

STATE OF NEW HAMPSHIRE  
JUDICIAL CONDUCT COMMITTEE

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Judge William H. Lyons  
JC-12-031-C

**REPRIMAND**

Based upon the facts and circumstances surrounding the above captioned complaint initially filed as a grievance by Mr. Ed Kissell, the Committee's own investigation of this matter (which included but was not limited to Judge Lyons' responses to the Committee's inquiries) and pursuant to Judge Lyons' stipulated violation of Rule 2.11, *Disqualification*, Sections A.(2) (c) and (d) of the Code of Judicial Conduct (Supreme Court Rule 38), the Committee has voted to publicly sanction Judge Lyons for his violation of Rule 2.11, *Disqualification*, Sections A.(2) (c) and (d) of the Code of Judicial Conduct by way of this Reprimand.

**I. FINDINGS OF FACT**

Based upon the evidence before it, the Committee has determined that there exists clear and convincing evidence to support the following facts:

1. At all times relevant to these proceedings, Judge William H. Lyons was a Justice of the District Court of the State of New Hampshire.
2. At all times relevant to these proceedings, Mr. Kissell was a teacher at Central High School in Manchester, New Hampshire and was the brother-in-law of Judge Lyons being married to Judge Lyons' wife's sister.

3. The grievance filed by Mr. Kissell was received and docketed by the Committee on June 11, 2012. Mr. Kissell brought this grievance against Judge Lyons alleging *inter alia* several violations of the Code of Judicial Conduct including deliberate violation of Rule 2.11, *Disqualification*, such that, on or about January 6, 2011 Judge Lyons “set bail parameters for the two students that attacked me (Mr. Kissell) even though I (Mr. Kissell) had pressed charges.”
4. On or about Thursday, January 6, 2011, two students were arrested at Central High School in Manchester by Manchester Police Officers and charged with: Disorderly Conduct (pursuant to New Hampshire RSA 644:2); Resisting Arrest (pursuant to New Hampshire RSA 642:2); Simple Assault (pursuant to New Hampshire RSA 631:2-a); and, one additionally charged with Violation of Bail Conditions (pursuant to New Hampshire RSA 597:7-a).
5. The above charges stemmed from the alleged assault by these students upon Mr. Kissell with Mr. Kissell reporting that one student had charged at Mr. Kissell and had punched Mr. Kissell in the face.
6. This student was arraigned in the Manchester District Court on or about January 7, 2011 by Judge Lyons.
7. Immediately prior to this student’s arraignment, Judge Lyons had reviewed the Gerstein affidavits to determine whether there was sufficient probable cause to believe that this student along with the other student detainee had committed the crimes as charged. Judge Lyons reviewed an affidavit by Manchester Police Detective, Kim Barbee, concerning the former student. This affidavit referenced Mr. Kissell as the victim of the assault and Mr. Kissell was immediately recognized by Judge Lyons as a teacher at Central High School and his brother-in-law (being married to Judge Lyons’ wife’s sister).
8. Judge Lyons reasoned that although he could not ethically hear testimony from Mr. Kissell at trial of this matter or at trial of the companion action involving the other student detainee due to his relationship with Mr. Kissell, Judge Lyons was not precluded from conducting this arraignment given that: the case before him was a criminal matter; the only parties before the Court were the State of New Hampshire and the defendant student; and, that Judge Lyons himself had no conflict with either party to the criminal actions.
9. Following the arraignment of this student, Judge Lyons informed the arraignment courtroom clerk that he had a conflict with one of the witnesses in this case and in the companion action involving the other student defendant.

10. When the arraignment courtroom clerk informed Judge Lyons that trial in this matter had been scheduled for April of 2011, Judge Lyons requested that she change the trial schedule having subsequently recused himself from this matter and from the companion action involving the other student defendant whose behavior was also alleged to involve Mr. Kissell.

11. Following the arraignment of January 7, 2011 involving this student, Judge Lyons had no further involvement with this criminal matter.

12. On or about January 30, 2012, Judge Lyons presided over an arraignment relating to a bench warrant regarding the second student defendant.

13. At one point during this proceeding, as this second student defendant was responding to the State's argument in objection to bail, Judge Lyons became aware that Mr. Kissell was involved in this case as well as an alleged victim. Although the criminal complaint alleging Mr. Kissell to be a victim of simple assault was contained in this defendant's file, Judge Lyons neither remembered the case nor remembered examining the relevant complaints nor does the record indicate that Judge Lyons had examined these complaints at hearing.

14. As in the case of the initial arraignment on January 7, 2011, Judge Lyons informed the arraignment courtroom clerk that he had a conflict with this case as well and that this case was not be scheduled for trial before Judge Lyons. Once again, Judge Lyons reasoned that he could ethically preside over this bail hearing given that Mr. Kissell was not a party to this criminal matter.

15. With respect to this second defendant, the court record also reveals that Judge Lyons (following his recusal from this matter) subsequently approved two additional Motions for Services Other than Counsel for interpreter services. Judge Lyons reasoned that his approvals of these Motions for Services Other than Counsel for interpreter services were purely ministerial acts and that he did not believe that "the ministerial act of signing off on the Public Defender's request for services other than counsel for an interpreter under these circumstances was a violation of the recusal order."

16. Rule 2.11, *Disqualification*, of the State of New Hampshire Code of Judicial Conduct (Supreme Court Rule 38) provides in relevant part that:

A. A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(c) a person who has more than a *de minimis* interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

17. The term, "Third degree of relationship", is defined under the Code to include: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew and niece.

## II. RULINGS

18. Factual findings as set forth in Section I above are incorporated herein by reference.

19. The Respondent and the Judicial Conduct Committee stipulate that the following Rule of the State of New Hampshire Code of Judicial Conduct (Supreme Court Rule 38) was violated by Judge Lyons:

Rule 2.11, *Disqualification*, Sections A (2) (c) and (d) provide in relevant part as follows:

A. A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(c) a person who has more than a *de minimis* interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

20. Given the use of the disjunctive “or” in the language above, the Committee finds that Mr. Kissell, as the spouse of Judge Lyons’ wife’s sister, falls into this category as the spouse of an individual within the third degree of relationship of Mrs. Lyons.

21. “Third degree of relationship” is defined under the Code to include: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew and niece.

22. The Code requires disqualification when the judge “knows that the judge, the judge’s spouse or domestic partner or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such person is a person who has more than a *de minimis* interest that could be substantially affected by the proceeding or is likely to be a material witness in the proceeding.

23. The Code requires that disqualification is mandatory should the judge have actual knowledge of the relationship.

24. Several states have adopted even stricter disqualification standards in this regard with New York State proscribing a judge from participating in any matter in which he or she is related to any party by consanguinity or affinity within the sixth degree.

25. These provisions are based upon the principle of impartiality to assure the fair and proper administration of justice and to promote public confidence in the integrity and impartiality of the court. Additionally, any judge should know, even without specific direction, that presiding over cases involving relatives is improper and diminishes public confidence in the judiciary.

26. Under the Commentary Section to Rule 2.11, *Disqualification*, at Comment (1), a judge is disqualified under Rule 2.11 “whenever that judge’s impartiality might reasonably be questioned, regardless of whether any specific provisions of paragraphs (A) (1) through (6) apply”.

27. Comment (2) to Rule 2.11, *Disqualification*, provides that the judge’s obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

28. Comment (5) to Rule 2.11, *Disqualification*, provides that a judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

29. Without regard to the concerns specifically addressed by Mr. Kissell, the Committee also finds that that the record supports the conclusion that disclosure to the parties by Judge Lyons' of his familial relationship to Mr. Kissell by affinity would have provided information that the parties or their lawyers in the underlying criminal actions might have considered relevant to the issue of Judge Lyons' disqualification, and as such, should have been ethically disclosed.

30. Finally, the Committee understands and fully appreciates that Judge Lyons had recused himself from the each of the underlying criminal actions following each arraignment.

31. Regardless of the reason(s) for the recusal by Judge Lyons as to each of these cases, however, Judge Lyons nevertheless went on to rule on the two Motions for Services Other than Counsel relating to the provision of interpreter services.

32. Although Judge Lyons has characterized his ruling on these motions as "ministerial" in nature, the Committee believes that the Douglas Court's instruction that "a trial judge who has recused himself (or herself) should take no other action in the case except the necessary ministerial acts to have the case transferred to another judge" (see Charles Douglas, III v. Caroline Douglas, 143 NH 419, 728 A.2d 215 (1999)) is clear, controlling and should have been followed by Judge Lyons in the instant circumstance. In the Committee's view, Judge Lyons' post recusal rulings on the Motions for Services Other than Counsel were in excess of the necessary ministerial acts associated with having the case transferred to another judge as the law requires and should have been avoided.

33. The Committee is mindful of Judge Lyons' efforts to treat the litigants in the underlying criminal matters fairly and to assure that neither defendant was prejudiced in any fashion and the Committee makes no suggestion that Judge Lyons treated either defendant unfairly in any respect as the result of his relationship to Mr. Kissell. Moreover, the Committee is also mindful of the difficulties attendant to being a trial judge (and often the sole trial judge) in a very busy District Court. Further, Judge Lyons maintains that he had no prior notice that there was an issue with respect to his disqualification until he began to review the Gerstein affidavits on the morning of the arraignment and that, accordingly, he had limited time available to him to reason through the disqualification issue. However, the Committee remains concerned that Judge Lyons' rulings in the case subsequent to his recusal run contrary to established law and may otherwise fail to promote the public's confidence in the integrity and impartiality of the judiciary.

34. The Committee determined that while Judge Lyons' ruling on the post proceeding motions may have been in error given his prior recusal, these rulings do not constitute judicial misconduct as his orders were clearly not motivated by bad faith and were based upon a reasonable interpretation of the law and a reasonable view of the facts. However, the Committee strongly advises that, prospectively, Judge Lyons take no other action in any case on which he has recused himself but for those necessary ministerial acts which may be required to have the case transferred to another judge.

35. Judge Lyons has subsequently reported to the Committee that he, acting in concert with the Clerk of the 9<sup>th</sup> Circuit Court – District Division – Manchester, has since taken remedial action such that, prospectively, all administrative motions will be presented to reviewing judges with the complete files attached so that any potential conflicts may be appropriately identified and that the Clerk's office is presently working with all divisions to identify and mark court files so that should a judge have a conflict in any case, the matter will never again be presented to that judge – even for routine administrative functions which may violate the disqualification rule.

### III. DISPOSITIONAL ANALYSIS

36. After determining the existence of clear and convincing evidence supporting the finding of a violation of Rule 2.11, *Disqualification*, Sections A. (2) (c) and (d) of the Code of Judicial Conduct by Judge Lyons, the Committee examined the factors identified by the New Hampshire Supreme Court pursuant to its decision In Re: Coffey's Case, 949 A.2d 102 (NH 2008) in determining the within sanction.

37. Specifically, the Committee considered the nature of the misconduct, the extent of the misconduct, the judge's culpability, the judge's conduct in response to the Committee's inquiry and disciplinary proceedings, and the judge's reputation and record on the bench.

#### a. The Nature of the Misconduct:

The conduct involved occurred in the judge's official capacity. Misconduct on the bench is typically more serious than the same conduct off the bench. Although a violation of Rule 2.11, Section A (2) (c) and (d) was found, there is no basis to infer that Judge Lyons had ever intended to exploit his relationship with Mr. Kissell for personal benefit or gain.

b. The Extent of the Misconduct:

The Committee determined that the misconduct at issue on the part of Judge Lyons was in the nature of an isolated instance and was not part of any identifiable pattern or course of conduct. This misconduct did not take place over a significant period of time.

c. The Judge's Culpability:

Judge Lyons has stated that he knew that Mr. Kissell was a teacher at Central High School and his brother-in-law when he reviewed the Gerstein affidavits on January 7, 2011 prior to the first arraignment but that he reasoned, albeit incorrectly, that he could proceed with the arraignment stage of the proceeding given that Mr. Kissell himself was not a party to either criminal matter.

d. The Judge's Conduct in Response to the Committee's Inquiry and Disciplinary Proceedings:

Judge Lyons' responses to the Committee's inquiries were: somewhat defensive and evidenced little insight as to how Judge Lyons' familial relationship to Mr. Kissell as the alleged victim of an assault by these two defendants may have triggered his mandatory disqualification under Rule 2.11; raised significant issues that the parties or their lawyers might reasonably have considered relevant to a possible motion for disqualification; and/or, failed to promote public confidence in the judiciary by creating the appearance of impropriety. The Committee is encouraged that Judge Lyons has accepted responsibility for his actions by stipulating to the above violation and resolving the violation consistent with this disposition.

e. The Judge's Reputation and Record on the Bench:

The Committee recognizes that Judge Lyons has had no prior disciplinary history as a district court judge since his appointment to the bench.

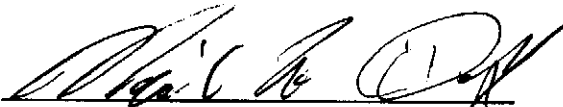
#### **IV. DISCIPLINE**

38. Upon a finding that Judge Lyons had violated Rule 2.11 Sections A (2) (c) and (d) of the Code of Judicial Conduct and based on the above analysis, the Committee finds that the violations are not of a sufficiently serious nature to



warrant the imposition of formal discipline by the Court. Therefore, pursuant to Supreme Court Rule 40 (8) (f), and with the consent of Judge Lyons, the Committee issues this Reprimand.

State of New Hampshire Judicial Conduct Committee

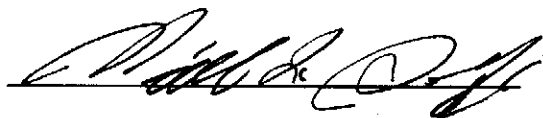
By:   
Wilfred L. Sanders, Jr., Esq., Vice Chair

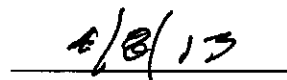
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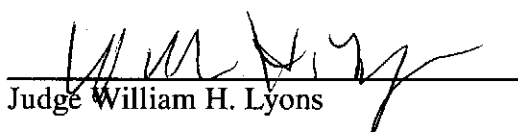
### STIPULATION


The Judicial Conduct Committee through its Vice Chair, Wilfred L. Sanders, Jr., Esq. and the Honorable William H. Lyons stipulate to resolve this matter by way of Judge Lyons' agreement to accept the attached public reprimand from the Judicial Conduct Committee.

By entering into this stipulation, Judge Lyons waves his right to a public hearing pursuant to New Hampshire Supreme Court Rule 40 (9) and agrees that the attached reprimand will serve as the official record of these proceedings.

  
Wilfred L. Sanders, Jr., Esq., Vice Chair

  
Date

  
Judge William H. Lyons

  
Date

Dana Zucker and Judge Houran did not participate in this matter.