

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF
THE HONORABLE LARRY W. OURS
MAGISTRATE FOR GRANT COUNT**

COMPLAINT NO. 122-2014

The matter came before the Judicial Investigation Commission upon a complaint filed on September 24, 2014, against the Honorable Larry W. Ours, Magistrate for Grant County (hereinafter "Respondent"). After a review of the complaints, 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"), at its December 12, 2014 meeting found probable cause that Respondent violated Canons 1A, 2A, 3B(2), 3B(7) and 3B(8) and ordered that he be publicly admonished pursuant to Rules 1.11 and 2.7(c) of the Rules of Judicial Disciplinary Procedure.

STATEMENT OF FACTS

Respondent became a Magistrate on November 17, 1990, and has served continuously in the capacity since that time. On or about June 13, 2014, Complainant filed a wrongful occupation action against a husband and wife. The case was given Grant County Magistrate Court Case No. 14C-91. Respondent was assigned to preside over the case, and a hearing was held on June 26, 2014. At the conclusion, Respondent entered an Order of Possession/Removal which gave the couple until June 30, 2014 at 5:00 p.m. to remove their personal property and vacate the premises. Respondent also ordered the couple to pay \$550.00 in back rent. Lastly, he ordered the following with respect to Complainant:

[Complainant is] not to be around the residence while [the couple was] taking their belongings out. [Complainant] advised "I can't be on my own property." This Court advised [Complainant] not to be on property while [the couple is]

moving out. No more harassment or threats to [the couple] or I would hold [Complainant] in contempt of court.

On June 30, 2014, the wife filed a complaint with the Grant County Sheriff's Office in which she alleged that Complainant had willfully violated the Order on June 28 and 29, 2014, by being at the residence while the couple was removing their personal property. On July 1, 2014, Respondent issued an arrest warrant for Complainant. The warrant was given Grant County Magistrate Court Criminal Case No. 14M-297. The arrest warrant provided:

Whereas this court has found probable cause to believe that the defendant . . . did commit an offense or offenses in this County on the 28/29th day of June, 2014 previous to the issuance of this Warrant, by unlawfully disobedience to or resistance of any officer of the court, juror, witness, party, or other person, to any lawful process, judgment, decree or order of the Grant County Magistrate Court, to wit: [Complainant] after verbally/and written order by the Magistrate Court defies the court's order of June 26, 2014 by continuing to harass [the couple] while they were attempting to comply with a wrongful occupation of residential proper order. [Complainant] was present during their attempt to move out in violation of Magistrate Court Order 14C-91. In violation of West Virginia Code §§ 61-5-26 and 50-5-11.

No criminal complaint was issued with the warrant. Respondent had Complainant brought before him and the encounter was audio recorded. Before Complainant was brought into the courtroom, Respondent called the matter a "hearing." Respondent also stated that Complainant had "committed a violation." After Complainant came into the courtroom, Respondent twice accused him of violating the order. Complainant denied the allegations. Respondent then said that he would "set it up for hearing at a later date. Right now, I'm gonna give them two days to move out. In the meantime, the possible penalty on civil contempt first offense is \$50.00 plus costs." When Complainant again denied any wrongdoing, Respondent replied that he had "a right to have a hearing and we'll set that up here at a later date. In the meantime, I'm gonna commit you to Potomac Highland Regional Jail for two days to give them time to move out without any further ado." When Complainant stated that he couldn't be sent to

jail, Respondent replied, "You wanna bet." Respondent then ordered Complainant taken to jail. Respondent also stated that Complainant would be released on July 3, 2014 in order to give the couple additional time to move their stuff free from any interference by Complainant.

The jail commitment order listed the charge as "civil contempt; 50-5-11(e) and 61-5-26." The Order also stated under the bail section "[t]o comply with court order issued on June 26, 2014 on a wrongful occupation order not to be in or around the residential property while [the couple] was moving which was violated. Under the "other" section Respondent stated that Complainant was "to be released on July 3, 2014 at 12:20 p.m."

At a July 8, 2014 hearing, Respondent told the Complainant that if he had just admitted to the violation on July 1, 2014, he would have been fined \$50.00 and he could have "been on his way." Respondent then called the two days in jail a "sanction." After taking evidence, Respondent found Complainant guilty of first offense contempt of court and fined him \$50.00 plus costs.

CONCLUSIONS

The Commission, by a vote of 8-0,¹ determined that probable cause does exist in the instant complaint and that the Honorable Larry W. Ours, Magistrate for Grant County, violated Canons 1A, 2A, 3B(2), 3B(7) and 3B(8) of the Code of Judicial Conduct 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

¹ The Commission consists of six judicial officers and three lay members. One of the judicial officers was not in attendance at the December 12, 2014 meeting.

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.

Canon 3:

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

B. Adjudicative responsibilities.

(2) A judge shall be faithful to the law and maintain professional competence in it.

(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. . . .

(8) A judge shall dispose of all judicial matters fairly.

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.

A judge has a right to control his or her courtroom through the use of the contempt power. However, a judge must follow appropriate procedures particularly when an alleged contemnor's liberty interests are at issue. In *In re Jefferson*, 753 So.2d 181 (LA 2000), a City Court Judge was removed from office and fined by the Supreme Court of Louisiana for exceeding his contempt powers and not following proper procedures in the exercise thereof in

connection with the City Prosecutor and Clerk of Court. The judge was found to have violated, in part, the equivalent of our Canons 1, 2A, and 3B(2) of the Code of Judicial Conduct for twice holding in contempt the City Prosecutor without giving him an opportunity to be heard orally by way of defense or mitigation and imposing a jail sentence that far exceeded the legally permissible punishment. *Id.* He was also deemed to have violated the same Canons for holding the City Clerk in contempt in an instance where there was no proceeding before him as a judicial officer and by using it as a way to address an administrative matter. *Id.*

The Court noted that the “contempt power wielded by judges is an awesome responsibility and, when exercising such power, judges must diligently and in good faith comply with the strictures of the law governing its execution. The failure to do so, as in this case, constitutes an abuse of the contempt power.” *Id.* at 185. We agree with the Louisiana Supreme Court.

W. Va. Code § 50-5-11 governs a magistrate’s powers with respect to holding a person in contempt and states:

A magistrate may punish for contempt of court a person guilty of any of the following acts:

- (a) Contemptuous or insolent behavior toward such magistrate while engaged in the trial of a case or in any other judicial proceeding;
- (b) Any breach of the peace, willful disturbance, or indecent conduct in the presence of such magistrate while so engaged, or so near as to obstruct or interrupt the proceedings;
- (c) Violence or threats of violence to such magistrate, or any officer, juror, witness, or party going to, attending, or returning from, any judicial proceeding before the court with respect to anything done or to be done in the course of such proceeding;
- (d) Flagrant misbehavior of any officer of the county acting in his official capacity with respect to any action or judicial proceeding had or pending before the court, or any process, judgment, order or notice therein; or

(e) Willful resistance by an officer of the court, juror, witness, party or other person to any lawful process or order of the court.

A magistrate may, if necessary, issue a warrant of arrest for such person, who shall be given an opportunity to be heard. In the event such person is adjudged guilty of contempt, the person may be fined not more than fifty dollars for the first offense. . . .

Importantly, the provision does not give a magistrate any authority to place someone in jail for any reason on a first-offense civil contempt charge.

As a magistrate with 24 years' experience and a familiarity with the contempt provisions as evidenced by the investigation in this matter, it is clear that Respondent knew he could not place the Complainant in jail without benefit of a hearing. Instead, of following the clearly mandated law, Respondent enforced his will. His argument that he was simply imposing a sanction when he put Complainant in jail so that the couple could retrieve their belongings without interference is without merit. The term "sanction" clearly implies penalty; and the only one that could be given in this instance was a \$50.00 fine. In reality, the penalty that Complainant received was not limited to the fine but included two days in jail. Thus, Respondent clearly levied a sanction that far exceeded the legally permissible punishment.

By his own statements during the hearings, it is evident that Respondent had already pre-judged the case before Complainant had ever appeared in court following his arrest. Respondent was upset when Complainant did not admit any wrongdoing during the initial appearance. Instead of set a hearing and sending him on his way, Respondent sent Complainant to jail. Moreover, Respondent only considered hearsay evidence contained in the warrant from the Sheriff before imposing jail time. This constitutes an improper *ex parte* communication. Respondent never afforded the Complainant any meaningful right to be heard, to confront and

cross examiner his accusers, or to present a defense. He simply took the warrant as gospel when he imposed jail time.

Based upon the foregoing, it is the decision of the Judicial Investigation Commission that the Honorable Larry W. Ours, Magistrate for Grant County, be disciplined. Accordingly, the Judicial Investigation Commission hereby publicly admonishes the Honorable Larry W. Ours, Magistrate for Grant County, for his conduct as fully set forth in the matters asserted herein and warns him to refrain from engaging in similar behavior in the future.

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


Ronald E. Wilson, Chairperson
Judicial Investigation Commission

19 DECEMBER 2014
Date