

BEFORE THE
JUDICIAL INVESTIGATION COMMISSION
OF WEST VIRGINIA

IN THE MATTER:

COMPLAINT NO. 43-95

Magistrate Lois Kesner
Magistrate for Mineral County

This matter is before the Judicial Investigation Commission upon a complaint filed on March 9, 1995, setting forth certain allegations against Magistrate Lois Kesner, Magistrate for Mineral County.

The complaint alleged inter alia that Magistrate Kesner had participated in the preparation of a bogus ticket by a conservation officer so that the ticket could be served upon Magistrate Kesner and her arraignment could be conducted in front of another Magistrate in the Magistrate Court of Tucker County in order to "test" that Magistrate's handling of Magistrate Kesner's arraignment.

Upon initiation of the complaint an investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure. The investigation revealed that Magistrate Kesner was assigned to preside over a case in Tucker County in September, 1994, in which a defendant was charged with littering. Subsequent to the bench trial of the defendant, Magistrate Kesner told a conservation officer that there had been problems with the procedures followed by a Tucker County Magistrate when conducting arraignments. Magistrate Kesner wondered how this Tucker County Magistrate would arraign her if she presented herself before the Magistrate. She asked

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the conservation officer if he could issue a ticket to her that "he could eat later." The conservation officer pursuant to Magistrate Kesner's request issued a ticket charging her with Highway Litter in violation of West Virginia Code §20-7-26.

Magistrate Kesner then took her copy of the ticket, went into the Tucker County Magistrate's office, and shut the door. She presented the ticket to the Magistrate and asked the Magistrate to handle it. The Magistrate read her rights to her and also read the applicable statute to her. She was released on a \$200 personal recognizance bond.

Subsequently, the conservation officer issued a request for withdraw of the ticket to the other Tucker County Magistrate. This Magistrate has since received the ticket, the Motion to Withdraw Complaint, bail bond form, and the advice of rights form which have been maintained in her desk drawer.

The complaint and the investigation of this matter were reviewed by the Judicial Investigation Commission at its meeting on June 9, 1995, and it was determined that probable cause does exist that Magistrate Lois Kesner violated Canons 1 and 2A of the Code of Judicial Conduct. It was further determined that formal discipline was not appropriate under the circumstances. The Judicial Investigation Commission determined that pursuant to Rule 2.7 (c) a written admonishment would be issued to Magistrate Lois Kesner.

It is, therefore, the decision of the Judicial

Investigation Commission that Magistrate Lois Kesner be and she hereby is admonished for her conduct as is more fully set forth in the matters asserted herein in the complaint filed in this matter on March 9, 1995.

Fred L. Fox, II

Fred L. Fox, II, Chairman

Date: _____

15 JUNE 95