



SUPREME COURT OF APPEALS
CHARLESTON, WEST VIRGINIA

ELIZABETH D. WALKER
Justice

May 4, 2018

Teresa A. Tarr, Judicial Disciplinary Counsel
Judicial Investigation Commission
City Center East – Suite 1200 A
4700 MacCorkle Avenue, SE
Charleston, WV 25304

Via Electronic Mail

Re: Judicial Investigation Complaint No. 41-2018

Dear Ms. Tarr:

This letter is my response pursuant to Rule 2.3 of the Rules of Judicial Disciplinary Procedure to the above-captioned complaint against me filed by Judicial Disciplinary Counsel. Thank you for granting my request for additional time to provide this response.

The “area of concern” identified in the formal complaint is “the Court’s practice of purchasing lunches for themselves and others while at work at the Capitol on work days which include but may not be limited to Argument Dockets and Administrative Conferences.” The formal complaint further states that “the Commission would like you to address” the following:

- (1) What express or implied authority allowed the Court to use State funds to purchase lunches during Argument Dockets and Administrative Conferences?
- (2) What express or implied authority allowed the Court to use State funds to purchase lunches for people other than the Justices during Argument Dockets and Administrative Conferences?
- (3) What public benefit was gained by having the lunches paid for with State funds instead of by the individuals?



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When I took office on January 1, 2017, the practice of providing lunches for Justices and staff seemed to be well-established and neither controversial nor disputed by any members of the Court. I did not question the practice at that time and I did not become aware until later in that year that persons other than Justices, our administrative assistants and circuit judges sitting by special assignment were furnished lunches by the Court.

In January 2017, I was generally aware — as a result of my background in employment law — that employer-provided meals on an employer's premises that are provided "for the convenience of the employer" are not considered income under federal tax law (26 U.S.C. § 119). Admittedly, I did not research whether the practice was restricted by state law. In response to the numbered inquiries (1) and (2) above, I am unaware of any law or regulation prohibiting the Court from providing lunches to Justices and staff on days when we worked through the lunch hour. On those days, it is necessary for key staff to work through lunch in order for us to do our work.

Moreover, I have no personal knowledge of the original decision to provide Court-paid lunches. However, as stated in one of the Court's recent responses to a request under the Freedom of Information Act (FOIA), "the Court has in recent years chosen to remain on the bench without a lunch break until all arguments are concluded as a convenience to litigants and lawyers. Thereafter, a working lunch allows the Court to finish consideration of the cases and other administrative matters." I recall the Court's practice some years ago of taking a lunch break of unpredictable length on argument days, which on occasion resulted in inconvenience for counsel whose cases were not taken up prior to the break. Thus, in response to inquiry (3) above, I believe that Court-provided lunches benefitted the public by enabling the Court to continue and complete its work promptly.

Nonetheless, in the fall of 2017, I began to question whether as a purely personal matter I wanted the Court to provide paid lunches to me and my assistant. After I was elected in 2016, I made a personal decision never to seek reimbursement from the Court for travel expenses (mileage or meals). I have not driven and will not drive a state car for any purpose. I declined the offer made by the Court Administrator in 2016 for the Court to purchase my judicial robe and to provide a computer and printer for my home office. I also personally paid for all catering expenses associated with my swearing-in ceremony in December 2016.



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As a result of my personal concerns, I made a general inquiry as to whether it was possible to compute the 2017 lunch expenses attributed to my assistant and me and was informed that it was too difficult to do so. Regrettably, I did not document this inquiry and response. However, on December 20, 2017 — after a FOIA request was made for the lunch expenditures — I learned that there were records of the expenditures. That day, I sent an email to Sue Troy (the Court's Chief Financial Officer) requesting that the information be shared with the Justice prior to making the FOIA response. As I explained in that email, "[a]ssuming it is permissible from a legal/accounting perspective, I will be writing the Court a personal check for 1/5 of the total." A copy of my email to Ms. Troy and her response is attached as Exhibit A.

On December 28, we were provided records of meals purchased for Justice and staff in 2017 (copy attached as Exhibit B). I reviewed the records and computed the total of all meals provided in 2017 to be \$10,096.20. Although 1/5 of that sum likely exceeded the actual cost of the lunches provided to me and my assistant, out of an abundance of caution I wrote a check for that amount (\$2,019.24) and delivered it to Administrative Director Gary Johnson on December 29, 2017 (copy attached as Exhibit C). To the best of my knowledge, the Court has not paid for lunches for the Justice or staff since November 14, 2017.

I respectfully contend that I did not fail to comply with the law (Rule 1.1), did not fail to act in a manner that promotes public confidence in the independence, integrity or impartiality of the judiciary (Rule 1.2), and did not abuse the prestige of judicial office to advance my personal or economic interest (Rule 1.3).

Regarding the alleged violation of Rules 3.13 and 3.15, I respectfully contend that Canon 3 pertains to extrajudicial activities and not working lunches provided by our employer, the Supreme Court of Appeals of West Virginia. The language and comments to Rule 3.13 make no reference to gifts, loans, bequests, benefits or other things of value given to a judge (or staff, court officials and others subject to the judge's direction and control) by her employer. In addition, the comment to Rule 3.15 specifically states that "reporting of expense reimbursement and waiver of fees under Rule 3.15(A)(3) does not apply to judicial seminars and judicial meetings."

I am concerned about a number of decisions and activities that took place at the Court prior to my taking office. I readily admit that the overall effect of press coverage of

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these decisions and activities has not been positive for the judiciary. I am personally committed to being responsible with public funds and transparent in my work as a Justice.

I understand that you do not wish to meet with me at this time. That being said, I am more than happy to meet with you if you have any questions or concerns about this matter or any other. Thank you for the opportunity to address these issues.

Sincerely,

A handwritten signature in black ink that reads "Beth Walker".

Beth Walker

Enclosures

Walker, Beth

From: Troy, Sue
Sent: Wednesday, December 20, 2017 1:42 PM
To: Walker, Beth
Cc: Johnson, Gary; Loughry, Allen; Davis, Robin; Workman, Margaret; Ketchum, Menis
Subject: RE: 2017 Meal Expenses

Justice Walker,

I am working on locating those documents this afternoon. I don't think my search will be complete until sometime tomorrow. I will provide the documents to Chris Morris so that he can share them with everyone. Chris and I are working together to ensure that all documents are thoroughly reviewed before their release. We will let you know once we have these ready for review.

Thank you,
Sue

Sue Racer-Troy, CPA
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West Virginia Supreme Court of Appeals
1900 Kanawha Blvd. E., Building 1, Room E-100
Charleston, WV 25305
Phone 304-558-0145
Fax 304-558-1212
Sue.Troy@CourtsWV.gov

From: Walker, Beth
Sent: Wednesday, December 20, 2017 1:33 PM
To: Troy, Sue <Sue.Troy@courtswv.gov>
Cc: Johnson, Gary <Gary.Johnson@courtswv.gov>; Loughry, Allen <Allen.Loughry@courtswv.gov>; Davis, Robin <Robin.Davis@courtswv.gov>; Workman, Margaret <Margaret.Workman@courtswv.gov>; Ketchum, Menis <Menis.Ketchum@courtswv.gov>
Subject: 2017 Meal Expenses

Sue,

When you complete a calculation of the Court's spending on meals brought in to the Capitol for the Justices and their staffs in 2017 and before that information is shared in response to a FOIA request, can you share that information with us? Assuming it is permissible from a legal/accounting perspective, I will be writing the Court a personal check for 1/5 of the total.

Thanks very much,

Beth