

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF
PHILLIP TODD GAUJOT,
FORMER MAGISTRATE OF MONONGALIA COUNTY**

**COMPLAINT NOS. 84-2022
133-2022**

**PUBLIC ADMONISHMENT OF PHILLIP TODD GAUJOT
FORMER MAGISTRATE OF MONONGALIA COUNTY**

The matter is before the Judicial Investigation Commission (“JIC”) upon complaints filed by Dana Johnson, Director of the Monongalia County Dog Wardens & Canine Adoption Center (“Adoption Center”) and Judicial Disciplinary Counsel setting forth certain allegations against Phillip Todd Gaujot, former Magistrate of Monongalia County (“Respondent”). On July 27, and December 1, 2022, Judicial Disciplinary Counsel (“JDC”) sent Respondent letters asking for replies to the allegations contained in the complaints. After a review of the complaints, Respondent’s replies, the evidence gathered therefrom, the February 27, 2023 signed agreement (attached hereto), Respondent’s resignation letter and the pertinent Rules contained in the Code of Judicial Conduct, the JIC found probable cause on February 28, 2023 that Respondent violated Rules 1.1, 1.2, 1.3, 2.1, 2.2, 2.3(B), 2.5(A) and (B), 2.8(B), 2.9, and 3.1(A), (B), (C), (D) and (E) of the Code of Judicial Conduct. Since Respondent has resigned as magistrate and agreed never again to seek judicial office in West Virginia by election or appointment, the JIC found that formal discipline was not necessary but that Respondent be publicly admonished pursuant to RJDP 1.11 and 2.7(c)¹ as set forth in the following statement of facts and conclusions of law.

¹ The Rules state that an admonishment cannot issue if the Respondent has been disciplined in the last three years or if the nature of the misconduct is the same as he/she has been disciplined in the last five years. Ordinarily, the JIC would issue formal charges in this case but since Respondent has agreed to resign and never seek judicial office again, this body believes that in this instance judicial economy warrants another admonishment.

STATEMENT OF FACTS

Respondent was elected as Magistrate of Monongalia County in the May 2020 election and took office on January 1, 2021. At all times relevant to the instant investigation, Respondent was serving as a Magistrate. Respondent graduated from John Marshall Law School in Georgia but is not licensed to practice law. On April 25, 2022, the JIC admonished Respondent for violating Rules 1.1, 1.2, 1.3, 2.8(B) and 2.10(A) of the Code of Judicial Conduct in *Matter of Gaujot*, Complaint Nos. 130 and 131-2021, in part, for exhibiting intemperate behavior to two law enforcement officers in different matters, commenting on a case pending before the Court to the local newspaper, and soliciting letters of support in the disciplinary matter from three defense attorneys who regularly appeared in his court and one bail bondsman.

FINDINGS

A. Complaint No. 84-2022:

W. Va. Code § 7-10-4 governs custody and care of abandoned, neglected or cruelly treated animals and provides in pertinent part:

- (a) Subject to the provisions of subsection (h) . . . a humane officer shall take possession of any animal . . . known or believed to be . . . deprived of . . . reasonable protection from fatal freezing or hearing exhaustion . . .
- (b) The owner . . . of any animal seized pursuant to subsection (a) . . . shall be provided written notice of the seizure, his or her liability for the cost and care of the animal . . . and the right to request a hearing in writing before a magistrate in the county where the animal was seized. The magistrate court shall schedule any hearing requested within ten working days of the receipt of the request. . . At the hearing . . . the magistrate shall determine by a preponderance of the evidence if the animal was . . . deprived of . . . reasonable protection from fatal freezing or heat exhaustion. . . .
- (c)(1) If a hearing is requested and the magistrate finds by a preponderance of the evidence that the owner [violated the provisions] . . . the magistrate shall enter an order awarding custody of the animal to any humane officer for further disposition in accordance with reasonable practices for the humane treatment of animals. After hearing the evidence, if the magistrate is not convinced the animal was neglected or cruelly treated, he or she may dismiss the action and order the animal be returned to the owner. . . .

On or about June 21, 2022, a dog warden was dispatched to pick up two dogs from a humane complaint made by WVU Hospital security. The dogs had purportedly been left in a hot car for an extended period on a sizzling summer day. A car window had to be broken in order to retrieve the dogs and a temperature gauge purportedly registered the inside of the vehicle at 140 degrees Fahrenheit. A Morgantown police officer signed a seizure notice for the owner of the vehicle, and the dogs were taken to the Adoption Center.

Later that afternoon, the owner of the dogs and her daughter appeared in Monongalia County Magistrate Court and spoke with Respondent to get their dogs back. Respondent then called the prosecutor's office and first talked to APA Nordstrom who stated:

[Respondent] was seeking to recover the dogs for them. He indicated that they were – that at least one of the dogs was a comfort dog for the daughter and they needed to get their dogs back before they returned to Romney, I believe . . . At that point in time, he was clearly trying to get them recovered and seeking intervention from our office to get the dogs given back to the people so they could go back to Romney, so they didn't have to return at a later date.

APA Nordstrom further said that Respondent "seemed to be working on behalf of the [owner and her daughter] as opposed to doing what a magistrate does, advising them of how the process works and moving on. He seemed to be acting on their behalf." APA Nordstrom advised Respondent that he would have to consult with then APA Gabriella Mucciola² and call him back.

Together the two APAs called Respondent back and APA Mucciola told Respondent the following:

It was my understanding there had been a seizure because animals were left in a hot car and he wanted to give those animals back to the owner despite the seizure. And so I advised him of the process, basically. I read him the code for animal seizure, told him we needed to schedule a hearing on that, that they had a right to a hearing, but that wasn't an option to give those animals back without a hearing and that because he had talked to them, that probably needed to be a hearing schedule with

² Ms. Mucciola is now the Prosecuting Attorney of Monongalia County. At the time of the incident, Ms. Mucciola handled the majority of animal cruelty cases in Monongalia County.

a different magistrate because it was clear, you know, that he had had a lot of conversation with them at that point.

Instead of scheduling a hearing, Respondent called the Adoption Center and told them to immediately return the dogs to the owner. Director Johnson stated:

[H]e called and introduced himself and he said that he had . . . the owner of the dog and the mother's daughter in his presence, and he wanted to know what he could do to get the dog back to the owner on that day. I told him that was not possible, that she was required to schedule a seizure hearing which would be scheduled in five days, and that would determine if there was enough evidence – or lack of evidence and that they would get to maybe take them home until the [final] hearing. And he said he didn't want that. He said that he wanted the dogs to be able to go home today, that he got to see pictures on her phone, that the dogs wear clothes, that they sleep in a bed and that these are good people.

And I got a little emotional and I said, "You know what, [Magistrate] Gaujot, you're the judge and I have been taught to respect a judge. So if you're telling me I need to release these dogs today, I'm going to release the dogs. And he said, "well, I'm going to send them over. I want you to release the dogs."

Director Johnson believed she had no choice but to release the dogs because the magistrate "told me to." Director Johnson has worked at the Adoption Center for over 20 years and she testified that this was the only time she recalls receiving a call from a magistrate ordering her to release the dogs without benefit of a seizure hearing.

The owner of the dog and her daughter came by to retrieve the animals. Before she would release the dogs, Director Johnson made the two go back to Magistrate Court and obtain a date and time for a seizure hearing. When they came back a short while later with the information, Director Johnson released the dogs. The seizure hearing was held before a different magistrate within the required timeframe. The magistrate ordered the dogs impounded until the final hearing. At the final hearing, the dogs were released to the owners per an agreement between the parties that required the owner to pay the requisite impound fees and perform community service.

B. Complaint No. 133-2022:

A deputy magistrate clerk works the front window of the office and handles public inquiries. Among her duties, the deputy clerk is also responsible for taking care of bonds, filing wrongful occupations and handling domestic violence orders and personal safety orders. The cashier works beside her.

Domestic violence orders are required to be uploaded immediately to the Domestic Violence Registry to protect the alleged victim. On October 24, 2022, the deputy magistrate clerk asked Respondent about a domestic violence order that he had failed to timely provide for upload. She jokingly said to him, “I’m going to smack your fingers if you don’t put that DV order in there.” Respondent didn’t directly respond to her but walked into his office and angrily and loudly said, “Fuck her” to his assistant. The deputy magistrate clerk heard the comment.

She said he was already upset when the incident took place. The deputy magistrate clerk stated:

The reason I know he was already in a bad mood is because he had called his assistant prior to that and not wanted to do the arraignments that morning. He had wanted her to find someone else to do the arraignments. And she had reached out to Magistrate Holepit [who] declined and said she would not do his arraignments, and then [Magistrate Gaujot] had some choices words for her as well, not directly to her face, but on the phone. And I was in [his assistant’s] office, so I heard the like. . . . He said the same thing he said to me, but he called her other words and, honestly, just other profanities.

According to the deputy magistrate clerk, the DV order that she asked Respondent about appeared on her desk later that day. The next morning, Respondent apologized to her stating, “I’m sorry I was a dick the day before. . . . It was because I was fucking swamped and so I was pissed off.”

Later that same day, Respondent set a bond for a defendant. There was a question about the bond so the paperwork was in the Magistrate Clerk's office for determination as to whether it could be processed in the manner ordered. Respondent called the deputy magistrate clerk from the courtroom and yelled at her to immediately get the paperwork and get the defendant bonded out. The deputy magistrate clerk explained that she couldn't because she had not yet received the bond paperwork. She stated:

He's just getting more irate and more irate. He said to me three times, "I am telling you, get the paperwork and get him out of here." And finally when he started again, I just – I said, "[Magistrate Gaujot], I can't do that. That's way beyond what I do up here. I can't do it," and I hung up. In the course of probably 30 seconds, he's flying, I mean like he came out of nowhere. . . . All of [a] sudden, he is like inches from my window screaming at me, "Don't you ever fucking hang that phone up. Do you know who I am? I'm telling you." I mean his face was red, his neck is like bulging. I mean it was – I've not really seen anything like that to tell you the honest truth. I mean it was crazy. At that time, he – it scared me so much that I got up off my chair and the only thing I knew to do, I had to get away from him. So I walked in the back [a]nd there I just broke down.

Respondent was in the public corridor when he yelled at the deputy magistrate clerk. The incident was witnessed by at least two members of the public who were standing by the window and two other deputy magistrate clerks. The deputy magistrate clerk involved in the exchange immediately informed the Magistrate Clerk who reminded Magistrate Gaujot that "we are all adults and we don't act like this in the place of employment."

C. Miscellaneous:

During the course of the investigation, JDC interviewed multiple individuals who work in and around Magistrate Court. The investigation revealed:

- (1) Respondent is chronically late for work especially on intake days when he is required to be there at 8:00 a.m. but does not arrive until 9:30 or 10:00 a.m. An aggravating factor to this is that Respondent has been living across

the street, first in the Hotel Morgan and then in an apartment, for about four months and he is still routinely late for court. His tardiness has caused the other magistrates to carry out his duties in addition to handling their own caseload.

- (2) Respondent has a habit of engaging in unwanted hugging or touching people. In one instance after an arraignment, Respondent hugged a female defendant and told her he was going to make her his “special project.” The hug was captured on court security video.
- (3) Magistrates are entitled to carry cell phones provided by the IT Department of the Supreme Court of Appeals of West Virginia. The phones belong to the Court and are loaned to the Magistrates for the duration of their service. As part of the instant investigation, JDC issued a subpoena *duces tecum* for Respondent’s court cell phone. The phone was received by JDC on February 22, 2023. A review of the work phone indicated scores of improper photos, memes and text messages unbecoming a judicial officer. In addition, Respondent shared the inappropriate items with multiple individuals from his court phone.

CONCLUSIONS

The Commission unanimously³ found that probable cause exists in the matters set forth above to find that Phillip Todd Gaujot, Former Magistrate of Monongalia County, violated Rules 1.1, 1.2, 1.3, 2.1, 2.2, 2.3(B), 2.5(A) and (B), 2.8(B), 2.9, and 3.1(A), (B), (C), (D) and (E) of the Code of Judicial Conduct of the Code of Judicial Conduct as set forth below:

³ The vote was 9-0 for the issuance of an admonishment with two (2) members wanting more details about the contents of the court cell phone.

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.

2.1 -- Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities.

2.2 – Impartiality and Fairness

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

2.3 – Bias, Prejudice, Harassment

- (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 . . . sex

2.5 – Competence, Diligence and Cooperation

- (A) A judge shall perform judicial and administrative duties competently and diligently.
- (B) A judge shall cooperate with other judges and court officials in the administration of court business.

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. . . .

2.9 – *Ex Parte* Communications

- (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. . . .
- (C) A judge shall not investigate facts in a matter independently and shall consider only the evidence presented and any facts that may properly be judicially noticed.

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:

- (A) Participate in activities that will interfere with the proper performance of the judge's judicial duties;
- (B) Participate in activities that will lead to frequent disqualification of the judge;
- (C) Participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;
- (D) Engage in conduct that would appear to a reasonable person to be coercive; or
- (E) Make use of court premises, staff, stationary, equipment or other resources except for incidental use for activities that concern the law the legal system or the administration of justice, or unless such additional use is permitted by law.

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 states that “[i]t 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.” Comment [2] to Rule 2.2 states that a judge must be “objective and open-minded” to ensure impartiality and fairness to all parties. Importantly, 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 2.3 notes that “[a] judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.” Comment [3] states that “[h]arassment . . . is verbal or physical conduct that denigrates or shows hostility or aversion toward a person” Comment [4] to Rule 2.5 provides that “in disposing of matters

promptly and efficiently, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay.” Comment [1] to Rule 2.8 states that “[t]he duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.”

Comment [1] to Rule 2.9 states that “[t]he extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.” Comment [6] notes that the prohibition to investigate the facts in a matter extends to information available in all mediums. Comment [4] to Rule 3.1 states:

Discriminatory actions and expressions of bias or 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. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age sexual orientation, or socioeconomic status.

Former United States Supreme Court Justice Potter Stewart once said that “[e]thics is knowing the difference between what you have a right to do and what is right to do.” Respondent has proven by his current conduct and his failure to learn from past mistakes that he does not have the fortitude to serve as a judge. Thus, the outcome of this matter is wholly appropriate.

Therefore, it is the decision of the Judicial Investigation Commission that Phillip Todd Gaujot, former Magistrate of Monongalia County be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes Magistrate Gaujot 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

February 28, 2023

Date

ADM/tat

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF:
THE HONORABLE PHILLIP TODD GAUJOT
MAGISTRATE OF MONONGALIA COUNTY**

**JIC COMPLAINT NOS. 84-2022
133-2022**

AGREEMENT

Magistrate Phillip Todd Gaujot, Magistrate of Monongalia County (“Respondent” or “Magistrate Gaujot,”) and Teresa A. Tarr and Brian J. Lanham, Judicial Disciplinary Counsel (“JDC”) hereby enter into this Agreement consisting of the following terms:

1. On July 21, 2022, a judicial ethics complaint was filed against Respondent by Dana Johnson, Director of the Monongalia County Dog Wardens & Canine Adoption Center. The complaint was given Complaint No. 84-2022.

2. On November 28, 2022, a second judicial complaint was opened by JDC against Respondent. The complaint was given Complaint No. 133-2022.

3. JDC immediately began an investigation of the complaints. After a thorough investigation, JDC Counsel spoke with Respondent in an effort to resolve the complaint without seeking a suspension without pay and filing a formal statement of charges.

4. Respondent and JDC agree to the following terms and conditions:

- a. Magistrate Gaujot agrees to immediately resign his position as Magistrate for Monongalia County, West Virginia, effective on or before 4:00 p.m., Monday, February 27, 2023;
- b. Magistrate Gaujot 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, Justices of the Intermediate 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 (compliance with the law), 1.2 (confidence in the judiciary), 1.3 (abuse of the prestige of judicial office), 2.1 (giving precedence of the duties of judicial office), 2.2 (impartiality and fairness) 2.3(B), 2.5(A) and (B) (competence, diligence and cooperation) and 2.8(B) (decorum and demeanor), 2.9 (*ex parte* communication) and 3.1(A), (B), (C), (D) and (E) (extrajudicial duties) of the Code of Judicial Conduct for the following:

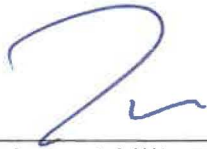
- (1) Respondent hugging a litigant following arraignment and telling her he would make her his “special project;”
- (2) Respondent’s use of his court cell phone for improper and inappropriate purposes unbecoming of a judicial officer;
- (3) Respondent’s handling of a dog seizure case outlined in Complaint No. 84-2022;
- (4) Respondent’s intemperate behavior toward a Deputy Magistrate Court Clerk of Monongalia County on October 24 and 25, 2022; and

- (5) Respondent's repeated tardiness for work, including but not limited to intake days;
- 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;
- e. Magistrate Gaujot 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 Gaujot 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 Gaujot 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 Nos. 84-2022 and 133-2022 for further investigation and prosecution of any violations of the Code of Judicial Conduct associated therewith. Magistrate Gaujot also agrees that by signing this document he has waived any future statute of limitations argument with respect to Complaint Nos. 84-2022 and 133-2022 should he violate the terms of the agreement necessitating the prosecution of any violations of the Code of Judicial Conduct;

5. Respondent understands, acknowledges and agrees that he is knowingly and voluntarily 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.

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

AGREED:



Magistrate Phillip Todd Gaujot
Magistrate of Monongalia County

2/27/23

Date



Alex Macia, Esquire
Counsel for Respondent

27 February 2023

Date



Teresa A. Tarr, Esquire
Judicial Disciplinary Counsel

2/27/2023

Date



Brian J. Lanham, Esquire
Judicial Disciplinary Counsel

2-27-23

Date

2/27/23

Honorable Judge Patti J. DeChristopher

Please accept my resignation as
Magistrate Judge of Monmouth
County effective today at 4:00 P.M.

Sincerely,

Todd G. Angelo