

NEBRASKA COMMISSION ON JUDICIAL QUALIFICATIONS
Complaint or Request Form
C O N F I D E N T I A L

TO: Commission on Judicial Qualifications

FROM: _____

DATE: _____

Please consider this form to be: (select one)

xx A complaint against a judge of the State of Nebraska regarding his or her acts, activities, or qualifications.

_____ A request that the Commission consider the qualifications of a judge of the State of Nebraska.

1. Name of the Judge: The Hon. Peter C. Bataillon

2. Name of Court: Judge of the District Court, 4th Judicial District (Douglas County)

3. City: Omaha

4. Date of incident: July 2013

5. Time of incident: unknown

6. Location of incident: Hall of Justice, 1701 Farnam Street, Courtroom 13

7. The information you provide in this statement should be based on facts and not on personal conjecture.

This matter concerns Judge Bataillon's handling of In re Petition of Anonymous 5, a teenager's petition to exercise her constitutional right to abortion. Judge Bataillon's conduct of that hearing constitutes willful disregard of and failure to perform his judicial duties, as well as conduct so prejudicial to the administration of justice that it brings the judicial office into disrepute.

In light of Bataillon's history of personal activism both in opposition to abortion rights and in defense of zealots seeking to intimidate others from exercising their constitutional rights, it is clear that Bataillon is not applying Nebraska law as is written and instead is implementing his own politics from the bench.

We ask the Commission to conduct a full investigation of this and all other matters before Judge Bataillon concerning his conduct in this matter and all other abortion-related matters which have been brought before him, to hold a hearing regarding his fitness to serve as judge, and to institute appropriate disciplinary action against Judge Bataillon including but not limited to public reprimand, discipline, or censure; or suspension or removal from office.

This complaint will now review the facts of Judge Bataillon's handling of In re Petition of Anonymous 5, then Judge Bataillon's personal history of extreme anti-abortion activism providing context to his egregious behavior from the bench.

Facts regarding In re Petition of Anonymous 5:

Emily[1] became a ward of Nebraska when a juvenile court terminated the parental rights of her

biological parents who were physically abusive and chemically dependent. That left the Nebraska Department of Health and Human Services as the legal guardian for Emily, age 16, and her two siblings, ages 7 and 9. She is a senior in high school who plans to graduate early, having already saved enough money to live on her own. She plans to attend college.

Placed in foster care with her siblings, and then ten weeks pregnant, Emily appeared before Judge Bataillon seeking judicial permission to terminate her pregnancy. This was required under Nebraska law because Emily did not want to approach her foster parents for their permission, given their avowed opposition to abortion.[2] As the Nebraska Supreme Court recounted in addressing Emily's appeal:

She testified that she would not be able to financially support a child or “be the right mom that [she] would like to be right now.” She feared that she might lose her foster placement if her foster parents learned of her pregnancy. Petitioner testified that her foster parents have strong religious beliefs about abortion. **She felt that her foster parents “would not okay” an abortion and that “they would not just be taking it out on [petitioner], it would also be taken out on the child.”** Petitioner believed that putting the child up for adoption would be worse for her and her family because her foster parents would have resentment toward her. **Petitioner feared that her foster parents would tell her siblings that she was a “bad person.”**

Emily's testimony further demonstrated her mature, thoughtful consideration of her options. She testified that she mostly raised her younger siblings because her parents “were never around.” As for this decision, she received significant counseling, including six sessions where she either had counseling or a medical procedure. Emily had three ultrasounds and has heard the fetal heartbeat, understood the ramifications of her decision including any attendant health risks to herself.

Judge Bataillon harshly challenged Emily, rudely and aggressively telling her “when you have the abortion it's going to kill the child inside you.” His bias against Emily's ability to make her own choices was manifest. He then denied Emily's request. The Nebraska Supreme Court affirmed, largely deferring to Judge Bataillon's personal conclusion that Emily was not sufficiently mature and well informed to decide on her own whether to carry her pregnancy to term.

Peter Bataillon's Legacy of Anti-Choice Activism: Worse than Judge Bataillon's harsh treatment of Emily in the courtroom is his career of anti-choice activism, often on behalf of radical and criminal behavior, which appears to have animated it. Judges are of course allowed to have personal beliefs, and the activities of one's clients are not all attributed to the attorney himself—but in this case, it appears clear beyond peradventure that Peter Bataillon sought to advance from the bench the same anti-choice interests he did during his personal crusades as a lawyer. He has failed to be reasonable, and to apply the law in a fair and impartial manner.

According to Crisis Magazine, Bataillon worked in November 1990 to help radical activists from the Operation Rescue organization—a self-described “pro-life Mafia” —defeat criminal charges on the grounds that such unlawful action was justified by a “necessity defense” to block women

from exercising their constitutional rights.

Similarly, according to an August 26, 1993 Associated Press article, Bataillon was at it again, this time defending Sharon McKee, an anti-choice zealot accused of stalking an obstetrician at the Omaha airport multiple times during the course of a year, once telling the doctor "*You deserve to be blown away.*" McKee has been arrested and convicted repeatedly for stalking abortion providers, though complainants do not presently know how many other times Bataillon has defended her.

According to the book *Women of Courage* (2007) by Mary Jay Green, Bataillon served during the 1990s as President of the Metro [Omaha] Area Right to Life organization. Similarly, a January 17, 1994 Associated Press article identifies him as speaking on behalf of Nebraska Lawyers for Life, while articles from the summer of 1992 show Bataillon across the Kansas border to represent Elizabeth Ann Tilson, accused of crimes related to anti-abortion protests in Wichita.

Emily's lawyer tried to raise the issue of recusal as to Judge Bataillon before the Nebraska Supreme Court. It declined to do so, on the grounds that the issue had not been raised before Judge Bataillon himself. It is timely and proper for this Commission to explore his bias now.

8. Please list all known witnesses' names, addresses, and phone numbers:

The only witness of which complainants are aware would be Emily's attorney, Catherine Mahern. According to the Nebraska State Bar Association, her contact information is 2120 Cass St., Omaha, NE 68178,(402) 280-3068.

Dated this _____ day of _____, _____.

Signature

Type or Print Full Name

Street Address

City, State, Zip

Office Phone: Home:

ANY OTHER PERSON DESIRING TO SIGN THIS COMPLAINT OR REQUEST SHOULD ATTACH A SIGNATURE BLOCK SIMILAR TO THE ABOVE FORMAT.

Please mail in an envelope marked CONFIDENTIAL to:
Commission on Judicial Qualifications
ATTN: Secretary
Nebraska Supreme Court
P.O. Box 98910
Lincoln, NE 68509

[1] The young woman is not named in the judicial proceedings, and the press has protected her privacy. For sake of readability, this complaint will refer to her as Emily.

[2] In addition, as a ward of the state there was a more-than-arguable case that her foster parents had no cognizable interests regardless, placing Emily in legal limbo under the statutory scheme. While Judge Bataillon was made aware of this issue, he chose not to address it, and accordingly the Nebraska Supreme Court did as well. Under the regulations of the Nebraska Department of Health and Human Services, however:

A female ward has the right to obtain a legal abortion. The decision to obtain an abortion is the ward's. The child's worker will provide unbiased information to the ward regarding alternatives and appropriate agencies and resources for further assistance. The worker will not encourage, discourage, or act to prevent or require the abortion.

If a ward decides to have an abortion, the consent of the parent(s) or Department is not required.

390 Neb. Admin. Code, ch. 11, § 11-002.04A (1998).