

STATE OF MARYLAND

BEFORE THE COMMISSION ON JUDICIAL DISABILITIES

IN THE MATTER OF:

*

JUDGE ALFRED NANCE

*

CJD 2015-121, CJD 2015-163 and
CJD 2016-012

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To: JUDGE ALFRED NANCE
CIRCUIT COURT OF MARYLAND FOR BALTIMORE CITY
EIGHTH JUDICIAL CIRCUIT

CHARGES

TAKE NOTICE that the Commission on Judicial Disabilities (hereinafter the “Commission”) has caused to be made and completed an investigation, through its Investigative Counsel, Carol A. Crawford, of Judge Alfred Nance (hereinafter sometimes referred to as “Judge”), who was, at all pertinent times, a Judge of the Circuit Court of Maryland for Baltimore City. The Commission notified Judge Nance of the nature of the investigation, and afforded the Judge an opportunity to present information bearing on the subject of the investigation.

The Commission has received and considered information from the investigation, including, but not limited to: information received from numerous sources, complaint and attachments filed by the complainant, audio and visual recordings of the underlying court hearings, the Judge’s response, the recommendation of Investigative Counsel, the Report of the Judicial Inquiry Board, and the Judge’s Objections to the Report of the Judicial Inquiry Board. In consideration of the foregoing and a finding by the Commission of probable cause to believe that Judge Nance has committed sanctionable conduct, the Commission directed that Investigative Counsel initiate formal proceedings, pursuant to Maryland Rule 18-407(a)

(formerly 16-808(a)), against Judge Nance.

The Commission will conduct a public hearing on these charges pursuant to Maryland Rule 18-407 (formerly 16-808). The following facts form the basis for these charges and the Commission's probable cause determination:

1. Judge Nance has served as a Judge of the Circuit Court of Maryland for Baltimore City since 1997. Judge Nance has served as Chief Judge of the Circuit Court of Maryland for Baltimore City since 2014.
2. Based upon information from numerous sources and formal complaint received, the Commission's Investigative Counsel opened an investigation regarding Judge Nance's conduct while he was sitting in the Circuit Court for Baltimore City on the following criminal matters: (a) State of Maryland v. Montrelle Braxton, Case No. 114183039 (hereinafter sometimes referred to as the "Braxton case"), based upon information from numerous sources (CJD 2015-121) and a formal complaint filed by Deborah Katz Levi, Esq. on October 30, 2015 (CJD 2015-163); (b) State of Maryland v. Quinere Harcum, Case No. 115182012 (hereinafter sometimes referred to as the "Harcum case"), and State of Maryland v. Caprice Jones, Case No. 115182010 (hereinafter sometimes referred to as the "Jones case"), based upon the formal complaint filed by Ms. Levi on October 30, 2015 (CJD 2015-163); and (c) State of Maryland v. David Blackwell, Case No. 115112011 (hereinafter sometimes referred to as the "Blackwell case"), based upon information from a source (CJD 2016-012). The investigation was focused on Judge Nance's behavior during open court proceedings on May 26, May 28, May 29, June 1, June 2, and June 3, 2015 in the Braxton case; on September 1, 2015 in

the Harcum and Jones cases; and on December 10, 2015 in the Blackwell case. In all cases, the investigation was focused on allegations that Judge Nance was generally unprofessional in his demeanor and interactions with Ms. Levi, Mr. Blackwell, and other participants in the legal proceedings at issue.

3. Investigative Counsel obtained and reviewed audio and visual recordings of all aforementioned hearings in their totality. In addition, the complaint filed by Ms. Levi, including attachments, the letter of response submitted by Judge Nance, through counsel, dated April 25, 2016, and the Objections to the Report of Judicial Inquiry Board filed by Judge Nance, through counsel, dated July 13, 2016 were reviewed and considered as part of this investigation.
4. The investigation revealed sanctionable conduct by Judge Nance with regard to his disrespectful and unprofessional demeanor during all of the open court proceedings at issue. With regard to the Braxton case, Judge Nance engaged in a pervasive and inappropriate course of conduct throughout the hearings, including, but not limited to, his disrespectful demeanor toward and general mistreatment of Ms. Levi, particularly his chastising her and subjecting her to public humiliation and embarrassment, his mocking and insulting her, and his using a demeaning and sarcastic tone; his general bias and/or prejudice against Ms. Levi, including his repeatedly calling her integrity into question; his threatening Ms. Levi with incarceration without legal justification; and his berating Ms. Levi in the presence of the jury. Judge Nance's persistent course of conduct toward Ms. Levi continued when she appeared before Judge Nance at the Harcum and Jones cases. Additionally, Judge Nance routinely directed his ire at jurors, litigants, attorneys,

defendants, witnesses, law enforcement personnel, and other persons present in the courtroom. With regard to the Blackwell case, Judge Nance was rude and disrespectful to Mr. Blackwell, and his tone was relentlessly mocking.

5. Judge Nance's conduct was in violation of Rules 18-101.1 (formerly 1.1), 18-101.2 (formerly 1.2), 18-102.2 (formerly 2.2), 18-102.3(a) (formerly 2.3(a)), 18-102.5 (formerly 2.5), 18-102.6(a) (formerly 2.6(a)), 18-102.8(b) (formerly 2.8(b)), and 18-102.11(a)(1) (formerly 2.11(a)(1)) of the Maryland Code of Judicial Conduct. In addition, Judge Nance's conduct was in violation of Rule 18-100.4 (formerly C-101, C-102 and C-103 of the Preamble in Maryland Rule 16-813) of the Maryland Code of Judicial Conduct. The pertinent provisions of the Rules provide as follows:

Rule 18-101.1 (Formerly 1.1). COMPLIANCE WITH THE LAW

A judge shall comply with the law, including this Code of Judicial Conduct.

Rule 18-101.2 (Formerly 1.2). PROMOTING CONFIDENCE IN THE JUDICIARY

(a) A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.

(b) A judge shall avoid conduct that would create in reasonable minds a perception of impropriety.

Rule 18-102.2 (Formerly 2.2). IMPARTIALITY AND FAIRNESS

A judge shall uphold and apply the law and shall perform all duties of judicial office impartially and fairly.

Rule 18-102.3 (Formerly 2.3). BIAS, PREJUDICE, AND HARASSMENT

(a) A judge shall perform the duties of judicial office, including

administrative duties, without bias or prejudice.

(b) A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation. A judge shall require lawyers in proceedings before the court, court staff, court officials, and others subject to the judge's direction and control to refrain from similar conduct

Rule 18-102.5 (Formerly 2.5). COMPETENCE, DILIGENCE, AND COOPERATION

(a) A judge shall perform judicial and administrative duties competently, diligently, promptly, and without favoritism or nepotism.

Rule 18-102.6 (Formerly 2.6). ENSURING THE RIGHT TO BE HEARD

(a) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

Rule 18-102.8 (Formerly 2.8). DECORUM, Demeanor, AND COMMUNICATION WITH JURORS

(b) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

Rule 18-102.11 (Formerly 2.11). DISQUALIFICATION

(a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

Rule 18-100.4 (Formerly C-101, C-102 and C-103). PREAMBLE

(a) Importance of Independent, Fair, Competent, Impartial Judiciary. An independent, fair, competent, and impartial judiciary composed of men and women of integrity who will interpret and apply the law that governs

our society is indispensable to our system of justice. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

(b) Dignity of Judicial Office. Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

(c) Function of Code of Judicial Conduct. This Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by this Code. This Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

6. The investigation specifically revealed the following facts upon which the charges are based:

a. State of Maryland v. Montrelle Braxton

On May 26, 2015, Ms. Levi, an Assistant Public Defender, appeared before Judge Nance with her client, Montrelle Braxton, who was charged with first degree murder. The case was set for a jury trial to begin that day, but was reset to May 29, 2015 at the State's request. On May 28, 2015, Ms. Levi appeared before Judge Nance on pretrial matters, including the State's request for a body attachment on one of the State's witnesses, and Ms. Levi's request to exclude certain DNA evidence.

On May 29, 2015, Ms. Levi and Mr. Braxton appeared before Judge Nance for the trial on the merits, and jury selection commenced. The trial continued on June 1 and 2, 2015, at which time Judge Nance found Ms. Levi in contempt. On the fourth day of trial – June 3, 2015 – Judge Nance, *sua sponte*, declared a mistrial, over objection from counsel, and dismissed the contempt finding.¹

During the Braxton case, Judge Nance engaged in a pervasive and inappropriate course of conduct throughout the hearings, including, but not limited to, his disrespectful demeanor toward and general mistreatment of Ms. Levi, particularly his chastising her and subjecting her to public humiliation and embarrassment, his mocking and insulting her, his often referring to her as “Lady” and banging on the bench, and his using a demeaning and sarcastic tone; his general bias and/or prejudice against Ms. Levi, including his repeatedly calling her integrity into question; his threatening Ms. Levi with incarceration without legal justification; and his berating Ms. Levi in the presence of the jury. Judge Nance directed his ire not only toward Ms. Levi, but also toward jurors, litigants, attorneys, defendants, witnesses, law enforcement personal, and other persons present in the courtroom. Examples of Judge Nance’s conduct include, but are not limited to, the following:

- On May 26, 2015, Judge Nance stated to Ms. Levi that she was “wasting my time at the moment, okay?” When Ms. Levi requested the court’s indulgence to speak with the Assistant State’s Attorney, Judge Nance

¹ Ms. Levi later filed a motion to dismiss the case on the grounds that a retrial would subject the defendant to double jeopardy, which was granted by the court (Rubin, J.).

- responded, “Uhhh, no? She can walk to the DOOR with you, but you’re interfering with a trial, do we understand that? Thank you.”
- On May 28, 2015, Judge Nance asked Ms. Levi, unprompted, “Is there something you want to bring to my attention? You’ve got on your, your ‘go to war’ glasses, so I was trying to figure out what was happening.” In interrupting Ms. Levi as she attempted to argue issues related to a body attachment and the exclusion of certain DNA evidence, Judge Nance stated condescendingly, “I’m just a little ole country lawyer, I’m just trying to figure that out, that’s all.”
 - On May 29, 2015, Ms. Levi moved to sequester the witnesses. Judge Nance replied, “Okay, we call it a motion to sequester unless you’re from Montgomery County. Are you from Montgomery County or PG County?” When Ms. Levi explained that she practiced in Montgomery County at one point in her career, Judge Nance stated mockingly, “Okay. It just perks all over you. I just want you know that I have this *fondness* of Montgomery County, NOT, in any case, got my message?” (Emphasis added). Ms. Levi also twice requested a bathroom break for Mr. Braxton. Judge Nance refused, accusing Ms. Levi of “feeding him water”.
 - During jury selection on May 29, 2015, a juror was asked whether she was currently in school. The juror replied that she was and that she had a Master’s degree. Judge Nance exclaimed, “You have a Master’s degree? Thank you very much and I’m having my trouble hearing your ‘*Master’s degree*’ voice.” (Emphasis added). While another juror was being

questioned at the bench, Ms. Levi expressed confusion about an answer given, prompting Judge Nance to state to the juror, “She doesn’t understand the word ‘I think’, she’s asking you as a psychologist to understand she only understands ‘yes’ or ‘no’.” Another juror advised that she had depression and was on medication, to which Judge Nance dismissively replied, “You are doing well and happy as can be. Have a seat.” Later in the day, Judge Nance asked the jurors to wake up another juror so that he “won’t have to throw a piece of ice at him”. He then addressed the juror stating, “I don’t know why you think you should sleep and I can’t?”

- On June 1, 2015, Judge Nance accused Ms. Levi of treating Mr. Braxton “like a child” and “hovering like a mother hen.” Later, this exchange occurred:

Judge Nance: “Why does your client race to be in front of you, to turn? Why does he race to be in front of you? Do you know? I don’t know. Why does he race to be in front of you?”

Ms. Levi: “He’s chivalrous.”

Judge: “He’s chivalrous? There’s a lot of that in the Baltimore City Detention Center.”

- On June 2, 2015, Judge Nance (1) exclaimed to Ms. Levi, “Have you lost your mind?!”; (2) accused Ms. Levi of “purposefully” confusing witness statements and told her to “shut up a minute and listen!” during her argument; (3) interrupted Ms. Levi during witness examination, asking whether she had “any further questions that your client is writing for you to ask? . . . So we don’t act like we’re in Kindergarten again?”; (4) refused

to permit Ms. Levi to approach witnesses under her examination; and (5) condescendingly stated “Does Ms. Levi have any idea how long we sit here waiting?” when she asked for the court’s indulgence during her examination of a witness.

- On June 3, 2015, Judge Nance, in declaring a mistrial, referred to Ms. Levi’s performance as “deficient” and questioned “how many murder trials [Ms. Levi’s] had or trials of such importance?” Judge Nance also accused Ms. Levi of having a “temper tantrum and therefore, as youngsters should be, ignored whenever possible.” In quashing the contempt finding, Judge Nance noted that his intention was to order Ms. Levi to “a weekend at the detention center, so that she could live amongst those that she supposedly represents.” When Ms. Levi objected to the mistrial, Judge Nance twice accused Ms. Levi of “represent[ing] [her] ego” and being on an “ego trip.” While dismissing the jury, Judge Nance instructed Ms. Levi to “leave my courtroom immediately!” and advised Ms. Levi’s supervisor to “watch the smirk on her face”.

b. State of Maryland v. Quinere Harcum
State of Maryland v. Caprice Jones

On September 1, 2015, Ms. Levi appeared before Judge Nance as counsel for the defendants, Quinere Harcum and Caprice Jones. During his questioning Ms. Levi about when the Harcum and Jones cases were assigned to her by the Office of the Public Defender, Judge Nance interrupted Ms. Levi during her answer and

directed the courtroom clerk to assign the case to another judge. When Ms. Levi began to inquire whether Judge Nance would consider an alternative, Judge Nance responded, "Not at all. You can discuss with Judge Doory." Thereafter, the court went off the record.

Once back on the record, Ms. Levi and her clients were visible in the gallery of the courtroom presumably having a private conversation, the audio of which could not be heard. Whereupon, Judge Nance asked Ms. Levi to have her client "step in the hall." Ms. Levi responded that the sheriffs would not permit her clients to exit the courtroom, to which Judge Nance yelled, "NOW! Not in my courtroom! Step in the hall please!" (Emphasis added).

c. State of Maryland v. David Blackwell

On December 10, 2015, Mr. Blackwell appeared before Judge Nance for the purpose of Mr. Blackwell entering a guilty plea in a criminal case. Mr. Blackwell was represented by the Office of the Public Defender. Judge Nance questioned Mr. Blackwell about having previously rejected the State's plea offer and whether he intended to plead guilty or go to trial. Judge Nance also asked Mr. Blackwell twice whether he had any mental disorders. Mr. Blackwell stated that he wanted to accept the plea offer. Judge Nance said, "No you don't" and sent Mr. Blackwell to lock up. Before doing so, Judge Nance stated to Mr. Blackwell, "You wanna play with yourself in front of me and I'll give you three years for contempt. You wanna play with yourself wait until you get back to your cell."

Mr. Blackwell's case was recalled later that afternoon, at which time he entered a guilty plea as to two criminal counts. After voir dire and the State's proffer, Judge Nance accepted the plea and imposed a sentence of incarceration and supervised probation upon Mr. Blackwell. Before discharging Mr. Blackwell, Judge Nance said, "If your tinkle come up dirty, you will be violated."

7. Judge Nance was persistently disrespectful and unprofessional to Ms. Levi throughout the Braxton case. Judge Nance also directed his ire not only toward Ms. Levi, but also toward jurors, litigants, attorneys, defendants, witnesses, law enforcement personnel, and other persons present in the courtroom. This pattern of behavior continued when Ms. Levi appeared before Judge Nance on the Harcum and Jones cases. Additionally, in the Blackwell case, Judge Nance was rude and disrespectful to Mr. Blackwell, and his tone was relentlessly mocking.
8. Judge Nance's behavior provides evidence that Judge Nance engaged in conduct that was prejudicial to the proper administration of justice in Maryland Courts, pursuant to the Maryland Constitution, Article IV, Section 4B(b)(1).

These charges, as authorized by the Commission on Judicial Disabilities, are issued by Investigative Counsel.

COMMISSION ON JUDICIAL DISABILITIES

Date: 11/22/16

Carol A. Crawford
Investigative Counsel

Date: 11.22.16

Tanya C. Bernstein
Deputy Assistant Investigative Counsel

NOTICE: YOU HAVE THE RIGHT, PURSUANT TO RULE 18-407(c) (FORMERLY 16-808(c)) OF THE MARYLAND RULES, TO FILE A WRITTEN RESPONSE TO THIS COMPLAINT WITHIN THIRTY (30) DAYS AFTER SERVICE OF THIS NOTICE UPON YOU. AN ORIGINAL AND ELEVEN (11) LEGIBLE COPIES OF THE RESPONSE ARE REQUIRED. THE RESPONSE SHOULD BE PROVIDED TO THE COMMISSION ON JUDICIAL DISABILITIES.