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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**IN THE MATTER OF:**
**MAGISTRATE CAROL FOUTY**
**MAGISTRATE FOR KANAWHA COUNTY**

**COMPLAINT NO. 33-2012**

## REPORT OF JUDICIAL DISCIPLINARY COUNSEL

**TO THE HONORABLE MENIS E. KETCHUM, II, CHIEF JUSTICE, SUPREME COURT OF APPEALS OF WEST VIRGINIA:**

Comes now Judicial Disciplinary Counsel pursuant to Rule 2.14 of the Rules of Judicial Disciplinary Procedure and submits this report on the above-referenced complaint filed by the Administrative Director of the Courts:

1. Rule 2.14(a) of the Rules of Judicial Disciplinary Procedure provides in pertinent part that "[w]hen the Administrative Director of the Courts has received information that a judge . . . (3) has engaged or is currently engaging in a serious violation of the Code of Judicial Conduct . . . , the Administrative Director may file a complaint with Disciplinary Counsel.

2. Rule 2.14(b) of the Rules of Judicial Disciplinary Procedure states in relevant part:

> Upon receipt of such complaint, Disciplinary Counsel shall conduct an immediate investigation and shall within ten days present to the Chief Justice of the Supreme Court a report indicating whether, in the opinion of Disciplinary Counsel, the integrity of the legal system has been placed into question by virtue of a judge's . . . (3) having engaged in or currently engaging in a serious violation of the Code of Judicial Conduct; or (4) inability or unwillingness to perform official duties. The Office of Disciplinary Counsel shall attempt to provide reasonable notice to the judge prior to the filing of this report.

3. On or about March 6, 2012, the Administrative Director of the Courts filed a complaint against Kanawha County Magistrate Carol Fouty (hereinafter "Respondent") alleging that she engaged in serious violations of Canons 1, 2, 3 and 4 of the Code of Judicial Conduct. A memorandum in support was attached to the complaint (Exhibit No. 1 attached hereto and made a part hereof by reference). A copy of the complaint was sent to Respondent on March 7, 2012 (Exhibit No. 1).

4. In the complaint and memorandum in support thereof it is alleged that: (a) on January 30, 2012, Respondent *sua sponte* dismissed a ticket citing Melea Dawn Fisher (hereinafter "Ms. Fisher") with the misdemeanor offense of simple possession; (b) the citation was dismissed without benefit of or input from a prosecutor; (c) no prosecutor was present during the dismissal of the ticket; (d) at some point Ms. Fisher began working for Respondent in a domestic capacity; (e) on February 27, 2012, Ms. Fisher was arrested and charged with the misdemeanor offenses of DUI and simple possession while running errands for Respondent in Magistrate Fouty's car; and (f) Respondent contacted the arraigning Magistrate on the February 27 charges and asked her to set a low bond for Ms. Fisher (Exhibit No. 1).

5. Upon the filing of the complaint by the Administrative Director of the Courts, the Judicial Investigation Commission began an immediate investigation which is still ongoing. Investigator Martin J. Wright, a former FBI agent who has been with the Judicial Investigation Commission for approximately two years, is conducting the investigation.

6. To date, Investigator Wright has spoken to the following individuals: (1) Respondent on March 11, 2012[1]; (2) Kanawha County Magistrate Assistant Sarah Weaver on March 12, 2012; (3) WV State Police Trooper Dennis Gregory on March 12, 2012; (4) Kanawha County Assistant Prosecutor Robert W. Schulenberg on March 12, 2012; (5) Kanawha County Deputy Sheriff and Court Bailiff Dan Waller on March 12, 2012; (6) Kanawha County Magistrate Julie Yeager on March 13, 2012; (7) Kanawha County Magistrate Assistant Kristen Vieweg on March 13, 2012; (8) Charleston Police Officer B.A. Lightner on March 13, 2012; (9) Dan Holstein, Chief of Staff, Kanawha County Prosecutor's Office on March 13, 2012; (10) Kanawha Magistrate Court Clerk Angela Cincinnati on March 13, 2012; (11) Insurance Agent Anna Dorsey on March 14, 2012; and (12) Michael Leonard Estes on March 15, 2012. Ms. Fisher[2] and Luther C. Basham declined to be interviewed. Investigator Wright attempted to personally interview Sandra Shaffer at her home on March 15, 2012. She either wasn't at home or would not answer the door. He also called her home number on several occasions. She did not answer the phone and did not return any telephone calls. Meanwhile, the undersigned spoke to Rhonda Cavendar of the Kanawha County Clerk's Office on March 14 and 15, 2012 and Sandra Shaffer and Sam Drucker from the Kanawha County Clerk's Office on March 14, 2012.

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[1] Respondent never informed Investigator Wright that she was represented by an attorney during their March 11, 2012 meeting. Investigator Wright made arrangements to do a more formal interview on March 12, 2012 at Respondent's residence. On that date, Respondent either wasn't home or did not answer the door. She also did not answer or return Investigator Wright's phone calls. It wasn't until Investigator Wright attempted to meet with Respondent at the Judicial Annex on March 13, 2012, that she first indicated that she had retained a lawyer. At first, Respondent told Investigator Wright that she had retained Attorney Ben Bailey immediately following the extensive media reports. However, she later told Investigator Wright that she had not yet signed any retainer agreement with and had not paid any retainer fee to Attorney Bailey.

[2] Ms. Fisher is represented by Attorney Tom McGee.

7. The results of Mr. Wright's investigation have uncovered the following facts concerning Respondent and the instant judicial ethics complaint:

   a. On or about December 31, 2011, Ms. Fisher was cited by West Virginia State Police Trooper D.E. Gregory (hereinafter "Trooper Gregory") for the offense of simple possession of Alazopram (Xanax). The Uniform Citation, bearing the number 100-1428904, was filed in the Magistrate Court of Kanawha County. Trooper Gregory noted on the Citation that Ms. Fisher had to appear at Magistrate Court on or before January 30, 2012 to address the ticket[3] (See Exhibit No. 2 attached hereto and made a part hereof by reference).

   b. At some point prior to January 30, 2012, Respondent was contacted by a mutual friend and asked to dismiss Ms. Fisher's ticket.[4] Respondent stated that she was contacted by her friend Michael Leonard Estes (hereinafter "Mr. Estes"). However, Mr. Estes denied making the request but indicated that it was Luther C. Basham (hereinafter "Mr. Basham") who probably asked Respondent to dismiss the ticket.[5]

   c. On January 30, 2012, Ms. Fisher personally appeared before Respondent in Day/Night Court at Kanawha County Magistrate Court. At that time, Respondent dismissed Ms. Fisher's ticket without either the knowledge of or approval by the Kanawha County Prosecutor, any assistant prosecutor, or Trooper Gregory.

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[3] Ms. Fisher had one prior charge in Kanawha County Magistrate Court. In 2008, she was charged with one count of domestic battery in Case No. 08-6734. The case was dismissed on September 9, 2008 by Kanawha County Magistrate Tim Halloran (Exhibit No. 3 attached hereto and made a part hereof).

[4] Respondent knew Ms. Fisher's parents, who are now deceased. She also knew Ms. Fisher as a young child but indicated that she had lost track of her until recently.

[5] Mr. Estes acknowledged that both Mr. Basham and he are friends with Respondent and Ms. Fisher. According to Mr. Estes, Luther Basham is a longtime friend of Respondent. Mr. Basham is also a convicted felon. He was last convicted in the Circuit Court of Kanawha County of two counts of receiving support from the prostitution of a minor and received a concurrent life recidivist sentence. He was released from prison in Fall 2011. During his incarceration, Mr. Basham had to have a leg amputated. Mr. Estes stated that Mr. Basham lives at the home of Mr. Este's sister. Mr. Estes stated that he works for Mr. Basham as a caregiver and one of his duties is to drive Mr. Basham places. Mr. Estes stated that he took Mr. Basham to Respondent's house at least twice in January 2012, and it was on one of those occasions when he first met Respondent.

d. On or about February 2, 2012, Respondent hired Ms. Fisher to work for her at her residence, which is located at 617 Maryland Avenue, Charleston, WV. According to Respondent, she hired Ms. Fisher at the request of Mr. Estes. However, Mr. Estes stated that Respondent hired Ms. Fisher at the request of Mr. Basham. Respondent stated that Ms. Fisher was supposed to work 32 hours a week at a rate of $10.00 an hour. According to Respondent, she paid her personal employees every two weeks by check. She acknowledged that she paid Ms. Fisher by check on one occasion prior to February 27, 2012.

e. At the time Ms. Fisher was working for Respondent, she did not have a vehicle. Mr. Estes would take Ms. Fisher to Respondent's house on the days she worked. He would then pick her up at the end of her work day and drive her home.

f. During the afternoon hours of February 27, 2012, Ms. Fisher was at work at Respondent's house when Respondent received a telephone call from Insurance Agent Anna Dorsey. Ms. Dorsey advised Respondent that her insurance was set to expire the next day on three of her rental properties. Respondent agreed to get the payment to Ms. Dorsey before close of business. Ms. Dorsey's office is located in Kanawha City near Foodland. Respondent asked Ms. Fisher to take the payment to Ms. Dorsey and to buy a few things for her at Foodland. Respondent filled out a check for Ms. Dorsey and gave it to Ms. Fisher. She also handed Ms. Fisher her checkbook. Respondent then instructed Ms. Fisher to use Respondent's car.[6]

g. Ms. Fisher drove to Kanawha City in Respondent's vehicle. At some point the vehicle stalled in the Foodland parking lot, so Ms. Fisher contacted Mr. Estes. Mr.

[6] Respondent has a burgundy Ford Taurus. Her license plate number is WV 4TZ688. This is the car Respondent loaned Ms. Fisher on February 27, 2012.

Estes got in his vehicle, drove to Kanawha City and found Ms. Fisher. When he arrived, Mr. Estes learned that Ms. Fisher was driving Respondent's car. According to Mr. Estes, Ms. Fisher had trouble locating Ms. Dorsey's insurance office. He found the address and the two walked the short distance from the car to the business. Both Mr. Estes and Ms. Fisher went inside. Ms. Fisher handed Ms. Dorsey the check. Mr. Estes and Ms. Fisher then left the business and walked back to the vehicle.[7] Meanwhile, Ms. Fisher had also called Respondent about the stalled vehicle. Respondent indicated that she would send a tow truck to Ms. Fisher's location.

h. When Mr. Estes and Ms. Fisher returned to Respondent's car, it started. Either Mr. Estes or Ms. Fisher then called Respondent and told her to cancel the tow truck. Ms. Fisher drove Respondent's car out of the lot and Mr. Estes started to follow in his vehicle. Mr. Estes observed Ms. Fisher turn the wrong way onto MacCorkle Avenue. She was traveling westbound in an eastbound lane. He then observed Ms. Fisher drive over the median in an apparent effort to go in the right direction. It was at that time that Ms. Fisher was pulled over by a Charleston Police Officer.

i. Patrolman B.A. Lightner (hereinafter "Patrolman Lightner") also saw Ms. Fisher drive in the wrong direction on MacCorkle Avenue and jump the median.[8] He initiated a traffic stop in the 4800 block of MacCorkle Avenue. His backup was Patrolman Zane Blackridge. Patrolman Lightner approached the vehicle and asked Ms. Fisher where she was going. Ms. Fisher informed him that she was running some errands for her boss, Carol Fouty.

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[7] During an unspecified time while in Kanawha City and prior to her arrest, Ms. Fisher also went into Foodland and purchased the items requested by Respondent.

[8] Respondent's car matched an earlier BOLO from the area of the 2700 block of Chesterfield Avenue in Kanawha City where a Burgundy Ford Taurus bearing license plate WV4TZ688 was reported to be all over the roadway traveling toward the dead end of Chesterfield.

j. According to the criminal complaint prepared by Patrolman Lightner, the following occurred:

> I then noticed Fisher push a brown pill bottle with a white cap down into her purse. I asked Fisher if she had taken any medication today. Fisher stated, "I took some advil for my teeth." I then asked Fisher if she had taken anything else. Fisher stated, "I am a recovering addict. I don't use like I used too. I asked Fisher if Carol Fouty knew she had her car. Fisher stated, "Yes. She sent me to pick up some items for her. I have her checkbook and everything." [She held] up a checkbook belonging to Carol Fouty.

(Exhibit No. 4 attached hereto and made a part hereof).

k. Patrolman Lightner then had Ms. Fisher exit the vehicle and perform standardized field sobriety tests. He also found 11 Clonazepam (Klonopin) in her purse in a prescription bottle belonging to another individual.

l. Meanwhile, Mr. Estes watched as the Patrolman talked to Ms. Fisher. He also observed Ms. Fisher perform the field sobriety tests. Mr. Estes called Respondent and advised her that Ms. Fisher had been stopped by the police and that it looked like she was going to be arrested. Respondent asked Mr. Estes to put one of the officers on the telephone but they refused to talk to her.

m. As a result of his investigation, Patrolman Lightner placed Ms. Fisher under arrest.[9] Patrolman Lightner then transported Ms. Fisher to the station. Patrolman Lightner inventoried Ms. Fisher's purse and located a zipped container that purportedly had 0.6 grams of marijuana inside. Patrolman Lightner then charged Ms. Fisher with one misdemeanor count of First Offense DUI and two misdemeanor counts of simple possession.

[9] Respondent's car was towed from the scene.

n. Meanwhile, Kanawha County Magistrate Julie Yeager (hereinafter "Magistrate Yeager") and her Assistant Sarah Weaver (hereinafter "Ms. Weaver") were on night duty in Magistrate Court.[10] According to Ms. Weaver, Respondent called sometime after 5:00 p.m. and asked about Ms. Fisher. Ms. Weaver told Respondent that Ms. Fisher had not yet appeared for arraignment. Respondent then asked Ms. Weaver to ask Magistrate Yeager if she would give Ms. Fisher a personal recognizance bond. Ms. Weaver told Respondent that she would pass the message along to Magistrate Yeager. Ms. Weaver then advised Magistrate Yeager of Respondent's phone call and her request. Magistrate Yeager indicated that she wanted to see the charges before making a decision on bond.

o. Shortly before 7:00 p.m., Patrolman Lightner arrived in night court with Ms. Fisher. He was asked to bring her back after the dinner hour. Patrolman Lightner and Ms. Fisher returned to night court at approximately 8:00 p.m. Coincidentally, Trooper Gregory was also in night court. He asked Patrolman Lightner why Ms. Fisher was there. Trooper Gregory then informed Patrolman Lightner that he had cited Ms. Fisher with simple possession in December 2011. At that point, Ms. Fisher voluntarily stated that the citation had been dismissed by Respondent. Magistrate Yeager then looked up the citation on the computer for Trooper Gregory and confirmed that Ms. Fisher's earlier ticket had in fact been dismissed by Respondent.

p. Magistrate Yeager arraigned Ms. Fisher on Patrolman Lightner's charges. She set bond in the amount of $5,000.00 surety with a 10% cash option. Following arraignment, Patrolman Lightner transported Ms. Fisher to the South Central Regional Jail.

[10] The night court shift usually runs from 4:00 p.m. until midnight.

q. Respondent called again later in the evening and asked Ms. Weaver about Ms. Fisher's status. Ms. Weaver informed Respondent what Ms. Fisher had been charged with and that bond had been set at $5,000.00 surety with a 10% cash option.

r. Respondent did not post Ms. Fisher's bond. Mr. Estes and Mr. Basham each chipped in $250.00 cash to post Ms. Fisher's bond.

s. On March 3, 2012, Trooper Gregory re-filed the simple possession of Alazopram (Xanax) charge against Ms. Fisher by way of criminal complaint (Exhibit No. 5 attached hereto and made a part hereof). Kanawha County Magistrate Pete Lopez found probable cause and issued a summons. Trooper Gregory personally served the complaint and summons on Ms. Fisher at her residence later the same day.

t. During the course of the investigation on the instant ethics complaint, Investigator Wright uncovered an issue pertaining to Respondent and warrant recalls. Investigator Wright interviewed Kanawha County Sheriff's Deputy and Court Bailiff Dan Waller (hereinafter "Deputy Waller"). Deputy Waller advised that in 2010 he became aware that certain defendants who turned themselves in were not being processed or fingerprinted. He also found that many of them were being released on personal recognizance bonds. He advised Kanawha County Assistant Prosecutor Rob Schulenberg (hereinafter "Mr. Schulenberg) of the issue. Mr. Schulenberg expressed concern about the matter in a letter dated January 11, 2011 (Exhibit No. 6 attached hereto and made a part hereof). In the letter, Mr. Schulenberg concluded that "a magistrate may not recall a previously issued arrest warrant without the authorization of the prosecuting attorney." Assistant Prosecutor Schulenberg correctly noted that no provision of Rule 4 of the West Virginia Rules of Criminal Procedure for Magistrate

Court grants a magistrate the authority to recall a warrant prior to its execution. In fact, Rule 4(d)(4) provides in pertinent part:

> At the request of the attorney for the state, made at any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the magistrate to an authorized person for execution or service.

Thus, it appears that the Rule requires involvement by a prosecutor and proper service by a duly authorized person of any warrants. A duly authorized person is a law enforcement officer who can serve the warrant and process the defendant.

u. Deputy Waller also asked Kanawha County Magistrate Clerk Angela Cincinnati (hereinafter "Ms. Cincinnati") to keep track of warrants recalls. She did so for an eight month period in 2011. Investigator Wright obtained the results of Ms. Cincinnati's efforts and they demonstrate the following: There were apparently 27 cases that had warrant recalls. Respondent handled 24 of those matters.[11] In 17 of the warrant recalls cases, Respondent gave the defendant a P.R. Bond; in 5 of the cases, Respondent gave defendant a surety bond; in one of the cases Respondent gave defendant a cash only bond; and in one of the cases, Respondent gave the defendant a cash bond on a misdemeanor charge and a property bond on the felony charge. Interestingly, Earl E. Wright[12] (hereinafter "Mr. Wright") posted the surety bond on the five surety bond cases. Mr. Wright[13] holds power of attorney for several individuals and uses their property to post the surety bonds. A review of the paperwork associated with each of the five cases indicates that Magistrate Fouty did

[11] It appears that Magistrates Yeager, Lopez and Halloran each handled one of the remaining three cases.
[12] Earl Wright is no relation to Investigator Wright.
[13] In 2010, Mr. Wright pled guilty to a worthless check charge in Kanawha County Magistrate Courty and was fined $250.00. In June 2011, Mr. Wright was charged with one felony count of possession with intent to deliver. The charge was dismissed at the preliminary hearing.

not obtain the requisite justification of surety in any of the matters. Based on Magistrate Fouty's failure to obtain the requisite justification of surety, the bonds were not recorded in the Kanawha County Clerk's office as encumbrances on any of the properties.[14]

v. Kristen Vieweg (hereinafter "Ms. Vieweg) is Respondent's assistant. According to Ms. Vieweg, she has heard Respondent tell individuals over the telephone what her work schedule is going to be. Ms. Vieweg acknowledged that Respondent seemed to have more people show up and appear before her when she is in day court as opposed to the other Magistrates. Respondent told her that it is their responsibility to fill out the Warrant Recall form when someone turns themselves in but that it is not their responsibility to make sure that the individuals are fingerprinted and/or booked. Concerning the Justification of Surety, Ms. Vieweg stated that it is Respondent's opinion that all they are required to collect is the Affidavit for Justification of Surety and not the actual Justification of Surety. She stated that Respondent believes it is their responsibility to accept the Affidavit as true when it is submitted. She also stated that Respondent believes that it is not their responsibility to question the validity of the information on the Affidavit. Ms. Vieweg stated that Mr. Wright has submitted a large number of surety bonds on individuals before Magistrate Fouty. She also stated that Mr. Wright usually calls into day court for the daily schedule.

w. However, in November 1997, the Honorable Tod Kaufman, then Chief Judge of the Circuit Court of Kanawha County, entered an Administrative Order regarding the use of bail bondsmen in and bonding procedures for the 13th Judicial Circuit (Exhibit No.

[14] The computer system in existence in Kanawha County Magistrate Court only allows limited searches to be performed by defendant or case number. An individual cannot search records, by arraigning magistrate or person posting bond or date of arrest or arraignment.

7 attached hereto and made a part hereof). The Order outlawed the use of bail bondsmen in Kanawha County unless they met certain qualifications outlined therein, were pre-approved by the Chief Judge, and agreed to associate as equal partners with other qualified bondsmen in the Kanawha County Circuit Court Monitored and Regulated Bonding Business Partnership.[15]

x. More importantly, the Administrative Order required the submission of an actual justification of surety from every individual who posted a property bond for any defendant in circuit or magistrate court. Moreover, the Order put the onus on the judicial officer to obtain the justification of surety. Paragraph No. 3 of the Administrative Order provides in pertinent part:

> The written understanding of one or more persons to pledge real property to assure that the defendant appears for scheduled proceedings and that he/she will abide by the conditions of the order granting bail which shall be known as secured bond. **The judge or magistrate shall require that justification of surety be furnished** and may require the surety to identify any outstanding liens or encumbrances on the property. . .

(Exhibit No. 7 at 2) (emphasis added). The Administrative Order took effect on January 12, 1998, and remains in effect today.

8. Respondent has been the subject of discipline on three prior occasions. By decision dated December 27, 2011, the Judicial Investigation Commission admonished Respondent for violating Canons 1A, 2A, 2B, 3A, 3B(1) and (2), and 3E(1)(a) of the Code of Judicial Conduct for helping a friend draft a peace bond and then finding probable cause to issue the peace bond (Exhibit No. 8 attached hereto and made a part hereof). By decision dated October 8, 2004, the Judicial Investigation Commission admonished Respondent for violating Canons 1, 2A, 2B, 3A, 3B(1) and (2), and 3E(1) of the Code of Judicial

[15] Mr. Wright has never gone through these procedures to act as a bail bondsman in Kanawha County.

Conduct in Complaint No. 73-2004, where she was alleged to have issued a protective order from her home to her neighbor who was also her tenant (Exhibit No. 9 attached hereto and made a part hereof). She also received a written admonishment in the same decision for Complaint No. 72-2004 for advertising her availability as a Notary Public in a telephone directory in violation of Article VIII § 7 of the West Virginia Constitution and Canons 1 and 4D(1)(a) and (b) of the Code of Judicial Conduct (Exhibit No. 9). By Order entered April 5, 2001, this Court censured Respondent for using a racial epithet in her courtroom in violation of Canons 1A, 2A and 3(B)(4) of the Code of Judicial Conduct in Slip Opinion No. 27832 (WV 4/5/2001) (Exhibit No. 10). This Court also ordered Respondent to reimburse the Judicial Hearing Board $1,500.00 (*See* Exhibit No. 10).

9. While the Judicial Investigation Commission continues to investigate this matter, the evidence uncovered thus far suggests that the integrity of the magistrate court system has been placed into question by virtue of Respondent's actions[16] when viewed in light of the following Canons of the Code of Judicial Conduct:

**Canon 1:**

**A judge shall uphold the integrity and independence of the judiciary.**

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

**Canon 2:**

**A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.**

[16] This Court has the authority to suspend a judge with or without pay until the underlying disciplinary proceeding has been completed. *In re Grubb,* 187 W. Va. 228, 417 S.E.2d 919 (1992); *In re Atkinson,* 193 W. Va. 258, 456 S.E.2d 202 (1995).

A. A judge shall respect and comply with the law, shall avoid impropriety and the appearance of impropriety in all of the judge's activities, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or knowingly permit others to convey the impression that they are in a special position to influence the judge. . . .

**Canon 3:**

**A judge shall perform the duties of judicial office impartially and diligently.**

A. Judicial duties in general. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

B. Adjudicative responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism. . . .

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding. . . .

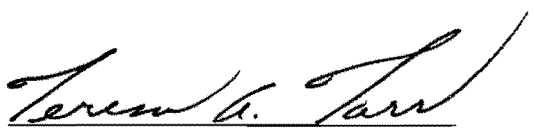
**Canon 4:**

**A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.**

A. Extra-judicial activities in general. A judge shall conduct all of the judge's extra-judicial activities so that they do not:
(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
(2) demean the judicial office; or
(3) interfere with the proper performance of judicial duties.

Based upon the foregoing, the undersigned having reported to the Chief Justice pursuant to Rule 2.14 of the Rules of Judicial Disciplinary Procedure, it is respectfully requested that this matter be reviewed and such action be taken as is deemed fit and proper in this case.

Respectfully submitted,



Teresa A. Tarr, Counsel
WV Bar I.D. No. 5631
Judicial Investigation Commission
City Center East Suite 1200A
4700 MacCorkle Avenue SE
Charleston, WV 25304
(304) 558-0169

| Delivered by hand to:<br>Judicial Investigation Commission<br>Post Office Box 1629<br>Charleston, West Virginia 25326 | Complaint No.: 33-12<br><br>Date filed: March 6, 2012 |
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# BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**COMPLAINT CONCERNING A JUSTICE, CIRCUIT JUDGE, FAMILY COURT JUDGE, MAGISTRATE, MENTAL HYGIENE COMMISSIONER, JUVENILE REFEREE, SPECIAL COMMISSIONER OR SPECIAL MASTER.**

NAME AND ADDRESS OF JUDICIAL OFFICER:

Magistrate Carol Fouty
111 Court Street
Charleston, West Virginia 25301

NATURE OF COMPLAINT: (Give complete details with names and specific dates. If additional space is needed, continue on Page Two of this form. Copies of any pertinent documents, letters, or other materials which you refer to in this complaint, may be attached at the time of filing.)

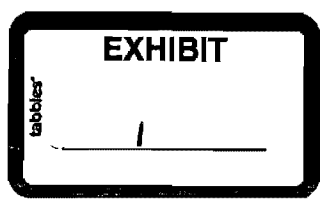
**TYPE OR USE BLACK OR DARK INK ONLY - DO NOT USE A PENCIL!**

Pursuant to the provisions of Rule 2.14 of the Rules of Judicial Disciplinary Procedure, this complaint is filed upon information received that Kanawha County Magistrate Carol Fouty has engaged, or is currently engaging, in a serious violation or violations of the Code of Judicial Conduct, namely, the requirement of Canon 1 that a judge shall uphold the integrity and independence of the judiciary; the requirement of Canon 2 that a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities; the requirement of Canon 3 that a judge shall perform the duties of judicial office impartially and diligently and the requirement of Canon 4 that a judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

**YOUR NAME AND ADDRESS:**

Steven D. Canterbury
Administrative Director
Supreme Court of Appeals of West Virginia
Building 1, Room E-100, State Capitol
Charleston, WV 25305

**TELEPHONE NO.:** (304) 558-0145



MEMORANDUM IN SUPPORT OF COMPLAINT CONCERNING
MAGISTRATE CAROL FOUTY

On or about February 27, 2012, Melea Dawn Fisher was arrested in Charleston, West Virginia and charged with the misdemeanor criminal offenses of Driving Under the Influence (DUI), possession of a controlled substance and possession of marijuana. Ms. Fisher was driving a vehicle registered to Kanawha County Magistrate Carol Fouty and in that vehicle, a Charleson police officer found a quantity of Klonopin, an anti-anxiety medication that had been prescribed for someone other than Ms. Fisher. A small quantity of marijuana was also found in the car. Ms. Fisher is reported to be employed in a domestic capacity by Kanawha County Magistrate Carol Fouty. In connection with her DUI arrest, Ms. Fisher is reported to have told a Charleston police officer that she is a recovering addict, that Magistrate Fouty knew that she was driving the vehicle registered to Magistrate Fouty, that Magistrate Fouty had sent her out to run errands and that she, Ms. Fisher, was in possession of Magistrate Fouty's checkbook which had been given to her by Magistrate Fouty. Ms. Fisher is reported to have shown a police officer the checkbook belonging to Magistrate Fouty. Kanawha County Prosecutor Mark Plantz is reported to have stated that Magistrate Fouty allegedly contacted Kanawha County Magistrate Julie Yeager and asked Magistrate Yeager to set a low bond amount for Ms. Fisher but that Magistrate Yeager ignored the request and set a bond amount of $5,000.

On or about December 31, 2011, Melea Dawn Fisher was issued a citation that charged her with simple possession of a controlled substance. On or about January 30, 2012, that citation was ordered dismissed by Kanawha County Magistrate Carol Fouty. In connection with the dismissal of the citation, Kanawha County Prosecutor Mark Plantz is reported to have stated that there are no indications in the court record that a hearing was conducted or that a prosecutor was present when the citation was dismissed by Magistrate Fouty. Mr. Plantz is reported to have further stated that if cases are dismissed without a prosecutor being present, that would potentially constitute a violation of the judicial code of ethics and could also potentially have criminal implications.

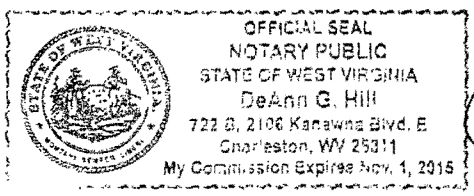
**The attached Affidavit must be signed by you before a Notary Public as a part of this complaint. Please mail complaint to the address shown at the top of this page.**

## AFFIDAVIT

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, ss:

This day personally appeared before the undersigned authority, a Notary Public in and for the State and County aforesaid, Steven D. Canterbury, who swears or affirms that the statements contained in the foregoing Complaint are true except as to those stated to be upon information, and as to those statements, he believes them to be true.




Steven D. Canterbury
Complainant

Taken, subscribed, and sworn to before me this 6th day of March, 2012.

My commission expires November 1, 2015.

Notary

**JUDICIAL INVESTIGATION COMMISSION**
City Center East - Suite 1200 A
4700 MacCorkle Ave., SE
Charleston, West Virginia 25304
(304) 558-0169 • FAX (304) 558-0831

March 7, 2012

PERSONAL & CONFIDENTIAL
The Honorable Carol Fouty, Magistrate
Kanawha County Magistrate Court
Kanawha County Judicial Building
111 Court Street
Charleston, West Virginia 25301

Dear Magistrate Fouty:

The Judicial Investigation Commission received a complaint against you. A copy of the complaint is enclosed for your review.

In accordance with the provisions of Rule 2.2 of the Rules of Judicial Disciplinary Procedure, I, as Counsel, must investigate all complaints received. After investigation, I must file a report with the Commission; but prior to the filing of the report, the involved judge must be advised of the nature of the charge and must be afforded an opportunity to make an explanation. At a recent meeting, the members of the Commission decided if a complainant requests a copy of your response to this complaint you may provide a copy at your discretion.

Since the Commission wishes to handle all complaints filed in the most expeditious and fair manner possible, any response or explanation you may wish to make should be submitted to me, in writing, within five (5) days after your receipt of this letter. For your information, the Rules, which are relevant to the handling of complaints against judicial officers, may be found in the Court Rules.

I will appreciate your prompt attention to this matter.

Sincerely,

Teresa A. Tarr
Judicial Disciplinary Counsel

TAT:nb
Enclosure
33-2012

3-12

State of West Virginia Uniform Citation NO: 100-1428904

*The undersigned, being duly sworn, upon his oath deposes and says:*

On Sat The 23 Day Of Dec 2016 At 2:16 Hours

Weekday Date Month Year Time

Name: Father Melea Dawn

Last First Middle

Address: 713

City: State: WV Zip Code:

Driver License Type:

- Driving License
- GDL Level 1
- GDL Level 3
- CDL Instruction Permit
- Motorcycle Instr Permit
- Instruction Permit
- GDL Level 2
- CDL
- Motorcycle Only
- Other:

F444015 WV 6/7/81

Driver License Number State Social Security Number Date of Birth

Gender: M F

102 5 Ft. 4 In.

Weight Height Eye Color Class Restrictions Endorsements

78NG48 WV

License Plate Number State Plate Class Vehicle Identification Number (VIN)

96 Cargo Civic Red

Make Year Body Style Model Color

Owner / Lessee Name: Same as Violator

Address:

City: State: Zip Code:

Fatality

**Complete Only for Commercial Motor Vehicles**

CMV Type (Check 1): Veh Designed to Carry 16+ Passengers Haz Mat Other CMV

Coal Resource Transportation Sys.

DOT / Carrier # Bill of Lading Shipper ID # Permit #

In or Near: Kanawha County Municipality

Highway Type: Route Number: Milepost: Direction of Travel:

Interstate County US City Street WV Other

GPS Coordinate: Lat Long

Street Name: Country Rd

*In the Above Listed County or City of West Virginia, Did Unlawfully Then and There Commit the Following Offense(s):*

*Charge #1: (Select Only 1 Violation per Charge)*

Speeding MPH in a MPH Zone

Other: Simple Possession

*In Violation of* WV State Code / Municipal Ordinance

60A-4-401

Code or Ordinance Ref #

*Charge #2: (Select Only 1 Violation per Charge)*

*In Violation of* WV State Code / Municipal Ordinance

Code or Ordinance Ref #

WVSP WV 5900 212

Agency, Detachment, or Unit Name ORI # Badge or ID #

S. Tar DS. Cooper S. Tar

Officer's Name (Please Print) Officer's Signature

**VIOLATOR RESPONSIBILITY**

*I Understand that I Have to Appear, On or Before,* Jan 30 2017 (Date)

111 Court St Charleston 304 746 2456

Court Name and Address Court Phone

*I Promise to Contact the Above Listed Court within the Time Specified. Failure to Appear Will Result in the Suspension of Driver's License.*

Violator Signature - Not an Admission of Guilt

**FOR COURT USE ONLY**

Reduced Charge #1 Code Reduced Charge #2 Code

Charge 1 Disposition: Case #:

- 01 Not Guilty
- 02 Forfeited Bail
- 03 Tried in Absence
- 04 Nolle Prosecui
- 05 Appealed to Higher Court
- 06 Nolo Contendre
- 07 Guilty
- 08 Prelim. Hearing
- 09 Change of Venue
- 10 Dismissed

Charge 2 Disposition: Case #:

- 01 Not Guilty
- 02 Forfeited Bail
- 03 Tried in Absence
- 04 Nolle Prosecui
- 05 Appealed to Higher Court
- 06 Nolo Contendre
- 07 Guilty
- 08 Prelim. Hearing
- 09 Change of Venue
- 10 Dismissed

*This Abstract is Certified Correct:*

Signature / Title / Date

**FOR DMV USE ONLY** Court Code Conviction Code 1 Conviction Code 2

**SUMMONS**

MAGISTRATE COURT
OF KANAWHA COUNTY, WV
A TRUE COPY FROM THE RECORD

TESTE: Angela Cincinnati
CLERK

EXHIBIT
tabbies
2

State of West Virginia Uniform Citation NO: 100-1428904

*The undersigned, being duly sworn, upon his oath deposes and says:*

On Sat (Weekday) The 31 (Date) Day Of Dec (Month) 2011 (Year) At 2316 (Time) Hours

Name: Fisher (Last) Melea (First) Dawn (Middle)

Address: 713 Breece St Apt B

City: Charleston State: WV Zip Code: 25302

Driver License Type:

(X) Driving License ( ) GDL Level 1 ( ) GDL Level 3 ( ) CDL Instruction Permit ( ) Motorcycle Instr Permit
( ) Instruction Permit ( ) GDL Level 2 ( ) CDL ( ) Motorcycle Only ( ) Other:

F414015 (Driver License Number) WV (State) (Social Security Number) 6/3/81 (Date of Birth)

Gender: (X) M ( ) F | 102 (Weight) 5 Ft. 4 In. (Height) B (Eye Color) E (Class) (Restrictions) (Endorsements)

8NG498 (License Plate Number) WV (State) (Plate Class) 022320 (Vehicle Identification Number (VIN))

Honda (Make) 96 (Year) Coupe (Body Style) Civic (Model) Red (Color)

Owner / Lessee Name: (X) Same as Violator

Address:

City: State: Zip Code:

**Complete Only for Commercial Motor Vehicles**

( ) Fatality CMV Type (Check 1): ( ) Veh Designed to Carry 16+ Passengers ( ) Haz Mat ( ) Other CMV

( ) Coal Resource Transportation Sys. Permit #:

DOT / Carrier # Bill of Lading Shipper ID #

*In or Near:* Kanawha (County) St Albans (Municipality)

Highway Type: (X) Interstate ( ) County (X) US ( ) City Street ( ) WV ( ) Other

Route Number: 60 Milepost: Direction of Travel:

GPS Coordinate: Lat: Long:

Street Name: Walnut St

Specific Reference / Landmark:

*In the Above Listed County or City of West Virginia, Did Unlawfully Then and There Commit the Following Offense(s):*

*Charge #1: (Select Only 1 Violation per Charge)*

( ) Speeding ____ MPH in a ____ MPH Zone

(X) Other: Simple Possession

*In Violation of* 60A-4-401 (Code or Ordinance Ref #) (X) WV State Code ( ) Municipal Ordinance

*Charge #2: (Select Only 1 Violation per Charge)*

( )

*In Violation of* ____ (Code or Ordinance Ref #) ( ) WV State Code ( ) Municipal Ordinance

WVSP (Agency, Detachment, or Unit Name) WVWSP1600 (ORI #) 212 (Badge or ID #)

Sr Tpr D.E. Gregory (Officer's Name (Please Print)) Sr Tpr D.E. G (Officer's Signature)

**VIOLATOR RESPONSIBILITY**

*I Understand that I Have to Appear, On or Before,* Jan 30 2012 (Date)

111 Court St Charleston (Court Name and Address) 357-0436 (Court Phone)

*I Promise to Contact the Above Listed Court within the Time Specified. Failure to Appear Will Result in the Suspension of Driver's License.*

Violator Signature - Not an Admission of Guilt

**FOR COURT USE ONLY**

Reduced Charge #1 | Code | Reduced Charge #2 | Code

| Charge 1 Disposition: | Case #: | Charge 2 Disposition: | Case #: |
|---|---|---|---|
| ( ) 01 Not Guilty | ( ) 06 Nolo Contendre | ( ) 01 Not Guilty | ( ) 06 Nolo Contendre |
| ( ) 02 Forfeited Bail | ( ) 07 Guilty | ( ) 02 Forfeited Bail | ( ) 07 Guilty |
| ( ) 03 Tried in Absence | ( ) 08 Prelim. Hearing | ( ) 03 Tried in Absence | ( ) 08 Prelim. Hearing |
| ( ) 04 Nolle Prosecui | ( ) 09 Change of Venue | ( ) 04 Nolle Prosecui | ( ) 09 Change of Venue |
| ( ) 05 Appealed to Higher Court | ( ) 10 Dismissed | ( ) 05 Appealed to Higher Court | ( ) 10 Dismissed |

*This Abstract is Certified Correct:*

Signature / Title / Date

**FOR DMV USE ONLY** Court Code ____ Conviction Code 1 ____ Conviction Code 2 ____

**COMPLAINT - AFFIDAVIT**

MAGISTRATE COURT
OF KANAWHA COUNTY, WV
A TRUE COPY FROM THE RECORD

TESTE: Angela Cinamati JR
CLERK

IN THE MAGISTRATE COURT OF KANAWHA COUNTY, WEST VIRGINIA

CASE NUMBER 08M-6734

## CRIMINAL CASE HISTORY

☐ Felony ☒ Misdemeanor

DOMESTIC BATTERY

Defendant, name, address, tel.
MELEA DAWN FISHER
713 BREECE ST
CHAS WV 25301
DL #: F414015
Def. birth date: 06/03/81 SS #: 232-35-8759

Complainant name, address, tel.
CPD AW FOSTER
PO BOX 2749
CHAS WV 25375
348-6400

Pros.:
Counsel: CAROLINE POWELL
Court-appointed?: YES
Affidavit of prejudice date:
Disp.:

Offense:
Offense date: 05/10/2008
W.V. Code: 61-2-28a
Summons date:
Sum. app. date:
Warrant date:
Rearrest issued:
Case reference:
Worthless check amt.: $
Issuing mag.: CROUCH
Assigned mag.: HALLDRAN
Transf. to:
Transf. to:
Trial mag.:

### BOND INFORMATION

Bond set at: 5,000.00 Type: P
Bond received from:
Date: Mag.:
Rec. #: Amount: $
Date pauper's affidavit filed:
Notes/Comments:

### FISCAL DATA

| | |
|---|---|
| Fine | $ |
| Court costs | $ |
| Arrest fee | $ |
| RJA fee | $ |
| LET fee | $ |
| CVC fee | $ |
| Worthless check notice | $ |
| Other | $ |
| Total due: | $ |

| Date | Mag. | Rec. # | Amount |
|---|---|---|---|
| | | | $ |
| | | | $ |
| | | | $ |

### FIRST APPEARANCE / PLEAS—MISDEMEANOR

Arrest date: 05/10/2008 Arraignment (plea) date: 05/10/2008
Re-arrest date:
Date committed: Date released:
Defendant status: ☐ Pro se ☐ Counsel ☐ Jury trial waived
☐ Defendant failed to appear by summons or notice
Plea: ☐ Not guilty ☐ No contest ☐ Guilty

### Hearing Dates

Def. P-T motions filed:
Pros. P-T motions filed:
Jury trial?:
Pre-trial conf.: Time:
Original trial: 09/09/2008 Time: 1:30 P
Prelim. hearing: Time:

### Continuances

| By: | To: | Time: |
|---|---|---|
| By: | To: | Time: |
| By: | To: | Time: |
| By: | To: | Time: |
| By: | To: | Time: |

### PRELIMINARY HEARING

Preliminary hearing date: Defendant status: ☐ Pro se ☐ Counsel
☐ Waiver of preliminary ☐ Probable cause found, bound over to Circuit Court Date to Circ. Ct.:
☐ No probable cause found, defendant and bond discharged ☐ Bond disbursed to: ☐ Circ. Ct. ☐ Defendant
☐ Other: ☐ Surety ☐ Other
, Magistrate

### DISPOSITION ACTIVITY AND JUDGMENT ORDER

Pre-trial dismissal date:
Verdict or plea date: Trial: ☐ Bench ☐ Jury ☐ Mistrial Verdict or plea: D/m
Plea agreement terms disclosed:

EXHIBIT
tabbies
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Sentence is imposed as follows: Fine: $ , Costs & fees: $ , Jail term:
Other:
So ordered and entered this 9th day of Septeaber 2008 by
, Magistrate

### POST-JUDGMENT ACTIVITIES

Set-aside hearing date: Status: ☐ Granted ☐ Denied
Appeal filed date: Appearance bond amount: $ Type: Date bond posted:
Appeal forwarded to Circuit Court date:
Writs: Execution: Suggestion: Suggestee Execution: Other:

### CERTIFICATION BY CLERK

I, Angela Cincinnati, hereby certify that the above is a true and complete record of all proceedings in the above criminal action, filed in my office.
GIVEN UNDER MY HAND THIS 16th DAY OF March 2012
Angela Cincinnati, Clerk

**IN THE MAGISTRATE COURT OF KANAWHA COUNTY, WEST VIRGINIA**

STATE OF WEST VIRGINIA

v.

FISHER, MELEA DAWN
Defendant

Case No. 08M-6734

713 BREECE ST. CHARLESTON WV 25301
Address

232-35-8759
Social Security No.

F414015
Driver's License No.

× Misdemeanor
Felony

06-03-1981
Date of Birth

CRIMINAL COMPLAINT

I, the undersigned complainant, upon my oath or affirmation, state the following is true and correct to the best of my knowledge and belief. On or about 10MAY2008 (date) in KANAWHA County, West Virginia, in violation of W.Va. Code *(cite specific section, subsection, and/or subdivision as applicable)* 61 - 2 - 28(a) the defendant did *(state statutory language of offense)*

**Domestic Battery** - If any family or household member unlawfully and intentionally makes physical contact of an insulting or provoking nature with another family or household member or unlawfully and intentionally causes physical harm to another family or household member, he or she is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not more than twelve months, or fined not more than five hundred dollars, or both fined and confined.

I further state that this complaint is based on the following facts: ON THE ABOVE DATE THE ABOVE DEFENDANT DID STRIKE THE VICTIM WITH A BEER BOTTLE CAUSING A 3 INCH LACERATION IN THE BACK OF HIS HEAD. THE ABOVE DEFENDANT ALSO STRUCK THE VICTIM WITH A CLOSED FIST CAUSING SEVERAL BRUISES TO THE VICTIMS FACE. THE VICTIM ALSO HAD SCRATCHES ON HIS NECK FROM THE DEFENDANT. THIS OCCURRED IN CHARLESTON WV.

Continued on attached sheet? yes × no

Complainant (who appears before magistrate):

A.W. FOSTER
Name

Charleston Police Department P. O. Box 2749
Address

Charleston, WV 25330 304-348-6400
Telephone

PTLM
Office or title, if any

Complainant Signature

On this complaint, sworn or affirmed before me and signed this date by complainant in my presence, the item(s) checked below apply:

✓ Probable cause found
Summons issued
Warrant issued
✓ Warrantless arrest
No probable cause found

Magistrate Signature

5-10-08
Date

MAGISTRATE COURT
OF KANAWHA COUNTY, WV
A TRUE COPY FROM THE RECORD

TESTE: Angela Cincinnati JPR
CLERK

White - return
Green - defendant
Yellow - file
Pink - complainant

Mag. Ct. Crim. Rules 3,4
SCA-M210-1/1-08

1883970

06M-6734

Court Case Number

# State of West Virginia
# COURT DISPOSITION REPORTING

FOR C.I.B. USE ONLY

**WVSP Form 29**
Revised 5/99

## TYPE OR PRINT LEGIBLY
TO BE COMPLETED BY THE ARRESTING OFFICER AT TIME OF ARREST

West Virginia Code § 15-2-24(g) requires **both** the fingerprinting and completion of this form for any person arrested or detained for any crime in this State in which the penalty therefor is confinement in any penal or correctional institution. This form shall not be utilized for criminal history recording purposes by the State Central Repository or the FBI absent the submission of fingerprints as required by law.

| FULL NAME | Last Name | First Name | Middle Name | Alias | Adult | Juv. |
|---|---|---|---|---|---|---|
| | FISHER | MELEA | DAWN | | X | |

| Address | Weight | Height |
|---|---|---|
| 713 BEELE ST. CHARLESTON WV 25302 | 98 lbs. | 5 ft. 04 in. |

| Date of Arrest (Mo Day Yr) | Date of Birth (Mo Day Yr) | Social Security Number | Sex | Race | Arresting Officer ORI No. |
|---|---|---|---|---|---|
| 05 08 08 | 06 03 81 | 232 - 35 - 8759 | F | W | 0200200 |

| Arresting Officer | Unit No. | Law Enforcement Agency |
|---|---|---|
| FOSTER, A.W. | 138 | CHARLESTON P.D. |

Court of Jurisdiction: CIRCLE ONE (MAGISTRATE) MUNICIPAL CIRCUIT

County

Address of Court:

| TO BE COMPLETED BY OFFICER | TO BE COMPLETED BY COURT OF JURISDICTION | | | |
|---|---|---|---|---|
| INITIAL CHARGE | CHARGE CHANGED / REDUCED TO | FELONY (Circle One) | | Date of Disposition (Mo Day Yr) |
| 1. DOMESTIC BATTERY | | Y | (N) | 9 9 08 |
| 2. | | Y | N | |
| 3. | | Y | N | |
| 4. | | Y | N | |
| 5. | | Y | N | |

| CHARGE | NO CONTEST | PLEA OF GUILTY | FOUND GUILTY | FOUND NOT GUILTY | DISMISSED | WITHDRAWN | ASSESSED FINE & COST | PAID FINE & COST | SENTENCE IMPOSED |
|---|---|---|---|---|---|---|---|---|---|
| 1. | | | | | TH | | | | |
| 2. | | | | | | | | | |
| 3. | | | | | | | | | |
| 4. | | | | | | | | | |
| 5. | | | | | | | | | |

MAGISTRATE COURT
OF KANAWHA COUNTY, WV
A TRUE COPY FROM THE RECORD

TESTE: Angela Cincinnati per
CLERK

IN THE MAGISTRATE COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

v.

FISHER, MELEA DAWN
Defendant

Case No. 12M-2007-09

713 BREECE ST. APT B CHARLESTON WV 25302
Address

232-35-8759
Social Security No.

F414015
Driver's License No.

☒ Misdemeanor
☐ Felony

06-03-1981
Date of Birth

Agency Case # N/A

## CRIMINAL COMPLAINT

I, the undersigned complainant, upon my oath or affirmation, state the following is true and correct to the best of my knowledge and belief On or about 27 FEBRUARY 2012 (date) in KANAWHA County, West Virginia, in violation of W.Va. Code *(cite specific section, subsection, and/or subdivision as applicable)* 17C-5-2 DUI 1ST the defendant did *(state statutory language of offense)*

17C-5-2 (d) DRIVING UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE/ DRUG (clonazePAM 0.5mg). ANY PERSON WHO DRIVES A VEHICLE IN THIS STATE WHILE HE OR SHE IS UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE AND/OR DRUGS is guilty of a misdemeanor and, upon conviction thereof, SHALL BE CONFINED IN JAIL FOR UP TO SIX MONTHS AND SHALL BE FINED NOT LESS THAN ONE HUNDRED DOLLARS NOR MORE THAN FIVE HUNDRED DOLLARS.

I further state that this complaint is based on the following facts: ON THE ABOVE DATE I OBSERVED A BURGUNDY IN COLOR FORD TAURUS BEARING WV REGISTRATION 4TZ688 PULL OFF THE FOODLAND PARKING LOT ONTO 50TH ST. THE VEHICLE MATCHED AN EARLIER BOLO FROM THE AREA OF THE 2700 BLOCK OF CHESTERFIELD AVE. WHERE A BURGUNDY FORD TAURUS BEARING WV 4TZ688 WAS REPORTED TO BE ALL OVER THE ROADWAY TRAVELING TOWARDS THE DEAD END OF CHESTERFIELD. I RAN THE REGISTRATION GIVEN OUT BY METRO. THE REGISTRATION CAME BACK TO ELIZABETH YOUNG OR CAROL FOUTY. AS THE VEHICLE TURNED LEFT FROM 50TH ST ONTO MACCORKLE AVE. IT WAS TRAVELING WESTBOUND IN THE EASTBOUND LANES FOR APPROX. 2 BLOCKS

The defendant is / has:

- ☐ The victim's spouse or ex-spouse
- ☐ A parent or guardian of the victim
- ☐ A child in common with the victim
- ☐ Living with the victim or had lived with the victim
- ☐ A person who may be classified as a spouse, parent or guardian to the victim
- ☒ None of the above connections to the victim

Continued on attached sheet? ☒Yes ☐No

Complainant (who appears before magistrate):

B.A. LIGHTNER
Name

PO BOX 2749
Address

CHARLESTON WV 25330 304-348-6400
Telephone

PATROL DIVISION
Office or title, if any

Complainant Signature

On this complaint, sworn or affirmed before me and signed this date by complainant in my presence, the item(s) checked below apply:

- ☒ Probable cause found
- ☐ Summons issued
- ☐ Warrant issued
- ☒ Warrantless arrest
- ☐ No probable cause found

Julie M. Kaye
Magistrate Signature

2/27/12
Date

MAGISTRATE COURT
OF KANAWHA COUNTY, WV
A TRUE COPY FROM THE RECORD
TESTE: Maela Cincinnati TMO

EXHIBIT
4

3/2008 DRW

| | |
|---|---|
| | Return |
| | Defendant |
| | File |
| | Complainant |
| | Prosecutor |

(Criminal Complaint Continued)

CASE NO. 12M-2007-09

WHEN I OBSERVED IT JUMP THE MEDIAN AND RE-ENTER THE WESTBOUND LANES. I THEN INITIATED A TRAFFIC STOP IN THE 4800 BLOCK OF MACCORKLE AVE. WHEN I APPROACHED THE VEHICLE I SPOKE TO THE DRIVER, IDENTIFIED AS MELEA FISHER BY HER WV OPERATORS. WHILE SPEAKING TO FISHER SHE SEEMED VERY DISORIENTED AND CONFUSED. I ASKED HER WHERE SHE WAS GOING AND SHE STATED THAT SHE HAD JUST RAN SOME ERRANDS FOR HER BOSS, CAROL FOUTY. WHILE SPEAKING TO FISHER I NOTICED HER EYES WERE CONSTRICTED AND HER SPEECH WAS SLOW AND THICK. I THEN NOTICED FISHER PUSH A BROWN PILL BOTTLE WITH A WHITE CAP DOWN INTO HER PURSE. I ASKED FISHER IF SHE HAD TAKEN ANY MEDICATION TODAY. FISHER STATED, "I TOOK SOME ADVIL FOR MY TEETH." I THEN ASKED FISHER IF SHE HAD TAKEN ANYTHING ELSE. FISHER STATED, "I AM A RECOVERING ADDICT, I DON'T USE LIKE I USED TOO." I ASKED FISHER IF CAROL FOUTY KNEW SHE HAD HER CAR. FISHER STATED, "YES, SHE SENT ME TO PICK UP SOME ITEMS FOR HER, I HAVE HER CHECKBOOK AND EVERYTHING," HOLDING UP A CHECKBOOK BELONGING TO CAROL FOUTY. I THEN ASKED FISHER TO EXIT THE VEHICLE. FISHER EXITED IN AN UNSTEADY MANNER AND WALKED TOWARDS THE REAR OF HER VEHICLE UNSTEADY GRABBING THE SIDE OF THE VEHICLE TO MAINTAIN BALANCE. I THEN ASKED FISHER TO PERFORM THE STANDARDIZED FIELD SOBRIETY TEST, CONSISTING OF THE HORIZONTAL GAZE NYSTAGMUS TEST, THE WALK AND TURN TEST, AND THE ONE LEG STAND TEST. AFTER EXPLAINING THE HORIZONTAL GAZE NYSTAGMUS TEST FISHER STATED THAT SHE UNDERSTOOD BUT KEPT FOLLOWING THE STIMULUS (PIN) WITH HER HEAD INSTEAD OF HER EYES. I THEN STOPPED THE TEST AND EXPLAINED IT AGAIN. THIS TIME FISHER COMPLETED THE TEST SHOWING A LACK OF SMOOTH PURSUIT IN BOTH EYES, DIISTINCT AND SUSTAINED NYSTAGMUS AT MAXIMUM DEVIATION IN BOTH EYES AND AN ONSET OF NYSTAGMUS PRIOR TO 45 DEGREES IN BOTH EYES. FISHER ALSO DISPLAYED VERTICAL NYSTAGMUS.

FISHER THEN WAS PLACED INTO THE STARTING POSITION OF THE WALK AND TURN TEST WHILE I EXPLAINED THE TEST. FISHER STARTED THE TEST PRIOR TO ME TELLING HER TO BEGIN AND COULDN'T MAINTAIN BALANCE DURING THE INSTRUCTION PHASE. AFTER DEMONSTRATING THE TEST FISHER STATED THAT SHE UNDERSTOOD. FISHER

MAGISTRATE COURT
OF KANAWHA COUNTY, WV
A TRUE COPY FROM THE RECORD

TESTE: Angela Cincinnati
CLERK

White - remm
Green - defendant
Yellow - file
Pink - complainant
Goldenrod - prosecutor

SCA-M310-2/11-93

THEN TOOK 9 STEPS FORWARD MISSING HEEL TO TOE ON EVERY STEP, STEPPING OFF LINE SEVERAL TIMES AND RAISED HER ARMS TO MAINTAIN BALANCE. FISHER THEN MADE A SUDDEN TURN, OPPOSITE DIRECTION AS EXPLAINED TO HER AND WALKED BACK AGAIN TAKING NINE STEPS MISSING HEEL TO TOE ON EVERY STEP, STEPPING OFF LINE SEVERAL TIMES AND RAISED HER ARMS TO MAINTAIN BALANCE. DURING THE TEST FISHER NEARLY FELL OVER SEVERAL TIMES. I THEN PLACED FISHER INTO THE STARTING POSITION FOR THE ONE LEG STAND TEST. WHILE EXPLAINING THIS TEST FISHER BEGAN TO PERFORM THE WALK AND TURN TEST AGAIN. AFTER FISHER WALKED FORWARD 9 STEPS I STOPPED HER AND ASKED HER TO GET BACK INTO THE STARTING POSITION FOR THE ON LEG STAND TEST. AFTER EXPLAIN THE ONE LEG STAND TEST TO FISHER SHE STATED SHE UNDERSTOOD. DURING THIS TEST FISHER RAISED HER RIGHT FOOT OFF THE GROUND AND NEARLY FELL BACKWARDS AND STOPPED THE TEST. FISHER THEN ATTEMPTED THE TEST AGAIN COUNTING TO SIX AND PUTTING HER FOOT DOWN DUE TO LOSING BALANCE. I THEN ASKED FISHER IF SHE HAD ANYTHING IN THE VEHICLE. FISHER STATED, "JUST MY ADVIL, IT'S NOT MY CAR, NOTHING SHOULD BE IN IT." I THEN ASKED FISHER WHERE HER ADVIL WHERE AND SHE STATED IN MY PURSE. I THEN LOOKED IN THE PURSE AND OBSERVED THE PILL CONTAINER THAT FISHER HAD EARLIER PUSHED INTO HER PURSE. THE PILL CONTAINER WAS FOR clonzazePAM 0.5MG (KlonoPIN) PRESCRIBED TO SHELLY PALMER. I ASKED FISHER IF SHE KNEW WHAT THE PILL WAS AND WHO THEY WERE PRESCRIBED TO. FISHER STATED, "MY MOM GAVE THEM TO ME FOR PAIN, LOOK AT MY TEETH," POINTING TOWARDS HER FACE. I ASKED FISHER IF SHE TOOK THEM. FISHER STATED, "I THOUGHT I TOOK ADVIL." THE PILL BOTTLE CONTAINED 11 KlonoPIN. I THEN PLACED FISHER UNDER ARREST FOR DRIVING UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE- KlonoPIN (SCHEDULE IV DRUG). ONCE AT THE STATION I INVENTORIED FISHER'S PURSE WHEN I LOCATED A BLACK ZIPPED CONTAINER. WHEN I UNZIPPED THE CONTAINER I OBSERVED A GREEN LEAFY SUBSTANCE THAT LATER FIELD TEST POSITIVE FOR THC (MARIJUANA TEST KIT). WHEN

MAGISTRATE COURT
OF KANAWHA COUNTY, WV
A TRUE COPY FROM THE RECORD

TESTE: Angela Cincinnati JRP
CLERK



White - remm
Green - defendant
Yellow - file
Pink - complainant
Goldenrod - prosecutor

(Criminal Complaint Continued)

CASE NO.

**FISHER SAW THAT I HAD REMOVED SUSPECTED MARIJUANA FROM HER PURSE SHE MADE AN EXCITED UTTERANCE STATING, "THAT'S NOT MINE, MY MOM PACKED MY PURSE." THE SUSPECTED MARIJUANA WEIGHED 0.6 GRAMS. FISHER WAS CHARGED WITH DUI 1ST, POSSESSION OF A CONTROLLED SUBSTANCE- KlonoPIN, POSSESSION OF MARIJUANA. THIS INCIDENT OCCURRED IN CHARLESTON, KANAWHA CO. WV.**

Julie M. Geary
2/27/12

MAGISTRATE COURT
OF KANAWHA COUNTY, WV
A TRUE COPY FROM THE RECORD

TESTE: Angela Cincinnati
CLERK

White - remm
Green - defendant
Yellow - file
Pink - complainant
Goldenrod - prosecutor

CA-M310-2/11-93

## IN THE MAGISTRATE COURT OF KANAWHA COUNTY, WEST VIRGINIA

☐ Out of County Warrant:

State of West Virginia
v.

Case No: 12M-2007-09

Melea Dawn Fisher
Defendant (Full Name)

XXX-XX- 8759
Social Security Number

F414015
Driver's License / Identification Number

06/03/1981
Date of Birth

## INITIAL APPEARANCE: RIGHTS STATEMENTS

### A. GENERAL: EITHER MISDEMEANOR OR FELONY OR BOTH

1. The Magistrate has informed me that I do not have to make any statement to anyone other than the statements in this document and that any statement I do make may be used against me.

2. The Magistrate has informed me that I am charged with the offense(s) of DUI, simple possession x2

and that, if I am later found guilty, the possible penalties are (*state mandatory minimum penalty, if any, and maximum penalty*): up to 6 months and or $100 to $500; 90 days to 6 months and or up to $1000

3. The Magistrate has informed me that I have the right to be represented by an attorney at every stage of the proceeding. If the West Virginia Code provides for a possible jail sentence, and if I cannot afford to hire an attorney, and I qualify, one will be appointed to represent me. I understand this right, and further understand that if I decide to represent myself, that I cannot later claim that I was deprived my right to be represented by an attorney.

**DEFENDANT MUST INITAL ONE OF THE FOLLOWING THREE CHOICES IF A JAIL PENALTY IS POSSIBLE:**

_____ (a) I give up my right to have an attorney represent me.

_____ (b) I want to hire an attorney to represent me.

(X) MF (c) I want an attorney appointed to represent me.

MAGISTRATE COURT
OF KANAWHA COUNTY, WV
A TRUE COPY FROM THE RECORD

TESTE: Angela Cincinnati
CLERK JP

I understand that, if I am found guilty, I might be required to reimburse the State for attorney fees even if a court-appointed or public-defender attorney is approved to represent me.

02/27/2012
**Date**

(X) Melea Fisher
**Defendant's Signature**

Case No: 12M-2007-09

4. The Magistrate has informed me that, except for any felony offense for which the penalty is life imprisonment, the Magistrate may release me from custody while awaiting further proceedings on the charge(s) stated above if I am able to make bail generally as follows: $500 Surety or 10% Cash

5. The Magistrate has informed me that I will be given reasonable time and opportunity to talk with an attorney, or with one relative or other person, for the purpose of obtaining counsel or of arranging bail.

**B. MISDEMEANOR CHARGE(S) ONLY**

1. The Magistrate has informed me that I have a right to plead not guilty; that I have a right to a trial by jury or by a Magistrate without a jury; and that, if I plead guilty or no contest, I give up my right to a trial.

2. The Magistrate has informed me that I have the right to demand a jury trial and that, if I want a jury trial, I must let the Magistrate Court know in writing no later than 20 days from the date of this initial appearance or, if I receive court-appointed counsel, 20 days from the date that an attorney is appointed. The Magistrate has further informed me that if I demand a jury trial, I may not withdraw my demand for a jury trial if the prosecuting attorney objects to the withdrawal. If I do not demand a jury trial within the 20-day period, I have also been informed that I give up my right to a jury trial, the Magistrate will try my case without a jury, and an appeal of a Magistrate Court conviction will not entitle me to a jury trial in Circuit Court. I understand, as well, that if I have a jury brought in, the jury fee will be assessed against me if I am convicted.

**C. FELONY CHARGE(S) ONLY**

1. The Magistrate has informed me that, since I have been charged with a felony offense for which the penalty is life imprisonment, only the Circuit Court may grant and set bail.

2. The Magistrate has informed me that, since I have been charged with a felony, I have the right to a preliminary hearing for a determination of whether any felony charge(s) should be bound over for possible presentation to a grand jury.

**DEFENDANT MUST INITIAL ONE OF THE FOLLOWING THREE CHOICES:**

_____ (a) I want a preliminary hearing.

_____ (b) I give up my right to a preliminary hearing.

_____ (c) I, or my attorney, will inform the Court whether I want a preliminary hearing.

MAGISTRATE COURT
OF KANAWHA COUNTY, WV
A TRUE COPY FROM THE RECORD
TESTE: Angela Cinnati
CLERK

02/27/2012
**Date**

(X) Melea Tyson
**Defendant's Signature**

I have informed the defendant personally of the applicable matters set out above. I find that any waiver of rights herein is made knowingly and voluntarily by the defendant.

_____ *[Initial If Applicable]* I certify that the defendant refused to initial and/or sign this document at the appropriate places.

02/27/2012
**Date**

Julie M. Yeager
**Magistrate's Signature**

WEST VIRGINIA PUBLIC DEFENDER SERVICES

# AFFIDAVIT: ELIGIBILITY FOR APPOINTED OR PUBLIC DEFENDER COUNSEL

NAME: Melea Dawn Fisher
CONTACT PHONE: 681-205-3011
ADDRESS: 713 Breece St Apt B
Charleston, WV 25302
DATE OF BIRTH: 6/3/81
SOCIAL SEC. # _____ - _____ - 8759

CASE NO.(S) 12M-2007-09 COURT? MAGISTRATE ☒ CIRCUIT ☐ COUNTY ☐ SUPREME ☐

**CHARGE(S):** DUI, CSL x 2

**CASE TYPE-SPECIFY:** FELONY ☐ MISDEMEANOR ☒ PROBATION REVOC ☐ JUVENILE ☐ MENTAL HYGIENE ☐ ABUSE & NEG ☐ EXTRADITION ☐ CONTEMPT ☐ OTHER-SPECIFY _____

BOND AMOUNT: $500 Surety or 10% cash
WERE YOU ABLE TO MAKE BOND? YES ☐ NO ☒
DO YOU PLAN TO HIRE PRIVATE COUNSEL? YES ☐ NO ☒
HAVE YOU TRIED TO HIRE PRIVATE COUNSEL? YES ☐ NO ☒
RESULT: _____

GROSS MONTHLY INCOME from ALL sources: Employer _____; Spouse's Employment; Single; 2nd Job _____; Self-employment _____; Public Assistance _____; Food Stamps 200; Unemployment _____; Benefits _____; Disability Benefits (Worker's Comp/VA/Social Security) _____; Social Security/SSI; _____; Alimony/Child Support Received _____; Pensions _____; Rental Income _____; Interest _____; Dividends _____; Annuities _____; ODD JOBS _____ OTHER (Specify): _____

**MONTHLY TOTAL FROM ALL SOURCES** $ 200

NAMES OF DEPENDENTS SUPPORTED BY YOU:

| | LAST NAME | FIRST NAME | RELATIONSHIP | AGE | DISABILITIES |
|---|---|---|---|---|---|
| 1. | | | | | |
| 2. | | | | | |
| 3. | | | | | |
| 4. | | | | | |
| 5. | | | | | |
| 6. | | | | | |

TOTAL NO. OF DEPENDENTS YOU SUPPORT 0

**TOTAL ASSETS:** Cash $ _____; Checking/Savings Accounts $ _____ Monies Owed to You $ _____; Tax Refunds Due $ _____ Value of Real Estate (other than your residence) $ _____; Vehicles: Model/Year _____, _____; Spouse's Vehicle _____; Stocks $ _____; Bonds _____; Notes $ _____; OTHER? _____ $ _____

**TOTAL MONTHLY EXPENSES:** Rent/Mortgage $ 300; Car Payment $ _____; Loan Payments $ _____; Utilities (gas/elect/phone/water/sewage/heat) $ _____; Job-Related Expenses (uniform/transportation/protective equipment/insurance premiums/child care/health care) $ _____; Alimony $ _____; Child Support $ _____; Other One-Time Debts You Currently Owe (Medical Bills/Car/Home Repairs) $ 3000 - 185

**TOTAL EXPENSES** $ 300

WARNINGS!

(1) False Swearing May Result in Criminal Prosecution (2) The Information In This Affidavit is *NOT* Confidential and May Be Made Available to Other Persons!

***I understand that by Court Order as a condition of probation or otherwise, I may be held responsible for repayment of court costs and the cost of my attorney to the extent determined to be reasonable in relation to my financial circumstances, and that such court order will become a valid judgment against me until paid.***

DATE: 2/27/12 SIGNATURE: Melea D. Fisher

Taken, subscribed, and sworn or affirmed before me by Melea D. Fisher this 27 day of Kanawha 2012, in Kanawha County, WV.

MAGISTRATE COURT
OF KANAWHA COUNTY, WV
A TRUE COPY FROM THE RECORD

Marla Cincinnati

Sarah Mace
NOTARY PUBLIC/MAGISTRATE/AUTHORIZED COURT PERSONNEL

W.Va. Code § 29-21-16
SCA-C&M101/7-96

IN THE MAGISTRATE COURT OF Kanawha COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

v.

Melea Dawn Fisher
Defendant

Case No. 12M-2183

713 Breece Street, Charleston, WV 25302
Address

232-35-8759
Social Security No.

F414015
Drivers License No.

☒ Misdemeanor
☐ Felony

06/03/1981
Date of Birth

**CRIMINAL COMPLAINT**

I, the undersigned complainant, upon my oath or affirmation, state the following is true and correct to the best of my knowledge and belief. On or about December 31, 2011 in Kanawha County, West Virginia, in violation of W.Va. Code (cite specific section, subsection, and/or subdivision as applicable) _____ the defendant did (state statutory language of offense)

see attached

I further state that this complaint is based on the following facts:
see attached

MAGISTRATE COURT
OF KANAWHA COUNTY, WV
A TRUE COPY FROM THE RECORD

TESTE: Angela Cincinnati JKP
CLERK

Continued on attached? ☐ yes ☐ no

Complainant (who appears before magistrate):
Senior Trooper D. E. Gregory
Name

711 Jefferson Road
Address

South Charleston, WV 25309 (304) 558-7777
Telephone

Senior Trooper, West Virginia State Police
Office or title, if any

Complainant Signature

On this complaint, sworn or affirmed before me and signed this date by complainant in my presence, the item(s) checked below apply:

☑ Probable cause found
☑ Summons issued
☐ Warrant issued
☐ Warrantless arrest
☐ No probable cause found

Magistrate Signature

3-3-12
Date

EXHIBIT
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Mag. Ct. Crim. Rules 3, 4

White - return
Green - defendant
Yellow - file
Pink - complainant

CASE NO. 12M-2183

(Criminal Complaint Continued)

PAGE ____ OF ____

ACTION TAKEN

On Saturday, December 31, 2011, at approximately 2230 hours, Senior Trooper D. E. Gregory, further referred to as the undersigned officer was sitting stationary on Route 60, Jefferson, WV and received a bolo from Metro Communications in reference to a red in color Honda Civic driving erratically on Rout 60, Jefferson, WV. Metro further stated that the vehicle was traveling west bound and that the information was being called in by the Kanawha County EMT Supervisor who was following the vehicle. Shortly after the bolo came over the air, the undersigned officer observed the EMT Supervisor drive by the undersigned officer and once he past the undersigned officer activated his rear emergency lights briefly to signal the undersigned officer.

The undersigned officer observed the vehicle traveling in front of the EMT to be driving erratically, weaving in and out of it's lane. The undersigned officer initiated a traffic stop on said vehicle and made contact with the driver, identified as Melea Dawn Fisher. The undersigned officer had Melea exit the vehicle to determine if she was impaired. The undersigned officer discovered that Melea was on her cell phone which was the cause of her erratic driving, but was acting strangely during our interaction. The undersigned officer obtained consent to search of Melea's vehicle by completing a vehicle consent to search form which was signed by Melea. The original copy of this consent form is attached to the file copy of this report.

Upon search of the vehicle, the undersigned officer discovered several loose prescription pills in Melea's purse. The undersigned officer later determined the pills to be Alazopram. Melea also confirmed this information stating that the pills were given to her.

On February 27, 2012, the undersigned officer was at Kanawha County Magistrate Court for a arraignment of a suspect in custody. The undersigned officer observed a Charleston PD Officer (Lightner) bring in a female suspect for arraignment. The undersigned officer recognized the female suspect as Melea Dawn Fisher. The undersigned officer was approached by Officer Lightner and advised the undersigned officer that during transport Melea advised him that the citation issued December 31, 2011 was dismissed. Melea later informed the undersigned officer that the citation was dismissed by Magistrate Carol Fouty. The undersigned officer also discovered that Melea is a friend of Magistrate Fouty and was under arrest that night for DUI and Simple Possession while operating a vehicle registered to Magistrate Fouty. The undersigned officer also confirmed through Magistrate Court that the citation issued by the undersigned officer was dismissed by Magistrate Fouty without the knowledge of the undersigned officer.

Due to the facts stated above the undersigned officer is requesting a Court Summons for Melea Dawn Fisher for the original charge of Simple Possession of a controlled substance.

60A-4-401

MAGISTRATE COURT
OF KANAWHA COUNTY, WV
A TRUE COPY FROM THE RECORD

TESTE: Angela Cincinnati
CLERK

White - return
Green - defendant
Yellow - file
Pink - complainant

**IN THE MAGISTRATE COURT OF** KANAWHA **COUNTY, WEST VIRGINIA**

State of West Virginia
v.

Case No(s). 12M-2183

Defendant (Full Name and Address)
MELEA DAWN FISHER
713 BREECE ST
CHARLESTON, WV 25302

*---fold here---* *---fold here---*

## Summons to Appear: Criminal Case

This court has found probable cause to believe that (as alleged in the attached complaint) you, *(name of defendant)* MELIA DAWN FISHER, did commit an offense or offenses in this county on the 31 day of DECEMBER, 2011 previous to the issuance of this summons, by unlawfully

*[state statutory language of offense(s)]*
§60A-4-401. Prohibited acts A; penalties.
(c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this act. Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under section four hundred seven of this article, subject to the limitations specified in said section, or upon conviction, such person may be confined in jail not less than ninety days nor more than six months, or fined not more than one thousand dollars, or both: Provided, That notwithstanding any other provision of this act to the contrary, any first offense for possession of less than 15 grams of marijuana shall be disposed of under said section.
against the peace and dignity of the State.

Therefore, you are commanded in the name of the State of West Virginia to appear on the 2 day of APRIL, 2012, at 9:00 a.m. at 111 COURT ST, CHARLESTON, WV 25301 Kanawha Co. Judicial Annex 304-357-0400 for an initial appearance. You may be requested to enter a plea on the above charge(s) on this date. **YOU HAVE A RIGHT TO HAVE AN ATTORNEY REPRESENT YOU.**

*Your failure to appear and answer this summons will result in a warrant being issued for your arrest.*

Given under my hand this 3 day of MARCH, 2012.

Magistrate

RETURN INFORMATION

Service was complete on the 3 day of March by delivery of a true written copy of the summons, together with the complaint by Dennis Gregory, Sr. Trooper.
*Name (print)* *(job title)*

MAGISTRATE COURT
OF KANAWHA COUNTY, WV
A TRUE COPY FROM THE RECORD

Signature

Copy Distribution:
- ☐ Return
- ☐ Defendant
- ☐ File
- ☐ Prosecutor

Mag. Crim. Rule 4

TESTE: CLERK

SCA-M303NP/10-00

Sum 4/2

IN MAGISTRATE COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA
v
MELEA DAWN FISHER

CASE NO: 12-M-2183, 12-M-2007, 2008, 2009

## NOTICE OF APPEARANCE OF COUNSEL

Please take NOTICE that the undersigned will appear as counsel for the above-named defendant in the above-styled case.

All Notices, correspondence, motions and other pleadings should be mailed to me at the address listed below.

Respectfully submitted,

Tom McGee - WVSB No. 11298
405 Capitol Street, Suite 1009
Charleston, West Virginia 25301
1.304.642.6160 (Office)
1.304.345.7601 (Fax)

RECEIVED
2012 MAR -5 P 2:28
MAGISTRATE COURT
KANAWHA COUNTY, WV

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of **NOTICE OF APPEARANCE OF COUNSEL** was sealed in an envelope, first-class postage pre-paid, deposited in the regular course of the United States Mail on March 5, 2012, and addressed to the following:

Magistrate Court Clerk
111 Court Street
Charleston, WV 25301

Office of the Prosecuting Attorney
301 Virginia Street, East
Charleston, WV 25301

Tom McGee - WVSB No. 11298
405 Capitol Street, Suite 1009
Charleston, West Virginia 25301
1.304.642.6160 (Office)
1.304.345.7601 (Fax)

MAGISTRATE COURT
OF KANAWHA COUNTY, WV
A TRUE COPY FROM THE RECORD

TESTE: Angela Cincinnati
CLERK JKP

Kanawha County
**OFFICE OF THE PROSECUTING ATTORNEY**
301 Virginia Street East
Charleston, WV 25301
(304) 357-0300
FAX (304) 357-0342

MARK PLANTS
Prosecuting Attorney

January 11, 2011

Mr. J. Kirk Brandfass
West Virginia Supreme Court of Appeals
Building 1, Room E-100
State Capitol Complex
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Mr. Brandfass:

I am writing you regarding the following question:

> Is it permissible for a Magistrate to recall prior to execution by a law enforcement officer an arrest warrant issued in the Magistrate Court (whether for felony or misdemeanor) and subsequently arraign the defendant on the warrant?

The reason that I inquire is that these events have occurred in this County. My conclusion is that a magistrate cannot recall an arrest warrant for the reasons set forth below. If my reasoning is correct, I would also appreciate the Court's issuing a communique to magistrates regarding this issue.

Initially, I approach this question with the premise that the magistrate court is a court of statutory creation. As a result, the magistrate courts have only those powers which are granted by statute or rule. They have no inherent constitutional power as do a circuit court or the Supreme Court of Appeals.

The provisions of Rule 4 of the West Virginia Rules of Criminal Procedure for Magistrate Courts declare that a warrant or summons may issue upon the finding of probable cause and that the warrant is to be delivered to a law enforcement officer who is authorized to execute the warrants. An issuing magistrate may choose to issue a summons or restrict the time of arrest during the

EXHIBIT
tabbies
6

period during which a magistrate is available to conduct the initial appearance.

Rule 4(d)(1) of the West Virginia Rules of Criminal Procedure for Magistrate Courts requires that the warrant be executed by an officer authorized to make arrests. Rule 4(d)(3) requires the warrant to be executed, "by the arrest of the defendant". Arrest brings into play the mandatory provisions of Chapter 15, Article 2, Section 24(g) of the West Virginia Code relating to fingerprinting of arrestees. No provision of Rule 4 of the West Virginia Rules of Criminal Procedure for Magistrate Courts grants a magistrate the authority to recall a warrant prior to its execution.

The return of the warrant is governed by Rule 4(d)(4) of the West Virginia Rules of Criminal Procedure for Magistrate Courts. The return of an arrest warrant is made by the arresting officer to the duty magistrate. The Rule does not authorize a magistrate to recall an arrest warrant. The only provision of the West Virginia Rules of Criminal Procedure for Magistrate Courts is in Rule 4(d)(4), which says, in pertinent part,

> " * * * At the request of the attorney for the state, made at any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the magistrate to an authorized person for execution or service."

While the statute does not define a cancelled warrant, it seems to this Assistant that a cancelled warrant is a warrant cancelled upon dismissal of an underlying criminal complaint. I do not believe a magistrate may dismiss a criminal charge once a warrant or summons is issued without the consent of the prosecuting attorney. See, syllabus point #9, State ex rel. Skinner v. Dostert, 166 W. Va. 743 (1981)("The decision to move to dismiss or to nolle prosequi a criminal warrant is a proper exercise of prosecutorial authority which may not be invaded by an extra-judicial order.").

These reasons lead me to believe that a magistrate may not recall a previously issued arrest warrant without the authorization of the prosecuting attorney by dismissal of the action. If I may

be of any further assistance to you in this regard, please do not hesitate to contact me.

Sincerely yours,

ROBERT WILLIAM SCHULENBERG III
ASSISTANT PROSECUTING ATTORNEY

# RULES OF CRIMINAL PROCEDURE FOR MAGISTRATE COURTS

## RULE 1. SCOPE

These rules govern the procedure in all criminal proceedings in the magistrate courts of the State of West Virginia. These rules supplement, and in designated instances supersede, the statutory procedures set forth in Chapter 50 and Chapter 62 of the West Virginia Code.

[Effective July 1, 1988.]

## RULE 2. PURPOSE AND CONSTRUCTION

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

[Effective July 1, 1988.]

## RULE 3. COMPLAINT

The complaint is a written statement of the essential facts constituting the offense charged. The complaint shall be presented to and sworn or affirmed before a magistrate in the county where the offense is alleged to have occurred. Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by a prosecuting attorney or a law enforcement officer showing reason to have reliable information and belief. If from the facts stated in the complaint the magistrate finds probable cause, the complaint becomes the charging instrument initiating a criminal proceeding.

[Effective July 1, 1988; amended effective August 1, 1991; April 1, 1993.]

## RULE 4. ARREST WARRANT OR SUMMONS UPON COMPLAINT

(a) Issuance. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. The magistrate may restrict the execution of the warrant to times during which a magistrate is available to conduct the initial appearance. Within the discretion of the magistrate a summons instead of a warrant may issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.
(b) Probable Cause. The finding of probable cause may be based upon hearsay evidence in whole or in part.
(c) Form.
(1) *Warrant.* The warrant shall be signed by the magistrate and shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before the nearest available magistrate of the county in which the warrant is executed.
(2) *Summons.* The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place.
(d) Execution or Service; and Return.
(1) *By Whom.* The warrant shall be executed by any officer authorized by law to arrest persons charged with offenses against the state. The summons may be served by any person authorized to serve a summons in a civil action.
(2) *Territorial Limits.* The warrant may be executed or the summons may be served at any place within the state.
(3) *Manner.* The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant at the time of the arrest, but upon request the officer shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant at the time of the arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein and by mailing a copy of the summons to the defendant's last known address.
(4) *Return.* The officer executing a warrant shall make return thereof to the magistrate or other officer before whom the defendant is brought pursuant to Rule 5. At the request of the attorney for the state any unexecuted warrant shall be returned to and canceled by the magistrate by whom it was issued. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the magistrate before whom the summons is returnable. At the request of the attorney for the state, made at any time while the complaint is pending, a warrant returned unexecuted and not canceled or a summons returned unserved or a duplicate thereof may be delivered by the magistrate to an authorized person for execution or service.

[Effective July 1, 1988; amended effective January 1, 1990; September 1, 1995.]

## RULE 5. INITIAL APPEARANCE BEFORE THE MAGISTRATE; BAIL

(a) In General. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before a magistrate within the county where the arrest is made. If a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith which shall comply with the requirements of Rule 4(a) with respect to the showing of probable cause. When a person, arrested with or without a warrant or

given a summons, appears initially before the magistrate, the magistrate shall proceed in accordance with the applicable subdivision of this rule.
(b) Misdemeanor Offense Triable Before a Magistrate. If the charge against the defendant is an offense triable by a magistrate, unless the defendant waives the right to a trial on the merits, the magistrate shall proceed in accordance with the rules of procedure set forth herein. The magistrate shall inform the defendant of the complaint and any affidavit filed therewith, of the right to retain counsel, of the right to request the assignment of counsel if the defendant is unable to obtain counsel, of the right to demand a jury trial, and of the general circumstances under which the defendant may secure pretrial release. The magistrate shall inform the defendant that he or she is not required to make a statement and that any statement made by the defendant may be used against him or her. The magistrate shall allow the defendant reasonable time and opportunity to consult with counsel or with at least one relative or other person for the purpose of obtaining counsel or arranging bail as provided by statute or in these rules.
(c) Demand for Jury Trial. When a magistrate informs a defendant of the right to demand a jury trial, the defendant shall also be informed that the demand must be made to the court in writing either within 20 days after the initial appearance or 20 days after an attorney is appointed by the circuit court, whichever applies, or the right will be waived and the trial will be before the magistrate without a jury. The magistrate shall further inform the defendant that if a jury trial is demanded, the demand may not be withdrawn if the prosecuting attorney objects to the withdrawal.
(d) Offenses Not Triable by the Magistrate. If the charge against the defendant is to be presented for indictment, the defendant shall not be called upon to plead. The magistrate shall inform the defendant of the complaint and any affidavit filed therewith, of the right to retain counsel, of the right to request the assignment of counsel, of the right to request the assignment of counsel if the defendant is unable to obtain counsel, and of the general circumstances under which the defendant may secure pretrial release. The magistrate shall inform the defendant that he or she is not required to make a statement and that any statement made by the defendant may be used against him or her. The magistrate shall also inform the defendant of the right to a preliminary examination. The magistrate shall allow the defendant reasonable time and opportunity to consult with counsel or with at least one relative or other person for the purpose of obtaining counsel or arranging bail as provided by statute or in these rules and shall admit the defendant to bail as provided by statute or in these rules.
If the offense is to be presented for indictment, a defendant is entitled to a preliminary examination unless waived. If the defendant waives preliminary examination, the magistrate clerk shall transmit forthwith to the clerk of the circuit court all papers in the proceeding. The magistrate court clerk shall also transmit to the prosecuting attorney a copy of the criminal case history sheet. Thereafter, the proceeding shall remain within the jurisdiction of the circuit court and shall not be remanded to the magistrate. If the defendant does not waive the preliminary examination, the magistrate shall schedule a preliminary examination. Such examination shall be held within a reasonable time but in any event not later than 10 days following the initial appearance if the defendant is in custody and no later than 20 days if the defendant is not in custody; provided, however, that the preliminary examination shall not be held if the defendant is indicted or if an information against the defendant is filed in circuit court before the date set for the preliminary examination. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this subdivision may be extended one or more times by a magistrate. In the absence of such consent by the defendant, time limits may be extended by a judge of the circuit court only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.
(e) Bail.
(1) The magistrate who originally sets bail retains jurisdiction with respect to bail only until the case is assigned. The assigned magistrate shall then have jurisdiction until the preliminary examination is held or waived, until the trial is held, or until the case is otherwise disposed of, subject to the proviso of Rule 2(a) of the Administrative Rules for the Magistrate Courts.
(2) A third party may secure pretrial release in the absence of a defendant who is in custody when the record contains a written acknowledgment of the terms and conditions of pretrial release signed by a magistrate and the defendant. Any magistrate may accept bail in the absence of the defendant provided that the third party reviews and agrees to the same terms and conditions of pretrial release by executing a separate written acknowledgment before the magistrate. No change may be made in the terms and conditions of pretrial release between the acknowledgment executed by the defendant and magistrate and the acknowledgment executed by the third party.
(3) Except as provided by Rule 5.2(d) of these rules, a magistrate may grant or deny a motion for change of bail or bond only after due notice to both the defendant and the attorney for the state and upon hearing, which shall be held within 5 days of the date the motion is filed.

[Effective July 1, 1988; amended effective August 1, 1991; January 1, 1993; July 1, 1994; September 1, 1995; September 1, 1996.]

RULE 5.1 PRELIMINARY EXAMINATIONS
(a) Probable Cause Finding. If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the magistrate shall forthwith hold the defendant to answer in circuit court. The state shall be represented by the prosecuting attorney at the preliminary examination. Witnesses shall be examined and evidence introduced for the state under the rules of evidence prevailing in criminal trials generally except that hearsay evidence may be received, if there is a substantial basis for believing:
(1) That the source of the hearsay is credible;
(2) That there is a factual basis for the information furnished; and
(3) That it would impose an unreasonable burden on one of the parties or on a witness to require that the primary source of the evidence be produced at the hearing.
The defendant may cross-examine adverse witnesses and may introduce evidence. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in Rule 12 of the Rules of Criminal Procedure applicable to circuit courts. On motion of either the state or the defendant, witnesses shall be separated and not permitted in the hearing room except when called to testify.
(b) Discharge of Defendant. If from the evidence it appears that there is no probable cause to believe that an offense has been

committed or that the defendant committed it, the magistrate shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the state from instituting a subsequent prosecution for the same offense.
(c) Records.
(1) A magistrate shall record electronically every preliminary examination conducted. If by reason of unavoidable cause it is impossible to record all or part of a preliminary examination electronically, a magistrate may proceed with the hearing but shall make a written record of the failure to do so and of the cause thereof.
A magnetic tape or other electronic recording medium on which a preliminary examination is recorded shall be indexed and securely preserved by the magistrate court clerk or, as assigned by the clerk, by the magistrate assistant.
For evidentiary purposes, a duplicate of such electronic recording prepared by the clerk of the magistrate or of the circuit court shall be a "writing" or "recording" as those terms are defined in Rule 1001 of the West Virginia Rules of Evidence , and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an "original" under such rule.
When requested by the state, the defendant, or any interested person, the clerk of the magistrate or of the circuit court shall provide a duplicate copy of the tape or other electronic recording medium of any preliminary examination held. Any defendant requesting the copy who has not been permitted to proceed with appointed counsel, any prosecutor who does not supply a blank tape, and any other person shall pay to the magistrate court an amount equal to the actual cost of the tape or other medium or the sum of five dollars, whichever is greater.
Preparation of a transcript of the record or any designated portions thereof shall be the responsibility of the party desiring such transcript.
(2) If probable cause is found at the conclusion of a preliminary examination in magistrate court: (i) the magistrate clerk shall transmit to the prosecuting attorney a copy of the criminal case history sheet; (ii) when the proceeding is recorded electronically, the magistrate clerk shall transmit forthwith to the clerk of the circuit court all papers and electronic records of the proceeding; if for unavoidable cause the proceeding or part thereof has not been recorded electronically, the magistrate shall promptly make or cause to be made a summary written record of the proceeding, and the magistrate clerk shall transmit forthwith to the clerk of the circuit court such record and all other papers of the proceeding. Once the records of the proceeding are transmitted to the clerk of the circuit court, the felony charge shall remain within the sole jurisdiction of the circuit court and shall not be remanded to the magistrate for any purpose.
[Effective July 1, 1988; amended effective January 1, 1993; July 1, 1994; September 1, 1995.]

RULE 5.2 OFFENSE ARISING IN ANOTHER COUNTY
(a) Appearance Before Magistrate. If a person is arrested on a warrant issued upon a complaint, information or indictment, or without a warrant for an offense alleged to have been committed in a county other than the county of arrest, all papers in the proceeding shall be promptly transmitted to a magistrate or circuit court of the county having jurisdiction of the offense for preliminary examination or trial. If the defendant is unable to provide bail in the county of arrest, he or she shall be committed to the custody of an officer who shall take the defendant without unnecessary delay before a magistrate or judge of a circuit court wherein the examination or trial is to be held, there to be dealt with as provided by these rules.
(b) Arrest of Probationer. If a person is arrested for a violation of probation in a county other than the county of supervision, such person shall be taken without unnecessary delay before the nearest available magistrate and then processed in accordance with the provisions of subdivision (a) of this rule upon the production of certified copies of the probation order, the warrant, the application for the warrant and upon a finding that the person before the magistrate is the person named in the warrant.
(c) Arrest for Failure to Appear. If a person is arrested on a warrant in a county other than that in which the warrant was issued, and the warrant was issued because of the failure of the person named therein to appear as required pursuant to subpoena or the terms of that person's release, the person arrested shall be taken without unnecessary delay before the nearest available magistrate. Upon production of the warrant or a certified copy thereof and upon a finding that the person before the magistrate is the person named in the warrant, the magistrate shall hold the person to answer in the county in which the warrant was issued.
(d) Bail. If bail was previously fixed in another county where a warrant, information or indictment issued, the magistrate shall take into account the amount of bail previously fixed and the reasons set forth therefor, if any, but will not be bound by the amount of bail previously fixed. If the magistrate fixes bail different from that previously fixed, he or she shall set forth the reasons for such action in writing.

[Adopted effective January 1, 1989; amended effective September 1, 1995.]

RULE 5.3 FAILURE TO APPEAR UPON A SUMMONS
The magistrate court clerk shall notify the prosecuting attorney on a regular basis when a defendant fails to answer or appear in response to a summons. The magistrate court clerk shall notify the Division of Motor Vehicles of such failure to answer or appear in cases involving violations of any provision of Chapter 17, 17A, 17B, 17C or 17D of the West Virginia Code, and for any criminal violation charged on or after July 9, 1993, with the exception of parking violations or other unattended vehicle violations. Notification shall be in the same form as that provided by Rule 22 and Rule 7(e) of these Rules and shall be sent within 15 days from the scheduled date to appear unless the defendant answers or appears within that time.
Upon a motion by the prosecuting attorney, the magistrate may issue a warrant for arrest of a defendant who without providing good cause has failed to answer or appear at any stage of a proceeding in response to a summons.

[Adopted effective September 1, 1993.]

RULE 6. AMENDMENT OF COMPLAINT, WARRANT, AND SUMMONS; HARMLESS ERROR
(a) Amendment. Upon motion, the magistrate shall permit the complaint, warrant, summons or any other document to be amended at

any time before verdict if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.
(b) Harmless Error. Error in the citation of the statute or rule or regulation which the defendant is alleged to have violated, or the omission of the citation shall not be ground for dismissal or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice.

[Effective July 1, 1988; amended effective August 1, 1991.]

RULE 7. CITATION FOR TRAFFIC AND NATURAL RESOURCES OFFENSES
(a) Citation. In lieu of the procedures set forth in Rules 3 and 4 of these rules, a law enforcement officer may prepare and serve a citation as the instrument charging a misdemeanor violation of Chapter 17, 17A, 17B, or 17C, except as provided by West Virginia Code §17C-19-3, 17D, or 20 of the West Virginia Code. The citation must state the offense charged and notify the defendant of the requirement to answer or appear in response to the charge, by a date certain, in the magistrate court of the county where the offense occurred.
(b) Pleas of Guilty or No Contest. The citation shall be a sufficient document to which the defendant may plead guilty or no contest. Before accepting a plea of guilty or no contest, the magistrate shall inform the defendant of the charge and the penalties the court may impose. The magistrate shall also advise that the defendant has the right to be represented by an attorney, that the defendant may plead not guilty to the charge and demand a trial by jury in accordance with the time limits set forth in Rule 5(c) of these rules, and that by pleading guilty the defendant waives all of these rights.
(1) For violations of West Virginia Code §17B-4-3 (driving while license suspended or revoked), West Virginia Code §17C-5-1 (negligent homicide), West Virginia Code §17C-5-2 (DUI), West Virginia Code §17C-5-3 (reckless driving) and West Virginia Code Chapter 20 offenses involving injury to the person, a plea of guilty or no contest shall be made in person before a magistrate in the county where the offense occurred.
(2) For all other citations such pleas of guilty or no contest may also be made by telephone to a magistrate in the county where the offense occurred. In such instances the magistrate, upon advising the defendant, accepting the plea, and imposing the fine and costs, shall direct the defendant to complete the guilty plea form on the citation and to deliver by mail to the magistrate court the citation and all fines and costs assessed.
(c) Plea of Not Guilty. A plea of not guilty to a traffic or natural resources citation may be made in person before a magistrate in the county in which the offense was charged, or by mail to the magistrate court of such county. In such instances, a complaint must be filed at or prior to trial which complies with the probable cause requirements of Rule 4 and an initial appearance conducted pursuant to the procedures set forth in Rule 5 of these rules. Upon motion of the defendant, a continuance may be granted if necessary to provide time to meet any new information set forth in the complaint and if the refusal to grant such continuance would substantially prejudice the rights of the defendant.
(d) Motion to Dismiss. A defendant may seek dismissal of a traffic or natural resources citation prior to trial by filing, on a form provided by the magistrate court, a motion to dismiss. Such motion shall state with particularity the grounds upon which dismissal is sought. Upon receipt of such motion, the magistrate court shall promptly forward a copy of such motion to the prosecuting attorney. If upon 10 days from the date of delivery of such motion to the prosecuting attorney no objection is made, the magistrate may dismiss the citation. If within 10 days from the date of delivery the prosecuting attorney objects to such motion, the case shall proceed to hearing or trial.
(e) Failure to Appear. The magistrate court clerk on a regular basis shall notify the prosecuting attorney of citations for which the defendant failed to answer or appear. The magistrate court clerk shall notify the Division of Motor Vehicles of all such instances involving a failure to answer or appear in response to a citation charging a violation of any provision of Chapter 17, 17A, 17B, 17C, or 17D of the West Virginia Code, and for any criminal violation charged on or after July 9, 1993, with the exception of parking violations and other violations for which a citation may be issued to an unattended vehicle. Such notification shall be provided in the same form as that provided by Rule 5.3 and Rule 22 of these Rules and shall be sent within 15 days from the scheduled date to answer or appear unless the defendant answers or appears within that time.
Upon motion by the prosecuting attorney, the magistrate may issue a warrant for the arrest of a defendant who without showing good cause has failed to answer or appear at any stage of a proceeding in response to a citation.

[Effective July 1, 1988; amended effective August 1, 1991; September 1, 1993; July 1, 1994.]

RULE 8. CITATION FOR OTHER OFFENSES
In lieu of the procedures set forth in Rules 3 and 4 of these Rules, a law enforcement officer may issue a citation for any offense for which a citation in lieu of an arrest is authorized by W.Va. Code §62-1-5a. For such citations, the procedures set forth in Rules 7(a), 7(b)(1), 7(c), and 7(e) shall apply.

[Effective July 1, 1988; amended effective September 1, 1993.]

RULE 9. PLEA PROCEEDING
Except as otherwise provided by Rule 7(b), the plea proceeding shall be conducted in open court and shall consist of reading the complaint to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The reading of the complaint may be waived by the defendant in open court. The defendant shall be given a copy of the complaint before being called upon to plead.

[Effective July 1, 1988; amended effective September 1, 1993.]

RULE 10. PLEAS

(a) Alternatives. A defendant may plead not guilty, guilty, or, with the consent of the magistrate, no contest.

(b) Advice to Defendant. Before accepting a plea of guilty or no contest, the magistrate must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

(1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; and

(2) If the defendant is not represented by an attorney, that the defendant has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent the defendant; and

(3) That the defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that the defendant has the right to be tried by a jury and at that trial the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses, the right against compelled self-incrimination, and the right to call witnesses; and

(4) That if a plea of guilty or no contest is accepted by the magistrate there will not be a further trial of any kind, so that by pleading guilty or no contest the defendant waives the right to a trial; and

(5) That upon a plea of guilty or no contest, the magistrate may question the defendant under oath, on the record, about the offense to which he or she has pleaded, and that the defendant's answers may later be used against him or her in a prosecution for false swearing.

(c) Ensuring That the Plea Is Voluntary. The magistrate shall not accept a plea of guilty or no contest without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The magistrate shall also inquire as to whether the defendant's willingness to plead guilty or no contest results from prior discussions between the attorney for the state and the defendant or the defendant's attorney.

(d) Record of Proceedings. Before accepting a plea of guilty or no contest, the magistrate shall receive from the defendant, on a form provided by the magistrate, a statement signed by the defendant acknowledging that the magistrate has addressed the matters set forth in sections (b) and (c) of this rule.

(e) Withdrawal of Plea of Guilty or No Contest. A magistrate may neither entertain nor grant a motion to withdraw a plea of guilty or no contest.

[Effective July 1, 1988; amended effective January 1, 1989; August 1, 1991; September 1, 1995; September 1, 1996.]

RULE 11. NOTICE OF TRIAL

When a defendant enters a plea of not guilty to a misdemeanor complaint or notifies the court of the intent to plead not guilty or otherwise to contest a misdemeanor citation, the court shall promptly schedule a date and time for trial.

If the defendant is not in custody, all parties shall be notified by the court by first-class mail not less than 21 days before such date of trial. If the defendant is in custody, trial shall be scheduled for the earliest practical date and all parties promptly notified. All such notices shall contain:

(a) The date, place and time of trial;

(b) The name of the magistrate scheduled to hear the case;

(c) A statement of the time periods in which pretrial motions must be filed, in accordance with Rule 12;

(d) A statement of the manner in which pretrial motions may be filed;

(e) A statement of the restrictions upon continuances as set forth in Rule 12; and

(f) A statement of the manner by which motions for disqualification may be filed as set forth in Rule 1B of the Administrative Rules for Magistrate Courts.

[Effective July 1, 1988; amended effective March 1, 1997.]

RULE 12. PRETRIAL MOTIONS

(a) Time Periods. Unless good cause is shown as to why such requirements should be excused, the following motions, if made, shall be made in writing and shall be filed with the court and served upon all parties not less than 10 days before the first date scheduled for trial:

(1) Motion and affidavit for transfer to another magistrate;

(2) Motion for continuance; and

(3) Any other motion which, if granted, would require rescheduling of the hearing or trial.

The clerk, deputy clerk, or magistrate assistant shall provide appropriate forms on which such pretrial motions may be made.

All other pretrial motions may be made at any time in writing prior to trial, or may be made orally or in writing at time of trial.

(b) Continuance. A motion for a continuance may be granted only upon:

(1) Compliance with the requirements set forth in section (a) of this rule;

(2) A showing of good cause; and

(3) A reasonable effort by the magistrate to notify all parties and provide them with an opportunity to respond to the motion.

[Effective July 1, 1988; amended effective January 1, 1989; July 1, 1994; March 1, 1997.]

RULE 13. SERVICE AND FILING OF PAPERS

(a) Service. Written motions, notices, and similar papers shall be served upon each of the parties in the same manner as provided for service of such papers in civil actions in magistrate court.

(b) Filing. Papers required to be served shall be filed with the court in the same manner as provided for filing of papers in civil actions in magistrate court.

[Effective July 1, 1988.]

RULE 14. DISCOVERY AND INSPECTION; BILL OF PARTICULARS [RESERVED]

Reporter's Note
Statutory procedures regarding discovery and bills of particulars are set forth in W.Va. Code §§2-1B-1 to 62-1B-4.

Current with amendments received through 1-1-2003

RULE 15. SUBPOENA
Subpoenas for attendance of witnesses and subpoenas for production of documentary evidence and of objects shall be issued by the magistrate clerk, deputy clerk, magistrate or magistrate assistant in the same manner as is provided by Rule 17 of the Rules of Criminal Procedure for Circuit Courts.

[Effective July 1, 1988.]

RULE 16. DISMISSAL
(a) By Attorney for State. The attorney for the state may move to dismiss a complaint, and if the magistrate grants the motion the prosecution shall thereupon terminate. Such a dismissal shall not be granted during the trial without the consent of the defendant.
(b) By Magistrate. The magistrate may dismiss the complaint, with or without a motion, if there is unnecessary delay in bringing a defendant to trial or if the attorney for the state fails to appear at trial. If the magistrate grants a motion to dismiss a complaint based on a defect in the institution of the prosecution or in the complaint, the magistrate may also stay entry of the order for a specified time pending the filing of a new complaint.

[Effective July 1, 1988; amended effective August 1, 1991.]

RULE 16A. JOINDER AND RELIEF FROM PREJUDICIAL JOINDER
(a) Two or more offenses may be charged in the same complaint, and tried together, but only if (1) the offenses are of the same or similar character, or (2) the offenses are based on the same act or transaction, or on acts or transactions connected together or constituting parts of a common scheme or plan. A magistrate may also, in his or her discretion, order two or more complaints to be tried together if the offenses could have been joined in one complaint.
(b) If it appears that a defendant or the state is prejudiced by joinder of offenses, the court may on motion order separate trials for the offenses.
(c) No more than one defendant may be charged in one complaint or tried in one proceeding.

[Adopted effective August 1, 1991.]

RULE 17. TRIAL
(a) Conduct of Trial. Trial shall be conducted by the examination and cross-examination of witnesses under oath or affirmation, in an orderly manner, and in accordance with the West Virginia Rules of Evidence.
(b) Production of Statement of Witnesses. Statements of witnesses shall be produced in accordance with the provisions of Rule 26.2 of the West Virginia Rules of Criminal Procedure.
(c) Trial by Jury. In cases of trial by jury, a sufficient number of persons shall be notified, in accordance with the Administrative Rules for Magistrate Courts, so that, after dismissals for cause, a panel of 10 persons may be assembled who are legally qualified and free from prejudice. The magistrate may conduct the examination of potential members of the panel or may permit all or part of such examination to be conducted by the parties or their attorneys. Upon selection of the panel of 10 persons legally qualified and free from prejudice, each side shall exercise 2 peremptory challenges to reduce the number of jurors to 6.
(d) Record of Jury Trial. Every jury trial shall be recorded electronically by a magistrate. If by reason of unavoidable cause it is impossible to record all or part of a jury trial electronically, a magistrate may proceed with the hearing but shall make a written record of the failure to do so and of the cause thereof.
A magnetic tape or other electronic recording medium on which a jury trial is recorded shall be indexed and securely preserved by the magistrate court clerk or, as assigned by the clerk, by the magistrate assistant.
For evidentiary purposes, a duplicate of such electronic recording prepared by the clerk of the magistrate court shall be a "writing" or "recording" as those terms are defined in Rule 1001 of the West Virginia Rules of Evidence, and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an "original" under such rule.
When requested by the state, the defendant, or any interested person, the clerk of the magistrate court shall provide a duplicate copy of the tape or other electronic recording medium of any jury trial held. Unless a defendant requesting the copy has been permitted to proceed with appointed counsel, the defendant shall pay to the magistrate court an amount equal to the actual cost of the tape or other medium or the sum of five dollars, whichever is greater.
Preparation and costs of a transcript of the record or any designated portions thereof shall be the responsibility of the party desiring such transcript unless the circuit court orders payment to be made by the Administrative Director of the Supreme Court of Appeals.
(e) Jury Instructions. In cases of trial by jury, at the close of the evidence, before arguments to the jury are begun, the magistrate

shall instruct the jury regarding the law that is applicable to the case. Any party or counsel for any party may provide to the magistrate written requests that the magistrate instruct the jury on the law as set forth in the requests. The magistrate shall provide all parties or their counsel the opportunity, out of the presence of the jury, to argue for or against the giving or refusal to give any instruction.
(f) Parties Not Represented by Counsel. When a party appears at trial without counsel, the magistrate may inform the party, in the presence of all other parties, of the proper procedures regarding the conduct of trial and examination of witnesses. Such information shall not include counsel or advice regarding choice of tactics or strategy.

[Effective July 1, 1988; amended effective July 1, 1994.]

RULE 18. VERDICT
(a) Return. The verdict shall be unanimous. It shall be returned by the jury to the magistrate in open court.
(b) Several Defendants and Offenses. If there is more than one defendant or offense being tried, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or an offense as to which it has agreed; if the jury cannot agree with respect to all, the defendant or offense as to which it does not agree may be tried again. In all cases involving multiple defendants or offenses, the court shall require the jury to make a separate finding as to each defendant and offense.
(c) Conviction of Lesser Offense. The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.
(d) Poll of Jury. When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.
[Effective July 1, 1988; amended effective September 1, 1995.]

RULE 19. SENTENCE
(a) Sentence shall be imposed in open court within 60 days of the finding of guilt.
(b) Except as to pleas of guilty or no contest pursuant to Rule 7(b), before imposing sentence the magistrate shall:
(1) Afford counsel an opportunity to speak on behalf of the defendant; and
(2) Address the defendant personally to ask if the defendant wishes to make a statement in the defendant's own behalf and to present any information in mitigation of punishment.
(c) The prosecuting attorney shall have an equivalent opportunity to speak to the court.

[Effective July 1, 1988; amended effective August 1, 1991; September 1, 1993.]

RULE 20. NEW TRIAL
(a) Within 20 days after a verdict or a finding of guilty, the defendant may file a motion requesting that the judgment be set aside and a new trial held.
(b) The clerk, deputy clerk or magistrate assistant shall notify all parties of the time, place and date set for hearing on the motion.
(c) If good cause is shown that a new trial is required in the interest of justice, the magistrate who entered the judgment or such magistrate's successor may set aside the judgment and order a new trial.
(d) If trial was by the magistrate without a jury, in lieu of a new trial, the magistrate may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment.

[Effective July 1, 1988.]

RULE 20.1 APPEAL TO CIRCUIT COURT
(a) Except for persons represented by counsel at the time a guilty plea is entered, any person convicted of a misdemeanor in a magistrate court may appeal such conviction to the circuit court as a matter of right. Notice of appeal shall be filed in magistrate court:
(1) Within 20 days after the sentencing for such conviction; or
(2) Within 20 days after the magistrate has denied a motion for a new trial.
(b) The magistrate may require that bond be posted with good security conditioned upon the appearance of the defendant as required in circuit court. Such bond may not exceed the maximum amount of any fine which could be imposed for the offense.
(c) If no appeal is perfected within the appropriate 20-day period, the circuit court may, not later than 90 days after the date of sentencing, grant an appeal upon a showing of good cause why such appeal was not filed within the 20-day period.
(d) An appeal of a magistrate court criminal proceeding tried before a jury shall be heard on the record in circuit court. An appeal of a criminal proceeding tried before a magistrate without a jury shall be by trial de novo in circuit court without a jury.

[Adopted effective July 1, 1994.]

RULE 21. STAY OF EXECUTION
(a) The timely filing or granting of an appeal automatically stays the sentence of the magistrate.
(b) Upon request by the defendant, the execution of a criminal judgment shall be stayed to allow for the filing of a motion for a new trial or a petition for modification of sentence. Upon timely filing of such motion or petition, the execution of a criminal judgment shall be stayed until the same has been decided. In addition to granting the request of the defendant, the magistrate shall require the

defendant to post or continue a sufficient bond to assure any required further appearance.

[Effective July 1, 1988; amended effective August 1, 1991; July 1, 1994.]

RULE 22. ENFORCEMENT OF JUDGMENTS
(a) Register of Unsatisfied Judgments. The clerk shall maintain a register of all cases in which a period of confinement, fine, costs, forfeiture, and/or restitution have been ordered but which, upon 3 months from judgment and the expiration of any stay of execution, have not been satisfied, or, in the case of a period of confinement, is not currently being satisfied. Such register shall include the case number; name of the defendant; address of defendant, if known; nature of the offense; date of sentencing; period of confinement; fine, penalty and costs imposed; forfeiture or restitution ordered; and period of time unserved or amount of fine, penalty, costs, forfeiture and restitution remaining unsatisfied.
(b) Notice of Unsatisfied Judgment. On a regular basis of at least once every month, the clerk shall:
(1) Provide the prosecuting attorney a copy of the register of unsatisfied judgments with abstracts of judgment for entries involving any criminal violation occurring after July 9, 1993, for which court-imposed assessments have not been paid in full;
(2) Provide the Division of Motor Vehicles a notice of all entries that have been added to the register since the previous notification regarding court- imposed assessments not paid in full for violations of Chapters 17, 17A, 17B, 17C and 17D of the West Virginia Code or such entries for any criminal violation occurring on or after July 9, 1993, with the exception of parking violations and other violations for which a citation may be issued to an unattended vehicle; and
(3) Provide to the Division of Natural Resources a notice of all hunting or fishing violation entries that have been added to the register since the previous notification for which court-imposed assessments have not been paid in full.

[Effective July 1, 1988; amended effective September 1, 1993.]

RULE 23. FORFEITURE OF BOND
(a) Declaration. If there is a breach of condition of a bond, the magistrate shall declare a forfeiture of the bail.
(b) Setting Aside. The magistrate may direct that a forfeiture be set aside or reduced, upon such conditions as the magistrate may impose, if it appears that justice does not require the enforcement of the forfeiture.
(c) Enforcement. When a forfeiture has not been set aside, the magistrate shall, upon motion and hearing, enter a judgment of default, and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction and venue of the magistrate and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and notice of the motion, and the hearing thereon, shall comply with West Virginia Code §62-1C-9.
[Effective July 1, 1988.]

RULE 24. SEARCH AND SEIZURE
All matters regarding search and seizure shall be governed by the procedures set forth in Rule 41 of the Rules of Criminal Procedure for Circuit Courts.

[Effective July 1, 1988.]

RULE 25. PEACE BONDS
Applications for peace bonds shall be by complaint and shall be conducted in accordance with the procedures for criminal prosecutions as set forth in these rules.

[Effective July 1, 1988.]

RULE 26. TIME
(a) Computation. In computing any time limit set in accordance with these rules, set by the magistrate, or set by statute:
(1) The day of the act, event or default from which the designated period of time begins to run shall not be included.
(2) The last day of the time period shall be included, unless it is a Saturday, Sunday, or legal holiday.
(3) When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in computation.
(b) Extension. Except as provided in section (c), below, any time limit which has been set by these rules, by the magistrate, or by statute, may be extended in the following circumstances:
(1) If all parties to the case agree in writing to the extension;
(2) If the existing period has not expired, upon a showing of good cause;
(3) If the time period has expired, upon a showing of unavoidable cause.
Prior to ruling upon a request for an extension, the magistrate shall make a reasonable effort to notify all other parties and provide them with an opportunity to respond to the request.
(c) Extension Prohibited. Time periods for filing a motion to set aside judgment shall not be extended. Time periods for the payment of fines and costs, as authorized by W.Va. Code §50-3-2a, shall not be extended.
(d) Additional Time After Service by Mail. When a party has received a notice or some other paper by mail and in response must take some action within a specified period from the date of mailing, 3 days shall be added to such period.

[Effective July 1, 1988; amended effective August 1, 1991.]

RULE 27. HARMLESS ERROR; CORRECTION OF SENTENCE; CLERICAL MISTAKES

(a) Harmless Error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Correction of Sentence. The magistrate who entered judgment, or such magistrate's successor, may correct an illegal sentence at any time.

(c) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the magistrate at any time and after such notice, if any, as the magistrate orders.

[Effective July 1, 1988.]

FILED
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CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

## ADMINISTRATIVE ORDER

In Kanawha County, after the 19th day of November, 1997, no person may engage in the business of bail bonding, as defined in West Virginia Code, Chapter 51, Article 10, Section 1, except as provided in this Order.

This Order does not release any person from the obligation of undischarged bail bond liability existing on the 19th day of November, 1997; or limit or repeal the provisions of Section 16, Article 1(c), Chapter 62 of the Code.

II

Bail is security for the appearance of a defendant to answer to a specific criminal charge before the magistrate or circuit court at a specific time or at any time to which the case may be continued and for obedience to the conditions of the order granting bail. At the discretion of the magistrate or judge, it may take one or more of the following forms:

1) The deposit with the clerk of the appropriate court, by the defendant or by some other person for the defendant, of the cash amount of the bond.



EXHIBIT
7

2) The written undertaking by one of more persons to forfeit a sum of money equal to the amount of the bail if the defendant is in default of appearance, which shall be known as recognizance, provided, that no person or persons may receive any remuneration in any form for the signing of such recognizance. A recognizance shall be signed by the defendant. It may also be signed by one or more adult persons required by the court to accept the responsibility of assuring that the defendant appears as required and abides by any general or special conditions of the bond.

3) The written undertaking of one or more persons to pledge real property to assure that the defendant appears for scheduled proceedings and that he/she will abide by the conditions of the order granting bail which shall be known as secured bond. The judge or magistrate shall require that justification of surety be furnished and may require the surety to identify any outstanding liens or encumbrances on the property. The assessed value of the real property as shown on the County Land Books over and above all liens and encumbrances may not be less than one-half the amount of the bail. No person shall demand or receive any money or other thing of value for acting as surety on a bond unless that person shall have first

have been granted the general authoritiy to do so by the circuit court in accordance with the previous orders or rules of this court.

4) A security deposit of ten percent cash deposit of the bail amount.

a) A defendant who has been permitted to execute a bail bond known as "Ten percent cash deposit" shall deposit with the clerk of the court before which the action is pending, a sum of money equal to ten percent of the bail, but in no event shall such deposit be less than Twenty-Five Dollars ($25.00).

b) Upon making the deposit and signing a bond, without the necessity for a justification of surety for the remaining amount of the bail, the defendant shall be released from custody.

c) Upon a violation of the terms of bond, any person released from custody by the posting of ten percent of the bail amount shall forfeit the deposited amount and shall be indebted to the State of West Virginia for the remaining amount over and above the ten percent deposit, unless otherwise Ordered by the Circuit Court.

d) After all conditions of the bond have been met and upon completion of the case, or case if the bond relates to more than one charge, the Clerk of the court receiving the bond shall

reimburse the deposit to the person who originally tendered it, unless otherwise ordered by the Circuit Court.

All of the forms of bail identified above shall include the following conditions whether or not the same shall be stated on the face of the order granting bail or of the bond: (1) that the defendant shall appear for any and all scheduled proceedings in the case or cases against him/her, (2) that the defendant shall not violate the laws of the State of West Virginia, of any other state or of the United States or the ordinances of any municipality.

III

Bonding Business

Persons wishing to engage in commercial bail bonding shall:

1) File a verified petition before the Chief Judge seeking to engage in the bonding business. Such petition shall only be filed by the real party in interest and desirous of engaging in the bonding business. The Court may determine such interest at its discretion. Such petition shall include:

a) A statement of assets with a true appraisal of property which may be used to secure any bonds;

b) The amount of bonding authority sought;

c) The applicant's complete arrest record and the complete arrest record of each member of the applicant's immediate family;

d) A statement that the applicant is of good moral character;

e) An agreement to abide by such rules and regulations as may be promulgated by the Circuit Court; and

f) A statement listing all bond forfeitures against the applicant previously entered by any Court and proof that all such forfeitures have been paid.

2) Agree to keep accurate records as set forth in the rules and regulations concerning the bonding business.

All persons wishing to engage in the bonding business, who are approved by the Chief Judge following a hearing upon their verified petition, shall thereafter be required to associate equally under Chapter 47, Article 8A, Section 1, et. seq. of the Code of West Virginia as partners in a company to be known as The Kanawha County Circuit Court Monitored and Regulated Bonding Business Partnership (KMRBP), which shall operate with a bonding authority to be established by the Court in an amount to be based upon the statements of assets of the various partners.

A partnership agreement shall be prepared by counsel

retained by the partners in the KMRBP and shall be approved by the Chief Judge upon petition prior to the commencement of business by the KMRBP. This agreement shall provide for full settlement as between the partners and the execution of a new agreement and the petition for approval thereof by the Court upon the addition or substitution of any partners.

The agreement shall further provide that the partnership shall employ at least one salaried agent who shall be approved by Order of the Chief Judge upon petition by KMRBP prior to his employment.

The agent or agents of the KMRBP shall exclusively conduct the business of the partnership in and about the Kanawha County Judicial Building. The partners of the KMRBP shall never themselves conduct such business, nor shall they at any time post bail as security for appearance of any defendant in the forms defined by Section II of this Order, themselves excepted.

IV

Rules and regulations

The KMRBP, while engaging in the bonding business, shall:

1) Supply to the Office of the Prosecuting Attorney at 9:30 a.m. of the next judicial day a separate 4 x 6 index card for each bond posted after 9:30 a.m. of the previous judicial

day, with a copy delivered to the Circuit Clerk who shall monitor the bond outstanding as against the bonding authority, which card shall contain the following information:

a) The name, address, date of birth and Social Security Number of the bonded person.

b) The name of the Court which authorized the bond.

c) The amount of the bond.

d) The name of the person posting the bond, the amount by them paid and receipt therefor signed by said payer.

e) The name of the person who contacted the bonds person and the means whereby contact was made.

f) The next return date of the bond.

g) The Court to which the bond is returnable.

2) Accept no bonding fee in excess of 6% by cash or check or money order only of the stated amount of bond.

The KMRBP shall be suspended from further participation in the bonding business upon the failure to pay any forfeiture upon demand by the Court or in any event within thirty (30) days of the forfeiture. Upon suspension, the KMRBP shall remain suspended for at least thirty (30) days after payment of the forfeiture or until further Order of the Chief Judge.

A certified copy of this Order shall be served by

registered mail return receipt requested upon each licensed bonds person presently operating in Kanawha County and to 1) George Castelle, Esq., Kanawha County Public Defender's Office; 2) Hon. William Forbes, Kanawha County Prosecuting Attorney; 3) Kanawha County Circuit Clerk; and 4) to each of the Judges of the Kanawha County Circuit Court.

Tod J. Kaufman
Chief Judge

DATED: November 20, 1997



DEPOSITED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

97 NOV 25 12:52

ADMINISTRATIVE STAY OF NOVEMBER 20, 1997 ORDER

Re: Business of Bail Bonding

This Court, after consulting with the Kanawha County Circuit Clerk about the implementation and execution of its November 20, 1997 Order (unanimously agreed upon by the Circuit Judges) STAYS all aspects of this Order until January 12, 1998.

The Circuit Clerk shall send a certified copy of this Order by registered mail, return receipt requested, upon each licensed bonds person presently operating in Kanawha County and to 1) George Castelle, Esq., Kanawha County Public Defender's Office; 2) Hon. William Forbes, Kanawha County Prosecuting Attorney; 3) Kanawha County Circuit Clerk; and 4) to each of the Judges of the Kanawha County Circuit Court.

Tod J. Kaufman
Chief Judge

DATED: November 25, 1997

IN THE FAMILY COURT OF _____ COUNTY, WEST VIRGINIA

TO:

_____ Magistrate Court Case No.: _____
Respondent's Name (First/Middle/Last)

_____ Family Court Civil Action No.: _____
Respondent's Street Address (Please do not list PO Box #)

_____
Respondent's City / State / Zip

_____
Respondent's Date of Birth

## ORDER OF PUBLICATION
## PROTECTIVE ORDER

1. The object of this suit is to obtain protection from the Respondent.
2. The object of this publication by Class I legal advertisement is to notify Respondent of the PROTECTIVE ORDER prohibiting the above-named Respondent from having contact with certain individuals. This Order may affect property and other rights of the Respondent. Violating this Order may subject the Respondent to criminal sanctions. The Respondent is strongly encouraged to obtain a copy of this Protective Order from the Circuit Clerk of the county listed above.

TO THE ABOVE-NAMED RESPONDENT:

If appearing by evidence duly taken in this action that you could not be found in or that you have left the State of West Virginia, you are hereby notified of the ORDER referenced above, a copy of which may be obtained at the _____ County, Circuit Clerk's office. This PROTECTIVE ORDER will remain in effect until _____.
(Date)

The Respondent may appeal this Protective Order pursuant to W.Va. Code § 48-27-510, within 10 days of the date the Order was entered.

Issued this _____ _____
(Date / Time) Circuit Clerk

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

IN THE MATTER OF:
MAGISTRATE CAROL A. FOUTY
MAGISTRATE FOR KANAWHA COUNTY

COMPLAINT NO. 12-2010

The matter is before the Judicial Investigation Commission upon a complaint filed on February 12, 2010, setting forth certain allegations against Magistrate Carol A. Fouty, Magistrate for Kanawha County. In the Complaint, it was alleged that Magistrate Fouty helped a friend write a peace bond and then found probable cause to issue the bond in violation of the Code of Judicial Conduct.

Upon receipt of the complaint, an investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure which revealed the following: On November 17, 2009, Norma Jean Saunders, Brian Miller and Dennis Rhodes secured peace bonds from Magistrate Fouty against an adjacent landowner. Magistrate Fouty and Ms. Saunders are friends. Magistrate Fouty helped Ms. Saunders draft her peace bond. Magistrate Fouty even wrote some of the narrative in her own handwriting. She then found probable cause to issue the three peace bonds.

The complaint and the investigation were reviewed by the Judicial Investigation Commission at its meeting on December 9, 2011. The Commission determined that probable cause does exist in the instant complaint and that Magistrate Carol A. Fouty, Magistrate for Kanawha County, violated Canons 1A, 2A, 2B, 3A, 3B(1) and (2) and 3E(1)(a) which provide in pertinent part:



EXHIBIT
tabbies
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**Canon 1:**

**A judge shall uphold the integrity and independence of the judiciary.**

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

**Canon 2:**

**A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.**

A. A judge shall respect and comply with the law, shall avoid impropriety and the appearance of impropriety in all of the judge's activities, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or knowingly permit others to convey the impression that they are in a special position to influence the judge. . . .

**Canon 3:**

**A judge shall perform the duties of judicial office impartially and diligently.**

A. Judicial duties in general. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law *. In the performance of these duties, the following standards apply.

B. Adjudicative responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding. . . .

It was further determined that formal discipline was not appropriate under the circumstances. The Judicial Investigation Commission determined that pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure that a written admonishment would be given to Magistrate Carol A. Fouty.

It is therefore the decision of the Judicial Investigation Commission that Magistrate Carol A. Fouty be and is hereby admonished for this conduct as fully set forth in the matters asserted herein the complaint filed in this matter on February 12, 2010.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

12-27-11
Date

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

IN THE MATTER OF:
MAGISTRATE CAROL A. FOUTY
MAGISTRATE FOR KANAWHA COUNTY

COMPLAINT NO. 72-04
COMPLAINT NO. 73-04

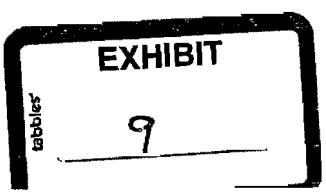
These matters are before the Judicial Investigation Commission upon complaints filed on April 16, 2004, setting forth certain allegations against Magistrate Carol A. Fouty, Magistrate for Kanawha County. In Complaint No. 72-04, it was alleged that Magistrate Fouty placed an advertisement announcing the availability of her services as a Notary Public. In Complaint No. 73-04 it was alleged that Magistrate Fouty issued a protective order from her home to her neighbor who was also her tenant.

Upon receipt of the complaints an investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure. In Complaint 72-04, the investigation revealed that Magistrate Fouty has placed in the Big Book, a telephone directory, an advertisement showing her picture and the seal of the State of West Virginia, which stated, "Carol A. Fouty Notary Public of West Virginia, Charleston, West Virginia, member of National Notary Association."

In Complaint 73-04 the investigation revealed that in April 2004, Carl Roger Workman, III, an individual who rents a house from Magistrate Fouty and her daughter went to Magistrate Fouty's residence and discussed a matter seeking a protective order with Magistrate Fouty. He completed a petition for the protective order at the Magistrate's residence and gave it to her and she issued the protective order.

The complaints and the investigation were reviewed by the Judicial Investigation





Commission at its meeting on October 1, 2004, and it was determined that the two complaints which were filed by the same individual on the same date should be consolidated for purposes of this proceeding. It was determined that probable cause does exist in Complaint No. 72-04 and Complaint No. 73-04, that Magistrate Carol A. Fouty, Magistrate for Kanawha County violated the Code of Judicial Conduct.

In Complaint No. 72-04, the Judicial Investigation Commission determined that probable cause did exist that Magistrate Carol A. Fouty violated the Constitution of West Virginia, Article VIII, § 7, Canon 1 and Canon 4D(1)(a)(b) of the Code of Judicial Conduct. These sections of the Constitution and Code of Judicial Conduct state in relevant part:

> Constitution of West Virginia, Article VIII, § 7
>
> "No justice, judge or magistrate shall hold any other office, or accept any appointment or public trust, under this or any other government."
>
> Canon 1. A judge shall uphold the integrity and independence of the judiciary.
>
> A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.
>
> Canon 4. A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.
>
> D. Financial activities.
>
> > (1) A judge shall not engage in financial and business dealings that:
> >
> > > (a) may reasonably be perceived to exploit the judge's judicial position, or
> > > (b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

In Complaint No. 73-04, the Judicial Investigation Commission determined that probable cause existed that Magistrate Carol A. Fouty, Magistrate for Kanawha County violated Canon 1, Canon 2A and B and Canon 3A, B and E of the Code of Judicial Conduct. These sections of the Code of Judicial Conduct state in relevant part:

> Canon 1. A judge shall uphold the integrity and independence of the judiciary.
>
> A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.
>
> Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
>
> A. A judge shall respect and comply with the law, shall avoid impropriety and the appearance of impropriety in all of the judge's activities, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
>
> B. A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or knowingly permit others to convey the impression that they are in a special position to influence the judge. . . .
>
> Canon 3. A judge shall perform the duties of judicial office impartially and diligently.
>
> A. Judicial duties in general. The judicial duties of a judge taken precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.
>
> B. Adjudicative responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. . . .

It was further determined that formal discipline was not appropriate under the circumstances. The Judicial Investigation Commission determined that pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure that a written admonishment would be given to Magistrate Carol A. Fouty.

It is therefore the decision of the Judicial Investigation Commission that Magistrate Carol A. Fouty be and she hereby is admonished for this conduct as fully set forth in the matters as asserted herein the complaints filed in this matter on April 16, 2004.

Fred L. Fox, II

Fred L. Fox, II, Chairperson
Judicial Investigation Commission

October 8, 2004
Date

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 5th of April, 2001, the following order was made and entered:

In Re: Carol Fouty, Magistrate
for Kanawha County

No. 27832

On a former day, to-wit, March 1, 2000, came the Judicial Hearing Board, by the Honorable Thomas H. Keadle, its chairperson, pursuant to Rule 4.8 of the Rules of Judicial Disciplinary Procedure, and presented to the Court its written recommended disposition in the above-captioned matter recommending that the respondent, Carol Fouty, Magistrate for Kanawha County, be censured and be required to reimburse the Judicial Hearing Board for costs in the amount of Three Thousand Three Hundred Five Dollars and Forty-Nine Cents ($3,305.49), for violating Canons 1(A), 2(a) and 3(B)(4). Thereafter, on the 27th day of March, 2001, came the Office of Disciplinary Counsel, by Charles R. Garten, Judicial Disciplinary Counsel, pursuant to Rule 4.9 of the Rules of Judicial Disciplinary Procedure, and presented to the Court its written consent thereto.

There having heard neither consent nor objection by the respondent, the Court doth hereby adopt the aforesaid recommendation in part. It is therefore ordered that the respondent be, and she hereby is, censured for violating Canons 1(A), 2(A) and 3(B)(4). It is further ordered that the respondent reimburse the Judicial Hearing Board in the amount of One Thousand Five Hundred Dollars ($1,500.00). Justice Maynard would have refused to adopt the recommendation and would have reprimanded the respondent and

EXHIBIT
10

required no reimbursement. Justice Davis would have adopted the recommendation as presented.

A True Copy

Attest: Rory L. Perry II.
Clerk, Supreme Court of Appeals

FILED
MAR 1 2001
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

BEFORE THE WEST VIRGINIA JUDICIAL HEARING BOARD

RE: IN THE MATTER OF:

CAROL FOUTY,
MAGISTRATE OF KANAWHA COUNTY

CASE NO.: 5-2000

FINDINGS OF FACT, CONCLUSION OF LAW, AND PROPOSED DISPOSITION

This matter comes before the Judicial Hearing Board by a finding from the Judicial Investigation Commission that probable cause existed to file a complaint with the Judicial Hearing Board. The charges filed by the Judicial Investigation Commission are that Respondent, Carol Fouty, violated Canon 1, Canon 2A, Canon 3, Canon B(2)(4) and (5) of the code of Judicial Conduct.

The charges against the Respondent are that she used a racial epithet in her Courtroom, while discussing a domestic violence matter with a female litigant.

I. STATEMENT OF FACTS:

1. Respondent, Carol Fouty, is a Magistrate serving Kanawha County, West Virginia, and has been a Magistrate for Kanawha County, for approximately sixteen (16) years. Respondent is sixty-three (63) years of age.

2. On December 14, 1999, Magistrate Fouty was presiding during what is commonly called "day court" in the Kanawha County Magistrate Court. A female by the name of Misty Shaw appeared before Magistrate Fouty to obtain a Family Violence Civil Contempt Petition. Other people were in the Courtroom at the same time, including Ptl. Keith Peoples and Cpl. Mark Fulks, both of the Charleston Police Department.

3. While Magistrate Fouty was assisting Misty Shaw with her petition, Misty Shaw stated

that her husband would not claim one of their children because the child had dark hair and dark eyes. Misty Shaw went on to say that her husband claimed the child was bi-racial.

4. Magistrate Fouty then asked Misty Shaw, "you don't date black men." When Misty Shaw replied no, Magistrate Fouty then asked Misty Shaw "you mean you don't date niggers." Misty Shaw replied no to that question.

5. Magistrate Fouty then turned to Ptl. Keith Peoples and said "here's a good looking one". Then Magistrate Fouty speaking directly to Ptl. Keith Peoples said "Hey Keith, I'm trying to get you a woman". Keith Peoples is of African American descent.

6. Magistrate Fouty presented testimony of her previous unblemished record as a Magistrate. She also presented testimony of her work in past civil rights movements, and of assisting other African American people.

7. Magistrate Fouty claims that she was repeating what Misty Shaw said to her. However, the "Petition: Order to Show Cause" tends to show, because of its location, that Magistrate Fouty may have inserted the words "Said I was a nigger lover" as an after thought. Magistrate Fouty filled out the petition for Misty Shaw.

## II. CONCLUSION OF LAW:

1. Charges by the Judicial Investigation Commission must be proved by clear and convincing evidence. (Rule 4.5 of the Rules of Judicial Disciplinary Procedure). The Judicial Hearing Board believes that the Judicial Investigation Commission proved certain of the charges in this case by clearing and convincing evidence.

2. Canon 1A in part specifically states that "a Judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe

those standards so that the integrity and independence of the judiciary will be preserved. Magistrate Fouty did not act in accordance with Canon 1(A) in this case.

3. Canon 2(A) specifically states that "a Judge shall respect and comply with the law, shall avoid impropriety and the appearance of impropriety in all of the Judge's activities, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary". Magistrate Fouty did not act in accordance with Canon 2A.

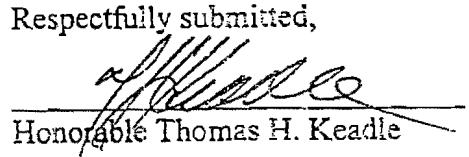
4. Canon 3(B)(4) specifically states "a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in the official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control". Magistrate Fouty did not act in accordance with Canon 3(B)(4).

5. The Judicial Hearing Board does not find that Magistrate Fouty violated Canons 3A, 3(B)(2) and 3(B)(5), as charged.

## III. RECOMMENDED DISPOSITION:

By an 8-0 vote, the Judicial Hearing Board finds that Magistrate Carol Fouty violated Canon 1(A), Canon 2(A), and Canon 3(B)(4). By an 8-0 vote, the Judicial Hearing Board recommends that Magistrate Carol Fouty be censured and required to pay the costs of this matter.

Respectfully submitted,



Honorable Thomas H. Keadle
Chairman of the Judicial Hearing Board

FILE COPY

BEFORE THE WEST VIRGINIA JUDICIAL HEARING BOARD

Complaint Concerning a Judge No.: 5-2000

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FROM FILE

RECEIVED
AUG 18 2000
JIC

ANSWER

Respondent Magistrate Carol Fouty, by counsel, hereby answers the complaint in the above-styled matter as follows:

1. Respondent admits the allegations contained in numbered paragraph 1 of the complaint.

2. Respondent has no recollection of using a racial epithet on the occasion referred to in the complaint, but acknowledges she may have repeated language used by a litigant in alleging domestic violence against her while processing the petition.

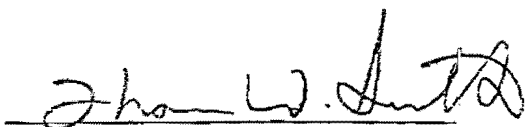
3. Respondent affirmatively asserts that she makes a point not to use such language and that she finds such language offensive and if she uttered such language it was a recitation, not an assertive use, and that she is known to habitually recite allegata when processing complaints.

FILED
Aug - 1 2000
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

4. Respondent affirmatively asserts that the recitation of such language is not a violation of any canon of judicial ethics.

Respectfully submitted,

CAROL FOUTY
By Counsel



THOMAS W. SMITH, ESQUIRE, WV Bar #3490
2008 Quarrier Street
Charleston, WV 25311
Phone: 304/343-1900
Fax: 304/343-1920
Counsel for Respondent

BEFORE THE WEST VIRGINIA JUDICIAL HEARING BOARD

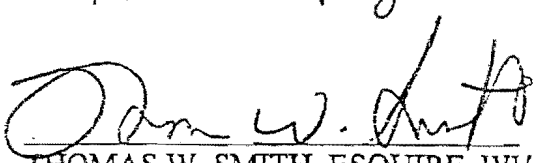
Complaint Concerning a Judge No.: 5-2000

CERTIFICATE OF SERVICE

I, Thomas W. Smith, Esquire, counsel for respondent in the above-referenced matter, do hereby certify that service of the foregoing *Answer* was made upon parties of record, via regular course of the United States Mail, postage prepaid, in properly stamped, addressed envelopes, as follows:

Charles R. Garten
Judicial Investigation Commission
P.O. Box 1629
Charleston, WV 25326

this 17 day of August, 2000.



THOMAS W. SMITH, ESQUIRE, WV Bar #3490
2008 Quarrier Street
Charleston, WV 25311
Phone: 304/343-1900
Fax: 304/343-1920
Counsel for Respondent

IN THE MAGISTRATE ~~COURT OF~~ Ham. COUNTY, WEST VIRGINIA

Misty Dawn Shaw
Petitioner *(person filing this petition)*

v.

Rodney Shaw
Respondent *(person charged with contempt)*

Case No. 99C5483
(Original Civil Case No.)

**PETITION: ORDER TO SHOW CAUSE**
**(FAMILY VIOLENCE CIVIL CONTEMPT)**

1. A protective order has been issued in which I am named *(check one)* ☒ Petitioner ☐ Respondent ☐ legal guardian or guardian ad litem of a person named in the order.

2. The protective order which I want to enforce is a *(check one)* ☐ TEMPORARY ☒ FINAL ☐ AMENDED FINAL PROTECTIVE ORDER which was issued on the 29 day of Nov 1999, by the Hancock County Magistrate Court

3. The above-named Respondent did commit civil contempt by doing the following in violation of the above referenced PROTECTIVE ORDER: Said I was a Nigger lover. He CALLS, threatens me I in fear of my life. He made me sign a Super Joint Custody of the 2 Children I wanted the 4th Child but he is a Liar he didn't want. He told me if I dies he would pour gasoline down my throat & lit.

4. Pursuant to W.Va. Code § 48-2A-10b(a), I hereby request the court to issue an order to show cause why Respondent should not be held in contempt of court for violating the protective order. I further request that a full hearing be held on this petition within 5 days as provided in W.Va. Code § 48-2A-10a(b) and that appropriate relief be granted.

X Misty Shaw
Person Filing Petition

14 Dec '99
Date

EXHIBIT
1

CHARLESTON POLICE DEPARTMENT

GENERAL INVESTIGATIVE SUPPLEMENTARY REPORT

CPD 102



| NCIDENT NUMBER | VICTIM | DATE | TIME |
|---|---|---|---|
| | | 14DEC99 | 1230 |

ON THE ABOVE LISTED DATE, AT APPROXIMATELY 1230 HOURS, CPL. MARK FULKS AND MYSELF SCORTED AN ARRESTEE, PATRICIA MARIE RICH TO KANAWHA COUNTY MAGISTRATE COURT, TO NSWER THE CHARGE OF FUGITIVE FROM JUSTICE. WHEN WE ARRIVED IN DAY COURT, THE AGISTRATE, CAROL FOUTY WAS SPEAKING WITH A WHITE FEMALE, BELIEVE THE FIRST NAME TO E MISTY, LAST NAME UNKNOWN, ABOUT A DOMESTIC PETITION.

THE FEMALE STATED TO MAGISTRATE FOUTY "I HAVE SOME CHILDREN, AND ONE OF THEM AVE DIFFERENT HAIR AND EYE COLOR THEN WHAT MY HUSBAND AND OTHER CHILDREN HAS, O MY HUSBAND THINK'S THE CHILD IS MIXED". MAGISTRATE FOUTY THEN STATED "DO YOU ATE BLACK MEN"? THE FEMALE STATED "NO". MAGISTRATE FOUTY THEN STATED "YOU MEAN, OU DON'T DATE NIGGERS"? THE FEMALE LAUGHED AND STATED "NO, YOU NEED TO STOP". AGISTRATE FOUTY THEN STATED WELL I'LL LIKE TO SEE YOU LAUGH, THEN CRY.

AFTER CPL. FULKS, THE ARRESTEE PATRICIA RICH AND MYSELF WALKED FROM THE COURT OOM HEADING BACK TO THE POLICE STATION, I ASKED CPL. FULKS "DID YOU HEAR WHAT I HINK I HEARD CAROL SAY", CPL. FULKS STATED "I THINK SO", AT THAT TIME PATRICIA RICH TATED "DID SHE ASK THAT WOMAN IF SHE DATED NIGGERS"? I THEN REPLIED "I THOUGH I EARD THAT". THEN, MS. RICH STATED "YES THAT'S WHAT SHE SAID". MS. RICH THEN STATED THAT REMARK, " MAKES ME THINK OF AN OLD PICTURE OF A BLACK MAN TIDE UP AND SET FIRE, ND SOME KIDS ARE LAUGHING WHILE THEY SIT AND WATCH HIM BURN".

EXHIBIT 2

| PREPARING OFFICER | PAYROLL # | APPROVING SUPERVISOR | ENTERED BY |
|---|---|---|---|
| | 14667 | | |

CHARLESTON POLICE DEPARTMENT
GENERAL INVESTIGATIVE SUPPLEMENTARY REPORT

# CPD 102



| INCIDENT NUMBER | VICTIM | DATE | TIME |
|---|---|---|---|
| N/A | N/A | 14DEC99 | 1310 |

ON TUESDAY, 14DEC99 AT APPROX. 1230 HRS., PTL. KEITH PEOPLES AND MYSELF (CPL. MARK FULKS) WERE AT MAGISTRATE COURT FOR THE ARRAIGNMENT OF A PRISONER (PATRICIA M. RICH) UNDER ARREST AS A FUGITIVE FROM JUSTICE OU OF THE STATE OF KANSAS. AT THE TIME, MAGISTRATE CAROL FOUTY WAS TALKING TO A WHITE FEMALE(POSSIBLY NAMED "MISTY" REFERENCE A DOMESTIC VIOLENCE PETITION, (AT THIS TIME MAGISTRATE FOUTY WAS SITTING BEHIND HER DESK, THE FEMALE WAS STANDING IN FRONT OF HER, PTL. PEOPLES WAS STANDING TO THE LEFT OF THE MAGISTRATE, AND I WAS BESIDE OF HIM (JUST BEHIND THE MAGISTRATE).

WHILESTANDING THERE, I HEARD THE FEMALE TELL THE MAGISTRATE THAT; HER HUSBAND WAS MAD BECAUSE HE THOUGHT ONE OF THE COUPLE'S CHILDREN WAS MIXED (BI-RACIAL) BECAUSE IT'S HAIR IS DARK. I BELIEVE MAGISTRATE FOUTY RESPONDED "WELL HONEY, SO IS YOURS". BOTH THE FEMALE AND THE MAGISTRATE BEGAN LAUGHING, AND MAGISTRATE FOUTY SAID "YOU DON'T DATE BLACK MEN?". THE FEMALE REPLIED "NO", STILL LAUGHING. MAGISTRATE FOUTY THEN SAID "YOU MEAN YOU DON'T DATE (SHE THEN LOWERED HER HEAD AND IN LOWER VOICE SAID) NIGGERS?" AND THE FEMALE AGAIN REPLIED "NO", STILL LAUGHLING. SHE THEN SAID "YOU NEED TO STOP". MAGISTRATE FOUTY THEN SAID "WELL I'D RATHER SEE YOU LAUGHING THAN CRYING". MAGISTRATE FOUTY THEN LOOKED AT PTL. PEOPLES AND SAID "HEY KEITH, I'M TRYING TO GET YOU A WOMAN". WHEN PTL. PEOPLESFAILED TO RESPOND (HE WAS FINISHING UP SOME OF THE ARREST PAPERWORK) MAGISTRATE FOUTY AGAIN SAID " HEY KEITH, DID YOU HEAR ME? I'M TRYING TO GET YOU A WOMAN" PTL. PEOPLES RESPONDED "I ALREADY GOT ENOUGH PROBLEMS". MAGISTRATE FOUTY THEN SAID "WELL, DON'T YOU LIKE HER?" PTL. PEOPLES AGAIN RESPONDED "I ALREADY GOT ENOUGH PROBLEMS". MAGISTRATE FOUTY THEN PROCEEDED TO TELL THE FEMALE THAT SHE WAS DONE, AND THEN HE PROCEEDED TO ARRAIGN OUR PRISONER.

THEN WE WERE DONE, WE BEGAN TO WALK TO OUR PRISONER BACK TO THE STATION. PTL. PEOPLES ASKED IF I HEARD WHAT THE MAGISTRATE (FOUTY) HAD SAID. I HESITATED TO ANSWER BECAUSE I WASN'T SURE THAT I HEARD THE MAGISTRATE CORRECTLY AND I SAID" I THINK SO". THE PRISONER THEN BLURTED OUT " DID SHE ASK THAT GIRL IF SHE DATED ?". PTL. PEOPLES

| PREPARING OFFICER | PAYROLL # | APPROVING | ENTERED BY |
|---|---|---|---|
| CA Mark Fulks | 15025 | | |

EXHIBIT

CHARLESTON POLICE DEPARTMENT

GENERAL INVESTIGATIVE SUPPLEMENTARY REPORT

# CPD 102



| INCIDENT NUMBER | VICTIM | DATE | TIME |
|---|---|---|---|
| N/A | N/A | 14DEC99 | 1345 |

THEN SAID "I THOUGHT THAT WAS WHAT SHE SAID". THE PRISONER THEN SAID " YEAH, THAT'S WHAT SHE SAID". WHEN WE RETURNED TO THE STATION WE TURNED OUR PRISONER OVER TO THE WAGON-DRIVER; AND THEN WENT TO FIND A SUPERVISOR.

LATER, WE CONTACTED LT. DAVE DICKENS AND INFORMED HIM OF THE SITUATION. HE ADVISED BOTH OF US TO WRITE THESE 102'S.

ALSO, PTL. PEOPLES AND MYSELF WERE TALKING, AND I MENTIONED TO HIM THAT I MIGHT KNOW THE FEMALE ( THIS WAS WHEN HE INFORMED ME THAT HE THOUGHT HER FIRST NAME WAS MISTY") I TOLD HIM THAT I THOUGHT SHE WAS A IN-LAW OF MY UNCLE'S. I CONTACTED MY UNCLE, WHO INFORMED ME THAT "MISTY" WAS HIS NEICE AND THAT HER NAME WAS MISTY SHAW, ADDRESS - - ROUTE 8 BOX 448-I, SOUTH CHARLESTON, WV 25309. SHE HAS NO PHONE AT HER RESIDENCE. I TOLD HIM TO HAVE HER CONTACT ME EITHER AT RECORDS OR AT MY RESIDENCE, SO I COULD MAKE SURE IT WAS HER AT MAGISTRATE COURT AND REFER HER TO THE PROPER SUPERVISOR.

AT THIS TIME I HAVE NOT HEARD BACK FROM MS. SHAW.

| PREPARING OFFICER | PAYROLL # | APPROVING SUPERVISOR | ENTERED BY |
|---|---|---|---|
| [signature] | 15025 | | |

**JUDICIAL INVESTIGATION COMMISSION**
Post Office Box 1629
Charleston, West Virginia 25326-1629
(304) 558-0169 • FAX (304) 558-0831

# MEMORANDUM

TO: Blake Westfall, Deputy Clerk
Supreme Court of Appeals of West Virginia

FROM: Nancy Black, Executive Secretary
Judicial Investigation Commission

DATE: April 3, 2001

RE: Expenses for the Magistrate Carol Fouty Ethics Investigation.

The investigative expenses incurred in the above-mentioned case were $3,305.49.

I hope this information will be sufficient for you to submit to the Justices. Should you need additional information please do not hesitate to contact me.

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

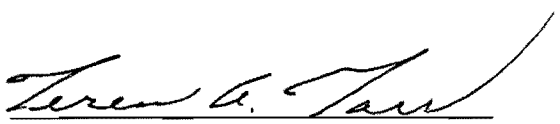
IN THE MATTER OF:
MAGISTRATE CAROL FOUTY
MAGISTRATE FOR KANAWHA COUNTY

COMPLAINT NO. 33-2012

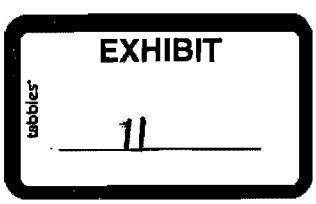
## NOTICE OF FILING REPORT OF JUDICIAL DISCIPLINARY COUNSEL

Comes now Judicial Disciplinary Counsel pursuant to Rule 2.14(b) of the Rules of Judicial Disciplinary Procedure and provides notice to Magistrate Carol Fouty that on the 19th day of March 2012, she duly filed her Report in the above-captioned matter to the Honorable Menis E. Ketchum, II, Chief Justice, Supreme Court of Appeals of West Virginia by hand delivering the original to his Office located at Capitol Complex, Building One, Room E-306, Charleston, West Virginia 25305.

Respectfully submitted,

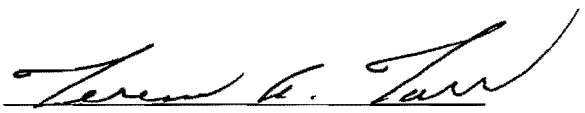


Teresa A. Tarr, Counsel
WV Bar I.D. No. 5631
Judicial Investigation Commission
City Center East Suite 1200A
4700 MacCorkle Avenue SE
Charleston, WV 25304
(304) 558-0169



## CERTIFICATE OF SERVICE

I, Teresa A. Tarr, do hereby certify that I served Notice[1] of the filing of the Report of Judicial Disciplinary Counsel to the Supreme Court of Appeals of West Virginia pursuant to Rule of Judicial Disciplinary Procedure 2.14 by mailing the same to Respondent via United States Mail to Magistrate Carol Fouty, 617 Maryland Avenue, Charleston, WV 25302 and Benjamin Bailey, Esquire, 209 Capitol Street, Charleston, WV 25301 on this the 19th day of March, 2012.



Teresa A. Tarr, Counsel
Judicial Investigation Commission
WV Bar I.D. No. 5631
City Center East, Suite 1200 A
4700 MacCorkle Avenue
Charleston, WV 25304
(304) 558-0169

[1] A copy of the notice is attached as Exhibit No. 11.

## CERTIFICATE OF SERVICE

I, Teresa A. Tarr, do hereby certify that I served Notice[1] of the filing of the Report of Judicial Disciplinary Counsel to the Supreme Court of Appeals of West Virginia pursuant to Rule of Judicial Disciplinary Procedure 2.14 by mailing the same to Respondent via United States Mail to Magistrate Carol Fouty, 617 Maryland Avenue, Charleston, WV 25302 and Benjamin Bailey, Esquire, 209 Capitol Street, Charleston, WV 25301 on this the 19th day of March, 2012.

Teresa A. Tarr, Counsel
Judicial Investigation Commission
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