



Supreme Court of Appeals State of West Virginia

News

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Supreme Court Administrative Director takes action against Judge Thornsburry, Chief Justice moves to appoint replacements

For immediate release Thursday, August 15, 2013

CHARLESTON, W.Va. – Today, upon learning of the federal indictment of Thirtieth Judicial Circuit (Mingo County) Judge Michael Thornsburry, Supreme Court Administrative Director Steve Canterbury filed a complaint against Judge Thornsburry with the Judicial Investigation Commission in accordance with Rule 2.14 of the Rules of Judicial Disciplinary Procedure.

In anticipation of a recommendation from the Judicial Investigation Commission on the future service of Judge Thornsburry in Mingo County, Chief Justice Brent D. Benjamin has asked Senior Status Judge John L. Cummings of Cabell County to serve in Mingo County. Senior Status Supreme Court Justice Thomas E. McHugh will assist as needed to ensure abuse and neglect, domestic violence, juvenile, and other emergency issues are handled without delay.

Both Judge Cummings and Justice McHugh have agreed and are prepared to begin work in Mingo County at 9 a.m. on Friday, August 16. Senior Status Justice McHugh previously served as a Kanawha County Circuit Court Judge before he initially was elected to the Supreme Court in 1980.

Rule 2.14 of the Rules of Judicial Disciplinary Procedure, entitled, “Extraordinary proceedings,” provides the following.

The Administrative Director may file a complaint with Disciplinary Counsel when he/she has received information that a judge (1) has been convicted of a serious offense, (2) has been indicted or otherwise charged with a serious offense, (3) has engaged, or is currently engaged in, a serious violation of the Code of Judicial Conduct, or (4) has become unable or unwilling to perform official duties.

(b) Upon receipt of such complaint, Disciplinary Counsel shall conduct an immediate investigation and shall within ten days present to the Chief Justice of the Supreme Court a report indicating whether, in the opinion of Disciplinary Counsel, the integrity of the legal system has been placed into question by virtue of a judge's (1) having been convicted of a serious offense; (2) having been indicted or otherwise charged with a serious offense; (3) having engaged in or currently engaging in a serious violation of the Code of Judicial Conduct; or (4) inability or unwillingness to perform official duties. The Office of Disciplinary

Counsel shall attempt to provide reasonable notice to the judge prior to the filing of this report.

(c) Upon receipt of the report, from the Chief Justice, the Supreme Court shall determine whether probable cause exists. A finding of probable cause hereunder shall be in lieu of a probable cause finding made pursuant to Rule 2.7(c). If it is determined that probable cause exists, the Court may:

(1) direct the Disciplinary Counsel to file formal charges with the Clerk of the Supreme Court; and,

(2) provide notice to the judge of a right to a hearing on the issue of temporary suspension, said hearing to be in not less than 30 days; with the judge provided notice of the hearing in not less than 20 days before the proceeding; or

(3) in the alternative, remand the complaint for proceedings pursuant to Rules 2.7(d) and Rule 4.

(d) (1) If the judge has been convicted of a serious offense or has been indicted or otherwise charged with a serious offense, the Chief Justice may order that the judge not hear any further civil or criminal matters or perform other judicial functions while the matter is pending, with or without pay.

(2) If the Court finds probable cause pursuant to Rule 2.14(c) to believe that a judge has engaged or is currently engaging in a serious violation of the Code of Judicial Conduct or has become unable or unwilling to perform official duties, the Court may direct that the judge not hear any further civil or criminal matters or perform other judicial functions while the matter is pending, with or without pay.

(3) The provisions set forth in paragraph (d)(1) shall be construed as separate and in addition to the provisions of paragraph (c), above. Further, the provisions of paragraph (d)(1) shall be applicable only where a judge has been convicted of a serious offense or indicted or otherwise charged with a serious offense.

(e) After the hearing on the issue of suspension, the Court may temporarily suspend the judge with or without pay while the matter is pending before the Judicial Hearing Board and until the Court has disposed of the formal charges.

(f) Both the details of the complaint filed by the Administrative Director of the Courts and the investigation conducted by the Office of Disciplinary Counsel under this rule shall be confidential, except that when a formal charge has been filed with the Clerk of the Supreme Court, all documents filed with the Clerk and the Judicial Hearing Board shall be made available to the public.

However, Disciplinary Counsel may release information confirming or denying the existence of a complaint or investigation, explaining the procedural aspects of the complaint or investigation, or defending the right of the judge to a fair hearing. Prior to the release of information confirming or denying the existence of a complaint or investigation, reasonable notice shall be provided to the judge.