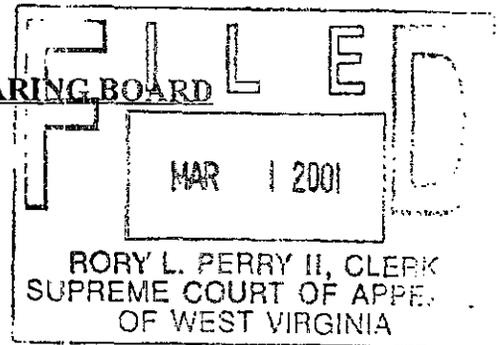


BEFORE THE WEST VIRGINIA JUDICIAL HEARING BOARD

RE: IN THE MATTER OF:

**CAROL FOUTY,
MAGISTRATE OF KANAWHA COUNTY**

CASE NO.: 5-2000

FINDINGS OF FACT, CONCLUSION OF LAW, AND PROPOSED DISPOSITION

This matter comes before the Judicial Hearing Board by a finding from the Judicial Investigation Commission that probable cause existed to file a complaint with the Judicial Hearing Board. The charges filed by the Judicial Investigation Commission are that Respondent, Carol Fouty, violated Canon 1, Canon 2A, Canon 3, Canon B(2)(4) and (5) of the code of Judicial Conduct.

The charges against the Respondent are that she used a racial epithet in her Courtroom, while discussing a domestic violence matter with a female litigant.

I. STATEMENT OF FACTS:

1. Respondent, Carol Fouty, is a Magistrate serving Kanawha County, West Virginia, and has been a Magistrate for Kanawha County, for approximately sixteen (16) years. Respondent is sixty-three (63) years of age.
2. On December 14, 1999, Magistrate Fouty was presiding during what is commonly called "day court" in the Kanawha County Magistrate Court. A female by the name of Misty Shaw appeared before Magistrate Fouty to obtain a Family Violence Civil Contempt Petition. Other people were in the Courtroom at the same time, including Ptl. Keith Peoples and Cpl. Mark Fulks, both of the Charleston Police Department.
3. While Magistrate Fouty was assisting Misty Shaw with her petition, Misty Shaw stated

that her husband would not claim one of their children because the child had dark hair and dark eyes. Misty Shaw went on to say that her husband claimed the child was bi-racial.

4. Magistrate Fouty then asked Misty Shaw, "you don't date black men." When Misty Shaw replied no, Magistrate Fouty then asked Misty Shaw "you mean you don't date niggers." Misty Shaw replied no to that question.
5. Magistrate Fouty then turned to Ptl. Keith Peoples and said "here's a good looking one". Then Magistrate Fouty speaking directly to Ptl. Keith Peoples said "Hey Keith, I'm trying to get you a woman". Keith Peoples is of African American descent.
6. Magistrate Fouty presented testimony of her previous unblemished record as a Magistrate. She also presented testimony of her work in past civil rights movements, and of assisting other African American people.
7. Magistrate Fouty claims that she was repeating what Misty Shaw said to her. However, the "Petition: Order to Show Cause" tends to show, because of its location, that Magistrate Fouty may have inserted the words "Said I was a nigger lover" as an after thought. Magistrate Fouty filled out the petition for Misty Shaw.

II. CONCLUSION OF LAW:

1. Charges by the Judicial Investigation Commission must be proved by clear and convincing evidence. (Rule 4.5 of the Rules of Judicial Disciplinary Procedure). The Judicial Hearing Board believes that the Judicial Investigation Commission proved certain of the charges in this case by clearing and convincing evidence.
2. Canon 1A in part specifically states that "a Judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe

those standards so that the integrity and independence of the judiciary will be preserved. Magistrate Fouty did not act in accordance with Canon 1(A) in this case.

3. Canon 2(A) specifically states that "a Judge shall respect and comply with the law, shall avoid impropriety and the appearance of impropriety in all of the Judge's activities, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary". Magistrate Fouty did not act in accordance with Canon 2A.
4. Canon 3(B)(4) specifically states "a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in the official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control". Magistrate Fouty did not act in accordance with Canon 3(B)(4).
5. The Judicial Hearing Board does not find that Magistrate Fouty violated Canons 3A, 3(B)(2) and 3(B)(5), as charged.

III. RECOMMENDED DISPOSITION:

By an 8-0 vote, the Judicial Hearing Board finds that Magistrate Carol Fouty violated Canon 1(A), Canon 2(A), and Canon 3(B)(4). By an 8-0 vote, the Judicial Hearing Board recommends that Magistrate Carol Fouty be censured and required to pay the costs of this matter.

Respectfully submitted,


Honorable Thomas H. Keadle
Chairman of the Judicial Hearing
Board

STATE OF WEST VIRGINIA

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At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 5th of April, 2001, the following order was made and entered:

In Re: Carol Fouty, Magistrate
for Kanawha County

No. 27832

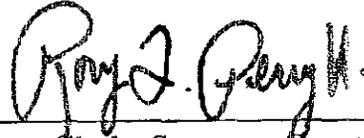
On a former day, to-wit, March 1, 2000, came the Judicial Hearing Board, by the Honorable Thomas H. Keadle, its chairperson, pursuant to Rule 4.8 of the Rules of Judicial Disciplinary Procedure, and presented to the Court its written recommended disposition in the above-captioned matter recommending that the respondent, Carol Fouty, Magistrate for Kanawha County, be censured and be required to reimburse the Judicial Hearing Board for costs in the amount of Three Thousand Three Hundred Five Dollars and Forty-Nine Cents (\$3,305.49), for violating Canons 1(A), 2(a) and 3(B)(4). Thereafter, on the 27th day of March, 2001, came the Office of Disciplinary Counsel, by Charles R. Garten, Judicial Disciplinary Counsel, pursuant to Rule 4.9 of the Rules of Judicial Disciplinary Procedure, and presented to the Court its written consent thereto.

There having heard neither consent nor objection by the respondent, the Court doth hereby adopt the aforesaid recommendation in part. It is therefore ordered that the respondent be, and she hereby is, censured for violating Canons 1(A), 2(A) and 3(B)(4). It is further ordered that the respondent reimburse the Judicial Hearing Board in the amount of One Thousand Five Hundred Dollars (\$1,500.00). Justice Maynard would have refused to adopt the recommendation and would have reprimanded the respondent and

required no reimbursement. Justice Davis would have adopted the recommendation as presented.

A True Copy

Attest:



Clerk, Supreme Court of Appeals