

**BEFORE THE NEBRASKA COMMISSION ON JUDICIAL QUALIFICATIONS**

In the matter of )  
**KENT D. TURNBULL,** )  
County Judge for the )  
11<sup>th</sup> Judicial District )  
of the State of Nebraska. )

**Case No. S-35-060001**

**PUBLIC REPRIMAND**

The Nebraska Commission on Judicial Qualifications, pursuant to its authority under Article V of the Nebraska Constitution and Neb. Rev. Stat. §§ 24-715 *et. seq.* (Reissue 1995), hereby publicly reprimands Respondent Kent D. Turnbull.

1. Kent D. Turnbull is and was at all material times a duly-appointed judge of the County Court for the 11th Judicial District, and at all material times was acting within his official capacity.

2. Prior to June 2005, Judge Turnbull presided over the juvenile court case of Elizabeth S. which, in December of 2004, was pending before the Supreme Court on a Petition for Further Review. Sometime between December 6 and December 10, 2004, Judge Turnbull telephoned Nancy Thompson, a child welfare worker who had not previously been involved in the case.

3. On December 10, 2004, the substance of Judge Turnbull's contact with Ms. Thompson was disclosed by Judge Turnbull to all of the parties on the record as follows:

I have talked to Nancy Thompson about this case in regard to this, and Nancy Thompson has indicated clearly to me that continual contact must be maintained between the aunt and the child, and the child and foster care. Regardless of the outcome either way whatever happens in this child's best interest there must be continued relationships maintained. How does one do that if we ever do proceed to adoption for either side? The court has no jurisdiction at that point obviously, but in light of those comments, with whom I have tremendous respect for Ms. Thompson, I think the court must continue visitation to some degree . . . I don't believe I can order it in California at this point based upon the fact that the child -- the case is up before the Supreme Court, and I think that clearly would extend the authority of this Court. . . Ms. Thompson has indicated clearly to me there must be a continuous assessment between the aunt and the child to determine what kind of damage would be done. . . I don't have the case back in front of me so I can't in good conscience . . . have the child go back out to California without some expert's advisement on that. But that's the Court's position. I'll be up front with everybody and I'd like your input after that.

. . . .

. . . I just called as to the nature of the case -- Elizabeth S[.]'s case, advised [Thompson] as to my concern about the contact with the aunt and with the foster care. . . So, Ms. Thompson is a child, I believe, psychiatrist - psychologist as I recall, well known throughout the State of Nebraska, speaks at Judge's conferences, well respected. And, so I talked to her a little bit about it. She was actually aware of some of the background of the case. And we talked about further assessments if necessary. She actually thought well of the person who does the assessment in Grand Island.

. . . .

[S]o she was going to communicate with [her] at the appropriate time when this comes back as to any further assessments, if any.

4. Judge Turnbull advised the Commission that his intent was to ask Thompson if she would be interested in providing a court-appointed evaluation at some time in the future after the appeals were over and the case was back in his jurisdiction. However, the record of December 10, 2004, clearly demonstrates Judge Turnbull did not confine his inquiry of Thompson to her availability to provide services. Instead, the conversation developed into a substantive discussion about the merits of the case, a communication that was outside the presence of the parties, without proper notice to the parties, and which did not provide any opportunity for the parties to make a record or to respond.

5. Judge Turnbull told the Commission that he believed he had previously disclosed to the parties his intent to contact Thompson, though he could not be certain he had done so; furthermore, Judge Turnbull could not be specific as to when he made the disclosure and in what form the disclosure was made. The record fails to reflect this expressed intent or any prior disclosure to the parties. Judge Turnbull's belief that such a disclosure was made is partly supported by some lawyers in the case who vaguely recall that Judge Turnbull mentioned something about such a contact. However, not all of the lawyers received this prior information, and none of them was provided a clear disclosure as to why Judge Turnbull wanted to contact Thompson or the subject matter that he planned to cover in the course of the telephone conversation.

6. Canon 3B(7) of the Nebraska Code of Judicial Conduct, states: "A judge shall not initiate, permit or consider ex parte communications or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding . . . ."

7. Judge Turnbull acknowledges his contact with Nancy Thompson was substantive and on the merits, not administrative or procedural. Although Judge Turnbull believed he was authorized by law to obtain an expert, the Commission finds the law does not authorize a judge to do so ex parte, and does not provide an exception to Canon 3. Judge Turnbull assumed the litigants understood his intent. However, because Judge Turnbull did not obtain the advance consent of all of the parties and interests involved in this proceeding before initiating his direct, ex parte contact with Thompson, coupled with the fact that he did not insure that a proper record was made, Judge Turnbull's conduct is considered a violation of Canon 3B(7). Accordingly, the Commission finds Judge Turnbull's conduct is conduct prejudicial to the administration of justice, which brings the judiciary into disrepute under Neb. Rev. Stat. § 24-726 (Reissue 1995).

8. There is no evidence to suggest Judge Turnbull's behavior was secretive, duplicitous, or undertaken with the intent of benefiting a particular party. Judge Turnbull has cooperated completely with the Commission during its investigation, has acknowledged his understanding of the fact that his conduct violated Canon 3B(7), and has expressed sincere, genuine, and appropriate remorse.

Dated this 27th day of January, 2006.

COMMISSION ON JUDICIAL QUALIFICATIONS

/signed/

---

John V. Hendry, Chief Justice  
Commission Chair