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IN THE WEST VIRGINIA SENATE
SECOND EXTRAORDINARY SESSION
2018

*IN RE: The Matter of Impeachment Proceedings
Against Respondent Justice Elizabeth Walker*

**BOARD OF MANAGERS OF THE WEST VIRGINIA HOUSE OF DELEGATES'
RESPONSE TO JUDICIAL INVESTIGATION COMMISSION CHAIRMAN RONALD E.
WILSON'S MOTION TO QUASH HOUSE OF DELEGATE'S SUBPOENA**

Comes Now, the Board of Managers of the West Virginia House of Delegates (hereinafter "Board of Managers") and moves the Court to reject the Motion of the Honorable Ronald E. Wilson, Chairman of the Judicial Investigation Commission to quash the subpoena issued by the House of Delegates to appear before this body and to give evidence in the impeachment proceedings of Justice Elizabeth Walker.

In support of its Motion, the Board of Managers states as follows:

The Board of Managers does not deny any factual point raised by Judge Wilson in his Motion. This is not a factual dispute, rather, it is a dispute as to interpretation.

Additionally, and perhaps surprisingly, the Board of Managers takes no exception to the position advanced in Judge Wilson's Motion that the deliberations of the Judicial Investigation Commission are protected from discovery, and, indeed, we herein affirm that they should be. Just as the deliberations of a jury are not to be inquired into, we do not believe that the process or reasoning by which the Judicial Investigation Commission reached the conclusions which it articulated concerning the investigation into Justices Walker, Workman, Davis, and Loughry should necessarily be made public.

What we want from Judge Wilson, is not, in our considered opinion, protected information. The Board of Managers has sought Judge Wilson's testimony on a few issues which, while they have to do with his official acts as Chairman of the Judicial Investigation

Commission, have nothing to do with how he or the Judicial Investigation Commission reached the conclusions they announced regarding that investigation.

One of those issues on which his testimony is sought is the admittedly "unusual step" Judge Wilson noted wherein the Judicial Investigation Commission made public its findings that the complaints against the Justices had been dismissed. We will not address the issue of whether or not this was proper or improper, but would like to know how Judge Wilson and the Judicial Investigation Commission arrived at the decision to make public the results of their deliberation. We are unconcerned with how they arrived at their conclusion, nor, do wish to know the deliberative process undertaken.

Again, Judge Wilson admits this was "an unusual step", and that "JIC policy is to acknowledge the existence of complaints against judicial officer until probable cause has been found to issue a statement of charges or an admonishment." What he does not note, is that this is more than mere policy. This "unusual step" as taken in this instance is to violate the plain and unambiguous language of Rule 2.4, appropriately entitled, "Confidentiality", of the Rules of Judicial Disciplinary Procedure.

That rule states in its entirety that "[t]he details of complaints filed or investigations conducted by the Office of Disciplinary Counsel shall be confidential, except that when a complaint has been filed or an investigation has been initiated, the Office of Disciplinary Counsel may release information confirming or denying the existence of a complaint or investigation, explaining the procedural aspects of the complaint or investigation, or defending the right of the judge to a fair hearing. Prior to the release of information confirming or denying the existence of a complaint or investigation, reasonable notice shall be provided to the judge." (emphasis added).

The Board of Managers wishes to have the opportunity to discover what induced Judge Wilson, known as a punctilious and careful public servant, to so disregard the plain strictures of this Rule. Article VIII, Section Eight of our Constitution requires the Supreme Court to issue

Rules "prescribing a judicial code of ethics, and a code of regulations and standards of conduct and performances for justices, judges and magistrates, along with sanctions and penalties for any violation thereof" as embodied, for example, in our *Code of Judicial Conduct*. Moreover, in that same Section, it is noted that "When rules herein authorized are prescribed, adopted and promulgated, they shall supersede all laws and parts of laws in conflict therewith[.]."

Given the weight such authority is ascribed by the Constitution, and, as this standard does not appear especially stringent, and is accorded such authority, we are all the more puzzled by what induced Judge Wilson to violate it. The resolution to this mystery is what is sought by the Board of Managers, and that, simply put, requires us to question Judge Wilson about his issuance of this press release.

Additionally, as Judge Wilson notes in his Motion at p.11, the Judicial Investigation Commission has provided the House Judiciary Committee with "the **majority** of the evidence that it reviewed in determining whether to dismiss [these] complaints." (emphasis added) With respect, while appreciated, and greatly useful in the investigation, this was insufficient. What was sought was **all** relevant information, and by Judge Wilson's own admission, this is not what we received.

Therefore, we should have the right to question him about what evidence was withheld and why that evidence was withheld. These are crucial points in determining the completeness of the record we may present to the Senate.

Moreover, as to the evidence which has been provided, we need him to lay the evidentiary foundation as to how we received this material. Without his testimony stating that this information came to us from the Judicial Investigation Commission, we may have issues with getting this material admitted into evidence, unless, of course, he, and opposing counsel, are willing to stipulate to its admission.

Accordingly, for these and other good and sufficient reasons, we respectfully request this Presiding Officer deny the requested Motion to Quash and provide us with all appropriate and consistent relief.



John Shott (WV Bar #3382)
*Chairman, Board of Managers of the
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West Virginia House of Delegates*

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CERTIFICATE OF SERVICE

I, JOHN H. SHOTT, on behalf of the Board of Managers, do hereby certify that the foregoing "*BOARD OF MANAGERS OF THE WEST VIRGINIA HOUSE OF DELEGATES' RESPONSE TO JUDICIAL INVESTIGATION COMMISSION CHAIRMAN RONALD E. WILSON'S MOTION TO QUASH HOUSE OF DELEGATE'S SUBPOENA*" has been upon the following individuals this 28th day of September, 2018, by hand delivering a true and exact copy thereof as follows:

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