

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF,
THE HONORABLE MICHAEL WEISS,
MAGISTRATE OF HARRISON COUNTY**

COMPLAINT NO. 112-2021

**PUBLIC ADMONISHMENT OF THE HONORABLE MICHAEL WEISS
MAGISTRATE OF HARRISON COUNTY**

The matter is before the Judicial Investigation Commission (“JIC”) upon a complaint filed by James Heslep setting forth certain allegations against the Honorable Michael Weiss, Magistrate of Harrison 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 Weiss violated Rules 1.1, 1.2, 1.3, 2.8(B) and 2.10(A) and (B) and 3.1(A), (B) and (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

Respondent was appointed Magistrate of Harrison County on March 17, 2020. Magistrate Weiss (Respondent) ran unopposed and was elected Magistrate in the May 2020 election. At all times relevant to the investigation, Respondent was serving as Magistrate. Prior to being appointed Magistrate, Respondent was a law enforcement officer and served in the military.

Respondent lives in the North View neighborhood of Clarksburg, West Virginia, along with his wife, his adult son and his daughter-in-law. At approximately 9:30 p.m., on October 16, 2021, someone knocked on Respondent’s back door and ran. Respondent’s wife looked out of the

kitchen window only to see someone running away. She was unable to provide a description. Within the next hour someone again knocked on the back door. Respondent's son happened to be in the kitchen at the time of the second knock. The son looked through the kitchen window and saw a male with a gray sweatshirt or backpack running from the house.

Respondent claimed the second knock was so hard and loud that they thought either the glass on the door had been broken or that the perpetrator had tried to kick in the door. According to Respondent, the second incident was of particular concern to the family because of the recent uptick in criminal behavior in the neighborhood. Because of this, Respondent and his son went outside and searched around the house to see if anyone was hiding or anything was missing. Nothing was amiss, so the two returned inside. Respondent then asked his wife to call 911.

Respondent and his son then left home. The two split up and walked around the block in different directions to see if they could find who was responsible for knocking on their door. In his written response to the complaint and in his sworn statement, Respondent adamantly maintained that his sole purpose was to locate the individual so he could point the person out to the police. Respondent, who routinely carries a gun, already had it on his hip when he went out to search. The gun was concealed by his shirt.

Meanwhile, four teenagers – two girls and two boys -- were playing volleyball in a fenced yard about a block away from Respondent's house. The ball was accidentally hit out of the yard into an alley which slopes downhill thereby causing it to roll in the direction of Respondent's home. One boy and one girl left to retrieve the volleyball. The boy was wearing a gray sweatshirt.

While walking down the alley looking for the volleyball, the two teens passed Respondent's son walking in the opposite direction. They did not know Respondent's son and found his actions suspicious. Respondent's son noticed that the male was wearing a gray sweatshirt

so he turned and followed the two. Alarmed by this, the two teens ran and screamed for help. Respondent's son chased them and yelled at them to stop. The teenagers then took two lefts and began running in Respondent's direction. Respondent saw two teens screaming and running toward him. Respondent also saw his son running behind them. Respondent moved toward the teens, yelled at them to stop and directed them to go over by a nearby car. Respondent told the two several times that the police were on their way.

The teenagers assert that while they were standing beside the car Respondent pulled something out of his pocket. In early accounts, the teens said it might have been a gun. In later accounts, they definitely saw a gun. Respondent steadfastly maintained that at no time did he remove his gun from underneath his shirt. He claimed that what the teens saw was his cell phone.

Not sure what was happening, the female continued to scream. A neighbor who lives almost directly in front of where the incident was taking place came out of his house. The neighbor told the teenagers to come to him and they complied. Members of the neighbor's family then escorted the teens to the house where they had been playing volleyball. Respondent and the neighbor then got into a heated argument. Respondent's wife arrived at the scene and got into a loud argument with the neighbor's wife. At that point, Clarksburg police officers arrived.

Two of the three officers wore bodycams. During a conversation with one of the officers, Respondent admitted telling the neighbor, "You need to calm your ass down! I am a Magistrate." In his sworn statement, Respondent at first denied swearing at the neighbor. However, after Judicial Disciplinary Counsel ("JDC") showed him the bodycam footage, Respondent stated that he did not remember swearing at the neighbor. Respondent acknowledged telling the neighbor he was a magistrate but argued it was solely to diffuse the situation.

In another conversation with an officer on bodycam, Respondent called the homeless in North View “shit bags.” When confronted with this at his sworn statement, Respondent did not remember making that statement but admitted it was inappropriate. Respondent also told the officer that the neighbor’s wife “started running her mouth because she’s a woman.”

The following day Respondent’s wife posted on a North View Neighborhood Watch Facebook page that the kids knocking on her door were caught and would not be doing that again. She made this statement even though none of the teens ever admitted the incident and with nothing more than a common-colored sweatshirt as the only link. Several members of the neighborhood including parents of some of the teens playing volleyball responded angrily about the teens’ innocence and Respondent’s actions that night.

During the JDC investigation it was discovered that Respondent was one of several administrators/moderators of the Facebook page which states:

This page is the North View Neighborhood Watch Group. This page is solely intended for North View, Clarksburg, West Virginia residents and past residents who want to make North View what it once was, again. We are tired of the drugs, the run down houses, and all of the younger generation not caring about our beloved neighborhood. Please report here, in confidence, to the moderators, any & all illegal activities that you see happening on our streets and in our homes. It will be reported to the proper authorities & put on blast via our page. We must do this as a Community!

During his sworn statement, Respondent admitted that being an administrator/moderator of the group could lead a reasonable person to think that he was biased toward law enforcement.

On October 20, 2021, Mr. Heslep, a parent of one of the teens, filed Complaint No. 103-2020 against Respondent. Respondent filed a written response on November 2, 2021, and filed a supplemental reply on December 7, 2021. Respondent also gave a sworn statement to JDC on March 4, 2022.

Respondent had one prior ethics complaint. In Complaint No. 103-2020, Respondent posted on Facebook that if a citizen were criminally cited for not wearing a mask and appeared before him, he would dismiss the citation because he thought it was unconstitutional. In his response to that complaint, Respondent admitted the decision to post was wrong and apologized for violating the Code of Judicial Conduct. Because Respondent was a newly appointed magistrate, the JIC dismissed the complaint with a warning:

Based upon the foregoing, the Commission is of the opinion that you violated Rules 1.2, 2.10(A) and (B) and 3.1(C) of the Code of Judicial Conduct. Ordinarily the Commission would have the right to admonish you for your conduct. Nevertheless, because of your inexperience as a judicial officer and your lack of any prior disciplinary record the Commission has decided to warn you that your conduct was inappropriate. You are also cautioned that any future such conduct will not be tolerated

CONCLUSIONS

The Commission unanimously¹ found that probable cause exists in the matters set forth above to find that the Honorable Michael Weiss, Magistrate of Harrison County, violated Rules 1.1, 1.2, 1.3, 2.8(B) and 2.10(A) and (B) and 3.1(A), (B) and (C) 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 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.

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.
- (B) A judge shall not in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

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;
- (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;

The Commission further found that formal discipline was not essential as Respondent had no prior disciplinary actions. Nonetheless, the Commission found that the violations coupled with the previous warning 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 [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 rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity and impartiality of the judiciary.

Comment [4], [5] and [6] to Rule 3.1 provide:

Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their . . . sex, gender . . . age . . . or socioeconomic status.

While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive.

The same Rules of the Code of Judicial Conduct that govern a judicial officer's ability to socialize and communicate in person, on paper, or over the telephone also apply to the Internet and social networking sites like Facebook.

Respondent's conduct following the arrival of the police was inappropriate. He swore, improperly invoked his position as a magistrate, made a demeaning stereotypical comment about the neighbor's wife, created the appearance however wrong it may be that he was pro-prosecution/pro-law enforcement by denigrating the homeless and serving as an administrator for the North View Neighborhood Watch Facebook page. Lastly, the comments made by his wife which convicted the teen of knocking on the door when the only proof was that he was wearing a common colored gray sweatshirt was unseemly in light of the fact that people thought he was the one posting. By engaging in such conduct, Respondent 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 Michael Weiss, Magistrate of Harrison County, be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes Magistrate Weiss 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