

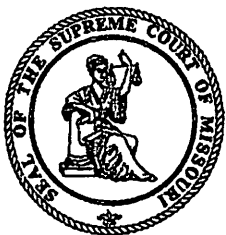
STATE OF MISSOURI – SCT.:

I, BILL L. THOMPSON, Clerk of the Supreme Court of Missouri, do hereby certify that the foregoing is a true copy of the order of said court, entered on the 24th day of November, 2015, as fully as the same appears of record in my office.

IN TESTIMONY WHEREOF, *I have hereunto set my hand and affixed the seal of said*

Supreme Court. Done at office in the City of Jefferson, State aforesaid,

this 24th day of November, 2015.



Bill L. Thompson, Clerk

Anthony Z. Taylor, Deputy Clerk

**BEFORE THE SUPREME COURT
OF THE
STATE OF MISSOURI**

IN RE: The Matter of

 THE HONORABLE PHILIP E. PREWITT

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

In Count 1, the Commission finds that Respondent engaged in a text message exchange on or about June 30 – July 1, 2014 with Ms. Kristy Lea, a candidate for circuit clerk, threatening his involvement in the campaign for circuit clerk. During the exchange Respondent encouraged Ms. Lea to remove Respondent’s opponent’s campaign sign from her yard and threatened future involvement against her in her campaign for circuit clerk. In one of his texts he stated: “If you come out against me, I have to come out against you. You know you will not win if I do that.” Respondent’s text exchange was perceived by Ms. Lea to be a threat that Respondent would campaign against her (Commission’s Exhibit 1). The Commission concludes that Respondent’s conduct was violative of Canon 2-4.1(D), requiring that a judge not engage in any other political activity, was an impropriety or the appearance of impropriety in violation of Canon 2-1.2, and was misconduct under Article V, Section 24, of the Constitution of the State of Missouri.

In Count 2, the Commission finds that Respondent maintained a Facebook account that identified him as an associate circuit court judge [Commission’s Exhibit 4). During various times in 2014, while in the office of associate circuit court judge, Respondent made the following Facebook postings that were available to the general public (Commission’s Exhibits 2-A – 2-K):

A. A photograph of the Ray of Hope Pregnancy Care Ministries sign with the statement: “I am happy to be supporting Ray of Hope Pregnancy Center again at their fundraising dinner. Even if you didn’t attend, consider donating to this wonderful organization.”

B. A photograph of you selling tickets with the caption: “Taking time out from my re-election campaign to help the Flywheel Reunion by selling tickets at the front gate - at Macon County Fairgrounds.”

C. A copy of a flier seeking contributions to the Tri-County Christian School with the posting: "In celebration of the 20th Anniversary of Tri-County Christian School, supporters are being asked to commit to giving \$20 a month for the next 20 months to help pay for two new teachers next year. I've already committed to one of these partnerships. How about you?"

D. A photograph of the food tent at the Randy Johnson fundraiser with the caption: "I had a good pulled pork lunch with friends at the Randy Johnson Fundraiser in downtown Macon. Go by all day for good food and entertainment."

E. A photograph of the Macon Jaycees with volunteers selling drinks and the caption: "The Macon Jaycees are selling drinks at the Demolition Derby. Come out and enjoy the Derby and support this good organization by buying your drinks from them - at **Macon County Fairgrounds.**"

F. A photograph of volunteers carrying a banner for the "Survivors Celebrating Life" and the caption: "Enjoying good friends, food and entertainment at the Macon County Relay for Life tonight. Come out and bid on me at the Choose Your Torture auction - at **Macon High School.**"

G. A photograph of the Tiffany In-Home Service sign with the caption: "It was my pleasure to once again donate items in support of **Relay For Life of Macon County - MO.** Please come out and support our efforts against cancer at the events on Saturday, June 14, starting at 6 pm in the Macon R-1 parking lot." The post was followed by a post from Brenda Tuttle stating: "Thank you Philip Prewitt for two great Relay Auction items!"

H. A photograph of children leading cheers with the caption: "Macon Youth Football Cheerleaders are having a bake sale fundraiser at Walmart. Come out and support them and get some really good food like we did - at **Walmart Macon - E Briggs Dr.**"

I. A photograph of a Missouri Farm Bureau tent with the caption: "Enjoying lunch at the Farm Bureau fundraiser at C & R. Come enjoy a good lunch for a good cause."

J. Two photographs of the menu and plate of food from Around The Corner Café with the caption: "I had the pleasure of eating again today at the Around The Corner Café in the VoTec School of Macon R-1. The culinary students prepared a delicious meal and for \$4 you can't get a better deal. Come out most Tuesdays, Wednesdays and Thursdays and support students. - at **Macon High School.**"

K. A photograph of people gathered at an assembly hall with the caption: "Having a good time at the art show and auction in support of Timeless Treasures. Come out and support a good cause and see neat art work - at **Macon Elks Lodge #999.**"

The Commission concludes that such Facebook postings are in violation of Supreme Court Rule 2, Canon 2-1.3, which provides that a judge shall not "abuse the prestige of

office to advance the personal or economic interests...of others”, Canon 2-3.7(A)(1) that provides that a judge shall not “personally participate in the solicitation of funds or other fundraising activities,” Canon 2-3.7[A][5] that provides “a judge shall not permit the prestige of office for fundraising or membership solicitation” and is misconduct under Article V, Section 24, of the Constitution of the State of Missouri.

In Count 3, the Commission finds that on or about September 3, 2014, Respondent’s Facebook account contained the following statement: “Unlike many judges, I am very open about decisions I make in cases because I am proud of the work I do.” (Commission’s Exhibit 3). The Commission concludes that this public comment is unfairly critical of the integrity of other judges in the circuit and in violation of Canon 2-1.2 in that Respondent failed to promote public confidence in the judiciary, and Canon 1 in that Respondent failed to uphold judicial integrity and thereby created impropriety and the appearance of impropriety, and was misconduct under Article V, Section 24, of the Constitution of the State of Missouri.

In Count 4, the Commission finds that in the case *State v Joseph Lewis*, Case No. 14MA-CR00280, on or about August 7, 2014 during the arraignment of the defendant, in open court, Respondent questioned the prosecutor about the strength of the state’s case, stated that he did not want to hold up the defendant unnecessarily from playing high school football, and that he wanted the case disposed. The statement was influential in the prosecutor’s decision to file a change of judge motion (Commission’s Exhibit 5). The Commission concludes that such statement was in violation of Canon 2-2.10 that prohibits a judge from making public comment on a pending or impending case that might reasonably be expected to affect the outcome or impair the fairness of the matter pending or impending in any court, and is misconduct under Article V, Section 24, of the Constitution of the State of Missouri.

The Commission on Retirement, Removal and Discipline filed a 4-count Amended Notice charging Respondent with acts of misconduct under Article V, Section 24, of the Constitution of the State of Missouri (Commission’s Exhibit 6).

The Commission finds in mitigation that Respondent has no history of prior complaints with this Commission, that Respondent was cooperative and truthful with the Commission's investigation, and that after notified of the Commission's investigation Respondent ceased Facebook postings that involved charitable fundraising and limited his political postings to thanking his supporters after the election, inviting them to attend his swearing in, and providing directions to the courthouse.

In light of the foregoing misconduct, the Commission recommends that Respondent e formally reprimanded by this Court.

Respondent has filed his Stipulation and Waiver of Hearing (Commission's Exhibit 7).



SKIP WALTHER, Chairman



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