

July 8, 1999

PUBLIC ADMONITION

OF

**THE HONORABLE JAMES FUNKE, JR.
JENNINGS SUPERIOR COURT**

The Indiana Commission on Judicial Qualifications issues this Public Admonition of the Honorable James Funke, Jr., Judge of the Jennings Superior Court. This Admonition is issued pursuant to Supreme Court Admission and Discipline Rule 25 VIII E(7), and is issued with the consent of Judge Funke, who has cooperated fully with the Commission in this matter.

The circumstances which gave rise to the Admonition are as follows. Judge Norman Curry of the Bartholomew Superior Court 2, was selected as Special Judge in a small claims case in Jennings Superior Court, Massie v. Speer, after Judge Funke disqualified himself on the basis of his acquaintance with the defendants. The Massie case, and another case in which Judge Curry was Special Judge, originally were scheduled to be heard on October 1, 1997 in Jennings County. Judge Curry traveled to Jennings County that morning for the purpose of conducting hearings on the two matters.

When Judge Curry arrived at the courthouse, he was led by Judge Funke's bailiff into Judge Funke's private office, where he and Judge Funke met and conversed. The Jennings County Republican Party Chairman, Melvin "Sleepy" Speer, then came into the office, and engaged Judge Curry in general conversation. After a few minutes of conversation, two other people appeared at the door, and were introduced to Judge Curry as Sleepy Speer's son and daughter-in-law, Jake and Kim Speer. According to Judge Curry, at that point, Sleepy Speer indicated that Jake and Kim Speer were the defendants in the Massie v. Speer dispute, and that they wanted to talk to Judge Curry about the case before they went into the courtroom. Judge Curry refused to discuss the matter with them. Judge Funke was present during the Speers' attempt to engage Judge Curry in a discussion about the case, then left Judge Curry alone with Sleepy Speer while Judge Funke left the office to obtain the court

files for Judge Curry.

Judge Curry reported this incident to the Commission and the Commission has found that Judge Funke, albeit passively, permitted Sleepy Speer's attempt at an ex parte conversation with Judge Curry to occur and took no measures to intervene. Indeed, just after the attempt, he left the two alone together. Judge Funke's own statement to the Commission was, "There is no doubt in my mind that Sleepy came...to see his son's small claims case and to make every effort to talk with Judge Curry." In part, he has defended his conduct by asserting that he felt he could not "kick" the party chairman out of his office.

The Commission members understand that judges frequently are targets of others' untoward attempts to engage them in ex parte conversations. When this occurs, they should respond exactly as did Judge Curry: by refusing to engage in the conversation. The Commission advises judges to make a record of the attempt and to disclose to other parties the substance of the conversation. They will not be held accountable for another's attempt at an ex parte contact when they respond appropriately. Here, Judge Funke was not the target of the attempt, but the conduit for it. He had invited Judge Curry into his office and allowed Sleepy Speer to join them. When Jake and Kim Speer arrived at the door, he made no attempt to intervene, although he knew that the Speers were parties in one of Judge Curry's cases that morning. Under the circumstances, the Commission holds him responsible for this meeting and the inappropriate course it took. His obligation was to place first as a priority his responsibility to his colleague and to the integrity of the system, rather than to his political allies.

Therefore, the Commission has concluded that Judge Funke has violated Canons 1, 2, and 3B(8) of the Code of Judicial Conduct, which require judges to uphold the integrity and independence of the judiciary, to avoid impropriety and to act at all times in a manner which promotes the public's confidence in the judiciary, and to not permit ex parte contacts. For this conduct, the Commission determined that formal charges were warranted, but, by agreement, now concludes this matter with this Public Admonition.

Questions about this Admonition may be directed Chief Justice Randall T. Shepard, Chairman of the Commission, at (317) 232-2550, or to Meg Babcock, Counsel for the Commission, at (317) 232-4706, or to Mr. Dan Byron, counsel for Judge Funke, at (317) 634-7588.