

Serial: 198724

IN THE SUPREME COURT OF MISSISSIPPI

No. 2015-JP-00246-SCT

***MISSISSIPPI COMMISSION ON
JUDICIAL PERFORMANCE***

v.

***JUSTICE COURT JUDGE BILL
WEISENBERGER***

ORDER

On March 26, 2015, this Court, sitting *en banc*, issued an order concerning the Petition for Interim Suspension of Madison County Justice Court Judge William “Bill” Weisenberger filed by the Mississippi Commission on Judicial Performance. In that order, this Court granted in part and denied in part the Commission’s recommendation, “temporarily suspend[ing] [Judge Weisenberger] from the performance of all duties of his office, with pay, until further order of this Court.” The Commission, joined by the County of Madison, now moves for this Court to reconsider, arguing that Mississippi law mandates that Judge Weisenberger be suspended without pay.

In this instance, motions for reconsideration are governed by Mississippi Rule of Appellate Procedure Rule 27(h), which, in pertinent part, states that:

Motions for reconsideration, vacation or modification of rulings of the Supreme Court and the Court of Appeals on motions are generally not allowed. However motions for reconsideration of rulings on motions and petitions may be filed within 14 days after a decision is handed down on the motion to be reconsidered as to:

motions to amend, correct or clarify orders, opinions, and mandates

M.R.A.P. 27(h)(6). The Commission argues that the order “entered on March 26, 2015[,] fails to address the mandatory language found in Sections 9-19-13 and 25-3-36(7) of the Mississippi Code.” Accordingly, the Commission requests that Judge Weisenberger’s “suspension be without pay.”

Section 9-19-13 of the Mississippi Code provides, “*except as otherwise provided in, Section 25-3-36(6)*, on recommendation of the commission on judicial performance, the Supreme Court may disqualify a judge from exercising any judicial function, *without loss of salary*, during pendency of proceedings before the commission or in the supreme court.” (emphasis added). Thus, under Section 9-19-13, all judicial suspensions should be with pay except as provided in Section 25-3-36(6). Section 25-3-36(6) of the Mississippi Code provides, “the salary of any justice court judge shall not be reduced during his term of office as a result of a population change following a federal decennial census.” Thus, because Section 25-3-36(6) is inapposite, the plain language of the statute requires that judges are suspended “without loss of salary.” Miss. Code Ann. § 9-19-13 (Rev. 2014).

The Commission argues that this Court should treat the reference to Section 25-3-36(6) as a scrivener’s error and instead look to Section 25-3-36(7), which states, “[a]ny justice court judge who is unable to attend and hold court by reason of being under suspension by the Commission on Judicial Performance or the Mississippi Supreme Court shall not receive a salary while under such suspension.” Miss. Code Ann. § 25-3-36(7) (Rev. 2010).

Regardless of whether we adopt the Commission’s statutory interpretation, this Court has held that a “sanction for judicial misconduct should fit the offense.” *Miss. Comm’n on Jud. Performance v. Gunn*, 614 So. 2d 387, 390 (Miss. 1993); *see generally Miss. Comm’n on Judicial Performance v. Gordon*, 955 So. 2d 300, 303 (Miss. 2007) (“[B]ecause we have the sole power to impose sanctions in judicial misconduct cases, we are obligated to render an independent judgment on the charges.”) (internal citation omitted). In *Hartzog*, we addressed a judicial performance complaint in which a justice court judge was under indictment for, but had not been convicted of, two felonies. *Miss. Comm’n on Jud. Performance v. Hartzog*, 822 So. 2d 941 (Miss. 2002). We held that “[u]nder the circumstances of this case we believe temporary suspension, with pay, is necessary to protect the sanctity of the courts.” *Id.* at 945 (¶ 15). Moreover, in every other judicial performance complaint in which a judge has been indicted for a felony, we have held that temporary suspension *with pay* is the appropriate sanction. *See Miss. Comm’n on Jud. Performance v. Delaughter*, 35 So. 3d 1208 (Miss. 2008); *Miss. Comm’n on Jud. Performance v. Walker*, 134 So. 3d 731 (Miss. 2014); *accord In re Merlo*, 17 A. 3d 869, 872 (Pa. 2011) (holding that suspension of a judge with pay balances the public’s interest in the integrity of the judiciary with the judge’s private property interests). Of note, the Commission on Judicial Performance has yet to conduct a formal hearing on this matter during which Judge Weisenberger can defend himself against the Commission’s complaint. *See Mathews v. Eldridge*, 424 U.S. 319, 321, 96 S. Ct. 893, 896, 47 L. Ed. 2d 18 (1976) (holding that the Fifth and Fourteenth Amendments necessitate that “some form of hearing is required before

an individual is finally deprived of a property interest”) (citing *Wolff v. McDonnell*, 418 U.S. 539, 557-558, 94 S. Ct. 2963, 2975-76, 41 L. Ed.2d 935 (1974)); *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed.2d 484 (1972) (“[D]ue process is flexible and calls for such procedural protections as the particular situation demands.”).

We therefore deny the Commission’s motion for reconsideration. We decline to amend our order of March 26, 2015, in which we ordered that Judge Weisenberger be temporarily suspended from the performance of all duties of his office, with pay, until further order of this Court.

SO ORDERED, this the 2nd day of June, 2015.

/s/ James W. Kitchens

JAMES W. KITCHENS, JUSTICE