

**BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA**

**IN THE MATTER OF  
MAGISTRATE RICHARD D. FOWLER  
MAGISTRATE FOR MERCER COUNTY**

**COMPLAINT NO. 82-2011**

**PUBLIC ADMONISHMENT OF MAGISTRATE RICHARD D. FOWLER**

The matter is before the Judicial Investigation Commission upon a complaint filed on May 17, 2011 setting forth certain allegations against Magistrate Richard D. Fowler, Magistrate for Mercer County. The complaint alleged that Magistrate Fowler inappropriately dated the wife/victim of a defendant who had appeared before him on wanton endangerment, stalking and domestic assault charges. It was also asserted that Magistrate Fowler engaged in concurrent employment at the Princeton Speedway without prior approval from the Administrative Director of the State Supreme Court and in violation of an administrative directive contained in the West Virginia Supreme Court of Appeals Personnel Manual Section 11.4 – Limitations on Outside Employment. The complaint alleged that the foregoing actions were in violation of the Code of Judicial Conduct. Upon receipt of the complaint, an investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure. After a review of the complaint, the Magistrate's response to the complaint, the information and documents obtained from the investigation and the pertinent Canons contained in the Code of Judicial Conduct, the West Virginia Judicial Investigation Commission (hereinafter "JIC") found probable cause that Magistrate Richard D. Fowler violated Canons 1A, 2A, 2B, 3A, 3B(1) and (2), 3E(1)(a), and 4D(3) at its June 1, 2012 meeting and order that he be publicly admonished pursuant to Rule 1.11 and Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure, as set forth in the following statement of facts and conclusions found by the Commission:

## STATEMENT OF FACTS

### Dating Relationship

During the evening hours of January 19 and early morning hours of January 20, 2011, Magistrate Fowler was the on-duty Magistrate. At that time, a criminal complaint was filed in the Magistrate Court of Mercer County charging a husband (hereinafter "husband/defendant") with 10 felony counts of wanton endangerment, five counts of stalking, and five counts of domestic assault. The alleged victims in the case were his wife (hereinafter "wife/victim"), her sister and her three minor nephews. Magistrate Fowler found probable cause to issue the criminal complaint and signed that document and the arrest warrant. He also signed a Domestic Violence Protective Order. Thereafter, the husband/defendant was arrested and arraigned by another Magistrate who set his bond at \$50,000.00 cash. The husband/defendant was transported to jail. On February 11, 2011, the husband/defendant pled guilty to one misdemeanor count of domestic assault and was placed on probation in lieu of a six month jail sentence. The remaining charges were dismissed. Another Magistrate handled the plea/sentencing hearing. Magistrate Fowler had known the wife/victim prior to signing the Domestic Violence Protective Order and had at one time worked for her parents before becoming a Magistrate.

Respondent started dating the wife/victim in April or May 2011, approximately two months after the criminal charges had been resolved against her now ex-husband but at a time when he was still serving probation. The relationship between the wife/victim and Magistrate Fowler ended around November 2011. The relationship was confirmed by the wife/victim and her parents. Likewise, Trooper Long, who was the arresting officer in the husband/defendant's case, stated that he knew Magistrate Fowler and the wife/victim were in a relationship but that it started after the husband/defendant had been sentenced.

In his May 23, 2011 written response to the Complaint, Magistrate Fowler did not address whether he ever dated the wife/victim. Instead, he merely stated that he had been friends with the

woman's parents for several years. In his May 14, 2012 interview with a JIC Investigator, Magistrate Fowler maintained that he never dated the wife/victim. Magistrate Fowler stated that after his divorce was finalized in May 2011, the wife/victim asked him to lunch. At first, he declined. He said the two eventually had lunch at a local restaurant but then she started dating someone else.

During interviews of the wife/victim and her parents, the three stated that she gave Magistrate Fowler furniture and other items to furnish a house that he had bought prior to their breakup. According to the three, Magistrate Fowler agreed to return the items if the couple broke up. Subsequently, the wife/victim requested that Magistrate Fowler return the items on several occasions. Magistrate Fowler failed to comply with her requests. She stated that during one attempt to retrieve her stuff, Magistrate Fowler sent a text stating words to the effect, "This is your first warning, leave me alone."

During his May 16, 2012 re-interview, Magistrate Fowler finally acknowledged to the JIC Investigator that he had a personal relationship with the wife/victim but stated that it did not start until after the husband's criminal case had concluded. He also acknowledged sending the text but stated that it was in response to her continuing to contact him after they stopped seeing each other. He also admitted being in possession of the items in question.

**Concurrent Employment:**

Magistrate Fowler has been a Magistrate since 2004. At some point prior to serving as a Magistrate, he worked at the Princeton Speedway, a local automobile racetrack, and at Mr. Bishop's Auto Auction. He last worked at the Auto Auction in 1991 and the racetrack in 1999.

West Virginia Supreme Court of Appeals Personnel Manual Section 11.4 – Limitations on Outside Employment provides in pertinent part:

All judicial branch personnel are prohibited from engaging in any outside employment that might be construed as compromising or interfering with performance in a judicial branch position. . . . Before any judicial branch employee may engage in outside employment for which there is remuneration, he must submit a written request to the

Administrative Director for review and approval. Requests by personnel in the circuits must be accompanied by a recommendation, either favorable or unfavorable, from the supervising circuit judge. The Administrative Director or his designee must determine from the Supreme Court or Chief Justice as appropriate, whether such employment entails a conflict of interest, an impropriety, or the appearance of impropriety.

In 2007, Magistrate Fowler wanted to work as a Magistrate and part-time for a delivery company. The concurrent employment would require Respondent to work a few days a month on the weekends. Pursuant to Section 11.4, Respondent made a written request to the Administrative Director to work at J & B Trucking. By letter dated February 16, 2007, Respondent received the requisite permission to work for the company.

In Spring 2011, Magistrate Fowler approached the owners of the Princeton Speedway and asked about working as the Race Director for the Saturday races. Magistrate Fowler agreed to a salary of \$100.00 for each Saturday. According to the owners, Magistrate Fowler only worked two Saturdays and then failed to show up for work. Magistrate Fowler was then terminated. The owners provided two paychecks that were each made out to Magistrate Fowler in the amount of \$100.00. In the "For" line for each check were the words "Race Director." The checks were drawn on an account belonging to Princeton Speedway, Inc. One check was numbered 1018 and was dated 4/30/2011. The second check number 1040 and was dated 5/7/2011. The owners stated that Magistrate Fowler cashed both checks. They also stated that Magistrate Fowler never returned the checks or money.

Meanwhile, in his written response to the complaint, Respondent denied ever concurrently being employed at the Princeton Speedway and as Magistrate. Instead, Respondent said he only volunteered at the racetrack after becoming Magistrate. During his May 14, 2011 interview with a JIC Investigator, Respondent stated that in early 2011, the owners approached him and asked him to come back to work at the track. He again denied ever receiving any remuneration. During the interview, he was adamant that he never received any money. He also indicated that he may have contacted Kirk Brandfass, General Counsel to the Administrative Office, and was advised that he could not work there.

He was unclear about whether this contact occurred over the telephone or in writing. However, Attorney Brandfass advised that Magistrate Fowler had never requested or received permission to work at the Princeton Speedway. During the May 16, 2011 re-interview, the JIC Investigator showed Magistrate Fowler the two checks. For the first time, Magistrate Fowler admitted receiving the checks but stated that he returned them uncashed at a later date.

### **CONCLUSIONS**

The Commission by a vote of 7-0 found that probable cause does exist in the instant complaint and that Magistrate Richard D. Fowler, Magistrate for Mercer County, violated Canons 1A, 2A, 2B, 3A, 3B(1) and (2), 3E(1)(a), and 4D(3).

#### **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 take 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, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

**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

(3) A judge shall not serve as an officer, director, manager, general partner, adviser or employee of any business entity . . . .

The Commission further determined that formal discipline was not appropriate under the circumstances. However, the Commission found that the violations were serious enough to warrant a public admonishment. First and foremost was Magistrate Fowler's propensity to lie to the JIC

Investigator. Lying to a JIC Investigator is tantamount to lying to the Judicial Investigation Commission.

The Preamble to the Code of Judicial Conduct states:

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to the American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law. . . . Good judgment and adherence to high moral and personal standards are also important.

Truth is the foundation upon which our legal system rests and its firmness depends upon those in charge. We can ask no less of those who come before us than what we ourselves are willing to give.

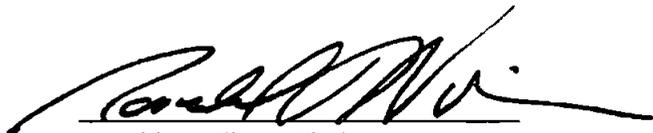
Thus, the veracity of all judicial officers is of paramount concern. By lying to the JIC Investigator about his relationship with the victim of a domestic violence case and by lying about his employment with the Princeton Speedway, Magistrate Fowler violated Canons 1A and 2A of the Code of Judicial Conduct and is hereby publicly admonished.

The State Supreme Court long ago placed great emphasis on domestic violence cases. In Syllabus Point 6 of *In re Browning*, 192 W. Va. 231, 452 S.E.2d 34 (1994) the Court noted that “[domestic violence cases are among those that our courts must give priority status. . . . [T]he West Virginia Legislature took steps to ensure that these cases are handled both effectively and efficiently by law enforcement agencies and the judicial system.” In so doing, the Court recognized the vulnerability of domestic violence victims. *See also In re Toler*, 218 W. Va. 653, 625 S.E.2d 731 (2005). Even though he took no other action in the underlying case after signing the criminal complaint, warrant and domestic violence petition and the wife/victim willingly went on the dates, Magistrate Fowler had a duty to refrain from such activity given her vulnerability at the time and the fact that the case was still active in Mercer County Magistrate Court since the husband was still on probation. By engaging in such activity, Magistrate Fowler violated Canons 1A, 2A, 2B, 3A, 3B(1) and (2), 3E(1)(a) and is hereby publicly admonished.

Lastly, Magistrate Fowler clearly understood the administrative directive set forth in the West Virginia Supreme Court of Appeals Personnel Manual Section 11.4 – Limitations on Outside Employment because he followed the appropriate procedures in 2007 in order to obtain concurrent employment at J & B Trucking. His decision not to seek written authorization for employment was deliberate and therefore constitutes a violation of Canons 3A and 4D(3). Accordingly, Magistrate Fowler is hereby publicly admonished.

It is therefore the decision of the Judicial Investigation Commission that Magistrate Richard D. Fowler be and is hereby publicly admonished for his conduct as fully set forth in the matters asserted

herein the complaint filed in this matter on May 17, 2011 and warns him to refrain from engaging in similar behavior in the future.



Ronald E. Wilson, Chairperson  
Judicial Investigation Commission

JUNE 15, 2012

Date

REW/tat