

SUPREME COURT OF MISSOURI

In re: The Honorable Christina Kunza Mennemeyer

No. SC95938 · No. SC95938 · Decided January 3, 2017

SUMMARY

The Supreme Court of Missouri suspended Judge Christina Kunza Mennemeyer without pay for six months after finding that she intentionally delayed appointing public defenders in probation-violation cases to prevent defendants from seeking a change of judge. The Court held that this conduct violated multiple Missouri Code of Judicial Conduct provisions and constituted misconduct under article V, section 24, of the Missouri Constitution. A concurring opinion addressed the interpretation of Missouri Revised Statutes section 600.042 and concluded that the judge was partially correct about the statute but that this did not excuse her misconduct.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	Per curiam; Breckenridge, C.J.; Stith, J.; Draper, J.; Russell, J.; Wilson, J.; Fischer, J.
JURISDICTION	Missouri
DECIDED	January 3, 2017
DOCKET	SC95938
DISPOSITION	other
PROCEDURAL POSTURE	Original disciplinary proceeding against a Missouri judge. The Commission on Retirement, Removal and Discipline recommended a six-month suspension without pay, and the Supreme Court of Missouri independently reviewed the record.
STANDARD OF REVIEW	The Supreme Court independently reviews the evidence and the Commission's factual findings, giving substantial consideration and due deference to the Commission's credibility determinations. Disciplinary charges must be proved by a preponderance of the evidence.
PRECEDENTIAL VALUE	Published en banc opinion of the Supreme Court of Missouri; the per curiam disciplinary ruling is precedential. The statutory interpretation discussion appears in a separate concurring opinion.

TOPICS

criminal procedure

procedural due process

statutory interpretation

appellate procedure

constitutional law

PRACTICE AREAS

judicial discipline

criminal procedure

public defender representation

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether Respondent's intentional delay in appointing counsel to indigent defendants to prevent a change of judge constituted violations of the Missouri Code of Judicial Conduct and misconduct under article V, section 24, of the Missouri Constitution.
2. Whether threats and a retaliatory disciplinary complaint against public defenders violated the Code of Judicial Conduct and constituted judicial misconduct.
3. Whether the public defender could enter an appearance in a probation-violation case without a court appointment under section 600.042, RSMo Supp. 2013.

HOLDINGS

1. A judge violates the Missouri Code of Judicial Conduct and commits constitutional judicial misconduct by intentionally delaying appointment of counsel to indigent defendants in order to prevent the exercise of their right to seek a change of judge.
2. A judge's threats to file disciplinary complaints against counsel and filing of a disciplinary complaint in retaliation for a complaint against the judge violate the Code of Judicial Conduct and constitute judicial misconduct.
3. The public defender may not enter an appearance for an indigent defendant charged with a probation violation unless the court determines that counsel is necessary to protect the defendant's due-process rights under section 559.036; a separate court order formally appointing counsel is not required once that statutory prerequisite is satisfied.

KEY QUOTATIONS

“Regardless of the correct interpretation of any law – section 600.042 in this case – it is a violation of the Code of Judicial Conduct, and misconduct under the constitutional standard, for a judge to intentionally subvert the rights of litigants.” (4)

“Having reviewed the evidence before the Commission, it is clear that Respondent intentionally delayed the appointment of public defenders to subvert the rights of indigent defendants.” (7)

FACTUAL BACKGROUND

Judge Christina Kunza Mennemeyer delayed appointing public defenders in indigent defendants' probation-revocation cases for 60 days or longer because she sought to prevent the public defender from disqualifying her. The affected defendants were confined and financially eligible for appointed counsel, while Mennemeyer appointed counsel promptly in cases where a change of judge was unavailable. She also threatened bar complaints against public defenders and filed a disciplinary complaint in retaliation for a complaint made by the public defender's director.

PROCEDURAL HISTORY

The director of the Missouri State Public Defender System filed a complaint alleging that Respondent deliberately delayed appointing counsel in probation-violation cases to prevent the public defender from obtaining a change of judge and threatened or filed disciplinary complaints against public defenders. The Commission found multiple violations of the Missouri Code of Judicial Conduct and misconduct under article V, section 24, of the Missouri Constitution, recommending a six-month suspension. Respondent filed no brief or objections in the Supreme Court, which accepted the recommendation after independent review.

DISPOSITION

other

CASES CITED

- In re Hill, 8 S.W.3d 578, 580-83 (Mo. banc 2000)
- In re Elliston, 789 S.W.2d 469, 472, 477 (Mo. banc 1990)
- In re Buford, 577 S.W.2d 809 (Mo. banc 1979)
- In re Briggs, 595 S.W.2d 270 (Mo. banc 1980)
- In re Baber, 847 S.W.2d 800, 802 (Mo. banc 1993)
- State ex rel. Mo. Public Defender Comm'n v. Pratte, 298 S.W.3d 870, 884-85, 887-88 (Mo. banc 2009)
- Mempa v. Rhay, 389 U.S. 128, 130 (1967)