

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF
THE HONORABLE OMAR ABOULHOSN
JUDGE OF THE 9TH JUDICIAL CIRCUIT**

COMPLAINT NO. 91-2013

**PUBLIC ADMONISHMENT OF THE HONORABLE
OMAR ABOULHOSN JUDGE OF THE 9TH JUDICIAL CIRCUIT**

The matter is before the Judicial Investigation Commission upon a complaint filed on August 2, 2013, against the Honorable Omar Aboulhosn, Judge of the 9th Judicial Circuit. At its January 17, 2014 meeting, after a review of the complaint, Judge Aboulhosn's written reply, the information and documents obtained from the investigation requested by the Commission, and a consideration of the pertinent Code of Judicial Conduct Canons, the West Virginia Judicial Investigation Commission, found probable cause that Judge Aboulhosn violated Canons 1A, 2A, 3B(5) and 3B(8), and pursuant to Rule 1.11 and Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure, ordered that he be publicly admonished. The factual foundations for that order are based upon the following statement of facts and conclusions:

STATEMENT OF FACTS

Judge Aboulhosn became Judge of the 9th Judicial Circuit on January 1, 2009, and has served continuously in that capacity since that time. On August 2, 2013, the Complainant in this matter filed an ethics complaint against Judge Aboulhosn. The complaint is based upon Judge Aboulhosn's conduct that occurred during litigation involving Complainant and pending before Judge Aboulhosn in December 2011.

Prior to Judge Aboulhosn's involvement in the Complainant's contentious paternity and child support proceedings, which had been going on since June 2009, the Family Court of Mercer County entered a Final Order on or about October 31, 2011, setting forth Complainant's child support obligation for his minor daughter at \$4,317.32 a month. The Complainant's arrearage was also set at \$85,554.97 as of August 31, 2011. Judge Aboulhosn was only involved because Complainant filed a petition for appeal on November 30, 2011, and the appeal was assigned to him for review pursuant to W.Va.Code 51-2A-14.

On December 1, 2011, Judge Aboulhosn entered an order scheduling a hearing involving Complainant and the Opposing party for December 29, 2011, at 10:00 a.m. On or about December 8, 2011, the Opposing party filed a Motion for Issuance and Execution of Body Attachment against Complainant. On December 9, 2011, Complainant filed a Motion to Continue. On December 12, 2011, the Opposing party filed a response to the Motion to Continue. Judge Aboulhosn promptly responded on December 13, 2011, by entering an Order scheduling a hearing for December 16, 2011, at 3:00 p.m. The Order informed the parties that attendance was mandatory and the failure to attend could result in the dismissal of the matter and/or entry of an adverse judgment.

The Complainant failed to appear for the December 16, 2011 hearing. His counsel advised the Court that he was in Chicago, Illinois on business. At the hearing, the Opposing party requested a writ of body attachment. During the hearing Judge Aboulhosn called and spoke to the Complainant. The judge ordered the Complainant to appear for hearing to be held on December 22, 2011, by 12:00 p.m., or he would issue the writ of body attachment.

Complainant advised the Court that he understood and that he would appear in Court at the requested time.

Complainant again failed to appear for the December 22, 2011 hearing. Complainant's attorney informed the Court that Complainant was going to get his belongings and leave the jurisdiction to avoid going to jail on the writ of body attachment. Judge Aboulhosn then entered an Order for Complainant to be held for up to six months in jail or until a \$100,000 cash bond was posted. He also entered an Order for Complainant's airplane to be seized and locked so that it could not be flown out of the jurisdiction.

Later that day, local law enforcement officers told Judge Aboulhosn that they had probable cause to believe that Complainant was hiding in his home. Judge Aboulhosn granted a search warrant of the home to look for Complainant. When the officers arrived at the scene, Complainant was not there. Judge Aboulhosn said that law enforcement officers told him that they observed "many valuable items of personal property" in the home including "Rolex watches, coin collections, firearms, train collections and other items. . . ."

Judge Aboulhosn then, *sua sponte*, entered an Order of Seizure that required Complainant's friend to give the Mercer County Sheriff's Department the keys to Complainant's residence. The Order also gave deputies the authority to enter Complainant's home and seize "*any and all personal property of value.*" (Emphasis added). The property to be seized included, but was not limited to, the contents of any and all safes, jewelry, guns, firearms, ammunition, train collections, automobiles, computers and televisions.

Judge Aboulhosn does not deny that he personally went to Complainant's house when the warrant of seizure was executed by law enforcement. Judge Aboulhosn told the Commission that:

[T]he Court was contacted by the officers and notified that a vast treasure trove of items were located, including vintage automobiles, weapons and other items, valued in the hundreds of thousands of dollars. *Believing the seizure should be restricted . . .*, I came to the location, remained outside the whole time and gave directions to the officers to leave specified items at the home as the value exceeded the [amount in controversy]. (Emphasis added). These items exempted from the Seizure Order included vintage automobiles worth hundreds of thousands of dollars. At no time did I access Mr. Henderson's computer or even enter Mr. Henderson's home.

Corporal Steve Sommers of the Mercer County Sheriff's Department told the JIC Investigator that Judge Aboulhosn did not stay long and did not go into the house. He said that Judge Aboulhosn looked into a trailer where the officers had placed firearms and into the garage which contained five vehicles and three motorcycles. Corporal Sommers stated that Judge Aboulhosn may have walked into the garage to look at the hydraulic lift system. Assistant Chief Probation Officer and Warrant Coordinator Greg Arnold was also at the scene. He agreed that Judge Aboulhosn did not go into the home at any time and that the judge was on the property for ten to twelve minutes. He agreed that the Judge Aboulhosn looked into, but did not enter, the garage. However, a third witness disputed that and told the JIC Investigator that he observed Judge Aboulhosn with some officers at Complainant's desk in the office but did not know what they were doing.

Thereafter, on or about January 3, 2012, Judge Aboulhosn voluntarily recused himself from the case. Judge Aboulhosn said he took the action because he had "witnessed, first-hand,

the depth of [Complainant's] deception to the Court . . . regarding his financial means and assets." Judge Aboulhosn also said he withdrew to "avoid any possibility that I would be personally biased against [Complainant] or pre-judge the truthfulness of his testimony based on my acquired personal knowledge of the false representations and false statements he had made regarding his personal assets and wealth."

The matter was transferred to Mercer Circuit Judge William J. Sadler, who by Order entered February 15, 2012, ruled against Complainant and in favor of the Opposing party. It was Judge Sadler's finding that Judge Aboulhosn's contempt Orders did not "constitute an abuse of discretion and merited the issuance of a body attachment for his incarceration in South Carolina and West Virginia and the seizure of many of his assets for ultimate sale to pay his child support arrearage. . . ."

CONCLUSIONS

The Commission, by a vote of 8-0,¹ determined that probable cause does exist in the instant complaint and that the Honorable Omar Aboulhosn, Judge of the 9th Judicial Circuit, violated Canons 1A, 2A, 3B(5) and 3B(8) of the Code of Judicial Conduct that provide in pertinent part:

Canon 1:

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

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

¹ The Commission consists of six judicial officers and three lay members. One of the circuit judge members was not in attendance at the January 17, 2014 meeting.

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.

B. Adjudicative responsibilities. --

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

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

The Commission further determined that formal discipline was not appropriate under the circumstances. However, the Commission found that the violations were serious enough to warrant a public admonishment. 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.

The Commission is of the opinion that the canons require a judge to maintain his or her impartiality even in the face of apparent contumacious behavior by a litigant. When Judge Aboulhosn went to Complainant's home to direct the seizure of assets, he discarded his cloak of neutrality and fairness and conveyed to the parties and the public a perceived bias against Complainant. His duty was to decide the issues raised on appeal free of emotion and predilection. That was not the standard he appeared to honor by his presence at the Complainant's house. By leaving the courthouse and being with law enforcement when his order was being executed he knew or should have known that his presence there would mandate his removal from his judicial obligation to hear the case assigned to him. Judge Aboulhosn acknowledged this by word when he stated that he "witnessed, first-hand, the depth of [Complainant's] deception" and by deed when he voluntarily recused himself from the case. All judges are subject to external constraints by virtue of the office they hold. Judges are not free to bully from the bench or to respond to personal factors in the same manner as others. By his actions, Judge Aboulhosn violated Canons 1A, 2A, 3B(5) and 3B(8) of the Code of Judicial Conduct.

Based upon the foregoing, it is the decision of the Judicial Investigation Commission that the Honorable Omar Aboulhosn, Judge of the 9th Judicial Circuit be disciplined. Accordingly, the Judicial Investigation Commission hereby publicly admonishes the Honorable Omar Aboulhosn, Judge of the 9th Judicial Circuit for his conduct as fully set forth in the matters asserted herein and warns him to refrain from engaging in similar behavior in the future.

Pursuant to Rule 2.7(c), Judge Aboulhosn has fourteen (14) days after receipt of the public admonishment to file a written objection. If Judge Aboulhosn 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, Chairman
Judicial Investigation Commission

1-31-14
Date