

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF
THE HONORABLE LINDA J.R. VIDERMAN
MAGISTRATE OF BROOKE COUNTY**

**COMPLAINT NOS. 07-2016
74-2016**

AMENDED PUBLIC ADMONISHMENT OF MAGISTRATE LINDA J.R. VIDERMAN

Complaint No. 07-2016 came before the Judicial Investigation Commission upon a matter filed by Judicial Disciplinary Counsel on January 27, 2016, setting forth certain allegations against the Honorable Linda J.R. Viderman, Magistrate of Brooke County (hereinafter "Respondent"). The complaint alleged that Respondent breached State law by posting bond for her granddaughter in a Brooke County criminal case and had improper *ex parte* communication with the Special Magistrate presiding over the matter in violation of the Code of Judicial Conduct. After a review of the complaint, 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 Rules 1.1, 1.2, 1.3, and 2.9(A)(1)(a) and (b) at its April 25, 2016 meeting and ordered that she be publicly admonished pursuant to Rules 1.11 and 2.7(c) of the Rules of Judicial Disciplinary Procedure.

Complaint No. 74-2016 came before the Commission upon a second matter filed by Judicial Disciplinary Counsel on May 4, 2016, setting forth allegations that Respondent had violated the Code of Judicial Conduct by indemnifying the bond posted by a bonding company in her granddaughter's Hancock County criminal case and accepting the bonding agents offer to forego the bonding fee. After a review of the complaint, Respondent's written reply, the

information and documents obtained from the investigation, and the pertinent Canons contained in the Code of Judicial Conduct, the Commission found probable cause that Respondent violated Rules 1.1, 1.2, 1.3, 2.2, 2.4(B) and (C), 2.11, and 3.1(B) at its June 24, 2016 meeting. Since the allegations are similar to those contained in the previous admonishment and because the conduct giving rise to the complaint occurred contemporaneous to the facts contained in Complaint No. 07-2016, the Commission ordered an amended public admonishment pursuant to Rules 1.11 and 2.7(c) of the Rules of Judicial Disciplinary Procedure.

STATEMENT OF FACTS

Respondent has served continuously as a Brooke County Magistrate since January 1, 2013. At all times relevant to the instant complaint, Respondent was serving in her capacity as Magistrate.

On or about June 8, 2015, Respondent's granddaughter was charged with the misdemeanor offense of battery in Brooke County Magistrate Court Case No. 15-M05-M-01059. On or about June 9, 2015, the granddaughter was arraigned on the charge and received a personal recognizance bond. Hancock County Assistant Prosecutor Allison Cowden was appointed Special Prosecutor and The Honorable Harry A. Radcliffe, Magistrate of Ohio County, was appointed Special Magistrate.

On or about December 24, 2015, the granddaughter was charged with the misdemeanor offense of domestic battery in Hancock County Magistrate Court Case No. 15-M15M-01773. She was arraigned in Hancock County Magistrate Court on the same day. Bond was set at "\$2,500 cash or bondsman." The granddaughter's bond was posted by A Bail Bonding by Suters ("Suters"), which regularly does business in Hancock and Brooke Counties.

On or about December 30, 2015, Special Prosecutor Cowden filed a Motion to Revoke Bond in the granddaughter's Brooke County case. The Motion was heard by Magistrate Radcliffe on or about January 4, 2016. Respondent's granddaughter was represented by Attorney Patricia Kurelac. At the conclusion of the hearing, Magistrate Radcliffe granted the State's request and set bond at \$1,000.00 with a term and condition of home confinement.

Respondent was at the Courthouse and posted bond on behalf of her granddaughter in the Brooke County Magistrate Clerk's Office. Magistrates cannot post bond for anyone pursuant to W. Va. Code § 50-1-12, which provides in pertinent part:

Magistrates shall be subject to and shall abide by the code of judicial ethics as adopted and amended by the supreme court of appeals. In addition to such conduct as may be regulated by the rules of the supreme court of appeals, **no magistrate**, magistrate court clerk or magistrate court deputy clerk or magistrate assistant shall:

- (a) Acquire or hold any interest in any matter which is before the magistrate court; . . .
- (c) Act as agent or attorney for any party in any proceeding in any magistrate court in the state; or

Any person who violates the provisions of this section shall be guilty of official misconduct and shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars.

(Emphasis added).

In her February 16, 2016 response to the ethics complaint, Respondent stated that she "was taken aback to realize that it might be construed as a violation for me to post bond for a member of my own household." She stated that she found W. Va. Code § 50-1-12 to be "excessively vague and ambiguous as far as trying to apply it to the posting of my

granddaughter's bond is concerned." She asserted that she "was not acquiring an interest in a magistrate court matter."¹

Following the posting of the bond, Respondent approached Magistrate Radcliffe twice and had two *ex parte* conversations with him concerning home confinement hook-up issues rather than leaving it to the granddaughter's attorney to contact both the Special Magistrate and the Special Prosecutor. The Special Prosecutor was not privy to the conversations between the two Magistrates. According to Magistrate Radcliffe, the first contact occurred following the hearing. Respondent spoke with him as he was leaving the Courthouse and asked what she should do since the home confinement office was already closed for the day. Magistrate Radcliffe told her that she should watch her granddaughter that evening and have home confinement hook her up the next morning. According to Respondent, she simply asked Magistrate Radcliffe "if the home confinement terms would permit my granddaughter to keep an important and long-standing appointment scheduled for the upcoming Saturday. Magistrate Radcliffe replied, 'It's only for four days. . . .'"²

The second communication occurred the following morning by telephone. Respondent called Magistrate Radcliffe at his office and explained that the Brooke County Home Confinement Officer was refusing to hook her granddaughter up and that he was requiring her to go to Hancock County to be hooked up by home confinement there. Respondent admitted making the phone call to Magistrate Radcliffe but said she did so "as a grandmother for scheduling and GPS monitoring purposes only." According to Magistrate Radcliffe, Respondent

¹ Following receipt of the initial ethics complaint on or about February 8, 2016, Respondent immediately requested to be removed from her granddaughter's bond and her motion was granted.

² Four days refers to the time between the bond revocation hearing and the original trial date. The granddaughter's trial on the Brooke County case was originally set for January 8, 2016, but was continued to March 31, 2016.

told him that she had neither the time to run her granddaughter to Hancock County nor the money to drive her back and forth from the neighboring county.³ Magistrate Radcliffe then had the Brooke County Home Confinement Officer hook up her granddaughter but had Hancock County Home Confinement monitor her activity. During a March 17, 2016 pre-trial hearing on the Brooke County case, the granddaughter pleaded no contest to the battery charge. She was sentenced to credit for time served on home confinement.

Subsequently, the granddaughter failed to appear for a May 3, 2016 hearing in her Hancock County case and a warrant/capias was issued for her arrest. At the same time, Disciplinary Counsel received a tip that Respondent had also been responsible for posting the granddaughter's Hancock County bond. Disciplinary Counsel then obtained paperwork from Suters which confirmed that Respondent was listed as a "Co-Signer/Indemnitor" on the bail bond documents. Respondent alone signed the indemnity agreement which provided in pertinent part:

As Co-Signer/Indemnitor pursuant to bail of Defendant the above named Co-Signer(s) understand that if the defendant failing to appear and if the defendant's bail is forfeited, for any reason whatsoever, than in the event, the said Co-Signer(s)/Indemnitor shall be held responsible for the full amount of the bond and/or fees that are due to the bonding company. The Co-Signer'(s)/Indemnitor shall indemnify and hold harmless W.N. Suter or P.L. Suter and/or agent, DBA A Bail Bonding by Suter's organization and or company in an amount equal to the amount of the defendant's bail so forfeited plus any and all expenses incurred by A Bail Bonding by Suter's and or W.N. Suter and P.L. Suter. It is further understood and agreed that Bail Bonding by Suter's to forfeit such bail or maintain a separate action to enforce this indemnity for any reason whatsoever. . . .

INDEMNITY: WARNING YOU ARE RESPONSIBLE until this case is completed. I will pay to the order of W.N. Suter or P.L. Suter the sum of \$2500.00. If the defendant fails to appear in said court as required, I hereby wave the benefits of

³ Magistrate Radcliffe had already waived the home confinement fees at the hearing.

all laws exempting real and/or personal property from levy and sale or of any intended for my apprehension of said accused, **and bond fees owed by said defendant.** Defendant and co-signor are jointly responsible and are subject to any and all civil litigation. **BAIL BONDING FEES ARE NON-REFUNDABLE.**

Ordinarily, a bail bonding company requires an individual who uses its services to pay 10% as a fee. On the accompanying Power of Attorney, \$250.00 was initially listed on the fee line and then crossed out and "no chg" was put in its place. Pat Suter, owner of the bonding company, stated that Respondent did not have to pay the fee and that "no chg" meant "no charge."

Ms. Suter also advised that her company regularly posts bonds for criminal defendants in Brooke County Magistrate Court. She stated that Phyllis Swan was the bonding agent who handled the granddaughter's bond in Hancock County. She said that she received a call from Ms. Swan on December 24, 2015, asking her if she could do the bond at no charge to Respondent. Ms. Suter told Ms. Swan that she would authorize the request if Ms. Swan agreed to forego her commission. According to Ms. Suter, Ms. Swan told her that Respondent was "great about coming out" and felt that a "professional courtesy" was due her. Subsequently, Ms. Swan told Ms. Suter that Respondent never asked for any favors or for a break on the bond fee. Ms. Suter stated that over the past 30 years she has written approximately ten (10) bonds and not collected a fee. She further stated that to her knowledge Ms. Swan had never waived a bond fee until the granddaughter's case.

Ms. Swan advised that she worked for Ms. Suter for ten years and is the company's principal bonding agent in Brooke and Hancock Counties. She stated that she has known Respondent professionally for approximately 3 1/2 years. Ms. Swan stated that Respondent called her at approximately 7:30 a.m. on December 24, 2015, and told her that her

granddaughter had been physically assaulted and arrested during a domestic altercation in Hancock County. According to Ms. Swan, Respondent told her that she was unsure of the bond procedure and asked her for some advice. Respondent agreed to serve as the Co-signor/Indemnitor for the bond.

Ms. Swan did not charge Respondent the customary 10% bond fee and gave up her commission. She stated that Respondent was prepared to pay the \$250.00 fee but since it was Christmas and the granddaughter was "in awful shape" she waived the payment. Ms. Swan stressed that Respondent never asked her to waive the fee. She stated that "about once a year" she will do a bond for someone, waive the 10% bond fee, and forego her commission.

Respondent replied to the allegations contained in Complaint No. 74-2016 by letter dated May 11, 2016. Respondent said she contacted Ms. Swan and asked her to "help me find out where my granddaughter was, and when she would be arraigned because I didn't want to make any calls to the court myself. . . ." Respondent said she was prepared to pay Ms. Swan but she said "no charge – professional courtesy." Respondent said she never thought to inform the JIC during the prior investigation about her serving as indemnitor in the Hancock County bond "since I hadn't actually posted the particular bond . . . , it didn't even dawn on me it was an issue." Respondent acknowledged removing herself as Co-signor/Indemnitor after receiving the Complaint No. 74-2016.

Respondent stated that between December 24, 2015, and May 4, 2016, approximately 42 defendants were arraigned in Brooke County Magistrate Court. Nineteen of the defendants had their bond posted by Suters. Of the 19, Respondent arraigned ten of the defendants. Four of the cases were assigned to Respondent. Respondent was also assigned four of the nine

cases arraigned by the other magistrate. Respondent did not disqualify herself or disclose the relationship with Suters in any of the cases. Respondent did not hear any bond revocation motions during this period. Lastly, Respondent failed to address the issue of disqualification/disclosure despite being requested to do so by Counsel.

CONCLUSIONS

The Commission by unanimous vote at its April 25, 2016 and June 24, 2016 meetings⁴ found that probable cause does exist in the instant complaints and that the Honorable Linda J.R. Viderman, Magistrate of Brooke County, violated Rules 1.1, 1.2, 1.3, 2.2, 2.4, 2.9(A)(1)(a) and (b), 2.11, and 3.1(B) of the Code of Judicial Conduct which provide in pertinent part:

Canon 1

A Judge Shall Uphold And Promote The Independence, Integrity, And Impartiality Of The Judiciary, And Shall Avoid Impropriety And The Appearance Of Impropriety.

Rule 1.1 Compliance With the Law

A judge shall comply with the law, including the West Virginia Code of Judicial Conduct.

Rule 1.2 Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.3 Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

⁴ The Honorable Ronald Wilson, Judge of the 1st Judicial Circuit and Chair of the Commission, recused himself from Respondent's cases.

Canon 2

A Judge Shall Perform The Duties Of Judicial Office Impartially, Competently, And Diligently.

Rule 2.2 Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Rule 2.4 External Influences on Judicial Conduct

- (B) A judge shall not permit family, social, political, financial or other interests or relationships to influence the judge's judicial conduct or judgment.
- (C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Rule 2.9 Ex Parte Communications

- (A) 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 or their lawyers, concerning a pending or impending matter, except as follows:
 - (1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:
 - (a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and
 - (b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

Rule 2.11 Disqualification

A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned . . .

Canon 3

A Judge Shall Conduct The Judge's Personal And Extrajudicial Activities To Minimize The Risk Of Conflict With The Obligations Of Judicial Office.

Rule 3.1 Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not: . . .

- (B) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

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 magistrate is supposed to uphold the law, not violate it. By posting her granddaughter's bond in the Brooke County matter and by acting as indemnitor of the bond in the Hancock County case, Respondent clearly disregarded W. Va. Code § 50-1-12. The meaning of the law is clear. A magistrate cannot post bond for any other individual or serve as an indemnitor/co-signor for bail posted by a bonding company. Importantly, there is no family exception to this Rule. This has been the law since 1976. Magistrates have been advised in training that they cannot post bond. Indeed, Magistrate Radcliffe was aware of the prohibition. Respondent knew or should have known that she could not post her granddaughter's bond or act as indemnitor/co-signer for bail posted by a bonding company. Criminal defendants in

Magistrate Court are often warned of the old maxim that ignorance of the law is no excuse. Respondent is not immune from this tenet. By discounting the law, Respondent violated Rules 1.1 and 1.2 of the Code of Judicial Conduct and she is admonished for her conduct.

Respondent's *ex parte* communication with Magistrate Radcliff in the Brooke County case violated Rules 1.1, 1.2 and 1.3 and Rule 2.9(A)(1)(a) and (b). In criminal cases, both sides are entitled to due process – notice and an opportunity to be heard. Due process ensures fairness in all criminal cases. *Ex parte* communications undermine fairness. Respondent was well aware of this when she initiated *ex parte* communication with Magistrate Radcliffe. Respondent placed Magistrate Radcliffe in an untenable position by contacting him when she knew she should not have done so. Most grandmothers who are not magistrates would not have been as lucky. Moreover, public confidence in the judiciary may be eroded by a perception, however unjust though it may be, that the granddaughter derived some benefit by virtue of Respondent's position and her one-on-one communication with Magistrate Radcliffe. Respondent should not have engaged in *ex parte* communication with Magistrate Radcliffe; and accordingly, she is admonished for her conduct.

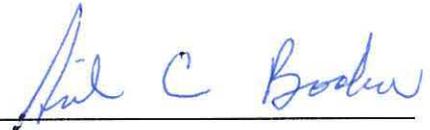
Respondent also should not have accepted Ms. Swan's offer to forego the 10% bond fee. Both Respondent and Ms. Swan acknowledge that the fee was waived as a "professional courtesy." The public could easily misconstrue from the act that the benefit afforded to Respondent was solely based on her position as a magistrate and that Suters was in a position to exert undue influence over her because of the fee waiver. By accepting the fee waiver, Respondent violated Rules 1.2, 1.3, 2.2 and 2.4 and is admonished for her conduct.

At a minimum, Respondent also had a duty to disclose the relationship in all bond matters involving Suters after December 24, 2015. The Commission can only assume that she did not disclose the relationship since she failed to address the matter in her response to Complaint No. 74-2016. In *Tennant v. Marion Health Care Foundation*, 194 W. Va. 97, 459 S.E.2d 374 (1995), the Supreme Court of Appeals of West Virginia noted that the avoidance of the appearance of impropriety is as important in developing public confidence in the judicial system as avoiding actual impropriety and that the judge should take appropriate action to withdraw from a case in which the judge deems himself or herself biased or prejudiced. *Id.*

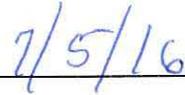
Tennant cited the commentary to former Canon 3E(1) which states that a judge should timely disclose on the record information which he/she believes the parties or their lawyers might consider relevant to the question of disqualification. *Id.* Litigants and counsel should be able to rely on judges complying with the Code of Judicial Conduct. *Id.* There is no obligation imposed on counsel to investigate the facts known by the judge which could possibly disqualify the judge. *Id.* The judge has a duty to disclose any facts even if the judge does not feel that they are grounds for disqualification *sua sponte*. *Id.* By not disclosing the relationship with Suters in bond cases she presided over, Respondent violated Rules 1.2 and 2.11 of the Code of Judicial Conduct and is admonished for the same.

Based upon the foregoing, it is the decision of the Judicial Investigation Commission that the Honorable Linda J.R. Viderman, Magistrate of Brooke County, be disciplined. Accordingly, the Judicial Investigation Commission hereby publicly admonishes the Honorable Linda J.R. Viderman, Magistrate of Brooke County, 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), Respondent has fourteen (14) days after receipt of the amended public admonishment to file a written objection. If Magistrate Viderman 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.



Gail C. Boober, Vice-Chairperson
Judicial Investigation Commission



Date