

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF,
THE HONORABLE PHILLIP T. GAUJOT,
MAGISTRATE OF MONONGALIA COUNTY**

**COMPLAINT NOS. 130-2021
& 131-2021**

**PUBLIC ADMONISHMENT OF THE HONORABLE PHILLIP T. GAUJOT
MAGISTRATE OF MONONGALIA COUNTY**

The matter is before the Judicial Investigation Commission (“JIC”) upon complaints filed by The Honorable Cindy S. Scott, Judge of the 17th Judicial Circuit, and Preston County Sheriff’s Captain Travis N. Tichnell setting forth certain allegations against the Honorable Phillip T. Gaujot, Magistrate of Monongalia County (“Respondent”). An investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure (“RJDP”). After a review of the complaint, the Judge’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 JIC found probable cause that Magistrate Gaujot violated Rules 1.1, 1.2, 1.3, 2.8(B) and 2.10(A) 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

Respondent was elected Magistrate for Monongalia County in the May 2020 election and took office on January 1, 2021. At all times relevant to this investigation, Respondent was serving as a Magistrate. Respondent graduated from John Marshall law school in Georgia but is not licensed to practice law. Respondent has no prior JIC complaints nor has he been the subject of any prior judicial discipline.

On December 1, 2021, Judge Scott filed Complaint No. 130-2021. On December 6, 2021, Captain Tichnell filed Complaint No. 131-2021. Respondent filed a written response to each complaint. On March 11, 2022, Respondent gave Judicial Disciplinary Counsel (“JDC”) a sworn statement. Although multiple allegations were raised in the two complaints and investigated by the JDC, only two claims have merit:

Complaint No. 130-2021:

In early November 2021, a defendant was charged with severely damaging several Morgantown police cruisers. Respondent arraigned the defendant. Morgantown Police Captain Matthew Solomon thought Respondent set the bond too low. Captain Solomon expressed his concern to a reporter for the local newspaper which decided to print an article on the subject.

The reporter contacted Respondent who made several comments to the reporter which were printed in the newspaper. For example, Respondent told the reporter that he gave the defendant a low bond to make sure “the department gets restitution.” Respondent also insinuated that the law enforcement officers had beaten up on the defendant by stating, “He’d taken some knocks. I mean his face was all swollen and I was kinda like ‘yikes,’ that he’d kinda done, he’d paid for that.” The newspaper article about the bonds ran in the November 7, 2021 edition of the paper.

In his sworn statement, Respondent claimed that he thought the interview was mostly off the record. Respondent alleged that the newspaper misquoted him several times during the article. Respondent eventually admitted during his sworn statement that the comments he made to the reporter were inappropriate. Respondent said he no longer talks to the press.

After the local newspaper printed the article, Respondent scheduled a meeting to talk to Morgantown Police Chief Eric Powell. The meeting occurred on or about November 8, 2021. Captain Solomon was present for the first part of the meeting in Chief Powell’s office. At one point, Respondent loudly addressed Captain Solomon’s decision to complain to the press about

the defendant's bond. According to Captain Solomon, Respondent was belligerent and shouted vulgarities at Captain Solomon. According to the officers, Respondent's behavior was so bad that Captain Solomon left the meeting to diffuse the situation. Chief Powell claimed that he also had to threaten to have Respondent removed before he would calm down.

In his written response and sworn statement, Respondent admitted that he was "livid." Respondent also admitted to a heated verbal exchange at the beginning of the meeting. Respondent denied saying the vulgarity claimed by law enforcement but admitted telling Captain Solomon that it was "an asshole decision."

During his sworn statement, Respondent insisted that the meeting with police, his demeanor and the use of the phrase "asshole decision" were appropriate and that it was "just men being blunt in an attempt to work through their differences." Only after JDC pointed out that the law enforcement officers probably saw an unequal balance of power between the judge and them did Respondent admit that the incident was inappropriate.

Complaint No. 131-2021:

On or about November 26, 2021, Captain Tichnell investigated a single vehicle crash that caused injury to several children. The mother and another adult were charged with the felony offense of gross child neglect with risk of serious injury. The injured children and the mother were transported to a Monongalia County hospital. When the mother was released, she was transported to Monongalia County Magistrate Court for arraignment. Respondent was on call and arraigned the mother.

The Preston County Prosecuting Attorney requested a bond of \$250,000, and it was noted on the paperwork that was provided to Respondent at the arraignment. When setting the mother's bail, Respondent thought that she should be given a Personal Recognizance (PR) bond. Respondent called a Preston County Magistrate to discuss why the prosecutor requested a

\$250,000 bond. At one point during the call, the magistrate put Respondent on hold and returned to the call with Captain Tichnell.

Captain Tichnell was very insistent that Respondent set the bond requested by the Prosecutor. Captain Tichnell threatened to dismiss the charges against the mother and refile more serious charges if Respondent set a PR bond. Captain Tichnell also threatened Respondent with going to the press and filing a judicial ethics complaint. According to Captain Tichnell, Respondent repeatedly responded in a vulgar manner.

During his sworn statement, Respondent stated that Captain Tichnell was emotional on the phone and that he would not let Respondent speak. Respondent believed Captain Tichnell's tone, demands and threats were out of line. Nonetheless, Respondent admitted swearing at the Captain and that his conduct was inappropriate.

Other Conduct:

After the complaints were received and Respondent replied in writing, JDC received four letters of support for him. Three of the letters were from defense attorneys and one was from a bail bondsman. During his sworn statement, Respondent admitted that he discussed having complaints against him and that he asked the people to write letters of support to JDC on his behalf. Respondent admitted that the lawyers that wrote letters on his behalf regularly appear in front of him. Respondent stated that he did not believe his position put any pressure on the lawyers to write the letters or gave any public impression of his lack of impartiality.

CONCLUSIONS

The Commission unanimously¹ found that probable cause exists in the matters set forth above to find that the Honorable Phillip T. Gaujot, Magistrate of Monongalia County, violated Rules 1.1, 1.2, 1.3, 2.8(B) and 2.10(A) of the Code of Judicial Conduct as set forth below:

1.1 – Compliance With the Law

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

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.

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.

2.8 – Decorum, Demeanor and Communication with Jurors.

(B) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity. . . .

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 discipline was not essential as Respondent had no prior disciplinary actions. Nonetheless, the Commission found that the violations were serious enough to warrant a public admonishment.

¹ The vote was 7-0. One commission member was absent and the Honorable Alan D. Moats, Judge of the 19th Judicial Circuit and JIC Chair, is presently serving as an *ex officio* member since his temporary appointment to the Supreme Court of Appeals of West Virginia.

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 [1] to Rule 1.2 states that “[p]ublic confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.” Comment [2] provides that “[a] judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code.” Comment [3] notes that “[c]onduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.” Comment [4] states that “[j]udges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.” 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.

Comment [1] to Rule 1.3 states that it is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. Comment [1] to Rule 2.10 provides that the restrictions on judicial speech are essential to the maintenance of the independence, integrity and impartiality of the judiciary. A judges must have a thick skin. Not

everyone will agree with the decisions that judges must make in cases on a daily basis. There will always be at least one party who will disagree with the decision and they are free to openly criticize the judge if they so choose. However, judges are constrained by the rules from replying to criticisms and shall not do so when they involve a matter that is pending or impending in any court.

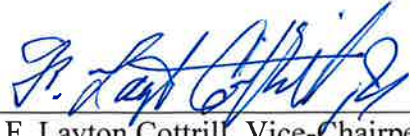
Judicial temperament is an absolute requirement. Not only does a judge set the tone of his/her courtroom but he/she in large part owes his/her reputation to acts of courtesy, civility and consideration. Judges must also realize that how people view the judge is how they view the court system as a whole. In order to gain respect, a judge must give respect even in difficult circumstances.

Judges are often perceived as the most powerful person in his/her county. In other words, the balance of power is never equal where a judge is involved and it is usually heavily tipped in his/her favor. Therefore, a judge must at all times take into consideration how he/she is viewed by his/her opponent before commenting. A simple negative comment by a judge may be viewed by his/her opponent as a threat. Therefore, judges should choose their words wisely. Respondent failed to follow these precepts. By doing so, he violated Rules 1.1, 1.2, 1.3, 2.8(B) and 2.10(A) of the Code of Judicial Conduct and is admonished for the same.

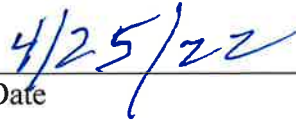
Therefore, it is the decision of the Judicial Investigation Commission that the Honorable Phillip T. Gaujot, Magistrate of Monongalia County, be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes Magistrate Gaujot for his conduct as fully set 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.



F. Layton Cottrill, Vice-Chairperson
Judicial Investigation Commission



Date

FLC/tat