

August 19, 2002 See news release 59 for concurrences/dissents
SUPREME COURT OF LOUISIANA

No. 2002-O-1975

**IN RE: JUDGE SHARON K. HUNTER,
CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS**

APPENDIX

FORMAL CHARGE NO. 0177

The charge in case No. 0177, Subsection A, alleges that Judge Hunter failed to perform her administrative duties by failing competently to supervise and direct her employees, including court reporters and minute clerks, and that such failure resulted in a high attrition rate, which in turn impacted Judge Hunter's ability (1) to ensure that transcripts are provided to the Fourth Circuit Court of Appeal in cases on appeal, and (2) to comply timely with the Fourth Circuit's orders directing her to produce transcripts.

Subsection B of the charge in No. 0177 relates to ten cases in which Judge Hunter's failure to provide accurate transcripts to the Fourth Circuit ultimately led to the reversal of a conviction or habitual offender adjudication, based solely upon the issue of a missing or deficient transcript. While a full procedural history for each is described below, the underscored language outlines the most relevant features and emphasizes the different outcomes for purposes of the charge against Judge Hunter.

1. *State v. Michelle Noel*, CDC # 385-093. Ms. Noel was convicted of second-degree murder and sentenced to life imprisonment without benefit of parole, probation, or suspension of sentence. Because the record did not contain a complete transcript of the testimony taken at trial, the Fourth Circuit found that the defendant was denied her right to meaningful appellate review and vacated the conviction and sentence. *State v. Noel*, 99-1415 (La. App. 4th Cir. 3/1/00). On remand for a new trial, a jury found Ms. Noel not guilty.

2. *State v. Audrey Bell*, CDC # 383-127. Ms. Bell was convicted of second-degree murder and sentenced to life imprisonment without benefit of parole, probation, or suspension of sentence. The Fourth Circuit subsequently vacated the conviction and sentence because the transcript was not made part of the record. *State v. Bell*, 97-1615 (La. App. 4th Cir. 10/21/98). Following remand for a new trial, a jury found Ms. Bell guilty of manslaughter; she was sentenced to serve 40 years in prison, with credit for time served.

3. *State v. Irvin Clark*, CDC # 378-494. Mr. Clark was convicted of second-degree murder and sentenced to life imprisonment without benefit of parole, probation, or suspension of sentence. The Fourth Circuit subsequently vacated the conviction and sentence because the record did not include a transcript of the first day of trial. *State v. Clark*, 00-0348 (La. App. 4th Cir. 12/13/00), 776 So. 2d 1249. Following remand for a new trial, the State amended the charge to manslaughter because several key witnesses were no longer available. Mr. Clark entered a plea of guilty to manslaughter and was sentenced to serve 20 years in prison, with credit for time served.

4. *State v. Raynell Bright*, CDC # 376-884. Mr. Bright was convicted of first-degree murder and sentenced to life imprisonment without benefit of parole, probation, or suspension of sentence. The Fourth Circuit reversed the conviction and sentence because the transcript of the trial lacked the testimony of important witnesses, including the defendant, and contained numerous errors. *State v. Bright*, 00-1255 (La. App. 4th Cir. 2/6/02), 809 So. 2d 1112. The State's application for supervisory writs from the Fourth Circuit's ruling is pending in this court, No. 2002-K-0698.

5. *State v. Bobby Dickerson*, CDC # 392-232. Mr. Dickerson was convicted of attempted first-degree murder and sentenced to life imprisonment as a third felony offender. The Fourth Circuit reversed the conviction and sentence because the trial

transcript lacked the testimony of three of the four witnesses who testified at trial. *State v. Dickerson*, 00-2324 (La. App. 4th Cir. 3/28/01). A new trial was pending at the time the Commission filed the instant charge against Judge Hunter.

6. *State v. Donald McGee*, CDC # 376-601. Mr. McGee was convicted of possession of cocaine and distribution of cocaine and sentenced to life imprisonment as a third felony offender. Citing lost transcripts, the court of appeal vacated the conviction and sentence, and remanded the case for a new trial. *State v. McGee*, 00-0347 (La. App. 4th Cir. 7/26/00). Thereafter, the State entered a *nolle prosequi* in the case, and the defendant was released from custody.

7. *State v. Raymond Jones*, CDC # 379-522. Mr. Jones was convicted of possession of a Schedule I controlled dangerous substance (phencyclidine - PCP) within 1,000 feet of a school and sentenced to serve fifteen years in prison as a second felony offender. Because substantial portions of the transcript were absent from the record, the Fourth Circuit reversed the conviction and sentence, and remanded the case for a new trial. *State v. Jones*, 00-0298 (La. App. 4th Cir. 11/21/00). Thereafter, the defendant's case was re-allotted to a different section of court, where he entered a plea of guilty to a lesser crime and was sentenced to serve ten years in prison with credit for time served.

8. *State v. Eddie Johnson*, CDC # 414-319. Mr. Johnson was convicted of possession of cocaine and possession of marijuana and sentenced to life imprisonment as a third felony offender. Because the trial transcript was absent from the record, thereby resulting in the denial of the defendant's right to appellate review, the Fourth Circuit vacated the conviction and sentence, and remanded the case for a new trial. *State v. Johnson*, 01-1909 (La. App. 4th Cir. 1/23/02), 807 So. 2d 1071.

9. *State v. Pedro Bacot*, CDC # 309-826. Mr. Bacot was convicted of attempted first-degree murder and sentenced to serve twenty-five years in prison as a second felony offender. The Fourth Circuit affirmed the conviction, but it vacated

the habitual offender adjudication and sentence because the record lacked transcripts of the sentencing and of a hearing on a motion to quash the habitual offender bill. *State v. Bacot*, 98-0506 (La. App. 4th Cir. 5/26/99). Following remand for sentencing, Judge Hunter found Mr. Bacot was a multiple offender and sentenced him to serve twenty-five years in prison without benefit of parole, probation, or suspension of sentence, with credit for time served.

10. *State v. Gregory Hernandez*, CDC # 383-422. Mr. Hernandez was convicted of theft of an automobile valued at \$500 or more and sentenced as a multiple offender to serve eighty months at hard labor. Because the transcript of the second day of trial was not provided, the Fourth Circuit reversed the conviction and sentence, and remanded the case for a new trial. *State v. Hernandez*, 99-2980 (La. App. 4th Cir. 5/10/00). Following remand, Mr. Hernandez entered a plea of guilty as charged and was sentenced to serve forty-two months with credit for time served.

Subsection C of the charge relates to cases in which Judge Hunter failed to comply with the Fourth Circuit's orders to produce transcripts, but the cases were either affirmed on other grounds or remain pending before the court of appeal:

1. *State v. Eckley Marshall*, CDC # 415-530. On February 9, 2001, March 12, 2001, and May 14, 2001, the Fourth Circuit ordered Judge Hunter to produce the transcript of the defendant's guilty plea and sentencing hearing. Judge Hunter did not comply with the orders. On August 7, 2001, the Fourth Circuit ordered Judge Hunter to produce the transcript on or before September 11, 2001, or appear before the court on September 14, 2001 for a contempt of court hearing. Judge Hunter complied with the Fourth Circuit's orders by providing a certificate certifying that the audiotapes of the proceeding could not be located and that the transcript could not be produced. The certificate was received by the Office of the Judicial Administrator for Orleans Parish Criminal District Court on September 14, 2001, and was received by the Fourth Circuit on September 25, 2001.

The Fourth Circuit subsequently affirmed the defendant's sentence, finding that the record was sufficient for appellate review, that Mr. Marshall did not establish he suffered any prejudice from the lack of a sentencing transcript, and that the record indicated he had knowingly and intelligently waived his rights. *State v. Marshall*, 01-1907 (La. App. 4th Cir. 1/30/02), 812 So. 2d 79.

2. *State v. Steve Banks and Jamar Rolling*, CDC # 390-356. On July 19, 2000, and August 29, 2000, the Fourth Circuit ordered Judge Hunter to produce the transcripts of two motion to suppress hearings. Judge Hunter did not comply with the orders. On October 2, 2000, the Fourth Circuit ordered Judge Hunter to produce the transcripts on or before November 9, 2000, or appear before the court on November 16, 2000, for a contempt of court hearing. On November 9, 2000, Judge Hunter complied with the Fourth Circuit's orders by providing a certificate certifying that one of the transcripts was unavailable.

Thereafter, on December 11, 2000 and January 23, 2001, the Fourth Circuit ordered Judge Hunter to produce the transcript of a motion hearing conducted on the second day of the defendants' trial. Judge Hunter did not comply with the orders. On March 5, 2001, the Fourth Circuit ordered Judge Hunter to produce the transcript on or before April 16, 2001, or appear before the court on April 25, 2001, for a contempt of court hearing. Judge Hunter complied with the Fourth Circuit's orders by providing a certificate certifying that the transcript was unavailable. The certificate was received by the Fourth Circuit on April 18, 2001.

On October 17, 2001, the Fourth Circuit affirmed the defendants' convictions and sentences. The court of appeal found that the absence of the transcript of the motion to suppress hearing did not preclude the defendants' exercise of their constitutional right of review because the arresting police officers had testified at the motion hearing and at trial, and had adequately recounted their reasons for stopping the defendants. *State v. Banks and Rolling*, 00-0525 (La. App. 4th Cir. 10/17/01), 800

So. 2d 28.¹

3. *State v. Todd Plaisance a/k/a Michael Thomas*, CDC # 405-507. On November 9, 2000 and December 18, 2000, the Fourth Circuit ordered Judge Hunter to produce the transcript of a pre-trial motion hearing. Judge Hunter did not comply with the orders. On February 13, 2001, the Fourth Circuit ordered Judge Hunter to produce the transcript within twenty days, failing which the court would commence contempt proceedings. On March 5, 2001, the Fourth Circuit granted Judge Hunter's request for a thirty-day extension of time to comply with the orders. On April 9, 2001, when the transcript still had not been filed, the Fourth Circuit ordered Judge Hunter to produce the transcript on or before May 11, 2001, or appear before the court on May 23, 2001 for a contempt of court hearing. On May 7, 2001, Judge Hunter complied with the Fourth Circuit's orders by providing a certificate certifying that the transcript could not be reproduced. The certificate was received by the Fourth Circuit on May 8, 2001.

On March 6, 2002, the Fourth Circuit affirmed the defendant's conviction and sentence. The court stated that appellate counsel also represented the defendant at trial, and that the defendant did not demonstrate how the missing portions of the transcript had prejudiced him. *State v. Plaisance*, 00-1858 (La. App. 4th Cir. 3/6/02), 811 So. 2d 1172.²

4. *State v. Michael Harris*, CDC # 413-972. On April 25, 2001, and May 23, 2001, the Fourth Circuit ordered Judge Hunter to produce the transcripts of the defendant's trial and sentencing hearing. Judge Hunter did not comply with the orders. On August 7, 2001, the Fourth Circuit ordered Judge Hunter to produce the transcripts on or before September 11, 2001, or appear before the court on September

¹ Defendants have sought review of the Fourth Circuit's ruling in this court, and the matter is currently pending under docket number 2001-K-3103.

² Defendant has sought review of the Fourth Circuit's ruling in this court, and the matter is currently pending under docket number 2002-K-1395.

14, 2001, for a contempt of court proceeding. Judge Hunter ultimately complied with the Fourth Circuit's orders by providing a certificate certifying that the trial transcript could not be produced. As of the date the formal charge was filed against Judge Hunter, this case was pending before the Fourth Circuit.³

5. *State v. Matthew Whiticar*, CDC # 414-151. On January 29, 2002, and March 6, 2002, the Fourth Circuit ordered Judge Hunter to produce the transcript of a motion to quash hearing. On March 21, 2002, Judge Hunter complied with the Fourth Circuit's orders by providing a certificate certifying that the transcript could not be produced. The certificate was received by the Fourth Circuit on March 26, 2002. As of the date the formal charges were filed against Judge Hunter, this case was pending before the Fourth Circuit.

6. *State v. Kentrell Vance*, CDC # 413-739. On January 29, 2002, and March 6, 2002, the Fourth Circuit ordered Judge Hunter to produce the transcripts of the defendant's trial, sentencing hearing, and multiple bill hearing. On March 7, 2002, Judge Hunter complied with the Fourth Circuit's orders by providing the trial transcript and by providing certificates certifying that the transcripts of the sentencing and multiple bill hearings could not be produced. As of the date the formal charges were filed against Judge Hunter, this case was pending before the Fourth Circuit.

7. *State v. Tory Boatner*, CDC # 406-284. Mr. Boatner was convicted of second-degree murder and sentenced to life imprisonment without benefit of parole, probation, or suspension of sentence. On January 17, 2002, and February 22, 2002, the Fourth Circuit ordered Judge Hunter to produce the transcripts of five pre-trial hearings. On March 21, 2002, Judge Hunter complied with the Fourth Circuit's orders by providing the transcript of one proceeding and by providing a certificate certifying that the transcripts of the remaining four proceedings could not be

³ The Fourth Circuit has since vacated the defendant's conviction and sentence, citing the absence of the trial transcript, and it remanded the case for a new trial. *State v. Harris*, 01-1910 (La. App. 4th Cir. 4/24/02), 817 So. 2d 1164.

produced. As of the date the formal charges were filed against Judge Hunter, this case was pending before the Fourth Circuit.⁴

Subsection D of the charge in No. 0177 relates to cases in which Judge Hunter complied with the Fourth Circuit's orders to produce transcripts, but only after the court issued numerous orders and threatened her with contempt proceedings if she did not comply, or found her to be in contempt of court:

1. *State v. Katie Zeno*, CDC # 411-088. On April 6, 2001, and May 22, 2001, the Fourth Circuit ordered Judge Hunter to produce the transcripts of the defendant's trial, sentencing hearing, and multiple bill hearing. Judge Hunter did not comply with the orders. On August 7, 2001, the Fourth Circuit ordered Judge Hunter to produce the transcripts on or before September 11, 2001, or appear before the court on September 14, 2001, for a contempt of court hearing. On August 29, 2001, Judge Hunter complied with the Fourth Circuit's orders by filing the transcripts with the Office of the Judicial Administrator for Orleans Parish Criminal District Court. The transcripts were received by the Fourth Circuit on October 11, 2001.

2. *State v. Christopher James*, CDC # 374-038. On March 31, 1998, May 27, 1998, October 16, 1998, and January 8, 1999, the Fourth Circuit ordered Judge Hunter to produce the transcript of the defendant's trial. Judge Hunter did not comply with the orders. On April 1, 1999, the Fourth Circuit ordered Judge Hunter to produce the transcript on or before May 7, 1999, or appear before the court on May 19, 1999, for a contempt of court hearing. Judge Hunter did not comply with the order, and a show cause hearing was held in this matter on May 19, 1999. Judge Hunter eventually supplied the necessary transcript.

3. *State v. Keine Johnson*, CDC # 391-992. On July 31, 2000, and October 3,

⁴ The Fourth Circuit vacated the defendant's conviction and sentence, *State v. Boatner*, 01-1659 (La. App. 4 Cir. 6/26/02), ___ So.2d ___, but later, when the tape of the jury charge was found, reinstated the conviction and sentence and affirmed. 01-1659 (La. App. 4 Cir. 8/14/02), ___ So.2d ___.

2000, the Fourth Circuit ordered Judge Hunter to produce the transcript of a motion to quash hearing. Judge Hunter did not comply with the orders. On December 18, 2000, the Fourth Circuit ordered Judge Hunter to produce the transcript on or before January 18, 2001, or appear before the court on January 23, 2001, for a contempt of court hearing. On January 19, 2001, Judge Hunter complied with the Fourth Circuit's orders by filing the transcript with the Office of the Judicial Administrator for Orleans Parish Criminal District Court. The transcript was received by the Fourth Circuit on February 2, 2001.

4. *State v. Darrin Brooks*, CDC # 400-833. On March 7, 2001 and May 3, 2001, the Fourth Circuit ordered Judge Hunter to produce transcripts of closing arguments, jury instructions, and voir dire, or certificates of no objection, and various motion hearings. Judge Hunter did not comply with the orders. On June 14, 2001, the Fourth Circuit ordered Judge Hunter to produce the transcripts by August 10, 2001, or appear before the court on September 14, 2001, for a contempt of court hearing. On July 30, 2001, Judge Hunter complied with the Fourth Circuit's orders by filing all of the requested transcripts with the Office of the Judicial Administrator for Orleans Parish Criminal District Court.

5. *State v. Kenneth Hall*, CDC # 387-335. On August 7, 2001, September 21, 2001, and October 24, 2001, the Fourth Circuit ordered Judge Hunter to produce the transcripts of the defendant's trial and sentencing hearing. Judge Hunter did not comply with the orders. On November 29, 2001, the Fourth Circuit ordered Judge Hunter to produce the transcripts on or before January 9, 2002, or appear before the court on January 17, 2002, for a contempt of court hearing. On January 14, 2002, Judge Hunter complied with the Fourth Circuit's orders by filing the transcripts with the Office of the Judicial Administrator for Orleans Parish Criminal District Court.

6. *State v. Frank Moses*, CDC # 397-504. On August 2, 2000 and October 3, 2000, the Fourth Circuit ordered Judge Hunter to produce the transcripts of the

defendant's trial and sentencing hearing. Judge Hunter did not comply with the orders. On December 18, 2000, the Fourth Circuit ordered Judge Hunter to produce the trial transcript on or before January 17, 2001, or appear before the court on January 23, 2001, for a contempt of court hearing. Judge Hunter did not comply with the order, and following a hearing, she was held in contempt of court on January 24, 2001. On February 9, 2001, Judge Hunter complied with the Fourth Circuit's orders by filing the trial transcript with the Office of the Judicial Administrator for Orleans Parish Criminal District Court.

7. *State v. Elgin McClay*, CDC # 392-507. On October 19, 2001, and November 19, 2001, the Fourth Circuit ordered Judge Hunter to produce the transcript of the defendant's trial and sentencing hearing. Judge Hunter did not comply with the orders. On January 25, 2002, the Fourth Circuit ordered Judge Hunter to produce the transcript on or before March 4, 2002, or appear before the court on March 20, 2002, for a contempt of court hearing. On February 22, 2002, Judge Hunter complied with the Fourth Circuit's orders by filing the transcript with the Office of the Judicial Administrator for Orleans Parish Criminal District Court.

8. *State v. Jennifer McKenzie*, CDC # 405-596. On October 11, 2001, and November 29, 2001, the Fourth Circuit ordered Judge Hunter to produce the transcripts of the defendant's trial and sentencing hearing. Judge Hunter did not comply with the orders. On January 25, 2002, the Fourth Circuit ordered Judge Hunter to produce the transcripts on or before March 4, 2002, or appear before the court on March 20, 2002, for a contempt of court hearing. On February 26, 2002, Judge Hunter complied with the Fourth Circuit's orders by filing the transcripts with the Office of the Judicial Administrator for Orleans Parish Criminal District Court.

9. *State v. Kick Hatcher*, CDC # 419-293. On November 19, 2001 and January 23, 2002, the Fourth Circuit ordered Judge Hunter to produce the transcripts of the defendant's trial, sentencing hearing, and multiple bill hearing. Judge Hunter did not

comply with the orders. On March 6, 2002, the Fourth Circuit ordered Judge Hunter to produce the transcripts on or before April 1, 2002, or appear before the court on April 10, 2002, for a contempt of court hearing. On March 28, 2002, Judge Hunter complied with the Fourth Circuit's orders by filing the transcripts with the Office of the Judicial Administrator for Orleans Parish Criminal District Court.

10. *State v. Robert Jenkins*, CDC # 416-638. On November 19, 2001, and January 25, 2002, the Fourth Circuit ordered Judge Hunter to produce the transcript of the defendant's trial. Judge Hunter did not comply with the orders. On March 6, 2002, the Fourth Circuit ordered Judge Hunter to produce the transcript on or before April 1, 2002, or appear before the court on April 10, 2002, for a contempt of court hearing. On April 1, 2002, Judge Hunter complied with the Fourth Circuit's orders by filing the transcript with the Office of the Judicial Administrator for Orleans Parish Criminal District Court.

Subsection E of charge No. 0177 cites Judge Hunter's failure to perform her administrative duties by her consistent and persistent failure to cooperate with the Fourth Circuit:

1. *State v. Kenneth Hall*, CDC # 387-335. On February 5, 2002 and March 6, 2002, the Fourth Circuit ordered Judge Hunter to produce the transcripts of the defendant's trial and the court's ruling of December 22, 1998. As of the date the formal charge was filed against Judge Hunter, she had not produced the transcript of her ruling of December 22, 1998. For reasons that are not entirely clear, the trial transcripts were produced by the defendant's counsel.

2. *State v. Ann Bernard*, CDC # 407-589. On January 8, 2002 and February 19, 2002, the Fourth Circuit ordered Judge Hunter to produce the transcript reflecting the defendant's waiver of a jury trial. On March 20, 2002, Judge Hunter provided a certificate certifying that the transcript could not be produced. The certificate was received by the Fourth Circuit on March 22, 2002. However, on April 2, 2002, the

transcript was delivered to the Office of the Judicial Administrator for Orleans Parish Criminal District Court. As of the date the formal charges were filed against Judge Hunter, this case was pending before the Fourth Circuit.

3. *State v. Steve Banks and Jamar Rolling*, CDC # 390-356. On March 9, 2000, April 26, 2000, and June 5, 2000, the Fourth Circuit ordered Judge Hunter to produce the transcript of the sentencing of Jamar Rolling. Judge Hunter eventually supplied the necessary transcript.

Subsection F of charge No. 0177 cites the extensive media coverage surrounding the administrative failures in Judge Hunter's court. The Commission alleged that the publicity caused members of the public to view negatively the judicial system in Orleans Parish Criminal District Court.

Subsection G of the charge relates to Judge Hunter's serving as her own minute clerk. The Commission alleges that during the period of time in which Judge Hunter performed the duties of the Section C minute clerk, the minute clerk's duties and responsibilities were performed in an inadequate and substandard manner.

Finally, in Subsection H of the charge, the Commission alleged that Judge Hunter's conduct violated Articles of the Louisiana Constitution of 1974, namely: La. Const. art. I, § 19 (granting to defendants the right to judicial review), and La. Const. art. V, § 25(C) (prohibiting a judge from engaging in willful misconduct relating to a judge's official duty, and from engaging in persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute). The Commission also alleged that Judge Hunter's conduct violated the Code of Judicial Conduct, namely: Canon 1 (a judge shall uphold the integrity and independence of the judiciary); Canon 2A (a judge shall respect and comply with the law and act in a manner that promotes public confidence in the integrity and impartiality of the judiciary); Canon 3A(1) (a judge shall be faithful to the law and maintain professional competence in it); Canon 3B(1) (a judge shall diligently

discharge her administrative responsibilities and maintain professional competence in judicial administration); and Canon 3B(2) (a judge shall require her staff to observe the standards of fidelity and diligence that apply to the judge).