

JUN 12 1997

STATE OF KANSAS  
BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

COMMISSION ON  
JUDICIAL QUALIFICATIONS

Inquiry Concerning  
A Judge

Docket No. 645

ORDER

Members of the Commission present include: Mr. David J. Waxse, Chair; Hon. Kathryn Carter, Vice-Chair; Mr. Ray Call; Mr. Robert A. Creighton; Hon. Theodore B. Ice; Hon. James W. Paddock; and Ms. Carol Sader.

FINDINGS OF FACT

There is no dispute regarding the facts set out below:

1. The Honorable Herb Rohleder is a Retired District Court Judge from the Twentieth Judicial District, Barton County, Kansas. After retirement, Respondent accepted occasional assignments as requested by the Office of Judicial Administration and on April 6, 1997, entered into a contract to perform temporary judicial duties as a senior judge pursuant to K.S.A. 20-2622. As a senior judge, Respondent continued a temporary assignment to the Fifth Judicial District at Emporia, Kansas.
2. On April 11, 1997, at Emporia, Kansas, Respondent presided over sentencing in Case Number 96-CR-414, *The State of Kansas vs. Omar Jason Sampsel* and Case Number 96-CR-419, *The State of Kansas vs. Kelly Lee Minor*. The two men in these cases were convicted of having sex with girls fourteen and thirteen years of age, respectively. Following are comments and statements made by Respondent in open court.
3. In case number 96-CR-414 Defendant Omar Jason Sampsel had been convicted of aggravated indecent liberties with a child for having sexual relations with a fourteen-year-old girl. He appeared before Respondent for sentencing on April 11, 1997, at which time testimony was taken regarding relevant sentencing factors. At the conclusion of that testimony, Respondent commented, "[W]hen you get a victim like the [fourteen year old] victim involved in this case, hell, she doesn't want to be protected, she wants to be -- you know, there's too many women in this courtroom or I would use the word -- she wants to go to bed, she wants to have sex, she wants to screw everybody. That's what she wants to do. And so I can't feel any great compassion for her that's for sure."

4. In case number 96-CR-419 Defendant Kelly Minor had been convicted of aggravated criminal sodomy for allowing a thirteen-year-old girl to perform oral sex on him. He appeared before Respondent for sentencing on April 11, 1997, at which time testimony was taken regarding relevant sentencing factors. At the conclusion of that testimony, Respondent observed, "Well, the thing that's unfortunate in this case are the two girls that are putting about four young men in the pen are still running around out on the damned streets, still doing the same thing to more men. That's what's unfortunate."
5. Also on April 11, 1997, at the sentencing in case number 96-CR-419, Respondent referred to the composure of the fourteen-year-old victim in case number 96-CR-414, by saying, "[S]he sat there like, you know, nothing ever happened to her. And she had been dicked by three or four different guys."
6. At the close of the sentencing hearing in case number 96-CR-419 in response to a comment by the mother of defendant Sampsel, Respondent stated, "And then I certainly agree with you that, you know, ten days in jail is too much for a blow job from a thirteen year old. Now, if it was coming from a 40-year old, that might be worth ten days, but from a thirteen year old it wouldn't be worth, you know, a day in jail."
7. Respondent's comments were initially reported in *The Emporia Gazette* on April 16, 1997.
8. Respondent tendered his resignation as senior judge on April 18, 1997, and is no longer an active member of the Kansas judiciary.

#### CONCLUSIONS OF LAW

1. Canon 2 of the Canons of Judicial Conduct, Rule 601A, provides in relevant part:

*A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.*

A. 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...of the judiciary. 1996 Kan. Ct. R. Annot. 411.

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

A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity....1996 Kan. Ct. R. Annot. 412.

3. The Commission notes that Respondent, in a letter to this Commission, admitted the allegations, apologizing and expressing regret for the language used in the April 11 hearings. The Commission has, nonetheless, determined that Respondent violated Canon 2A and Canon 3B(4).

As stated above, the Respondent has resigned from senior judge status and is no longer an active member of the judiciary. If Respondent again serves as a judge as defined in Supreme Court Rule 604(b) (1996 Kan. Ct. R. Annot. 434), **IT IS ORDERED** that Respondent, Herb Rohleder, cease and desist from any activity in violation of the above-cited canons.

This Order, if accepted, shall be made public pursuant to Rule 611(a). See 1996 Kan. Ct. R. Annot. 438.

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 6<sup>th</sup> day of June, 1997.

COMMISSION ON JUDICIAL QUALIFICATIONS

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

APPROVED & ACCEPTED  
June 11, 1997  
(date)  
Herb Rohleder  
Herb Rohleder, Respondent