

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF:
THE HONORABLE JOSHUA BUTCHER,
JUDGE OF THE 7TH JUDICIAL CIRCUIT**

COMPLAINT NO. 165-2019

PUBLIC ADMONISHMENT OF JUDGE JOSHUA BUTCHER

The matter is before the Judicial Investigation Commission (“JIC” or “Commission”) upon a complaint filed by Judicial Disciplinary Counsel setting forth certain allegations against The Honorable Joshua Butcher, Judge of the 7th Judicial Circuit (“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, Respondent’s written response, Respondent’s sworn statement and the information and documents obtained from the investigation, the JIC found probable cause that Respondent violated Rules 1.1, 1.2, 3.1(B) and 3.1(C) of the Code of Judicial Conduct at a recent meeting and ordered that he 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

A. Extra-Judicial Activity Involving WVPAL.

Respondent was first elected to the bench in May 2016 and took office on January 1, 2017. He has served continuously as a Circuit Court Judge in Logan County since that time. For many years prior to taking the bench, Respondent and his wife enjoyed acting in local theater events. Several years before taking the bench, Respondent became aware of a training called “Finding Words” (now called “Child First”) put on by the West Virginia Prosecuting Attorney’s Institute (“WVPAL”). The week long training needed people to portray sexually abused children to allow social workers, lawyers and law enforcement officers to learn and practice forensic interviewing techniques. Respondent and his wife agreed to participate as actors in the trainings for compensation.

Two months before Respondent took the bench, The Honorable Eric O'Briant, Chief Judge of the 7th Judicial Circuit, entered an Administrative Order assigning all Abuse and Neglect cases to Respondent. After assuming the bench in 2017, Respondent continued to participate in the WVPAl trainings. Respondent admitted to participating in three to four trainings while actively presiding over abuse and neglect cases. Respondent also admitted that he sat on Abuse and Neglect cases involving forensic interviews. Respondent did not disclose in any of the Abuse and Neglect hearings that he also served as an actor for pay in the WVPAl forensic interview trainings.

At some point during 2018, Respondent stopped participating in the forensic trainings. Although Respondent initially maintained that his participation in the WVPAl training did not create a potential conflict or the perceived appearance, however wrong it may be, that he favored the State in Abuse and Neglect matters, he eventually admitted during his sworn statement that his actions violated the Code of Judicial Conduct.

B. Improper use \$1,000 Scholarship Money.

Shortly before taking the bench Respondent applied to go to a National Judicial College training in Reno, Nevada. Respondent spoke to a member of the Administrative Office of the Supreme Court of Appeals of West Virginia ("AO") in furtherance of that goal. The AO employee, who was responsible for and knowledgeable in judicial trainings and travel associated therewith, told Respondent that the Court would cover his costs to attend the training. The AO employee also directed Respondent to apply for several available scholarships to help the Court reduce or cover the costs associated with the training. The AO employee clearly informed Respondent that any scholarships that were paid directly to him would have to be turned over to the Court since it was covering the full cost of the training.

By letter dated March 8, 2017, Respondent was notified by the State Justice Institute ("SJI") that he was the recipient of a \$1,000.00 scholarship for the training. The SJI also informed Respondent in the same letter that the scholarship check would not issue until after he successfully completed the

training. Respondent attended and successfully completed the training from April 24, 2017 through May 4, 2017. In order to receive the scholarship reimbursement, Respondent was required to complete some paperwork upon completion of the training. However, Respondent failed to complete the necessary SJI paperwork to receive the reimbursement scholarship.

On July 29, 2017, Respondent contacted the same AO employee to determine Respondent's eligibility to attend another conference scheduled in 2018. The AO employee informed Respondent that he would be more likely to be granted permission to attend the conference by the Court if he completed the necessary paperwork to receive the SJI reimbursement scholarship for the April 2017 National Judicial College training.

At the AO employee's direction, Respondent contacted SJI to determine the forms that he needed to complete. SJI informed Respondent of the necessary steps and that he should expect a \$1,000.00 reimbursement check to be mailed **to him** within two weeks of completing the necessary paperwork. Over the next ten days, Respondent exchanged eleven (11) emails with the AO employee concerning the scholarship check. In several of the missives the AO employee reminded Respondent that he needed to immediately reimburse the money to the Court. Less than three weeks later, Respondent received a check issued from the United States Treasury for \$1,000.00. Instead of immediately reimbursing the Court, Respondent deposited the check in his personal bank account on August 30, 2017. Importantly, Respondent waited ten months before paying the money over to the Court by personal check.

In his written response to the ethics complaint, Respondent claimed that he did not know why he received the check. Respondent deposited the money in his personal bank account and "thought nothing more of the check for many months." Interestingly, although Respondent asserted that he did not know why he received the \$1000.00 check, he clearly failed to claim the amount on his 2017 taxes. Respondent alleged that in late June 2018, he began completing his annual financial disclosure statement and that prompted him to remember SJI scholarship and the need to reimburse the court for

the same. Respondent wrote a check to the Court for \$1,000.00 on June 27, 2018. In his sworn statement when questioned about why he did not immediately turn over the SJI check to the Court, Respondent blamed his failure on chronic inattention to detail regarding his personal finances.

CONCLUSIONS

The Commission unanimously found that probable cause does exist in the matters set forth above to find that the Honorable Joshua Butcher, Judge of the 7th Judicial Circuit, violated Rules 1.1, 1.2, 3.1(B) and 3.1(C) 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 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 will lead to frequent disqualification of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity or impartiality;

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 matter.

Respondent knew or should have known that attending, participating and being paid to work on a training put on by the WVP AI for prosecutors, law enforcement officers and social workers would not promote the public confidence in the impartiality of the judiciary, especially in Abuse and Neglect cases. While simultaneously serving as a judge in such matters and as an actor at WVP AI trainings,

Respondent had a duty to disclose the latter activity and give both sides in such matters the opportunity to seek his disqualification if they so desired.

In *Tennant v. Marion Health Care Foundation*, 194 W. Va. 97, 459 S.E.2d 374 (1995), the Court held that a judge should disqualify himself/herself from any proceeding in which his/her impartiality might reasonably be questioned. The Court noted that the avoidance of the appearance of impropriety is as important in developing public confidence in the judicial system as avoiding actual impropriety itself and that the judge should take appropriate action to withdraw from a case in which the judge deems himself/herself biased or prejudiced. *Id.* The Court stated 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. The judge has a duty to disclose any facts even if the judge does not feel that they are grounds for disqualification *sua sponte*. By simultaneously participating in paid trainings for WVPAI and serving as a judge, and by failing to disclose the same to parties in Abuse and Neglect cases before him, Respondent clearly violated Rules 1.1, 1.2, 3.1(B) and 3.1(C) and is hereby **ADMONISHED** for his conduct.

The Commission also found Respondent's explanation for not immediately turning over the reimbursement check to the Court because he suffers from poor financial acumen implausible. Although Respondent eventually repaid the Court, the ten month delay was never properly explained. The Commission is of the opinion that Respondent knew the money was to be promptly turned over to the Court. If it had not, he would have had the obligation to disclose it on his 2017 taxes, which he did not do. Accordingly, Respondent violated Rules 1.1, 1.2 and 3.1(C) of the Code of Judicial Conduct for his failure to promptly turn over the \$1,000.00 scholarship check to the Court and is hereby **ADMONISHED** for his conduct.

Therefore, it is the decision of the Judicial Investigation Commission that the Honorable Joshua Butcher, Judge of the 7th Judicial Circuit, be disciplined by this **ADMONISHMENT**. Consequently, the Judicial Investigation Commission hereby **PUBLICLY ADMONISHES** Judge Butcher for his conduct as fully set forth in the matters asserted herein.

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

07/06/2020

Date

ADM/bjl