

No. 31797 – In the Matter of: Magistrate William Tom Toler, Magistrate for Wayne County

FILED

June 1, 2005

released at 10:00 a.m.

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, J., dissenting:

This magistrate was duly elected and our law most clearly says that the *people who elected him have a right to his services*, absent a finding that his conduct bars his service.

The complaint now pending before the Judicial Hearing Board states that this magistrate “had been charged in the commission of serious criminal offenses.” Once that was true. But it is true no longer. There are *no* criminal charges. He has been determined to be *legally not guilty* of any crime.

Now, can he be removed from office for conduct that is not a crime? Possibly. But before that can be done, the case must move through the judicial disciplinary procedures as provided for in the *West Virginia Rules of Judicial Disciplinary Procedure*. And, in such a case there can be a suspension from office without pay, but not to exceed one year. In such a case, there is a duty to prove conduct to such a degree as to override the rights of the people to his services. That is quite a burden.

In the meanwhile, not paying this magistrate is simply wrong. He met the serious criminal charges and was acquitted. Furthermore, there are no criminal charges pending against him at this time. He should be reinstated with back pay while the investigation continues.

Accordingly, I dissent.