

**COMMONWEALTH OF KENTUCKY  
JUDICIAL CONDUCT COMMISSION**

**IN RE THE MATTER OF:**

**W. MITCHELL NANCE, FAMILY COURT JUDGE  
43<sup>RD</sup> JUDICIAL CIRCUIT**

**FORMAL PROCEEDINGS DOCKET ENTRIES**

Date of Document

1. September 11, 2017 - [Notice of Formal Proceedings and Charges](#)
2. September 20, 2017 - [Motion for Extension](#)
3. September 21, 2017 - [Order for Extension](#)
4. October 25, 2017 - [Answer](#)
5. October 30, 2017 - [Notice of Time and Place for Hearing](#)

**COMMONWEALTH OF KENTUCKY  
JUDICIAL CONDUCT COMMISSION**

**IN RE THE MATTER OF:**

**W. MITCHELL NANCE, FAMILY COURT JUDGE  
43<sup>RD</sup> 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 against Judge W. Mitchell Nance, Family Court Judge for Kentucky's 43<sup>rd</sup> Judicial Circuit located in Barren and Metcalf Counties. The Charges are as follows:

**Count I**

On April 27, 2017, you 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 might constitute a “personal bias or prejudice” against homosexuals seeking to adopt children, you ordered that any attorney filing a motion for adoption on behalf of a homosexual party must notify court staff so that you could recuse and disqualify yourself from any such proceeding. A copy of General Order 17-01 is attached to these charges.

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 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 socioeconomic status.

### Count II

In issuing General Order 17-01, you enacted a Local Rule for Barren and Metcalf Family Courts without the approval from the Chief Justice of the Kentucky Supreme Court as required under SCR 1.040(3)(a).

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.

The Judicial Conduct Commission has jurisdiction pursuant to 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 or public reprimand; (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.
    - (ii) Persistent failure to perform his/her duties.

- (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.

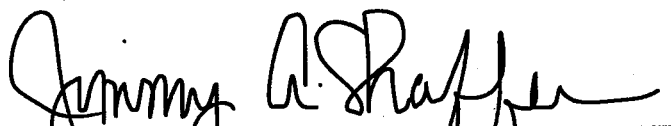
Please mail your answer to: Ms. Jimmy Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, Kentucky 40604-4266.

September 11, 2017

  
STEPHEN D. WOLNITZEK, CHAIR

Judge Jeff S. Taylor recused from any consideration of this matter.

I hereby certify that copy of this Notice of Formal Proceedings and Charges was served on M. Mitchell Nance, Family Court Judge, by mailing same to his attorneys, Bryan H. Beauman, Esq. and L. Scott Miller, Esq., 333 West Vine Street, Suite 1500, Lexington, KY 40507 this 11<sup>th</sup> day of September, 2017.

  
JIMMY SHAFFER, EXECUTIVE SECRETARY

COMMONWEALTH OF KENTUCKY  
COURT OF JUSTICE  
FORTY-THIRD JUDICIAL CIRCUIT COURT  
(BARREN CIRCUIT COURT  
METCALFE CIRCUIT COURT)  
SECOND DIVISION  
(FAMILY COURT)

A TRUE COPY  
ATTEST: KRISSIE COE FIELDS, CLERK  
APR 27 2017  
BY *[Signature]* D.C.

ENTERED  
APR 27 2017  
KRISSIE COE FIELDS, CLERK  
BY *[Signature]* D.C.

**IN RE: UNDERSIGNED JUDGE'S *SUA SPONTE* RECUSAL AND  
DISQUALIFICATION IN ADOPTION ACTIONS INVOLVING  
A HOMOSEXUAL PARTY OR PARTIES**

GENERAL ORDER  
17 - 01

\* \* \*

*WHEREAS*, the law, KRS 199.520 (1), in part requires that the court enter a judgment of adoption upon a finding, *inter alia*, that "... the best interest of the child will be promoted by the adoption ..."; and,

*WHEREAS*, the law, KRS 26A.015 (2), provides in part as follows:

Any ... judge of the Court of Justice ... shall disqualify himself in any proceeding:

- (a) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings, or has expressed an opinion concerning the merits of the proceeding;

\* \* \* \*

- (c) Where he has knowledge of any other circumstances in which his impartiality might reasonably be questioned.

and,

**WHEREAS**, the law, Canon 3 of the Kentucky Code of Judicial Conduct, in SCR 4.300 Section 3 E., provides in part as follows:

- (1) A judge shall disqualify himself ... in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
  - (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

and,

**WHEREAS**, the undersigned judge takes notice of the decision which the United States Supreme Court rendered in *Obergefell v. Hodges*, 576 U.S. \_\_\_\_\_, 135 S.Ct. 2584, 192 L. Ed.2d 609 (2015)<sup>1</sup> and the decision which the Kentucky Supreme Court rendered in *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010)<sup>2</sup> and its progeny; and,

**WHEREAS**, notwithstanding the decisions cited in the preceding paragraph, the undersigned judge believes as a matter of conscience that (although adoption of a child by a practicing homosexual is not expressly prohibited by law) under no circumstance would "... the best interest of the child ... be promoted by the adoption ..."<sup>3</sup> by a practicing homosexual; and,

**WHEREAS**, the undersigned judge believes that his conscientious objection to the concept of adoption of a child by a practicing homosexual may constitute "personal bias or prejudice" or some other "circumstances in which his impartiality might reasonably be questioned" to the degree that his disqualification or recusal is ethically required in adoption actions involving a homosexual party or parties;

---

<sup>1</sup>In this decision the United States Supreme Court recognized same-sex "marriage."


<sup>2</sup>In this decision the Kentucky Supreme Court reinstated a trial court judgment awarding a child's joint custody to his natural mother and to his natural mother's homosexual former "partner."

<sup>3</sup>See KRS 199.520 (1).

***NOW, THEREFORE***, on the court's own motion, *sua sponte*, ***IT IS ORDERED*** that any attorney filing in this court an initial pleading or motion in an adoption action involving a homosexual party or parties simultaneously with such filing shall notify Mrs. Julie W. Jolly, Case Manager (or any other staff member) of this court (at [270] 651-9923 or at [Julie.Jolly@kycourts.net](mailto:Julie.Jolly@kycourts.net)), concerning the filing of such initial pleading or motion so that the undersigned judge can take immediate steps on his own motion, *sua sponte*, to *recuse* and *disqualify* himself from proceedings in such action through issuance of an Order Certifying Need for Special Judge Assignment without undue delay.

***IT IS FURTHER ORDERED*** that the undersigned judge, through the staff of the Forty-Third Judicial Circuit Court, Second Division (Family Court), forthwith shall transmit electronically a copy hereof to all attorneys regularly practicing before this court, and each of such attorneys shall comply strictly herewith.

This the 27<sup>th</sup> day of April, 2017.

  
\_\_\_\_\_  
JUDGE, FORTY-THIRD JUDICIAL CIRCUIT COURT  
(BARREN AND METCALFE CIRCUIT COURT)  
SECOND DIVISION  
(FAMILY COURT)

DISQUALIFICATION ADOPTION I

COMMONWEALTH OF KENTUCKY  
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

W. MITCHELL NANCE, FAMILY COURT JUDGE  
43<sup>RD</sup> JUDICIAL CIRCUIT

MOTION FOR EXTENSION

Respondent, Hon. W. Mitchell Nance, by counsel, moves for an extension of time in order to answer the Notice of Formal Proceedings and Charges. In support of this Motion, the undersigned states that Judge Nance desires to continue discussions with the Judicial Conduct Commission and its representatives concerning an agreed resolution of these charges. Based upon preliminary discussions, it appears that Judge Nance and the Commission may reach an agreed resolution of the charges but additional time is needed in order to further facilitate and conclude these discussions. Therefore, Judge Nance requests an extension of time through October 26, 2017 to file an Answer to the Notice of Formal Proceedings and Charges.

Respectfully submitted,

STURGILL, TURNER, BARKER & MOLONEY, PLLC

By: 

\_\_\_\_\_  
Bryan H. Beauman

Scott L. Miller

333 W. Vine Street, Suite 1500

Lexington, KY 40507

[bbeauman@sturgillturner.com](mailto:bbeauman@sturgillturner.com)

[smiller@sturgillturner.com](mailto:smiller@sturgillturner.com)

T: (859) 255-8581

COUNSEL FOR RESPONDENT



**CERTIFICATE OF SERVICE**

I hereby certify that this Motion was emailed ([JimmyShaffer@KYCOURTS.NET](mailto:JimmyShaffer@KYCOURTS.NET)) and mailed to Ms. Jimmy Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, Kentucky 40604-4266 on this 20<sup>th</sup> day of September, 2017.

By: \_\_\_\_\_



Bryan H. Beaman

COUNSEL FOR RESPONDENT

COMMONWEALTH OF KENTUCKY  
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

W. MITCHELL NANCE, FAMILY COURT JUDGE  
43<sup>RD</sup> JUDICIAL CIRCUIT

**ORDER FOR EXTENSION**

Upon consideration of request of counsel for Judge Nance for extension of time to file an Answer to the Notice of Formal Proceedings and Charges, pursuant to SCR 4.200, it is by the Commission,

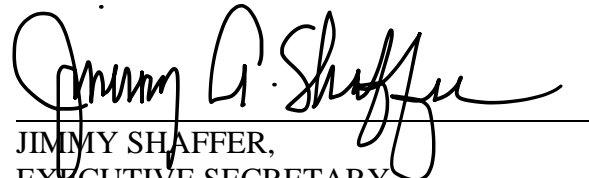
**ORDERED** that the time for filing an Answer be and it is hereby extended. The Answer shall be filed on or before October 26, 2017.

9/21/17  
Date

  
Stephen D. Wolnitzek, Chair

**CERTIFICATE OF SERVICE**

I hereby certify that copy of this Order for Extension was served on M. Mitchell Nance, Family Court Judge, by mailing same to his attorneys, Bryan H. Beaman, Esq. and L. Scott Miller, Esq., 333 West Vine Street, Suite 1500, Lexington, KY 40507 this 21<sup>th</sup> day of September, 2017.

  
JIMMY SHAFFER,  
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY  
JUDICIAL CONDUCT COMMISSION**

**IN RE THE MATTER OF:**

**W. MITCHELL NANCE, FAMILY COURT JUDGE  
43<sup>RD</sup> JUDICIAL CIRCUIT**

**ANSWER**

Respondent, Hon. W. Mitchell Nance, by counsel, files this Answer.

On October 25, 2017, Judge Nance resigned his position as Judge of the Forty-Third Judicial Circuit Court, Second Division (Family Court), effective 11:59 p.m. December 16, 2017. *See* Exhibit 1. Judge Nance's resignation moots this action against him. Judge Nance waives any formal hearing and requests dismissal of these charges, or alternatively, that he be excused from any further participation in the Commission's process. In the event the Commission deems a response necessary to this matter, for his Answer Judge Nance states as follows.

On April 27, 2017, Judge Nance issued General Order 17 – 01 in Barren and Metcalfe counties in which he attempted preemptively to establish a procedure by which on his own motion, *sua sponte*, he would recuse or disqualify in adoption actions involving a party in a same-sex relationship. *See* Exhibit 2. In doing so he relied on the recusal or disqualification provisions of KRS 26A.015(2) and of Canon 3 of the Kentucky Code of Judicial Conduct in SCR 4.300 Section 3 E. Judge Nance believed this Canon required his recusal in situations where his impartiality might be questioned. The Canon specifically states: “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned....” SCR 4.300 Section 3 E (1). Furthermore, KRS 26A.015(2)(a) requires that “[a]ny justice or judge of the Court of Justice or master commissioner shall disqualify himself in any proceeding: where he has a personal bias or prejudice concerning a party...”

Judge Nance's religious beliefs and convictions require him to disqualify from certain adoption cases in order to ensure a fair and impartial outcome for all the parties involved, and such disqualification is not a detriment on the efficient administration of justice within the court system. The final two paragraphs on page 2 of his order explained the premises for his decision. The basis for his order was confined to ensuring that all parties are provided with a judiciary that can objectively make findings as to what the Court determines to be in the best interest of the child pursuant to KRS 199.520(1). Judge Nance has acknowledged that his religious beliefs may impact upon his ability to apply the criteria required by the statute in certain cases - which arise infrequently. His recusal would have facilitated the impartiality of the judicial system and ensured that all families had a fair opportunity for adoption. His recusal also would have ensured he complied with the Judicial Canons *requiring* recusal as well as the statutory requirements for disqualification mentioned above.

The basis for his conscientious religious objection to a child's adoption by a same-sex couple is his conviction that the best interest of a child is promoted by an adoption which results in the *formation* of a legal parent-child relationship which includes the possibility (if not the present reality) of the child's having both a male legal parent and a female legal parent - an outcome which adoption by a same-sex couple precludes. Furthermore, the basis for his conviction is his sincerely held religious belief that the divinely created order of nature is that each human being has a male parent and a female parent, and, accordingly, that the only adoption which promotes the child's best interest is an adoption which includes at least the prospect of the child having both a male legal parent and a female legal parent.

As a matter of conscience, therefore, Judge Nance cannot adjudicate same-sex adoption actions because he cannot in good conscience grant an adoption in those circumstances, and thus

he is precluded as a matter of faith from granting the relief sought. For those reasons, the only option ethically available was to recuse or disqualify, on his own motion, *sua sponte*, in those actions pursuant to KRS 26A.015(2) and Canon 3 of the Kentucky Code of Judicial Conduct in SCR 4.300 Section 3 E.

Same-sex adoptions present a unique crisis of conscience for Judge Nance. Many subject matters in family court jurisdiction (for example, dissolution, dependency, custody and visitation proceedings) may concern contexts where the legal parent-child relationships *pre-exist* the litigation. In those matters, what is being litigated is the *reconfiguration* of the legal parent-child relationships. In contrast, adoptions involve the *formation* of legal parent-child relationships. Accordingly, Judge Nance did not feel compelled to recuse or disqualify *sua sponte* in dissolution, dependency, custody or visitation proceedings involving a person in a same-sex relationship, nor did he feel compelled to do so in domestic violence proceedings involving a person in a same-sex relationship. Indeed, it is the *formation* rather than the *reconfiguration* of an existing relationship that dictate recusal for Judge Nance according to his religious beliefs. And no violation of any judicial canon is implicated by Judge Nance's need to recuse from that limited category of cases.

Judge Nance acknowledges his responsibility for two separate and distinct errors which he made in the issuance of General Order 17 – 01 on April 27, 2017: (1) the decision in *Abernathy v. Nicholson*, 899 S.W.2d 85 (Ky. 1995) prohibits the use of general orders for procedures for which only local rules are competent, requiring Supreme Court approval pursuant to SCR 1.040 (3) (a); and (2) recusal or disqualification under KRS 26A.015 or SCR 4.300 may be made only on a case-by-case basis and not on the basis of an entire class of litigation.

Based upon Judge Nance's resignation from his office, he requests this matter be dismissed and that his cooperation in this matter be noted by the Commission's record.

Respectfully submitted,

STURGILL, TURNER, BARKER & MOLONEY, PLLC

By: 

\_\_\_\_\_  
Bryan H. Beauman

Scott L. Miller

333 W. Vine Street, Suite 1500

Lexington, KY 40507

[bbeauman@sturgillturner.com](mailto:bbeauman@sturgillturner.com)

[smiller@sturgillturner.com](mailto:smiller@sturgillturner.com)

T: (859) 255-8581

COUNSEL FOR RESPONDENT

**CERTIFICATE OF SERVICE**

I hereby certify that this Motion was emailed ([JimmyShaffer@KYCOURTS.NET](mailto:JimmyShaffer@KYCOURTS.NET)) and mailed to: Ms. Jimmy Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, Kentucky 40604-4266 on this 25<sup>th</sup> day of October, 2017 with a copy provided to Jeffrey C. Mando, ADAMS, STEPNER, WOLTERMANN & DUSING, PLLC, 40 West Pike Street, Covington, KY 41011.

By: 

\_\_\_\_\_  
COUNSEL FOR RESPONDENT



COMMONWEALTH OF KENTUCKY  
43RD JUDICIAL CIRCUIT, DIVISION 2  
202 COURTHOUSE SQUARE  
GLASGOW, KENTUCKY 42141-2480  
PHONE 270-651-9923 FAX 270-651-5524

W. MITCHELL NANCE  
CIRCUIT JUDGE  
FAMILY COURT DIVISION

BARREN CIRCUIT COURT  
METCALFE CIRCUIT COURT

October 25, 2017

Hon. Matthew G. Bevin  
Governor of Kentucky  
700 Capital Avenue, Suite 100  
Frankfort, Kentucky 40601

*RE:* Notification of Resignation

Dear Governor Bevin:

I submit my resignation as Judge of the Forty-Third Judicial Circuit Court, Second Division (Family Court), effective at 11:59 p.m. central time on Saturday, December 16, 2017.

I wish to thank the people of Barren and Metcalfe counties for electing me to this position, and I wish to thank my staff and my fellow judges and the clerks and the many dedicated members of the bar with whom it has been my honor to work in these courts.

Sincerely,

  
W. Mitchell Nance

Hon. John D. Minton, Jr.  
Chief Justice of Kentucky  
231 Capitol Building  
700 Capital Avenue  
Frankfort, Kentucky 40601

Hon. John D. Minton, Jr.  
Chief Justice of Kentucky  
Warren County Justice Center  
1001 Center Street, Suite 305  
Bowling Green, Kentucky 42101



Hon. John T. Alexander  
Judge, Barren Circuit Court  
300 Court House Square  
Glasgow, Kentucky 42141

Hon. Kelly Mark Easton  
Chief Regional Circuit Judge (Green River Region)  
Hardin County Justice Center  
120 East Dixie Avenue  
Elizabethtown, Kentucky 42701

Hon. J. Gabriel Pendleton  
Judge, Barren District Court  
204 Court House Square  
P. O. Box 1359  
Glasgow, Kentucky 42142-1359

Hon. Krissie Coe Fields  
Clerk, Barren Circuit Court  
100 Court House Square  
P. O. Box 1359  
Glasgow, Kentucky 42142-1359

Hon. Tommy A. Garrett  
Clerk, Metcalfe Circuit Court  
201 East Stockton Street  
P. O. Box 27  
Edmonton, Kentucky 42129-0027


Hon. Laurie K. Dudgeon, Director  
Administrative Office of the Courts  
1001 Vandalay Drive  
Frankfort, Kentucky 40601

Mrs. Donna S. Early, Executive Director  
Kentucky Judicial Form Retirement System  
Whitaker Bank Building, Suite 302  
305 Ann Street  
Frankfort, Kentucky 40601  
GOVBEVIN.2



COMMONWEALTH OF KENTUCKY  
COURT OF JUSTICE  
FORTY-THIRD JUDICIAL CIRCUIT COURT  
(BARREN CIRCUIT COURT  
METCALFE CIRCUIT COURT)  
SECOND DIVISION  
(FAMILY COURT)

**IN RE: UNDERSIGNED JUDGE'S *SUA SPONTE* RECUSAL AND  
DISQUALIFICATION IN ADOPTION ACTIONS INVOLVING  
A HOMOSEXUAL PARTY OR PARTIES**

A TRUE COPY  
ATTEST: KRISSIE COE FIELDS, CLERK  
APR 27 2017  
BY  D.C.

ENTERED  
APR 27 2017  
KRISSIE COE FIELDS, CLERK  
BY  D.C.

GENERAL ORDER  
17 - 01

\* \* \*

*WHEREAS*, the law, KRS 199.520 (1), in part requires that the court enter a judgment of adoption upon a finding, *inter alia*, that "... the best interest of the child will be promoted by the adoption ..."; and,

*WHEREAS*, the law, KRS 26A.015 (2), provides in part as follows:

Any ... judge of the Court of Justice ... shall disqualify himself in any proceeding:

- (a) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings, or has expressed an opinion concerning the merits of the proceeding;

\* \* \* \* \*

- (c) Where he has knowledge of any other circumstances in which his impartiality might reasonably be questioned.

and,



**WHEREAS**, the law, Canon 3 of the Kentucky Code of Judicial Conduct, in SCR 4.300 Section 3 E., provides in part as follows:

- (1) A judge shall disqualify himself ... in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
  - (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

and,

**WHEREAS**, the undersigned judge takes notice of the decision which the United States Supreme Court rendered in *Obergefell v. Hodges*, 576 U. S. \_\_\_\_\_, 135 S.Ct. 2584, 192 L. Ed.2d 609 (2015)<sup>1</sup> and the decision which the Kentucky Supreme Court rendered in *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010)<sup>2</sup> and its progeny; and,

**WHEREAS**, notwithstanding the decisions cited in the preceding paragraph, the undersigned judge believes as a matter of conscience that (although adoption of a child by a practicing homosexual is not expressly prohibited by law) under no circumstance would "... the best interest of the child ... be promoted by the adoption ..."<sup>3</sup> by a practicing homosexual; and,

**WHEREAS**, the undersigned judge believes that his conscientious objection to the concept of adoption of a child by a practicing homosexual may constitute "personal bias or prejudice" or some other "circumstances in which his impartiality might reasonably be questioned" to the degree that his disqualification or recusal is ethically required in adoption actions involving a homosexual party or parties;

---

<sup>1</sup>In this decision the United States Supreme Court recognized same-sex "marriage."


<sup>2</sup>In this decision the Kentucky Supreme Court reinstated a trial court judgment awarding a child's joint custody to his natural mother and to his natural mother's homosexual former "partner."

<sup>3</sup>See KRS 199.520 (1).

***NOW, THEREFORE***, on the court's own motion, *sua sponte*, ***IT IS ORDERED*** that any attorney filing in this court an initial pleading or motion in an adoption action involving a homosexual party or parties simultaneously with such filing shall notify Mrs. Julie W. Jolly, Case Manager (or any other staff member) of this court (at [270] 651-9923 or at [Julie.Jolly@kyecourts.net](mailto:Julie.Jolly@kyecourts.net)), concerning the filing of such initial pleading or motion so that the undersigned judge can take immediate steps on his own motion, *sua sponte*, to *recuse* and *disqualify* himself from proceedings in such action through issuance of an Order Certifying Need for Special Judge Assignment without undue delay.

***IT IS FURTHER ORDERED*** that the undersigned judge, through the staff of the Forty-Third Judicial Circuit Court, Second Division (Family Court), forthwith shall transmit electronically a copy hereof to all attorneys regularly practicing before this court, and each of such attorneys shall comply strictly herewith.

This the 27<sup>th</sup> day of April, 2017.

  
\_\_\_\_\_  
JUDGE, FORTY-THIRD JUDICIAL CIRCUIT COURT  
(BARREN AND METCALFE CIRCUIT COURT)  
SECOND DIVISION  
(FAMILY COURT)

DISQUALIFICATION ADOPTION I

COMMONWEALTH OF KENTUCKY  
COURT OF JUSTICE  
FORTY-THIRD JUDICIAL CIRCUIT COURT  
(BARREN CIRCUIT COURT  
METCALFE CIRCUIT COURT)  
SECOND DIVISION  
(FAMILY COURT)

**IN RE: UNDERSIGNED JUDGE'S *SUA SPONTE* RECUSAL AND  
DISQUALIFICATION IN ADOPTION ACTIONS INVOLVING  
A HOMOSEXUAL PARTY OR PARTIES**

**GENERAL ORDER  
17-01**

\* \* \*

*WHEREAS*, the law, KRS 199.520 (1), in part requires that the court enter a judgment of adoption upon a finding, *inter alia*, that "... the best interest of the child will be promoted by the adoption ..."; and,

*WHEREAS*, the law, KRS 26A.015 (2), provides in part as follows:

Any ... judge of the Court of Justice ... shall disqualify himself in any proceeding:

- (a) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings, or has expressed an opinion concerning the merits of the proceeding;

\* \* \* \* \*

- (c) Where he has knowledge of any other circumstances in which his impartiality might reasonably be questioned.

and,

A TRUE COPY ATTEST  
THIS 27 April 2017  
Tommy A. Garrett  
METCALFE CIRCUIT CLERK  
By: RWDL

1

FILED IN MY OFFICE  
THIS 27 DAY OF April 2017  
TOMMY A. GARRETT, CLERK  
BY Rachel Walbert

**WHEREAS**, the law, Canon 3 of the Kentucky Code of Judicial Conduct, in SCR 4.300 Section 3 E., provides in part as follows:

- (1) A judge shall disqualify himself ... in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
  - (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

and,

**WHEREAS**, the undersigned judge takes notice of the decision which the United States Supreme Court rendered in *Obergefell v. Hodges*, 576 U. S. \_\_\_\_\_, 135 S.Ct. 2584, 192 L. Ed.2d 609 (2015)<sup>1</sup> and the decision which the Kentucky Supreme Court rendered in *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010)<sup>2</sup> and its progeny; and,

**WHEREAS**, notwithstanding the decisions cited in the preceding paragraph, the undersigned judge believes as a matter of conscience that (although adoption of a child by a practicing homosexual is not expressly prohibited by law) under no circumstance would "... the best interest of the child ... be promoted by the adoption ..."<sup>3</sup> by a practicing homosexual; and,

**WHEREAS**, the undersigned judge believes that his conscientious objection to the concept of adoption of a child by a practicing homosexual may constitute "personal bias or prejudice" or some other "circumstances in which his impartiality might reasonably be questioned" to the degree that his disqualification or recusal is ethically required in adoption actions involving a homosexual party or parties:

---

<sup>1</sup>In this decision the United States Supreme Court recognized same-sex "marriage."

<sup>2</sup>In this decision the Kentucky Supreme Court reinstated a trial court judgment awarding a child's joint custody to his natural mother and to his natural mother's homosexual former "partner."

<sup>3</sup>See KRS 199.520 (1).

***NOW, THEREFORE***, on the court's own motion, *sua sponte*, ***IT IS ORDERED*** that any attorney filing in this court an initial pleading or motion in an adoption action involving a homosexual party or parties simultaneously with such filing shall notify Mrs. Julie W. Jolly, Case Manager (or any other staff member) of this court (at [270] 651-9923 or at [JulieJolly@kycourts.net](mailto:JulieJolly@kycourts.net)), concerning the filing of such initial pleading or motion so that the undersigned judge can take immediate steps on his own motion, *sua sponte*, to *recuse* and *disqualify* himself from proceedings in such action through issuance of an Order Certifying Need for Special Judge Assignment without undue delay.

***IT IS FURTHER ORDERED*** that the undersigned judge, through the staff of the Forty-Third Judicial Circuit Court, Second Division (Family Court), forthwith shall transmit electronically a copy hereof to all attorneys regularly practicing before this court, and each of such attorneys shall comply strictly herewith.

This the 27<sup>th</sup> day of April, 2017.

  
\_\_\_\_\_  
JUDGE, FORTY-THIRD JUDICIAL CIRCUIT COURT  
(BARREN AND METCALFE CIRCUIT COURT)  
SECOND DIVISION  
(FAMILY COURT)

DISQUALIFICATION ADOPTION I

**COMMONWEALTH OF KENTUCKY  
JUDICIAL CONDUCT COMMISSION**

**IN RE THE MATTER OF:**

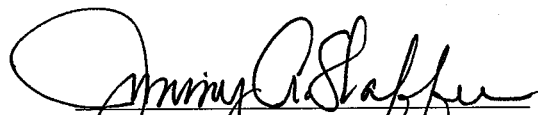
**W. MITCHELL NANCE, FAMILY COURT JUDGE  
43RD JUDICIAL CIRCUIT**

**NOTICE OF TIME AND PLACE FOR HEARING**

NOTICE is hereby given that the hearing in these formal proceedings will be held commencing December 15, 2017, at 2:00 p.m. in Courtroom E on the Third Floor of the Fayette County Circuit Courthouse, 120 N. Limestone Street, Lexington, Kentucky, 40507.

**CERTIFICATE OF SERVICE**

Copy hereof was mailed this 30<sup>th</sup> day of October 2017, to W. Mitchell Nance, Family Court Judge, 43<sup>rd</sup> Judicial Circuit, by mailing same to his attorneys, Bryan H. Beaman, Esq. and L. Scott Miller, Esq., 333 West Vine Street, Suite 1500, Lexington, KY 40507; and upon counsel for the Judicial Conduct Commission, Jeffrey C. Mando, Adams, Steiner, Woltermann & Dusing, PLLC, 40 West Pike Street, Covington, KY 41011.

  
JIMMY A. SHAFFER  
EXECUTIVE SECRETARY