

No. 31856 – *State of West Virginia ex rel. Eric P. Mantz, M.D., et al. v. The Honorable Paul J. Zakaib, Jr., Judge of the Circuit Court of Kanawha County, West Virginia; St. Paul Fire and Marine Insurance Company, a Minnesota corporation; Commercial Insurance Service, Inc., a West Virginia corporation; Christopher P. Bastion, Gerald R. Lacy, and Susan K. Dirks, Special Masters*

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OF WEST VIRGINIA

Starcher, J., dissenting:

I wholeheartedly agree with the majority opinion's holding that a special master must comply with the *Code of Judicial Conduct*. But I feel compelled to dissent to express my dissatisfaction with the outcome of this case.

The attorneys that the circuit judge chose to employ as special masters in this case had a tight, attorney-client relationship with the primary defendant, St. Paul Fire and Marine Insurance Company, both before and during the petitioners' lawsuit. There is simply no way that a person could get a paycheck from a client one day as a lawyer, and the next day be expected to act as a fair and impartial judge in a case where that very same client is a litigant. I do not say this to impugn the integrity of the lawyers in the instant case, but there is no sidestepping the fact that there is a strong appearance of impropriety at work. The lawyers should have had the courage to see this, abided by the spirit of the *Code of Judicial Conduct*, and stepped aside a long time ago.

What compels me to dissent is this: the majority opinion's command to send this case back to the circuit court for further proceedings to reconsider the petitioners'

motion to disqualify the special masters is, in my mind, a formal legal exercise that borders on the absurd. It is downright wasteful of the litigants' and taxpayers' money to force the judge to hold more hearings to answer a question with an obvious answer. I would have granted the writ of prohibition outright because the lawyers chosen by the circuit court plainly should have been disqualified from acting as special masters.

I therefore respectfully dissent.