

IN THE SUPREME COURT OF THE STATE OF UTAH FILED  
UTAH APPELLATE COURTS

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NOV 07 2005

In re: Judicial Conduct Commission  
Inquiry Concerning a Judge;

Case No. 20050949-SC  
JCC 05-3JC-082

Hon. Michael W. Kwan

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ORDER

Pursuant to the authority vested in the Supreme Court by Article VIII, Section 13 of the Utah Constitution and Utah Code Ann. § 78-8-107, the Court approves the implementation of the Judicial Conduct Commission's Order of Reprimand.

For The Court:

November 1, 2005  
Dated

Christine M. Durham  
Christine M. Durham  
Chief Justice

MAILING CERTIFICATE

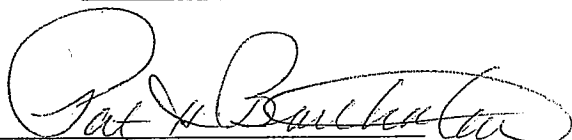
I certify that on the 7th day of November, 2005, I mailed a true and correct copy of the foregoing Notice, postage prepaid, to the following addresses:

Colin R. Winchester  
Utah Judicial Conduct Commission  
645 South 200 East, Suite 104  
Salt Lake City, Utah 84111

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

Walter R. Bugden, Esq.  
BUGDEN and ISACCSO  
623 E. 2100 S.  
Salt Lake City, Utah 84106

Date Nov. 7, 2005



Pat H. Bartholomew  
Clerk of Court

Case No. 20050127-SC  
JCC 05-5PT-003

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BEFORE THE UTAH JUDICIAL CONDUCT COMMISSION

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IN RE:

HON. MICHAEL W. KWAN

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ORDER OF REPRIMAND

Case No. 05-3JC-082

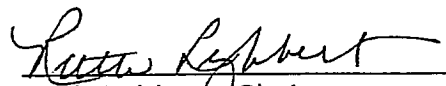
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On October 11, 2005, the Judicial Conduct Commission received and reviewed a written Stipulation signed by Colin R. Winchester and the Honorable Michael W. Kwan. The Stipulation sets forth facts and conclusions that support both a finding of judicial misconduct and the issuance of a reprimand. The Commission voted to approve the Stipulation and to recommend that the Supreme Court impose a reprimand in this matter.

Based on the Stipulation and the Commission's approval of the same, the Judicial Conduct Commission hereby orders that the Hon. Michael W. Kwan be reprimanded.

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

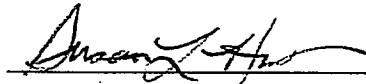
DATED this 11<sup>th</sup> date of October, 2005.

  
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Ruth Lybbert, Chair  
Judicial Conduct Commission

CERTIFICATE OF SERVICE

I certify that on the 12<sup>th</sup> day of October 2005, I mailed, via postage pre-paid first class mail, a true and correct signed copy of the foregoing Order of Public Reprimand to:

Walter F. Bugden  
Bugden & Isaacson, LLC  
623 E. 2100 S.  
Salt Lake City, Utah 84106

  
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that previous discovery orders did not include the document.

7. After a lengthy discussion with Mr. Miller about whether previous court orders required the City to produce the document, Judge Kwan told Mr. Miller that he seemed to be raising the "Clinton defense."

8. Judge Kwan explained that Mr. Miller's argument was "the same as President Clinton arguing that when asked if he 'is' having sex outside of marriage, his answer would be dependent on what the definition of 'is' is."

9. Mr. Miller stated that he did not understand the Court's analogy. Judge Kwan then explained that the City's argument was similar to President Clinton claiming that he understood he was not supposed to have sex outside of marriage, but that "nobody told him he couldn't put his penis in somebody else's mouth."

10. Judge Kwan's comments were heard by Mr. Miller, Mr. Cook, the court clerk, and a bailiff. There were several other adults in the courtroom when the comments were made who likely heard the comments.

11. Judge Kwan has never been publicly, privately or informally disciplined by the JCC or the Utah Supreme Court.

#### APPLICABLE PROVISIONS OF CODE OF JUDICIAL CONDUCT

Code of Judicial Conduct Canon 3B(4) requires judges to "be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity . . ."

#### CONCLUSIONS OF LAW

1. Judge Kwan's comments in court on December 8, 2004 violate Canon 3B(4) of the Code of Judicial Conduct.

2. Judge Kwan's comments in court on December 8, 2004 constitute conduct prejudicial to the administration of justice which brings a judicial office into

disrepute, in violation of: Article VIII, Section 13 of the Constitution of Utah; Utah Code Ann. §78-8-103(1)(e).

3. Given the facts as set forth herein, a reprimand is the appropriate sanction in this matter.

ORDER TO BECOME EFFECTIVE ONLY UPON IMPLEMENTATION

The order of reprimand shall take effect only upon implementation of the same by the Utah Supreme Court. The JCC will recommend that the Utah Supreme Court issue a reprimand to Judge Kwan. However, the Supreme Court is not bound by any JCC recommendation. Rather, it may approve, reject, or modify the recommendation as it sees fit.

Colin Winchester 10/11/05  
Colin R. Winchester Date  
Executive Director,  
Judicial Conduct Commission

[Signature] 10/3/05  
Hon. Michael W. Kwan Date

Judicial Conduct Commission:

Walter F. Bugden 9/23/05  
Walter F. Bugden Date  
Attorney for Hon. Michael W. Kwan

Ruth Lybbert 10/4/05  
Ruth Lybbert, Chair Date