

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

**MISSISSIPPI COMMISSION ON
JUDICIAL PERFORMANCE**

PETITIONER

VS.

2007-JP-01959

NICKI M. BOLAND

RESPONDENT/APPELLANT

**BRIEF OF APPELLANT,
NICKI M. BOLAND**

ORAL ARGUMENT REQUESTED

**ROBERT F. WILKINS, ESQ. [REDACTED]
ROBERT F. WILKINS LAW FIRM, PLLC
475 EAST CAPITOL STREET (39201)
POST OFFICE BOX 2777
JACKSON, MISSISSIPPI 39207
TELEPHONE: (601) 948-6888
FACSIMILE: (601) 948-6889**

**ATTORNEY FOR APPELLANT,
NICKI M. BOLAND**

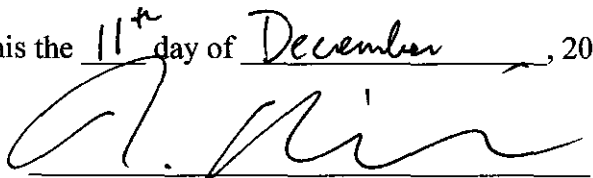
CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

- I. Nicki M. Boland, Appellant
- II. Mississippi Commission on Judicial Performance, Appellant
- III. Honorable Gaines Dyer, Presiding Judge, Mississippi Commission on Judicial Performance
- IV. Honorable Rick Coulter, Judge, Mississippi Commission on Judicial Performance
- V. Honorable Melvin Ray, Judge, Mississippi Commission on Judicial Performance
- VI. Robert F. Wilkins, Attorney for Appellant, Nicki M. Boland
- VII. Luther T. Brantley, Attorney for Appellant, Mississippi Commission on Judicial Performance
- VIII. Darlene Ballard, Attorney for Appellant, Mississippi Commission on Judicial Performance
- IX. Ayanna Batiste, Attorney for Appellant, Mississippi Commission on Judicial Performance

RESPECTFULLY SUBMITTED, this the 11th day of December, 2007.

BY:



ROBERT F. WILKINS
ATTORNEY OF RECORD FOR
APPELLANT NICKI M. BOLAND

ROBERT F. WILKINS, ESQ.
ROBERT F. WILKINS LAW FIRM, PLLC
475 EAST CAPITOL STREET (39201)
POST OFFICE BOX 2777
JACKSON, MISSISSIPPI 39207
TELEPHONE: (601) 948-6888
FACSIMILE: (601) 948-6889

STATEMENT REGARDING ORAL ARGUMENT

Judge Nicki M. Boland has been seriously wronged by the decision of the Mississippi Commission on Judicial Performance. It would be extremely helpful to this Court if the issues concerning this matter and the harsh punishment could be addressed openly before this Court.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
STATEMENT REGARDING ORAL ARGUMENT	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE ISSUES	vi
STATEMENT OF THE CASE	1
I. Nature of the Cases	1
II. Course of Proceedings and Disposition in the Court Below	1
III. Statement of Facts	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT (<i>BRETT PRINCE 2006-084</i>)	4
I. Regarding <i>Prince</i> , the Commission Erred in its Findings of Fact, and Any Conclusion of Law Based Thereon Is Clearly in Error.. ..	4
II. Regarding <i>Prince</i> , Peace Bonds Have Been a Source of Confusion for Justice Court Judges Around the State and Judge Boland Followed the Procedure of the Hinds County Justice Court	6
III. Regarding <i>Prince</i> , There Has Been No Violation of Any Duty of Judicial Conduct	11
IV. Regarding <i>Prince</i> , the Commission Erred in Imposing Sanctions.	13
ARGUMENT (<i>AUSTIN KINSTLEY 2006-121</i>)	19
I. Regarding <i>Kinstley</i> , the Commission Correctly Dismissed the Complaint ..	19
CONCLUSION	21
CERTIFICATE OF SERVICE	22

TABLE OF AUTHORITIES

Cases

<i>In Re Inquiry Concerning Dennis M. Baker</i> , 535 So.2d 47 (Miss. 1988)	3, 15, 16
<i>Mississippi Comm'n on Judicial Performance v. Blakeney</i> , 905 So.2d 521 (Miss. 2004)	16
<i>Mississippi Comm'n on Judicial Performance v. Gibson</i> , 883 So.2d 1155 (Miss. 2004)	16
<i>Mississippi Comm'n on Judicial Performance v. Gordon</i> , No. 2006-JP-01452-SCT (May 3, 2007)	17
<i>Mississippi Commission on Judicial Performance v. Judy Case Martin</i> , 921 So.2d 1258 (Miss. 2006)	14, 15, 20
<i>Mississippi Comm'n on Judicial Performance v. Judge U.U.</i> , 875 So.2d 1083 (Miss. 2004)	15, 16
<i>Mississippi Judicial Performance Comm'n v. Walker</i> , 565 So.2d 1117 (Miss. 1990)	15
<i>Mississippi Comm'n on Judicial Performance v. Justice Court Judge R.R.</i> , 732 So.2d 224 (Miss. 1999)	15

Statutes

Section 177A of the Mississippi Constitution of 1890

Miss. Code Ann. 99-23-1	3
Miss. Code Ann. 99-23-5	3
Miss. Code Ann. 99-23-13	3

Mississippi Code of Judicial Conduct

Canon 1	11, 16
Canon 2A	11, 16
Canon 2B	11, 16
Canon 3B(2) ..	11, 16
Canon 3B(4) .	11, 16

Canon 3B(8)	11, 16
Canon 3C(1)	11, 16

STATEMENT OF THE ISSUES

BRETT PRINCE 2006-084

- I. Regarding *Prince*, the Commission Erred in its Findings of Fact, and Any Conclusion of Law Based Thereon is Clearly in Error
- II. Regarding *Prince*, Peace Bonds Have Been a Source of Confusion for Justice Court Judges Around the State and Judge Boland Followed The Procedure of the Hinds County Justice Court
- III. Regarding *Prince*, There Has Been No Violation of Any Duty of Judicial Conduct
- IV. Regarding *Prince*, the Commission Erred in Imposing Sanctions

AUSTIN KINSTLEY 2006-121

- I. Regarding *Kinstley*, the Commission Correctly Dismissed the Complaint

STATEMENT OF THE CASES

I. Nature of the Cases

Judge Nicki M. Boland (hereinafter "Judge Boland") has spent her life serving others and being committed to justice for all. On September 14, 2006, the Mississippi Commission on Judicial Performance (hereinafter "the Commission"), filed two (2) formal Complaints charging Nicki M. Boland, Justice Court Judge, District One, Hinds County, Mississippi, with judicial misconduct stemming from willful misconduct in office and conduct prejudicial to the administration of justice which brings the judicial office into disrepute in violation of Section 177A of the Mississippi Constitution of 1890, as amended. The Complaints involve Brett Prince, Cause No. 2006-084 ("Prince") and Austin Kinstley, Cause No. 2006-121 ("Kinstley"). On October 25, 2006, Judge Boland filed Answers to the Complaints where she basically denied the allegations contained therein.

II. Course of Proceedings and Disposition in the Court Below

The Brett Prince matter involved a peace bond arising out of threats made by Prince to his neighbor, Mark Moore. Essentially, Prince argues that his sentence was improper or in violation of the peace bond statute. The Austin Kinstley matter involved an alleged excess sentence. On September 19, 2007, a Committee comprised of Gaines S. Dyer, Presiding, Judge Melvin Ray, and Mr. Rick Coulter, held a hearing. The Committee filed its Findings of Fact, Conclusions of Law, and Recommendations on October 5, 2007. Judge Boland filed her Objections to the same on October 19, 2007.

On November 1, 2007, the Commission rendered its Findings of Fact, Conclusions of Law, and Recommendation. (hereinafter "November 1, 2007 Findings"). In the *Prince* matter, the Commission found that Judge Boland's conduct 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, and recommended that Judge Boland be suspended from office without pay for 90 days and that she be fined \$4,250.00 plus costs of \$3,532.06. In the *Kinstley* matter, the Commission found that the Complaint be dismissed. Judge Boland's response to this November 1, 2007 Findings follows.

III. Statement of Facts

The Brett Prince matter will be addressed first. Judge Nicki M. Boland has been a dedicated attorney and jurist for over twenty years. (R at p. 204-210). Judge Boland is fifty-two years old, and has lived in Jackson, Mississippi her entire life. (R at p. 202). She is currently a Justice Court Judge in Hinds County, Mississippi, District One, and was elected in November 2003. Judge Boland lost her re-election bid, and will finish her term at the end of 2007.

Judge Boland graduated the University of Mississippi and received her J.D. from Mississippi College School of Law. (R at p. 204). She attended the Harvard School of Government and four summer programs at Cambridge University. (R at p. 204). When elected to the bench, Judge Boland attended the National Judicial College. (R at p. 204). She also attended Straus Institute of Dispute Resolution at Pepperdine University. (R at p. 205). Recently, Judge Boland was asked to be on the faculty at the National Judicial College one week a year to teach on therapeutic jurisprudence and problem-solving courts. (R at p. 205).

In addition, Judge Boland has worked in her community in many nonprofit organizations for many years. (R at pp. 206-7). She also served as a private attorney with Crosthwait, Turney, Noble, and Eastland for five years with success and without even a suggestion of unethical behavior. (R at pp. 205-6). Subsequently she served with acclaim as a commissioner of the Mississippi State Tax Commission for a six-year term. (R at pp. 205-6). During this time, she planned, launched, and presided over the first and only Justice Court Drug Court in the State of Mississippi. Judge Boland

has mediated over 250 Hurricane Katrina cases. (R at p. 207). Simply stated, Judge Boland's record of public servant is exemplary.

Regarding other judicial training, Judge Boland has attended every D.U.I. program offered at the National Judicial College. She has attended all domestic violence seminar's given by the Hinds County Sheriff's Office. Judge Boland attends all training that the Mississippi Judicial College puts on and attends the summer conferences. It is important to note that in her entire career as an attorney and judge, Judge Boland has never received any training regarding peace bonds. (R at p. 210).

SUMMARY OF THE ARGUMENT

Judges are not infallible. It was never intended that each and every failure to conform to the standards of the Code of Judicial Conduct would lead to judicial discipline. *In Re Inquiry Concerning Dennis M. Baker*, 535 So.2d 47, 50 (Miss. 1988). Yet, for attempting to interpret a statute that is confusing at best, unconstitutional at worst, Judge Boland has been severely punished by the Commission. The Commission's November 1, 2007 decision is clearly erroneous, and likely played a role in her defeat in the recent November election.

Mississippi law allows the entry of a peace bond to prevent a breach of the peace in certain situations. Miss. Code Ann. §99-23-1. The Commission's November 1, 2007 Findings hinge on a faulty premise: that "there is nor has [there] ever been a crime of 'peace bond.'" (See November 1, 2007 Commission Findings of Fact, Conclusions of Law, Recommendations, ¶20)(hereinafter "Findings"). As shown below, this bold statement was contradicted by every judge and the only expert that testified at the hearing. It also contradicts the procedure of the Justice Court Judges of Hinds County and numerous other Justice Court Judges in Mississippi. Finally, the Commission simply ignores the fact that peace bonds are found in the "Criminal Procedure" section of the

Mississippi Code.

ARGUMENT (BRETT PRINCE 2006-084)

I. Regarding *Prince*, the Commission Erred in its Findings of Fact, and Any Conclusion of Law Based Thereon is Clearly in Error

The Commission made several factual errors that led to its conclusions to find Judge Boland had violated the Code of Judicial Conduct. First, the Commission found that “[o]n 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.’ There were no accompanying affidavits or warrants alleging Prince’s violation of any law.” (See November 1, 2007 Findings, ¶9).

The charging Affidavit of Mark Moore against Brett Prince is part of the Justice Court record for Cause No. 1375-292 and was admitted into evidence at the hearing. (See Affidavit for Bond to Keep the Peace, Hearing Exhibit 3, p. 2 of 18). The Affidavit of Mark Moore states that Brett Prince threatened Mark Moore and said “he will beat his fucking ass...” (*Id.*). This criminal conduct by Brett Prince scared Mark Moore and Mr. Moore felt threatened. (*Id.*). At the very least, the Affidavit of Mark Moore outlines the crimes of disorderly conduct, threats, and battery. Thus, the Commission erred in finding there were no accompanying affidavits alleging Prince’s violation of any law.

It is undisputed that Judge William Skinner, not Judge Boland, instructed Mark Moore to sign an affidavit against Brett for peace bond and possibly another charge. (R at p. 99). Thus, it is important to remember that Judge Boland did not initiate this criminal case against Prince, and had no prior animus towards him. Judge William Skinner met with the parties and decided the charges that the Commission now says were improper. Judge Skinner also held Brett Prince without bond and stated that Prince “must see a judge,” because Judge Skinner was quite familiar with Prince’s

violent nature. (R at p. 101; See Justice Court Warrant, Hearing Exhibit 3, p. 4 of 18).

Second, the Commission found that there was a dispute in whether Prince executed a knowing and voluntary waiver of attorney form. (See November 1, 2007 Findings, ¶10). Upon close examination of the record, this is not completely accurate. Brett Prince's mother, Caren Prince, admitted that her son was not forced to sign the waiver of attorney form. (R at p. 370). Further, Brett Prince could have hired an attorney or had one appointed for him, but he waived that right. (R at p. 368-9; See Deposition of Caren Prince, Hearing Exhibit 15, pp. 41-2).

Third, the Commission found that "Prince's mother arranged his transfer to the Country Oaks Treatment Center where he remained until October 20, 2005..." (See November 1, 2007 Findings, ¶10). After Brett Prince was sentenced by Judge Boland, Brett' parents, Billy and Caren Prince, willingly arranged for the transfer of their son to the treatment center. Once Brett Prince was admitted to Country Oaks, his parents then contacted another Hinds County Justice Court Judge because they were "concerned" about Brett's sentence from Judge Boland. (R at pp. 111-2).

Mr. and Mrs. Prince approached their next door neighbor, Justice Court Judge William Skinner, after Judge Boland had already handed down the sentence for Brett Prince. With only Mr. and Mrs. Prince present, Judge Skinner contacted Judge Boland via telephone. (R at p. 113). This conversation was not in open court and neither the prosecutor nor the complaining witness were present. The Commission failed to include these important facts.

Fourth, the Commission found that "Prince *allegedly* violated certain terms and conditions of said treatment in that he failed to report to work and went home without permission." (See November 1, 2007 Findings, ¶11) (Emphasis added). Again, the Commission erred because Brett Prince *actually admitted* that he violated the terms of his drug and alcohol treatment facility. (R at pp. 267-8). Also, the Commission found that Judge Boland's re-sentencing Order lacked "veracity."

(See November 1, 2007 Findings, ¶11). However, Judge Boland denied that there was any intent to be untruthful regarding any Order. She testified that she took steps to rectify the situation once she found out there were problems with the procedure she had followed when sentencing Prince. The Commission also claims that Judge Boland's use of a form Order stating the defendant was present means that her Order lacked veracity. All of Judge Boland's actions were done in open Court in the presence of the defendant and/or his attorney, and the inflammatory statement by the Commission does not take the context of Judge Boland's actions into account.

II. Regarding *Prince*, Peace Bonds Have Been a Source of Confusion for Justice Court Judges Around the State and Judge Boland Followed The Procedure of the Hinds County Justice Court

The Commission found that the "Respondent's primary defense alleged in her answer and in her proof at the hearing before this Commission is that the peace bond statute is 'confusing' not only to the Respondent, but also to many other justice court judges." In fact, the Commission states, despite direct evidence to the contrary, that "there is nor has [there] ever been a crime of 'peace bond.'" (November 1, 2007 Findings, ¶20). It is interesting to note that the Commission cites no testimony from a single witness to support this finding. Obviously, the reason why there is no citation is that several witnesses testified that peace bonds were both civil and criminal in nature, and that there was great confusion in their application. Despite no testimony to support its bald assertion, the Commission still found that clear and convincing evidence existed.

The Commission erroneously found that "more unlawful conditions were also placed on Prince." (See November 1, 2007 Findings, ¶12). Once again, the Commission makes an argumentative statement that presupposes that the conditions placed on Prince were "unlawful." The Commission's pronouncement was directly contradicted by the sole expert witness with experience writing legal opinions on peace bonds.

Moreover, it is ironic that the Commission calls the conditions placed by Judge Boland on Prince “unlawful,” because other Hinds County Justice Court Judges routinely did the exact same thing. In fact, Judge Skinner regularly made defendants charged with peace bond report to a probation officer as a condition of their charge. (R at p. 106). Judge Skinner testified that while there is no language in the peace bond statute that allows probation as a condition, he simply decided to do it anyway to protect people. (R at p. 131). Judge Skinner testified that other Hinds County Justice Court Judges put conditions on peace bonds such as drug and alcohol treatment. (R at p. 131). These conditions are not expressly stated in the statute, but reflect the practice of Justice Court Judges that are trying to protect the public and help defendants with certain needs.

The Commission fails to address the testimony of the key witness in the entire proceeding, David Scott. David Scott from the Mississippi Attorney General’s Office testified on behalf of Judge Boland. Mr. Scott is a practicing attorney with twelve years experience, and he previously worked in the Opinions Division of the Attorney General. He also spoke at seminars for Justice Court Judges and trained judges at the Judicial College. (R at p. 296-7). **The Commission recognized that Mr. Scott was an expert on peace bonds.** (R at p. 312). No expert testified for the prosecution on peace bonds.

Mr. Scott testified at length regarding Miss. Code Ann. § 99-23-1 Peace Bonds. He testified that peace bonds are both “**quasi criminal, quasi civil.**” (R at p. 300). Mr. Scott said he does not think peace bonds fit properly under the civil or criminal label. (R at p. 301). Further, he said that the constitutionality of peace bond statute has not yet been challenged. (R at p. 302). Thus, it is not clear what this Court would do when deciding whether or not the peace bond statute is constitutional.

Mr. Scott testified that in his vast experience there is confusion among Justice Court Judges in Mississippi as to the application and workings of peace bonds. (R at p. 303). In fact, **he advises**

Justice Court Judges to stay away from peace bonds because they are so confusing and problematic. (p. 303). More importantly, the peace bond statute does not address placement of conditions on peace bond. (R at p. 305; See Miss. Code Ann. § 99-23-1 Peace Bonds, Hearing Exhibit 7). Likewise, other bond statutes do not address whether you can put conditions on a bond such as alcohol or drug treatment, but such conditions are routinely used by judges. (R at p. 306).

Mr. Scott testified that the original Order by Judge Boland was not in violation of the law because the peace bond statute places no specific prohibition of putting conditions on a peace bond. (See September 14, 2005 Order, Hearing Exhibit 3, p. 8; R at pp. 310-311). Further, there is no written or implied requirement for affiant to be in court when the Defendant appears on a peace bond. (R at p. 309). Moreover, if the defendant does not post the money or a surety to the satisfaction of the judge, the defendant can be put in jail up to one year on a peace bond. (R at p. 315-6). Clearly, the monetary fine smacks of a civil penalty, while the jail time is clearly a criminal punishment.

There was conflicting testimony from every Justice Court Judge, attorney, and expert regarding the proper procedure for a peace bond. **In fact, the only testimony that was undisputed was that there is confusion regarding the proper procedure for a peace bond.** Yet, the Commission summarily found that peace bonds are not criminal and this was clearly erroneous.

Judge William Skinner testified that peace bonds are a “strange animal.” (R at p. 121). Judge Skinner also testified that some judges will not use peace bonds due to the confusion. (R at p. 125). He testified that he never had any judicial training on peace bonds from the Attorney General’s office in his six years on the bench. (R at p. 121). Judge Skinner also testified that there is no filing fee in a criminal case, but there is a \$64 filing fee for a peace bond. However, the Defendant actually says “guilty” or “not guilty” when they appear in open court. (R at p. 122). The Commission did

not address this anomaly in its Findings. It was not contradicted that there is confusion among Hinds County Justice Court Judges and Justice Court Judges in the State of Mississippi regarding the proper procedure for peace bonds. (R at p. 123). This fact alone should weigh heavily towards Judge Boland's exoneration.

Like Judge Boland, Judge Skinner uses the term "guilty" if the defendant comes into court and admits the affidavit. (R at p. 128). Judge Skinner says the defendant with a peace bond is pleading guilty to a criminal offense even though there is a monetary fine. (R at p. 128). Judge Skinner says he considered peace bonds a criminal charge. (R at p. 128). Thus, according to the Commission, every Hinds County Justice Court Judge that testified at the Hearing is wrong because "there is nor has [there] ever been a crime of "peace bond." (See November 1, 2007 Commission Findings, ¶20).

Like Judge Boland and David Scott, Judge Skinner feels the peace bond statute does not give guidance as to whether peace bonds are civil or criminal. (R at p. 129). Judge Skinner testified that twenty different judges will give you twenty different answers on the proper procedure for peace bonds. (R at p. 103). While Judge Skinner's Warrant for Brett Prince says charged with "peace bond," Judge Skinner testified "I don't know" what a peace bond means. (R at p. 103). Judge Skinner testified that half of the judges think peace bonds are civil, and half of the judges think peace bonds are criminal. (R at pp. 104, 121). Thus, according to the Commission, half of the Justice Court Judges across the state are wrong because "there is nor has [there] ever been a crime of "peace bond." (See November 1, 2007 Findings, ¶20).

Despite the above, Judge Skinner has placed conditions on peace bonds in his Court. He has made Defendants report to a probation officer on a peace bond. (R at p. 106). Unfortunately, Judge Boland has been sanctioned for the same thing.

Judge Nicki Boland testified regarding the lack of understanding by judges regarding peace bonds. Judge Boland testified that she received no judicial training on peace bonds. (R at p. 382).

Judge Boland testified that the peace bond statute was the most confusing and contested aspect of justice court. In fact, everybody she dealt with thought peace bonds were criminal. (R at p. 382). Thus, once again, according to the Commission, everybody Judge Boland dealt with is wrong because “there is nor has [there] ever been a crime of “peace bond.” (See November 1, 2007 Findings, ¶20).

Judge Boland testified that Brett Prince was charged with “peace bond” by Judge Skinner. (See Justice Court Warrant, Hearing Exhibit 3, page 4). Judge Skinner decided the charge, so if there was an erroneous charge for the crime of peace bond, it was made by Judge Skinner, not Judge Boland. (R at p. 387). Further, Judge Skinner held Prince without a hearing until he saw a judge. There is nothing in the peace bond statute to allow Judge Skinner to do that, but all the Hinds County Justice Court Judges do the same thing. (R at p. 388-9).

Moreover, it was uncontradicted that Judge Boland had never sent anyone to jail on a peace bond before Brett Prince. (R at p. 396). This was her first time to use a peace bond for jail time. Judge Boland testified that in September 2005 that the peace bond statute was “the most confusing thing” she had ever encountered as a judge. (R at p. 448). To help her understand peace bonds, Judge Boland took the initiative and sought advice regarding peace bonds from numerous sources, including Hinds County Court Judge Mike Parker and Judge William Skinner. (R at p. 448). **Judge Skinner told Judge Boland that she was allowed to place conditions such as probation on a peace bond.** Judge Boland now knows that this advice was incorrect. However, it was not until after the Brett Prince matter, when Judge Mike Parker overturned an Order with probation by Judge Skinner, that Judge Boland knew this. (R at p. 448-9). Judge Boland currently avoids dealing with

peace bonds if at all possible. (R at p. 450).

Judge Boland put conditions on Brett Prince because she was simply trying to help a disturbed young man and a family that was splitting at the seams, and she thought that treatment was the vehicle to help Brett Prince. (R at p. 451). Moreover, the entire testimony of David Scott and Judge William Skinner clearly prove how confusing peace bonds are to the judges in this State. The fact that Judge Boland is an attorney and had never been taught about peace bonds in law school, the Mississippi Judicial College, or the National Judicial College provide evidence that Judge Boland believed she had the authority to use the peace bond as she did. When she asked a judge with more experience, he actually told her she could do what she is now being punished for. Judge Boland's testimony proves that she was trying to start the first misdemeanor drug court, and believed that using peace bonds was an appropriate way to get it started. In the end, Judge Boland should not be punished for acting in good faith.

III. Regarding *Prince*, There Has Been No Violation of Any Duty of Judicial Conduct

The Commission found that the Respondent "played fast and loose with her unique power as judge" and "violated 99-23-1, 99-23-5, 99-23-13, Canons 1, 2A, 2B, 3B(2), 3B(4), 3B(8), and 3C(1) of the Code of Judicial Conduct and Section 177A of the Mississippi Constitution of 1890, as amended." (See November 1, 2007 Findings, ¶16). The Commission erred and no violation of any duty of judicial conduct occurred.

There is no evidence whatsoever that the Respondent had any preconceived ill will towards Brett Prince or his family. (R at p. 402). Also, there is no evidence of any fraud or deceit on the part of Judge Boland. Under the circumstances, Judge Boland was justified to think that Brett Prince was dangerous based on the Affidavit of Mark Moore and evidence in the arrest record that Brett Prince

was previously violent and had previously assaulted his father with a boat paddle. (R at p. 397-8).

At the time, Judge Boland believed that peace bonds were going to be a vehicle to get people such as Brett Prince into a problem solving court, not to send them to jail. (R at p. 398). Accordingly, Judge Boland initially intended to place Brett Prince in a drug/alcohol treatment facility so he could receive help. She did not initially plan to send him to jail. (R at p. 400). Judge Boland placed conditions on the peace bond (e.g. don't drink or do drugs), because it was the only way that she knew how to get Brett Prince into a problem solving court or into treatment. She knew about Brett Prince's past from the arrest record and Judge Skinner. (R at pp. 401, 418-19). Judge Boland simply placed the same type of conditions on Brett Prince that Judge Skinner would use, except she used the Good Samaritan treatment facility and Judge Skinner used a commercial probation service. (R at p. 401).

Judge Boland had a reasonable basis for the conditions she ordered. (R at p. 416-422). She honestly believed that drug/alcohol treatment was appropriate for Brett Prince based on the evaluation she received from the treatment center. (R at pp. 401-2). The Commission ignores that Brett Prince had an alcohol evaluation and actually asked Judge Boland to send him to treatment. (R at p. 417). **It is important to note that had Brett Prince finished treatment, he would not have gone to jail.** However, instead of getting help, Brett Prince was kicked out of treatment for "non-compliance..." (R at pp. 404, 409, 413; Hearing Exhibit 3, p. 14). Brett Prince voluntarily chose not to follow the rules of his treatment facility. There is no testimony that Judge Boland forced Prince to violate the terms of his treatment. The facts show that Judge Boland did everything required under the law to protect the rights of the defendant and that she genuinely believed that she could place probation on Brett Prince in order to get him help in treatment. When Prince failed to comply with his treatment, she held him in contempt and thought he could be jailed for contempt.

Finally, the Commission did not address the following relevant facts in its Findings:

- 1) Brett Prince had a history of violence that was known to his parents and Judge Skinner.
- 2) Brett Prince pled guilty to peace bond and admitted in open court the facts in the affidavit. (R at p. 264).
- 3) Brett Prince was asked by Judge Boland if he needed alcohol counseling and Prince doesn't remember if he said yes. (R at p. 265).
- 4) Brett Prince had alcohol evaluation in jail.
- 5) Brett Prince **admitted that it was a careless mistake for him not to read the waiver.** (R at p. 282).
- 6) Brett Prince admitted that Judge Boland did not force him to do or sign anything. (R at p. 283).
- 7) Brett Prince had a drug and alcohol evaluation and was given the option to either spend time in jail or go to treatment. (R at pp. 284-5).
- 8) Brett Prince asked Judge Boland to send him to treatment instead of jail. (R at p. 286).
- 9) Brett Prince knew he had the right to an attorney at the time he signed the waiver of attorney. (R at p. 292).
- 10) Judge Boland offered Brett Prince the opportunity to obtain counsel, to plead guilty or not guilty, to hear the maximum and minimum penalties, and to obtain a court appointed lawyer. (R at pp. 390, 392).
- 11) Brett Prince was very disrespectful to the Court. (R at p. 394).

IV. Regarding *Prince*, the Commission Erred in Imposing Sanctions

The Commission found that the “astounding chain of events” are “shocking,” and that the Respondent entered an Order that was “clearly unlawful.” (See November 1, 2007 Findings, ¶20). Further, the Commission found that the actions of the Respondent were “unlawful and extreme.” The Commission found that Judge Boland’s conduct 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, and recommended that Judge Boland be suspended from office without pay for 90 days and that she be fined \$4,250.00 plus costs of \$3,532.06. (See November 1, 2007 Findings, ¶33(2) and (3)). The Commission erred in imposing these harsh sanctions against Judge Boland.

First, while the Commission summarily found that Judge Boland's Order was "clearly unlawful," the former attorney from the Opinions Division of the Attorney General's Office and the only judges that testified disagreed. In fact, another Hinds County Justice Court Judge, William Skinner, disagrees that peace bond Orders with conditions are clearly unlawful. Second, the judicial seminars and literature provided to the Respondent do not state that placing conditions on peace bonds is clearly unlawful. (Hearing Exhibit 12). Accordingly, Justice Court Judges in Mississippi receive no training on interpreting this statute.

The Commission's announcement that "there is nor has ever been a crime of "peace bond," was disputed by every judge and expert that testified. The Commission's finding ignores the sworn testimony of David Scott, Judge Skinner, and Judge Boland. It is telling that the prosecution did not offer expert testimony on this issue.

Moreover, Judge Boland committed no intentional unlawful acts. The defendant Brett Prince had a history of violence with his family and terrorized the neighbors like Mark Moore. Judge Boland believed that she had the authority to put a condition on Prince and when the defendant intentionally the condition, she found him in contempt and thought he could be jailed. Further, the facts show that Judge Boland was trying to start a drug court program and did not knowingly violate any Judicial Canon. Instead, she steadfastly worked to improve the Hinds County Justice Court.

The relevant case law shows that Judge Boland should not be suspended or fined. The case of *Mississippi Commission on Judicial Performance v. Judy Case Martin* is instructive. *Martin*, 921

So.2d 1258 (Miss. 2006). The *Martin* case involved a Lincoln County Justice Court Judge that denied bail on two separate occasions in violation of state and constitutional provisions under which only county and circuit judges could deny bail. *Martin*, at p. 1258. The Commission on Judicial Performance issued findings of fact and conclusions of law, and recommended public reprimand, suspension from office without pay for 30 days, and assessment of costs. *Id.* Judge Martin testified that she was unfamiliar with the bond provisions of the Mississippi Constitution, and that she held no contempt or bond revocation hearings. *Id.* at p. 1263.

The Mississippi Supreme Court found that Judge Martin violated Article 3, Section 29 of the Mississippi Constitution and erred in denying bail to the Defendant. *Id.* at p. 1263. However, the Court found that this error “does not necessarily equate to sanctionable conduct...” *Id.* at p. 1263. The Court eventually dismissed the findings of the Commission with prejudice and found that “while exercising her judicial discretion, Judge Martin committed an error. All judges will err, if they serve long enough.” *Id.* at p. 1264. Thus, the actions of Judge Boland, even if incorrect, should not be sanctioned in light of the well reasoned opinion in *Martin*.

The Commission also ignored the principle that in no case does one isolated instance of alleged misconduct warrant the penalty imposed on Judge Boland - a suspension plus \$7,782.06 in fines and costs. Where the incident was an isolated or atypical, the courts have always insisted on no more than a private reprimand. *In Re Inquiry Concerning Baker*, 535 So.2d 47, 53 (Miss. 1988). The Supreme Court ran a survey of all recent Mississippi judicial disciplinary cases and found that the sanction of public reprimand is never imposed when there is only one isolated instance of impropriety. *Id.* (See also *Mississippi Comm’n on Judicial Performance v. Judge U.U.*, 875 So.2d 1083, 1094 (Miss. 2004); *Mississippi Judicial Performance Comm’n v. Walker*, 565 So.2d 1117, 1124 (Miss. 1990); *Mississippi Comm’n on Judicial Performance v. Justice Court Judge R.R.*, 732

So.2d 224 (Miss. 1999); *Mississippi Comm'n on Judicial Performance v. Blakeney*, 905 So.2d 521, 529 (Miss. 2004). This was the first time that Judge Boland had ever used a peace bond to put someone in jail, and she should not be punished for this one Complaint.

The Commission has failed to prove by clear and convincing evidence that Judge Boland violated Canon 1, 2A, 2B, 3B(2), 3B(4), 3B(8) and 3C(1) of the Code of Judicial Conduct. Canon 1 simply announces the overall thrust Code. Canon 2 prohibits a judge from violating the law. There is no evidence that Judge Boland intentionally violated any law. Also, there is no evidence or inference to a dishonest act by Judge Boland. The Supreme Court has held that Canon 2 could not be applicable when a judge's impartiality or integrity are not questioned. *Mississippi Comm'n on Judicial Performance v. Judge U.U.*, 875 So.2d 1083 at 1090 (Miss. 2004). Regarding Canon 3B(2) and 3B(8), Judge Boland acted in good faith based on her training and guidance from other judges. She also took steps to correct her mistake once she realized there was a problem. Furthermore, the evidence simply fails to show that Judge Boland violated any of these vague sections by clear and convincing evidence as required by law. The charges under each of these Canons are groundless.

Our Court has required has required the Commission on Judicial Performance to apply certain standards in determining all sanctions. These requirements go beyond simple mitigating factors. *Mississippi Comm'n on Judicial Performance v. Gibson*, 883 So.2d 1155 (Miss. 2004). Our Court previously applied the facts set forth in *Baker, supra*, but now has modified the *Baker* factors to apply to all cases to determine appropriate tests in misconduct proceedings. *Gibson* at 1157. These factors are as follows: (1) The length and character of the judge's public service; (2) Whether there is any prior case law on point; (3) The magnitude of the offense and the harm suffered; (4) Whether the misconduct is an isolated incident or evidences a pattern of conduct; (5) Whether moral

turpitude was involved; and (6) The presence or absence of mitigating or aggravating circumstances. These facts factors were recently cited by this Court as being the applicable standards in *Mississippi Comm'n on Judicial Performance v. Gordon*, No. 2006-JP-01452-SCT (May 3, 2007).

Each of these factors falls overwhelmingly in favor of Judge Boland. Factor one is the length and character of Judge Boland's public service. The evidence is uncontradicted that Judge Boland has served the public in an exemplary manner for over 20 years. (R at pp. 204-210). In addition, Judge Boland has worked in her community in many nonprofit organizations for several years. (R at p. 206). She also served as a private attorney for five years with success and without even a suggestion of unethical behavior. Subsequently, she served with acclaim as a commissioner of the Mississippi State Tax Commission for a six-year term, and has served as an elected Justice Court Judge since January 2004. During this time, she planned, launched, and presided over the first and only Justice Court Drug Court in the State of Mississippi. Judge Boland has mediated over 250 Hurricane Katrina claims. The length and character of her service as a public servant are exemplary.

Also, regarding other judicial training, Judge Boland has attended every D.U.I. program offered at the National Judicial College. She has attended all domestic violence seminars given by the Hinds County Sheriff's Office. Judge Boland attends all training that the Mississippi Judicial College puts on and attends the summer conferences. However, in her entire career as an attorney and judge, Judge Boland has never received any training regarding peace bonds. (R at p. 210).

Second, the Commission should look at whether there is any prior case law on point. There are no cases or Attorney General Opinions interpreting the placing of conditions on a peace bond, and this weighs heavily in favor of Judge Boland. This explains why it is better for judges not to use peace bonds, because there is no guidance on the issue.

Next, the Court considers the magnitude of the offense and the harm suffered. Brett Prince

threatened to do bodily harm to an innocent man, Mark Moore. Prince's father and Mark Moore consulted their neighbor Judge William Skinner about their options. Judge Skinner told Mr. Prince and Mark Moore that Moore should file a peace bond charge against Brett Prince. Brett Prince's father initially did not object to his son having criminal charges brought against him. Brett Prince was then evaluated for alcohol and drug treatment and requested to be placed in a facility for help. Prince signed a document and waived his right to an attorney. Later on, the Prince family felt the charges were excessive and filed this Complaint against Judge Boland only. Certainly, although there is a difference of opinion regarding whether Judge Boland was within her authority to place conditions on a peace bond, there are no allegations that any money was stolen or that Judge Boland acted intentionally towards some illegal end. Fourth, the alleged misconduct was an isolated incident and Judge Boland testified it was the first time that she put someone in jail on a peace bond. She now rarely uses peace bonds, and there is no proof of a pattern of conduct. The fifth factor is whether moral turpitude was involved. Moral turpitude is fraud, deceit, bribery, extortion or the like. Moral turpitude was not involved here.

The sixth and final factor is the presence or absence of mitigating or aggravating circumstances. With all deference to the Commission, the findings reflect confusion regarding the issue of peace bonds. Although every judge and expert testified there was confusion regarding the proper procedure for peace bonds, the Commission still found that there was no confusion on the subject. This is not only clearly erroneous, it is inexplicable. The Commission also failed to take into account the numerous accomplishments of Judge Boland and the fact that she took action to correct this matter. Applying the proper standards under Mississippi law, Judge Boland should not be found guilty of a violation of any rule of judicial conduct.

In conclusion, Judge Boland implores this Court to dismiss the *Prince* matter. To do

otherwise, would be punishing a hard working public servant that was doing her best to interpret an extremely confusing area of the law. Again, the Commission was wrong in its factual findings and ignored the crux of the debate - peace bonds are quasi criminal, quasi civil and difficult for judges to apply. To Judge Boland, this matter has been devastating and in all likelihood cost her the election in November. For these, reasons, Judge Boland prays that this Court dismiss the charges filed.

ARGUMENT (AUSTIN KINSTLEY 2006-121)

I. Regarding *Kinstley*, the Commission Correctly Dismissed the Complaint

Judge Boland agrees with the Commission that there were no violations or willful misconduct in the *Kinstley* matter. (See November 1, 2007 Findings, ¶33(1)). However, it is important to point out that the prosecution for the Commission on Judicial Performance recklessly proceeded against Judge Boland based on a false affidavit that caused Judge Boland to defend a frivolous charge and incur great time, expense, and legal fees. In fact, **the prosecution for the Commission on Judicial Performance did not even review the court file** or check the story of its star witness, Lisa Shack Kinstley, prior to filing the Complaint and trying to remove Judge Boland from the bench. Mrs. Kinstley was incorrect about which disturbing the peace statute that Mr. Kinstley was charged with. (R at p. 90). Had Mrs. Kinstley or the prosecution read the correct disturbing the peace statute, they would have realized that Mr. Kinstley was sentenced correctly.

On the day before the hearing, when counsel for Judge Boland pointed out that the prosecution had charged Judge Boland for violation of the wrong statute, the Commission on Judicial Performance offered to withdraw the charge. Even when confronted with this glaring error, the prosecution blamed Judge Boland for hiding the Justice Court file. However, the Justice Court Clerk testified that the *Kinstley* file was merely lost, and that there was no evidence Judge Boland

had anything to do with the missing file. (R at pp. 6-9, 156-7, 166). Once again, scurrilous accusations against Judge Boland were disproved.

It is ironic that the Commission on Judicial Performance tried to remove Judge Boland from the bench for a clerical error in the *Kinstley* matter, when the Commission committed a gross violation itself by not verifying the facts prior to proceeding against a sitting judge. This failure undermined the credibility of the complaining witness, prosecution, and the entire *Kinstley* case. Even when presented with this mistake, the prosecution would not agree to dismiss the *Kinstley* case. Rather, it offered a “warning letter” to settle the matter. Judge Boland refused to accept such a warning because she did nothing intentional or in bad faith, but merely made a clerical mistake, which she admitted in her Answer. In light of the above, Judge Boland should be awarded fees and costs for having to defend this portion of the charges.

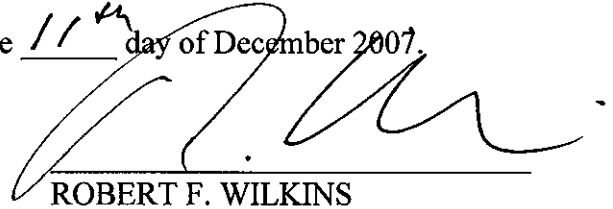
Regardless, regarding Paragraph 33(1), Judge Boland agrees with the Commission that there were no violations. Further, there was no evidence of any ill will or bad faith or motive and Judge Boland merely committed a clerical error. Thus, there should be no sanction against Judge Boland in the *Kinstley* matter. (See *Martin*, 921 So.2d 1258 (Miss. 2006)).

Finally, the Commission did not address the fact that Austin Kinstley was erroneously let out of jail based on a statute that he was not charged with. In fact, Mr. Kinstley served less than the maximum charge. Mr. Kinstley actually served 4 months 20 days, instead of six months. (R at p. 80). The Commission also did not address the fact that Lisa Shack Kinstley was at first adamant that her husband serve the maximum sentence because he severely beat her for two days and then urinated on his wife. It was not until later, when Mrs. Kinstley changed her mind and did not want her husband to be in jail, that she filed the charges with the Commission on Judicial Performance. In any event, Lisa Shack Kinstley ultimately asked that the charges against Judge Boland be dropped,

but the prosecution refused. (R at p. 64).

In conclusion, Judge Nicki M. Boland is a dedicated jurist that made a clerical error. She admitted this in her Answer. Yet, the Commission on Judicial Performance conducted a mean spirited witch hunt against Judge Boland that probably cost her election in November. In light of the above, the Commission's ruling in *Kinstley* should be affirmed.

RESPECTFULLY SUBMITTED, this the 11th day of December 2007.



ROBERT F. WILKINS

ROBERT F. WILKINS, ESQ. [REDACTED]
ROBERT F. WILKINS LAW FIRM, PLLC
475 EAST CAPITOL STREET (39201)
POST OFFICE BOX 2777
JACKSON, MISSISSIPPI 39207
TELEPHONE: (601) 948-6888
FACSIMILE: (601) 948-6889

**ATTORNEY FOR APPELLANT,
NICKI M. BOLAND**

CERTIFICATE OF SERVICE

I, Robert F. Wilkins, counsel for the Appellant Nicki M. Boland in the above-referenced matter, do hereby certify that I have this day served, via United States mail, postage pre-paid, the foregoing document to the following:

Luther T. Brantley, Esq.
Darlene Ballard, Esq.
Mississippi Commission on Judicial Performance
Barefield Complex Building, Suite 201
Jackson, Mississippi 39201

This the 11th day of December, 2007.

A handwritten signature in black ink, appearing to read 'R. Wilkins', written over a horizontal line.

ROBERT F. WILKINS