

IN THE TENNESSEE BOARD OF JUDICIAL CONDUCT

**IN RE: THE HONORABLE KAY SPAULDING ROBILIO
CIRCUIT JUDGE, 30TH JUDICIAL DISTRICT
SHELBY COUNTY, TENNESSEE**

FILED
2013 MAY 14 AM 11:19
APPELLATE COURT CLERK
NASHVILLE

Docket No. M2013-01143-SC-CJ-CJ

File No. 12-4986

FORMAL CHARGES

Timothy Discenza, Disciplinary Counsel for the Tennessee Board of Judicial Conduct, at the direction of an investigative panel of three members of the Board of Judicial Conduct, in accordance with Tennessee Code Annotated § 17-5-301, *et. seq.*, hereby files formal charges against the Honorable Kay Spaulding Robilio, Circuit Judge of the 30th Judicial District at Shelby County, Tennessee.

Jurisdiction

1. Following a full investigation authorized under the provisions of Tennessee Code Annotated § 17-5-304(b)(3)(2009 Repl.) the three member investigative panel composed of the Honorable Angelita Dalton, Mr. Miles Burdine, and Mr. Thomas Lawless found, pursuant to Tennessee Code Annotated § 17-5-304(d)(2)(A), that there is reasonable cause to believe that the Honorable Kay Spaulding Robilio has committed judicial offenses alleged herein in violation of Tennessee Code Annotated § 17-5-302, and directed Disciplinary Counsel to file formal charges pursuant to Tennessee Code Annotated § 17-5-304(d)(2)(A).

2. The Honorable Kay Spaulding Robilio, at times relevant herein, was a Circuit Judge of the 30th Judicial District at Shelby County, Tennessee, having been elected to that position. Therefore, Judge Robilio is subject to judicial discipline by the Board of Judicial Conduct pursuant to Tennessee Code Annotated § 17-5-102.

Charges

Disciplinary Counsel charges the Honorable Kay Spaulding Robilio as follows:

Count I

3. On or about February 12th, 2012, the Honorable Kay Spaulding Robilio, while acting in her position as a Circuit Judge of the 30th Judicial Circuit of Tennessee, had pending in her Court a domestic relations case in which the post divorce custody and visitation rights concerning the minor child of the parties were at issue. On said date, Judge Robilio undertook an independent investigation of the conditions present at the residence of the father, by making a personal visit to the residence of the father, inspecting the home of the father, and later utilizing her personal observations in making rulings and referring to matters concerning the parenting issues.

4. At all times described in paragraph 3, the said Kay Spaulding Robilio, as a Circuit Judge of the 30th Judicial District of Tennessee was subject to the Code of Judicial Conduct, as set out in Rule 10, Rules of the Supreme Court of Tennessee, that were then in effect.

In pertinent part, the Code of Judicial Conduct, by and through its Canons, provided as follows:

CANON 1 — A Judge Shall Uphold the Integrity and Independence of the Judiciary

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Commentary. Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2 — A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. 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.

Commentary. —Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a

perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

CANON 3- A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

B. (7) A Judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. 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....

Commentary. ... A judge must not independently investigate facts in in a case and must consider only the evidence presented.

5. The above-described conduct and actions of Judge Robilio set forth herein in paragraph 3 constitute a violation of the Code of Judicial Conduct as set forth in the preceding paragraph 4, and as such, subject her to the sanctions provided by the provisions of Tennessee Code Annotated § 17-5-301.

NOTICE

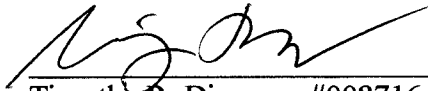
The Honorable Judge Kay Spaulding Robilio is hereby given written notice of the details of the Formal Charges brought against her pursuant to Tenn. Code Ann. § 17-5-307.

Pursuant to Tenn. Code Ann. § 17-5-307(c), Judge Robilio shall have thirty (30) days from and after the date of receipt of these Formal Charges to file an Answer with the Court by filing the same at the Office of the Clerk of the Supreme Court, 100 Supreme Court Building, 401 Seventh Avenue North, Nashville, Tennessee 37219 and by serving a copy on Disciplinary Counsel at P.O. Box 50356, Nashville, Tennessee 37205.

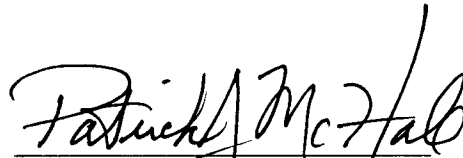
Failure to answer these Formal Charges shall constitute an admission of the factual allegations not answered.

WHEREFORE, Disciplinary Counsel moves the Board to set this matter for hearing before a Hearing Panel of the Board of Judicial Conduct at such location where the Board of Judicial Conduct may convene by law, within sixty (60) days from and after the date the Answer is filed by Judge Robilio, as required by Tenn. Code Annotated § 17-5-308(a), or, in the event no Answer is filed, to set the matter within ninety (90) days of the date these Formal Charges are filed with the Clerk of the Court, in order to comply with the statutory time limit, and upon the hearing of this action, to impose just and proper sanctions as provided by law, including the costs and discretionary costs as provided by law.

This the 14 day of MAY, 2013.



Timothy R. Discenza #008716
Disciplinary Counsel
Tennessee Board of Judicial Conduct
P.O. Box 50356
Nashville, Tennessee 37205



Patrick J. McHale, # 004648
Assistant Disciplinary Counsel
Tennessee Board of Judicial Conduct

APPROVED BY THE INVESTIGATIVE PANEL
IN ACCORDANCE WITH RULE 6, SECTION 4
OF THE RULES OF PRACTICE AND PROCEDURE
OF THE TENNESSEE BOARD OF JUDICIAL CONDUCT:

Angelita B. Blackshear Dalton by
BY: *[Signature]*
Angelita Blackshear Dalton
Investigative Panel Member

Miles Burdine by
BY: *[Signature]*
Miles Burdine
Investigative Panel Member

Thomas Lawless by
BY: *[Signature]*
Thomas Lawless
Investigative Panel Member