

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2007-JP-01617-SCT

***MISSISSIPPI COMMISSION ON JUDICIAL
PERFORMANCE***

v.

JUDY CASE MARTIN

ON MOTION FOR REHEARING

COURT FROM WHICH APPEALED: COMMISSION ON JUDICIAL
PERFORMANCE
ATTORNEYS FOR APPELLANT: LUTHER BRANTLEY
IRENE M. BUCKLEY
ATTORNEY FOR APPELLEE: JOHN W. KITCHENS
NATURE OF THE CASE: CIVIL - JUDICIAL PERFORMANCE
DISPOSITION: DISMISSED - 12/04/2008
MOTION FOR REHEARING FILED: 03/27/2008
MANDATE ISSUED:

EN BANC.

DICKINSON, JUSTICE, FOR THE COURT

¶1. The joint motion for rehearing is granted. The order previously entered by this Court on February 28, 2008, is dismissed and these opinions are substituted therefor.

¶2. This is a formal complaint of judicial misconduct against Judy Case Martin, formerly Justice Court Judge for Post One, Lincoln County, Mississippi. The issue presented is whether this Court must dismiss its previous order of interim suspension pursuant to a memorandum of understanding between Judge Martin and the Commission on Judicial Performance.

BACKGROUND FACTS AND PROCEEDINGS

¶3. On September 18, 2007, the Commission filed a Formal Complaint against Judge Judy Case Martin, alleging in Count One that Judge Martin “violated Canons 1, 2A, 3B(2), 3B(5), 3B(7) and 3B(8) of the Code of Judicial Conduct of Mississippi Judges.” Specifically, Count One alleges:

On or about April 3, 2007, in apparent association with an on-going domestic dispute, the Respondent issued a warrant for the arrest of Steve Harzog for the offense of “contempt of Court” and further ordered that Harzog be held without bond. The record is void of probable cause by affidavit, or otherwise, as a basis for the issuance of said warrant.

¶4. Counts Two, Three, Four, and Five¹ of the Commission’s Formal Complaint were based on conduct related to the arrest warrant. These Counts included various allegations of misconduct against Judge Martin, including (1) refusing to set a bond for Harzog unless he agreed to allow Judge Martin to hear several cases pending against Harzog, all of which had been assigned to another judge; and (2) “admonish[ing] and derid[ing] Harzog’s attorney for his failure to have Harzog testify so that [she] ‘could hear [his] voice.’” In addition to its Formal Complaint filed with this Court, the Commission petitioned this Court for an order of interim suspension, pending the Commission’s continuing investigation into the matter.

¶5. On October 16, 2007, the Commission petitioned this Court to allow it to withdraw the petition for interim suspension. The Commission stated, “Since the filing of the petition, counsel for the Commission and the Respondent have entered into an agreement whereby the issues have been resolved in a manner satisfactory to all parties.” Finding insufficient the

¹Only Count Five of the Commission’s Formal Complaint alleges one of the five constitutional violations which fall within the Commission’s jurisdiction, as discussed below.

basis stated for the Commission’s motion to withdraw its petition for interim suspension, this Court, by order dated November 29, 2007, denied the motion and, by order dated February 28, 2008, ordered the interim suspension of Judge Martin.

¶6. Thereafter, the Commission and Judge Martin filed a joint motion, asking this Court to reconsider its previous order denying the motion to withdraw the petition for interim suspension. The basis for the motion for reconsideration was that, on October 12, 2008, the Commission and Judge Martin had entered a “memorandum of understanding” which settled the matter.

ANALYSIS

¶7. In 1979, the people of Mississippi created, by constitutional amendment, the Mississippi Commission on Judicial Performance. Miss. Const. art. 6, § 177A. As a constitutionally-created body, its substantive² duties and powers are set and limited by constitutional provision, and may be diminished or expanded only by constitutional amendment. Section 177A provides in relevant part:

On Recommendation of the commission on judicial performance, the Supreme Court may remove from office, suspend, fine or publicly censure or reprimand any justice or judge of this state for: (a) actual conviction of a felony in a court other than a court of the State of Mississippi; (b) willful misconduct in office; (c) willful and persistent failure to perform his duties; (d) habitual intemperance in the use of alcohol or other drugs; or (e) conduct prejudicial to the administration of justice which brings the judicial office into disrepute; and may retire involuntarily any justice or judge for physical or mental disability seriously interfering with the performance of his duties, which disability is or is likely to become of a permanent character.

Miss. Const. art. 6, §177A.

²As an integral part of the judicial branch of government, the Supreme Court sets the procedural rules governing the Commission.

¶8. Pursuant to this provision, the Commission has jurisdiction over six categories of complaints³ against a judge: (1) actual conviction of a felony in a court other than a court of the State of Mississippi; (2) willful misconduct in office; (3) willful and persistent failure to perform his duties; (4) habitual intemperance in the use of alcohol or other drugs; or (5) conduct prejudicial to the administration of justice which brings the judicial office into disrepute; and (6) physical or mental disability seriously interfering with the performance of [the judge's or justice's] duties, which disability is or is likely to become of a permanent character. *Id.*

¶9. In cases in which the Commission finds one or more violations within the five categories of misconduct actionable under Section 177A, the Commission's recommendations to this Court for punishment are limited by the following constitutional provision:

On recommendation of the commission on judicial performance, the Supreme Court may remove from office, suspend, fine or publicly censure or reprimand any justice or judge of this state for

Id. The constitution grants the Commission no direct authority or power to order punishment. Nor does it authorize the Commission to enter into a settlement agreement or memorandum of understanding which bypasses its constitutional mandate to make recommendations for punishment to this Court. That said, the Commission is certainly free to agree to recommend to this Court approval of a memorandum of understanding which is supported by the facts.

³Of the six categories, the first five involve complaints of misconduct, and the sixth involves a judge's inability to perform the duties of office because of physical or mental disability.

¶10. In the case before us today, we are told by the Commission that “counsel for the Commission and the respondent have entered into an agreement whereby the issues have been resolved in a manner satisfactory to all parties.” We are further told that the Commission and Judge Martin entered into a Memorandum of Understanding which “the Commission accepted by unanimous decision.” We find and hold today that, where the Commission finds judicial misconduct within one of the five categories under Section 177A, failure to report such findings to this Court, and disposal of the violation by agreement, settlement, or memorandum of understanding between the respondent and the Commission, are beyond the Commission’s constitutional authority.

¶11. The fault for the Commission’s unauthorized settlement and memorandum of understanding in this case does not lie with the Commission, but rather with the lack of clarity in the language of Rule 6B of the Rules of the Mississippi Commission on Judicial Performance, which provides:

B. Disposition. The Commission shall dispose of the case in one (1) of the following ways:

- (1) If it finds that there has been no misconduct the case shall be dismissed.
- (2) If it finds that there has been misconduct for which a private admonishment constitutes adequate discipline, it shall issue the admonishment. The complainant shall be notified that the matter has been resolved. The Commission shall notify the Chief Justice of the Supreme Court of its action.
- (3) The commission may enter into a memorandum of understanding with the judge concerning his future conduct or submission to professional treatment or counseling.
- (4) If it is determined that probable cause exists to require a formal hearing, it shall so notify the judge by service of a notice and a formal complaint.

Miss. R. Judicial Performance 6(B). Since Section 177A provides the Commission no authority to administer punishment through a memorandum of understanding, this Court is in the process of amending Rule 6(B). This Court has always guarded its ultimate and inherent authority to decide issues concerning judicial misconduct, including appropriate sanctions, whereas the Commission has the significant role of making recommendations on which we greatly rely. *See Miss. Comm'n on Judicial Performance v. A Mun. Court Judge*, 755 So. 2d 1062, 1063 (Miss. 2000).

¶12. On the other hand, Section 177A clearly imposes upon this Court the duty, responsibility, and authority (after considering the recommendation of the Commission) to determine and impose punishment on “any justice or judge of this state” who this Court finds has committed one of the enumerated offenses. That duty and authority is no more delegable than this Court’s duty to hear appeals from our trial courts. Stated differently, the only offenses for which a judge may be punished, and the only punishments which may be ordered, are those enumerated in Section 177A, and it is within the exclusive duty and authority of the Supreme Court to determine and order the appropriate punishments.

¶13. Thus, in the case before us, we do not view the Commission’s memorandum of understanding as requiring us to dismiss our previous order of interim suspension. However, we do take into consideration the contents of the memorandum of understanding in reaching this result. In so doing, and because Judge Martin has resigned her office, we find the order of interim suspension should be, and hereby is, dismissed as moot.

¶14. **DISMISSED.**

WALLER, P.J., EASLEY, CARLSON AND LAMAR, JJ., CONCUR. GRAVES, J., CONCURS IN RESULT ONLY. RANDOLPH, J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY CARLSON AND DICKINSON, JJ. SMITH, C.J., AND DIAZ, P.J., NOT PARTICIPATING.

RANDOLPH, JUSTICE, SPECIALLY CONCURRING:

¶15. I concur with Justice Dickinson’s well-reasoned opinion. However, I am compelled to address the proposed amendments to the Rules of the Mississippi Commission on Judicial Performance. Not only does Rule 6(B)(3) require amendment, but also in need of amendment are Rules 6(B)(2), 8(F) and 10(F), regarding private reprimands or private admonishments. Private discipline is not an option constitutionally available for sanctioning judges. The Rules of the Mississippi Commission on Judicial Performance need clarification in order to reflect this truth.

¶16. Article 6, Section 177A of the Mississippi Constitution provides, “On recommendation of the commission on judicial performance, the Supreme Court may remove from office, suspend, fine or publicly censure or reprimand any justice or judge of this state.” *Private* reprimands are not an option available for the discipline of judges. See *In re Inquiry Concerning a Judge*, 419 So. 2d 145, 146 (Miss. 1982) (“The first question is whether this Court may order restitution as recommended by the Commission. We answer the question no because restitution is not one of the sanctions permitted.”).

¶17. Article 6, Section 177A of the Mississippi Constitution additionally provides the circumstances under which a judge may be disciplined. A judge may be removed from office, suspended, fined or *publicly* censured or reprimanded for:

- (a) actual conviction of a felony in a court other than a court of the State of Mississippi;
- (b) willful misconduct in office;
- (c) willful and persistent failure

to perform his duties; (d) habitual intemperance in the use of alcohol or other drugs; or (e) conduct prejudicial to the administration of justice which brings the judicial office into disrepute; and may retire involuntarily any justice or judge for physical or mental disability seriously interfering with the performance of his duties, which disability is or is likely to become of a permanent character.

Miss. Const. art. 6, §177A (emphasis added). Judges of this state are publicly elected officials, and if a judge commits one of the foregoing offenses, he or she should be publicly sanctioned.

Intrinsic to all sections of th[e] Code [of Judicial Conduct] are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law. . . .

Miss. Code of Judicial Conduct pmb1. Judges are subject to a higher standard. Since the public has placed its confidence in a particular justice or judge by elevating him or her to a revered office of public trust, the public has a constitutional right to know of that judge's misdeeds. Not only is a nonpublic censure or reprimand a constitutionally unavailable option, no valid, articulable reason can be shown that a judicially created exception serves the public interest.

¶18. Therefore, in conjunction with amending Mississippi Commission on Judicial Performance Rules 6(B)(2), 8(F) and 10(F), this Court should apply the Constitution as written, and overrule all prior cases which imposed private reprimands against judges.⁴ While

⁴See *Miss. Comm'n on Judicial Performance v. Justice Court Judge T.T.*, 922 So. 2d 781 (Miss. 2006) (among other recommendations, the Commission recommended a public reprimand, and this Court adopted the Commission's recommendations in part but imposed a private reprimand); *Miss. Comm'n on Judicial Performance v. Former Judge U.U.*, 875 So. 2d 1083 (Miss. 2004) (the Commission recommended a public reprimand, a fine of \$500, and that Former Judge U.U. be assessed costs of the appeal in amount of \$ 953.95, and this Court imposed a private reprimand and

the Court understands it is necessary for the bench, bar, and in this case, the Commission on Judicial Performance, to rely on the principle of stare decisis, it is necessary that we overrule these cases to comport with the constitutional mandates under which we operate, and to remove an ill-advised cloak of secrecy.⁵ Only then can the public make an informed decision, should the judge or justice further seek the approval of the electorate.

¶19. For the foregoing reasons, I submit that this Court should amend Mississippi Commission on Judicial Performance Rules 6(B)(2), 8(F) and 10(F) in order to reflect that private reprimands cannot be imposed upon judges.

CARLSON AND DICKINSON, JJ., JOIN THIS OPINION.

assessed the former judge the costs of the appeal in the amount of \$ 953.95); *Miss. Comm'n on Judicial Performance v. Blakeney*, 905 So. 2d 521 (Miss. 2004) (the Commission recommended a public reprimand, and this Court imposed a private reprimand); *Miss. Comm'n on Judicial Performance v. A Mun. Court Judge*, 755 So. 2d 1062, 1065 (Miss. 2000) (Court issued a private reprimand after finding judge ordered three defendants to get married and set a bond for a defendant whom the judge represented in another matter); *Miss. Comm'n on Judicial Performance v. Justice Court Judge*, 580 So. 2d 1259 (Miss. 1991) (judge issued a private reprimand after he personally accepted fine monies because the justice court clerk was unavailable).

⁵“While the decision to overrule a precedent is a matter of judicial discretion, most state courts have required departures from stare decisis to be rooted in what the Connecticut Supreme Court described as ‘the most cogent reasons and inescapable logic.’ Victor E. Schwartz, Cary Silverman & Phil Goldberg, *Toward Neutral Principles of Stare Decisis in Tort Law*, 58 South Car. L. Rev. 2, 328-29 (Winter 2006) (citing *City of Waterbury v. Town of Washington*, 800 A.2d 1102, 1126 (Con. 2002) (quoting *Rivera v. Comm’r of Corr.*, 756 A.2d 1264, 1286 (Conn. 2000)). *See also Morrow v. Commonwealth*, 77 S.W.3d 558, 559 (Ky. 2002) (stating that the doctrine of stare decisis does not commit the state supreme court “to the sanctification of ancient [or relatively recent] fallacy.”) (quoting *Hilen v. Hays*, 673 S.W. 2d 713, 717 (Ky. 1984)).