

No. 33068 – *In the Matter of: Magistrate Clarence W. “Charlie” McCourt, Jr., Magistrate for Upshur County*

FILED

June 26, 2006

Albright, Justice, concurring, in part, and dissenting, in part:

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

I necessarily concur in that portion of the majority opinion which upholds this Court’s indisputable power to suspend a judicial officer, with or without pay, for alleged violations of the Code of Judicial Conduct. Nevertheless, I write separately to explain why I disagree with how that power is often employed without full consideration of the circumstances of each particular case which might justify suspension with pay. In the absence of such full consideration, unjust consequences might well follow from an unwavering practice of always suspending accused judicial officers without pay.

At the initial stage of the judicial investigation process in similar cases, I generally vote for suspension of the individual with pay – especially when material facts are genuinely in dispute. As the majority acknowledges, we have little information before us when we are called upon to make the probable cause determination on complaints alleging serious transgression of the Code of Judicial Conduct. When such complaints involve significant factual disputes, I believe that justice is best served by allowing the trier of fact, the Judicial Hearing Board, to do its job of hearing evidence before such harsh action as withholding pay is taken by summary action of this Court.

There is no question that the magistrate in the case at hand acted in a manner inappropriate to his office when he went to the victim's hotel room. Nevertheless, what occurred during that visit is highly contested by the parties to the disciplinary proceeding. Indeed, the factual dispute begins with whether the magistrate actually entered the room and continues through what transpired between the parties after that point and extends to how long the encounter lasted. To routinely deprive an accused judicial officer of a source of income while defending a judicial misconduct charge under such contested factual circumstances is hardly representative of the hallmark of the judiciary – fairness.

In the present case, not only are the material facts hotly contested but the magistrate has also represented that he has no other source of income with which to readily develop a competent defense against the charges levied. Under such circumstances, fairness dictates that suspension from duty must occur to preserve public confidence in the judicial system because of the serious misbehavior which has been alleged. I believe fairness also demands that the magistrate should not be summarily denied pay by this Court without full and fair consideration of the particular facts and circumstances of his case.

Accordingly, I concur with the majority regarding this Court's authority to suspend the subject magistrate without pay. However, I dissent generally with the majority's indiscriminate manner of deciding to indefinitely suspend judicial officers without pay

whenever a transgression of judicial conduct rules is alleged, I also dissent from the specific decision to suspend the magistrate named in this case without pay.

I am authorized to state that Justice Starcher joins in this separate opinion.