

Harding

IN THE SUPREME COURT OF THE STATE OF UTAH

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In re: Judicial Conduct Commission  
Inquiry Concerning a Judge;  
03-4D-006

Case No. 20030173-SC


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FINAL ORDER

The Court hereby acknowledges the receipt of the recommended Order of Removal From Office from the Utah Judicial Conduct Commission in this matter. In view of the resignation from judicial office received from Mr. Harding on February 28, 2003, the recommended sanction of removal has become moot, but the Court orders that Mr. Harding be permanently disqualified from serving in any judicial or quasi-judicial position in the State of Utah.

For The Court:

March 25, 2003  
Dated

  
Christine M. Durham  
Chief Justice

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BEFORE THE UTAH JUDICIAL CONDUCT COMMISSION

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IN RE: )  
          ) ORDER OF REMOVAL FROM OFFICE  
          ) )  
HON. RAY M. HARDING, JR. ) Case No. 03-4D-006  
          )

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This matter came before the Judicial Conduct Commission for a confidential hearing on February 1, 2003. Senator Gene Davis was absent. Representatives Katherine Bryson and Neal Hendrickson recused themselves and did not attend or participate in the confidential hearing. All other Commissioners were present.

Judge Harding was present in person, and was represented by counsel, Edward K. Brass. Judge Harding's father, daughter, and son-in-law were also present. Colin R. Winchester, Executive Director of the Judicial Conduct Commission, appeared as the Examiner. The proceedings were transcribed by a certified court reporter.

The Chair announced that Judge Harding's Motion to Stay Proceedings had been denied upon a majority vote of the Commission, and that a written Order would follow.

Prior to the confidential hearing, Judge Harding, Mr. Brass and Mr. Winchester had agreed upon and executed a written Stipulation. The Stipulation contained facts that Judge Harding had agreed that the Examiner could prove by a preponderance of the evidence. Mr. Winchester read the Stipulation into the record, and submitted the facts contained therein as his case-in-chief.

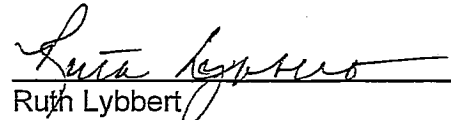
Judge Harding exercised his constitutional rights under the Fifth Amendment to the United States Constitution and Article I, Section 12 of the Constitution of Utah.

Mr. Winchester and Mr. Brass argued their respective positions, and submitted the matter to the Commission for deliberation and decision.

The Commission, having heard the Stipulation and the arguments of counsel, and having duly deliberated, and having entered its Findings of Fact and Conclusions of Law, now therefore orders that Judge Harding shall be removed from office.

This Order shall only take effect upon implementation of the same by the Utah Supreme Court.

DATED this 12<sup>th</sup> day of February, 2003.

  
\_\_\_\_\_  
Ruth Lybbert  
Chair, Judicial Conduct Commission

CERTIFICATE OF SERVICE

I certify that on the 13th day of February, 2003, I hand-delivered a true and correct copy of the foregoing Order of Removal from Office to the following:

Edward K. Brass  
175 East 400 South #400  
Salt Lake City, Utah 84111

*Colum Winchester*

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BEFORE THE UTAH JUDICIAL CONDUCT COMMISSION

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IN RE: ) FINDINGS OF FACT AND  
          ) CONCLUSIONS OF LAW  
          ) )  
HON. RAY M. HARDING, JR. ) Case No. 03-4D-006  
          ) )

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Judge Harding exercised his constitutional rights under the Fifth Amendment to the United States Constitution and Article I, Section 12 of the Constitution of Utah.

Mr. Winchester and Mr. Brass argued their respective positions, and submitted the matter to the Commission for deliberation and decision.

The Commission, having heard the Stipulation and the arguments of counsel, and having duly deliberated, now therefore enters the following:

#### FINDINGS OF FACT

1. State law provides that it is a felony for any person to unlawfully, knowingly and intentionally possess or use heroin or cocaine.
2. At about 7:30 a.m. on July 13, 2002, Judge Harding's wife placed a 911 call to the Utah County Sheriff's Office. During the 911 call, Mrs. Harding stated that her husband had been up all night using drugs and that he needed help.
3. The first law enforcement officers to arrive at the Harding home as a result of the 911 call were James Cowan (Alpine/Highland Police Department), Rick Shumway (Utah County Sheriff's Office), and Wayne Keith (Utah County Sheriff's Office).
4. When those officers arrived, Judge Harding spoke briefly with them. Deputy Keith noticed that Judge Harding's speech was slurred, and that Judge Harding had difficulty maintaining his balance. At the time, Deputy Keith was approximately one yard away from Judge Harding, and did not smell the odor of alcohol coming from Judge Harding.
5. Shortly after those officers arrived, Mrs. Harding led Deputy Keith around the back of the house to a tack shed, where she showed Deputy Keith a baggie of white powder. Mrs. Harding told Deputy Keith that Judge Harding had used drugs in the tack shed.

6. Mrs. Harding then took Deputy Keith to a studio above the tack shed. From the studio, Mrs. Harding retrieved a white plastic grocery sack which contained several items that appeared to be drug paraphernalia. Mrs. Harding told Deputy Keith that she had seen Judge Harding place the sack in a dumpster, and that she had retrieved it and hidden it.
7. Officer Cowan field tested a powdery substance from the grocery sack. The substance indicated positive for cocaine.
8. At about 2:40 p.m. on July 13, 2002, officers obtained two search warrants from Third District Judge Denise P. Lindbergh. One search warrant was for blood, urine and hair samples from Judge Harding. The other search warrant was for items from the Harding home, curtilage, outbuildings and vehicles.
9. At about 3:30 p.m. on July 13, 2002, forensic nurse Suzette Mitchell obtained blood, urine and hair samples from Judge Harding.
10. On July 15, 2002, Ms. Mitchell delivered the blood and urine samples to the toxicology laboratory operated by the Utah Department of Health's Division of Epidemiology and Laboratory Services. On that same date, Ms. Mitchell shipped the hair sample, in a sealed package via Airborne Express, to Northwest Drug Testing in Salt Lake City.
11. Toxicologist Bruce Beck analyzed Judge Harding's urine sample at the toxicology lab according to standard procedures. Cocaine and benzoylecgonine were found in the urine sample.
12. Toxicologist Susan Rasmussen analyzed Judge Harding's blood sample at the toxicology lab according to standard procedures. Benzoylecgonine was found in the blood sample.

13. Miles Merrill analyzed Judge Harding's hair sample at Northwest Drug Testing according to standard procedures. Cocaine, benzoylecgonine, and 6-Acetylmorphine were found in the hair sample.
14. The presence of benzoylecgonine in a biological sample is an indication of cocaine use.
15. The presence of 6-Acetylmorphine in a hair sample is an indication of heroin use.
16. Several items suspected to be controlled substances or drug paraphernalia were collected pursuant to the search warrant for the Harding home, curtilage, outbuildings and vehicles. These items were collected and forwarded to the State of Utah Crime Laboratory according to standard procedures.
17. Criminalist Jennifer McNair analyzed several of the items at the crime lab according to standard procedures. Some of the results follow:
  - a. cocaine was identified in the residue taken from a green straw (Item JW1a, found in the white plastic grocery sack given to Deputy Keith by Mrs. Harding);
  - b. cocaine was identified in the residue taken from a white straw (Item JW1b, found in the white plastic grocery sack given to Deputy Keith by Mrs. Harding);
  - c. cocaine was identified in the residue taken from a metal spoon (Item JW2a, found in the white plastic grocery sack given to Deputy Keith by Mrs. Harding);
  - d. heroin was identified in the residue taken from a piece of plastic inside a piece of foil (Item JW2b, found in the white plastic grocery sack given to Deputy Keith by Mrs. Harding);
  - e. cocaine was identified in the residue taken from a white straw (Item JW2c, found in the white plastic grocery sack given to Deputy Keith by Mrs. Harding);
  - f. cocaine was identified in the residue taken from a green straw (Item JW10, found in the white plastic grocery sack given to Deputy Keith by Mrs. Harding);

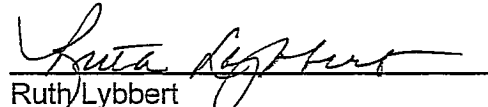


- g. cocaine was identified in the 290 milligrams of white powder taken from a piece of plastic (Item 19, found in a camelback hydration pack in the studio);
  - h. heroin was identified in the residue taken from a piece of foil (Item 17, found in tack room);
  - i. heroin was identified in the residue taken from a red straw (Item 18a, found in tack room);
  - j. cocaine was identified in the residue taken from a red straw (Item 26, found in drink holder of 1999 Chevrolet pickup truck, license number 105 YCF, registered to Ray M. Harding); and
  - k. cocaine was identified in the residue taken from a metal spoon (Item 32a, found wrapped in a towel in a ravine near the Harding home with the assistance of Mrs. Harding).
- 18. Judge Harding unlawfully, knowingly and intentionally possessed or used heroin or cocaine on or about, or just prior to, July 13, 2002, in violation of Utah law.
  - 19. Judge Harding has no prior history of judicial discipline.

CONCLUSIONS OF LAW

1. Judge Harding's actions constitute conduct prejudicial to the administration of justice which brought his judicial office into disrepute, in that:
  - a. Judge Harding's actions violated Code of Judicial Conduct Canon 2A, which requires judges to respect and comply with the law; and
  - b. Judge Harding's actions appear, to objective observers (the Judicial Conduct Commissioners), to prejudice public esteem for the judicial office.
2. Judge Harding should be removed from office.

DATED this 12<sup>th</sup> day of February, 2003.

  
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Ruth Lybbert  
Chair, Judicial Conduct Commission

CERTIFICATE OF SERVICE

I certify that on the 13th day of February, 2003, I hand-delivered a true and correct copy of the foregoing Findings of Fact and Conclusions of Law to the following:

Edward K. Brass  
175 East 400 South #400  
Salt Lake City, Utah 84111

*Alan Winchester*