

May 10, 1993

STATEMENT OF ADMONITION

The Indiana Commission on Judicial Qualifications, having concluded that the circumstances warrant a public disciplinary proceeding before the Indiana Supreme Court, has agreed with the Honorable Kenneth L. Lopp, elected Judge of the Crawford Circuit Court, and the Honorable Carlton E. Sanders, elected Judge of the Harrison Superior Court, that, in lieu of formal charges and a Supreme Court proceeding, the following statement of admonition is released publicly.

The complaint against Judge Lopp and Judge Sanders, which is resolved by this admonition, arose from the following facts. On January 26, 1993, Judge Lopp filed a civil proceeding against English, Indiana attorney Brent Welke. He signed a sworn document which asserted that he planned to sue Welke for slander and that "based upon the likelihood that [Welke] will leave the area as soon as he becomes aware that an action for slander has been filed against him", he asked for an Order permitting him to take Welke's deposition without a lawsuit first being filed. Judge Lopp filed the action in the Crawford Circuit Court, and Harrison Circuit Court Judge Carlton Sanders, who was serving that day as judge pro tempore in Crawford County, assumed jurisdiction.

Judge Lopp's Petition was filed pursuant to Indiana Trial Rule 27, which provides the extraordinary action of compelling deposition testimony prior to the filing of a lawsuit in the event the Court is "satisfied that the perpetuation of the testimony may prevent a failure or delay of justice". Often, the rule is implemented when a potential witness is expected to die or otherwise be unavailable after a lawsuit is filed. The rule called for notice to Welke that the request had been made, then for at least twenty days to elapse before the Court held a hearing on the request.

With the Rule 27 Petition, Judge Lopp's attorney filed a "Motion to Shorten Time" with Judge Sanders stating that, if the twenty-day notice period were enforced, "Welke will take any and all steps to prevent the taking of the deposition". He asked Judge Sanders to shorten the period from twenty days to twenty-four hours. He also filed a Motion asking Judge Sanders to close the proceedings and the record, both of which would normally be public. Each of these requests was made after conferring with Judge Lopp. Judge Sanders granted both requests. On January 26, 1993, he set the hearing on the deposition request for January 28, 1993 at 10:00 a.m.

Welke filed numerous objections to the proceedings, the short notice, the confidentiality order, and to proceeding without adequate opportunity to retain counsel. On January 28, the proceedings went forward over his objections. They occurred not in

the courtroom, but in Judge Lopp's chambers. Judge Lopp was in Indianapolis at a seminar. The proceedings were recorded.

First, Judge Sanders held a hearing on the Rule 27 Petition. Although the hearing pertained primarily to Welke's objections, and contained no testimony about the possibility of Welke leaving the jurisdiction, Judge Sanders granted the Petition and left chambers as the deposition began. Next, Welke refused to answer questions beyond some preliminary inquiries, and Judge Sanders was notified and returned to the chambers. He confirmed from Welke that he refused to answer, found him in contempt and sentenced him to ninety days in jail. Judge Sanders' final statement was "You're outta here, big boy". Welke spent approximately two and one-half days in jail. He was released after a civil liberties lawyer intervened on his behalf.

The Commission believes both Judge Lopp and Judge Sanders abused their positions and the civil process in an attempt to obtain information from Welke, to silence him, or both. All the circumstances indicate that Judge Sanders failed to act as a neutral arbiter, one to whom both parties could turn for impartial rulings. His demeanor toward Welke, his denial to Welke of a meaningful opportunity to prepare or to obtain counsel, and his nearly pro forma granting of highly unusual requests, support the Commission's contention.

Of course, Judge Lopp has a right to file a lawsuit. However, from time to time, actions which would otherwise appear to be legitimate or solely discretionary take on a less wholesome appearance under the totality of the circumstances. Although Judge Lopp was not present the day of the hearing and deposition, he sanctioned his counsel's activities, which involved the literal use of the judicial office for Judge Lopp's private litigation, as well as the filing of an unreasonable pleading requesting a mere twenty-four hours notice of the hearing and deposition. No information before the Commission supports Judge Lopp's assertion in his Rule 27 Petition that Welke would flee if sued.

Judge Lopp and Judge Sanders violated Canons 1 and 2 of the Code of Judicial Conduct, which require them to uphold the integrity and independence of the judiciary, to act at all times in a manner promoting public confidence in the integrity of the judiciary, and, as to Judge Lopp, to not use his judicial position to advance his private interests. The determination by the Commission that formal charges were warranted evidences its strongest disapproval of their conduct.

Questions about this press release may be directed to Meg Babcock, Counsel to the Commission, at (317) 232-4706.