

STATE OF MARYLAND

BEFORE THE COMMISSION ON JUDICIAL DISABILITIES

IN THE MATTER OF:

JUDGE AMY LEIGH NICKERSON

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CJD 2018-033

Received By Commission

OCT 25 2018

To: JUDGE AMY LEIGH NICKERSON
ORPHAN'S COURT OF KENT COUNTY

on Judicial Disabilities

CHARGES

TAKE NOTICE that the Commission on Judicial Disabilities (hereinafter "Commission") has caused to be made and completed an investigation, through its Investigative Counsel, Tanya C. Bernstein, Esq., of Judge Amy Leigh Nickerson (hereinafter sometimes referred to as "Judge"), who was, at all pertinent times, a Judge of the Orphan's Court of Kent County, Maryland. The Commission notified Judge Nickerson of the nature of the investigation and afforded the Judge an opportunity to present information bearing on the subject of the investigation.

The Commission has received and considered information from the investigation, including, but not limited to: information received from numerous sources including local news media, materials provided by the Kent County Sheriff's Office, the Judge's response, the recommendation of Investigative Counsel, and the Report of the Judicial Inquiry Board. In consideration of the foregoing and a finding by the Commission of probable cause to believe that Judge Nickerson has committed sanctionable conduct, the Commission directed that Investigative Counsel initiate formal proceedings against Judge Nickerson pursuant to Maryland Rule 18-407(a).

The Commission will conduct a public hearing on these charges pursuant to Maryland Rule 18-407. The following facts form the basis for these charges and the Commission's probable cause determination:

1. Judge Nickerson has served as a Judge of Orphan's Court of Kent County since December 1, 2014.
2. Based upon information received, the Commission's Investigative Counsel opened an investigation regarding Judge Nickerson's extrajudicial conduct. The investigation was focused on allegations that Judge Nickerson committed multiple traffic violations including impaired driving, speeding, negligent driving, and reckless driving arising out of a traffic stop on or about March 9, 2018.
3. Investigative Counsel reviewed the Call for Service Detail Page; Alcohol Influence Report; Arrest and Booking Detail Page; News Release; Maryland Uniform Complaint and Citation Nos. 3ZR0AG6, 3ZS0AG6, 3ZT0AG6, 3ZV0AG6, 3ZW0AG6, 3ZX0AG6, and 3ZY0AG6; and other materials generated by Sgt. Harry A. Kettner and the Kent County Sheriff's Office arising out of Judge Nickerson's March 9, 2018 arrest. In addition, Investigative Counsel attended and reviewed the audio recording of the trial of Judge Nickerson before Judge Melvin J. Jews in the District Court of Maryland for Kent County.
4. The investigation revealed sanctionable conduct by Judge Nickerson with regard to her operation of a motor vehicle under the influence of alcohol as well as her misrepresentation of fact and her invocation of her judicial title during the traffic stop preceding her arrest.
5. Judge Nickerson's conduct was in violation of Rules 18-100.4, Preamble; 18-

101.1, Compliance with the Law; 18-101.2, Promoting Confidence in the Judiciary; 18-101.3, Avoid Lending the Prestige of Judicial Office; and 18-103.1, Extra-Official Activities in General. In addition, Judge Nickerson's conduct constituted misconduct and was prejudicial to the proper administration of justice pursuant to Rule 18-401(j). The pertinent provisions of the Rules provide as follows:

Rule 18-100.4. PREAMBLE.

(a) Importance of Independent, Fair, Competent, Impartial Judiciary. An independent, fair, competent, and impartial judiciary composed of men and women of integrity who will interpret and apply the law that governs our society is indispensable to our system of justice. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

(b) Dignity of Judicial Office. Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

(c) Function of Code of Judicial Conduct. This Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by this Code. This Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

Rule 18-101.1. COMPLIANCE WITH THE LAW.

A judge shall comply with the law, including this Code of Judicial Conduct.

Rule 18-101.2. PROMOTING CONFIDENCE IN THE JUDICIARY.

- (a) A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.
- (b) A judge shall avoid conduct that would create in reasonable minds a perception of impropriety.

Rule 18-101.3. AVOID LENDING THE PRESTIGE OF JUDICIAL OFFICE

A judge shall not lend the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

Rule 18-103.1. EXTRA-OFFICIAL ACTIVITIES IN GENERAL

Except as prohibited by law or this Code, a judge may engage in extrajudicial activities. When engaging in extrajudicial activities, a judge shall not:

- (a) participate in activities that will interfere with the proper performance of the judge's judicial duties;

- (c) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality; [or]
- (d) engage in conduct that would appear to a reasonable person to be coercive[.]

Rule 18-401(j)(1) DEFINITION OF SANCTIONABLE CONDUCT.

"Sanctionable Conduct" means misconduct while in office, the persistent failure by a judge to perform the duties of the judge's office, or conduct prejudicial to the proper administration of justice. A judge's violation of any of the provisions of the Maryland Code of Judicial Conduct promulgated by Title 18, Chapter 100 may constitute sanctionable conduct.

6. The investigation specifically revealed the following facts upon which the charges are based:

On March 9, 2018, Sgt. Harry A. Kettner stopped Judge Nickerson for speeding. During this stop, Sgt. Kettner determined there to be probable cause

Judge Nickerson was driving under the influence of alcohol. She was subsequently arrested, charged, and released on signature.

Specifically, Sgt. Kettner stopped Judge Nickerson on Rt. 320 in Rock Hall, Maryland after determining that she was speeding using his in-car radar unit. He approached the vehicle and observed that Judge Nickerson's eyes were glassy and blood shot and her actions were slow and delayed. He smelled alcohol emanating from the vehicle and observed a clear cup with a clear liquid in the center console.

Judge Nickerson stated that she had just left work. Sgt. Kettner asked Judge Nickerson to exit the vehicle. Almost immediately after being asked to exit her vehicle, Judge Nickerson stated, "Can I tell you something else? I'm a judge of the Orphan's Court." When asked if she had consumed any alcoholic beverages that evening, Judge Nickerson responded that she had a couple of drinks before she left work. At different points during this traffic stop, Judge Nickerson also stated that she consumed three drinks and, in a conversation on the phone with an unknown individual, four drinks. When asked by Sgt. Kettner what was in the cup in the center console, Judge Nickerson stated it was club soda. A subsequent test performed on the contents of this cup by Sgt. Kettner showed that it contained alcohol. Judge Nickerson later confirmed that the cup contained vodka.

Judge Nickerson performed poorly on multiple field sobriety tests. Judge Nickerson posited her low blood sugar levels as the basis for her poor performance. Sgt. Kettner allowed her to take measures to raise her blood sugar before performing the tests a second time. During this period, Judge Nickerson

cited several different blood sugar levels at which she would be able to properly complete the tests. Once Judge Nickerson's blood sugar level was at what she described as an appropriate level, Sgt. Kettner asked Judge Nickerson to step out of the vehicle to perform the field sobriety tests again. Sgt. Kettner noted Judge Nickerson had poor results on these tests as well, and she was placed under arrest. After her arrest, Judge Nickerson refused a blood alcohol concentration test.

Sgt. Kettner issued charges against Judge Nickerson under Citation Nos. 3ZR0AG6 (exceeding posted maximum speed limit: 43 in a posted 30 mph zone), 3ZS0AG6 (exceeding posted maximum speed limit: 31 in a posted 25 mph zone), 3ZT0AG6 (driving vehicle while under the influence of alcohol), 3ZV0AG6 (driving vehicle while impaired by alcohol), 3ZW0AG6 (negligent driving), 3ZX0AG6 (reckless driving), and 3ZY0AG6 (throwing, dumping, discharge, deposit any refuse on highway).

After a trial on the merits in the District Court for Kent County before Judge Melvin J. Jews, Judge Nickerson received probation before judgment on Citation Nos. 3ZR0AG6 (exceeding posted maximum speed limit: 43 in a posted 30 mph zone), 3ZS0AG6 (exceeding posted maximum speed limit: 31 in a posted 25 mph zone), 3ZV0AG6 (driving vehicle while impaired by alcohol), 3ZW0AG6 (negligent driving), 3ZX0AG6 (reckless driving), and 3ZY0AG6 (throwing, dumping, discharge, deposit any refuse on highway); she received a judgment of acquittal on Citation No. 3ZT0AG6 (driving vehicle while under the influence of alcohol).

7. Judge Nickerson's behavior provides evidence that Judge Nickerson engaged in

conduct that was prejudicial to the proper administration of justice in Maryland Courts, pursuant to the Maryland Constitution, Article IV, Section 4B(b)(1).

These charges are issued by Investigative Counsel at the direction of the Commission on Judicial Disabilities.

COMMISSION ON JUDICIAL DISABILITIES

Date: 10.24.18

Tanya C. Bernstein
Investigative Counsel

Date: 10/24/18

Derek A. Bayne
Assistant Investigative Counsel

NOTICE: YOU HAVE THE RIGHT, PURSUANT TO RULE 18-407(c) OF THE MARYLAND RULES, TO FILE A WRITTEN RESPONSE TO THIS COMPLAINT WITHIN THIRTY (30) DAYS AFTER SERVICE OF THIS NOTICE UPON YOU. AN ORIGINAL AND ELEVEN (11) LEGIBLE COPIES OF THE RESPONSE ARE REQUIRED. THE RESPONSE SHOULD BE PROVIDED TO THE COMMISSION ON JUDICIAL DISABILITIES.