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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

**MISSISSIPPI COMMISSION ON
JUDICIAL PERFORMANCE**

PETITIONER

VS.

2007-JP-01959

**NICKI M. BOLAND
JUSTICE COURT JUDGE**

RESPONDENT

**BRIEF ON BEHALF OF THE
MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE**

The Mississippi Commission on Judicial Performance ("Commission") herewith files this brief with the Supreme Court of Mississippi, in accordance with Rule 10D of the Rules of said Commission. This brief is submitted on behalf of the Mississippi Commission on Judicial Performance relating to the conduct of Nicki M. Boland, Justice Court Judge for Hinds County, District One, Mississippi ("Respondent").

STATEMENT OF THE ISSUES

1. Did the conduct of the Respondent, Justice Court Judge Nicki M. Boland, constitute willful misconduct in office and conduct prejudicial to the administration of justice

which brings the judicial office into disrepute, pursuant to Section 177A of the Mississippi Constitution of 1890, as amended?

2. Should the Respondent, Justice Court Judge Nicki M. Boland, be suspended from office without pay for a period of 90 days and assessed a fine of \$4,250.00 by the Mississippi Supreme Court, pursuant to Section 177A of the Mississippi Constitution of 1890, as amended and assessed the costs of this proceeding in the amount of \$3,532.06, or an alternative sanction in light of Respondent's failed bid for re-election?

STATEMENT OF THE CASE

The Commission, on September 14, 2006, filed Formal Complaints in Inquiry Concerning a Judge Nos. 2006-121 (C.P. 2-7) and 2006-084 (C.P. 8-14) charging the Respondent with willful misconduct in office and conduct prejudicial to the administration of justice which brings the judicial office into disrepute in violation of Section 177A, Mississippi Constitution of 1890, as amended. On October 25, 2006, the Respondent filed Answers to the Formal Complaints wherein Respondent basically denied the allegations therein. (C.P. 16-20).

Inquiry Concerning a Judge No. 2006-084/121 came on for hearing on Wednesday, September 19, 2007 at 9:00 a.m. in the offices of the Mississippi Commission on Judicial Performance in Jackson, Mississippi, before a Committee comprised of Gaines S. Dyer, Presiding, Judge Melvin Ray, and Mr. Rick J. Coulter. Representing the Commission were Honorable Darlene D. Ballard, Honorable Ayanna N. Batiste and Honorable Luther T.

Brantley, III. Representing the Respondent was Honorable Robert F. Wilkins.

On October 5, 2007 the Committee filed its Findings of Fact and Recommendation. (C.P. 74-84). Thereafter, on October 19, 2007 both parties filed Objections to Committee's Findings of Facts and Recommendations. (C.P. 85-111).

On October 31, 2007, at a special meeting called by the Chairman of the Commission, the Commission unanimously accepted and adopted the Committee Findings of Fact and Recommendation (C.P. 112) and on that same date entered its Findings of Fact and Recommendation. (C.P. 113-125). The Commission, by clear and convincing evidence, found that Respondent's conduct in Inquiry Concerning a Judge No. 2006-084 constituted willful misconduct in office and conduct prejudicial to the administration of justice pursuant to Section 177A of the Mississippi Constitution of 1890, as amended; however, the Commission found that Commission counsel failed to prove by clear and convincing evidence that Respondent's conduct in Inquiry Concerning a Judge No. 2006-121 constituted willful misconduct in office and conduct prejudicial to the administration of justice and dismissed the complaint in that cause. (C.P. 124-125). Commission counsel disagrees with the dismissal of the same.

STATEMENT OF THE FACTS

NO. 2006-084

On or about September 2, 2005, Mark Moore, filed an Affidavit for Bond to Keep the Peace in the Justice Court of Hinds County, Mississippi which was docketed as Cause No. 1374/292. (Ex. 3). Moore alleged that Brett Prince had threatened to harm Moore by "beating] his f...ing(sic) ass" if Moore did not remove himself from Prince's property. (Ex. 3, Pg. 2). Moore and Prince were neighbors at the time.(Tr.261)

On or about September 9, 2005, Prince was arrested on a warrant executed by Justice Court Judge Bill Skinner upon what purported to be the "charge of peace bond.". (Ex. 3, Pg. 4). There were no accompanying affidavits or warrants alleging Prince's violation of any law. (Ex. 3). Based upon Prince's alleged "violation" of the peace bond statute, he was detained in the Hinds County Detention Center until his initial appearance before the Respondent on September 13, 2005, some four (4) and a half days later. (Ex. 3, Pg. 6; Tr. 263, 340-341).

At the initial appearance Mr. Prince executed a waiver of attorney form, which, according to Prince and others, was never explained nor read to him; he was simply informed by the Respondent that he was "to sign the form.". (Ex. 3, Pg. 7; Tr. 280-283, 288, 335). The Respondent disputes this and says that Prince voluntarily "waived" his right to be represented by counsel. (Tr. 391, 394). Thereafter Prince entered a plea of "guilty" to the charge of "peace bond" under Mississippi Code Annotated Section 99-23-1 et seq. and was

sentenced to one (1) year in jail which would be suspended upon entering a court certified drug treatment facility. The Order provided the defendant with his choice of one (1) year in jail “or” a certified drug treatment facility. The full cost of the treatment provided was to be the amount of the defendant’s fine. (Ex. 3, Pg. 6, 8-10; Tr.264-266, 345). On September 15, 2005, seven days after his incarceration, Prince’s mother arranged his transfer to the Country Oaks Treatment Center where he remained until October 20, 2005 upon the Order of the Respondent. (Tr. 350). The cost of the Court ordered treatment was \$750.00 a month. (Tr. 350).

On or about October 19, 2005 Prince allegedly violated certain terms and conditions of said treatment in that he failed to report to work and went to his home without permission. (Tr. 268-270). As a result of this Prince was “kicked out” of Country Oaks. (Tr. 268-270). On that same date, the credible proof shows that the Respondent, without the defendant being present and without hearing any sworn testimony or for that matter any lawful hearing whatsoever *sua sponte*, Prince was found to have been non-compliant with the terms of his probation. (Tr. 405-412). Further, the Respondent found the defendant “guilty” of “probation violation” and ordered that Prince be held in jail without bond until Wednesday, October 26, 2005 when a second “hearing” was to take place. (Tr. 436-439). The Order entered by the Respondent, on its face, reflects that the defendant having been charged with peace bond and the State [and] “the defendant having announced ready for trial...[and] the Court having heard evidence and testimony finds the defendant guilty.” (Ex.

3, Pg. 14). The Respondent's order does not reflect the truth as there was no testimonial evidence, nor was the defendant present. (Tr. 411-412). Simply put, there was no hearing and the Order and the words therein lack veracity and the Respondent went further still by additionally ordering the defendant to serve "six months in jail." (Tr. 411-412; Ex. 3, Pgs. 12-14).

Prince's parents soon thereafter hired an attorney, Randy Clark, who was paid the sum of \$3000, as counsel for their son. The hearing set by Respondent for October 26, 2005, was never placed on the docket nor was Prince ever brought to Justice Court from the jail. Prince's parents and grandparents were in court however. (Tr. 354, 357, 361). After some discourse the Respondent referred to them as "enablers" and stated she would hold Mrs. Prince in contempt if she had the authority to do so. (Tr. 357). Respondent, after consulting with Prince's attorney later that day, finally prepared an Order Setting Bail and Conditions of Release. (Tr. 355-356). In that Order Respondent set bail at \$5,000. More unlawful conditions were also placed on Prince. (Ex. 14). The Respondent ordered Prince to participate in daily community service, restricted Prince from leaving the State of Mississippi, imposed a curfew of 7:00 p.m., disallowed the possession of firearms, drugs and alcohol and finally that he undergo treatment for medical, psychiatric, emotional and substance abuse at his expense at Good Samaritan Center and that he attend out-patient counseling, and to undergo random urine analysis to detect prohibited or controlled substance as directed by Good Samaritan. (Ex. 14). Also, as part of the Order, Respondent

ordered that Prince, age 22, live with his grandparents and have “no contact” with his parents for thirty (30) days. (Ex. 14). The parents, who the Respondent adjudged as “enablers” had not requested, nor wanted, a “no contact” order. (Tr. 444). The record reflects according to Mr. Clark’s testimony that he only consented to the terms and conditions of the Order so that his client would have an opportunity to be immediately released from his unlawful custody and seek an appeal. (Tr. 322-327, 330).

The aforementioned Order was never entered, but was rescinded by the Respondent later in the day without notice to Prince’s attorney. (Tr. 326, 355, 359-360, 440-442). Therefore, Prince again remained incarcerated. Why the Order was rescinded remains uncertain. (Tr. 326, 355, 359-360, 440-442).

At sometime thereafter, according to Judge Boland, Mr. Clark “threatened her with a judicial performance complaint.” (Tr. 441). Mr. Clark testified that he had assumed his client would finally be released from jail pursuant to the wording on the Order of October 26, 2005, and was very upset that he was not. (Tr. . 326-327). Judge Boland later entered an Order of release that finally allowed his release after posting a \$1,000.00 cash bond. (\$500.00 more than the statutory maximum). (Ex. 3, Pgs. 15-16). Importantly, November 4, 2005 was the first date that a bond of any type was set in which Mr. Prince could obtain his release. (Ex. 15-16). Mr. Prince was incarcerated in the County Jail or in treatment at the Country Oaks Treatment Center from September 9, 2005 until November 4, 2005. (Tr. 272).

NO. 2006-121

On or about April 26, 2006, Respondent Nicki M. Boland presided over Hinds County Justice Court Cause Nos. 177/524-525, *State of Mississippi v. Austin R. Kintsley*, at which time Mr. Kintsley entered pleas of guilty to the charges of domestic violence and disturbing the peace. (Ex. 2 and 4). The Respondent entered an Order sentencing Kintsley to serve twelve (12) months in jail along with fines and court costs in the amount of \$1000 with an additional twelve (12) months probation supervised by the Good Samaritan Center with additional drug and alcohol treatment if necessary along with anger management at his own expense. (Ex. 2 and 4). Additionally Kintsley was to serve six (6) months and pay a \$500 fine for creating a disturbance. (Ex. 2 and 4).

An additional Order (“mittimus”) was sent to the jail showing that Kintsley was convicted of domestic violence, simple assault and disturbing the peace. The sentence reflected in that Order was “1 year-on domestic violence and 6 months on disturbing the peace-18 months imprisonment, and/or pay a fine of \$1000 plus costs.” (Ex. 2, Pg. 3; Ex. 4, Pg. 4). This Order was dated April 26, 2006 as well. (Ex. 2, Pg. 3; Ex. 4, Pg. 4).

The maximum penalty for domestic violence is a total of six (6) months to serve and \$500 fine; rather than the erroneous 12 months/1 year sentences as reflected in the April 26, 2006 Order and mittimus. (Tr. 43, Ex. 1).

At the hearing, however, Judge Boland presented into evidence an additional Order,

which was not contained in or made a part of the certified court records, also dated April 26, 2006 which indicates that for both charges Kintsley was to serve a total of twelve (12) months and pay \$1000 in total fines; this along with the 1 year/12 month probation period. (Ex. 6).

The Respondent judge who is also a licensed member of the State Bar of Mississippi testified that the two previous Orders, while legally incorrect, were simple errors and that Respondent was well aware of the statutory maximum sentence for domestic violence. (Tr. 202-204, 218-219).

Respondent testified that when this matter came to her attention, she corrected the clerical error, to amend the sentence to reflect six (6) months to serve on the domestic violence charge. (Tr. 223-224, 227; Ex. 2, Pg. 4).

SUMMARY OF THE ARGUMENT

The Respondent improperly incarcerated a litigant for the crime of “peace bond” in violation of the litigant’s Constitutional rights as a citizen of this country. Judge Boland, as both a Justice Court Judge and a member of the Mississippi Bar, manipulated the litigant and his family using her unique power as judge. In so doing the Respondent, inter alia, violated Mississippi Annotated Section(s) 99-23-1, 99-23-5 and 99-23-13 and Canons 1, 2A, 2B, 3B(2), 3B(4), 3B(7), 3B(8) and 3C(1) of the Code of Judicial Conduct and Section 177A of the Mississippi Constitution of 1890, as amended.

In addition, Respondent incarcerated a litigant for a period of time beyond that authorized by statute. Though the Commission dismissed this complaint against Respondent, the Commission recognized that though the Respondent's conduct may well have been a "clerical error" as she claimed, the defendant Mr. Kintsley did have to bear the expense of an attorney to file a Petition for Writ of Certiorari in the County Court of Hinds County as the Respondent did not attempt to correct her mistake until after she lost jurisdiction over the matter. Commission counsel respectfully disagrees with the Commission's stance that this complaint should be dismissed.

Respondent's actions constitute willful misconduct in office and conduct prejudicial to the administration of justice which brings the judicial office into disrepute as defined by the Mississippi Supreme Court. Miss. Comm'n on Judicial Performance v. Carr, 786 So.2d 1055, 1058 (Miss. 2001); In re Quick, 553 So.2d 522, 524-25 (Miss. 1989).

The Respondent should be suspended from office for a period of ninety (90) days without pay, fined in the sum of \$4,250.00 and assessed costs of the proceedings in the sum of \$3,532.06. Or, in the alternative, considering Respondent's failed bid for re-election, that the suspension be modified to an increased fine reflective of the recommended loss of judicial salary.

ARGUMENT

I.

THE CONDUCT OF THE RESPONDENT, JUSTICE COURT JUDGE NICKI M. BOLAND, CONSTITUTE WILLFUL MISCONDUCT IN OFFICE AND CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE WHICH BRINGS THE JUDICIAL OFFICE INTO DISREPUTE, PURSUANT TO SECTION 177A OF THE MISSISSIPPI CONSTITUTION OF 1890, AS AMENDED?

Section 177A of the Mississippi Constitution of 1890 authorizes the Mississippi Supreme Court to sanction judges for “willful misconduct in office or conduct which is prejudicial to the administration of justice which brings the judicial office into disrepute.”

In Miss. Comm’n on Judicial Performance v. Carr, 786 So.2d 1055, 1058-59 (Miss. 2001)

the Court defined these grounds for sanctions as follows:

Willful misconduct in office is the improper or wrongful use of power of his office by judge acting intentionally or with gross unconcern for his conduct and generally in bad faith. It involves more than an error of judgment or a mere lack of diligence. Necessarily, the term would encompass conduct involving moral turpitude, dishonesty, or corruption, and also any knowing misuse of the office whatever the motive. However, these elements are not necessary to finding bad faith. A specific intent to use the powers of the judicial office to accomplish a purpose which the judge knew or should have known was beyond the legitimate exercise of his authority constitutes bad faith....Willful misconduct in office of necessity is conduct prejudicial to the administration of justice that brings the judicial office into disrepute. However, a judge may also, through negligence or ignorance not amounting to bad faith, behave in a manner prejudicial to the administration

Miss. Comm'n on Judicial Performance v. Russell, 691 So.2d 929, 937 (Miss. 1997). This Court can generally recognize examples of willful misconduct when they are presented for review. In re Anderson, 412 So.2d 743, 752 (Miss. 1982) (Hawkins, J., specially concurring). The misconduct complained of need not be intentional or notorious; rather negligence, ignorance, and incompetence suffice as grounds for behavior to be classified as prejudicial to the administration of justice which brings the judicial office into disrepute and thus worthy of sanctions. In re Quick, 553 So.2d 522, 527 (Miss. 1989).

The Respondent, Hinds County Justice Court Judge Nicki Boland, found Brett Prince guilty of the “crime” of peace bond. She originally sentenced him to 12 months in the Hinds County Detention Center. There is no crime of “peace bond” and there was no authority whatsoever to incarcerate Prince. Respondent then gave him the option of entering a court ordered drug and alcohol treatment program, though drugs and alcohol were not at issue. He entered such a program; he was later removed from the program and placed back in the jail. Respondent subsequently reduced his sentence on the fictitious “crime” to 6 months incarceration. Finally, after hiring an attorney, Prince was released from jail on bond, having been involuntarily in jail or treatment nearly 60 days.

The Commission determined, after hearing testimony and reviewing other evidence, by clear and convincing evidence, that the acts of the Respondent, as described herein, were willful and demeaning to the judicial office of Justice Court Judge. The Respondent showed no contrition and felt her actions were proper. Respondent’s actions are a violation of 1, 2A, 3B(2), 3B(4), 3B(7), 3B(8) and 3C(1) of the Code of Judicial Conduct of

Mississippi and and Section 177A of the Mississippi Constitution of 1890, as amended.

Canon 1 of the Code of Judicial Conduct of Mississippi Judges provides that:

**A Judge Should Uphold the Integrity and
Independence of the Judiciary**

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code should be construed and supplied to further that objective.

The Commission asserts that Respondent failed to observe high standards of conduct by repeatedly entering unlawful orders resulting in the unlawful incarceration of a litigant and the unauthorized detention of the litigant in a drug treatment facility.

Canon 2A states as follows:

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

The commentary to Canon 2A further states that “[P]ublic confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge’s conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.” The Respondent neither respected nor complied with the law, as clearly

documented in the record and the Commission findings and conclusions. She jailed a litigant for a “crime” that did not exist and failed at every turn to afford that litigant his constitutional rights. Her actions destroyed any confidence the litigant or his family had in the integrity of the judiciary.

Canon 2B states:

Judges shall not allow their family, social or other relationships to influence the judge’s judicial conduct or judgment. Judges shall not lend the prestige of their offices to advance the private interests of the judges or other; nor shall judges convey or permit others to convey the impression that they are in a special position to influence the judges. Judges shall not testify voluntarily as character witnesses.

Since Respondent has been on the bench, she has had the impression that justice court is a “problem solving” court and has been instrumental in establishing a misdemeanor drug court in the Hinds County Justice Court.

In testimony before the Commission, Respondent stated that she believed peace bonds to be an avenue that allowed her to get litigants into a “problem solving” court. (Tr. 398).

On cross examination, the following exchange occurred:

Q. And so, based upon what he told you, you decided that he needed to go to drug court?

A. What I decided was that this might be the perfect opportunity to get someone into the drug court program, that this – with the confusion about peace bonds, this might be the perfect opportunity to help somebody and

their family by getting them into a problem-solving court. (Tr. 434).

Respondent excused her actions by claiming the judiciary is confused about peace bond procedures and, at the same time, used that alibi as a reason to advance her interest in the misdemeanor drug court ideation. As a result, the Respondent allowed her personal opinions or beliefs about the litigant's conduct to influence her judgment by requiring Prince to go to drug treatment in lieu of jail (when she had absolutely no authority to order either) thereby advancing the private interests of said drug treatment facility. In fact, no-one ever asked that Respondent be incarcerated.

In questioning by a panel member, Respondent was asked:

Q. Mr. Dyer: What does the affidavit say that the affiant was requesting, Judge Boland?

A. That he fears for his life and family and prays that the defendant be put under bond to keep the peace. That's the standard language.

Q. Mr. Dyer: Placed under a bond to keep the peace.

A. That's correct.

Q. Mr. Dyer: And what did you do? Did you place him under a bond to keep the peace?

A. No.

Q. Mr. Dyer: What did you do?

A. Tried to get him in drug – in our drug court.

Q. Mr. Dyer: By sentencing him to a year in jail.

A. But he – we weren't gonna – it wasn't to keep him in jail. At that time we didn't know how to get anybody into drug court.

Q. Mr. Dyer: If he couldn't find a certified drug treatment facility, if he

couldn't find that, he had a year of sentence, did he not?

A. No. Because, see, we weren't gonna put him in jail.

Q. Mr. Dyer: Where did he go at the end of this order? Where did he go?

A. Well, he went to jail.

Respondent's actions in this matter were clearly an abuse of the office of justice court judge, an office in which her authority is limited to that permitted by law.

However, the Commission, asserts that Respondent was not considering what was permissible by the statutes involving peace bonds, but only how to get the litigant before her into her new drug court program though he was never a viable candidate.

Canon 3 of the Code of Judicial Conduct provides that:

**A judge Should Perform the Duties of Judicial
Office Impartially and Diligently**

Canon 3B (2) then says:

**A judge shall be faithful to the law and maintain
professional competence in it. A judge shall not be
swayed by partisan interests, public clamor, or fear of
criticism.**

The Respondent herein was neither faithful to the law nor did she remotely maintain professional competence in it. The Respondent, while a justice court judge, has a law degree and is a member of the Mississippi Bar. The peace bond statute, is found at MCA Section 99-23-1. Respondent claims this statute is too confusing for her, as a lawyer, to understand. The statute is in fact quite simple. It provides that:

Whatever complaint is made under oath by a credible person to a justice of the peace that any person has threatened to commit an offense against the person or property of another, and such justice is satisfied that there is good reason to fear the commission of such offense, he may issue a warrant to arrest and bring the person complained of before him or some other justice of the peace; and the justice of the peace before whom such person may be brought shall examine into the charge, and if there be just reason to apprehend that such person will commit the offense, he shall be required by the justice to enter into bond in such sum, with such sureties, and for such time not exceeding twelve months, as the justice may prescribe, conditioned to keep the peace toward the person against whom or whose property there is reason to fear offense may be committed.

If the presiding judge deems “there be just reason to apprehend that such person will commit the offense” alleged in the affidavit, the only authority the judge has is to require the defendant to post a bond of not more than \$500.00. MCA Section 99-23-13 & 99-23-35. There is absolutely and unequivocally no “crime” of peace bond and no authority to incarcerate a litigant for 12 months (or any other period of time) or order drug treatment. Respondent was not faithful to the law and totally lacked professional competence therein.

Canon 3B(4) states:

Judges shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacities, and shall require similar conduct of lawyers, and of their staffs, court officials, and others subject to their direction and control.

Again, Respondent was neither patient, dignified nor courteous in dealing with

Mr. Prince, his family or their attorney. Although drugs or alcohol were not a factor in the peace bond affidavit, in open court Respondent referred to the family as “enablers” and expressed a desire to jail Mrs. Prince for contempt for failing to attend Al-Anon. Her personal disdain for Mr. Prince was further exhibited by her unlawful “custody” order wherein she essentially gave custody of a 22 year old man to his grandparents, forbidding contact with his parents.

Canon 3B(7) provides:

A judge shall accord to all who are legally interested in a proceeding, or their lawyers, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

- (a) where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized: provided:**
 - (I) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and**
 - (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allow an opportunity to respond.**
- (b) Judges may obtain the advice of a disinterested expert on the law applicable to a proceeding before them if the judges give notice to the parties of the person consulted and the substance of the advice, and afford the parties reasonable opportunity to respond.**
- (c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge’s**

adjudicative responsibilities or with other judges.

- (d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.**
- (e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.**

Respondent engaged in a course of improper ex parte communications with fellow Hinds County Justice Court Judge William Skinner, representatives of the Country Oaks Treatment Center and others throughout the approximately 60 days Mr. Prince was incarcerated or in treatment.

Judge Skinner, a neighbor of the Prince family, conversed with Respondent regarding past behavioral problems with Brett Prince, of which he had knowledge. Respondent used this information in making her decision to order Prince to enter rehabilitation in lieu of incarceration. (Tr. 424).

In addition, Respondent admitted placing Prince back in jail for violation of “peace bond” based upon ex parte communication with the personnel at Country Oaks.

Canon 3B(8) states:

A judge shall dispose of all judicial matters promptly, efficiently and fairly.

The record is abundantly clear; there was nothing fair about the Respondent’s disposition of the Prince case.

Finally, Canon 3C(1) states the following:

A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.

Respondent abused her judicial power by using Prince's lack of knowledge of the peace bond process to manipulate him and his family into entering drug and alcohol rehabilitation though abuse of such was never a factor in the matter pending before the Court. Respondent knew or should have known that her actions were improper. Respondent also used her staff to further her unauthorized and illegal acts.

Having established the clear and convincing violations of the Code of Judicial Conduct, we now turn to relevant case law that found similar violations to be sanctionable judicial misconduct and constituting willful misconduct in office and conduct prejudicial to the administration of justice which brings the judicial office into disrepute. As this is the first Commission case involving such blatant abuse of office in a peace bond matter there are no cases directly on point. That being said, there are numerous reported cases instructive to the Commission and the Court on the issues.

The Commission would first direct the Court's attention to Mississippi Commission on Judicial Performance v. Dodds, 680 So2d 180 (Miss.1996). In Dodds, a justice court judge, without authority, entered a trespassing restraining order against the pastor of a church, had the pastor arrested pursuant to the unlawful restraining order

and later extended the improper order. The justice court judge had no authority to issue a restraining order except in specific circumstances of domestic abuse. The Court found that Dodds had no authority to enter the restraining order or have the pastor arrested, and that the order was in effect for 60 days without an opportunity to challenge it. The Court found this to constitute willful, or at least negligent misconduct. The Court stated as follows:

It is apparent that Dodds is essentially arguing that he did not engage in willful misconduct, bad faith or corruptive behavior so as to entitle the Commission to have jurisdiction over the case. However, his argument is without merit. In *Chinn, Anderson, and Bailey* this Court held that neither moral turpitude, dishonesty, nor corruption are necessary for finding of bad faith. According to said cases, specific intent to use the powers of the judicial office to accomplish a purpose which Dodds knew or should have known was beyond the legitimate exercise of his authority constituted bad faith on his behalf. Dodds should have known the limits of his authority. Dodds, 680 So.2d at 192.

Based upon this, and other misconduct, Dodds was removed from office. The Respondent's conduct herein regarding the issuance of a peace bond is quite similar to Dodd's restraining order and clearly constitutes misconduct.

In In re Quick, 553 So.2d 522 (Miss.1989), a justice court judge, was removed from office for willful misconduct in office which brought the judiciary into disrepute. Quick involved a long-standing pattern of fixing tickets by not reporting convictions to the Department of Public Safety, thereby keeping said convictions off the violators records. As the Court held:

...His defense is basically negligence and ignorance. The statutes,

however, are clear. The judge shall have committed misconduct, whether by refusal or neglect, when he fails to comply with any of the requirements of the statutes. It is this misconduct that constitutes grounds for removal. 553 So.2d at 527.

In the case sub judice, the statutes are also clear: Respondent admittedly committed misconduct by failing to comply with the requirements of the statutes.

There have been several cases wherein judges have improperly sentenced criminal defendants convicted of actual crimes and the Supreme Court has found said conduct to consist of willful misconduct in office and conduct prejudicial to the administration of justice which brings the judicial office into disrepute. These cases include Mississippi Commission on Judicial Performance v. Neal, 774 So.2d 414 (Miss. 2000), wherein a justice court judge gave jail time for a charge which did not carry jail time; Mississippi Commission on Judicial Performance v. Byers, 757 So.2d 961 (Miss. 2000), wherein a circuit court judge sentenced a defendant to pretrial diversion when the defendant was not eligible and Mississippi Commission on Judicial Performance v. Fletcher, 686 So.2d 1075 (Miss.1996), wherein a justice court judge sentenced a defendant to more jail time than allowed by statute. See also, Mississippi Commission on Judicial Performance v. Emmanuel, 688 So.2d 222 (Miss.1996).

This Court has further found willful misconduct in office and conduct prejudicial to the administration of justice which brings the judicial office into disrepute in two (2) cases involving circuit court judges who have exceeded their authority by releasing criminal defendants. Mississippi Commission on Judicial Performance v. Sanders, 706

So.2d 1107(Miss. 1998) and Mississippi Commission on Judicial Performance v. Russell, 691 So.2d 929 (Miss.1997). In Russell it was argued that judges should be exempt from disciplinary sanctions for exceeding their authority. Writing for the Court, current Chief Justice Smith stated:

To hold judges exempt from professional misconduct proceedings would deprive members of the public of any remedy. Moreover, to hold that judges may not be sanctioned for actions which exceed their lawful authority would totally disregard the protection of the public, the administration of justice, the maintenance of professional standards, and the deterrence of similar conduct. We discipline a judge to reassure the citizens....that the judiciary of their state is dedicated to the principle that ours is a government of laws and not of men. Citing In re Kneifl, 217 Neb.472, 351 N.W.2d 693 (Neb.1984).

Justice Smith continued:

Judge Russell's argument fails to take into account that judges are elected officials, accountable to the public who elects them. Moreover, there is the need, as well as the duty to insure that those intrusted with the privilege of holding such an esteemed position, maintain that privilege with integrity and remain within the confines of their authority. 691 So.2d at 948.

In the case of Mississippi Commission on Judicial Performance v. Lewis, 830 So.2d 1138 (Miss. 2002), this Court addressed another Hinds County Justice Court Judge exceeding his authority. Justice Court Judge Joseph Lewis refused to return a handgun to a litigant although he was required to do so as a matter of law pursuant to MCA Section 97-37-3. The Court clearly found that Judge Lewis violated a statutory mandate without reasonable explanation. The Court further found willful misconduct in office and conduct prejudicial to the administration of justice which brings the judicial office into disrepute and publicly reprimanded Lewis.

A final case for the Court's consideration on Respondent's misconduct with regards to the peace bond against Mr. Prince is Mississippi Commission on Judicial Performance v. Perdue, 853 So.2d 85(Miss. 2003). In Perdue, a Youth Court Referee improperly entered an ex parte order, refused to conduct a proper hearing, then continued the improper order depriving a parent of lawful custody of her child, custody being restored only after incurring sizable attorney fees. The Youth Court Referee's actions were found to be willful misconduct in office and conduct prejudicial to the administration of justice; she was suspended for 30 days without pay. Much like Perdue, the Respondent herein entered an unlawful order, by sentencing Prince to 12 months in jail, or drug treatment. At a subsequent appearance the judge did not correct her error, but resented Prince to six (6) months in jail for violation of "peace bond"(with no authority whatsoever). Only later, when Prince retained a lawyer, at considerable expense, did the Respondent set a bond and release him. Even then, the bond exceeded the statutory limit.

As the Commission found in its Findings of Fact, Conclusion of Law and Recommendations:

The astounding chain of events that led to where we are now is shocking and very clear, as little is in dispute. The actions of Judge Boland, an attorney at law, are clearly unlawful. The Respondent repeatedly entered unlawful Orders resulting in the unlawful incarceration

of Mr. Prince, not to mention the trauma placed on him and his family.

The judge had no authority, statutorily or otherwise, to refuse to set bond, nor any authority to sentence Mr. Prince to one year in jail, six months in jail or for any time in jail at all. Judge Boland was without any authority to send Mr. Prince to any drug treatment facility or to require any other of the incredibly restrictive terms of his "probation." There is nor has ever been a crime of "peace bond.". (C.P.120).

Having reviewed the clear and convincing evidence and the relevant Mississippi case law, it is indeed clear and convincing that the Respondent's conduct herein constitutes willful misconduct in office and conduct prejudicial to the administration of justice which brings the judicial office into disrepute pursuant to Section 177A of the Mississippi Constitution of 1890, as amended.

In the other case before the Commission at the hearing, Inquiry Concerning a Judge No. 2006-121, hereinafter the "Kintsley matter", the Commission charged the Respondent with exceeding her authority in sentencing defendant Kintsley to serve 12 months for simple assault-domestic violence and also 12 months probation. This sentence was in violation of that provided by MCA Section 97-3-7, as amended.

In the Kintsley matter the Respondent admitted that the sentence imposed was in error, but claimed a "clerical error" and that she only intended to sentence Kintsley to six (6) months as provided by statute. She testified that she was unaware that the

sentence had been made in error until such time as she received a copy of the Petition for Writ of Certiorari filed in the County Court of Hinds County on behalf of Kintsley some four months later. Respondent testified that she then entered an order to correct the sentencing error. However, Respondent fails to realize or take into account that Kintsley had to incur the expense of hiring an attorney to right the error and that her attempt to amend the sentencing by order was done after the time the County Court had assumed jurisdiction, therefore depriving her of any authority to make such amendment.

Previous cases decided by this Court that are analogous to the case *sub judice* involve judges that have exceeded their authority by not following statutory mandates.

In Mississippi Commission on Judicial Performance v. Fletcher, 686 So. 2d 1075 (Miss. 1996) this Court found that a public reprimand and assessment of costs was the proper sanction against Municipal Court Judge Cardell Fletcher. In a domestic disturbance case, Judge Fletcher incarcerated a defendant without proper notice or hearing. Also, in an unrelated proceeding Judge Fletcher sentenced another defendant to jail for more time than allowed by statute after being found guilty of driving under the influence (DUI), first offense with no car tag or driver's license.

In the related case of Mississippi Commission on Judicial Performance v. Jones, 735 So. 2d 385 (Miss. 1999) Judge Jerry Jones, Justice Court Judge of Webster County reduced five different defendants' offenses involving a DUI. The reduction of these offenses were found to violate Miss. Code Ann. § 63-11-39 which provides that a DUI

charge may not be reduced to a lesser charge by the judge having jurisdiction. The Supreme Court held that a public reprimand was warranted and further fined Judge Jones \$1,500.00 and taxed him all costs of the judicial conduct proceedings.

Similarly, in Mississippi Commission on Judicial Performance v. Lewis, supra. Justice Court Judge Joseph Lewis, acting in his official capacity, presided over a case involving a minor who had been charged with head lighting a deer, improper shot size, and failure to dim headlights. During the minor's arrest a rifle, a shotgun, and a handgun were seized. Subsequently, the minor pled guilty to the charge of failing to dim headlights and was found not guilty as to the other two charges. Judge Lewis then returned the rifle and shotgun, but ordered that the handgun be forfeited to the court. The Commission found that the judge had violated § 97-37-3 Miss. Code Ann. (2000) by refusing to return the handgun to the minor. This Court agreed, finding that under § 97-37-3 the judge should have returned the handgun as a matter of law since no charge was filed against the minor that would have allowed for the handgun to be seized. Thus, Judge Lewis had violated the statutory mandate. This Court publicly reprimanded and ordered payment of costs against him.

Another case tantamount in this matter is Mississippi Commission on Judicial Performance v. Neal, 774 So. 2d 414 (Miss. 2000). Here, Justice Court Judge Larry Neal, acting in his official capacity, presided over two separate trials and fined both defendants in excess of his statutory authority and sentenced to jail both for periods

longer than the statutory mandate. Additionally, Judge Neal was found to have exceeded his jurisdictional authority by hearing one of the cases which involved perjury of a defendant. The Commission and Judge Neal entered into an Agreed Statement of Facts and Proposed Recommendation which was adopted by this Court. Judge Neal was publicly reprimanded and assessed costs against him.

In the Kintsley matter there is no question that Respondent exceeded her authority. Her testimony was that she knew the maximum penalty for domestic violence was six (6) months in jail and/or \$500.00 fine. However, she also testified that she did not know she was unable to sentence someone to probation, drug and alcohol rehabilitation or anger management without first suspending a portion of the sentence.

In Mississippi Commission on Judicial Performance v. Chinn, 611 So. 2d 849, 856 (Miss. 1993) this Court stated, "The statutes concerning justice court are not too voluminous that a judge could not comprehend them, given a reasonable effort." Respondent is a licensed attorney trained to read and interpret the laws of the State of Mississippi. In the case of In re Collins, 524 So. 2d 553 (Miss. 1987), involving a County Court Judge, this Court explained that:

[Any] claim of ignorance of the duties of his office or negligence in carrying out those duties as a defense to judicial misconduct is tantamount to an admission by an accused judge that he does not possess the qualifications necessary to hold the office to which he has been elected.

The Commission found that the Respondent's misconduct did not constitute willful

misconduct in office and conduct prejudicial to the administration of justice pursuant to Rule 8E of the Rules of the Commission of Judicial Performance. While not finding judicial misconduct by clear and convincing evidence, the Commission did find errors on her part and noted that Mr. Kintsley had to bear the expense of an attorney to correct her error. (C.P. 122-125). The Commission further found Respondent did not have the authority to impose probation, with numerous and expensive conditions thereon, when she had sentenced a defendant to the statutory maximum and that as an attorney and judge she should have been aware of the applicable law. (C.P. 123-124).

Commission counsel filed objections to the original Committee Findings, Conclusion of Law and Recommendation. (C.P. 85-97). The Commission findings were based on the lack of intentional misconduct on the part of the Respondent. As Commission counsel noted, and as set forth previously herein:

The misconduct complained of need not be intentional or notorious; rather negligence, ignorance and incompetence suffice as grounds for behavior to be classified as prejudice to the administration of justice which brings the judicial office into disrepute and thus worthy of sanctions. In re Quick, 553 So.2d 522, 527 (Miss. 1989)

Therefore, Commission counsel disagrees with the dismissal of this complaint by the Commission and asks this Court to reinstate the complaint and sanction Respondent in an appropriate manner for the misconduct alleged therein.

II

THE RESPONDENT, JUSTICE COURT JUDGE, NICKI M. BOLAND SHOULD BE SUSPENDED FROM OFFICE WITHOUT PAY FOR A PERIOD OF 90 DAYS, BE ASSESSED A FINE IN THE AMOUNT OF \$4,250.00 BY THE MISSISSIPPI SUPREME COURT PURSUANT TO SECTION 177A OF THE MISSISSIPPI CONSTITUTION OF 1890, AS AMENDED, AND BE ASSESSED COSTS OF THIS PROCEEDING IN THE AMOUNT OF \$3,532.06, OR AN ALTERNATIVE SANCTION BE IMPOSED IN LIGHT OF RESPONDENT'S FAILED RE-ELECTION BID.

Section 177A of the Mississippi Constitution of 1890, as amended, provides that upon recommendation of the Commission, a judge may be removed, suspended, fined, publicly censured or publicly reprimanded by the Supreme Court. The Commission has recommended that the Respondent, Justice Court Judge, Nicki M. Boland be suspended from office without pay for a period of ninety (90) days, fined \$4,250.00 and assessed costs of this proceeding in the amount of \$3,532.06.

In accordance with Section 177A of the Mississippi Constitution and Rule 10 of the Rules of the Commission, as interpreted by this Court, the Commission recommends disciplinary sanctions and the Court, based upon a review of the entire record, determines the appropriate sanction. As the Court stated in In re Quick, 553 So.2d 522, 527 (Miss.1989):

In judicial misconduct proceedings, this Court is the trier of fact, and has sole power to impose sanctions. Garner, 466So.2d at 885 Collins, 524 So.2d at 556. Although this Court has an obligation to conduct, an independent inquiry,

it nonetheless gives great weight to the findings of the Commission, which has had the opportunity to observe the demeanor of the witnesses. Garner, supra, at 885; Collins, supra, at 556. See also, Mississippi Commission on Judicial Performance v. Walker, 565 So.2d 1117, 1125 (Miss. 1990).

The Supreme Court has established certain factors to be considered in regard to punishments given in judicial misconduct proceedings. The factors, as set forth in In re Baker, 535 So.2d 47, 54 (Miss.1988) and reiterated in Mississippi Commission on Judicial Performance v. Walker, supra, were used by this Court to determine whether a sanction should be public or private. Later in Mississippi Commission on Judicial Performance v. Gibson, 883 So.2d 1155, 1158 (Miss. 2004) the Court modified the Baker factors to apply to all judicial misconduct proceedings in considering appropriate disciplinary measures, as follows:

- **The length and character of the judge's public service.**

The Respondent is serving her first term as justice court judge. Respondent testified as to her affiliation with professional groups, charity organizations and her implementation of a misdemeanor drug court. There is currently pending before the Mississippi Supreme Court a recommendation from the Commission to publicly reprimand the Respondent for judicial misconduct in a prior case.

- **Whether there is any prior case law on point.**

There is no prior precedent factually on point. However, the Commission has cited numerous cases of judges being sanctioned for exceeding the power, authority or jurisdiction of the court. This Court has clearly stated that it is judicial misconduct and bad faith for a judge to use the powers of office “to accomplish a purpose the judge knew or should have known was beyond the legitimate exercise of his authority...”

Mississippi Commission on Judicial Performance v. Dodds, 680 So.2d at 192.

In the Prince case, Respondent knew or should have know that she absolutely no authority to incarcerate Brett Prince, or order treatment and other conditions placed upon him pursuant to the peace bond statutes.

In the Kintsley matter, discussed previously herein, Commission counsel has cited several cases above that support their position that willful misconduct and conduct prejudicial to the administration of justice which brings the judicial office into disrepute occurred.

As previously cited from In re Collins, 524 So.2d 553 (Miss.1987) and reiterated recently in Mississippi Commission on Judicial Performance v. Britton, 936 So.2d 898, 904 (Miss. 2006):

“A claim of ignorance of the duties of the office of judge, as a defense to judicial misconduct, is tantamount to an admission by the accused judge that he does not possess the qualifications necessary to be a judge.”

The Court states further that:

“Ignorance of the law is even less of an excuse for a judge than a private citizen,” citing In re Bailey, 541 So.2d 1036, 1037 (Miss. 1989).

Sanctions for acting beyond the legitimate authority of the court have included removal, Mississippi Commission on Judicial Performance v. Dodds, supra; suspension from office, Mississippi Commission on Judicial Performance v. Perdue, supra; public reprimand and a fine, Mississippi Commission on Judicial Performance v. Byers, supra, Mississippi Commission on Judicial Performance v. Sanders, supra, Mississippi Commission on Judicial Performance v. Russell, supra, Mississippi Commission on Judicial Performance v. Emmanuel, supra; and a public reprimand, Mississippi Commission on Judicial Performance v. Lewis, supra, Mississippi Commission on Judicial Performance v. Neal, supra, and Mississippi Commission on Judicial Performance v. Fletcher, supra.

- **The magnitude of the offense and the harm suffered.**

As a result of Respondent's misconduct, Brett Prince was unlawfully incarcerated, either in the Hinds County Detention Center, or in court ordered treatment, from September 9, 2005 to November 4, 2005. The Prince family was required to spend approximately \$4,250.00 on attorney fees and the costs of the treatment center when the only authorized penalty available to Respondent was to require Prince to post a \$500.00 bond. Brett Prince and his family suffered great emotional and financial harm. The

magnitude of Respondent's offense certainly requires significant sanctions.

In the Commission's Inquiry Concerning a Judge No. 2006-121, Kintsley entered a plea of guilty before Respondent and was ready to accept the punishment for the offense of simple assault-domestic violence that Respondent deemed appropriate within the boundaries of the law. However, Respondent improperly sentenced Kintsley in excess of that allowed by statute, forcing him to hire counsel to file pleadings in the County Court of Hinds County to secure his release.

- **Whether "moral turpitude" was involved.**

As stated in Gibson, supra, "Moral turpitude includes, but is not limited to, actions which involve interference with the administration of justice, misrepresentation, fraud, deceit, bribery, extortion, or other such actions which bring the judicial into disrepute."

Recently, in Mississippi Commission on Judicial Performance v. Sanford, 941 So.2d 209 (Miss. 2006), this Court revisited the issue of moral turpitude and regarding the same, stated: "This case involves some of the basic tenets of daily living in a civil society, such as living by standards of fundamental decency and honesty by not abusing the judicial process, and by revering the law and the judicial system, and upholding the dignity and respect of the judiciary through appropriate conduct and behavior toward others.

The Commission would submit that the Respondent's conduct herein certainly

abused the judicial process, failed to revere the law and the judicial system and clearly failed to uphold the dignity and respect of the judiciary. Her conduct, and the results thereof, was abysmal. The consequences of Respondent's conduct were inconceivable to the complainants in these matters as well as the attorneys who were engaged to represent them. Commission counsel contends that Respondent's actions must constitute moral turpitude.

- **Whether the misconduct is an isolated incident or evidences a pattern of conduct.**

The Commission would submit that the Respondent's misconduct evidences a pattern of misconduct. She is currently before the Supreme Court on a recommendation for a public reprimand for misconduct arising from a National Drug Court Conference. Mississippi Commission on Judicial Performance v. Boland, Cause No. 2007-JP-00661 in the Supreme Court of the State of Mississippi.

In the Prince case, Respondent abused the authority of the office of the justice court and professed ignorance or the inability to understand a simple statute as her defense. In the Kintsley matter, Respondent feigned mistake in the sentencing of Kintsley and ignorance of the law after improperly placing him on probation.

There appears to be an emerging pattern of the Respondent not understanding, or perhaps failing to appreciate the statutory limitations placed upon the justice court.

- **The presence or absence of mitigating or aggravating circumstances.**

Respondent has shown no acknowledgment of the impropriety of her conduct. Furthermore, she refuses to accept responsibility for her actions or for the irreparable harm caused to the Prince family. When presented opportunities to follow the law and lessen the damages to Prince, she refused to do so and returned him to jail without bond. Respondent alleged “clerical error” in the sentencing of Kintsley and failure to know the law regarding probation. Respondent’s plea of ignorance is not a mitigating factor.

In In re Collins, supra, this Court found that Collins was not a mere justice court judge, but a county court judge, who was required by statute to be a lawyer. Though Respondent holds the office of justice court judge, she is a licensed attorney in this state, trained to read, comprehend and apply the laws. Her failure to do so with any competence or diligence has again placed her before the Commission and ultimately this Court.

In determining an appropriate sanction the Commission considered the traditional purpose of sanctions in judicial disciplinary cases as set forth by the Nebraska Supreme Court years ago in the case of In re Kniefel, 351 N.W. 2d 693, 700 (Neb. 1984):

The purpose of sanctions in cases of judicial discipline is to preserve the integrity and independence of the judiciary and to restore and reaffirm public confidence in the

administration of justice. The discipline we impose must be designed to announce publicly our recognition that there has been misconduct; it must be sufficient to deter respondent from again engaging in such conduct; and it must discourage others in engaging in similar conduct in the future. Thus, we discipline a judge not for purposes of vengeance or retribution, but to instruct the public and judge, ourselves included, of the importance of the function performed by judge to reassure the public that judicial misconduct is neither permitted nor condoned. We discipline a judge to reassure the citizens of Nebraska that their judiciary of their state is dedicated to the principal that ours is a government of laws and not of men. See, Disciplinary Proceedings against Buchanan, 100 Wash.2d 396, 669 P.2d 1248 (1983); Matter of Ross, 428 A.2d 858 (Me.1981) Id. at 700.

Having considered these traditional purposes for judicial discipline the severity of the Respondent's misconduct, her prior disciplinary history, her failure to accept responsibility, the modified Baker factors and prior opinions of the Court, the Commission has recommended that the Respondent be suspended from office, without pay, for a period of 90 days and fined \$4,250.00, plus be assessed costs in the sum of \$3,532.06. The amount of the fine reflects the costs the Prince family incurred as a direct result of the Respondent's misconduct. A 90-day suspension without pay, based upon the statutory annual salary of a Hinds County Justice Judge of \$55,559 would approximate \$13,889.75.

Since the filing of the Commission's recommendation, the Respondent has been defeated in her bid for re-election; consequently she will not be in office after the expiration of her current term on December 31, 2007, and therefore not subject to

suspension recommended by the Commission. This Court has consistently held that, although a judge may have left office, there are substantial reasons for bringing the matter to a conclusion with a decision on the merits. Mississippi Commission on Judicial Performance v. Byers, 757, So.2d 961 (Miss.2000). Mississippi Commission on Judicial Performance v. Dodds, 680 So.2d 180 (Miss.1996); In re Anderson, 451 So.2d 232 (Miss.1984). As stated in Anderson , if a judge is removed from office it would disqualify him from offering for a judicial office again. See also, MCA Section 9-19-17. In Dodds, the court noted:

Additionally, judicial conduct is a matter of great public interest and our decisions serve as a guide for the entire judiciary and to preserve the public confidence in the Matter of Yaccarino, 101 N.J. 342, 502 A.2d 3, 30-31 (1985); Matter of Probert, 411 Mich. 210, 308 N.W.2d 773,776 (1981); Judicial Inquiry and Review Board v. Snyder, 514 Pa 142, 523 A.2d 294, 298(1987).

Finally, in Byers, the Commission recommended removal from office. The Court found that Judge Byers engaged in willful misconduct and conduct prejudicial to the administration of justice which brings the judicial office into disrepute. Noting that she had been defeated, the Court held that in order to maintain the integrity of the judiciary she must be sanctioned and ordered a public reprimand, a fine of \$1,500.00 and costs.

The Commission herein submits that its recommendation of a 90-day suspension without pay, fine of \$4,250.00 plus costs is appropriate and should be accepted by this honorable Court, and that as Respondent will not be in office after December 31, 2007,

the suspension be modified to an increased fine reflecting the recommended loss of judicial salary.

CONCLUSION

In conclusion, the Commission, submits that Respondent's actions in the above cases reflect gross misconduct on her part that is willful in nature and constitutes conduct prejudicial to the administration of justice which brings the judicial office into disrepute. Such conduct is a violation of Section 177A of the Mississippi Constitution of 1890, as amended and Canons 1, 2A, 2B, 3B(2), 3B(4), 3B(7), 3B(8) and 3C(1) of the Code of Judicial Conduct of Mississippi Judges. Respondent attempts to defend herself by hiding behind claims of ignorance and mistake. We must not allow this to happen over and over again. Such attempts to justify her misconduct indicate her failure and/or inability to fully appreciate the nature and consequences of her actions.

In the case of In re Bailey, 541 So.2d 1036, 1039 (Miss. 1989) this Court has stated:

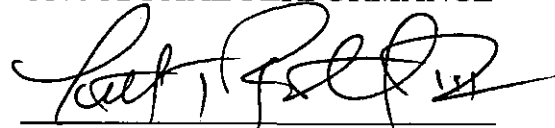
When a person assumes the office of Justice Court Judge in this state, he or she accepts the responsibility of becoming learned in the law. When such a person takes the oath of office, he or she yields the prerogative of executing the responsibilities of the office on a basis other than the fair and impartial and competent application of the law to the facts. The preservation of the rule of law as our last best hope for the just ordering of our society requires nothing less than an insistence by this Court that our justice court judges be in fact what they are in name: judges.

The Commission asserts that Respondent's actions in both cases were

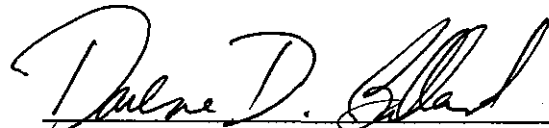
inappropriate and inexcusable and the recommendation of the Commission is that Respondent be suspended from office for a period of 90 days without pay and fined in the sum of \$4,250.00 pursuant to Section 177A of the Mississippi Constitution of 1890, as amended. Also, the Commission submits that costs of this proceeding in the amount of \$3,532.06 should be taxed to the Respondent pursuant to Rule 36 of the Mississippi Rules of Appellate Procedure. However, since the recommendation of the Commission was made, Respondent has been defeated in her bid for re-election to the office of Justice Court Judge and will no longer occupy that position after December 31, 2007. In light of that development, the Commission would recommend amending the recommendation of suspension to include an additional fine in the sum of \$13,889.75, which is equal to a 90-day suspension without pay, based upon the statutory annual salary of a Hinds County Justice Judge of \$55,559, or any other suitable sanction this honorable Court might deem appropriate under the circumstances.

Respectfully submitted,

MISSISSIPPI COMMISSION
ON JUDICIAL PERFORMANCE



Luther T. Brantley, III
Executive Director



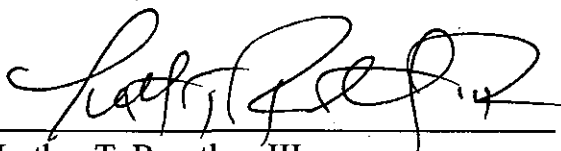
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CERTIFICATE OF SERVICE

I, Luther T. Brantley, III, Executive Director of the Mississippi Commission on Judicial Performance, do hereby certify that I have this date mailed postage pre-paid a copy of the foregoing Brief on Behalf of the Mississippi Commission on Judicial Performance to the Respondent, Nicki M. Boland, through her counsel, Robert F. Wilkins at his office located at Post Office Box 2777, Jackson, MS 39207.

This the 11th day of Dec 2007.



Luther T. Brantley, III