

**SUPREME COURT OF LOUISIANA**

99-O-1313

IN RE: JUDGE LARRY D. JEFFERSON

**ON RECOMMENDATION FOR DISCIPLINE  
FROM THE JUDICIARY COMMISSION OF LOUISIANA**

**JOHNSON, J., Dissenting.**

The Judiciary Commission of Louisiana began its investigation of Judge Larry Jefferson in the summer of 1997 based on two anonymous complaints.<sup>1</sup> In my opinion, allowing complainants to keep their identities anonymous can lead to abuses. *See In re Thibodeaux*, 99-0014 (La. 7/7/99); 737 So. 2d 1284. The complainant may have a political or personal vendetta, and knowing the identity of the complainant can give us valuable information to test the motive and truthfulness of the allegations.

**CHARGE I**

The record reflects that much of this controversy between Judge Jefferson and the City Prosecutor, Mr. James Rodney Pierre, and the Clerk of Court, Ms. Carol Powell-Lexing stemmed from political and personal animosities. Judge John Harrison, who was appointed Supernumerary Judge *pro tempore* by this court, testified before the Judiciary Commission that upon his arrival at the Monroe City Court that there was no communication or working relationship between Judge Jefferson and others at the court. He further testified that there had been friction created between the officers of the court when Judge Jefferson was relieved of his administrative duties as senior judge by an *en banc* order signed by the other two judges. Then, tensions were heightened when Mrs. Powell-Lexing was given the authority to hire and discharge employees because she terminated several employees hired by Judge Jefferson. Judge Jefferson reacted by using his contempt power. This behavior demonstrated a lack of proper judicial temperament and demeanor. No judge has unbridled authority to haul officers of the court into his courtroom and find them in contempt of court

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<sup>1</sup>The Commission has revised JCL Rule III, which became effective November 19, 1999. The Rule now reads:

The Commission, however, may consider alleged misconduct or disability of any judge from whatever source, including anonymous complaints and news reports, and may do so on its own motion. An anonymous complaint may not be reviewed or investigated unless it states facts, not mere conclusions, that can be independently verified.

without regard for the procedural rules.

## **CHARGE II**

Judge Jefferson was scheduled to hear a docket of criminal cases, but the City Prosecutor, Mr. Pierre failed to appear. Judge Jefferson instructed an employee from the City Prosecutor's office, who was not a lawyer, to move for a continuance. At this point, a defense attorney protested that only a lawyer could proceed. Rather than recessing court for the day, Judge Jefferson dismissed the charges against 41 defendants. All of the charges dismissed that day were later reinstated by the City Prosecutor. So, it is important to note that there was no actual injury to the administration of justice. *See In re William R. Brough*, 98- 0366 (La. 4/3/98)(Court unwilling to impose severe sanction where no actual injury to the profession existed.) Nonetheless, Judge Jefferson's actions created an embarrassing situation for the court and could have denied victims of crime their day in court. Judge Jefferson failed to keep his personal differences in perspective. His disregard for the court process and the administration of justice warrants discipline.

## **CHARGE III**

Charge III relates to whether Judge Jefferson practiced law in violation of La. R.S. §13:1952(15)(a). Unlike some statutes which designate city judges as part time and allow for the practice of law, La. R.S. §13:1952(15)(a) states: "The City Court of Monroe, domiciled in the city of Monroe, parish of Ouachita, having three city judges and a city marshal. [sic] Such city court judges may not practice law." Judge Jefferson was, thereby, prohibited from the practice of law. In this instance, Judge Jefferson represented the plaintiff in *Patterson v. Hutto, Inc.*, 89-3028 (La. 4<sup>th</sup> JDC). The suit was filed prior to his election, but concluded during his first term as judge. Judge Jefferson maintains that he learned he could complete pending cases within a reasonable time at a new judges' conference. On October 8, 1992, Judge Jefferson wrote a letter to opposing counsel seeking to close the file. It states, "[t]he procrastination . . . has prolonged the time frame which I had given the judicial administrator's office in regards to my finalizing all cases from private practice. This case is and has been the only one lingering for an inordinate period of time." After this correspondence, there is no further activity by Judge Jefferson. The only document which contains his signature is the Motion to Dismiss dated June 16, 1995 but filed in 1997.

It is undisputed that Judge Jefferson signed the Motion to Dismiss in this suit. This activity constitutes the practice of law as contemplated by La. R. S. §37:212 and therefore, is a technical

violation of §13:1952(15)(a). Nonetheless, we recognize that when one is elected to judicial office from private practice, a transition must be made. Common sense dictates that as part of this transition, where a judge is prohibited from the practice of law, a once private practitioner will have time to finalize pending cases. In the case of *Patterson v. Hutto, Inc.*, Judge Jefferson testified that a settlement was negotiated before his election. There were documents to be exchanged, but for all intents and purposes the case was over. In every other case, Judge Jefferson either completed them within reasonable time limits or transferred them to other attorneys. In this one case, where the settlement amount had been agreed upon, he sent one letter, and filed a motion to dismiss. It is one act in one case. For this activity, I would not impose a sanction.

#### **CHARGE IV**

I agree that the evidence supports Charge IV that Judge Jefferson disregarded the orders of Judge Harrison. Judge Jefferson argues that Judge Harrison's requests extended beyond his administrative duties and usurped his judicial powers. Regardless of Judge Jefferson's beliefs, there were more appropriate avenues to challenge Judge Harrison's actions. Judge Jefferson's failure to cooperate with Judge Harrison constitutes a violation of the Louisiana Supreme Court's Order of May 28, 1998. Furthermore, his misconduct is a breach of La. Const. art. V, § 25 and should be sanctioned by this Court.

#### **CONCLUSION**

The majority recommends that Judge Jefferson be removed from judicial office. However, this court has previously stated that "[t]he most severe discipline should be reserved for judges who use their office improperly for personal gain; judges who are consistently abusive and insensitive to parties, witnesses, jurors, and attorneys; judges who because of laziness or indifference fail to perform their judicial duties to the best of their ability; and judges who engage in felonious criminal conduct. *In re Whitaker*, 463 So.2d at 1303; *see also In re Johnson*, 96- 1866, p. 6 (La. 11/25/96); 683 So.2d 1196, 1201. Moreover, the "removal of a duly elected member of the judiciary is a serious undertaking which should only be borne with the utmost care so as not to unduly disrupt the public's choice for service in the judiciary." *In re Johnson* 96-1866 at p. 14 (*quoting In re Huckaby*, 95-0041 at p. 10; 656 So.2d at 298.)

Judge Jefferson's behavior is more akin to *In re Bowers* which also involved "inappropriate language and discourteous treatment of persons appearing" before the court. 98-1735, p. 10 (La.

12/12/98); 721 So.2d 875, 880. Judge Gary Bowers was charged with three acts of misconduct. In Charge I, the attorney for the plaintiff filed an emergency writ application and stay order with the Second Circuit Court of Appeal, seeking relief from Judge Bowers' rulings. Judge Bowers criticized the attorney in open court and referred to his application as "eleventh-hour crap." The attorney sought a continuance for the second time, but Judge Bowers denied the continuance. Instead, he issued a bench warrant for the arrest of the plaintiff and ordered that plaintiff's name be entered into the National Crime Information Center (NCIC) for her failure to appear. Subsequently, Judge Bowers ordered that a warrant be issued for the arrest of plaintiff's husband and set his bond at \$50,000. His name was also entered into the NCIC. The husband was a resident of Colorado and not a party to the lawsuit. However, Judge Bowers believed that the husband was responsible for threatening phone calls received at his home. Judge Bowers referred to him on several occasions in a derisive manner, calling him a "two-bit hoodlum" and a "little pimp."

Judge Bowers was also charged with abuse of his contempt power. During one proceeding, the Judge instructed a litigant to answer a question. When she declined to do so on several occasions, he first asked the litigant if she had a hearing problem. After further protest from the litigant, he ordered her to stop speaking, held her in contempt of court, and ordered her incarcerated. A writ was filed with the Court of Appeal to secure her release. In a subsequent proceeding, Judge Bowers chastised the attorney in open court for fifty minutes using occasional profanity and threatened him, stating, "if you ever do it again, I'm going to come gunning for you, do you understand?" He further commented, "I wouldn't want you to go whining up to the Court of Appeal again . . ."

The Commission charged a third violation wherein Judge Bowers was abusive and argumentative with another attorney appearing before the court. He warned her about arguing with the Court in an unprofessional manner stating that "maybe in New Orleans you folks do a Judge Ito deal where you argue with the court . . ." In a memorandum submitted to the court by the same attorney, Judge Bowers struck through the pleadings with large question marks covering the entirety of the first and last pages, initialed and dated the document and returned it to her.

We declined to impose a suspension as recommended by the Judiciary Commission and ordered that Judge Bowers should be censured. *In re Bowers* should guide our decision in choosing a discipline appropriate for Judge Jefferson.

Judge Jefferson's behavior is not so egregious that it requires removal from judicial office.

*Compare In re Whitaker, supra* (Judge was suspended for one year after smoking marijuana, associating with users and sellers of illegal drugs. The Court declined to follow Judiciary Commission's recommendation of removal.); *In re Dupont*, 322 So.2d 180 (1975) (Court declined to remove from judicial office or suspend judge who received stolen guns); *In re Huckaby*, 95-0041 (La. 5/22/95); 656 So.2d 292 (Court ordered removal of judge after his consistent failure to file and pay taxes.) *In re Johnson*, 96-1866 (La. 11/25/96)(Court ordered removal from judicial office where judge used his position for personal gain.); *In re Haggerty*, 241 So.2d 469 (1970)(Court removed judge from the bench due to his involvement in gambling and pornography). Judge Jefferson's conduct warrants a two year suspension, retroactive to his interim suspension dated October 13, 1998.