

**PUBLIC ADMONITION OF
THE HONORABLE MARTHA C. HAGERTY
FREMONT TOWN COURT**

November 19, 2012

The Indiana Commission on Judicial Qualifications, having determined that formal disciplinary charges are warranted, issues instead this Public Admonition against the Honorable Martha C. Hagerty, Fremont Town Court in Steuben County. This Admonition is pursuant to Supreme Court Admission and Discipline Rule 25 VIII E(7) and with the consent of Judge Hagerty, who cooperated fully with the Commission in this matter and who acknowledges she violated the Code of Judicial Conduct.

The Commission admonishes Judge Hagerty for assuming the role of the prosecutor when she attempted to negotiate a resolution to a defendant's case after the defendant inquired about the status of his traffic infraction ticket and driver's license suspension. The Commission also admonishes Judge Hagerty for having several *ex parte* conversations with the prosecutor about the same case.

On November 13, 2008, a defendant called the Fremont Town Court about a traffic infraction ticket he had received which had resulted in a driver's license suspension because he failed to either pay the ticket or appear in court to contest the ticket. After explaining why the defendant's license had been suspended, Judge Hagerty informed the defendant that his license would be reinstated if he paid the original fine of \$139.50 plus an additional \$139.50 for failing to either pay or appear. On June 25, 2009, the defendant sent a letter to the judge requesting a hearing to contest his ticket and then followed up with a phone call to the court on July 2, 2009. During that call, for which the prosecutor was not present, Judge Hagerty repeated why she instructed the Bureau of Motor Vehicles to suspend the defendant's license and what he would need to pay to remove the suspension. Judge Hagerty did not set the matter for a hearing.

On July 2, 2009, Judge Hagerty also called the prosecutor to suggest that he amend the defendant's violation to a nonmoving violation so that the defendant's point exposure to his driving record would be limited, but the fine would remain the same. The defendant was not present for this conversation. Approximately one year later, on June 25, 2010 and June 29, 2010, the defendant called to ask again about the status of his request for a contested hearing, and each time, Judge Hagerty communicated the offer to the defendant that she previously had discussed with the prosecutor. The defendant continued to express his wish for a contested hearing.

On May 10, 2011, two years after the defendant first contacted the court to request a hearing on this matter, the defendant filed a motion for discovery. Rather than rule on the defendant's motion, Judge Hagerty called the prosecutor to discuss the motion. Once

again, the defendant was not present for this conversation. After her discussion with the prosecutor, Judge Hagerty denied the defendant's motion for discovery. The defendant continued to send correspondence to the court to express frustration that he had not received discovery and had not received a hearing to contest his ticket, as requested. On January 13, 2012, after a telephone call with Judge Hagerty, the prosecutor decided to dismiss the infraction and expunge the license suspension on the defendant's driving record. The prosecutor filed a motion to dismiss on January 19, 2012, which was granted by Judge Hagerty.

Judge Hagerty acknowledges that her conduct in this case of repeatedly engaging in conversations with one litigant, without the other party present, violated Rule 2.9(A) of the Code of Judicial Conduct which forbids judges from initiating, permitting, or considering *ex parte* communications concerning a pending proceeding. Judge Hagerty also acknowledges that by communicating an offer to resolve the traffic infraction (when the prosecutor was not present), she gave the impression that she stood in the role of prosecutor as well as judge. Such conduct, Judge Hagerty recognizes, is a violation of Rule 1.2 of the Code of Judicial Conduct which requires judges to act at all times in a manner that promotes confidence in the independence, integrity, and impartiality of the judiciary, and Rule 2.2 of the Code of Judicial Conduct which requires a judge to perform all duties of judicial office fairly and impartially.

The Commission further would note that its decision to issue this Public Admonition in lieu of filing formal charges was influenced, in part, by the fact that Judge Hagerty immediately took corrective action to address issues in her court that contributed to litigants attempting to initiate *ex parte* conversations with her (and her subsequent attempts to contact the prosecutor to negotiate resolutions on behalf of litigants). Such actions included establishing a separate office for the judge, rearranging court hours to assure office coverage by the court clerk, and allowing the court clerk to share her office responsibilities with the town's water clerk. Had Judge Hagerty not been so responsive to the Commission's concerns and taken immediate corrective action, the Commission would have been inclined to pursue a stronger course of action.

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

Questions about this Admonition may be directed to Adrienne L. Meiring, Counsel for the Commission, at (317) 232-4706. Judge Hagerty is represented by Adam M. Henry (260) 426-9706.