

Filed: February 7, 2013

IN THE SUPREME COURT OF THE STATE OF OREGON

Inquiry Concerning a Judge

Re: THE HONORABLE TIMOTHY BARNACK,

Accused.

(CJFD No. 12-24; SC S060976)

En Banc

On review of the Commission on Judicial Fitness and Disability Stipulation to Facts and Consent to Censure.

Filed January 9, 2013.

The Honorable Patricia Sullivan, Chair, Oregon Commission on Judicial Fitness and Disability, submitted the stipulation.

PER CURIAM

The accused is censured.

1 PER CURIAM

2 This is a proceeding to inquire into the conduct of a circuit court judge.

3 ORS 1.410 establishes the Commission on Judicial Fitness and Disability (Commission),
4 and ORS 1.420 to ORS 1.430 set out procedures by which the Commission may
5 investigate any complaint concerning the conduct of a judge. Those procedures permit
6 the Commission and a judge who is the subject of a complaint to enter into a stipulation
7 as to the facts and the appropriate sanction. ORS 1.420(1)(c); ORS 1.430(2). One
8 permissible sanction is censure by this court. ORS 1.430(2); *see also* Or Const, Art VII
9 (Amended), § 8(1)(e) (authorizing censure by the Supreme Court as sanction for violation
10 of rule of judicial conduct). In this proceeding, the Commission and the accused, the
11 Honorable Timothy Barnack, a judge of the Circuit Court of the State of Oregon for
12 Jackson County, have agreed to a Stipulation of Facts and Consent to Censure
13 (stipulation), in which the accused has stipulated that he engaged in conduct that violated
14 the Oregon Code of Judicial Conduct JR 1-101(A) (judge shall observe high standards of
15 conduct so that integrity, impartiality, and independence of the judiciary are preserved)
16 and JR 1-101(C) (judge shall not engage in conduct that reflects adversely on the judge's
17 character, competence, temperament, or fitness to serve as a judge).

18 We set out the stipulation in pertinent part:

19 "The accused stipulates as follows:

20 "1. If a contested hearing was held in this matter, clear, cogent and
21 convincing evidence would be presented sufficient to establish the facts that
22 follow;

23 "2. At all material times herein, the accused was a judge on the

1 Circuit Court in Jackson County, State of Oregon.

2 "3. In October 2011, defendant Richard Lee Taylor was convicted
3 of 21 sex crimes including five counts of using a child in a display of
4 sexually explicit conduct, one count of sexual abuse in the first degree, one
5 count of sodomy in the second degree, three counts of encouraging child
6 sexual abuse in the first degree, and three counts of encouraging child
7 sexual abuse in the second degree.

8 "4. Taylor's victims were two 12 year old boys. The evidence
9 included about 30 video recordings showing Taylor sexually abusing the
10 boys. The recordings were so disturbing that jurors thanked Judge Barnack
11 for stopping some of the video shown during the three day trial. Several
12 jurors cried. Three jurors asked Judge Barnack whether there was
13 counseling available to them.

14 "5. On January 21, 2012, Judge Barnack sentenced Taylor to 21 life
15 sentences in prison without the possibility of parole. Taylor declined to
16 comment during his sentencing when asked by the judge if he wished to do
17 so.

18 "6. Judge Barnack referred to Taylor as a 'piece of shit,' repeatedly
19 asked Taylor if he wanted to salvage his soul, commented that community
20 members might ask why Taylor isn't 'hanging from a tree' and that he
21 personally hopes that Taylor rots in prison.

22 "7. Judge Barnack, like the jurors, says he was traumatized from
23 viewing the videos of the abuse.

24 "8. Judge Barnack acknowledges he lost control of his emotions
25 when Taylor declined to speak at his sentencing. Judge Barnack felt Taylor
26 evidenced an indifferent and unsympathetic attitude towards his victims,
27 one of whom was in the courtroom. Judge Barnack acknowledges that his
28 comments were inappropriate.

29 "9. After sentencing, Judge Barnack sent an email to the other
30 Jackson County Circuit Court Judges apologizing for his remarks at the
31 sentencing of Taylor. Judge Barnack sought counseling from more
32 experienced judges regarding how best to manage emotionally charged
33 courtroom situations. Furthermore, Judge Barnack has adopted procedures
34 such as a prepared script for sentencing to ensure that such behavior is not
35 repeated."

36 Pursuant to ORS 1.430(2), the court has reviewed the stipulation of facts

1 and the disciplinary action to which the accused has consented. The court approves the
2 consent to censure.

3 The accused is censured.