

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **21st day of October, 2022** are as follows:

BY Crain, J.:

2022-O-00886

IN RE: JUDGE CHARLENE CHARLET DAY, THE FAMILY COURT
IN AND FOR EAST BATON ROUGE PARISH, STATE OF
LOUISIANA

SUSPENSION IMPOSED. SEE OPINION.

Hughes, J., dissents in part and assigns reasons.

SUPREME COURT OF LOUISIANA

No. 2022-O-00886

**IN RE: JUDGE CHARLENE CHARLET DAY
THE FAMILY COURT IN AND FOR
EAST BATON ROUGE PARISH
STATE OF LOUISIANA**

Judiciary Commission of Louisiana

CRAIN, J.

This matter is before the court on the recommendation of the Judiciary Commission of Louisiana that Judge Charlene Charlet Day be suspended from office for 180 days. The Commission found that Judge Day abused her contempt power in violation of Canons 1, 2, 2A, and 3A(1) of the Code of Judicial Conduct and committed willful misconduct in violation of Article V, Section 25(C) of the Louisiana Constitution. We agree.

FACTS AND PROCEDURAL HISTORY

Herbert and Tina Anny filed a petition for grandparent visitation rights, which was allotted to Judge Day. The pertinent facts are: Jonathan Johnson was married to Tiesha Gransbery Johnson, the Annys' daughter. One child, J.J., was born of the marriage. Tiesha died in April 2016. Johnson re-married to Whitney Crockett-Johnson. With a military deployment approaching for Johnson and strained relations with Crockett-Johnson, the Annys sought grandparent visitation rights to ensure a continuing relationship with their grandson. Crockett-Johnson was not a party to this visitation action.

Johnson and the Annys reached an agreement on visitation. That agreement was reduced to writing and signed by Johnson, the Annys, their attorneys, and Judge Day. Crockett-Johnson was neither named in the agreement, nor did she sign it. The agreement was then reduced to judgment, which was signed by the attorneys and

Judge Day. Crockett-Johnson was neither named in the judgment, nor did she sign it. Before his deployment, Johnson executed a power of attorney and a provisional custody by mandate¹ in favor of Crockett-Johnson.

After Johnson's deployment, problems quickly arose as Crockett-Johnson denied the Annys visitation for various reasons. This led to the Annys filing a contempt rule against Johnson, the signatory to the visitation judgment. Judge Day ordered Johnson to appear for a contempt hearing on July 23, 2019. On July 16, the Annys filed a second rule for contempt against Johnson. Again, Judge Day ordered Johnson to appear on July 23 to show cause why he should not be held in contempt. Significantly, Johnson was on deployment, and the visitation documents did not name Crockett-Johnson.

Complicating matters, on June 19 Johnson fired his attorney, Aidan Reynolds. Reynolds' paralegal signed a return receipt on July 10, confirming the termination. Because Reynolds did not immediately withdraw as attorney of record, his secretary was served with the two contempt rules requiring Johnson's attendance at the July 23 hearing. One service return indicated Reynolds' secretary "says that they were dropped by client and no longer represent him." The second service return indicated personal service on Reynolds' secretary.

Reynolds contacted the Annys' attorney and asked that the July 23 hearing be continued to August 13 so Johnson could retain new counsel. The Annys' attorney agreed. However, no new subpoenas were issued and no one representing Johnson's

¹ "A person having parental authority over a child may delegate the provisional custody of that child by written mandate to any natural person." La. R.S. 9:951. "The mandate of provisional custody shall be effective for the term stipulated, but the stated term shall not exceed one year from the date of execution." La. R.S. 9:952. "A mandate of provisional custody of a child may provide for the health, education, and welfare of the child, including the following: (1) Consenting to and authorizing such medical care, treatment, or surgery as may be necessary for the health, safety, and welfare of the child. (2) Enrolling the child in such schools or educational institutions as may be necessary for his proper education. (3) Disciplining the child in such reasonable manner as may be necessary for his proper rearing, supervision, and training. (4) Doing and performing all other such acts as may be necessary for the shelter, support, and general welfare of the child." La. R.S. 9:953.

interests appeared for the August 13 hearing. Judge Day called Reynolds and asked why neither he nor Johnson were present for the hearing. Reynolds told Judge Day he was fired, he was ill, and he could not come to court. The Annys' attorney asked to proceed. Reynolds asked for a continuance. Judge Day agreed to continue the August 13 hearing, but, according to Reynolds, told him she required Johnson (on deployment), Crockett-Johnson (not a party), or their attorney to appear before 4:00 p.m. on August 14 and sign a receipt for notice of a new hearing. In a sworn statement to the Judiciary Commission, Judge Day testified:

So Mr. Reynolds was saying that he was ill and I didn't want to have to make him come to court, but I did say [Crockett-Johnson] has an option. She can come up here now and she can sign notice, or she can come before 4:00 p.m. I didn't care as long as she came and signed the notice, but I did say that she had to appear before 4:00 p.m., and I think I gave her until 4:00 p.m. the very next day.

Reynolds attempted to notify both Johnson and Crockett-Johnson of Judge Day's order through email and voicemail. His email to Crockett-Johnson was sent to an incorrect email address. Johnson received Reynolds' email and acknowledged speaking to a new attorney, but did not recall any conversations with Crockett-Johnson. Crockett-Johnson denied knowledge of Reynolds' messages.

Attorney Edmond Jordan contacted Reynolds the next day regarding substituting as counsel for Johnson. At this point, Reynolds believed the issue of the hearing notice was resolved. But, no one appeared to sign a receipt for the notice. On August 19, Judge Day issued an arrest warrant for Crockett-Johnson for her "failure to appear as ordered by Judge Day to sign notice before the end of business on 8-13-19."²

At 1:08 p.m. on August 30, Crockett-Johnson was arrested at the school where she worked and J.J. was a student. Deputies placed five-year-old J.J. in physical

² Judge Day ordered someone to sign a receipt for notice by the end of August 14, but the arrest warrant instead stated the date as August 13.

custody of Mrs. Anny, after determining she was included in the visitation judgment. Crockett-Johnson was transported to the East Baton Rouge Parish jail, photographed, fingerprinted, booked into custody, and held in a jail cell until 3:25 p.m. Upon being released, she immediately retrieved J.J. from Mrs. Anny. That same day, a motion was filed to substitute Edmond Jordan for Aidan Reynolds as counsel for Johnson.

Crockett-Johnson filed a judiciary commission complaint against Judge Day. Following investigation and a hearing, the Commission filed its findings and recommendation with this court. The Commission found the issuance of an arrest warrant for Crockett-Johnson for her “failure to appear as ordered by Judge Day to sign notice” was improper. Judge Day issued the arrest warrant even though Crockett-Johnson was not a party in the proceeding, had not filed pleadings requesting relief, and was not served with a subpoena or summons to appear for the August 13 hearing. Crockett-Johnson was neither in court nor on the phone with Judge Day when she was ordered to appear and sign for the hearing notice, and was not served a subpoena or summons to appear in court to sign for such notice. The Commission found no legal support for issuing an arrest warrant under these circumstances. The Commission concluded Judge Day abused her contempt power, thus constituting judicial misconduct in violation of Canons 1, 2, 2A, and 3A(1) of the Code of Judicial Conduct and Article V, Section 25(C) of the Louisiana Constitution.

Judge Day disagrees with the Commission’s conclusion and seeks relief from this court. She contends the parties’ attorneys agreed that Crockett-Johnson would appear to sign a receipt for the hearing notice and that an arrest warrant would issue if she failed to do so. Judge Day knew Johnson was on military deployment, but believed Crockett-Johnson was substituting for him while he was gone. Judge Day argues she acted in good faith and would not have accepted the attorneys’ agreement

that Crockett-Johnson would accept the notice of hearing if she thought it legally improper. Judge Day believed Crockett-Johnson's failure to appear and sign was "direct" contempt because she failed to appear at a particular time after being ordered to do so. Judge Day argues if there was a legal error in issuing the arrest warrant, it does not constitute judicial misconduct.

DISCUSSION

Contempt may be either direct or constructive. La. Code Civ. Proc. art. 221. "Direct" contempt is "[o]ne committed in the immediate view and presence of the court and of which it has personal knowledge, or a contumacious failure to comply with a subpoena or summons, proof of service of which appears of record." La. Code Civ. Proc. art. 222. Crockett-Johnson's failure to appear did not occur in the immediate view or presence of the court. Rather, according to Judge Day, the "direct" contempt was her alleged "contumacious failure to comply with a subpoena or summons, proof of service of which appears of record." But, Crockett-Johnson was not a party to the proceeding and was never subpoenaed. A review of the record would have confirmed these critical facts. The record confirms that Crockett-Johnson was never under legal compulsion to appear on either July 23, August 13, or before 4:00 p.m. on August 14.

Judge Day relied upon her verbal order issued during the telephone conference on August 13. That order is not a summons or subpoena for purposes of "direct" contempt. *See* La. Code Civ. Proc. art 252 ("The clerk of court shall issue all citations, writs, mandates, summons, subpoenas, and other process of the court in the name of the State of Louisiana. He shall indicate thereon the court from which they issue, sign them in his official capacity, and affix the seal of the court thereto. If service by the sheriff is required, the clerk shall deliver or mail them to the sheriff who is to make the service."). Judge Day's order was not in writing, was not issued

by the clerk, and did not comply with the legal requirements for a subpoena or summons.

To secure jurisdiction over a non-party, such as Crockett-Johnson, Judge Day could have issued a subpoena requiring her to appear in court. *See* La. Code Civ. Proc. art. 1351 (“The clerk or judge of the court wherein the action is pending, at the request of a party, shall issue subpoenas for the attendance of witnesses at hearings or trials. A subpoena shall issue under the seal of the court. It shall state the name of the court, the title of the action, and shall command the attendance of the witness at a time and place specified, until discharged.”). Instead, having never legally compelled her to appear, Judge Day issued an arrest warrant because Crockett-Johnson failed to appear.

Judge Day’s verbal order was issued to someone Judge Day knew had been discharged and during a status conference in a matter that Crockett-Johnson was never a party to. The attorney receiving that verbal order then conveyed Judge Day’s directive to an incorrect email address. This series of errors emphasizes the importance of a judge carefully and deliberately using *proper* procedure to secure an individual’s presence in court. Judge Day had no legal authority to hold Crockett-Johnson in “direct” contempt.

“Constructive” contempt is “[w]illful disobedience of any lawful judgment, order, mandate, writ, or process of the court[.]” La. Code Civ. Proc. art. 224. Judge Day contends the provisional custody by mandate in favor of Crockett-Johnson allowed her to compel Crockett-Johnson’s appearance. Even if that were correct, a matter to which we do not opine, Judge Day was still required to follow a lawful procedure to determine “constructive” contempt. A person charged with “constructive” contempt is entitled to forty-eight hour notice and a hearing. *See* La. Code Civ. Proc. art. 225. Judge Day provided no notice of her contempt ruling and no opportunity to be heard. Instead, she issued a warrant for Crockett-Johnson’s

immediate arrest. A judge cannot, without prior notice and an opportunity to be heard, order arrest for “constructive” contempt.

In summary, Crockett-Johnson could not be punished for “direct” contempt because she was not legally compelled to appear and sign for the notice. Judge Day’s verbal order did not satisfy the legal requirements for process. If Crockett-Johnson’s actions were “constructive” contempt, then Judge Day failed to follow that procedure. The arrest warrant issued for Crockett-Johnson was without legal authority.

Judge Day argues Crockett-Johnson’s involvement as J.J.’s stepmother and Johnson’s wife mitigates any legal errors. She believed Crockett-Johnson was substituted for her husband while he was deployed. Thus, she believed service of process on Johnson was service of process on Crockett-Johnson. Even if her beliefs and assumptions were correct and Crockett-Johnson was an agent or proxy for Johnson, the facts still do not support her immediate arrest. Considering all evidence, including Judge Day’s proffered evidence motion, we find no law authorized Judge Day to order the immediate arrest of Crockett-Johnson for failing to comply with a verbal directive issued in her absence.

Judge Day also argues the attorneys agreed if Crockett-Johnson did not appear to sign for the notice, then an arrest warrant would issue. She argues Reynolds waived issuance of a formal subpoena and accepted notice for Johnson and his proxy, Crockett-Johnson, to get the continuance. A judge must know the law and follow it faithfully, regardless of whether an attorney consents or fails to object. An attorney’s consent or failure to object does not cloak a judge with authority she does not otherwise possess.

Judge Day’s failure to properly exercise her contempt power deprived Crockett-Johnson of her liberty and violated her fundamental due process rights. Her error is judicial misconduct. *See In re Quirk*, 97-1143 (La. 12/12/97), 705 So.2d

172, 178 (“A single instance of serious, egregious legal error, particularly one involving the denial to individuals of their basic or fundamental rights, may amount to judicial misconduct.”).

An aggravating fact that we cannot ignore is that less than ten months before the current violation, Judge Day was admonished by the Commission for similar misconduct in two other cases. Those admonishments were for holding two separate litigants in “direct” contempt and ordering them jailed without first affording them due process and an opportunity to speak, all contrary to Louisiana Code of Civil Procedure article 223. According to the record, Judge Day imposed a jail sentence for contempt that was not authorized by law and exhibited an intemperate judicial demeanor towards the individuals. So, this is the third time it has been proved that Judge Day abused her contempt power. Unfortunately, this reflects a “pattern or practice of legal error.” *Id.* at 178 (“[A] pattern of repeated legal error (although not necessarily the same error) over a period of time can constitute judicial misconduct, regardless of whether the errors were made in bad faith or were egregious in nature.”).

“The contempt power wielded by judges is an awesome responsibility and, when exercising such power, judges must diligently and in good faith comply with the strictures of the law governing its execution. The failure to do so ... constitutes an abuse of the contempt power.” *In re Jefferson*, 99-1313 (La. 1/19/00), 753 So. 2d 181, 185. Judge Day violated Canon 1 by failing to observe a high standard of conduct, which damaged the integrity and independence of the judiciary. She violated Canons 2 and 2A by failing to respect and comply with the law, thereby eroding public confidence in the integrity and impartiality of the judiciary. She violated Canon 3A(1) by failing to follow the law and maintain professional competence in it.

Judge Day's actions also constitute willful misconduct in violation of Article V, Section 25(C) of the Louisiana Constitution. She did not issue the arrest warrant for Crockett-Johnson until six days after the August 13 conference. Thus, nearly a week passed during which time Judge Day had ample opportunity to reflect, consider the basis for contempt, and ensure proper legal authority for an arrest warrant. She should have known her actions were not permitted by law.

Having found these violations, we must consider an appropriate discipline. We are guided by the following factors: (a) whether the misconduct is an isolated instance or evidences a pattern of conduct; (b) the nature, extent, and frequency of occurrence of the acts of misconduct; (c) whether the misconduct occurred in or out of the courtroom; (d) whether the misconduct occurred in the judge's official capacity or in her private life; (e) whether the judge has acknowledged or recognized that the acts occurred; (f) whether the judge has evidenced an effort to change or modify her conduct; (g) the length of service on the bench; (h) whether there have been prior complaints about this judge; (i) the effect the misconduct has upon the integrity of and respect for the judiciary; and (j) the extent to which the judge exploited her position to satisfy her personal desires. *In re: Chaisson*, 549 So.2d 259, 266 (La. 1989).

(a) Whether the misconduct is an isolated instance or evidenced a pattern of conduct and (b) the nature, extent, and frequency of occurrence of the acts of misconduct

Judge Day received a prior admonishment for failing to follow proper contempt procedures. She was put on notice of the necessity of scrupulously following the law before depriving a person of his liberty. This violation occurred less than ten months after that admonishment. This factor weighs in favor of serious discipline.

(c) Whether the misconduct occurred in or out of the courtroom and (d) whether the misconduct occurred in the judge's official capacity or in her private life

Judge Day's actions were not in open court, but the arrest warrant was issued in her official judicial capacity. This factor weighs in favor of serious discipline.

*(e) Whether the judge has acknowledged or recognized that the acts occurred and
(f) whether the judge has evidenced an effort to change or modify her conduct*

Judge Day cooperated with this investigation. However, she has not acknowledged that her actions violated judicial ethics and the Louisiana Constitution. The Commission was impressed that Judge Day does not appear to recognize and understand her errors. This factor weighs in favor of serious discipline.

(g) The length of service on the bench

Judge Day was admitted to practice law in 1994. She was first elected family court judge in East Baton Rouge Parish in 2011. Her current term ends December 31, 2026. She will attain age 70 during this term, making her current term her last. When this matter arose in 2019, Judge Day had been a judge for eight years and an attorney for twenty-five years. She should have been familiar with, and sensitive to, due process rights and her ethical and constitutional obligations. This factor weighs in favor of serious discipline.

(h) Whether there have been prior complaints about this judge

Judge Day was previously admonished for abusing her contempt authority in two separate cases. These admonishments expressly warned Judge Day there are no exceptions to the procedural requirements for holding a person in contempt. Despite these warnings, her contempt powers were again used and deprived someone of their liberty without following proper procedure. The prior discipline should have prompted extreme caution before depriving someone else of their liberty for contempt. This factor weighs in favor of serious discipline.

(i) The effect the misconduct has upon the integrity of and respect for the judiciary

Judge Day's conduct harmed the integrity of and respect for the judiciary. When a judge abuses the immense power to deprive a person of their liberty, it has a profound effect on public confidence in the judiciary. This factor weighs in favor of serious discipline.

(j) The extent to which the judge exploited her position to satisfy her personal desires

There is no evidence that Judge Day used her position to satisfy personal desires. This factor mitigates against serious discipline.

The factors in favor of serious discipline far outweigh any mitigating factors. We agree with the Commission's recommended discipline. Judge Day's actions were contrary to clear and determined law regarding contempt and resulted in the wrongful arrest of an individual in deprivation of her fundamental due process rights. This error occurred less than ten months after Judge Day was admonished by the Commission for similar conduct in two other cases. Similar, but distinguishable, violations of the contempt power have resulted in harsher discipline. *See In re Jefferson*, 753 So.2d at 194 (removing Judge Jefferson from office for the abuse of his contempt power, as well as for engaging in abusive behavior towards the city prosecutor, dismissing forty-one criminal cases without legal grounds, failing to cooperate with a supernumerary judge, and the unauthorized practice of law); *In re Free*, 16-0434 (La. 6/29/16), 199 So. 3d 571, 605 (suspending Judge Free for one year without pay for his failure to follow proper contempt procedures with respect to two defendants, for his improper comments about a pending case to the district attorney and victims' families outside the presence of the defendants and defense counsel, and for improper language and failing to maintain decorum in his courtroom).

Contempt power is significant. The abuse of that power causes substantial harm to the public's confidence in the judiciary. Considering Judge Day's prior admonishment, the Commission's concern that she fails to fully comprehend her

error, her experience on the bench, and the fact that an individual was actually detained and jailed as a result of this misconduct, we believe a 180-day suspension from judicial office without pay is warranted.

DECREE

Judge Charlene Charlet Day violated Canons 1, 2, 2A, and 3A(1) of the Code of Judicial Conduct and committed willful misconduct in violation of Article V, Section 25(C) of the Louisiana Constitution. It is ordered that Judge Day be and she is suspended from judicial office for 180 days without pay. Judge Day is further ordered to pay the Judiciary Commission of Louisiana \$6,260.00 for costs.

SUPREME COURT OF LOUISIANA

No. 2022-O-00886

**IN RE: JUDGE CHARLENE CHARLET DAY
THE FAMILY COURT IN AND FOR
EAST BATON ROUGE PARISH
STATE OF LOUISIANA**

Judiciary Commission of Louisiana

Hughes, J., dissents in part.

Respectfully, I would impose a lesser penalty. If a party who has been served fails to appear for trial, trial may proceed without that party. It is not the responsibility of the trial judge to round up the participants. The Code of Civil Procedure applies in Family Court.