

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) BEFORE THE STATE ETHICS COMMISSION
))
IN THE MATTER OF:)
Complaint C2012-027)
))
David W. Huffstetler,)
Respondent.)
))
Amy V. Cofield, etal.)
Complainants.)
_____)

DECISION AND ORDER

STATE ETHICS
COMMISSION

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RECEIVED

This matter comes before the State Ethics Commission by virtue of a complaint filed by Amy V. Cofield, Jeffrey Jones, Timothy B. Killen and Reid Warder, Jr. on September 28, 2011. On November 16, 2011, pursuant to S.C. Code Ann. §8-13-320(10)(i)(Supp. 2010), the State Ethics Commission reviewed the above-captioned complaint charging Respondent, David W. Huffstetler, with violations of the Canons of Rule 501 of the Code of Judicial Conduct, and probable cause was found to warrant an evidentiary hearing.

Present at the Hearing on January 18, 2012 were Commission Members Jonathan H. Burnett, Richard H. Fitzgerald, and Phillip Florence, Jr., Hearing Chair. Respondent was present and appeared *pro se*. Complainants were represented by Cathy L. Hazelwood, General Counsel. The following charges were considered:

COUNT ONE
JUDGE SHALL UPHOLD THE INTEGRITY & INDEPENDENCE OF THE
JUDICIARY
RULE 501 CODE OF JUDICIAL CONDUCT CANON 1(A)

The Respondent, David W. Huffstetler, SC Worker's Compensation Commissioner, did in Charleston County, on September 9, 2011, unlawfully violate Canon 1(A) of Rule 501 of the Code of Judicial Conduct, by failing to uphold the integrity and independence of the judiciary when Respondent scheduled a hearing with the various parties'

attorneys and upon calling the attorneys to the hearing room he informed them that no hearing would be held because he had a problem with Faith Logistics due to his son's former employment.

COUNT TWO
**JUDGE SHALL AVOID IMPROPRIETY & THE APPEARANCE OF
IMPROPRIETY**
RULE 501 CODE OF JUDICIAL CONDUCT CANON 2(A)

The Respondent, David W. Huffstetler, SC Worker's Compensation Commissioner, did in Charleston County, on September 9, 2011, unlawfully violate Canon 2(A) of Rule 501 of the Code of Judicial Conduct, by failing to promote public confidence in the integrity and impartiality of the judiciary when Respondent scheduled a hearing with the various parties' attorneys and upon calling the attorneys to the hearing room he informed them that no hearing would be held because he had a problem with Faith Logistics due to his son's former employment.

COUNT THREE
**JUDGE SHALL AVOID IMPROPRIETY & THE APPEARANCE OF
IMPROPRIETY**
RULE 501 CODE OF JUDICIAL CONDUCT CANON 2(B)

The Respondent, David W. Huffstetler, SC Worker's Compensation Commissioner, did in Charleston County, on September 9, 2011, unlawfully violate Canon 2(B) of Rule 501 of the Code of Judicial Conduct, by allowing family relationships to influence his judicial conduct when Respondent scheduled a hearing with the various parties' attorneys and upon calling the attorneys to the hearing room he informed them that no hearing would be held because he had a problem with Faith Logistics due to his son's former employment.

COUNT FOUR

**JUDGE SHALL PERFORM DUTIES OF JUDICIAL OFFICE
IMPARTIALLY & DILIGENTLY
RULE 501 CODE OF JUDICIAL CONDUCT CANON 3(B)(4)**

The Respondent, David W. Huffstetler, SC Worker's Compensation Commissioner, did in Charleston County, on September 9, 2011, unlawfully violate Canon 3(B)(4) of Rule 501 of the Code of Judicial Conduct, by failing to be patient, dignified and courteous to the lawyers in a matter before him when Respondent scheduled a hearing with the various parties' attorneys and upon calling the attorneys to the hearing room he informed them that no hearing would be held because he had a problem with Faith Logistics due to his son's former employment.

**COUNT FIVE
JUDGE SHALL PERFORM DUTIES OF JUDICIAL OFFICE
IMPARTIALLY & DILIGENTLY
RULE 501 CODE OF JUDICIAL CONDUCT CANON 3(B)(8)**

The Respondent, David W. Huffstetler, SC Worker's Compensation Commissioner, did in Charleston County, on September 9, 2011, unlawfully violate Canon 3(B)(8) of Rule 501 of the Code of Judicial Conduct, by failing to fairly dispose of a judicial matter before him when Respondent scheduled a hearing with the various parties' attorneys and upon calling the attorneys to the hearing room he informed them that no hearing would be held because he had a problem with Faith Logistics due to his son's former employment.

**COUNT SIX
JUDGE SHALL PERFORM DUTIES OF JUDICIAL OFFICE
IMPARTIALLY & DILIGENTLY
RULE 501 CODE OF JUDICIAL CONDUCT CANON 3(C)(1)**

The Respondent, David W. Huffstetler, SC Worker's Compensation Commissioner, did in Charleston County, on September 9, 2011, unlawfully violate Canon

3(C)(1) of Rule 501 of the Code of Judicial Conduct, by failing to diligently discharge his administrative responsibilities without bias or prejudice when Respondent scheduled a hearing with the various parties' attorneys and upon calling the attorneys to the hearing room he informed them that no hearing would be held because he had a problem with Faith Logistics due to his son's former employment.

COUNT SEVEN
JUDGE SHALL PERFORM DUTIES OF JUDICIAL OFFICE
IMPARTIALLY & DILIGENTLY
RULE 501 CODE OF JUDICIAL CONDUCT CANON 3(C)(2)

The Respondent, David W. Huffstetler, SC Worker's Compensation Commissioner, did in Charleston County, on September 9, 2011, unlawfully violate Canon 3(C)(2) of Rule 501 of the Code of Judicial Conduct, through his direction Respondent's staff did observe the standards of fidelity and diligence that apply to the judge when Respondent scheduled a hearing with the various parties' attorneys and upon calling the attorneys to the hearing room he informed them that no hearing would be held because he had a problem with Faith Logistics due to his son's former employment.

STATEMENT OF FACTS

1. The Respondent, David W. Huffstetler, was a South Carolina Workers' Compensation Commissioner in September 2011.
2. Commission Investigator Dan Choate testified he spoke with the four complainants and the other two attorneys who were in attendance at the September 9, 2011 Workers' Compensation hearing in Charleston before Respondent. The two attorneys who did not join as complainants, Frederick Jekel and Thomas White, confirmed in affidavits the allegations made by the four complainants. In addition Investigator Choate in-

interviewed Respondent's court reporter, Kathryn Bostrom, and Kellie Lindler, his administrative assistant. Their testimony was offered in affidavits, which Investigator Choate reviewed. He testified that Ms. Bostrom relayed that she believed the parties in attendance at the September 9, 2011 hearing understood Respondent's comments to be in jest. Ms. Lindler told Investigator Choate that she had decided to contact the attorneys to move up the hearing to allow adequate pre-trial time.

3. The Complainant, Amy V. Cofield, is a lawyer in Lexington who practices in various areas to include Workers' Compensation. She testified that Respondent scheduled a Workers' Compensation Commission hearing in Charleston on September 9, 2011. All of the parties involved arrived at the hearing site early based upon a request by Respondent's administrative assistant. Ms. Cofield, her client and the others waited for more than hour for the pre-hearing. As the attorneys were getting ready to set up for the hearing, Respondent announced that there would be no hearing. Respondent stated he had a personal issue with Faith Logistics, a party in the hearing represented by Ms. Cofield and that he was going to recuse himself and have the hearing re-set before another Commissioner. Respondent told the attorneys that he kept the hearing on the docket so that the parties would be required to travel to the hearing site for two reasons. The first reason was to give the parties an opportunity to discuss the case and a possible settlement. Respondent stated that Charleston attorneys do not typically settle until the eleventh hour so they can bill more. Secondly, Respondent stated he wanted to see that Faith Logistics had to pay its lawyer to drive to Charleston for the day. Respondent stated that if he had heard the case he would have "put the wood" to Faith Logistics and found every possible way to impose fines and penalties. He stated he would explain the basis for his personal

issues with Faith Logistics if Ms. Cofield to stay behind.

Ms. Cofield testified that in the presence of she and Ms. Bostrum, Respondent proceeded to relate several specific instances where Faith Logistics was unfair in the treatment of Respondent's son who had been an employee of Faith Logistics. Respondent stated that it was a small world and that Faith needed to be careful how they treated people because you never know when it will come back to haunt them.

Ms. Cofield testified that Respondent did not joke around when conducting a hearing. Ms. Cofield testified that there was absolutely nothing funny about the situation. Ms. Cofield testified that it was a very awkward moment for her client to be put on the spot by Respondent.

4. The Complainant, Jeffrey Jones, is a lawyer from Greenville whose sole practice is Workers' Compensation. He testified that Respondent scheduled a Workers' Compensation Commission hearing in Charleston on September 9, 2011. All of the parties involved arrived at the hearing site early based upon a request by Respondent's administrative assistant. Mr. Jones and the others waited for more than hour for the pre-hearing. As the attorneys were getting ready to set up for a hearing, Respondent announced that there would be no hearing. Respondent stated he had a personal issue with Faith Logistics, a party in the hearing represented by Ms. Cofield and that he was going to recuse himself and have the hearing re-set before another Commissioner. Respondent reported to the attorneys that he kept the hearing on the docket so that the parties would be required to travel to the hearing site for two reasons. The first reason was to give the parties an opportunity to discuss the case and a possible settlement. Respondent stated that Charleston attorneys do not typically settle until the eleventh hour so they can bill more.

Secondly, Respondent stated he wanted to see that Faith Logistics had to pay its lawyer to drive to Charleston for the day. Respondent stated that if he had heard the case he would have “put the wood” to Faith Logistics and found every possible way to impose fines and penalties. He stated he would explain the basis for his personal issues with Faith Logistics if Ms. Cofield to stay behind.

Mr. Jones testified that he spoke to Respondent prior to Respondent speaking to Ms. Cofield alone. Mr. Jones wanted Respondent to know the reason he drove to Charleston for the hearing when his firm had an office in Charleston. Mr. Jones testified that he did not believe that Respondent was joking. Respondent never joked. It was a very awkward moment. Mr. Jones testified that Respondent appeared angry when making his remarks. Respondent was critical during hearings, but his comments on this day were outrageous. Mr. Jones testified that any laughter on his part was nervous laughter due to the stress and awkwardness of the moment.

5. The Complainant, Timothy B. Killen, is a staff attorney for the SC Second Injury Fund. He testified that Respondent scheduled a Workers’ Compensation Commission hearing in Charleston on September 9, 2011. All of the parties involved arrived at the hearing site early based upon a request by Respondent’s administrative assistant. Mr. Killen waited for more than hour for the pre-hearing. As the attorneys were getting ready to set up for a hearing, Respondent announced that there would be no hearing. Respondent stated he had a personal issue with Faith Logistics, a party in the hearing represented by Ms. Cofield and that he was going to recuse himself and have the hearing re-set before another Commissioner. Respondent reported to the attorneys that he kept the hearing on the docket so that the parties would be required to travel to the hearing site for two rea-

sons. The first reason was to give the parties an opportunity to discuss the case and a possible settlement. Respondent stated that Charleston attorneys do not typically settle until the eleventh hour so they can bill more. Secondly, Respondent stated he wanted to see that Faith Logistics had to pay its lawyer to drive to Charleston for the day. Respondent stated that if he had heard the case he would have “put the wood” to Faith Logistics and found every possible way to impose fines and penalties. He stated he would explain the basis for his personal issues with Faith Logistics if Ms. Cofield to stay behind.

Mr. Killen testified that it would be unlikely for the Second Injury Fund to settle the case because it was a death claim with out-of-state coverage and a number of upstream employers. Mr. Killen testified that Respondent’s recusal was unusual. He testified that he reviewed the Judicial Canons on his own as he believed it was an abuse of power by Respondent. He testified that he did not believe Respondent was joking as he was often sarcastic, often at someone else’s expense.

6. Respondent testified that prior to the scheduled hearing on September 9, 2011 he was unsure as to whether or not he should recuse himself from the matter or disclose the issues his son had with Faith Logistics. Once he met with the parties his emotions began to swell and he knew he had to recuse himself. Respondent testified that he did not like to postpone a case. He felt like he was under pressure as he took great pride in being efficient. Respondent testified that he was troubled by what was going to happen. He has a dry sense of humor and the statements he made that are at issue in this matter were made in jest. Respondent testified that he told the assembled parties that he had a conflict or problem with Ms. Cofield’s client. He kept the case on the docket so settlement negotiations could happen and to make Ms. Cofield’s client pay; however, that was said in a

joking manner. Respondent testified that he took pride in the efficiency and effectiveness of his hearings. He was all-business and would ask direct questions of attorneys, which they did not always like.

7. The Commission finds that Respondent scheduled the hearing in Charleston for the purpose of causing Faith Logistics to incur additional legal costs related to its legal counsel preparing for the hearing and traveling to the hearing.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, the Commission concludes, as a matter of law:

1. During all times relevant, the Respondent, David W. Huffstetler, was a public official as defined by Section 8-13-100(27).
2. The State Ethics Commission has personal and subject matter jurisdiction
3. Section 42-3-250 provides in part:
 - (A) The commissioners are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules, and the State Ethics Commission is responsible for enforcement and administration of Rule 501 pursuant to Section 8-13-320. Commissioners must also comply with the applicable requirements of Chapter 13 of Title 8.
4. Canon 1 of Rule 501 of the Judicial Code of Conduct provides:
 - 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.
5. Canon 2 of Rule 501 of the Judicial Code of Conduct provides in part:
 - 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.

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

6. Canon 3 of Rule 501 of the Judicial Code of Conduct provides that a judge shall perform the duties of judicial office impartially and diligently and provides in part:

(B)(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(B)(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

C(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(C)(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

7. Section 8-13-320(10)(l) provides in part:

(i) requiring the public official, public member, or public employee to pay a civil penalty of not more than two thousand dollars for each violation.

DECISION

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the State Ethics Commission has determined based upon a preponderance of evidence that Respondent David W. Huffstetler is in violation of Counts One through Six of the allegations set forth in the Notice of Hearing. The Commission Hearing Panel dis-

misses Count Seven.

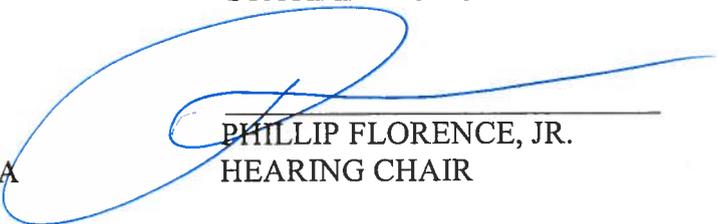
IT IS FURTHER ORDERED that a FINE of \$1,000.00 per violation is ASSESSED, for a total of \$6,000.00, to be paid within six months of receipt of the order. If payment is not made then, pursuant to Section 8-13-320(14), a Judgment in the amount of \$6,000.00 is, and shall be entered against Respondent. The Clerk of Court of the County in which Respondent was last known to reside shall enter this Order in its Judgment Rolls, without cost to the State Ethics Commission, in the amount of \$6,000.00 upon the Commission's filing of same with the Clerk of Court's Office.

FINALLY, Respondent David W. Huffstetler has ten (10) days from receipt of this order to appeal this Decision and Order to the full Commission.

IT IS SO ORDERED THIS 2nd DAY OF March, 2012.

STATE ETHICS COMMISSION

COLUMBIA, SOUTH CAROLINA



PHILLIP FLORENCE, JR.
HEARING CHAIR