

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

IN THE MATTER OF

**MAGISTRATE PATRICIA MURPHY
MAGISTRATE FOR OHIO COUNTY**

COMPLAINT NO. 181-2012

PUBLIC ADMONISHMENT OF MAGISTRATE PATRICIA MURPHY

The matter is before the Judicial Investigation Commission upon a complaint filed on November 28, 2012, setting forth certain allegations against Magistrate Patricia Murphy, Magistrate for Ohio County (hereinafter "Respondent"). Upon receipt of the complaint, an investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure. After a review of the complaint, the Respondent's written reply, 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 "Commission") found probable cause that Respondent violated Canons 1A, 2A, 2B, 3A, 3B(1), 3B(2), 3B(5), 3B(7), 3B(9) and 3E(1)(a) at its July 19, 2013 meeting and orders that she 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:

STATEMENT OF FACTS

Respondent took office as a Magistrate in 2005. Prior to that, she served as a magistrate assistant for approximately 24 years. During the weekend of November 10-11, 2012, Respondent was the on call magistrate. Rule 1(b) of the Administrative Rules for the Magistrate Courts of West Virginia governs on call and provides in pertinent part:

One magistrate in each county, on a rotating basis, shall be on call at all times other than regular office hours. On call duties shall extend, in criminal cases, to initial appearances; to taking bond for someone who is in jail; and to receiving and acting upon emergency search warrants, domestic violence matters, and juvenile abuse and neglect matters.

(1) Initial appearances and taking bond in criminal cases. - Within the time periods provided for below, the on call magistrate shall contact the county or regional jail,

whichever applies, and the juvenile detention facility that serves the county, and shall inquire whether any person has been arrested in the county since the close of regular business hours or since the last contact with the jail, or whether anyone confined to the jail is able to post bond. If an arrest has been made or if a prisoner is able to post bond, the magistrate shall proceed immediately to the magistrate court offices to conduct an initial appearance and to set bail for such person, or to accept bond for someone already in jail.

It shall be sufficient to comply with this rule if the on call magistrate contacts the jail and juvenile detention facility:

- (A) Between 10:00 p.m. and 11:00 p.m. Monday through Friday;
- (B) Between 10:00 a.m. and 11:00 a.m. and between 10:00 p.m. and 11:00 p.m. on Saturdays and holidays; and
- (C) Between 12:00 p.m. and 1:00 p.m. and between 10:00 p.m. and 11:00 p.m. on Sundays.

(2) Emergency search warrants, domestic violence matters, and juvenile abuse and neglect matters. - The on call magistrate shall be available and responsible for receiving and acting upon applications for emergency search warrants and petitions for domestic violence protective orders. The on call magistrate shall also respond at any time for the purpose of holding a temporary custody proceeding pursuant to W. Va. Code § 49-6-3(c). When contacted concerning any of these matters, the on call magistrate shall conduct such emergency action as may be necessary at the magistrate court offices or at any other appropriate location approved for such purpose by the supervising circuit judge.

Thus, Rule 1(b)(1) only requires a magistrate to come out and arraign a defendant or take a bond and prepare a jail release twice a day during the weekends – once in the morning and once in the evening. The purpose of this Rule is to ensure that all defendants have an equal opportunity to post bond on the weekends rather than to spend the entire time in custody. Rule 1(b)(2) requires the on call magistrate to come out at all times for emergency search warrants, abuse and neglect matters and domestic violence petitions.

Respondent does not strictly adhere to the weekend on call schedule with respect to contacting the jail between the specified times outlined in Rule 1(b)(1)(B) and (C). According to Respondent, this is because the Northern Regional Jail covers five counties and “we’re all five fighting for times to come in for arraignment.” Instead, Respondent follows a modified schedule of her own making. With respect to Saturday and Sunday mornings, Respondent stated that she goes to the Courthouse between 9:00 and

10:00 a.m. With respect to the evenings, Respondent said she contacts the Regional Jail between 8:00 and 9:00 p.m.

Respondent stated that she constantly checks the jail website when she is on call to see if anyone is arrested. Respondent said that the "Northern Regional Jail is an app on my iPhone, my iPad and my Mac." Respondent stated that she will sometimes go in and arraign someone during off hours at the request of a police officer or lawyer.¹ Respondent could not recall ever coming out during off hours at the request of a civilian to arraign someone although she later provided documents which appear to reflect three other occasions in which she did.² She also stated that she had never before been called by a relative about someone who had been arrested and needed arraigned.

During the afternoon hours of Saturday, November 10, 2012, Wheeling Police Officers Zeke Goddard and Eric Burke were on routine patrol. At approximately 2:28 p.m., the Officers were dispatched to the Stifel Fine Arts Center to investigate an alleged hit and run. A short while later, the officers arrested Corey Murphy for the misdemeanor offense of failure to produce a driver's license and Shelby Brooke Haines for the misdemeanor offenses of first-offense DUI and leaving the scene of an accident.³ Corey Murphy is Respondent's second cousin.

Prior to arresting Ms. Haines, Officer Burke observed that she smelled of alcohol, her speech was slurred, she had trouble maintaining her balance, and she appeared disoriented. When asked if she had been drinking, Ms. Haines replied that she "had a few beers about an hour ago" at her house which is

¹ Respondent provided arraignment documents in multiple cases to demonstrate that she comes out during off hours when she is on call. A review of those cases indicated that Respondent was either required to come during off hours pursuant to Rule 1(b)(2), she was already at the Courthouse handling other arraignments, she was asked to come out by a police officer or lawyer, the times in question were when she was supposed to be at the Courthouse either by her time table or Rule 1(b), or it was a regular work day.

² On April 30, 2012, Respondent, provided more arraignment documents from other cases to demonstrate that she had been come during off hours when called by a civilian. Of these, only three may have any merit. At 4:00 p.m., on Saturday, August 1, 2009, Respondent sent a jail release to the Northern Regional Jail for a defendant. Based upon information and belief, Respondent came in off hours at the request of a civilian who she did not previously know. The other two cases involved requests from civilians who Respondent knew.

³ On March 13, 2013, Ms. Haines entered a conditional plea of guilty to 1st Offense DUI non-aggravated. The conditional plea allowed her to participate in the DUI deferral program pursuant to WV Code § 17C-5-2(b).

located close to the Stifel Center. At some point, Ms. Burke admitted to driving the vehicle to Laurel Avenue. Officer Burke then administered the standard field sobriety tests to Ms. Haines. According to the officer, she failed all three tests.

The officers transported Corey Murphy and Ms. Haines to the Wheeling Police Department. Officer Burke took Ms. Haines to the DUI Processing Room where he read the implied consent form to her. She signed the document at approximately 3:54 p.m. Officer Burke then watched Ms. Haines for the standard twenty minute observation period and noticed that she appeared to fall asleep. Officer Burke then had Ms. Haines attempt to blow on the intoximeter, but she apparently gave insufficient samples for the test.

Meanwhile, Officer Goddard and Corey Murphy were in the booking room. Officer Goddard issued Corey Murphy a Municipal Citation,⁴ and allowed him to make a telephone call. He contacted his sister, Kelli Murphy, who picked him up at the police station and took him home.

Kelli Murphy then returned to her house. She lives near Respondent and saw her outside walking her dog. She spoke with Respondent about the arrests. She told Respondent that her brother had been issued a citation and released but that Ms. Haines may still be at the police station. Respondent stated that Kelli Murphy was upset and she was trying to calm her down. Respondent asked her second cousin whether Ms. Haines "was a nice lady." According to Respondent, Kelli Murphy told her that Ms. Haines was in fact a nice lady and a teacher. Respondent then said, "Ok, I am on call, I will make a phone call and call you back. If need be, can you come get her?" At some point thereafter, Respondent called Corey Murphy at his house and asked him about the arrests. Corey Murphy informed Respondent that he believed Ms. Haines was going to be charged with DUI. Respondent told Corey Murphy she would find out. Respondent acknowledged that she never called any of the other magistrates to see if they could handle the arraignment.

⁴ The charge against Corey Murphy was dismissed by the Municipal Judge after he provided proof that he had a driver's license.

Instead, Respondent contacted the Wheeling Police Department while Ms. Haines was still being processed and spoke with Corporal Talkington. In turn, Corporal Talkington advised Officer Burke that Respondent wanted them to contact her about Ms. Haines' arrest. Respondent wanted to know whether the officers were going to bring Municipal or State charges against Ms. Haines. The officers did not initially return Respondent's call, opting instead to finish processing Ms. Haines. According to the Officers, they believed that Ms. Haines was still extremely intoxicated. They had a difficult time obtaining her fingerprints and signature. They also had a hard time taking her booking photograph because she was swaying from side to side. The officers stated that when they took Ms. Haines to the restroom to wash the fingerprint ink residue away, they noticed that she was "very unsteady" on her feet and at one point, "almost fell over." The officers walked Ms. Haines back to the Booking Room and observed her to be "very unsteady upon her feet." The officers next advised the Northern Regional Jail that they were transporting Ms. Haines there. The officers noted that while walking to the vehicle Ms. Haines was "unsteady upon her feet and had a difficult time entering the rear of the cruiser."

While the officers were on their way to the Regional Jail, Corporal Talkington contacted them and informed them that they needed to call Respondent. Officer Goddard then called Respondent on her cell phone. Respondent asked him what charges were being brought against Ms. Haines and whether they would be filed in Municipal or Magistrate Court. Officer Goddard advised her of the charges and stated that they would be filed in Magistrate Court. According to the officers, Respondent then directed them to turn around and not take Ms. Haines to jail, stating, "I don't want her to spend any time in jail." Respondent admits contacting the officers and stating that she did not want Ms. Haines to spend any time in jail. Respondent denied directing or ordering the officers to return with Ms. Haines. Respondent stated that she merely asked the officers to do so. She also acknowledged that this was the only time she can remember ever asking a police officer to turn around and bring someone back for arraignment.

Respondent then went to Magistrate Court. She called Kelli Murphy to make sure she was coming to get Ms. Haines. She then told Kelli Murphy that she would call her when the arraignment had concluded. Meanwhile, the officers returned to the Wheeling Police Department with Ms. Haines and prepared the criminal complaint.

Respondent again contacted the officers and again inquired as to Ms. Haines charges in order to prepare the arraignment/bond paperwork. According to Officer Goddard and Corporal Talkington, Respondent stated the following toward the end of the conversation: "Can I ask a favor of you? Can you keep my name out of this report?" Respondent admits making this statement. She gave the following explanation to the JIC Investigator:

I would like you to understand what kind of year I have had this year. It has been an election year, and I have been -- the press has been on me really bad for some cases in which all I am doing is my job. . . . So, I did say: "Would you do me a favor? Can you keep my name out of the report?" I know how the police do reports. I know that my cousin was somehow involved. I just didn't want another fiasco in the press.

After completing the criminal complaint, Officers Goddard and Burke took Ms. Haines before Respondent for arraignment. The officers noted the following on page 8 of their incident report:

Magistrate Patty Murphy attempted to explain to Miss Haines several legal documents and the process of hiring a lawyer, deterring Miss Haines from being provided with a public defender. Magistrate Patty Murphy stopped the arraignment process and advised Miss Haines that she (Miss Haines) needed to come back tomorrow (Sunday, November 11, 2012) to be arraigned. Magistrate Patty Murphy made a telephone call, utilizing her cell phone. Miss Haines asked Magistrate Patty Murphy who she contacted to come and pick her up, and Magistrate Patty Murphy stated that Kelly Murphy was coming to retrieve her. Magistrate Patty Murphy looked at the officer and shrugged her shoulders stating, "What can you do? Family." Magistrate Patty Murphy then advised officers that their duties had been fulfilled and they could leave and that Miss Haines would be reprimanded into her (Magistrate Patty Murphy's) custody.

However, Respondent stated:

I did the initial appearance. When I asked her about the -- if she could afford an attorney -- she was hysterical during the whole thing. She was not understanding. I said: "Okay. That's fine. We are going to go ahead and release you on a recognizance bond, and we will come back tomorrow, and we will take care of this tomorrow and go over it so you will fully understand what is going on." . . . I never took her into my own custody. She was released on bond. . . . Before they left, I did say: "What can you do

with family?" Everybody makes idiotic mistakes. It was an embarrassing situation for everyone involved. I was embarrassed, and I was not trying to let anyone off simply because my cousin was involved. I did nothing that I would not normally do for anyone.

Respondent acknowledged letting the officers go and waiting with Ms. Haines until Kelli Murphy arrived to take her home. Respondent denied stopping the arraignment because Ms. Haines was too intoxicated to understand the arraignment process:

Q. [T]he police officers felt that she was very intoxicated. She was stumbling and they felt that she was somewhat incoherent. You didn't have that same feeling that they had?

A. I felt that she was overwhelmed. She went to the bathroom by herself. She came back. She was fine – not fine. She seemed overwhelmed to me. She was nervous.

Q. Okay. But your impression is that she understood what you explained to her on that day when she signed that paperwork?

A. She understood, yes.

Respondent stated that it is her customary practice to ask an intoxicated person whether they are okay before arraigning them. If the individual is not okay and is incarcerated, Respondent will delay the arraignment. However, if the individual is not incarcerated, Respondent will release him or her on bond to a responsible party and have the person return the next day. If the individual tells her that he or she is okay, Respondent proceeds with the arraignment. According to Respondent, she does not let anyone sign the arraignment documents unless she feels comfortable that they understand what she has explained to them. Yet, with respect to Ms. Haines, Respondent stated:

Q. [W]hen she came in for arraignment, did you ask her if she could go through the arraignment and understand what you were going to tell her?

A. I'm sure I did.

Q. Okay. And did you start the arraignment?

A. Yes, I did.

Q. Did you complete the arraignment that evening?

A. I feel I did.

Q. If you felt you completed it and you felt that she was able to understand, why did you have her come back the next day?

A. Because she was overwhelmed and did not understand. I tell that to everyone that I arraign – not everyone. I'm sorry. If you need to ask further questions, you can come in. I do that all the time.

Q. So you didn't make her come back in. You suggested that she come back in?

A. Yeah.

Corey Murphy told the JIC Investigator that he was contacted later that evening about picking up Ms. Haines from the Courthouse, but he does not remember whether it was his sister or Respondent who called him. He declined to pick up Ms. Haines. According to Mr. Murphy, he was told to bring Ms. Haines back to Magistrate Court on Sunday, November 11, 2012 at 9:00 a.m. Mr. Murphy took Ms. Haines back to Respondent's office the next day. He said Ms. Haines completed some paperwork, and the two then left the Courthouse.

Respondent stated that even though someone may come back the next day for clarification, she does not re-arraign them or have them re-sign the paperwork. Ms. Haines' arraignment paperwork, which consists of the initial appearance/rights statement and the criminal bail agreement was dated November 10, 2012. Ms. Haines' signature was affixed next to the typewritten dates indicating that she signed the documents on November 10, 2012. Respondent's signature was also affixed next to the typewritten date of November 10, 2012. Respondent handwrote the date of November 10, 2012 on Paragraph E: Admission to Bail of the criminal bail agreement. The date of the release was listed as November 10, 2012. The Court disposition sheet indicates that the arraignment occurred on November 10, 2012. However, the Request for Deferral of DUI Conviction form was signed and dated by both Respondent and Ms. Haines on November 11, 2012.

The media became aware of the events of November 10, 2013, and began reporting the story the following week. Respondent acknowledges being interviewed by one newspaper and one radio reporter

and admits to discussing the incident with them. In fact, the reporters quoted her in their newspaper and radio stories. Respondent said she discussed the arraignment because she was simply trying to defend herself.

CONCLUSIONS

The Commission, by a vote of 6-0,⁵ determined that probable cause does exist in the instant complaint and that Magistrate Patricia Murphy, Magistrate for Ohio County, violated Canons 1A, 2A, 2B, 3A, 3B(1), 3B(2), 3B(5), 3B(7), 3B(9) and 3E(1)(a) which provide in pertinent 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 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.

⁵ The Commission consists of six judicial officers and three lay members. Two of the three lay members were not in attendance at the July 19, 2013 meeting, and the Chairman of the Commission recused himself.

(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.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice. . . .

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding. . . .

(9) Except for statements made in the course of official duties or to explain court procedures, a judge shall not make any public or nonpublic comment about any pending or impending proceeding which might reasonably be expected to affect its outcome or impair its fairness.

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;

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. 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.

Equal Justice is another valued concept in our legal system. As United States Supreme Court Justice Lewis Powell, Jr. once stated: "Equal justice under law is not merely a caption on the facade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for

which our entire legal system exists. . . . [I]t is fundamental that justice should be the same, in substance and availability. . . ." However, this ideal is rendered meaningless when only some people benefit from a relationship with a judicial officer while others do not. If Respondent chooses to come out during off hours to arraign people or take bonds, she must do so for everyone who is arrested when she is on call and not just those individuals who have access to her by virtue of some relationship. In this case, it is the failure to provide the service to all and the perceived benefit to a few that creates an actual or appearance of impropriety. Respondent compounded the impropriety not only by her actions but also by her words: (1) asking the police officers to turn around and bring Ms. Haines back to the Courthouse for arraignment because she didn't "want her to spend any time in jail;" (2) asking the officers to keep her name out of the police incident report; and (3) her statement about family during Ms. Haines initial appearance. By virtue of this conduct, Respondent violated Canons 1A, 2A, 2B, 3A, 3B(1) and 3E(1)(a) of the Code of Judicial Conduct.

It is also improper for a judicial officer to conduct his or her own investigation into a matter, have *ex parte* communication with a potential witness, or communicate with others about a pending or impending matter outside the presence of the litigants. The rule applies to all matters pending or impending in the jurisdiction and not just those assigned to the judicial officer. Such communications deprive absent parties of an opportunity to respond, may imply bias for or against a litigant, or may insinuate improper influence. Moreover, the information gleaned may be imprecise or incomplete.

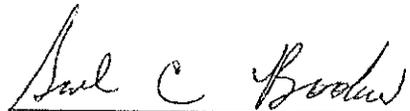
In this case, Respondent should not have discussed the arrests of Corey Murphy and Ms. Haines with Kelli Murphy. She should not have asked Kelli Murphy whether Ms. Haines was "a nice lady." Not only was this question inappropriate but it also created the impression that Respondent will only come out to arraign people who are "nice." Likewise, it was improper for Respondent to contact Corey Murphy and discuss the matter, because at that point, he was a potential witness in Ms. Haines' pending criminal case. By doing so, Respondent violated Canons 3B(5) and 3B(7) of the Code of Judicial Conduct.

Respondent also publicly commented about the case to the media. The comments were not made in the course of official duties or to explain court procedures. Instead, Respondent acknowledged that the comments were made in an effort to defend herself against the public outcry over her actions with respect to the Haines' arraignment. As such, Respondent violated Canon 3B(9) of the Code of Judicial Conduct.

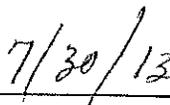
Lastly, Respondent violated Canon 3B(2) by failing to follow proper procedure when arraigning Ms. Haines. At an arraignment, a magistrate explains the charges to a defendant, advises the accused of his or her rights, and usually sets some form of bond. A defendant must understand the nature and extent of the charges in order to enter a plea. A defendant must also understand his or her rights in order to make informed decisions about invoking or waiving them. If a defendant's level of intoxication is such that he or she is unable to comprehend the process then the Magistrate must postpone the arraignment. At that point, a magistrate has the authority to release a defendant to a responsible individual or send the person to a detox center or jail and conduct the arraignment at the next available time after the party regains his or her ability to comprehend and make informed decisions. It is never appropriate to go through with the arraignment process in such cases and then advise the person that he or she may come back the next day to ask questions or seek clarification. The arresting officers believed that Ms. Haines was too intoxicated to be arraigned. Respondent denied this but did acknowledge that Ms. Haines was "hysterical during the whole thing" and "not understanding." She also said she had Ms. Haines come back the next day because "she was overwhelmed and did not understand." Thus, Respondent should have postponed the arraignment until Sunday.

Based upon the foregoing, it is the decision of the Judicial Investigation Commission that Magistrate Patricia Murphy be disciplined. Accordingly, the Judicial Investigation Commission hereby publicly admonishes Magistrate Patricia Murphy for her conduct as fully set forth in the matters asserted herein and warns her to refrain from engaging in similar behavior in the future.

Pursuant to Rule 2.7(c), the Respondent has fourteen (14) days after receipt of the public admonishment to file a written objection. If the Respondent timely files an objection, the Judicial Investigation shall, pursuant to the Rule, file a formal charge with the Clerk of the Supreme Court of Appeals of West Virginia.



Gall C. Boober, Vice-Chairperson
Judicial Investigation Commission



Date