of jealousy in individuals surrounding her husband. "Those people who came out against him could not control him. He is honest and does what he thinks is right. They tried to turn it around on him and discredit him." "I think they just wanted him off the bench to get at him."

Ms. Combs denied that her husband was capable of making the various posts to social media that he had been accused of. "Steve doesn't even know how to text, Twitter, or Facebook. We don't have any of that. We share an email address, and I have to do everything if he needs anything faxed or scanned."

Ms. Combs described her husband's drinking patterns. She said that he drinks beer occasionally and may have as many as two beers at a time. He never drinks anything else these days. When he was back in college, he might have consumed a bit more. He never gets intoxicated these days, she said. She said that she thought she saw him intoxicated a few times several years ago. This is not a common occurrence. She is not aware of any issues regarding recreational drugs.

For fun, the couple enjoys travelling to their son's golf tournaments. They walk and run. Her husband loves to cook. She said that he especially enjoys grilling.

Interview, Lovonne Fleming-Richardson, Alcohol and Drug Counselor, February 3, 2016

Ms. Fleming-Richardson said that Judge Combs had been referred to her due to indications of possible alcohol abuse. She first saw him on June 30, 2015. She saw him on three occasions in July, twice in August, and once each month since then. She said that he had been referred by his primary physician.

To her, she said that he reported occasional beer consumption, but he denied any abusive pattern of alcohol use. She said that none of the assessments that she gave him reflected scores in the clinical range. She said she would diagnose him as having generalized anxiety disorder related to stress, including the loss of his mother, his spouse's health, and his current occupational conflicts. She has observed no red flags about his alcohol use at all. She said that the judge has been forthcoming and open with her, and he has been compliant with everything that she has asked him to do. Their counseling work together has focused upon helping him to not internalize his feelings about those mistreating him.

Urine Drug Screen, February 1, 2016

Judge Combs was administered a 13-panel urine drug screen during the course of his time with us. On this test, he tested negative for all drugs of abuse. He also tested negative for the presence of ETG or ETS, metabolites associated with alcohol use.

PEth Test, February 1, 2016

This test also tests for metabolites of alcohol in the blood. It reliably shows the presence of alcohol use during the prior two to three weeks. On this test, Judge Combs' result was positive, showing that he was consuming alcohol several days prior to this evaluation. This was consistent with his report of alcohol use a few days before.

Hair Test, February 1, 2016

Judge Combs' hair was tested for metabolites of drugs of abuse, including for amphetamines, barbiturates, benzodiazepines, cocaine, opiates, PCP, and cannabinoids. There was no indication of the presence of any metabolites of drugs associated with abuse.

Other Medical Testing

Judge Combs underwent comprehensive metabolic blood testing. There were no laboratory test results suggestive of heavy alcohol consumption. AST, ALT, MCV, platelets, and GGT were all within normal limits. Thyroid tests including free T4 and TSH were within normal limits, as well.

COGNITIVE TESTS ADMINISTERED

Green's Medical Symptom Validity Test (MSVT)
Mini Mental State Examination (MMSE)
Wechsler Adult Intelligence Scale-IV (WAIS-IV)
Repeatable Battery for the Assessment of Neuropsychological Status (RBANS)
Trail Making Test (TMT)
Booklet Category Test (BCT)
Wisconsin Card Sorting Test (WCST)
Tactual Performance Test (TPT)

COGNITIVE TEST RESULTS

Performance Validity Testing

Judge Combs performed well within normal limits on a performance validity test, not revealing an attempt on his part to distort his test scores or try to appear more impaired than was likely true. Good confidence can be placed in his following test scores, in our opinion.

Mini Mental State Examination (MMSE)

On the Mini Mental State Examination, his score was 30/30, normal for his age and educational level. On this test, he demonstrated that he was fully oriented. He was able to perform serial subtractions and a backward spelling task. He successfully recalled three of three words after a few minutes' time. He correctly performed simple language tasks and accurately copied a visual figure.

Wechsler Adult Intelligence Scale-IV (WAIS-IV)

On the Wechsler Adult Intelligence Scale – IV, he achieved a full scale IQ of 112, at the 79th percentile as compared to other men his age. This score fell within the high average range. His Verbal Comprehension Index was measured at 112 (79th percentile), his Perceptual Reason-

ing Index was measured at 109 (73rd percentile), his Working Memory Index was measured at 111 (77th percentile), and his processing speech index was measured at 108 (70th percentile). Judge Combs' global cognitive skills appear to fall well within average limits. There was no indication of any deficiencies on this test. Examination of his individual subscale score reflected average to above average performance on all of the various dimensions examined by this test.

Repeatable Battery for the Assessment of Neuropsychological Status (RBANS)

On the Repeatable Battery for the Assessment of Neuropsychological Status, Judge Combs achieved an overall score of 115, a score at the 84th percentile as compared to other men his age. Thus, there was no indication of any serious neurocognitive difficulty. His immediate memory ability was measured within exceptional limits, at the 96th percentile. Following a delay, he was able to recall what he had learned earlier well within normal limits, at the 70th percentile level. His visuospatial skills were measured at the 86th percentile, his language skills at the 25th percentile, and his attention skills at the 79th percentile. Each of these scores fell well within normal limits.

Trail Making Test (TMT)

He was administered the Trail Making Test, a test of mental/motor sequencing ability shown to be very sensitive to acquired brain dysfunction. On the first portion of this test, that involving simply connecting numbered dots with one another, he performed well within normal limits. When a more complex processing component was added to the task, that of connecting successively numbered and lettered dots, he continued to perform well within normal limits. There was no indication of difficulties in his higher order processing speed.

Wisconsin Card Sorting Test (WCST)

On the Wisconsin Card Sorting Test, he performed very well, achieving all six categories and not making an unusual number of perseverative errors. There were no difficulties noted with his higher order reasoning and integrative functioning skills on this test.

Booklet Category Test (BCT)

On the Booklet Category Test, Judge Combs struggled a bit. He made more errors than typical and struggled with discerning the principles behind the patterns he was shown on this test. This test involves feedback about whether one is being successful or not at achieving the correct answer. He appeared to become somewhat distressed by the negative feedback involved in this test. Overall, his scores on this test fell within mildly impaired limits as compared to other men of his age and educational level. This raised the possibility of mild deficiencies in his executive functioning skills.

Tactual Performance Test (TPT)

He was administered the Tactual Performance Test, a test of higher order motoric executive functioning. On this test, he was able to place blocks into a form board without the aid of visual cues. His scores on this test fell entirely within average limits, with the exception of an incidental memory task, which fell slightly below normal limits.

PERSONALITY TESTS ADMINISERED

Minnesota Multiphasic Personality Inventory – 2 (MMPI-2)
Personality Assessment Inventory (PAI)
Revised NEO Personality Inventory (NEO PI-R)
Bar-On Emotional Quotient Inventory
Michigan Alcoholism Screening Test (MAST)
Substance Abuse Subtle Screening Inventory – 3 (SASSI-3)

PERSONALITY TEST RESULTS

Minnesota Multiphasic Personality Inventory – 2 (MMPI-2)

On the Minnesota Multiphasic Personality Inventory-2, Judge Combs produced a valid profile. He was a bit defensive on this test, denying common faults and shortcomings to which most people will admit, not an unusual finding considering the scrutiny which he is presently undergoing. His profile on this test reflected a single elevation on a single clinical scale, one reflecting a sense of persecution and mistreatment. Judge Combs presently feels that he is being unfairly put upon and has individuals in his life who are working against his best interests. He is hypersensitive to criticism and perceives that the motives and intentions of those around him might not be the best. Overall, his profile did not raise the likelihood of serious psychopathology. He denied any addictive propensities or behaviors on this test.

Personality Assessment Inventory (PAI)

On the Personality Assessment Inventory, he likewise produced a valid profile. There was no indication of an attempt on his part to either minimize or exaggerate problems on this test. As on the MMPI-2, there was a single mild elevation on a single clinical scale, that related to a sense of persecution and mistreatment. He described himself as consequently being somewhat more wary and sensitive in his interpersonal relationships than the average adult. Others might find him a bit toughminded and skeptical.

On this test, he denied any significant problems with regard to unusual thoughts or peculiar experiences, antisocial behavior, problems with empathy, extreme moodiness, impulsivity, unhappiness, depression, unusually elevated mood, heightened activity, marked anxiety, or problems with drugs or alcohol abuse or dependence.

His interpersonal style involves strong needs for affiliation and positive regard from others. This may result in rather uninhibited social behavior that may be seen by others as somewhat attention seeking and dramatic. His needs for attention and affiliation with others may be so strong that the quality of his social interactions may be relatively unimportant to him as compared to their quantity. Others may view him as a bit overbearing and overly dramatic.

His interest in and motivation for treatment is below average as compared to adults who are not being seen in a treatment setting. His level of treatment motivation is substantially lower than individuals who are being seen in treatment settings. His responses indicate that he is satisfied with himself as he is, that he is not experiencing marked distress, and that he sees little need for changes in his behavior.

Revised NEO Personality Inventory (NEO PI-R)

On the Revised NEO Personality Inventory, he described himself as an exceptionally well-adjusted man who infrequently experiences episodes of psychological distress. He described himself as not at all sensitive or moody, as feeling secure, and having a generally high level of self-esteem. He described himself as very warm and affectionate toward others and enjoying large and noisy crowds and parties. He is forceful and dominant, preferring to be a group leader rather than a follower. He has a high level of energy and likes to keep active and busy. He experiences as much joy and happiness as most men do.

In his experiential style, he is generally open. He appreciates beauty, music, art, poetry, and nature, and his feelings and emotional reactions are normal in variety and intensity. He is interested in intellectual challenges and in unusual ideas and perspectives. He is generally liberal in his social, political, and moral beliefs.

He described himself as usually candid and sincere, and he finds it difficult to deceive or manipulate others. He goes out of his way to be thoughtful and helpful, and he is quite generous. He holds his own in conflicts, but he is always willing to forgive and forget.

He described himself as reasonably efficient and generally sensible and rational when making decisions. He is moderately neat, punctual, and well organized, and he described himself as highly conscientious, adhering strictly to his ethical principles. He is average in self-discipline and generally finishes the tasks he starts. He is reasonably cautious and generally thinks through things before acting.

Bar-On Emotional Quotient Inventory

He was administered the Bar-On Emotional Quotient Inventory, a test designed to assess for one's ability to deal with both intrapersonal and interpersonal challenges. On this test, Judge Combs described himself as being generally successful in his emotional and social life. His awareness of his own emotions is a bit of a weakness for him as compared to his other strengths

as described on this test. He also described himself as not being as assertive as he might otherwise be, having some difficulty communicating his feelings and beliefs in a non-offensive fashion.

He described himself as having an adequate degree of self-esteem. He described himself as generally flexible, able to tolerate stress well, and as being very optimistic about his life and the future. He described himself as a good problem-solver who is able to understand the reality of situations well, and he is able to resist or delay impulses to act precipitously. He described himself as having mutually satisfying relationships and being very sympathetic to the feelings of others. He is socially conscious and helpful. He described himself as exceptionally independent and free from emotional dependency in his decisions and daily life.

Michigan Alcoholism Screening Test (MAST)

On the Michigan Alcoholism Screening Test, he generally denied indicators consistent with alcohol dependence. His score on this test was below the level generally shown to reflect the presence of alcohol dependence in individuals.

Substance Abuse Subtle Screening Inventory – 3 (SASSI-3)

He was administered the Substance Abuse Subtle Screening Inventory-3, another test of substance use designed to identify the presence of substance dependence issues in adults. On this test, Judge Combs scored entirely within normal limits across each of the scales of the test. He was mildly defensive on this test, reluctant to share the presence of some difficulties, but overall he did not endorse any serious issues consistent with the presence of alcohol or drug dependence.

DIAGNOSTIC IMPRESSION

Maladaptive personality characteristics

CONCLUSIONS

The following conclusions are offered here within a reasonable degree of psychological/medical certainty.

1. Judge Combs' cognitive functioning is generally intact.

Judge Combs is a reasonably intelligent man who is able to process information without undue difficulty. His attention, concentration, memory, and language skills are intact. He performed in a rather inconsistent fashion on tests of higher order reasoning and problem solving ability, scoring well on some tests and poorly on others in this regard. It appeared that he was overly sensitive to feedback on one of these tests, and became somewhat distressed with feedback that he

was having trouble figuring out the right answer. This suggests that his capacity to think on his feet might be compromised when he is in the midst of receiving criticism or negative feedback. This is an area of weakness for him to be aware of in moving forward. He does not like to be opposed. His thinking and reasoning skills might not be at their best when he is being opposed or criticized in some fashion. Unfortunately, based on the information we have, it appears that he experiences such circumstances on a frequent basis.

2. Judge Combs is functioning well from an emotional perspective.

Judge Combs denied any serious psychiatric symptomatology. His personality testing did not reveal the presence of any serious psychiatric dysfunction or maladjustment. Personality testing reflected the presence of some prominent distress and concern about feelings of mistreatment and persecution, consistent with the situation he described to us related to his charges. However, there was no indication of undue paranoia or indication that this rose to delusional intensity. Judge Combs appears to be functioning well from a psychiatric and emotional point of view.

3. There is insufficient indication of substance use disorder.

Judge Combs has a remote history of a DUI that occurred several years ago. He admitted that he called some individuals in his community and verbally berated them after drinking, although he denied being in an intoxicated state. He admitted to consuming several mixed drinks at a time prior to the summer of 2015, but he indicated that he had ceased this practice and now confines himself to frequent but minimal amounts of beer. He was prescribed Valium for a period of time in late 2014 and early 2015, but no information suggested that he ever used this substance abusively. His laboratory testing did not show that he uses alcohol in a heavy fashion on a regular basis, since his liver function tests and other testing fell entirely within normal limits. It certainly does not appear that Judge Combs' alcohol use rises to the level of frank dependence. It is possible that he has a mild alcohol use disorder, but as noted above, there is insufficient information to diagnose such a condition. In summary, our team had concerns about Judge Combs' alcohol use over the prior 18 months, but there was insufficient evidence to diagnose him with a formal alcohol use disorder.

4. We recommend that Judge Combs refrain from the use of alcohol altogether.

The fact that he is taking Crestor, a medication which can cause serious medical complications in the presence of alcohol use, should preclude alcohol use on his part. The fact that he has engaged in some unwise activities in the course of drinking, his prominent social position, and the concerns raised in his community also leads us to believe that he would be better served by not consuming alcohol at all. In this regard, we join Dr. Dalton's recommendation from last year. We are concerned that Judge Combs has not followed this recommendation. KYLAP may wish to consider a period of diagnostic monitoring in this regard.

5. Judge Combs has some personality characteristics that are implicated in his current difficulties.

Judge Combs is a rather dramatic, attention seeking, and forceful personality who is not shy about using his office and authority to accomplish things that are important to him. Our attorney, Richard Tennent, interviewed Judge Combs thoroughly regarding the various charges brought against him by the Judicial Conduct Commission. With perhaps a single exception, we were unable to identify any issue that generated concerns about serious misconduct. However, there is clearly a perception that the judge has gone over the line on occasion. This is probably as much a reflection of the political nature of his position and community as it is of his own personal characteristics, but even so we think that the judge would do well to be careful.

He could benefit from some support and assistance as he attempts to navigate the politics and pressures of his office there in Pikeville. We think the judge would be well served to consider engaging in a professional coaching program, such as that offered by Acumen Institute in Lawrence, Kansas. There he would receive coaching and assistance in maximizing his personal resources in a positive and professional direction. Typically their program involves an initial week's stay, followed by two or three briefer visits over the subsequent year. Their team is excellent in working with individuals like Judge Combs who are in need of coaching and support in dealing with challenging work circumstances. We make this suggestion, not because we believe that Judge Combs is impaired, but because we think such a course would maximize his professional effectiveness.

6. Judge Combs is fully fit for duty as an attorney and judge.

This evaluation was able to identify no conditions that would impair the judge from functioning in an effective fashion, either on the bench or in individual law practice. Cognitively and emotionally, we believe that Judge Combs is well suited for his position. We expect that he will continue to be successful.

We certainly appreciated the opportunity of working with this very interesting gentleman. Do not hesitate to call on us if we can provide any further information regarding our evaluation of him.



James S. Walker, Ph.D., ABPP
Director, Clarity Professional Evaluation Center

EXHIBIT E



615.329.2408 (office)

615.691.7032 (fax)

www.claritypec.com

April 7, 2016

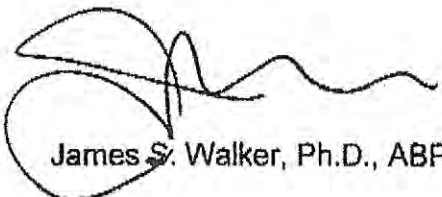
The Honorable Steven Combs
114 East Cedar Drive
Pikeville, KY 41501

Dear Judge Combs:

You recently shared with us that you have been asked to sign a contract with the Kentucky Lawyers Assistance Program. You asked us to provide you with a letter detailing Clarity's opinions regarding your alcohol use, specifically whether there was evidence that you suffer from an alcohol use disorder.

It is our considered opinion that there is insufficient evidence to conclude that you have a significant alcohol use disorder. We performed a thorough assessment, including evaluation by an addictionologist, extensive medical testing, record review, and interviews by multiple mental health professionals. We did not detect the presence of an alcohol use disorder on your part.

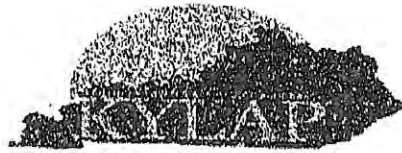
Feel free to call upon us if we can be of further assistance.



James S. Walker, Ph.D., ABPP

EXHIBIT F

SLC 1 of 3



*** KENTUCKY LAWYER ASSISTANCE PROGRAM
CONFIDENTIAL RECOVERY AGREEMENT**

I, Hon. Steven Combs, upon Order of the Judicial Conduct Commission, agree to comply with all the terms and conditions of this Supervision Agreement. This Supervision Agreement shall continue in force and effect from its effective date of April 21, 2016 for a period of one (1) year, absent further orders from the Judicial Conduct Commission. While I agree to cooperate with the terms of this supervision agreement, my cooperation should not be construed as and is not an acknowledgment or admission of a problem with alcohol or other substances.

1. Monitor

* I agree to submit to supervision by the Director of KYLAP who shall supervise and report my compliance for all purposes required by the Judicial Conduct Commission on a monthly basis. I understand that it is my duty and obligation to contact the Director within 10 days hereof and provide all relevant information relating to this agreement as set forth below.

Monitor Contact Information:

Yvette Hourigan, Director
KYLAP
P.O. Box 1437
Frankfort, KY 40602-1437
Telephone: (Office): 502-564-3795, ext. 266
Cell phone: (Preferred telephone contact): 859-221-0806
Email: yhourigan@kylap.org

2. Abstinence

* I agree to remain abstinent from all alcohol and other mind altering drugs except on an occasion when medications are prescribed by an attending physician and when taken in accordance with such prescription.

The term "alcohol" includes alcohol in foods, hygiene products or OTC medications containing alcohol, such as vanilla extract, mouthwash containing alcohol, Nyquil, cough syrups, Communion wine, topical gels and/or medications containing alcohol to be used on skin or mucous membranes, as these items may render a false positive for alcohol on tests. I have also been advised that ingesting poppy seeds may render a false positive for opiates on drug tests. I understand that if I choose to use those items containing alcohol listed above, or ingest poppy seeds, that the use of same cannot be used as a defense to a positive test results (breath, urine, blood or other tests), and will be considered a violation of this Agreement.

* *SLC* 1 of 3
4/29/16

[Handwritten signature] 2 of 3

A list of my current medications are as follows:

- Amlodipine
- Carvedilol
- Crestor
- HCTZ
- Lisinopril

- * If any other medications are prescribed, I agree to immediately inform the Director of the name of the drug prescribed, the name and phone number of the prescribing physician, and the medical illness necessitating the use of the medication. I agree to provide KYLAP with a copy of said prescription(s). I further agree, upon request of the Director, to take any action or execute any documents, authorizations and releases necessary to allow the Director to obtain information directly from any health provider.
- * If I use alcohol or any non-prescribed, illegal or non-approved substance(s), I agree to report it to the Director of KYLAP within 24 hours.
- * I agree to report to the Director of KYLAP any arrest(s), service of criminal complaint, any involvement with any law enforcement authorities (other than social or work-related encounters), and any alleged violation of any administrative rule or regulation within twenty-four (24) hours of the occurrence.

3. Contacts

I agree to contact the Director by telephone on a monthly basis, or more frequently if so required by her throughout the duration of this Supervision Agreement. During the course of this agreement I agree to meet with the Director in person, at her request and at a mutually convenient time and location, to discuss any problems or concerns she may have with my compliance with this agreement.

4. Program Participations

As recommended by Clarity Professional Evaluation Centers, I will attend professional coaching sessions. I have elected to have private coaching sessions rather than attending a comprehensive coaching program and agree to attend a minimum of 8 sessions with Dr. Lovonne Fleming-Richardson. These sessions will be specifically focused on providing me with special assistance in maximizing my personal resources in a positive and professional direction. During the course of these 8 sessions, a monthly progress report will be prepared by Dr. Fleming-Richardson on the attached form, which shall be submitted to KYLAP.

5. Alcohol and Drug Screens

- * I agree to submit to and pay for random non-DOT 7-panel + EtG urine alcohol / drug screens. I have requested that test randomization of the non-DOT 7-panel + EtG urine alcohol / drug screens will be generated through a separate agreement with Affinity Online Solutions (AOS), at the drug testing center specified in the request. Failure to present at such site for a random drug screen within the time specified in any request (no more than

* *[Handwritten signature]* 2 of 3
4/29/16

[Handwritten initials]
3 of 3

24 hours) shall be a violation of this Supervision Agreement. A copy of the drug test results shall be *prima facie* evidence of its validity and content and any chain of custody is waived. I understand that I will receive a separate agreement from KYLAP for my testing through Affinity Online Solutions. I understand that I will be tested up to 12 times during the next 12 months, or an average of one time per month. I agree to call the dial-in number each day to determine whether I have been selected to test. Call-in days are Monday through Friday each week and selections will be on those days.

At my request, when I am in Pikeville, the testing will be performed at LabCorp, 387 Town Mountain Road; #203, Pikeville, KY 41501. Upon request to test, I will present to do so within twenty-four (24) hours. My failure to present at the approved site within 24 hours for an alcohol/drug screen shall be a violation of this Supervision Agreement. A copy of the alcohol/drug test results shall be *prima facie* evidence of its validity and content and any chain of custody is waived.

There will be times when I leave town on business or pleasure during the course of this agreement. I understand that I will continue to be randomly selected for alcohol/drug testing during that time while I am out of town and may be selected to test. If I am selected, a location site at or near my location will be identified to me by the Director or by Affinity Online Solutions.

6. Release of Information

I agree to execute a Release of Information and to cooperate in providing all information relevant to this Supervision Agreement and my compliance or noncompliance with its terms and conditions to the Director if said releases have not previously been signed.

7. Waiver of Confidentiality

I understand and acknowledge that I have waived confidentiality as it pertains to communications between KYLAP and the Judicial Conduct Commission which waiver includes release of documents KYLAP may receive on my behalf (i.e., alcohol/drug test results, medical records) which may then be disclosed to the Judicial Conduct Commission and vice-versa. I have also waived confidentiality as to the reports prepared by the Director which shall be submitted on a monthly basis to the Judicial Conduct Commission.

*** SIGNED ONLY UNDER PROTEST AND DURESS**

Date: 4/29/16

Signature: *[Handwritten Signature]*

Date: _____

Witness: _____

*** This Document has been signed ONLY UNDER PROTEST AND DURESS**

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3 of 3
4/29/16

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

**RESPONSE IN OPPOSITION TO MOTION FOR DECLARATIONS AS TO
KYLAP-MANDATED ABSTINENCE AND TESTING**

In response to Judge Steven D. Combs' Motion for Declarations as to KYLAP-Mandated Abstinence and Testing, Counsel for the Commission states as follows:

On September 21, 2015, Judge Combs appeared before the Kentucky Judicial Conduct Commission ("JCC") and entered into an agreement whereby he admitted, under oath, certain allegations set forth in the JCC's Notice of Formal Proceedings. Judge Combs further agreed to a six month suspension and enroll in the Kentucky Lawyers Assistance Program ("KYLAP") and follow all KYLAP recommendations.

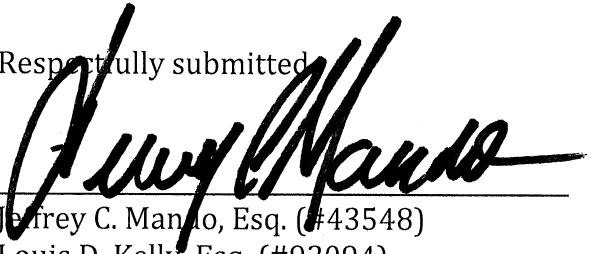
The terms of this agreement were memorialized in an October 1, 2015 Agreed Order of Suspension that was signed by Judge Combs and his legal counsel. (Attached as Exhibit A) Consistent with the agreement made at the September 21, 2015 hearing, the Agreed Order of Suspension mandated that Judge Combs enroll and "follow the instructions and procedures recommended by KYLAP." Despite agreeing to follow all of the recommendations of KYLAP at both the September 21, 2015 hearing and in the October 1, 2015 Agreed Order of Suspension, Judge Combs now asks the JCC to waive KYLAP's requirements that he abstain from using alcohol and be subject to monitoring and testing.

KYLAP is a program established by Kentucky Supreme Court Rules. Under SCR 3.970, agencies of the Kentucky Supreme Court can request assistance from KYLAP for

individuals who are the subject of a pending disciplinary proceeding. Upon receiving the request from the JCC, KYLAP directed Judge Combs to obtain an evaluation and assessment with Clarity Professional Evaluation Center in February 2016. (Combs' Motion, p. 4) The assessment included a recommendation that Judge Combs refrain from the use of alcohol. (*Id.* at Exhibit D, p. 14) Following this assessment, KYLAP presented Judge Combs, and he signed, a confidential recovery agreement that included a provision that he abstain from alcohol. (*Id.* at Exhibit F) In order to ensure compliance, the agreement further mandated that Judge Combs be subject to monitoring and testing. (*Id.*)

Based upon this information, Counsel for the Commission sees no reason for the JCC to alter the terms Judge Combs agreed to during the September 21, 2015 hearing and in the October 1, 2015 Agreed Order. At both the hearing and in the Agreed Order, Judge Combs agreed to follow all KYLAP recommendations without condition. Judge Combs himself has presented evidence that KYLAP has made recommendations that are consistent with the recommendations provided in the Clarity assessment. As such, Counsel for the Commission respectfully requests that his Motion be denied.

Respectfully submitted



Jeffrey C. Mando, Esq. (#43548)

Louis D. Kelly, Esq. (#92094)

ADAMS, STEPNER,

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Counsel for Judicial Conduct Commission

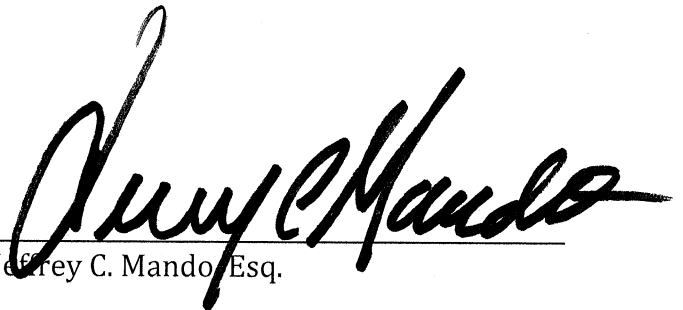
CERTIFICATE OF SERVICE

This is to certify that true and correct copy of the foregoing has been served via electronic mail on this the **26** day of May, 2016, upon the following:

Richard A. Getty, Esq.
Danielle H. Brown
1900 Lexington Financial Center
250 West Main Street
Lexington, KY 40507

Stephen P. Ryan, Esq.
7104 Hillcircle Court
Louisville, KY 40214

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604



Jeffrey C. Mando, Esq.

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

AGREED ORDER OF SUSPENSION

Steven D. Combs ("Judge Combs") is a Circuit Court Judge for Kentucky's 35th Judicial Circuit, consisting of Pike County. On the morning of September 21, 2015, prior to the commencement of the final hearing in this matter, the parties reached an agreement to resolve the matter. Judge Combs has waived formal proceedings and Judge Combs, the Judicial Conduct Commission (the "Commission") and the Commission's Counsel have agreed to entry of this Order.

The Commission received Complaints and other information, conducted a preliminary and subsequent investigations, and ultimately filed a Notice of Formal Proceedings and Charges (the "Original Notice"), an Amended Notice of Formal Proceedings and Charges (the "First Amended Notice") and a Second Amended Notice of Formal Proceedings and Charges (the "Second Amended Notice") (the Original Notice, First Amended Notice and Second Amended Notice referred to collectively as the "Notices") against Judge Combs. Judge Combs timely filed Responses to each of the Notices. The Notices asserted thirteen (13) charges against Judge Combs.

Prior to the scheduled final hearing, Judge Combs filed a Motion to Dismiss Counts I, II, IV, VII, VIII, IX, X, XI, XII and XIII of the Notices. The Commission's Counsel, in Response to the Motion to Dismiss, did not object to dismissal of Count VII and of that portion of Count VIII that alleged Judge Combs had engaged in ex parte communications with attorney

EXHIBIT A

Michael de Bourbon about the case at issue in Count VIII. Having reviewed the Motion and Response, the Commission dismissed Count VII and the portion of Count VIII that alleged Judge Combs engaged in an ex parte communication with Attorney Michael de Bourbon. As part of the agreement reached between Judge Combs and the Commission's Counsel, the Commission also dismissed Count X in its entirety.

On the morning that the final hearing was scheduled to commence, Judge Combs, by counsel, and the Commission's Counsel, reached agreement on a resolution of this matter, as described below. The Commission's Counsel recommended that the Commission accept the agreement reached with Judge Combs, and the Commission, by a vote of 5-1 (with one voting member of the Commission not in agreement as to the length of the suspension to be imposed) approved the agreement, resulting in this Agreed Order of Suspension:

1. Judge Combs will take the following steps regarding the Kentucky Lawyers Assistance Program ("KYLAP"): enroll in the Kentucky Lawyers Assistance Program ("KYLAP") for evaluation and assessment within 30 days of the date of this Order; follow the instructions and procedures recommended by KYLAP; and waive the confidentiality of the KYLAP reports only as to the Commission, so that the Commission can be informed as to any and all results of such evaluation and assessment and as to his progress in following any instructions and procedures recommended for him. Judge Combs' failure to comply with the provisions of this paragraph will constitute a breach of this Agreed Order of Suspension.

2. Judge Combs agrees that he will not retaliate against any witness, complainant or person involved in these proceedings regarding their statements, actions or other conduct prior to the date of this Agreed Order of Suspension, and further agrees that if he does commit any such acts of retaliation as to such prior statements, acts or conduct, it will constitute a breach of this Agreed Order of Suspension.

3. Judge Combs agreed to, and did, make an allocution on the record and in open court on September 21, 2015, as follows:

- a. As to Count I of the Notices, Judge Combs admits that he committed the acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct.
- b. As to Count II of the Notices, Judge Combs admits that he committed the first through fifth and the seventh acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct. As to the sixth act set forth in Count II, Judge Combs does not admit to the act but admits that the Commission has a good faith basis and proof to support Count II related to this act.
- c. As to Count III of the Notices, Judge Combs admits that he committed the first, second and sixth through twelfth acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct. As to the third, fourth and fifth acts set forth in Count III, Judge Combs does not admit the acts but admits that the Commission has a good faith basis and proof to support Count III related to these acts.
- d. As to Count IV of the Notices, Judge Combs admits that he committed the acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct.
- e. As to Count V of the Notices, Judge Combs admits that he committed the acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct.

- f. As to Count VI of the Notices, Judge Combs admits that he committed the acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct.
- g. Judge Combs Motion to Dismiss Count VII of the Notices is sustained, and Count VII is dismissed in its entirety.
- h. Judge Combs Motion to Dismiss that portion of Count VIII of the Notices that alleges Judge Combs engaged in ex parte communications with attorney Michael de Bourbon prior to the hearing that is at issue in Count VIII is sustained, and that portion of Count VIII is dismissed. As to the remainder of Count VIII of the Notices, Judge Combs admits that he committed the acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct.
- i. As to Count IX of the Notices, Judge Combs admits that he committed the acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct.
- j. By agreement of Judge Combs and the Commission's Counsel, and on the recommendation of the Commission's Counsel, Count X of the Notices is dismissed in its entirety.
- k. As to Count XI of the Notices, Judge Combs admits that he committed the first act set forth therein, except as to the last sentence thereof, and that this act constitutes a violation of the Canons of the Kentucky Code of Judicial Conduct. As to the last sentence of the first act set forth in Count XI, Judge Combs does not admit this act but admits that the Commission has a good faith basis and proof to support Count XI related to this act. As

to the second act set forth in Count XI, Judge Combs admits that he committed the act set forth therein and that this act constitutes a violation of the Canons of the Kentucky Code of Judicial Conduct.

- l. As to Count XII of the Notices, Judge Combs admits that he committed the acts set forth therein and that these acts constitute a violation of the Canons of the Kentucky Code of Judicial Conduct.
- m. As to Count XIII of the Notices, Judge Combs does not admit the acts but admits that the Commission has a good faith basis and proof to support Count XIII.

Therefore, in light of the foregoing, Judge Combs is hereby suspended from his duties as Pike Circuit Court Judge, without pay, for a period of one hundred eighty (180) days, beginning October 1, 2015 and ending March 29, 2016.

Judge Laurance B. VanMeter, Judge Jeffrey M. Watson, Judge David P. Bowles, Mr. Stephen D. Wolnitzek, Ms. Joyce King Jennings and Ms. Diane Logsdon, sitting. Judge Janet Stumbo and Judge Eddy Coleman recused from any consideration of this matter.

Date: October 1, 2015

Stephen D. Wolnitzek
Stephen D. Wolnitzek, Chair

Agreed to:
Richard A. Getty
Richard A. Getty, Co-Counsel for Judge Combs

Steven D. Combs
Steven D. Combs, Judge

Stephen Ryan
Stephen Ryan, Co-Counsel for Judge Combs

Jeffrey C. Mando
Jeffrey C. Mando, Counsel for the Commission

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**STEVEN D. COMBS, CIRCUIT COURT JUDGE
35TH JUDICIAL CIRCUIT**

**ORDER ON MOTION FOR DECLARATIONS AS TO
KYLAP-MANDATED ABSTINENCE AND TESTING**

Upon consideration of the motion by Judge Combs for the Commission to enter an order declaring that certain portions of the Kentucky Lawyer Assistance Program Confidential Recovery Agreement are invalid and should be stricken from the agreement,¹ the response thereto, and being otherwise fully advised and informed, it is by the Commission

ORDERED that the motion be, and it is hereby, OVERRULED.

SO ORDERED this 1st day of June, 2016.



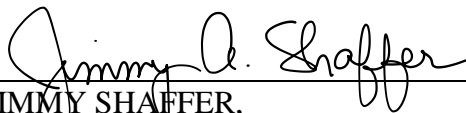
Stephen D. Wolnitzek, Chair

Judge Janet Stumbo and Judge Eddy Coleman recused from any consideration of this matter.

¹ While the motion is styled as having been filed under seal, the request to file under seal was withdrawn by counsel when informed by the Commission that this was impermissible under SCR 4.130(1), which states that all pleadings filed subsequent to the filing an answer to a notice of formal proceedings shall not be confidential.

CERTIFICATION

I hereby certify that copy hereof was served on Steven D. Combs, Pike Circuit Court Judge, by mailing same to his attorneys, Richard A. Getty and Danielle H. Brown, 1900 Lexington Financial Center, 250 West Main Street, Lexington, KY 40507; Stephen P. Ryan, 7104 Hillcircle Court, Louisville, KY 40214; and on counsel for the Judicial Conduct Commission, Jeffrey C. Mando and Louis D. Kelly, 40 West Pike Street, Covington, KY 41011, this 1st day of June, 2016.



JIMMY SHAFFER,
EXECUTIVE SECRETARY