
JUDICIAL REVIEW COUNCIL

FILE NO. FM2007-002

HARTFORD, CONNECTICUT

IN RE: THE HONORABLE SUSAN D. BARAN

JULY 3, 2007

MEMORANDUM OF DECISION

On or about January 18, 2007, the Judicial Review Council (“the Council”) received a letter from Chief Court Administrator William J. Lavery advising that Family Support Magistrate Susan D. Baran (“the respondent”) had recently been arrested on various motor vehicle charges, including driving under the influence.

On or about March 21, 2007, the Council considered the Chief Court Administrator’s letter and, acting upon a complaint initiated by itself, began an investigation into the respondent’s reported conduct.

Pursuant to Conn. Gen. Stat. § 51-51*l*, a confidential probable cause hearing was held on May 2, 2007, wherein the respondent appeared with counsel and testified

in her own behalf. Notice of the probable cause hearing was provided as required by law. Following the hearing, the Council filed the following charges against her:

CHARGES

1. On or about November 21, 2006, the Honorable Susan D. Baran engaged in conduct which caused her to be arrested for Driving Under the Influence in violation of Conn. Gen. Stat. § 14-227a, Evading Responsibility in violation of Conn. Gen. Stat. § 14-224b, Risk of Injury to a Minor in violation of Conn. Gen. Stat. § 53-21, and Failure to Drive Right in violation of Conn. Gen. Stat. § 14-230a, thereby failing to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved in willful violation of Canon 1 of the Code of Judicial Conduct and of Conn. Gen. Stat. § 51-51i(a)(2).

2. On or about November 21, 2006, the Honorable Susan D. Baran engaged in conduct which caused her to be arrested for Driving Under the Influence in violation of Conn. Gen. Stat. § 14-227a, Evading Responsibility in violation of Conn. Gen. Stat. § 14-224b, Risk of Injury to a Minor in violation of Conn. Gen. Stat. § 53-21, and Failure to Drive Right in violation of Conn. Gen. Stat. § 14-230a, thereby failing to respect and comply with the law and act in a manner promoting public confidence in the integrity and impartiality of the judiciary in willful violation of Canon 2a of the Code of Judicial Conduct and of Conn. Gen. Stat. § 51-51i(a)(2).

Pursuant to Conn. Gen. Stat. § 51-51i(c), the Council thereafter conducted a public hearing on the above described charges on June 20, 2007. Notice of the charges and public hearing was provided as required by regulation. The respondent appeared with counsel at the hearing. The Executive Director of the Council, Attorney Peter A. Clark, presented unchallenged documentary evidence pertaining to the conduct of the respondent. The respondent did not contest any of the facts or evidence put forth at the public hearing by Attorney Clark, but rather conceded that those facts constituted a sufficient basis for finding a violation of the Code of Judicial Conduct. The respondent testified personally and presented documentary evidence. The Council did not exclude any evidence proffered by the respondent.

After deliberating in executive session, to which the respondent did not object, the Council reached the following Findings of Fact and Conclusions:

FINDINGS OF FACT

The Council finds that the following facts are established by clear and convincing evidence:

1. At all times material to the conduct at issue herein, Honorable Susan D. Baran was a family Support Magistrate of the Superior Court of the State of Connecticut. By all accounts, the respondent's performance of her duties as a family support magistrate has been exemplary.

2. At approximately noon on November 21, 2006, the respondent, accompanied by her minor child, had a right front flat tire on her leased Lexus automobile repaired at the Sport Hill Service Center on Easton Turnpike in Fairfield, Connecticut.

3. No other damage was visible to employees of the Service Center while the Lexus was being repaired.

4. The respondent appeared, to employees of the Service Center, to have a diminished capacity, seeming numb and/or incoherent.

5. After her tire was fixed, the respondent departed the Service Center, leaving her purse and wallet behind. After leaving the Service Center, the respondent struck a tree and stop sign with her vehicle a short distance from her house and left the scene of the accident to proceed home.

6. David Saad, owner of the Service Center, obtained the respondent's address from her wallet and drove to her house to return it, arriving within about ten minutes from when the respondent had left the Service Center.

7. When Mr. Saad arrived at the respondent's house, he noted the respondent's Lexus parked in the driveway with new left front end damage, and the respondent and her child standing near the car. According to Mr. Saad, the respondent was bleeding from the face and appeared to be in impaired condition.

8. Mr. Saad called the Fairfield Police Department at 12:48 p.m. to report that he believed the respondent had been involved in an automobile accident.

9. A Fairfield police officer, John Moran, responding to the 12:48 p.m. call, proceeded to the respondent's home, which she had entered by the time of his arrival, where he encountered the respondent bleeding from cuts on her nose and forehead. According to Officer Moran, the respondent's eyes were bloodshot and glassy, her speech was slurred, she had an odor of alcohol on her breath, and she swayed and had difficulty balancing.

10. The respondent gave Officer Moran conflicting and implausible answers concerning her alcohol consumption, including acknowledging that she had been drinking and then responding "nothing" when asked what. The respondent denied consuming alcohol after arriving home. When questioned about the automobile accident, she was belligerent and evasive.

11. Officer Moran did not observe any alcoholic beverages, cups, or glasses in the area in which the respondent was located in her home.

12. The respondent was thereafter transported to Bridgeport Hospital for evaluation and treatment, where a blood sample was drawn at 3:09 p.m.

13. The respondent, who was found by emergency room personnel to be in a confused state, denied the use of alcohol to emergency room personnel.

14. While the respondent was being transported to the hospital, Officer Moran entered her Lexus to look for insurance information, where he encountered a strong odor of alcohol and located a plastic cup containing a clear liquid smelling of alcohol in the console.

15. The blood sample drawn from the respondent was evaluated for alcohol, revealing a serum alcohol level of 291 MG/DL which the Toxicology Laboratory of the State Department of Public Safety converted to a blood alcohol content of .250% by weight. The respondent does not contest the accuracy of this finding.

16. A blood alcohol content of .250% by weight is more than three times the level beyond which a person is deemed by Conn. Gen. Stat. § 14-277a to have an elevated blood alcohol content. Operating a motor vehicle with an elevated blood alcohol content is an offense under that statute.

17. On January 5, 2007, the respondent was arrested on charges of driving under the influence of alcohol, evading responsibility, risk of injury to a minor, and failure to drive right.

18. At the probable cause hearing, the respondent testified that she remembers beginning to consume a glass of wine at about 11 a.m., on the morning in question, but did not have a clear memory of further alcohol consumption thereafter. She testified that she believed she must have had something additional to drink after arriving home because of her level of blood alcohol. At the public hearing, in response to a question of the respondent by a Council member, her attorney represented that the respondent does not dispute the fact that she had to have consumed more than the one glass of wine before leaving home that morning, but that she has no present independent recollection of drinking after arriving home from the Service Center.

19. In view of Officer Moran's observation that the respondent did not have any alcoholic beverages in sight in her home while he was there with her, the fact that she was home at most only a few minutes before his arrival, thereby affording her a very limited opportunity to consume additional alcohol that he could not have observed, and the high level of alcohol found in the blood sample taken at Bridgeport Hospital, the Council finds that the respondent was highly intoxicated while driving from the Sport Hill Service Center to her home shortly before 1 p.m. on November 21, 2006.

20. The respondent testified that she had taken a prescribed sleeping medication called Ambien at approximately 2 a.m. on November 21, 2006. The respondent suggests that the Ambien may have affected her ability to recall the events of the day in question and/or her judgment as to the quantity of alcohol she consumed on that day. The respondent does not claim or suggest, however, that the ingestion of Ambien affected her decision to commence consuming alcohol on the morning of November 21, 2006, or that the Ambien interfered with the accuracy of the blood alcohol test administered that day at Bridgeport Hospital. Nor, despite the respondent's long term use of Ambien, was there any evidence that the medication ever previously affected her behavior, judgment or memory. Nor, finally, did the respondent offer any expert testimony suggesting a causal link between the consumption of Ambien and the conduct or judgment at issue in this matter. There is insufficient evidence from which to conclude that such a causal link exists. The respondent did acknowledge that she was aware prior to November 21, 2006, that Ambien and alcohol should not be ingested close in time to each other.

21. Based on the foregoing facts, the Council finds that the respondent, by the above-described conduct, willfully failed to respect and comply with the law and act in a manner promoting public confidence in the integrity and impartiality of the judiciary.

22. The Council notes that, while the respondent's medical records contained a notation of her occupation, the respondent testified that she did not provide such information to any hospital personnel and believes that someone at the hospital may have recognized her. The Council credits the respondent's testimony on this point, and finds that there is no evidence whatsoever of any effort by the respondent improperly to influence the impartial performance of any hospital employees' duties by usage of the respondent's official title.

23. The Council also notes that the respondent has taken measures to avoid future problems relating to or arising from the consumption of alcohol, and notes further that the respondent has demonstrated admirable candor and contrition throughout these proceedings and in proceedings relating to the criminal charges against her. The Council does not find that the respondent's conduct as described herein reflects a general inability to perform the duties of family support magistrate.

CONCLUSIONS

Based on the foregoing, the Council finds by clear and convincing evidence and upon motions made and seconded that:

As to Charge 2, the respondent, the Honorable Susan D. Baran, by her conduct, failed to respect and comply with the law and act in a manner promoting public confidence in the integrity and impartiality of the judiciary in willful violation of Canon 2a of the Code of Judicial Conduct and Conn. Gen. Stat. § 51-51i(a)(2). The vote of the Council on this Charge was twelve in favor of finding a violation and none against.

The respondent did not commit the violations alleged in Charge 1. The vote of the Council on Charge 1 was unanimous for not finding a violation.

ORDER

Based on the foregoing and pursuant to its authority set forth in Conn. Gen. Stat. § 51-51n(a)(2), the Council, by unanimous vote, hereby suspends the Honorable Susan D. Baran for a period of sixty days, during which time she may not exercise any of the duties, powers, or privileges of a family support magistrate. During the period of suspension, the Honorable Susan D. Baran's judicial salary, including any benefits relating thereto, shall to the extent applicable and permitted by law be suspended and time shall not be accrued for any rights in any pension plan. See Conn. Gen. Stat. § 51-51p. This suspension shall occur on dates to be determined by the Judicial Branch of the State of Connecticut, at the earliest occasion consistent with the orderly administration of court business but not before the expiration of the appeal period set forth in Practice Book § 74-1.

JUDICIAL REVIEW COUNCIL

Raymond M. Hassett

Chairman
