

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

**IN THE MATTER OF**

**RICHARD D. FOWLER, FORMER**

**COMPLAINT NO. 125-2013**

**MAGISTRATE FOR MERCER COUNTY**

**PUBLIC ADMONISHMENT OF FORMER MAGISTRATE RICHARD D. FOWLER**

The matter is before the Judicial Investigation Commission ("JIC") upon a complaint filed on September 19, 2013, setting forth certain allegations against Richard D. Fowler, former Magistrate for Mercer County (hereinafter "Respondent"). The complaint alleged, among other things that Magistrate Fowler had improper communications with a woman he presided over in Mercer County Magistrate Court. The complaint alleged that this action was in violation of the Code of Judicial Conduct. Upon receipt of the complaint, an investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure.

At its March 14, 2014, meeting, after reviewing the complaint, the Magistrate's response to the complaint, the information and documents obtained from the investigation and the pertinent Canons contained in the Code of Judicial Conduct, the JIC found probable cause that Respondent violated Canons 1A, 2A, 2B, 3A, 3B(1) 3B(2), 3B(5), 3B(7), 3(B)(8), 3E(1)(a) and 4A of the Code of Judicial Conduct and ordered that he be publicly admonished pursuant to the

## Rules of Judicial Disciplinary Procedure.

Respondent was a Mercer County Magistrate during the time the improper conduct giving rise to this admonishment occurred. He became a Magistrate on January 1, 2005, and served continuously in that capacity until he resigned effective February 28, 2014. During the time that Magistrate Fowler's behavior was being investigated, he tendered his resignation to the Chief Judge of the Circuit. The February 10, 2014 letter provided in pertinent part:

This letter is to inform you of my decision to retire from the Magistrate Court Judge position . . . I have truly enjoyed serving the county and the state, but I shall not make any attempt to run for public office again. While it is a tough decision, I know it's time to retire from public life. I will inform the WV Supreme Court through this letter of my decision, and make 2-28-14 my last duty day.

Respondent then took a leave of absence, which covered the period between February 10 and February 28, 2014.

At the time Respondent tendered his resignation, he was fully aware of the ongoing judicial ethics investigation and the possibility that he could face a formal statement of charges.<sup>1</sup> During the investigation four circumstances of grave concern were uncovered. Two of them involved sexual harassment allegations, one was a complaint about an extrajudicial activity that interfered with his official duties as magistrate, and the fourth one was the matter

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<sup>1</sup> Respondent replied to allegations contained in the complaint by letter dated September 22, 2013. A JIC Investigator also interviewed him on three subsequent occasions.

involving R.R.<sup>2</sup> that is set forth in detail below.

Based upon the severity of the allegations and the previous public admonishment of Respondent on June 15, 2012,<sup>3</sup> the JIC concluded that the investigation supported a Formal Statement of Charges on all four of the misconduct charges. However, Respondent has now resigned and has openly acknowledged that he will never again seek public office. Therefore, for reasons of judicial economy and the knowledge that the public is protected because Respondent is no longer in office, the JIC believes that the appropriate action is to issue this admonishment<sup>4</sup> in connection with the R.R. matter and to dismiss the remaining allegations. However this dismissal is without prejudice and the JIC reserves the right to reopen them

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<sup>2</sup> Consistent with the State Supreme Court's practice in cases involving sensitive matters, the JIC will use initials rather than full names.

<sup>3</sup> The JIC publicly admonished Respondent for violating Canons 1A, 2A, 2B, 3A, 3B(1) and (2), 3E(1)(a) and 4D(3) of the Code of Judicial Conduct for: (1) dating the wife/victim of a defendant who had appeared before him on wanton endangerment, stalking and domestic assault charges while the defendant was still on probation following the resolution of the criminal case; (2) engaging in concurrent employment without prior approval of the Administrative Director of the State Supreme Court; and (3) lying to a JIC Investigator. Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure states that an admonishment shall not issue if Respondent has been disciplined in the last three years or in the past five years if the misconduct is of the same nature as that for which he has previously been sanctioned.

<sup>4</sup> See *Terminal Freight Handling Co. v. Solien for and on Behalf of N. L. R. B.*, 444 F.2d 699 (8<sup>th</sup> 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 (7<sup>th</sup> Cir.), *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")

should Respondent renege on his decision never again to seek public office at any time and in any State.

#### **THE R.R. MATTER:**

R.R. knew the Respondent for over five years. She met him when she was working at a local restaurant. According to R.R., Respondent would frequent the restaurant "a few times every couple of weeks" and she would personally prepare his order whenever she was working. R.R. said Respondent and she began communicating with one another several years ago via text messaging. She called Respondent "flirtatious."

R.R. and/or her boyfriend have been the subject of several matters in the Magistrate Court of Mercer County, and Respondent presided over some of their cases. On or about April 8, 2012, the boyfriend was charged with three misdemeanor counts of domestic battery, three misdemeanor counts of assault on an officer, and three misdemeanor counts of obstructing in Mercer County Magistrate Court. R.R. was the alleged victim of one of the domestic battery charges. Respondent handled the boyfriend's initial arraignment and set bond at \$5,000.00. R.R. told Respondent that she could not afford to post the bond for her boyfriend. At one point during the arraignment she said Respondent took her to his office and Respondent suggested that she agree to "let [her boyfriend] sit in jail for ten days." She did not agree. She also said that at some point during the conversation, Respondent "patted her on the buttocks." The boyfriend confirmed to a JIC Investigator that R.R. and Respondent

went back to Respondent's office. He said that when they came out, Respondent "grabbed her [buttocks] right in front of me." Both R.R. and the boyfriend said that Magistrate Fowler then reduced the bond to \$1,000.00 surety with a 10% cash option and ripped up the old bond paperwork. R.R. went to her boyfriend's parents and obtained the \$100.00, came back to the Courthouse and posted the bond. The boyfriend was then permitted to leave with R.R.

On or about June 18, 2012, R.R. filed a domestic violence petition against her boyfriend in Mercer County Magistrate Court. Respondent granted the petition. On July 12, 2012, R.R. filed another domestic violence petition against her boyfriend but another magistrate granted the petition.

On April 23, 2013, in connection with R.R.'s obstructing conviction and sentence, a probation violation hearing was set before another Magistrate. When R.R. did not appear for hearing, a capias was issued for her arrest. On May 3, 2013, R.R. appeared for hearing on her most recent charge of domestic assault. At that time, her attorney made a motion to dismiss "the bench warrant. . . , continue the prior Court Orders allowing dismissal upon completion of DHHR services." Respondent granted the motion and also dismissed R.R.'s most recent domestic assault charge. Magistrate Clerk Donna Arnold told the JIC Investigator that it is unusual for one Magistrate to handle a probation revocation for another magistrate. APA McGinnis said he usually, but not always, initials the Motion to Dismiss if he agrees with it. There were no initials on the Motion, and the Court paperwork did not reflect whether the prosecutor objected. APA McGinnis did not recall any specifics about R.R.'s case.

From August 13 through August 17, 2013, Respondent and R.R. communicated by Facebook and sent multiple messages to one another and, while they will not be set forth in this Admonishment, the texts were clearly sexually suggestive.

In his September 22, 2013, written reply to the Complaint, Respondent called the Facebook messaging "totally absurd." Respondent stated that R.R. and he "had acted crazy on Facebook **privately** a few times joking and making fun of each other." On September 24, 2013, Respondent told the JIC Investigator that he did not really expect any sexual favors from R.R. Respondent stated, "Do I say crazy things to girls? Yeah I do."

### **CONCLUSIONS**

The Commission by a vote of \_\_\_\_\_ found that probable cause does exist in the R.R. matter and that Magistrate Richard D. Fowler, Magistrate for Mercer County, violated Canons 1A, 2A, 2B, 3A, 3B(1), 3B(2), 3B(5), 3B(7), 3B(8), 3E(1)(a), and 4A 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. In the performance of these duties, the following standards apply.

B. Adjudicative responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(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 other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding. . . .

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding; . . .

**Canon 4. A judge shall so conduct the judge's extra-judicial activities 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.


As set forth above, 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. Not only did Respondent's conduct not exemplify the values, lofty principles and demeanor required of a judge, it was shameful, reprehensible and contemptible. Respondent exploited his position and attempted to use his judicial office to create inappropriate intimacy with R.R. and others. Not only was his conduct offensive and an embarrassment to the robe, it was threatening to women who encountered the Respondent in his judicial position. Respondent's behavior demonstrates that he lacks the requisite dignity and character to be a judge. Respondent's use of his position as a means to satisfy his personal desires was more than foolhardy and humiliating; it was a blatant abuse of power. It also called into question his integrity, impartiality, and independence and undermined his judgment in his handling of the cases involving R.R and her boyfriend.



Based upon the foregoing, it is the decision of the Judicial Investigation Commission that former Magistrate Richard D. Fowler be disciplined. Accordingly, the Judicial Investigation Commission hereby publicly admonishes former Magistrate Richard D. Fowler for his conduct as fully set forth in the matter asserted herein and warns him that if he attempts to run for public office again the Commission will reopen the remaining allegations that were dismissed without prejudice for further consideration.

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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 a formal charge with the Clerk of the Supreme Court of Appeals of West Virginia.

  
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Ronald E. Wilson, Chairperson  
Judicial Investigation Commission

3-14-14  
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Date

REW/tat