

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF W. SCOTT BIAS
FORMER MAGISTRATE OF CABELL COUNTY**

COMPLAINT NO. 169-2016

PUBLIC ADMONISHMENT OF FORMER MAGISTRATE W. SCOTT BIAS

The matter is before the Judicial Investigation Commission upon a complaint filed on November 21, 2016, setting forth certain allegations against W. Scott Bias, former Magistrate of Cabell County. The complaint alleged that former Magistrate Bias wrongly criticized the pre-trial/bond review program and a circuit court judge while a guest on a radio program, had improper *ex parte* communication, and engaged in conduct unbecoming a judicial officer 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. After a review of the complaint, the former Magistrate's written responses, the information and documents obtained from the investigation and the pertinent Canons contained in the Code of Judicial Conduct, the West Virginia Judicial Investigation Commission (hereinafter "JIC" or "Commission") found probable cause that former Magistrate Scott Bias violated Rules 1.2, 2.2, 2.8(B), 2.9(A), 2.10(B), and 3.1(C) of the Code of Judicial Conduct at its February 17, 2017 meeting and ordered that he be publicly admonished pursuant to Rules 1.11 and Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure ("RJDP"), as set forth in the following statement of facts and conclusions found by the Commission.

STATEMENT OF FACTS

Respondent worked continuously as a Cabell County Magistrate from January 1, 2013, through December 31, 2016. At all times relevant to the instant complaint, Respondent was serving in his capacity as Magistrate.

On September 26, 2016, Respondent was a guest on a local news radio program in Huntington where he talked about the pre-trial/bond review pilot program. Respondent incorrectly alleged that the program was operating illegally because the statute enacting the program had expired three years ago. He neglected to state that when the Code provision governing the original pilot program expired, new legislation was adopted pursuant to W. Va. Code § 62-11C-5(d)(11) that allows authorized community corrections programs to provide pre-trial release plans. Respondent improperly criticized a Cabell County Circuit Judge by stating that he/she unlawfully issued an Administrative Order to keep the program running. Respondent also made numerous inopportune statements about how the program operates. In reply to the allegations, Respondent stated:

In Magistrate Court training we have been advised that we are allowed to be guest speakers as long as we do not address specific cases and names and only speak of how the court system operates. This is what I attempted to do. At no time was [Complainant's] or any other person's names mentioned. I also never mentioned any specific cases. . . . She also mentions that I am incorrect about the Pre-Trial release Program being extended by the Legislature. To this she is correct. When I took office I was provided a copy of the initial Administrative order creating the program and a copy of the code. About a year ago I was told by Judge Chiles that it had been extended by an Administrative order by Judge Farrell. In late November or early December I had a phone conversation with [the General Counsel for the Administrative Director of the Courts] and as a result of his research, he found where the code was extended but was placed in a separate code. This was the first knowledge I had of 62-11C-5(d)(11). Why the legislature placed it there I don't know. . . . This was my mistake as innocent as it was.

On November 10, 2016, Complainant was in court when Respondent had misdemeanor and felony preliminary hearing dockets. She went to Respondent's office to locate a file for a public defender when she overheard the Magistrate having an *ex parte* communication with another public defender about bonds and continuances in several cases. Specifically, she heard Respondent say he was not going to grant the joint motions for personal recognizance bonds or joint requests for continuances of the cases. She said Respondent stated that "[t]he prosecutor was weak and only worried about the jail bill." Complainant returned to the courtroom and informed the prosecutor of the Respondent's conversation with the public defender.

The prosecutor then left the courtroom and spoke with Respondent about the conversation. A short while later the prosecutor and Respondent returned to the courtroom. Respondent then informed Complainant that she was banned from his courtroom. He followed it up with a letter dated the same day to her supervisor which stated:

Please be advised that [Complainant] is no longer permitted in the courtroom in Cabell County Magistrate Court during the times that my court is in session. I have my own issues as well as complaints from other personnel, whom I will not name. Thank you for your cooperation in this matter.

In reply to these allegations, Respondent acknowledged having *ex parte* communication with the public defender. According to Respondent, he told the public defender that he "would have to think about releasing [the defendants on bond] because they [faced] serious charges." He also told the public defender that he thought the cases "should not have been added to our docket without proper notifications to victims and witnesses." He also claimed to have said that he "would have to speak to the prosecutor as to why it was justified and make sure the reasons were not weak." Respondent acknowledged having an "intense disagreement" with the prosecutor about "how things were being done."

Following the disagreement, Respondent admits going back into the courtroom and informing Complainant that “she would not be permitted back in my courtroom.” Respondent also admitted subsequently receiving a letter from Cabell County Circuit Judge Chris Chiles informing him that he could not ban Complainant from his courtroom. Respondent stated that he informed Judge Chiles that he would allow Complainant “back in [my courtroom] on my next docket . . . I do feel however that as the Magistrate that I have the right to hold someone in contempt, have the Bailiff remove them, or to ban them if they are causing problems or disturbances in the courtroom.”

CONCLUSIONS

The Commission by a vote of 6-2¹ found that probable cause does exist in the instant complaint and that W. Scott Bias, former Magistrate of Cabell County, violated Rules 1.2, 2.2, 2.8(B), 2.9(A), 2.10(B), and 3.1(C) of the Code of Judicial Conduct as set forth below:

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 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 2.8 Decorum, Demeanor, and Communication with Jurors

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

Rule 2.9 Ex Parte Communication

¹ The JIC has nine members. One of three lay members was absent from the meeting.

- (A) 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 or their lawyers, concerning a pending or impending matter.

Rule 2.10 Judicial Statements on Pending and Impending Cases

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

Rule 3.1 Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not: . . .

- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

Respondent's *ex parte* communication with the public defender clearly violated the Code. In criminal cases, both sides are entitled to due process – notice and an opportunity to be heard. Due process ensures fairness in all criminal cases. *Ex parte* communications undermine fairness. As a magistrate, Respondent was well aware of this when he engaged in discussions with the public defender outside the presence of the prosecutor about joint motions to reduce bond and/or continue a case. Moreover, public confidence in the judiciary may be eroded by a perception, however unjust it may be, that the Respondent favored the public defender over the prosecutor because of his one-on-one communication with the public defender. As such, Respondent is admonished for his conduct.

Concerning the comments made during the radio program, Respondent is correct in that he may publicly speak about how the court system operates. What he is not allowed to do is publicly criticize the law that he is sworn to uphold or a fellow judge concerning an administrative action he has taken. Such actions call into question whether the judge can be

neutral and detached. Therefore, Respondent violated the Code by condemning the program and judge. To add insult to injury the judge wasn't even accurate in his statements about the law or judge. Accordingly, Respondent is admonished for his conduct.

Lastly, Respondent acted inappropriately when he banned Complainant from the courtroom simply for informing the prosecutor about the ex parte with the public defender. A judge must remember at all times that when he ignores the dictates of the Canons and acts in a vindictive or intemperate manner, the judge risks losing the public's confidence in the integrity and impartiality of both the judge and the entire judicial system. The Supreme Court of Appeals of West Virginia made this very point in the case of *In re Watkins*, 233 W.Va. 170, 757 S.E.2d 594 (2013) when it stated the following:

It is not enough that we know ourselves to be fair and impartial or that we believe this of our colleagues. Our power over our fellow citizens requires that we appear to be so as well. How else are ordinary citizens to have the faith in us . . . ? An impartial manner, courtesy, and dignity are the outward sign of that fairness and impartiality we ask our fellow citizens, often in the most trying of circumstances, to believe we in fact possess. Surely it is arrogance for us to say to them that we may not seem impartial, but we know we are, and so they must submit. Precisely because the public cannot witness, but instead must trust, what happens when a judge retires to the privacy of his chambers, the judiciary must behave with circumspection when in the public eye.

Id. at 182, 757 S.E.2d at 606, quoting *Matter of Brown*, 427 Mass. 146, 149, 691 N.E.2d 573, 576 (1998).

The Court also recognized that judges have a responsibility to set a proper tone:

Citizens judge the law by what they see and hear in courts, and by the character and manners of judges and lawyers. "The law should provide an exemplar of correct behavior. When the judge presides in court, he personifies the law, he represents the sovereign administering justice and his conduct must be worthy of the majesty and honor of that position." *Matter of Ross*, 428 A.2d 858, 866 (Me.1981). Hence, a judge must be more than independent and honest; equally important, a judge must be

perceived by the public to be independent and honest. Not only must justice be done, it also must appear to be done.

Id. Based upon the foregoing Respondent is admonished for his retaliatory conduct.

Therefore, it is the decision of the Judicial Investigation Commission that W. Scott Bias, former Magistrate of Cabell County, be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes former Magistrate Bias 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 Ronald E. Wilson, Chairperson
Judicial Investigation Commission

March 1, 2017
Date

REW/tat