

BEFORE THE
JUDICIAL INVESTIGATION COMMISSION
OF WEST VIRGINIA

IN THE MATTER:

COMPLAINT NO. 179-96

Ozell Eplin, Candidate for
Magistrate for Cabell County

This matter is before the Judicial Investigation Commission upon a complaint filed on September 10, 1996, setting forth certain allegations against Ozell Eplin, Candidate for Magistrate for Cabell County.

The complaint alleged that Mr. Eplin appeared at Democratic Executive Committee meetings as a proxy for some of the Committee members and voted their proxy. It was alleged that this occurred on several occasions.

Upon initiation of the complaint an investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure. The investigation revealed that on August 19, 1996, while a candidate for Magistrate for Cabell County, Mr. Eplin attended a Democratic Executive Committee meeting and voted proxy for another member of the Committee.

The complaint and the investigation of this matter were reviewed by the Judicial Investigation Commission at its meeting on November 15, 1996, and it was determined that probable cause does exist that Ozell Eplin, candidate for Magistrate for Cabell County violated Canon 5A(1)(a) of the Code of Judicial Conduct which state in relevant part:

Canon 5. A judge or judicial candidate shall refrain from inappropriate political activity.

A. All judges and candidate. - (1) Except as authorized by Sections 5B(2), 5C(1), and 5C(3), a judge or candidate for election or appointment to judicial officer shall not:

(a) act as a leader or hold an office in a political organization; . . .

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 given to Ozell Eplin.

It is, therefore, the decision of the Judicial Investigation Commission that Ozell Eplin be and he hereby is admonished for his conduct as is more fully set forth in the matters asserted herein in the complaint filed in this matter on September 10, 1996.



Fred L. Fox, II, Chairman

Date: November 21, 1996

Rule 2.7. Review of complaints.

(a) Within sixty days after the date of a report by the Office of Disciplinary Counsel, the Commission shall file a written decision regarding whether it believes there is probable cause to formally charge the judge with a violation of the Code of Judicial Conduct or that the judge, because of advancing years and attendant physical or mental incapacity, should not continue to serve, or whether the matter should be investigated further by the Office of Disciplinary Counsel.

(b) When it has been determined that probable cause does not exist, the Commission shall issue a brief explanatory statement in support of its decision to close the complaint.

(c) When it has been determined that probable cause does exist, but that formal discipline is not appropriate under the circumstances, the Commission shall issue a written admonishment to the respondent, who has fourteen days after its receipt to object. The written admonishment shall be available to the public. If the Office of Disciplinary Counsel or the respondent files a timely objection to the written admonishment, the Commission shall file a formal charge with the Clerk of the Supreme Court of Appeals. Admonishment shall not be administered if (1) the misconduct involves the misappropriation of funds; (2) the misconduct resulted or will likely result in substantial prejudice to a litigant or other person; (3) the respondent has been disciplined in the last three years; (4) the misconduct is of the same nature as misconduct for which the respondent has been disciplined in the last five years; (5) the misconduct involves dishonesty, deceit, fraud, or misrepresentation by the respondent; (6) the misconduct constitutes a crime that adversely reflects on the respondent's honesty, trustworthiness, or fitness as a judge; or (7) the misconduct is part of a pattern of similar misconduct.

(d) When it has been determined that probable cause does exist, and that formal discipline is appropriate, the Commission shall file a formal charge with the Clerk of the Supreme Court of Appeals. After the filing and service of formal charges, all documents filed with the Clerk of the Supreme Court of Appeals and the Judicial Hearing Board shall be available to the public.