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## Civil and Criminal Contempt Law

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F. *Judicial Hearing Board*

In *Matter of Hey*,<sup>709</sup> Justice McHugh addressed the authority of the Judicial Hearing Board. The court stated that

[u]nder 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.<sup>710</sup>

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*.<sup>711</sup> Justice McHugh held that

[w]hether 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.<sup>712</sup>

In *Robinson*, Justice McHugh then held that

[w]here 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.<sup>713</sup>

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

<sup>709</sup> 425 S.E.2d 221 (W. Va. 1992).

<sup>710</sup> *Id.* at Syl. Pt. 3.

<sup>711</sup> 276 S.E.2d 812 (W. Va. 1981).

<sup>712</sup> *Id.* at Syl. Pt. 1.

<sup>713</sup> *Id.* at Syl. Pt. 2.

stating that

[t]he appropriate sanction in a civil contempt case is an order that incarcerates a contemner for an indefinite term and that also specifies a reasonable manner in which the contempt may be purged thereby securing the immediate release of the contemner, or an order requiring the payment of a fine in the nature of compensation or damages to the party aggrieved by the failure of the contemner to comply with the order.<sup>714</sup>

Finally in *Robinson*, Justice McHugh held that

[a]bsent legislation otherwise, the public interest in the enforcement of a noncustodial parent's obligation of support does not create a positive duty on the part of a prosecuting attorney to prosecute a civil contempt action which arises from a failure to comply with a divorce decree which orders support payments.<sup>715</sup>

#### B. *Criminal Contempt*

In *State ex rel. Robinson v. Michael*,<sup>716</sup> Justice McHugh indicated that “[w]here the purpose to be served by imposing a sanction for contempt is to punish the contemner for an affront to the dignity or authority of the court, or to preserve or restore order in the court or respect for the court, the contempt is criminal.”<sup>717</sup>

Justice McHugh also held that “[t]he appropriate sanction in a criminal contempt case is an order sentencing the contemner to a definite term of imprisonment or an order requiring the contemner to pay a fine in a determined amount.”<sup>718</sup>

## XII. CONTRACT LAW

#### A. *Interpreting Contract*

In *L.D.A., Inc. v. Cross*,<sup>719</sup> Justice McHugh restated a principle of law developed in *Quinn v. Beverages of West Virginia*.<sup>720</sup> He held in *Cross*:

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<sup>714</sup> *Id.* at Syl. Pt. 3.

<sup>715</sup> *Id.* at Syl. Pt. 6.

<sup>716</sup> 276 S.E.2d 812 (W. Va. 1981).

<sup>717</sup> *Id.* at Syl. Pt. 4.

<sup>718</sup> *Id.* at Syl. Pt. 5.

<sup>719</sup> 279 S.E.2d 409 (W. Va. 1981).

<sup>720</sup> 224 S.E.2d 894 (W. Va. 1976).