

COURT OF THE JUDICIARY CASE NO. 41

IN THE MATTER OF GERARD JOHN DURWARD, MUNICIPAL JUDGE,
CITY OF IRONDALE



Reprimand and Censure

Gerard John Durward, Municipal Court Judge for the City of Irondale, is hereby reprimanded and censured by the Court of the Judiciary of Alabama for violating the Canons of Judicial Ethics by failing to recuse himself in a traffic violation case in which his son was the defendant and instead, entered an order dismissing that case.

This cause came before the Court of the Judiciary on November 16, 2012, in a public hearing held on a Joint Motion to Resolve the Charges filed by the Judicial Inquiry Commission and Judge Durward. That motion was jointly filed after the Commission conducted an alternate dispute resolution hearing with Judge Durward, pursuant to Rule 10 of the Rules of Procedure for the Judicial Inquiry Commission.

Based upon the representations made by Judge Durward and the Commission in the Joint Motion to Resolve the Charges, and made in the November 16, 2012, hearing before this Court, the Court makes the following findings as the basis for this reprimand and censure:

1. On December 6, 2010, the son of Irondale Municipal Court Judge Gerard John Durward was issued a traffic citation by a City of Irondale Police Officer, charging him with driving a vehicle 15 m.p.h. in excess of the posted speed limit.

2. On December 13, 2010, Judge Durward, acting in his capacity as Irondale Municipal Court Judge, entered an order on the back of the Uniform Traffic Ticket and Complaint

issued to his son, dismissing the speeding charge made therein against his son.

3. In entering this order of dismissal, Judge Durward acted outside of a court session, outside the presence of the defendant and the municipal prosecutor, and without the knowledge or consent of the city prosecutor.

4. At the time Judge Durward dismissed this speeding charge, he was aware that the citation being dismissed had been issued to his son and that both Alabama law and the Canons of Judicial Ethics prohibited him from sitting or acting as a judge in his son's case.

5. More specifically, §12-1-12, Code of Alabama, 1975, provides in part:

"No judge of any court shall sit in any case or proceeding in which he is . . . related to any party within the fourth degree of consanguinity or affinity[.]" (The parent-child relationship is within the fourth degree of consanguinity.)

and Canon 3(C)(1) of the Judicial Canon of Ethics provides, in part:

"A judge should disqualify himself in a proceeding in which his disqualification is required by law or . . . where . . . a person within the fourth degree of relationship [to the judge] is named a party to the proceeding."

6. The statute and Canon prohibited Judge Durward from taking any action in his son's case; and because Judge Durward was disqualified, as a matter of law, in his son's case, Judge Durward thus violated §12-1-12 and Canon 3(C)(1)

of the Judicial Canon of Ethics by entering the order of dismissal.

The Court regards a judge's dismissal of a traffic violation case against a judge's family member under these or similar circumstances as a serious violation of judicial ethics, as well as, being contrary to Alabama law. Such conduct by a judge strikes at the heart of the concept of equal justice under law and undermines the public's confidence in the state judiciary.

Factors considered by the Court in arriving at the decision to issue a reprimand and censure to Judge Durward, rather than a more serious sanction, are the facts that the complaint alleges only one incident of the proscribed conduct, rather than a pattern of dismissals of traffic violation cases; that in the approximately twenty years of Judge Durward's service as Irondale Municipal Court Judge, according to the representation of the Judicial Inquiry Commission, no complaint for this or other judicial misconduct has been made against Judge Durward; and that Judge Durward, when confronted with his misconduct, admitted the same and its wrongfulness, and has before this Court acknowledged such misconduct.

In addition to this reprimand and censure, the Court further orders and directs Judge Durward be taxed costs in the proceeding in the amount of \$1,117.12.