

IN THE MATTER OF
THE HONORABLE
LYNN STEWART MAYS

* BEFORE THE
* MARYLAND COMMISSION
* ON JUDICIAL DISABILITIES
* Case Nos. 2015-69 and 2015-108

* * * * *

RESPONDENT'S ANSWER TO CHARGES

Respondent, the Honorable Lynn Stewart Mays ("Judge Mays"), by and through undersigned counsel, submits this Answer to the Charges served on her by Investigative Counsel on September 21, 2016.

1. Judge Mays admits that she has served as an Associate Judge of the Circuit Court for Baltimore City since 2002.
2. With regard to the allegations contained in paragraph 2 of the Charges, Judge Mays admits that she presided over certain proceedings in *State v. Dana Brown*, Case Nos. 114213011-013, and *State v. Charles Washington*, Case Nos. 114213014-016, on December 9, 2014, and that she presided over certain proceedings in *State v. Timothy Lynn*, Case No. 812341002, on July 14, 2015. Judge Mays objects to Investigative Counsel's reliance on information from undisclosed and unidentified "sources." Judge Mays denies that she was rude or disrespectful toward a prosecutor in the *Brown* and *Washington* cases, or a probation agent in the *Lynn* case.
3. Judge Mays is not in a position to admit or deny the allegations contained in paragraph 3 of the Charges.
4. Judge Mays denies the allegations contained in paragraph 4 of the Charges.

5. Judge Mays denies the allegations contained in paragraph 5 of the Charges. And, to the extent the Charges allege violations of Rule 18-100.4(a), (b), and (c), the preamble to the Code of Judicial Conduct, these provisions are merely general or aspirational statements that shed light on how the Code should be interpreted. They are not rules of conduct that may form the basis for discipline, and their inclusion in the list of alleged violations is improper.

6a. With regard to the allegations contained in paragraph 6a of the Charges, Judge Mays objects to Investigative Counsel's unfair characterization of her statements and conduct, Investigative Counsel's incomplete and inaccurate quotations from audiovisual recordings of court proceedings, and Investigative Counsel's misleading additions of emphasis in those quotations. Judge Mays denies that she "threaten[ed]," "interrogate[d]," "ridiculed," "badgered," or "threatened personnel action" concerning a prosecutor, or that she employed a "condescending and sneering line of questioning," or that she "yelled, sighed and groaned."

Assistant State's Attorney Christine Goo had cavalierly flouted the Court's direction at an earlier bail review proceeding that she interview a Mr. Spence, who was a key witness concerning the crime that Mr. Brown was alleged to have committed. This was, apparently, one of the key reasons why Mr. Brown had been held on bond and why the bail review had been postponed. Ms. Goo made no attempt to interview Mr. Spence until after he was arrested on another charge and became represented by counsel, some seven to ten days after the first bail review hearing. Ms. Goo offered no valid excuse or explanation for not having complied with the Court's order.

Accordingly, Judge Mays expressed her displeasure and attempted to make it clear to Ms. Goo, as a representative of the State's Attorney's Office, that instructions from the Circuit Court are to be followed, and compliance is not optional. Indeed, Judge Mays might have been within her rights to cite Ms. Goo for contempt of court, but chose instead to simply properly impress upon her the seriousness of the issue and the obligations of all lawyers appearing in the Circuit Court to respect the Court's orders and instructions. If prosecutors were to be permitted to pick and choose which Court orders they follow, then defense attorneys, parties, witnesses and others who appear in court could do the same. Judge Mays acted appropriately in condemning the Assistant State's Attorney's willful noncompliance with the Court's instructions.

In all other respects, Judge Mays presided over the December 9, 2014 hearings in a thorough, conscientious and respectful manner. She gave all parties a chance to make any arguments and provide any factual information they wished. She reached a reasonable and proper decision on the bail issue before her. It bears noting that, although both Mr. Brown and Mr. Washington were charged with a number of serious crimes, including multiple counts of attempted first degree murder, assault, robbery, reckless endangerment, and weapons violations, court records indicate that, on March 16, 2015, all charges against Mr. Brown and Mr. Washington were dismissed, except one count each of possessing a handgun, to which they tendered *Alford* pleas in exchange for sentences of one year in prison, the majority of which had already been served. Judge Mays' concerns that Ms. Goo's conduct may have prejudiced the State's case, or worse,

that it may have caused defendants to remain in pretrial detention longer than necessary and without justification, were not baseless.

It is also noteworthy, as defense attorney Andrew Alperstein made very clear in his remarks to the Court in *State v. Dante Bailey*, Case No. 114310024, which immediately preceded *State v. Brown*, that the State's Attorney's Office had repeatedly acted in an irresponsible, uncooperative, and uncivil manner in its dealings with him and had failed or refused to communicate with him about key issues in the case. Thus, the prior course of conduct in the *Bailey* case between the defense attorney and several representatives of the State's Attorney's Office, compounded by Ms. Goo's disrespectful decision to ignore the Court's order, render the criticism that Judge Mays directed to Ms. Goo fully justified and appropriate.

6b. With regard to the allegations contained in paragraph 6b of the Charges, Judge Mays objects to Investigative Counsel's unfair characterization of her statements and conduct and Investigative Counsel's incomplete quotations from audiovisual recordings of court proceedings. Judge Mays denies that she "brusquely yelled" at the complainant, Probation Agent McDougald, or that she referred to Agent McDougald's report "sarcastically." Judge Mays quite properly dismissed the violation of probation charge because the statement of charges was irreconcilably inconsistent with its supporting narrative and, therefore, the State would not have been able to sustain its burden of proof. Judge Mays has a legitimate expectation that the probation agents who appear in the Circuit Court are prepared, pay attention in court, and submit accurate reports. Probation agents play an important role in the justice system, and judges rely

heavily on their reports and assessments when making crucial decisions concerning probationers' liberty. For the system to work, judges must be able to rely on these reports as being truthful and accurate. Judge Mays' criticism of Agent McDougald's report was fully justified and appropriate.

6c. With regard to the allegations contained in paragraph 6c of the Charges, Judge Mays denies that the operation of the recording system in her courtroom violated her probation or otherwise violated the Code of Judicial Conduct. There is absolutely no rational basis upon which to conclude that having the courtroom camera pan on the parties, attorneys, and courtroom audience constitutes a violation of any judicial rule or canon. Certainly none of the Rules governing judicial integrity and the avoidance of impropriety set forth in the Code of Judicial Conduct prohibit, or even address, the operation of courtroom cameras. Further, even the most careful reading of the terms of Judge Mays' two year probation agreement fails to disclose any provision respecting the use and operation of the courtroom recording camera. While there is a provision that Investigative Counsel will randomly review audiovisual recordings of courtroom proceedings before Judge Mays, as evidenced by the two cases before the Commission, Judge Mays' conduct in her courtroom in these two matters was duly recorded, and Investigative Counsel has had no problems determining what the Judge said and did in the cases.

Moreover, close inspection of the audiovisual recordings provided by Investigative Counsel reveals that the recording system in Judge Mays' courtroom was not "manipulat[ed]" in the way that the Charges describe. The recording system


automatically focused on the bench, giving a full view of Judge Mays, during bench conferences. For example, during the proceeding that immediately followed the *Lynn* case that is the subject of Paragraph 6b of the Charges, *State v. White*, Case No. 811325030, the recording system focused solely on Judge Mays and counsel during a bench conference lasting approximately three minutes.

7. Judge Mays denies the allegations contained in paragraph 7 of the Charges. She has done nothing "prejudicial to the proper administration of justice."

8. Proceedings initiated to address Maryland Judges' conduct and efforts to impose serious sanctions upon hardworking and productive members of the bench should be reserved strictly for cases in which real – not imagined – judicial misconduct can be rationally perceived. The Charges against Judge Mays do not evince any sanctionable conduct. Accordingly, both matters should be dismissed.

Respectfully submitted,

Dated: October 20, 2016


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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of October 2016, a copy of the foregoing document was sent by electronic mail and by courier to:

Carol A. Crawford, Esquire
Investigative Counsel
Maryland Commission on Judicial Disabilities
[ADDRESS REDACTED]



Andrew Jay Graham