

**BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA**

**IN THE MATTER OF DWIGHT A. WILLIAMSON  
MAGISTRATE OF LOGAN COUNTY**

**COMPLAINT NO. 131-2018**

**PUBLIC ADMONISHMENT OF LOGAN COUNTY  
MAGISTRATE DWIGHT WILLIAMSON**

The matter is before the Judicial Investigation Commission upon a complaint filed by Regina Clark setting forth certain allegations against The Honorable Dwight A. Williamson, Magistrate of Logan 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 Magistrate’s written response and sworn statement, the information and documents obtained from the investigation, and the pertinent Rules contained in the Code of Judicial Conduct, the West Virginia Judicial Investigation Commission (hereinafter “JIC” or “Commission”) found probable cause that Magistrate Dwight A. Williamson, violated Rules 1.1, 1.2, 2.2, 2.5(A) and 2.10(A) of the Code of Judicial Conduct at its April 26, 2019 meeting and ordered that he be publicly admonished pursuant to Rules 1.11 and Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure (“RJDP”), as set forth in the following statement of facts and conclusions found by the Commission.

**STATEMENT OF FACTS**

Respondent has worked continuously as a Logan County Magistrate since January 1, 2001. At all times relevant to the instant complaint, Respondent was serving in his capacity as Magistrate. On December 21, 2006, Respondent was admonished by the Judicial Investigation Commission in Complaint No. 31-2006, in part, for making modifications to court orders without having the legal jurisdiction to do so in violation of Canons 1A, 2A, 3A and 3B(2) of the former Code of Judicial Conduct.<sup>1</sup>

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<sup>1</sup> Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure states, in part, that an admonishment shall not be administered if “the respondent has been disciplined in the last three years” or if the misconduct is “of the same nature

Complainant is the petitioner in a request for a Personal Safety Order (“PSO”). Complainant filed the PSO petition in the Magistrate Court of Logan County on or about August 13, 2018. On the same date another magistrate issued a Temporary PSO against the opposing party. Complainant’s final hearing was originally set for August 22, 2018, but was continued three times. The final hearing occurred on October 2, 2018, and Respondent presided over the matter. Both Complainant and the opposing party were present for the hearing which lasted approximately forty-six (46) minutes. Unbeknownst to Respondent or anyone else, Complainant audio-taped the proceedings with a personal recording device.

Importantly, the opposing party never filed a petition for a PSO against the Complainant. The opposing party also never requested a reciprocal PSO at the time of the hearing. During the hearing, a disturbance occurred in the hallway. Both Respondent and the bailiff left Complainant and the opposing party alone in the courtroom twice to see what was happening in the hallway. After they returned, the Respondent and bailiff discussed the disturbance and the affiliated Family Court PSO case with Complainant and the opposing party. They also openly discussed the Family Court PSO case in relation to Complainant’s matter while other people were walking in and out of the courtroom. Instead of granting or denying Complainant’s request for a final PSO at the conclusion of the hearing, Respondent issued a “cooling off” order so that “no one would have to pay court costs.” The “cooling off” order used by Respondent is not sanctioned by the State Supreme Court. The non-sanctioned “cooling off” order provided in pertinent part:

The parties hereto, Regina Ann Clark and \_\_\_\_\_ agree to a 180 day “Cooling-Off” period whereby each party agrees no[t] to vex, annoy, harass or otherwise interfere with the personal well-being, safety and happiness of the other [f]or the time period of 180 days. The State does further agree to dismiss the pending charges against upon \_\_\_\_\_ conditions that the parties satisfy the requirements of this agreement.

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as misconduct for which the respondent has been disciplined in the last five years.” In the instant matter, the conduct giving rise to the admonishment occurred almost twelve (years) after the 2006 admonishment and is therefore permissible pursuant to the Rule.

The agreement was signed by Complainant, the opposing party, and Respondent.

In his written reply to the allegations contained in the complaint, Respondent said “the [Complainant] failed to provide any proof as alleged in her [petition].” He admitted that “I did not want to have to charge the petitioner a court cost by denying her the order. Therefore, I did try to resolve the matter by asking them to sign a mutual ‘cooling off’ order.” Respondent stated that he has used the form for almost 19 years and it “has worked 99 percent of the time in alleviating matters where physical violence might occur” and was “very effective in place of peace bonds.” Respondent said he could not recall any incident occurring in the hallway while the hearing was ongoing. He said if something had occurred though, he felt “certain our only bailiff would have responded accordingly.”

Respondent concluded by saying:

I simply believe the [Complainant] wanted the [opposing party] to pay in some fashion or another in addition to making her miss work as some sort of pay back for her involvement with her ex-husband. Now, she seeks revenge against me, probably because the respondent thanked me for making the order mutual as she left the courtroom. In short, my objective was to keep the peace. In hindsight, I wish I had denied the order and assessed the petitioner a court cost.

However, a review of the audio recording of the hearing indicates that Respondent actually informed the parties that he believed Complainant had submitted enough evidence to have thrown the other party in jail (10/2/18 audio recording at 12:20 to 12:47). The hearing stopped abruptly at approximately 23:14. From 23:14 through 28:49, no further action occurs on the hearing, but the courtroom door opens and closes and children’s voices can be heard in the hallway. Beginning at 28:50 through 34:24, Respondent and the bailiff intermittently discuss the disturbance in the hallway and the affiliated court proceedings including the custody of the minor children belonging to the parties of that proceeding. The door to the courtroom can be heard opening and closing two more times. Complainant’s hearing then resumed at approximately 34:25.

Beginning at approximately 36:00 minutes, Respondent explained to the parties why he is entering a “cooling off” Order:

Now, I'm issuing an order. Let me tell you one thing. If I grant the order to you today (Complainant), then you (opposing party) would be paying \$75.00 today. If I deny the order today, you (Complainant) would be paying a \$75.00 court costs. Unless you all got more money than what I do, you all probably don't want to be paying the damn court costs. So what I'm going to do because I don't know how this is going to end up. . . . because no matter what kind of order is issued its still paper and anybody can violate it. Someone else can get hurt. . . . The thing is that I am going to do here today based on the information provided by both of you -- knowing that there is still going to be problems down the road. The Order that I am going to issue is a mutual order whereby each party agrees not to vex, annoy, harass or otherwise interfere with the personal well-being, safety and happiness of the other. If you run into each other . . . you just got to avoid each other as best you can. None of these hand gestures. Just cause your silent doesn't mean you can't violate this Order some other way. You certainly can do it by phone, text or any other way. . . . The issue out there that is causing the problem is none of my business. It's your all's business and it's gonna cost one or both of you all court problems. You all can make that decision. All I can do is issue an order that covers both of you and by doing this neither one of you has to pay court costs. Now if one of you was to violate then you would have to provide proof to this Court that someone violated and then I would also then have to get a prosecuting attorney involved. So then it could cost you fines and jail time and all that so I am trying to explain all this to you so that you'll know. . . .

At approximately 41:56, Respondent started addressing an unrelated domestic violation matter with a Court Official. Again, the discussion occurred in front of Complainant and the opposing party and lasted for approximately three minutes. Respondent then told the Complainant to "come up here and sign" the "cooling off" order. He then told her to sit down and he would make a copy of the order in just a minute. He then told the opposing party to "sign." He told both parties that if they violated the order, it would then become a "criminal matter" but "neither one of you have to pay a court cost now" (10/2/18 audio recording at 44:58 to 45:48).

On February 12, 2019, Judicial Disciplinary Counsel obtained a sworn statement from Respondent. Respondent acknowledged that the "cooling off" order was a form created by a former prosecutor (2/12/2019 Tr. at 32-33, 36). Respondent admitted that the order was never approved by the State Supreme Court (2/12/2019 Tr. at 33). However, Respondent said he discussed the form at a conference with a former deputy court administrator and she said, "If it works, use it" (2/12/2019 Tr. at 33). Respondent stated that he never showed the order to the former deputy court administrator but "explained to her the best I could" (2/12/2019 Tr. at 33).

Respondent recognized that contrary to what he informed the parties at hearing the “cooling off” order had absolutely no force and effect:

Q. So tell me what you tell litigants when you’re explaining the possible penalties of violation of this cooling off order?

A. The cooling – I basically tell them that the prosecuting attorney could be involved and that could lead to jail and/or fines. I don’t say a year or, you know, none of that. Now, if I issue the actual order, PSO order, I do make them aware of the fines and the possible jail time.

Q. Under the law, you will agree with me that at the end of a final hearing on a PSO, as you stated earlier, your two options are to either grant or to deny the petition. Is that correct?

A. That’s correct.

Q. Will you also agree with me then that by the letter of the law, this cooling off order is not legal?

A. I totally agree and I’ve said that for years, which is why I asked about it to begin with. I mean I knew that it was – it’s a worthless piece of paper and we know that, but it worked.

Q. My question then is if you knew you were asking them to sign what amounted to an illegal order, why then did you inform them or tell them that if they violated this illegal order criminal penalties could result when that was clearly not right?

A. [T]he reason for that is to keep the peace. It’s to let someone know there are repercussions if you do anything to this individual that’s asking for this, but the truth is if that person were to, you know, call or threaten a person, that’s a crime in itself, and so there could be repercussions either way. I mean as far as criminally speaking you know, if something came up, I would hope that it would be investigated.

(2/12/2019 Tr. at 38-39). Respondent agreed that he had no right to issue a mutual order where the opposing party had never filed a written petition (2/12/2019 Tr. at 58-59). Lastly, Respondent conceded that the “cooling off” order should no longer be used (2/12/19 Tr. at 51).

## CONCLUSIONS

The Commission unanimously found that probable cause does exist in the matters set forth above to find that the Honorable Dwight A. Williamson, Magistrate of Logan County, violated Rules 1.1, 1.2, 2.2, 2.5(A) and 2.10(A) of the Code of Judicial Conduct as set forth below:

### **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 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 2.5 – Competence, Diligence and Cooperation**

(A) A judge shall perform judicial and administrative duties, competently and diligently.

### **Rule 2.10 – Judicial Statements on Pending and Impending Cases**

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

The Commission further found that formal disciplinary action was not essential but that the violations were serious enough to warrant a public admonishment. The Preamble to the Code of Judicial Conduct provides:

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.

Comment [2] to Rule 1.2 notes that “a judge should expect to be the subject of constant public scrutiny” and should therefore accept restrictions on the judge’s conduct that might be viewed as burdensome by the ordinary citizen. Comment [4] states that “[j]udges should . . . support professionalism within the judiciary and the legal profession . . . .” Importantly, Comment [5] provides:

Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.

The Comments to Rule 2.5 are also informative:

- [1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge’s responsibilities of judicial office.
- [2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.
- ...
- [4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Respondent had a duty to either grant or deny Complainant’s petition for a personal safety order. Instead, he abrogated his responsibility by issuing a bogus order which had absolutely no force and effect. He also clearly lacked candor when he wrongly informed the parties that if they violated the order they could be subject to criminal penalties. Lastly, Respondent made inappropriate public comments to the parties about the Family Court matter occurring in the hallway. Consequently, it is the decision of the Judicial Investigation Commission that the Honorable Dwight A. Williamson,

Magistrate of Logan County, be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes Respondent for his conduct as fully set forth in the matters asserted herein.

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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, file formal charges with the Clerk of the Supreme Court of Appeals of West Virginia.

  
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The Honorable Alan D. Moats, Chairperson  
Judicial Investigation Commission

  
\_\_\_\_\_  
Date

ADM/tat