



STATE OF MARYLAND

BEFORE THE COMMISSION ON JUDICIAL DISABILITIES

IN THE MATTER OF: *

JUDGE ALFRED NANCE * CJD 2015-121, CJD 2015-163 and

* CJD 2016-012

RESPONSE OF JUDGE NANCE

The Honorable Alfred Nance (“Judge Nance”) through undersigned counsel and pursuant to Md. Rule 18-407(c) files this response to the charges in the above referenced cases.

General Response

Judge Nance denies that he committed sanctionable conduct as defined in Md. Rule 18-401(k).

Judge Nance denies that he violated the Maryland Code of Judicial Conduct as promulgated in Md. Rule 18-100 et seq.

Judge Nance respectfully requests that the Commission dismiss the charges filed by Investigative Counsel and terminate the proceeding.

Specific Response to Facts

Without waiving the Motion for a More Definite Statement and the Motion to Strike and to the extent that the charges allege some specific facts, Judge Nance denies that he “was generally unprofessional in his demeanor and interactions,” that he has a “disrespectful and unprofessional demeanor,” that he “was relentlessly mocking,” and that he used “a demeaning and sarcastic tone.”

The specifics.

State v. Braxton

- Judge Nance found Ms. Levi in contempt - a legal decision – not sanctionable conduct.

- Judge Nance declared a mistrial - a legal decision – *not* sanctionable conduct.
- May 26, 2015: Discussion re: courtroom management – You’re “wasting my time at the moment, okay?” “You’re interfering with a trial.” A judge has the authority and the duty to manage the conduct of all persons in the courtroom, specifically recalcitrant counsel – *not* sanctionable conduct.
- May 28, 2015: Discussion re: legal argument - “Is there something you want to bring to my attention?” “I was trying to figure out what was happening.” “I’m just a little ole country lawyer, I’m just trying to figure that out, that’s all.” That was an appropriate colloquy with counsel – *not* sanctionable conduct.
- May 29, 2015: Discussion re: Md. Rule 5-615 and local Montgomery County practice. “Okay, we call it a motion to sequester unless you’re from Montgomery County.” Explaining to a lawyer the correct citation of a rule and the local practice is *not* sanctionable conduct.
- May 29, 2015: Discussion re: bathroom breaks. A judge has the authority and the duty to manage the conduct of all persons in the courtroom, specifically recalcitrant counsel – *not* sanctionable conduct.
- May 29, 2015: Discussion during jury selection re: the volume of Jurors’ responses and dealing with a sleeping juror. A judge has the authority and the duty to manage the conduct of all persons in courtroom, including making certain that participants speak so that others can hear what is being said and that persons not sleep during judicial proceedings – *not* sanctionable conduct.
- June 1, 2015: Discussion re: counsel’s interaction with her client. “Hovering like a mother hen.” A judge has the authority and the duty to manage the conduct of all persons

in the courtroom, including making certain that participants, specifically recalcitrant counsel, interact professionally and appropriately with others during the proceedings – *not* sanctionable conduct.

- June 2, 2015: Discussion re: legal argument, witness examination and pace of the trial. Again, it is the judge who controls the courtroom – not counsel, specifically recalcitrant counsel. A judge has the authority and the duty to manage the conduct of all persons in the courtroom – *not* sanctionable conduct.
- June 3, 2015: Discussion re: declaration of a mistrial. A trial judge makes the legal determination of when to declare a mistrial which is reviewable on appeal. It is a legal decision – *not* sanctionable conduct.

State v. Harcum & Jones

- September 1, 2015: Discussion re: exiting the courtroom. The defendant had an open bench warrant and was about to be placed into custody by the Sheriff's Department. A judge has the authority and the duty to manage the conduct of all persons in the courtroom – *not* sanctionable conduct.

State v. Blackwell

- December 10, 2015: Discussion re: Blackwell plea and his physical motions in the courtroom. A judge has a duty to make certain that a defendant understands his constitutional rights and that a guilty plea is knowingly and voluntarily made. A judge has the authority and the duty to manage the conduct of all persons in the courtroom – *not* sanctionable conduct.
- December 10, 2015: Discussion re: possible violation of probation. A judge can impress upon a defendant the seriousness of the rules and regulations of probation and can warn a

defendant of the consequences of violating the terms of probation - *not* sanctionable conduct.

Motion for More Definite Statement

Md. Rule 18-407(a) requires that: “The charges *shall* (1) state the nature of the alleged disability or sanctionable conduct, including each Rule of the Maryland Code 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.” (Emphasis added.)

The charges do allege each Rule of the Maryland Code of Judicial Conduct allegedly violated by Judge Nance (Charges ¶ 5). However, the charges do *not* adequately or sufficiently “allege *specific facts* upon which the charges are based.” In addition, the charges are “so vague and ambiguous that [Judge Nance] cannot reasonably frame [a response].” (*See*, Md. Rule 2-322(d))

The introductory allegations in paragraph six do not contain *specific facts* – there are no references to specific language or citations to transcript pages of the proceedings. There are mere conclusory allegations. For example, the charges summarily allege the following:

- “Disrespectful *demeanor* toward and *general mistreatment* of Ms. Levi” - *not* specific facts.
- “His *chastising* her and subjecting her to *public humiliation and embarrassment*” - *not* specific facts.
- “His *mocking and insulting* her, his often referring to her as ‘Lady’” - *not* specific facts.
- “His using a demeaning and *sarcastic tone*” - *not* specific facts.
- “His *general bias* and/or prejudice against Ms. Levi, including his repeatedly calling her integrity into question” - *not* specific facts.

- “His *berating* Ms. Levi in the presence of the jury” - *not* specific facts.
- “Judge Nance directed his *ire* not only toward Ms. Levi, but also toward jurors, litigants, attorneys, defendants, witnesses, law enforcement personal, and other persons present in the courtroom,” - *not* specific facts.
- “Rude and disrespectful” and “his *tone* was relentlessly *mocking*” – *not* specific facts.

Demeanor, tone and ire are vague and ambiguous terms – Judge Nance cannot reasonably frame a response to such amorphous allegations.

Likewise the phrase “including, but not limited to” is so vague and ambiguous that Judge Nance cannot reasonably frame a response. Not limited to what, to when, to where? Md. Rule 18-407(a) requires *specific facts* upon which the charges are based. The charges fail to specifically and factually delineate the alleged sanctionable conduct. In the seminal case of *In re Diener*, 268 Md. 659, 304 A.2d 587 (1973) the Court of Appeals ruled that the notice requirement was central to the fairness of the judicial disciplinary process. In *Diener* the court found that the notice of the charges must be “sufficient to apprise [the judge] and to ‘specify in ordinary and concise language the complaint against the judge.’” *In re Diener*, 268 Md. 659, 672, 304 A.2d 587, 595 (1973). The charges in the instant case do not comply with either Md. Rule 18-407(a) or the dictates of *Diener*.

Judge Nance is entitled to a more definite statement.

Motion to Strike

In the alternative, the hearing in this case should be confined solely to the *specific facts* alleged in the charges (the bullet points in ¶ 6) and all other conclusory allegations should be stricken from the charges. In addition, there should be no other charges and/or evidence offered that falls into the category of “including, but not limited to.” It would be a denial of procedural

due process and fundamental fairness to require Judge Nance to respond to non-specified facts and for Judge Nance to guess or speculate what *specific facts* are included in the phrase, “including, but not limited to.”

Proceedings before the Commission are clearly governed by the fundamental rules of fairness. *In re Diener, supra* at 682. Accord, *In re Bennett*, 301 Md. 517, 527, 483 A.2d 1242, 1247 (1984) (“All factors considered, we find no breach of the ‘fundamental rules of fairness.’ Accordingly, we hold this contention to be without merit.”) Fundamental fairness requires that Judge Nance not be forced to speculate as to what the *specific facts* are in this case. He should not be forced to guess what “not limited to” means.

Judge Nance is entitled to have all non-specific facts stricken from the charges.

December 29, 2016

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response was hand-delivered this 29th day of December, 2016 to the following individuals:

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