

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

IN THE MATTER OF  
THE HONORABLE AMY J. SWISHER  
JUDGE OF THE 19<sup>TH</sup> FAMILY COURT CIRCUIT

COMPLAINT NOS. 57-2014  
63-2014

The matter came before the Judicial Investigation Commission upon complaints filed on April 14 and 24, 2014, against the Honorable Amy J. Swisher, Judge of the 19<sup>th</sup> Family Court Circuit (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(4) and 4A(1) through (3) and ordered that she 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 Family Court Judge on January 1, 2009, and has served continuously in the capacity since that time. On April 14 and 24, 2014, Complainant filed ethics complaints against Respondent. Complainant is the girlfriend of Respondent's ex-husband.

On February 28, 2014, Respondent went to Magistrate Court and obtained a temporary personal safety order against Complainant from Marion County Magistrate Cathy Reed-Vanata.

Subsequently, the Honorable Michael John Aloj, Chief Judge of the Sixteenth Judicial Circuit, disqualified all of the Marion County Magistrates from presiding over the final hearing on the personal safety order. By Order entered March 12, 2014, the Chief Justice of the Supreme Court of Appeals of West Virginia appointed Monongalia County Magistrate Darris Summers to preside over the matter, which was styled Marion County Magistrate Case No. 14-S-3.

The final hearing was held on March 18, 2014. Complainant and Respondent attended the hearing. Magistrate Summers stated that Respondent "used the F-bomb numerous times" during the hearing while Complainant sat quietly. He also noted that Respondent was loud and interrupted the proceeding several times. Magistrate Summers stated that at the conclusion of the hearing, he granted the final personal safety order. Magistrate Summers stated that the order was supposed to be in effect for one year. Nonetheless, the final order indicated that it would "remain in effect until the 18<sup>th</sup> day of March 2014." Thus, the final order expired on the same day that it was entered.

Additionally, Magistrate Summers marked on the final order that "[Complainant] shall stay away from the place of employment, school, and residence of [Respondent]." However, Magistrate Summers, Complainant, and Respondent all stated Magistrate Summers orally advised the parties that Complainant was permitted at the Marion County Courthouse to conduct business and if necessary go to the third floor provided that she make every effort to avoid Respondent.

On April 2, 2014, a post-divorce hearing was scheduled in *Swisher v. Swisher*, Marion County Case No. 12-D-396. The hearing was held at the Kanawha County Judicial Annex in Charleston with Special Family Court Judge Michael Kelly presiding. Respondent attended the hearing in person and by counsel. Her ex-husband appeared *pro se* by telephone with the approval of the Court. According to Mr. Swisher, Complainant and he were sitting in his vehicle in Fairmont during the hearing, which began at approximately 10:50 a.m. and concluded at approximately 11:45 a.m.

Mr. Swisher stated that he owed Respondent a \$100.00 payment on a property settlement agreement and he was late. He stated that Respondent had been expecting him to bring the money to the hearing. At the conclusion of the hearing, Complainant and he drove to the Courthouse to make the payment. They went through the metal detectors at the front door and then went to the third floor where Respondent's office is located. Once there, Complainant and Mr. Swisher ran into a Marion County Deputy Sheriff. Mr. Swisher asked him if any of Respondent's staff was in the office. The

Deputy advised that both employees were gone. Mr. Swisher then walked to the office door to put \$100.00 in cash in the mail slot. However, Mr. Swisher decided against the move as he would not have any proof of payment. He then asked Complainant if she would write a check to Respondent for the amount. The two then vetoed the idea because they thought Respondent would not accept payment from Complainant. Complainant and Mr. Swisher then left the Courthouse.

When Respondent returned to the Courthouse later that afternoon, she was informed by a deputy "her ex and a woman were here." She said the deputy told her that Mr. Swisher had been there to drop off a child support payment. Respondent stated that the child support payment is withheld from Mr. Swisher's paycheck, so he could not have come to the Courthouse to make a payment. Respondent acknowledged that her ex-husband also has to pay her \$100.00 a month as part of a property settlement. She told the JIC investigator that he "is always late with his payments and it's like pulling teeth. I would constantly have to ask him for it."

Respondent stated that she contacted the Information Technology Manager for the Courthouse, and he showed her video surveillance of Complainant and Mr. Swisher near her office. She did not observe anything in their hands. She saw Mr. Swisher walk toward her office door while Complainant sat at a table going through her purse. Respondent stated that she was "fearful and that they were coming after me."<sup>1</sup>

Respondent then contacted Fairmont Police Chief Kelly Moran. The Chief, in turn, contacted Marion County Prosecutor Pat Wilson and Fairmont Police Corporal Donald Neal. All three went to Respondent's office, viewed the video and looked over the final personal safety order. The Chief, the Prosecutor and Corporal Neal all agree that Respondent never advised them of Magistrate Summers'

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<sup>1</sup> In her statement to the JIC investigator, Respondent said that at some point during the custody hearing, "Jeff reached a blow-up point." Respondent could not provide any specifics except to say "I know him." However, a review of the hearing DVD does not corroborate Respondent's assertion. Mr. Swisher did not appear to become angry or blow up at any point during the hearing. In fact, Respondent's tone remained constant throughout the hearing. He did not use profanity, threaten anyone or call anyone names.

statement during the final protective order hearing that Complainant could come to the courthouse to conduct business and even go to the third floor as long as she did not go near Respondent. Additionally, none of the three realized that the personal safety order was no longer valid because of the end date. Unaware of the parameters set by Magistrate Summers and that the final order was no longer valid, the Prosecutor believed there was sufficient evidence to charge Complainant with a violation of the personal safety order and authorized a warrant for her arrest.

Chief Moran stated that had he been advised of the parameters set forth by Magistrate Summers, he would have questioned the issuance of the arrest warrant. Prosecutor Wilson stated that had he known of the parameters, he either would not have authorized the issuance of the arrest warrant or at a minimum contacted Magistrate Summers in order to clarify the instructions that had been given to Complainant and Respondent at the time the final personal safety order was issued.

On or about April 3, 2014, Respondent, Chief Moran and Corporal Neal went to Magistrate Reed-Vanata.<sup>2</sup> The Magistrate could tell Respondent was very upset. She asked what was wrong and Respondent told her that she wanted a violation of the personal safety order issued. Magistrate Reed-Vanata then asked her to set forth the grounds. Respondent told her that she had to go out of town that day for business. She then advised that her ex-husband and his girlfriend were on the third floor of the Courthouse that day and she wanted the violation of the personal safety order done. Magistrate Reed-Vanata then asked Respondent if the two had come into her office. Respondent replied "No" but that it didn't matter because Complainant wasn't supposed to be near her or come to her job. Magistrate Reed-Vanata then explained to Respondent that since she was not in her office that day and Complainant had not come near her or stepped foot in her office there was no threat and she would not find probable cause on the violation of the personal safety order. Respondent then stated that the two were on video on the third floor of the courthouse. Magistrate Reed-Vanata again asked Respondent if

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<sup>2</sup> Magistrate Reed-Vanata said this was the first time that Chief Moran had ever come to her office in an attempt to secure a warrant for a violation of a personal safety order.

she was in her office when they were on the third floor and she indicated that she was not present. Magistrate Reed-Vanata again told Respondent "that I didn't feel that this was enough cause to do the warrant for violation of the safety protective order. I said she has the right to go into a public building [and] that I can't keep her out of the Courthouse especially if she didn't do anything to you or make any kind of a threat." Respondent was not happy with the decision. According to the Magistrate, she then stated:

I also told her that she needed to really think this through because she is a Judge and we are held to a higher standard . . . I told [them] that there was already a safety protective order in effect and if she had any real confrontation she knew to call 911. I told all three of them that I didn't feel that there was enough evidence for me to issue the warrant based upon what they told me and truthfully I didn't feel comfortable with the whole situation. . . . She asked me who was on call that night and I told her Magistrate Hayes. [A]fter talking to Mark [Magistrate Hayes] I guess they came into see him later that night.

Respondent and Corporal Neal then went to Magistrate Hayes' office. They requested a domestic violence emergency protective order against Mr. Swisher. According to Magistrate Hayes, Respondent and Corporal Neal sought an arrest warrant against Complainant for a violation of the personal safety order, which he granted. Magistrate Hayes stated that Respondent never told him about the parameters set by Magistrate Summers for Complainant to be at the Courthouse. He stated that had he been advised of the same, he would not have issued the arrest warrant.

A State Police Trooper served the warrant on April 3, 2014 at approximately 7:30 p.m. The Trooper, Complainant and Mr. Swisher stated that Complainant told the officer at the time of her arrest the circumstances surrounding her visit to the Courthouse. The Trooper stated that he believed Complainant but that he was "just the messenger." The Trooper stated that at some point during transport he was notified that the magistrate on duty was not coming out that night and that he was not given a reason. He believes he received this information from the Marion County 911 Center.

Magistrate Hayes advised that he had been contacted by a Fairmont Police Officer about Complainant's arraignment at approximately 9:00 p.m. Magistrate Hayes told the officer that he was

involved in a juvenile matter and was unable to see Complainant at that time. Magistrate Hayes recalled telling the officer that if he wanted to bring Complainant to his office he could but that he would have to wait until he finished with several juveniles. Magistrate Hayes handled three juvenile cases that evening.

After being processed, Complainant was taken to the regional jail where she spent the night. The next morning, Marion County Magistrate Missy Linger arraigned Complainant by video conference. Bond was set at \$1000.00. Complainant was released from the regional jail at 10:35 a.m., April 4, 2014. Subsequently, all of the Marion County Magistrates were disqualified from presiding over the violation charge, which was given Marion County Magistrate Court Case No. 14-M-397. Magistrate Summers was appointed to preside over the violation charge. Likewise, Prosecutor Wilson recused himself and a special prosecutor was appointed.

A hearing was held on July 30, 2014. At the time, Magistrate Summers dismissed the charge against Complainant because he did not believe that she had been a threat to Respondent as the Judge had been in Charleston at the time of Complainant's visit to the Courthouse. Respondent did not attend the hearing.

#### CONCLUSIONS

The Commission, by a vote of 8-0,<sup>3</sup> determined that probable cause does exist in the instant complaint and that the Honorable Amy J. Swisher, Judge of the 19<sup>th</sup> Family Court Circuit, violated Canons 1A, 2A, 3B(2), 3B(4) and 4A(1) through (3) of the Code of Judicial Conduct which provide in pertinent part:

**Canon 1:**

**A judge shall uphold the integrity and independence of the judiciary.**

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<sup>3</sup> 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.

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.

**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. A judge shall not be swayed by partisan interests . . . .

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. . . .

**Canon 4:**

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

A. Extra-judicial activities in general. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

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.

In her zeal to have Complainant charged with a violation of the personal safety order, Respondent exhibited an extreme lack of candor to the magistrates, the prosecutor and law enforcement by not informing them of the parameters with which Complainant could come to the Courthouse. Judges are held to the highest ethical standards of any profession because our livelihood depends on our judgment of others. Therefore, the professional and personal actions of all judges must foster respect for their decisions and for the Judiciary as a whole. Judges require those who come before them to be truthful. We can ask no less of ourselves in our dealings with others.

When Respondent failed to provide the necessary information, she was clearly serving her own agenda; and by doing so, she prevented others from making a fully informed and fair decision. She also cast all fundamental precepts of law to the wind when she engaged in forum shopping and twisted the elements necessary for a violation of a personal safety order to justify the means to affect a carefully orchestrated end.

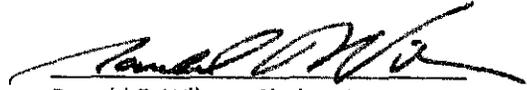
Lastly, Respondent's conduct during the hearing to obtain the final personal safety order was wholly inappropriate. As the Supreme Court of Appeals of West Virginia noted recently in the case of *In re Watkins*, 233 W. Va. 170, \_\_\_, 757 S.E.2d 594, 606 (2013), "[t]he law should provide an exemplar of correct behavior. . . . An impartial manner, courtesy and dignity are the outward sign of that fairness and impartiality that we ask our fellow citizens, often in the most trying of circumstances to believe we in fact possess." A judge should remember at all times that when he/she ignores the dictates of the Canons and speaks in an intemperate manner, the judge again risks losing the public's confidence in the integrity and impartiality of both the judge and the entire judicial system.

Based upon the foregoing, it is the decision of the Judicial Investigation Commission that the Honorable Amy J. Swisher, Judge of the 19<sup>th</sup> Family Court Circuit, be disciplined. Accordingly, the Judicial Investigation Commission hereby publicly admonishes the Honorable Amy J. Swisher, Judge of the 19<sup>th</sup>

Family Court Circuit, 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.

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Pursuant to Rule 2.7(c), Judge Swisher has fourteen (14) days after receipt of the public admonishment to file a written objection. If Judge Swisher 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