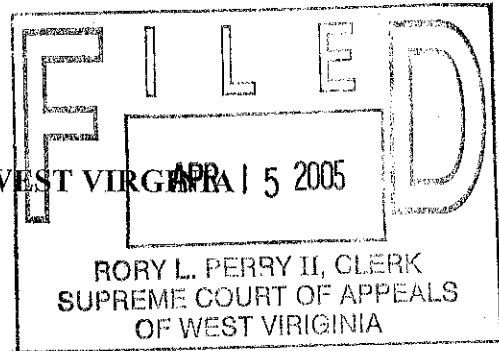


NO. 31797

BEFORE THE
SUPREME COURT OF APPEALS OF WEST VIRGINIA



IN THE MATTER OF: WILLIAM TOM TOLER,
MAGISTRATE FOR WAYNE COUNTY

**REPLY OF THE JUDICIAL INVESTIGATION COMMISSION
TO RESPONDENT'S MOTION FOR REINSTATEMENT AND BACK PAY**

I. Statement of the case.

This matter is pending before the Court on Respondent's motion for reinstatement and back pay. The Respondent has been suspended without pay pursuant to Orders entered by this Court on July 16, 2004, and November 12, 2004. The suspension without pay resulted from a report filed with the Court stating that a complaint had been filed against the Respondent alleging that he was charged in a nine-count indictment. Subsequent to the filing of this report, this Court found probable cause to believe that the Respondent was engaging in a serious violation of the Code of the Judicial Conduct and remanded the matter to the Judicial Investigation Commission for the filing of formal charges. Formal charges against the Respondent were filed with the Judicial Hearing Board on August 5, 2004 and they are being pursued by the Commission. A supplemental report was filed with the Court stating that another indictment had been returned against the Respondent which set forth two more counts alleging criminal activity on the part of the Respondent. The Court ordered that the Respondent be suspended without pay upon taking the oath of office after being reelected to the Office of Magistrate in November 2004. The Respondent was acquitted of all criminal

charges in the Circuit Court of Wayne County on February 24, 2005.

II. Statement of Law.

The seminal case setting forth this Court's authority to suspend a judicial officer who has been indicted for or convicted of serious crimes with or without pay pending final disposition of criminal charges against the particular judge or until underlying disciplinary proceedings before the Judicial Investigation Commission have been completed is Matter of Grubb, 187 W.Va. 228, 417 S.E.2d 919 (1992). In the syllabus point in Grubb this Court stated:

Under the authority of Article VIII, sections 3 and 8 of the West Virginia Constitution and Rule II (J)(2) of the Rules of Procedure for the Handling of Complaints Against Justices, Judges, Magistrates and Family Law Masters, the Supreme Court of Appeals of West Virginia may suspend a judge, who has been indicted for or convicted of serious crimes, without pay, pending the final disposition of the criminal charges against the particular judge or until the underlying disciplinary proceeding before the Judicial Investigation Commission has been completed. [Rule 2.14 of the Rules of Judicial Disciplinary Procedure has replaced Rule II(J)(2) stated supra.]

The criminal charges against the Respondent have been disposed of since he was acquitted of all charges filed against him. The formal charges against the Respondent in the disciplinary matter are pending before the Judicial Hearing Board.

The criminal charges and the disciplinary proceedings have different burdens of proof. The criminal charges require proof beyond a reasonable doubt. Allegations of a complaint in a judicial disciplinary proceeding "must be proved by clear and convincing evidence." Rule 4.5, Rules of Judicial Disciplinary Procedure; Matter of Browning, 192 W.Va. 231, 452 S.E.2d 34 (1994). Even though the criminal charges have been disposed of, the charges in the disciplinary complaint could be proven if the Judicial Hearing Board

believed the allegations under the lower standard of "clear and convincing evidence."

III. Conclusion.

Based on this Court's holding in the Matter of Grubb, *supra*, there is authority to continue the Respondent's suspension without pay until the formal charges pending before the Judicial Hearing Board have been resolved.

Respectfully submitted,

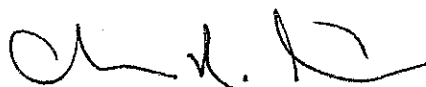
By Counsel

A handwritten signature in black ink, appearing to read "C. R. Garten". The signature is fluid and cursive, with a prominent initial "C" and "R".

Charles R. Garten
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CERTIFICATE OF SERVICE

I, Charles R. Garten, do hereby certify that I served copies of the Reply of the Judicial Investigation Commission to Respondent's Motion for Reinstatement of Back Pay by mailing a copy via United States mail to Donald R. Jarrell, Esquire, 218 North Court Street, Wayne, West Virginia 25570, counsel for Magistrate William Tom Toler, on this the 15th day of April 2005.



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