

December 29, 2017

**PUBLIC ADMONITION OF THE HONORABLE TIMOTHY B. DAY
DECATUR CIRCUIT COURT**

The Indiana Commission on Judicial Qualifications has determined that formal disciplinary charges are warranted against the Honorable Timothy B. Day. However, in lieu of filing formal disciplinary proceedings, the Commission issues this Admonition pursuant to Supreme Court Admission and Discipline Rule 25 VIII E(7) and with the consent of Judge Day. Judge Day fully cooperated with the Commission in this matter and acknowledges he violated the Code of Judicial Conduct.

The Commission admonishes Judge Day for injudicious behavior in his personal life which prompted law enforcement investigations. By engaging in this conduct, Judge Day violated Rule 1.2 of the Code of Judicial Conduct which requires judges to act at all times in a manner that promotes public confidence in the integrity of the judiciary and to avoid the appearance of impropriety.

October 1, 2014 Incident

In August and September 2014, Judge Day and his wife (“S.D.”) were estranged and living in separate residences but continued to have regular contact, including eating lunch together often. On October 1, 2014, Judge Day and S.D. had made plans for S.D. to call him later in the morning. By noon, since Judge Day had not heard from S.D., he went to lunch. Before returning to work, Judge Day drove by the Lake Point Apartments, where he knew a man lived with whom he believed S.D. was romantically involved, and saw his wife’s car parked in the lot. Judge Day then returned to work and sent a text to his wife to the effect that he had seen S.D.’s car in the parking lot and was ready to end their marriage.

Judge Day continued to text his wife, and this time she responded. Throughout the afternoon, the couple continued to text each other with dramatic texts about the state of their relationship. According to Judge Day, S.D. denied having a romantic relationship with the man who she visited at the Lake Point Apartments and suggested that Judge Day could have stopped by to meet him.

Sometime after 4:30 p.m., Judge Day again was in the area of the Lake Point Apartments when he saw his wife’s car behind him. According to Judge Day, he decided to turn into the apartment complex to see if S.D. would actually introduce him to the man whom the judge believed was his wife’s boyfriend. At the time, Judge Day had a loaded shotgun in his pickup. Concerned because of the nature of the texts between the two of them, S.D. called a Trooper she knew with the Indiana State Police on the Trooper’s personal cellphone and conveyed that her husband was going to confront the man she was seeing, and her husband had a gun with him. S.D. then pulled her car into the apartment complex in an attempt to speak with her husband and to stop him from going to the other man’s apartment.

The Trooper arrived on the scene within a few minutes (the Trooper was not in uniform as he was off duty at the time of the call, but he was in a marked police vehicle) and observed Judge

Day seated in his pickup truck and S.D. standing outside the driver's side of the truck, and the two were engaged in what the Trooper perceived as a heated conversation. The Trooper told S.D. to return to her vehicle, and he approached the passenger's side of Judge Day's pickup truck. He saw a shotgun parallel to the judge's leg with the barrel of the shotgun on the floorboard next to the gas pedal. The Trooper secured the weapon, unloaded it, and placed it in his police cruiser. The Trooper then went back to talk to Judge Day about the judge's intent being at the apartment complex and noticed that Judge Day was in a highly agitated state.

The Trooper also spoke to S.D. that evening, and she expressed concerns about the judge's prior conduct with another man whom she had been seeing a year earlier and told the Trooper her husband was very jealous and controlling of her. S.D. later refused to speak to law enforcement but retracted her prior statements when she spoke to the special prosecutor and the Commission. A special prosecutor decided not to file any criminal charges.

During the subsequent investigation by the Commission, Judge Day indicated that he always kept a loaded shotgun in the truck underneath the back seat. He further indicated that he moved the shotgun from the back seat to the front seat to place it in plain view when he saw the Trooper arrive on the scene. However, the Trooper never saw the judge move the shotgun, although he was watching the vehicle closely because of S.D.'s report that Judge Day had a gun. Judge Day never informed the Trooper that he had changed the scene by moving the shotgun.

December 29, 2015 Incident

By December 2015, Judge Day and S.D. continued to live apart and dissolution proceedings had been filed but not finalized. On the evening of December 29, 2015, S.D. and the Days' sixteen-year-old daughter (R.D.) came over to Judge Day's residence so R.D. could get ready to go out with friends. While R.D. went upstairs to get ready, S.D. went to see Judge Day in his bedroom, and the two talked about the marital relationship, including the possibility of reconciliation.

Sometime between 8:23 p.m. and 8:42 p.m. that evening, Judge Day received several texts from J.S., a woman Judge Day was dating, and S.D. saw the text notification. S.D. became upset and took Judge Day's cellphone off the nightstand and proceeded out of the bedroom. Judge Day followed after S.D., demanding that she return the phone and attempted to grab the phone from S.D. The couple continued to argue about the phone.

S.D. went down the hallway and threw the phone out the door into the driveway. R.D., who heard the commotion, retrieved the phone and returned it to Judge Day. He then went back to his bedroom, followed by S.D. After hearing a disturbance, R.D. also went into the bedroom. In a statement to a police detective, S.D. indicated that she followed Judge Day back to the bedroom because she was concerned that he might harm himself because of prior statements he had made to her. S.D. has since retracted this statement.

In the bedroom, Judge Day picked up a rifle he kept in his bedroom by the barrel. While Judge Day had possession of the rifle, S.D. grabbed the other end of the rifle, and the two engaged in a tug-of-war over the weapon. During the Commission's investigation, Judge Day stated that he picked up the rifle to move it to his closet. He also stated that his reason for engaging in the

tug-of-war with S.D. over the weapon was his concern that S.D. would attempt to take the rifle, which had sentimental value to the judge, out of the house.

The couple struggled over the rifle until their sixteen-year-old daughter interceded and grabbed the middle of the rifle. The couple then let go of the weapon, and R.D. left with the weapon through a bedroom door that went to the outside of the property. S.D. promptly began calling and texting other individuals to discuss what had just occurred and to express her concerns about Judge Day's conduct with guns and his mental state. She later located R.D. on the property, and S.D. and R.D. left the property. S.D. called the mother of a friend of her son to indicate that she was going to pick her son up that night and told the mother, "Tim pulled a gun and it was bad" or words to that effect. When she went to pick up her son, S.D. also communicated to her son's friend's mother that she felt like she was between a rock and a hard place and just wanted Tim to get help. S.D. has since retracted these statements she made by text and in various phone calls.

The child's mother, who S.D. had told this information to, is a relative of law enforcement officers and relayed her concerns about the statements to them. Eventually, the information reached the Sheriff who called S.D. on January 7, 2016 to confirm the information. He then referred the matter to the Indiana State Police, who conducted an investigation between January 8, 2016 and January 15, 2016. The results of the investigation were referred to a special prosecutor, but no criminal charges were filed.

At no time on December 29, 2015, or even a few days after, did Judge Day call the police to report this incident nor did he inform the Commission that another incident involving a gun had occurred, despite his knowledge that the Commission had investigated the prior October 1, 2014 incident and expressed concerns.

The Commission believes that, considering the totality of circumstances of these two incidents, which occurred less than fourteen months apart, Judge Day made several missteps which escalated the conduct and led to more police involvement. By engaging in this conduct, the judge violated his ethical duty to act at all times in a manner that promotes public confidence in the integrity of the judiciary and to avoid the appearance of impropriety, as required by Rule 1.2 of the Code of Judicial Conduct.

This Admonition concludes the Commission's investigation, and Judge Day will not formally be charged with ethical misconduct.