

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

**IN THE MATTER OF,  
CHARLES N. POE,  
FORMER MAGISTRATE OF MERCER COUNTY**

**COMPLAINT NO. 17-2021**

**PUBLIC ADMONISHMENT OF CHARLES N. POE,  
FORMER MAGISTRATE OF MERCER COUNTY**

The matter is before the Judicial Investigation Commission (“JIC”) upon a complaint filed by a member of the public setting forth certain allegations against Charles N. Poe, former Magistrate of Mercer County (“Respondent”). An investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure (“RJDP”). After a review of the complaint, the Judge’s sworn statement, the information and documents obtained from the investigation, the March 12, 2021 agreement between Judicial Disciplinary Counsel and Respondent (*see* attached), his resignation letter, and the pertinent Rules contained in the Code of Judicial Conduct, the JIC found probable cause that Respondent violated Rules 1.1, 1.2, 1.3, 2.3(A) and (B), and 3.1(C) of the Code of Judicial Conduct at a special 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 served as a Magistrate in Mercer County from 2008 through December 31, 2012. He unsuccessfully ran for election in the 2012 race. In February 2014, Respondent was appointed to take the place of former Mercer County Magistrate Richard Fowler who resigned over similar allegations/violations pursuant to an agreement with Judicial Disciplinary Counsel. He was re-elected in 2016 and 2020. He has served continuously in that position for over seven

years. At all times relevant to the instant complaint, Respondent was serving in his capacity as a Magistrate.

Prior to taking office in 2014, Respondent was required to read the Employee Handbook for the Supreme Court of Appeals of West Virginia. The Handbook contains a lengthy multi-page section pertaining to “Fair and Equal Treatment Principles (No-Discrimination, No Harassment).”<sup>1</sup> On February 26, 2014, Respondent signed a written document in which he certified that he had “received and read” the Handbook.

On or about January 26, 2021, a member of the public who frequents the Courthouse by virtue of his/her employment, filed an ethics complaint against Respondent. Complaint alleged that over the course of the past year Respondent made numerous inappropriate sexual, homophobic and racist comments to him/her. Complainant alleged that Respondent would make the discriminatory statements both verbally and by text message. Complainant also alleged that Respondent sent indecent photos, cartoons and at least one video to him/her via text message. On certain occasions when the individual declined to reply to the text messages, Respondent would remind him/her that he was a Magistrate. Specifically, Respondent would state “Hello I’m talking to you. This is your honor speaking.” Respondent admitted the text messages in question came from him in his sworn statement of March 8, 2021. The investigation further revealed at least one former judicial employee who suffered the same type of unseemly conduct by Respondent.

As a result of the investigation, Judicial Disciplinary Counsel entered into an agreement signed by Respondent’s attorney and Respondent on or about March 12, 2021, in which he agreed

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<sup>1</sup> The Handbook has been revised several times between 2014 and 2021. The conduct engaged in by Respondent, which is set forth below would violate the 2014 through the 2021 versions of this section. The various versions have been placed on a site easily accessible by all Court employees. Respondent stated in his March 8, 2021 sworn statement that he had not reviewed all versions of the personnel manual after his initial reading in 2014. However, Respondent acknowledged that it was his responsibility to keep current with any changes in the Handbook.

to immediately resign from his magistrate's position, to never again seek judicial office in West Virginia by election or appointment, and to accept an admonishment from the JIC for violations of the Code of Judicial Conduct as a result of his behavior toward the two individuals.

## **CONCLUSIONS**

The Commission unanimously<sup>2</sup> found that probable cause exists in the matters set forth above to find that Charles N. Poe, former Magistrate of Mercer County, violated Rules 1.1, 1.2, 1.3, 2.3(A) and (B), and 3.1(C) the Code of Judicial Conduct as set forth below:

### **1.1 – Compliance With the Law**

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

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

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

### **1.3 – Avoiding Abuse of the Prestige of Judicial Office**

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

### **2.3. – Judicial Statements on Pending and Impending Cases**

- (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
- (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status or political affiliation . . . .

### **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:

. . .

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<sup>2</sup> The vote was 9-0.

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

(emphasis added).

The Commission further found that formal discipline was not essential as Respondent had agreed to immediately resign as magistrate and to never again seek judicial office by election or appointment. However, the Commission found that the violations were grave enough to warrant a public admonishment.

The Preamble to the Code of Judicial Conduct provides:

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to the American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law. . . . Good judgment and adherence to high moral and personal standards are also important.

Comment [1] to Rule 1.2 states that “[p]ublic confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.” Comment [2] provides that “[a] judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code.” Comment [3] notes that “[c]onduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.” Comment [4] states that “[j]udges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.” Comment [5] provides:

Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

Comment [1] to Rule 1.3 notes that “[i]t is improper for a judge to use or attempt to use his or her position to . . . gain deferential treatment of any kind.” Comment [2] to Rule 2.4 provides some examples of bias and prejudice such as “epithets; slurs; demeaning nicknames, negative stereotyping; attempted humor based on stereotypes . . . ; and irrelevant references to personal characteristics. All of these examples can be found in the verbal statements and text messages made by the Respondent to the two parties. Comment [3] to the same Rule states that “[h]arassment . . . is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex . . . [and] sexual orientation . . . . Again, many of Respondent’s comments amounted to harassment of the two individuals.

Comment [4] to Rule 3.1 states that “[d]iscriminatory actions and expressions of bias and prejudice by a judge, even outside the judge’s official or judicial actions, are likely to appear to a reasonable person to call into question the judge’s integrity and impartiality.” Comment [6] provides that “[t]he same Rules of the Code . . . that govern a judicial officer’s ability to socialize and communicate in person, on paper, or over the telephone also apply to the internet and social networking sites.”


Discrimination and harassment should be things of the past. They have no place in today’s society. They do not belong in the courtroom, the boardroom, the classroom, the workplace, or anywhere. Judges must lead by example. Justice is supposed to be blind. Therefore, it is provident for judges to treat all litigants in a courtroom or all persons in a courtyard equally. To do otherwise, casts doubt on the judiciary as a whole. As Eleanor Roosevelt once said:

Where after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.

There is no place in the judiciary for a judge who does not practice equality for all both on and off the bench. By his actions, Respondent cast shame on the judiciary as a whole. Because of his actions, Respondent no longer deserves the mantle of judge. Therefore, it is the decision of the Judicial Investigation Commission that Charles N. Poe, former Magistrate of Mercer County be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes former Magistrate Poe for his conduct as fully set forth in the matters asserted herein.

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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.

  
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The Honorable Alan D. Moats Chairperson  
Judicial Investigation Commission

  
\_\_\_\_\_  
Date

ADM/tat



BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

IN THE MATTER OF:  
THE HONORABLE CHARLES N. POE  
MAGISTRATE OF MERCER COUNTY

JIC COMPLAINT NO. 17-2021

AGREEMENT

Magistrate Charles N. Poe, Magistrate of Mercer County ("Respondent" or "Magistrate Poe," and Teresa A. Tarr and Brian J. Lanham, Judicial Disciplinary Counsel, hereby enter into this Agreement consisting of the following terms:

1. On January 26, 2021, a judicial ethics complaint was filed against Respondent.
2. The Judicial Investigation Commission (JIC) Counsel immediately began an investigation of the complaint. After a thorough investigation, JIC Counsel spoke with Respondent and his counsel, Kenneth E. Chittum, Esquire, in an effort to resolve the complaint without filing a formal statement of charges.
3. Respondent and Judicial Disciplinary Counsel agree to the following terms and conditions:
  - a. Magistrate Poe agrees to immediately resign his position as Magistrate for Mercer County, West Virginia, effective on or before close of business, Tuesday, March 16, 2021;
  - b. Magistrate Poe agrees to never again seek judicial office by election or appointment in West Virginia. Judicial office is defined by Application I(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-captioned

matter which will reflect Respondent violated Rules 1.1, 1.2, 1.3, 2.3(A) and (B) and 3.1(C) of the Code of Judicial Conduct;

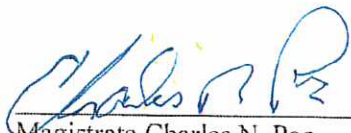
- d. Both parties understand, acknowledge and agree that the decision to accept or reject this agreement is solely within the purview of the Judicial Investigation Commission. The parties understand, acknowledge and agree that the Judicial Investigation Commission has the authority to reject this agreement and if it chooses to do so that Magistrate Poe and Judicial Disciplinary Counsel will be returned to their original positions;
- e. Magistrate Poe 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;
- f. Magistrate Poe 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;
- g. Magistrate Poe also understands, acknowledges and agrees that if he violates any of the terms of this agreement, the parties will be returned to their original positions and the Judicial Investigation Commission may reopen Complaint No. 17-2021 for further investigation and prosecution of any violations of the Code of Judicial Conduct associated therewith. Magistrate Poe also agrees that by signing this document he has waived any future statute of limitations argument with respect to Complaint No. 17-2021 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.

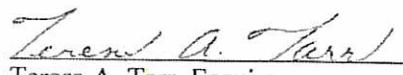
AGREED:

  
Magistrate Charles N. Poe  
Magistrate of Mercer County


03-12-2021  
Date

  
Kenneth E. Chittum, Esquire  
Counsel for Respondent

03-12-2021  
Date

  
Teresa A. Tarr, Esquire  
Judicial Disciplinary Counsel

March 9, 2021  
Date

  
Brian J. Lanham, Esquire  
Judicial Disciplinary Counsel

3-12-21  
Date