

IN THE SUPREME COURT FOR THE STATE OF ALASKA

In re **TIMOTHY D. DOOLEY,** )  
 )  
Judge of the Superior Court, )  
Second Judicial District at )  
Nom, Alaska, )

**FILED**  
**DEC 28 2015**  
APPELLATE COURTS  
OF THE  
STATE OF ALASKA

Supreme Court No. \_\_\_\_\_  
Alaska Commission on Judicial Conduct  
Accusation No. 2013-013

RECOMMENDATION FOR DISCIPLINE

Procedures before the Commission

This matter was brought to the attention of the Alaska Commission on Judicial Conduct (“Commission”) in late-2013. At its regular meeting on November 21, 2014, the Commission determined that it would hold a Probable Cause Hearing in this matter. A Probable Cause Hearing took place at the Commission’s meeting on May 11, 2015. The Commission found Probable Cause on May 12, 2015 on a vote of 7 in favor and 2 opposed. Formal charges issued on May 26, 2015.

There were several pre-hearing motions. On October 15, 2015, the Judge filed a “Motion to Compel Disclosure of “Anonymous”

Complainants”. Special Counsel filed an opposition, Judge’s Counsel filed a reply and the motion was denied by the Chair in an order dated November 6, 2015. On November 6, 2015 Counsel for the Department of Law filed a “Motion to Quash Earthman Deposition/Subpoena”. Judge’s Counsel opposed that motion and the motion was granted by the Chair in an order dated November 10, 2015. On November 10, 2015 Counsel for the Department of Law filed a “Motion for In Camera Review to Obtain Ruling on Discoverability of Records”. That motion was supplemented on November 17, 2015 to identify the specific grounds upon which the Commission should determine whether the records were privileged or outside the scope of permissible discovery. Judge’s Counsel opposed the motion and the Chair ordered that all documents were subject to disclosure with the exception of 3 pages (order dated November 18, 2015). On December 4, 2015 Judge’s Counsel filed a “Motion to Strike Mentoring Judges as Witnesses”. Special Counsel opposed the motion and the Alaska Court System filed a supplemental brief objecting to the testimony of an assigned mentor judge concerning counseling to Judge Dooley in that role. The Chair denied that motion in an order dated December 8, 2015.

A Formal Disciplinary Hearing pursuant to AS 22.30.0119(b) and Alaska Commission on Judicial Conduct Rule 14 took place in Anchorage on December 10, 2015.

The attached Commission Findings and Recommendation is filed pursuant to Article IV, section 10 of the Constitution of Alaska, AS 22.30.011 (d)(2) and Rule 406 of Alaska's Rules of Appellate Procedure.

SUBMITTED by the COMMISSION ON JUDICIAL CONDUCT, through its Executive Director, this 28<sup>th</sup> day of December 2015.



Marla N. Greenstein (Bar No. 9708048)  
Executive Director  
Commission on Judicial Conduct

**RETURN**

I served the above order on Special Counsel John Cashion (Bar No. 9806025) and Judge's Counsel William Satterberg (Bar No. 7610126) on the 28<sup>th</sup> day of December, electronically and by certified mail.



Signature

Administrative Assistant

Title

Jessica Richter

Name

STATE OF ALASKA  
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding Pursuant to  
AS 22.30.011(a) in Relation to:

TIMOTHY D. DOOLEY,

Judge of the Superior Court, SECOND  
Judicial District at NOME, Alaska

ACJC File No.: 2013-013

**FINDINGS AND RECOMMENDATION**

**1. Introduction**

The Alaska Commission on Judicial Conduct filed a complaint against Superior Court Judge Timothy Dooley. At the formal hearing, Special Counsel to the Commission and Judge Dooley presented a stipulation under which Judge Dooley admitted to a pattern of conduct that violates AS 22.30.011(a)(3)(C), (D), and (E), and Canons 1, 2A, 3B(4), and 3B(5) of the Alaska Code of Judicial Conduct. The Stipulation contains Judge Dooley's acknowledgment that (1) he made statements in court proceedings that indicate insensitivity to victims and witnesses in criminal matters, and insensitivity to unrepresented parties in civil matters; (2) the statements, although not intended to reflect bias or prejudice, were reasonably interpreted by others to manifest bias; and (3) his statements could be construed as disregarding the serious nature of sexual abuse and domestic violence and as disrespectful to the victims of those crimes. The Commission unanimously accepted the Stipulation.

After accepting the Stipulation, the Commission held a formal hearing for the purpose of determining the appropriate sanction. Judge Dooley testified and the parties submitted exhibits. After considering the evidence and arguments of counsel, the Commission unanimously agreed that there is clear and convincing evidence that Judge Dooley violated AS 22.30.011(a)(3)(C), (D), and (E), and Canons 1, 2A, 3B(4), and 3B(5) of the Alaska Code of Judicial Conduct and that the appropriate sanction is public censure.<sup>1</sup>

## **2. Findings of Fact**

The misconduct in this case relates to statements made by Judge Dooley in court, on the record. Accordingly, there is no dispute about the facts. As set forth in the Stipulation, Judge Dooley made the following statements:

a. On May 29, 2013 in the sentencing in State of Alaska v. Pushruk, 2NO-12-905 CR Judge Dooley stated: “Has anything good ever come out of drinking other than sex with a pretty girl?”

b. On October 29, 2013 in the sentencing in State of Alaska v. Delie, 2NO-13-245 CR, Judge Dooley stated: “What you’ve done with this young girl, it’s a strange thing, routinely done in Afghanistan where they marry 6 year-old girls. In our society, and in the society of the local tribal communities, supposed to be totally forbidden.”

c. On November 5, 2013 in the sentencing in State of Alaska v. Sagoonick, 2NO-13-236 CR, a sexual abuse of a minor offense where the victim was a 14 year-old

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<sup>1</sup> Commissioner Brown did not participate in the formal hearing or deliberations.

girl, Judge Dooley stated: “This was not someone who was, and I hate to use the phrase, ‘asking for it’. There are girls out there that seem to be temptresses. And this does not seem to be anything like that.”

d. On August 12, 2014 in a civil trial with unrepresented litigants, Judge Dooley stated “I’m gonna enforce these oaths and they’re enforceable with a 2-year sentence for perjury. And I’d be the sentencing judge. I also have a medieval Christianity that says if you violate an oath, you’re going to hell. You all may not share that, but I’m planning to populate hell.”

e. On August 20, 2014 in State of Alaska v. Wells, 2NO-13-907 CR, a domestic violence felony assault trial, Judge Dooley made off-the-record comments to the jury when inquiring as to whether they could hear the victim during her testimony: “I’m sorry folks, but I can’t slap her around to make her talk louder.”

### **3. Sanction Analysis**

Under Alaska law, the American Bar Association’s Standards for Imposing Lawyer Sanctions are applied to the extent possible in determining an appropriate sanction for violations of the Canons of Judicial Conduct.<sup>2</sup> The ABA Standards address four issues to determine the appropriate level of sanction: (a) the ethical duty the judge violated; (b) the judge’s mental state; (c) the extent of the actual or potential injury caused by the judge’s misconduct; and (d) any aggravating or mitigating circumstances.<sup>3</sup> However, this

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<sup>2</sup> *In re Inquiry concerning a Judge*, 788 P.2d 716, 723 (Alaska 1990).

<sup>3</sup> *Id.*

can be difficult because the ethical obligations of judges differ in many significant respects from the obligations of lawyers. In contrast, the Washington Supreme Court applies the following factors:

- (a) whether the misconduct is an isolated instance or evidenced a pattern of conduct;
- (b) the nature, extent and frequency of occurrence of the acts of misconduct
- (c) whether the misconduct occurred in or out of the courtroom;
- (d) whether the misconduct occurred in the judge's official capacity or in his private life;
- (e) whether the judge has acknowledged or recognized that the acts occurred;
- (f) whether the judge has evidenced an effort to change or modify his conduct;
- (g) the length of service on the bench;
- (h) whether there have been prior complaints about this judge;
- (i) the effect the misconduct has upon the integrity of and respect for the judiciary; and
- (j) the extent to which the judge exploited his position to satisfy his personal desires.<sup>4</sup>

In determining an appropriate sanction for Judge Dooley, the Commission finds the following factors relevant:

**a. What Ethical Duty did Judge Dooley Violate?**

Judge Dooley admitted that he violated AS 22.30.011(a)(3)(C), (D), and (E), and Canons 1, 2A, 3B(4), and 3B(5) of the Alaska Code of Judicial Conduct. The Commission finds that Judge Dooley's statements adversely reflect on the integrity of the Judiciary in general (Canon 1 and 2A); are undignified and discourteous to witnesses,

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<sup>4</sup> *In re Deming*, 736 P.2d 639 (Washington 1987).

litigants, and sexual violence victims (Canon 3B(4)); and, on their face, suggest bias or prejudice to groups of people identified in Canon 3. (Canon 3B(5)).

**b. What was Judge’s Dooley’s Mental State?**

The Commission does not find that the statements reflect actual bias by Judge Dooley. However, the Commission finds that Judge Dooley’s statements could reasonably be interpreted by others, and in fact were interpreted by others, as showing bias. Judge Dooley’s statements undermine public confidence in the Judiciary. In making these statements, the Commission finds Judge Dooley to have been negligent.

**c. What was the Extent of the Actual or Potential Injury caused by Judge Dooley’s Misconduct?**

The Commission finds no evidence of actual injury to any specific individual. However, it is reasonable to assume that Judge Dooley’s statements adversely affected the witnesses, victims, and others who directly or indirectly heard the statements. Judge Dooley’s conduct caused actual injury to the public perception of the Judiciary’s integrity. In that regard, a judge is held to a high standard, a standard “greater than that expected of lawyers and other persons in society.”<sup>5</sup> In his official capacity, a judge has a duty to be patient, courteous, and dignified in all interactions with litigants, jurors, witnesses, lawyers, and others. Canon 3B(4). At a minimum, Judge Dooley’s repeated failure to exercise care in making statements and in failing to recognize the effect his statements had on others caused injury to the Judiciary as an institution.

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<sup>5</sup> *In re Inquiry Concerning a Judge*, 788 P.2d 716, 722 (Alaska 1990).

**d. Are There any Aggravating or Mitigating Circumstances?**

The Commission finds the following aggravating factors:

1. The subjects of the Complaint are multiple statements by Judge Dooley constituting a pattern of conduct.
2. Until the week before the hearing, Judge Dooley failed to express remorse or fully appreciate the impact of the statements.
3. Judge Dooley's statements were made in the courtroom while acting in his official capacity.

The Commission finds the following mitigating factors:

1. Judge Dooley's statements were made while he was a new judge.
2. Judge Dooley was cooperative with the Commission process.
3. Judge Dooley did not act from a selfish or dishonest motive when he made the statements.
4. Since August, 2014, the Commission has not received additional complaints against Judge Dooley that required amending the original charges.
5. Judge Dooley expressed remorse at the hearing.

**4. Recommendation**

As discussed above, while it is difficult to apply the ABA Standards for Imposing Lawyer Sanctions specifically to judges, the Commission finds that the appropriate sanction in this instance to be a public censure. The Commission's recommendation of

this sanction is unanimous. As part of the appropriate sanction, the Commission also recommends that Judge Dooley:

1. Be formally assigned a mentor judge by the Alaska Court System to actively work with him for the next 12 months; and
2. Avail himself of further training, whether through internet sources, long distance learning, or other sources, in the areas of gender sensitivity, cultural awareness, domestic violence and interaction with pro se litigants in both civil and criminal matters.

The Commission anticipates that, by complying with these recommendations, Judge Dooley will uphold the integrity of the Judiciary and exhibit the high standards of conduct expected of Alaska judges.

Dated this 21 day of December, 2015.



Keith B. Levy  
Chairperson  
Alaska Commission on Judicial Conduct