

UTAH SUPREME COURT FOR THE STATE OF UTAH

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STATE OF UTAH
JUDICIAL CONDUCT COMMISSION

Re: Inquiry Concerning A Judge
Commissioner and Judge
Pro Tem Marlynn B. Lema

No. 970055
F-005-96

96-5D-005

ORDER

Pursuant to the authority vested in the Supreme Court by article VIII, section 13 of the Utah Constitution, and section 78-7-30(4)(a) of the Code, the court accepts the stipulation consenting to the implementation of the Commission's Findings of Fact, Conclusions of Law, and Order, in this matter.

Date

3/24/97


I. Daniel Stewart
Associate Chief Justice
For The Court

BEFORE THE JUDICIAL CONDUCT COMMISSION

INQUIRY CONCERNING
A JUDGE

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FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

Case No. F-005-96

A quorum of the Commission, having considered the record in this case, enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The following facts were stipulated to by the parties:

1. Ms. Lema waived the notice of formal proceedings required by Rule 6 of the Commission's Rules of Procedure and consented that the Commission could enter Findings of Fact, Conclusions of Law, and Order based on a Stipulation. That Stipulation is part of the record in this case.
2. Ms. Lema stipulated that consistent with Article VIII, Section 13 of the Utah Constitution, and Section 78-7-30(4) of the Utah Code, the record of the proceedings, which shall consist of the original complaint, Ms. Lema's response to it, the Stipulation, and the Commission's Findings of Fact, Conclusions of Law, and Order, shall be certified to the Utah Supreme Court for review; that the Commission's Findings of Fact, Conclusions of Law, and Order may be implemented by the Utah Supreme Court without a hearing; that neither the Commission nor Ms. Lema shall file additional pleadings with, or request oral argument before, the Utah Supreme Court; that if, on its own motion, the Utah Supreme Court schedules oral argument, counsel for the Commission and Ms. Lema shall appear for oral argument and jointly

recommend that the Supreme Court implement the Commission's Findings of Fact, Conclusions of Law, and Order; and that neither the Commission's counsel nor Ms. Lema shall make any other recommendation to, nor argue any other position before, the Utah Supreme Court.

3. On June 28, 1995, during a public court proceeding attended by approximately 20 people, Ms. Lema, while on the bench, wearing her judicial robes, and acting in her official capacity as a judge *pro tem* in the Fifth Judicial District Court of Iron County, Utah, made the following statements:

Good morning. It's Wednesday, the 28th day of June, 1995, and the time is 10:02. I'm going to warn you in advance that I'm in a very bad humor. Those of you who have contested matters may wish to continue them or settle them. I'm not sure I can be terribly objective.

Every working day for the last seven years, I've taken the bench and I've listened patiently to your stories. I'm going to ask you to listen to me for about three minutes while I vent. Hopefully I'll feel better and if I don't we'll continue this session to another day.

I have been slam dunked by the system in Utah repeatedly from the time I was about seven years old. You'd think that after close to 60 years I would have lost my idealism and my belief that education, intelligence, honesty, and diligence would pay off. I have been slam dunked again. The legislature did away with my job some months ago and I've been on a *pro tem* basis. I have dedicated my life to the law and to the welfare of children. So I applied to be a juvenile court judge, assuming that seven years on the bench and all those things I told you about would assure my success in that position.

The reason I have been slam dunked by the system is because I don't fit the mold. And I really have never understood that, because you see my name is Bennett. Lema is a name I picked up along the way due to an unfortunate marriage. My great great grandfather walked along side my great great grandmother while she pushed or pulled the handcart across the plains. One of

my grandmothers was a Merckley coming out of Vernal. There are more Merckleys in Vernal than there are Mormons. My husband is a Bryner, his other great great grandfather was a Bryce. If you'll check your local cemeteries you'll know that the Bennetts and the Merckleys and the Bryces and the Bryners were here before dirt -- but I don't fit the mold. And the reason I don't fit the mold is because I don't play golf with the governor. Mr. Chamberlain is the new juvenile court judge.

Are there any matters to be handled summarily?

4. A videotape of the June 28, 1995 proceedings is attached hereto as Exhibit A.

CONCLUSIONS OF LAW

1. In order to conclude that Ms. Lema engaged in conduct prejudicial to the administration of justice which brought a judicial office into disrepute in violation of Section 78-7-28(1)(e) of the Utah Code, the Commission must (i) identify "the relevant 'unjudicial conduct,' and (ii) [assess] whether that conduct would appear to an objective observer to prejudice public esteem for the judicial office." *In re* Richard Worthen, Utah Supreme Court Case No. 950536, *In re* Gaylen Buckley, Utah Supreme Court Case No. 950537, ___ UAR ___, ___ P.2d ___, filed October 22, 1996, at 29.

2. Having identified Ms. Lema's relevant unjudicial conduct, the Commission now assesses whether that conduct would appear to an objective observer to prejudice public esteem for the judicial office. Ms. Lema's statements that she was not appointed a juvenile judge because she did not "fit the mold," and that the reason she did not fit the mold is because she did not "play golf with the Governor," fall far below the "high standards" required by Canon 1 of the Code of Judicial Conduct (CJC). Also, by making those statements, Ms. Lema violated Canon 2 of the CJC which requires judges to "avoid impropriety and the appearance of impropriety in all

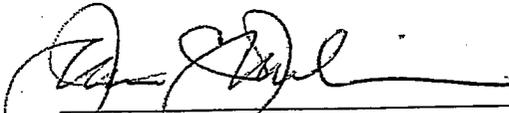
activities.” Ms. Lema’s statements would cause an objective observer to conclude that in her view, Mr. Chamberlain received the judicial appointment (for which she had also applied) not because he was the most qualified applicant, but because he “fit the mold” and “play[ed] golf with the governor.” Ms. Lema did not avoid impropriety or the appearance of impropriety when she publicly, and in her official capacity as a judge *pro tem*, implied that she was the better-qualified applicant for the juvenile judgeship. For these reasons, the Commission concludes that Ms. Lema’s comments from the bench on June 28, 1995 prejudiced public esteem for the judicial office.

ORDER

Marlynn B. Lema is publicly reprimanded for engaging in conduct prejudicial to the administration of justice which brought a judicial office into disrepute in violation of Section 78-7-28(1)(e) of the Utah Code because on June 28, 1995, in her official capacity as a judge *pro tem*, she failed to maintain the high standards required of judges in violation of Canon 1 of the CJC, and failed to avoid impropriety or the appearance of impropriety in violation of Canon 2 of the CJC.

DATED this 15 day of November, 1996.

JUDICIAL CONDUCT COMMISSION



James C. Jenkins, Chair

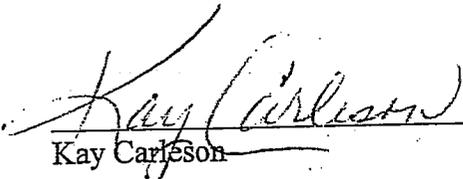
APPROVED AS TO FORM AND CONTENT:



Joane Pappas White
Attorney for Marlynn B. Lema
475 East Main #1
Price, Utah 84501
Attorney for Marlynn B. Lema

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of January, 1996, I served a copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** on Marlynn B. Lema by mailing a copy thereof to her counsel, Joane Pappas White, 475 East Main #1, Price, Utah 84501.



Kay Carlsson

BEFORE THE JUDICIAL CONDUCT COMMISSION

INQUIRY CONCERNING : STIPULATION
: :
A JUDGE : Case No. F-005-96

The Judicial Conduct Commission (Commission) and Marlynn B. Lema, Attorney at Law, (Ms. Lema) stipulate as follows:

A. Notice of Formal Proceedings. Ms. Lema waives the notice of formal proceedings required by Rule 6 of the Commission's Rules of Procedure and consents that the Commission may enter Findings of Fact, Conclusions of Law, and Order based on this Stipulation.

B. Findings of Fact, Conclusions of Law, and Order.

1. The following facts are uncontroverted: On June 28, 1995, Ms. Lema, while acting as a judge *pro tem* in the Fifth Judicial District Court of Iron County, Utah, made the statements attributed to her in the transcript attached hereto as Exhibit A. The Commission shall enter the foregoing uncontroverted facts in its formal Findings of Fact.

2. The Commission shall enter conclusions of law and an order publicly reprimanding Ms. Lema for engaging in conduct prejudicial to the administration of justice which brought a judicial office into disrepute because she:

a. Failed to maintain and personally observe high standards of conduct so that the integrity of the judiciary will be preserved, in violation of Canon 1 of the Code of Judicial Conduct (CJC).

b. Failed to exhibit conduct that promotes confidence in the integrity of the judiciary, in violation of Canon 2A of the CJC.

3. Before entry, the Commission shall obtain approval as to form from counsel for Ms. Lema with respect to its proposed Findings of Fact, Conclusions of Law, and Order.

C. Formal hearing. Ms. Lema waives the formal hearing required by Section 78-7-30(2)(b) of the Utah Code and consents that after approval as to form by her, the Commission's Findings of Fact, Conclusions of Law, and Order may be entered by the Commission and certified to the Utah Supreme Court for review.

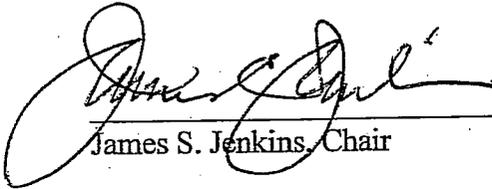
D. Mandatory Supreme Court review. Consistent with Section 78-7-30(4) of the Utah Code, the record of the proceedings, which shall consist of the original complaint, Ms. Lema's response to it, this Stipulation, and the Commission's Findings of Fact, Conclusions of Law, and Order, shall be certified to the Utah Supreme Court for review. Ms. Lema consents that the Commission's Findings of Fact, Conclusions of Law, and Order may be implemented by the Utah Supreme Court without a hearing. Neither the Commission nor Ms. Lema shall file additional pleadings with, or request oral argument before, the Utah Supreme Court. If, on its own motion, the Utah Supreme Court schedules oral argument, counsel for the Commission and Ms. Lema shall appear for oral argument and jointly recommend that the Supreme Court implement the Commission's Findings of Fact, Conclusions of Law, and Order. Neither the Commission's counsel nor Ms. Lema shall make any other recommendation to, nor argue any other position before, the Utah Supreme Court.

DATED this 8th day of October, 1996.


Marlynn B. Lema

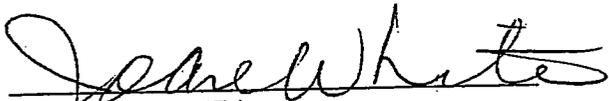
DATED this 15 day of November, 1996.

THE JUDICIAL CONDUCT COMMISSION


James S. Jenkins, Chair



Steven H. Stewart, A-3114
Judicial Conduct Commission
Executive Director and Examiner
645 South 200 East, Suite 104
Salt Lake City, UT 84111
801/533-3200



Joane Pappas White
475 East Main #1
Price, Utah 84501
Attorney for Marlynn B. Lema

CERTIFICATE OF SERVICE

I hereby certify that on the 15TH day of NOVEMBER, 1996, I served a copy of the foregoing **STIPULATION** on Marlynn B. Lema by mailing a copy thereof to her counsel, Joane Pappas White, 475 East Main #1, Price, Utah 84501.



Steven H. Stewart