

BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS
FOR THE STATE OF SOUTH DAKOTA

INQUIRY CONCERNING
JUDGE A. P. FULLER

NOTICE OF FORMAL
PROCEEDINGS

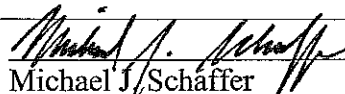
TO: THE HONORABLE A. P. FULLER

You are hereby advised that formal proceedings are being commenced against you in connection with a complaint before the Commission on Judicial Qualifications. You have the right to file a written Answer to the charges within thirty (30) days after service of the Notice and Complaint upon you. Service of such Answer shall be made to the Commission counsel in this case, Michael J. Schaffer at his office at 412 West 9th Street, Suite 1, Sioux Falls, South Dakota

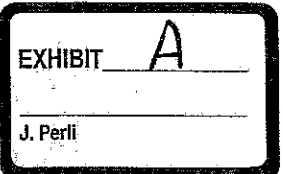
57104.

Dated at Sioux Falls, South Dakota, this 7th day of September, 2010.

SCHAFFER LAW OFFICE, PROF. LLC



Michael J. Schaffer
412 West 9th Street, Suite 1
Sioux Falls, SD 57104-3602
Telephone (605) 274-6760
Facsimile: (605) 274-6764
Commission Counsel



BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS
FOR THE STATE OF SOUTH DAKOTA

*
INQUIRY CONCERNING * COMPLAINT
JUDGE A. P. FULLER *
*

Commission counsel for the Commission on Judicial Qualifications, for these formal proceedings and complaint concerning Judge A.P. Fuller, states and alleges as follows:

1. Judge A.P. "Pete" Fuller, is a Circuit Court Judge in the Seventh Judicial Circuit in the State of South Dakota, with chambers in Rapid City, South Dakota.

2. On or about June 24, 2010, the Judicial Qualifications Commission for the State of South Dakota served a copy of a Complaint that had been filed on Judge Fuller, giving him ten (10) days within which to respond to the Complaint. A copy of the transmittal papers and the Complaint are attached hereto and incorporated herein by this reference as Exhibit "1".

3. Among other things, the Complaint alleged that on April 28, 2010, during testimony in a juvenile proceeding, when officer Joshua Twedt was on the witness stand, Judge Fuller questioned the officer and following the officer's response uttered the statement "bunch of racists."

4. The Complainants against Judge Fuller allege that he violated Canons 1, 2, and 3 of the Code of Judicial Conduct contending that his conduct in the courtroom gave an appearance of impropriety, suggested that Judge Fuller lacked the ability to perform the duties of judicial office impartially and diligently and also potentially had the effect of impacting the young officer's career.

5. In his response to the Judicial Qualifications Commission, Judge Fuller sent a letter dated June 28, 2010, stating simply: "The allegation is correct." A copy of the letter is attached hereto and incorporated herein by this reference as Exhibit "2".

6. Following receipt of Judge Fuller's response, the Commission obtained a copy of the adjudicatory hearing as well as the actual tape of that proceeding.

7. The hearing transcript at page 8, indicates that Judge Fuller did indeed make the comment, "bunch of racists".

8. Moreover, the Commission's further review of the transcript of that proceeding indicated that Judge Fuller made additional comments at the close of that proceeding which both in statement and tone of voice indicated disgust with the police officers in Rapid City. A copy of the transcript of the adjudicatory hearing is attached hereto and incorporated herein by this reference as Exhibit "3".

9. The tone of the comments and a subsequent investigation by Commission counsel suggests that Judge Fuller by his demeanor and tone of voice expressed his disbelief of and disgust for the witness for law enforcement.

10. The Judicial Qualifications Commission elected to commence an investigation of the complaint filed against Judge Fuller and issues concerning his demeanor. Toward that end, the Judicial Qualifications Commission directed then Commission counsel, Dave Nelson, to conduct that investigation.

11. Attorney Nelson conducted an investigation by contacting and interviewing a number of individuals and on August 7, 2010, transmitted his report of that investigation to the members of the Judicial Qualifications Commission. A copy of the Affidavit of Mr. Nelson along with his report is attached hereto and incorporated herein by this reference as Exhibit "4".

12. In connection with the submission of the Complaint to Judge Fuller, Judge Fuller was advised that the Rules of Commission are found in the Appendix to SDCL §16-1A.

13. Those Rules relating to judicial discipline make clear that the proceedings are confidential. Those Rules provide in pertinent part:

All proceedings involving allegations of misconduct by or the disability of a judge shall be kept confidential until the Commission's recommendation to the Supreme Court is filed or the accused requests that the matter be public, or the investigation is predicated upon a conviction of the judge for a crime as defined in SDCL §16-1A-12. All participants in the proceeding shall conduct themselves so as to maintain the confidentiality of the proceeding. Any violation by any person of the requirement of confidentiality shall constitute contempt and shall be punishable as such by the Supreme Court.

Rules of Procedure of the Judicial Qualifications Commission III. Judicial Discipline 1.
Proceedings Confidential – Violation as Contempt.

14. On or about July 13, 2010, Judge Fuller before a proceeding in his Court in informal discussions with Assistant Attorney General Heidi Linngren, indicated that he had been the subject of a complaint with the Judicial Qualifications Commission, made a number of comments to that effect, referred to the specific complaint, all in the presence of Ms. Linngren, a number of student interns and anyone else who may have been in the courtroom.

15. These comments were made in violation of the Rules of Procedure of the Judicial Qualifications Commission, concerning confidentiality and are potentially subject to contempt by the South Dakota Supreme Court.

16. Further, the Commission learned in the course of its investigation into matters concerning the demeanor and conduct of Judge Fuller, that Judge Fuller has referred to juvenile court as "little prick day." These comments have been made in public in the courtroom at which other members of the Bar and public have been present and these comments call into question

Judge Fuller's impartiality and whether he conducts proceedings in a manner that is dignified and courteous to the litigants, lawyers and others with whom he deals in an official capacity.

17. In connection with the investigation, in a particular proceeding, Judge Fuller in chambers referred to one of the attorneys as "asshole" in front of the other lawyers. The comments were believed to be in jest, but also were clearly inappropriate. During the trial, the Judge gave the same attorney to whom he had made the derogatory comment the "bird" from the bench, also apparently in jest, and somewhat surreptitiously.

18. Also, during the trial, Judge Fuller commented that the case had been reversed on appeal and on retrial Judge Fuller believed that the Supreme Court was wrong in deciding the appeal and he made the same or similar rulings on retrial as those that constituted grounds for the original appeal. As a result, the attorney filed a second appeal, agreed not to charge his client and ultimately settled the case pending appeal. Prior to that proceeding, Judge Fuller commented to that attorney, "I have been waiting for this for a long time," an apparent reference to a prior proceeding that that lawyer had against Judge Fuller when Judge Fuller was in private practice.

19. These comments and this behavior caused concern to the attorney's clients and raised questions concerning Judge Fuller's impartiality, and treatment of the lawyer who appeared before him.

20. Further, in a civil proceeding, Judge Fuller contacted one of the attorneys in the case *ex parte* more than once putting that attorney in what he considered to be an awkward position.

21. The allegations of the original complaint against Judge Fuller, and the subsequent investigation by Commission counsel concerning the conduct of Judge Fuller indicate that Judge Fuller has violated Cannon 1 of the Code of Judicial Conduct by failing to maintain high

standards of conduct and failing to personally observe those standards so that the integrity, impartiality, and independence of the Judiciary will be preserved.

22. The original Complaint and subsequent investigation directed by the Judicial Qualifications Commission, indicate that Judge Fuller's conduct is in violation of Canon 2 of the Code of Judicial Conduct which provides as follows:

A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.

23. The original complaint and subsequent investigation conducted on behalf of the Judicial Qualifications Commission reveal that Judge Fuller has violated Canon 3 of the Code of Judicial Conduct which provides in pertinent part:

The judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

Canon 3B(4).

24. The original complaint and the subsequent investigation conducted at the direction of the Judicial Qualifications Commission reveal that Judge Fuller has also violated Canon 3B(5) which provides in pertinent as follows:

A judge shall perform judicial duties without bias or prejudice. A Judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice[.]

25. The investigation requested by the Judicial Qualifications Commission reveals that Judge Fuller has also violated Canon 3B(7), which provides in pertinent part:

A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the Judge outside the presence of the parties concerning a pending or impending proceeding. ...

26. Some of the individuals who were interviewed by Commission counsel, some of whom are attorneys, have expressed concern about future appearances before Judge Fuller and have indicated concern about potential retaliation.

WHEREFORE, Commission counsel requests that this matter be brought on for hearing before the Judicial Qualifications Commission, and that the Commission make an appropriate recommendation to the South Dakota Supreme Court for sanctions against Judge Fuller for his violation of the South Dakota Code of Judicial Conduct.

Dated at Sioux Falls, South Dakota, this 7th day of September, 2010.

SCHAFER LAW OFFICE, PROF. LLC



Michael J. Schaffer
412 West 9th Street, Suite 1
Sioux Falls, SD 57104-3602
Telephone (605) 274-6760
Facsimile: (605) 274-6764
Commission Counsel
