Judicial Disciplinary Law

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matters in the case of *Lawyer Disciplinary Board v. McGraw*. The opinion held that

Rule 3.7 of the Rules of Lawyer Disciplinary Procedure, effective July 1, 1994, requires the Office of Disciplinary Counsel to prove the allegations of the formal charge by clear and convincing evidence. Prior cases which required that ethics charges be proved by full, preponderating and clear evidence are hereby clarified.

X. JUDICIAL DISCIPLINARY LAW

A. *Construction of Judicial Code of Ethics*

In *Matter of Karr*, Justice McHugh held that "[w]hen the language of a canon under the Judicial Code of Ethics is clear and unambiguous, the plain meaning of the canon is to be accepted and followed without resorting to interpretation or construction." 700

B. *Public Statements by Judicial Officer*

Justice McHugh held in *Matter of Hey* that

[under Canon 3A(6) of the Judicial Code of Ethics [1976] judges’ public statements shall be considered to be in the “course of their official duties” when the statement is part of an official duty, or related to an official duty, or is sought from or given by the judge because of his or her official position. 701

C. *Ex Parte Communication*

Justice McHugh examined ex parte conduct by a magistrate in a criminal case affecting the sentence of a defendant in the disciplinary case of *Matter of Mendez*. Justice McHugh held:

Where a magistrate sentenced a defendant to 60 days in jail, to be served upon weekends only, upon the misdemeanor offense of

697 461 S.E.2d 850 (W. Va. 1995).
698 Id. at Syl. Pt. 1.
700 Id. at Syl. Pt. 1.
702 Id. at Syl. Pt. 2.
703 344 S.E.2d 396 (W. Va. 1985).
destruction of property, and the magistrate subsequently
suspended the sentence, partially served by the defendant, without
lawful authority and upon the ex parte representation of the
defendant's father that the sentence was harmful to a previously
undisclosed medical ailment of the defendant, the magistrate, in
suspending the sentence, violated Canon 3 of the West Virginia
Judicial Code of Ethics.\footnote{387 S.E.2d 126 (W. Va. 1989).}

D. \textit{Campaign Funds}

Justice McHugh stated in \textit{Matter of Karr}\footnote{387 S.E.2d 126 (W. Va. 1989).} that

\[ \text{[w]hen a candidate, including an incumbent judge, for a judicial}
\text{office that is to be filled by public election between competing}
candidates personally solicits or personally accepts campaign
funds, such action is in violation of Canon 7B(2) of the Judicial
Code of Ethics. A committee established by a judicial candidate,
including an incumbent judge, may solicit or accept funds for such
candidate's campaign.}^{387 S.E.2d 126 (W. Va. 1989).}

E. \textit{Suspension of Judicial Officer}

The authority of the West Virginia Supreme Court of Appeals to suspend a
judicial officer was addressed by Justice McHugh in \textit{Matter of Grubb}.\footnote{417 S.E.2d 919 (W. Va. 1992).} Justice McHugh held that

\[ \text{[u]nder the authority of article VIII, sections 3 and 8 of the West}
\text{Virginia Constitution and Rule II(J)(2) of the Rules of Procedure}
for the Handling of Complaints Against Justices, Judges,
Magistrates and Family Law Masters, the Supreme Court of
Appeals of West Virginia may suspend a judge, who has been
indicted for or convicted of serious crimes, without pay, pending
the final disposition of the criminal charges against the particular
judge or until the underlying disciplinary proceeding before the
Judicial Investigation Commission has been completed.}^{417 S.E.2d 919 (W. Va. 1992).}
F. **Judicial Hearing Board**

In *Matter of Hey*, Justice McHugh addressed the authority of the Judicial Hearing Board. The court stated that

[under Rule III(C)(13) [1992] of the West Virginia Rules of Procedure for the Handling of Complaints Against Justices, Judges, Magistrates and Family Law Masters, the Judicial Hearing Board is limited to making a “written recommendation, which shall contain findings of fact, conclusions of law and proposed disposition.” Because of the Board’s limited judicial capacity, the Board is without authority to make a legal decision that is entitled to preclusive or res judicata effect.]

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**XI. CIVIL AND CRIMINAL CONTEMPT LAW**

**A. Civil Contempt**

Justice McHugh set out a bright line for distinguishing between civil and criminal contempt in the case of *State ex rel. Robinson v. Michael*. Justice McHugh held that

[whether a contempt is classified as civil or criminal does not depend upon the act constituting such contempt because such act may provide the basis for either a civil or criminal contempt action. Instead, whether a contempt is civil or criminal depends upon the purpose to be served by imposing a sanction for the contempt and such purpose also determines the type of sanction which is appropriate.]

In *Robinson*, Justice McHugh then held that

[where the purpose to be served by imposing a sanction for contempt is to compel compliance with a court order by the contemner so as to benefit the party bringing the contempt action by enforcing, protecting, or assuring the right of that party under the order, the contempt is civil.]

Justice McHugh addressed the nature of a civil contempt in *Robinson* by

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710 Id. at Syl. Pt. 3.
712 Id. at Syl. Pt. 1.
713 Id. at Syl. Pt. 2.