

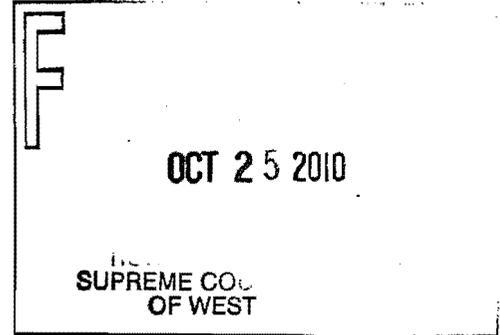
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia ex rel,)
ASHLEIGH and DANIEL JURKOVICH,)
Plaintiff,)

Vs.)

Case number
101319

RUSSELL W. GOODWIN,)
Magistrate of Roane County; and)
JANET MURPHY, Magistrate)
Assistant of Roane County; and)
BRENDA WHITE, (now RITA HELBIG))
Clerk of the Magistrate Court of Roane)
County,)
Respondents,)



RESPONSE

Now comes your Respondent, Russell Goodwin, and responds as follows:

On all dates contained within the Petition for Writ of Mandamus, and pertaining thereto, your Respondent, Russell W. Goodwin, was attending mandatory training, ordered by the Supreme Court of Appeals, in Charleston, West Virginia. That your respondent had no knowledge of the alleged incident, and did not communicate with the Petitioners concerning the allegations contained the Petition for Writ of Mandamus, or with any member of the Legal Aid of West Virginia.

The Magistrate Court case(s) contained within the Petition for Writ of Mandamus, and pertaining thereto, was assigned to Magistrate Jason

Bennett by the Clerk of the Roane County Magistrate Court, Rita Helbig, by records contained in the file(s) of said case(s).

On all dates contained within the Petition for Writ of Mandamus, and pertaining thereto, the Honorable Jason Bennett, was attending the mandatory training session, as a member of the Magistrate Training Committee.

On all dates contained within the Petition for Writ of Mandamus, and pertaining thereto, the Honorable Donald Sharp, Senior Status Magistrate, was recalled to active service to preside in the Magistrate Court of Roane County on September 27, 2010, through October 1, 2010, by order entered September 23, 2010, by the Honorable Robin Jean Davis, Chief Justice of the West Virginia Supreme Court. (see the attached order)

On September 27, 2010, the Honorable Donald Sharp, Senior Status Magistrate, did preside over the cases contained within the Petition for Writ of Mandamus.

On all dates contained within the Petition for Writ of Mandamus, and pertaining thereto, Janet Murphy was the Magistrate Assistant for Magistrate Russell Goodwin, and has been so employed since November 19th, 2007.

That it is Magistrate Russell Goodwin's practice and procedure to handle all matters relating to civil appeals, in cases that he is assigned. That it is the duty of Janet Murphy, Magistrate Assistant, to collect any fees ordered by Magistrate Goodwin.

Your Respondent does submit, and expects that Janet Murphy's statement in this matter to be as follows: (a) That the Petitioners came to her demanding answers to their questions about the amounts assessed by

Magistrate Sharp it their case, especially matters relating to travel expenses awarded by Magistrate Sharp. She informed them that there was nothing entered on the computer relating to judgment in the case, and that Magistrate Sharp had the files on his desk. She told them that they would have to talk to Magistrate Sharp; (b) that she gave the Respondents a copy of SCA-M490, and told them to sign the top of the form if they wanted to appeal, and to return the form to her (the form was not returned to her); (c) that she told the Respondents that after they signed the form that she would give the form to Magistrate Sharp, and he would have them sign a bond. The petitioners questioned her to the amount of the bond, and she told them it would be set by the Magistrate; (d) that she told the Petitioners there was a \$146.00 filing fee. That she did not know if they could use an old financial affidavit in an appeal, that she had never been asked that question before, and told them to ask the Magistrate; (d) that she told the petitioners several times that they needed to contact Magistrate Sharp (who was present at the time). The petitioners did not want to talk with Magistrate Sharp, and she told them to contact Magistrate Bennett the assigned Magistrate (on Friday, October 1st, 2010) for answers to their questions. She told them that Magistrate Goodwin would return to the office Monday, October 4th, 2010, if they wanted to talk with him; and (e) she denies every telling the Petitioners that they could not file an appeal.

Your petitioner states that the Petitioners, and counsel for the Petitioners, had until October 18, 2010 to file an appeal, and never at any time did they follow the directions or instructions of Janet Murphy and contact a Magistrate to enter an appeal. It is a requirement of Rule 18, of the Rules of Civil Procedures for Magistrate Courts that the Magistrate

shall require bond. Only the Magistrate can set the amount of bond. Janet Murphy was correct in directing the Petitioners to contact a Magistrate, which the Petitioners did not do. She in no way “exceeded her legitimate powers” by admitting that she did not know the answers to their questions, and that they needed to contact a Magistrate.

Rule 18, of the Rules of Civil Procedures for Magistrate Courts,
“(b) The magistrate shall require the appellant to post a bond with good security in a reasonable amount not less than the sum of the judgment and the reasonable court costs of the appeal, upon the condition that such person will satisfy the judgment and any court costs which may be rendered against the appellant on the appeal. The magistrate court clerk or deputy clerk shall collect the bond and the circuit court filing fee at the time the appeal is filed unless the person or entity filing the appeal is permitted to proceed without prepayment. The magistrate court clerk or deputy clerk shall forward any collected bond and fee along with the appropriate documents to the circuit court clerk.”

Rule 22, of the Rules of Civil Procedures for Magistrate Courts,
“(b) Review of affidavit of indigency. - If it appears from the affidavit that the person meets the financial guidelines, the clerk shall perform the service requested in conjunction with the affidavit. If it subsequently appears to the assigned magistrate that the person did not meet the financial guidelines, the magistrate shall order the person to pay the required fees, costs, or security, or the magistrate may order another appropriate remedy. If it appears from the affidavit that the person does not meet the financial guidelines, the clerk shall inform the person that the

service will not be performed without the payment of the appropriate fees, costs, or security, and that the person may request review of the clerk's determination by a magistrate. If the person requests review of the clerk's determination, the clerk shall immediately forward a copy of the affidavit to an on-duty magistrate. Upon receipt of the affidavit, the magistrate shall, within 7 days, either approve the affidavit, disapprove the affidavit, instruct the person to provide additional information, or schedule an ex parte hearing to determine indigency

Rule 2, of the Administrative Rules for Magistrate Courts, (a)
Caseload assignment. - Caseload assignment shall be conducted in such manner that, to the greatest extent possible, a plaintiff, petitioner, or complainant shall be unable to select a magistrate. All cases shall be centrally assigned by the magistrate clerk regardless of the magistrate before whom the civil or criminal complaint is filed. No magistrate may conduct hearings or enter orders in a case assigned to another magistrate, except upon consent of the magistrate to whom such case is assigned or upon order of the Circuit Court or the Supreme Court of Appeals; Provided, however, that any magistrate shall entertain a motion for a change of bail or bond and shall accept an appeal if the assigned magistrate is off duty or otherwise unavailable to do so.

Records of the Roane County Magistrate Court show as follows: (a) 2007 there were 275 civil actions, and there was 1 appeal. Circuit Court fees were collected in the one appeal case. (b) 2008 there were 216 civil actions, and there were 5 appeals. In four of these cases of appeal,

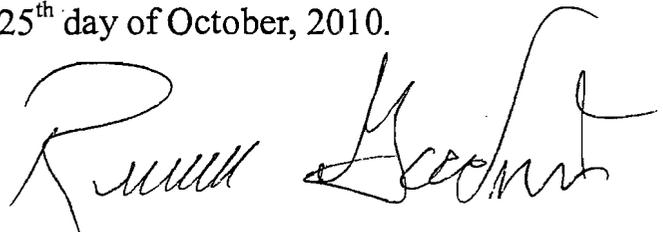
Circuit Court fees were collected. In case number 08C-178 the initial court costs were paid by the Plaintiff, and later a waiver was applied for by the Plaintiff for the appeal. (which was approved by Magistrate Goodwin). (c) 2009 there were 238 civil actions, and there were 3 appeals. In all three cases of appeal, Circuit Court fees were collected, and no waivers filed. (d) 2010 there have been 207 civil case filings, and there were 2 appeals. In both of these cases of appeal, Circuit Court fees were collected, and no waivers filed. (e) In four years there have been 886 civil cases, and only 11 appeals filed. Only one of those appeals was by financial affidavit (which was approved). Your Respondent was the assigned Magistrate in seven of the 11 appeal cases. Your Respondent denies "persistent disregard of procedural law".

Your Respondent states that the Petitioners have experience in civil procedure in Magistrate Court, and this is the third "unlawful occupation of residential rental property" filed against the Jurkovichs; (1) 03C-228, City of Spencer Housing Authority vs. Daniel and Rose Jurkovich; (2) 05C-213, Darol P. Lowe vs. Asheigh and Craig Jurkovich; and (3) 10C-182, Clark Crider vs. Daniel and Ashley Jurkovich.

Your Respondent does not oppose the Petitioners filing an appeal, and would have no objection to the Court ordering the extension of the filing period. Your Respondent does however oppose the petition as filed, and denies the allegations as stated in the petition.

Respectfully submitted this the 25th day of October, 2010.

Russell Goodwin – Pro Se

A handwritten signature in black ink, appearing to read "Russell Goodwin", written in a cursive style.

Roane County Magistrate Court
201 Main Street
Spencer, WV 25276
304-927-4751

ADMINISTRATIVE ORDER

SUPREME COURT OF APPEALS OF WEST VIRGINIA

RE: RECALL OF MAGISTRATE DONALD SHARP TO ACTIVE SERVICE TO PRESIDE IN THE MAGISTRATE COURT OF ROANE COUNTY ON SEPTEMBER 27, 2010, THROUGH OCTOBER 1, 2010

WHEREAS, the Honorable Thomas C. Evans, III, Chief Judge of the Fifth Judicial Circuit, has requested assistance in the Magistrate Court of Roane County on the dates referenced above; and

WHEREAS, the Chief Justice, upon review thereof, deems such request to be warranted;

IT IS, THEREFORE, ORDERED, that Donald Sharp, Senior Status Magistrate, be, and he hereby is, recalled for temporary assignment to the Magistrate Court of Roane County under the provisions of Article VIII, §§ 3 and 8 of the Constitution of West Virginia and West Virginia Code § 50-1-6a, for the purpose of presiding as a visiting Magistrate on the referenced dates; and

IT IS FURTHER ORDERED, that Senior Status Magistrate Sharp be, and he hereby is, authorized to enter orders and otherwise conclude matters considered or heard by him on the dates of assignment referenced above; and

IT IS FURTHER ORDERED, that the Circuit Clerk and Magistrate Clerk of Roane County record this Order in their respective Offices and that proceedings be held in the manner provided by law.

ENTERED: SEPTEMBER 23, 2010

Robin Jean Davis, C.J.

ROBIN JEAN DAVIS
Chief Justice