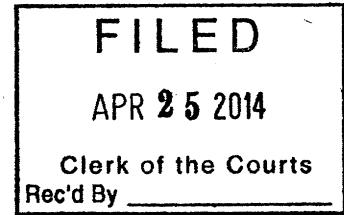


IN THE TENNESSEE BOARD OF JUDICIAL CONDUCT

IN RE: THE HONORABLE LU ANN BALLEW
CHILD SUPPORT MAGISTRATE
FOURTH JUDICIAL DISTRICT
COCKE COUNTY, TENNESSEE



Docket No.: M2013-02345-BJC-DIS-FC

File No.: B13-5426

OPINION OF THE HEARING PANEL

This matter came to be heard before the Hearing Panel of the Tennessee Board of Judicial Conduct (the "Hearing Panel") on the 3rd day of March, 2014 in accordance with provisions as set forth in Tennessee Code Annotated § 17-5-301, *et. seq.* on formal charges filed by Disciplinary Counsel for the Tennessee Board of Judicial Conduct against Child Support Magistrate Lu Ann Ballew, of the Fourth Judicial District of Tennessee. This hearing was held in Cocke County, the home county of Magistrate Ballew, in accordance with Tennessee Code Annotated § 17-5-308. The Hearing Panel found by clear and convincing evidence that by her actions, Magistrate Ballew violated the Code of Judicial Conduct.

JURISDICTION

The Honorable Lu Ann Ballew, at all times relevant, was a Child Support Magistrate of the Fourth Judicial District of Tennessee, having been appointed to that position by the trial judges of the Fourth Judicial District. Therefore, Magistrate Ballew is subject to judicial discipline by the Board of Judicial Conduct pursuant to Tennessee Code Annotated § 17-5-102.

FACTS

On or about May 29, 2013, a Petition to Establish Paternity was filed by Jaleesa N. Martin (the "Mother") in the Chancery Court of Cocke County, Tennessee naming Jawaan P. McCullough (the "Father") as the Respondent. The petition alleged that McCullough was the natural father of Messiah Deshawn Martin, a child born on January 9, 2013. On the child's birth certificate, Mother listed the child's name as Messiah Deshawn Martin. Mother requested that the court determine the child's surname. On July 18, 2013, the

petition was heard by Magistrate Ballew. On that date, all matters raised in the petition were determined, except the determination of the child's surname. During the hearing, Father requested that the child's entire name be changed to Jawaan Paxton McCullough, Jr. Magistrate Ballew reserved ruling on the name change until August 8, 2013.

On August 8, 2013, Magistrate Ballew resumed the hearing on the petition with both parties present. At the onset of the hearing, Father again requested that the child's entire name be changed to Jawaan Paxton McCullough, Jr. At the conclusion of the hearing, but before Magistrate Ballew ruled on the matter, both parties agreed to the child retaining his first name, Messiah. Contrary to the agreement of the parties, Magistrate Ballew found that it was in the child's best interest to change his name from Messiah Deshawn Martin to Martin Deshawn McCullough and ordered that the name be changed to reflect her decision. In support of her ruling, Magistrate Ballew issued a "Statement of Facts and Reasons Supporting the Name Change" (the "Statement"). The Statement indicates that the court found it was in the best interest of the child to change his first and last names; that "'Martin' includes Ms. Martin's last name as [the child's] first name; 'Deshawn', the child's middle name given at birth, remains the child's middle name. 'McCullough' gives the child his father's last name." Magistrate Ballew also expressly found that "'Messiah means Savior, Deliverer, the One who will restore God's kingdom. 'Messiah is a title that is held only by Jesus Christ;'" and that "[I]abl[ing] this child 'Messiah' places an undue burden on him that as a human being, he cannot fulfill." After Magistrate Ballew issued her ruling changing the child's name on August 8th, the Father requested a hearing before a judge regarding Magistrate Ballew's ruling.

On August 9, 2013, Magistrate Ballew granted an interview with WBIR-TV, which was publicly broadcast, regarding her decision to change the child's name. During the interview, Magistrate Ballew again stated that "[t]he word 'Messiah' is a title and it's a title that has only been earned by one person and that one person is Jesus Christ;" and "[i]t could put [the child] at odds with a lot of people and, at this point, he has had no choice in what his name is." On September 18, 2013, the Honorable Telford E. Forgety, Jr., Chancellor, vacated Magistrate Ballew's order as it relates to the child's name, and ordered that the child's first name remain "Messiah" and that his last name be changed to "McCullough."

ISSUES

The issues before the hearing panel were whether, by her actions, Magistrate Ballew violated the Code of Judicial Conduct, specifically as to the following Canons:

CANON 1 – A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1 Compliance with the Law

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

RULE 1.2 Promoting Confidence in the Judiciary

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

CANON 2 – A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

RULE 2.2 Impartiality and Fairness

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

RULE 2.3 Bias, Prejudice, and Harassment

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

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

RULE 2.10 Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

Religious Bias

The Hearing Panel found by clear and convincing evidence that by her actions, Magistrate Ballew inappropriately applied her own religious beliefs as a basis for her decision to change the child's name from "Messiah Deshawn Martin" to "Martin Deshawn McCullough." In the Statement supporting her decision to change the name, Magistrate Ballew states that "Messiah means Savior, Deliverer, the One who will restore God's kingdom, and that "Messiah is a title that is held only by Jesus Christ."

While there are no Tennessee cases on point addressing judicial misconduct based on religious bias, in support of its argument that Magistrate Ballew's actions rise to the level of misconduct based on religious bias, Disciplinary Counsel relies on cases as persuasive authority, particularly *State of Nebraska Commission on Judicial Qualifications vs. Empson*, 562 N.W. 2d 817 (Nebraska 1997), in which a judge was charged with multiple violations, including disseminating religious materials to jurors in the courthouse following a jury trial. In that case the Supreme Court of Nebraska upheld the imposition of discipline, holding:

As a general matter, we find it inappropriate for a judge, as an authority figure, to disseminate religious materials in the courthouse with the intent of impressing his or her beliefs on the recipients. Despite the fact that the Hunt trial was over and the jurors had been excused, the question and answer session in which the religious pamphlets were dispersed proceeded with the jurors remaining in the jury box. More troubling are respondent's remarks that he got to "witness" and "minister" to the jurors. The fact that respondent had completed his judicial "duties" at the time of the discussion is immaterial in determining whether his conduct was appropriate. See *In re Complaint Against Kneifl*, 217 Neb. 472, 351 N.W.2d 693 (1984). While respondent is free to practice his religion as he chooses, his attempts to express his personal views on persons within the confines of the courthouse are violative of Canons 1 and 2 of the Code of Judicial Conduct and § 24-722(6). *Empson, supra* at 5612 N.W.2d 830.

In another case presented as persuasive authority, the Supreme Court of Pennsylvania upheld disciplinary sanctions against a judge for interjecting religion in a delinquency proceeding. In *Review Board*

of the Supreme Court of Pennsylvania vs. *Fink*, 532 A. 2d 358 (Penn. 1987), the Respondent interrupted a delinquency hearing and called for an in-chambers conference wherein the judge suggested that the boy might be possessed by demons and that a local priest should examine him to determine whether an exorcism was required. Respondent then called a separate meeting with the boy's parents and told them the same thing. *Id.* The Court in *Fink* also cited other incidents wherein the Respondent injected religion into court proceedings. In affirming the sanctions imposed on the judge in *Fink*, the Pennsylvania Supreme Court held:

Our system of government is grounded on individual freedom to participate or not participate in religious activity. And this freedom extends, needless to say, to those involved in civil and criminal litigation. When a judge of a Court of Common Pleas openly indicates a personal affinity for persons of the Christian faith, as opposed to persons of no religious faith or person of non-Christian faith, he has affixed the imprimatur of state approval on a particular type of religious belief. This is the stuff of oppression, not freedom, and it will not be tolerated in this Commonwealth. *Fink, supra at 532 A.2d 369.*

In the present case, in ruling that the child's first name be changed from "Messiah" to "Martin," Magistrate Ballew stated that "'Messiah' means Savior, Deliverer, the One who will restore God's kingdom. 'Messiah' is a title that is held only by Jesus Christ." Disciplinary Counsel argues that the statements of Magistrate Ballew constitute an impermissible religious bias.

Magistrate Ballew argues that her actions of changing the child's name and her statements supporting her actions were not an attempt to express her personal views on any of the parties before her. She maintains that she did not impinge a citizen's right to practice the religion of his or her choosing and she did not suggest that any of the parties should be a certain religion. She further argues that by her actions, she made a practical decision based on her own knowledge of the community, that she felt would be in the child's best interest, protect the child, and be fair to both of the child's parents.

In ruling that the child's given name be changed and basing her decision as noted in the Statement supporting her decision, Magistrate Ballew inappropriately injected and applied her own religious beliefs in her decision, thus violating the Code of Judicial Conduct. We emphasize that Magistrate Ballew has every right to hold the very religious beliefs at issue in the case. However, the imposition of those beliefs by Magistrate Ballew upon the litigants is the inappropriate conduct involved in this case.

It should be noted that the Father requested the child's given name be changed at the July 18th hearing before Magistrate Ballew. At the conclusion of the August 8th hearing, but prior Magistrate Ballew's ruling, both parties agreed to the child retaining the first name given at birth. Thus, the issue of changing the child's first name was no longer subject to Magistrate Ballew's consideration.

Based on these actions by Magistrate Ballew, we conclude that Magistrate Ballew violated the following Rules of the Code of Judicial Conduct:

Magistrate Ballew's conducted violated Rule 1.1 by failing to comply with the law, including failing to comply with the Code of Judicial Conduct for the reasons stated below.

Magistrate Ballew's conduct violated Rule 1.2 by taking it upon herself to change the child's first name for a reason based on religion, after the parties agreed on the child retaining the name given at birth. Magistrate Ballew acted in a way that eroded and undermined public confidence in the impartiality of the judiciary and gave the appearance of impartiality. A reasonable person would perceive that Magistrate Ballew's conduct reflects lack of impartiality based on religion, whether her own or that of the community.

Magistrate Ballew's conduct violated Rule 2.2 by taking it upon herself to address the child's first name when the parties agreed to the child retaining the name given at birth, and the issue was no longer before Magistrate Ballew. By taking it upon herself to change the child's name, and in doing so, injecting religion as a basis, Magistrate Ballew did not perform the duties of her judicial office impartially, but instead performed her duties in a way that signaled partiality toward particular religious beliefs.

Magistrate Ballew's conduct violated Rule 2.3 by injecting religion into the proceedings. Magistrate Ballew manifested bias against the parties *agreed* choice of the first name for the child, expressly for reasons based on religion. Regardless of whether the religious beliefs were her own or that of the "community," the stated reason for her action was related to particular religious beliefs.

Publicly Commenting on a Pending Case

The Hearing Panel found by clear and convincing evidence that by her actions, Magistrate Ballew violated the Code of Judicial Conduct by making certain statements in an interview with media while the underlying case was still pending. After Magistrate Ballew issued her ruling on August 8, 2013, the matter

was pending before Chancellor Forgety because any decision or recommendation by the Magistrate was subject to approval by the judge. Additionally, the Father requested a hearing by a judge regarding Magistrate Ballew's ruling, thus appealing Magistrate Ballew's ruling and keeping the matter pending. On August 9, 2013, Magistrate Ballew granted an interview with WBIR-TV regarding her decision, which was broadcast to the public. During the interview, Magistrate Ballew stated that "[t]he word 'Messiah' is a title and it's a title that has only been earned by one person and that person is Jesus Christ" and "[i]t could put [the child] at odds with a lot of people and, at this point, he has had no choice in what his name is."

Magistrate Ballew argues that her comments during the interview were not violative of the Code of Judicial Conduct because her comments could not reasonably be expected to affect the outcome or impair the fairness of a pending matter. She further argues that at the time of the interview, the matter of the child's name was pending before Chancellor Forgety, and that as evidenced by his holding, Magistrate Ballew's comments did not in fact affect the outcome of the proceeding or impair fairness, nor could her comments be reasonably be expected to do so.

The Supreme Court of California upheld the discipline of a judge who publicly commented on two cases that were pending on appeal. In *Broadman vs. Commission on Judicial Performance*, 959 P.2d 715 (Cal. 1998), the Petitioner was under investigation and ultimately disciplined for publicly explaining his reasons for imposing certain probation conditions on two cases that were pending in his court and in the California Court of Appeals. In upholding the discipline in *Broadman*, the Supreme Court of California stated:

A judge's public comment on a pending case threatens the state's interest in maintaining public confidence in the judiciary whether or not the case to which the comment is directed is pending before the commenting judge. When the case is pending before a judge other than the commenting judge, the public may perceive the comment as an attempt to influence the judge who is charged with deciding the case. Such comments may also create the public impression that the judge has abandoned the judicial role to become an advocate for the judge's own ruling or for the position advanced by one of the parties. *Broadman, supra at 272.*

In the present case, while the matter was pending before Chancellor Forgety, Magistrate Ballew granted an interview with WBIR-TV, which was publicly broadcast, thus publicly advocating for her own

decision. Magistrate Ballew's public comments could reasonably be perceived as affecting the fairness and/or outcome of the proceeding pending before Chancellor Forgy. By publicly commenting on the pending matter, Magistrate Ballew's action clearly falls within the conduct prohibited by Rule 2.10, thus violating the Code of Judicial Conduct.

SANCTIONS

Having found by clear and convincing evidence that Magistrate Ballew's actions violated the Code of Judicial Conduct, specifically as it relates to the Canons and Rules as set forth above, in determining the appropriate sanctions pursuant to Tennessee Code Annotated § 17-5-301(i), the Hearing Panel considers the following factors:

- (3) Magistrate Ballew's misconduct occurred both in and out of the courtroom;
- (4) Magistrate Ballew's misconduct occurred while she was acting in her official capacity;
- (5) Magistrate Ballew did not acknowledge or recognize the impropriety of the acts;
- (6) Magistrate Ballew evidenced no effort to change or modify her conduct; and
- (9) Magistrate Ballew's misconduct had considerable effect on the respect of the judiciary.

Based upon these findings, the Hearing Panel imposes a public censure as authorized by Tennessee Code Annotated § 17-5-301. The costs of this matter are assessed to Magistrate Ballew.

This Opinion has been reviewed by all members of the Hearing Panel. The Presiding Panel Member is authorized to enter this Opinion on their behalf.

Entered this 24th day of April, 2014



Angelita Blackshear Dalton
Presiding Panel Member