

**BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA**

**IN THE MATTER OF  
THE HONORABLE ROBERT M. MONTGOMERY  
JUDGE OF THE 11<sup>TH</sup> FAMILY COURT CIRCUIT**

**COMPLAINT NOS. 46-2013 &  
55-2013**

**PUBLIC ADMONISHMENT OF JUDGE ROBERT M. MONTGOMERY**

The matter came before the Judicial Investigation Commission upon separate complaints filed on April 19, 2013, and May 14, 2013, against The Honorable Robert M. Montgomery, Judge of the 11<sup>th</sup> Family Court Circuit (hereinafter "Respondent"). After a review of the complaints, the Respondent's written replies, the information and documents obtained from the investigation, the warning letter issued in a previous complaint and the pertinent Canons contained in the Code of Judicial Conduct, the West Virginia Judicial Investigation Commission (hereinafter "Commission"), at its September 13, 2013 meeting, found probable cause that Respondent violated Canons 1A, 2A, 3A, 3B(8) and 3C(1) and ordered that he be publicly admonished pursuant to Rule 1.11 and Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure.

**STATEMENT OF FACTS**

Judge Montgomery was a Kanawha County Family Law Master from July 17, 2000, until December 31, 2001. He has been a Family Court Judge in the 11<sup>th</sup> Family Court Circuit since August 1, 2002. This admonishment is based in part of the fact that on May 13, 2013, the Commission issued a warning letter to Respondent in connection with an October 2011 Complaint (No. 157-2011) that was thoroughly examined by a JIC investigator. At that time the Commission opted to only warn Respondent instead of admonish him because it was the first complaint filed in his twelve years as a Family Court Judge that had any merit. However, the Commission did find that Judge Montgomery's handling of the underlying case was inadequate because he failed to timely file a final divorce order and he was lax in his judicial duties.

In response to that complaint Judge Montgomery was frank and he refreshingly acknowledged that he was dilatory in preparing the Order. He admitted that he "probably should have acted quicker," and also that he "should have got it done faster. When I start to see a pile I can do quicker, I do it." In a direct and candid manner he said: "I am not so formal and I agree to things when the attorneys tell me something." He clarified that remark by saying that there are times when one party will come to his office and ask for a hearing or continuance, he will agree to the request, and that he relied on the requesting attorney to inform the other party. However, he again admitted that he was aware that the proper paper was often not submitted to the Court and that the informal discussions were sometimes not memorialized on the record. The Commission, sensitive to the harm that can be caused to Family Court litigants by excessive delay in issuing orders, warned Judge Montgomery that "if you engage in such behavior again, appropriate sanctions could follow."

The facts in the two complaints that caused the Commission to issue this admonishment are as follows:

**Complaint No. 46-2013**

Beverly Hemmings and Richard Mullins were married in September 1995, and had one child. A petition for divorce was filed in the Circuit Court of Kanawha County and a final divorce order was entered on June 2, 1999.

On March 20, 2006, Mr. Mullins filed a petition for modification seeking to prohibit Ms. Hemmings from relocating out-of-state with the minor child. On April 11, 2006, Ms. Hemmings filed a response and counter-petition seeking, among other things, payment of back child support. Several hearings were held on the issues raised in the petitions. Following a March 13, 2007 telephonic hearing, the Court entered an order on September 12, 2008 that stated in pertinent part:

[F]rom the date of the Divorce Order until August of 2006, the father should have paid eighty-six (86) payments of child support. The father has paid Four Thousand Two Hundred Seventy Two Dollars (\$4,272.00) in child support, and he is entitled to receive a credit for child support in the amount of Eight Thousand Seven Hundred Fifty-Eight

Dollars and Seventy-Four Cents (\$8,758.74) for the house payment and Nine Thousand One-Hundred Fifty Seven Dollars and Ninety Eight Cents (\$9,157.98) that he overpaid in equally divided payments. Dividing that number by Four Hundred Dollars (\$400.00), the father is entitled to a finding that he has in effect paid 55.47 months of child support and he owes 30.53 months of child support arrears of Twelve Thousand Two Hundred Twelve Dollars (\$12,212.00).

Ms. Hemmings then appealed to the Circuit Court of Kanawha County and the appeal was denied. On April 6, 2009, Ms. Hemmings filed a *pro se* petition for appeal with the West Virginia Supreme Court of Appeals. The petition was granted on November 19, 2009.

On November 18, 2010, the State Supreme Court reversed the lower court decision and remanded the matter back to the Family Court for further proceedings consistent with the opinion. See *Mullins v. Mullins*, 226 W. Va. 656, 704 S.E.2d 656 (2010). The Family Court was instructed to make findings of fact with regard to an issue in the case concerning medical expenses that Ms. Hemmings supposedly incurred on behalf of the child.

Judge Montgomery held a hearing on September 22, 2011 and on October 18, 2011, he then entered an Order that indicated that the parties had stipulated to certain issues relating to child care expenses. In that Order Judge Montgomery also stated:

[The Court] would go through the documents provided, that being the copies of the actual checks or other documents of payment, along with the charting of the amounts paid and the date paid, and would conduct a subsequent hearing and advise counsel as to how the Court ruled on each and every payment that the parties were claiming were made in the nature of support for payments of medical support, or for other daycare expenses or other extracurricular activities claimed by either of the parties. The Court therefore took that matter under advisement and will advise the parties when the Court has reviewed all the documents and is prepared to rule.

Despite that declaration, no other hearings were held after September 22, 2011, and only limited activity occurred in the case between the final hearing and April 9, 2013. A mediator and guardian ad litem were appointed on September 23, 2011. Proposed orders pertaining to modification of the parenting plan and objections were filed in November and December 2011. An agreed order on the parenting plan was entered on April 30, 2012. A mediation outcome report was filed with the Court

on June 13, 2012. Ms. Hemmings filed a Motion for Attorney fees pertaining to the appeal on October 26, 2012, and her ex-husband filed a response on November 28, 2012.

On April 9, 2013 Ms. Hemmings filed a *pro se* petition for writ of mandamus in the Circuit Court of Kanawha County asking the Circuit Court to direct Respondent to issue an Order pertaining to the Supreme Court mandate set forth in *Mullins*. On April 19, 2013, she filed the instant ethics complaint against Respondent. Foremost among the numerous allegations was Respondent's failure to timely rule on remand on the issues outlined in the Supreme Court opinion.

Following the filing of the mandamus action and the ethics complaint, Judge Montgomery did enter the requisite Order on May 9, 2013. Of decisive importance to the Commission was that the Order came two and a half years after the mandate from the State Supreme Court and approximately 20 months after the last hearing held in the case. On May 24, 2013, the Circuit Court entered an order dismissing Complainant's Petition for Writ of Mandamus as Moot since Respondent had "entered an order in accordance with the directives of the Supreme Court."

The ethics complaint was presented to the Commission at its July 19, 2013 meeting. By letter dated July 22, 2013, the Commission asked Judge Montgomery to reply to the allegations contained in the complaint. By letters dated July 30, 2013 and August 22, 2013, Judge Montgomery requested and received two extensions to file his response. Then, by letter dated August 29, 2013, he replied to the allegations. Judge Montgomery addressed the Complaint about the delay in filing the order, and mentioned the "extensive and overwhelming" record in the case "along with the substantial conflict between the parties during the process." Judge Montgomery stated:

[The case was remanded back] with much of the same concerns 2 years and 3 months after entry of this court's order on September 12, 2008. I will acknowledge it was 10 months later before hearings and rulings were completed. The Court file will reflect the volume of records once again filed and various contempt, modification and emergency filings also filed in this same ten month time period.

**Complaint No. 55-2013**

Larry Stewart filed for divorce in the Family Court of Kanawha County on May 11, 2012. The temporary hearing was held on August 24, 2012, and the final hearing was held on December 11 and 14, 2012. On May 14, 2013, Mr. Stewart filed an ethics complaint against Judge Montgomery alleging that he failed to issue a final divorce order in his case. The ethics complaint was presented to the Commission at its July 19, 2013 meeting and the Commission requested a response. By letter dated July 22, 2013, the Commission asked Respondent to address the allegations contained in the complaint. Respondent replied by letter dated August 6, 2013, in which he stated:

After completion of the final hearing in December 2012, Larry Stewart and Lori Stewart each requested that the Court withhold any rulings as they wanted to investigate whether it would be in the best interest of the parties to be able to file a joint bankruptcy. Of course to do that, they would have to remain married. I was in agreement that a joint bankruptcy was probably in their benefit.

My office was subsequently informed that Ms. Stewart did not wish to file joint bankruptcy and my staff informed me of the same. At that time, the case was not fresh in my mind so I needed to review the hearing tapes from the case. At first I had some difficulty getting one of the hearings copied correctly, but that was rectified. By that time I had difficulty finding a block of time to listen to all hearing tapes. Several times I would start but then when I would get back to finish the tapes, I found I would need to re-listen to the first hearing again. There was a significant delay for me to find the time when I could listen to the hearings together in a close time frame and keep up with my other work prior to my completion of Mr. Stewart's Order.

However, the case docketing statement indicates that the possibility of a joint bankruptcy vanished by January or February 2013, when a petition for review of property appraisal was filed on January 23, 2013, and a petition for contempt was filed for February 5, 2013. The Commission found it unsatisfactory that no other hearing was held between the December 2012 final hearing and August 2, 2013, the date the final order was entered by Respondent and that the final order was entered almost eight months after the final hearing.

**West Virginia Rules of Practice and Procedure for Family Court**

Rule 22 of the West Virginia Rules of Practice and Procedure for Family Court sets forth time-standards for entry of Family Court orders. Rule 22(a) provides that “[a]ll orders shall be entered by the court within 20 days of the hearing, except a temporary support order must be entered within one business day of the hearing.”

Rule 59(b) of the West Virginia Rules of Practice and Procedure for Family Court provides that final orders shall be entered in every case within 240 days of the filing of the initial pleading. Meanwhile, Rule 59(a) outlines the significance for compliance with these time standards, which is “to ensure that ‘justice shall be administered without sale, denial or delay,’ in accordance with Article III, Section 17 of the West Virginia Constitution,” and to comport with Canon 3B(8) of the Code of Judicial Conduct.<sup>1</sup>

### CONCLUSIONS

The Commission, acknowledging the demanding and formidable issues that overburdened Family Court Judges confront on a daily basis, finds that formal discipline is not appropriate under the circumstances. However, the Commission does find that the violations were serious enough to warrant a public admonishment. The Commission, by a vote of 7-1,<sup>2</sup> finds that probable cause exists in Complaint No. 46-2013 and in Complaint No. 55-2013 to find that the Honorable Robert M. Montgomery, Judge of the 11<sup>th</sup> Family Court Circuit, violated Canons 1A, 2A, 3A, 3B(8) and 3C(1) of the Code of Judicial Conduct that provide in pertinent part:

**Canon 1:**

**A judge shall uphold the integrity and independence of the judiciary.**

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<sup>1</sup> The Commission understands that all Family Court Judges should strive to meet the standards set forth in the W. Va. Rules of Practice and Procedure for Family Court. However, the Commission also recognizes that some leeway must be given for demonstrated good cause.

<sup>2</sup> The Commission consists of six judicial officers and three lay members. One Judicial officer was not in attendance at the September 13, 2013 meeting.

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

**Canon 2:**

**A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.**

A. A judge shall respect and comply with the law, shall avoid impropriety and the appearance of impropriety in all of the judge's activities, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

**Canon 3:**

**A judge shall perform the duties of judicial office impartially and diligently.**

A. Judicial duties in general. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

B. Adjudicative responsibilities.

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

C. Administrative responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

The Preamble to the Code of Judicial Conduct states:

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to the American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law. . . . Good judgment and adherence to high moral and personal standards are also important.

The Commentary to Canon 3B(8) emphasizes the importance of conducting judicial business in a timely manner:

In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interest of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. . . . Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court, and expeditious in determining matters under submission and to insist that court officials, litigations and their lawyers cooperate with the judge to that end.

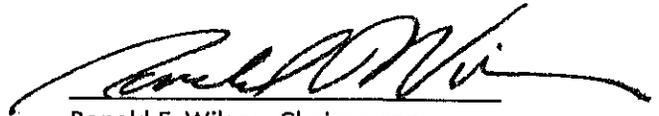
The matters addressed herein reflect a disturbing trend of deferment and unreasonable delay on the part of Judge Montgomery that must stop. The failure of a judge to promptly dispose of the business of the court- when there is no valid reason for the delay- reflects adversely on the entire judicial system. Prompt disposition of cases is important to litigants, necessary to prevent backlogs, essential to the proper administration of justice and necessary to promote the public's confidence in the integrity of the judiciary.

Based upon the foregoing, it is the decision of the Judicial Investigation Commission that Family Court Judge Robert M. Montgomery be disciplined. Accordingly, the Judicial Investigation Commission hereby publicly admonishes Judge Montgomery for his conduct in Complaint Nos. 46-2013 and 55-2013. The Commission also recommends that Judge Montgomery be referred to the Family Court Peer Review Board. See Rule 60 of the W.Va. Rules of Practice and Procedure for Family Court. Accordingly, the Commission directs that a copy of this admonishment be provided to the Administrative Director of the West Virginia Supreme Court of Appeals for Peer Review Board referral.

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Pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure, the Respondent has fourteen (14) days after receipt of the public admonishment to file a written objection. If the

Respondent timely files an objection, the Judicial Investigation Commission shall, pursuant to the Rule, file a formal charge with the Clerk of the Supreme Court of Appeals of West Virginia.



Ronald E. Wilson, Chairperson  
Judicial Investigation Commission

1 OCTOBER 2013

Date