

BEFORE THE JUDICIAL STANDARDS COMMISSION

FILED

STATE OF NORTH CAROLINA

FEB 18 2013

**JUDICIAL STANDARDS
COMMISSION**

IN RE:)	
INQUIRY CONCERNING A JUDGE,)	STATEMENT OF CHARGES
NO. 12-013)	
JERRY R. TILLET, Respondent)	

TO: JERRY R. TILLET, a Judge of the General Court of Justice of the State of North Carolina.

The North Carolina Judicial Standards Commission (Commission) is a body duly organized under the laws of North Carolina and is authorized to recommend to the Supreme Court of North Carolina (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.

The Commission has concluded that disciplinary proceedings should be instituted against you based on evidence developed by the formal investigation in this inquiry. The formal investigation was ordered based on the Judicial Standards Commissions's own motion.

You have the right to file a written, verified answer to the charges against you within twenty (20) days after service of this STATEMENT OF CHARGES. If you choose to file an answer with the Commission, an original and ten (10) copies are required. The Commission's address is Post Office Box 1122, Raleigh, North Carolina 27602.

COUNSEL ALLEGES, upon information and belief, and proposes to offer evidence before the Commission to establish the following:

1. Jerry R. Tillett (Respondent) was at all times referred to herein and is now a judge of the General Court of Justice, Superior Court Division, Judicial District 1, and as such 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 superior court judge set forth in the North Carolina General Statutes, Chapter 11.

2. On April 15, 2010, eleven days after Respondent's adult son was detained by Kill Devil Hills Police, a meeting was arranged with the assistance of Respondent's self-described "good friend", former law partner, and fellow Mason, Kill Devil Hills Town Attorney Dan Merrell. Merrell requested that Kill Devil Hills Police Chief Gary Britt, Deputy Police Chief Dana Harris, Mayor Ray Sturza, and Town Manager Debbie Diaz attend what Merrell described to them as a "venting session" for Respondent and told them that they needed to listen to what Respondent had to say. During this meeting, Respondent: expressed complaints about his son's detention by the police; expressed complaints about incidents involving the Kill Devil Hills Police Department that did not involve his son; expressed complaints with the performance and conduct of Chief of Police Britt; expressed that his complaints were made mostly in his role as a Superior Court Judge; exhibited a demeanor that was described by all participants in the meeting, other than Respondent, as "stern", "aggressive", "agitated", and "angry"; expressed that "the law is what the superior court judge says it is in North Carolina"; and when Chief Britt challenged Respondent's authority during the meeting and acted in a matter Respondent found

to be “mercurial” and disrespectful, Respondent replied with comments about having the authority to remove officials from office, and warned the Kill Devil Hills officials that they needed to address Respondent’s complaints or that he would “take care of it for them.”

3. In the spring of 2011 Respondent began to receive communications from Kill Devil Hills police officers with grievances against Chief Britt and Assistant Town Manager Shawn Murphy related to personnel issues. Respondent instructed the officers how to properly file a complaint with his office and began to receive and review these complaints. On May, 9 2011 Respondent called Merrell with complaints regarding the Kill Devil Hills Police Department. On May, 10 2011 Respondent again spoke with Merrell about complaints regarding the police department, specifically concerning the discipline of officers, quotas for the police department, and Chief Britt’s meetings with the supervisors and officers of the department.

4. On or around June, 24 2011, Chief Britt received a letter from Respondent printed on Respondent’s judicial stationary and signed in Respondent’s capacity as Senior Resident Superior Court Judge, and courtesy copied to Debbie Diaz, which stated that Respondent had received “complaints of professional misconduct” against Chief Britt, and that “to the extent that allegations involve conduct prejudicial to the administration of justice, conduct violative of public policy, and/or violations of criminal law including obstruction of justice, oppression by official, misconduct in public office and/or substantial offense, this office will act appropriately in accord with statutory and/or inherent authority.”

5. On June 27, 2011, Respondent initiated conversations with District Attorney Frank Parrish regarding the filing of a petition for the removal of Chief Britt. Respondent

continued to regularly contact Parrish in reference to complaints against Chief Britt and directed the District Attorney and his staff to contact specific police officers as part of their investigation. Respondent continued to encourage the filing of a petition despite Parrish's reservations until Parrish produced a draft petition which he shared with Respondent on September 13, 2011. Parrish states that Respondent told him to share a copy of the draft with Patricia Holland, the attorney hired to represent Chief Britt, along with the message that "the Chief will resign or else." Parrish delivered the petition with that message to Holland on September 29, 2011.

6. On or around September 19, 2011, Respondent, upon his own initiative, drafted and executed an order based upon *ex parte* communications with the police officers and Respondent's own biases demanding that copies of the private personnel records of certain employees of the town of Kill Devil Hills, including Chief Britt and Assistant Town Manager Murphy, be copied and brought to him "for an *in camera* review, for the protection of integrity of information, to prevent alteration, spoliation, for evidentiary purposes and or for disclosure to other appropriate persons as directed by the Court." Neither the District Attorney's office, nor the town, nor any of the complaining police officers requested the order.

Respondent contacted Merrell about the order and sought his consent on behalf of the town to waive a hearing on the order, which Merrell granted without providing any notice to, or seeking any input from, the town's manager or police department. Respondent and Merrell colluded upon which personnel files to include in the order, and Respondent claims that he rejected suggestions from Merrell to include a demand for the files of other town employees

such as Town Manager Diaz. Respondent's order specifically demanded the private personnel records of Chief Britt and Murphy, though the personnel records of these two employees were not connected to any charges of record tampering as alleged in the order, and there was no reasonable justification for their seizure. Respondent further named Merrell in the order as the agent assigned to serve the order and to collect the records from the town, though Merrell was employed to represent the town.

7. After Parrish deferred filing any petition to remove Chief Britt, following the town's action on or around September 22, 2011 to place Chief Britt on paid administrative leave, Respondent became dissatisfied with the pace and progress made by Parrish toward filing the petition. On October 26, 2011, Respondent called Parrish, angry about Parrish's failure to file a petition, and dismissed Parrish's reasons for not filing the petition. When Parrish informed Respondent that an outside review of the complaints conducted by the North Carolina Department of Justice found no issues that would warrant removal, Parrish alleges that Respondent became unhappy and stated, "The Attorney General's Office doesn't say what the law is. I say what it is and Judge Fitch says what it is." Parrish alleges that when he explained that it was his intent to wait until after the town completed an independent review of Chief Britt's conduct conducted by the North Carolina League of Municipalities, that Respondent dismissed the review as "the fox guarding the hen house." When Parrish cited the possible conflict of interest between Respondent and Chief Britt based upon the confrontation between the two of them over the detention of Respondent's son, Respondent indicated he would refer the matter to another judge, however Respondent continued to pressure Parrish to file the

petition to remove Britt.

8. On or around December 28, 2011, Respondent contacted Parrish and advised that they needed to meet in reference to complaints lodged against the District Attorney's office. A meeting was held January 5, 2012 in Respondent's chambers with Parrish, Respondent, and Respondent's former law school classmate, Assistant District Attorney Nancy Lamb. Parrish was contacted by Dare County Sheriff John Doughtie prior to the meeting, who told Parrish that Respondent had requested that a bailiff be present at the meeting. Parrish states that it was clear that the deputy was there so that Respondent could have Parrish arrested. Respondent claims that he requested the deputy "in case Frank or Nancy got out of hand." Sheriff Doughtie states that he received a call from the Superior Court Trial Coordinator Dee Ivey, requesting a deputy for a meeting involving Respondent, Parrish, and an "unknown individual" because, Ivey told him, the Respondent "may need a bailiff to put someone in jail."

9. Sheriff Doughtie provided a deputy, Greg Padilla, for the first half of the January 5, 2012 meeting, and then he himself relieved Padilla. Sheriff Doughtie states that from outside the door where he was stationed, that "every now and then Respondent would get loud." Padilla says that while he was outside the chambers he would on occasions hear Respondent's voice "elevated" and also heard Lamb's voice "elevated". Parrish described Respondent's demeanor in the meeting as "angry, with a clenched jaw, and angry eyes." Lamb described the meeting as "very ugly." Respondent admits that "it would be my natural demeanor if I got loud" in the meeting.

10. In the January 5, 2012 meeting Respondent related numerous complaints to Parrish critical of how the District Attorney's office handled the Kill Devil Hills case with Chief Britt and several other cases. Parrish also states that Respondent referred to him as "lazy", "dishonest", "passive aggressive", and "unaccountable", and that Respondent referenced people having lawyers ready to file a petition to remove Parrish from office. Lamb confirms that Respondent made several complaints about Parrish's performance, discussed the petition to remove Parrish, and admitted that "he wasn't sure what he would do" about the petition to remove Parrish. Then Respondent tried to pin Parrish down on what action Parrish would take in the case against Chief Britt and arguing for a petition to remove the police chief. Parrish also states that Respondent told him that he had the "inherent authority" to take Parrish's law license and to hold him in contempt.

11. During the January 5, 2012 meeting Respondent declared that Parrish was "conflicted out" and ordered Parrish to cease work on the petition to remove Chief Britt and ordered Parrish to assign Lamb to that task. Respondent began talking about the case and argued that Chief Britt was guilty of malfeasance. Parrish states that Respondent made reference to North Carolina General Statutes §14-230 and §14-231, accusing the Chief of "malfeasance of office" and arguing that Chief Britt should be charged with a crime.

12. Respondent met again with the District Attorney's office on January 11, 2012, for a progress report with Lamb and George Ryan, an investigator from the District Attorney's office. At this meeting, Respondent admitted that he had posted the bailiff outside of his chambers during the meeting on January 5, 2012 in order to arrest Parrish for contempt and

willful misconduct. Ryan states that Respondent argued for the removal of Chief Britt in a loud and intimidating manner and several times would read from law books and make the statement "I have the inherent authority to do anything." When Respondent was questioned by Lamb concerning the apparent conflict between Respondent and Chief Britt stemming from the incident with Respondent's son, Respondent denied that there was any issue with the police department in regards to his son's incident and stated that it was irrelevant. Ryan states that when asked directly by Lamb, "If I signed the petition, will you be the judge that presides over the hearing?" that Respondent answered "yes." Respondent advised Lamb that she had a duty to file the petition. Both Ryan and Lamb state that they were initially persuaded by Respondent that Chief Britt should be removed. However, after they left the meeting and reflected on the case, they reasoned that there was insufficient evidence to file the petition to remove Chief Britt. Lamb sought outside review from the University of North Carolina's School of Government and was advised, just as in every other independent review of the matter, that this was a personnel issue and not a matter to justify removal by petition. Lamb also discovered inconsistencies in the complaints made by the officers against Chief Britt. She ultimately called Respondent back and said that she would not file the petition.

13. Upon the completion of the review of Chief Britt's conduct by the North Carolina League of Municipalities, Chief Britt was reinstated by the town on December 22, 2011. Shortly thereafter on January 3, 2012, a memo discussing several suggestions for new personnel policies, based upon the League's review, was circulated by Shawn Murphy to town officials. Copies of Murphy's recommendations were faxed by Dan Merrell to Respondent who reviewed

them and judged them to be “more aggressive toward whistleblowers.” On January 5, 2012, after the proposed policies had been reviewed by Respondent, Kill Devil Hills Assistant Town Manager Shawn Murphy received a letter from Respondent, on Respondent’s judicial stationary and signed in Respondent’s capacity as Senior Resident Superior Court Judge, and courtesy copied to Debbie Diaz, which stated that Respondent had received “complaints of professional misconduct” against Murphy, and that “to the extent that allegations involve conduct prejudicial to the administration of justice, conduct violative of public policy, and/or violations of criminal law including obstruction of justice, oppression by official, misconduct in public office and/or substantial offense, this office will act appropriately in accord with statutory and/or inherent authority.”

14. On November 1, 2011, Respondent sent Superior Court Judge Milton Fitch, who was in rotation in the 1st Judicial District, copies of the complaints received against Chief Britt, a copy of Respondent’s order concerning the town’s personnel records and a summary of the actions leading up to Respondent’s order for the copies of the records. Judge Fitch’s rotation in Respondent’s district ended in December of 2011, without Judge Fitch taking any action upon the materials sent to him by Respondent. Following Chief Britt’s reinstatement and after Respondent had received news of the Assistant Town Manager’s suggestions for new personnel policies for its police department, Respondent discussed his concerns regarding Kill Devil Hills with Judge Fitch and prepared and sent to Judge Fitch a draft order for judicial action regarding the town’s personnel policies. Respondent contacted Judge Fitch and his trial court administrator Bill Nichols several times, both directly and through Dee Ivey, to inquire about

the status of the order. During one of these contacts, Nichols relates that Respondent expressed that he wanted some sort of order and that he also wanted an SBI investigation and asked that any edits to the draft order not preclude an SBI Investigation. Judge Fitch made some edits to the draft order sent to him by Respondent and executed the order without a hearing and without any examination of evidence, relying only upon those materials that were provided to him by Respondent.

15. On January 27, 2012, Respondent referred to Superior Court Judge Alma Hinton a petition for the removal of Frank Parrish filed by several citizens, including one of the officers who had filed complaints against Chief Britt. Respondent sent Judge Hinton several materials, including copies of the complaints he had received against Frank Parrish, a draft show cause order for contempt against Frank Parrish and a draft order of removal. Judge Hinton relates that she did not consider this information from Respondent, citing an understanding that the statute permitted her only to consider the affidavits of the petitioners for removal.

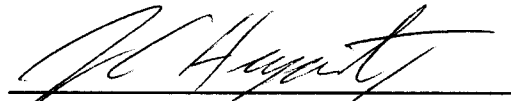
16. Following the town's successful appeal of the order executed by Judge Fitch in the North Carolina Court of Appeals, Respondent retained Counsel and submitted his own appellate motions to the Court of Appeals on November 20, 2012 alleging that the appeal had been wrongly decided and urging the court to rehear the matter or to withdraw its opinion. Attorneys for the town of Kill Devil Hills argued that Respondent's motions should be rejected as Respondent lacked standing in the matter and was not a proper party to the case. The Court of Appeals denied Respondent's motions on December 4, 2012.

17. Respondent's conduct, as alleged in Paragraphs Two through Paragraph Sixteen,

constitutes actions in violation of Canon 1, Canon 2A, Canon 2B, and Canon 3A of the North Carolina Code of Judicial Conduct. Respondent's actions, by the totality of the circumstances surrounding these allegations, constitute willful misconduct and conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of N.C.G.S. §7A-376(b) and §7A-377.

WHEREFORE, Counsel prays that the Commission make an appropriate recommendation for discipline to the Court as provided by law and as the facts and evidence warrant.

This the 18th day of February, 2013.



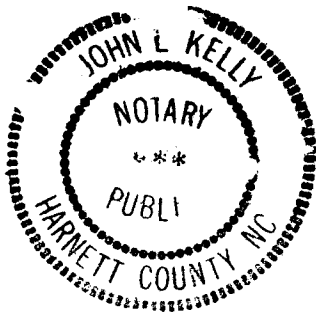
J. Christopher Heagarty, Counsel
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VERIFICATION

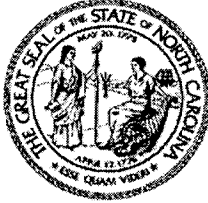
STATE OF NORTH CAROLINA
COUNTY OF WAKE

J. Christopher Heagarty, Counsel for the North Carolina Judicial Standards Commission, personally appeared before me and, being duly sworn, stated that he has read the foregoing STATEMENT OF CHARGES and that the matters and things alleged therein are true except as to those matters and things alleged therein on information and belief, and as to those matters he believes them to be true, and said J. Christopher Heagarty signed said STATEMENT OF CHARGES in my presence.

This the 18th day of February, 2013.



John L. Kelly
Notary Public
My Commission Expires: 11-24-2013



NORTH CAROLINA JUDICIAL STANDARDS COMMISSION

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Statement of Charges in Inquiry Number 12-013 was personally served on the respondent; Superior Court Judge Jerry R. Tillett on the 19th day of February 2013

This is the 19th day of February 2013.

By: R. Glenn Joyner

R. Glenn Joyner, Investigator

North Carolina Judicial Standards Commission