



STATE OF TENNESSEE
BOARD OF JUDICIAL CONDUCT

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December 15, 2020

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MEMBERS OF THE TENNESSEE
BOARD OF JUDICIAL CONDUCT

FOR PUBLIC RELEASE

Dee David Gay
Board Chair

Judge Michael E. Hinson
110 N. Park Street
Hohenwald, TN 38462

Andrew G. Brigham
Vice Chair

Marshall L. Davidson, III
Disciplinary Counsel

Re: Ethics Complaint
File No. B20-8336

Shane Hutton
Assistant Disciplinary Counsel

Dear Judge Hinson:

Jeffrey M. Atherton
H. Allen Bray
Robert Carter, Jr.
Edwena L. Crowe
Rita Ellison
William C. Koch, Jr.
Camille R. McMullen
Albert Mosley
Benjamin Purser, Jr.
Richard Rogers
Dan Springer
Terica Smith
John Whitworth
Robert W. Wilkinson

This letter shall serve as a public reprimand pursuant to Tennessee Code Annotated section 17-5-303(e)(2)(B)(i)(c).

This reprimand concerns you conducting judicial business outside the parameters of the COVID-19 Judicial District Plan for the 21st Judicial District as approved by the Tennessee Supreme Court. Specifically, you have failed to limit the number of persons in your courtroom and have not been enforcing social distancing requirements. To the contrary, your courtroom has at times been filled to capacity, even to the point of members of the public having to stand shoulder to shoulder along the walls because all the seats are taken. In addition, referring to the Tennessee Supreme Court's pandemic-related guidelines for the Judicial Branch, you commented to a courtroom audience that you wished Chief Justice Jeff Bivins would win an award so that the COVID-19 mandates from the Supreme Court would end.

In correspondence and in phone conversations with Disciplinary Counsel, you admitted that you have failed to enforce the guidelines in the COVID-19 Judicial District Plan applicable to your court. You also admitted making the comment in court described above. You acknowledged that making the comment was wrong and that you intended no disrespect.

On November 24, 2020, an investigative panel of the Board authorized a full investigation into this matter pursuant to Tennessee Code Annotated section 17-5-303(c)(3). In a letter dated December 4, 2020, you were given notice of the panel's decision to authorize the investigation as required by Tennessee Code Annotated section 17-5-303(d)(1).

While we are mindful that your courtroom is small and that you have been trying to avoid a backlog of cases, the COVID-19 guidelines adopted by our Supreme Court are not mere suggestions. Conducting judicial business within those guidelines, which have been expressed in court orders, is not optional. *See Webb v Nashville Area Habitat for Humanity Inc.*, 346 S.W.3d 422, 430 (Tenn. 2011) (“[o]nce the Tennessee Supreme Court has addressed an issue, its decision regarding that issue is binding on the lower courts”). By requiring all judicial districts to adopt measures designed to protect users and employees of the court system from the risks associated with COVID-19, the Supreme Court has recognized that the health and safety of litigants, witnesses, attorneys, court staff, and others, is of utmost importance. Thus, regardless of how logistically or administratively inconvenient, and no matter a judge's personal views concerning the pandemic generally, all judges are obligated to comply with and enforce the pertinent guidelines. You are no exception. *See* Tenn. Sup. Ct. R. 10, RJC 1.1 (a judge shall comply with the law); Tenn. Sup. Ct. R. 10, RJC 2.5(B) (a judge shall cooperate with other judges and court officials in the administration of court business).

In addition, judges are expected to maintain the highest standards of conduct and dignity of judicial office at all times. Preamble, Tenn. Sup. Ct. R. 10. This obligation includes the specific responsibility of being dignified and courteous with those with whom a judge deals in an official capacity. Tenn. Sup. Ct. R. 10, RJC 2.8(B). Your comment to a courtroom audience expressing your desire that the Chief Justice receive an award so that the Supreme Court's pandemic-related requirements would end is neither dignified nor courteous. While there is no evidence to doubt your assertion that you had no intent to cast aspersions on any member of the Supreme Court, those who heard your comment have no way of determining your intent apart from the words used. Once such comments are made, the damage is done.

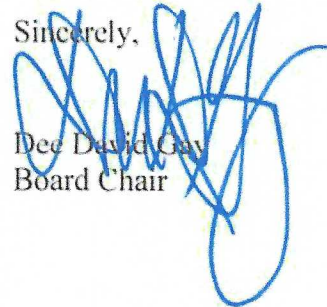
Moreover, a judge is required to act at all times in a manner that promotes public confidence in the judiciary. *See* Tenn. Sup. Ct. R. 10, RJC 1.2. The public is more likely to respect and have confidence in the integrity and quality of justice administered by a judge if the judge is outwardly respectful and dignified. The comment involved here, stated in open court, does not inspire such confidence.

The investigative panel decided to impose a public reprimand, which you have accepted. In imposing this particular sanction, the panel considered that you have acknowledged the problems with your actions and that you fully cooperated with Disciplinary Counsel throughout this matter. You have also agreed to abide by the COVID-19 guidelines adopted by the Supreme Court and your District Plan going forward.

In short, injudicious comments such as the one involved here, even if made off-the-cuff and with no intent to be offensive, reflect an ethical lapse that undermines the public's confidence in the professionalism and integrity of our judges. In addition, as you have acknowledged, failing to abide by the directives of a higher court is unacceptable and reflects

poorly on you as a jurist. The Board trusts that the reprimand imposed today will result in an elevated consciousness about how to approach this and similar situations going forward.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Dee David Gay', written over the typed name.

Dee David Gay
Board Chair