



STATE OF KANSAS

BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

Inquiry Concerning
A Judge

Docket No. 960

ORDER

Members of the Commission present included: Nancy Anstaett, Chair; William Swearer, Vice-Chair; Hon. J. Patrick Brazil; Hon. Jennifer L. Jones; and Carolyn Tillotson.

FINDINGS OF FACT

There is no dispute regarding the facts set out below:

1. The Honorable Rebecca L. Pilshaw, Respondent, is a District Judge in the 18th Judicial District.
2. The Commission received a complaint, alleging that the Respondent did not allow motions in a post-conviction proceeding to be filed with the clerk of the district court.
3. Respondent presided over a jury trial in 1997 which resulted in Complainant's being convicted of multiple criminal counts and sentenced to a controlling term of 30 years in prison. Various challenges to that conviction occurred which are not relevant to the complaint at issue.
4. On June 30, 2005, Complainant filed a pro se Motion for Arrest of Judgment related to his 1997 conviction.
5. On June 30, 2005, the district court clerk sent notice to Complainant of an August 12, 2005, hearing date on his pro se motion.
6. On July 18, 2005, Complainant mailed to Respondent a Motion for Recusal of Judge and affidavit which Respondent returned to Complainant unfiled on July 27, 2005, having determined the motion contained inappropriate citations to federal law and recitation of facts inappropriate under the Kansas recusal statute, K.S.A. 20-311d.

7. On August 1, 2005, Complainant mailed a Motion for Extension of Time to the clerk of the district court, seeking to continue his August 12 hearing date in order to obtain counsel.
8. On August 12, 2005, Respondent denied Complainant's Motion to Arrest Judgment as untimely filed pursuant to K.S.A. 22-3502. On the same date, Respondent returned Complainant's Motion for Extension of Time unfiled as "not necessary" because the Motion for Arrest of Judgment was not properly before the court.

CONCLUSIONS OF LAW

1. Canon 1 of the Code of Judicial Conduct, Rule 601A, provides:

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

2. Canon 2A of the Code of Judicial Conduct, Rule 601A, provides:

"A. A judge shall respect and comply with the law^o and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

3. Canon 3B(5) of the Code of Judicial Conduct, Rule 601A, provides:

"B. Adjudicative Responsibilities.

.....

(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 shall not permit staff, court officials and others subject to the judge's direction and control to do so."

4. Canon 3B(7) of the Code of Judicial Conduct, Rule 601A, provides in relevant part:

“B. Adjudicative Responsibilities.

.....

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.°”

5. Documents presented for filing in the district courts of Kansas are typically filed with the clerk of court and then referred to a judge for ruling.
6. Respondent, in this instance, followed an alternative procedure in which she apparently reviewed the merits of motions in order to determine whether the motions should be filed with the clerk of the district court.
7. The Commission has determined that Respondent violated Canons 1, 2A, 3B(5), and 3B(7) by following an alternative procedure which resulted in two pro se motions being returned to the Complainant unfiled.

IT IS THEREFORE ORDERED that the Honorable Rebecca L. Pilshaw cease and desist from establishing procedures which prevent filing of pleadings with the clerk of the court, in violation of the above-cited Canons.

The Commission recognizes that pro se filings may become abusive and that district courts may on rare occasion enter orders which limit future filings by pro se litigants. Nothing in this order should be construed to disapprove or limit that authority of the district courts.

This Order, if accepted, shall be made public pursuant to Rule 611(a). See 2006 Kan. Ct. R. Annot. 602.

The Secretary of the Commission on Judicial Qualifications is hereby instructed to mail a copy of this Order with a copy of Rule 611, as adopted by the Supreme Court of Kansas, to Respondent. Respondent is requested, in accordance with Rule 611, to either (a) comply by accepting the Order by written acknowledgment directed to the Secretary of the Commission; or (b) refuse to accept the Order. Any agreement to comply or refusal to accept shall be served upon the Commission within twenty days from this date. In the event the Respondent shall not agree to comply by accepting this Order by written acknowledgment within said period, Respondent shall be deemed to have refused to accept this Order.

BY ORDER OF THE COMMISSION dated this 1st day of March, 2007.

COMMISSION ON JUDICIAL QUALIFICATIONS

By: Carol G. Green
Carol G. Green, Secretary

APPROVED & ACCEPTED

3-21-07
Date

Rebecca L. Pilshaw
Rebecca L. Pilshaw, Respondent

Ross A. Hollander
Ross A. Hollander,
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