

**Final Report Regarding the Judge Webster Matter
and
Announcement of Unified E-Filing System**

In February and early March, 2013, Thirteenth Circuit Judge Carrie Webster issued a number of orders that contained, to varying degrees, errors. One of those orders led to the erroneous release of defendant Jeremy Carter from jail, a release which also was exacerbated by errors of process in the Kanawha County Circuit Clerk's Office. That release attracted the attention of reporters and, consequently, the public after reporter Zac Taylor, formerly of *The Charleston Gazette*, broke the story using an unidentified "courthouse source" to learn of Carter's release and the apparent mistake made by Judge Webster.

This report will detail some of the errors and, to the best of the investigators' knowledge, explain how such mistakes were apparently made on the part of both Judge Webster and employees in the Kanawha County Circuit Clerk's Office. It will also discuss some proposed remedies that the Court wishes to see enacted, not only due to these errors, but because of opportunities that the use of technology makes available today.

A Summary of the Erroneous Orders

On February 28, 2013, Kanawha County Circuit Judge Carrie Webster issued a dismissal order in the case of *The State of West Virginia v. Jeremy Carter*, Case No. 12-CRM-507. The order stated, "Inasmuch as the above-styled case appears to be moot, the Court, on its own motion, does hereby ORDER that this case be DISMISSED, and stricken from the Court's docket." In issuing this order, it does not appear that Judge Webster either contacted or informed the Kanawha County Prosecutor's Office even though, pursuant to Rule 48 of the West Virginia Rules of Criminal Procedure, the standard procedure for the dismissal of an indictment, information, or complaint is for the prosecutor's office to present a motion to dismiss to the court. However, in her March 10, 2013, written statement, Judge Webster stated that she did not intend to dismiss a case: "The Court never intended to dismiss the attempted kidnapping charge against Mr. Carter" and, earlier in said statement, wrote, "The Court notes that the Dismissal Order at issue directed dismissal of only one case number-12 CRM-507- a *miscellaneous* case number that the Clerk assigned to a motion filed by Mr. Carter's attorney seeking court approval of psychiatric evaluation" (emphasis in the original).¹

Relevant to the attempted kidnapping charge that was pending against Jeremy Carter, a preliminary hearing had been held in magistrate court, probable cause had been found, and the case had been bound over to circuit court. At the Circuit Clerk's office, in light of the case having been bound over, it was given a "B" number for administrative purposes. However, the 12-CRM-507 number was not assigned to the attempted kidnapping case until the motion for psychiatric examination was filed in connection with that case. Therefore, it should be noted that

¹Rule 48 of the West Virginia Rules of Criminal Procedure might not be directly applicable if it was something other than an indictment, information, or complaint that was being denied or dismissed by the court.

the 12-CRM-507 number was assigned to the case as a result of the filing of the motion for psychiatric evaluation. The 12-CRM-507 number was not assigned to the motion itself.

Judge Webster's dismissal order was stamped in at the Kanawha County Clerk's Office on February 28, 2013, at 4:25 p.m. The clerk's office determined that case number 12-CRM-507 was a felony attempted kidnapping case that was post-preliminary hearing but pre-indictment. There was also a fugitive case pending against defendant Jeremy Carter. The clerk's office had assigned this fugitive case the number 12-CRM-499 and it had a magistrate court case number of 12-E-98. As noted above, the clerk's office had assigned the 12-CRM-507 number to the attempted kidnapping case when a motion for psychiatric examination had been filed by defendant Jeremy Carter's counsel. The magistrate court case number for this attempted kidnapping charge had been 12-F-2685. Seeing that it was an order dismissing the case, the Circuit Clerk's office began to draw up a jail release form which would be necessary to have the defendant Jeremy Carter released from jail. To this end, the clerk's office took steps to implement its practice of dismissing not only the case number on the order but also all cases associated with it. However, this practice is not supported or authorized by statute, court rule, or even a provision of the Circuit Court Clerk's Manual.

A deputy clerk drew up a Jail Release form, and wrote on it the defendant Jeremy Carter's name; noted the date, March 7, 2013; described the relevant cases, "Fugitive, Kidnapping"; wrote "cases dismissed" on it; and then added the case numbers 12-CRM-507, 12-CRM-499, 12-F-2685 and 12-E-98. The Jail Release form was then signed by a deputy clerk and also by Kanawha County Circuit Clerk Cathy Gatson.

In a March 25, 2013, letter to Administrative Director Steven D. Canterbury, Ms. Gaston explained why the Circuit Clerk's office added the other case numbers associated with the case number set out on the actual dismissal order: "Although the case number may change at various stages during the pendency of the case, the Regional Jail requires all the numbers, including the magistrate number on a jail release because the magistrate number refers to and is assigned to the charge upon which an individual is incarcerated."

The completed jail release form was sent to the jail and on March 7, 2013, the defendant Jeremy Carter was erroneously released from the jail. After being advised by the Kanawha County Prosecutor's Office shortly before 5:00 p.m. of Carter's improper release, Judge Webster expeditiously issued a warrant for Carter's arrest and he was arrested, without incident, soon thereafter.

It should be noted that while Judge Webster's dismissal order was dated February 28, 2013, a Thursday, the Jail Release form was not issued by the clerk's office until seven days later, the next Thursday. In Judge Webster's March 10, 2013, written statement concerning the improper release of Jeremy Carter, she wrote: "Surely, if the Circuit Clerk interpreted, or by custom and practice, automatically includes the underlying felony charge(s) in the Dismissal Order of a miscellaneous action, even when the same is not included therein, then Mr. Carter should have been released on February 28, the same day the Order was entered, or the next business day at the latest." However, this critical analysis is complicated by the fact that Judge Webster, in her dismissal order, provided for a delay in implementing the order by putting the following

language into the order: “The parties are further advised that they shall have 10 calendar days from the filing of this Order to file an objection, if any, a request for clarification, and/or motion for reconsideration of same.”

Moreover, it is obvious that there exists serious confusion as to the exact meaning of the “CRM” numbers, and confusion on exactly how and when such numbers are assigned by the Clerk’s Office. In her own letter to Administrative Director Steve Canterbury on March 25, 2013, Ms. Gatson wrote, “Criminal miscellaneous numbers are not “new” cases but are assigned to **motions** ancillary to the underlying charge (B#)” (emphasis added). On March 22, 2103, Ms. Gatson issued an Interoffice Memorandum in which she stated changes in policy for the clerk’s office, including the following: “Criminal miscellaneous cases should be given a P-CR case designation which replaces 'CRM.’”

In her March 10, 2013, written statement Judge Webster focused on one of the many problems associated with the erroneous release of the defendant Jeremy Carter from jail when she stated, “The Jail Release Form authorizing Mr. Carter’s release was prepared and signed by the Circuit Clerk’s office. My signature is not on the jail release.” Relevant to this complaint, Ms. Gatson, in another Interoffice Memorandum, dated March 21, 2013, described changes being made in the Kanawha County Circuit Clerk’s Office procedure relevant to the creation of jail release forms:

In an effort to perfect an appropriate jail release in any criminal action dismissed pursuant to court order, and in those circumstances in which the dismissal order fails to specifically identify any adjunct criminal action numbers, you **must** verify that any adjunct criminal action numbers (ex: F, M, B, CRM, MAG NO.) attach to the dismissal order prior to the issuance of a **jail release**. Verification must be obtained by: (1) Confirmation with the courtroom clerk assigned to the respective judge (2) contacting the assigned judge’s office or (3) contacting the prosecuting attorney’s office. Verification must be noted on the jail release. (emphasis in the original).

While the Jeremy Carter order was what was of greatest interest to the media and the public, it was not the only dismissal order written and issued by Judge Webster and was not the only order that created problems. During the period of February, 28, 2013, to March, 8, 2013, Judge Webster wrote 28 orders, some which had to be issued in order to correct mistakes made in her earlier orders.

In connection with *State of West Virginia v. Gary Wayne Mullins*, Case No. 11-F-755, Judge Webster’s decision to write her own dismissal order created a different problem. At trial, Mr. Mullins had been convicted on one of three counts. The sentencing order, which was drawn up by the prosecutor’s office, failed to include language dismissing the other two counts. Instead of requiring the prosecutor to re-draft the sentencing order for her signature to include language dismissing the two counts, Judge Webster again chose to write her own order. In an interview, she noted that she was frustrated that the assistant prosecutor assigned to the case had not been responsive to her in a number of ways, and she decided just to get the job done herself in this case. The first sentence of that order was, “Inasmuch as the above-styled case appears to be moot, the Court, on its own motion, does hereby **ORDER** that this case be **DISMISSED**, and

stricken from the Court's docket" (emphasis in the original). There was no language in the order stating that two specific counts of the indictment were to be dismissed. Underneath "Case No.: 11-F-755" there was no notation of the two specific counts to be dismissed. The use of "this case be **DISMISSED**" language in combination with the fact that the order did not contain any language stating the intent to dismiss two specific counts, led to some comment in the media that the judge had dismissed the *Mullins* case after the defendant had already been convicted and sentenced in her own courtroom, and he was incarcerated in prison. This misunderstanding caused additional public criticism even though Judge Webster did say in the dismissal order, "This Order is not intended to void, moot or modify the provisions of any previous order entered by the Court in connection with this case," a part of the overall order that employees in the Kanawha County Circuit Clerk's Office apparently ignored or misunderstood.

In *State of West Virginia v. Devon Faucett*, Case No. 11-F-214, Judge Webster, on February 28, 2013, issued an order that "the Court, on its own motion" was dismissing the case, without prejudice, and ordering it stricken from the Court's docket. After having realized her mistake in ordering the case dismissed, Judge Webster, on March 8, 2013, entered an amended order directing that the February 28, 2013, dismissal order "**SHALL BE SET ASIDE**" and that further action in the matter "**SHALL BE STAYED**" until further order of the Court" (emphasis in the original).

In *State of West Virginia v. Dayton Charles Gillenwater*, Case No. 10-F-10, Judge Webster, issued an order dismissing the case. In this case, the parties had come before the court to present a proposed guilty plea to the court. After hearing only a proffer of the evidence relevant to the proposed guilty plea, the court expressed concern that the proffered evidence was insufficient to prove the underlying felony offense, deferred entry of the plea, and took the case under advisement. After considering the proffered evidence, Judge Webster found it to be "insufficient to prove the statutory elements of the case" and ordered that the case be "**DISMISSED** without prejudice, and stricken from the Court's docket." In light of the fact that Judge Webster had only heard a proffer of the evidence, and not the evidence in its totality, proper procedure would have been for the court simply to reject the proposed guilty plea and return the parties to their pre-plea offer positions, that is, free to file appropriate motions, try the case, or perhaps structure a different guilty plea offer to present to the court.

In *State of West Virginia v. Mary Horton*, Case No. 10-F-375, Judge Webster, on February 28, 2013, issued an order that "the Court, on its own motion," was dismissing the case, without prejudice, and ordering it stricken from the Court's docket. After having realized her mistake in ordering the case dismissed, Judge Webster, on March 8, 2013, entered an amended order directing that the February 28, 2013, dismissal order "**SHALL** be set aside" and further directed that the case "be stricken from the court's **active** docket and this matter stayed until further order of the Court" (emphasis in the original).

In *State of West Virginia v. Matthew Ryan Loudin*, Case No. 12-F-245, Judge Webster, on February 28, 2013, issued an order that "the Court, on its own motion," was dismissing the case, without prejudice, and ordering it stricken from the court's docket. After having realized her mistake in ordering the case dismissed, Judge Webster, on March 8, 2013, entered an amended order directing that the February 28, 2013, dismissal order "**SHALL** be set aside" and further

directed that the case “be stricken from the court’s **active** docket and this matter stayed until further order of the Court” (emphasis in the original).

In *State of West Virginia v. Paula McCracken*, Case No. 10-F-535, Judge Webster, on February 28, 2013, issued an order that “the Court, on its own motion,” was dismissing the case, without prejudice, and ordering it stricken from the court’s docket. After having realized her mistake in ordering the case dismissed, Judge Webster, on March 8, 2013, entered an amended order directing that the February 28, 2013, dismissal order “**SHALL** be set aside” and “this matter stayed until further order of the Court.” However, in this case, unlike the previous amended orders, the court did not include the language that “this case be stricken from the court’s **active** docket” (emphasis in the original).

In *State of West Virginia v. Edwin E. O’Dell*, Case No. 12-M-95, Judge Webster, on February 28, 2013, issued an order that “the Court, on its own motion,” was dismissing the case, without prejudice, and ordering it stricken from the court’s docket. After having realized her mistake in ordering the case dismissed, Judge Webster, on March 8, 2013, entered an amended order directing that the February 28, 2013, dismissal order “**SHALL** be set aside” and further directed that the case “be stricken from the court’s **active** docket and this matter stayed until further order of the Court” (emphasis in the original).

In *State of West Virginia v. Tracy Watt*, Case No. 11-F-123, Judge Webster, on February 28, 2013, issued an order that “the Court, on its own motion,” was dismissing the case, without prejudice, and ordering it stricken from the court’s docket. After having realized her mistake in ordering the case dismissed, Judge Webster, on March 8, 2013, entered an amended order directing that the February 28, 2013, dismissal order “**SHALL BE SET ASIDE**” and that “further action in this matter **SHALL BE STAYED** until further order of the Court.” However, in this case, once again, for unknown reasons, Judge Webster did not include the language that “this case be stricken from the court’s **active** docket” (emphasis in the original).

In stark contrast to the above-described series of orders followed by corrective amended orders, in *State of West Virginia v. Donald R. Wideman*, Case No. 12-F-275, Judge Webster issued a dismissal order by following proper procedure. In this case, the parties appeared before the court for a hearing on a motion to dismiss that had been filed by the defendant, one of the parties to the case. The court heard oral argument, considered the pleadings, found the motion was supported by good cause, and, accordingly, “**ORDERED** that Defendant’s Motion to Dismiss is **GRANTED**.” Proper procedure having been followed in this case, there was no need for any corrective amended order to be issued.

The actions taken in the above-described cases, as well as conversations with Administrative Office staff after the mistakes came to light, make it abundantly clear that Judge Webster did not understand the case numbering system that is utilized by the Kanawha County Circuit Court Clerk’s Office. After interacting with the Circuit Clerk’s office as well as Clerk Cathy Gatson herself, the authors of this report cannot help but be sympathetic to Judge Webster since the system is abstruse and its numbering of cases, motions, orders, etc., counterintuitive. For example, Judge Webster clearly did not understand that in dismissing case number “12-CRM-507,” she was using a case number that represented Jeremy Carter’s felony charge of attempted

kidnapping, not simply the portion of the case dealing with the already-concluded motion for psychiatric examination. In an interview, Judge Webster said that in putting the 12-CRM-507 number on the dismissal order, she only meant to dismiss the psychiatric motion aspect of the case since it was moot. However, the filing of the dismissal order led to the dismissal, as noted above, of the entire case and to the erroneous release of Mr. Carter.

Rule 2.14 of the Rules of Judicial Disciplinary Procedure, entitled, "Extraordinary proceedings," provides that 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. After full review and consideration of the facts relevant to this matter, the Administrative Director has decided that the errors committed by Judge Webster do not constitute a Rule 2.14 "extraordinary proceeding" to merit the filing of a complaint with the Disciplinary Counsel. The Commentary to Canon 2A of the Code of Judicial Conduct provides, "Errors in finding facts or in interpreting or applying law are not violations of this canon unless such judicial determinations involve bad faith or are done willfully or deliberately." Similarly, in *In The Matter of Magistrate Glen Greene*, 173 W. Va. 406, 317 S.E.2d 169 (1984), this Court held that when a judge, with no intent to prejudice the rights of a party, makes a legal error, the act does not constitute a violation of the Code of Judicial Conduct. Judge Webster's actions clearly fall within these confines.

Indeed, her goal in issuing the cluster of orders was laudable: she wanted to update her docket, clearing it of extraneous matters. However, she did not fully understand the Circuit Clerk's numbering system. It is somewhat understandable why Judge Webster did not comprehend the synecdochic nature of the numbering system -- where any single number that is part of the list of numbers contained in a single case implies the whole case: it is not a written policy. Circuit Clerk Gatson noted that the deputy circuit clerks assigned to the circuit judges know the local Kanawha County practices, and that those practices had been sufficient for the judges in the past.

Nevertheless, many users of the Kanawha County Circuit Clerk's Office processes are confused by them. Some of that office's users have called it "an error magnet" in the way that motions can result in the creation of separate case numbers and several different numbers are often used in reference to a single case and, further, that separate case numbers can actually appear to be completely separate cases when in fact they are not.

It would be unfair, however, to single out Kanawha County's Circuit Clerk's Office since similar situations are extant in scores of West Virginia counties. Making matters still more confusing for the public is the fact that each county has arrived at its own versions of a system which is only generally outlined in the current Circuit Clerks' Manual, a Manual in need of rewriting since it evolved by accounting for the various county systems and, consequently, contains some contradictions.

The Court's Mandate

Regarding the immediate matter of the erroneous orders issued by Judge Webster and complicated by some processing mistakes in the Kanawha County Circuit Clerk's Office, the Court can only insist that the Judge and all Circuit Clerk staff be fully informed about what they do and write in such important matters. Furthermore, it is vital that all parties keep all doors of communication open so that errors can be minimized. Since the errors do not rise to the level of an ethics violation, however, the Court at this time can only alert all parties to do a better, more contemplative, error-free job with all court documents.

But these errors have brought the bigger matter of the varying processing systems in the State's circuit clerks' offices to a head. Simply warning any judge or staff members to be careful is clearly not adequate to fix future problems if the systems themselves are so abstruse, so non-transparent, and so needlessly complicated that they almost generate a certain level of mistakes.

The Court wishes to remedy that bigger problem. **Therefore, the Administrative Director has been directed by the Court to establish a single, unified operating system for all of the counties' circuit clerks' offices.** In turn, the Administrative Director has done the following:

- Examined the 55 circuit clerks' offices' operating systems and discovered that there are four separate vendors serving the 55 counties with unique variations of those vendors' systems in every county;
- Determined that the operating system provided by vendor Software Systems, a company located in Morgantown, West Virginia, is the clearest, most logical, and most transparent of the four systems in use, and that company is being contracted to provide the unified system in the pilot counties;
- Selected fourteen counties* to be those pilot counties for the roll-out of a single, unified operating system and has held an initial meeting with the circuit clerks of those counties to weigh their willingness to serve as pilot counties;

*The counties and their respective circuit clerks are as follows:

Berkeley – Virginia Sine
Braxton – Susan Lemon
Cabell – Jeff Hood
Hampshire – Sonja Embrey
Harrison – Donnie Kopp
Jefferson – Laura Storm
Lewis – John Hinzmen
Lincoln – Charlie Brumfield
Marion – Barb Core
Morgan – Kim Hanback
Ohio – Brenda Miller
Randolph – Phil Riggleman
Upshur – Brian Gaudat
Wood – Carole Jones

- Determined that a separate company which specializes in providing e-filing through legacy systems -- On-Line Information Services, Inc. (OLIS), of Mobile, Alabama -- can partner with Software Systems to provide e-filing and, ultimately, electronic bill-paying for purposes of the pilot;
- Sought and had approved by the Court the creation of a Division of Circuit Clerk Services to deal specifically with not only the building and maintenance of a unified system, but also all other matters that so frequently arise regarding circuit clerks.

It is vital to underscore three more points:

(1) The counties, all of which currently pay for the circuit clerks' operating systems, equipment, maintenance agreements, and related software, will *not* be expected to pay for any of the installation, maintenance, and operations of the unified information system. All of this will be funded by the Court. Indeed, ultimately the counties will likely find themselves with space emptied of boxes of old records as those are scanned into the new unified system during the next decade.

(2) A comprehensive review committee which will be inclusive of representatives of all stakeholders -- circuit clerks, deputy circuit clerks, judges, attorneys of all types, and others -- will be appointed to help create and improve the operating system.

(3) OLIS will work with the Court and the West Virginia State Bar on a series of continuing education classes for lawyers to learn how to e-file so that they will all be ready to do so when e-filing becomes mandatory as the unified system is rolled out. Self-represented litigants will be encouraged to file electronically as well; however, these *pro se* litigants will still be allowed to file by paper in the circuit clerks' offices with the staff in those offices converting the paper filing to the electronic format.

The Court has also made it clear that this is to be one of the Administrative Office's highest priorities and that the pilot counties are to be up and running during the next year, barring unforeseen complications. After the outcomes are reviewed in the pilot counties, the Court may, at that time, ask to review additional vendors' systems or it may continue to contract with the pilot-period providers. In any case, after the pilot period has been completed, all of the state's counties will ultimately be merged into that single operating system, all at no cost to their counties.

Submitted to and received by

Chief Justice Brent D. Benjamin
West Virginia Supreme Court of Appeals

Date