IN THE SUPREME COURT OF MISSISSIPPI

NO. 2010-JP-01435-SCT

MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE

v.

THERESA BROWN DEARMAN

DATE OF JUDGMENT:	08/26/2010
TRIAL JUDGE:	HON. H. DAVID CLARK, II
COURT FROM WHICH APPEALED:	MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE
ATTORNEYS FOR APPELLANT:	DARLENE D. BALLARD AYANNA BATISTE BUTLER JOHN B. TONEY
ATTORNEY FOR APPELLEE:	SEAN JEFFREY TINDELL
NATURE OF THE CASE:	CIVIL - JUDICIAL PERFORMANCE
DISPOSITION:	SUSPENSION FROM OFFICE FOR THIRTY (30) DAYS WITHOUT PAY; PUBLIC REPRIMAND; AND ASSESSMENT OF COSTS IN THE AMOUNT OF $100 - 06/16/2011
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

RANDOLPH, JUSTICE, FOR THE COURT:

¶1. The Mississippi Commission on Judicial Performance ("Commission") recommends a public reprimand, suspension for thirty days without pay and assessment of the costs of these proceedings for Justice Court Judge Theresa Brown Dearman of the West District of Stone County. Dearman signed an Agreed Statement of Facts and Proposed

Recommendation. The Court finds the agreed-upon proposed sanctions appropriate and orders them as recommended.

PROCEEDINGS BEFORE THE COMMISSION

¶2. In November 2009, December 2009, and March 2010, the Commission filed formal complaints charging Judge Dearman with willful misconduct in office and conduct prejudicial to the administration of justice bringing the judicial office into disrepute in violation of the Mississippi Code of Judicial Conduct ("Code"). Such conduct is actionable under Article 6, Section 177A of the Mississippi Constitution. The complaints charged violations of Canons 1, 2A, 2B, 3B(1), 3B(2), 3C(1), and 3E(1) of the Code.

¶3. In lieu of a hearing, the Commission and Judge Dearman signed an Agreed Statement of Facts and Proposed Recommendation. *See* M.C.J.P. Rule 8. Following acceptance of the recommendation by the Commission at its regular monthly meeting, the record (findings, clerk's papers, and transcript) was filed with this Court. *See* Miss. R. App. P. 10(a); M.C.J.P. Rule 10B (Mississippi Rules of Appellate Procedure apply to all Commission proceedings before this Court). As there was no hearing, the transcript consisted only of the agreed statement of facts and proposed recommendation. Judge Dearman made no objection to the content of the record.

¶4. In September 2010, Judge Dearman and the Commission signed and filed with this Court a Joint Motion for Approval of Recommendation. Judge Dearman filed a simultaneous brief in support of the joint motion. However, Judge Dearman's brief included factual allegations and assertions that dispute portions of the agreed statement and joint motion, and also attached proposed exhibits not included in the record before the Commission.

¶5. The Commission moved to "Strike Portions of Respondent's Memorandum Brief in Support of Joint Motion for Approval of Recommendations filed by [the Commission]." Judge Dearman responded, arguing that the record was void of items that would have been included, had there been a hearing, and that the additional and contradictory material was presented to aid this Court in conducting its review. In our order granting the Commission's motion, we found that the exhibits attached to Judge Dearman's brief and the contradictory factual allegations and assertions were an impermissible attempt to add to the record. *See* Miss. R. App. P. 10(f). Although Judge Dearman is allowed to submit a brief, this Court will not consider exhibits or factual allegations and assertions that were not presented below. *See* M.C.J.P. Rule 10D. This Court examines only the record as presented.

AGREED FACTS

¶6. In April 2006, Judge Dearman presided over the initial appearance of Philipe D. White, who was charged with felony possession of a controlled substance, cocaine base. Judge Dearman set White's bail at $2,500 and, as a condition of bail, required White to attend church at least once a week. In June 2006, a probation officer charged White with violating the terms of release. Judge Dearman issued a mittimus ordering that White be arrested and allowed no bond. When White was arrested, Judge Dearman set bond at $50,000. In September 2006, after White had waived a preliminary hearing, Judge Dearman ordered White released on $2,500 bond on the same conditions. A week later, the grand jury issued a true bill. In November 2006, White violated his release terms. As before, Judge Dearman ordered that White be arrested and allowed no bond.

¶7. In May 2007, a Mississippi Bureau of Narcotics ("MBN") agent filed an affidavit against Onnie Bond for possession of marijuana with intent to distribute. As a part of the same incident, a Mississippi Highway Patrol ("MHP ") trooper cited Bond for driving under the influence and five other traffic offenses. On the evening the charges were filed, Judge Dearman called the trooper and inquired about reducing the drug charge to a misdemeanor, as she questioned whether the quantity was enough to support a felony charge. Later that night, Judge Dearman called again, asking the trooper to authorize the release of Bond's vehicle. The trooper properly declined to intervene, explaining that it was an MBN case and that the vehicle was being inventoried and might be held as evidence.

¶8. In October 2008, Judge Dearman set bond at $60,000 at William Ritzer's initial appearance on felony charges for possession of a controlled substance. After the case was referred to the district attorney's office for prosecution, Judge Dearman *sua sponte* reduced the bond to $10,000 and set conditions on the reduction, including Ritzer agreeing to enter a drug-rehabilitation program. Ritzer's appearance bond was executed the same day. Approximately two months later, after Ritzer had completed the program, Judge Dearman set new bail conditions and erroneously entered the bond amount as $5,000.

¶9. On February 2, 2009, Olan Brian Brown (Judge Dearman's nephew) and his girlfriend, Shannon Jones, were charged with domestic violence and simple assault for their involvement in a domestic dispute. On the same day, Judge Dearman presided over the initial appearance of both individuals and set conditions for their release. Brown's bond conditions were less stringent than Jones's.

¶10. In March 2009, Judge Dearman issued a warrant for the arrest of Ricky Wayne Polk for grand larceny in the theft of property valued at $6,000. At Polk's initial appearance, Judge Dearman *sua sponte* amended the charge to petit larceny. After the county attorney contested the amendment, the case was transferred to the district attorney's office. Subsequently, a grand jury issued a true bill for grand larceny.

¶11. In April 2009, Judge Dearman presided over Frank Drew Rettig's initial appearance on felony charges of manufacturing methamphetamine and four misdemeanor traffic violations. In August 2009, Rettig waived a preliminary hearing, and Judge Dearman, without objection, reduced his bond to $10,000. In October 2009, Judge Dearman further reduced his bond to $2,000 and set conditions for the reduction, including Rettig agreeing to enter a drug-rehabilitation program. A week later, Judge Dearman increased his bond to $5,000, noting that Rettig could not enter the program. In a similar case in October 2009, Judge Dearman set Christopher T. Gray's bond at $5,000 and, as a condition of his bond, required him to attend church twice a week. He had been charged with sale of a controlled substance.

¶12. In May 2009, Myriah Perry was charged with grand larceny for stealing property, including a digital camera. A note in the court file indicated that, if the camera was returned by a certain date, no charges would be filed. Judge Dearman learned through an *ex parte* communication that the camera had been returned. Based on this *ex parte* communication, she reduced the charge to a misdemeanor. Later, she dismissed the case under a mistaken belief that Perry was a minor and that the Youth Court would take jurisdiction.

¶13. Judge Dearman has made her views known to the public through her writings about the problems caused by the use of illegal drugs. She has expressed her view that the Stone County Sheriff's Department has been ineffectual in dealing with the problem. In these writings, she has invited ex parte communications on the subject. In May 2008, she wrote a letter to the sheriff, attaching to it a "communique" entitled, "Illegal Drugs, Effects, & Do We Have a Problem?" In the communique, she stated, "So little is being done about the drugs in our County, State and Country." She included her office phone number and invited "community leaders, law enforcement, churches, educators, and citizens" to call and discuss the problem. She also authored columns in a local newsletter in which she discussed her differences with the sheriff and advocated for her policy in drug cases of setting low bond amounts with conditions. In one column, she invited her readers to attend initial-appearance hearings at her court, adding, "Afterwards, I would appreciate your thoughts and ideas."

ANALYSIS

¶14. Our review is guided by the rules we adopted, which "shall be liberally interpreted so as to carry out the mandate of the electorate by its approval of Section 177A of the Mississippi Constitution of 1890." M.C.J.P. Rule 1C. We "'accord careful consideration [to] the findings of fact and recommendations of the Commission . . . .'" ***Miss. Comm'n on Judicial Performance v. Boone***, ___ So. 3d ___, 2011 WL 1586469, *3 (Miss. April 28, 2011) (quoting ***In re Removal of Lloyd W. Anderson, Justice Court Judge***, 412 So. 2d 743, 746 (Miss. 1982)). With all due consideration to the concerns stated in the dissent, the Statement of Facts and Proposed Recommendation is not contested by the parties in the record before us. Thus, no justiciable issue is before us regarding facts or recommendations.

We are left only with our duty to impose a constitutionally permissible sanction. *See* Miss. Const. art. 6 § 177A.

I. Whether Judge Dearman's conduct violated Article 6, Section 177A of the Mississippi Constitution.

¶15. We agree with the Commission that Judge Dearman violated Canons 1, 2A, 2B, 3B(1), 3B(2), 3B(7), 3C(1), and 3E(1) of the Code. We find by clear and convincing evidence that Judge Dearman's conduct was willful, as well as prejudicial to the administration of justice, bringing her judicial office into disrepute. The judge's conduct is in violation of Article 6, Section 177A of the Mississippi Constitution.

¶16. Judge Dearman argues that "most of the Complaints against [her] are matters involving the exercise of judicial discretion, disagreements with [her] application of the law, and honest mistakes." She now argues that her actions were not misconduct, but derived from being a fallible human, inevitably subject to occasional error "while making hundreds of decisions often under pressure." This Court has defined the term "willful misconduct" to include "any knowing misuse of the office, whatever the motive." ***In re Anderson***, 412 So. 2d 743, 745 (Miss. 1982) (quoting ***In re Nowell***, 237 S.E.2d 246, 255 (N.C. 1977)). By engaging in the following conduct, Judge Dearman knowingly misused her office by: (1) *sua sponte* reducing bonds and charges without proper motion; (2) conditioning the reduction on church attendance; (3) exceeding her authority by altering bonds after a defendant had been released on bond or had waived preliminary hearing, or after a preliminary hearing had been conducted; (4) permitting others to create the impression that they were in a special position to influence her as a judge; (5) initiating and inviting ex parte communications; and (6)

presiding at her nephew's initial appearance. Her motivations (including her belief that her system for handling drug offenders is more effective and better serves the public) are irrelevant to a finding of willful misconduct in office. *See* ***Miss. Comm'n on Judicial Performance v. Vess***, 10 So. 3d 486, 489 (Miss. 2009).

¶17. This Court has explained that "conduct prejudicial to the administration of justice that brings the judicial office into disrepute" includes, by necessity, all willful misconduct. ***Anderson***, 412 So. 2d at 745. However, such conduct may also include behavior brought about "through negligence or ignorance not amounting to bad faith . . . . The result is the same regardless of whether bad faith or negligence or ignorance are involved and warrants sanctions." ***Miss. Comm'n on Judicial Performance v. Boykin***, 763 So. 2d 872, 875 (Miss. 2000) (quoting ***In re Anderson***, 451 So. 2d 232, 234 (Miss. 1984)).

¶18. Judge Dearman agreed with the Commission that her conduct violated several canons of the Code, particularly: Canon 1 (charging judges to establish, maintain, and enforce high standards of conduct to uphold the integrity of the judiciary); Canon 2A (charging judges to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary); Canon 2B (charging judges to avoid lending the prestige of their office to advance the private interests of others); Canon 3B(1) (charging judges not to hear and decide matters requiring disqualification); Canon 3B(2) (charging judges to be faithful to the law and not be swayed by public clamor); Canon 3B(7) (charging judges not to "initiate, permit, or consider ex parte communications" other than those expressly excepted); Canon 3C(1) (charging judges to discharge their administrative responsibilities without bias or prejudice and to cooperate with other judges and court officials); and Canon 3E(1) (charging judges

to disqualify themselves when their impartiality may be questioned or on grounds provided by law or judicial canon).

¶19. Judge Dearman agreed with the Commission's recommended sanctions. She acknowledges that she violated several canons of the Code and that her actions constituted willful misconduct prejudicial to the administration of justice, bringing her judicial office into disrepute. We accept the agreed-upon findings and recommendation. We find that Judge Dearman's misconduct was willful and prejudicial to the administration of justice, bringing the judicial office into disrepute.

II. Whether the proposed sanctions should be ordered.

¶20. The sanctions agreed upon by the Commission and Judge Dearman are a public reprimand, suspension for thirty days without pay, and payment of the cost of these proceedings in the amount of $100. Article 6, Section 177A of the Mississippi Constitution grants this Court the power, upon recommendation of the Commission, to order the removal, suspension, fine, public censure, or reprimand of any judge in Mississippi. Miss. Const. art. 6, § 177A. The sanctions imposed should be consistent with those in other cases and "ought [to] fit the offense." ***In re Inquiry Concerning Bailey***, 541 So. 2d 1036, 1039 (Miss. 1989). The six-factor ***Gibson*** analysis is applied "generally to the determination of all sanctions in judicial misconduct proceedings . . . ." ***Miss. Comm'n on Judicial Performance v. Gibson***, 883 So. 2d 1155, 1158 (Miss. 2004), *overruled on other grounds by* ***Boone***, 2011 WL 1586469.

1. The length and character of the judge's public service

¶21. Judge Dearman has served her district as a justice-court judge for six years. The record is silent as to the character of her public service.

2. Whether there is any prior caselaw on point.

¶22. We determine whether the recommended sanctions fit the offense and are consistent with previous holdings of this Court. The cases cited *infra* involve justice-court judges accused of misconduct, including ex parte communications, abuse of process, procedural errors, and lending the prestige of office to advance the private interests of others.

¶23. In ***Mississippi Commission on Judicial Performance v. Fowlkes***, 967 So. 2d 12 (Miss. 2007), this Court found that the recommended sanctions for ex parte communications were insufficient, and ordered a public reprimand, a thirty-day suspension without pay, and the payment of costs. ***Id.*** at 16. However, Judge Fowlkes had been disciplined for the same violation and had, just a year earlier, acknowledged the impropriety of ex parte communications. ***Id.*** at 15. In ***Vess***, this Court accepted the Commission's recommendation of a public reprimand and a fine of $2,000 for violations including ex parte communications. *See* ***Vess***, 10 So. 3d at 495. The Court noted that Vess had been disciplined for the same misconduct a decade earlier. ***Id.*** at 494. Likewise, in ***Mississippi Commission on Judicial Performance v. Britton***, 936 So. 2d 898 (Miss. 2006), this Court ordered a public reprimand, a thirty-day suspension, and the payment of costs for a pattern of ex parte communications, including setting aside a judgment based on ex parte communications. ***Id.*** at 905, 907. In egregious cases, this Court has removed judges for engaging in a pattern of misconduct including ex parte communications. *See* ***Miss. Comm'n on Judicial Performance v.***

Willard, 788 So. 2d 736 (Miss. 2001); ***Miss. Comm'n on Judicial Performance v. Spencer***, 725 So. 2d 171 (Miss. 1998).

¶24. Here, although this case involves multiple instances of ex parte communications and an agreed finding of an overall pattern of violations, this is Judge Dearman's first formal commission action. Her ex parte communications, taken alone, do not constitute a pattern as egregious as that in ***Britton***. She initiated ex parte communications with a law-enforcement officer. In another case, she reduced a felony charge to a misdemeanor based on information received ex parte. She also invited ex parte communications through her writings.

¶25. This Court has disciplined judges for abuse of process and procedural errors. *See* ***Miss. Comm'n on Judicial Performance v. Roberts***, 952 So. 2d 934 (Miss. 2007); ***Willard***, 788 So. 2d at 738-39. In ***Roberts***, the judge admitted to numerous violations, was in his first term of office, and had never been formally disciplined by the Commission. ***Id.*** at 935-37, 942. This Court accepted the Commission's recommendation and ordered a public reprimand, thirty-day suspension, and payment of costs. ***Id.*** at 942. Judge Dearman's abuse-of-process and procedural violations are comparable in number and severity to Roberts's. She also is in a similar position regarding her overall experience and disciplinary history. Judge Dearman *sua sponte* reduced charges in two cases, reduced bonds without authority, and, in three cases, improperly altered bond terms.

¶26. This Court has disciplined judges for conduct creating the appearance of impropriety by failing to recuse themselves from a case involving a relative. ***Miss. Comm'n on Judicial Performance v. Cole***, 932 So. 2d 9 (Miss. 2006), *overruled on other grounds by* ***Boone***,

2011 WL 1586469. *See also* ***Miss. Comm'n on Judicial Performance v. Brown***, 918 So. 2d 1247 (Miss. 2005). Judge Cole reinstated his grandson's driver's license and attempted to use his influence to keep him out of a state facility. ***Cole***, 932 So. 2d at 11. This Court found that "Judge Cole should not have involved himself in any facet of the pending matters and should have recused himself from any matters involving a relative." ***Id.*** Here, Judge Dearman presided over the initial appearance of her nephew, "a person within the third degree of relationship." Miss. Code of Judicial Conduct Canon 3E(1). Even if we were to consider Judge Dearman's new argument that Brown and Jones were not harmed, as they declined the opportunity to object, it would be unhelpful to her. The harm to be considered here is the harm to the public's impression of the judiciary. *See* ***Vess***, 10 So. 3d at 493. Here, Judge Dearman's handling of her nephew's case created the appearance of impropriety, especially considering the inconsistent result.

¶27. Likewise, Judge Dearman's writings created an appearance of impropriety, harming the public's impression of the judiciary. She might have given, as the Commission found and Dearman agreed, the impression that she was advocating in favor of drug defendants by setting low bond amounts. Conversely, she could have given the impression that a drug defendant could not receive a fair trial in her court. Further, her call for a public debate and for public input on her handling of initial-appearance hearings allowed the impression that she would let public sentiment sway her judicial decisions.

3. The magnitude of the offense and the harm suffered

¶28. Judge Dearman's misconduct involved nine cases over a period of more than three years and affected at least twenty-two litigants and complainants, including the parent of a

minor, a county prosecutor, an MBN agent, an MHP trooper, two sheriff's deputies, and a probation officer. Her misconduct also affected the operation of other courts, as well as the district attorney's office, a bonding company, and a drug-rehabilitation center. The harm caused by her public writings and her handling of her nephew's case is detailed above.

¶29. Avoiding the appearance of impropriety is particularly important at the justice-court level because of the harmful effect of such an appearance on the public's impression of the entire judiciary. This Court has stated, "[o]fficial integrity of our Justice Court Judges is vitally important, for it is on that level that many citizens have their only experience with the judiciary." ***Vess***, 10 So. 3d at 493 (quoting ***In re Inquiry Concerning Garner***, 466 So. 2d 884, 887 (Miss. 1985), *overruled on other grounds by* ***Boone***, 2011 WL 1586469).

4. Whether the misconduct is an isolated incident or evidences a pattern of misconduct.

¶30. The series of formal complaints at issue here represent Judge Dearman's first formal disciplinary action, although she has had one previous informal action regarding unrelated conduct. The Commission found, and Judge Dearman agreed, that the numerous violations constitute a pattern. Judge Dearman committed similar actions during a period of more than three years. These actions were the result of a policy decision that she had announced and advocated to the public. A history of formal disciplinary actions is not necessary to a finding of a pattern if a judge has committed numerous violations. *See* ***Miss. Comm'n on Judicial Performance v. Bradford***, 18 So. 3d 251, 256 (Miss. 2009) (ten violations); ***Miss. Comm'n on Judicial Performance v. Cowart***, 936 So. 2d 343, 350 (Miss. 2006) (three violations). We find a pattern of misconduct.

5. Whether moral turpitude was involved.

¶31. The joint memorandum brief states that Judge Dearman's "actions do not rise to the level of conduct involving moral turpitude." This Court has stated, "Moral turpitude includes, but is not limited to, actions which involve interference with the administration of justice, misrepresentation, fraud, deceit, bribery, extortion, or other such actions which bring the judiciary into disrepute." ***Gibson***, 883 So. 2d at 1158 n.2. In ***Mississippi Commission on Judicial Performance v. Gordon***, 955 So. 2d 300 (Miss. 2007), this Court described moral-turpitude analysis as follows:

> The bottom line of this element is that we must determine whether a judge's conduct crosses the line from simple negligence or mistake, to willful conduct which takes advantage of a judge's position for greed or other inappropriate motives. If the conduct willfully subverts justice, more punishment is warranted.

Id. at 305.

¶32. In ***Vess***, this Court examined the moral-turpitude element at length. *See* ***Vess***, 10 So. 3d at 493-94. The ***Vess*** Court found that the violations brought the judicial office into disrepute, but did not meet the ***Gordon*** standard for moral turpitude. ***Id.*** at 494. We find no evidence that Judge Dearman's conduct involved moral turpitude.

6. The presence or absence of mitigating or aggravating factors

¶33. We find neither the presence nor absence of mitigating or aggravating factors.

¶34. We considered the agreed sanctions and performed a ***Gibson*** analysis. We accept the agreed recommendation. We find that the recommended sanctions fit the offense and should be imposed.

CONCLUSION

¶35. We agree with the Commission's recommendation, and we order Justice Court Judge Theresa Brown Dearman of the West District of Stone County to be publicly reprimanded, suspended from office for thirty days without pay, and assessed costs in the amount of $100. Judge Dearman's public reprimand shall be read in open court on the first day of the next term of the Circuit Court of Stone County in which a jury venire is present, with Judge Dearman present and standing before the presiding judge.

¶36. **STONE COUNTY JUSTICE COURT JUDGE THERESA BROWN DEARMAN SHALL BE SUSPENDED FROM OFFICE FOR A PERIOD OF THIRTY (30) DAYS WITHOUT PAY, EFFECTIVE ON THE DATE OF ISSUANCE OF THIS COURT'S MANDATE; PUBLICLY REPRIMANDED; AND ASSESSED COSTS OF $100. THE PUBLIC REPRIMAND SHALL BE READ IN OPEN COURT BY THE PRESIDING JUDGE OF THE STONE COUNTY CIRCUIT COURT ON THE FIRST DAY OF THE NEXT TERM OF THAT COURT IN WHICH A JURY VENIRE IS PRESENT AFTER THE ISSUANCE OF THIS COURT'S MANDATE, WITH JUDGE DEARMAN IN ATTENDANCE.**

WALLER, C.J., CARLSON AND DICKINSON, P.JJ., LAMAR, CHANDLER, PIERCE AND KING, JJ., CONCUR. KITCHENS, J., DISSENTS WITH SEPARATE WRITTEN OPINION.

KITCHENS, JUSTICE, DISSENTING:

¶37. In the present posture of this case, and given the turning point in the evolution of this Court's approach to judicial performance cases at which we now find ourselves, I believe that the fairest and most prudent thing for us to do is to remand this matter to the Commission for a full-blown hearing, without regard to the Agreed Statement of Facts and Proposed Recommendations with which we have been presented.

¶38. Judge Dearman and her lawyer may well have relied upon this Court's multitudinous published decisions in which we have represented to litigants and to the public that we conduct *de novo* reviews of the cases that come to us from the Mississippi Commission on

Judicial Performance. *See e.g.,* ***Miss. Comm'n on Judicial Performance v. Brown***, 37 So. 3d 14, 19 (Miss. 2010) (citing ***Miss. Comm'n on Judicial Performance v. Vess***, 10 So. 3d 486, 489 (Miss. 2009)); ***Miss. Comm'n on Judicial Performance v. Bradford***, 18 So. 3d 251, 253 (Miss. 2009) (citing ***Miss. Comm'n on Judicial Performance v. Gunn***, 614 So. 2d 387, 389 (Miss. 1993)). Such a reliance is evidenced by Judge Dearman's attempt, in her brief to this Court, to explain and, in some instances, seemingly to deny and defend against, accusations to which she had admitted in the Agreed Statement of Facts and Proposed Recommendations. Even though, as the majority opinion correctly observes, these portions of her brief are altogether extraneous and are, in fact, procedurally barred in the face of her admissions, she and her attorney very well may have believed, albeit mistakenly, that in the context of an expected *de novo* review by the Supreme Court, she appropriately could continue to defend herself, much as an appellant from a justice court conviction could do in a *de novo* trial in county or circuit court.[1]

¶39. Before Judge Dearman's case could finally be resolved by this Court, a change of major proportions occurred in our approach to judicial performances cases, as explained in

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[1]In her response to the Commission's motion to strike, Judge Dearman says:

> It should be noted that Respondent has agreed that her actions constituted misconduct, but she also feels she [is] entitled to a[n] independent review of these issues by [the] Mississippi Supreme Court. She could have chose[n] to raise a number of these issues set forth in her brief at a hearing before the Commission, but doing so would have likely cost her thousand[s] of dollars in her own attorney's fees, plus paying those incurred by the Commission. As such, Respondent elected [to] raise some of these mitigating factors and issue[s] in her Brief to this Court.

detail in our unanimous decision in ***Mississippi Commission on Judicial Performance v. Boone***, ___ So. 3d ___, 2011 WL 1586469, at *3 (Miss. Apr. 28, 2011), in which we revert to a process this Court adopted in the early days of judicial performance jurisprudence in Mississippi, as explained in ***In re Removal of Anderson***, 412 So. 2d 743, 746 (Miss. 1982). As quoted in ***Boone***, ***Anderson*** provided that:

> Therefore, it appears we are required to be a factfinding body, at least to some degree, in every case of this nature.
>
> . . .
>
> The power to impose sanctions is delegated solely to this Court; it therefore follows we have an obligation to conduct an independent inquiry of the record in order to make our final determination of the appropriate action to be taken in each case. In so doing, we will accord careful consideration the findings of fact and recommendations of the Commission, or its committee, which has had the opportunity to observe the demeanor of the witnesses.

In re Anderson, 412 So. 2d at 746.

¶40. What remains unclear is what consideration, if any, we give to findings of fact and recommended sanctions reached by agreement. *Compare* ***Miss. Comm'n on Judicial Performance v. Williams***, 880 So. 2d 343, 347 (Miss. 2004) ("Although there are unanswered questions regarding the mitigating facts in this case, we accept the recommendation before us, because it comes to us as an agreed recommendation.") *with* ***Miss. Comm'n on Judicial Performance v. Sanford***, 941 So. 2d 209, 217-18 (Miss. 2006) (holding that a joint recommendation is "akin to a criminal defendant entering into a plea agreement with the prosecution, whereby the defendant agrees to plead guilty to the offense in return for the prosecution's promise of a specific recommended sentence to the judge for consideration"). Even though our rules do not contemplate judicial performance cases'

reaching this Court via agreed statements of facts and proposed recommendations, such is not prohibited, and seemingly it is a reasonable and appropriate mechanism that facilitates the efficient and timely resolution of cases. But no evidence is adduced and no record is made in the absence of a hearing, which presents a significant impediment to this Court's exercise of its constitutional duties as the sole decider of judicial performance cases. We are hard pressed to assess the appropriateness of proposed recommendations for ultimate resolution of these important cases when we have been provided scant information concerning the facts that gave rise to the accusations against a judge.

¶41. This is true with regard to the accusations against Judge Dearman in the present case. With most of the instances of alleged judicial conduct of which she is accused, there are unanswered questions which appear to have great importance, and which, if answered in one way would validate or legitimatize her conduct, but, if answered in some other way, might result in a finding of egregious misconduct.

¶42. For example, in the case of Philipe D. White, the judge set the defendant's bail at $2,500 and imposed as a condition that White attend church at least once weekly.[2] In light of our decision in ***Mississippi Commission on Judicial Performance v. Martin***, 921 So. 2d 1258, 1263 (Miss. 2005), the imposition of an invalid condition of bail may have been nothing more than a judicial error, i.e., an incorrect legal interpretation, and ***Martin*** is clear

[2]While judges have no authority to require church attendance, Rule 3.04 of Mississippi's Uniform Rules of Procedure for Justice Court does say that the justice court judge has the authority "to require a certain type of bond." The rule provides no explanation of what this means, and this language could mislead a nonlawyer justice court judge to believe she had authority to craft any sort of bond she pleased.

authority for the bedrock proposition that we do not sanction judges for erroneously interpreting the law.

¶43. We are told that, two months after White's bail bond was set and he apparently had posted bail, a probation officer reported to Judge Dearman that White had violated the terms of his release. Judge Dearman may have exercised her discretion properly, and it is quite possible that she correctly followed the appropriate procedures in ordering White's arrest. We simply cannot determine this, one way or the other, from the limited facts before us. We are informed that she issued a mittimus "ordering that White be arrested and allowed no bond." It is impossible for us to discern what this means; a mittimus is a document whereby a judge orders an accused person detained, usually to await grand jury action on a felony charge. *See* Miss. Code Ann. §§ 99-5-31 ("Mittimus in bailable cases to fix the bail"); 99-25-7 ("Mittimus where bail is denied"); 99-25-9 ("Mittimus where bail is allowed and not given") (Rev. 2007). At the point at which she issued a mittimus, the judge seems to have set White's bail at $50,000. We have no earthly way of knowing whether there was anything wrong with her having done that.

¶44. Next, we are told that White waived a preliminary hearing. We do not know whether it was on the initial charge, or on some other charge. When White waived the preliminary hearing, we are told, "Judge Dearman ordered White released on $2,500 bond on the same conditions." While experience tells us it is more likely that the judge set White's bail at $2,500, then someone posted the bail and he was released, rather than the judge's ordering him released, it is not possible to read the few facts we are provided and ascertain what, if anything, the judge did wrong. We are informed that, a week later, the grand jury indicted

White. For what crime he was indicted is not revealed to us, or whether there were other charges still pending against him before Judge Dearman, or whether new charges were brought against him in the justice court. We are told only that in November 2006, White violated his release terms and that Judge Dearman again ordered him arrested and allowed no bond. In short, the information before us is unfathomably vague and hopelessly confusing, so much so that, in its present posture, the portion of Judge Dearman's case that relates to her judicial interaction with Philipe D. White defies intelligent adjudication by this Court.

¶45. Without attempting, at this point, laboriously to analyze and make sense of the superficial, greatly abbreviated factual recitations that pertain to the other litigants mentioned in the majority opinion, it is sufficient to say that none of them – through no fault of the author of that opinion – provides adequate detail for us to discern whether Judge Dearman has violated applicable judicial canons, and, if so, to what extent. The record before us is woefully deficient in that regard. Thus, if this judge has committed indiscretions or infractions that rise to the level of judicial misconduct, we are in no position to determine appropriate sanctions.

¶46. Finally, I respectfully disagree that Judge Dearman's writings are clear evidence of any bias or that they amount to an invitation to *ex parte* communications. Notably, the majority opinion does not determine whether they demonstrate a partiality toward criminal defendants or the prosecuting authorities. Maj. Op. at ¶ 27. The most that can be said is that Judge Dearman could have been expressing her understanding that "[e]xcessive bail shall not be required." U.S. Const. amend. VIII; Miss. Const. art. 3, § 29. Moreover, Judge Dearman

maintains that she was not inviting the public to comment on a particular matter, but rather, she was seeking input about the general administration of justice. *See* Miss. Code of Judicial Conduct Canon 3(B)(9) ("This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court."). This is not so different from a circuit judge's discussing judicial proceedings with a jury after a verdict has been rendered. In my opinion, to sanction Judge Dearman for her writings would amount to an unconstitutional infringement of her right to free speech. ***Miss. Comm'n on Judicial Performance v. Wilkerson***, 876 So. 2d 1006, 1010 (Miss. 2004) ("[T]his Court clearly may not impose sanctions for violation of a Canon where doing so would infringe on rights guaranteed under the First Amendment, including the freedom of speech."). Because the remainder of the vague allegations are unsupported by facts sufficient to determine to what extent Judge Dearman engaged in misconduct, if at all, I would remand the case to the Commission for further proceedings. *See* ***Brown***, 37 So. 3d at 18 n.4 (noting that we had remanded a judicial performance matter to the Commission for further factual development when the record presented "an insufficient factual basis before the Court to determine whether the recommended sanctions, or any sanctions at all, were appropriate").