

**In the  
Supreme Court of Indiana**

<b>IN THE MATTER OF</b>	)	
	)	
<b>THE HONORABLE</b>	)	
	)	
<b>NANCY L. BROYLES</b>	)	<b>Cause No. 49S00-0804-JD-156</b>
	)	
<b>COMMISSIONER OF THE</b>	)	
	)	
<b>MARION SUPERIOR COURT</b>	)	

**NOTICE OF THE INSTITUTION OF FORMAL PROCEEDINGS**

**AND**

**STATEMENT OF CHARGES**

The Indiana Commission on Judicial Qualifications, having found sufficient cause for formal disciplinary proceedings, now notifies the Honorable Nancy L. Broyles 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, Section 4, of the Constitution of Indiana, has original jurisdiction over the discipline, suspension, and removal of all judges of this State. At all times pertinent to these Charges, Commissioner Broyles was employed as a part-time Commissioner by the Marion Superior Court. Commissioner Broyles may file an Answer within twenty days after service of these Charges.

## BACKGROUND

1. Commissioner Nancy L. Broyles began serving as part-time Commissioner in the Marion Superior Court, Criminal Division #5 (“Court 5”) in January 2001, when Judge Grant W. Hawkins assigned her to manage the court’s post-conviction cases. Judge Grant W. Hawkins has been the presiding judge in Court 5 since January 2001.

2. These Charges against Commissioner Broyles, and the Charges filed concurrently against Judge Hawkins,<sup>1</sup> allege delay and dereliction of their duties as the judicial officers responsible for Harold D. Buntin’s post-conviction case and as the judicial officers responsible for providing reliable and timely information about the court’s delay in the *Buntin* case.

### **Delay – April 16, 2005 to March 8, 2007**

3. Harold D. Buntin (“Buntin”) was convicted of rape and robbery in 1986 and began serving a 50-year sentence in the Indiana Department of Corrections in 1994 after his extradition from Florida.

4. Buntin’s conviction was affirmed on appeal in 1996.

5. In 1998, Buntin filed a Petition for Post-Conviction Relief in Court 5 based upon DNA evidence not available during his trial.

6. Commissioner Broyles presided over Buntin’s post-conviction hearing on March 16, 2005. The DNA evidence established that the DNA in the semen taken from the rape victim after the crime did not match Buntin’s DNA.

7. After the hearing, Buntin’s attorney, Carolyn Rader (“Rader”) and the State each submitted their proposed Orders to Commissioner Broyles. Rader urged Commissioner Broyles to grant Buntin’s petition in light of the new DNA evidence, arguing that he probably would not be convicted if he were retried. The State argued that the other evidence against Buntin was sufficient to sustain the conviction, despite the DNA evidence.

8. Commissioner Broyles’ decision was under advisement beginning April 15, 2005.

9. In January 2007, Buntin filed a complaint with the Commission alleging that his post-conviction case had been pending for nearly twenty-two months and that Rader had not communicated with him since 2005.

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<sup>1</sup> 49S00-0804-JD-157

10. After the Commission began its investigation into the delay and contacted Judge Hawkins directly in February, it learned the *Buntin* file could not be located.

11. An unidentified person in Court 5 found the file in early March 2007.

12. On March 8, 2007, Commissioner Broyles issued an Order dated May 20, 2005 granting Buntin's petition for post-conviction relief.<sup>2</sup>

### **Prior Order**

13. Judge Hawkins and Commissioner Broyles also filed on March 8, 2007 a "Notice Explaining Delayed Ruling."

14. They reported that Commissioner Broyles granted Buntin's petition on May 20, 2005, but that a Court 5 staff member or a clerk's employee assigned to Court 5 neglected to process the Order as Commissioner Broyles had directed on a post-it note, and the file was closed and archived as if the Order properly had been entered.

15. They wrote in their Notice Explaining Delayed Ruling, "Quite recently the court was advised that a ruling was still outstanding. The file was retrieved from the archives. The signed and dated Order, post-it note still attached, was found in the front of the file...The Court is filing the Order herewith."

16. However, the Order Judge Hawkins and Commissioner Broyles issued on March 8, 2007 was not the Order they reportedly found in the file, but was a new Order they prepared on March 8, 2007, dated May 20, 2005.<sup>3</sup>

17. Judge Hawkins explained later that, when he reviewed Commissioner Broyles' Order in March 2007, he noticed several typographical errors. The diskette Commissioner Broyles had used to prepare the Order was in the file. He testified that he inserted the diskette with Commissioner Broyles' Order into his computer, and corrected and reprinted the Order.

18. Neither Judge Hawkins nor Commissioner Broyles can recall whether the corrections made in 2007 required Commissioner Broyles to resign the Order or whether they attached the old signature page to the corrected Order.

19. On March 8, 2007, Judge Hawkins and Commissioner Broyles knew the Commission was investigating the delay in the *Buntin* case and knew or should have

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<sup>2</sup> Until March 2007, Commissioner Broyles routinely issued final orders in post-conviction cases without obtaining Judge Hawkins' approval and signature, contrary to IC 33-33-49-16 and IC 33-23-5-8.

<sup>3</sup> Rader's proposed Order was used as a template to create the court's Order. When Commissioner Broyles signed the Order, she wrote in the month and day. The year "2005" was typewritten, a remnant of Rader's 2005 proposed Order.

known the importance of any evidence that Commissioner Broyles had ruled in *Buntin* on an earlier date.

20. However, neither Judge Hawkins nor Commissioner Broyles retained or secured the diskette or the first Order they said Commissioner Broyles signed on May 20, 2005.

### ***Date of Prior Order***

21. Throughout the first phase of the Commission's investigation, from March 2007 until January 2008, Commissioner Broyles insisted she signed Buntin's Order on May 20, 2005, thirty-five days after taking the issue under advisement, despite the following:

- a. Commissioner Broyles has no independent memory of signing the *Buntin* Order in 2005.
- b. There is no evidence of a 2005 Order on her word processing equipment.
- c. Three months after May 20, 2005, Commissioner Broyles told Rader that she intended to work on the *Buntin* case and asked Rader for a diskette with her proposed findings, which Rader's staff delivered to Court 5 later that day.
- d. Nearly a year after the date on the Order, Rader sent an email to Commissioner Broyles inquiring about the status of her decision in the *Buntin* PCR, to which Commissioner Broyles did not reply.
- e. Buntin wrote the court on five occasions after the date of the Order asking for a decision. His letters are not in his file but are noted on the official case chronology as received by the court.
- f. On May 20, 2005, Commissioner Broyles had at least three other post-conviction cases under advisement which were older than Buntin's case and on which she ultimately ruled after delays of twenty-eight months, thirteen months, and thirteen months respectively. And, in 2007, Commissioner Broyles ruled on four other cases after delays of six months, nine months, thirteen months, and fifteen months respectively.<sup>4</sup>

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<u>Case Name and Number</u>	<u>Under Advisement</u>	<u>Order Issued</u>
Brown v. State 49G02-9510-PC-149022	11/12/04	03/22/07 (file reportedly also archived prematurely)
Bewley v. State 49G05-9804-PC-064052	11/10/04	12/08/05
Edwards v. State 49G05-9604-PC-061303	10/13/04	11/17/05
Johnson v. State 49G05-0302-PC-021874	06/03/05	12/08/05
Stephens v. State 49G05-9805-PC-076033	06/14/06	03/22/07 (file is lost)
Bailey v. State 49G05-0212-PC-311072	01/31/06	02/05/07
Dunlap v. State 49G05-9801-PC-012097	12/14/05	03/14/07

### ***The Post-it Note***

22. Judge Hawkins and Commissioner Broyles reported that the lost *Buntin* file included a dated post-it note on the Order on which Commissioner Broyles wrote her instructions to staff for processing the Order.

23. Both relied in part on the date of the post-it note to support their statements that Commissioner Broyles signed the *Buntin* Order in 2005.

24. Judge Hawkins provided the Commission with a copy of the post-it note early in the investigation. He and deputy bailiff Stephen Talley reported that the original note was dated “2005” but that the “5” designating the year, according to Mr. Talley, “didn’t print well” and, according to Judge Hawkins, “was lost during the copying process.”

25. Later, the Commission obtained the original post-it note from the *Buntin* file. Contrary to the statements that the number “5” indicating the Order was prepared in 2005 was lost during photocopying, the original post-it note includes only the incomplete date, “5-20-0”, without a digit indicating the year.

### **Amended Explanation**

26. The Commission notified Judge Hawkins and Commissioner Broyles in January 2008 that it was amending the focus of its investigation to include not only delays and neglect but also whether their statements were false that Commissioner Broyles prepared the *Buntin* Order in 2005. Commissioner Broyles then advised the Commission that, upon reflection, she may have signed the Order on Saturday, May 20, 2006 instead, inadvertently retaining the typewritten year “2005” from Rader’s 2005 proposed Order.

### **Location of *Buntin* File until March 2007**

27. Commissioner Broyles’ statement that she may have signed the Order in May 2006 did not answer the question of the location of the lost *Buntin* file prior to its discovery in March 2007.

28. Court 5 documents designed to track the location of files, whether delivered to the Clerk’s office, stored in the common areas of Court 5, stored with so-called “fat files,” as the *Buntin* file was considered, or taken home by Commissioner Broyles, contain no entries for the *Buntin* file.

29. On about March 7, 2007, the *Buntin* file was located, and Judge Hawkins and Commissioner Broyles reported on March 8 that it had been prematurely “archived” and “retrieved from archives.”

30. The *Buntin* file was never in the Clerk’s office’s archives.

31. Neither Judge Hawkins nor Commissioner Broyles undertook any serious inquiry to justify their statements that the file was “archived” or “retrieved from archives.”

32. Among the Court 5 staff members, the deputy clerk assigned to Court 5, Judge Hawkins, and Commissioner Broyles, no witness will identify himself or herself as the person who found the file.

33. Judge Hawkins’ deputy bailiff, Stephen Talley, initially advised the Commission that, in March 2007, he contacted the Clerk’s office, that the Clerk’s office had the *Buntin* file, and that either he or Commissioner Broyles retrieved the *Buntin* file from the Clerk’s office.

34. Later, under oath, he denied any knowledge of who found the *Buntin* file or of its location before its appearance in early March.

35. Judge Hawkins was aware of Talley’s misleading statements to the Commission and took no remedial action to address his employee’s misconduct.<sup>5</sup>

### **Delay After March 7, 2007**

36. On March 8, 2007, Commissioner Broyles and Judge Hawkins knew that Buntin had remained in prison for nearly two years with no apparent action on his petition.

37. They believed that Commissioner Broyles had signed an Order granting Buntin’s relief on May 20, 2005, when his conviction should have been vacated and his release status reviewed.

38. On March 8, 2007, despite the consequences of the delay already incurred, neither Judge Hawkins nor Commissioner Broyles vacated his conviction, scheduled a review of his release status, or ensured that the Order was processed promptly.

39. They ruled only that the Order was effective March 8, 2007 for purposes of appeal or retrial and that Buntin’s conviction would not be vacated until the State decided whether to appeal or seek a retrial.

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<sup>5</sup> Judge Hawkins subsequently promoted Mr. Talley to the position of Chief Bailiff.

40. Although both Judge Hawkins and Commissioner Broyles were aware that the Commission was investigating Buntin's complaint and had been inquiring into the status of his case, neither notified the Commission that they had located the *Buntin* file or that they had issued the Orders, until the Commission inquired on March 21, 2007.

41. Neither Judge Hawkins nor Commissioner Broyles ensured the new Order promptly was entered onto the Court's electronic docket, which did not occur until March 27, 2007.

42. Rader did not file anything on Buntin's behalf, nor did the State advise the Court of its intentions regarding retrial, appeal, or dismissal of the original charges.

43. Thirty-three days after the effective date of Buntin's Order, on April 10, 2007, Commissioner Broyles sent an email to the State asking if they planned to appeal, indicating that Buntin's family had been calling the court and had been told that the State's time for appeal had not lapsed.

44. The Commission contacted Judge Hawkins and Commissioner Broyles on April 12, 2007 to inquire why there had been no progress in the case and urging immediate action; also on April 12, 2007, Judge Hawkins received a letter from Buntin pleading for his release.

45. On April 12, 2007, Judge Hawkins scheduled a release hearing for April 20, 2007.

46. On April 20, 2007, the State, Buntin, and Rader appeared before Judge Hawkins. The State dismissed the rape and robbery charges, and Judge Hawkins ordered Buntin's release.

## **CHARGES**

The Commission incorporates the Background Section into each Count below.

### **Count I**

By delaying a prompt ruling on Buntin's post-conviction petition, Commissioner Broyles violated Canon 3B(9) of the Code of Judicial Conduct, which requires judges to dispose of all matters fairly, promptly, and efficiently, and committed conduct prejudicial to the administration of justice.

### **Count II**

By delaying prompt rulings in the *Brown, Bewley, Edwards, Johnson, Stephens, Bailey, and Dunlap* cases, Commissioner Broyles violated Canon 3B(9) of the Code of Judicial Conduct and committed conduct prejudicial to the administration of justice.

### **Count III**

By issuing purportedly final Orders in post-conviction cases without obtaining the approval and signature of the presiding judge, Commissioner Broyles violated Canon 3(B)1 of the Code of Judicial Conduct, which requires judges to be faithful to the law.

### **Count IV**

By losing the *Buntin* file or permitting an environment in which the file was lost, Commissioner Broyles violated Canon 2A, which requires judges to act at all times in a manner promoting the public's confidence in the judiciary, and committed conduct prejudicial to the administration of justice.

### **Count V**

By losing Buntin's letters to the Court or permitting an environment in which the letters were lost, Commissioner Broyles violated Canon 2A, which requires judges to act at all times in a manner promoting the public's confidence in the judiciary, and committed conduct prejudicial to the administration of justice.

### **Count VI**

By not notifying the Commission during its early investigation that the *Buntin* file had been located and an Order issued, Commissioner Broyles committed conduct prejudicial to the administration of justice.

#### **Count VII**

By representing that the *Buntin* file had been archived and retrieved from archives, Commissioner Broyles violated Canon 1, which requires judges to uphold the integrity of the judiciary, Canon 2A, and committed conduct prejudicial to the administration of justice.

#### **Count VIII**

By not securing on March 8, 2007 the evidence that an earlier order in the *Buntin* case had been prepared, Commissioner Broyles violated Canons 1 and 2A of the Code of Judicial Conduct and committed conduct prejudicial to the administration of justice.

#### **Count IX**

By not ensuring on March 8, 2007 that the *Buntin* Order was processed immediately, Commissioner Broyles violated Canons 1, 2A, and 3B(9) of the Code of Judicial conduct, and committed conduct prejudicial to the administration of justice.

#### **Count X**

By not ensuring that a hearing on the issue of Buntin's release or continued incarceration was not immediately scheduled after March 8, 2007, Commissioner Broyles violated Canons 1, 2A, and 3B(9) of the Code of Judicial Conduct, and committed conduct prejudicial to the administration of justice.

WHEREFORE, the Commission\* respectfully requests that, upon the filing of Commissioner Broyles' Answer, the Indiana Supreme Court appoint three Masters to conduct a public hearing on the charge that Commissioner Broyles committed judicial

misconduct as alleged, and further prays that the Supreme Court find that Commissioner Broyles committed misconduct and that it impose upon her the appropriate sanction.

Respectfully submitted,

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DATE

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Meg W. Babcock  
Counsel to the Commission  
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DATE

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\* Commission member John Trimble is not participating in this proceeding.

**CERTIFICATE OF SERVICE**

I certify that a copy of this "Notice of the Institution of Formal Proceedings and Statement of Charges" was sent by facsimile and certified mail to James H. Voyles and Jennifer M. Lukemeyer, Counsel for Commissioner Broyles, on this \_\_\_\_ day of April, 2008.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
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