

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF:
SCOT A. LAWRENCE, FORMER
MAGISTRATE OF PUTNAM COUNTY**

**COMPLAINT NOS. 82-2015
84-2015**

**PUBLIC ADMONISHMENT OF SCOT A. LAWRENCE,
FORMER MAGISTRATE OF PUTNAM COUNTY**

The matter is before the Judicial Investigation Commission (“JIC” or “Commission”) upon complaints filed by Judicial Disciplinary Counsel on August 13, 2015, and Troy Sexton (“Mr. Sexton”) on August 19, 2015, setting forth certain allegations against Scot A. Lawrence, now a former Magistrate of Putnam County (“Respondent”). Afterwards, pursuant to the Rules of Judicial Disciplinary Procedure, an investigation was conducted.

On December 18, 2015, after assessing the allegations in the complaint, the Magistrate’s response to the accusations, the information and documents obtained from the investigation, the pertinent Canons in the Code of Judicial Conduct, and – of essential importance – a December 4, 2015 agreement by and between Judicial Disciplinary Counsel and Respondent, the JIC found probable cause to believe that former Magistrate Lawrence violated Canons 1A, 2A, 3(B)(2), 3B(4), 3B(5), 3B(7), and 3E(1) of the Code of Judicial Conduct.¹

The Commission further found that formal discipline was not essential since Respondent had agreed to resign his position as Magistrate of Putnam County and never again seek judicial office in

¹ The conduct complained of occurred solely while the 1993 Code of Judicial Conduct was in effect. By Order entered November 12, 2015, the Supreme Court of Appeals of West Virginia adopted a new Code of Judicial Conduct which went into effect on December 1, 2015. Because the new Code did not contain a retroactivity clause, the allegations contained in the complaint are addressed under the former Code.

West Virginia.² Therefore, the Commission ordered that former Magistrate Lawrence be publicly admonished pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure.³

STATEMENT OF FACTS

Respondent was an elected Magistrate serving Putnam County, West Virginia. He won the 2012 General Election and officially took office on January 1, 2013.⁴ He served continuously in that position until his resignation on December 6, 2015, at midnight.

On or about July 11, 2015, Mr. Sexton was pulled over by West Virginia State Police Captain Reggie Patterson while driving on State Route 34 near Hurricane, Putnam County, West Virginia. Mr. Sexton was charged with one misdemeanor count of operating a motor vehicle with an illegal window tint in violation of W. Va. Code § 17C-15-36a and one misdemeanor count of not wearing a seatbelt in violation of W. Va. Code § 17C-15-49(a). The matter was styled *State v. Sexton*, Putnam County Magistrate Court Case No. 15-M-01220.

On July 13, 2015, Mr. Sexton filed a Motion requesting a hearing on the citations. On July 27, 2015, Mr. Sexton filed a letter with the court that was taken by Respondent to be a Motion to Remove the Case to Circuit Court. In the letter, Mr. Sexton insulted Respondent several times

² By letter dated December 5, 2015, Respondent notified the Honorable Phillip M. Stowers, Judge of the 29th Judicial Circuit that he was resigning his position effective Sunday, December 6, 2015, at midnight.

³ The JIC believes that the appropriate action is to issue an admonishment based on judicial economy and the knowledge that the public is protected because Respondent has resigned from office and will never again serve as a judicial officer in West Virginia. See *Terminal Freight Handling Co. v. Solien for and on behalf of NLRB*, 444 F.2d 699 (8th Cir. 1971), *cert denied*, 405 U.S. 996 (1972) (“Generally those engaged in prosecutorial or enforcement activities are allowed a wide discretion and considerable latitude on when to file charges and against whom charges are to be filed. This is necessarily so for many reasons, some more obvious than others. The resources of those engaged in prosecutorial activities as well as the resources of all agencies of the Government and the Country itself are not unlimited. Priorities must be established and the resources available utilized to carry out the primary object of the enforcement activity.”) See also *Fleszar v. U.S. Dept. of Labor*, 598 F.3d 912, 914-15 (7th Cir. 2009), *cert. denied*, 131 S. Ct. 423 (2010) (“An agency must be allowed the authority to decide where its investigative and prosecutorial resources are best applied.”); and *In the Matter of Fowler*, WVJIC Complaint No. 125-2013 (admonishment issued where magistrate had already resigned from the bench and agreed never again to seek judicial office).

⁴ From 1985 through 2010, Respondent worked as a State Trooper and retired with the rank of first lieutenant. Before that, Respondent worked as a deputy for two and one half years and a correctional officer for one year with the Cabell County Sheriff's Department.

including calling him a “WVSPIG” and “piggy.”⁵ Respondent never ruled on Mr. Sexton’s motion. On July 29, 2015, Mr. Sexton filed a Motion to Dismiss the window tint violation. Respondent also never ruled on this motion.

Approximately one week before the *Sexton* trial, Respondent mentioned the matter to Marian Smith (“Advocate Smith”), Director of Victim Services for the Putnam County Prosecutor’s Office. He told her he was going to take care of the matter and that he was going to “stack” the courtroom.

The case went to trial on August 12, 2015. Respondent presided over the bench trial, the State was represented by Putnam County Assistant Prosecutor Elizabeth Sunyog (“APA Sunyog”), and Mr. Sexton represented himself *pro se*. Captain Patterson arrived at the Courthouse early for the hearing. According to Captain Patterson, he passed Mr. Sexton in the hallway and heard him say, “Oink Oink.” Captain Patterson did not react but made his way into Magistrate Court and advised Respondent’s Assistant of the encounter. Respondent overheard the conversation between Captain Patterson and his Assistant.

Respondent ran into APA Sunyog outside the courtroom before the hearing. Respondent told her not to take anything personally that happened during the Sexton trial. Respondent told APA Sunyog that the matter was between Mr. Sexton and him, and that Respondent would “handle it.” Respondent then said: “I’m going to take care of this.”

At the beginning of trial, Respondent never addressed any pre-trial motions. He never addressed the allegation that Mr. Sexton “oinked” at Captain Patterson. Instead, he had the State call its first witness. APA Sunyog called Captain Patterson as her only witness. She merely asked Captain Patterson his name and where he was employed – two standard questions asked by all attorneys of their witnesses during trial. At that point, Respondent slammed down his hand on the

⁵The derogatory term “pig” was frequently used during the 19th century to refer to police officers, disappeared for a while, but reappeared again in the 1960s and 1970s in the underground and anti-establishment cultures and unfortunately, is still used today.

table and asked APA Sunyog in an accusatory tone: “Why are you being demeaning to me? You know I know who he is. You know I know what he does.” (8/12/2015 Trial Tr. at 4).⁶

Instead of giving Ms. Sunyog an opportunity to respond to his accusation or allowing her to continue to conduct the direct examination of her witness, Respondent took control of the State’s case. Respondent conducted the remainder of Captain Patterson’s direct examination, and by doing so failed to ask the requisite questions necessary to establish all of the elements for the crime of illegal window tint.

When he was finished, Respondent did not give APA Sunyog the opportunity to ask Captain Patterson any questions. Instead, he turned his attention to Mr. Sexton and asked him if he wanted to cross-examine the witness:

The Court: I’m going to tell you the way it is, Mr. Sexton. Okay? Do you understand me?
Mr. Sexton: Huh?
The Court: I said do you understand me?
Mr. Sexton: Yeah.
The Court: Yeah (harsh/mockling tone).
Mr. Sexton: Yes.
The Court: Yes (harsh/mockling tone). This is the way it’s going to be Mr. Sexton. If you ask anything demeaning of this witness whatsoever, I’ll find you in contempt of court. I’m already going to find that way, first of all, for the little comment you made to him coming into the courtroom. Do you understand me? . . . If it’s anything demeaning in any manner whatsoever, I’ll find you in contempt of court. They asked what his name was and what he did. To me, that was demeaning. Do you understand that? You are not going to treat him in that manner. Do you understand me? You ask anything out of line that I think is demeaning. I’m going to find you in contempt of court. Do you understand that?

(8/12/15 Trial Tr. at 4-5). Mr. Sexton asked one question which Captain Patterson answered. When Mr. Sexton asked a second question, Respondent without any objection posed by the State said:

⁶ APA Sunyog was an assistant prosecutor in Putnam County from 2007-2011. She returned to work at the Putnam County Prosecutor’s Office in 2013 and has worked there continuously since that time. She testified that she has handled hundreds of bench and jury trials in Magistrate Court during her years of service. She said Respondent was the presiding magistrate in many of those cases. APA Sunyog said that she routinely asks witnesses their name and place of employment. She said the *Sexton* hearing was the only time she had ever been chastised for asking such questions.

“That has nothing to do with this case. Next question” (8/12/2015 Trial Tr. at 6). Mr. Sexton declined to ask any more questions. The State did not offer any other evidence.

Mr. Sexton then took the stand in his own defense without Respondent first explaining his 5th Amendment right against self-incrimination. Respondent did not give Mr. Sexton an opportunity to testify in narrative fashion. Instead, Respondent questioned Mr. Sexton who admitted that he was not wearing a seat belt when he was pulled over by Captain Patterson. Respondent did not give APA Sunyog an opportunity to ask Mr. Sexton any questions. Instead, Respondent taunted Mr. Sexton:

The Court: Now, let's discuss a few other things since you're up here. Okay? You know where I come from, Mr. Sexton, if somebody writes things as derogatory as you did in your motions towards me, and I'm right here with you right here --

Mr. Sexton: Right.

The Court: -- okay, to me, those are fighting words.

Mr. Sexton: Okay.

The Court: Okay? (harsh mocking tone)

Mr. Sexton: Okay.

The Court: Do you want to fight me? Is that what you want?

Mr. Sexton: No.

The Court: Then why are you saying something like that? Like I said, where I come from --

Mr. Sexton: Because I believe you're not a very good person.

The Court: Well, I don't care if you do or don't.

Mr. Sexton: I know you don't.

The Court: Do you think anybody in this courtroom or anybody that's around here thinks you're a good person?

Mr. Sexton: Probably not, but they're mistaken, whatever.

The Court: You know, I've did nothing but try to be fair to you, and then you want to sit here -- you can roll your head all you want to, but I'm going to tell you right now, Mr. Sexton. Why haven't you been by my house like you did to other people? Why didn't you come? I was waiting on you. Why didn't you come? I want to know.

Mr. Sexton: I don't even know where you live.

The Court: Yeah, you do.

Mr. Sexton: No, I don't.

(8/12/2015 Trial Tr. at 8-10).

Respondent then brought up Mr. Sexton's December 2009 conviction for two misdemeanor counts of domestic battery involving his minor sons before again threatening him:

The Court: I want to know why you didn't come.
Mr. Sexton: Why would I come to your house?
The Court: That's what you do to the women and what you do to children.
Mr. Sexton: (Indicating laughing.)
The Court: You beat children.
Mr. Sexton: Yeah. I like to beat children.
The Court: Yeah. How come you didn't come to my house? Why didn't you come? Were you afraid?
Mr. Sexton: No. I just didn't see any reason to come to your house.
The Court: Well, come by any time, Mr. Sexton. Come by any time you want to.
Mr. Sexton: Just knock on your door?
The Court: Oh, you come by any time you want to. You knock on my door or whatever you want to do. Okay?
Mr. Sexton: For dinner or what?
The Court: Yeah. For anything you want to.
Mr. Sexton: All right.
The Court: And see what happens to you.
Mr. Sexton: All right.
The Court: Okay?
Mr. Sexton: I'm going to pay my fine and get home.
The Court: No, you're not. I'm not done with you.

(8/12/2015 Trial Tr. at 10-11).

Respondent then found Mr. Sexton guilty and immediately sentenced him to pay a \$100.00 fine each for the window tint violation the seatbelt violation. However, Respondent did not allow the State or Mr. Sexton to speak before imposing sentence in violation of Rules 19(b)(2) and (c) of the West Virginia Rules of Criminal Procedure for Magistrate Court which state:

- (b) [B]efore imposing sentence the magistrate shall:
 - (2) Address the defendant personally to ask if the defendant wishes to make a statement in the defendant's own behalf and to present any information in mitigation of punishment.⁷
- (c) The prosecuting attorney shall have an equivalent opportunity to speak to the court.

⁷ In *State v. Berrill*, 196 W. Va. 578, 474 S.E.2d 508 (1996), the Supreme Court of Appeals of West Virginia said that plain error occurs whenever a judge or magistrate does not afford a defendant the right to allocution before passing sentence.

Respondent also summarily held Mr. Sexton in contempt for the alleged "Oink Oink" comment and ordered him to pay \$50.00 fine. Respondent did not take any evidence or testimony nor did he allow Mr. Sexton to be heard on the contempt charge.

After sentencing but before Mr. Sexton left the courtroom, Respondent again took the opportunity to goad him:

The Court: But come on by any time, Mr. Sexton.

Mr. Sexton: Okay.

The Court: Okay. I really do -- and let me tell you something about as far as being a pig. From what a couple of your neighbors have told me and from what -- you know, that's a slang term used against police, which I'm sure you're aware of that, right?

Mr. Sexton: Yeah.

The Court: Okay. Well, at least it stands for something other than being a child beater and a convict and all the other stuff, okay, that you've done. All right?

Mr. Sexton: Okay.

(8/12/2015 Trial Tr. at 11-12). Despite being warned not to do so, Mr. Sexton put his hat on before he left the courtroom so Respondent again held him in contempt and fined him another \$50.00.

Later that afternoon, APA Sunyog ran into Respondent in the courthouse. He asked her how he did in the hearing and whether she thought he was too hard on Mr. Sexton. Respondent also asked Advocate Smith, who attended the trial, if she thought he was "out of line." Unbeknownst to Respondent, Mr. Sexton audiotaped the trial and placed the recording on YouTube, a free video sharing website on the internet, later the same day. Despite this, Respondent told several people in the courthouse that if he had the opportunity to try the case again he would have handled the matter in the exact same way that he did on August 12, 2015. Advocate Smith stated that the trial "was not handled fairly," and Respondent's behavior made Putnam County look "backwoods." A DNR Officer who witnessed the trial thought Respondent's conduct was "over the top" and that another magistrate should have been assigned the case.

Mr. Sexton subsequently appealed his convictions to the Circuit Court of Putnam County. Following a *de novo* trial on October 28, 2015, Mr. Sexton was again found guilty of the window tint and seatbelt violations.

Meanwhile, on August 13, 2015, Judicial Disciplinary Counsel opened a complaint against Respondent arising out of his conduct during the trial. On August 19, 2015, Mr. Sexton filed a complaint alleging similar misconduct. Respondent replied to the allegations contained in the complaints by letters dated September 4, and November 20, 2015. Judicial Disciplinary Counsel also took his sworn statement on October 5, and December 1, 2015. Through November 30, 2015, Respondent denied any impropriety. He believed that he was protecting APA Sunyog and his family by taking control of the trial. He also stated that if he had to try the case over again, he would handle it the same way. On December 1, 2015, Respondent, for the first time, acknowledged that he handled the matter poorly. Respondent said he had a chance to read his October 7, 2015 statement and had changed his mind. Respondent stated:

[O]nce you read something, you listen to what you say and so forth. I think you all asked me would I do this thing the same way, or something of that nature in dealing with the Sexton case. [O]bviously, I wouldn't but I think truthfully my emotions or my manhood or whatever you want to call it came out after he did that with Captain Patterson. I know that I was very edgy. There was no intent of me threatening him.

Judicial Disciplinary Counsel also took the sworn statement of APA Sunyog on September 29, 2015. She stated that she was fully prepared to present her case and was “startled”, “angered,” “embarrassed” and “uneasy” by Respondent’s actions. She thought Respondent’s conduct during the hearing was “inappropriate” and unbecoming a judicial officer. She also did not believe that Mr. Sexton received a fair trial in Magistrate Court.

CONCLUSIONS

The Commission unanimously found that probable cause exists in the matters set forth above to find that Scot A. Lawrence, former Magistrate of Putnam County, violated Canons 1A, 2A, 3B(2), 3B(4), 3B(5), 3B(7), and 3E(1) of the Code of Judicial Conduct:

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.

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, public clamor or fear of criticism.
 - (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. . . .
 - (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, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status. . . .
 - (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 communications made to the judge outside the presence of the parties concerning a pending or impending proceeding.

E. Disqualification. –

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

The Commission further found that formal disciplinary action was not essential since Respondent had agreed to resign his position as Magistrate and never again seek judicial office in West Virginia. 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.

The Commentary to Canon 2A makes it clear that the Code of Judicial Conduct regulates both a judge's professional and personal conduct. The Commentary notes that "[a] judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly." This is because "[p]ublic confidence in the judiciary is eroded by irresponsible or improper conduct" by judges.

Respondent's handling of the *Sexton* matter is a travesty of justice and a blueprint for how not to try a case in magistrate court. It is evident that from the beginning Respondent had a very strong bias against Mr. Sexton. Therefore, he should never have heard the case. Respondent is supposed to be neutral and detached and is required to decide a case based on all of the evidence adduced at the trial from the State and the Defendant. In this case, Respondent clearly made up his

mind before he ever walked into the courtroom. Respondent usurped the power of the State and himself questioned Mr. Sexton. He failed to follow proper procedure by not informing Mr. Sexton of his 5th Amendment right against self-incrimination, of finding him guilty of the window tint violation without sufficient evidence, by sentencing him without first offering the right of allocution and by holding him in contempt for purportedly saying "Oink Oink" without proper notice or an opportunity to be heard.

Respondent either ignored or simply forgot that equal justice is a 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. . . ." By his actions on that day, Respondent sent the iniquitous message that in his courtroom equal justice only applies to some. For that reason alone, he should never again hold judicial office.

The Commission recognizes that judges are human and that there are times when a judge may be provoked into a fit of anger or outrage. Still, a judge must remember at all times that when he/she ignores the dictates of the Canons and speaks in a vindictive or intemperate manner, the judge risks losing the public's confidence in the integrity and impartiality of both the judge and the entire judicial system. This Court made a similar point in *In re Watkins*, 233 W. Va. 170, 757 S.E.2d 594 (2013):

It is not enough that we know ourselves to be fair and impartial or that we believe this of our colleagues. Our power over our fellow citizens requires that we appear to be so as well. How else are ordinary citizens to have the faith in us . . .? An impartial manner, courtesy, and dignity are the outward sign of that fairness and impartiality we ask our fellow citizens, often in the most trying of circumstances, to believe we in fact possess. . . . Precisely because the public cannot witness, but instead must trust, what happens when a judge retires to the privacy of his chambers, the judiciary must behave with circumspection when in the public eye.

Id. at 182, 757 S.E.2d at 606, quoting *Matter of Brown*, 427 Mass. 146, 149, 691 N.E.2d 573, 576 (1998).

The Court further recognized:

Citizens judge the law by what they see and hear in courts, and by the character and manners of judges and lawyers. “The law should provide an exemplar of correct behavior. When the judge presides in court, he personifies the law, he represents the sovereign administering justice and his conduct must be worthy of the majesty and honor of that position.” *Matter of Ross*, 428 A.2d 858, 866 (Me 1981). Hence, a judge must be more than independent and honest; equally important, a judge must be perceived by the public to be independent and honest. Not only must justice be done, it also must appear to be done.

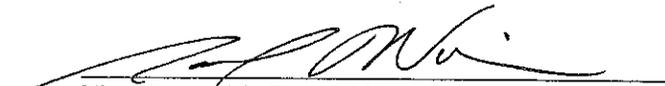
Id.

Thus the finding of the Commission is that Respondent **violated Canons 1A, 2A, 3B(2), 3B(4) 3B(5), 3B(7), and 3E(1) of the Code of Judicial Conduct.**

Based upon the foregoing, it is the decision of the Judicial Investigation Commission that Scot A. Lawrence, former Magistrate of Putnam County, be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes former Magistrate Lawrence for his conduct as fully set forth in the matters asserted herein. Magistrate Lawrence has now resigned and has agreed to never again seek judicial office in West Virginia. Therefore the Commission will not take any further action on the matter.

Pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure, the Respondent has fourteen (14) days after receipt of the public admonishment to file a written objection to the contents thereof. If the Respondent timely files an objection, the Judicial Investigation Commission shall, pursuant to the Rule and his breach of the December 4, 2015 agreement by and between Judicial

Disciplinary Counsel and Respondent, file formal charges with the Clerk of the Supreme Court of Appeals of West Virginia.


The Honorable Ronald E. Wilson, Chairperson
Judicial Investigation Commission

12-18-15
Date

REW/tat