



THE COMMONWEALTH OF MASSACHUSETTS  
COMMISSION ON JUDICIAL CONDUCT

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PRESS RELEASE

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FOR IMMEDIATE RELEASE  
June 4, 2001

PROBATE AND FAMILY COURT JUDGE MARIE E. LYONS DISCIPLINED  
BY COMMISSION ON JUDICIAL CONDUCT

BOSTON, MA (June 4, 2001) In a resolution of its formal charges against Judge Marie E. Lyons, Associate Justice of the Probate and Family Court Department, Hampden Division, the Commission on Judicial Conduct has this day reprimanded Judge Lyons, and she has agreed to be suspended for three months without pay for judicial misconduct. The Commission's formal charges arise out of a series of cases over which Judge Lyons presided. Under the disposition agreed to by Judge Lyons and the Commission, Judge Lyons will be on an unpaid leave of absence for a period of three months, will not sit as a judge in any court during that time, and will not use any accumulated vacation time.

Judge Lyons has agreed not to challenge the validity of any of the allegations contained in the Commission's Amended Statement of Formal Charges, a copy of which is attached. The Amended Statement of Formal Charges alleges Judge Lyons violated the following Canons of the Code of Judicial Conduct:

- Canon 3(A)(1) by failing to be faithful to the law or failing to maintain professional competence in it;
- Canon 3(A)(3) by failing to be patient, dignified and courteous to litigants and lawyers with whom she has dealt in her official capacity; and
- Canon 3(A)(4) by failing to accord litigants or their attorneys a full right to be heard according to law.

The Commission's reprimand is based upon Judge Lyons' having: (a) entered orders that either were contrary to or not authorized by law; (b) entered orders or relief not requested by any of the parties to a case without allowing the parties to be heard; (c) refused to listen to litigants and, in one case, ordered a litigant imprisoned for contempt without good cause; (d) refused to consider or rule on matters properly before her; (e) refused to enter temporary orders without considering the individual facts of the case; (f) failed to follow the domestic abuse prevention guidelines of the Trial Court in certain cases where litigants petitioned to vacate domestic abuse prevention orders; and (g) chastised an attorney in an inappropriate manner.

Judge Lyons has also agreed to participate at her own expense in a two-week educational program, at a time to be designated by the Commission in cooperation with Chief Justice Dunphy of the Probate and Family Court. Over the course of two years beginning with the termination of the period of her suspension, there will be a monitoring program designed by the Commission with respect to Judge Lyons' conduct as a judge and her compliance with the Canons of the Code of Judicial Conduct. Judge Lyons has entered into this agreement with the Commission pursuant to G.L. c.211C, § 8(1) and (3), has waived her confidentiality with regard to the above terms of the agreement, and has waived her right to a public hearing in this matter.

BEFORE THE COMMISSION ON JUDICIAL CONDUCT

AMENDED STATEMENT OF FORMAL CHARGES

INCLUDING COMPLAINT NOS. 97-140, 97-143, 98-66, 99-153 and 2000-78

Pursuant to M.G.L. c. 211C, § 5(14) and Commission Rule 7, the Commission on Judicial Conduct hereby gives notice to the Honorable Marie E. Lyons, Associate Justice of the Probate and Family Court Department, that it has found sufficient cause to issue Formal Charges in the above-captioned matters. Pursuant to M.G.L. c. 211C, § 5(14) and Commission Rule 7 (B)(4), the Commission hereby notifies Judge Lyons of her right to file, within ten (10) days after service of this Amended Statement of Formal Charges, a response to the charges set forth below.

The Commission served Judge Lyons with a Statement of Allegations on November 15, 1999 and an Amended Statement of Allegations on February 15, 2000. Judge Lyons served a written Response to the Amended Statement of Allegations on March 10, 2000. The Commission served Judge Lyons with a Second Amended Statement of Allegations on September 22, 2000, to which Judge Lyons filed a Response on October 12, 2000. The Commission notified Judge Lyons of her right pursuant to M.G.L. c. 211C, § 5(7) and Commission Rule 6G to request a personal appearance before the Commission in addition to her written Response, but Judge Lyons made no request to appear personally before the Commission. Thereafter, a Statement of Formal Charges issued, and to which Judge Lyons' counsel has responded.

The Supreme Judicial Court has appointed the Honorable Charles F. Barrett as Hearing Officer, in accordance with Commission Rule 8.A. This Amended Statement of Formal Charges is filed in accordance with arrangements agreed to by counsel for the Commission and Judge Lyons at a pretrial conference conducted by the Hearing Officer.

The Commission charges that, over a period of years, Judge Lyons has engaged in multiple acts of recurrent misconduct. The specific acts of misconduct as hereafter alleged are prejudicial to the administration of justice under M.G.L. c. 211C, § 2(5)(d), and further constitute violations of the Code of Judicial Conduct under M.G.L. c. 211C, § 2(5)(e) as follows:

- (1) refusals and avoidance of her duty to "accord every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law" [Canon 3(A)(4)];
- (2) failures to "be faithful to the law and to maintain professional competence in it" [Canon 3(A)(1)]; and

- (3) failures to conduct herself in a "patient, dignified and courteous manner to litigants, . . . lawyers and others . . . ." [Canon (3)(A)(3)].

All instances hereinafter mentioned took place in the Hampden Division of the Probate and Family Court Department, unless otherwise noted:

### FIRST CHARGE

JUDGE LYONS HAS FAILED TO ACCORD EVERY PERSON WHO IS LEGALLY INTERESTED IN A PROCEEDING, OR HIS LAWYER, FULL RIGHT TO BE HEARD ACCORDING TO THE LAW, IN THE FOLLOWING CIRCUMSTANCES:

- a. Slade v. Slade, Hampden Probate and Family Court No. 96-P-621.

After a conference in this divorce case, the Court issued a pretrial order limiting the issues to be determined at trial to the disposition of certain items of tangible personal property. After trial, Judge Lyons issued an order dividing the tangible personal property at issue and, in addition, awarding the wife \$10,000.

The issue of the \$10,000 payment was not litigated by the parties. Judge Lyons did not notify the husband that she was considering ordering any monetary payment. Accordingly, he presented no evidence at trial relating to any issues other than the division of personal property that was the subject of the pretrial order. In fact, the portion of Judge Lyons' order relating to the \$10,000 transfer was a complete surprise to the husband, who effectively was deprived of an opportunity to be heard.

- b. Family Service Office on Behalf of Melissa M. Miller v. Carlos J. Matos, Franklin Probate and Family Court Nos. 97W 0059 - 61.

In 1997, the Massachusetts Department of Revenue Child Support Enforcement Division (DOR) brought an action in Franklin Probate and Family Court (Massachusetts Department of Revenue Child Support Enforcement Division on Behalf of Melissa M. Miller v. Carlos J. Matos, Franklin Probate and Family Court No. 97W0059 PA1) to have Carlos Matos adjudicated the father of Hayley Matos, then two years old. Mr. Matos, Hayley Matos' mother, Melissa Miller, and an attorney representing DOR appeared before Judge Lyons on June 10, 1997. Based on Mr. Matos' acknowledgment of paternity, Judge Lyons entered an order adjudicating Carlos Matos the father of Hayley Matos.

No other motions were pending at the time of hearing. Nevertheless, in addition to adjudicating Mr. Matos the father of Hayley Matos, Judge Lyons entered an order requiring Mr. Matos to actively seek employment and to report to the

Family Service Office weekly on his efforts to find a job.

On March 16, 1998, the Family Service Office and DOR filed a complaint for civil contempt against Mr. Matos based on his failure to report on his efforts to find work (Family Service Office on Behalf of Melissa M. Miller v. Carlos J. Matos, Franklin Probate and Family Court Nos. 97W0059 - 61). Mr. Matos and Ms. Miller appeared at a hearing before Judge Lyons on April 1, 1998, at which time they explained that they lived together with their children, that Mr. Matos had been employed full-time since September of 1997, and that the family received a small amount of public assistance under a Transitional Assistance to Families With Dependent Children ("TAFDC") grant. After learning that Mr. Matos had been employed full-time since September of 1997, the DOR attorney assigned to the case, Maryann Audette, informed Judge Lyons that DOR was seeking no relief against Mr. Matos other than reimbursement for the cost of serving him with the summons and complaint.

Ms. Audette also explained that Mr. Matos lived with the family, was employed, and was part of a public assistance household. Ms. Audette specifically informed Judge Lyons that DOR was not moving for an order requiring Mr. Matos to pay child support. By way of explanation, Ms. Audette told Judge Lyons that since Mr. Matos was part of the AFDC household, a support order could not be made against him.

Without notice to Mr. Matos that she was considering entering a support order, and without affording Mr. Matos an opportunity to be heard in opposition to any such order, Judge Lyons entered an order on April 2, 1998 requiring Mr. Matos to pay child support and to "resign from the AFDC Program today."

- c. Guardianship of Kiesha Lynn Flematti, Hampden Probate and Family Court No. 97P1977-GM.

On October 22, 1997, Judge David G. Sacks appointed Ruth Kennedy temporary guardian of her granddaughter, Kiesha Lynn Flematti, and issued emergency restraining orders preventing Kiesha Lynn Flematti's father, Anthony Flematti, from contacting Kiesha Lynn Flematti or Ms. Kennedy. Six days later, on October 28, 1997, Judge Lyons held a hearing on Ms. Kennedy's petition to extend the two restraining orders issued by Judge Sacks.

There was no motion pending to vacate Judge Sacks' order appointing Ms. Kennedy temporary guardian of Kiesha Lynn Flematti. Neither the parties nor Judge Lyons raised the issue of Ms. Kennedy's guardianship at the hearing. Nevertheless, after hearing the parties on the restraining orders, Judge Lyons revoked Ms. Kennedy's guardianship over Kiesha Lynn Flematti. Judge Lyons provided no notice to Ms. Kennedy that she was considering revoking the

guardianship and did not provide Ms. Kennedy an opportunity to be heard in opposition to the revocation of the guardianship.

d. Badillo v. Badillo, Hampden Probate and Family Court No. 96P0960.

Marie Badillo filed a complaint for contempt against her ex-husband, who had failed to pay court-ordered child support in the amount of \$11.55 per week. The arrearage at the time Ms. Badillo filed the complaint was \$242.55. A hearing was scheduled for October 30, 1997.

At the time of the hearing, Ms. Badillo lived in Newport News, Virginia, where she worked in a 7-11 convenience store. She was represented by Massachusetts counsel, who attended the October 30 hearing. Ms. Badillo did not travel to Massachusetts for the hearing because the cost of travel, coupled with time lost from work, would have far exceeded the recovery she was seeking in the contempt action. When Judge Lyons learned that Ms. Badillo was not in court, she refused to hear the case. Judge Lyons did not allow Ms. Badillo's attorney an opportunity to be heard so that he might explain his client's absence or how he intended to proceed in his client's absence.

e. Nieves v. Chacon, Hampden Probate and Family Court No. 94D0076 DV.

On August 4, 1997, Miriam Nieves was heard on her complaint for modification of a divorce decree to allow her to remove her minor children from the Commonwealth temporarily. Judge David G. Sacks, the First Justice of the Court, scheduled an evidentiary hearing for September 2, 1997 and allotted thirty minutes for it. Judge Lyons later was assigned to preside at the hearing.

Judge Lyons refused to conduct the scheduled hearing scheduled by Judge Sacks even though the parties and the witnesses were present. Her stated reason for refusing to hear the case was that no pretrial conference had been held, even though the matter had been assigned by Judge Sacks for a hearing, not for a pretrial conference. When Ms. Nieves' attorney asked Judge Lyons to hold the pre-trial conference during the time that had been allotted for the hearing, Judge Lyons refused. Judge Sacks conducted the evidentiary hearing approximately four weeks later without first holding a pre-trial conference.

f. Toce v. Albert, Hampden Probate and Family Court No. 97D2411 AB.

On April 22, 1997, Deanna Toce obtained an ex parte restraining order under M.G.L. c. 209A in District Court against her ex-husband, Jeffrey Albert. The District Court entered an order on May 6, 1997 extending the initial restraining order. The May 6 order stated that the restraining order could be amended,

rescinded, or extended by the Probate and Family Court, where custody and visitation motions already were pending. On August 8, 1997, the District Court extended the restraining order through August 13, 1997. The District Court noted in that order that all further relief was to be sought in Probate and Family Court. Mr. Albert's attorney indicated to Ms. Toce's attorney, Jennifer Dieringer, that his client would not oppose any extension of the existing restraining order.

Based on the District Court's instruction that further motions on the restraining order be brought in Probate and Family Court, Ms. Toce's attorney, Jennifer Dieringer, moved on August 13, 1997 to vacate the restraining order issued by the District Court and filed a petition for a new restraining order in Probate and Family Court. Based on Mr. Albert's attorney's representation to Ms. Dieringer that Mr. Albert would not oppose a new restraining order issued by the Probate and Family Court, Ms. Dieringer then appeared ex parte before Judge Lyons to request the new restraining order.

Judge Lyons asked Ms. Dieringer at the August 13 hearing if the petition was based on the same grounds as the restraining order issued and vacated by the District Court. Ms. Dieringer replied in the affirmative and attempted to explain that the District Court had vacated its order at her request so that she could petition for a new order in Probate and Family Court. Without any basis for saying so, Judge Lyons said, "I don't think that's really true." Ms. Dieringer continued to attempt to explain why it was proper for her to request a new restraining order from the Probate and Family Court and why an order was necessary to protect her client. However, Judge Lyons cut Ms. Dieringer off and refused to consider the evidence, thus denying Ms. Toce and her lawyer a full opportunity to be heard according to law.

- g. Bournigal v. Kho, Hampden Probate and Family Court Nos. 95W0043 and 99W1438.

On August 11, 1999, Judge Lyons refused to hear a motion to vacate a temporary custody order previously entered by Judge David G. Sacks, based on her position that only Judge Sacks could do so. Judge Lyons refused to accept a representation by the moving party's attorney, Nancy Gallman, that Judge Sacks had expressly stated at a previous hearing that did not go forward because no interpreter was available that the matter should be heard on the next motion day, regardless of whether he was sitting in the motion session. Judge Lyons rejected Ms. Gallman's assertion without making any inquiry as to whether it was accurate.

THEREFORE, the Commission charges that, by the foregoing conduct, Judge Lyons violated Supreme Judicial Court Rule 3:09, Canon 3(A)(4) of the Code of Judicial Conduct, which requires a judge to "accord every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law."

### SECOND CHARGE

JUDGE LYONS HAS FAILED TO BE FAITHFUL TO THE LAW OR, ALTERNATIVELY, FAILED TO MAINTAIN PROFESSIONAL COMPETENCE IN IT IN THE FOLLOWING CIRCUMSTANCES:

- a. Family Service Office on Behalf of Melissa M. Miller v. Carlos J. Matos, Franklin Probate and Family Court Nos. 97W 0059 - 61.

As described more fully above, on April 1, 1998, Carlos Matos appeared before Judge Lyons as a defendant in a complaint for contempt filed by DOR based on Mr. Matos's failure to report weekly to the Family Service Office on his efforts to find full-time employment. DOR's attorney, Maryann Audette, told Judge Lyons at the hearing that DOR was not seeking a child support order against Mr. Matos. By way of explanation, Ms. Audette informed Judge Lyons that Mr. Matos, Melissa Miller, and their three children lived together as an intact family unit and received public assistance under the TAFDC grant, and that child support orders against a custodial parent could not be sought in such circumstances.

Despite the absence of a pending motion and that a child support order against a custodial parent receiving public assistance could not be ordered, Judge Lyons entered an order requiring Mr. Matos to pay child support to DOR in the amount of \$80.60 per week and to "resign from the AFDC Program" that day.

Judge Lyons's order requiring Mr. Matos to pay child support and to resign from the AFDC grant was contrary to and undermined the statutes and state regulations under which Mr. Matos, Ms. Miller, and their children received public assistance. Specifically, under 106 C.M.R. §§ 204.220(A) and 204.230, the child support paid by Mr. Matos would be retained by the Massachusetts Department of Transitional Assistance ("DTA"), except for \$50 per month which would be passed through to the family unit. Moreover, Mr. Matos' child support payments would not be deducted from the amount of family income considered by the DTA when calculating the amount of public assistance to which the family was entitled under 106 C.M.R. §§ 204.200 - 204.290. Therefore, Judge Lyons' order resulted in the family receiving reduced public assistance until Judge Lyons' order was stayed by another Probate and Family Court judge on May 21, 1998.



Judge Lyons knew, or should have known, that her April 2, 1998 order that Mr. Matos pay child support and "resign" from public assistance was contrary to and undermined the purpose of duly enacted legislation and regulations under which Mr. Matos and his family received public assistance.

- b. Guardianship of Tawanda T. Ward, Hampden Probate and Family Court No. 96P0420-GM.

On March 11, 1996, twelve year-old Tawanda Ward's two adult brothers filed an emergency petition to be appointed as her temporary guardians. The grounds for their petition were that Tawanda Ward suffered from epilepsy and that their mother had died four days earlier. Judge Lyons denied the petition on the grounds that the "emergency" required for the appointment of a temporary guardian was lacking. Judge Lyons informed the petitioners and their attorney that the relevant statute (M.G.L. c. 201, § 14) and Supreme Judicial Court decisions made it clear that she was not authorized to appoint a temporary guardian for Ms. Ward under the circumstances, and that the brothers would have to petition for permanent guardianship. However, M.G.L. c. 201, § 14 specifically authorizes the appointment of temporary guardians in cases where, as alleged by the proposed temporary guardians, the welfare of a minor so requires, and no cases suggest otherwise. Judge Lyons' unfounded reliance on and reference to a statute and cases to deny categorically the relief requested by the petitioners demonstrate her failure to be faithful to the law or, alternatively, her failure to maintain competence in it.

- c. Giard v. Giard, Hampden Probate and Family Court No. 97D0413.

On November 3, 1997, Judge Lyons presided over a divorce hearing brought by Karen Giard against George Giard on grounds of cruel and abusive treatment. At the hearing, Ms. Giard's attorney, Jennifer Dieringer, proffered a proposed Judgment of Divorce Nisi providing for custody of Ms. Giard's two minor children, the resumption of her former name, no visitation rights for Mr. Giard, and a permanent 209A restraining order to be issued against Mr. Giard. After Ms. Giard testified on the grounds for divorce, Judge Lyons stopped the hearing and said that she was granting the divorce on grounds of cruel and abusive treatment. Having submitted the proposed Judgment, Attorney Dieringer did not elicit additional testimony from Ms. Giard.

Later that day, the Court entered a Judgment of Divorce Nisi signed by Judge Lyons which granted the divorce but provided none of the other requested relief. Believing that the Court had omitted the relief inadvertently, Attorney Peter Benjamin, who had succeeded Attorney Dieringer, filed a Motion to Amend

Judgment of Divorce Nisi. At hearing on the motion, Judge Lyons expressed the view that, because the parties had last lived together in Florida, the Court lacked jurisdiction to grant the relief Ms. Giard requested. She maintained this position even though Ms. Giard and the children had resided in Massachusetts since 1995. She then asked Attorney Benjamin to file a brief addressing the issue of jurisdiction.

After Attorney Benjamin filed a brief supporting the Court's jurisdiction to award the relief requested by Ms. Giard, Judge Lyons denied the Motion to Amend Judgment of Divorce Nisi, this time "for the reason that there was no testimony offered at the time of the hearing of divorce with regard to the requeste (sic) amendment."

Judge Lyons' sua sponte suggestion that she lacked jurisdiction contradicted a basic tenet of Massachusetts law and this and her subsequent refusal to grant the uncontested relief on the grounds of "no testimony," particularly in light of her own termination of the evidentiary proceeding, thereby causing a wasteful appeal to the Appeals Court, demonstrates an unwillingness to follow the law.

d. White v. White, Hampden Probate and Family Court No. 99D1254-AB.

On August 6, 1999, Michelle White appeared before Judge Lyons to request that a restraining order against her husband, Michael White, be extended for one year. The order had been in effect for three months at the time of the hearing. Michael White, who met with Ms. White's attorney in the courthouse prior to the hearing, did not oppose the extension requested by Ms. White and left the courthouse before the hearing. Ms. White's attorney informed Judge Lyons that Mr. White had told her that he did not object to the restraining order being extended for one year.

After briefly reviewing an affidavit submitted by Ms. White in support of the requested extension, Judge Lyons informed Ms. White and her attorney that she could not consider evidence about incidents of abuse that occurred prior to the issuance of the existing order three months earlier, but was constrained by law to considering only what had happened during the pendency of the existing restraining order. That statement is contrary to M.G.L. c. 209A, § 3. Eventually, Judge Lyons agreed to extend the restraining order for a period of three months. She provided no reason for denying Ms. White's request that the restraining order be extended for a full year.

e. Toce v. Albert (see above).

In determining not to extend the restraining order, Judge Lyons inquired whether there had been any abuse within the three month period that the restraining order

had been in effect. This inquiry, in this context, reflects Judge Lyons' misunderstanding of the law, and her apparent belief that violation of a c. 209A Order is a condition precedent to extending the Order.

f. Vacating or Modifying c. 209A Orders.

In cases in which a parent petitions to vacate or modify a c. 209A restraining order obtained as a result of abuse that occurred in front of a minor child, Judge Lyons has adopted the informal policy of informing the petitioner, in substance, that she intends to cause the filing of a report with the Massachusetts Department of Social Services alleging possible child abuse or failure to provide a safe or suitable environment for the child. Judge Lyons informs the petitioner that she intends to file such a report without regard to any prior involvement by the Department of Social Services with the family unit. The result of this policy is that persons who wish to have a restraining order vacated or modified for legitimate reasons are discouraged from seeking aid from the court for fear of being subjected to an investigation by the Department of Social Services.

The following cases illustrate this practice:

Ward v. Ringer, Hampden Probate and Family Court No. 99D0352. On April 27, 1999, Sherry Ward filed a petition to vacate the "no contact" provision of an existing restraining order against her boyfriend, Kevin Ringer. At hearing, Ms. Ward requested that the entire order be vacated. Judge Lyons informed Ms. Ward that she would notify the Department of Social Services of Ms. Ward's petition to vacate.

White v. White, Hampden Probate and Family Court No. 99D1254. On June 11, 1999, Michelle White petitioned to vacate the "no contact" and "stay away" provisions of a restraining order previously issued against her husband, Michael White. Judge Lyons told Ms. White that she would notify the Department of Social Services if she went through with her request to have the restraining order vacated. Ms. White then withdrew her petition to vacate.

Russell v. Russell, Hampden Probate and Family Court No. 99D2559. On September 13, 1999, the petitioner, Carolyn Russell, petitioned for a restraining order against abuse only, allowing Ms. Russell's husband, Charles Russell, to continue to contact her. Judge Lyons granted the petition but informed Ms. Russell that she intended to have a report filed with the Department of Social Services because she did not petition for a restraining order preventing the defendant from contacting her.

Karwowski v. Karwowski, Hampden Probate and Family Court No.

99D0622. On June 9, 1999, Diane Karwowski petitioned to vacate a restraining order previously issued against her husband, John Karwowski. Judge Lyons told Ms. Karwowski that she would file a report with the Department of Social Services if she went through with her request to have the restraining order vacated.

Anne E. LaPierre v. Richard R. LaPierre, Hampden Probate and Family Court No.99-D-1982 and Richard R. LaPierre v. Anne E. LaPierre, Hampden Probate and Family Court No. 99-D-2188-AB. On August 11, 1999, Anne E. LaPierre petitioned to vacate a restraining order previously issued against her husband, Richard R. LaPierre. Judge Lyons told Ms. LaPierre that she would notify the Department of Social Services if she went through with her petition to have the restraining order vacated.

- g. In re Guardianship of a Minor. Hampden Probate and Family Court No. 00P-0847.

On November 22, 2000, Judge Lyons presided over a hearing regarding the extension of a guardianship of a minor child in the process of adoption by David and Catherine Goyer. Prior Orders of temporary guardianship had been made by other Probate Judges on April 14, 2000 and on June 30, 2000, pending completion of a home study, which is a prerequisite to completion of adoption proceedings. In complete disregard of the apparent best interests of the minor child, who by that time had lived with Mr. and Mrs. Goyer for more than eight months, Judge Lyons refused to extend the temporary guardianship and gave custody of the child to the Department of Social Services. At a reconvened hearing later that day, Judge Lyons wrongly caused the imprisonment of Mrs. Goyer, purportedly on the basis of her refusal to obey a "direct order" of the Court, made minutes before, by which Mrs. Goyer was required to turn over the child to DSS. Mrs. Goyer repeatedly told Judge Lyons that the child was with her sister, shopping at some unknown location in the Springfield area and that the sister cared for the child in the afternoon until Mrs. Goyer returned from work at 5:30 in the afternoon. Despite this and despite Mrs. Goyer's cooperation, even in a period of obvious stress, Judge Lyons refused to listen to Mrs. Goyer and her husband, and ordered Mrs. Goyer imprisoned, without cause. Judge Lyons also took personal jurisdiction of the case.

THEREFORE, the Commission charges that Judge Lyons violated Canon 3(A)(1) of the Code of Judicial Conduct by failing to be faithful to the law or, alternatively, failing to maintain professional competence in it.

### THIRD CHARGE

JUDGE LYONS HAS FAILED TO CONDUCT HERSELF IN A PATIENT, DIGNIFIED AND COURTEOUS MANNER, IN THE FOLLOWING CIRCUMSTANCES:

- a. Fernandez v. Fernandez, Hampden Probate and Family Court No. 96D2235 AB.

This case involved a complaint for modification regarding child visitation. An evidentiary hearing was scheduled for March 11, 1997 before Judge Lyons. The parties settled their dispute on March 10. The mother's attorney, Jennifer Dieringer, immediately called the clerk and asked that the hearing be removed from the list. The clerk refused that request.

Ms. Dieringer and the father's attorney, John Jerzyk, then prepared a written visitation agreement to present to Judge Lyons the following day. Ms. Dieringer and Mr. Jerzyk also agreed that there was no need for Ms. Fernandez, who lived in a battered women's shelter an hour's drive from the courthouse and had no car or child care available to her, to be present in court. Ms. Fernandez also did not want to attend the hearing because she did not want to be near her ex-husband, whom she alleged had physically abused her previously.

When Judge Lyons learned at the hearing that Ms. Fernandez was not present in court, she ordered Ms. Dieringer to call Ms. Fernandez and instruct her to come to court immediately. Judge Lyons then berated Ms. Dieringer for informing her client that she need not appear at the hearing.

Ms. Dieringer's instruction to her client not to attend the March 11 hearing appeared to have been, at worst, a good faith error arising out of an agreement with opposing counsel. Ms. Dieringer apologized to Judge Lyons at least five times and attempted to explain the reason for her client's absence, but Judge Lyons cut Ms. Dieringer off repeatedly and continued to berate her long after the judge had made her point.

- b. Toce v. Albert, Hampden Probate and Family Court No. 97D2411 AB.

As described more fully above, Ms. Toce's attorney, Jennifer Dieringer, appeared before Judge Lyons ex parte to petition for an emergency restraining order. Ms. Dieringer informed Judge Lyons at the hearing that the District Court had vacated an identical restraining order at her request so that she could petition for a new restraining order in Probate and Family Court, where related matters were pending. Without having any basis to believe that Ms. Dieringer's representation was

untrue, and without inquiring of the District Court whether or not Ms. Dieringer's representation was untrue, Judge Lyons responded, "I don't think that's really true," and refused to hear Ms. Dieringer on the petition. Judge Lyons' statement was reasonably perceived by Ms. Dieringer as an accusation that she was lying. Judge Lyons had no basis upon which to make such an accusation.

- c. In re Guardianship of a Minor, Hampden Probate and Family Court, No. 00-P-0847.

As described more fully above, Mr. and Mrs. Goyer appeared before Judge Lyons on November 22, 2000. Judge Lyons' conduct on that date was impatient, undignified, and discourteous.

On April 11, 2001, Mrs. Goyer filed a Complaint with the Commission, complaining about Judge Lyons' conduct in this matter. On April 19, 2001, counsel for the minor child moved that Judge Lyons disqualify herself from the proceeding in light of the Complaint filed with the Commission by Mrs. Goyer.

On April 20, 2001, a Motion for Disqualification was brought to the attention of Judge Lyons' counsel with an indication that the matter was "time sensitive" and with a request that it be acted on promptly. Nevertheless, for at least two weeks thereafter, Judge Lyons refused to recuse herself in this matter. On May 9, 2001, Judge Lyons required the parties to appear before her with respect to the requested recusal. At the hearing on May 9, 2001, Judge Lyons took the matter under advisement. As of May 15, 2001, the Motion had still not been decided.

While a Judge is certainly not required to recuse herself whenever one of the parties has filed a Complaint with the Commission on Judicial Conduct, Judge Lyons' refusal to do so in the context of these proceedings reflects a failure to act in accordance with the dignity of the court, and was discourteous and inconsiderate.

- d. Case of Ortiz Santana, Hampden Probate and Family Court, No. 90-D-2541

On August 5, 1999, Mr. Santana appeared before Judge Lyons, in connection with a Complaint for Contempt for non-payment of child support. Attorney Colin Keefe was appointed by the Court to represent Mr. Ortiz.

There were various hearings before Judge Lyons on August 5. Mr. Ortiz did not speak or understand English and relied on the services of an interpreter for his communication. During the course of the day, Attorney Keefe worked diligently with Mr. Ortiz, in accordance with the Court's direction, based on the Court's representation that she would impose a suspended sentence of six months on Mr. Ortiz, and not sentence him to jail that day, if he provided evidence of employment

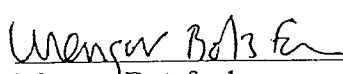
and if he agreed to a payment of \$105 a week on the past due child support and \$44 a week in current child support. Mr. Ortiz agreed to these conditions and, with the assistance of Attorney Keefe, provided the Court with documented evidence of employment which the Court found satisfactory and agreed to the arrangement which the Court had said would be acceptable, including the six month suspended sentence. Despite this, and solely because Mr. Ortiz could not answer a confusing question put to him by the Court through the interpreter, and with unjustified pique and anger, Judge Lyons immediately sentenced Mr. Ortiz to six months in the House of Correction.

This conduct by Judge Lyons reflected impatience in the extreme and disrespect for the orderly process of justice.

THEREFORE, the Commission charges that Judge Lyons failed to conduct herself in a patient, dignified and courteous manner to litigants, lawyers, and others with whom she deals in her official capacity.

The conduct alleged above, if true, constitutes conduct that is prejudicial to the administration of justice, that is unbecoming a judicial officer, that brings the judicial office into disrepute, and that violates M.G.L. c. 211C, § 2(5)(d) and (e), and Canon 3 of the Code of Judicial Conduct.

For the Commission



Margot Botsford  
Chairman

Date: May 21, 2001