

**Filed**

**DEC 22 2017**

Debbie M. Decker, Clerk  
Court of Appeals  
of Maryland

**STATE OF MARYLAND**

**BEFORE THE COMMISSION ON JUDICIAL DISABILITIES**

**In the Matter of the**

\*

**HONORABLE MARY C. REESE,**

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**CJD 2015-132, CJD 2015-133**

**and**

**CJD 2015-134**

**Judge of the District Court of  
Maryland for Howard County,  
Tenth Judicial Circuit,  
Respondent**

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**AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND  
RECOMMENDATIONS**

Pursuant to Charges filed by the Investigative Counsel, the response filed by Judge Mary C. Reese (hereinafter "Respondent" or "Judge Reese"), and prior written notice of hearing to Respondent, a public hearing was conducted in the above-entitled matter in Annapolis (hereinafter "Hearing"), as authorized by Maryland Rule 18-407 (a), (b), (c), (d) and (i), on November 16, 2017, before the Maryland Commission on Judicial Disabilities (hereinafter "Commission"). Carol A. Crawford, Esq., Investigative Counsel, Tanya C. Bernstein, Esq., Deputy Assistant Investigative Counsel, and Derek A. Bayne, Esq., Assistant Investigative Counsel, prosecuted the case against the Respondent, Judge Mary C. Reese. The Respondent was present at the Hearing and represented by Andrew Jay Graham, Esq. and Louis P. Malick, Esq.

The following Commission Members participated in the hearing: Honorable Susan H. Hazlett, Acting Chair, The Honorable Michael W. Reed, The Honorable Robert B. Kershaw, Virginia L. Fogle, Vernon Hawkins, Jr., Arielle F. Hinton, Esq., Susan R. Hoffmann, Richard M. Karceski, Esq., Susan J. Matlick, and Marisa A.

Trasatti, Esq. Commission Member Sally McLane Young Ridgely did not participate in the hearing. The ten (10) Commission Members present at the Hearing constituted a quorum, pursuant to Maryland Rule 18-403(e).

During the Hearing, the following stipulated materials were offered and accepted into evidence without objection: Joint Exhibit 1, District Court for Carroll County audio recording of the hearing on August 8, 2014 in Lauren M. Lewis v. Richelieu W. James (Case No. 1002SP004962014); Joint Exhibit 2, District Court for Carroll County audio recording of the hearing on August 8, 2014 in Lauren M. Lewis v. Richelieu W. James (Case No. 1002SP004962014); Joint Exhibit 3, Transcript of August 8, 2014 hearing before Judge Mary Reese, sitting in the District Court for Carroll County, in Lauren M. Lewis v. Richelieu W. James (Case No. 1002SP004962014); Joint Exhibit 4, Transcript of August 8, 2014 hearing before Judge Mary Reese, sitting in the District Court for Carroll County, in Patricia Stein v. Benton Stephen Lecuyer (Case No. 1002SP001402015); Joint Exhibit 5, District Court for Carroll County Case Summary and Event List for Patricia Stein v. Benton Stephen Lecuyer (Case No. 1002SP001402015); and Joint Exhibit 6, District Court for Carroll County docket entries for Patricia Stein v. Benton Stephen Lecuyer (Case No. 1002SP001402015).

Additionally, the following exhibits were marked and proffered but not admitted into evidence: Respondent Exhibit 1, Excerpt from the Maryland Judge's Domestic Violence Resource Manual; Respondent Exhibit 2, MD Code, Courts and Judicial Proceedings, Section 3-1504; Respondent Exhibit 3 Proffer of Testimony: Judge Joseph F. Murphy, Jr. (Retired); Respondent Exhibit 4 Proffer of Testimony: Judge James N. Vaughn (Retired); Respondent Exhibit 5 Proffer of Testimony: Judge Frederic N. Smalkin

(Retired); and Respondent Exhibit 6, MD Code, Family Law, Section 4-506. The Commission heard testimony from four (4) character witnesses on behalf of Judge Reese. The Charges and Respondent's Answer to Charges were filed in this matter.

After being fully advised of its obligations and duties, the Commission specifically finds that the Hearing was conducted according to the rules, statutes, and procedures required by law. Upon private deliberations immediately following the Hearing, the Commission considered all of the exhibits admitted into evidence, as well as the sworn testimony and demeanor of Judge Reese and her witnesses at the Hearing.

The Commission hereby issues the following Findings of Fact, Conclusions of Law, Order and Recommendations to the Court of Appeals as to the imposition of discipline, pursuant to Maryland Rule 18-407(j) and (k):

**I. FINDINGS OF FACT.**

A. Judge Reese was, at all times applicable to the allegations contained in the Charges, an Associate Judge of the District Court of Howard County, Maryland. Therefore, the Respondent was and still is a judicial officer whose conduct was and is subject to the provisions of the Maryland Code of Judicial Conduct, (Maryland Rules Title 18, Chapter 100) and Maryland Rules on Judicial Discipline (Title 18, Chapter 400).

B. Upon review of the exhibits, featuring audio testimony and transcripts of hearings conducted by Judge Mary C. Reese as well as the testimony of Judge Reese, the Commission found that the Respondent was not in compliance with the law in a temporary peace order matter. The peace order request was filed by Patricia Stein, grandmother and custodian, on behalf of a seventeen (17) year old petitioner who

presented to the court with black eyes at the hands of an ex-boyfriend. They were not represented by counsel.

C. As to Petitioner v. Benton Stephen Lecuyer, Case No. 1002SP001402015 (CJD 2015-132 and CJD 2015-133), the Commission found that the Respondent did not exhibit the thoroughness or diligence necessary to render any decision she was to make as part her judicial responsibilities.

Per the transcript in Joint Exhibit 4, the Respondent's examination of the seventeen (17) year old went as follows:

Q. What do you want to tell me, ma'am?

A. Well, everything she said is true.

MS. STEIN: Well, what do you got to -- I mean --

BY THE COURT:

Q. Has this ever happened before?

A. No.

Q. Okay. Did you have any conversation with him that day?

A. No. I blocked him from my phone. His phone number is blocked.

THE COURT: Okay. All right. It looks to me like she's taking (sic) care of it. Okay?

MS. STEIN: Mm-hmm.

THE COURT: I have to be able to find two things. One, is that one of the nine statutory forms of abuse have occurred. And, number two, he's likely to commit the purported act against her in the future.

And I don't have any indication from his past behavior that anything like this is likely to occur again in the future. So I'm not going to enter the order today. If anything else were to occur, you can go to the commissioner's office if the court is not open. Or you can come back to the courthouse to file for relief. Okay?

MS. STEIN: Okay.

THE COURT: All right.

MS. STEIN: Yes, ma'am.

THE COURT: Okay. Thank you.

During this hearing the Respondent asked the minor child, who had visible injuries to both eyes and was unrepresented, a total of three (3) questions. The exchange between the minor child and the Respondent lasted nineteen (19) seconds. The entire hearing lasted less than three (3) minutes.

The Commission found that such conduct violated the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1 and Maryland Rule 18-102.5(a).

## **II. CONCLUSIONS OF LAW.**

A. The Commission has both subject matter jurisdiction over the above-entitled cases and personal jurisdiction over Judge Mary C. Reese, all pursuant to Md. Const., Art. 4, Section 4A and 4B and Maryland Rules 18-101.1 et seq.

B. The Commission is guided by the clear and convincing evidence standard in determining whether a judge has committed sanctionable conduct. Maryland Rule 18-407(j). Based upon the Commission's findings as to the specific facts and violations of the Canons of the Maryland Code of Judicial Conduct, as set forth in the Findings of

Fact, the Commission, by majority vote, finds by clear and convincing evidence that Judge Mary C. Reese has committed sanctionable conduct, as defined by Maryland Rule 18-401 (j), by violating the following Canons of the Maryland Code of Judicial Conduct:

1. The factual findings by the Commission of the conduct of Judge Reese as to the lack of competence and diligence displayed by Judge Reese in presiding over Petitioner v. Benton Stephen Lecuyer, Case No. 1002SP001402015 (CJD 2015-132 and CJD 2015-133) are proof of, and constitute, a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1 which provides "a judge shall comply with the law, and this Code of Judicial Conduct" and Maryland Rule 18-102.5(a) which provides "a judge shall perform judicial and administrative duties competently, diligently, promptly, and without favoritism or nepotism".

2. The factual findings by the Commission that Judge Reese did not comply with the law in presiding over Petitioner v. Benton Stephen Lecuyer, Case No. 1002SP001402015 (CJD 2015-132 and CJD 2015-133), are proof of, and constitute, a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1 and Maryland Rule 18-102.5(a).

### **III. CONSIDERATIONS REGARDING THE IMPOSITION OF DISCIPLINE.**

A. As to the appropriate discipline in a judicial conduct case, the Commission is guided by the General Provisions of the Maryland Code of Judicial Conduct, Maryland Rule 18-100.1(b)(1)(B), which provides:

Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules

and should depend upon factors such as the seriousness of the transgression, the facts and circumstances at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of their improper activity upon the judicial system or others.

B. The Commission has found that Judge Reese's conduct violated the Code of Judicial Conduct, in that she did not comply with the law. Specifically, the Respondent did not demonstrate the thoroughness, competence and diligence necessary to complete her judicial responsibilities.

C. The Commission considered the testimony of the character witnesses offered by Judge Reese, all of whom described the Respondent as consistent, polite and conscientious. The Commission did not find the testimony of the lawyers who regularly appear before the Respondent to be persuasive. The Commission also found that portions of the testimony of the judges who testified to be of little value, as they never observed the Respondent presiding in court. The Commission did consider the reputation testimony offered by each of the witnesses, and found that information to be helpful. The Commission also considered the Respondent's lack of any prior history with the Commission.

D. The Commission also found the Respondent's testimony to be important in considering whether or not any training, education or mentorship would be appropriate. Specifically, that the Respondent said:

"I asked her the questions like I thought that I could ask, and I did it to the best of my ability....And my only response is that I have to follow the Rules of Professional Conduct and I felt that if I had gone any further than I had already done that I would have been violating those Rules."

Given this statement, as well as the additional testimony of the Respondent, the Commission finds that the Respondent would benefit from the opportunity to be mentored and educated in how to address matters involving these litigants.

Subsequent to the Hearing, the Commission reviewed proposed Findings of Fact and Conclusions of Law submitted by Judge Reese and Investigative Counsel. Judge Reese has made no recommendation of a sanction, in that she denies committing sanctionable conduct. Investigative Counsel also makes no specific recommendation as to an appropriate sanction, deferring to the Commission.

The Commission hereby refers this matter to the Court of Appeals with a recommendation to impose the discipline set forth in Paragraph IV, B.2, infra. In the Commission's view, the imposition of a public reprimand is insufficient to address the misconduct by Judge Reese or restore the public's trust that the judge will not repeat these behaviors in the future. The Commission believes specialized training and monitoring of the judge's conduct in domestic violence and peace order matters is warranted in this matter.

**IV. ORDER, RECOMMENDATIONS, AND REFERRAL TO THE COURT OF APPEALS.**

IT IS HEREBY ORDERED that:

1. The Charges involving the Lauren M. Lewis v. Richlieu W. James Case No. 1002SP004962014 (CJD 2015-134 and in part as referenced in CJD 2015-132) are hereby dismissed for lack of proof.
2. The Acting Chair is authorized to sign this decision for all the

Commission Members who agreed with the findings stated herein. The signature pages for these Commission members shall be retained in the Commission file.

3. The Executive Secretary of the Commission is to take all necessary steps to file with the Court of Appeals the entire Hearing record which shall be certified by the Acting Chair of the Commission and include all documents required by Maryland Rule 18-407 (k) (4).

4. The Executive Secretary is to promptly mail to Judge Reese and her counsel notice of the filing of the record and a copy of this Findings of Fact, Conclusions of Law, Order and Recommendations in this matter.

5. This document, all exhibits introduced into evidence, the transcript and CD discs are hereby entered into the record in the name of the Commission.

B. IT IS HEREBY FURTHER ORDERED that, pursuant to Maryland Rule 18-407(j):

1. The Commission, by majority vote, found by clear and convincing evidence that Judge Reese has committed sanctionable conduct, as defined by Maryland Rule 18-407(j), by violating the Canons of the Maryland Code of Judicial Conduct, as set forth in Section II. B above.

2. The Commission, by majority vote, hereby refers this above-captioned matter to the Court of Appeals with its recommendations as follows:

a. That Judge Reese be ordered to attend specialized training, approved by the Commission on Judicial Disabilities, for at least five (5) calendar days in 2018

that will address domestic violence, protective orders, social media, pro se litigants, and the dynamics of domestic violence victims. The Respondent is to bear the expense(s) of this training. Documentation of attendance and successful completion shall be provided to the Commission on Judicial Disabilities; and

b. Judge Reese shall be assigned a mentor judge approved by the Commission on Judicial Disabilities. This mentorship shall have a focus on domestic violence matters and peace orders, and the unique and varied circumstances involved in these cases. The mentor judge and Commission on Judicial Disabilities may share information regarding Judge Reese and the mentorship. The mentor relationship shall last at least one (1) year.

Dated this 21<sup>st</sup> day of December, 2017.

Maryland Commission on Judicial Disabilities

By: \_\_\_\_\_  
The Honorable Susan H. Hazlett, Acting Chair

STATE OF MARYLAND

BEFORE THE COMMISSION ON JUDICIAL DISABILITIES

In the Matter of the

HONORABLE MARY C. REESE,

Judge of the District Court of  
Maryland for Howard County,  
Tenth Judicial Circuit,  
Respondent

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CJD 2015-132, CJD 2015-133  
and  
CJD 2015-134

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DISSENTING OPINION

We respectfully dissent from the Findings of Fact, Conclusions of Law, Order and Recommendations of the Commission.

We respectfully dissent from the following portions of the Commission majority's Findings of Fact:

- 1) Section 1.B., lines 3-4, inclusive; and
- 2) Section 1. D., first paragraph; and
- 3) Section 1.D., third paragraph, lines 1-2, as to whether there were visible injuries to both or one eye; and
- 4) Section 1. D., fourth paragraph.

Otherwise, the undersigned adopt the Commission majority's Findings of Fact.

We respectfully dissent from the Commission majority's Conclusions of Law in the following respects:

While we hypothetically may have reached a different decision than Judge Reese in Petitioner v. Benton Stephen Lecuyer, Case No. 10025P001402015, we do not find on this record by clear and convincing evidence, that Judge Reese committed sanctionable conduct. We are not convinced Judge Reese's admittedly brief hearing in the Lecuyer case or her conduct therein violated Maryland Rule 18-101.1 or Maryland Rule 18-102.5(a) on either basis found by a majority of the participating Commission members.

Judge Reese's conduct was well within the boundaries of her independent judicial discretion and consistent with the testimony of each of the persuasive character witnesses who appeared on Judge Reese's behalf. Judge Reese's decision in this case was subject to appellate review, but not a basis for a finding of sanctionable conduct by the Commission.

All matters before the Commission on charges should have been dismissed.

Respectfully submitted and filed this 18<sup>th</sup> day of December, 2017.

  
The Honorable Robert B. Kershaw

  
Richard M. Karceski, Esquire

  
Vernon Hawkins, Jr.

  
Marisa M. Trishiti, Esquire

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**OPINION DISSENTING IN PART, AND  
CONCURRING IN PART, WITH THE MAJORITY**

**I. Background**

**A. The Maryland Commission on Judicial Disabilities Historically**

The Maryland Commission on Judicial Disabilities ("Commission") was established by constitutional amendment in order to investigate and respond to complaints received about sanctionable conduct or disability against Maryland judges. Once the investigation and hearing have been conducted, the Commission may vote (by majority) to recommend that a judge be retired, removed, censured, publicly reprimanded or the case referred to the Court of Appeals. The recommendation is then sent to the Court of Appeals, who may impose a lesser, the same, or more severe discipline.<sup>1</sup> In 1996, the Honorable Glenn Harrell, Jr. (retired) captured the importance of the Commission with these words:

*One of the most important purposes of the Maryland Commission on Judicial Disabilities is to maintain the public's confidence in the judiciary. The [American Bar Association] has said in its Standards Relating to Judicial Discipline and Disability Retirement, the purpose of the discipline systems is not to punish judges, but to maintain public confidence in the judiciary (emphasis added), preserve the integrity of the judicial*

<sup>1</sup> (Chapter 773, Acts of 1965, ratified Nov. 8, 1966; Const., Art. IV, sec. 4A)  
<http://msa.maryland.gov/msa/mdmanual/26excom/html/22jdisf.html>

process and create greater awareness of proper judicial behavior on the part of judges themselves.<sup>2</sup>

The current cases and the decisionmaking process that ensued in the course of reaching the majority's decision in favor of sanctions as to Judge Reese has highlighted the shortage of tools that are available to the Commission have under the present rules, and the need to modify the rules sooner rather than later, so as to better effectuate Judge Harrell's stated purpose of the Commission, e.g., recalibrating judges through retraining techniques, as opposed to imposing a public reprimand or referring the case to the Court of Appeals. MD. RULE 18-407 (j). To be clear, the Dissenting Commissioners who have signed this opinion agree, assuming the correctness of the Commission's finding of sanctionable conduct, that some retraining is necessary in this instance; but rather, they took issue with the rules which forced commissioners to refer the case to the Court of Appeals instead of recommending retraining. In this case, the Dissenters are not persuaded that there was clear and convincing evidence of sanctionable conduct. Further, the purpose of this Dissent is to highlight the shortcomings in the present rules in hopes that the Court of Appeals will modify them so as to make this Commission more helpful to judges and less punitive to them.

#### **B. Findings of Fact in The Reese Cases**

The Commission's Investigative Counsel opened an investigation regarding Judge Mary C. Reese's conduct, while she was sitting in the District Court for Carroll County on two (2) civil matters: (a) *Petitioner v. Benton Stephen Lecuyer*, Case No. 1002SP001402015 and (b) *Lauren M. Lewis v. Richelieu W. James*, Case No. 1002SP004962014 (collectively, "the Reese cases").

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<sup>2</sup> Harrell, Glenn T. Jr. (1996) "The Maryland Commission on Judicial Disabilities: Whither Thou Goest?," *University of Baltimore Law Forum*: Vol. 26: No. 2, Article 2. Available at: <http://scholarworks.law.ubalt.edu/lf/vol26/iss2/2>

In a close vote as evidenced by the dissenting opinions in these cases, six (6) commissioners found that Judge Reese's conduct was sanctionable.

Those signing this Dissent concur with the following findings of fact from the Majority

Opinion:

1. Judge Reese was, at all times applicable to the allegations contained in the Charges, an Associate Judge of the District Court of Howard County, Maryland. Therefore, the Respondent was and still is a judicial officer whose conduct was and is subject to the provisions of the Maryland Code of Judicial Conduct, (Maryland Rules Title 18, Chapter 100) and Maryland Rules on Judicial Discipline (Title 18, Chapter 400).
2. Upon review of the exhibits, featuring audio testimony and transcripts of hearings conducted by Judge Mary C. Reese as well as the testimony of Judge Reese, the Commission had concerns regarding the Respondent's diligence in a temporary peace order matter. The peace order request was filed by Patricia Stein, grandmother and custodian, on behalf of a seventeen (17) year old petitioner who presented to the court with black eyes at the hands of an ex-boyfriend. They were not represented by counsel.
3. The transcript in Joint Exhibit 4 is undisputed.

## **II. Discussion**

### **A. How Best to Effectuate Education of a Judge Post-Hearing**

The immediate question before us is whether there is any mechanism for judges to receive education or further training in lieu of a reprimand or referral to the Court of Appeals, once a hearing is elected by a Judge called before the Judicial Disabilities Commission.

The dissenting Commissioners who have signed off on this opinion believed that Judge Reese needed one-on-one training or mentorship, but, assuming the correctness of the Commission's ruling on sanctionable conduct, they could not effectuate same after a hearing absent an agreement of Discipline by Consent which, among other conditions, requires the judge to admit all or part of the charges. *See* MD. RULE 18-407(l).

## **B. Rules in Need of Updating**

The Commission is simply hamstrung. Once a hearing takes place, a simple visit to the judge initiated by investigative counsel to speak privately with the judge is not allowed at any point. Additionally, to have any conversation would require, at a minimum, that the Commission issue a warning to the judge who may or may not accept it or offer a deferred discipline agreement. If the warning is rejected, the Commission's only recourse is to bring charges or dismiss. There should exist a process or track that allows the Commission, through investigative counsel, to approach and discuss certain issues with the judge under investigation even after a hearing has occurred.

Another question that came up was whether the judge can call an expert witness on the question of whether there was a violation of the rules and canons, not the penultimate jury/commissioner question of whether there was sanctionable conduct. There is nothing in the current rules that describes the scope of expert testimony in cases before the Judicial Disabilities Commission. In the Reese cases, Judge Reese, through her counsel, chose to call the Honorable Joseph F. Murphy, Jr.<sup>3</sup> (retired) as an expert witness. There is little worth in outlining the credentials of the esteemed Judge Murphy as an expert. Second, the four (4) lay Commission members who participated could be guided by Judge Murphy's testimony on the judicial rules and canons, and just like any civil jury would do, all commissioners are free to assign as much or as little weight to his testimony. Nonetheless, Judge Murphy's testimony on the issue of whether there was a violation of the rules or canons was precluded. Guidance is necessary as to the parameters of expert testimony in these cases. Additional issues included what motions practice exists in these hearings, the costs associated with defending these actions, and whether the Court

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<sup>3</sup> Additional experts, namely, Judges Smalkin, Battaglia, and Vaughn, were also to be called to opine on Judge Reese's conduct. None gave expert testimony.

could mandate a flat fee structure or any fee structure for private counsel to charge when defending judges, similar to what is imposed in bankruptcy court (*See, generally, Johnson v. Georgia Highway Express Inc.*, 488 F.2d 714 (5th Cir. 1974) (setting forth 12 factors to be considered in determining reasonable hourly rates and reasonable hours for an award of professional fees)) or under *Lodestar* (*Camden I Condo. Assn. v. Dunkle*, 946 F.2d 768 (11th Cir.1991))).

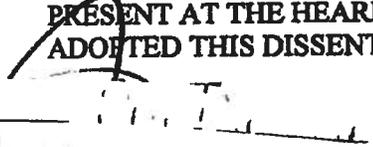
### III. Conclusion

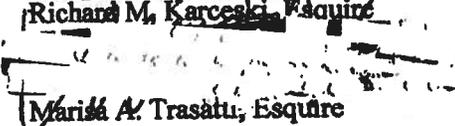
The signatories to this Dissent have determined, based on their participation in Commission matters—some of whom have served for a significant period of time—that the rules and procedures currently in place to guide the Commission on its mission are in need of immediate review and change. It is respectfully requested that the suggestions contained herein be forwarded for review by the Rules Committee. Thereafter the Rules Committee in conjunction with the Commission should formulate suggestions to be forwarded to this Court for its consideration. The issues voted and decided by the Commission are most important, extremely serious and possibly career ending. Therefore, it is requested that immediate action be taken.

Dated this 10<sup>th</sup> day of December, 2017.

Maryland Commission on Judicial Disabilities

SIGNATURES OF ALL COMMISSION MEMBERS APPEAR BELOW WHO WERE PRESENT AT THE HEARING AND WHO PARTICIPATED IN, AND WHO ADOPTED THIS DISSSENT:

  
Richard M. Karceski, Esquire

  
Marisa A. Trasatti, Esquire