

BEFORE THE
JUDICIAL INVESTIGATION COMMISSION
OF WEST VIRGINIA

IN THE MATTER OF:

COMPLAINT NO. 225-94

Mental Hygiene Commissioner Wayne R. Mielke
Mental Hygiene Commissioner for
Brooke County, West Virginia

This matter is before the Judicial Investigation Commission upon a complaint filed on December 8, 1994, setting forth certain allegations against Mental Hygiene Commissioner Wayne R. Mielke, Mental Hygiene Commissioner for Brooke County.

The complaint was filed to determine if there had been a violation of the Code of Judicial Conduct by the Mental Hygiene Commissioner based upon his communication with law enforcement officers, anticipated witnesses and parties in connection with the preparation of and investigation of applications for involuntary custody.

Upon receipt of the complaint it was investigated pursuant to the Rules of Judicial Disciplinary Procedure. During the investigation of this matter it was learned that the procedures followed by the Mental Hygiene Commissioner in handling certain matters entail his interviewing, speaking to, or receiving information from prospective applicants or petitioners, witnesses, police officers, and others prior to, subsequent to and outside of the custody/detention proceeding on a mental hygiene petition or application. The procedures

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currently utilized, despite the benign intentions of the Mental Hygiene Commissioner, sometimes place him in the position of an advocate rather than a judicial officer who must rule upon a petition or application based on information and statements contained therein or presented in support thereof. The Commission notes that under West Virginia Code Chapter 27, Article 5, Section 1(c), it is the duty of the Prosecuting Attorney or one of his or her assistants to represent applicants in all proceedings filed pursuant to the provisions of said Article.

The complaint and the investigation of this matter were reviewed by the Judicial Investigation Commission at its meeting on February 10, 1995. It was determined that probable cause exists that Mental Hygiene Commissioner Wayne R. Mielke violated Canons 1, 2A, and 3A and B(7) of the Code of Judicial Conduct. It was further determined that formal discipline was not appropriate under the circumstances. The Judicial Investigation Commission determined that pursuant to Rule 2.7(c) a written admonishment would be issued to Mental Hygiene Commissioner Wayne R. Mielke. It is, therefore, the decision of the Judicial Investigation Commission that Mental Hygiene Commissioner Wayne R. Mielke be and he hereby is admonished for his conduct as is more fully set forth in the

matters asserted herein and the complaint filed in this matter on December 8, 1994.



Fred L. Fox, II, Chairman

Date: 22 12 95