

FILED

BEFORE THE JUDICIAL STANDARDS COMMISSION

NOV 18 2008

STATE OF NORTH CAROLINA

PR
JUDICIAL STANDARDS
COMMISSION

IN RE:

INQUIRY CONCERNING A JUDGE, NO. 07-136

ORDER

JERRY F. WADDELL, Respondent

This proceeding came on to be heard and was heard before the Judicial Standards Commission (Commission) beginning on Thursday, 6 November 2008, in the Board Room of the North Carolina Judicial Center in Raleigh, North Carolina.

The Commission is a body duly organized under the laws of North Carolina and is authorized to recommend to the North Carolina Supreme Court (Court) the discipline of Judges and Justices of the General Court of Justice pursuant to the Constitution of North Carolina, Article IV, Section 17, and the procedures prescribed by the North Carolina General Assembly in the North Carolina General Statutes, Chapter 7A, Article 30.

Judge Jerry F. Waddell (the respondent) is now and was at all times referred to herein a Judge of the General Court of Justice, District Court Division, Judicial District 3B. As such, the respondent is subject to the Canons of the North Carolina Code of Judicial Conduct, the laws of the State of North Carolina, and the provisions of the oath of office for a district court judge set forth in the North Carolina General Statutes, Chapter 11.

Present and participating in the hearing were the following

Commission members: Judge John C. Martin, Chairman; Judge Richard D. Boner; Judge Tanya T. Wallace; Mr. Dudley Humphrey; Mr. L.P. Hornthal, Jr.; Mrs Linda Brown Douglas; and Mr. R. Wayne Troutman. Counsel for the Commission was Nancy Vecchia, Attorney at Law. The respondent was present in person and was represented by Douglas J. Brocker, Attorney at Law.

This hearing was convened for the purpose of hearing evidence concerning the charge that the respondent engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The charge was based on conduct alleged in paragraph 3 of the verified STATEMENT OF CHARGES duly served on the respondent to which the respondent filed a verified ANSWER.

Evidence was presented at the hearing by Counsel for the Commission and by Counsel for the respondent. Having heard all of the evidence presented, observed the demeanor and determined the credibility of the witnesses, and heard oral arguments from counsel, the Commission finds that allegations of the STATEMENT OF CHARGES alleging violations of Canons 2A. and 2B. of the North Carolina Code of Judicial Conduct were not proved by clear and convincing evidence.

As to the allegations of the STATEMENT OF CHARGES alleging a violation of Canon 3A.(4) of the Code of Judicial Conduct, the Commission finds by clear and convincing evidence that on 18 June

2007, the respondent signed an order in the matter entitled *Bowling v. Bowling*, 06 CVD 1782, pending in the District Court Division of Craven County, directing any law enforcement officer in the State of North Carolina to "take all steps necessary to return" the named children of the parties to the custody of the plaintiff-mother. At the time respondent signed the order, no motion had been filed with the court seeking the return of the children and respondent had heard no sworn testimony nor considered any sworn affidavit which would establish a basis for the relief granted by the order. The order was entered without notice to defendant-father and was based upon information related to respondent by Cindy Dickerson, his legal assistant, and Shelbie Hardison, a paralegal for Alfred D. Ward, Jr., an attorney in New Bern, N.C. Mr. Ward did not represent either party to the action, was away from his office on vacation, and was unaware of Ms. Hardison's involvement in the events. The Commission finds that the information provided to respondent by Ms. Hardison and Ms. Dickerson was to the effect that the defendant-father had taken the children for an arranged visitation and, at the conclusion of the visitation period, had notified the plaintiff-mother that he would not return the children to her as had been arranged.

The Commission further finds by clear and convincing evidence that respondent judge signed the order after instructing both Ms. Hardison and Ms. Dickerson to contact defendant-father's attorney

of record, James Randall Hunter, and after having been advised that office personnel in Mr. Hunter's office had told both Ms. Dickerson and Ms. Hardison that Mr. Hunter was out of town and intended to withdraw from the case, and that "the court can do what it has to do" or words to that effect. At the time the order was signed, however, no order had been entered allowing Mr. Hunter to withdraw.


The Commission further finds that respondent judge testified that at the time he signed the order he believed he had the authority to act *ex parte* to protect the minor children and that he believed there were reasonable grounds to fear for their safety.

Based on the foregoing findings of fact, the Commission concludes that the *ex parte* order issued by respondent was not authorized by law in that it was not based on any motion, sworn testimony, affidavit or other competent evidence, and was issued without notice to all parties or their attorneys. Thus, the Commission concludes that respondent's conduct was conduct in violation of the provisions of Canon 3A.(4). The Commission further concludes, however, in light of respondent's belief he had the authority to act in order to provide for the safety of the minor children of the parties, and under all the circumstances shown by the evidence in this case, such conduct was not such as to warrant a recommendation to the North Carolina Supreme Court that respondent be censured, suspended, or removed from office pursuant

to N.C.G.S. § 7A-376(b).

The Commission makes no recommendation for discipline in this matter and it is, therefore, dismissed.

This the 18th day of November, 2008.



John C. Martin
Chairman
Judicial Standards Commission

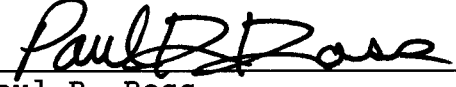
CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Order by depositing a copy in the United States Mail, first class postage prepaid, addressed to Counsel for the respondent judge and to Special Counsel for the Commission as follows:

Douglas J. Brocker, Esq.
The Brocker Law Firm, P.A.
5540 Centerview Drive, Suite 200
Raleigh, NC 27606

Mrs. Nancy A. Vecchia
Counsel
Judicial Standards Commission
PO Box 1122
Raleigh NC 27602

This the 18th day of November, 2008.



Paul R. Ross
Executive Secretary
Judicial Standards Commission