

PUBLIC ADMONITION OF THE HONORABLE

DONALD C. JOHNSON, JUDGE OF THE TIPPECANOE SUPERIOR COURT

The Indiana Commission on Judicial Qualifications issues this public statement of admonition of Judge Donald C. Johnson, Judge of the Tippecanoe Superior Court. The Commission's admonition results from its finding of probable cause that Judge Johnson violated the Code of Judicial Conduct. Judge Johnson has agreed to accept this admonition in lieu of the filing of formal disciplinary charges with the Indiana Supreme Court.

In November, 1992, Judge Donald C. Johnson presided over a jury trial in the matter of McClanahan v. Remington Freight Lines. After a jury verdict, counsel for Remington filed a Motion to Correct Error, which was to have been ruled upon by February 22, 1993. However, an Order on the Motion was not entered by that date. Judge Johnson did issue an Order after the deadline which would have granted, in part, the Motion to Correct Error on behalf of Remington. However, because it was not issued until after the deadline, it was not effective, and the parties appealed from the jury verdict.

During oral argument at the Court of Appeals, counsel for Remington produced an affidavit signed by Judge Johnson on April 14, 1994, a year after the ruling. In the affidavit, Judge Johnson stated, "The computerized system for entering the Court's Orders was rendered non-functioning...on February 13, 1993 and continued to March 1, 1993...Although I had reached a decision [prior to the deadline]...I had not anticipated that the computer system would be shut down...thus making entry of the Court's orders...physically impossible".

Presumably, counsel's intent in producing the affidavit was to affect which issues would be considered by the Court of Appeals. It appears to have been an attempt to supplement the record with Judge Johnson's affidavit. If accepted by the Court of Appeals, which it was not, it would have redefined the issues on appeal, possibly to the benefit of Remington.

Counsel for McClanahan, Margret Robb, had never seen this affidavit until attorney Jeffrey Newell attempted to inject it into the record. Ms. Robb since has presented convincing evidence to the Commission that the statement made in the affidavit that the computer system was down throughout the entire two-week period was not accurate. While there were problems with the computer system during the time in question, and court staff had some difficulty in entering orders on occasion, many orders were entered successfully during the time in question. Judge Johnson should not have signed the affidavit without carefully ascertaining its accuracy. Also, Ms. Robb should have been apprised by opposing counsel, or, if not, then by

Judge Johnson, when the affidavit was being discussed and prepared. Although Judge Johnson had been disqualified in the case a year before the affidavit was prepared, and, therefore, would not have been the presiding Judge had a new trial occurred, he participated in the creation of a document, which, if accepted by the Court of Appeals, could have had a critical impact on Ms. Robb's client. He should have advised Ms. Robb he was preparing an affidavit and asked for her input.

The Indiana Commission on Judicial Qualifications believes these circumstances raise concerns under the Code of Judicial Conduct. In fact, it has voted that formal disciplinary charges are warranted. Canons 1, 2, and 3B(8) of the Code of Judicial Conduct require a judge to uphold the integrity of the judiciary, to avoid the appearance of impropriety, and to not permit ex parte communications. However, the Commission and Judge Johnson have agreed that this issue can be resolved appropriately with this public statement of admonition and by virtue of Judge Johnson's written apology to Ms. Robb.

Questions about this public admonition may be directed to Chief Justice Randall T. Shepard, Chairman of the Commission, at (317) 232-2550, Meg W. Babcock, Counsel to the Commission, at (317) 232-4706, or to James V. McGlone, counsel for Judge Johnson, at (317) 423-1561.