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Compendium of Essential Legal Principles From His
Opinions as a Justice on the West Virginia Supreme
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reinstatement to the practice of law or other disciplinary proceedings, Disciplinary Counsel shall notify the Hearing Panel Subcommittee of the existence of the conflict. If the conflict is not resolved in advance, the Hearing Panel Subcommittee shall have the right to representation by separate counsel before this Court upon review of the petition.²⁹²

X. JUDICIAL DISCIPLINARY LAW

A. *Magistrates*

*In re Browning*²⁹³ held,

[e]xcept in very limited circumstances, it is improper for a magistrate to act in a case in which the magistrate cannot remain neutral and detached. Therefore, Syllabus Point 2 of *In re Pauley*, 173 W.Va. 475, 318 S.E.2d 418 (1984), quoted in Syllabus Point 4 of *In re Markle*, 174 W.Va. 550, 328 S.E.2d 157 (1984), is limited to situations in which a magistrate is not otherwise disqualified.²⁹⁴

Browning also ruled that “[i]t is not a violation of the Judicial Code of Ethics or the Code of Judicial Conduct to fail to follow mandatory criminal procedure if a magistrate is disqualified from hearing the matter.”²⁹⁵

B. *Public Remarks by Judicial Officer*

The case of *In re Hey*²⁹⁶ established a bright line for public judicial comments. Justice Cleckley wrote that

[t]he State’s interests in maintaining and enforcing the judicial canons against judges’ speech are sufficiently served by their

²⁹² *Id.* at Syl. Pt. 5.

²⁹³ 452 S.E.2d 34 (W. Va. 1994).

²⁹⁴ *Id.* at Syl. Pt. 4.

²⁹⁵ *Id.* at Syl. Pt. 5.

²⁹⁶ 452 S.E.2d 24 (W. Va. 1994).

specific prohibitions so that the general prohibitions in Canons 1, 2, and 3 of the Judicial Code of Ethics (and now the Code of Judicial Conduct) may not be used to punish judges for their public remarks that do not concern a pending or impending matter and that do not violate either a specific prohibition or some other law.²⁹⁷

XI. NEGOTIABLE INSTRUMENT LAW

In *Painter v. Peavy*,²⁹⁸ Justice Cleckley addressed the issue of accepting or rejecting a check for payment of a debt:

If a check is tendered bearing the words ‘payment in full’ or some other words of similar purport, the payee may either accept the check and acknowledge the accord and satisfaction, or return the check to the payor. If the payee chooses the latter course of action he may continue to dispute the underlying claim.²⁹⁹

Several principles of law were enunciated by Justice Cleckley in *Public Citizen, Inc. v. First National Bank in Fairmont*.³⁰⁰ The opinion held that

[u]nder W. Va. Code § 46-3-116 (1963), a check made out to two parties may be endorsed and negotiated by either of them only when the check clearly indicates that it is to be paid in the alternative. When a check is ambiguous as to whether payees are joint or alternative, it will be construed as payable jointly.³⁰¹

Justice Cleckley noted that “[u]nder W. Va. Code § 46-3-406 (1963), it is commercially unreasonable for a bank to accept for deposit in an individual account a check made payable to a corporation, without first ascertaining, or at least

²⁹⁷ *Id.* at Syl. Pt. 3.

²⁹⁸ 451 S.E.2d 755 (W. Va. 1994).

²⁹⁹ *Id.* at Syl. Pt. 6.

³⁰⁰ 480 S.E.2d 538 (W. Va. 1996).

³⁰¹ *Id.* at Syl. Pt. 4.