

## STATE OF KANSAS

JAN 20 2021

## BEFORE THE COMMISSION ON JUDICIAL CONDUCT

COMMISSION ON  
JUDICIAL CONDUCTInquiry Concerning A Judge  
JAY E. TATE

Complaint No. 2152

**ORDER**

Members of the Commission present include James S. Cooper, Vice-Chair; Terrence J. Campbell; Judge Robert W. Fairchild; and Judge Mary B. Thrower.

**FINDINGS OF FACT**

There is no dispute regarding the facts set out below:

1. Jay E. Tate, respondent, is a District Magistrate Judge in the 17<sup>th</sup> Judicial District.
2. On November 1, 2019, Chief Judge Preston A. Pratt filed a complaint alleging respondent had failed to rule and/or complete a number of judicial duties as a magistrate judge as follows:
  - a. 2017-LM-15 - limited action matter heard and taken under advisement on February 22, 2017;
  - b. 2017-LM-42 - limited action matter heard and taken under advisement on December 28, 2017;
  - c. 2017-CR-77 - criminal matter heard and taken under advisement on May 29, 2018; and
  - d. nine criminal cases required the appointment of an attorney.
3. In his capacity as administrative judge, Chief Judge Pratt repeatedly contacted respondent about the delay and appointments. Respondent did not take corrective action. On October 24, 2019, Chief Judge Pratt told respondent that he should self-report his lack of diligence to the Judicial Conduct Commission and that as administrative judge of the judicial district he was obligated to report respondent's lack of action.
4. On December 1, 2019, the Inquiry Panel for the Commission met at its general monthly meeting to discuss the complaint against the respondent and determine whether the complaint contained facts that cause a reasonable person to believe that a violation of the Code of Judicial Conduct had occurred.

5. On January 7, 2020, the Commission asked the respondent to respond to the complaint.
6. On January 21, 2020, the Commission received notification from Chief Judge Pratt that respondent was having surgery and would be on medical leave for 5 – 6 weeks.
7. On April 2, 2020, the respondent submitted a response to the Commission acknowledging the areas of concern filed in the complaint, advising of his health issues, and noting the areas that he and Chief Judge Pratt had identified for improvement.
8. On June 5, 2020, the Inquiry Panel for the Commission met at its general monthly meeting to discuss the April 2<sup>nd</sup> response submitted by the respondent. The Inquiry Panel decided to continue the matter to allow the respondent the opportunity to conclude the three cases taken under advisement and also indicated that no further continuances would be granted.
9. At its general monthly meeting on August 14, 2020, the Inquiry Panel for the Commission determined that respondent still had not resolved any of the cases that were the subject of the complaint. The Inquiry Panel referred the complaint against the respondent to its Examiner, Todd Thompson, for investigation under Supreme Court Rule 613(b)(2)(C). 2020 Kan. S. Ct. R. 490.
10. On November 23, 2020, the Inquiry Panel received a report from Thompson that he interviewed the respondent regarding the complaint.
11. Respondent's defense to Thompson was the same as his initial response to Chief Judge Pratt—that he had been physically ill. Respondent did require surgery and several weeks of recuperation in 2019 and into 2020, long after the complaint had been filed.
12. Respondent called Chief Judge Pratt in September 2020 after he received Thompson's Rule 609 letter and Chief Judge Pratt told respondent to get the two unfinished cases completed post haste. Respondent said he would do so.
13. Despite prompting from Thompson, the respondent did not immediately finish the remaining two cases. Respondent notified Thompson on October 16, 2020, that he completed the Journal Entries and supplied copies to Thompson on October 19, 2020.

14. Upon reviewing the journal entries complete by respondent, Thompson concluded: "Each is extremely short and demonstrates no apparent reason why the rulings could not have been done, literally, 'years ago.' As CJ Pratt noted, these rulings should have been completed well before the more recent health issues arose."
15. According to respondent and Chief Judge Pratt, respondent is now keeping up on his current case responsibilities.

### CONCLUSIONS OF LAW

1. RULE 1.2 of the Code of Judicial Conduct, Rule 601B, provides:  
  
"A judge shall act at all times in a manner that promotes public confidence in the *independence, integrity, and impartiality* of the judiciary, and shall avoid *impropriety* and the appearance of impropriety."
2. RULE 2.5 of the Code of Judicial Conduct, Rule 601B, provides:  
  
"(A) A judge shall perform judicial and administrative duties, competently and diligently.  
(B) A judge shall cooperate with other judges and court officials in the administration of court business."
3. RULE 2.7 of the Code of Judicial Conduct, Rule 601B, provides:  
  
"A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other *law*."
4. The Commission determines that respondent violated Rules 1.2, 2.5, and 2.7 of the Code of Judicial Conduct by not performing judicial duties competently and diligently when he failed to hear and decide matters in a timely fashion that came before the court.

IT IS THEREFORE ORDERED that Jay E. Tate:

1. cease and desist from acting in a manner that does not promote confidence in the integrity of the judiciary;
2. cease and desist from failing to perform judicial duties competently and diligently;
3. cease and desist in delaying to decide matters assigned to the judge; and
4. agree that this Order will be made public.

This Order, if accepted, shall be made public pursuant to Rules 611(a) and 614(c). See 2020 Kan. S. Ct. R. 688, 691.

The Secretary of the Commission on Judicial Conduct is hereby instructed to serve a copy of this Order on the respondent under K.S.A. 60-303(c). Respondent must, in accordance with Rule 614, either (1) agree to comply with the Order by accepting the Order in writing where indicated and returning a signed copy of the Order to the Secretary of the Commission; or (2) refuse to accept the Order by notifying the Secretary it is not accepted. The signed Order or written refusal to accept must be served upon the Secretary of the Commission within twenty days after service of the Order. This Order is deemed to have been refused if the Secretary of the Commission receives no response from the respondent within twenty days after service of this Order.

BY ORDER OF THE COMMISSION dated this 29<sup>TH</sup> day of DECEMBER, 2020.

**COMMISSION ON JUDICIAL CONDUCT**

By:   
JAMES S. COOPER, VICE CHAIR

APPROVED & ACCEPTED

01/24/2021  
Date

  
JAY E. TATE, RESPONDENT