

IN THE MATTER OF * BEFORE THE MARYLAND
JUDGE JOHN H. MCDOWELL * COMMISSION ON
CJD 2011-013 & CJD 2011-014 * JUDICIAL DISABILITIES

TO: Judge John H. McDowell
Associate Judge, Circuit Court for Washington County
Fourth Judicial Circuit

STIPULATION OF FACTS AND WAIVER OF HEARING

Judge John H. McDowell ("Judge McDowell"), his counsel Alfred L. Scanlan, and the Maryland Commission on Judicial Disabilities (the "Commission") by and through its Investigative Counsel, Steven P. Lemmey, Esquire, ("Investigative Counsel"), hereby agree that the Commission may properly determine its disposition in these cases based solely upon the facts and conclusions stated in this Stipulation of Facts and Waiver of Hearing (the "Stipulation"), taking into account the complaints filed by attorneys Scott L. Schubel and Travis W. Poole. Mr. Schubel filed his formal complaint with the Commission on February 22, 2011. On February 23, 2011, Travis W. Poole filed a formal complaint with the Commission. By stipulation the Commission may take into account all of the information in the exhibits contained in both Mr. Schubel and Mr. Poole's complaints as well as the statements of witnesses, the statements made by Judge McDowell and his counsel, and all of the information contained in the deposition taken of Judge McDowell by the Commission's Investigative Counsel. The Commission may also consider the information provided to the Commission from: the Judicial Inquiry Board, Investigative Counsel and Judge McDowell's counsel.

Judge McDowell agrees that he was notified that Investigative Counsel opened a

file before the Commission based upon the Schubel and Poole complaints. Judge McDowell agrees that he was notified of the nature of all of the information in Investigative Counsel's file, including additional information developed during the investigation. Judge McDowell was afforded an opportunity to review the information with his counsel, and has voluntarily met with Investigative Counsel and the Judicial Inquiry Board. Judge McDowell and his counsel were given an opportunity to appear before the Judicial Inquiry Board as part of the investigation process and Judge McDowell was given access to all of the information in the Commission's investigation.

Judge McDowell, having been given an opportunity to consult with his counsel, gives his express consent to this Stipulation. The facts and conclusions upon which the Commission may act are as follows:

1. Judge John H. McDowell resides in Washington County, Maryland.
2. Judge John H. McDowell presently serves as an Associate Judge of the Washington County Circuit Court and has served in that position continuously since May 28, 1993. From August 1, 2008 to June 29, 2011, and at times pertinent to the underlying facts of this case, Judge McDowell also served as the Administrative Judge for the Circuit Court for Washington County, Maryland.
3. On or about February 22, 2011, attorney Scott L. Schubel of Hagerstown, Maryland filed a formal complaint with the Commission regarding Judge McDowell's conduct in a Circuit Court case known as David Zickafoose, et ux. vs. Maxxam Homes, LLC, et al., Case No. 21-C-10-037504.
4. On or about February 23, 2011, attorney Travis W. Poole also of Hagerstown,

Maryland filed a formal complaint regarding Judge John H. McDowell's conduct in his handling of the same case, David Zickafoose, et ux. vs. Maxxam Homes, LLC., et al., Case No. 21-C-10-037504.

5. Both Mr. Schubel and Mr. Poole's formal complaints to the Commission dealt with Judge McDowell's conduct in the Zickafoose case on February 15, 2011 and February 16, 2011. Mr. Schubel represented the defendants in the civil case and Mr. Poole represented the plaintiff in the same civil case.
6. Both complaints allege that on the afternoon of February 15, 2011, Judge McDowell, acting as Administrative Judge, learned that the Zickafosse case, which had been removed from the calendar one week earlier because counsel for the parties notified the Court that the the case had settled, had not settled. Judge McDowell informed the attorneys in separate communications that the Zickafoose case was being scheduled back in for a jury trial, the next day, February 16, 2011. The complainants allege that when Judge McDowell learned that the parties had not filed a written line of dismissal based upon an earlier agreed upon settlement, Judge McDowell immediately ordered that the attorneys and their clients appear and be ready for trial on February 16, 2011.
7. When Judge McDowell notified the lawyers that their case was set in for a jury trial less than 24 hours from the time of the notice, each of the attorneys advised Judge McDowell that they were unprepared for the case to proceed to trial in that manner and in that time frame. Judge McDowell rejected the attorneys' efforts to explain that they believed the appropriate

action in the case would be that defendant's attorney should file a Motion to Enforce the Oral Agreement which should be heard by a judge other than the one who handled the settlement conference.

8. On February 15, 2011, Judge McDowell met with another Judge regarding the Zickafoose case and later Judge McDowell met with an assignment clerk for the Circuit Court. Judge McDowell directed her to produce an official court docket showing that the Zickafoose case was set for jury trial the next day. Judge McDowell also directed the assignment clerk to post a list of juror numbers, who would be called in for the trial. Judge McDowell further directed the assignment clerk to advise the jury clerk that no jurors were to be called in but indicated to the assignment clerk that the attorneys were not to be told that the posted docket was false.
9. Judge McDowell's conduct on the afternoon of February 15, 2011, in ordering a case set back in, in less than 24 hours, misleading the attorneys, directing the assignment clerk to create a false document and directing the assignment clerk to post a false document, all were in violation of the Maryland Rules of Judicial Conduct.
10. During the course of the investigation Judge McDowell, by consent, answered questions at a deposition in these cases. At his deposition on September 6, 2011, Judge McDowell was asked:

Can you tell me today what was wrong with what Judge McDowell did back on February 15th?

Judge McDowell provided the following answer:

Absolutely. At the time that all this happened, and I don't

want to make any excuses for what I did, I did, I acted as an administrative judge. I was attempting to move this case that was potentially very complicated that the attorneys were having a difficult time with because one of the clients was backing out or reneging on the deal where a fellow judge was involved in having heard and been party to the agreement, you know, I was attempting to, you know hold their feet to the fire to try to get the case settled by having it acknowledged the next day. And I thought that this was the best way to handle it.

And I want you to understand that all this was in a very compressed period of time probably from 1:30 to 2:30 or three o' clock. It probably all took place all within an hour and a half.

I feel like at the time you know, acting as administrative judge I was, I had tunnel vision, you know, I had myopia. I was just seeing what I needed to do in order to continue to have the reputation that Washington County does for efficiency.

Had I known that my actions would have affected people, the attorneys, I put them under stress that they didn't need to be put under. I probably didn't listen to them as I should have. . . I can't tell you how hard that is on me because of the close relationship that we have and because of how I now understand I've affected her to an extent that she's come to me in tears and has been crying about this because I had to, I felt as though I had to resign.

But if I would have had an opportunity just to stand back and think about how my actions affected other people I would have done things much, much differently. I would have just said all right, the case is going to be continued, we're going to wait until the parties have an opportunity to file a motion to enforce the settlement agreement. And that would have been it.

By my intention, my intention was to be the best administrative judge that I could and that's simply because, you know, I took my job very seriously. Being the administrative judge is probably the biggest, the greatest thing that's ever happened to me and I took this job seriously. I took the position of administrative judge very seriously because over the past decade or so being administrative judge and knowing about the initiatives of Chief Judge Bell and how much faith he had in me in making this appointment, one of the things and one of the biggest things that we've been given as administrative judges is the requirement to meet time standards. And that means that in every case we have a certain number of days that we have to get the case completed. If not, it's reported it's out of time standards.

I used to get each month these documents that report each case that's filed, the openings of the each class of case from criminal, civil, CINA, TPR, termination parental rights, in all different classes of cases, what cases are disposed of, what new openings there are.

When I go to conferences, and I'm still on the judicial conference, we have graphs and charts that we deal with that are prepared by the administrative office that show how Washington County is doing in these different areas, what, how many cases are out of time standards and how we compare to the rest of the state.

I mean these things were in my mind as administrative judge and you know, I have resigned for the purpose and for the sole purpose of making sure that what I did in this case and in the other case that was under investigation never happens again, that being administrative judge will not deter me from being as fair and impartial as possible and for treating people as justly and kindly and patiently as I possibly can, as I did for 16 years before, or almost 15 years I should say before being appointed as administrative judge.

So I would have done things much differently had I had a chance to think about it, had I had more information to consider and had I simply known about the effect that my decision would have had on my colleagues, the attorneys that are, have been friends of mine, the staff, and particularly . . .

11. Judge McDowell was afforded an opportunity to review the contents of this Stipulation and all related documents with his counsel, Alfred L. Scanlan.
12. Judge McDowell acknowledges that his actions are subject to sanction and that the Commission determines the sanction to be imposed. By his signature on this Stipulation Judge McDowell affirms that he agrees to the Stipulation voluntarily, having reviewed it with counsel and after having an opportunity to review all of the evidence in the investigation with his counsel. The Commission will decide this case based upon the facts contained in this Stipulation and the documents received from Judge McDowell, his counsel, and the Commission's Investigative Counsel.

13. Judge McDowell hereby waives his right to a hearing before the Commission and waives his right to any subsequent proceedings before the Maryland Court of Appeals with regard to these cases. Judge McDowell waives his right to challenge the findings that serve as the basis for this Private Reprimand that is being issued along with this Stipulation. Judge McDowell agrees, pursuant to Maryland Rule 16-807 (b)(1)(C) that the Private Reprimand issued in this case may be admitted into evidence in any subsequent disciplinary proceedings against him to the extent that it is relevant to the charges at issue or the sanction to be imposed.
14. Judge McDowell consents to the public release of this Stipulation as well as the Private Reprimand.
15. Judge McDowell acknowledges that his actions on February 15, 2011 were in violation of the Maryland Code of Judicial Conduct, Rule 16-813, Section 1, Rule 1.1 and Rule 1.2.

The pertinent portions of the Maryland Code of Judicial Conduct provide:

Maryland Rule 16-813, Section 1

Rule 1.1 Compliance with the Law

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

Rule 1.2 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.

(b) A judge shall avoid conduct that would create in reasonable minds a perception of impropriety.

16. Judge McDowell also acknowledges that pursuant to Maryland Rule 16-803(k) that his actions on February 15, 2011 in violation of the Maryland Code of Judicial Conduct, constituted sanctionable conduct. Judge McDowell, prior to the conclusion of these cases, issued written apologies to Attorney Scott L. Schubel and Attorney Travis W. Poole regarding his handling of the Zickafoose case.
17. Judge McDowell has agreed to execute this Stipulation and understands that a copy of this Stipulation will be retained by the Commission and shall be considered a public document. Judge McDowell acknowledges that this Stipulation and any related documents issued by the Commission based upon this Stipulation may be published in the *Maryland Register*, published on the Commission's web site, and otherwise re-published in a manner consistent with the Commission's past practices. The parties further agree that in the event that Judge McDowell chooses to make any public statements regarding the content of this Stipulation or any related documents, the Commission, or any other aspect of this case, pursuant to Maryland Rule 16-810(b)(2), the Commission may issue explanatory statements in the Commission's discretion.

I, JUDGE JOHN H. MCDOWELL, HAVE READ THE TERMS OF THIS STIPULATION AND WAIVER OF HEARING AND CAREFULLY REVIEWED ITS CONTENTS WITH MY COUNSEL. I UNDERSTAND THE STIPULATION AND WAIVER OF HEARING AND ACCEPT IT AS FULLY SET FORTH ABOVE.

Date

Judge John H. McDowell

Date

Alfred L. Scanlan, Esquire
Counsel to Judge McDowell

APPROVED AND RECOMMENDED:

Date

Steven P. Lemmey
Investigative Counsel