

JUL 05 2017

COMMISSION ON
JUDICIAL QUALIFICATIONS

STATE OF KANSAS

BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

Inquiry Concerning
A Judge

Docket No. 1299

ORDER

Members of the Commission present include: Hon. Mary B. Thrower, Chair; Nancy S. Anstaett; James S. Cooper; Hon. Robert W. Fairchild; and Norman R. Kelly.

FINDINGS OF FACT

There is no dispute regarding the facts set out below:

1. Michael J. Giardine, respondent, was a municipal court judge in Dodge City, Kansas, and was a judicial candidate for district court judge in the 16th Judicial District.
2. An attorney disciplinary case was filed in the Supreme Court of Kansas as Case No. 16-116,190-S, In the Matter of Michael Joseph Giardine which contained a pleading titled "Stipulations."
3. The pleading "Stipulations" sets forth admission to a March 20, 2005, traffic stop and set forth the following facts:
 - A. On March 20, 2005, respondent was stopped by a Lansing, Michigan police officer. During the course of the stop, respondent was handcuffed and searched, which resulted in the discovery of a small amount of marijuana in respondent's right front jacket pocket. The contemporaneous incident report prepared by the police officer indicated that the respondent was released after being identified.
 - B. In April 2005, respondent moved to Olathe, Kansas. The respondent alleged that prior to moving, he retained a Michigan attorney to defend him in the event that criminal charges were filed against him as a result of the March 20, 2005, incident.
 - C. On or about July 11, 2005, a complaint was filed in Ingham County, Michigan district court, charging respondent with one count of misdemeanor possession of marijuana. Pursuant to the Michigan district court docket sheets, it is unclear whether service of the complaint was ever attempted.

- D. In November 2005, the respondent submitted his petition for admission to the Kansas bar. The respondent sat for the Kansas bar exam in February 2006. Respondent alleged that prior to taking the bar exam, he received a letter from his Michigan attorney advising him that the attorney was closing the matter because no charges had been filed, and none were anticipated. The respondent did not maintain a copy of the letter and cannot recall the Michigan attorney's name.
- E. On July 15, 2014, a Dodge City Daily Globe reporter contacted the respondent and told him that an anonymous source had informed the newspaper that the respondent had an outstanding arrest warrant in Ingham County, Michigan. At that time, the respondent was running in the August 2014 Republican primary for a district judge position in the 16th Judicial District of Kansas.
- F. On July 17, 2014, the respondent self-reported to the Kansas Disciplinary Administrator's office stating that he had an outstanding Michigan arrest warrant from 2005 for possession of marijuana. The respondent further represented that he had no knowledge of the warrant or complaint filed against him until so informed by the Dodge City Daily Globe reporter. The respondent alleged that he had never been served with a ticket, notice to appear, arrested, booked, fingerprinted, photographed, or informed of the Michigan arrest warrant.
- G. On or about July 21, 2014, the respondent appeared at the Michigan district court and pled guilty to one count of disorderly conduct in exchange for dismissal of the marijuana possession charge.
- H. On or about July 22, 2014, the respondent falsely stated, to a Dodge City Globe reporter, that he was not the person stopped during the March 20, 2005, incident, and that his identification had been stolen a short time before the incident. Respondent's statements to the Dodge City Globe reporter were published on the Dodge City Daily Globes' website, and republished by the Associated Press and the Wichita Eagle.
- I. On or about July 23, 2014, while speaking at a judicial candidate form, the respondent publicly misrepresented that he was not the individual stopped during the March 20, 2005, incident.
- J. On July 24, 2014, the respondent posted a reply to the Dodge City Dodgeboard.com, an on-line forum, and alleged, in relevant part, that he wrote the post to clear up misinformation about the March 20, 2005 incident; that he had no knowledge of the warrant or pending charge until July 2014; that he would not speculate on the information contained in the arrest warrant "because that may give the impression that I have more information about this incident than I really do;" and that "the sum total of my knowledge on this case is what I read in the officer's affidavit."

- K. Respondent stipulated that his conduct set forth in the "Stipulations" violated KRPC 8.2 (Candidate for Judicial Office) and KRPC 8.4 (Misconduct).
4. On August 19, 2016, the secretary of the Commission on Judicial Qualifications sent Respondent a letter seeking a response to the facts contained in the Stipulations in relation to Respondent's position as a municipal court judge and judicial candidate.
5. On August 24, 2016, respondent submitted a written response. Respondent claimed that he acted in compliance with Rule 1.2, that he may have violated Rule 4.1(A)(4), and that he did not violate Rule 4.1(A)(1).

CONCLUSIONS OF LAW

1. RULE 1.2 of the Code of Judicial Conduct, Rule 601B, provides:
- "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."
2. RULE 4.1(A)(4) of the Code of Judicial Conduct, Rule 601B, provides:
- ". . . *knowingly*, or with reckless disregard for the truth, make any false or misleading statement;"
3. The Commission unanimously determined that respondent violated the above-cited rules by failing to act at all times in a manner that promotes public confidence and also making false or misleading statements.

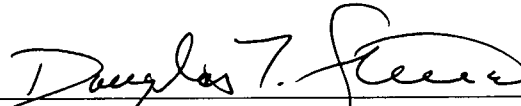
IT IS THEREFORE ORDERED that Michael J. Giardine cease and desist from making false or misleading statements. These statements give the appearance of impropriety in violation of the above-cited Rules.

This Order, if accepted, shall be made public pursuant to Rule 611(a). See 2017 Kan. Ct. R. Annot. 473.

The Secretary of the Commission on Judicial Qualifications is hereby instructed to mail 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) agree to comply with the Order by accepting the Order by written acknowledgment directed to the Secretary of the Commission; or (b) refuse to accept the Order. Any written acknowledgement to comply or refusal to accept shall be served upon the Secretary of the Commission within twenty days from the date of this Order. This order is deemed to have been refused if the Secretary of the Commission receives no communication from respondent within twenty days after service of this Order.

BY ORDER OF THE COMMISSION dated this 12th day of June, 2017.

COMMISSION ON JUDICIAL QUALIFICATIONS

By: 
DOUGLAS T. SHIMA, Secretary

APPROVED & ACCEPTED

JUNE 1 2017
Date


MICHAEL J. GIARDINE, Respondent