

SEP 13 2019

IN THE SUPREME COURT OF THE STATE OF UTAH

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Re: Inquiry Concerning a Judge

No. 20190408-SC

JCC Case No. 19-3JC-012

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ORDER

Pursuant to the authority vested in the Supreme Court by Article VIII, Section 13 of the Utah Constitution and Utah Code Ann. § 78A-11-111, the Court approves the implementation of the Judicial Conduct Commission's Order of Reprimand.

FOR THE COURT:

September 13, 2019

Dated



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Deno G. Himonas

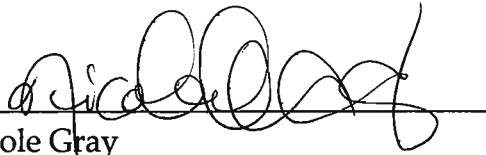
Justice

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2019, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

19-3JC-012  
74 S 100 E #12  
TOOELE UT 84074

ALEX G PETERSON  
JUDICIAL CONDUCT COMMISSION  
APETERSON@UTAH.GOV

By   
Nicole Gray  
Clerk of Court

Case No. 20190408  
District Court No. 19-3JC-012

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BEFORE THE UTAH JUDICIAL CONDUCT COMMISSION

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IN RE: )  
          ) ORDER OF REPRIMAND  
          ) )  
HON. JOHN DOW ) Case No. 19-3JC-012  
          ) )

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The Judicial Conduct Commission after a Confidential Formal Hearing wherein evidence was received, argument was heard and deliberations were conducted, issued Findings of Facts and Conclusions of Law in the above case. Finding misconduct, the Judicial Conduct Commission determined an appropriate sanction was the issuance of a reprimand. The Judicial Conduct Commission recommends the same to the Utah Supreme Court.

The Judicial Conduct Commission hereby orders that the Hon. John Dow be reprimanded. This Order shall only take effect upon implementation of the same by the Utah Supreme Court.

DATED this 13<sup>th</sup> day of May, 2019.

  
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James S. Jardine, Chair  
Judicial Conduct Commission

CERTIFICATE OF SERVICE

I certify that on the 14<sup>th</sup> day of May 2019, I hand delivered, a true and correct signed copy of the foregoing Order of Suspension to:

Hon. John M. Dow  
74 S. 100 E. #12  
Tooele, UT 84074



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BEFORE THE UTAH JUDICIAL CONDUCT COMMISSION

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IN RE:

HON. JOHN DOW

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Case No. 19-3JC-012

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The Judicial Conduct Commission ("JCC"), having conducted a confidential formal hearing with all parties present, having reviewed the parties' Stipulation ("Stipulation") and having approved the same, having reviewed Judge Dow's Judicial Conduct Commission's case history, having received and considered testimony from Judge Dow, having reviewed matters and briefings submitted by Judge Dow and the Examiner, having heard arguments from Judge Dow and the Examiner, now enters the following:

FINDINGS OF FACT

1. From May 2010 through the present, Judge John Dow served as a full-time justice court judge in the Tooele County Justice Court.
2. In 2015, Judge Dow received a dismissal letter from the Judicial Conduct Commission for a Rule 2.8(B) violation wherein the Commission expressed their concern that a judge should at all times behave in a patient, dignified, and courteous manner with litigants or other participants in the court system.
3. On 5 September, Mr. Schwermer on behalf of the Utah Judicial Council alleged that Judge Dow committed a violation of the Utah Code of Judicial Conduct.
4. This alleged violation was Judge Dow's distribution of a short, graphic

video showing a man's scrotum via text to the Tooele Justice Court clerks. It was not clear from the evidence whether or to what extent this text was forwarded to other Court personnel or others.

5. While investigating this allegation, current and former Tooele Justice Court clerks described an unprofessional work environment.

6. In addition, these clerks expressed their concern about Judge Dow's possible retaliation against them for speaking with JCC investigators.

7. On 21 December 2018, Judge Dow submitted a written response to these allegations and concerns.

8. In Judge Dow's response, he acknowledged distributing the video. Judge Dow also acknowledged knowing that the video was not appropriate, regretting sending it, and apologizing to the Tooele Justice Court clerks the next day for having sent it.

9. Judge Dow did not subsequently report to the AOC or the JCC the potential misconduct of distributing the video to his clerks.

10. After the investigation was complete, the Tooele Justice Court Clerks described an improved professional work environment.

11. In addition, these clerks no longer expressed any concern about possible retaliation.

12. On 15 March 2019, Judge Dow, on his own initiative, successfully completed Sensitivity Training in the Workplace and provided evidence of the same to the Commission.

13. On 19 March 2019, Judge Dow, at his request, participated in a

confidential formal hearing to answer JCC Commissioners' questions and explain his conduct under oath.

14. In both the December 21, 2018 letter and at the March 19, 2019 hearing, Judge Dow referenced the conduct of a certain employee within his chambers, and why in the judge's view this individual may not have been the best employee. Judge Dow also expressed in the letter and at the hearing that he was disappointed or surprised that this employee may have "told on him," as Judge Dow thought the employee and he were friends.

15. Judge Dow's actions violate the following provisions of the Utah Code of Judicial Conduct:

Rule 1.2	A judge ... shall avoid impropriety and the appearance of impropriety.
<i>Comment 1</i>	<i>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.</i>
<i>Comment 5</i>	<i>Actual improprieties include violations of law 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 engaged in impropriety.</i>
Rule 2.3	A judge shall not ... engage in harassment ...
<i>Comment 3</i>	<i>Examples of sexual harassment include ... other verbal or physical conduct of a sexual nature that is unwelcome.</i>
Rule 2.8(B)	A judge shall be ... dignified ... to ... court staff ...

16. Judge Dow understands the inappropriateness of his conduct of distributing the video.

17. Judge Dow has taken full responsibility for his actions and did not intend any violation of the Code of Judicial Conduct or Utah Standards of Judicial Professionalism and Civility Rule 11-301(2). He is apologetic, and has assured the Judicial Conduct Commission that he will not engage in this kind of behavior in the future.

18. The Commission found Judge Dow's conduct of texting the video was a very serious lapse in judgment.

19. The conduct by Judge Dow was prejudicial to the administration of justice and brought a judicial office into disrepute.

#### CONCLUSIONS OF LAW

20. Based on Judge Dow's testimony, the other evidence received, and the Commission's findings of fact, the Commission concludes this conduct violated Rules 1.2 in that public confidence in the judiciary was eroded by the improper conduct and that the conduct would create in reasonable minds a perception that the judge engaged in impropriety.

21. Based on Judge Dow's testimony, the other evidence received, and the Commission's findings of fact, the Commission concludes this conduct violated Rule 2.3 of the Code of Judicial Conduct in that a judge shall not engage in harassment including communication of a sexual nature that is unwelcome.

22. Based on Judge Dow's testimony, the other evidence received, and the Commission's findings of fact, the Commission concludes this conduct violated Rule 2.8(B) of the Code of Judicial Conduct in that a judge shall be dignified to court staff which this conduct was not.



23. The Commission concludes that Judge Dow's conduct of texting the video to his court clerks violated Code of Judicial Conduct Rules 1.2, 2.3, and 2.8(B).

24. Accordingly, Judge Dow's actions constitute conduct prejudicial to the administration of justice which brings a judicial office into disrepute, in violation of Article VIII, Section 13 of the Constitution of Utah and Utah Code Ann. §78A-11-105(1).

#### Appropriate Sanction

25. In evaluating what appropriate sanction to recommend, the Commission considered a number of factors. First, the capacity Judge Dow was acting in when the misconduct occurred was both official and private (as a judge, but also as a longtime acquaintance of the clerks).

26. The Commission considered the settings of Judge Dow's misconduct (in a group text chat used for official and personal purposes).

27. The Commission considered that the misconduct was spontaneous.

28. The Commission considered Judge Dow's misconduct had both an appearance of, as well as an actual, impropriety. The appearance of impropriety extended to those that received the text as well as those to whom it may have been subsequently forwarded or with whom it may have been discussed. The Commission concludes Judge Dow's conduct carried with it more than the appearance of impropriety and constituted actual impropriety.

29. The Commission considered that Judge Dow's misconduct was an isolated incident.

30. The Commission considered the potential and actual harm to the public's perception of fairness and impartiality in Utah's judicial system. The Commission considered that Judge Dow's behavior caused both actual and potential harm to the public's perception of fairness and impartiality of Utah's judicial system.

31. The Commission considered Judge Dow's written (December 21, 2018 letter) and verbal (March 19, 2019 hearing) comments regarding an employee within Judge Dow's chambers. These comments included Judge Dow's emphasis on the employee's workplace competence, along with Judge Dow's disappointment that this employee had apparently discussed the video clip incident with investigators, resulting (at least in part) in this investigation.

32. Judge Dow did state that the employee's conduct did not excuse his own behavior. However, Judge Dow's repeated and continued focus on the employee's conduct led the Commission to consider that Judge Dow did not fully appreciate the main purpose of the investigation. Specifically, Judge Dow's demeanor and presentation at the hearing combined with the seeming import he placed on the fact that a "friend" in his chambers would bring this to light, evinced a lack of appreciation for the impact of his improper conduct on others including court staff or those who may appear before him with knowledge of such conduct. Judge Dow sent a graphic video showing a man's scrotum via text to the court clerks. The employee's competence, and Judge Dow's view that an employee possibly betrayed his friendship, are wholly irrelevant to the propriety of Judge Dow's conduct, and are not mitigating factors.

33. The Commission considered that Judge Dow acknowledged his misconduct, apologized shortly thereafter, took further responsibility when the investigation began, engaged in acts of self-improvement and has shown meaningful remorse for his violations of the Utah Code of Judicial Conduct.

34. Finally, the Commission considered Judge Dow's judicial service. He has been on the bench since May 2010 (almost 9 years). His judicial service includes one private sanction for dissimilar misconduct.

35. The Commission concluded that considering all these factors, that a public reprimand is the most appropriate sanction for his violations of the Utah Code of Judicial Conduct identified in these findings and conclusions

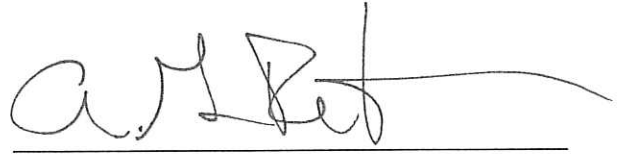
DATED this 12<sup>th</sup> day of May, 2019.

  
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James S. Jardine, Chair  
Judicial Conduct Commission

CERTIFICATE OF SERVICE

I certify that on the 14 day of May 2019, I hand delivered, a true and correct signed copy of the foregoing JCC Findings of Facts and Conclusions of Law to:

Hon. John M. Dow  
74 S. 100 E. #12  
Tooele, UT 84074



A handwritten signature in cursive script, appearing to read "A. M. Dow", is written above a horizontal line.