

July 10, 1996

**ADMONITION**

**THE HONORABLE MYRON BARNARD, JUDGE OF THE**

**MARION COUNTY SMALL CLAIMS COURT**

**PERRY TOWNSHIP DIVISION**

The Indiana Commission on Judicial Qualifications issues this public statement of admonition of Judge Myron Barnard, Judge of the Marion County Small Claims Court, Perry Township Division. The Commission's admonition results from its findings of probable cause that Judge Barnard violated the Code of Judicial Conduct. Judge Barnard cooperated fully with the Commission during its investigation and has agreed to accept this admonition in lieu of the filing of formal disciplinary charges with the Indiana Supreme Court.

The conduct for which Judge Barnard is admonished relates to what appears to be preferential treatment of attorneys for collection agencies over the rights of individual litigants or their lawyers. This is a problem about which all small claims court judges in Marion County were warned by the Commission in 1992.

The complaint which led to the Commission's conclusion that disciplinary charges against Judge Barnard were warranted was filed by Indianapolis attorneys Steven Hofer and Nan Lewis. The Commission investigated two aspects of their complaints. First, it was established that when default judgments were entered against defendants, Judge Barnard sent the defendants a notice stating that a default judgment was entered and that the defendant notified "must make suitable arrangements regarding payment...within 10 days...or further court proceedings will be implemented, including but not limited to garnishment". While a simple notice only of the default judgment would have sufficed, Judge Barnard's notice went further and called for immediate payment of the judgment with no mention of the defendant's right to seek relief from the judgment or to appeal; it would appear to the recipient of the notice that the only option available was payment. Furthermore, the contents of the notice left the impression that the court was operating as an arm of the judgment holder and that the court would, on its own, institute proceedings designed to satisfy the judgment. Judge Barnard ceased his practice of sending these

notices of default judgments when this matter was brought to his attention.

The Commission concluded that, in issuing these notices, Judge Barnard violated Canons 1 and 2 of the Code of Judicial Conduct which require a judge to uphold the independence of the judiciary and to act at all times in a manner promoting the public's confidence in the impartiality of the judiciary.

A second aspect of the complaint involved the perception that counsel for collection agencies were given "run of the court", including access to files which was denied to the defendants. Whereas Judge Barnard's clerk, in one instance, turned over entire files to the attorney for a collection agency, Ms. Lewis was advised by Judge Barnard, first, that she could review only the Record of Judgments and Orders and, second, that she could do so only between 8:00 and 8:30 and 4:00 and 4:30 on Mondays. Judge Barnard ultimately determined that Ms. Lewis' review of the files would not be limited to the RJO's, but the perception remained that counsel for the collection agency enjoyed preferential treatment by the judge and the judge's staff. This conduct also violated Canons 1 and 2.

For these acts of misconduct, the Commission now publicly admonishes Judge Barnard. The admonition, by agreement, is issued in lieu of formal disciplinary charges and constitutes the resolution of the complaint filed by attorneys Hofer and Lewis.

The Commission takes this opportunity to comment on matters beyond those involving the complaints against Judge Barnard, but which relate to all small claims proceedings. The integrity of our judicial system depends upon the public's perception and belief that the courts act impartially. All litigants are entitled to equal treatment, and no party should be granted special access to files, or control over the court's calendar, or use of the court's summons to force settlement negotiations, or the ability to proceed absent proof of adequate service. Judges must ensure that their staff members, too, are mindful of these duties, and, furthermore, should ensure that their staff members treat the public with courtesy and respect. The small claims experience may be the only contact with the judicial system for many litigants, and it is the judges' duty to promote their confidence in the system's fairness and integrity. The Commission will hold the judges of the small claims courts accountable when they fail to fulfill this important duty.

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Questions about this public admonition may be directed to Chief Justice Randall T. Shepard, Chairman of the Commission, at (317) 232-2550, or to Meg Babcock, Counsel for the Commission, at (317) 232-4706, or to Kevin McGoff, attorney for Judge Barnard, at (317) 848-2300.