



THE TENNESSEE BOARD OF JUDICIAL CONDUCT

511 Union Street
Suite 600
Nashville, TN 37219

December 18, 2015

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Nashville, TN 37219-1407
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FOR PUBLIC RELEASE

The Honorable Jeffrey Atherton
Chancellor
Hamilton County Courthouse, Suite 311
Chattanooga, Tennessee 37402

RE: Board of Judicial Conduct complaints
FILE NOS. B15-6256 and B15-6265

Dear Chancellor Atherton:

This shall serve as a letter of public reprimand pursuant to your agreement with the Disciplinary Counsel and approved by an investigative panel of the Board.

This reprimand relates to your Order Dismissing Complaint and Counter-Complaint in the Chancery Court for Hamilton County Tennessee, on August 28th, 2015 in the divorce case of *Bumgardner v. Bumgardner*. In this order, you decreed that the Complaint and Counter-complaint of these parties for divorce were to be dismissed for lack of subject matter jurisdiction as a principal cause for dismissal, with additional bases being stated.

Your order in this case contains the following language in connection with your analysis of the recently decided United States Supreme Court case of *Obergefell v. Hodges*, 135 S.Ct.

2584 (2015), which held that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution:

...To say the least, Tenn. Const. art XI, having been adopted by the people of the State of Tennessee in 2006 as reflecting the will, desire, public policy and law of this State, and to be applied by its judiciary, seems a bit on the incompatible side with the U.S. Supreme Court's ruling ...The conclusion reached by this Court is that Tennesseans, corporately, have been deemed by the U.S. Supreme Court to be incompetent to define and address such keystone/central institutions such as marriage and, thereby, at minimum, contested divorces. Consequently, since only our federal courts are wise enough to address the issues of marriage-and therefore contested divorces, it only follows that this Court's jurisdiction has been preempted. At least, according to Justice Scalia, the majority opinion in Obergefell represents "social transformation without representation" Obergefell 135 S.Ct. at 2629 (Scalia, J., dissenting)

Although this Court has some vague familiarity with the governmental theories of democracy, republicanism, socialism, fascism, theocracy, and even despotism, implantation of this apparently new "super-federal-judicial" form of benign and benevolent government, termed "kryptocracy" by some and "judi-idocracy" by others, with its iron fist and limp wrist, represents quite a challenge for a state level trial court. In any event, it should be noted that the victory of personal rights and liberty over the intrusion of state government provided by the majority opinion in Obergefell is held by this Court to have divested subject matter jurisdiction from this Court when a divorce is contested. Individuals, at least according to the majority opinion, are apparently authorized (along with the federal judiciary) to define when a marriage begins and, accordingly, ends, (without the pesky intervention/intrusion of a state court) leaving irreconcilable divorces under Tenn. Code Ann. § 36-4-101(11), Tenn. Code Ann. § 36-4-103, and perhaps even Tenn. Code Ann. § 36-4-129 to some degree (but only when the grounds and/or irreconcilable differences are stipulated), intact and within the jurisdiction of this Court to address.

Upon receiving notice of the complaint from Disciplinary Counsel, you entered an order on September 17, 2015, inviting the parties to brief and argue whether the Court's order of August 28, 2015, should be altered or amended and setting a hearing for argument on that proposition. On September 18, 2015, you entered an order vacating your order of August 28, 2015, and granting the parties a divorce.

After receiving notice from Disciplinary Counsel of the complaint and investigation, you promptly replied, notifying Disciplinary Counsel of the subsequent steps that you had taken concerning the case and were fully cooperative with Disciplinary Counsel during the investigation.

In a meeting with Disciplinary Counsel in connection with the complaints filed against you, and as noted in the September 18, 2015 order, you indicated that you realized that you may have been in error entering the Order as written and recognized that the order could have been misunderstood by the public as undermining its confidence in the independence, integrity and impartiality of the Judiciary, even though that had not been your intention.

Your entry of the order of August 31, 2015, was a violation of Canon 1, Rules 1.1 and 1.2 of the Code of Judicial Conduct as set forth in Rule 10 of the Rules of the Supreme Court of Tennessee that provides in pertinent part:

CANON 1 — A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1 Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

RULE 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Accordingly, this letter constitutes a public reprimand for your actions as described herein.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Craft", with a long horizontal flourish extending to the right.

Chris Craft
Board Chair