

NOV 4 - 2016

IN THE SUPREME COURT OF THE STATE OF UTAH

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In re: Inquiry Concerning a Judge,

No. 20160710-SC

JCC Case No. 15-3JC-065

ORDER

The Judicial Conduct Commission has recommended that this Court impose a reprimand pursuant to a stipulation in this matter. Chief Justice Matthew B. Durrant, Associate Chief Justice Thomas R. Lee, and Justice Deno G. Himonas have recused themselves. Presiding Judge J. Frederick Voros, Jr., Associate Presiding Judge Gregory K. Orme, and Judge Jill M. Pohlman of the Court of Appeals participated in the review of the recommendation and stipulation. Pursuant to the authority vested in the Supreme Court by Article VIII, Section 13, of the Utah Constitution and Section 78A-11-111 of the Utah Code, the Court approves the implementation of the Judicial Conduct Commission's Order of Reprimand.

FOR THE COURT:

11-4-2016
Date


Christine M. Durham
Justice

BEFORE THE UTAH JUDICIAL CONDUCT COMMISSION

IN RE:

HON. MICHAEL KWAN

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ORDER OF REPRIMAND

Case No. 15-3JC-065

The Judicial Conduct Commission authorized its staff to negotiate the terms of and enter into a written Stipulation for discipline by consent in this matter. The Stipulation has been signed and approved by the Commission's Executive Director and the Hon. Michael Kwan, and sets forth facts and conclusions that support both a finding of judicial misconduct and the issuance of a reprimand. The Judicial Conduct Commission hereby approves the Stipulation and recommends that the Utah Supreme Court impose a reprimand in this matter.

The Judicial Conduct Commission hereby orders that the Hon. Michael Kwan be reprimanded. This Order shall only take effect upon implementation of the same by the Utah Supreme Court.

DATED this 30 day of August, 2016.



Brian S. King, Chair
Judicial Conduct Commission

CERTIFICATE OF MAILING

I hereby certify that on November 4, 2016, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

COLIN R. WINCHESTER
colinwinchester5862@gmail.com

MICHAEL R. KWAN
mwk7198@taylorsvilleut.gov

By 
Administrative Secretary

Case No. 20160710
JUDICIAL CONDUCT COMMISSION, 15-3JC-065

CERTIFICATE OF SERVICE

I certify that on the 31st day of August 2016, I mailed, via postage pre-paid first class mail, a true and correct signed copy of the foregoing Order of Reprimand to:

Hon. Michael Kwan
Taylorsville Justice Court
2600 West Taylorsville Boulevard
Taylorsville, Utah 84118



BEFORE THE UTAH JUDICIAL CONDUCT COMMISSION

IN RE:

HON. MICHAEL KWAN

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Case No. 15-3JC-065

The Judicial Conduct Commission ("JCC"), having reviewed the parties' Stipulation and having approved the same, now therefore enters the following:

FINDINGS OF FACT

1. Hon. Michael Kwan ("Judge Kwan") was appointed to the Taylorsville Justice Court in April 1998 and has served continuously as a full-time justice court judge since that time.
2. Over ten years ago, Judge Kwan was nominated to stand for election as the secretary of OCA-Asian Pacific American Advocates ("OCA"), a national non-profit organization dedicated to advancing the social, political, and economic well-being of Asian Pacific Americans.
3. Prior to accepting the nomination, Judge Kwan and AOC General Counsel Brent Johnson ("Johnson") discussed the ethical considerations that might arise from Judge Kwan's service as OCA secretary. Johnson expressed no ethical concerns, and neither Johnson nor Judge Kwan considered it necessary to seek an opinion from the Ethics Advisory Committee.

4. Judge Kwan accepted the nomination and was elected and served as OCA's secretary. He later served as OCA's executive vice-president, and in January 2015, began to serve as OCA's president.

5. Judge Kwan did not speak with Johnson about the ethical considerations that might arise from his service as executive vice-president or president.

6. During Judge Kwan's term as president, OCA posted articles and press releases on its website that included Judge Kwan's name and judicial title.

7. During Judge Kwan's term as president, OCA took public positions on various legislative proposals and actions other than those limited to the law, the legal system and the administration of justice. On occasion, OCA issued articles or press releases that included comments from or attributed to Judge Kwan.

8. During Judge Kwan's term as president, OCA joined an amicus brief filed by another entity in a case pending before the United States Supreme Court. OCA issued a press release about the brief that included comments attributed to Judge Kwan. Judge Kwan had not been consulted about the comments, and would not have approved the comments if he had been consulted.

9. During Judge Kwan's term as president, OCA issued articles or press releases criticizing certain candidates for political office for having used racially or ethnically disparaging rhetoric against people of Asian or Pacific Islander descent.

10. During Judge Kwan's term as president, Judge Kwan appeared at an OCA fund-raising event.

11. In June 2015, the Judicial Conduct Commission (JCC) received the complaint in this matter.

12. After the complaint was received, the JCC requested an opinion from the Ethics Advisory Committee as to whether a full-time justice court judge may ethically serve as the national president of an organization dedicated to advancing the social, political, and economic well-being of a specific ethnic group.

13. On November 10, 2015, the Ethics Advisory Committee issued Informal Opinion 15-01, in which it opined that a full-time justice court judge could not ethically serve in such a position.

14. On or about November 19, 2015, the JCC notified Judge Kwan about the complaint and Informal Opinion 15-01. Judge Kwan immediately tendered his resignation as OCA president.

15. Judge Kwan asked the Ethics Advisory Committee for additional guidance.

16. On April 27, 2016, the Ethics Advisory Committee issued Informal Opinion 16-02. The opinion provided additional guidance, but did not change Informal Opinion 15-01's conclusion.

17. Judge Kwan did not intend to violate the Code of Judicial Conduct by serving as OCA president. To the contrary, he intended to: aid and lift up the Asian Pacific American community; fight against injustice, discrimination and inequality; and build bridges of understanding and unity.

18. Judge Kwan has accepted responsibility for his actions and has expressed sincere remorse for any harm his actions may have caused.

19. Judge Kwan did not satisfy his personal desires or profit as a result of his service as OCA president.

20. In November 2005, Judge Kwan was reprimanded by the Utah Supreme Court for failing to maintain appropriate patience, dignity and courtesy in a criminal case.

21. Based on a complaint received in 2013, which was dismissed in 2014, the JCC informally advised Judge Kwan to avoid actions that gave rise to two of allegations contained in the complaint.

CONCLUSIONS OF LAW

1. Judge Kwan's service as OCA president violated Code of Judicial Conduct Rules 1.2, 2.10, 3.1, 3.2, 3.7 and Canon 4.

2. Judge Kwan negligently (but not intentionally, willfully or with bad faith) engaged in conduct prejudicial to the administration of justice which brings a judicial office into disrepute.

3. Reprimand is an appropriate sanction in this matter.

DATED this 30 day of August, 2016.



Brian S. King, Chair
Judicial Conduct Commission

CERTIFICATE OF SERVICE

I certify that on the 3/5 day of August, 2016, I mailed, via postage pre-paid first class mail, a true and correct signed copy of the foregoing Findings of Fact and Conclusions of Law to:

Hon. Michael Kwan
Taylorsville Justice Court
2600 West Taylorsville Boulevard
Taylorsville, Utah 84118

Alan Winchester

BEFORE THE UTAH JUDICIAL CONDUCT COMMISSION

IN RE:

HON. MICHAEL KWAN

STIPULATION

Case No. 15-3JC-065

COME NOW THE UNDERSIGNED AND STIPULATE AND AGREE AS FOLLOWS:

1. Hon. Michael Kwan ("Judge Kwan") was appointed to the Taylorsville Justice Court in April 1998 and has served continuously as a full-time justice court judge since that time.
2. Over ten years ago, Judge Kwan was nominated to stand for election as the secretary of OCA-Asian Pacific American Advocates ("OCA"), a national non-profit organization dedicated to advancing the social, political, and economic well-being of Asian Pacific Americans.
3. Prior to accepting the nomination, Judge Kwan and AOC General Counsel Brent Johnson ("Johnson") discussed the ethical considerations that might arise from Judge Kwan's service as OCA secretary. Johnson expressed no ethical concerns, and neither Johnson nor Judge Kwan considered it necessary to seek an opinion from the Ethics Advisory Committee.
4. Judge Kwan accepted the nomination and was elected and served as OCA's secretary. He later served as OCA's executive vice-president, and in January 2015, began to serve as OCA's president.

5. Judge Kwan did not speak with Johnson about the ethical considerations that might arise from his service as executive vice-president or president.

6. During Judge Kwan's term as president, OCA posted articles and press releases on its website that included Judge Kwan's name and judicial title.

7. During Judge Kwan's term as president, OCA took public positions on various legislative proposals and actions other than those limited to the law, the legal system and the administration of justice. On occasion, OCA issued articles or press releases that included comments from or attributed to Judge Kwan.

8. During Judge Kwan's term as president, OCA joined an amicus brief filed by another entity in a case pending before the United States Supreme Court. OCA issued a press release about the brief that included comments attributed to Judge Kwan. Judge Kwan had not been consulted about the comments, and would not have approved the comments if he had been consulted.

9. During Judge Kwan's term as president, OCA issued articles or press releases criticizing certain candidates for political office for having used racially or ethnically disparaging rhetoric against people of Asian or Pacific Islander descent.

10. During Judge Kwan's term as president, Judge Kwan appeared at an OCA fund-raising event.

11. In June 2015, the Judicial Conduct Commission (JCC) received the complaint in this matter.

12. After the complaint was received, the JCC requested an opinion from the Ethics Advisory Committee as to whether a full-time justice court judge may ethically serve as the national president of an organization dedicated to advancing the social, political, and economic well-being of a specific ethnic group.

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14. On or about November 19, 2015, the JCC notified Judge Kwan about the complaint and Informal Opinion 15-01. Judge Kwan immediately tendered his resignation as OCA president.

15. Judge Kwan asked the Ethics Advisory Committee for additional guidance.

16. On April 27, 2016, the Ethics Advisory Committee issued Informal Opinion 16-02. The opinion provided additional guidance, but did not change Informal Opinion 15-01's conclusion.

17. Judge Kwan did not intend to violate the Code of Judicial Conduct by serving as OCA president. To the contrary, he intended to: aid and lift up the Asian Pacific American community; fight against injustice, discrimination and inequality; and build bridges of understanding and unity. Nevertheless, Judge Kwan's service as OCA president violated Code of Judicial Conduct Rules 1.2, 2.10, 3.1, 3.2, 3.7 and Canon 4.

18. Judge Kwan negligently (but not intentionally, willfully or with bad faith) engaged in conduct prejudicial to the administration of justice which brings a judicial office into disrepute.

19. Judge Kwan has accepted responsibility for his actions and has expressed sincere remorse for any harm his actions may have caused.

20. Judge Kwan did not satisfy his personal desires or profit as a result of his service as OCA president.

21. In November 2005, Judge Kwan was reprimanded by the Utah Supreme Court for failing to maintain appropriate patience, dignity and courtesy in a criminal case.

22. Based on a complaint received in 2013, which was dismissed in 2014, the JCC informally advised Judge Kwan to avoid actions that gave rise to two of allegations contained in the complaint.

23. Reprimand is an appropriate sanction in this matter and Judge Kwan agrees to accept the same.



Colin R. Winchester
Executive Director
Judicial Conduct Commission

08/22/2016

Date



Hon. Michael Kwan

8/22/16
Date