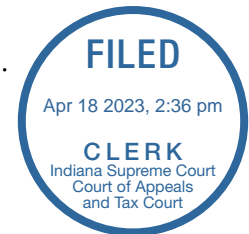


In the Indiana Supreme Court

In the Matter of the Honorable Timothy B.
Day, Judge of Decatur Circuit Court,
Respondent

Supreme Court Case No.
22S-JD-412



Published Order Approving Statement of Circumstances and Conditional Agreement for Discipline

We find that the Honorable Timothy B. Day, Judge of the Decatur Circuit Court, engaged in judicial misconduct by allowing and participating in unauthorized *ex parte* communications within his court and failing to take appropriate remedial measures upon receiving unauthorized *ex parte* communications.

This matter is before us on the Indiana Commission on Judicial Qualifications' "Notice of the Institution of Formal Proceedings and Statement of Charges" against Respondent. Special masters were appointed by order dated January 19, 2023. Thereafter, the parties jointly tendered to the Court a "Statement of Circumstances and Conditional Agreement for Discipline" stipulating to the following facts and violations.

At all relevant times, Respondent has presided over a general jurisdiction docket that includes child-in-need-of-services (CHINS), termination of parental rights, adoption, and guardianship cases. During 2020, Respondent repeatedly engaged in unauthorized *ex parte* communications with attorneys representing the Department of Child Services (DCS), to the exclusion of guardians ad litem, court-appointed special advocates, and unrepresented parties; and in one instance, Respondent received an *ex parte* communication from an attorney who frequently represents parents in CHINS cases, without notifying DCS attorneys and other parties. Respondent also admitted during the Commission's investigation that when represented parents would send him *ex parte* communications, he would shred them without reading them and without notifying the parties or providing them a chance to respond.

The Commission charges, and Respondent agrees, that Respondent's conduct was prejudicial to the administration of justice and violated these provisions of the Code of Judicial Conduct prohibiting the following misconduct:

- Rule 1.1: Failing to comply with the law, including the Code of Judicial Conduct;
- Rule 1.2: Failing to act at all times in a manner that promotes confidence in the independence, integrity, and impartiality of the judiciary, and failing to avoid impropriety and the appearance of impropriety;

Rule 2.9(A): Initiating, permitting, or considering *ex parte* communications or other communications made to the judge outside the presence of the parties or their lawyers concerning a pending matter; and

Rule 2.9(B): Failing to promptly notify the parties of unauthorized *ex parte* communications inadvertently received by the judge and provide the parties with an opportunity to respond.

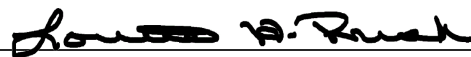
The parties cite Respondent's prior public admonition, issued by the Commission in 2017, as an aggravating factor. In mitigation, the parties cite among other things Respondent's cooperation with the Commission's investigation, the steps he has taken to modify his conduct, and his agreement to engage in certain continuing judicial education measures. The parties agree that the appropriate sanction under the circumstances is a public reprimand.

We accept the parties' agreement and take this opportunity to re-emphasize what our Code of Judicial Conduct requires of judicial officers in this regard. Aside from exceptions narrowly defined in Rule 2.9(A)(1) – (5), a judge shall not initiate, permit, or consider *ex parte* communications concerning a pending or imminent matter. Where an *ex parte* communication is for administrative, scheduling, or emergency purposes and substantive matters are not addressed, a judge may permit it, but only if the judge (a) reasonably believes no party will gain an advantage from the communication, and (b) promptly notifies other parties of the substance of the communication and gives those parties an opportunity to respond. Jud. Cond. R. 2.9(A)(1). Respondent did not follow these strictures.

Rule 2.9(B) anticipates the possibility that a judge may inadvertently receive an unsolicited *ex parte* communication from an attorney, party, or nonparty bearing on the substance of a matter. When this occurs, the rule requires the judge to promptly notify the parties of the communication and give them an opportunity to respond. Respondent likewise did not engage in these remedial measures.

Accordingly, Timothy B. Day, Judge of the Decatur Circuit Court, is hereby reprimanded for his judicial misconduct. This discipline terminates the disciplinary proceedings relating to the circumstances giving rise to this cause. The special masters are discharged with the Court's appreciation.

Done at Indianapolis, Indiana, on 4/18/2023.



Loretta H. Rush
Chief Justice of Indiana

All Justices concur.