

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

IN THE MATTER OF:

**JASON D. HARWOOD, FORMER JUDGE
OF THE 9TH FAMILY COURT CIRCUIT**

JIC COMPLAINT No. 28-2015

**PUBLIC ADMONISHMENT OF JASON D. HARWOOD,
FORMER JUDGE OF THE 9TH FAMILY COURT CIRCUIT**

The matter is before the Judicial Investigation Commission (“JIC” or “Commission”) upon a complaint filed by Judicial Disciplinary Counsel on April 10, 2015, setting forth certain allegations against Jason D. Harwood, now a former Judge of the 9th Family Court Circuit (“Judge” or “Respondent”). Afterwards, pursuant to the Rules of Judicial Disciplinary Procedure, an investigation was conducted.

After that, on July 2, 2015, after assessing the allegations in the complaint, the Judge’s response to the accusations, the information and documents obtained from the investigation, the pertinent Canons in the Code of Judicial Conduct, and -- of essential importance -- a July 1, 2015 agreement by and between Judicial Disciplinary Counsel and Respondent, the JIC found probable cause that Judge Harwood violated Canons 1A, 2A, 2B, 3A, 3B(7), 3B(9), 3B(11), 4A(1) through (3), and 4G.

The Commission further found that formal disciplinary action was not essential since Respondent had agreed to resign his position as Family Court Judge and never again seek judicial office in West Virginia.¹ Therefore, the Commission ordered that Judge Harwood be publicly admonished pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure.²

¹ By letters dated July 6, 2015, Judge Harwood notified the Honorable Earl Ray Tomblin, Governor of West Virginia, and the Honorable Margaret L. Workman, Chief Justice of the Supreme Court of Appeals of West Virginia, that he was resigning his position effective 5:01 p.m., Friday, July 10, 2015.

² The JIC believes that the appropriate action is to issue an admonishment based on judicial economy and the knowledge that the public is protected because Respondent has resigned from office and will never again serve as a judicial officer in West Virginia. See *Terminal Freight Handling Co. v. Solien for and on behalf of NLRB*, 444 F.2d

STATEMENT OF FACTS

Judge Harwood was sworn into office in late December 2008, and formally took the position on January 1, 2009. He served continuously in that position until resigning at 5:01 p.m., Friday, July 10, 2015.

Prior to taking office on January 1, 2009, Judge Harwood asked TFM³ to work for him as his Secretary/Clerk. Judge Harwood listed TFM as his choice on a New Judicial Officer's Appointment of Confidential Employee form dated November 24, 2008. Additionally, TFM submitted a Release of Information dated November 25, 2008.⁴ By letter dated December 29, 2008, Judge Harwood was informed that TFM met the position requirements for Family Court Secretary/Clerk and that her start date would be January 1, 2009.

Later, when the job of Family Court Case Coordinator became vacant late in 2010, Judge Harwood requested that TFM be promoted to that position. After that Judge Harwood was informed that TFM met the position requirements and her start date was made retroactive to January 1, 2011. TFM served as Family Court Case Coordinator until the end of March 2011.

After Judge Harwood hired TFM, he began an improper sexual relationship with her. Importantly, during the investigation of the allegations against him, Judge Harwood has acknowledged that it is not appropriate for a judicial officer to engage in such a relationship:

Q. [D]o you think it's appropriate for a judge to have a sexual relationship with his secretary?

699 (8th Cir. 1971), *cert denied*, 405 U.S. 996 (1972) ("Generally those engaged in prosecutorial or enforcement activities are allowed a wide discretion and considerable latitude on when to file charges and against whom charges are to be filed. This is necessarily so for many reasons, some more obvious than others. The resources of those engaged in prosecutorial activities as well as the resources of all agencies of the Government and the Country itself are not unlimited. Priorities must be established and the resources available utilized to carry out the primary object of the enforcement activity.") *See also Fleszar v. U.S. Dept. of Labor*, 598 F.3d 912, 914-15 (7th Cir. 2009), *cert. denied*, 131 S. Ct. 423 (2010) ("An agency must be allowed the authority to decide where its investigative and prosecutorial resources are best applied."); and *In the Matter of Fowler*, WVJC Complaint No. 125-2013 (admonishment issued where magistrate had already resigned from the bench and agreed never again to seek judicial office).

³ Consistent with the State Supreme Court's practice in cases involving sensitive matters, the JIC will use initials rather than full names.

⁴ This form is used by the Supreme Court of Appeals to perform background checks on prospective employees.

A. No.

Q. From an ethical standpoint, do you think it is appropriate for a judge to have a sexual relationship with his secretary?

A. No. I will say this – well, no, I won't. I mean no, it's not.

(5/28/2015 Sworn Statement of Judge Harwood at 43).

Judge Harwood and TFM continued to have email contact after she left his employ. On some occasions TFM sent emails in which she discussed certain cases pending before him concerning her friends. It appears that TFM felt she could discuss these improper subjects with Judge Harwood, and he did nothing to discourage her from contacting him or discussing the matters. For instance, in a February 12, 2012 email exchange, TFM asked Judge Harwood if he remembered her friend LB:

TFM: [She] had a hearing in front of you on behalf of her daughter about a month ago? Anyway, the boy broke her nose last week and she is having surgery today. In your order, you said the state had a year to pick up criminal charges would that only be for the issue you heard at hand or could it go along w/ this new issue?

Judge: I remember [LB], sure. They have a year for both charges from the date each happened. That little bastard needs to be charged and put in jail since he's such a big tough guy.

On March 2, 2012, the following email colloquy took place with respect to another case pending before Judge Harwood:

TFM: Wanted to give you a heads up. . . KH has a hearing in front of you in April, I want to say April 21st but don't quote me on that. Anyway, she now lives with SB, I assume you remember him. He is a pretty big vote getter. He is my friend

Judge: Thanks. I know SB. I'll take care of it. Anything for you.

TFM: Silly boy, I am trying to help you w/ your votes. . . lol.

In a December 18, 2012 email exchange, TFM asked Judge Harwood about an attorney who was involved in another friend's child custody/visitation case pending before him. Judge Harwood said that the attorney was good but not as good as her friend's lawyer. During that exchange, Judge

Harwood commented on the friend's sexual orientation. He also commented on the perceived sexual orientation and manner of dress of the opposing attorney.

At the same time, Judge Harwood and TFM were also having a corresponding conversation about her child support case involving her former husband, which was pending before another judge. TFM explained that her former husband was supposed to go to Court every Friday until he found a job and provide proof that he was seeking employment. Judge Harwood replied, "Like [he] will bother coming up here on Fridays. . . ."

These email conversations violated Rule 6 of the Rules of Practice and Procedure for Family Courts (hereinafter "RPPFC") that addresses the confidentiality of Family Court proceedings. Family Court proceedings are not open to the public. *See* RPPFC 6(b). Although Orders are a matter of public record, pleadings, recordings, exhibits, transcripts, or other documents contained in a court file are confidential and are not available for public inspection. *See* RPPFC 6(a).

The conversations also violated Judge Harwood's own office policy. Since taking office, Judge Harwood has mandated that staff cannot discuss pending or impending cases with anyone outside the office who was not affiliated with the matter as a litigant or attorney. According to Judge Harwood, his confidentiality policy is consistent with Canons 3B(9) and 3B(11) of the Code of Judicial Conduct.

While this investigation was continuing, Judicial Disciplinary Counsel learned that Judge Harwood had provided legal advice to a woman facing a post-divorce proceeding in another Family Court. HLYT is not related to Judge Harwood but was a friend of his in junior high and high school. In 2007, HLYT filed for divorce from her then husband in the 20th Family Court Circuit in Preston County. The final decree was entered on or about August 6, 2007. In October 2013, HLYT's former husband filed a notice of relocation in Preston County Family Court. HLYT obtained Judge Harwood's home telephone number from his mother. She contacted him by telephone on at least two occasions to discuss the relocation issue.

On November 17-19, 2013, the following email exchange took place between HLYT and Judge Harwood about the relocation issue:

HLYT: I've attached B's response to my relocation notice, and my answer to his response. I haven't sent my answer yet I wanted you to read it first and let me know if it's reasonable. He's also retained an attorney, who sent a Notice of Objections and Request for Hearing. Thanks so much for doing this for me!

Judge: I have reviewed your documents. I think your response is fine but I have two concerns: 1. Now that he has retained counsel, why send a response? It is not going to prevent a hearing at this point so although I recognize you are trying to resolve this amicably and as adults, he has thrown down the gauntlet by getting an attorney. 2. This response lets him know what you are thinking. I would not respond and keep this close to my vest. They may offer a compromise more to your liking (doubtful, but I've seen it happen).

I don't think you need an attorney to come up with an agreement with his counsel, if you can't then you may look to an attorney, but you guys aren't too far apart in your responses.

HLYT: Just spoke to his attorney, and he said if we reach an agreement, he will prepare the document and submit it to the court, and we may not have to appear, or at least could do it via phone. I don't understand how not answering his response would benefit me, or expedite this process. I'm really confused now.

Judge: My point is that by answering him you have shown what you would accept and gives him and his attorney a jumping off point to chip away at your proposal. Your response sets the floor as to what you want. . . . Negotiate with his attorney. That's ok. Your negotiations are inadmissible.

HLYT: [I]f this came before you what happens? Paint that picture for me. . .

Judge: As a judge, I wouldn't get a feel for it either way as I am not privy to negotiations before my hearing. Besides, the code says you must file your notice and they have so many days to file any objections. There is no obligation to negotiate and I wouldn't think bad of you if you did or did not negotiate prior. You are in my courtroom because you couldn't agree in the first place. My final ruling will reflect what is reasonable under the law. I've got to go with your gut on this one You know what is best ultimately and obviously settlement is cheaper in the long run. I guess I am conditioned to not let the other side know what I am thinking.

CONCLUSIONS

The Commission unanimously found that probable cause exists in the matters set forth above to find that Jason D. Harwood, Judge of the 9th Family Court Circuit, violated Canons 1A, 2A, 2B, 3A, 3B(7), 3B(9), 3B(11), 4A(1) through (3), and 4G 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.

- 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. . . .
- B. Adjudicative responsibilities. –
 - (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 communications made to the judge outside the presence of the parties concerning a pending or impending proceeding.

- (9) Except for statements made in the course of official duties or to explain court procedures, a judge shall not make any public or nonpublic comment about any pending or impending proceeding which might reasonably be expected to affect its outcome or impair its fairness. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control.
- (11) A judge shall not disclose or use for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

Canon 4.

A judge shall so conduct the judge's extra-judicial activities so 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.
- G. Practice of law. – A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

The Commission further found that formal disciplinary action was not essential since Respondent had agreed to resign his position as Family Court Judge and never again seek judicial office in West Virginia. However, the Commission found that the violations were serious enough to warrant a public admonishment.

The Preamble to the Code of Judicial Conduct states:

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.

The Commentary to Canon 2A makes it clear that the Code of Judicial Conduct regulates both a judge's professional and personal conduct. The Commentary notes that "[a] judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly." This is because "[p]ublic confidence in the judiciary is eroded by irresponsible or improper conduct" by judges.

Judge Harwood's decision to engage in a sexual relationship with his secretary was ill-conceived and unacceptable. As is the situation in this complaint, improper sexual relationships can form the basis for sexual harassment lawsuits. The allegations in those lawsuits frequently become public knowledge and those allegations alone can destroy the public's confidence in the judiciary. They can cause public humiliation for the parties involved. They are rarely kept secret and, as the investigation in this case discloses, can become grist for the gossip mill and destructive blather in the community. They can also cause disharmony within the office if other employees think the secretary is receiving favoritism or if the sexual relationship ends badly and the parties are still expected to work together. The judge may cease to be objective about the secretary's work performance. They can also create an appearance of undue influence by the secretary over the judge -- as it did in this case where TFM felt free to contact Judge Harwood about cases involving her friends.

Judge Harwood developed an unfavorable reputation in his work environment and perhaps in the community concerning his attitude toward women as sex objects, which was contributed to by his use of language of a sexual nature and his crude utterances about a women's physical appearance. As such, it was a combination of all of this that caused the Commission to conclude that Jason D. Harwood's attitude toward women was more like that of an adolescent's notions of women as sex

objects than that of a responsible circuit judge and that he should no longer serve in that honorable position. Thus the finding of the Commission is that he **violated Canons 1A, 2A, 2B, 3A, 3B(7), 3B(9), 3B(11), 4A(1) through (3) of the Code of Judicial Conduct.**

Judge Harwood was also plainly wrong in giving legal advice to his friend. The Commentary to Canon 4G declares:

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters including matters, involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or members of the judge's family.

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

The Code defines "member of the judge's family" as a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship.

Respondent should not have giving legal advice or talked to HYL T about her post-divorce proceeding pending in the Family Court of Preston County. By doing so, **Respondent violated Canons 1, 2A, 3B(9), 3B(11) and 4G of the Code of Judicial Conduct.**

Based upon the foregoing, it is the decision of the Judicial Investigation Commission that Jason D. Harwood, former Judge of the 9th Family Court Circuit, be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes Judge Harwood for his conduct as fully set forth in the matters asserted herein. Judge Harwood has now resigned and has agreed to never again seek judicial office in West Virginia. Therefore the Commission will not take any further action on the matter.

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 and his breach of the July 1, 2015 agreement by and between Judicial Disciplinary Counsel and Respondent, file formal charges with the Clerk of the Supreme Court of Appeals of West Virginia.



The Honorable Ronald E. Wilson, Chairperson
Judicial Investigation Commission

July 13, 2015

Date

REW/tat