

**In the
Supreme Court of Indiana**



IN THE MATTER OF)
)
THE HONORABLE)
) Case No. 05S00-1706-JD-430
DEAN A. YOUNG)
)
BLACKFORD CIRCUIT COURT)

NOTICE OF THE INSTITUTION OF FORMAL PROCEEDINGS

AND

STATEMENT OF CHARGES

The Indiana Commission on Judicial Qualifications, having found probable cause to warrant formal charges of judicial misconduct, now notifies Respondent, the Honorable Dean A. Young (“Young”) of the filing of these Charges. These Charges are brought under Admission and Discipline Rule 25 and before the Indiana Supreme Court, which, pursuant to Article 7, § 4 of the Constitution of Indiana, has original jurisdiction over the discipline, suspension, and removal of all judges and judicial officers of this State. The Commission charges that Respondent Young, while judge of the Blackford Circuit Court, engaged in judicial misconduct as specifically charged below. Pursuant to Admission and Discipline Rule 25 VIII (F), Respondent may file a written Answer to these Charges within twenty (20) days of service.

BACKGROUND

1. Respondent Dean A. Young was admitted to the Indiana Bar in 1981.
2. Since January 1, 2007, Respondent Young has served as the Judge of Blackford Circuit Court.
3. Since January 1, 2011, John N. Barry (“Judge Barry”) has served as the Judge of Blackford Superior Court.
4. At all times pertinent to these Charges, Respondent Young presided over general jurisdiction dockets consisting of felony and misdemeanor criminal cases, juvenile delinquency and CHINS matters, civil collection, tort, and domestic relations cases.

FACTS GIVING RISE TO MISCONDUCT CHARGES

Background

5. Pursuant to the Indiana Administrative Rules, all court records are the exclusive property of the courts and subject to the authority of the Supreme Court of Indiana. Each judge is administratively responsible for the integrity of the judicial records of his or her court. Ind. R. Admin. 10(A).
6. The Circuit Court Clerk of each county, an independently-elected official, is the custodian of court records and is responsible for administering the official court records of all court cases with jurisdiction in that county. Clerks must safeguard the integrity and security of all court records in their custody. Ind. R. Admin. 10(B).

Events of August 3-19, 2015

7. At all times relevant to these Charges, Derinda Shady served as the elected Clerk of the

Blackford Circuit Court.

8. On August 3, 2015, the Blackford County Council held a public budget hearing. At this hearing, the Council announced its intent to cut funding for two positions in the Blackford Circuit Court Clerk's Office.
9. To alleviate some of the resulting logistical burden to the Clerk's Office, Respondent Young and Judge Barry decided to take physical custody of all open criminal court files and transfer these files to the court offices.
10. During the morning of August 5, 2015, Judge Barry sent one of his court employees to the Clerk's Office to measure filing cabinets. When Clerk Shady learned of this from her staff, she responded with anger, using profanity in a phone call to Judge Barry.
11. Later that afternoon, Respondent Young sent an email to Clerk Shady indicating that his court staff planned to remove all open criminal files on August 11, 2015.
12. On August 10, 2015, Clerk Shady sent an email to Respondent Young and Judge Barry apologizing for her prior remarks to Judge Barry and to let them know that she would cooperate in the transfer of court files. Later that same day, she delivered a letter to each judge indicating that she would cooperate in the transfer of open criminal court files to the court offices, as requested.
13. The files were transferred without incident on August 11, 2015.
14. On August 19, 2015, the Blackford County Council held a public hearing for budget appeals. At this hearing, Clerk Shady requested to appeal the staffing cuts to the Clerk's Office the Council had announced on August 3, 2015.

15. After Clerk Shady spoke, Respondent Young testified that he had removed all open criminal court files from the Clerk's Office and that he did not believe the Clerk's Office would ever need to handle these files in the future.
16. After hearing testimony from Respondent Young, the County Council denied Clerk Shady's staffing appeal.

Events of August 20, 2015

17. On the morning of Thursday, August 20, 2015, Respondent Young met with Judge Barry in the Circuit Court chambers to discuss how to proceed regarding court records and interactions with the Clerk's Office.
18. Between 8:00 a.m. and 8:15 a.m., Respondent Young returned to the Clerk's Office and, in an aggressive manner, directed Clerk Shady to go to his office immediately.
19. Clerk Shady and Chief Deputy Clerk Patricia Milholland ("Milholland") went upstairs to the Circuit Court jury room.
20. Respondent Young then directed the Chief Deputy Clerk to return to the Clerk's Office.
21. Clerk Shady indicated that she was uncomfortable meeting with Respondent Young and Judge Barry without a witness and refused to go into the jury room. She then returned to her office.
22. Upon returning to her office downstairs, Clerk Shady began suffering from severe chest pain. She immediately left to go home and later that morning went to the emergency room.
23. Sometime after Clerk Shady left her office and before 8:25 a.m., Respondent Young directed a sheriff's deputy to retrieve Clerk Shady, Chief Deputy Clerk Milholland, and another deputy clerk, Kacey Roberts ("Roberts"), and bring them to court for a hearing.

24. Upon the sheriff's deputy's request, the deputy clerks went upstairs for the hearing; Clerk Shady was not present, as she had already left to go home for medical reasons.
25. Prior to the hearing, Chief Deputy Clerk Milholland and Deputy Clerk Roberts were not advised about the purpose of the hearing and were not advised about their right to have counsel or given an opportunity to consult with counsel.
26. The hearing began at 8:25 a.m., and Respondent Young primarily conducted the August 20, 2015 hearing, although Judge Barry contributed remarks.
27. Respondent Young opened the hearing by stating, "The purpose today is the Courts' determination to declare that an emergency exists such that the Clerk of the Blackford Circuit and Superior Court, Derinda Shady, should be enjoined from the courthouse grounds and premises and her office as Clerk of the Blackford County Courthouse based upon activities which I will attempt to summarize and that have occurred over the last couple of weeks, three weeks, that this Court believes presents an emergency such that the present action the Court is inclined to take is necessary."
28. Respondent Young further indicated on the record that both deputy clerks had been called to the hearing "to know what was happening with the Clerk, because ... if they do remain here, it will be necessary for them to comply with the orders that the Court is about to give them," and that "the Court has reserved judgment on whether or not they, too, should be enjoined from entering the courthouse grounds and the courthouse and the courthouse office subject to further comment and testimony..." Respondent Young did not provide the deputy clerks with prior notice of the hearing or an opportunity to respond.

29. Respondent Young indicated on the record that, earlier that morning, Clerk Shady had refused to meet with him and Judge Barry without a member of her staff as a witness.
30. When summarizing the telephone conversation between Clerk Shady and Judge Barry on August 5, 2015, after Judge Barry had sent a member of his court staff to the Clerk's Office to measure filing cabinets, Respondent Young stated, "I can assure [Clerk Shady], if she were here today, that had she said that to me that she would be here in hunter orange this morning, in chains, where she would stay and enjoy her Thanksgiving dinner, probably her Christmas dinner as well."
31. Respondent Young also stated that he had received reports that Clerk Shady acted disrespectfully toward the Blackford County Council at the end of their August 19, 2015 meeting "and that's what I wanted to discuss with Ms. Shady this morning. I'm assuming it's true, because she has, again, stormed out of the courthouse apparently." At no time was any witness given the opportunity to provide an explanation as to why Clerk Shady had left the courthouse.
32. Respondent Young then declared Clerk Shady unfit to serve her position and barred her from the Blackford County Courthouse, stating "the Court will get out a detailed history and chronology when we have further hearings in this and Ms. Shady will appear or she will be arrested and brought here, we'll address all these issues in detail, and we will allow her to respond, but this Court is declaring an emergency exists. That the Clerk presently is unfit to assume her duties. She will be locked out of the entire courthouse square. If she appears any time before Wednesday, August 26th at 11:00 a.m. when we're having a hearing back here in

open Court, she will be arrested and she will remain arrested until such time as she'll be brought back here by the jail on Wednesday, August 26th at 11:00 a.m.”

33. After questioning the deputy clerks about their willingness to serve the Blackford County Courts and soliciting their agreement to “conduct [themselves] with appropriate restraint,” Respondent Young appointed the Chief Deputy Clerk as the acting Blackford County Clerk.
34. During the hearing, Chief Deputy Clerk Milholland and Deputy Clerk Roberts felt demeaned, intimidated, and were afraid they too would be banned from the courthouse if they offered information about Clerk Shady’s actions which was contradictory to Respondent Young’s stated views, in light of Respondent Young’s previous remarks about Clerk Shady during the hearing.
35. At no time during the hearing did Respondent Young receive evidence which would suggest that Clerk Shady intended to destroy court records or otherwise was a threat to the security of court records, nor did Respondent Young receive evidence to establish that, after August 10, 2015, Clerk Shady had not been cooperative in the transfer of court records.
36. Respondent Young set the matter for a final hearing on August 26, 2015 to determine whether Clerk Shady should be permitted to resume her office.

The Temporary Restraining Order and Events after August 20, 2015

37. After the hearing, Respondent Young and Judge Barry issued a written “Joint Temporary Restraining Order and Emergency Order Enjoining Derinda Shady, Clerk of the Blackford Circuit and Superior Courts” under Case Nos. 05C01-1508-CB-000003 and 05D01-1508-CB-000004.

38. In this Temporary Restraining Order, Respondent Young and Judge Barry wrote that Clerk Shady had been made “aware of the hearing and the order to appear” but had instead “fle[d] the courthouse grounds,” necessitating the issuance of an order in her absence. However, Clerk Shady was absent only while seeking emergency medical treatment for chest pains.
39. The Temporary Restraining Order banned Clerk Shady from entering the courthouse or even “the four sidewalks that border the property” of the Blackford County Courthouse.
40. Violation of this Order would subject Clerk Shady to “immediate arrest, fine, and/or incarceration pending further hearing.”
41. On August 25, 2015, Clerk Shady’s newly-hired counsel, Respondent Young, and Judge Barry came to an agreement, and the temporary restraining order was vacated.
42. Respondent Young did not provide Clerk Shady with written notice of the August 20, 2015 hearing or afford her the opportunity to obtain counsel prior to the hearing or the issuance of the emergency order banning her from the courthouse.
43. Respondent Young did not provide Clerk Shady’s deputies with written notice of the August 20, 2015 hearing or afford them the opportunity to obtain counsel prior to the hearing.
44. By *sua sponte* issuing a temporary restraining order on behalf of the Blackford County Courts, Respondent Young made himself a witness (and party) to the action and denied the Clerk and her deputies a neutral arbiter over the dispute.

CHARGES

The Commission incorporates the facts set out in ¶¶ 1-44 into the Charges below.

Count 1

The Commission charges that, on August 20, 2015, Respondent Young enjoined the elected Blackford County Clerk from the courthouse after conducting a hearing at which she was not present and for which she had not been adequately notified or provided the opportunity to seek counsel. By engaging in this conduct, Respondent Young violated Rule 1.1 of the Code of Judicial Conduct, which requires a judge to comply with the law; Rule 1.2 of the Code of Judicial Conduct, which requires a judge to avoid impropriety and to act at all times in a manner that promotes public confidence in the integrity, independence, and impartiality of the judiciary; Rule 2.2 of the Code of Judicial Conduct, which requires a judge to perform all duties of judicial office fairly and impartially; Rule 2.6 of the Code of Judicial Conduct, which requires a judge to accord to every person who has a legal interest in a proceeding the right to be heard; and Rule 2.9(A) of the Code of Judicial Conduct, which prohibits *ex parte* proceedings unless otherwise authorized by law.

Count 2

On August 20, 2015, through his conduct immediately prior to the August 20 hearing and his statements made during the hearing, Respondent Young engaged in conduct which did not reflect patience, dignity, or courtesy and did not promote public confidence in the impartiality of the judiciary. By engaging in this conduct, Respondent Young violated Rules 1.2 and 2.8(B) of the Code of Judicial Conduct.

Count 3

On August 20, 2015, by commanding Blackford County Clerk's Office employees Patricia Milholland and Kacey Roberts to appear for a hearing that same morning without providing them prior

written notice of the purpose of the hearing, Respondent Young violated Rules 1.1, 1.2, and 2.2 of the Code of Judicial Conduct.

Count 4

By presiding as a judicial officer in the temporary restraining order proceedings in *In the Matter of Derinda Shady, Clerk of the Blackford Circuit Court*, case #05C01-1508-CB-000003 and #05D01-1508-CB-000004, when Respondent Young had a specific interest in the subject matter of the proceedings which would lead a reasonable person to question Respondent Young's impartiality in the matter, Respondent Young violated Rules 1.1, 1.2, 2.2, and 2.11 of the Code of Judicial Conduct.

WHEREFORE, the Commission respectfully requests that, upon the filing of Respondent's Answer, the Indiana Supreme Court appoint three Masters to conduct a public hearing on the charge that Respondent committed judicial misconduct as alleged, and further prays that the Supreme Court find that Respondent committed misconduct and that it impose upon him the appropriate sanction.

June 28, 2017
DATE

Indiana Commission on
Judicial Qualifications
30 S. Meridian St., Ste. 500
Indianapolis, IN 46204
(317) 232-4706

Respectfully submitted,

Adrienne L. Meiring
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Counsel to the Commission
Atty. No. 18414-45

CERTIFICATE OF SERVICE

I certify that a copy of this "Notice of the Institution of Formal Proceedings and Statement of Charges" was sent by certified mail, postage pre-paid, to Respondent at Blackford Circuit Court, 110 West Washington Street, Hartford City, Indiana 47348. A copy also was sent by first class United States mail, postage pre-paid, to Respondent Young's lawyers, Mr. James R. Williams and Mr. Scott E. Shockley, DeFur Voran, 400 S. Walnut Street, Suite 200, Muncie, Indiana, 47305 on this 28th day of June 2017.

June 28, 2017
DATE

Adrienne L. Meiring
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Counsel