

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

**IN THE MATTER OF  
WARD HARSHBARGER, III,  
MAGISTRATE OF KANAWHA COUNTY**

**COMPLAINT NO. 129-2022**

**PUBLIC ADMONISHMENT OF WARD HARSHBARGER III  
MAGISTRATE OF KANAWHA COUNTY**

The matter is before the Judicial Investigation Commission (“JIC”) upon a complaint filed by Montgomery Police Chief Paris Workman setting forth certain allegations against Ward Harshbarger, III, Magistrate of Kanawha County (“Respondent”). On November 17, 2022, Judicial Disciplinary Counsel sent Respondent a letter asking for a reply to the allegations contained in the complaint. On or about November 30, 2022, Respondent, by and through his attorney, indicated a willingness not to contest the allegations and to negotiate an agreement with JDC to resolve the matter. After a review of the complaint, the December 1, 2022 signed agreement (attached hereto), Respondent’s 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, 2.3(B) and 2.8(B) of the Code of Judicial Conduct at its December 2, 2022 meeting. Since Respondent has resigned effective 5:00 p.m., December 16, 2022, 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) as set forth in the following statement of facts and conclusions of law.

**STATEMENT OF FACTS**

Respondent served as a Magistrate from January 1, 1981, until December 31, 2016. During this time, Respondent was disciplined four separate times. In 1984, the Supreme Court of Appeals of West Virginia publicly censured Respondent for neglect of duty in violation of Canon 3 of the

former Code of Judicial Ethics in *In re Harshbarger*, 173 W. Va. 206, 314 S.E.2d 79 (1984). In 1994, the State Supreme Court publicly admonished Respondent for a violation of Canon 2A of the former Code of Judicial Conduct in *In re Harshbarger*, 192 W. Va. 78, 450 S.E.2d 667 (1994). In 2014, Respondent was publicly censured and fined for violating Canons 2A, 3A, 3(B)(1), 3B(2), 3B(7), 3B(8) and 3C(2) of the former Code of Judicial Conduct in *In the Matter of Harshbarger*, Supreme Court No. 14-0306 (WV 5/27/2014). On June 4, 2015, the JIC publicly admonished Respondent for violating Canons 1, 2(A), 3B(2), 3B(7) and 3B(8) of the former Code of Judicial Conduct. Respondent ran for re-election in May 2016 but lost the campaign.

Respondent ran again in May 2020 and was elected as Magistrate. He took office on January 1, 2021, and he has served continuously in that position since that time. At all times relevant to the instant complaint, Respondent was serving in his capacity as Magistrate.

On November 17, 2022, Chief Workman, himself a former Magistrate, filed a complaint against Respondent. Chief Workman alleged that on September 10, 2022, one of his officers transported a defendant to Magistrate Court for arraignment. The officer arrived at 11:53 p.m. Respondent, who was on duty, allegedly complained about the officer arriving so close to the midnight closing time. The officer alleged that Respondent “verbally reprimanded me in an unprofessional way in front of other officers and court staff.” The officer stated that Respondent also threw a Styrofoam cup at him.

On October 6, 2022, an officer arrested and transported a defendant to Magistrate Court on an out of county warrant. The officer asserted that Respondent complained about having to arraign a defendant on an out of county warrant and told the officer that he was “wasting [the Magistrate’s] time.” Chief Workman also alleged that on October 15, 2022, two of his officers brought an arrestee before Respondent in an arraignment room full of people. According to the officers,

Respondent referred to them as “idiots” and stated that the officers of the Montgomery Police Department didn’t know how to do their jobs.

On November 17, 2022, JDC sent Respondent the complaint and asked him to reply to the allegations contained therein. On November 30, 2022, JDC received a telephone call from Respondent’s attorney. The attorney indicated that Respondent did not want to contest the allegations. Thereafter, the JDC negotiated an agreed disposition to the complaint. Respondent agreed to resign from office effective December 16, 2022 and he agreed to never again by election or appointment seek judicial office in West Virginia. In exchange, Respondent would be admonished by the JIC for violations of Rules 1.1, 1.2, 2.3(B) and 2.8(B) of the Code of Judicial Conduct. The agreement was signed by the parties on or about December 1, 2022. Respondent then submitted his resignation letter, which contained a disingenuous reason for his leaving the bench, to the Chief Circuit Judge of Kanawha County.

### **CONCLUSIONS**

The Commission unanimously<sup>1</sup> found that probable cause exists in the matters set forth above to find that Ward Harshbarger, III, Magistrate of Kanawha County, violated Rules 1.1, 1.2, 2.3(B) and 2.8(B) of 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.

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<sup>1</sup> The vote was 7-0 with two members absent from the meeting.

### **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 . . . .

### **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. . . .

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 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 [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.”

Respondent's conduct toward the Montgomery Police Officers was discourteous, disrespectful and indecorous. As a Magistrate with almost 37 years' experience, Respondent knew better than to hurl insults and a cup at the officers. To his credit, Respondent admitted his conduct and accepted responsibility. To his detriment, this is now the fifth time he has been disciplined and he lacked candor in his resignation letter to the Chief Circuit Judge. Serving as a magistrate in West Virginia is a privilege bestowed upon an individual by the electorate or the Chief Judge whenever appointment is necessary to fill a vacancy. Public trust is sacred and respect for the public is paramount. By denigrating officers of the Montgomery Police Department, by complaining about his primary responsibilities associated with the position and by casting doubt on the true reason for his resignation, Respondent has consigned himself to his fate and can no longer call himself a judge.

Therefore, it is the decision of the Judicial Investigation Commission that Ward Harshbarger, III, Magistrate of Kanawha County be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes Magistrate Harshbarger 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.



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 WARD HARSHBARGER, III,  
MAGISTRATE OF KANAWHA COUNTY**

**JIC COMPLAINT NO. 129-2022**

**AGREEMENT**

**COMES NOW**, Magistrate Ward Harshbarger, III, Magistrate of Kanawha County (“Respondent” or “Magistrate Harshbarger,”) by and through Counsel, William C. Forbes and Jesse Forbes, Esquires, and Teresa A. Tarr and Brian J. Lanham, Judicial Disciplinary Counsel and hereby enter into this Agreement consisting of the following terms:

1. On November 17, 2022, a judicial ethics complaint was filed against Respondent.
2. The Judicial Investigation Commission (JIC) Counsel immediately began an investigation of the complaint. On November 17, 2022, JIC sent a letter to Respondent asking him to reply to the allegations contained in the complaint. On November 30, 2022, Respondent’s counsel spoke with the undersigned about the matter to negotiate a resolution.
3. Respondent and Judicial Disciplinary Counsel agree to the following terms and conditions:
  - a. Magistrate Harshbarger agrees to resign his position as Magistrate for Kanawha County, West Virginia, effective on or before 5:00 p.m., Friday, December 16, 2022;
  - b. Magistrate Harshbarger agrees to submit his letter of resignation to the Chief Judge of the 13<sup>th</sup> Judicial Circuit, the Administrative Director and the JIC on or before 5:00 p.m., Thursday, December 1, 2022. The letter will reflect the contents of Paragraph No. 3a and is non-revokable one submitted.
  - c. Magistrate Harshbarger 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;

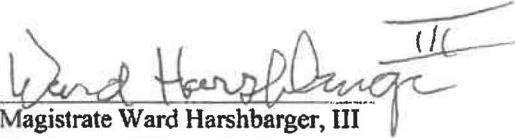
- d. Judicial Disciplinary Counsel agrees to recommend to the Judicial Investigation Commission that the Commission issue an admonishment in the above-captioned matter which will reflect Respondent violated Rules 1.1, 1.2, 2.3(B) and 2.8 and (B) and 2.8(B) of the Code of Judicial Conduct for his conduct set forth in Complaint No. 129-2022. The admonishment will also briefly outline Respondent's prior discipline;
- e. 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 Harshbarger and Judicial Disciplinary Counsel will be returned to their original positions;
- f. Magistrate Harshbarger 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;
- g. Magistrate Harshbarger 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;

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.

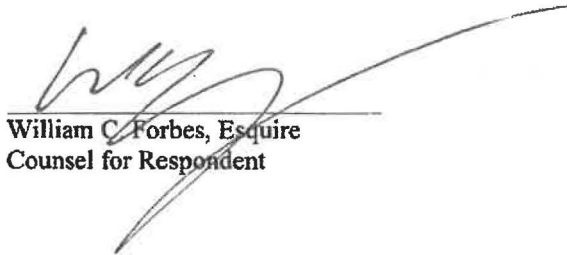


5. All parties agree to do everything necessary to ensure that the foregoing terms of this Agreement take effect.

**AGREED:**

  
Magistrate Ward Harshbarger, III  
Magistrate of Kanawha County

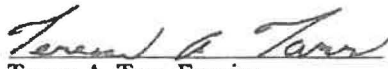
12/1/22  
Date

  
William C. Forbes, Esquire  
Counsel for Respondent


12/1/22  
Date

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Jesse Forbes, Esquire

\_\_\_\_\_  
Date

  
Teresa A. Tarr, Esquire  
Judicial Disciplinary Counsel

November 30, 2022  
Date

  
Brian J. Lanham, Esquire  
Judicial Disciplinary Counsel

11-30-22  
Date