

IN THE MATTER OF:  
JUDGE JOHN N. PREVAS  
CJD 2005-31  
CJD 2005-88

\* BEFORE THE COMMISSION ON  
\* JUDICIAL DISABILITIES  
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**DECISION OF COMMISSION ON JUDICIAL DISABILITIES**

After a public hearing before the Commission on June 26, 2006 and presentation of evidence and legal argument made by Investigative Counsel and by Judge John N. Prevas, and upon consideration of post-hearing memoranda filed by the parties;

The Commission on Judicial Disabilities, by majority vote, issues the following decision:

**I. CJD 2005-31 Prevas/Muldrow**

The Commission finds by clear and convincing evidence the following facts to be true:

1. Judge Prevas was serving as a Circuit Court Judge in Baltimore City on June 9, 2004 when he was assigned to hear the case of State of Maryland vs. Melvin S. Muldrow, case #100109013.
2. Mr. Muldrow was appearing for a second trial, after having his first case reversed on appeal by the Court of Special Appeals.
3. While listening to pre-trial matters in State vs. Muldrow, Judge Prevas lost his temper with Mr. Muldrow, called Mr. Muldrow a jerk, and made inappropriate comments to Mr. Muldrow.

The transcript of the videotaped proceedings reads as follows:

THE COURT: All right, Ms. Gering, first Motion?

DEFENSE COUNSEL: Your Honor, Motion to Dismiss for lack of speedy trial.

THE COURT: All right. Do you want to put any evidence on?

DEFENSE COUNSEL: Your Honor, I -

THE DEFENDANT: Yes, also a subpoena - (inaudible) -

DEFENSE COUNSEL: I will - I'll put my client's Motion in.

I believe he's arguing constitution to a speedy trial.  
That -

THE DEFENDANT: Both of these.

THE COURT: All right. You're asking that the record for appeal, including the file be the - the - the - be the record, right?

DEFENSE COUNSEL: Yes, Your Honor.

THE DEFENDANT: Yes, Sir.

THE COURT: All right, I'll hear your argument.

DEFENSE COUNSEL: Your Honor, during this time, there have - there have been some of delays and since he came back on appeal, there have been some delays. Specifically, the prejudice he's arguing under *Barker v. Wingo*, (phonetic) is the - the loss of his witness, Anthony Green, and also Maurice Gardner, who did not appear beforehand. The - he feels that the - the length that has been since his last trial to today is of constitutional dimension. He feels that we have asserted our right by asking for - not asking for postponements and I can get as an Exhibit, there was one by the - the defense, but there were a couple by the State. And he believes we have asserted our right to a speedy trial and not waived it. And believes the prejudice is the lack of - the witnesses being lost and not being able to be present.

THE DEFENDANT: Your Honor, if I may -

THE COURT: No, Sir.

DEFENSE COUNSEL: You know, Mr. Muldrow -

THE COURT: Confer in private with Ms. Gering. You can have her make the argument. I am hearing nothing from you.

DEFENSE COUNSEL: Look, look here - here it is. You can do it or I can do it.

THE DEFENDANT: I'll argue it.

DEFENSE COUNSEL: Then are - then are you dismissing me

as your attorney? Because it's one of two ways. I'm the attorney or you do, but there's no -

THE DEFENDANT: I'll argue the Motion.

DEFENSE COUNSEL: Are you dismissing me as your attorney?

THE DEFENDANT: Yes, Ma'am.

THE COURT: I don't find good cause. There's - he - he got the case reversed on appeal because he didn't have counsel. I don't find his discharge meritorious.

THE DEFENDANT: Your Honor, she has -

THE COURT: Anything you want to write on a piece of paper to tell Ms. Gering to say, she'll faithfully say it for you. You will not speak in the courtroom. You want her to say something, write it down.

THE DEFENDANT: All right. Well -

THE COURT: You got the case reversed once for not having a lawyer, I'm not going to have you make a non-meritorious discharge of counsel just because you're a jerk.

THE DEFENDANT: Your Honor -

THE COURT: No, I don't want to hear from you. Write it down and give it to Ms. Gering.

(Pause in the proceeding.)

MR. BAILIFF: The body attachment person they say he's going to be on his way in 10 minutes. I said please -

THE COURT: Yeah, bring him - bring him in.

MR. BAILIFF: They're going to bring him.

THE COURT: Yeah bring him. It'll be at least 10 minutes in Motions. You know, it got reversed on appeal for having waiver by an action ineffective, and now he wants to discharge his counsel. No way.

DEFENSE COUNSEL: While he's writing that down, Your Honor, I will submit two postponement forms where there

was no Court available and although the - (inaudible) - was found, he's asserting it's not appropriate reason for the delay.

4. Many of Judge Prevas's statements set forth above were shouted in a loud and angry voice and it was obvious from the videotape that Judge Prevas had temporarily lost control of his words and actions. The only provocation for this demonstrated anger and loss of control was the defendant's statement that he sought to discharge his attorney. Mr. Muldrow had not raised his voice, said or done anything to disrupt the court proceedings, nor demonstrated any lack of respect for the Court. Thus, the Judge was not dealing with an unruly litigant who threatened the Judge's orderly control of the courtroom, a circumstance that might have justified more aggressive conduct by a judge.

5. Additionally, Judge Prevas summarily and abruptly concluded that there was no good cause for the discharge without giving the defendant adequate opportunity to state why he sought the discharge.

6. With the above conduct, Judge Prevas failed to "observe high standards of conduct so that the integrity and independence of the judiciary will be preserved," as required by Canon 1. He also violated the Canon 2 A requirement that he "act at all times in a manner that promotes public confidence in the impartiality and integrity of the judiciary." A judge who demonstrates that he is not in control of his angry emotions, and rules without apparent consideration of the issue before him undermines public confidence in the judiciary.

7. When he testified before the Commission Judge Prevas attempted to explain his conduct in part by stating that he was "very protective of Judge Quarles." The Judge referred three different times to the fact that Muldrow got the case reversed on appeal. Judge Prevas obviously decided there was no good cause for discharge of his counsel based on the defendant's earlier successful appeal in which the defendant apparently obtained a reversal of the decision of then Circuit Court Judge William Quarles because Judge Quarles improperly allowed the defendant to discharge his counsel. As Judge Prevas testified "[t]he Judge that he got the reversal with is Judge Quarles and I've always been very protective of Judge Quarles. I think that entered into my emotional component that he had kind of done something bad to Judge Quarles." A successful appeal by a litigant on technical or procedural grounds is not appropriate grounds for a judge to deny the litigant the opportunity to present his case on a re-trial, and to do so constitutes a failure to "perform the duties of judicial

office diligently, impartially, and without having or manifesting bias or prejudice[,]” as required by Canon 3A. When a judge acts in this manner, the risk of causing a chilling effect on litigants’ efforts to protect their constitutional rights is significant.

8. Judge Prevas also violated the Canon 3B(5) requirement that “[a] judge shall be courteous to and patient with . . . litigants.” Although the Commission does not expect a judge to demonstrate perfect manners all the time, and recognizes that a judge may occasionally find it necessary to speak in a loud voice in order to maintain control of the courtroom, the angry and uncontrolled shouting exhibited by Judge Prevas was beyond any tolerable breach of the courtesy standard of Canon 3B(5). Further, it is not the role of a judge to indulge in derogatory name-calling from the bench, even of criminal defendants whom the judge believes to be guilty.

9. Judge Prevas makes several arguments with regard to an alleged failure to comply with the Rule 16-808(a) requirement that the charges against him “(1) state the nature of the alleged disability or sanctionable conduct, including each Canon of Judicial Conduct allegedly violated by the judge, (2) allege the specific facts upon which the charges are based, and (3) state that the judge has the right to file a written response to the charges within 30 days after service of the charges.” The Commission rejects these arguments and finds that the charges, including the amended charges, complied with Rule 16-808(a).

10. Judge Prevas offered evidence of certain health problems he suffered as explanation for or in mitigation of his poor conduct on the bench on this occasion. He testified that, after an illness, he “went back to work and even when I was back to work for a while I was not myself yet.” He continued:

On this particular day, I had finished my docket and thought that I was going to be able to spend the afternoon writing opinions, but I got a call from the Chief Judge of the Criminal Court, . . . that he had a case he needed to dispose of and he wanted to move it to my courtroom. So I kind of dragged myself out on the bench, facing one more case that would interfere with my ability to be able to get the most out of my docket for the next couple of days because there was a pending trial, there were court cases that had been sent that basically had been postponed or moved to other courts. And I knew I was going to be in court for a while and I just - I just lacked the emotional reserve to keep my mouth shut when Mr. Muldrow started attempting to take

things over from his lawyer and it looked like he was trying to set it up for a post conviction or try to get me to discharge her.

When asked "how do you determine when you are fit and able to sit as a judge," Judge Prevas replied: "I just go to work everyday unless the doctor tells me I can't." The Commission concludes that Judge Prevas' conduct on June 9, 2004 was not justified or significantly mitigated by his health condition.

In sum, the Commission finds by clear and convincing evidence that Judge Prevas' comments and conduct regarding Mr. Muldrow on June 9, 2004 violate the following Canons of Judicial Conduct:

#### **CANON 1**

##### **Integrity and Independence of the Judiciary**

An independent and honorable judiciary is indispensable to justice in our society. A judge shall observe high standards of conduct so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

#### **CANON 2**

##### **Avoidance of Impropriety and the Appearance of Impropriety**

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

#### **CANON 3**

##### **Performance of Judicial Duties**

A. General Responsibilities. A judge shall perform the duties of judicial office diligently, impartially, and without having or manifesting bias or prejudice, including bias or prejudice based on age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status.

B. (5) A judge shall be courteous to and patient with

jurors, lawyers, litigants, witnesses, and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers and of court officials, staff, and others subject to the judge's direction and control.

The Commission finds by clear and convincing evidence, that Judge Prevas' conduct described in this Section I constitutes sanctionable conduct within the meaning of Maryland Rule 16-803(j).

## **II. CJD 2005-88 Prevas/Investigative Counsel**

### **A. Telephone Call with Jury Judge, John Themelis**

The Commission finds by clear and convincing evidence the following facts to be true:

1. On July 6, 2005, Judge Prevas was serving as a Circuit Court Judge in Baltimore City, Maryland.

2. During court proceedings, and while Judge Prevas was on the bench, his cell phone rang.

3. Judge Prevas interrupted the docket and accepted the phone call, which was from Judge John Themelis, the Baltimore City Circuit Court Judge responsible for managing jury service during that time period. Judge Themelis was in charge of ruling on requests for postponements sought by persons summoned for jury service. When Judge Themelis called Judge Prevas's cell phone, he was returning a phone call to him from Judge Prevas.

4. In open court, Judge Prevas conducted a conversation with Judge Themelis in which Judge Prevas arranged for Toni Keane to get a rescheduled date for her jury duty. Toni Keane is Judge Prevas' "significant other," and has lived with Judge Prevas for the last 28 years. Judge Prevas testified that he was under pressure from Ms. Keane to arrange for the change in the date of her jury service, and, in his words, to "take care of the jury problem."

5. At the conclusion of the call with Judge Themelis, Judge Prevas directed his law clerk, Jennifer, to prepare the papers and complete the arrangements necessary to change Toni Keane's jury duty date. Jennifer is a court employee under the direction and control of Judge Prevas.

The Commission finds by clear and convincing evidence that Judge Prevas' telephone call with Judge Themelis on July 6, 2005 violated the following Canons of Judicial Conduct:

## **CANON 1**

### **Integrity and Independence of the Judiciary**

An independent and honorable judiciary is indispensable to justice in our society. A judge shall observe high standards of conduct so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

## **CANON 2**

### **Avoidance of Impropriety and the Appearance of Impropriety**

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

B. A judge shall not allow judicial conduct to be improperly influenced or appear to be improperly influenced by a family, political, social, or other relationship or by an employment offer or opportunity. A judge shall not lend or use the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence judicial conduct. A judge shall not testify voluntarily as a character witness.

Judge Prevas violated Canons 1 and 2 when he contacted Judge Themelis on behalf of his "significant other" to arrange a deferral of jury service. This action fell short of the "high standards of conduct" required of a judge because it constituted an effort to use the prestige of his judicial office to advance his own private interests and those of Ms. Keane. Although Judge Themelis may freely grant postponements for jury service, so that Ms. Keane may have been able to accomplish the same postponement without his help, Judge Prevas chose to intervene in that process because apparently Ms. Keane had not successfully achieved the postponement on her own. Judge Prevas's decision to accomplish this intervention while on the bench during a public proceeding raises the severity level of the violation because (1) it disrupted this public proceeding, and (2) suggested to any person present that a friend of the judge could receive special favors from the judge himself or other judges whom he knew. Judges make factual and

legal decisions that carry grave consequences to the litigants, and the strength of our judicial system depends upon public belief that our judges are independent and cannot be influenced by any personal relationship or other improper inducement. This conduct by Judge Prevas carried a meaningful risk of eroding the public's belief in the integrity of that system.

The Commission finds by clear and convincing evidence that Judge Prevas' conduct described in this Section II A constitutes sanctionable conduct within the meaning of Maryland Rule 16-803(j).

**B. State v. Charles Young**

The Commission finds by clear and convincing evidence that:

1. On July 6, 2005, Judge Prevas was serving as a Circuit Court Judge in Baltimore City, Maryland, presiding over the case of State v. Charles Young, Case # 805130019.

2. When the case was called, Young's attorney, Donald Daneman informed Judge Prevas of the following:

On May 11, 2005, Mr. Young appeared before Judge Paul Smith for trial, while represented by Mr. Daneman. The State's Attorney, William Cook, requested a postponement on the grounds that the victim/witness had called him and said that she had an emergency and needed to take her daughter to John's Hopkins hospital.

Mr. Daneman argued to Judge Prevas that he was "entitled to know when I cross examine her" whether she told the truth about why she did not show up at trial on May 11, 2005." The State's Attorney then offered that

[t]he victim . . . did call me in the morning of the 11<sup>th</sup> and indicated her child was sick and she was taking the child to the hospital. I recall it being Johns Hopkins Hospital. She may have went somewhere else or she may - I may have been mistaken, but it was to the hospital."

3. Judge Prevas directed:

Put her under oath. Mr. Daneman can depose her prior to jury selection about whether she told the truth about her whereabouts.

Judge Prevas then directed Mr. Cook to question her regarding why she was not present at the May 11 hearing before Judge Smith. The witness testified that she had taken her daughter to a regular check up with a doctor at Mercy Hospital on May 11 rather than attend court. The following colloquy then occurred:

THE COURT: You skipped Court to go to a routine check up?

THE WITNESS: Huh?

THE COURT: You skipped Court to go for a routine checkup?

THE WITNESS: It was for my daughter.

THE COURT: Yeah, I know, but I mean, you can do a routine check up 365 days a year. Why would you miss Court and deny somebody the opportunity to resolve their case just for a routine check up?

THE WITNESS: I didn't - I mean, I don't know how the Court system is done. I didn't think it was that serious.

THE COURT: I have no confidence in the ability of this witness to tell the truth. The verdict is not guilty.

MR. DANEMAN: Thank you.

THE COURT: Thank you.

MR. COOK: Your Honor, we - well -

THE COURT: File a Writ of Prohibition if you disagree with me.

MR. COOK: May I have a moment to step outside?

THE COURT: You may.

4. Judge Prevas did not give the State's Attorney any opportunity to call other witnesses; nor did he ask whether the State rested its case. He did not allow argument by counsel. Judge Prevas did not learn that there was another witness supporting the State's case until after he found the defendant not guilty. Without even seating a jury, he simply dismissed the case on the grounds that one witness lacked credibility, a decision that was not his to make because a jury trial had been requested.

5. Judge Prevas agreed in his deposition that he "pulled the trigger too fast" and "probably moved a little too quickly" in deciding State v. Young.

The Commission finds by clear and convincing evidence that Judge Prevas' conduct on July 6, 2005 in the Charles Young case violates Canons 1 and 2. These Canons state as follows:

#### **CANON 1**

##### **Integrity and Independence of the Judiciary**

An independent and honorable judiciary is indispensable to justice in our society. A judge shall observe high standards of conduct so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

#### **CANON 2**

##### **Avoidance of Impropriety and the Appearance of Impropriety**

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

In dismissing this criminal prosecution in this manner, Judge Prevas failed to observe high standards of conduct required by Canon 1. This is not an instance of a judge simply making an error or a wrong decision. This was intentional conduct in flagrant violation of the most rudimentary rules and procedures governing criminal prosecutions that Judge Prevas knew very well. It is conduct that directly violates the Canon 2 mandate that "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the impartiality and integrity of the judiciary."

The Commission finds by clear and convincing evidence that Judge Prevas' conduct described in this Section II B constitutes sanctionable conduct within the meaning of Maryland Rule 16-803(j).

#### **PUBLIC REPRIMAND**

Based upon the previous findings of fact and conclusions of

law, the Commission concludes that a Public Reprimand is the appropriate discipline for Judge Prevas's conduct described above in sections I (CJD 2005-31 Prevas/Muldrow), AND II (CJD 2005-88 Prevas/Investigative Counsel and State v. Charles Young). Accordingly, **the Commission hereby issues this Public Reprimand to Judge John N. Prevas.**

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Sally D. Adkins, Chair  
Commission on Judicial Disabilities

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Gary J. Kolb  
Executive Secretary  
Commission on Judicial Disabilities

Date: \_\_\_\_\_