

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

JAMES T. JAMESON, CIRCUIT COURT JUDGE
42ND JUDICIAL CIRCUIT

MOTION TO ALTER, AMEND, OR VACATE

Comes James T. Jameson, Circuit Court Judge for the 42nd Judicial Circuit, and pursuant to SCR 4.160 and KRCR 59.05, hereby petitions the Judicial Conduct Commission to vacate its Order of Temporary Suspension entered on August 15, 2022 and attached hereto as Exhibit A. As grounds for this motion, Circuit Judge Jameson states as follows:

Relevant Facts

1. On Friday, August 12th, 2022, a hearing was held in the Christian County Justice Center at the command of the Kentucky Judicial Conduct Commission, a body that, by rule is made up of a member of the Court of Appeals elected by the Judges of the Kentucky Court of Appeals (SCR 4.040), a Kentucky Circuit Court Judge elected by the body of Circuit Judges from across the state (SCR 4.050), a Kentucky District Court Judge elected by the body of District Judges from across the state (SCR 4.060), a member of the Kentucky Bar Association that is not a Judge, and a member of the general public chosen by the Governor.

2. During the hearing, it was the burden of the Commission to prove by clear and convincing evidence that it was in the "best interest of justice" that Judge Jamie Jameson be suspended from acting as Circuit Court Judge for Kentucky's 42nd Judicial Circuit, Division I, the 7th busiest Circuit Court in Kentucky, according to the Administrative Office of the Courts.

3. As far as he is aware, all of the complaints that have been filed against Judge Jameson were all filed within the last approximately one year just prior to an election year. Additionally, all of the complaints have come from individuals supporting Judge Jameson's opponent, and only from Marshall County. No complaints have been filed by attorneys or citizens residing in Calloway County. Calloway County has dozens of attorneys living and practicing law within its borders while Marshall County has only approximately ten or less.

4. The Commission chose to litigate two issues during the hearing: (1) whether Judge Jameson had acted inappropriately with respect to a phone call he had with attorney Lisa DeRenard by allegedly asking her for financial support for his campaign or otherwise conducting himself inappropriately during that call, (2) whether Judge Jameson had acted inappropriately by requesting Marshall County Sheriff Eddie McGuire to transfer the head of security for the Marshall County Judicial Building.

5. The Commission called only two witnesses, attorney Lisa DeRenard, and Sheriff Eddie McGuire. Counsel for the Commission had notified Judge Jameson and his counsel that a third witness was to be called during the hearing, but that witness, Dennis Foust, was not called and did not appear.

6. Ms. DeRenard, changed her testimony during the hearing, and testified inconsistently with her previous recorded statement to the Commission. Ms. DeRenard testified that, in fact, she was the first person to mention money during her phone call with Judge Jameson, and that she was "intimidated" simply by an email from Judge Jameson's wife inviting her to a campaign event, an email she, in fact, requested.

7. Sheriff McGuire testified consistent with his statement to the Commission.

Argument

1. According to SCR Rule 4.160, the Kentucky Rules of Civil Procedure are to be followed by the Judicial Conduct Commission relative to any inquiry. Specifically, SCR 4.160 states that to the extent applicable and not inconsistent with these Rules, the Kentucky Rules of Civil Procedure shall apply to proceedings before the Commission. The only exception concerns the standard of proof in that the burden requires that the proof submitted be of clear and convincing evidence.

2. Kentucky Rule of Civil Procedure 59.05 authorizes the trial court, in this case, the Judicial Conduct Commission, to alter, amend, or vacate its judgment and enter a new judgment on a motion properly filed within 10 days of the entry of the Order. Rule 59 exists in part to correct manifest errors of law upon which a judgment is based. In this instance, there are numerous errors of law that occurred, all of which require that the Order of Temporary Suspension be withdrawn and vacated.

3. The first and potentially the most egregious error of the Commission in ordering a temporary suspension of Judge Jameson's ability to serve as Circuit Judge of the 42nd Judicial Circuit, concerns the number of votes cast by the Judicial Conduct Commission ordering the temporary suspension.

The only Supreme Court rule that governs the votes necessary for a suspension of a Circuit Judge is contained in SCR 4.120. SCR 4.120 advises that for a quorum to be present, there be four members of the Commission in attendance. The Commission complied with that part of the rule. The rule goes on to state that the Commission may act by a majority vote of members present. However, **the affirmative vote of at least four members shall be required for the suspension**, removal, or retirement of a Judge for

good cause. The rule in its entirety is set out herein below:

Rule 4.120. Quorum.

A quorum shall be four members. The Commission may act by majority vote of members present; however, **the affirmative vote of at least four members shall be required for the suspension, removal, or retirement of a judgment for good cause.** Absence of a member or vacancy upon the Commission shall not invalidate its action. If because of disqualification or other inability of members and alternates to serve, a quorum cannot be achieved, the Chairperson shall certify that fact to the respective appointed authorities for selection of sufficient special members to bring the Commission to full membership in the matter. (Emphasis added.)

In this action, and as evidenced by the Order of Temporary Suspension, the vote was 3 – 2, with the Commission finding that it will be in the best interest of justice that Judge Jameson be temporarily suspended from the performance of judicial duties and acting in his official capacity as a Judge. That Order, on its face, violates its SCR 4.120.

The importance of SCR 4.120 has been stressed in *Gentry v. Judicial Conduct Commission*, 2020 – SC – 0434 – RR. In that Opinion, it states that safeguards are built in to protect a Judge's rights. Charges are required to be proved by clear and convincing evidence, citing SCR 4.160, and the affirmative vote of four members is required for suspension, citing SCR 4.120. It matters not whether this is a temporary hearing or a final hearing. A suspension for any time is a suspension as contemplated under the rules.

The aforementioned rule requires that four members vote to suspend Judge Jameson. As is evident by the attached Order (Exhibit A), that did not occur. As such, the Order of Temporary Suspension should be vacated and Judge Jameson should be restored to his position of Circuit Judge for Marshall and Calloway Counties of the 42nd Judicial Circuit.

As an aside, and consistent with the requirements of at least four votes being cast in favor of the suspension, the Commission is directed to SCR 4.240. In that rule, it states

that at any hearing, only evidence admissible under the Kentucky Rules of Evidence shall be received. The proof against any Judge must rise to the level of clear and convincing evidence as is stated herein above. That rule goes further to state that at least 67% of the Commission must agree. In this case, 60% of the Commission agreed, not the required 67%. Had the Commission followed the rules, and had at least four votes in favor of suspension, then it would be conceded that the requisite votes were obtained. Once again, an insufficient number of votes were cast to temporarily suspend Judge Jameson.

4. **Insufficient Proof.** The evidence presented by the Commission is insufficient to prove the burden required to temporarily suspend Judge Jameson. The evidence must prove **by clear and convincing evidence** that it is in the best interest of justice that Judge Jameson be suspended prior to whether a hearing can be had on whether he even violated any supreme court rule for certain. To meet the "clear and convincing" standard of proof, the Commission had to show that evidence, "of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent-minded people." *F.V. v. Comm. Cab. for Health and Family Services*, 567 S.W.3d597 (Ky. App. 2018). In other words, the testimony and other evidence put on by the Commission on August 12th had to be of a probative and **substantial nature**, sufficient enough to convince an ordinarily prudent-minded person that it was in the best interest of justice that Judge Jameson be temporarily suspended prior to is final substantive hearing. This standard was clearly not met by the Commission.

The Commission called only two witnesses to prove its case. The testimony of the first witness, attorney Lisa DeRenard, was *significantly* modified from the statement she had given the Commission in March of this year. The original statement gave a story of how

Judge Jameson intentionally and almost in a bullying fashion antagonized Ms. DeRenard into giving a donation to his campaign. Not only that, the March statement of Ms. DeRenard stated that Judge Jameson even rejected the first offer of a donation from Ms. DeRenard of \$250 and told her she needed to give more. **All of this was abandoned by Ms. DeRenard at the August 12th hearing.** In fact, Ms. DeRenard made it clear on cross-examination that Judge Jameson **never asked her for money and that she had in fact been the first to mention a financial donation** during their conversation early this year. Additionally, the "intimidation" Ms. DeRenard spoke of in her original unsworn statement to the JCC turned out to simply be an email that Ms. DeRenard had asked to receive from Judge Jameson's campaign committee so she would know when campaign events were occurring. That's correct. The "intimidation" turned out to actually only be a flyer inviting people to a campaign event at Marcella's Kitchen in Benton that was emailed to Ms. DeRenard, at her request, by Judge Jameson's wife, not him, which is permitted under the rules. Judge Jameson's wife confirmed this during her testimony. **No evidence was presented to the contrary.**

The Commission's second witness, Sheriff Eddie McGuire, had nothing negative to say about Judge Jameson. His testimony consisted of stating that Judge Jameson had reached out to him, as Chief Circuit Court Judge (the judge over safety of the judicial building), and stated that the head of court security should be removed from his duties at the judicial building "if possible."¹ Judge Jameson is permitted to have his own opinion about who should and should not be the head of security at the judicial buildings he has authority over. That's all this statement was: a request based on his opinion, based on facts he had observed or been made aware of. In fact, Judge Jameson acknowledged during his

¹ The employee in question was set to retire in August of 2022, and he did.

testimony that he knew he did not have the authority to remove the head of security unilaterally and that all he could do was ask the Sheriff to do so, which is all that occurred.

Testimony and documents confirmed that the head of court security at the time had reviewed secure video that was the property of AOC without their permission and then shared that video with county attorney Jason Darnall, who informed the head of security to hold the video so that Commonwealth's Attorney, Dennis Foust, could come by later to get the video. Mr. Foust had no right or reason (other than political ones) to review that video and, according to testimony, still has it even though AOC investigated the matter and determined that no one should have given anyone the video because, as the Sheriff testified, the security protocols, location of secured doors, patterns of behavior of court personnel, could all potentially be gathered from that video creating a potential threat to the employees in the building, especially the Judges like Judge Jameson. It is uncontested that Marshall Co. Deputy Clerk Lacey Cavitt, who very openly supports Judge Jameson's opponent. All of this was set out in yet another complaint to this Commission (that was dismissed upon initial consideration by the Commission) that was part of the coordinated effort of public defender Amy Harwood-Jackson, Commonwealth Attorney Dennis Foust, Cheri Riedel (director of the public defender's office), and others to submit complaints to the Commission, specifically during the 2022 campaign period, in order to damage Judge Jameson's reputation among the citizens of the counties he serves. All of this was testified to by the **Commission's own witness**, Lisa DeRenard, and was not contradicted by any other evidence or testimony.

5. The Order of Temporary Suspension is deficient in that the Order does not comport with the Supreme Court Rules. According to SCR 4.260, the following is noted:

SCR 4.260. Commission Findings; Order

(1) The Commission shall make written Findings of Fact and Conclusions of Law which shall be filed with the record in the case.

(2) A certified copy of the Commission's Findings of Fact and Conclusions of Law and Final Order shall be served on the Judge or counsel immediately after entry.

There are absolutely no Findings of Fact or Conclusions of Law. There is nothing contained in the Order that indicates to Judge Jameson why he is being suspended. The requirements of requiring the Judicial Conduct Commission to follow the Supreme Court rules provides those safeguards mentioned in *Gentry, supra*, to Judge Jameson the rule intends to protect. Judge Jameson has no understanding of the rationale of the Judicial Commission members who voted to suspend him. They only state that it is in the best interest of justice that he be temporarily suspended. They cite to no facts. They cite to no specific charges. Not one of the witnesses called by counsel for the Judicial Conduct Commission made those statements. However, every witness called by Judge Jameson stated under oath to the contrary.

6. An additional error in the temporary suspension hearing concerns SCR 4.170. In subparagraph 4, it is stated that after the preliminary investigation is completed, but before formal proceedings are initiated under SCR 4.180, the Commission must afford the Judge an opportunity to examine all factual information. Requests were made by Judge Jameson and his counsel to obtain all of the factual information. However, the Commission failed to afford all such factual investigation files to Judge Jameson. In fact, it has admitted there is factual information that it has considered but has not made available to Judge Jameson. It is likely to be argued that this is important only on final hearing when the adjudication is by clear and convincing evidence on the charges made. However, during this hearing, claims

were made by the Judicial Conduct Commission of improper actions of Judge Jameson, none of which affected the best interest of justice standard that must be used for a temporary suspension order. As such, it is submitted that the Judicial Conduct Commission is likely to have considered factual information Judge Jameson never saw. Had the Judicial Conduct Commission prepared Findings of Fact and Conclusions of Law, this question may be answered. However, it did not and accordingly, it is error to allow the temporary suspension to be levied against Judge Jameson.

7. Ten Days Have Not Passed. SCR 4.270 states, "Commission orders shall become effective 10 days after service on the judge unless the judge appeals therefrom within that time." There is no other rule that address this issue. As such, this rule controls all orders of the Commission against a Judge. As such, the Commission's "immediate" suspension of Judge Jameson with pay was inappropriate. The Commission has been dealing with this matter for over a year. There is nothing known to counsel that would suggest that not waiting the required 10 days is appropriate or allowed. It is only reasonable to allow such a timeframe so that the matters Judge Jameson presides over do not go unattended due to Judge Jameson's lack of an ability to do his job.

Conclusion

For the reasons stated, it is respectfully requested that this Motion to Alter, Amend or Vacate be granted and the Order of Temporary Suspension be set aside and held for naught, as is clearly required by Kentucky law.

Respectfully submitted,

BOEHL STOPHER & GRAVES, LLP

/s/ Richard L. Walter

Richard L. Walter KBA #74082

Bradley A. Sears KBA #91053

410 Broadway

Paducah, KY 42001

(270) 442-4369

(270) 442-4689 fax

rwalter@bsgpad.com

ATTORNEYS FOR JAMESON

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of August 2022, a copy of the foregoing was served on Hon. R. Michael Sullivan, Chair, Judicial Conduct Commission; Hon. Jimmy Shaffer, Executive Secretary; and the Hon. Jeffrey C. Mando.

/s/ Richard L. Walter

Richard L. Walter

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**JAMES T. JAMESON, CIRCUIT JUDGE
42ND JUDICIAL CIRCUIT**

**ORDER OF TEMPORARY SUSPENSION FROM DUTIES
PENDING FINAL ADJUDICATION**

On August 12, 2022, pursuant to SCR 4.020(1)(a)(ii) and jurisdiction thereby, and after proper notice, the Judicial Conduct Commission ("Commission") conducted a temporary suspension hearing in this matter involving James T. Jameson, Circuit Court Judge of the 42nd Judicial Circuit, against whom a preliminary investigation was initiated under SCR 4.170.

Pursuant to SCR 4.220(3), not less than five (5) voting members of the Commission were present at this hearing when evidence was presented, those being R. Michael Sullivan, Chair, Judge Jeff S. Taylor, Judge Eddy Coleman, Judge Karen Thomas, and Janet Lively McCauley. Alternate members Judge Mitch Perry and Carroll M. "Trip" Redford, III, were also present.

Following the completion of the hearing, by a vote of 3-2, the Commission finds that it will be in the best interest of justice that Judge Jameson be temporarily suspended from the performance of judicial duties and acting in his official capacity as a judge until final adjudication of the complaint, including charges set forth in the Amended Notice of Formal Proceedings and Charges dated July 21, 2022. Judge Jameson is hereby immediately suspended, without affecting his pay status, pending final adjudication of said charges. During his suspension, Judge Jameson shall not access or utilize court resources, and shall not appear at the Marshall County or Calloway County Judicial Centers. This Order shall not be confidential.

Date: August 15th, 2022


R. MICHAEL SULLIVAN, CHAIR

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this order has been served this 15th day of August 2022 via electronic and first-class mail upon:

Richard L. Walter (rwalter@bsgpad.com)
Boehl Stopher and Graves, LLP
410 Broadway
Paducah, KY 42001

Jeffrey C. Mando (JMando@adamsattorneys)
Adams Law, PLLC
40 W. Pike St.
Covington, KY 41011

Judge James T. Jameson at his home address


JIMMY SHAFFER,
EXECUTIVE SECRETARY