

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

IN THE MATTER OF:
THE HONORABLE JANINE LEA VARNER,
MAGISTRATE OF OHIO COUNTY

COMPLAINT NO. 124-2019

PUBLIC ADMONISHMENT OF MAGISTRATE JANINE LEA VARNER

The matter is before the Judicial Investigation Commission (“JIC” or “Commission”) upon a complaint filed by Judicial Disciplinary Counsel setting forth certain allegations against Janine Lea Varner, Magistrate of Ohio County (“Respondent”). Upon receipt of the complaint, an investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure (“RJDP”). After a review of the complaint, the Magistrate’s written response, and the information and documents obtained from the investigation, the JIC found probable cause that Magistrate Janine Lea Varner violated Rules 1.1 and 1.2 of the Code of Judicial Conduct at a recent meeting and ordered that she be publicly admonished pursuant to RJDP 1.11 and 2.7(c), as set forth in the following statement of facts and conclusions found by the Commission.

STATEMENT OF FACTS

Article VIII, § 10 of the West Virginia Constitution states that “[t]he legislature shall establish in each county a magistrate court or courts with the right of appeal” and “shall determine the qualifications and the number of magistrates for each such court to be elected by the voters of the county.” W. Va. Code § 50-1-4 sets forth the qualifications for magistrates and provides in pertinent part:

Each magistrate shall be at least twenty-one years of age, **shall have a high school education or its equivalent**, shall not have been convicted of any felony or any misdemeanor involving moral turpitude and shall reside in the county of his election. No magistrate shall be a member of the immediate family of any other magistrate in the county.

(emphasis added).

Respondent was born on October 11, 1966, and grew up in Point Pleasant, New Jersey. In or about 1992, Respondent moved to Ohio County, West Virginia. Since relocating, Respondent has worked in various positions. For the past fifteen years, she has work in the legal field as a support person. In early August 2019, the Honorable Ronald E. Wilson, Chief Judge of the 1st Judicial Circuit, appointed Respondent to serve as Magistrate in Ohio County. Of his appointment, Judge Wilson stated:

I knew about Mrs. Varner because she served as a clerk in some of my mass litigation asbestos trials and in other Ohio County civil trials. I knew she had worked with success in the Ohio County Prosecutor’s office and I knew of the excellent reputation she earned from her employment in the Ohio County Circuit Clerk’s Office. I was impressed. . . . [She is] very well-liked and respected. Although I knew that she had a good job working for a highly respected law firm, I approached Janine to see if she was interested in the Magistrate position. After being encouraged by many of her friends and with promises of support in the 2020 election, she said she would be thrilled to accept the appointment. In truth – with all the responsible positions she had held in her work life – I never gave any thought to whether she had graduated from high school.

Following a mandatory waiting period, Respondent officially took office on August 26, 2019.

Prior to taking office, Respondent was required to fill out personnel forms for the Division of Human Resources (“HR”) of the Supreme Court of Appeals of West Virginia. On page one of the personal history form, which was signed by her on August 17, 2019, and received by HR on August 21, 2019,¹ Respondent circled that she completed high school. She also stated that she graduated from “Point Pleasant Borough High School” in Point Pleasant, New Jersey, in “1985.” She drew a line through the space on the form asking about a GED.² By signing the two-page

¹ At the time Respondent filled out the form, she was unfamiliar with the Code of Judicial Conduct, having not received any training on the same until August 20, 2019.

² The West Virginia Department of Education no longer uses the term GED. Instead, it now calls it a “High School Equivalency Diploma.” *See* W. Va. C.S.R. § 126-32-1, et seq.

personal history form, Respondent “certif[ied] that the information provided above is true and complete to the best of my knowledge.”

The form also required Respondent to provide “[a] copy of [a] diploma or GED Certificate.” A paralegal for Magistrate Court Services offered to help Respondent obtain a copy of her high school diploma. On or about September 6, 2019, the paralegal was notified by email by a representative of the high school that Respondent had not graduated high school. A copy of Respondent’s high school transcripts was provided which indicated the same.

On September 6, 2019, Judicial Disciplinary Counsel contacted the school district and was advised that they were continuing their search for any paperwork which indicated that Respondent had either received a high school diploma or its equivalent. By letter dated September 10, 2019, Kimberly Ferlauto, Director of School Counseling for Point Pleasant Borough High School, stated:

This is to certify that Ms. Janine Brown attended our school from 9/1981 through 3/19/1984. She withdrew from our school on 3/19/1984 and did not graduate from Point Pleasant Borough High School. We have attached her transcript to show verification of her history in our school.

During conversations occurring over the September 6, 2019 weekend, Respondent told Judicial Disciplinary Counsel that she did not obtain a diploma or a GED but that she had gone a more “non-traditional” route and had received a “certificate.” This was the same explanation that Respondent gave Judge Wilson when he questioned her.³ As Judge Wilson stated:

³ This also mirrors the account given by Respondent’s attorney in her reply to the ethics complaint. Additionally, Respondent’s attorney stated that she had never before been required to produce proof of education. As Respondent’s attorney noted:

In those fifteen (15) years, either when first employed or when switching departments, documenting her educational disposition was never given a second thought. . . . The issue of never being required to prove her education through seven (7) different employments in the Ohio Valley over 27 years reinforced her reliance that she had graduated from high school. It is likely because she has always been proficient at her varying jobs and a quick learner when her tasks changed that none of her employers had any reason to even suspect she would not have the required high school education. [Respondent], the 18 year old kid from New Jersey thought she graduated from high school. Nothing has happened since then until these events . . . to alert the 52 year old married mother of three that she did not possess a high school education. As such when she filled out the Magistrate Personnel

I feel responsible for not going over all the questions in the application form and not discovering that she did not have a traditional high school diploma. There is absolutely no doubt in my mind that if I would have addressed that issue with her [Respondent] would have explained to me how she followed a different path to obtain a high school diploma. When I now questioned her about that belief she told me about how she participated in her high school graduation ceremony and the embarrassment she suffered when her name was never called and how crushed her mother was. She was very concerned about what her failure did to her mother and Janine wanted to please her mother. Then she told me about the certificate she later earned from taking additional vocational classes and how that certificate caused her and her mother to believe she was now a high school graduate. She was happy to see the joy exhibited by her Mom over that accomplishment.

Judicial Disciplinary Counsel gave Respondent until noon, Monday, September 16, 2019, to produce a high school diploma or its equivalent. Respondent also voluntarily agreed not to work pending production of the paperwork. When Respondent was unable to provide the documentation, she decided to take the GED exam in order to remove any doubt as to her qualifications to serve.

Respondent first took the GED test on September 12, 2019, but did not pass the exam. There are five components to the exam and a test-taker must pass all five components to receive his/her GED. At her first sitting, Respondent passed four of the components but failed the math section. After the deadline to produce the requisite documentation passed, Judicial Disciplinary Counsel formally opened an ethics complaint against Respondent and filed a Rule 2.14 Motion asking the Supreme Court of Appeals of West Virginia to suspend her without pay.

By Order entered September 18, 2019, the Supreme Court granted Judicial Disciplinary Counsel's request and suspended Respondent without pay. The Court also remanded the matter back to the JIC for further consideration. By letter dated the same day, Respondent resigned as

History Form, she simply stated that which she thought to be true. She now knows that the information in the Personal History regarding her education is not accurate, but on August 17, 2019 when she signed her name to it, she believed that information to be "true and accurate to *the best of my knowledge.*"

Magistrate of Ohio County. On Thursday, September 26, 2019, Respondent retook the math component of the GED. On Friday, September 27, 2019, Respondent was notified that she had passed the math component and thereby had passed the GED test. On October 7, 2019, Judge Wilson reappointed Respondent as Magistrate of Ohio County. Her appointment is effective October 28, 2019. Judge Wilson decided to reappoint Respondent, in part, because he “heard nothing but praise for her work during the few days she was on the job.”

CONCLUSIONS

The Commission unanimously found that probable cause does exist in the matters set forth above to find that Janine Lea Varner, Magistrate of Ohio County, violated Rules 1.1 and 1.2 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.

It was further determined that formal discipline was not essential under the circumstances. However, the Commission found that a written admonishment is proper and appropriate in this situation. 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.

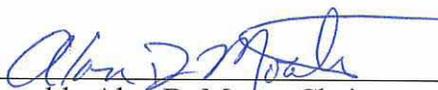
The Comments to Rule 1.2 make clear that the Code of Judicial Conduct regulates both a judge's professional and personal conduct. The Comments note that a judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Importantly, the Comments state that "actual improprieties include violations of law, court rules or provisions of this Code."

In order to lawfully serve as a Magistrate, Respondent must have a high school education or its equivalent at the time of his/her appointment. The burden of proof rests with the Magistrate, and in this case, she was unable to provide it by Judicial Disciplinary Counsel's deadline. Therefore, it is the decision of the JIC that Janine Lea Varner, Magistrate of Ohio County, be disciplined by this Admonishment. Accordingly, the JIC hereby publicly admonishes Magistrate Varner for her conduct as fully set forth in the matters asserted herein.

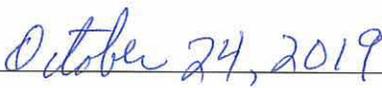
While the Commission believes it necessary to deliver this discipline, it at the same time wishes to commend Magistrate Varner for taking prompt action in resigning her position after being unable to produce a high school diploma or its equivalent and for her perseverance in taking and passing the GED exam. The Commission is mindful of the widespread publicity associated with this matter and believes that exposure, coupled with the admonishment, is probably the most effective deterrent in this case. As the noted newspaper publisher, Joseph Pulitzer, once said, "Publicity, publicity, publicity is the greatest moral factor and force in our public life."

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 Alan D. Moats, Chairperson
Judicial Investigation Commission



Date

ADM/tat