

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

IN THE MATTER OF:
THE HONORABLE JOHN C. YODER
CIRCUIT COURT JUDGE

COMPLAINT NO. 85-2011

PUBLIC ADMONISHMENT OF CIRCUIT JUDGE JOHN C. YODER

This matter is before the Judicial Investigation Commission upon a complaint filed on May 19, 2011, setting forth certain allegations against Circuit Court Judge John C. Yoder. The complaint alleged that "Judge Yoder was scheduled to hold 2 name change hearings in Morgan County, WV on Friday, May 13, 2011. Judge Yoder did not preside over these hearings and instead requested his law clerk preside over the hearing. Judge Yoder was not present in the Courtroom during these proceedings and upon information and belief he was not even present in the courthouse complex."

Upon receipt of the complaint an investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure.

After a review of the complaint, Judge Yoder's response to the complaint, the information and documents obtained from the investigation, and a review of the pertinent Canons contained in the Code of Judicial Conduct, at its meeting on August 26, 2011, the West Virginia Judicial Investigation Commission found probable cause that Circuit Judge John C. Yoder violated Canon 1, Canon 2, Canon 3A and 3B(1) of the Code of Judicial Conduct and ordered that Circuit Judge John C. Yoder be publicly admonished pursuant to Rule 1.11 and Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure, as set forth in the following statement of facts and reasons found by the Commission:

STATEMENT OF FACTS AND REASONS

Judge Yoder has been a judge of the Twenty-Third Judicial Circuit-Berkley Jefferson and Morgan Counties-since January 2009.

Judge Yoder set the date and time for two name change hearings on May 13, 2011, at 1:45 p.m. and 2:00 p.m.

Judge Yoder subsequently received notice of a legislative update forum luncheon that was to take place on May 13, 2011, in Martinsburg, West Virginia, that was of interest to him because all legislators from the Eastern Panhandle would speak about the 2011 session of the West Virginia Legislature.

Judge Yoder is a member of the Legislative Committee of the West Virginia Judicial Association and believed that as a member of that Committee he needed to maintain good

relations with West Virginia Legislators and needed to stay abreast of legislative changes and potential legislation that might affect the judiciary.

Judge Yoder had a right to change the date for the May 13, 2011 name change hearings. See W.Va. Code §48-25-101.

Judge Yoder signed Orders permitting the requested name changes prior to the hearing. Judge Yoder was not present for the hearings.

Judge Yoder instructed his law clerk to conduct the hearing and to ask the exact same questions of the petitioners that he would normally ask.

Judge Yoder's law clerk, with the help of the bailiff, presided over both petitions. The law clerk asked both petitioners if they had read or reviewed the petition for a change of name and was everything on the petition true and correct? Although Judge Yoder was not present, both petitioners were told that if they waited a few minutes they could get copies of the name change Order.

Judge Yoder's response to his law clerk presiding over the hearings was that, if necessary, the Judge would conduct any hearings on the name change petitions by telephone. He had reviewed the petitions and they were routine and complied with West Virginia law. He did not see any reason for not granting them. He admits signing the Orders prior to the hearing, but told the law clerk to hold them for filing until later. He also told the law clerk to call him if he had to conduct a hearing by phone if someone appeared to contest the hearing. If that happened he would decide if he needed to return to the Berkeley County Courtroom or listen to the contested matter by telephone. The Judge also told the law clerk that she was to hold the Orders and to contact him about any questions that may have come up about the name change petitions before filing the Orders.

Judge Yoder further explained that he didn't think it was necessary to hold a hearing on the record if a verified petition met all the criteria for granting a name change and no one shows up to contest it. Judge Yoder says that was the way he did it in Kansas where he was a district court judge.

Judge Yoder told a Judicial Investigation Commission Investigator that [after the fact] he had talked to Judge Cookman, who was his advisor when he became a judge, about this matter. What he didn't tell the investigator was that Judge Cookman told him that he would never do such a thing and he did not feel this was at all proper.

Judge Yoder believes that he should be able to conduct his own docket in civil cases and to administer civil cases "without interference from a disgruntled criminal Prosecutor." The Complainant in this matter is the Morgan County Prosecuting Attorney

Judge Yoder does not believe he did anything improper. At worst, he believes it was a procedural mistake and not an ethics violation, "but just a misinterpretation on my part of the law and of what is required in name change petitions."

The Commission finds no merit in Judge Yoder's argument. He is an elected West Virginia judge. It is the judge and not his law clerk who is the arbiter of facts and law for the resolution of name change requests. It is the judge who is the "highly visible symbol of

government under the rule of law." "The role of the judiciary is central to American concepts of justice and the rule of law." See the Preamble of the West Virginia Code of Judicial Conduct.

The name change petitions were not necessarily "routine." In the one case the name change was for a 16 year old boy who, for medical reasons could not attend the hearing. The judge made a decision that the 16 year old did not have to attend the hearing. His parents signed the name change petition and the 16 year old probably was in agreement. But we don't know that without hearing from him, or at least considering other trustworthy evidence that it was the child who wanted the name change. That would have been one purpose for the Judge to have been present at the hearing. The judge needed to hear from the child or question the parents about whether it was the 16 year old who wanted the name change, or was it his parents who needed the name change. It was the judge's responsibility to make sure that it was in the child's best interest to change his last name.

In the second name change case the petitioner alleged that his name, that had the generational suffix "Jr" on his birth certificate, needed to be changed because his name was "wrong on birth certificate." He wanted it changed to the generational suffix "II." In the petitioner's financial affidavit to proceed without paying costs he added that he needed his name "corrected so I can get a job to be able to provide for myself." Again, there probably was no reason to deny the name change request. But there was no evidence that the generational suffix "Jr." was wrong on the birth certificate. The allegation that "Jr." had to be changed to the generational suffix "II" so that the petitioner could get a job also needed to be further explored by the Judge.

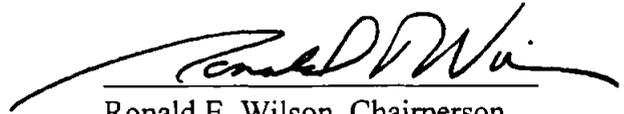
The name change issues are not necessarily issues that a young law clerk would recognize. That is another reason that the Judge has to be there. Judge Yoder does not understand that he harmed the public trust and confidence in the judicial system by assigning his authority and responsibility to his law clerk.

The Commission did not recommend the filing of formal charges with the Clerk of the Supreme Court of Appeals. However, the Judicial Investigation Commission did find that there is probable cause that Judge Yoder committed misconduct in office by:

1. Neglecting his duty on May 13, 2011, to hear and decide matters assigned to him.
2. Delegating his constitution duty to hear and review cases to his law clerk.
3. Failing to adhere to his responsibility to maintain and enforce high standards of conduct and failing to personally observe those standards so that the integrity and independence of the judiciary would be preserved.
4. Failing to avoid the appearance of impropriety and failing to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Commission members, Magistrate Gail C. Boober, Attorney Alice Chakmakian, and Judge Christopher C. Wilkes, voluntarily removed themselves from considering this complaint against Judge Yoder because they have a working relationship with him. All of the other Commission members unanimously voted that the violations were serious enough to publicly admonish Judge Yoder. The Commission concluded that what Judge Yoder's actions were, at a minimum, improper, a dereliction of duty, and a violation of Canons 1, 2, 3A and 3B(1).

Accordingly, the Judicial Investigation Commission hereby publicly admonishes Circuit Court Judge John C. Yoder for his conduct and neglect of duty on May 13, 2011, as set forth in the complaint filed in the matter on May 19, 2011, and cautions him to refrain from engaging in this course of conduct in the future.

A handwritten signature in black ink, appearing to read "Ronald E. Wilson", written over a horizontal line.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission