

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF:
MAGISTRATE CAROL A. FOUTY
MAGISTRATE FOR KANAWHA COUNTY**

**COMPLAINT NO. 72-04
COMPLAINT NO. 73-04**

These matters are before the Judicial Investigation Commission upon complaints filed on April 16, 2004, setting forth certain allegations against Magistrate Carol A. Fouty, Magistrate for Kanawha County. In Complaint No. 72-04, it was alleged that Magistrate Fouty placed an advertisement announcing the availability of her services as a Notary Public. In Complaint No. 73-04 it was alleged that Magistrate Fouty issued a protective order from her home to her neighbor who was also her tenant.

Upon receipt of the complaints an investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure. In Complaint 72-04, the investigation revealed that Magistrate Fouty has placed in the Big Book, a telephone directory, an advertisement showing her picture and the seal of the State of West Virginia, which stated, "Carol A. Fouty Notary Public of West Virginia, Charleston, West Virginia, member of National Notary Association."

In Complaint 73-04 the investigation revealed that in April 2004, Carl Roger Workman, III, an individual who rents a house from Magistrate Fouty and her daughter went to Magistrate Fouty's residence and discussed a matter seeking a protective order with Magistrate Fouty. He completed a petition for the protective order at the Magistrate's residence and gave it to her and she issued the protective order.

The complaints and the investigation were reviewed by the Judicial Investigation

Commission at its meeting on October 1, 2004, and it was determined that the two complaints which were filed by the same individual on the same date should be consolidated for purposes of this proceeding. It was determined that probable cause does exist in Complaint No. 72-04 and Complaint No. 73-04, that Magistrate Carol A. Fouty, Magistrate for Kanawha County violated the Code of Judicial Conduct.

In Complaint No. 72-04, the Judicial Investigation Commission determined that probable cause did exist that Magistrate Carol A. Fouty violated the Constitution of West Virginia, Article VIII, § 7, Canon 1 and Canon 4D(1)(a)(b) of the Code of Judicial Conduct. These sections of the Constitution and Code of Judicial Conduct state in relevant part:

Constitution of West Virginia, Article VIII, § 7

“No justice, judge or magistrate shall hold any other office, or accept any appointment or public trust, under this or any other government.”

Canon 1. A judge shall uphold the integrity and independence of the judiciary.

A. An independent and honorable judiciary is indispensable to justice in our society. 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. The provisions of this Code are to be construed and applied to further that objective.

Canon 4. A judge shall so conduct the judge’s extra-judicial activities as to minimize the risk of conflict with judicial obligations.

D. Financial activities.

(1) A judge shall not engage in financial and business dealings that:

- (a) may reasonably be perceived to exploit the judge’s judicial position, or
- (b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

In Complaint No. 73-04, the Judicial Investigation Commission determined that probable cause existed that Magistrate Carol A. Fouty, Magistrate for Kanawha County violated Canon 1, Canon 2A and B and Canon 3A, B and E of the Code of Judicial Conduct. These sections of the Code of Judicial Conduct state in relevant part:

Canon 1. A judge shall uphold the integrity and independence of the judiciary.

A. An independent and honorable judiciary is indispensable to justice in our society. 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. The provisions of this Code are to be construed and applied to further that objective.

Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

A. 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.

B. A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or knowingly permit others to convey the impression that they are in a special position to influence the judge. . . .

Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

A. Judicial duties in general. The judicial duties of a judge taken precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

B. Adjudicative responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

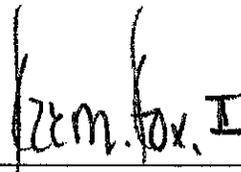
(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

E. Disqualification.

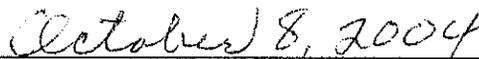
(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. . . .

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) of the Rules of Judicial Disciplinary Procedure that a written admonishment would be given to Magistrate Carol A. Fouty.

It is therefore the decision of the Judicial Investigation Commission that Magistrate Carol A. Fouty be and she hereby is admonished for this conduct as fully set forth in the matters as asserted herein the complaints filed in this matter on April 16, 2004.



Fred L. Fox, II, Chairperson
Judicial Investigation Commission



Date