

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF

HON. W. MITCHELL NANCE, FAMILY COURT JUDGE
43rd JUDICIAL CIRCUIT

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

I

STATEMENT OF CHARGES

The Judicial Conduct Commission of the Commonwealth of Kentucky was created for the purpose of, and is vested with the jurisdiction to, initiate, hear and decide charges of official misconduct by any judge of the Court of Justice or lawyer while a candidate for judicial office, and upon a finding of such official misconduct, to impose sanctions pursuant to SCR 4.020. In furtherance of this authority and purpose, the Commission filed charges of judicial misconduct against Judge W. Mitchell Nance, Family Court Judge, 43rd Judicial Circuit on September 11th, 2017. (Notice of Formal Proceedings and Charges dated September 11th, 2017 are attached hereto and incorporated herein by reference).

II

PROCEEDINGS

1. The Respondent, W. Mitchell Nance is the Family Court Judge for the 43rd Judicial Circuit consisting of Barren and Metcalfe Counties, Kentucky.
2. The Commission authorized an investigation into the allegations after receipt of a media report and multiple Complaints.

3. The Respondent was informed of the investigation and appeared with Counsel, Hon. Bryan H. Beauman and Scott L. Miller, on June 30th, 2017. The Respondent was provided the factual information in the custody of the Commission for examination, pursuant to SCR 4.170(4) and was afforded an opportunity to present any other information bearing on the investigation. The Respondent did not provide additional information bearing on the Commission's investigation.

4. Notice of Formal Proceedings and Charges were filed against the Respondent on September 11th, 2017 under Supreme Court Rule 4.180.

5. An Answer to the Notice of Formal Proceedings and Charges was filed by the Respondent by his Counsel on October 25th, 2017.

6. A Notice of Time and Place for Hearing was sent to the Respondent on October 30th, 2017, setting the Hearing for December 15th, 2017 at 2:00pm in court room E on the third floor of the Fayette County Circuit Courthouse 120 N. Limestone Street Lexington, KY 41507.

7. On December 15th, 2017 neither the Respondent or his Counsel appeared for the hearing as scheduled and offered no evidence in defense of said charges.

8. Counsel for the Commission, Hon. Jeffrey Mando, presented evidence in support of the charges.

9. The (five) voting members of the Commission in this case are as follows: Hon. Stephen D. Wolnitzek, Judge Janet Stumbo, Judge Eddy Coleman, Judge David Bowles, and Michael Noftsgar. Citizen member Joe Adams was recovering from a medical condition and was unable to participate. In attendance during the hearing was alternate member Judge Mitchell Perry. The alternate member did not participate in the Commission vote in this matter.

10. At the conclusion of the presentation of evidence it was announced that the Hearing was concluded and appropriate Findings of Fact, Conclusions of Law and a Final Order would be entered in due course.

III

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

CHARGE

On April 27th, 2017 the Respondent issued General Order 17-01 declaring that “under no circumstance” would the adoption of a child by a homosexual be in the child’s best interest. Acknowledging that this declaration constitutes a “personal bias or prejudice” against homosexuals seeking to adopt children, Judge Nance ordered that any attorney filing a motion for adoption on behalf of a homosexual party notify court staff so that he could recuse and disqualify himself from any such proceeding.

The General Order effectively created a Local Rule that was implemented without the approval of the Chief Justice of the Kentucky Supreme Court as required under SCR 1.040(3)(a) and its content is contrary to prevailing law.

As a result, the Respondent was charged with violating SCR 4.020(1)(b)(i) and that his actions constitute misconduct in office. In addition, the Respondent was charged with violation of 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 to act at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.

Canon 3B(1) which requires a Judge to hear and decide matters assigned to the Judge except those in which disqualification is required.

Canon 3B(2) which requires a Judge to be faithful to the law.

Canon 3B(5) which prohibits a Judge from manifesting by words or conduct, a bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socio economic status.

The Kentucky code of Judicial Conduct requires Judges to fairly and impartially decide cases according to the law. Judge Nance's refusal to hear and decide adoption cases involving homosexuals is violative of said Canons.

In addition, the Respondent was charged with issuing General Order 17-01, a local rule for Barren and Metcalfe Family Court, without the approval from the Chief Justice of the Kentucky Supreme Court as required under SCR 1.040(3)(a). The Respondent's actions in doing so violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Furthermore, the Respondent's actions violate SCR 4.300 and the relevant portions of the following Canons of the code of the 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 to act at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.

By a vote of four to one, with member Noftsger dissenting the Commission finds that the Respondent, W. Mitchell Nance, is guilty of the violations set forth in Count I of the charges.

By a vote of five to zero, the Commission finds that the Respondent, W. Mitchell Nance, is guilty of the Violations as set forth in Count II of the charges.

ORDER

The Respondent has been found guilty of misconduct by violating Canon1, Canon2A and Canon3B(1), Canon3B(2) and 3B(5) as charged in Count I, and Canon1 and 2(a) as charged in Count II.

For the foregoing violations, the Commission concludes that, due to Respondent's retirement, a public reprimand is warranted, and is the only public sanction available, and by a vote of 4-1, the Respondent W. Mitchell Nance, Family Court Judge 43rd Judicial Circuit is publicly reprimanded.

Judge David Bowles, the District Court Member of the Commission voted that Judge Nance be removed from office for the violations set forth in the charges, and since at the time the vote was taken, Judge Nance's resignation was not yet effective believed that the only appropriate vote was a vote to remove him from office.

Rule 4.270 provides that the Commission's Order shall become effective within Ten (10) days after service, unless an appeal is filed within that time.

I hereby certify that the Findings of Fact, Conclusions of Law and Final Order represent an action of the Judicial Conduct Commission this 19th day of December 2017.


STEPHEN D. WOLNITZEK
CHAIR OF THE COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon Judge W. Mitchell Nance Family Court Judge, 43rd Judicial Circuit by mailing same to his attorneys, Bryan H. Beaman, and Scott L. Miller, 333 West Vine Street, Suite 1500 Lexington, KY 41507 and upon Jeffrey C. Mando, Counsel to the Commission, 40 W. Pike Street Covington, KY 41011 the 19th day of December 2017.


MS. JIMMY SHAFFER,
EXECUTIVE SECRETARY