

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF HANK E. MIDDLEMAS
FORMER MAGISTRATE OF MARION COUNTY**

COMPLAINT NO. 88-2018

PUBLIC ADMONISHMENT OF FORMER MAGISTRATE HANK E. MIDDLEMAS

The matter is before the Judicial Investigation Commission upon a complaint filed by Marion County Magistrate Mark Hayes setting forth certain allegations against Hank E. Middlemas, former Magistrate of Marion County (hereinafter "Respondent"). Upon receipt of the complaint, an investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure. After a review of the complaint, the former Magistrate's written responses, the information and documents obtained from the investigation, the February 11, 2018 agreement between Judicial Disciplinary Counsel and Respondent, his resignation letter, and the pertinent Rules contained in the Code of Judicial Conduct, the West Virginia Judicial Investigation Commission (hereinafter "JIC" or "Commission") found probable cause that former Magistrate Hank E. Middlemas, violated Rules 1.1, 1.2, 2.1, 2.5(A) and (B), and 2.16(A) of the Code of Judicial Conduct at its March 22, 2019 meeting and ordered that he be publicly admonished pursuant to Rules 1.11 and Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure ("RJDP"), as set forth in the following statement of facts and conclusions found by the Commission.

STATEMENT OF FACTS

Respondent worked continuously as a Marion County Magistrate from January 1, 2001 through February 14, 2019. At all times relevant to the instant complaint, Respondent was serving in his capacity as Magistrate. Respondent's duties included but were not limited to serving from time to time as the on-call magistrate. The Administrative Rule for Magistrate Court (hereinafter "ARMC") 1(b) provides:

One magistrate in each county, on a rotating basis, shall be on call at all times other than regular office hours. On-call duties shall extend, in criminal cases, to initial appearances; to taking bond for someone who is in jail; and to receiving and acting upon emergency search warrants, domestic violence matters, and juvenile abuse and neglect matters.

- (1) Initial appearances and taking bond in criminal cases. – Within the time periods provided for below, the on-call magistrate shall contact the county or regional jail, whichever applies, and the juvenile detention facility that serves the county, and

shall inquire whether any person has been arrested in the county since the close of regular business hours or since the last contact with the jail, or whether anyone confined to the jail is able to post bond. If an arrest has been made or if a prisoner is able to post bond, the magistrate shall proceed immediately to the magistrate court offices to conduct an initial appearance and to set bail for such person, or to accept bond for someone already in jail.

It shall be sufficient to comply with this rule if the on-call magistrate contacts the jail and juvenile detention facility:

- (A) Between 10:00 p.m. and 11:00 p.m. Monday through Friday;
- (B) Between 10:00 a.m. and 11:00 a.m. and between 10:00 p.m. and 11:00 p.m. on Saturdays and holidays; and
- (C) Between 12:00 p.m. and 1:00 p.m. and between 10:00 p.m. and 11:00 p.m. on Sundays.

In addition to the Rule set forth above and in place of the weekday proviso contained in ARMC 1(b)(1)(B), the Circuit Judges instituted a local rule by Order entered January 5, 2017, that required the following:

The on-call magistrate will conduct magisterial business from 12:30 p.m. until 4:30 p.m., Monday through Wednesday of his/her on-call week. The on-call magistrate will conduct magisterial business from 4:00 p.m. until 7:00 p.m. on Thursday of his/her on-call week. The on-call magistrate is not required to maintain office hours on Friday of his/her on-call week.

On August 27, 2018, Complainant filed an ethics complaint alleging that Respondent refused to perform his duties pursuant to ARMC Rule 1(b) while serving as the on-call Magistrate in Marion County during the night of July 30, 2018. Complainant asserted that Respondent failed to contact the jail as required and consequently did not arraign six people booked into the facility earlier in the evening between 6:15 p.m. and 9:00 p.m.¹ Magistrate Hayes also referred to a similar incident where Respondent failed to contact the jail and arraign two individuals who were incarcerated during the early evening hours of June 23, 2018. Magistrate Hayes also asserted that Respondent was chronically tardy for work. According to Magistrate Hayes, Respondent would routinely show up for the weekday on-call shift, which began at 12:30 p.m.,

¹ Magistrate Hayes attached signed statements from two Magistrate Assistants. Respondent told the assistants that he called the Sheriff's Office on July 30, 2018, at around 9:30 p.m., and was advised that only two people had been booked into the jail. Respondent showed one of the assistants his cell phone to prove he had called the Sheriff's Office. When asked why he did not come out and arraign the "two individuals," Respondent told the assistants that "I didn't want to, I just wanted to let them sit."

anywhere from fifteen (15) to forty-five (45) minutes late. Lastly, Magistrate Hayes asserted that Respondent routinely gave personal recognizance bonds to defendants in exchange for a waiver of their constitutional right to an attorney.

By letter dated August 30, 2018, Respondent replied to the allegations concerning the July 30, 2018 incident by attaching a copy of a statement he made to the Chief Circuit Judge in which he stated:

It is true that I did not call [the] Regional Jail. I did however call Marion County Dispatch at 9:26 p.m. [on July 30]. I was told, we had two (2) people in jail. After talking to the dispatcher, it was decided to leave them for arraignment the following morning. In hindsight, I realize now I should have checked with the jail opposed to dispatch. Which is how I've been doing it for years, due to [the] fact they are supposed to know what is going on. They should know who and how many are in jail, and if anyone wishes to bond out . . . information the jail doesn't possess. To let you know, since July 31st and after being verbally reprimanded by Magistrate Hayes, I have been calling North Central Regional Jail so you [we] won't have any more problems on this issue.

On December 10, 2018, Judicial Disciplinary Counsel took a sworn statement from Respondent. Respondent acknowledged failing to arraign three individuals on June 23, 2018, during the 12:30 to 4:30 p.m. on-call shift. Respondent admitted that he did not conduct the arraignments because he was not provided with a Criminal Dispute Resolution (hereinafter "CDR") form, which is not needed in order to complete the task. The Chief Magistrate instructed Respondent to complete the arraignments, but he refused. On June 25, 2018, Respondent conducted the arraignments in question after being contacted by the Chief Circuit Judge. As a result, the Chief Circuit Judge had a meeting with all of the magistrates including Respondent and went over their duties and obligations as a judicial officer.

Respondent also acknowledged failing to arraign those incarcerated on the evening of July 30, 2018. Respondent admitted that he did not call the jail in violation of ARMC 1(b). Instead, Respondent called 911/dispatch and said he was only informed that two people had been incarcerated that evening. Respondent also admitted purposefully abrogating his responsibility to go to the Courthouse and conduct the required arraignments:

I was playing in a golf tournament. I tried to get somebody to cover for me, which we do on occasion. You have something going on, I'll take your shift or whatever. I couldn't get anybody to cover for me, so I went ahead and played in a golf tournament with my buddy and did the on-call duties, along with that. I was pretty fortunate it wasn't a busy, busy weekend. . . . I called the sheriff's department and they had two people under arrest that

they had taken to jail. And in talking to the dispatcher what they were charged with and all that, I knew they weren't going to make bond anyway, so I left two people in there, to my knowledge, for Magistrate Hayes to do the next morning.

(12/10/2018 Sworn Statement at 41). Respondent also stated that he did not conduct the arraignments that night because he was "tired" from playing golf all day (Tr. at 46-47). Respondent acknowledged that in "hindsight I don't have a good excuse" for not conducting the arraignments and admitted that he was only guessing when he thought that the individuals would not be able to make bond (12/10/2018 Sworn Statement at 42).

Respondent was also untruthful during the sworn statement when he told Judicial Disciplinary Counsel that they would not find any failure to arraign incidents since July 30, 2018:

Q. Since this end of July incident, have there ever been any more incidents where you have not arraigned people that are in jail?

A. No, sir.

Q. So if we have paperwork that shows from September to as late as October where you did not arraign someone in jail, that would be incorrect?

A. I believe so, yes.

(12/10/2018 Sworn Statement at 49). In fact, Respondent failed to arraign people who were incarcerated in the regional jail while on-call on August 2, September 21, September 22, September 26, October 19, October 20, October 22, and December 15, 2018. Subsequent to the sworn statement, Respondent also had a conversation with the Honorable Todd Rundle, Magistrate of Marion County, in which he improperly advised the newest judicial officer there that the on-call magistrate did not have to come out during the evening hours to arraign defendants who were incarcerated in jail.

Respondent admitted to routinely being late for the 12:30 p.m. to 4:30 p.m. on-call shift. Respondent averaged that he was late at least three times a week during the times when he was required to do the shift. During his sworn statement, Respondent blamed his tardiness on playing golf and acknowledged that he was often as much as thirty (30) minutes late. Respondent denied ever exchanging personal recognizance bonds in exchange for attorney waivers. However, Magistrate Hayes and the Honorable Melissa Pride Linger, Magistrate of Marion County, informed Judicial Disciplinary Counsel that

Respondent consistently engaged in such practice, which left them having to do the paperwork at a subsequent hearing to see if the defendant could obtain court-appointed counsel.

CONCLUSIONS

The Commission unanimously found that probable cause does exist in the matters set forth above to find that Hank E. Middlemas, former Magistrate of Marion County, violated Rules 1.1, 1.2, 2.1, 2.5(A) and (B), and 2.16(A) of the Code of Judicial Conduct as set forth below:

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

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 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

Rule 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.

Rule 2.16 – Cooperation with Disciplinary Authorities

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

The Commission further found that formal disciplinary action was not essential since Respondent had agreed to resign his position as Magistrate 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 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.

The Comments to Rule 1.2 make clear that the Code of Judicial Conduct regulates both a judge's professional and personal conduct. The Comment 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. Importantly, the Comment states that "[a]ctual improprieties include violations of law, court rules or provisions of this Code."

The Comments to Rule 2.5 are also instructive:

- [1] Competence 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.
- [2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.
- [3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.
- [4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Respondent's actions demonstrate repeated and flagrant disregard for the Code of Judicial Conduct and a cavalier attitude toward the judiciary as a whole. He repeatedly placed his golf game over the integrity of the Court, abrogated his judicial responsibilities, was a slacker with respect to duty, was chronically responsible for avoidable delays in court matters, and proved untruthful when it came to his wrongdoing. Accordingly, Respondent has no right to hold the title of judge and must be disciplined for his conduct.

Therefore, it is the decision of the Judicial Investigation Commission that Hank E. Middlemas, former Magistrate of Marion County, be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes former Magistrate Middlemas 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

3/22/2019 Date

REW/tat