

June 30, 2005

PUBLIC ADMONITION

OF

THE HONORABLE THOMAS NEWMAN, JR.

The Indiana Commission on Judicial Qualifications, having determined that formal disciplinary charges are warranted, issues instead this Public Admonition of the Honorable Thomas Newman, Jr., Madison Superior Court 3. This Admonition is pursuant to Supreme Court Admission and Discipline Rule 25 VIII E(7), and is issued with the consent of Judge Newman, who cooperated fully with the Commission in this matter and who acknowledges he violated the Code of Judicial Conduct.

The Commission now admonishes Judge Newman for knowingly failing to follow the law and for not fairly resolving the case described below, both violations of the Code of Judicial Conduct. This Admonition concludes the Commission's investigation into these events.

In August 2004, John Grayson appeared before a magistrate after he was charged with forgery and three counts of theft. The magistrate set bond at \$50,000.00. Grayson then requested a bond reduction, over which Judge Newman presided on August 23, 2004.

After considering some testimony about Grayson's prior criminal record and his Ohio residency at the bond reduction hearing, Judge Newman interrupted the proceedings and stated Grayson would be held without bond. Grayson filed a motion for reasonable bail, which Judge Newman denied. Grayson then petitioned the Indiana Supreme Court for a Writ of Mandamus. The Supreme Court granted the petition and ordered Judge Newman to reinstate Grayson's bail.

As the Supreme Court noted in its Order granting Grayson's Writ Petition, the *Grayson* case was the third known instance in which Judge Newman erroneously ordered a defendant entitled to bail to be held without bail. See, *Perkins v. State*, 694 N.E.2d 292 (Ind.App. 1998) and *Ray v. State*, 679 N.E.2d 1364 (Ind.App. 1997). In both *Perkins* and *Ray*, the Indiana Court of Appeals reversed Judge Newman's orders

revoking bail. The Court of Appeals found that IC 35-38-8-5 provides that a judge may revoke bail upon clear and convincing proof by the State that, while admitted to bail, the defendant committed any of five acts or offenses specifically enumerated in the statute, none of which were applicable to the *Perkins* or *Ray* cases, or to *Grayson*. The minority view in *Perkins* and *Ray* was that a judge could revoke bail upon a finding of “good cause” and was not limited to a finding that one or more of the five acts or offenses listed in the statute had occurred. Judge Newman finds the minority views in *Perkins* and *Ray* to be more reasonable statutory interpretations than the majority views, and has provided the Commission with his basis for revoking bond under the “good cause” standard. Nonetheless, the minority opinions are not the applicable law.

The Supreme Court also noted in its Order that, normally, the Court of Appeals, and not the Supreme Court on original action, considers alleged erroneous decisions regarding bail. However, because Judge Newman previously had been twice reversed for revoking bail outside the parameters of the statute when he made the same decision in *Grayson*, the Court granted the Writ. Similarly, the Qualifications Commission ordinarily does not conclude that a judge’s mere legal error violates the ethics rules. But, repeated and knowing violations of clear precedent do implicate a judge’s ethical duties. Therefore, the Commission concludes that when Judge Newman revoked Grayson’s bail contrary to the rulings in *Perkins* and *Ray*, he violated Canons 3B(2) and 3B(9) of the Code of Judicial Conduct, which require judges to be faithful to the law and to dispose of all matters fairly.

Questions about this Admonition may be directed to Meg Babcock, Counsel for the Commission, (317) 233-5394. Judge Newman is represented by Kevin P. McGoff, (317) 848-2300.