BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

IN THE MATTER OF ROBERT L. BOLTON III
MAGISTRATE OF TAYLOR COUNTY

COMPLAINT NO. 86-2019

PUBLIC ADMONISHMENT OF MAGISTRATE ROBERT L. BOLTON III

The matter is before the Judicial Investigation Commission upon a complaint filed by Joe Armstrong, Administrative Director of the Supreme Court of Appeals of West Virginia setting forth certain allegations against Robert L. Bolton III, Magistrate of Taylor 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 responses and sworn statement, the information and documents obtained from the investigation, the August 15, 2019 agreement between Judicial Disciplinary Counsel and Respondent, his resignation letter, 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 Robert L. Bolton III violated Rules 1.1, 1.2, 2.1, 3.1(A) and (C) and 3.10 of the Code of Judicial Conduct at a recent 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 Taylor County Magistrate since April 1, 2015. His resignation is effective on October 15, 2019. At all times relevant to the instant complaint, Respondent was serving in his capacity as Magistrate. Respondent has also been licensed to practice law in West Virginia since October 15, 2014. Prior to taking office, Respondent contacted the JIC and requested a formal opinion as to what, if any, practice of law he could engage in while serving as a full-time magistrate. In JIC Advisory Opinion 2015-02 issued on February 23, 2015, the JIC told Respondent that he could "engage in the limited practice of law within the parameters set forth by the [West Virginia] Legislature and as long as it does not

impede your service as a magistrate or violate the Code of Judicial Conduct." Importantly, the Commission stated:

> [T]he provisions of Article VIII, Section 7 of the Constitution of West Virginia permit attorneys who are magistrate to practice law except to the extent prohibited by the West Virginia Legislature in W. Va. Code §§ 50-1-4 and 50-1-12. Therefore, the Constitution precludes a [Rule 3.10] absolute bar of magistrates from the practice of law. *See Judicial Inquiry Commission v. Allamong*, 162 W. Va. 652, 252 S.E.2d 159 (1979). However, the Court also stated that the practice of law must not interfere with the full performance of a magistrates duties. *Id.* The Court noted: "Having asked voters to elect him as magistrate, his first obligation is to that office because a magistrate is a judicial officer, he is subject to all the Canons of the Judicial Code of Ethics. . . . He must not, through his activities as an attorney, jeopardize his impartiality. *Id.* At 661, 252 S.E.2d at 164."

W. Va. Code § 50-1-4 provides that "each magistrate who serves more than five thousand in population shall devote full time to his public duties." Meanwhile, W. Va. Code § 50-1-12 states 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**: . . . (d) **Engage in, or assist in, any remunerative endeavor, except the duties of his office, while on the premises of the magistrate court office**.

(emphasis added).

On December 26, 2017, the Circuit Court of Taylor and Barbour Counties, who has supervisory authority over the Magistrate Courts there, entered an administrative order providing the following:

> [T]he Magistrate Courts in Barbour County and Taylor County shall be open for regular office hours from 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. Each magistrate is to be physically present at all times during regular office hours except for a lunch break, unless the magistrate is attending training, official business, or utilizing annual leave or sick leave. No magistrate may engage in any other employment during regular office hours. If a magistrate is out after midnight attending to official duties while on call, that magistrate may report for work the next day no later than 11:00 a.m.

Yet, despite these admonitions, the evidence adduced shows that over the years Respondent repeatedly performed services as an attorney for paying and *pro bono* clients while he was at the courthouse supposed to be working as a magistrate and that he sometimes used court resources, such as the computer, email and/or copy paper, to perform these tasks. In March 2019, the two judges of those counties met with Respondent, reprimanded him for engaging in the private practice of law from magistrate court and advised

him that he was to immediately cease the endeavor while he was at work as a judicial officer. Respondent assured the judges that he would comply with their edict. Nonetheless, the evidence revealed that as late as May 28, 2019, Respondent continued to perform private practice work while on duty at magistrate court in violation of W. Va. Code §§ 50-1-4 and 50-1-12(d), JIC Advisory Opinion 2015-02, the 12/26/2017 Taylor Circuit Court Administrative Order and the March 2019 warnings of the two Circuit Court Judges. The evidence included Respondent's own admissions of his misconduct that he made during an August 13, 2019 sworn statement to Judicial Disciplinary Counsel.

CONCLUSIONS

The Commission unanimously found that probable cause does exist in the matters set forth above to find that Robert L. Bolton III, former Magistrate of Taylor County, violated Rules 1.1, 1.2, 2.1, 3.1(A) and (C) and 3.10 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 2.1 – Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities

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:

(A) Participate in activities that will interfere with the proper performance of the judge's judicial duties.

. . .

(C) A judge shall cooperate with other judges and court officials in the administration of court business.

Rule 3.10 – Practice of Law

> A judge shall not practice law. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's lawyer in any forum.

The Commission further found that formal disciplinary action was not essential since Respondent had agreed to resign his position as Magistrate and refrain from seeking judicial office for twenty (20) years or until August 15, 2039. However, the Commission found 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.

The Comments to Rule 1.2 make clear that the Code of Judicial Conduct regulates both a judge's professional and personal conduct. The Comment 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. Importantly, the Comment states that "[a]ctual improprieties include violations of law, court rules or provisions of this Code."

Respondent's conduct demonstrates blatant indifference for the Code of Judicial Conduct, state law, court orders, the JIC and the supervisory authority of two circuit judges. On three separate occasions, Respondent was told by the JIC, by administrative order and by the circuit judges that he could not engage in the private practice of law while on duty at the courthouse as a magistrate. He ignored these warnings.

By his actions, Respondent exhibited poor judgment and an absence of high moral character necessary for a judicial officer. The JIC attributes Respondent's behavior to a distinct lack of maturity. This is further evidenced by Respondent's decision to write a letter which implied that he was leaving of his own accord when he said that he was "resigning from the office of magistrate. For the near future, I intend

to focus on my private practice and teaching." In reality, he resigned because he was required to do so by the terms of the Agreement he entered into with Judicial Disciplinary Counsel.

A wise man once said that "admitting our mistakes is a sign of maturity and wisdom. We learn more from knowing our mistakes." For Respondent, the Commission is hopeful that with age comes the understanding necessary to serve as a judicial officer. For this reason, the Commission is of the opinion that Respondent should be barred from holding judicial office as defined by Application IA of the Code of Judicial Conduct for twenty (20) years instead of the usual lifetime ban imposed in such cases. Therefore, it is the decision of the Judicial Investigation Commission that Robert L. Bolton III, Magistrate of Taylor County, be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes Magistrate Bolton 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.

The Honorable Christopher C. Wilkes, Vice Chairperson[1]
Judicial Investigation Commission

8-23-2019 Date

CCW/tat

[1] The Honorable Alan D. Moats, Judge of the 19th Judicial Circuit and Commission Chair, recused himself from the case.