

BEFORE THE COMMISSION ON JUDICIAL DISCIPLINE

STATE OF NEVADA

**FILED**

OCT - 6 1998

NEVADA COMMISSION ON  
JUDICIAL DISCIPLINE

*Michelle Wright*, CLERK

Case No. 9802-222

In the Matter of the  
HONORABLE FRANCES-ANN FINE,  
District Judge, Family Court Division,  
City of Las Vegas, County of Clark,  
State of Nevada,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
DECISION AND ORDER**

The above-entitled matter having come on for hearing on September 2-3, 1998, before the NEVADA COMMISSION ON JUDICIAL DISCIPLINE (hereinafter referred to as the COMMISSION), Frank J. Cremen, Esq. appearing as Special Prosecutor for the State of Nevada Commission on Judicial Discipline, and William B. Terry, Esq. appearing as attorney for the RESPONDENT.

After hearing the allegations and proofs of the parties, the arguments of counsel and having considered the evidence introduced by both parties and being fully advised, the COMMISSION states that this proceeding was a Formal Hearing pursuant to the Administrative and Procedural Rules applicable to the Nevada COMMISSION on Judicial Discipline for the purposes of determining whether the acts and conduct of the RESPONDENT warrant the imposition of discipline. The COMMISSION makes the following Findings of Fact, Conclusions of Law and Decision of the COMMISSION in this matter.

**Findings of Fact**

The COMMISSION finds that the legal evidence presented by the Special Prosecutor at the Formal Hearing clearly and convincingly established each of the facts hereinafter set forth in Paragraphs 1 through 3 of these Findings of Facts:

1. RESPONDENT is a District Court Judge for the County of Clark, State of Nevada, Family Division. That while serving in said capacity in the case of McMonigle v. McMonigle, Case No.

1 D124619, RESPONDENT on or about March 28, 1993, participated in an ex parte telephone  
2 conversation with Stephanie Crowley, an expert psychologist engaged by one of the parties to  
3 the litigation; and thereafter on or about March 30, 1993, directed her law clerk to have an ex  
4 parte telephone conversation with said Stephanie Crowley. That on or about June 8, 1993, while  
5 presiding in this case, RESPONDENT conducted an ex parte conference with William Sheldon  
6 of the Family Mediation and Assessment Center, in which Dr. Lewis Etkoff and Stephanie  
7 Crowley participated on the telephone.

8 2. That RESPONDENT, while serving in the capacity of District Court Judge, Family Division in  
9 the case of Kinnard v. Kinnard, Case No. D186967, appointed her first cousin to wit, Faith  
10 Garfield, to serve as a mediator to the parties without having disclosed to the parties or their  
11 counsel that the aforesaid Faith Garfield was her first cousin; and thereafter on or about June 3,  
12 1996, RESPONDENT scheduled an order to show cause directed to the parties, why they should  
13 not be held in contempt for having failed to pay Faith Garfield for her services.

14 3. That RESPONDENT, while serving in the capacity of District Court Judge, Family Division in  
15 the case of Greisen v. Greisen, Case No. D196398, met ex parte in chambers on or about  
16 February 24, 1996 with William Sheldon of the Family Mediation and Assessment Center and  
17 discussed the results of his interview of the parties and the temporary custody of the party's  
18 children.

19 From the above facts, the COMMISSION concludes:

20 **Conclusions of Law**

21 1. The COMMISSION unanimously concludes that RESPONDENT's conduct as set forth in  
22 paragraph 1 of the Findings of Fact, violated ARJD 11(3) and:

23 a. Canon 2A which provides, "A judge shall respect and comply with the law and shall act  
24 at all times in a manner that promotes public confidence in the integrity and impartiality  
25 of the judiciary"; and

26 b. Canon 3B(7) which provides, "A judge shall accord to every person who has a legal  
27 interest in a proceeding, or that person's lawyer, the right to be heard according to law.

28 A judge shall not initiate, permit, or consider ex parte communications, or consider other

1 communications made to the judge outside the presence of the parties concerning a  
2 pending or impending proceeding\*\*\*.”

3 2. The COMMISSION unanimously concludes that RESPONDENT’s conduct as set forth in  
4 paragraph 2 of the Findings of Fact, violated ARJD 11(3) and:

5 a. Canon 2 which provides, “A judge shall avoid impropriety and the appearance of  
6 impropriety in all of the judge’s activities”;

7 b. Canon 2A which provides, “A judge shall respect and comply with the law and shall act  
8 at all times in a manner that promotes public confidence in the integrity and impartiality  
9 of the judiciary”; and

10 c. Canon 3C(4) which provides in part that “A judge shall avoid nepotism and favoritism.”

11 3. The COMMISSION unanimously concludes that RESPONDENT’s conduct as set forth in  
12 paragraph 3 of the Findings of Fact violated ARJD 11(3) and:

13 a. Canon 2 which provides, “A judge shall avoid impropriety and the appearance of  
14 impropriety in all of the judge’s activities”;

15 b. Canon 2A which provides, “A judge shall respect and comply with the law and shall act  
16 at all times in a manner that promotes public confidence in the integrity and impartiality  
17 of the judiciary”; and

18 c. Canon 3B(7) which provides, “A judge shall accord to every person who has a legal  
19 interest in a proceeding, or that person’s lawyer, the right to be heard according to law.  
20 A judge shall not initiate, permit, or consider ex parte communications, or consider other  
21 communications made to the judge outside the presence of the parties concerning a  
22 pending or impending proceeding\*\*\*.”

23 **Decision**

24 The COMMISSION having made and adopted the foregoing Findings of Fact and Conclusions  
25 of Law deems it appropriate to set forth in some detail the reasoning underlying its Decision.

26 As indicated above, with the exception of Count 2 of the Formal Statement of Charges, the  
27 COMMISSION has found by clear and convincing evidence that each of the remaining allegations of  
28 conduct contained in the Formal Statement of Charges has been established. In regard to Count 2, the

1 COMMISSION finds that the RESPONDENT did in fact engage in an ex parte telephone conference  
2 with Faith Garfield and Dr. Marc Caplan, and met ex parte in her chambers with Dr. Elizabeth Ritchitt,  
3 a psychologist who was thereafter called as a witness at a hearing scheduled by the court. The evidence  
4 presented at the Formal Hearing did not establish by the clear and convincing standard imposed upon  
5 the COMMISSION by its Administrative and Procedural Rules that substantive matters were discussed  
6 at either of the ex parte conferences set forth above.

7 Although not charged in the Formal Statement of Charges, two additional instances of deplorable  
8 ex parte conduct were clearly and convincingly established by the evidence. The RESPONDENT  
9 testified that she received a telephone call from Dr. Marc Caplan at approximately 11:00 p.m. at her  
10 home during the month of November, 1996.<sup>1</sup> Although the RESPONDENT at first testified that nothing  
11 of a substantive nature was discussed, her later testimony clearly established that at least some  
12 discussion of substantive matters occurred. The RESPONDENT testified that she had told Dr. Caplan  
13 to put his concerns in a letter and that Dr. Caplan responded "I am afraid if I put it in a letter to the  
14 parties or their lawyers, that the mother will run. That's what he did say."<sup>2</sup>

15 Although RESPONDENT maintained that she did not read Dr. Caplan's letter until she had a  
16 conference call with the attorneys, the evidence in the case indicates otherwise. The evidence clearly  
17 and convincingly establishes that after RESPONDENT engaged in the telephone conference with Dr.  
18 Caplan and after she received Dr. Caplan's letter, she set a hearing in this matter without informing the  
19 attorneys as to the purpose of the hearing. A letter from Marshall Willick, Esq. to the judge, introduced  
20 into evidence as Exhibit 10, indicates Mr. Willick inquired of the court as follows: "Since I was not  
21 given any reason why this hearing was set or what the issues are, I am requesting guidance on how I am  
22 to proceed\*\*\*."<sup>3</sup>

23 The evidence clearly establishes therefore, that Judge Fine received an ex parte telephone  
24 communication from Dr. Caplan and a letter which she reviewed. Based upon these two ex parte  
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26 <sup>1</sup> See Formal Hearing transcript dated September 3, 1998, page 279.

27 <sup>2</sup> See Formal Hearing transcript dated September 3, 1998, page 391.

28 <sup>3</sup> See Exhibit 10.

1 contacts, the judge on her own, set the matter for hearing. She directed her office to call Dr. Ritchitt to  
2 be present at her chambers the morning of the hearing. Her office informed Dr. Ritchitt that the judge  
3 was considering changing custody from the mother to the father. The judge did in fact change the  
4 custody as her staff had indicated to Dr. Ritchitt.

5 The evidence clearly and convincingly establishes that in the same case, JUDGE FINE received  
6 an ex parte communication in the form of a copy of a letter from Dr. Ritchitt which was addressed to  
7 one of the parties, i.e., Mrs. Kinnard. Based upon statements contained in the letter, RESPONDENT,  
8 without notifying counsel or the parties, entered an Order directing that "the plaintiff, LAURA  
9 KINNARD, shall have no contact with the parties [sic] minor child, Ryan, unless a therapist is present  
10 to monitor their conversations\*\*\*."<sup>4</sup> The court thus significantly altered important parental rights of the  
11 mother without notice or a hearing. Although the RESPONDENT attempts to maintain as a rationale  
12 for her actions that she was acting in the best interest of the child, that the orders she entered were only  
13 temporary, and that some of her actions were taken because of emergency situations, the evidence does  
14 not support and the COMMISSION does not accept the RESPONDENT's rationalization. Dr. Caplan's  
15 letter specifically states that the facts set forth in his letter did not constitute an emergency,<sup>5</sup> yet the judge  
16 without a motion being filed, set a hearing and changed custody of the minor child.

17 The RESPONDENT's conduct evidences a pattern of behavior which virtually eliminates the  
18 judicial process as established in the State of Nevada and the United States of America. JUDGE FINE,  
19 using the rationale of acting in the "best interest of the child," discarded her judicial capacity and became  
20 an advocate. Utilizing rationales of expediency, emergency, a heavy workload and claiming the orders  
21 entered were only temporary, she dispensed with the presentation of evidence in court through testimony  
22 of witnesses with the opportunity of cross-examination by attorneys. After holding ex parte conferences  
23 by telephone and in person with various persons who were performing services for the court, the judge  
24 made decisions on the ultimate issue of the case and directly affected peoples lives. Based upon ex parte  
25 communications she received, she set hearings without any motions being brought by the attorneys.

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27 <sup>4</sup> See Exhibit 1(14).

28 <sup>5</sup> See Exhibit 6, final paragraph.

1 Indeed, as testified by Mr. Willick (attorney for Mrs. Kinnard), he was being ordered to attend a hearing,  
2 the purpose of which was not disclosed to him, nor was it disclosed to Mr. Kinnard. Although a judge  
3 must act in the best interest of the child where custody of a child is at issue, he or she may not dispense  
4 with the normal judicial process. Although RESPONDENT appears to maintain that the process of  
5 receiving ex parte communications from various therapists and counselors was endemic in Family Court  
6 in Clark County, the testimony of LaDeana Gamble (Manager of the Family Mediation Center of the  
7 Eighth Judicial District Court, Family Division) does not support this conclusion. The testimony of  
8 Joyce Gallina (an employee of the Family Mediation Center) called by the RESPONDENT, also does  
9 not support this contention.

10 The evidence clearly and convincingly established that JUDGE FINE appointed her first cousin,  
11 Faith Garfield to serve as a mediator in the case of Kinnard v. Kinnard. She did so without having  
12 disclosed to the parties that Ms. Garfield was her cousin. Although the judge maintains that her failure  
13 to advise counsel of the family relationship was unintentional and that her motivation was to "get this  
14 family back -- healed and back together," she acknowledged that "I didn't -- did not want them to know  
15 there was a relationship."<sup>6</sup> After Ms. Garfield was not paid by the parties, the judge on her own volition,  
16 set an Order to Show Cause why they should not be held in contempt. RESPONDENT's actions,  
17 although they may be well intentioned, create an appearance of impropriety that can only serve to reduce  
18 public confidence in the integrity and impartiality of the judiciary.

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28 <sup>6</sup> See Formal Hearing transcript dated September 3, 1998, page 431.



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CERTIFICATE OF MAILING

I hereby certify that on the 7<sup>TH</sup> day of October, 1998, I placed the Findings of Fact,  
Conclusions of Law, Decision and Order in the United States Mail, postage pre-paid, addressed to  
the undersigned:

William B. Terry, Esq.  
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Special Prosecutor

*Michelle Wright*  
MICHELLE WRIGHT, Commission Clerk

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