

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **20th day of October, 2023** are as follows:

BY Crain, J.:

2023-O-00735

*IN RE: JUDGE G. MICHAEL CANADAY FOURTEENTH JUDICIAL
DISTRICT COURT PARISH OF CALCASIEU STATE OF LOUISIANA*

PUBLIC CENSURE ORDERED. SEE OPINION.

SUPREME COURT OF LOUISIANA

No. 2023-O-00735

**IN RE: JUDGE G. MICHAEL CANADAY
FOURTEENTH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU
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 G. Michael Canaday be publically censured.

We agree.

FACTS AND PROCEDURAL HISTORY

In *State v. Bartie*, 14th Judicial District Court Case Number 12615-16, Div. G, Judge Canaday presided over multiple hearings relating to the defendant’s indigency and his request for ancillary funding for defense experts. Because the hearings involved the disclosure of defense strategy, they were conducted without the district attorney, and the transcripts were sealed. Judge Canaday found the defendant was not indigent and denied his request for funding.

The defense filed a writ application with the Third Circuit Court of Appeal challenging the indigency ruling. To facilitate filing the application, Judge Canaday granted defense counsel’s request for transcripts of the hearings. On May 23, 2019, after defense counsel moved to obtain a missing transcript, Judge Canaday ordered the transcript be given to defense counsel and handwrote that it be “release[d] from seal.”

Judge Canaday then received an email from the district attorney’s office asking whether his May 23, 2019 order gave the district attorney’s office access to

the transcripts, or only defense counsel and the Third Circuit. Defense counsel was not copied with this email.

Amber Thibodeaux with the district attorney's office followed up by texting Judge Canaday that she sent him the email. Judge Canaday replied: "Since I don't believe the state could appeal my granting relief to the defense on funding, I don't think they can support the courts [*sic*] position to deny. The courts [*sic*] reasons will be sufficient for the 3rd to review. If the 3rd requests a states [*sic*] response obviously they could access the record." Thibodeaux responded: "Thank you for getting back with me. Enjoy your trip & safe travels! We'll see you on the 9th." Defense counsel was not included in these communications.

Thibodeaux then emailed Judge Canaday a copy of the Third Circuit's writ action, noting the court of appeal reversed him and remanded. Judge Canaday replied: "If the state wants to take up to the Supreme Court, I will unseal the record. GMC." Defense counsel was not copied on this email.

The district attorney's office then filed a "Motion to Unseal All Documents and Transcripts in Regards to Determining Indigency of the Defendant." This motion was styled neither *ex parte* nor unopposed. Without a hearing, on September 30, 2019, Judge Canaday signed an order granting the district attorney's office the requested relief. Defense counsel did not have an opportunity to respond. The materials released by Judge Canaday included a transcript of a closed hearing where defense strategy specific to *Bartie* was discussed, including experts and their expected testimony.

After the September 30, 2019 ruling, defense counsel successfully argued for Judge Canaday's recusal from the *Bartie* case. Writ applications seeking reversal of the recusal were denied by both the Third Circuit and the Louisiana Supreme Court. The recusal and subsequent related writ applications resulted in the expenditure of

significant time, effort, and funds by both the state and defense counsel. There were negative media reports concerning Judge Canaday's actions.

Media reports prompted a Judiciary Commission investigation. Judge Canaday cooperated with the investigation. He entered a stipulation of facts and conclusions of law accepting responsibility for his actions. The Commission found Judge Canaday engaged in improper *ex parte* communications and inappropriately granted a state motion to release documents from seal without holding a hearing or otherwise allowing defense counsel the opportunity to respond. The parties have stipulated these actions violate Canons 1, 2, 2A, 3A(1), 3A(4), and 3A(6) of the Code of Judicial Conduct and constitute willful misconduct in violation of Article V, Section 25(C) of the Louisiana Constitution. The Commission recommended that he be publicly censured and pay costs. According to La. Const. Art. V, § 25(C), the Louisiana Supreme Court is the only authority that can discipline a judge.

DISCUSSION

Judge Canaday has consistently acknowledged and apologized for his misconduct and its impact on the judiciary. According to Judge Canaday, it was not unusual for Thibodeaux to contact him or his secretary regarding scheduling or issues with the daily docket. She contacted him about unsealing the *Bartie* record. Judge Canaday knew any motion filed by the state to unseal the record would require a contradictory hearing. He stated he “did not intend” his communication with Thibodeaux “to be a definitive response as to what my action would be, but only send me a motion.” However, he acknowledged the language he used was inappropriate and that it suggested he would grant such motion. Judge Canaday further admitted he “may have had some ego involved” after the Third Circuit reversed him on his indigency ruling. He believes he may have had a “knee-jerk” reaction to his ruling being deemed incorrect. He wanted the issue before the

Louisiana Supreme Court and knew the district attorney's office would have to file a writ application.

Judge Canaday also admitted not carefully reviewing the state's motion before granting relief without a contradictory hearing or allowing the defense to respond. He said the motion was in a stack of hundreds of discovery-type motions presented when he was without a magistrate and was duty judge. Judge Canaday had a very heavy civil docket, but acknowledged this was "[n]ot an excuse, but part of what was going on at the time." He admitted "just signing things, and I'm not even reading them I should have picked up on it because I'm the first one to tell you that it should be a contradictory motion."

While Judge Canaday said he got "kind of caught up in a perfect storm," he also acknowledged he "created the situation," "made legal error," and "took away from the esteem of the judiciary." After defense counsel moved for his recusal, Judge Canaday recognized there were "a series of failures on [his] part" and determined he was "going to let somebody else look at it and make an independent objective decision." He agreed his eventual recusal was proper and confessed if he was defense counsel, "I would have felt the same way."

Judge Canaday's actions violated: Canon 1, because he failed to observe a high standard of conduct so as to preserve the integrity and independence of the judiciary; Canon 2, because he failed to avoid impropriety or the appearance of impropriety; Canon 2A, because he failed to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary; Canon 3A(1), because he failed to be faithful to the law and maintain professional competence in it; Canon 3A(4), because he, in the performance of judicial duties, by words or conduct manifested bias or prejudice; Canon 3A(6), because he engaged in private or *ex parte* interviews, arguments or

communications designed to influence his judicial action; and La. Const. Art. V., § 25(C), because he engaged in willful misconduct relating to his official duty.

Considering these violations, discipline is required. In imposing discipline, we are guided by the following: (a) whether the misconduct is an isolated instance or evidenced 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 his 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 his 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 his position to satisfy his personal desires. *In re: Chaisson*, 549 So.2d 259, 266 (La. 1989).

(a) Is the misconduct an isolated instance or does it evidence a pattern of conduct and (b) what is the nature, extent, and frequency of the acts of misconduct?

While the misconduct occurred in one judicial proceeding, it involved *ex parte* communications that conveyed to the district attorney's office that it had special access to Judge Canaday or an advantage in his court. His conduct resulted in defense strategy being revealed in a second-degree murder case and gave the impression of the judiciary favoring prosecutors and their requests, even when the law requires otherwise.

(c) Did the misconduct occur in or out of the courtroom and (d) did the misconduct occur in the judge's official capacity or in his private life?

Although the misconduct occurred outside the courtroom, Judge Canaday was at all times acting in his official capacity. It occurred in the course and scope of Judge Canaday's official duties in a high-profile second-degree murder case.

(e) Has the judge acknowledged or recognized that the acts occurred and (f) has he made an effort to change or modify his conduct?

Judge Canaday cooperated with this investigation and accepted responsibility for his actions. He attested to implementing measures to prevent a recurrence. All his communications now go through his legal assistant and any email must include opposing counsel. He does not accept text messages. He reviews all motions before him to determine whether they require a contradictory hearing, which is more manageable now with a magistrate judge tasked with reviewing routine discovery-type motions. Judge Canaday testified he is “much more cautious now in what I sign.”

(g) How long has the judge served on the bench?

Judge Canaday took judicial office on January 1, 2001. At the time of the misconduct, he was an experienced judge of over eighteen years. He should have known not to engage in *ex parte* communications with the district attorney’s office, not to advise how he would rule on an unfiled motion to unseal records, and not to grant such motion without a contradictory hearing.

(h) Have there been prior complaints about this judge?

Judge Canaday was previously cautioned by the Commission for restricting the writing privileges of an incarcerated defendant who was awaiting trial, thus violating Canons 2A and 3A(1). In that case, after the defendant contacted his alleged victims, Judge Canaday denied the defendant writing privileges, except for correspondence sent directly to the court. Though Judge Canaday claimed he was protecting alleged victims from harassment and dealing with a difficult defendant, the Commission was particularly concerned about the personal screening of correspondence, potentially exposing Judge Canaday to case information from outside the record. While that conduct differs from his current conduct, it similarly

involved potential prejudice to a criminal defendant, which could have resulted in his recusal.

(i) What effect did the misconduct have upon the integrity of and respect for the judiciary?

Judge Canaday's actions harmed the integrity of and respect for the judiciary. His *ex parte* communications gave the impression he granted special access and advantages to prosecutors regularly appearing in his court. This impression was reinforced when, upon receiving a motion to unseal records, Judge Canaday failed to thoroughly review it and summarily granted it without the required hearing and without providing defense counsel the opportunity to object. That is inconsistent with a judge's duty to serve as a neutral arbiter. His actions undermined the fair and impartial administration of justice. Upon media reporting on Judge Canaday's actions, public trust in and respect for the judiciary eroded.

(j) To what extent did the judge exploit his position to satisfy his personal desires?

The only evidence that Judge Canaday used his position to satisfy personal desires is his acknowledgment that ego may have played a role in granting the state's motion, because he wanted the state to ask the Louisiana Supreme Court to reinstate his indigency ruling.

Applying these factors, Judge Canaday's misconduct caused substantial harm to public confidence in and respect for the integrity and impartiality of the judiciary. In mitigation, he has apologized and appears genuinely remorseful for his misconduct. He explained the circumstances surrounding his improper actions, has taken measures to prevent a recurrence of the conduct, and has a single prior meritorious complaint over his twenty-plus years as a judge.

The parties agree Judge Canaday should be publicly censured and pay costs, which is supported by precedent. *See In re Badeaux*, 11-0214 (La. 7/1/11), 65 So.3d 1273 (The court publicly censured Judge Badeaux for not recusing himself from a

divorce and custody proceeding between parents who were both friends of his, engaging in *ex parte* communications with the father about custody, and signing a legally deficient order in favor of the father.) We agree a public censure is warranted.

DECREE

Judge G. Michael Canaday violated Canons 1, 2, 2A, 3A(1), 3A(4), and 3A(6) 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 Canaday be and he is publicly censured. Judge Canaday is further ordered to pay the Judiciary Commission of Louisiana \$1,690.25 for costs.