



**BEFORE THE
JUDICIAL STANDARDS COMMISSION**

INQUIRY NO. 08-234

PUBLIC REPRIMAND

B. CARLTON TERRY, JR.

DISTRICT COURT JUDGE

JUDICIAL DISTRICT 22

This matter came to the attention of the Judicial Standards Commission by a written complaint filed with the Commission. A formal investigation was ordered by the Commission and conducted by the Commission's investigator. During its meeting on February 13, 2009, the Commission completed its review of the investigative report prepared in this matter. The Commission caused a copy of this Public Reprimand to be personally served upon Judge B. Carlton Terry, Jr. In accordance with Rule 11(b) of the Rules of the Judicial Standards Commission, a judge has 20 days within which to accept the Public Reprimand or to reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with Rule 12 of the Rules of the Judicial Standards Commission.

Findings of Fact

1. B. Carlton Terry, Jr., was at all times referred to herein a judge of the General Court of Justice, District Court Division, Judicial District Twenty-two and, as such was subject to the Canons of the North Carolina Code of Judicial Conduct, the laws of the State of North Carolina, and the provisions of the oath of office for a district court judge as set forth in the North Carolina General Statutes, Chapter 11.
2. Beginning Tuesday, September 9, 2008 and continuing through Friday September 12, 2008, Judge Terry presided over a child custody and child support hearing in the matter

of Whitley vs. Whitley, Iredell County File No. 07CVD0008.

3. On or about September 9, 2008, while in the judge's chambers, Judge Terry and Charles A. Schieck, attorney for Mr. Sterling Whitley, the defendant in the proceeding, spoke about "Facebook", a internet social networking website. Jessie Conley, attorney for Mrs. Renee Whitley, the plaintiff in the proceeding, was present during the discussion but stated she did not know what "Facebook" was, and that she did not have time for it. Judge Terry and Mr. Schieck designated themselves as "friends" on their "Facebook" accounts so that they could view each other's account.
4. During an in chambers meeting on or about Wednesday September 10, 2008, Judge Terry, Shieck and Conley were reviewing prior testimony that suggested one of the parties had been having an affair. Schieck asked Judge Terry if he thought Mr. Whitley was guilty of having an affair. Judge Terry stated he believed the allegations were true due to evidence introduced by Conley, but that it did not make any difference in the custody dispute. It was at this time Schieck stated "I will have to see if I can prove a negative".
5. On or about the evening of September 10, 2008, Judge Terry checked Schieck's "Facebook" account and saw where Schieck had posted "how do I prove a negative". Judge Terry posted on his "Facebook" account, he had "two good parents to choose from" and "Terry feels that he will be back in court" referring to the case not being settled. Schieck then posted on his "Facebook" account, "I have a wise Judge".
6. During a break in the proceedings on September 11, 2008, Judge Terry told Conley about the September 10, 2008 exchanges on "Facebook" between Schieck and himself.
7. On or about September 11, 2008, Judge Terry wrote on his "Facebook" account, "he was in his last day of trial". Schieck then wrote "I hope I'm in my last day of trial." Judge Terry responded stating "you are in your last day of trial".
8. Sometime on or about September 9, 2008, Judge Terry used the internet site "Google" to find information about Mrs. Whitley's photography business. Judge Terry stated he wanted to see examples of Mrs. Whitley's photography work. Upon visiting Mrs. Whitley's web site, Judge Terry stated he viewed samples of photographs taken by Mrs. Whitley and also found numerous poems that he enjoyed.
9. When court reconvened at approximately 2:00 p.m. on September 12, 2008, prior to the

to announcing his findings in the case, Judge Terry recited a poem, to which he had made minor changes, that he found on Mrs. Whitley's web site.

10. Judge Terry told the Commission's investigator he quoted the poem because it gave him "hope for the kids and showed that Mrs. Whitley was not as bitter as he first thought". Judge Terry stated that he felt the poem reflected favorably towards Mrs. Whitley.
11. Judge Terry acknowledge he accessed Mrs. Whitley's photography web site on the first two days of trial and stated he may have accessed the site on the last day of trial to copy the poem. Judge Terry could not recall exactly how many times he visited the site but stated that four times was very possible.
12. Judge Terry never disclosed to counsel or the parties at any time during the four days of trial that he had conducted independent research on Mrs. Whitley or had visited any web site belonging to Mrs. Whitley.
13. Following the conclusion of the hearing and after having orally entered his order, Judge Terry requested a bailiff to summon Conley and Schieck to return to the courtroom, whereupon Judge Terry disclosed his actions of having viewed Mrs. Whitley's web site and quoting a poem he found thereon.
14. Conley filed a Motion in the Cause on October 2, 2008, whereby she requested a) Judge Terry's order be vacated, b) a new trial, and c) Judge Terry's disqualification.
15. Judge Terry disqualified himself by Order filed October 14, 2008.
16. Judge Terry's Child Custody and Child Support Order was vacated and an order for a new trial entered on October 22, 2008.
17. Judge Terry cooperated fully with the investigation.

Conclusions

Judge Terry had ex parte communications with counsel for a party in a matter being tried before him. Judge Terry was also influenced by information he independently gathered by viewing a party's web site while the party's hearing was ongoing, even though the contents of the web site were never offered as nor entered into evidence during the hearing. Judge Terry's actions described above evidence a disregard of the principles of conduct embodied in the North

Carolina Code of Judicial Conduct, including failure to personally observe appropriate standards of conduct to ensure that the integrity and independence of the judiciary shall be preserved (Canon 1), failure to respect and comply with the law (Canon 2A), failure to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Canon 2A), engaging in *ex parte* communication with counsel and conducting independent *ex parte* online research about a party presently before the Court (Canon 3A(4)). Judge Terry's actions constitute conduct prejudicial to the administration of justice that brings the judicial office into disrepute (N.C. Const. art IV, § 17 and N.C.G.S. § 7A-376(a)).

Corrective Action and Acceptance of Terms

Judge Terry agrees that he will not repeat such conduct in the future, mindful of the potential threat any repetition of his conduct poses to public confidence in the integrity and impartiality of the judiciary and to the administration of justice.

Judge Terry agrees he will promptly read and familiarize himself with the Code of Judicial Conduct.

Judge Terry further agrees that he will not retaliate against any person known or suspected to have cooperated with the Commission, or otherwise associated with this matter.

Judge Terry affirms he has consulted with, or had the opportunity to consult with counsel prior to acceptance of this Public Reprimand.

I, B. Carlton Terry, Jr., hereby accept the terms contained in this Public Reprimand this the 25 day of March , 2009.

ORIGINAL SIGNED BY

B. Carlton Terry, Jr.

ORDER OF PUBLIC REPRIMAND

Now therefore, pursuant to the Constitution of North Carolina, Article IV, Section 17, the procedures prescribed by the North Carolina General Assembly in the North Carolina General Statutes, Chapter 7A, Article 30, and Rule 11(b) of the Rules of the Judicial Standards Commission, the North Carolina Judicial Standards Commission, hereby orders that B. Carlton

Terry, Jr., be and is hereby PUBLICLY REPRIMANDED for the above set forth violations of the Code of Judicial Conduct. Judge Terry shall not engage in such conduct in the future and shall fulfill all of the terms of this Public Reprimand as set forth herein.

Dated this the __1st__ day of _____April_____, 2009.

ORIGINAL SIGNED BY

John C. Martin, Chairman
Judicial Standards Commission