

S-35-030003

**BEFORE THE NEBRASKA COMMISSION ON JUDICIAL QUALIFICATIONS**

In the matter of )  
 )  
**RONALD E. REAGAN** #134150 )  
District Judge of the Second )  
District of Nebraska )

**No. JQ 2002-86**  
**REPRIMAND**

**FILED**

**JUN 02 2003**

**CLERK**  
**NEBRASKA SUPREME COURT**  
**COURT OF APPEALS**

The Nebraska Commission on Judicial Qualifications (JQC), pursuant to its authority under Article V of the Nebraska Constitution and Neb. Rev. Stat. §§ 24-715 et seq., following waiver of formal hearing and pursuant to stipulation, hereby finds probable cause to reprimand the Respondent, Ronald E. Reagan.

This reprimand is public because the JQC is obliged to make public all reprimands issued. Its publication is also an opportunity for the JQC to instruct the judiciary on the ethics of the following factual circumstances, as well as on the correctness of and integrity demonstrated by Judge Reagan's self-reporting.

1. Ronald E. Reagan is and was at all material times a duly-appointed judge of the District Court in Sarpy County in the Second Judicial District of Nebraska, presiding over trial, conviction, sentencing and post-conviction filings in a specific criminal case. At all material times, the defendant and the State of Nebraska were represented by counsel of record.
2. In June, 2000, Judge Reagan entered an order denying the defendant's request for post-conviction relief. That order was timely appealed to the Nebraska Court of Appeals at which time an assistant attorney in the Office of the Attorney General was assigned the matter for the State.
3. On or about February 11, 2002, the Court of Appeals published its decision reversing Judge Reagan's order in certain particulars. Judge Reagan reviewed the decision and became concerned about what he perceived were wide-ranging and problematic implications of the Court of Appeals' opinion. On or about February 13, 2002, Judge Reagan telephoned the assistant Attorney General assigned to the case and expressed his alarm and concern about the decision. The attorney told Judge Reagan the State intended to petition the Nebraska Supreme Court for further review and Judge Reagan indicated he was glad to hear that.
4. On or about February 14, 2002, Judge Reagan sent a letter to the assistant Attorney General confirming the telephone conference and elaborating upon his concerns and the procedural and evidentiary complications he believed would result from the Court of Appeals' opinion in many criminal matters. The case was accepted by the Supreme Court for further review and remained pending before that court until early 2003.
5. Said contacts with the State's attorney were substantive in nature, were made off the record and were made without notice to or involvement of the defendant or his counsel. Judge Reagan's

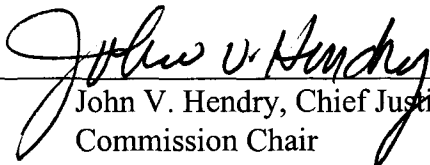
correspondence was not copied to defense counsel at the time.

6. In mid-October, 2002, Judge Reagan reviewed the Nebraska Supreme Court's newly-published judicial discipline decision, *In re Complaint Against White*, 264 Neb. 740, 651 N.W.2d 551 (2002). Prior to reading that opinion, Judge Reagan had not considered that his conduct might be ethically suspect and believed that a case would not be "pending" under Canon 3 because it had been appealed which divested him of jurisdiction while the matter was on appeal. After reading that opinion, Judge Reagan stated, "it struck me that my actions in communicating with the Attorney General's Office may have been a violation of Canon 3. I spoke with a couple of active and retired judges and, even though their opinion was to the effect there was no violation, I still felt uncomfortable." However, Judge Reagan was uncertain whether further reporting his conduct would compromise the underlying criminal matter or prejudice either party while the case was still on appeal.
7. Therefore, Judge Reagan contacted the defendant's attorney of record on or about October 23, 2002 to disclose his contacts and to inquire about reporting an ethical violation to the JQC. On October 24, 2002, Judge Reagan wrote to defendant's attorney enclosing a copy of the prior correspondence with the assistant Attorney General. Receiving no response by late November, 2002, Judge Reagan again contacted defendant's counsel of record and learned that he had been replaced by another lawyer.
8. On December 10, 2002, Judge Reagan phoned the new defense counsel and learned said attorney had just filed a motion with the Supreme Court setting forth the judge's contacts. Judge Reagan determined that as his conduct was now a matter of public record, there would be no further reason to be concerned about whether self-reporting might prejudice one of the parties. Therefore, on December 11, 2002, Judge Reagan self-reported his conduct to the JQC.
9. The contacts with defense counsel were made off the record and without notice to or the involvement of the State's attorney.
10. The Nebraska Code of Judicial Conduct States in pertinent part:  
  
*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 ....
11. The JQC finds and determines that Judge Reagan's contacts with counsel as set forth above do constitute impermissible ex parte communications in violation of Canon 3. Said contacts were initiated by the Judge and do not fall within any of the exceptions of Canon 3. The underlying criminal case was on appeal from Judge Reagan's court and therefore "pending" as contemplated by Canon 3 and Nebraska case law. His conduct is therefore a violation of the Code which constitutes conduct prejudicial to the administration of justice that brings the judiciary into

disrepute under the Nebraska Constitution and Neb. Rev. Stat. § 24-722(6).

12. However, the JQC also finds that Judge Reagan's actions in disclosing his conduct and in reporting his possible violation to the JQC are commendable, thereby justifying discipline no greater than this public reprimand. The JQC further notes that Judge Reagan cooperated fully and completely and was fully candid about the nature and extent of his contacts and his mistaken belief they were not improper. The JQC notes that even though he discussed his concerns with other judges and was reassured by his colleagues, Judge Reagan remained uncomfortable with his conduct and the JQC agrees with his conclusion that self-reporting that conduct was the right course.

Dated this 27<sup>th</sup> day of June, 2003.

  
\_\_\_\_\_  
John V. Hendry, Chief Justice  
Commission Chair

Accepted:   
Ronald E. Reagan

Date: May 28, 2003