

**PUBLIC ADMONITION OF
THE HONORABLE JOHN N. BARRY
BLACKFORD SUPERIOR COURT**

June 28, 2017

The Indiana Commission on Judicial Qualifications has determined that formal disciplinary charges are warranted against the Honorable John N. Barry. 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 Barry. Judge Barry fully cooperated with the Commission in this matter and acknowledges he violated the Code of Judicial Conduct.

The Commission admonishes Judge Barry for participating in a hearing at which the Blackford County Courts issued an *ex parte* Joint Temporary Restraining Order and Emergency Order¹ banning the Clerk of Court from the Blackford County Courthouse, without providing the Clerk with notice of the purpose of the hearing or the opportunity to obtain counsel. By participating in this hearing, Judge Barry violated the Code of Judicial Conduct and basic due process requirements for emergency orders. (*See* Indiana Trial Rule 65(B); *see also* Public Admonition of the Honorable Jerry F. Jacobi, Clark Superior Court, September 9, 1999).

On August 3, 2015, the Blackford County Council announced its intent to cut funding for two positions in the Blackford Clerk's Office. To alleviate some of the resulting burden to the Clerk's office, Judge Barry decided to take physical custody of all open criminal court files and to transfer them to court offices. Tensions arose when the judge communicated this decision to the Clerk, and the judge reports that the Clerk's intense reaction raised concerns about the security of court records and the Clerk's performance of administrative duties.

According to Judge Barry, on August 5, 2015, after Judge Barry had sent a court employee to the Clerk's Office to measure filing cabinets, the Clerk called Judge Barry and responded with anger, using profanity during the phone call. Judge Barry also indicates that the Clerk suggested she would not make court files available to him. However, the undisputed facts reflect that, on August 10, 2015, the Clerk apologized to Judge Barry for her prior behavior, and she indicated that she would cooperate in the transfer of open criminal court files to the Superior Court offices. On August 11, 2015, the files were transferred to the Superior Court offices without incident.

¹ Judge Barry treated this situation as one which required issuance of a temporary restraining order, but the Commission's view is that this matter should have been handled as an indirect contempt proceeding, with all of the appropriate procedural safeguards. By *sua sponte* issuing a restraining order which directly benefitted/impacted the courts, the judge essentially made himself a witness (and party) to the action and denied the Clerk and her employees a neutral arbiter over the dispute.

The evening of August 19, 2015, the Blackford County Council held a public hearing for budget appeals, and, after hearing testimony, denied the Clerk's staffing appeal. Later that evening, Judge Barry received a text from someone who attended the meeting who expressed concern about the Clerk's conduct during the meeting. According to Judge Barry, the morning of August 20, 2015, he concluded he needed to discuss with the Clerk the future of the Blackford County Court system regarding court records and the general courthouse working environment. Around 8:00 a.m., the Clerk was directed to go into the Circuit Court offices for the meeting. The Clerk refused to enter the jury room without her Chief Deputy Clerk present and returned to her office; shortly thereafter, she left for the hospital after experiencing chest pain. Judge Barry was informed that the Clerk had left the courthouse but was not aware that she had left for medical reasons.

At approximately 8:20 a.m., a sheriff's deputy came to the Clerk's office and directed the Chief Deputy and Deputy Clerk to the Circuit Court courtroom for a hearing. The Clerk was absent. Neither the Clerk nor her deputies were given prior written notice about the hearing or the reasons for it, nor were they given time to obtain counsel prior to the hearing or the issuance of the emergency order banning the Clerk from the courthouse. No questions were asked of Clerk's Office employees as to why the Clerk left the courthouse.

A hearing was held beginning at 8:25 a.m., and, while not primarily conducted by Judge Barry, he did attend the hearing and contributed remarks. During the hearing, a narrative was given purporting to support the temporary restraining order, which included allegations that the Clerk had several outbursts in early August suggesting that she would deny court staff and Judge Barry access to court files, episodes of profanity directed at Judge Barry and others, and ended with concerns that the Clerk refused to meet with Judge Barry that morning without a witness present. Near the conclusion of the hearing, Judge Barry contributed remarks that the reason the Clerk was being enjoined from the courthouse was due to a concern that her prior behavior and behavior from the prior night showed a risk to the integrity of the court's records.

However, no evidence was presented at the hearing that the Clerk had interfered with the transfer or processing of files after August 10, 2015, nor was there any evidence presented, other than the fact that she would not meet with Judge Barry without her Chief Deputy present the morning of August 20, that the Clerk would not comply with the Superior Court's directives regarding court files.

After a summary of concerns was recited at the hearing, the Blackford County Courts declared an emergency existed, the Clerk was unfit to assume her duties, and enjoined the Clerk from entering the courthouse until the next scheduled hearing; and Judge Barry agreed. After some questioning of the Chief Deputy Clerk, the Chief Deputy Clerk then was appointed as Acting Clerk.

Judge Barry signed an Order, thereby committing the Order announced at the hearing to writing, and scheduled a hearing for August 26, 2015 for the express purpose of determining whether the Clerk should be permitted to resume her office. On August 25, 2015, the Clerk's attorney and the judge reached an agreement to terminate the restraining order, and an Order to that effect was issued the same day.

The Commission believes Judge Barry abused his judicial powers by participating in the August 20, 2015 hearing without providing appropriate notice and a sufficient opportunity to be heard to the Clerk. While Judge Barry had a responsibility to secure court records and to ensure that court business was maintained, the totality of the circumstances in this matter demonstrates that the judge's conduct did not promote public confidence in the integrity and impartiality of the judiciary.

Judge Barry violated Rule 2.9(A) of the Code of Judicial Conduct, which prohibits *ex parte* proceedings unless otherwise authorized by law. He also violated Rules 1.1, 1.2, and 2.6 of the Code of Judicial Conduct, which require judges to uphold and apply the law, to act at all times in a manner that promotes public confidence in the integrity, independence, and impartiality of the judiciary, and to accord to every person who has a legal interest in a proceeding the right to be heard.

This Admonition concludes the Commission's investigation, and Judge Barry will not formally be charged with ethical misconduct. The Commission's decision to resolve this matter with a Public Admonition is due to Judge Barry's cooperation in this matter, his acceptance of responsibility for his conduct, and his lack of any prior disciplinary history.

Questions about this Admonition may be directed to Adrienne L. Meiring, Counsel for the Commission, at (317) 232-4706, or Judge Barry's counsel, Kelly N. Bryan, at (765) 282-2260.