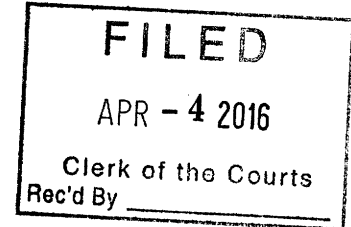


IN THE TENNESSEE BOARD OF JUDICIAL CONDUCT

**IN RE: ROGER MARSH
JUDICIAL COMMISSIONER
WILSON COUNTY, TENNESSEE**

Docket No. M2015-00437-BJC-DIS-FC

File No. B13-5355



DEFERRED DISCIPLINARY AGREEMENT

This Agreement entered into by and between a Hearing Panel of the Tennessee Board of Judicial Conduct, and Roger Marsh, Judicial Commissioner, Wilson County, Tennessee is a Deferred Disciplinary Agreement as contemplated by Tennessee Code Annotated section 17-5-301(g)(3). This Agreement is in resolution of the complaint against Commissioner Marsh with the Tennessee, File Number B13-5355, and a Formal Charge subsequently brought against Commissioner Marsh in case number M2015-00437-BJC-DIS-FC.

Facts and Agreement

1. In early March, 2013, the former son-in-law of the Board of Judicial Conduct complainant in this action filed domestic assault charges against the claimant.

2. On or about March 3, 2013, Commissioner Marsh in his official capacity, signed a mittimus document designated as a "County Mittimus-Jail" which recited, *inter alia*, that the complainant in this action "Having been examined before me on a charge of Domestic Assault," and with due cause and failure to give bond, was ordered to be arrested by the Sheriff and held essentially without bond, resulting in

his incarceration for some 12 hours. A copy of the "mittimus" was attached to the original Formal Charge in this action as Exhibit "A", and is specifically incorporated herein by reference.

3. In fact, and despite the representation of Commissioner Marsh on the face of the mittimus document, the complainant alleged that he had not been examined by Commissioner and had not made any appearance before the Commissioner at all.

4. In response to an inquiry by the Board of Judicial Conduct, through its Disciplinary Counsel, to Commissioner Marsh regarding the incident that forms the basis of the Formal Charge, Commissioner Marsh responded "...I have no reason to believe that (the complainant) did not appear before me on the charge of Domestic Assault on 3/13/13."

5. No written record of an appearance by the complainant before Commissioner Marsh appears in any records maintained by Wilson County, Tennessee.

6. At all times relevant to the matters set forth herein, the following Tennessee Statutes were in full force and effect:

§ 40-5-102. Magistrates

The following are magistrates within the meaning of this part:

- (1) The judges of the supreme court;
- (2) The judges of the circuit and criminal courts;
- (3) Judicial commissioners;
- (4) Judges of the courts of general sessions;
- (5) City judges in cities and towns; and
- (6) Judges of juvenile courts.

§40-5-105. Disposition

The magistrate is required to reduce the examination of the accused to writing, if the accused submits to an examination, and also all the evidence adduced on both sides, and is authorized to discharge, bail, or commit the accused and to take all

necessary recognizances to enforce the appearance of the defendant, the prosecutor or witnesses at the proper court.

7. The Formal Charge herein alleged that by signing the formal legal document titled "County Mittimus-Jail," reciting that the complainant had appeared before the Commissioner and had in fact "been examined" by the Commissioner, Commissioner Marsh had violated the following provisions of the Code of Judicial Conduct, as follows:

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 2.5 Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties competently, promptly and diligently.

Rule 2.6 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 lawyer, the right to be heard according to law.

8. Commissioner Marsh candidly does not specifically recall an appearance and examination before him by the complainant in this action.

9. Following the initiation of the complaint with the Board of Judicial Conduct, and as a direct result thereof, Commissioner Marsh, of his own volition implemented certain measures incident to his role as Judicial Commissioner, as follows:

A. Wilson County has modified its "Bail Bond Questionnaire" to include the "Mittimus Number".

B. A Judicial Commissioner now sees only one individual at a time. Previously and during busy nights, sometimes the Jail would bring two (2), three (3) or more arrestees to the Judicial Commissioner, at one time. That practice has been eliminated..

C. A training session was held, after this Complaint was received, with all Wilson County Judicial Commissioners, and is now a part of In-service training for Judicial Commissioners.

D. The Wilson County Jail has been instructed not to take anyone back to the Jail until seen by a Judicial Commissioner.

10. As part of this Agreement, Commissioner Marsh agrees to continue, during the term of this agreement, to continue the measures set forth in preceding Paragraph 9 herein.

11. In addition, and also as part of this Agreement, Commissioner Marsh has agreed to scrupulously follow the provisions of Tennessee Code Annotated § 40-5-105, set forth in Paragraph 6 herein.

12. It is understood and agreed that this Agreement is being made and entered into in accordance with the pertinent provisions of T.C.A. § 17-5-307, which provide as follows:

...(g)(1) At any time after the filing of formal charges and before final disposition, the judge may agree with disciplinary counsel that the judge shall admit to any or all of the formal charges in exchange for a stated sanction. The agreement shall be submitted to the hearing panel assigned to the case, which shall either:

(A) Reject the agreement; or

(B) Approve the agreement and enter the order disciplining the judge.

(2) If the stated sanction is rejected by the hearing panel, the agreement shall be withdrawn and cannot be used against the judge in any proceedings.

(3) A judge who consents to a stated sanction shall sign an affidavit stating that:

(A) The judge consents to the sanction;

(B) The consent is freely and voluntarily rendered;

(C) There is presently pending a proceeding involving allegations of misconduct, which shall be specifically set forth in the affidavit; and

(D) The facts set forth in the affidavit are true.

(4) Upon approval by the hearing panel, the affidavit shall be filed with the board. The affidavit shall remain confidential until it is filed with the board. The final order of discipline shall be based upon the formal charges and the conditional admission.

13. Contemporaneous with the execution of this Agreement, Commissioner Marsh has executed an affidavit intended to comply with the statutory requirements of T.C.A. § 17-5-307, as described in preceding Paragraph 12.

14. It is agreed between the Hearing Panel and Commissioner Marsh that for and in consideration of the Investigative Panel not pursuing formal charges on the complaint, Commissioner Marsh will be on probation for a period of one (1) year commencing from the date of the execution of this agreement. Any violation of a condition of probation, as described herein, including but not limited to continuing to adhere to the requirements and practices described in Paragraphs 9 and 11, herein, the Formal Charge heretofore filed in this action may be refiled, as well as potential additional charges, in accordance with the provisions of T.C.A. § 17-5-301, *et. seq.*, arising from any additional alleged

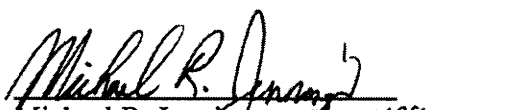
violation of the Code of Judicial Conduct or the applicable provisions of § 17-5-301, *et. seq.*

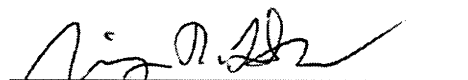
15. Commissioner Marsh and the Hearing Panel agree that this Deferred Disciplinary Agreement can be and is being executed without a formal meeting as contemplated by Rule 7 § 2 of the Rules of the Board of Judicial Conduct, the formal meeting being specifically waived by agreement of Commissioner Marsh and the Hearing Panel.

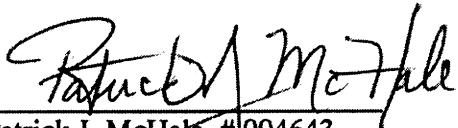
16. Upon the execution and filing of this Agreement with the Clerk of the Board of Judicial Conduct, the pending Formal Charge described herein, shall be dismissed, subject to the provisions of Paragraph 14, herein.

This Agreement is made and entered into on the 1st day of December, 2015.



Roger Marsh
Judicial Commissioner


Michael R. Jennings #006698
Attorney for Commissioner Roger Marsh


Timothy R. Discenza #008716
Disciplinary Counsel
Tennessee Board of Judicial Conduct
P.O. Box 50356
Nashville, Tennessee 37205

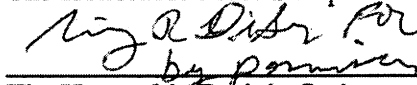

Patrick J. McHate, #004643
Assistant Disciplinary Counsel
Tennessee Board of Judicial Conduct

FOR THE HEARING PANEL:


by permission

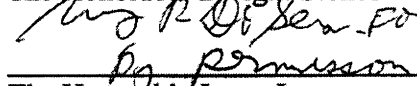
The Honorable Mike Sharp

2/16/2018
Date


by permission

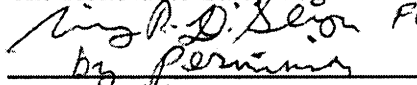
The Honorable Dwight Stokes

2/16/2018
Date


by permission

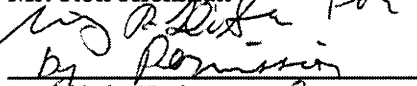
The Honorable Larry Logan

2/16/2018
Date


by permission

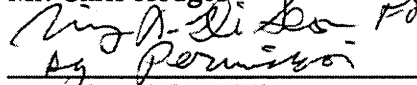
Mr. Ron Hickman

2/16/2018
Date


by permission

Mr. Chris Hodges


2/16/2018
Date


by permission

Mr. Edward G. Phillips

2/16/2018
Date

APPROVED:



The Honorable Chris Craft
Chair Person, Board of Judicial Conduct