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STATE OF KANSAS

COMMISSION ON
JUDICIAL CONDUCT

BEFORE A HEARING PANEL FOR FORMAL JUDICIAL COMPLAINTS

Inquiry Concerning a Magistrate Judge)
Marty K. Clark)

Docket No. 2265

NOTICE OF FORMAL PROCEEDINGSTo: Judge Marty K. Clark, Respondent
Russell County District Court
401 N. Main St.
Russell, KS 67665

Pursuant to the provisions of Rule 614(b)(C) of the Rules of the Supreme Court of the State of Kansas Relating to Judicial Conduct, the Commission on Judicial Conduct issues this written notice of institution of formal proceedings against Marty K. Clark, a Magistrate Judge in the 20th Judicial District.

FORMAL COMPLAINT

It is alleged that Respondent, who at all times relevant hereto was a magistrate judge of the 20th Judicial District, engaged in certain conduct which violated the provisions of Canon 1 and Canon 3 of the Rules of the Supreme Court of the State of Kansas Relating to Judicial Conduct. The Rules and Canons provide in pertinent part:

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE *INDEPENDENCE, INTEGRITY, AND IMPARTIALITY* OF THE JUDICIARY, AND SHALL AVOID *IMPROPRIETY* AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.2**Promoting Confidence in the Judiciary**

"A judge shall act at all times in a manner that promotes public confidence in the *independence, integrity, and impartiality* of the judiciary, and shall avoid *impropriety* and the appearance of impropriety."

Comments [1], [2], [3], and [5] of Rule 1.2 provide:

[1] "Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge."

[2] "A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code."

[3] "Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms."

[5] "Actual improprieties include violations of law, court rules, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."

Rule 601B defines "Impropriety" as follows:

"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality. See Canon 1 and Rule 1.2.

Rule 601B defines "Integrity" as follows:

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character.

CANON 3

**A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRA
JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT
WITH THE OBLIGATIONS OF JUDICIAL OFFICE.**

RULE 3.1

Extrajudicial Activities in General

A judge may engage in extrajudicial activities except as prohibited by law or this Code. However, when engaging in extra judicial activities, a judge shall not:

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(C) participate in activities that would appear to undermine the judge's *independence, integrity, or impartiality*; or demean the judicial office"

ALLEGATIONS

It is alleged that Respondent acted in violation of elements of the foregoing Canons and Rules. The facts upon which this Formal Complaint is based are as follows:

1. Respondent posted photos of himself in various stages of undress and showing his genitals on the website known as Club Foreplay ("C4P").
2. C4P is a website that is self-described as being "for Swingers."
3. The site is used to make connections for swapping partners for sexual encounters.
4. Subscribers pay a fee to the website which allows them to share photos and personal information with other "Swingers."
5. Respondent was a subscriber to the C4P website "on and off for a couple of years."
6. Respondent misrepresented his identity on the website by using a fake name.
7. Respondent misrepresented his identity on the website by indicating that he resided in Missouri.
8. Respondent misrepresented his identity on the website by using a fake name for his wife.
9. Respondent used the website to give access to others to view nude or partially nude photos of Respondent—for example a photo of him standing in water with his penis showing.

10. Respondent sent photos of himself in various stages of undress to the wife of the Complainant.

11. Respondent had a discussion via text about the possibly of engaging in sexual intercourse in Respondent's judicial chambers.

12. Respondent requested of Complainant's wife that she send sexually explicit photos to him.

Respondent should take notice that pursuant to Rules 615-618 of the Rules of the Supreme Court of the State of Kansas Relating to Judicial Conduct, Respondent has the right to file, and shall file, a written Answer within twenty (20) days after service of this Formal Complaint, and that regardless of whether an Answer is filed, the case may proceed to hearing and disposition.

COMMISSION ON JUDICIAL CONDUCT

By: 

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