

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

*September 1993 Term*

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*No. 21531*

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IN THE MATTER OF:  MAGISTRATE M. L. TWYMAN,  
                          MAGISTRATE FOR MARION COUNTY

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*Disciplinary Proceeding*

*COMPLAINT DISMISSED*

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*Submitted:  October 5, 1993*

*Filed:  November 1, 1993*

*Charles R. Garten  
Charleston, West Virginia  
Attorney for Judicial Investigation Commission*

*David R. Janes  
Fairmont, West Virginia  
Attorney for Magistrate M. L. Twyman*

*This Opinion was delivered PER CURIAM.*

## SYLLABUS BY THE COURT

1. *"Under Rule III(C)(2) [1992 Supp.] of the West Virginia Rules of Procedure for the Handling of Complaints Against Justices, Judges and Magistrates, the allegations of a complaint in a judicial disciplinary proceeding must be proved by clear and convincing evidence." Syl. pt. 4, In Re Pauley, 173 W. Va. 228, 314 S.E.2d 391 (1983).*
2. *"The Supreme Court of Appeals will make an independent evaluation of the record and recommendations of the Judicial [Hearing] Board in disciplinary proceedings." Syl. pt. 1, West Virginia Judicial Inquiry Com'n v. Dostert, 165 W. Va. 233, 271 S.E.2d 427 (1980).*

*Per Curiam:*

*This matter is before this Court upon review of the judicial disciplinary proceeding initiated against M. L. Twyman, Magistrate for Marion County, West Virginia. The Judicial Investigation Commission ("the Commission") filed a complaint, with the West Virginia Judicial Hearing Board ("the Board") against Magistrate Twyman and charged her with violating Canon 3A(1) and (5) and Canon 3B(1) and (2) of the Judicial Code of Ethics. Following a hearing on the matter, the Board recommended to this Court that the complaint against Magistrate Twyman be dismissed. We adopt the recommendation of the Board. For the reasons stated below, we hereby order that the complaint against Magistrate Twyman be dismissed.*

Normally, Marion County has four magistrates, however, from April of 1990, through November of 1991, Marion County operated with only three magistrates. The fourth magistrate at that time, Ronald Crislip, was absent from his office during this time period, and he later passed away in April of 1991. The three remaining magistrates then became overloaded with the backlog created by the absence of Mr. Crislip.

The charges against Magistrate Twyman arose from an incident in which Raymond McIntire obtained a warrant for brandishing and assault against Byron Dunsler, in the Marion County Magistrate Court on November 3, 1991. The case of State of West Virginia ex rel. Raymond McIntire v. Byron Dunsler was assigned to Magistrate Twyman.

In magistrate court, ordinarily criminal cases must be conducted within 120 days of the issuance of the warrant or the case may be dismissed. However, the absolute limit for the commencement of a misdemeanor case is one year if good cause exists for such delay. See *State ex rel. Stiltner v. Harshbarger*, 170 W. Va. 739, 296 S.E.2d 861 (1982).

In November of 1991, Mr. McIntire contacted the Marion County Magistrate Court and was advised that the complaint had been served and a hearing date would be scheduled for December of 1991. On two other occasions Mr. McIntire contacted the magistrate court in order to find out the actual day of the hearing, and on each occasion, the hearing had been rescheduled for January of 1992, and then for May of 1992. The hearing was rescheduled a third time when Tammy Newhouse, the Magistrate

Assistant for Magistrate Twyman, spoke with defense attorney, Ross Maruka, and he informed her that he could not be present for the hearing scheduled on May 19, 1992. Ms. Newhouse then continued the matter, but she did not send notices of the continuance to the respective parties.

On September 9, 1992, a hearing was held before Magistrate Twyman with Mr. Maruka appearing on behalf of the defendant, Mr. Dunsler, and Assistant Prosecuting Attorney, Penny Hartman, appearing on behalf of the State. Mr. Maruka filed a motion to dismiss because the case had not been heard within 120 days. There was no objection made by the assistant prosecuting attorney, therefore, Magistrate Twyman dismissed the case. Following the hearing, Mr. McIntire was informed that his complaint had been dismissed.

On September 12, 1992, Mr. McIntire filed a complaint against Magistrate Twyman with the Commission. After reviewing the complaint, the Commission followed through with an investigation and found probable cause existed for the Commission to file a complaint with the Board. Accordingly, on January 12, 1993, the Commission filed a complaint against Magistrate Twyman charging her with violating Canon 3(A)(1) and (5) and 3B(1) and (2) of the Judicial Code of Ethics, which provides:

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism . . . .



*(5) A judge should dispose promptly of the business of the court . . . .*

*B. Administrative Responsibilities.*

*(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials . . . . (2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.*

*On May 21, 1993, a hearing was held before the Board regarding the charges against Magistrate Twyman. On July 6, 1993, the Board submitted its findings of fact, conclusions of law and proposed disposition for review by this Court. The Board concluded and ultimately recommended that due to the overload in the Marion County Magistrate Court, Magistrate Twyman did not violate the above-mentioned Judicial Code of Ethics, and*

therefore, the complaint against Magistrate Twyman should be dismissed.

II

With respect to the handling of complaints against magistrates, this Court set forth the requisite standard of proof initially in syllabus point 4 of *In Re Pauley*, 173 W. Va. 228, 314 S.E.2d 391 (1983): "Under Rule III(C)(2) [1992 Supp.] of the West Virginia Rules of Procedure for the Handling of Complaints Against Justices, Judges and Magistrates, the allegations of a complaint in a judicial disciplinary proceeding must be proved by clear and convincing evidence."

Upon review, this Court is required to make an independent evaluation of the Board's findings and recommendations as stated in syllabus point 1 of West Virginia

*Judicial Inquiry Com'n v. Dostert, 165 W. Va. 233, 271 S.E.2d 427*

*(1980): "The Supreme Court of Appeals will make an independent evaluation of the record and recommendations of the Judicial [Hearing] Board in disciplinary proceedings."*

*In the case before us, Magistrate Twyman is in essence charged with failing to diligently carry out her judicial and administrative duties. However, we are of the opinion that the delay which occurred in the case styled State ex rel. Raymond McIntire v. Byron Dunsler was justified in that the evidence presented supports Magistrate Twyman's contention that the Marion County Magistrate Office was faced with an unusually heavy workload due to the absence of the county's fourth magistrate.*

*The Commission contends that because Magistrate Twyman*

failed to promptly dispose of this criminal action, Mr. McIntire never had an opportunity to "have his day in court." As mentioned earlier, in magistrate court criminal cases are to be addressed within 120 days from the issuance of the warrant. However, as asserted by counsel for Magistrate Twyman, the outer limit for hearing a criminal matter is one year from the issuance of the warrant, if good cause exists for such delay. See *Stiltner, supra*. Mr. McIntire obtained his criminal warrant on November 4, 1991, and the hearing pertaining to this warrant was scheduled and heard on September 9, 1992, within the one-year outer limit per *Stiltner*. Therefore, Magistrate Twyman acted within the allotted time period mandated by West Virginia law.

We do not condone dilatory behavior on the part of judicial officers. However, we are of the opinion that due to

*the overload in the Marion County Magistrate Court at the time, the delay which occurred in the case of State of West Virginia ex rel. Raymond McIntire v. Byron Dunsler, was not intentional.*

*Furthermore, the assistant prosecuting attorney did not object to the dismissal even though more time remained before the lapse of the one-year period. Magistrate Twyman testified that had the State objected to the motion, citing good cause for the delay, then the case would have gone to trial.*

*This Court has independently evaluated the record in this case and heard oral arguments from the respective parties. For the reasons stated herein, we believe that the record is void of clear and convincing evidence to support the charges raised in the Commission's complaint against Magistrate Twyman, and therefore, we accept the recommendation of the Judicial Hearing*

*Board to dismiss the complaint against Magistrate Twyman.*

*Complaint*

*Dismissed.*