



STATE OF TENNESSEE BOARD OF JUDICIAL CONDUCT

February 14, 2024

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MEMBERS OF THE TENNESSEE
BOARD OF JUDICIAL CONDUCT

FOR PUBLIC RELEASE

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Board Chair

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Shelby Co. Justice Complex
201 Poplar Avenue, Room 519
Memphis, TN 38103

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Disciplinary Counsel

RE: Public Reprimand
File Nos. B23-9495, B23-9521, B23-9522, B23-9523, B23-9524, and
B23-9536

Shane A. Hutton
Assistant Disciplinary Counsel

Dear Judge Skahan:

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

This reprimand stems from your actions as described in *Anderson v. State*, No. W2023-00067-CCA-R3-PC, 2023 WL 6864731 (Tenn. Crim. App., Oct. 18, 2023). Specifically, in a post-conviction proceeding, you made injudicious comments about Shelby County's former District Attorney General and the trial judge who initially handled the case. In addition, you had an *ex parte* conversation with the District Attorney General's office about the case, and your comments during the proceedings suggested that you had predetermined the outcome and directed the actions of the parties to reach a certain result. Your actions were more fully described by the court as follows:

[O]ne can easily infer from the transcript that the trial court in this matter not only predetermined the outcome prior to conducting a hearing on the motion but directed the actions of the parties to reach a desired and specific result. During the December 13 hearing, the trial court noted that when the petitioner's case "came to my desk" the court brought the ADA into chambers and directed the ADA "we've got to try and do something if we can" and "we tried to get a lawyer in here that would hopefully do something about it." Then, during the

November 16 hearing, the trial court inquired of the parties, “How are *we going to do this?*” When petitioner’s counsel informed the trial court that they would be filing a post-conviction petition, the trial court made the following statements, “I think that’s – I mean, as soon as I saw this, I thought that [reopening the post-conviction petition] would be the only thing to do”; “Yeah, Yeah. I agree [that reopening the post-conviction is ‘cleaner and easier’]”; and “Okay. Great. *I’m excited about it.*” After further discussion about the plan and the timing of the next hearing, the trial court stated, “I am certainly on board. I was hopeful this would be able to happen as soon as I looked at it. Seriously [his sentence] is so outrageous.” Finally, the trial court opened the December 13 hearing by confirming that it had already prepared and signed an order granting the petitioner’s motion and had prepared amended judgments modifying the petitioner’s sentence.

As noted by the State and corroborated by the transcripts, the trial court, prior to an actual filing by the petitioner, hearing any argument from the parties, or taking any evidence, was prepared to grant the petitioner relief.

Additionally, we express our concern with the trial court’s *ex parte* conversations with the District Attorney General’s office. Per the trial court’s comments during the December 13 hearing, the trial court, upon receiving the petitioner’s filing, called the assistant district attorney (“ADA”) into her chambers and had an *ex parte* conversation with the ADA about the petitioner’s case, including directing the ADA “we’ve got to try and do something if we can.” This conversation is concerning because the trial court engaged in *ex parte* communication with a party. . . .

Finally, the trial court’s comments concerning the former District Attorney General and, more importantly, the original trial judge are extremely troubling. As noted, a judge shall at all times “act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.” RJC 1.2. However, here, the trial court took time during her oral ruling to unnecessarily and without provocation or proof, call into question the character of members of the judicial system and, indirectly, the system as a whole. More specifically, the trial court stated,

“So[,] it was all timing with Amy Weirich [the former District Attorney General] out of the office and the right judge who might be willing to do something to help you, it was all

timing. It's just the way I guess God looking down on you. . . . But that's too much time, obviously, way too much time, and I know how Judge Dailey was. I -- believe me, I practiced in there. It was not fun. They just piled up on people."

These comments by the trial court only further the concerns relating to bias or prejudice to one party, as well as, cast doubt on the integrity and impartiality of the judicial system. In short, these comments, especially when viewed in light of a court acting without jurisdiction and other comments noted above, are contrary to the spirit of the Code of Judicial Conduct, if not directly in violation of it.

Anderson v. State, 2023 WL 6864731 at *9-11.

You have acknowledged that you should have refrained from making injudicious comments about the former District Attorney General and the original trial judge. You explained that you did not intend to demean anyone. You also acknowledged that when you received the *Anderson* file from the court clerk, you asked a representative from the District Attorney General's office "to come take a look" and that she agreed with you that the defendant's sentence was excessive. You then appointed defense counsel. Further, while you deny telling the attorneys how to proceed with the case, you acknowledged that you exceeded your authority in the matter.

The circumstances described above are inconsistent with a judge's role as an impartial arbiter. As such, your conduct runs afoul of Tenn. Sup. Ct. R. 10, RJC 1.2 ("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."); Tenn. Sup. Ct. R. 10, RJC 2.2 (requires judges to uphold and apply the law and perform all duties of judicial office fairly and impartially); Tenn. Sup. Ct. R. 10, RJC 2.3(A) (a judge shall perform the duties of judicial office without bias or prejudice); and Tenn. Sup. Ct. R. 10, RJC 2.9(A) (prohibiting *ex parte* communications with limited exceptions not applicable here).

The investigative panel decided to impose a public reprimand, which you have accepted. In imposing this sanction, the panel considered in mitigation that you have taken full responsibility, have offered no excuses for your actions, and have no history of disciplinary action.

The Board trusts that the reprimand imposed today will result in an elevated consciousness about how to approach similar situations going forward and avoid any future conduct that undermines public confidence in you as an impartial jurist or in the proper administration of justice.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Andrew Brigham". The signature is fluid and cursive, with a large initial "G" and a long, sweeping underline.

G. Andrew Brigham
Board Chair