

**BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA**

**IN THE MATTER OF:  
THE HONORABLE RANDY NUTTER,  
FORMER MAGISTRATE OF PLEASANTS COUNTY**

**COMPLAINT NO. 121-2020**

**PUBLIC ADMONISHMENT OF MAGISTRATE RANDY NUTTER**

The matter is before the Judicial Investigation Commission (“JIC” or “Commission”) upon a complaint filed by Judicial Disciplinary Counsel setting forth certain allegations against The Honorable Randy Nutter, former Magistrate of Pleasants County (“Respondent”) based upon documents submitted by Respondent self-reporting his conduct. Upon opening of the complaint, an investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure (“RJDP”). After a review of the complaint, Respondent’s written response, Respondent’s sworn statement and the information, documents and sworn statements obtained from the investigation, the JIC found probable cause that Respondent violated Rules 1.1, 1.2, 1.3, 2.2 and 3.7(A)(2) of the Code of Judicial Conduct at a recent meeting and ordered that he be **PUBLICLY ADMONISHED** pursuant to RJDP 1.11 and 2.7(c), as set forth in the following statement of facts and conclusions found by the Commission.

**STATEMENT OF FACTS**

Respondent was elected as a Magistrate in Pleasants County in 2008, took office on January 1, 2009 and served continuously since that time. He has not been the subject of any prior judicial discipline.

Approximately 10 years ago, a law enforcement officer for the St. Marys Police Department (“SMPD”) introduced a nonprofit program for the city. For the final two or three months of the year, the SMPD raised money to provide Christmas presents for underprivileged children in the community. The initiative was called “Slow Down for the Holidays.” Besides other fund-raising events such as cook outs, the SMPD would raise money from people that were pulled over and given Municipal traffic citations.

When a SMPD officer made a traffic stop, he or she had the option to give a defendant a flyer detailing the Slow Down for the Holidays program along with the citation. The flyer indicated that the defendant could face his or her criminal charges in St. Marys Municipal Court or opt to make a donation to the SMPD program. The flyer indicated that the donation amount would be \$50 per traffic offense. If the defendant chose to donate to the program, the Municipal Court would dismiss the citation and the defendant would avoid the criminal fines and court costs. The conviction would also not appear on their record. All of the citations were for non-serious traffic offenses such as speeding. None of the charges that went through the City involved jail time.

Respondent admitted he had been aware of the SMPD program for at least 6 or 7 years. Respondent understood that the program was run by the City of St. Marys and benefitted the underprivileged in the community.

During the time the SMPD utilized the program to raise money from criminal defendants, several different people served as the Municipal Judge. From 2004-2015, Brian Carr served as the St. Marys Municipal Judge. In 2016, Brian Carr was elected Pleasants County Prosecuting Attorney. Mr. Carr was re-elected in 2020.

In 2018, the Pleasants County Sheriff's Office joined the SMPD in raising money for the Slow Down for the Holidays program. In 2018, 2019 and 2020, Deputy Sheriffs had the option of giving defendants a program flier with a citation. If the Deputy chose to give the defendant the option to avoid criminal prosecution by donating, then the traffic citation was run through Municipal Court, otherwise the citation was written to Magistrate Court.

In 2018, Pleasants County Prosecuting Attorney (PA) Brian Carr and Assistant Prosecuting Attorney (APA) Paul Marteney decided to offer a few defendants charged with misdemeanors in Magistrate Court the opportunity to donate to the SMPD program in exchange making a motion for the Magistrate to dismiss their criminal charges.

During the Holiday months of 2018 through 2020, PA Carr and APA Marteney offered at least 19 defendants the opportunity to avoid the criminal and administrative consequences of their charges by donating to the SMPD program. Unlike the less serious traffic charges in Municipal Court, PA Carr and APA Marteney offered to move to dismiss more serious criminal charges.

PA Carr, APA Marteney and Respondent all testified that each of the misdemeanor cases were fully prosecutable and suffered from no legal defects that would have otherwise required PA Carr or APA Marteney to move to dismiss them. The criminal charges PA Carr and/or APA Marteney selected for the program ranged from Passing a School Bus to DUI 2<sup>nd</sup> Offense.

PA Carr and APA Marteney testified that the procedure used in Magistrate Court to dismiss criminal charges was consistent. At the defendant's pretrial hearing PA Carr and/or APA Marteney met with the defendant, or if represented, the defendant's counsel and explained the SMPD program. PA Carr and/or APA Marteney offered to move the Court to dismiss the criminal charges in exchange for the defendant donating to the program. However, instead of requiring a \$50 donation per charge, PA Carr and/or APA Marteney demanded donations ranging from \$200 to \$5,000. Donations were required of *pro se* defendants, defendants with retained counsel and even defendants that qualified for court appointed counsel.

Respondent testified that if the defendant accepted the PA's offer, the parties would inform Respondent that they had reached a deal to continue the pretrial hearing to allow the defendant to donate to the SMPD program. Respondent testified that during the pretrial hearing when the PA's moved to continue the case, Respondent was made aware of the parties' negotiations. PA Carr or APA Marteney informed Respondent that if the defendant made the donation required, then the PA's office would come back to Respondent and file a motion to dismiss the case. In every case asked, Respondent granted the motion to continue the pretrial hearing.

After Respondent granted the motion to continue the pretrial hearing, PA Carr or APA Marteney directed a law enforcement officer to issue the defendant a citation to St. Marys Municipal

Court. Sometime before the next hearing, the defendant took the Municipal citation and their donation to St. Marys City Building. The Municipal Judge would dismiss the defendant's Municipal citation and someone from SMPD or St. Marys Municipal Court notified the PA's office.

Upon proof of a donation being provided to the PA's office, PA Carr or APA Marteney made a motion to dismiss the charges to Respondent. Respondent was aware that there were no legal defects in the cases and that the only reason for the motion to dismiss the case was that the defendant donated money to the SMPD charity. In every case, Respondent granted the motion to dismiss.

Respondent admitted that there was no statute, rule or case law that permitted a criminal case to be dismissed in exchange for the defendant donating to the Slow Down for the Holidays program. Respondent admitted that he did not ask for advice from other Magistrates, Judges or the Judicial Investigation Commission because he thought the program was good for the community. Respondent failed to investigate whether there was a law, court rule or caselaw that allowed him to dismiss cases because the defendant donated to charity. Respondent relied completely on the representations of the Prosecutor's Office.

Respondent admitted to dismissing seven cases that were run through the SMPD program. Of those seven cases, five contained criminal charges that if convicted, the defendant would have faced an enhanced penalty if charged again. Respondent admitted that by running the cases through the program and thereby dismissing the charges, Respondent ensured the defendants would not receive a judgment of guilty that could later have been used to enhance the criminal penalties.

Respondent also admitted that of the seven, six involved charges that if convicted, the defendant would receive points on his or her license or possible license suspensions. With the exception of DUI's, cases that went through the program allowed defendants to avoid DMV points and some suspensions.

## CONCLUSIONS

The Commission unanimously found that probable cause does exist in the matters set forth above to find that the Honorable Randy Nutter, former Magistrate of Pleasants County, violated Rules 1.1, 1.2, 1.3, 2.2 and 3.7(A)(2) of the Code of Judicial Conduct as set forth below:

### **Rule 1.1 – Compliance with the Law**

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

### **Rule 1.2 – Confidence in the Judiciary**

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

### **Rule 1.3 -- Avoiding Abuse of the Prestige of Judicial Office**

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

### **Rule 2.2 -- Impartiality and Fairness**

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

### **Rule 3.7 -- Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities**

- A. Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:
  2. soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;

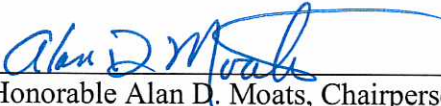
It was further determined that formal discipline was not essential since Respondent had resigned and agreed to never again seek judicial office by election or appointment. However, the Commission found that a written admonishment is proper and appropriate in this matter.

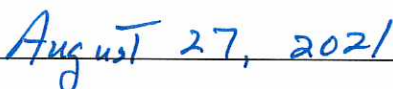
By dismissing criminal charges in exchange for donations to a charitable organization, Respondent created the appearance of selling justice in his courtroom. By going along with PA Carr and APA Marteney, Respondent created a secondary judicial system for select defendants. By so doing, Respondent clearly violated Rules 1.1, 1.2, 1.3, 2.2 and 3.7(A)(2) of the Code of Judicial Conduct and is hereby **ADMONISHED** for his conduct.

Therefore, it is the decision of the Judicial Investigation Commission that the Honorable Randy Nutter, former Magistrate for Pleasants County, be disciplined by this **ADMONISHMENT**. Consequently, the Judicial Investigation Commission hereby **PUBLICLY ADMONISHES** Randy Nutter for his conduct as fully set forth in the matters asserted herein.

\*\*\*\*\*

Pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure, the Respondent has fourteen (14) days after receipt of the public admonishment to file a written objection to the contents thereof. If the Respondent timely files an objection, the Judicial Investigation Commission shall, pursuant to the Rule, file formal charges with the Clerk of the Supreme Court of Appeals of West Virginia.

  
\_\_\_\_\_  
The Honorable Alan D. Moats, Chairperson  
Judicial Investigation Commission

  
\_\_\_\_\_  
Date

**BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA**  
**IN THE MATTER OF: JIC COMPLAINT NO. 121-2020**  
**THE HONORABLE RANDY NUTTER**  
**MAGISTRATE OF PLEASANTS COUNTY**

**AGREEMENT**

Magistrate Randy Nutter, Magistrate of Pleasants County, and Teresa A. Tarr and Brian J. Lanham, Judicial Disciplinary Counsel, hereby enter into this Agreement consisting of the following terms:

1. On December 16, 2020, Judicial Disciplinary Counsel opened judicial ethics Complaint No. 121-2020 against Respondent after receiving his self-report.

2. The Judicial Investigation Commission (JIC) Counsel immediately began an investigation into the complaint. After a lengthy and thorough investigation, JIC Counsel spoke with Respondent in an effort to resolve the complaint without filing a statement of charges.

3. Magistrate Nutter and Judicial Disciplinary Counsel agree to the following terms and conditions:

- a. Magistrate Nutter agrees to immediately resign his position as Magistrate for Pleasants County, West Virginia, effective on or before close of business, Friday, August 13, 2021;
- b. Magistrate Nutter agrees to never again seek judicial office by election or appointment in West Virginia. Judicial office is defined by Application 1(A) of the West Virginia Code of Judicial Conduct to include Justices of the Supreme Court of Appeals, Circuit Judges, Family Court Judges, Magistrates, Mental Hygiene Commissioners, Juvenile Referees, Special Commissioners and Special Masters;
- c. Judicial Disciplinary Counsel agrees to recommend to the Judicial Investigation Commission that the Commission issue an admonishment in the above-

TW  
RPN



captioned matter which will reflect Respondent violated Rules 1.1, 1.2, 1.3, 2.2 and 3.7 of the Code of Judicial Conduct;

- d. By accepting this agreement, tendering his resignation and accepting an admonishment from the Judicial Investigation Commission, Magistrate Nutter is accepting responsibility and showing remorse for his conduct that violated the previously mentioned Rules of the Code of Judicial Conduct.
- e. Both parties understand, acknowledge and agree that the decision to accept or reject this agreement is solely within the purview of the Judicial Investigation Commission. The parties understand, acknowledge and agree that the Judicial Investigation Commission has the authority to reject this agreement and if it chooses to do so that Magistrate Nutter and Judicial Disciplinary Counsel will be returned to their original positions;
- f. Magistrate Nutter further understands, acknowledges and agrees that any admonishment issued by the Judicial Investigation Commission is public pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure;
- g. Magistrate Nutter also understands, acknowledges and agrees that if he files an objection to any admonishment issued by the Judicial Investigation Commission then the Commission shall be required to consider and/or file a Formal Statement of Charges pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure;
- h. Magistrate Nutter further understands, acknowledges and agrees that the Judicial Investigation Commission is bound by Rule 2.7 of the Rules of Judicial Disciplinary Procedure on possible sanctions and that restitution is not a listed sanctions.
- i. Magistrate Nutter also understands, acknowledges and agrees that if he violates any of the terms of this agreement, the parties will be returned to

Ted  
RPN



their original positions and the Judicial Investigation Commission may reopen Complaint No. 121-2020 for further investigation and prosecution of any violations of the Code of Judicial Conduct associated therewith. Magistrate Nutter also agrees that by signing this document he has waived any future statute of limitations argument with respect to Complaint No. 121-2020 should he violate the terms of the agreement necessitating the prosecution of any violations of the Code of Judicial Conduct;

4. Respondent understands, acknowledges and agrees that he is entering into this agreement because it is in his best interest and that no other inducements have been promised other than what is contained within the four corners of this document.

5. All parties agree to do everything necessary to ensure that the foregoing terms of this Agreement take effect.

TW  
RPN

**AGREED:**



Magistrate Randy Nutter  
Magistrate of Pleasants County

8/05/2021

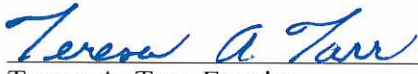
Date



Attorney for Respondent

8/5/2021

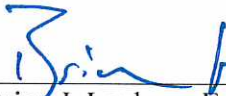
Date



Teresa A. Tarr, Esquire  
Judicial Disciplinary Counsel

8/16/2021

Date



Brian J. Lanham, Esquire  
Judicial Disciplinary Counsel

8-16-21

Date