

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF,
THE HONORABLE RUDOLPH J. MURENSKY, II
JUDGE OF THE 8TH JUDICIAL CIRCUIT**

COMPLAINT NO. 20-2022

**PUBLIC ADMONISHMENT OF
THE HONORABLE RUDOLPH J. MURENSKY, II
JUDGE OF THE 8TH JUDICIAL CIRCUIT**

The matter is before the Judicial Investigation Commission (“JIC”) upon a complaint filed by Betsy Jividen, Commissioner of the West Virginia Division of Corrections and Rehabilitation (“DCR”), setting forth certain allegations against the Honorable Rudolph J. Murensky, II, Judge of the 8th Judicial Circuit. An investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure (“RJDP”). After a review of the complaint, the Judge’s written response, the information and documents obtained from the investigation and the pertinent Rules contained in the Code of Judicial Conduct, the JIC found probable cause that Judge Murensky violated Rules 1.1, 1.2, 1.3, 2.2, 2.5(A) and 2.8(B) of the Code of Judicial Conduct at a recent meeting and ordered that he be publicly admonished pursuant to RJDP 1.11 and 2.7(c) as set forth in the following statement of facts and conclusions found by the Commission.

STATEMENT OF FACTS

Respondent was elected Judge in the November 2000 election. He took office on January 1, 2001, and has served continuously since that time. At all times relevant to this investigation, Respondent was serving as a Circuit Judge. Respondent has not been the subject of any prior judicial discipline.

On January 5, 2022, a female inmate was transferred from Southern Regional Jail (SRJ) in Beaver to the McDowell County Circuit Court in Welch for a hearing by two male correctional

officers who both retained the rank of Corporal.¹ Ultimately, the inmate entered a plea of guilty to one felony count of forgery of a public document.²

Prior to her court appearance, the inmate had been involved in a physical altercation at SRJ the facts of which are in dispute. Suffice it to say, she had two black eyes and some cuts and bruising on her forehead. Respondent noticed the marks and inquired about them. Following his inquiry, Respondent decided to send her to Southwestern Regional Jail in Holden rather than back to SRJ. Judge Murensky stated that he had a “transport order” and asked the two correctional officers if they had “any problems taking her to Southwestern” (1/5/2022 Tr. at 41).

In response to the inquiry, one of the officers started to explain that they would have to first contact a supervisor and go through the chain of command to get authorization for the transfer since it was mandated by DCR policy, orders, and operational procedures and safeguards. Respondent cut the officer off mid-sentence and prevented him from finishing his explanation:

Officer: The only problem that we would have, Your Honor, is we have to submit it to our supervisors and –

The Court: Well, I have a direct court order here. Are you going to obey or not?

Officer: I’ll have to contact my supervisor.

(1/5/2022 Tr. at 41).

Importantly, the officer speaking never told the Judge he wouldn’t comply and the other officer never even opened his mouth to speak. Despite this, Respondent summarily ordered both of them taken into custody and incarcerated for civil contempt. Respondent stated:

¹ In part, the inmate was incarcerated on a bond violation out of Mercer County where she was charged with burglary.

² The inmate was charged in McDowell County in a three-count indictment. At the hearing, the inmate attempted to plead guilty to a drug charge contained in Count I of the indictment. Near the end of the plea hearing the prosecutor attempted to lay the foundation for the plea, Respondent questioned the sufficiency of the proffer. At that point, the prosecutor agreed to change the plea to Count III. A twenty minute recess was taken for the paperwork to be redone (1/5/2022 at 33). At that point, the issue of moving the inmate to another facility had not been raised.

Well, until you do, go into the hands – both of you will go into the hands of the correctional officer for incarceration here for violating a court order and not take her to Southwestern Regional Jail, in violation of this Court order. . . . Mr. Deputy, take both these correctional officers and incarcerate them up here and have them come before the Court in the morning at 11:00 a.m.

(1/5/2022 Tr. at 42). Respondent then ordered the prosecutor to “right quickly prepare an Order” stating that the officers had “refused to abide by the court order” (1/5/2022 Tr. at 42; 1/5/2022 Order).

The officers were escorted from the courtroom, taken into custody and detained. They were required to surrender their weapons to deputies, permitted to call their supervisors and relay a situation report. They were then taken to the county holding facility. While there, the officers were subject to strip searches. Their badges, shoestrings, wallets and watches were confiscated. Following the strip searches, the officers were directed to put their uniforms back on and were told that they were going to be placed in uniform in a cell with six inmates. At some point during all of this, they were also handcuffed. When the superintendent from the Stevens Correctional Center arrived, he was able to have the officers safely held in a room separate from any inmates.

Upon learning of the incident, DCR leadership communicated with the prosecutor and authorized the inmate transfer to Southwestern. Leadership was then notified that the officers had been released to transport the inmate to Southwestern but that Respondent wanted them in court the following morning for a show cause hearing. The officers went to Court the next morning. DCR leadership was present as was an Assistant Attorney General who would represent them. Respondent did not hold a hearing. Instead, he advised counsel that he considered the matter moot. On or about January 20, 2022, Respondent entered an Order “purging” the officers of contempt.

On February 22, 2022, Commissioner Jividen filed a judicial ethics complaint against Respondent alleging that he had violated Rules 1.1, 1.2, 2.2, 2.5(A), and 2.8(B) of the Code of

Judicial Conduct. By letter dated March 10, 2022, Respondent replied to the allegations contained in the complaint. Respondent stated:

The January 5, 2022, plea hearing officially began at 2:33 p.m. A recess was taken between 3:04 p.m. to 3:25 p.m. The correctional officers were held in civil contempt at 3:35 pm. Thus, at 2:32 p.m. at the latest, the two correctional officers here knew through the McDowell County correctional officer that [the inmate] was suffering from an acute condition and that the Court desired to take immediate action for her safety. These correctional officers had at least one hour to secure alternative holding arrangements for [the inmate] prior to being held in civil contempt.

Nevertheless, [the correctional officers] stated on the record that they could not comply with the Court's order without the approval of their supervisor. The correctional officers were accordingly held in civil contempt. . . . The correctional officers were at all relevant times given the opportunity to purge their civil contempt by immediately complying with my lawful directives that were aimed at protecting the health, safety, welfare and life of [the inmate]. Contrary to the contentions in the complaint these correctional officers always had the keys to their own cell. . . . The purpose of my rulings was to compel compliance with my directives for [the inmate's] safety – not to punish these correctional officers.

CONCLUSIONS

The Commission unanimously³ found that probable cause exists in the matters set forth above to find that the Honorable Rudolph J. Murensky, II, Judge of the 8th Judicial Circuit, violated Rules 1.1, 1.2, 1.3, 2.2, 2.5(A) and 2.8(B) of the Code of Judicial Conduct as set forth below:

1.1 – Compliance With the Law

A judge shall comply with the law, including the West Virginia Code of Judicial Conduct.

1.2 – Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

1.3 – Avoiding Abuse of the Prestige of Judicial Office

³ The vote was 7-0. One commission member was absent and the Honorable Alan D. Moats, Judge of the 19th Judicial Circuit and JIC Chair, is presently serving as an *ex officio* member since his temporary appointment to the Supreme Court of Appeals of West Virginia.

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

2.2 – Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

2.5 –Competence, Diligence and Cooperation

A. A judge shall perform judicial and administrative duties, competently and diligently.

2.8 – Decorum, Demeanor and Communication with Jurors.

(B) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity. . . .

The Commission further found that formal discipline was not essential as Respondent had no prior disciplinary actions and given his general reputation as a good judge. Nonetheless, the Commission found that the violations were serious enough to warrant a public admonishment.

The Preamble to the Code of Judicial Conduct provides:

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.

Comment [1] to Rule 1.2 states that “[p]ublic confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.” Comment [2] provides that “[a] judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied

to other citizens and must accept the restrictions imposed by the Code.” Comment [3] notes that “[c]onduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.” Comment [4] states that “[j]udges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.” Comment [5] provides:

Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

Comment [1] to Rule 1.3 states that it is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. Comment [4] to Rule 2.2 states that it is not a violation of the Rules for a judge to make reasonable accommodations to ensure *pro se* litigants the opportunity to have their matters fairly heard. Comment [4] to Rule 2.5 provides in part that “[i]n disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of the parties to be heard”

The Judicial Investigation Commission has no complaint with Respondent’s decision to protect an inmate from further harm. However, the manner and means with which he went about it were wrong. The Commission also has some concerns about the manner in which Respondent went about holding the Complainant in contempt. W. Va. Code § 61-5-26 and W. Va. Rule of Criminal Procedure 42 govern criminal contempt in circuit court. W. Va. Code § 61-5-26 provides:

The courts and the judges thereof may issue attachment for contempt and punish them summarily only in the following cases: (a) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice; (b) violence or threats of violence to a judge or officer of the court, or to a juror, witness, or party going to, attending or returning from the court, for or in respect of any act or proceeding had, or to be had, in such court; (c) misbehavior of an officer

of the court, in his official character; (d) disobedience to or resistance of any officer of the court, juror, witness, or other person, to any lawful process, judgment, decree or order of the said court. No court shall, without a jury, for any such contempt as is mentioned in subdivision (a) of this section, impose a fine exceeding fifty dollars, or imprison more than ten days. But in any such case the court may impanel a jury (without an indictment or any formal pleading) to ascertain the fine or imprisonment proper to be inflicted and may give judgement according to this verdict. No court shall impose a fine for contempt, unless the defendant be present in court or shall have been served with a rule of the court to show cause, on some certain day, and shall have failed to appear and show cause.

W. Va. Crim. Pro. Rule 42 states in pertinent part:

- (a) Summary disposition. – A criminal contempt may be punished summarily if the judge certifies that the judge saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered on record.
- (b) Disposition upon notice and hearing. – A criminal contempt except, as provided in subdivision (a) of this rule, shall be prosecuted on notice. . . .

On the other hand, civil contempt is governed by W. Va. Code § 57-5-6 and relates to a person attending but refusing to testify or produce a writing. In *In re Yoho*, 171 W. Va. 625, 301 S.E.2d 581 (1983), the State Supreme Court stated that a summary civil contempt proceeding does not violate due process but a defendant must be informed about the contempt, is entitled to be present with counsel and be heard, a stenographic record should be made and the court must base its decision on competent evidence. The Court defined the distinction between civil and criminal contempt noting that it was dependent upon the purpose to be served by imposing the sanction for the contempt and that such purpose also determines the type of sanction which is appropriate. *Id.* Lastly, the Court stated that the imposition of a civil contempt sanction is inappropriate where the defendant has no ability to purge himself/herself. *Id.*

The one correctional officer who spoke never said he wouldn't transport the inmate to a different facility. He merely said he would first have to contact his supervisor. The second officer never said anything. Neither officer said they would not comply with the Court order at that point.

Therefore, they should not have been held in contempt. Moreover, Respondent failed to tell them what they needed to do to get out of jail. Instead, he left it up to his bailiff to perform the task. In order to get out of the jail, the officers had to contact their supervisor who in turn contacted DCR leadership. Leadership contacted the prosecutor and informed him the inmate could be taken to a different facility. At that point, the officers were released to transport the inmate. Consequently, Respondent could easily have resolved the transport question by allowing the officers to first contact their supervisors instead of immediately ordering them to jail.

As the JIC noted in its public admonishment in *In the Matter of Ours*, Complaint No. 122-2014:

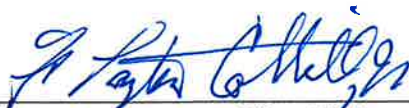
A judge has a right to control his or her courtroom through the use of the contempt power. However a judge must follow appropriate procedures particularly when an alleged contemnor's liberty interests are at issue. In *In re Jefferson*, 753 So.2d 181 (LA 2000), a City Court Judge was removed from office and fined by the Supreme Court of Louisiana for exceeding his contempt powers and not following proper procedures The [Louisiana] Court noted that "the contempt power wielded by judges is an awesome responsibility and, when exercising such powers, judges must diligently and in good faith comply with the strictures of the law governing its execution. The failure to do so, as in this case, constitutes an abuse of the contempt power."

Id. at 4-5.


Contempt should be used sparingly. It was not appropriate in this case where the two correctional officers did not defy the Court but merely indicated that they would have to notify their supervisor. Absent something more, contempt should not be utilized against two lower level officers who did not defy the Court and who do not set DCR policy but are required to comply with it as a condition of employment. Thus, it is the decision of the Judicial Investigation Commission that the Honorable Rudolph, J. Murensky, Judge of the 8th Judicial Circuit, be disciplined by this

Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes Judge Murensky for his conduct as fully set forth in the matters asserted herein.

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



F. Layton Cottrill, Vice-Chairperson
Judicial Investigation Commission



Date

FLC/tat