

Before the
COMMISSION ON
JUDICIAL CONDUCT

In the Matter of the Investigation of	)	<u>CONFIDENTIAL</u>
	)	
DAVID L. FONG,	)	NO. 00-14
	)	
Judge, District Court of the	)	CONCLUSIONS
First Circuit, State of Hawai'i	)	AND
	)	RECOMMENDATION
	)	FOR DISCIPLINE

CONCLUSIONS AND RECOMMENDATION FOR DISCIPLINE

Based on the Stipulation of Facts entered into between the Office of Disciplinary Counsel and David L. Fong, the Commission determines that further proceedings are not necessary, adopts that Stipulation of Facts as its Findings of Fact, and makes the following conclusions and recommendation for disciplinary action to the Hawai'i Supreme Court.

CONCLUSIONS

1. Although Judge Fong's term as a judge has expired and he is no longer sitting as a judge of the District Court, the Commission has continuing jurisdiction over this matter since the complaint was initiated while he

was sitting as a judge. See Rule 8.2(c)(3) of the Rules of the Supreme Court ("RSCH").

2. RSCH Rule 15 pertaining to "Judicial Financial Disclosures" requires that every judge, including part time judges, shall file in the supreme court clerk's office an annual financial statement on a form approved by the supreme court on or before April 30 of each year.
3. The form sets forth the matters which shall be disclosed and requires that the statement shall include disclosure of the financial interests of not only the judge but also the judge's spouse and any dependent children.
4. Judges must report as much information about their spouse's and dependent children's holdings, income, transactions and liabilities as judges would about their own.
5. If a judge believes there is an ambiguity in the reporting requirements, such ambiguity should generally be resolved in favor of disclosure.
6. The objectives of financial disclosure are to inform the public about the financial interests of a judge and the judge's spouse and children, as required by

RSCH Rule 15, in order to increase public confidence in the integrity of the judiciary and to deter potential conflicts of interests.

7. The burden is on the judge to file accurate financial disclosure statements.
8. A judge who files an incomplete statement is subject to discipline pursuant to RSCH Rule 8.
9. Financial disclosure statements, however, are neither intended as net worth statements, nor are they suited for that purpose.
10. The Findings of Fact are supported by clear and convincing evidence as required by RSCH Rule 8.9(f).
11. Judge Fong did not fully comply with the judicial financial disclosure requirements of RSCH Rule 15 from the time he was a part time judge through the time that he served as a full time judge by not disclosing several of his wife's financial interests.
12. Judge Fong's failure to comply was due to negligence and at times due to inattention to the detailed information regarding his wife's financial interests.
13. Judge Fong cannot ignore the fact that while he was engaged in the practice of law, he also represented parties to matters in which his wife was involved and

which should have been disclosed under the requirements of RSCH Rule 15.

14. Judge Fong was aware of his wife's business affairs.
15. Judge Fong is presumed to know the judicial financial disclosure requirements of RSCH Rule 15.
16. Judge Fong's failure to comply with the requirements of RSCH Rule 15 was inexcusable.
17. There is clear and convincing evidence that Judge Fong materially failed to comply with the judicial financial disclosure requirements of RSCH Rule 15.
18. The numerous failures to disclose set forth in the Findings of Fact each constitute a separate violation of RSCH Rule 15.
19. Judges are held to the highest standards of integrity. The Revised Code of Judicial Conduct disciplines not only actual impropriety but also conduct that reasonably results in an appearance of impropriety.
20. Judge Fong not only failed to comply with RSCH Rule 15 but his omissions also had the effect of giving an appearance of impropriety which was prejudicial to the administration of justice and has enhanced the potential for bringing the judicial office into disrepute in violation of Canon 2 of the Revised Code of Judicial Conduct.

21. Judge Fong's omissions were not fraudulent. However, grounds for discipline exist under RSCH Rule 8.5(a)(4).
22. Judge Fong's misstatement to the media regarding his lack of knowledge of "anything illegal" violated Canon 2 of the Revised Code of Judicial Conduct.
23. The involvement by Judge Fong's spouse in the hostess bar business is not a violation of the Revised Code of Judicial Conduct.

RECOMMENDATION FOR PUBLIC CENSURE

Since Judge Fong's term has expired and he is no longer serving as a judge, the disciplinary sanctions that the Commission may consider are limited. The Commission has considered all disciplinary sanctions available to the Commission for recommendation. Having found that Judge Fong's omissions were material but not fraudulent, the Commission concludes that the sanction to recommend should be either a private reprimand under RSCH Rule 8.9(f)(4) or a public censure under RSCH Rule 8.9(f)(5).

In determining whether the appropriate sanction should be private or public, this Commission has considered a number of factors:

1. Judge Fong is highly respected within the Hawai'i State Judiciary as is reflected by

his election and service as President of the Hawai'i State Trial Judges Association from November 1999 to November 2001.

2. Omissions by Judge Fong were not fraudulent.
3. The omissions were negligent and at times inadvertent or based upon a good faith misinterpretation of the disclosure requirements.
4. Judge Fong performed his judicial duties ably and conscientiously during the time he served as a per diem judge and a district judge.
5. Judge Fong has cooperated with the Office of Disciplinary Counsel and this Commission during this investigation.
6. Judge Fong voluntarily responded to the media's questions about his conduct.
7. Judge Fong should have been knowledgeable of his wife's business activities for purposes of complying with his financial disclosure responsibilities.
8. In his effort to be spontaneous and cooperative with the media, Judge Fong appears to have misstated the level of his

knowledge of unsavory activities involved in some of the hostess bars related to some of his wife's business activities.

9. Judge Fong should be reprimanded because of the number of omissions regarding his wife's many business activities.
10. The number of omissions and the negative effect it has on public confidence in the judiciary, outweigh the fact that Judge Fong has performed well as a judge and that the nondisclosures were not fraudulently concealed, and thereby support a recommendation that the reprimand be public as opposed to private.

Accordingly, the Commission recommends that the Hawai'i Supreme Court issue a public censure as a sanction against Judge David Fong for violating the financial disclosure requirements of RSCH Rule 15.

DATED: Honolulu, Hawaii, July 31, 2003

COMMISSION ON JUDICIAL
CONDUCT
STATE OF HAWAI'I



GERALD Y. SEKIYA
CHAIR