

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**ANN RUTTLE, DISTRICT COURT JUDGE
16TH JUDICIAL CIRCUIT, DIVISION 1**

FORMAL PROCEEDINGS DOCKET ENTRIES

Date of Filing

1. November 10, 2022 - [Notice of Formal Proceedings and Charges](#)
2. November 18, 2022 - [Order for Extension](#)
3. November 30, 2022 - [Motion to Dismiss](#)
4. December 1, 2022 - [Order Denying Motion to Dismiss](#)
5. December 2, 2022 - [Response to Formal Proceedings and Charges](#)
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7. December 2, 2022 - [Motion for Oral Hearing](#)
8. December 15, 2022 - [Response to Motion for Oral Hearing](#)
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10. December 16, 2022 - [Order Denying Motion for Oral Hearing and Order for Judge Ruttle to File Response to Objection to Request for Production of Documents](#)
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15. January 24, 2023 - [Order Denying Motion to Reschedule Hearing](#)

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**ANN RUTTLE, DISTRICT COURT JUDGE
16TH JUDICIAL CIRCUIT, DIVISION 1**

NOTICE OF FORMAL PROCEEDINGS AND CHARGES

Notice is hereby given of the initiation of formal proceedings under Rule 4.180 of the Rules of the Supreme Court. At the times set out in this Notice, you were District Court Judge for Kentucky's 16th Judicial Circuit located in Kenton County. While serving as District Court Judge for Kenton County you have engaged in a pattern of conduct that constitutes misconduct in office and violates the Code of Judicial Conduct. As a result, the Commission has determined formal proceedings and charges are warranted.

The factual basis supporting these charges arises from your conduct in *Commonwealth v. Comer*, 21-T-09354 and your practice in not applying the law concerning the appointment of counsel for indigent criminal defendants.

A review of the record in that case shows that on September 23, 2021, the defendant appeared before you for arraignment for driving under the influence and other traffic citations. The defendant requested the appointment of counsel, specifically representing that she could not afford an attorney. You replied "no, you will have to get your own." The defendant inquired again about the appointment of an attorney and invoked her constitutional right to the appointment of counsel. You responded that she had a job, which the defendant denied. You then remarked the

defendant was out of custody and was driving, inferring the defendant owned a motor vehicle. You then informed the defendant she could return at the pre-trial conference with proof of income and you would review the information at that time but ended the court appearance for the defendant.

At the pre-trial conference of November 9, 2021, the defendant again asked if an attorney could be appointed for her and you responded “no, you do not qualify for the public defender.” After the defendant became emotional, you remanded her to custody of the court security and remarked “I wonder who the racist is, her or me. Ok. That made my day.” After the defendant returned before you, you explained that because the defendant was out of custody, was driving, had a car, and was employed that “generally under those circumstances” a criminal defendant would not qualify for a court-appointed attorney. You then continued the pre-trial conference for a later date and appointed the public defender as counsel.

However, at the November 9, 2021, pre-trial conference, the County Attorney made a plea negotiation offer to Comer to dismiss the aggravating circumstances applicable under KRS 189A.010(11). With the continuance of the pre-trial, that offer was withdrawn. Comer eventually pled guilty to the DUI charge with the aggravator charge included, resulting in a sentence of additional jail time, rather than what would have been imposed if Comer had accepted the offer with the benefit of court-appointed counsel available to her at the pre-trial conference.

A review of your felony arraignments reveals you have a pattern and practice of misadvising criminal defendants of their right to have an attorney appointed for them and the circumstances under which they qualify.

COUNT I

Your actions in this case show you have failed to follow the law or required litigants before you to take unnecessary measures by the following:

1. Denying indigency status for reasons other than those identified by statute, including but not limited to whether a defendant in a criminal case is driving a vehicle or owns one;
2. Reconsidering indigency status, and consequently appointment of counsel, without conducting the necessary hearings;
3. Engaging in conduct during a court proceeding with a defendant unrepresented by counsel that could be construed as coercive in nature, seeking the defendant's waiver of certain rights and accepting the terms of the plea offer from the Commonwealth.

This Count set out above violates the relevant portions of the following Canons of the Code of Judicial Conduct:

- Canon 1, Rule 1.1, which requires a judge to comply with the law.
- Canon 1, Rule 1.2, which requires a judge to 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, Rule 2.2, which requires a judge to uphold and apply the law, and to perform all duties of judicial office fairly and impartially.
- Canon 2, Rule 2.3(A), which requires a judge to perform the duties of judicial office, including administrative duties, without bias or prejudice.
- Canon 2, Rule 2.5(A), which provides a judge shall perform judicial and administrative duties competently and diligently.

- Canon 2, Rule 2.8(B), which provides a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

Jurisdiction

The Judicial Conduct Commission has jurisdiction over this matter pursuant to SCR 4.020(1)(b)(i) and (v); and (1)(c)-(d), which read, in pertinent part, as follows:

(1) Commission shall have authority:

(b) To impose the sanctions separately or collectively of (1) admonition, private reprimand, public reprimand, or censure; (2) suspension without pay or removal or retirement from judicial office, upon any judge of the Court of Justice or lawyer while a candidate for judicial office, who after notice and hearing the Commission finds guilty of any one or more of the following:

(i) Misconduct in office.

(v) Violation of the Code of Judicial Conduct, Rule 4.300

(c) After notice and a hearing to remove a judge whom it finds to lack the constitutional statutory qualifications for the judgeship in question.

(d) To refer any judge of the Court of Justice or lawyer while a candidate for judicial office, after notice and hearing found by the Commission to be guilty of misconduct, to the Kentucky Bar Association for possible suspension or disbarment from the practice of law.

For your information, the Commission calls your attention to the following

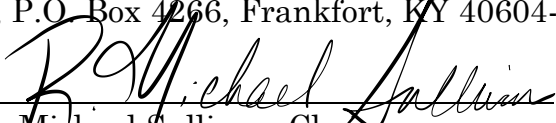
Supreme Court Rule:

Rule 4.180 Formal Proceedings

If the Commission concludes that formal proceedings should be initiated, it shall notify the Judge. The Judge may file an answer within 15 days after service of the notice. Upon filing of her answer, or the

expiration of time for so filing, the Commission shall set a time and place for the hearing and shall give reasonable notice thereof to the judge.

Please mail your answer to: Ms. Jimmy Shaffer, Executive Secretary,
Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, KY 40604-4266.



R. Michael Sullivan, Chair
Kentucky Judicial Conduct Commission

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Hon. Ann Ruttle by mailing same to her home address this 10th day of November 2022.



JIMMY SHAFFER,
EXECUTIVE SECRETARY

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:
ANN RUTTLE, DISTRICT JUDGE, 16TH DISTRICT

ORDER FOR EXTENSION

Upon consideration of the request by Judge Ruttle for an extension of time to file an Answer to the Notice of Formal Proceedings and Charges, pursuant to SCR 4.200, it is by the Commission,

ORDERED that the time for filing an Answer be and it is hereby extended. The Answer shall be filed on or before December 3, 2022.

11/18/2022
DATE


R. MICHAEL SULLIVAN, CHAIRPERSON

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Judge Ann Ruttle, by mailing and emailing the same to her attorney James T. Gilbert, Coy, Gilbert, Shepherd & Wilson, 212 North Second Street, P.O. Box 1178, Richmond, KY 40476, jt@coygilbert.com, this 18th day of November, 2022.


JIMMY SHAFFER, EXECUTIVE SECRETARY

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

ANN RUTTLE, DISTRICT COURT JUDGE
16th JUDICIAL CIRCUIT, DIVISION 1

MOTION TO DISMISS NOTICE
OF FORMAL PROCEEDINGS AND CHARGES

Comes Judge Ann Ruttle, by counsel, and respectfully moves the Commission to dismiss the "Notice of Formal Proceedings and Charges" in this matter dated 10 November 2022, for the following reasons:

1. SCR 4.170(5) provides as follows:
The Commission shall decide whether to initiate formal proceedings under SCR 4.180 within 180 days of commencement of preliminary investigation, unless within such period or extension thereof the Commission for good cause extends such period for a period or periods not exceeding an additional 180 days. The judge shall be informed of such extensions.
- The complete Rule is Attachment 1 to this Motion.
2. This matter was initiated by a written Complaint signed by Lakeisha Comer dated 9 September 2021 (Attachment 2).
 3. From the record of the Commission, we know that the "preliminary investigation" of the Commission began no later than 11 November 2021, when the Commission's Executive Assistant, J. Rachel Noyes was provided with the Courtnet records for Lakeisha Comer (Attachment 3).
 4. On 17 May 2022, the Chair of the Commission entered an "Order for Extension," purportedly extending "the time in which the Commission shall decide whether to initiate formal proceedings under ACR 4.180" to 17 July 2022 (Attachment 4).¹
 5. 17 May 2022 is **One Hundred Eighty Seven (187) days** after the commencement of the preliminary investigation on 11 November 2021. One Hundred Eighty (180) days expired on a 10 May 2022.

¹ On 11 July 2022, another "Order for Extension" was entered by the Chair, again purportedly extending the time for determination of whether to initiate formal proceedings (Attachment 5). As noted in the main body, the Commission had already exhausted its 180 days on 10 May 2022. In addition, neither of the Orders specified what the good cause was that justified the extension. This is a violation of Judge Ruttle's basic due process rights; *viz.* entering an order without the opportunity to be heard and without providing the basic reasons for the order, to which Judge Ruttle had no input.

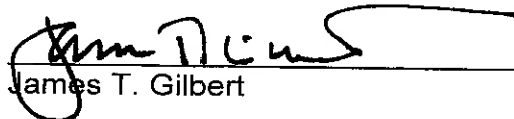
6. The time limits in SCR 4.170(5) are mandatory and jurisdictional due to the use of the word "shall." According to KRS 446.010(39), "shall is mandatory" in the construction of statutes. The Rules of our Supreme Court are entitled to no less dignity of construction. Our Supreme Court is given the constitutional authority to prescribe rules for the administration of justice and to discipline members of the bar (which includes judges). Ky. Constitution, Section 116.
7. In statutes, and by reasonable inference, Supreme Court Rules, the specific and mandatory language in "may not be interpreted in a manner that conflicts with the stated language." *Hoy v. Kentucky Industrial Revitalization Auth.*, Ky., 907 S.W.2d 766, 768 (1995), citing *Layne v. Newberg*, Ky., 841 S.W.2d 181, 183 (1992). See also *Dep't of Revenue v. Wyrick*, 323 S.W.3d 710, 713 (Ky. 2010)("[O]ur duty is to ascertain and give effect to the intent of the General Assembly. We are not at liberty to add or subtract from the legislative enactment nor discover meaning not reasonably ascertainable from the language used.").
8. "Preliminary investigation" is not defined in the Supreme Court Rules nor, so far as undersigned counsel is able to determine, in Kentucky jurisprudence. In such event, we must consider "the common and approved usage of language" (KRS 446.080(4)). Webster's defines "preliminary" as "something that precedes or is introductory or preparatory...introductory." Black's Law Dictionary defines "investigation" as a "follow up step by step by patient inquiry or observation; to examine and inquire into with care and accuracy..." It cannot be denied that the "preliminary investigation" into the assertions in the Complaint occurred when Ms. Noyes was provided the Courtnet records for Lakeisha Comer (in fact, the "investigation" would have preceded this when the file was opened and Ms. Noyes requested the Courtnet records.).
9. The failure of the Commission to comply with the mandatory provisions of SCR 4.170(5) deprives the Commission of jurisdiction just as readily as the failure to file a notice of appeal in the trial court. "Without the properly filed notice of appeal, the appellate court **lacks jurisdiction** to consider the matter. See, e.g., *City of Devondale v. Stallings*, 795 S.W.2d 954, 957 (Ky. 1990). As a result, a party's failure to timely file a notice of appeal "shall result in a dismissal or denial." CR 73.02(2). In other words, the filing of the notice within the thirty-day period is mandatory "and failure to do so is fatal to the action." *Workers' Compensation Bd. v. Suter*, 840 S.W.2d 812, 813 (Ky. 1992) (citations omitted). This is true even when the appealing party makes a good faith effort to file the notice of appeal. *Id.* (citing *Jenny Wiley Health Care Center v. Commonwealth Cabinet for Human Resources*, 828 S.W.2d 657, 39 4 Ky. L. Summary 44 (Ky. 1992))." *Commonwealth v. H.C.*, 581 S.W.3d 580, 582-83 (Ky. 2019). Failure to comply with SCR 4.170(5) is a jurisdictional defect which cannot be remedied. See *Manly v Manly*, 669 SW2d 537, 539)Ky. 1984)("CR 73.01 provides that an appeal may be taken by filing a Notice of Appeal. CR 73.02(1)(a) provides the time limit within

which the Notice may be filed. Although these rules are Rules of Procedure, failure to comply with them is fatal to an attempted appeal.”)

10. The Civil Rules apply in these proceedings. SCR 4.160. CR 6.02 provides that “When by statute or by these Rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion, (a) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (b) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50.02, 52.02, 59.02, 59.04, 59.05, 60.02, 72.02, 73.02 and 74 except to the extent and under the conditions stated in them.” The Commission failed to ask for or extend the time period unilaterally (without notice to Judge Ruttle or an opportunity for her to be heard, a fundamental principle of due process), within the time specified by SCR 4.170(5). This failure deprives the Commission of Jurisdiction to consider the Complaint against Judge Ruttle.
11. Moreover, the clear import of the Charges is that Judge Ruttle made an error of law with regard to Ms. Comer (Please refer to the ambiguous statement in the “Notice of Formal Proceedings and Charge” on page 3 of 5 that “a review of your felony arraignments reveals that you have a pattern and practice of misadvising criminal defendants of their right to have an attorney appointed for them and the circumstances under which they qualify.” Notably, there is no accompanying charge for this alleged error of law. SCR 4.020(2) makes it clear that “any erroneous decision made in good faith shall not be subject to the jurisdiction of the commission.” The “Charges” that there were erroneous legal decisions is demonstrably beyond the commission’s jurisdiction.
12. Since the Commission failed to initiate formal proceedings “within 180 days of commencement of preliminary investigation,” the “Notice of Formal Proceedings and Charges” against Judge Ruttle herein must be dismissed.

Respectfully submitted.

COY, GILBERT, SHEPHERD & WILSON
212 North Second Street
P.O. Box 1178
Richmond, Kentucky 40476-1178
(859) 623-3877
jt@coygilbert.com


James T. Gilbert

NOTICE

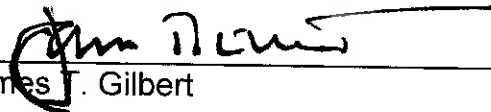
This Motion shall come on for hearing on Notice of the Commission for same.

James T. Gilbert

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing Answer was deposited in the first-class U.S. mail to and served electronically to the following on this 30th day of November, 2022:

Ms. Jimmy Shaffer
Executive Secretary
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
JimmyShaffer@KYCOURTS.NET



James T. Gilbert

ATTACHMENT 1

[Home Table of Contents](#)

SCR 4.170 Complaint; preliminary investigation
Baldwin's Kentucky Revised Statutes Annotated
Rules of the Supreme Court

Baldwin's Kentucky Revised Statutes Annotated
Rules of the Supreme Court
IV Judicial Conduct Commission (Refs & Annos)

Rules of the Supreme Court (SCR), Rule 4.170

SCR 4.170 Complaint; preliminary investigation

Currentness

- (1) Upon its own motion or upon receiving a written complaint indicating that there is a basis for investigation of a matter within the jurisdiction of the Commission under SCR 4.020, the Commission shall make a preliminary investigation to determine whether formal proceedings should be initiated.
- (2) Notice of the investigation shall be given to the judge, and the judge shall be given an opportunity to appear informally before the Commission. The name of the complainant shall not be included in the notice.
- (3) If the Commission concludes after its preliminary investigation that formal proceedings should not be initiated, it shall so inform the judge.
- (4) After the preliminary investigation is completed and before formal proceedings are initiated under Rule 4.180, the Commission shall afford the judge under investigation an opportunity to examine all factual information, including the name of the complainant if relevant, and shall afford the judge an opportunity to furnish to the Commission any information the judge may desire bearing on the investigation.
- (5) The Commission shall decide whether to initiate formal proceedings under SCR 4.180 within 180 days of commencement of preliminary investigation, unless within such period or extension thereof the Commission for good cause extends such period for a period or periods not exceeding an additional 180 days. The judge shall be informed of such extensions.
- (6) If because of court injunction or other requirement of law, the Commission is prevented from proceeding in a matter, the time periods of this rule and SCR 4.260(3) shall be tolled, and the full period shall not begin to run until the reason for the Commission's inability to act is removed.

Credits

HISTORY: Amended by Order 2015-20, eff. 1-1-16; prior amendments eff. 1-1-99 (Order 98-2), 1-1-78; adopted eff. 10-1-76
Note: Former Rules of Appellate Procedure (RAP) were amended and redesignated as Rules of the Supreme Court (SCR) by Order of the Supreme Court effective January 1, 1978. Prior Rules of the Court of Appeals (RCA) had been redesignated as Rules of Appellate Procedure effective March 12, 1976.

Sup. Ct. Rules, Rule 4.170, KY ST S CT Rule 4.170

Current with amendments received through September 1, 2022. Some sections may be more current, see credits for details.

END OF DOCUMENT

ATTACHMENT 2

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

P. O. Box 4286
 Frankfort, KY 40604
 Phone (502)564-1231
 FAX (502)564-1233
 www.courts.ky.gov

RECEIVED
 NOV 03 2021
 JUDICIAL CONDUCT
 COMMISSION

FOR INTERNAL USE ONLY

JCC Case Number: 2021-214

Meeting Date(s): 11/19/21

COMPLAINT FORM

The Commission's preliminary investigation shall be confidential under Rule 4.130 of the Rules of the Kentucky Supreme Court.

Please be advised that the Commission only has authority over Commonwealth of Kentucky judges, trial commissioners, domestic relations commissioners, master commissioners and attorneys who are candidates for judicial office.

The Commission does not have authority to review a case for judicial error or to direct a different result in the case. Those functions are to be handled through the appeals process available through the state's appellate courts. If you seek to change the outcome of your case, discuss this with an attorney without delay.

In addition, allegations stemming from a judge's rulings or exercise of judicial discretion do not provide a basis for action by the Commission. Personal dissatisfaction alone cannot be grounds for an investigation.

Please type or print legibly. NOTE: This form can be filled in online then printed OR printed and then filled out.

I. COMPLAINANT INFORMATION:

Mr. Mrs. Ms.

Name: Comee Lakeisha Yolanda
 (Last) (First) (Middle)

Address: 6040 Celtic Ash Ave Florence, Ky 41042
 (Street, No., Route) (City, State) (Zip)

Home Phone: (859) 777-8134 Cell Phone: (859) 786-3169

II. COMPLAINT AGAINST:

Please check the box next to the appropriate judicial office:

District Judge	<input checked="" type="checkbox"/>	Court of Appeals Judge	<input type="checkbox"/>	Domestic Relations Commissioner	<input type="checkbox"/>
Circuit Judge	<input checked="" type="checkbox"/>	Supreme Court Justice	<input type="checkbox"/>	Trial Commissioner	<input type="checkbox"/>
Family Court Judge	<input type="checkbox"/>	Master Commissioner	<input type="checkbox"/>	Attorney Running for Judicial Office	<input type="checkbox"/>

Name: Ruttle Ann
 (Last) (First) (Middle)

Address: 751 Madison Ave Covington, Ky 41011
 (Street, No., Route) (City, State) (Zip)

III. ADDITIONAL INFORMATION:

a) If your complaint arises out of a court case, please answer the following:

1. Case Name: Lakeisha Y Comee

Case County: Kenton Case No: DUI 5227

Control Number

2. What kind of case is it?

Criminal Civil _____ Family _____ Juvenile _____ Other _____
(Please specify)

3. What is your relationship to the case?

Plaintiff/Petitioner _____ Defendant/Respondent Attorney _____ Witness _____
Other _____

b) When and where did the alleged judicial misconduct occur?

Date: 9/15/2021 Time: 10:35pm Location: 3432 Madison Pike

Date: _____ Time: _____ Location: _____

c) If you were represented by an attorney in this case, please identify the attorney:

Name: _____

Address: _____
(Street, No., Route) (City, State) (Zip)

Phone: () _____

d) Identify any other attorney(s) who represented any party in the case:

Name: _____

Represented: _____

Name: _____

Represented: _____

IV. ALLEGATIONS AND STATEMENT OF FACTS:

Please state the facts and circumstances you believe constitute judicial misconduct or disability. Include any details, names, dates, places, addresses, and telephone numbers to assist the Commission in its evaluation and investigation of this complaint. Attach any documents or recordings of court proceedings pertaining to this complaint.

I went to Court 09/23/2021, When my case was called I WAS ASKED to state my name and DOB, I did. Then I was asked how do I plea, I said Not guilty. I then asked for a lawyer, I am not working and cant afford one at the time. Judge Rattle told me "No" get your own! I then said I'm not working and cant afford one she then said "yes you can out riding around in a new car and

IV. ALLEGATIONS AND STATEMENT OF FACTS (continued):

derailing and delaying" I said what dose that have to do with me getting a lawyer. She said im sure you can afford one. I said no I cant. She then said "Show me your welfare papers" I said I dont get welfare! She the said "well you will have to pay for a lawyer your self!" I said "Oh your being Bias an racist, not allowing me an an attorney" She told me to leave out the court room an I did.

I have also made aware that Judge Ruffe is always not being fair to Black an has been in trouble for not allowing Blacks to have a lawyer when they cant afford one.

If additional space is required, please attach and number additional one-sided 8 1/2" X 11" pages as needed.

V. I certify that the allegations and statements of facts set forth above are true and correct to the best of my knowledge, information, and belief and are made of my own free will.

09/30/2021
(Date)

Lakshmi/Comer
(Complainant's Signature)

ATTACHMENT 3



KENTUCKY
COURT OF JUSTICE

21-T-09354

**COMMONWEALTH VS. COMER, LAKEISHA
YOLANDA**

KENTON DISTRICT COURT

Filed on 09/16/2021 as **TRAFFIC** with **HON. ANN RUTTLE**

**** NOT AN OFFICIAL COURT RECORD ****

Case Memo

21-T-09354

VIOLTIME = 22:35 ARRSTDT = 9/15/2021 22:35;

Parties

21-T-09354

COMER, LAKEISHA YOLANDA as **DEFENDANT / RESPONDENT**

DOB: 12/19/1974 DLN: W03917686 OPERATOR'S LICENSE - KENTUCKY Race: B Sex: F Hispanic: N Eye Color: BN Hair Color: BK
Height: 505 Weight: 175

Bail Bonds

ADMINISTRATIVE RELEASE for \$0.00 set on 09/16/2021 and posted on 09/16/2021
/OR (SELF);

Address

6040 CELTIC ASH AVE
FLORENCE KY 41042

BELLAU, T as **COMPLAINING WITNESS**

Address

FORT WRIGHT POLICE DEPARTMENT
409 KYLES LN
FORT WRIGHT KY 41011

Charges

21-T-09354

ONE HEADLIGHT - 189.040(1)

CHARGE 1 ORIGINAL 0002260
Charged on 09/15/2021 by citation 1DU752271-1

IMPROPER DISPLAY OF REGISTRATION PLATES - 186.170

CHARGE 2 ORIGINAL 0004250
Charged on 09/15/2021 by citation 1DU752271-2

OPER MV U/INFL ALC .08 (189A.010(1A) 1ST - 189A.010(5A)

CHARGE 3 ORIGINAL 0031100
Charged on 09/15/2021 by citation 1DU752271-3
Blood Alcohol Level of 0.152

AMENDED Disposition on 09/23/2021 by **NO TRIAL**

OPER MV U/INFL ALC .08 (189A.010(1A) - 1ST (AGG CIR) - 189A.010(5A)

CHARGE 3 AMENDED 0031120
Charged on 09/23/2021 by citation 1DU752271-3
Blood Alcohol Level of 0.152

Documents

21-T-09354

VEHICLE INFORMATION filed on 09/16/2021

VehicleMake="LINCOLN" VehicleModel="MKS" VehicleColor="BLACK" VehicleYear="2010" VehicleRegState="OH" VehicleRegYear="2021"
VehicleRegNumber="N099869"

CRIMINAL DOCKET filed on 09/23/2021

Events

21-T-09354

PRETRIAL CONFERENCE scheduled for 11/09/2021 09:00 AM in room 4B with **HON. ANN RUTTLE**

ARRAIGNMENT scheduled for 09/23/2021 09:30 AM in room 1A with **HON. ANN RUTTLE**

9/23/2021 9:30:00 AM TRANSFERRED TO 11/9/2021 9:00:00 AM COURTROOM 4B [4B] **HON. ANN RUTTLE**

CITATION filed on 09/15/2021 Page(s): 1

CRIMINAL DOCKET filed on 09/23/2021 Page(s): 1

CRIMINAL DOCKET filed on 09/24/2021 Page(s): 1

*** End of Case Number : 21-T-09354 ***

ATTACHMENT 4

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

**IN RE THE MATTER OF:
ANN RUTTLE, DISTRICT JUDGE, 16TH DISTRICT**

ORDER FOR EXTENSION

Determining that additional time is needed for the completion of the preliminary investigation in this matter, the Commission finds good cause for an extension of time, and it is therefore by the Commission,

ORDERED that the time within which the Commission shall decide whether to initiate formal proceedings under SCR 4.180 be and hereby is extended to and including July 17, 2022.

Entered this 17th day of May, 2022.



R. Michael Sullivan, Chair

ATTACHMENT 5

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

**IN RE THE MATTER OF:
ANN RUTTLE, DISTRICT JUDGE, 16TH DISTRICT**

ORDER FOR EXTENSION

Determining that additional time is needed for the completion of the preliminary investigation in this matter, the Commission finds good cause for an extension of time, and it is therefore, by the Commission,

ORDERED that the time within which the Commission shall decide whether to initiate formal proceedings under SCR 4.180 be and hereby is extended to and including November 14, 2022.

Entered this 11th day of July, 2022.



R. Michael Sullivan, Chair

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

**IN RE THE MATTER OF:
ANN RUTTLE, DISTRICT JUDGE, 16TH DISTRICT**

ORDER DENYING MOTION TO DISMISS

Having considered the motion by Judge Ruttle to Dismiss the Notice of Formal Proceedings and Charges, it is **ORDERED** that the motion be, and it is hereby, **DENIED**.

The Commission first reviewed the complaint against Judge Ruttle at its meeting on November 19, 2021, as noted on the face of the complaint. The CourtNet reports are printed by Commission staff for all complaints before they are considered by the Commission. A preliminary investigation may only be initiated by a vote of the Commission, which took place on November 19, 2021. The first 180 days would have expired on May 18, 2022, however that time was extended to July 17, 2022, by Order entered on May 17, 2022. The time was again extended on July 11, 2022, to November 14, 2022. The Notice of Formal Proceedings and Charges were filed against Judge Ruttle on November 10, 2022.

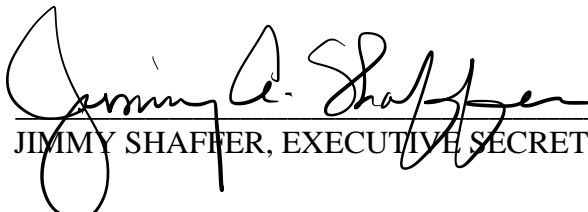
12/1/2022
DATE



R. MICHAEL SULLIVAN, CHAIRPERSON

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Judge Ann Ruttle, by mailing and emailing the same to her attorney James T. Gilbert, Coy, Gilbert, Shepherd & Wilson, 212 North Second Street, P.O. Box 1178, Richmond, KY 40476, jt@coygilbert.com, this 1st day of December, 2022.



JIMMY SHAFFER, EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**ANN RUTTLE, DISTRICT COURT JUDGE
16th JUDICIAL CIRCUIT, DIVISION 1**

**RESPONSE OF JUDGE RUTTLE TO NOTICE
OF FORMAL PROCEEDINGS AND CHARGES**

Comes Judge Ann Ruttle, by counsel, and makes the following Answer to the Notice of Formal Proceedings and Charges dated 10 November 2022:

1. The Charges asserted against Judge Ruttle are based on an inaccurate Complaint signed by Lakeisha Comer dated 9 September 2021 (Attachment 1). A review of the video record of the arraignment¹ belies the assertions. The Complaint alleges that Judge Ruttle said the defendant was “riding around in a new car and drinking and driving,” nor did Ms Comer say “what does that have to do with me getting a lawyer.” These statements are simply not substantiated by the video. Ms. Comer further alleges that the Court said to her “show me your welfare papers... and I said I don’t get welfare.” This is not substantiated in the video. Ms. Comer admits calling the Court a racist².
2. The Notice of Formal Proceedings and Charges relates solely Judge Ruttle’s “conduct in *Commonwealth v. Comer*, 21-T-09354,” as set out in paragraph 2 of the Notice of Formal Proceedings and Charges (The “Charges”). Consequently, it is unknown why the Charges include the statement that “[a] review of your felony arraignments reveals that you have a pattern and practice of misadvising criminal defendants of their right to have an attorney appointed for them and the circumstances under which they qualify.” (Charges, page 3 of 5). This vague and ambiguous statement, unsupported by any formal charges, has nothing to do with the circumstances of *Commonwealth v. Comer*, is not set forth with specificity, thus in violation of the Judge’s due process rights, and must not be considered by the commission in this matter.
3. The commission charges in Count 1(1) that “[y]our actions *in this case* [referring to *Commonwealth v. Comer*] show you have failed to follow the law

¹ Please see the partial transcript attached as Attachment 2.

² Ms. Comer further alleges that “I have also heard that Judge Ruttle is always not being fare (*sic*) ti Black an (*sic*) has been in trouble for not allowing Blacks to have a lawyer when they cant (*sic*) afford one.” This is completely unfounded and is emblematic of the untruth of Ms. Comer’s Complaint and allegations. The Notice of Formal Proceedings relates solely to *Commonwealth v. Comer*, 21-T-09534, as asserted in the second paragraph of the Notice of Formal Proceedings and Charges.

or required litigants (*sic*) before you take unnecessary measures by the following:

“Denying indigency status for reasons other than those identified by statute, including but not limited to whether a defendant in a criminal case is driving a vehicle or owns one.”

The statute is not ambiguous. KRS 31.120 (copy attached at Attachment 3) references several factors, including but not limited to “number of motor vehicles owned and in working condition” (at (2)(d); “other assets owned....” (at (2)(e); “income...and source of income...(at (2)(a) and (b); and “any other circumstances presented to the court relevant to financial status.” (at (2)(m)). It is simply wrong for the commission to assert that “whether a defendant drives a vehicle or owns one” is not a factor included in the statute.

There is nothing in the record which indicates or even intimates that Judge Ruttle did not afford the defendant an opportunity to bring her financial records to the pretrial for a determination whether she qualified for a public defender (VIDEO, 9/23/2021, 10:02:23: “If you want to you can bring all your income information, from whatever source, I don’t care if it’s government assistance, bring it with you on November 4th.” VIDEO 11/9/2021, 10:37:18: “). So what I asked for you to do today, because you know, I have your [Pretrial Services Report] . . . you were out-of-custody, you were in a car, you were driving and also you have a job. But so (Δ interrupting) . . . let me finish. Under those circumstances, you generally do not qualify. (10:37:45). But you said, you kept yelling at me, “it’s my right. It’s my right. It’s my right.” Ok, yes, you do, but then I said ok, then I’ll have a hearing on it, please bring all your financial information, and any stimulus money, and all your paycheck stubs, and all of that. Did you bring that today? Did you bring that with you? (10:38:00); Defendant:” No ma’am...”).

4. The Charges in Count 1(2) asserts that Judge Ruttle took “unnecessary measures by reconsidering indigency status and consequently appointment of counsel without conducting the necessary hearings.” (Note: this is not alleged to be violative of any law, procedure, regulation, or protocol, nor beyond the bounds of normal procedure in the Kenton District Court). How is a Court supposed to conduct a hearing when the Court requests that the party bring in documents and information on which the Court could rely to make a determination, and the party does not comply? Additionally, counsel was appointed for the defendant even though the defendant ignored the Court’s directive for information. Count 2 is a distinction without a difference.
5. Count 1(3) asserts that Judge Ruttle was “engaging in conduct during a court proceeding with a defendant unrepresented by counsel that *could be construed* (Note: not that it was so construed) as coercive in nature, seeking the defendant’s waiver of certain rights and accepting the terms of the plea offer from the Commonwealth.”

Here is the totality of the colloquy between Judge Ruttle and Ms. Comer relating to the plea offer on the DUI:

Court: "[Y]ou're also charged with Driving Under the Influence...it's a first offense, aggravating, and that alleges that the breathalyzer is in excess of .15, (Defendant interrupting...); let me talk, I'm just telling you... Let me just finish, OK (Defendant interrupting)...; so on the DUI charge (Defendant interrupting)...will you let me talk or no....(Defendant interrupting)...I'm just trying to tell you the penalties, the maximum penalties, OK, then you can enter your plea however you want.... So it carries a maximum five hundred dollar fine and/or up to thirty days in jail, and license suspension is determined through the Department of Transportation, you can do it with interlock, or.... How do you want to plead?

(VIDEO 9/23/2021; 10:00:53-10:01:12)

Commonwealth: ""Judge the offer on DUI 1st, non-aggravator, \$250 fine, 7 days, conditionally discharged for 2 years; it was charged with an aggravator, it was marked at some point; the BA was 0.152, but I will make the offer on a non-agg today."

(VIDEO 11/9/2021; 9:45:55-9:46:09)

Court: "That's an offer. There's mandatory jail time based on this breathalyzer, but since she..." (Defendant interrupts Judge)

VIDEO 11/9/2021; 9:46:13)

Court: "I'll appoint today, that's fine, you can go over and talk to them, but they're going to take their offer off the table so it will be . . . it's charged as an aggravator, which means mandatory jail time . . . I'll appoint a public defender, and I'll continue your pretrial

(VIDEO 11/9/2021; 10:38:05-10:38:40).

The Court has an obligation to advise a criminal defendant of the consequences of their actions. It is the practice of the Commonwealth in the Kenton District Court to withdraw plea offers after the arraignment, and it was the Judge's duty to tell the defendant that. There is absolutely no evidence of coercion or even that anyone could construe that Judge Ruttle's comments were coercive in nature.

"Coercion" means to "force to act or think in a certain way by the use of pressure, threats, or intimidation; compel." *Hamblin v. Commonwealth*, No. 2007-CA-001935-MR, 2008 Ky. App. Unpub. LEXIS 964, at *3 (Ct. App. Sep. 5, 2008)(quoting *The American Heritage Dictionary of the English Language*).

In order to succeed [on a motion of judicial coercion]...., the defendant must establish "by objective proof that the judge forced a guilty plea by putting the defendant on notice that he could expect more severe punishment if he insisted on a trial by jury." *Commonwealth v. Damiano*, 14 Mass. App. 615, 619, 441 N.E.2d 1046 (1982). Such coercion may occur when a judge "unequivocally" or "straight out" tells a defendant that he will be given a definite, more severe sentence if he opts to proceed to trial instead of pleading guilty.... See *Commonwealth v. Carter*, 50 Mass. App. 902, 733 N.E.2d 582 (2000) (coercion found when trial judge encouraged defendant to plead guilty and offered sentence of six years to six years and one day on a guilty plea but

after trial gave the guarantee that the sentence would be eighteen to twenty); *Commonwealth v. Lebon*, 37 Mass. App. 705, 706, 643 N.E.2d 45 (1994) (trial judge coerced forfeiture of right to jury trial when he promised not to impose a committed jail sentence if the defendant opted for a jury-waived trial, but promised to impose a period of incarceration should the defendant demand a jury). These unusual cases stand in contrast to the traditional situations where the trial judge does not commit himself in advance to the imposition of a particular sentence but instead discusses various sentencing alternatives and explains the options to a defendant.

Commonwealth v. Gaumont, 14 Mass L. Rep 519 (2002)(Attachment 4). The “bare fact of the communication to the judge of the sentencing alternatives being considered could not have had a coercive effect.” *Commonwealth v. Damiano*, 14 Mass. App. 615, 619, 441 N.E.2d 1046 (1982).

The assertion that a judge’s communication to a criminal defendant that his or her action will result in a change in the prosecutions recommendations have never been found to be coercive.

In addition, the assertion in the Charge that that the County Attorney’s pretrial offer to dismiss the aggravating circumstances was withdrawn is simply incorrect³. If the Commission would simply look at Judge Ruttle’s docket sheet provided in Attachment 5, it would clearly see that the County Attorney recommended “non-agg,” which plea was accepted by the Court. It is somewhat inconceivable that the Charge completely misstates and misrepresents the facts of Ms. Comer’s actual plea. Please also see and pay attention to the Courtnet portion of Attachment 6 which details the result of Ms. Comer’s plea.

The Commission should be knowledgeable of the inaccurate nature of Judge Ruttle’s courtroom practices (as well as the custom and practice of all the judges in the Kenton District court) and the inaccuracy of Ms. Comer’s complaint.

In Judge Ruttle’s court, when all defendants are seated she reads the rights as follows: “When your name is called you need to approach the podium and give me your name and date of birth. I will let you know what you are charged with and let you know the penalties involved, so before you respond there are a few things you need to know. You have the right to an attorney and if it is determined you cannot afford one, I can appoint one for you. Those are cases where the fine meets or exceeds \$500 or there is jail time involved with your charge. So, if you are in that category and want an attorney, please let me know when you come to the podium so I can make inquiries to see if you

³ The Charge states as follows: “However, at the November 9, 2021, pre-trial conference, the County Attorney made a plea negotiation offer to Comer to dismiss the aggravating circumstances applicable under KRS 189A.010(11). With the continuance of the pre-trial, that offer was withdrawn. Comer eventually pled guilty to the DUI charge with the aggravator charge included, resulting in a sentence of additional jail time, rather than what would have been imposed if Comer had accepted the offer with the benefit of court-appointed counsel available at her pre-trial conference.”

qualify for a public defender.” (there are additional rights but not germane to the Comer Complaint).

September 23, 2021 was her arraignment docket and when Ms. Comer’s name was called she came to the podium and stated her name and date of birth. The video confirms that Judge Ruttle told her what she was charged with and the maximum penalties for each charge, and then asked how she wanted to plead. She said Not Guilty and said she wanted an attorney. Judge Ruttle then reviewed her pretrial interview (Attachment 5), in which Ms. Comer had stated she was employed. She had not filed an affidavit of indigency so her information on her pretrial interview is all that Judge Ruttle had to consider. Ms. Comer continued to say she was not employed and therefore either lied to pretrial services or to the Court⁴. Judge Ruttle routinely has 60 to 100 arraignments a day. As a result, it is not practically possible to have a KRS 31.120 hearing at arraignments so Judge Ruttle told Ms. Comer that she would conduct the hearing at the pretrial to determine if she would qualify for a public defender. Judge Ruttle informed her that she would need to bring to the KRS 31.120 hearing all of her financial information, *i.e.* income, property owned, and expenses. Judge Ruttle never said anything about welfare as Ms. Comer alleges. Ms. Comer has never been in Judge Ruttle’s court so for her to accuse Judge Ruttle of racial bias was very upsetting to Judge Ruttle, and is completely unfounded.

At the November 9, 2021 pretrial/KRS 31 hearing Ms. Comer did again ask for an attorney. Judge Ruttle responded that it was scheduled for a hearing to determine if she was eligible upon review of her financial data that she was ordered to produce. She continued to berate Judge Ruttle and screaming in the courtroom. Judge Ruttle had a full court room and Ms. Comer’s behavior was so disruptive that Judge Ruttle found it contemptuous and placed Ms. Comer in the holding cell. At the end of the docket, Judge Ruttle brought Ms. Comer into the courtroom, and in fact appointed a public defender without further review.

In Kenton District Court, the County Attorney makes an offer in every case at both the arraignment and pretrials and customarily this does not change even if the defendant does not initially accept the offered plea. The Court does not make recommendations. The Commonwealth did not withdraw its offer, and Ms. Comer entered a guilty plea to “non-aggravating” DUI. (Attachment 6 is Courtnet and Judge Ruttle’s docket showing resolution of her case as a non-agg). When the Commonwealth agrees to amend to a “non-aggravating “ they recommend jail time no matter if the offer was made at the arraignment, pretrial, or trial call.

As to the uncharged assertion that Judge Ruttle misadvises felony defendants of their right to an attorney, this is a completely vague and ambiguous allegation. Judge Ruttle appoints a public defender in almost all felony cases at the initial appearance. She informs each defendant that if a bond is posted they may have to hire their own

⁴ Counsel for Judge Ruttle will subpoena the employer set out on the Pretrial Services Report to determine which was a lie.

attorney. The public defenders often argue that Judge Ruttle may not refuse to appoint them if the bond is not posted in the defendant's name. Judge Ruttle refers them to KRS 31.120, specifying the factors in determining whether a person is needy: Section (2)(l), "payment of money bail, other than property bond of another, whether deposited by the person or another, to secure a person's release...."

Judge Ruttle has been on the bench for 28+ years and has never considered gender, race, religion, or sexual orientation in making a decision. Listening to the video confirms that Ms. Comer's complaint is without merit. Judge Ruttle did not, and never would, talk to a defendant as alleged by Ms. Comer in her complaint. Judge Ruttle always shows the utmost respect to all that appear before her and I always will.

Wherefore, Judge Ruttle prays that the Commission review this Answer and the record in this matter and to conclude that the three charges in Count 1 are unfounded and dismiss this proceeding.

Respectfully submitted.

COY, GILBERT, SHEPHERD & WILSON

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P.O. Box 1178
Richmond, Kentucky 40476-1178
(859) 623-3877
jt@coygilbert.com



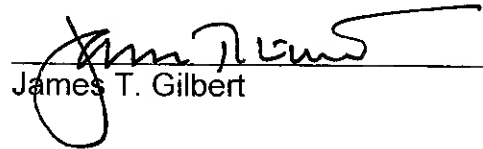
James T. Gilbert

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing Answer was deposited in the first-class U.S. mail to and served electronically to the following on this 2nd day of December, 2022:

Ms. Jimmy Shaffer
Executive Secretary
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
JimmyShaffer@KYCOURTS.NET

Courtesy copy to:
Hon. R. Michael Sullivan, Chairperson
100 St. Ann Street
Owensboro, Kentucky 42303


James T. Gilbert

ATTACHMENT 1

RECEIVED
NOV 03 2021
JUDICIAL CONDUCT COMMISSION

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

P. O. Box 4286
Frankfort, KY 40604
Phone (502)564-1231
FAX (502)564-1233
www.courts.ky.gov

FOR INTERNAL USE ONLY

JCC Case Number: 2021-214

Meeting Date(s): 11/19/21

COMPLAINT FORM

The Commission's preliminary investigation shall be confidential under Rule 4,130 of the Rules of the Kentucky Supreme Court.

Please be advised that the Commission only has authority over Commonwealth of Kentucky judges, trial commissioners, domestic relations commissioners, master commissioners and attorneys who are candidates for judicial office.

The Commission does not have authority to review a case for judicial error or to direct a different result in the case. Those functions are to be handled through the appeals process available through the state's appellate courts. If you seek to change the outcome of your case, discuss this with an attorney without delay.

In addition, allegations stemming from a judge's rulings or exercise of judicial discretion do not provide a basis for action by the Commission. Personal dissatisfaction alone cannot be grounds for an investigation.

Please type or print legibly. NOTE: This form can be filled in online then printed OR printed and then filled out.

I. COMPLAINANT INFORMATION:

Mr. Mrs. Ms.

Name: Comee Lakeisha Yolanda
(Last) (First) (Middle)

Address: 6040 Celtic Ash Ave Florence, Ky 41042
(Street, No., Route) (City, State) (Zip)

Home Phone: (502) 777-8134 Cell Phone: (502) 786-3169

II. COMPLAINT AGAINST:

Please check the box next to the appropriate judicial office:

District Judge	<input checked="" type="checkbox"/>	Court of Appeals Judge	<input type="checkbox"/>	Domestic Relations Commissioner	<input type="checkbox"/>
Circuit Judge	<input checked="" type="checkbox"/>	Supreme Court Justice	<input type="checkbox"/>	Trial Commissioner	<input type="checkbox"/>
Family Court Judge	<input type="checkbox"/>	Master Commissioner	<input type="checkbox"/>	Attorney Running for Judicial Office	<input type="checkbox"/>

Name: Ruttle Ann
(Last) (First) (Middle)

Address: 251 Madison Ave Covington, Ky 41011
(Street, No., Route) (City, State) (Zip)

III. ADDITIONAL INFORMATION:

a) If your complaint arises out of a court case, please answer the following:

1 Case Name: Lakeisha Y Comee

Case County: Kenton Case No: DUI 5227

Control Number

2. What kind of case is it?

Criminal Civil _____ Family _____ Juvenile _____ Other _____
(Please specify)

3. What is your relationship to the case?

Plaintiff/Petitioner _____ Defendant/Respondent Attorney _____ Witness _____
Other _____

b) When and where did the alleged judicial misconduct occur?

Date: 9/15/2021 Time: 10:35pm Location: 3432 Madison Pike
Date: _____ Time: _____ Location: _____

c) If you were represented by an attorney in this case, please identify the attorney:

Name: _____
Address: _____
(Street, No., Route) (City, State) (Zip)
Phone: () _____

d) Identify any other attorney(s) who represented any party in the case:

Name: _____
Represented: _____
Name: _____
Represented: _____

IV. ALLEGATIONS AND STATEMENT OF FACTS:

Please state the facts and circumstances you believe constitute judicial misconduct or disability. Include any details, names, dates, places, addresses, and telephone numbers to assist the Commission in its evaluation and investigation of this complaint. Attach any documents or recordings of court proceedings pertaining to this complaint.

I went to Court 09/23/2021, When my case was called I WAS ASKED to state my name and DOB, I did. Then I was asked how do I plea, I said Not guilty. I then asked for a lawyer, I am not working and cant afford one at the time. Judge Rattle told me "No" get your own! I then said I'm not working and cant afford one she then said "yes you can out riding around in a new car and

IV. ALLEGATIONS AND STATEMENT OF FACTS (continued):

denying and driving" I said what dose that have to do with me gettig a lawyer. She said im sure you can afford one, I said no I cant. She then said "Show me your Welfare papers" I said I dont get Welfare! She the said "well you will have to pay for a lawyer your self!" I ~~did~~ said "Oh your being Bias an racist, not allowig me an an attorney" She told me to leave out the court room an I did.

I have also made aware that Judge Ruttle is always not being fair to Black an has been in trouble for not allowing Blacks to have a lawyer when they cant afford one.

If additional space is required, please attach and number additional one-sided 8½" X 11" pages as needed.

V. I certify that the allegations and statements of facts set forth above are true and correct to the best of my knowledge, information, and belief and are made of my own free will.

09/30/2021
(Date)

Lakshmi / Gomez
(Complainant's Signature)

ATTACHMENT 2

9/23/2021

10:00:04	Case called
10:00:21	Charges explained: "Ms. Comer, you have two violations, one is you only had one headlight, and the other is you had improper display of registration plates, those are violations that carry fines only, but you're also charged with Driving Under the Influence...it's a first offense, aggravating, and that alleges that the breathalyzer is in excess of .15, (Defendant interrupting...); let me talk, I'm just telling you..."
10:00:53	Court: "Let me just finish, OK (Defendant interrupting)...; so on the DUI charge (Defendant interrupting)...will you let me talk or no...(Defendant interrupting)...I'm just trying to tell you the penalties, the maximum penalties, OK, then you can enter your plea however you want..."
10:01:12	Court: "So it carries a maximum five hundred dollar fine and/or up to thirty days in jail, and license suspension is determined through the Department of Transportation, you can do it with interlock, or.... How do you want to plead?"
10:01:44	Δ: "Not guilty; Court: "I'll schedule it for a pretrial;" Δ: I'd like to have an attorney." Court: "That will be on Tuesday November 9 th , and that will be at nine o'clock. That will be upstairs in Courtroom 4b."
10:01:58	Δ: "How can I get an attorney, 'cause I can't afford one?". Ct: "No, you'll have to get your own." Δ: "If I can't afford one?...that's against my rights to not give me one...."
10:02:15	Ct: "I've got here, you have a job...(Defendant interrupting: "I don't have a job" ¹). "You're driving, so you have a vehicle."
10:02:23	Ct: "If you want to you can bring all your income information, from whatever source, I don't care if it's government assistance, bring it with you on November 4 th and I'll take look at it but so far as I can tell you don't qualify...."
10:2:36	Δ: "That's just biased and racist."

11/9/2021

9:45:30	Case called
9:45:55	Commonwealth: "Judge the offer on DUI 1 st , non-aggravator, \$250 fine, 7 days, conditionally discharged for 2 years; it was charged with an aggravator, it was marked at some point; the BA was 0.152, but I will make the offer on a non-agg today." (46:09)
9:46:13	Ct: "That's an offer. There's mandatory jail time based on this breathalyzer, but since she . . ."

¹ Note that the Pretrial Services Report, which Judge Ruttle had in front of her, specifically provides that the Defendant is a "Temporary PT Employee" at "CR Brands/Job Store On/Off..[for] 10 years."

9:45:19	Δ interrupts Judge
9:46:20	Δ talking over Judge
9:40:24	Δ "Can I get a lawyer?"
9:40:25	Ct: "No, you do not qualify . . ."
9:40:27	Δ: (interrupting and loud) "Why do you say I can't get a lawyer ma'am?"
9:40:29	Ct: "You call me a racist again and I'll . . ."
9:40:32	Δ: (loudly) "You're being mean and nasty for some reason."
9:40:36	Ct: "Sit down right now."
9:40:37	Δ: "OK. I'll get a lawyer in there. I can get a lawyer. . . OK, that's fine."
9:40:42	Ct: "I'm just gonna let you calm down."
9:40:44	Δ: "I didn't call you ma'am; you just being mean . . . I didn't call you a racist . . . Last time I did in Court. You just being mean today. Cause I seen you did it to that white guy out there (46:52). You just being mean and nasty and acting incompetent. And you hold a higher rank? You need to step down (:50)
9:47:03	Ct: "You do not qualify for . . ." Δ: (Interrupting) "I don't care. You have to give me a lawyer now."
9:47:06	Ct: "You don't qualify for a public defender."
9:47:08	Δ: "Yes I do. Yes I do and I'll file a grievance on you."
9:47:10	Ct: "You do not act like that in court."
9:47:11	Δ: "And I'll file a grievance on you. . . I could care less, so what."
9:47:19	Δ: "She think I'm gonna kiss her butt . . . cause you sitting up on a bench, white lady. No."
9:47:24	Δ is lead from courtroom by bailiff
9:47:32	Ct: "I wonder who the racist is . . ."
10:37:12	Ct: "Ms. Comer, have you calmed down?"
10:72:15	Δ: "Yes, ma'am."
10:37:18	Ct: "Ok. Let me just explain a couple of things to you. You know, you sat there for the rights. You know, I think you have a misunderstanding. You have the right to an attorney, but if it's determined you cannot afford one, I can appoint one for you (37:29). So what I asked for you to do today, because you know, I have your [Pretrial Services Report] . . . you were out-of-custody, you were in a car, you were driving and also you have a job. But so (Δ interrupting) . . . let me finish. Under those circumstances, you generally do not qualify. (10:37:45). But you said, you kept yelling at me, "it's my right. It's my right. It's my right." Ok, yes, you do, but then I said ok, then I'll have a hearing on it, please bring all your financial information, and any stimulus money, and all your paycheck stubs, and all of that. Did you bring that today? Did you bring that with you? (10:38:00)
10:38:01	Δ: "No ma'am. You told me to bring my welfare. . ."

10:38:05	Ct: "That's fine, but I asked you (Δ interrupting) You gotta stop talking, wait a minute, you're gonna stop talking. But you wouldn't stop talking enough for me to tell you that, so that I could do a hearing on the fact to see if you are qualified for a public defender (10:38:20) Does that make sense to you? Because if I had . . . you saw how many people were there. Now . . . do you think the public defender could take every one of those cases? Now I'm going to tell you one thing. I'll appoint today, that's fine, you can go over and talk to them, but they're going to take their offer off the table so it will be . . . it's charged as an aggravator, which means mandatory jail time . . . I'll appoint a public defender, and I'll continue your pretrial (10:38:40).
10:39:00	Ct sets new pretrial date, setting it in December because "that'll give them more time. . ." (10:39:06)
10:39:09	Ct sets pretrial December 21 st
10:39:15	Ct directs Δ to public defender's office and tells Δ "I'll credit your time served for the contemptuous behavior . . . Don't act like that ever again in my Court.... It's a court of law, whether you like me or not. . ."
10:39:33	Ct again tells Δ where public defender's office is.

ATTACHMENT 3

KRS § 31.120

Current through all 2022 legislation.

Michie's™ Kentucky Revised Statutes > TITLE IV Judicial Branch (Chs. 21 — 34) > CHAPTER 31 Department of Public Advocacy (§§ 31.010 — 31.250)

31.120. Determination of whether person needy — Factors for determination — Affidavit of indigency.

(1)

(a) The determination of whether a person covered by KRS 31.110 is a needy person shall be deferred no later than his or her first appearance in court or in a suit for payment or reimbursement under KRS 31.211, whichever occurs earlier.

(b) The court of competent jurisdiction in which the case is pending shall then determine, with respect to each step in the proceedings, whether he or she is a needy person. However, nothing shall prevent appointment of counsel at the earliest necessary proceeding at which the person is entitled to counsel, upon declaration by the person that he or she is needy under the terms of this chapter. In that event, the person involved shall be required to make reimbursement for the representation if he or she later is determined not a needy person under the terms of this chapter.

(c) A person who, after conviction, is sentenced while being represented by a public defender shall continue to be presumed a needy person, and the court, at the time of sentencing, shall enter an Order In Forma Pauperis for purposes of appeal without having to show further proof of continued indigency, unless the court finds good cause after a hearing to determine that the defendant should not continue to be considered an indigent person.

(2) In determining whether a person is a needy person and in determining the extent of his or her and, in the case of an unemancipated minor under KRS 31.100(5)(c), his or her custodial parents' or guardians' inability to pay, the court concerned shall consider such factors as:

(a) Income;

(b) Source of income;

(c) Property owned;

(d) Number of motor vehicles owned and in working condition;

(e) Other assets;

(f) Outstanding obligations;

(g) The number and ages of his or her dependents;

(h) The poverty level income guidelines compiled and published by the United States Department of Labor;

(i) Complexity of the case;

(j) Amount a private attorney charges for similar services;

(k) Amount of time an attorney would reasonably spend on the case; and

KRS § 31.120

(l) Payment of money bail, other than a property bond of another, whether deposited by the person or another, to secure the person's release from confinement on the present charge of which he or she stands accused or convicted; and

(m) Any other circumstances presented to the court relevant to financial status.

Release on bail, or any other method of release provided in KRS Chapter 431, shall not necessarily prevent him or her from being a needy person. In each case, the person and, if an unemancipated minor under KRS 31.100(5)(c) and (d), his or her custodial parent or guardian, subject to the penalties for perjury, shall certify by affidavit of indigency which shall be compiled by the pretrial release officer, as provided under KRS Chapter 431 and Supreme Court Rules or orders promulgated pursuant thereto, the material factors relating to his or her ability to pay in the form the Supreme Court prescribes.

(3) The affidavit of indigency, to be subscribed and sworn to by the person and, in the case of an unemancipated minor under KRS 31.100(5)(c), by his or her custodial parent or guardian, shall be as set out herein and contain, at a minimum, the following information:

"Commonwealth of Kentucky

County of

Affiant being first duly sworn says that he or she is not now represented by private counsel and that he or she does not have the money or assets out of which to employ one; that he or she is indigent and requests the court to appoint counsel.

Affiant states that he or she is presently (fill in the blank with one (1) of the following: unemployed, employed full-time, employed part-time, or employed on a seasonal basis)

Affiant states that his or her weekly income is; and that he or she receives (circle any of the following which apply and fill in the blank if necessary)

Welfare

Food stamps

Social Security

Workers' compensation

Unemployment

Retirement disability

Other

Affiant states that he or she owns the following property:

Description	Value
.....
.....
.....;

Affiant states that he or she has the following dependents:

KRS § 31.120

Name	Age	Relationship
.....
.....
.....

KRS § 31.120

Affiant states that he or she has the following obligations:

KRS § 31.120

To whom owed

Amount owing

.....

.....

.....

.....

.....

.....

.....

KRS § 31.120

Affiant understands and has been advised that he or she may be held responsible for the payment of part of the cost of legal representation. Affiant also understands that the cost of payment for legal representation will be determined by the judge after considering affiant's financial condition, what private attorneys charge for similar services, how complicated the affiant's case is, and the amount of time affiant's attorney spends on affiant's case.

Signature of affiant

Subscribed and sworn to before me this, day of....., 20.....

.....

Signature and title of officer

administering the oath

Perjury Warning: Affiant understands that any person knowingly making false statements in the above affidavit shall be subject to the penalties for perjury under KRS Chapter 523, the maximum penalty for which is five (5) years' imprisonment. Affiant declares under penalty of perjury that he or she has read the above affidavit and that it is true and complete to the best of his or her knowledge."

History

Enact. Acts 1972, ch. 353, § 12; 1976, ch. 258, § 1; 1976 (Ex. Sess.), ch. 24, § 3; 1978, ch. 155, § 29, effective June 17, 1978; 1980, ch. 188, § 11, effective July 15, 1980; 1980, ch. 334, § 1, effective July 15, 1980; 1986, ch. 104, § 2, effective July 15, 1986; 1992, ch. 241, § 2, effective July 14, 1992; 1994, ch. 395, § 2, effective July 15, 1994; 1998, ch. 491, § 3, effective July 15, 1998; 2002, ch. 283, § 12, effective July 15, 2002; 2014, ch. 87, § 4, effective July 15, 2014.

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ATTACHMENT 4



Neutral

As of: December 2, 2022 7:35 PM Z

Commonwealth v. Gaumond

Superior Court of Massachusetts, At Essex

April 19, 2002. Decided ; April 19, 2002, Filed

98-2813-14-15

Reporter

2002 Mass. Super. LEXIS 82 *: 14 Mass. L. Rep. 519

Commonwealth v. Scott D. Gaumond

Disposition: [*1] Defendant's motion for new trial was denied.

Core Terms

sentence, guilty plea, charges, recommendation, plea negotiation, options, co-defendants, lobby, plea colloquy, go to trial, convicted, lenient, impose sentence, responded, coercion, stand-by, elderly, sentencing recommendation, criminal record, incarceration, probation

Case Summary

Procedural Posture

Defendant, appearing pro se, filed a motion for new trial pursuant to *Mass R. Crim. P. 30(b)*. Defendant pled guilty pursuant to a plea agreement to numerous counts of larceny over \$ 250, violations of the home improvement contractors laws, and one count of larceny over \$ 250 on a person over the age of 60.

Overview

The court found that given the numerous charges, the alleged scheme, and defendant's past criminal record of similar offenses, sentencing information from the judge during a conference was not a surprise to such a knowledgeable and sophisticated defendant. It did not in any way constitute some sort of coercion that prevented him from asserting his right to a trial. The trial judge did not attempt to force a plea upon defendant. Confronted with realities, defendant was actively seeking the best deal that he could make. He sought the judge's assistance by asking for a lobby conference to discuss the Commonwealth's sentencing recommendation. The judge did not threaten any particular sentence. Defendant recognized the reality voiced by the judge at

the conference, namely that were he to go to trial, and if he was also convicted of all the numerous felonies, he would, in all likelihood, receive some significantly longer sentence.

Outcome

The motion was denied.

LexisNexis® Headnotes

Civil Procedure > Judicial Officers > Judges > General Overview

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Coercion

Governments > Courts > Judges

HN1 [↓] **Judicial Officers, Judges**

One reason why judicial participation in the plea negotiation process is disfavored is that, even though a defendant often wishes the judge to inform him of his options and seeks to have the judge pressure the Commonwealth in making a more lenient recommendation, any comment made by the judge later may be pointed to as some type of coercion which forced the defendant to give up his right to a trial.

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Coercion

Governments > Courts > Judges

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > General Overview

Criminal Law &
 Procedure > Sentencing > Forfeitures > Proceeding
 s

[HN2](#) Guilty Pleas, Coercion

In order to show judicial coercion of a plea, a defendant must establish by objective proof that the judge forced a guilty plea by putting the defendant on notice that he could expect more severe punishment if he insisted on a trial by jury. Such coercion may occur when a judge unequivocally or straight out tells a defendant that he will be given a definite, more severe sentence if he opts to proceed to trial instead of pleading guilty. These unusual cases stand in contrast to the traditional situations where a trial judge does not commit himself in advance to the imposition of a particular sentence but instead discusses various sentencing alternatives and explains the options to a defendant.

Criminal Law & Procedure > ... > Entry of
 Pleas > Guilty Pleas > Coercion

Criminal Law & Procedure > Preliminary
 Proceedings > Entry of Pleas > General Overview

Criminal Law & Procedure > ... > Entry of
 Pleas > Guilty Pleas > General Overview

[HN3](#) Guilty Pleas, Coercion

There is no doubt that any defendant involved in a plea negotiation prior to trial is under a certain degree of coercion, in the sense of physiological or emotional pressure, in that entering a plea requires a person to forgo certain rights in order to be spared certain penalties. In the context of a plea negotiation, the sentencing judge may reward a defendant with a lighter sentence in that the admission of guilt is a socially positive act. The Massachusetts Supreme Judicial Court, recognizing the reality of plea negotiation holds that the possibility that a greater penalty will result from a jury trial than from the entry of a guilty plea has not been found to infringe impermissibly on the right to a jury trial.

Judges: Richard E. Welch III, Justice of the Superior court.

Opinion by: Richard E. Welch

Opinion

MEMORANDUM OF DECISION REGARDING DEFENDANT'S MOTION FOR NEW TRIAL

The defendant, proceeding pro se, has filed his first motion for new trial pursuant to *Massachusetts Rule of Criminal Procedure 30(b)*. The defendant pled guilty pursuant to a plea agreement he reached with the prosecution. He now claims he was coerced into pleading guilty and was denied his right to a trial. Ergo, he argues, justice was not done and a new trial must be ordered. The defendant was indicted for numerous counts of larceny over \$ 250, violations of the home improvement contractors laws, and one count of larceny over \$ 250 on a person over the age of sixty. Two co-defendants, Robert F. Newell, Jr. and Stephen M. Todd were indicted on similar charges. In essence, the defendant and his co-defendants were charged with entering into a scheme whereby they would approach individuals, often elderly, and offer to do home improvement work. After obtaining money from these individuals who relied upon their promises, the defendants would not perform the work or would perform unnecessary or grossly inadequate [*2] work.

The co-defendants elected to be represented by counsel. Defendant Scott Gaumond insisted on asserting his right to proceed pro se. Because the case involved numerous pre-trial motions, the case was specially assigned to this judge. As a result, this judge became quite knowledgeable about the allegations and the evidentiary issues. Despite cautions provided by this judge, defendant Scott Gaumond insisted on proceeding pro se. This judge appointed standby counsel to assist Mr. Gaumond.

After various trial date continuances, trial was scheduled for November 30, 1999. The day before trial, the defendant, and his co-defendants, decided to plea guilty. This judge was familiar with the very extensive prior criminal records of all three co-defendants. Defendant Scott Gaumond's prior criminal record included numerous prior fraud and larceny convictions relating to similar schemes. Without any urging by the judge, the defendants and the Commonwealth engaged in plea negotiations.

After participating in those discussions, defendant Scott Gaumond, with his standby counsel, asked to approach sidebar and discuss with the court, on the record, his concerns about the proposed sentencing [*3]

recommendation that the prosecutor was willing to offer in exchange for a pretrial plea. The Commonwealth explained that it was willing to recommend a 5- to 7-year sentence of incarceration should Gaumond plead guilty to the charges. (Transcript, p. 98.) The Commonwealth stated that it was making a rather lenient sentence recommendation (in light of the numerous charges, the allegations of serious and prolonged fraudulent behavior, and the defendant's long criminal record) due to the Commonwealth's concerns about subjecting the victims, a number of whom were elderly, to the trauma of trial. Indeed the Commonwealth emphasized that its offer was "too generous" and the product of a "momentary lapse." (Transcript, pp. 97, 102.) Defendant Scott Gaumond, on the other hand, wanted the court to intervene to force the Commonwealth to recommend a sentence less than 5 to 7 years of incarceration or to commit to a sentence below the Commonwealth's recommendation. To this end defendant Gaumond asked the Court to impose a sentence of 4 to 5 years on incarceration. (Transcript, p. 100.)

In essence what was conducted at the sidebar is what is known in the Superior Court parlance as a "Lobby Conference. [*4]" This conference, however, did not occur in the lobby or off the record but instead on the record and in the courtroom. A lobby conference is often requested in many criminal cases, such as this one, where the parties disagree as to what sentence should be imposed in the event the defendant pleads guilty. The purpose of such a lobby conference then is to determine what sentence the judge will give upon a plea, i.e., will the judge accept the defendant's recommendation or the unusually more stringent suggestion of the prosecutor; and if the defendant does not plead to the Commonwealth's recommendation, will that result in more jail time after trial--i.e., how much credit will the judge give for the defendant's acceptance of responsibility. Resorting to the oft used analogy of making sausage, the process of plea negotiation in a lobby conference may be messy and even unappealing, but the defendant is eager to engage in the process because he seeks to know the flavor of the end result. In short, the defendant is seeking as much information as possible before making an important decision.

In the present case, this judge heard from both sides on the record and then indicated that the [*5] court would impose the Commonwealth's recommended sentence should the defendant plead guilty. When the defendant requested a lighter sentence, this judge indicated, using conditional language, that if the case was to go to trial and if the Commonwealth was to prove all of the serious

charges, "I might later impose a sentence significantly higher than 5 to 7 . . . if they prove the charges, these charges deserve a much stiffer sentence" than the 5 to 7 sentence offered. The defendant continued to complain about the government's recommendation and likened it to a "life sentence." This judge then discussed the defendant's options:

Look, there's no doubt--I wouldn't want to do 5 to 7. But, frankly, you have to look at your options. Maybe you have some strong defenses. Maybe you don't get convicted of these crimes. But, if you get convicted, I think you're talking about a sentence that's going to be far stiffer than 5 to 7. I think that, then, really a good chunk of your productive life will be taken away from you. Whereas 5 to 7 gets you out, back on the street.

(Page 100.) Not deterred, defendant Gaumond then again asked the Court "to consider a possibly 4 to 5." The Court indicated [*6] to the defendant that this judge would not impose such a sentence of 4 to 5 and opined: "I think 5 to 7 is a very generous offer." (Transcript, pp. 100-01.)

It should be noted that the defendant, while proceeding pro se, was remarkably knowledgeable and sophisticated about the workings of the criminal system and criminal sentencing options. It was the defendant himself who requested a conference to discuss the plea negotiations. (Transcript, pp. 96-97.) After the sidebar conference, the defendant was provided time to consider his options and discuss them with his standby counsel. The defendant took advantage of this opportunity. (Transcript, p. 103.) Showing his sophistication with the law, and how calm and reflective the defendant was during this period of time, the defendant stated he would accept the plea agreement but only if the sentences were imposed on "pre-truth in sentencing" charges. (Transcript, p. 103.) The Commonwealth, which had already indicated that it thought that its earlier offer of 5 to 7 was excessively lenient, refused the defendant's request that the sentence run on earlier, pre-truth and sentencing charges. After this discussion, the defendant responded [*7] "I will accept the plea your honor." (Transcript, p. 104.)

This judge then proceeded with the a rather extensive plea colloquy. During the course of this plea colloquy, the defendant evidenced a full understanding of the proceedings. The defendant stated that he was taking medications for certain conditions and such medications made it easier for him to mentally focus and make

decisions. (Transcript, p. 112.) Earlier that day, the defendant had been examined by a court appointed psychiatrist and was found to be competent. The defendant at all times was a coherent, intelligent, and experienced participant in the plea negotiations process and during the plea colloquy. For example, the defendant used the plea colloquy to ask such questions as to whether the sentence imposed in this case could run "concurrent" to the probation he was currently serving in Suffolk County. The defendant's stand-by counsel took an active roll in the plea colloquy. (Transcript, p. 120.) The Commonwealth acceded to the defendant's request and recommended that the sentence be served concurrently with the Suffolk County sentence. (Transcript, pp. 121-22.) The defendant also made sure he was appropriately [*8] credited for any time held in custody on these charges. (Transcript, p. 143.)

Before the Commonwealth stated the facts upon which it would rely on trial, this judge gave a special caution to the defendant:

Now, I don't want you to pleading guilty to anything you're not guilty of, so please pay attention to this Assistant Attorney General. At the end, I'm going to ask you, "Mr. Gaumond, did you do those things?"

If you didn't, don't plead guilty. Do you understand, Mr. Gaumond?

The defendant responded in the affirmative. (Transcript, p. 123.) After giving a summary of the facts, the defendant did not agree "with some of the facts . . . with regards to my participation and the amounts refunded and charged. I think there are some serious discrepancies in the amounts; but I do agree that there is substantial facts." Upon further inquiry, the defendant admitted that he had committed larceny. (Transcript pp. 136-37.) The defendant also agreed that he stole money from the victims by engaging in a scheme with co-defendant Newell to defraud various elderly individuals and that he repeatedly (in excess of 12 times) violated the home improvement contractor laws. The defendant [*9] stated that no one forced him to plead guilty or put pressure upon him to plead guilty. He also agreed that he pled guilty willing, freely, and voluntarily. (Transcript p. 137.) During the plea colloquy, the court informed the defendant that he was still free to go to trial. To the judge's statement "well I am happy to let you go to trial," the defendant responded that he did not want to do that. (Transcript 138.)

Throughout the entire process of the plea negotiation

and subsequent colloquy, the defendant was not emotional, distraught, confused, or upset. The defendant used the services of his stand-by counsel. The defendant evidenced a remarkable degree of legal sophistication and drove a hard bargain with the Commonwealth. There is no possible way that the defendant's will was overborne in anyway nor was he subject to coercion.¹

[*10] This case is further evidence that the frequent state court practice of "lobbying" cases, and thereby having judges participate in plea bargaining, should be "discouraged." *Commonwealth v. Johnson*, 27 Mass. App. 746, 750, 543 N.E.2d 22 (1989). HN1[↑] One reason why judicial participation in the plea negotiation process is disfavored is that, even though a defendant often wishes the judge to inform him of his options and seeks to have the judge pressure the Commonwealth in making a more lenient recommendation, any comment made by the judge later may be pointed to as some type of coercion which forced the defendant to give up his right to a trial.²

¹After the defendant was evaluated by Dr. David Swenson, this Court found that the defendant was fully capable of representing himself and standing trial. (Transcript, November 29, 1999, p. 67.) It was the defendant then who brought up the request of "possibly lobbying this case." (Transcript, p. 68.) He stated that he wished to speak with his stand-by counsel Mr. Bransfield about negotiating a plea. The Court allowed him time to do this. At the time, defendant Gaumond was aware that a co-defendant (Mr. Stephen Todd) was pleading guilty and the court would be conducting a plea colloquy with Mr. Todd.

²There are numerous other reasons why a judge's involvement in plea negotiations should be discouraged (or, as in the federal system, outright prohibited). These include the unavoidable fact that most lobby conferences are in essence "back room deals" that do not involve the defendant, the victim, or the public. No matter how fair a judge is in the lobby conference (be it in his or her lobby or at sidebar, be it on or off the record) it is usually only the judge and the lawyers participating. Any plea agreement negotiated in such a private setting is likely to be misunderstood by the public, the defendant, or the victim. In addition, the judge, no matter how wise or experienced, has only limited knowledge of the details of the case and he or she is being asked to give a snap decision as to what is an appropriate sentence. This places the judge in an untenable position. The often-used excuse for such a participation in plea bargaining is that the judge will only give a tentative decision as to the sentence during the lobby conference, but will await a full sentence hearing before

[*11]

HN2 [↑] In order to succeed in this motion, the defendant must establish "by objective proof that the judge forced a guilty plea by putting the defendant on notice that he could expect more severe punishment if he insisted on a trial by jury." Commonwealth v. Damiano, 14 Mass App 615, 619, 441 N.E.2d 1046 (1982). Such coercion may occur when a judge "unequivocally" or "straight out" tells a defendant that he will be given a definite, more severe sentence if he opts to proceed to trial instead of pleading guilty. See Commonwealth v. Carter, 50 Mass. App. 902, 733 N.E.2d 582 (2000) (coercion found when trial judge encouraged defendant to plead guilty and offered sentence of six years to six years and one day on a guilty plea but after trial gave the guarantee that the sentence would be eighteen to twenty); Commonwealth v. Lebon, 37 Mass App. 705, 706, 643 N.E.2d 45 (1994) (trial judge coerced forfeiture of right to jury trial when he promised not to impose a committed jail sentence if the defendant opted for a jury-waived trial, but promised to impose a period of incarceration should the defendant demand a jury). These unusual cases [*12] stand in contrast to the traditional situations where the trial judge does not commit himself in advance to the imposition of a particular sentence but instead discusses various sentencing alternatives and explains the options to a defendant. Commonwealth v.

announcing the final sentence. But, even if well intended, this is but an excuse. In reality, the "fix is in" after the judge has indicated an appropriate sentence and it is communicated to both sides, barring some truly surprising development during the plea colloquy or the victim impact statement. For all these reasons, this judge no longer participates in the practice of "lobbying" cases. Denying both sides of a criminal case the chance to expound upon their positions in such a lobby conference and to obtain a general sense from the judge whether he or she would accept the defendant's sentence recommendation is not a popular position to take. Both defense counsel and the prosecutor often seek such a lobby conference. For example in this case, the sophisticated pro se defendant actively sought a lobby conference and this judge acceded to the request by holding a conference on the record at side bar. Given the inevitable disagreements that occur after a defendant has been sentenced, this judge, at least, has decided that the better practice is to avoid any involvement in the plea negotiation process. The current motion is sufficient evidence of why this Judge and a few of his colleagues have changed their positions on the issue of holding lobby conferences. It is worth noting that Superior Court judges who regularly sit in western Massachusetts do not engage in the practice of lobbying cases and no apparent ill effects have been observed from Springfield westward.

Carter, *supra* at 904 (comparing and distinguishing the case of Commonwealth v. Damiano, 14 Mass. App. 615, 620, 441 N.E.2d 1046 (1982)).

The present case falls well within the non-coercive plea bargaining situation upheld in Commonwealth v. Damiano, *supra*. This is a determination that must be made on a case by case basis. One begins the analysis with two somewhat opposing concerns. HN3 [↑] There is no doubt that any defendant involved in a plea negotiation prior to trial is under "a certain degree of coercion (in the sense of physiological or emotional pressure)" in that entering a plea requires "a person to forgo certain rights in order to be spared certain penalties." Commonwealth v. Damiano, *supra* at 619. In the context of a plea negotiation, the sentencing judge may "reward" a defendant with a lighter sentence in that the "admission of guilt is a [*13] socially positive act" and, particularly in the context of this case, such an admission spared elderly victims the trauma of testifying at trial. Commonwealth v. Lebon, 37 Mass. App. 705, 707, 643 N.E.2d 45 (1994). See also Commonwealth v. Johnson, 27 Mass. App. 746, 750-51, 543 N.E.2d 22 (1989). The Supreme Judicial Court has recognized the reality of plea negotiation and held: "The possibility that a greater penalty will result from a jury trial than from the entry of a guilty plea has not been found to infringe impermissibly on the right to a jury trial." Commonwealth v. LeRoy, 376 Mass. 243, 246 (1978). So it is in this case.

Facts to be considered include the fact that the trial judge did not attempt to force a plea upon the defendant. In this case, the judge reiterated in the plea colloquy that he would be happy to have the defendant go to trial. More telling, it was the defendant himself (knowing that he had the right to his jury trial on the very next day) who asked to conference the case with the judge. Any suggestion in the nearly identical affidavits filed by the three co-defendants in support of this motion that this [*14] judge somehow pressured the co-defendants into pleading guilty by threatening, through their attorneys, "double digit" sentences after trial is ludicrous and completely unsupported. As can be seen from the transcript of the lobby conference and the plea colloquy, the defendant was knowledgeable and experienced with the criminal justice system. The defendant used the services of stand-by counsel and repeatedly sought to obtain the best deal that he could in a sentence. First he requested that the judge impose a sentence lower than the Commonwealth's recommendation. Then the defendant suggested that the sentence run on the pre-truth in sentencing counts.

Finally the defendant won the concession to have his Suffolk County probation (and any sentence imposed on a probation violation) run concurrently with the sentence being imposed in Essex County. The record of these proceedings (which covers forty-seven transcript pages) plainly establishes the defendant's "awareness of the situation, legal distinctions, and available options." *Commonwealth v. Damiano, supra at 621.*

This judge does not rely solely upon the record that has been transcribed. As the judge specially [*15] assigned to this case, I fully recall Mr. Gaumond's behavior during this time. He was at all times cool and collected and in command of the legal situation. Earlier in the proceedings, the Assistant Attorney General had stated that she would be seeking a very lengthy prison sentence if the defendants were found guilty. She explained that she might seek a sentence enhancement due to the extensive prior criminal record of the defendant Gaumond. Mr. Gaumond had engaged in extensive discovery and was aware of the numerous witnesses who would testify against him at the trial. Mr. Gaumond was aware that the trial date was a certainty and that various of his co-defendants already had pled guilty. Confronted with these realities, the defendant was actively seeking the best deal that he could make. In this attempt, he sought the judge's assistance by asking for a lobby conference to discuss the Commonwealth's sentencing recommendation.

The side bar conference began with this judge asking the Commonwealth for its sentencing recommendation. The Assistant Attorney General stated that she would honor a sentence of five to seven years (plus probation on and after) even though she believed that [*16] it was a "momentary lapse," in that it was too lenient of a sentence. The judge then simply asked the defendant "Mr. Gaumond, what do you think about that?" (Transcript p. 98.) The defendant, who was never hesitant to express his personal beliefs, responded: "I don't think it's agreeable, your honor." The defendant then attempted to revive an earlier more lenient offer made by the Commonwealth made during pre-trial discovery. As can be seen from the foregoing, the defendant was attempting to determine what his sentencing options were. The Court then inquired of the Commonwealth if they would offer the earlier four to four and one-half sentence and the Commonwealth declined to honor that earlier offer. (Transcript pp. 98-99.) The defendant then explained to the judge that he understood that he might receive a harsher sentence after trial if all the charges against him were proven but he wished to explain to the court that a five to seven

sentence "is like a life sentence to me, especially with probation." (Transcript p. 99.) This judge then explained "look, there is no doubt--I wouldn't want to do five to seven. But, frankly you have too look at your options. Maybe you have some strong [*17] defenses. Maybe you don't get convicted of these crimes. But if you get convicted, I think you're talking about a sentence that is going to be far stiffer than five to seven. And I think that, then, really, a good chunk of your productive life will be taken away from you. Whereas five to seven gets you out, back on the street." (Transcript p. 100.) To this, the defendant responded "well I would ask the court to consider the possibility of four to five." The court responded "frankly I think five to seven is a very generous offer. I would not impose a sentence less than that." (Transcript pp. 100-01.)

In this case, the judge did not threaten any particular sentence. Instead, the judge stated the obvious. If the defendant was to go to trial and was to be convicted of the numerous felony charges, he might well receive a significantly longer prison sentence than five to seven years incarceration. No particular sentence was promised. Certainly this is not a case where a judge threatens a maximum sentence if a defendant chose to exercise his right to go to trial. Compare *Commonwealth v. Carter, 50 Mass. App. 902, 733 N.E.2d 582 (2000)*. Instead, this side bar conference [*18] "did nothing more than crystallize several choices for [defendant Gaumond] which were intended to assist him in making an informed decision as to his plea. None of the choices imposed pressures beyond those normally affecting a defendant in his situation." *Commonwealth v. Damiano, 14 Mass. App. at 620* (unrecorded lobby conference deemed not coercive where judge stated that he "had an eighteen to twenty year sentence in mind if defendant cooperated" where defendant was facing potential life sentence).

After having obtained this information by way of the side bar conference, the defendant had time to assess his options. He decided to plead guilty. The guilty plea colloquy was extensive. There is simply no doubt the defendant's plea was voluntary. He wished to gain credit by offering a plea of guilty instead of going to trial the next morning. He obtained a lenient sentencing recommendation which the judge assured him that he would impose. Having struck that beneficial bargain, and being aware that many of the witnesses who would have testified against him at trial are now even more elderly, the defendant has made the calculated decision to seek to withdraw his [*19] plea of guilty. Here the defendant initiated the plea negotiation process. He

knew that he could fully exercise his right to a fair, public trial on the very next day. He also knew that the Commonwealth's lenient sentencing recommendation, which took into account his acceptance of responsibility and the beneficial effect of relieving various elderly witnesses of the trauma of testifying, would disappear on the next day. (Transcript, pp. 101-03.) The defendant also recognized the reality voiced by the judge at the conference, namely that were he to go to trial, and if he would be convicted of all the numerous felonies, he would, in all likelihood, receive some significantly longer sentence. Given the numerous charges, the alleged scheme, and the defendant's past criminal record of similar offenses, this hardly could have been a surprise to such a knowledgeable and sophisticated defendant as Mr. Gaumont. Nor did it in any way constitute some sort of coercion that prevented him from asserting his right to a trial.

This motion must be *DENIED*.

So Ordered.

Richard E. Welch III

Justice of the Superior court

Dated: April 19, 2002

End of Document

ATTACHMENT 5

ATTACHMENT 6

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**ANN RUTTLE, DISTRICT COURT JUDGE
16th JUDICIAL CIRCUIT, DIVISION 1**

REQUEST FOR PRODUCTION OF DOCUMENTS


Comes Judge Ann Ruttle, by counsel, and pursuant to SCR 4.160 and CR 34, and requests that the Judicial Conduct Commission produce the following documents to counsel for Judge Ruttle in accordance with the Civil Rules:

1. Any documents or records setting forth any rules of procedure, bylaws, regulations, protocols, rulings, directives, orders, acts, statutes, edicts, pronouncements, mandates, commands, or the like, governing the Commission's consideration and determination of motions filed in the matters before the Commission.
2. Any documents or records setting forth any rules of procedure, bylaws, regulations, protocols, rulings, directives, orders, acts, statutes, edicts, pronouncements, mandates, commands, or the like, governing the Commission's practices and procedures in all events.
3. Copies of any and all motions, and the Commission's rulings or determinations thereon, filed with the Commission within calendar years 2018, 2019, 2020, 2021, and 2022.
4. Any and all public orders of the Commission within calendar years 2018, 2019, 2020, 2021, and 2022.
5. Any and all orders of the Commission specifically relating to or dealing in any way with a judge's determination of whether a person is needy as defined by KRS 31.120.
6. Any and all orders of the Commission specifically relating to or dealing in any way with a judge reconsidering indigency status and consequently appointment of counsel, without conducting the necessary hearings.
7. Any and all orders of the Commission specifically relating to or dealing in any way with a defendant unrepresented by counsel that could be construed as coercive in nature, seeking the defendant's waiver of certain rights and accepting the terms of the plea offer from the Commonwealth

Respectfully submitted.

COY, GILBERT, SHEPHERD & WILSON

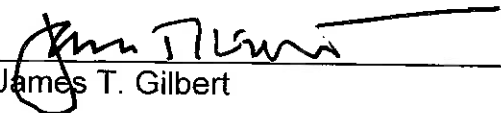
212 North Second Street
P.O. Box 1178
Richmond, Kentucky 40476-1178
(859) 623-3877
jt@coygilbert.com


James T. Gilbert

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing Requests for Production of Documents was deposited in the first-class U.S. mail to and served electronically to the following on this 2nd day of December, 2022:

Ms. Jimmy Shaffer
Executive Secretary
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
JimmyShaffer@KYCOURTS.NET


James T. Gilbert

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

ANN RUTTLE, DISTRICT COURT JUDGE
16th JUDICIAL CIRCUIT, DIVISION 1

MOTION FOR ORAL HEARING ON MOTION TO DISMISS
NOTICE OF FORMAL PROCEEDINGS AND CHARGES

Comes Judge Ann Ruttle, by counsel, and respectfully moves the Commission for An oral hearing on her Motion to Dismiss the "Notice of Formal Proceedings and Charges" in this matter dated 10 November 2022.

On Wednesday, 30 November 2022, counsel for Judge Ruttle filed a Motion to Dismiss as aforesaid. This was filed with the commission at 2:06 p.m. EST. At 11: 55 a.m. EST on 1 December 2022, counsel for Judge Ruttle received an email Order denying the Motion to Dismiss. Judge Ruttle was afforded no opportunity to be heard on the motion, and it is evident that the Chairperson of the commission acted unilaterally without input from any of the commission, and without the benefit of argument or an opportunity to be heard afforded to Judge Ruttle.

Fundamental fairness and due process requires notice and a meaningful opportunity to be heard.

[T]here can be no doubt that at a minimum they [the words of the due process clause] require that deprivation of life, liberty or property by adjudication be preceded by notice and **opportunity for hearing** appropriate to the nature of the case." *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, at 313."An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

Armstrong v. Manzo, 380 U.S. 545, 550, 85 S. Ct. 1187, 1190 (1965)(emphasis supplied).

Kentucky courts have long-adhered to these principles:

At the most fundamental level, procedural due process requires reasonable notice and an opportunity to be heard."

Bd. of Levee Comm'rs v. Johnson, 178 Ky. 287, 199 S.W. 8, 12 (1917).

The Civil Rules (which apply in the commission's proceedings (SCR 4.160)) require a "preliminary hearing" on motions to dismiss before rulings are made thereon

(CR 12.04). It is respectfully submitted that all state trial courts before which the undersigned has appeared afford this opportunity¹.

There was no response or any arguments or assertions on behalf of the commission that the motion was not well-taken. It is noted that the commission has the authority to engage counsel to represent it in its proceedings (SCR 4.110), but apparently it chose to act in this matter without the benefit of counsel.

The Order of the Chairperson of the commission on its face denies Judge Ruttle her constitutional right to be heard, and the Order was clearly entered without due consideration, considering the timing set out above. Judge Ruttle is constitutionally entitled to a hearing before an unbiased decision-maker on her motion.

The Order does not even address the assertions of the Motion that the commission's "preliminary investigation" began upon the obtaining of the Courtnet records by its executive director. The Order unilaterally and without citation of any authority, such as a commission rule, states that its "preliminary investigation" began at its meeting on the Complaint. This is not substantiated in the record nor supported by anything other than the Chairperson's *ipse dixit*, without citation to anything².

The Order does not even mention or refer to SCR 4.170(5) nor afford the courtesy of addressing the arguments in Judge Ruttle's motion. This cannot comport with constitutional due process.

The Order simply and without explanation and without citation to any authority unilaterally states that "a preliminary investigation can only be initiated by vote of the commission...." Where is that written down for any person to see? Is that a rule, or is it simply the unilateral determination of one board member. The law in Kentucky is that the words in statutes (and Supreme Court rules) are to be given their "the common and approved usage of language" The order fails to explain how the obtaining of information by the executive director does not equate the commencement of a preliminary investigation. The *ipse dixit* of one commission member does not overcome the common and approved meaning of the words in the rule.

If the Court of Appeals is bound by and shall follow precedents of the Supreme Court (SCR 1.030(8)(a)), then surely this commission must follow applicable Kentucky precedent and provide meaningful notice and opportunity to be heard before it acts.

This commission must provide Judge Ruttle a meaningful opportunity to present her factual and legal arguments in support of her Motion to Dismiss. The constitution and fundamental fairness demand it.

¹ Undersigned counsel for Judge Ruttle has been licensed to practice law in the Commonwealth of Kentucky since 25 October 1974, more than forty-eight years. Never once has he had a state trial court deny a CR 12 motion without an oral hearing.

² It is also noteworthy that the "order(s) for Extension" failed to provide any indication of the "good cause" referenced in the Orders, nor provide Judge Ruttle advance notice of the consideration of any proposed extension.

Respectfully submitted.

COY, GILBERT, SHEPHERD & WILSON

212 North Second Street
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(859) 623-3877
jt@coygilbert.com


James T. Gilbert

NOTICE

The Movant requests a time and place for her to be heard on her Motion to Dismiss.

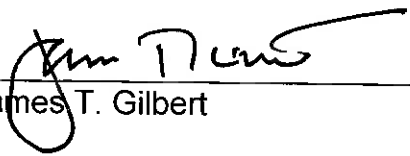

James T. Gilbert

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing Motion for Oral Hearing was deposited in the first-class U.S. mail to and served electronically to the following on this 2nd day of December, 2022:

Ms. Jimmy Shaffer
Executive Secretary
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
JimmyShaffer@KYCOURTS.NET

Courtesy copy to:
Hon. R. Michael Sullivan, Chairperson
100 St. Ann Street
Owensboro, Kentucky 42303


James T. Gilbert

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**ANN RUTTLE, DISTRICT COURT JUDGE
16TH JUDICIAL CIRCUIT, DIVISION 1**

RESPONSE TO MOTION FOR ORAL HEARING

Counsel for the Judicial Conduct Commission files this response to Judge Ruttle’s motion for an oral hearing.

Judge Ruttle seemingly argues no Order can be entered by the Commission without first conducting an *oral* hearing. Her motion misconstrues the use of the term “hearing” as synonymous to oral argument. But motions are routinely decided by Judges throughout the Commonwealth based on written filings and without first conducting an oral hearing. In fact, a substantial amount of cases is decided every month by the Supreme Court and the Court of Appeals with no oral hearing, including most every type of motion.

Judge Ruttle’s citation to CR 12.04 changes nothing. First, as the Rules of the Supreme Court clearly articulate and the Commission has traditionally held, not every civil rule of procedure controls this matter. *See* SCR 4.160 (“[t]p the extent applicable and not inconsistent with these Rules, the Rules of Civil Procedure shall apply...”). Thus, virtually all the civil rules concerning pleadings (rules 7 through 25), the discovery rules (rules 26 through 37), and trials (rules 38 through 53) do not apply to Judicial Conduct Commission matters as those are in conflict with SCR 4.170-4.190 (concerning the pre-hearing procedure, i.e., the pleadings), SCR 4.170

(concerning the material provided to the judge, i.e., discovery), and SCR 4.210-4.270 (concerning the conduct of the hearing, i.e., the trial).

Perhaps more importantly, the substance of Judge Ruttle's motion to dismiss very well may serve as one of her dispositive defenses to these charges and she is free to raise this argument at the Commission's hearing on this matter which is yet to be scheduled. Nothing about the Commission's prior Order denying the motion to dismiss forecloses Judge Ruttle from presenting supporting evidence and making arguments at the ultimate hearing of this matter concerning the same issues raised in her motion to dismiss. Her motion was denied without prejudice. Thus, Judge Ruttle will have the opportunity to present the merits of her argument, in person and in an oral hearing, at a point in the future. However, there is no authority under the Rules of the Supreme Court for Judge Ruttle to short-circuit the process and insist on an oral argument on a preliminary motion to dismiss.

Finally, to the extent Judge Ruttle has any procedural authority to have an oral argument on her motion, she has waived that by her prior failure to meet with the Commission or provide any information. On July 12, 2022, by written communication from the Commission's Executive Secretary, Judge Ruttle was provided notice of the complaint against her and invited to attend an informal conference on September 23, 2022. She could have then presented any of these arguments she now poses in her motion to dismiss. Judge Ruttle refused to appear and meet with the Commission. When presented the factual file on October 12, 2022, Judge Ruttle was provided the Commission's entire factual file and notified

she could provide any additional information by October 27, 2022. She could have then presented any of these arguments she now poses in her motion to dismiss. She declined to do so. Her refusal to engage the Commission on at least two prior occasions waives any insistence to now have an oral argument before the formal hearing.

For these reasons, among others, Judge Ruttle's motion for an oral hearing should be denied.

CONCLUSION

For these reasons, Judge Ruttle's Motion to Dismiss should be denied in its entirety.

Respectfully submitted,

/s/ Bryan H. Beaman

Bryan H. Beaman

Sturgill, Turner, Barker & Moloney, PLLC

333 West Vine Street, Suite 1500

Lexington, Kentucky 40507

bbeaman@sturgillturner.com

Telephone: (859) 255-8581

COUNSEL FOR JUDICIAL CONDUCT

COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2022, I served a true and correct copy of the foregoing by U.S. Mail and electronic mail to the following:

J. T. Gilbert
Coy Gilbert Shepherd & Wilson
212 N. Second Street
P.O. Box 1178
Richmond, KY 40476
(859) 623-3877
jt@coygilbert.com
COUNSEL FOR JUDGE RUTTLE

Jimmy Shaffer
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JimmyShaffer@kycourts.net
EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION

/s/ Bryan H. Beauman
COUNSEL FOR
JUDICIAL CONDUCT COMMISSION

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**ANN RUTTLE, DISTRICT COURT JUDGE
16TH JUDICIAL CIRCUIT, DIVISION 1**

OBJECTION TO REQUEST FOR PRODUCTION OF DOCUMENTS

On December 5, 2022, undersigned counsel received Requests for Production of Documents directed to the Judicial Conduct Commission. These items were received these via email from the Commission Executive Director which appear to be signed by Judge Ruttle's counsel. In response to these discovery requests, counsel objects for the following grounds.

First, written discovery requests of this type are not appropriate in matters pending before the Judicial Conduct Commission. The Kentucky Judicial Conduct Commission is governed by the Supreme Court Rules 4.000-4.310. Specifically, Rule 4.210 governs the procedural rights for a judge subject to a disciplinary hearing. The Supreme Court Rules for these judicial conduct procedures nowhere authorize any civil discovery prior to a disciplinary hearing.

Second, some of the documents sought by the discovery requests from Judge Ruttle include material from the investigative factual file. All of these materials have been provided to Judge Ruttle. The factual file at this time consists of eight distinct documents or categories of documents which were provided to Judge Ruttle via U.S. Mail on October 12, 2022.

Third, the remainder of Judge Ruttle's discovery requests seek materials from other disciplinary actions involving other judges. Other filings in other cases not involving Judge Ruttle are not relevant to this matter. Nevertheless, the materials Judge Ruttle seeks are publicly available documents. For those dating to approximately 2013, they would be included in each case's respective proceedings file and each is available on the Commission's public-facing website found at: <https://kycourts.gov/Courts/Pages/Judicial-Conduct-Commission.aspx>.

For these reasons, counsel respectfully requests this objection to the Request for Production of Documents propounded by Judge Ruttle be sustained.

Respectfully submitted,

/s/ Bryan H. Beaman

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333 West Vine Street, Suite 1500
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bbeaman@sturgillturner.com
Telephone: (859) 255-8581
COUNSEL FOR
JUDICIAL CONDUCT COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2022, I served a true and correct copy of the foregoing by U.S. Mail and electronic mail to the following:

J. T. Gilbert
Coy Gilbert Shepherd & Wilson
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(859) 623-3877
jt@coygilbert.com
COUNSEL FOR JUDGE RUTTLE

Jimmy Shaffer
Judicial Conduct Commission
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JimmyShaffer@kycourts.net
EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION

/s/ Bryan H. Beauman

COUNSEL FOR
JUDICIAL CONDUCT COMMISSION

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

**IN RE THE MATTER OF:
ANN RUTTLE, DISTRICT JUDGE, 16TH DISTRICT**

**ORDER DENYING MOTION FOR ORAL HEARING ON MOTION TO DISMISS
AND
ORDER FOR JUDGE RUTTLE TO FILE RESPONSE TO OBJECTION TO REQUEST
FOR PRODUCTION**

Judge Ruttle filed a Motion for Oral Hearing on her Motion to Dismiss, and Counsel for the Judicial Conduct Commission has filed a Response. The Commission, by a unanimous vote of 5-0,¹ denies the motion for the reasons set forth below.

First, Judge Ruttle is wrong when she states in her Motion, “[I]t is evident that the Chairperson of the commission acted unilaterally without input from any of the commission.” Judge Ruttle’s Motion to Dismiss was denied by a 6-0 vote of the Commission.

Second, Judge’s Ruttle’s due process rights are not violated by consideration of her motion without a hearing, as the Commission duly considered her position and denied the motion for the reasons set forth in its Order, i.e., the Commission timely brought the charges because the Commission’s preliminary investigation was not initiated until the Commission’s vote that took place November 19, 2021. As noted by counsel for the Commission, the Kentucky Supreme Court, the Court of Appeals, and Kentucky administrative bodies as well, decided motions without an oral hearing on the matter. As also noted by counsel for the Commission, not all the Rules of Civil Procedure apply to the Commission’s proceedings, including CR 12.04. The Commission does not routinely grant hearings on motions. Moreover, Judge Ruttle may still raise the issue raised in her Motion to Dismiss at the hearing on this matter, and argue it at that time.

¹ One of the two citizen members, Janet Lively McCauley, did not attend the Commission’s December 16, 2022, where the vote was taken to deny Judge Ruttle’s Motion for Oral Hearing.

For the foregoing reasons, it is **ORDERED** that the Motion for Oral Hearing be, and it is hereby, DENIED.

Counsel for the Commission has filed an Objection to Request for Production of Documents filed by Judge Ruttle. It is **ORDERED** that Counsel for Judge Ruttle shall have 10 days from this date to respond to the Objection to the Request for Production of Documents, at which time the objection shall be submitted for a decision.

12/16/22
DATE

R. Michael Sullivan
R. MICHAEL SULLIVAN, CHAIRPERSON

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Judge Ann Ruttle, by mailing and emailing the same to her attorney James T. Gilbert, Coy, Gilbert, Shepherd & Wilson, 212 North Second Street, P.O. Box 1178, Richmond, KY 40476, jt@coygilbert.com; and on counsel for the Judicial Conduct Commission, Bryan H. Beauman, Sturgill, Turner, Barker & Moloney, PLLC, 333 West Vine Street, Suite 1500, Lexington, KY 40507, bbeauman@sturgillturner.com, this 16th day of December, 2022.

Jimmy C. Shaffer
JIMMY SHAFFER, EXECUTIVE SECRETARY

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

ANN RUTTLE, DISTRICT COURT JUDGE
16th JUDICIAL CIRCUIT, DIVISION 1

RESPONSE TO OBJECTIONS TO REQUEST FOR PRODUCTION OF DOCUMENTS

Comes Judge Ann Ruttle, by counsel, and pursuant Order dated 16 December 2022, respectfully submits the following response to Counsel for the Commission's Objection to her Request for Production of Documents.

1. Judge Ruttle requested "Any documents or records setting forth any rules of procedure, bylaws, regulations, protocols, rulings, directives, orders, acts, statutes, edicts, pronouncements, mandates, commands, or the like, governing the Commission's consideration and determination of motions filed in the matters before the Commission." **Counsel for the Commission does not respond to this request, and presumably the Commission utilizes rules of procedure, which fundamental due process mandates that a forum provide to a party. If there are no rules of procedure, then Judge Ruttle is entitled to be aware of same. Judge Ruttle respectfully renews her request for any such rules of procedure or the like for the Commission.**
2. Judge Ruttle also requested "Any documents or records setting forth any rules of procedure, bylaws, regulations, protocols, rulings, directives, orders, acts, statutes, edicts, pronouncements, mandates, commands, or the like, governing the Commission's practices and procedures in all events." **Counsel for the Commission does not respond to this request, and presumably the Commission utilizes rules of procedure, which fundamental due process mandates that a forum provide to a party. If there are no rules of procedure, then Judge Ruttle is entitled to be aware of same. Judge Ruttle respectfully renews her request for any such rules of procedure or the like for the Commission.**
3. Judge Ruttle's third Request was for "Copies of any and all motions, and the Commission's rulings or determinations thereon, filed with the Commission within calendar years 2018, 2019, 2020, 2021, and 2022." **Judge Ruttle accepts the response that materials from other disciplinary actions involving other judges may be accessed on the Commission's website.**
4. Judge Ruttle's fourth Request was for "Any and all public orders of the Commission within calendar years 2018, 2019, 2020, 2021, and 2022." **Judge Ruttle accepts the response that materials from other disciplinary**

actions involving other judges may be accessed on the Commission's website.

5. Judge Ruttle's fifth Request was for "Any and all orders of the Commission specifically relating to or dealing in any way with a judge's determination of whether a person is needy as defined by KRS 31.120." **Judge Ruttle accepts the response that materials from other disciplinary actions may be accessed on the Commission's website.**
6. Judge Ruttle's sixth request was for "Any and all orders of the Commission specifically relating to or dealing in any way with a judge reconsidering indigency status and consequently appointment of counsel, without conducting the necessary hearings." **Judge Ruttle accepts the response that materials from other disciplinary actions involving other judges may be accessed on the Commission's website.**
7. Judge Ruttle's final request was for "Any and all orders of the Commission specifically relating to or dealing in any way with a defendant unrepresented by counsel that could be construed as coercive in nature, seeking the defendant's waiver of certain rights and accepting the terms of the plea offer from the Commonwealth." **This request is a little more focused than Requests 3-6. It is respectfully submitted that counsel is of the opinion that this proceeding is unique in that it is focused on what may be characterized as an erroneous decision made in good faith and therefore not subject to the jurisdiction of the Commission per SCR 4.020(2). Counsel is of the further opinion that in the event this is a unique, first-time matter, that such information is pertinent to the Commission's further proceedings, and that Judge Ruttle is legally entitled to this information from the Commission.**

Respectfully submitted.

COY, GILBERT, SHEPHERD & WILSON

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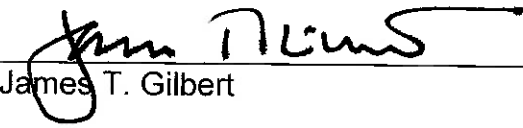

James T. Gilbert

I, the undersigned, do hereby certify that a true and correct copy of the foregoing Response to Objection to Requests for Production of Documents was deposited in the first-class U.S. mail to and served electronically to the following on this 21st day of December, 2022:

Ms. Jimmy Shaffer
Executive Secretary
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
JimmyShaffer@KYCOURTS.NET

Hon. Bryan H. Beauman
Sturgill Turner Barker & Moloney
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507
bbeauman@sturgillturner.com

Courtesy copy to:
Hon. R. Michael Sullivan, Chairperson
100 St. Ann Street
Owensboro, Kentucky 42303



James T. Gilbert

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:
ANN RUTTLE, DISTRICT JUDGE, 16TH DISTRICT

**ORDER SUSTAINING OBJECTION TO JUDGE RUTTLE’S REQUEST FOR
PRODUCTION**

This matter comes before the Judicial Conduct Commission on the Objection to Request for Production of Documents filed by counsel for the Commission on or about December 15, 2022, to which counsel for Judge Ruttle filed a Response on or about December 21, 2022.

Judge Ruttle propounded the Request for Production of Documents “pursuant to SCR 4.160 and CR 34.” SCR 4.160 provides, “To the extent applicable and not inconsistent with these rules, the Rules of Civil Procedure shall apply to proceedings before the Commission, except that the proof shall be by clear and convincing evidence.” Since the Request for Production was propounded under CR 34, which sets forth the rules applicable to requests for production, the issue is whether CR 34 applies to proceedings before the Commission. The Commission has long held that CR 34 and the other civil rules applicable to discovery do not apply to Commission procedures. *See, e.g.,* July 29, 2020 Order on Pending Motion, *In Re: The Matter of Dawn M. Gentry, Family Court Judge, 16th Judicial Circuit [DN 55]*¹, and June 21, 2016 Order on Discovery Motions, *In Re: The Matter of Gregory T. Popovich, District Court Judge, 17th Judicial District [DN 10]*.²

SCR 4.210 governs procedural rights for a judge subject to a disciplinary hearing and it does not include discovery available under the civil rules. In addition, SCR 4.170(4) provides

¹ [In Re the Matter of: Dawn M. Gentry, Family Court Judge, 16th Judicial Circuit, Division 5](#)

² [In Re the Matter of: Gregory T. Popovich, District Court Judge, 17th Judicial District](#)

that “before formal proceedings are initiated under Rule 4.180, the Commission shall afford the judge under investigation an opportunity to examine all factual information, including the name of the complainant, if relevant” Pursuant to this rule, on October 12, 2022, the Commission provided Judge Ruttle all of the factual information in the Commission’s possession related to this matter.

Based on the foregoing, the Commission SUSTAINS the objection to Judge Ruttle’s Request for Production.

The Commission further notes that in Judge Ruttle’s Response, her counsel states that he “accepts the response” of counsel for the Commission to his Requests 3-6. In regard to Requests 1-2, the Commission hereby informs counsel that all of its procedural rules are set forth in SCR 4.000 – 4.290. In regard to Request 7, no reply is required since the objection to all requests, including Request 7, is sustained.

12/28/2022
DATE

R. Michael Sullivan
R. MICHAEL SULLIVAN, CHAIRPERSON

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Judge Ann Ruttle, by mailing and emailing the same to her attorney James T. Gilbert, Coy, Gilbert, Shepherd & Wilson, 212 North Second Street, P.O. Box 1178, Richmond, KY 40476, jt@coygilbert.com; and on counsel for the Judicial Conduct Commission, Bryan H. Beauman, Sturgill, Turner, Barker & Moloney, PLLC, 333 West Vine Street, Suite 1500, Lexington, KY 40507, bbeauman@sturgillturner.com, this ^{28th} day of December, 2022.

Jimmy A. Shaffer
JIMMY SHAFFER, EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

**IN RE THE MATTER OF:
ANN RUTTLE, DISTRICT JUDGE, 16TH DISTRICT**

NOTICE FOR TIME AND PLACE FOR HEARING

Notice is hereby given that the hearing in these formal proceedings will be held commencing on the 22nd day of March 2023, at the time of 9:00 a.m., in District Courtroom 1-A of the Campbell County Courthouse, 330 York St., Newport, Kentucky.

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Judge Ann Ruttle, by mailing and emailing the same to her attorney James T. Gilbert, Coy, Gilbert, Shepherd & Wilson, 212 North Second Street, P.O. Box 1178, Richmond, KY 40476, jt@coygilbert.com; and on counsel for the Judicial Conduct Commission, Bryan H. Beaman, Sturgill, Turner, Barker & Moloney, PLLC, 333 West Vine Street, Suite 1500, Lexington, KY 40507, bbeaman@sturgillturner.com, this 28th day of December, 2022.


JIMMY A. SHAFFER, EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**ANN RUTTLE, DISTRICT COURT JUDGE
16th JUDICIAL CIRCUIT, DIVISION 1**

MOTION TO RESCHEDULE HEARING DATE

Comes Judge Ann Ruttle, by counsel, and respectfully moves the Commission to reschedule the Formal Hearing date of March 22, 2023, on the following grounds:

The 16th Judicial District has only two of its three allocated judges now conducting court business, as Judge Grothaus is on medical leave; only Judge Ruttle and Judge Easterling are conducting court. The week of March 20, 2023, is Judge Ruttle's arraignment week, when she is scheduled to be on the bench each day. Due to the absence of one of the District's three Judges, it would not be possible for Judge Ruttle to be absent on March 22nd.

Counsel undersigned respectfully requests that the hearing be rescheduled to either the week of March 13th (except for 16 March, when counsel will be in Court in Madison Circuit), or March 30th or 31st. If these dates are unavailable, counsel undersigned will be unavailable due to trial schedule April 3-14, and will be out of town May 17-June 3, 2023.

Respectfully submitted.

COY, GILBERT, SHEPHERD & WILSON

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(859) 623-3877
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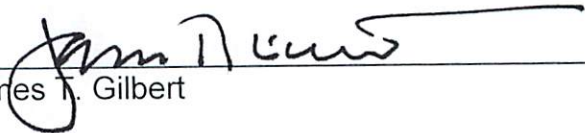

James T. Gilbert

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing Requests for Production of Documents was deposited in the first-class U.S. mail to and served electronically to the following on this 30th day of December, 2022:

Ms. Jimmy Shaffer
Executive Secretary
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
JimmyShaffer@KYCOURTS.NET

Hon. Bryan H. Beauman
Sturgill Turner Barker & Moloney
333 West Vine Street, Suite 1500
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bbeauman@sturgillturner.com


James T. Gilbert

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:
ANN RUTTLE, DISTRICT JUDGE, 16TH DISTRICT

ORDER DENYING MOTION TO RESCHEDULE HEARING DATE

Having considered Judge Ruttle's Motion to Reschedule Hearing Date, it is **ORDERED** that the motion be, and it is hereby, **DENIED**, by unanimous vote of the Commission.

1/24/23
DATE

R. Michael Sullivan
R. MICHAEL SULLIVAN, CHAIRPERSON

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Judge Ann Ruttle, by mailing and emailing the same to her attorney James T. Gilbert, Coy, Gilbert, Shepherd & Wilson, 212 North Second Street, P.O. Box 1178, Richmond, KY 40476, jt@coygilbert.com; and on counsel for the Judicial Conduct Commission, Bryan H. Beaman, Sturgill, Turner, Barker & Moloney, PLLC, 333 West Vine Street, Suite 1500, Lexington, KY 40507, bbeaman@sturgillturner.com, this ^{4th} 24 day of January, 2023.

Jimmy A. Shaffer
JIMMY SHAFFER, EXECUTIVE SECRETARY