BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

IN THE MATTER OF
THE HONORABLE TIMOTHY C. HALLORAN **COMPLAINT NOS. 68-2017**
MAGISTRATE OF KANAWHA COUNTY **84-2017**

PUBLIC ADMONISHMENT OF MAGISTRATE HALLORAN

These matters are before the Judicial Investigation Commission upon complaints filed by Mark Halburn and Judicial Disciplinary Counsel ("JDC") setting forth certain allegations against the Honorable Timothy C. Halloran, Magistrate of Kanawha County ("Respondent"). Chief among Complainant Halburn's numerous allegations was that Respondent failed to give him a requested jury trial in violation of the Code of Judicial Conduct. JDC alleged that Respondent inappropriately publicly endorsed a candidate for appointment for Magistrate and improperly commented on an impending matter in violation of the Code of Judicial Conduct.

Upon receipt of the complaints, an investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure. After a review of the complaints, the Respondent's written replies, the information and documents obtained from the investigations and the pertinent Rules contained in the Code of Judicial Conduct, the West Virginia Judicial Investigation Commission (hereinafter "Commission"), at its October 27, 2017 meeting, found probable cause to believe that Respondent violated Rules 1.1, 1.2, 1.3, 2.2, 2.5(A), 2.10(A), 2.16(A) and 4.1(A)(3) and orders that he be publicly admonished pursuant to Rules 1.11 and 2.7(c) of the Rules of Judicial Disciplinary Procedure, as set forth in the following statement of facts and conclusions:

STATEMENT OF FACTS

Respondent first became a Magistrate in Kanawha County on or about November 11, 1994 through December 31, 1996. He again took office on December 21, 2000, and has served continuously in that capacity since that time. At all times relevant to the facts and circumstances set forth below, Respondent has served as a Magistrate for Kanawha County.

Complaint No. 68-2017

On or about April 28, 2016, Complainant was charged in Kanawha County Case No. 16-M-2960 with the misdemeanor offense of telephone harassment in violation of W. Va. Code 61-8-16. If convicted of the offense, Complainant faced a penalty of not more than a $500.00 fine or imprisonment in the county jail for not more than six months, or both fined and imprisoned. Complainant was arrested and arraigned on the charge on or about September 9, 2016. On or about September 15, 2016, Complainant's attorney filed a "Motion for Jury Trial, Pretrial Conference to Exchange Discovery and Demand for Speedy Trial." The Motion was time-stamped by the Magistrate Clerk's Office as having been received that day and was entered into the Unified Judicial Application Case Management System ("UJA").

On June 8, 2017, Respondent held a bench trial for Complainant. Following the presentation of all evidence, Respondent found Complainant guilty of the crime charged and sentenced him to a $500.00 fine and six months in jail. Later that same day, Complainant filed a motion for an appeal. A status conference was held on the appeal on September 7, 2017. By Order entered September 19, 2017, the Honorable Joanna I. Tabit, Judge of the Circuit Court of Kanawha County, remanded the matter back to Respondent to conduct a jury trial.

Meanwhile, on July 5, 2017, Complainant filed an ethics complaint against Respondent. On August 18, 2017, the complaint was presented to the Judicial Investigation Commission. After reviewing the complaint the Commission, by letter dated August 21, 2017, from the JDC, asked Respondent to reply to the allegations within ten days of receiving the request. The letter was sent certified mail return receipt requested and was received by Respondent on August 24, 2017. Respondent was also reminded in the letter that Rule 2.16 of the Code of Judicial Conduct requires him to cooperate with the Commission. Respondent did not reply to this request for information. On September 19, 2017, JDC sent a second request for information to be provided within ten days. The

letter, sent certified mail return receipt requested, was received by Respondent on September 22, 2017.

On September 28, 2017, Respondent finally replied to the Commission's request for information. Respondent replied to all of the allegations except why he failed to give Complainant a jury trial despite a request to do so. Respondent also apologized for failing to timely respond to the allegation contained in the complaint within the original 10 day allowance by the Commission.

Complaint No. 84-2017

On or about July 21, 2017, Respondent's assistant, Melanie Rucker, sent a letter to Chief Kanawha Circuit Judge Jennifer F. Bailey, asking to be appointed to the Magistrate position vacated on July 20, 2017, by former Magistrate Julie Yeager.[1]

On July 23, 2017, Respondent sent a letter to Judge Bailey asking her to appoint Ms. Rucker to the vacant position. Respondent also stated, "Ms. Rucker was a candidate for Magistrate in the 2016 election coming in second to Julie Yeager. Did Ms. Yeager use stolen money to help her win? Further investigation is needed to answer this question." Respondent copied Kanawha County Court Administrator Beverly Selby and Kanawha County Chief Magistrate Jack Pauley on the recommendation letter. On or about July 31, 2017, *The West Virginia Record* ran a story about Respondent's recommendation letter quoting several passages including a portion of the one set forth above.

In his written reply to the ethics complaint, Respondent admitted providing a copy of his endorsement letter to the newspaper. Respondent stated:

> At the time, the Respondent did not believe the July 23, 2017 letter was improper or in any way inconsistent with the Rules of Judicial Conduct. However, upon reflection and

[1] On July 19, 2017, the Administrative Director for the Supreme Court of Appeals of West Virginia ("Supreme Court") filed a Rule 2.14 complaint against former Magistrate Yeager. On July 20, 2017, Judicial Disciplinary Counsel filed an investigation report with the Supreme Court on the charges contained in Complaint No. 77-2017, which alleged the embezzlement of money by former Magistrate Yeager from the West Virginia Magistrate Association. Later that same day, the Supreme Court found "that there is probable cause to believe the [R]espondent has engaged or is currently engaging in serious violations of the Code of Judicial Conduct" and remanded the matter "for the filing of formal charges and proceedings pursuant to Rule[s] 2.7(d) and 4 of the Rules of Judicial Disciplinary Procedure." The matter was also referred to the Prosecuting Attorney of Kanawha County for criminal investigation. Subsequently, the Prosecutor recused himself from the investigation and the Raleigh County Prosecuting Attorney Kristen Keller was appointed Special Prosecutor.

> review of the law, the Respondent regrets sending the July 23, 2017 letter. . . . With regard to the comments about Julie Yeager . . . . , the Respondent did not consider this matter to be before his court because he would immediately conflict himself off of the case should it be assigned to his docket. Likewise, considering the allegations against Julie Yeager, the Respondent believed that all Kanawha County Magistrates would be forced to conflict off of the case should criminal charges be filed against Julie Yeager in Kanawha County. . . . [T]he Respondent did not offer an opinion as to the guilt or innocence of Julie Yeager. Likewise, he did not comment on any specific evidence involved or the reliability of said evidence involved in this matter. Instead, Respondent raised the question of whether stolen funds were used to fund Julie Yeager's campaign for re-election and encouraged further investigation into the matter. The respondent possesses no evidence or information regarding the issue of whether Julie Yeager used stolen money to fund her campaign for re-election. The Respondent raised the issue in his July 23, 2017 letter to Judge Bailey because he believed at the time it was a fair question to ask. . . .

CONCLUSIONS

The Commission, by a vote of 8-0,[2] determined that probable cause does exist in the instant complaints and that the Honorable Timothy C. Halloran, Magistrate of Kanawha County, violated Rules 1.1, 1.2, 1.3, 2.2, 2.5(A), 2.10(A), 2.16(A) and 4.1(A)(3) of the Code of Judicial Conduct which provide in pertinent part:

> **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**
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> 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**
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> A judge shall not abuse the prestige of judicial office to advance the personal . . . interests of the judge or others, or allow others to do so.
>
> **Rule 2.2 – Impartiality and Fairness**
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> A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

[2] The Commission consists of six judicial officers and three lay members. One judicial officer was not in attendance at the October 27, 2017 meeting.

Rule 2.5 – Competence, Diligence and Cooperation

(A) A judge shall perform judicial and administrative duties, competently and diligently.

Rule 2.10 – Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing. . . .

Rule 2.16 – Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

Rule 4.1 – Political and Campaign Activities of Judge and Judicial Candidates in General

(A) Except as permitted by law, or by Rules 4.2, 4.3 and 4.4, a judge or a judicial candidate shall not:

(3) publicly endorse or oppose a candidate for any public office;

With respect to Rule 2.10, the Code of Judicial Conduct defines "impending matter" as "a matter that is imminent or expected to occur in the near future." With respect to Rule 4.1(A)(3), "judicial candidate" means "any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy [or] declares or files as a candidate with the election or appointment authority . . . ."

The Commission further determined that formal discipline was not appropriate under the circumstances. However, the Commission found that the violations were serious enough to warrant a public admonishment.

Preamble [1] to the Code of Judicial Conduct states in pertinent part:

> An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an

> independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

Preamble [2] provides that "[j]udges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity and competence.

Comment [1] to Rule 1.2 states that "public confidence in the judiciary is eroded by improper conduct and conduct that creates an appearance of impropriety. This principle applies to both the professional and personal conduct of a judge." Meanwhile, Comment [2] 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. Comment [5] states that actual improprieties include "violations of law, court rules or provisions of this Code." It also sets forth a test for appearance of impropriety – "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 . . . impartiality."

Complaint No. 68-2017

Comment [1] to Rule 2.2 states that "[t]o ensure impartiality and fairness to all parties, a judge must be open-minded and objective." Comment [2] notes that "a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question." Comment [1] to Rule 2.5 provides that "[c]ompetence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office."

Rule 5(d) of the Rules of Criminal Procedure for Magistrate Courts sets forth when a defendant in a criminal case is entitled to a jury trial. The Rule states in pertinent part:

> 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.

In this case, the Complainant asked for a jury trial approximately six days after his initial appearance. Thus, Complainant timely requested that his case be heard by a jury. Respondent, who is a seasoned magistrate, could give no justifiable reason why he failed to comply with Complainant's request. As the late Warren Burger, former Chief Justice of the United States Supreme Court, once said:

> A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society: that people come to believe that inefficiency and delay will drain even a just judgment of its value; that people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching; that people come to believe the law – in the larger sense – cannot fulfill its primary function to protect them and their families in their homes, at their work, and on the public streets.

By failing to provide Complainant with a jury trial, Respondent violated Rules 1.1, 1.2, 2.2, and 2.5(A) of the Code of Judicial Conduct and is admonished for the same.

Respondent also had a duty to timely file his reply to the allegations contained in the complaint. He was well aware of this responsibility, having been advised of the same on previous occasions by the Commission. Comment [1] to Rule 2.16 states that "[c]ooperation with investigations and proceedings of judicial and lawyer discipline agencies . . . instills, confidence in judges' commitment to the integrity of the judicial system and the protection of the public." By failing to timely respond to the allegations, Respondent clearly violated Rule 2.16(A) of the Code of Judicial Conduct and is admonished for his behavior.

Comment [1] to Rule 1.3 states that "it is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind." Importantly, Comment [1] to Rule 2.4 provides that '[a]n independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences." Comment [1] to Rule 2.10(A) notes that the restrictions "on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary." Comment [4] to Rule 4.1 notes that the purpose of paragraph (A)(3) is to prevent judges and candidates "from abusing the prestige of judicial office to advance the interests of others."

Not only did Respondent endorse Ms. Rucker in his July 23, 2017 letter to Chief Judge Bailey but he purposely made sure Kanawha County residents knew of his preference when he deliberately gave the document to the newspaper for publication. As a longtime magistrate, Respondent knew or should have known that the letter was improper. Moreover, the tenor of the document and the decision to provide it to the newspaper caused the Commission members to conclude that Respondent took this action in a blatant attempt to strong arm the Chief Judge into appointing Ms. Rucker as Magistrate.[3]

Respondent also wrongly commented on the impending matter of former Magistrate Yeager's alleged embezzlement. The Rule clearly states that judges cannot comment on pending or impending matters "in any court." Thus the restriction is not limited only to matters likely to

[3] In early August 2017, Chief Judge Bailey appointed probation officer Angela Perdue as Magistrate. She officially took office on August 15, 2017.

come before the Respondent or Kanawha County Magistrate Court but it includes cases which could come before any court in the land. By engaging in such conduct, Respondent called into question the integrity and independence of the judiciary and adopted a position that was certainly contrary to the neutral and detached demeanor of all judges. Therefore, Respondent is admonished for violating Rules 1.1, 1.2, 1.3, 2.10(A) and 4.1(A)(3) of the Code of Judicial Conduct.

Based upon the foregoing, it is the decision of the Judicial Investigation Commission that the Honorable Timothy C. Halloran, Magistrate of Kanawha County, be disciplined. Accordingly, the Judicial Investigation Commission hereby publicly admonishes Magistrate Halloran for his conduct as fully set forth in the matters asserted herein and warns him to refrain from engaging in similar behavior in the future.

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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. If the Respondent timely files an objection, the Judicial Investigation Commission shall, pursuant to the Rule, file a formal charge with the Clerk of the Supreme Court of Appeals of West Virginia.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

November 2, 2017
Date

REW/tat