

STATE OF MARYLAND

BEFORE THE COMMISSION ON JUDICIAL DISABILITIES

IN THE MATTER OF:

JUDGE JOAN B. GORDON

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CJD 2019-147

Received By Commission

AUG 11 2020

on Judicial Disabilities

To: JUDGE JOAN B. GORDON
DISTRICT COURT OF MARYLAND FOR BALTIMORE CITY
FIRST JUDICIAL CIRCUIT

CHARGES

TAKE NOTICE that the Commission on Judicial Disabilities (hereinafter “Commission”) has caused to be made and completed an investigation, through its Investigative Counsel, Tanya C. Bernstein, Esq., of Judge Joan B. Gordon who was, at all pertinent times, a Judge of the District Court of Maryland for Baltimore City. The Commission notified Judge Gordon of the nature of the investigation and afforded her an opportunity to present information bearing on the investigation.

The Commission received and considered information from the investigation, including, but not limited to, the complaint and attachments filed by the complainant, audio recordings of the underlying court proceedings, the Judge’s written responses and attachments, and the recommendation of Investigative Counsel. In consideration of the foregoing and a finding by the Commission of probable cause to believe that Judge Gordon has committed sanctionable conduct, the Commission directed Investigative Counsel to initiate formal proceedings against Judge Gordon pursuant to Rule 18-431(a). The Commission will conduct a public hearing on these charges pursuant to Rule 18-434.

The Commission states as follows in support of its probable cause determination:

1. Judge Gordon has served as a Judge of the District Court of Maryland for Baltimore City since 2005.
2. Based upon a complaint received, the Commission's Investigative Counsel opened an investigation regarding Judge Gordon's conduct while she was sitting in the District Court for Baltimore City.
3. The investigation revealed sanctionable conduct by Judge Gordon. The nature of the sanctionable conduct that is the subject of these charges includes exhibiting unprofessional demeanor toward an Assistant Public Defender in open court; denying the Assistant Public Defender's opportunity to be heard; exhibiting bias and/or prejudice against the Assistant Public Defender and the Office of the Public Defender; disregarding the stated wishes of and exercise of rights by a defendant in a criminal case; initiating contempt proceedings and subjecting the Assistant Public Defender to incarceration without just cause or following proper procedures; disparaging the character and reputation of the Assistant Public Defender and the Office of the Public Defender in open court and in written court documentation; and making statements not supported by the record in open court and in written court documentation.
4. Judge Gordon's conduct was in violation of Rules 18-101.1 (Compliance with the Law), 18-101.2 (Promoting Confidence in the Judiciary), 18-102.2 (Impartiality and Fairness), 18-102.3 (Bias, Prejudice, and Harassment), 18-102.5 (Competence, Diligence, and Cooperation), 18-102.6 (Ensuring the Right to be Heard), and 18-102.8 (Decorum, Demeanor, and Communication with Jurors) of the Maryland Code of Judicial Conduct. The pertinent provisions of the Rules

provide as follows:

Rule 18-101.1. COMPLIANCE WITH THE LAW.

A judge shall comply with the law, including this Code of Judicial Conduct.

Rule 18-101.2. PROMOTING CONFIDENCE IN THE JUDICIARY.

(a) A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.

Rule 18-102.2. IMPARTIALITY AND FAIRNESS.

(a) A judge shall uphold and apply the law and shall perform all duties of judicial office impartially and fairly.

(b) A judge may make reasonable efforts, consistent with the Maryland Rules and other law, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard

Rule 18-102.3. BIAS, PREJUDICE, AND HARRASSMENT.

(a) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

Rule 18-102.5. COMPETENCE, DILIGENCE, AND COOPERATION.

(a) A judge shall perform judicial and administrative duties competently, diligently, promptly, and without favoritism or nepotism.

(b) A judge shall cooperate with other judges and court officials in the administration of court business.

Rule 18-102.6. ENSURING THE RIGHT TO BE HEARD.

(a) A judge shall accord to every person who has a legal interest in a proceeding, or that person's attorney, the right to be heard according to law.

Rule 18-102.8. DECORUM, DEMEANOR, AND COMMUNICATION WITH JURORS.

(b) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's

direction and control.

5. The specific facts upon which the charges are based are as follows:

Criminal Proceedings

On August 8, 2019, the criminal docket was called before Judge Gordon. An Assistant State's Attorney and Assistant Public Defender were present. When Case No. 1B02400644 (hereinafter, the "Criminal Case") was called, the Assistant State's Attorney asked permission to step back briefly to convey an offer to the Assistant Public Defender. Judge Gordon granted the request. Following a brief discussion between counsel, the Assistant Public Defender requested that the case be recalled so that she could discuss the State's offer with her client. Judge Gordon denied the request.

When the Assistant Public Defender attempted to explain the defense's position, Judge Gordon interrupted and stated that the Assistant Public Defender should have anticipated and discussed the range of offers that the State might make prior to arriving in court. The Assistant Public Defender explained that the Assistant State's Attorney was not prepared to make an offer when they spoke the day before, but Judge Gordon interrupted again, stating in part, "No, listen. Listen! One more time. Listen one more time. A lot of us are getting very tired of this business of saying 'I need time to talk about the State's offer with my client.'" Judge Gordon then addressed the defendant directly and advised that she could elect a court trial or plead guilty.

The Assistant Public Defender continued to advocate for the opportunity to speak to the defendant privately and Judge Gordon continued to refuse her requests. The Assistant Public Defender stated that the defense was requesting a postponement to

which Judge Gordon stated, “No! I will be back when you can be quiet . . .” Following a recess, Judge Gordon continued to admonish the Assistant Public Defender and again asked the defendant directly whether she wanted to plead guilty or proceed to trial. The Assistant Public Defender began to protest before Judge Gordon interjected, “Ok then we’ll have a court trial” and “I’m just tired of people being unprepared.” The Assistant Public Defender denied being unprepared and argued that she needed “to be an effective attorney to my client” and that she was “only asking for five minutes.” Judge Gordon readied to begin the trial. The Assistant Public Defender asked for a brief indulgence. The request was denied, and Judge Gordon stated that the trial would proceed without the participation of the Assistant Public Defender. The Assistant Public Defender made two further requests for additional time, both of which were denied.

Shortly thereafter, the defendant voiced her objection to trial and her desire to accept the State’s offer to pay restitution in exchange for the entry of a *nolle prosequi*. The Assistant Public Defender requested a postponement to accomplish the same. Judge Gordon denied the request. The Assistant Public Defender made four (4) additional requests for the court to hold the case to allow the defendant to arrange for the restitution amount to be brought to court. Judge Gordon denied each request by either repeating “No!” or calling into question the Assistant Public Defender’s preparedness and referring to her requests for time as a “backdoor way for you to try to get prepared . . .” The Assistant Public Defender acknowledged the court’s concern but disputed that she was unprepared. The Assistant Public Defender repeated her request for the court to hold the case until the end of the docket. Judge Gordon refused and stated that the case would proceed to trial. The Assistant Public Defender repeated that her client did not want a

trial and that the court could not force the defendant to go to trial. Judge Gordon said, “I most certainly can.”

Following the Assistant Public Defender’s additional requests for “five minutes” and Judge Gordon’s continued refusal to allow the same, Judge Gordon entered a not guilty plea on behalf of the defendant and indicated that the trial would begin. The Assistant Public Defender objected and repeated her request for “five minutes” so that her client could have the restitution brought to court and the case could be resolved. Judge Gordon refused.

The court asked the State to begin the trial and a witness was sworn. The Assistant Public Defender asked for a brief indulgence, which was denied. The Assistant Public Defender stated, “Your Honor, you cannot force [the defendant] into a trial. I literally just need two minutes to talk.” Judge Gordon instructed the Assistant Public Defender to “pull up a chair.” The Assistant Public Defender continued to object, and the court advised her to “be quiet, you’re interrupting the trial.” Following additional back and forth, Judge Gordon found the Assistant Public Defender in contempt of court and ordered her to be taken into custody. Judge Gordon instructed the defendant to “have a seat” before taking a recess.

Following the recess, a Managing Attorney from the Office of the Public Defender appeared and advised that the Assistant Public Defender wished to address the court. Judge Gordon denied the request. Judge Gordon ordered that the Assistant Public Defender be brought out of incarceration “so she can finish her representation” of the remaining defendants on the criminal docket. The Assistant Public Defender was returned to the courtroom and handled the remainder of the docket. The Assistant Public

Defender was not provided an opportunity to speak in her own defense regarding the contempt finding and subsequent incarceration.

When the Criminal Case was recalled later in the criminal docket, Judge Gordon asked, "Where do we stand?" The Assistant Public Defender stated that she "did not mean to offend the court" and began to reiterate her arguments in support of additional time for her client. Judge Gordon stated that the court would not hear the arguments again and alleged that the Assistant Public Defender's unpreparedness had delayed the morning's court proceedings. Each time that the Assistant Public Defender started to defend herself, Judge Gordon prevented her from doing so and accused her of interrupting the court. Judge Gordon also refused to permit the Managing Attorney from the Office of the Public Defender to approach counsel table to speak to the Assistant Public Defender.

Further back and forth ensued until Judge Gordon asked the defendant directly how she wished to proceed. The Assistant Public Defender advised the defendant not to speak. Judge Gordon stated that the matter would proceed to trial. The Assistant Public Defender requested an indulgence to advise her client. Judge Gordon denied the request and again alleged that the Assistant Public Defender was unprepared.

Judge Gordon addressed the defendant and advised her about trial procedures and options. When Judge Gordon began to explain "[t]he other option which your attorney has rejected repeatedly," the Assistant Public Defender asserted that the court was "misstating facts." Judge Gordon continued to advise the defendant until the Managing Attorney asked Judge Gordon to recuse "in light of the fact that [she] held the Assistant Public Defender in contempt." Judge Gordon agreed.

The Criminal Case was called later that day before another judge of the District Court for Baltimore City and was resolved by plea.

Contempt Proceedings

On the afternoon of August 8, 2019, the contempt matter against the Assistant Public Defender (hereinafter the “Contempt Case”) was called before Judge Gordon. Counsel appearing on behalf of the Assistant Public Defender requested a postponement. Judge Gordon granted the request and indicated her intention to release the Assistant Public Defender from custody. Judge Gordon reiterated her concerns regarding the Assistant Public Defender’s “repeated interruption” of the criminal docket, “lack of preparedness”, and requests to set cases aside “every time”.

Judge Gordon issued a Show Cause Order dated August 8, 2019 (hereinafter, the “Order”). The Order referred to the Assistant Public Defender’s conduct as “contemptuous, insolent and directly intended to disrupt the proceedings of the Court and impair the respect due its authority.” The Order further stated that the Assistant Public Defender was found in direct criminal contempt, that she was subject to incarceration, and that she had a right of allocution. The Order failed to include any condition under which the sanction may be suspended, modified, revoked, or terminated.

On August 15, 2019, the Contempt Case was recalled before Judge Gordon. The Assistant Public Defender was present with counsel. Defense counsel argued that the court erred by denying the Assistant Public Defender the opportunity to be heard before she was found in contempt and by denying her right to a jury trial. Defense counsel requested that the court vacate the contempt or, in the alternative, reset the matter for a jury trial. Judge Gordon denied both requests. Defense counsel moved for

reconsideration of the court's contempt and also requested that the Assistant Public Defender be heard before imposition of any sanctions. The matter concluded without the Assistant Public Defender having been afforded an opportunity to address the court in her own defense to present any exculpatory or mitigating information.

Opinion and Order

Judge Gordon issued a written Opinion and Order dated September 6, 2019 (hereinafter, the "Opinion"), in which she vacated the contempt and dismissed the Contempt Case. The Opinion contained factually inaccurate and misleading statements, including, but not limited to, the following:

- That the Assistant Public Defender "was called back into the courtroom [after being taken into custody] so that the court could provide her with her right of allocution";
- That Judge Gordon had recused from the Criminal Case *sua sponte*;
- That the Assistant Public Defender was unprepared for court and lacked knowledge of her case;
- That the Assistant Public Defender intentionally delayed the disposition of cases and interrupted the order of the courtroom;
- That the Assistant Public Defender abandoned her client; and
- That the defendant refused to make an election between a trial and a plea.

The Opinion also, in pertinent part:

- Referred to the Assistant Public Defender as "insolent", "bullying", "childish", "churlish", and "openly defiant";

- Justified the contempt finding by noting that a judge other than Judge Gordon had admonished an assistant public defender other than the Assistant Public Defender in the Contempt Case “for repeatedly asking to set aside cases so that he/she could talk with clients, because she had not talked with them prior to the day of trial”; and
- Failed to acknowledge any mitigating factors.

7. Judge Gordon’s actions and behavior provide evidence that Judge Gordon engaged in conduct that was prejudicial to the proper administration of justice pursuant to the Maryland Constitution, Article IV, Section 4B(b)(1).

These charges are issued by Investigative Counsel at the direction of the Commission on Judicial Disabilities.

COMMISSION ON JUDICIAL DISABILITIES

Date: _____

~~Tanya C. Bernstein~~
Director/Investigative Counsel

Date: _____

~~Derek A. Bayne~~
Assistant Investigative Counsel

NOTICE: YOU HAVE THE RIGHT, PURSUANT TO RULE 18-431(d) OF THE MARYLAND RULES, TO FILE A WRITTEN RESPONSE WITHIN THIRTY (30) DAYS AFTER SERVICE OF THESE CHARGES. YOU MUST FILE EITHER AN ORIGINAL AND ELEVEN (11) COPIES OF THE RESPONSE OR AN ELECTRONIC COPY PURSUANT TO RULE 18-404. THE RESPONSE SHOULD BE FILED WITH THE COMMISSION ON JUDICIAL DISABILITIES.