

IN THE MATTER OF:
THE HONORABLE PAMELA J. WHITE

* BEFORE THE MARYLAND
* COMMISSION ON
* JUDICIAL DISABILITIES
* CJD 2014-114

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MEMORANDUM AND ORDER

This matter came before the Commission on Judicial Disabilities (“Commission”) at a public hearing on June 27, 2016, pursuant to a Motion to Dismiss the charges against the Honorable Pamela J. White (“Judge White”). Andrew Jay Graham and Louis P. Malik, Kramon & Graham, P.A., were present at the hearing as counsel for Judge White. Carol A. Crawford, Executive Director/Investigative Counsel, and Tanya C. Bernstein, Deputy Assistant Investigative Counsel, were present as the investigatory and prosecutorial counsel of the Commission. The charges were filed with the Commission on March 31, 2016. The Motion to Dismiss was filed by Judge White on May 2, 2016, and Ms. Crawford and Ms. Bernstein filed an Opposition to Motion to Dismiss on May 16, 2016. No reply in support of the Motion to Dismiss was filed by Judge White.

After a review of all pleadings and hearing argument, the Commission duly considered each argument, particularly Judge White’s arguments that: (1) the same case is currently pending before the Court of Special Appeals and therefore is not eligible for review before the Commission; (2) the Commission should not review a legal decision or court action taken by a judge; (3) Judge White’s conduct is not considered “sanctionable;” (4) Maryland procedural rules were violated as to timelines and notifications; (5) Investigative Counsel refused to give her Memorandum because she

claimed privilege; (6) Judge White's exhibits were not provided to Commission; (7) Mr. Jones's complaint was submitted in bad faith as an act of retaliation against Judge White; (8) Judge White was never advised about third complaint; and (9) the Commission decided to authorize filing of charges before Judge White filed objections to the Board's report.

After reviewing the Motion to Dismiss and Opposition and hearing arguments from Mr. Graham and Ms. Crawford, the Commission, after due consideration, denied each of the arguments made by Mr. Graham for the reasons set forth in Ms. Crawford's Opposition to Motion to Dismiss.

At the motions hearing, counsel for Judge White sought to appeal to the Commission the Chair's limitation of Judge White's discovery request. The determination of the scope of discovery is left to the discretion of the Chair of the Commission. Md. Rule 16-808(g)(3). "Discovery is governed by Title 2, Chapter 400 of these Rules, except that the Chair of the Commission, rather than the court, may limit the scope of discovery, enter protective orders permitted by Md. Rule 2-403, and resolve other discovery issues." Md. Rule. 16-808. This Rule explicitly states that the scope of discovery is to be determined by the Chair and no one else. Here, Judge Wright limited the scope of discovery by striking admission requests and interrogatories directed to the Investigative Counsel. The Chair did not eliminate Judge White's access to a fair discovery process. There is not a mechanism in the Commission's Rules to appeal Judge Wright's decision to the Commission as a whole.

Assuming arguendo that the Motion to Dismiss had merit, a question was raised as to whether a motion to dismiss is proper at this stage in the proceeding. After review, the Commission determined that there is not a mechanism for the Commission to grant a motion to dismiss. In a post-hearing memorandum, counsel for Judge White argued that there are two Rules that would give the Commission the authority to grant Judge White's Motion to Dismiss. First, Md. Rule 16-807(a)(1) states "[t]he Commission shall dismiss a complaint if, after an investigation, it concludes that the evidence fails to show that the judge has a disability or has committed sanctionable conduct." This Rule is inapplicable because the Commission found probable cause that Judge White had committed sanctionable conduct. Second, Md. Rule 16-808(j) states "[i]f the Commission finds by clear and convincing evidence that the judge has a disability or has committed sanctionable conduct, it shall either issue a public reprimand for the sanctionable conduct or refer the matter to the Court of Appeals pursuant to section (k) of this Rule. Otherwise, the Commission shall dismiss the charges filed by the Investigative Counsel and terminate the proceeding." This Rule is inapplicable because the public hearing on the charges has not yet occurred. Because neither of the above-mentioned Rules are applicable, and independent research has failed to find another applicable rule, we find that there is not a mechanism by which we may grant Judge White's Motion to Dismiss.

IT IS HEREBY ORDERED, by unanimous vote of the Commission Members

presiding at the hearing on June 27, 2016, that Judge White's Motion to Dismiss is denied.

Dated: June 30, 2016

Judge Alexander Wright, Jr.
Chair, Maryland Commission on Judicial Disabilities