

No. 19-300

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In The  
**Supreme Court of the United States**

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BETH LEWIS MAZE,

*Petitioner,*

v.

KENTUCKY JUDICIAL CONDUCT COMMISSION,

*Respondent.*

—◆—  
**On Petition For Writ Of Certiorari  
To The Supreme Court Of Kentucky**

—◆—  
**RESPONSE IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

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JEFFREY C. MANDO, ESQ.  
ADAMS, STEPNER, WOLTERMANN  
& DUSING, PLLC  
40 West Pike Street  
Covington, KY 41011  
859.394.6200  
jmando@aswdlaw.com

*Counsel of Record for Respondent,  
Kentucky Judicial Conduct  
Commission*

**COUNTERSTATEMENT OF  
QUESTION PRESENTED**

The question presented is whether Judge Maze's Fifth Amendment rights will be impinged if the Kentucky Judicial Conduct Commission (JCC) conducts a hearing on disciplinary proceedings against her prior to the trial on her pending criminal charges.

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## COUNTERSTATEMENT OF FACTS

Judge Maze is the Chief Circuit Judge for the 21st Judicial Circuit in Kentucky, comprised of Bath, Menifee, Montgomery, and Rowan Counties. On September 28, 2017, she received information that her ex-husband, Donald “Champ” Maze, had been arrested on several criminal charges, including possession of a controlled substance. In an effort to aid him after his arrest, Judge Maze made several phone calls to local elected officials to secure a pretrial officer and district court judge who would be able to assist her ex-husband through the criminal process. Over the next few hours, Judge Maze spoke with Bath County Jailer Earl Willis, who confirmed the arrest and informed her that Mr. Maze was in his custody.

Later that evening, Judge Maze received a call from Jailer Willis and learned that he had taken Mr. Maze to St. Joseph Hospital for a drug test. However, Jailer Willis informed her that the hospital refused to administer the drug test without a court order. According to Judge Maze, she informed Jailer Willis that she “could not do an order for Mr. Maze.” She “knew it was a conflict,” but did it anyway. She faxed a signed Order, handwritten on official form AOC-006-3, to St. Joseph Hospital directing that “a drug test shall be conducted” for Mr. Maze. Shortly thereafter, Judge Maze received a call from Jailer Willis reporting that St. Joseph Hospital would not honor the Order, and that he was taking Mr. Maze to the Clark County Medical Center to try again for a drug test.

After Jailer Willis and Mr. Maze arrived at the Clark County Medical Center, Judge Maze prepared and signed a second Order directing that a drug test be administered. She promptly faxed this second Order, also prepared on official form AOC-006-3, to the Clark County Medical Center. After the hospital refused to honor this Order, Jailer Willis transported Mr. Maze to the Clark County Detention Center for booking.

On November 12, 2017, Judge Maze sent a letter, via her attorney, reporting her actions to the JCC. In her letter, she conveyed to the JCC that she had written and sent two Orders on behalf of Mr. Maze on the night of September 18, 2017, and attached copies of both Orders for the JCC's review. In response, the Commission began an investigation. Since Judge Maze had retained counsel, the JCC contacted her attorney and invited both him and Judge Maze to attend an Informal Conference, which took place on January 26, 2018. After the Informal Conference, Judge Maze requested a second opportunity to appear before the JCC. The JCC denied that request but permitted Judge Maze to submit a letter for the JCC's review and consideration. On February 28, 2018, Judge Maze sent a six-page letter addressing the two September 18, 2017 Orders.

The JCC concluded that the severity of Judge Maze's actions and their impact on the impartial administration of justice warranted formal disciplinary charges. On May 21, 2018, after providing Judge Maze with a copy of its factual file, the JCC charged her with two counts of violating the Judicial Code of Conduct.

Shortly after the JCC filed the charges, Judge Maze filed an appeal to the Kentucky Supreme Court based on grievances she had against the JCC. The Kentucky Supreme Court dismissed that appeal and the JCC's proceedings continued.

On August 6, 2018, WLEX 18 News aired a story focusing on Judge Maze's actions on the evening of September 18, 2017. As part of this news story, Judge Maze discussed her actions and conduct in a lengthy interview with WLEX reporter Leigh Searcy. WLEX 18 News conducted the interview in Judge Maze's courtroom and the Bath County Circuit Clerk recorded it, per Judge Maze's request. As a result of this interview, the JCC learned that Judge Maze signed the name of Mr. Maze's private counsel and the titles of two Bath County elected officials to the Order she sent to St. Joseph Hospital without their knowledge or permission. Because none of the individuals were aware of the Order, and they did not authorize Judge Maze to sign their name or place their titles on it, the JCC brought two additional disciplinary charges against Judge Maze.

The JCC also continued its investigation and learned of actions Judge Maze took to discover confidential informants potentially linked to her ex-husband's pending criminal drug trafficking charges. According to various sources, Judge Maze made numerous, improper inquiries into the identities of confidential informants involved in what have collectively been referred to as the "Syndicate Cases." Based on the facts discovered in its investigation, the JCC brought

a fifth disciplinary charge against Judge Maze on October 18, 2018.<sup>1</sup>

Meanwhile, Special Commonwealth Attorney convened a grand jury to consider criminal charges against Judge Maze. On November 1, 2018, the Bath County Grand Jury returned an indictment against Judge Maze for two counts of forgery and one count of tampering with public records. The criminal case is set for trial on November 12, 2019.

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### PROCEEDINGS BELOW

The JCC's hearing on the five disciplinary charges against Judge Maze was originally scheduled to occur in mid-October 2018, but was rescheduled for December 3, 2018.

On November 14, 2018, two weeks prior to the hearing, Judge Maze moved the JCC to stay the proceedings pending the resolution of the criminal charges, claiming it would violate her Fifth Amendment right against self-incrimination if the JCC hearing was held prior to her criminal trial. Judge Maze also filed two other motions – the first, requesting that the JCC continue the December 3, 2018 hearing, and the second, requesting an opportunity to appear

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<sup>1</sup> Prior to the filing of the fifth disciplinary charge, Judge Maze agreed to an Order of Temporary Suspension effective 12:01 a.m. on October 2, 2018. She has been on paid leave since that time.



informally before the JCC. On November 19, 2018, the JCC entered an Order denying all three motions.

On November 26, 2018, Judge Maze filed an Application for Intermediate Relief in Appellate Court pursuant to Kentucky Rule of Civil Procedure 76.33. The following day, she filed a Notice of Appeal from the JCC's November 19, 2018 Order. After receiving the JCC's Response to the Motion, the Kentucky Supreme Court granted Judge Maze's Application for Intermediate Relief and temporarily stayed the Commission's December 3, 2018 hearing pending further review.

On June 13, 2019, the Kentucky Supreme Court issued an Opinion and Order in which it (a) affirmed the JCC's decision denying a stay of the hearing pending resolution of Judge Maze's criminal charges; (b) dismissed as moot Judge Maze's motion to continue the December 3, 2018 hearing because the Kentucky Supreme Court's acceptance of Judge Maze's Application for Intermediate Relief effectively postponed the December 3, 2018 hearing; and, (c) declined to consider the propriety of the JCC's decision denying Judge Maze an opportunity to appear informally before the JCC, because "Judge Maze's challenge to the JCC's denial of her motion for an informal hearing is an impermissible issue for interlocutory review."

After the Kentucky Supreme Court's ruling, the JCC rescheduled the hearing on the charges against Judge Maze for September 9, 2019. On August 30, 2019, and acting pursuant to Kentucky Rule of Civil Procedure 76.34(4)(a), the Kentucky Supreme Court

granted a stay of the JCC proceedings for ninety days for Judge Maze to file a Petition for Writ of Certiorari and stated that “additional stays should be obtained from the United States Supreme Court.” The stay expired on September 23, 2019.



## **REASONS FOR DENYING THE PETITION**

### **I. THERE IS NO COMPELLING REASON TO GRANT A WRIT OF CERTIORARI**

Judge Maze argues her Petition should be granted because the Kentucky Supreme Court misapplied a properly stated rule of law. Hence, this is not a case in which the decision of the Kentucky Supreme Court conflicts with a decision of another state court of last resort or with a decision of a federal court of appeals on an important federal question. Indeed, Judge Maze does not even suggest, much less argue, that the Kentucky Supreme Court’s decision conflicts with the decision of any other state court of last resort or with any federal court of appeals.

Likewise, Judge Maze does not contend that this is a case in which a state court has decided an important question of federal law that has yet to be addressed by this Court. Instead, Judge Maze complains that the Kentucky Supreme Court’s decision affords her the “false choice” to either “(1) waive her Fifth Amendment right in the civil proceeding to defend herself against the misconduct allegations, which also would constitute a waiver in the criminal case, or (2)

invoke her Fifth Amendment right in the civil case to protect herself in the criminal matter, but preventing her from defending against the misconduct allegations.” (Petition, p. 3) But, this Court has already addressed that choice on numerous occasions. This Court recognizes that one who faces parallel criminal and civil proceedings may have to make the difficult choice currently faced by Judge Maze, but this Court further ruled that such a choice does not run afoul of the Fifth Amendment. *E.g.*, *Williams v. Florida*, 399 U.S. 78, 90 S. Ct. 1893 (1970) (“That the defendant faces such a dilemma demanding a choice between complete silence and presenting a defense has never been thought an invasion of the privilege against compelled self-incrimination.”); *McGautha v. California*, 402 U.S. 183 (1971) (vacated on other grounds by *Crampton v. Ohio*, 408 U.S. 941 (1972)) (“It does not violence to the privilege that a person’s choice to testify in his own behalf may open the door to otherwise inadmissible evidence which is damaging to his case. . . . Although a defendant may have a right, even of constitutional dimensions, to follow whichever course he chooses, the Constitution does not by that token always forbid requiring him to choose.”); *Jenkins v. Anderson*, 447 U.S. 231 (1980), quoting *Chaffin v. Stynchcombe*, 412 U.S. 17 (1973) (“[T]he Constitution does not forbid every government-imposed choice in the criminal process that has the effect of discouraging the exercise of constitutional rights.”); *McKune v. Lile*, 536 U.S. 24 (2002) (Kennedy, J., dissenting), citing *Jenkins, supra* (“It is well-settled that the government need not make the exercise of the Fifth Amendment privilege cost

free.”) The Kentucky Supreme Court’s decision in this case is perfectly consistent with this Court’s governing precedents.

The Petition is premised solely on an alleged misapplication of a properly stated rule of law. The Kentucky Supreme Court quoted *McGautha*, *McKune*, *Jenkins*, and numerous other federal and state authorities in reaching the conclusion that the “choice” faced by Judge Maze does not violate her Fifth Amendment right against self-incrimination. Judge Maze does not take issue with any alleged misstatement of any principle in any of those cases in seeking a writ of certiorari; rather, she takes issue with the Kentucky Supreme Court’s conclusion. Judge Maze’s chief complaint is: “A stay should have been granted to protect Petitioner’s constitutional rights.” (Petition, p. 3) Judge Maze does not take issue with the Kentucky Supreme Court’s identification of the governing legal precedents or its citation of the principles from those precedents. She simply disagrees with the way the Kentucky Supreme Court applied the law. That is not a compelling reason to grant a writ of certiorari.

## **II. THE LONGER THE DISCIPLINARY PROCEEDINGS REMAIN UNRESOLVED, THE BLACKER THE EYE ON THE ADMINISTRATION OF JUSTICE IN KENTUCKY**

Granting Judge Maze’s Petition will only further delay the adjudication of Judge Maze’s disciplinary charges. And, the longer the disciplinary charges

remain unresolved, the blacker the eye on the administration of justice in Kentucky.

The JCC is the body created by the Kentucky Constitution and responsible for “the discipline, retirement or removal of . . . judges of the . . . circuit court . . . under section 121 of the Constitution of Kentucky.” Ky. S. Ct. R. 4.000. “The purpose of Section 121 of our constitution is the regulation of the conduct of those persons charged with the administration of justice.” *Nicholson v. Judicial Ret. & Removal Commn.*, 562 S.W.2d 306 (Ky. 1978). “The aim of [JCC] proceedings . . . is to improve the quality of justice administered within the Commonwealth by examining specific complaints of judicial misconduct, determining their relation to a judge’s fitness for office and correcting any deficiencies found by taking the least severe action necessary to remedy the situation.” *Id.*

Given that purpose, the JCC’s interests in proceeding include: (1) maintaining the integrity of the state’s judicial system by the faithful discharge of its constitutional mandate to regulate the conduct of persons responsible for the administration of justice in Kentucky; and (2) adjudicating all complaints and charges fairly and expeditiously.

Moreover, the general public, the taxpayers, and the citizens of Kentucky’s 21st Judicial Circuit in particular, have a compelling interest in seeing the disciplinary action against Judge Maze move forward promptly. First, the public has a compelling interest in the fair and impartial administration of justice in

Kentucky. The fact that Judge Maze's charges are still pending and her hearing before the JCC has been repeatedly delayed lends itself to a perception that judges are "above the law" and receive special treatment. Second, Judge Maze has been suspended since October 2, 2018, which has caused a need for the appointment of Special Judges to handle her four-county docket. Having to rely on Special Judges is a disruption of routine court business for the citizens of Kentucky's 21st Judicial Circuit, who deserve stability, expedience and reliability in conducting court business. Additionally, the general public and the taxpayers have a financial interest in the timely resolution of the JCC proceedings. Judge Maze has drawn her regular salary for the duration of her suspension and will continue to do so until the JCC proceedings are concluded while the Commonwealth is expending taxpayer funds on the Special Judges who have been appointed to handle Judge Maze's docket. Those expenditures will also continue until the JCC proceedings are concluded. The general public and the citizens of the 21st Judicial Circuit have a compelling interest in the prompt resolution of the charges against Judge Maze.

**III. JUDGE MAZE’S RELIANCE ON THE FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION RINGS HOLLOW SINCE SHE HAS MADE VOLUNTARY STATEMENTS ABOUT THE CONDUCT THAT FORMS THE BASIS OF HER CRIMINAL CHARGES**

Judge Maze argues that allowing the JCC’s disciplinary proceedings to go forward will force her “to choose between testifying in the JCC proceeding and giving up her Fifth Amendment rights in the prosecution.” (Ky. S. Ct., Case No. 2108-SC-000633, Appellant’s Brief, p. 14) However, she fails to acknowledge the impact of her public statements and official responses explaining her preparation, signing and sending the Orders for the benefit of her ex-husband.

Judge Maze voluntarily wrote two letters to the JCC describing in detail the conduct that forms the basis for both the disciplinary and criminal charges against her. In addition, in August of 2018, she gave a lengthy television interview in her courtroom with WLEX 18 News Reporter Leigh Searcy, during which the following exchange occurred:

SEARCY: We asked you about this drug test order on September 18th of last year. You acknowledged you self-reported that. You said it was an error in judgment and that it was an emotional time. We have reached out to Commonwealth Attorney and the Bath County Attorney and each of them told me, on the

record, that they were unaware of this. Who wrote that?

JUDGE MAZE: I did write that. And am I sorry I wrote it? Sure. That night it was a very emotional night. My children were upset, I was upset.

Having made those statements to the JCC and having spoken publicly about the conduct that forms the basis for her criminal charges, Judge Maze's reliance on the Fifth Amendment privilege against self-incrimination in her disciplinary proceedings is "a dog that won't hunt."

Finally, the right against self-incrimination provides two types of protection in criminal proceedings: (a) a criminal defendant cannot be compelled to testify; and (b) the factfinder cannot draw adverse inferences by the defendant's refusal to testify. *Griffith v. California*, 380 U.S. 609 (1965). Here, no one is forcing Judge Maze to testify in either her disciplinary hearing before the JCC or at her criminal trial. If she chooses not to testify at her disciplinary hearing, the JCC – which is the factfinder – cannot draw adverse inferences from that choice. Nor will the court that presides over Judge Maze's criminal trial allow Judge Maze's silence at the disciplinary hearing to be used against her in the criminal trial. Judge Maze's Fifth Amendment privilege is not impaired if the hearing on her disciplinary charges takes place before the trial on her criminal charges.





**CONCLUSION**

For all these reasons, Respondent, the Kentucky Judicial Conduct Commission, respectfully requests that the Court deny Judge Maze's Petition for Writ of Certiorari.

Respectfully submitted,

JEFFREY C. MANDO, ESQ.  
ADAMS, STEPNER, WOLTERMANN  
& DUSING, PLLC  
40 West Pike Street  
Covington, KY 41011  
859.394.6200  
jmando@aswdlaw.com

*Counsel of Record for Respondent,  
Kentucky Judicial Conduct Commission*