

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

FRANK A. FLETCHER, CIRCUIT JUDGE
39TH JUDICIAL CIRCUIT

AGREED ORDER OF PUBLIC REPRIMAND

Frank A. Fletcher is circuit judge for the 39th judicial circuit consisting of Breathitt, Powell and Wolfe counties. Judge Fletcher has waived formal proceedings and has agreed to entry of this order.

During a preliminary investigation resulting from a complaint, the Commission received information that indicated Judge Fletcher engaged in the following conduct. In May 2012 Judge Fletcher presided over a sentencing hearing in Breathitt County for a defendant who had pleaded guilty to 14 counts of sexual offenses: one count of sexual abuse in the first degree, five counts of rape in the third degree, three counts of sodomy in the third degree, and four counts of use of electronic means to procure a minor for a sexual offense, all Class D felonies; and one count of distributing obscene material to a minor, first offense, a Class A misdemeanor. The defendant was an adult male teacher. The victims were five 13- and 14-year-old girls who were his students. During the hearing, Judge Fletcher made comments which could be viewed as sympathetic to the defendant. During the sentencing hearing, Judge Fletcher commented that the defendant “was not blind and only human” and that some of the victims didn’t look their age. During that hearing, Judge Fletcher also discussed the lack of enforcement of the school dress code and said he didn’t think students should come into school wearing low-cut blouses and short skirts. Responding to a statement by defendant’s attorney, Judge Fletcher said “[t]his is a

statutory offense, but is it your understanding that all of the acts that occurred were consensual?"

Kentucky Supreme Court Rule 4.300, the Code of Judicial Conduct, Canon 3B(5), provides:

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

The Commentary to Canon 3B(5) includes:

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

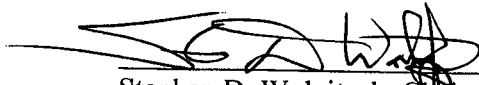
Judge Fletcher acknowledges that he made the comments in question during the sentencing hearing, but states that he was exploring the circumstances surrounding the commission of the offenses as he was required to do. However, because the victims were underage, they could not consent; nor was their manner of dress or not looking their age a defense to the sexual offenses committed by their adult teacher. Judge Fletcher's comments were offensive to the victims and their families in that they suggested that the young girls were in some way at fault or complicit in the defendant's offenses.

The sentence of seven years agreed upon by the Commonwealth and the Defendant was imposed by Judge Fletcher. Eight months later Judge Fletcher granted shock probation to the Defendant which was within his discretion. After the granting of shock probation, the Commission received a complaint relating to his comments at the initial sentencing. These comments manifested bias or prejudice in favor of the male defendant and against the female

victims and created the impression for some that his disposition of the case was motivated by bias or prejudice. Canon 3B(5) prohibits such conduct. The Commission concludes that the conduct of Judge Fletcher during the sentencing hearing violated Canon 3B(5).

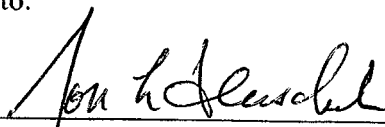
Therefore, for the foregoing conduct Judge Fletcher is hereby publicly reprimanded. In entering this order, the Commission duly considered that Judge Fletcher had no prior infractions and that he fully cooperated in the investigation. Judge Janet Stumbo disqualified herself from any consideration of this matter.

DATE: October 7, 2013



Stephen D. Wolnitzek, Chair

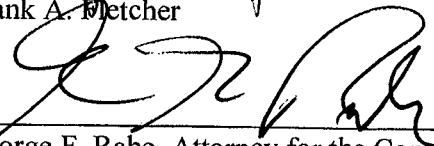
Agreed to:



Jon L. Fleischaker, Attorney for Judge Fletcher



Frank A. Fletcher



George F. Rabe, Attorney for the Commission

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