

IN THE TENNESSEE BOARD OF JUDICIAL CONDUCT

**IN RE: ROGER MARSH
JUDICIAL COMMISSIONER
WILSON COUNTY, TENNESSEE**

Docket No. M2015-00437-BJC-DIS-FC

File No. B13-5355

FILED
2015 MAR 11 AM 10:46
APPELLATE COURT CLERK
NASHVILLE

FORMAL CHARGE

Timothy Discenza, Disciplinary Counsel for the Tennessee Board of Judicial Conduct, at the direction of an investigative panel of three members of the Board of Judicial Conduct, in accordance with Tennessee Code Annotated § 17-5-301, *et. seq.*, hereby files formal charges against Roger Marsh, Judicial Commissioner, Wilson County, Tennessee.

Jurisdiction

1. Following a full investigation authorized under the provisions of Tennessee Code Annotated § 17-5-304(b)(3), the three member investigative panel originally composed of the Honorable Christy Little, Mr. Robert T. (“Tas”) Gardner, and the Honorable Holly M. Kirby found, pursuant to Tennessee Code Annotated § 17-5-304(d)(2)(A), that there is reasonable cause to believe that Roger Marsh has committed judicial offenses alleged herein in violation of Tennessee Code Annotated § 17-5-302. A “full investigation” in accordance with Tennessee Code Annotated § 17-5-304(c)(1) was authorized and directed. Thereafter, the Honorable Holly M. Kirby left the Board of Judicial Conduct due to her appointment as a Justice on the Tennessee Supreme Court. Mr. Miles Burdine was substituted for Justice Kirby on the investigative panel in this matter. The

investigative panel then directed Disciplinary Counsel to file formal charges pursuant to Tennessee Code Annotated § 17-5-304(e)(2)(A).

2. Roger Marsh, at all times relevant herein, was a Judicial Commissioner in Wilson County, Tennessee. Therefore, Mr. Marsh is subject to judicial discipline by the Board of Judicial Conduct pursuant to Tennessee Code Annotated § 17-5-102.

Charges

Disciplinary Counsel charges Commissioner Roger Marsh as follows:

Count I

3. On or about March 2, 2013, the former son-in-law of the Board of Judicial Conduct complainant Frank Guzman in this action filed domestic assault charges against Mr. Guzman.

4. On or about March 3, 2013, Judicial Commissioner Roger Marsh in his official capacity, signed a mittimus issued a "County Mittimus-Jail" which recited, *inter alia*, that "Francisco Guzman, Having been examined before me on a charge of Domestic Assault," and with due cause and failure to give bond, was ordered to be arrested by the Sheriff and held essentially without bond, resulting in his incarceration for some 12 hours. A copy of the "mittimus" is attached hereto as Exhibit "A."

5. In fact, and despite the representation of Commissioner Marsh on the face of the mittimus document, Mr. Guzman had not been examined by Commissioner and had not made any appearance before the Commissioner at all.

6. In response to an inquiry by the Board of Judicial Conduct, through its Assistant Disciplinary Counsel, to Commissioner Marsh regarding the incident that forms the basis of this formal charge, Commissioner Marsh responded "...I have no reason to

believe that Mr. Francisco H. Guzman did not appear before me on the charge of Domestic Assault on 3/13/13.”

7. Upon receiving the response of Commissioner Marsh, the Board of Judicial Conduct, through its Assistant Disciplinary Counsel, sought additional information and clarification from Commissioner Marsh by writing him on December 18, 2013, inquiring in pertinent part, as follows:

In your response you indicate that “I have no reason to believe that Francisco H. Guzman did not appear before me...” Are you saying that despite the mittimus form indicating that an individual “Having been examined before me...” is it possible that Mr. Guzman is correct and he did not appear before you on March 3?

8. Commissioner Marsh did not acknowledge, or respond to the inquiry of December 18, 2013, until July 15, 2014, almost seven (7) months, when his attorney did lodge a response. In the interim, the Board of Judicial Conduct, through its duly constituted Investigative Panel had authorized a “full investigation” pursuant to the provisions of Tennessee Code Annotated § 17-5-304(c)(1).

9. At all times described in the preceding paragraphs, the said Roger T. Marsh, as a Judicial Commissioner in Wilson County, Tennessee was subject to the Code of Judicial Conduct, as set out in Rule 10, Rules of the Supreme Court of Tennessee.

In pertinent part, the Code of Judicial Conduct, by and through its Canons, at all times relevant herein, provided as follows:

CANON 1 — A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1 Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

RULE 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

CANON 2 — A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

Rule 2.5 Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties competently, promptly and diligently.

Rule 2.6 Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

Rule 2.16 Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

10. The above-described conduct and actions of Commissioner Marsh in signing a formal document reciting inaccurate and false information, i.e., that an individual had appeared before that Commissioner, and then, based on the false and inaccurate document (Exhibit "A"), committing the individual to jail, as heretofore set forth, constitutes a violation of the Code of Judicial Conduct as set forth in the preceding paragraph 10, and as such, subject him to the sanctions provided by the provisions of Tennessee Code Annotated § 17-5-301.

In addition, the failure by Commissioner Marsh to respond to an inquiry by the Board of Judicial Conduct as described herein in paragraphs eight (8) and nine (9), above, constitute a violation of the Code of Judicial Conduct as expressed in Rule 2.16, above and further subject him to sanctions.

NOTICE

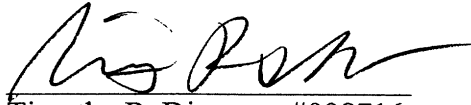
Commissioner Roger Marsh is hereby given written notice of the details of the Formal Charges brought against him pursuant to Tenn. Code Ann. § 17-5-307.

Pursuant to Tenn. Code Ann. § 17-5-307(c), Commissioner Roger Marsh shall have thirty (30) days from and after the date of receipt of these Formal Charges to file an Answer with the Court by filing the same at the Office of the Clerk of the Supreme Court, 100 Supreme Court Building, 401 Seventh Avenue North, Nashville, Tennessee 37219 and by serving a copy on Disciplinary Counsel at P.O. Box 50356, Nashville, Tennessee 37205.

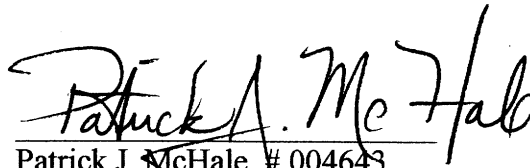
Failure to answer these Formal Charges shall constitute an admission of the factual allegations not answered.

WHEREFORE, Disciplinary Counsel moves the Board to set this matter for hearing before a Hearing Panel of the Board of Judicial Conduct at such location where the Board of Judicial Conduct may convene by law, within sixty (60) days from and after the date the Answer is filed by Commissioner as required by Tenn. Code Annotated § 17-5-308(a), or, in the event no Answer is filed, to set the matter within ninety (90) days of the date these Formal Charges are filed with the Clerk of the Court, in order to comply with the statutory time limit, and upon the hearing of this action, to impose just and proper sanctions as provided by law, including the costs and discretionary costs as provided by law.

This the 25 day of February, 2015.



Timothy R. Discenza #008716
Disciplinary Counsel
Tennessee Board of Judicial Conduct
P.O. Box 50356
Nashville, Tennessee 37205

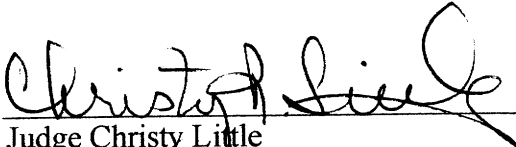


Patrick J. McHale, # 004643
Assistant Disciplinary Counsel
Tennessee Board of Judicial Conduct

IN THE TENNESSEE BOARD OF JUDICIAL CONDUCT

**IN RE: ROGER MARSH
JUDICIAL COMMISSIONER
WILSON COUNTY, TENNESSEE**

APPROVED BY THE INVESTIGATIVE PANEL
IN ACCORDANCE WITH RULE 6, SECTION 4
OF THE RULES OF PRACTICE AND PROCEDURE
OF THE TENNESSEE BOARD OF JUDICIAL CONDUCT:


BY: 
Judge Christy Little
Investigative Panel Member

IN THE TENNESSEE BOARD OF JUDICIAL CONDUCT

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OF THE TENNESSEE BOARD OF JUDICIAL CONDUCT:

BY:



Robert T. ("Yas") Gardner
Investigative Panel Member

IN THE TENNESSEE BOARD OF JUDICIAL CONDUCT

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APPROVED BY THE INVESTIGATIVE PANEL
IN ACCORDANCE WITH RULE 6, SECTION 4
OF THE RULES OF PRACTICE AND PROCEDURE
OF THE TENNESSEE BOARD OF JUDICIAL CONDUCT:

BY: Miles A Burdine
Miles Burdine
Investigative Panel Member

COUNTY MITTIMUS-JAIL

54438

Fine _____ \$ _____

As of _____ day of _____, _____

CASH BOND

Jail Register No. _____	
\$	_____
\$	_____
\$	_____
TOTAL \$	_____

Dkt. No. _____ Bk. _____ P. _____

STATE OF TENNESSEE – COUNTY OF WILSON

TO THE SHERIFF OR JAILOR OF SAID COUNTY: FRANCISCO GURNA

Having been examined before me on a charge of Domestic Assault

and it appearing that such offense has been committed, and that there is sufficient cause to believe him/her guilty thereof, and having failed to give bail of \$ ROR dollars as required, you are therefore commanded to receive him/her into your custody, and detain him/her until he/she is legally discharged.

This 7 day of March, 13

Cause continued for trial until 9 (AM) 4-10, 13

Committed 3:40 AM March, 13

Released _____ A.M. _____ P.M.

- Disposition of Prisoner in:
- General Sessions _____
- Bound Over _____
- On Bond _____
- Dismissed/Paid _____
- Other _____
- Agency WCSO
- Officer Corbett

I, LINDA NEAL, CLERK, DO HEREBY CERTIFY THE FOREGOING TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL INSTRUMENT ON FILE IN THIS CASE.

MAY 23 2013
Linda Neal
LINDA NEAL
GENERAL SESSIONS CLERK
WILSON COUNTY, TN

Pages T. Marshall
JUDICIAL COMMISSIONER