

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF,
THE HONORABLE SUSAN A. HONAKER,
MAGISTRATE OF MERCER COUNTY**

COMPLAINT NO. 72-2023

**PUBLIC ADMONISHMENT OF THE HONORABLE SUSAN A. HONAKER
MAGISTRATE OF MERCER COUNTY**

The matter is before the Judicial Investigation Commission (“JIC”) upon a complaint filed by Judicial Disciplinary Counsel setting forth certain allegations against the Honorable Susan A. Honaker, Magistrate of Mercer County (“Respondent”). An investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure (“RJDP”). After a review of the complaint, the Judge’s written response and sworn statement, the information and documents obtained from the investigation and the pertinent Rules contained in the Code of Judicial Conduct, the JIC found probable cause that Magistrate Honaker violated Rules 1.1, 1.2, 1.3, 2.1, 3.1(A), (B), (C) and (D), 3.11(B)(1) and (2) and (C)(4), 3.12 and 3.15(A)(1) of the Code of Judicial Conduct at a recent meeting and ordered that she be publicly admonished pursuant to RJDP 1.11 and 2.7(c) as set forth in the following statement of facts and conclusions found by the Commission.

STATEMENT OF FACTS

Respondent was appointed Magistrate of Mercer County and took office on February 1, 2011. She has run in every election for Magistrate and won since 2012. At all times relevant to the investigation, Respondent was serving as Magistrate.

Beginning in 2018, Respondent began engaging in outside employment by selling jewelry she purchased from an online company. The jewelry company advertised on its website “Work from Home,” “Be your own boss” and “Flexible hours.” Respondent worked on straight commission. Respondent would purchase each piece from the jewelry company for under \$4.00. She would then turn around and sell each one for \$5.00. She received 35% to 45% commission on every piece sold.

Respondent never obtained prior approval for selling jewelry as required from the Administrative Director.¹ Indeed, § 11.4² of the 1990 Judicial Personnel System Manual, which Respondent received and read,³ stated:

All judicial-branch personnel are prohibited from engaging in outside employment that might be construed as compromising or interfering with performance in a judicial-branch position. . . . Before any judicial branch employee may engage in outside employment for which there is remuneration, he must submit a written request to the Administrative Director for review and approval. Requests by personnel in the circuits must be accompanied by a recommendation, either favorable or unfavorable from the supervising circuit judge. The Administrative Director or his designee must determine, with guidance from the Supreme Court or Chief Justice as appropriate, whether such employment entails a conflict of interest, an impropriety or the appearance of impropriety.

In 2018, Respondent began doing live jewelry sales on her Facebook website. Those live sales continued until early 2023. Respondent also frequently sold non-jewelry items through online Facebook Posts such as clothing, shoes, food, wreaths, purses, primitive décor, household items and Valentine’s Day gifts. Some of the items belonged to Respondent while others were sold by her on behalf of a third party.

At the top of her Facebook page, which at the time of the filing of the ethics complaint was easily accessible to any member of the public,⁴ Respondent promptly listed that she was a “Mercer County Magistrate at WV Supreme Court of Appeals” and a “Magistrate at Mercer County Courthouse. Respondent’s Facebook profile photo consisted of her sitting at her desk at the Courthouse with the

¹ In 2018, Respondent twice unsuccessfully asked the Administrative Director in writing for permission to work part-time as a secretary and as a manager for a trailer park.

² The provision was also contained in § 11.3 of the 2016 version of the personnel manual. Section 2.5 of the current Judicial Employee Handbook states:

To avoid compromising or interfering with performance in a judicial branch position, all employees are prohibited from engaging in any outside employment without express authorization from the Administrative Director, as set forth in the Court’s Outside Employment and Financial Disclosures Policy. Before an employee may engage in compensated outside employment, the employee must submit a written request to the Administrative Director.

³ By form dated January 18, 2011, Respondent acknowledged receipt of and that she had read the personnel manual.

⁴ Indeed, JDC was able to download all photos, videos and posts described herein from her website even though no member of staff was ever Respondent’s Facebook friend.

W. Va. Code distinctly visible behind her. On her about page under work Respondent again listed “Mercer County Courthouse Magistrate” and “WV Supreme Court of Appeals Mercer County Magistrate.” Beside the latter is a photo of the Supreme Court courtroom. The Facebook page also included approximately 21 other photos of Respondent at the courthouse, being sworn into office on at least two separate occasions and campaigning for office. A scroll through Respondent’s Facebook page contained approximately 21 live sale videos from 2022, 35 live sale videos from 2021, 19 live sale videos from 2020, and 18 live sale videos from 2018-2019 for a total of approximately 93 live sale videos in five years. During her July 26, 2023, sworn statement, Respondent also admitted to at least two live-jewelry sales on her Facebook page in 2023 even though no copy of them remains.

In addition, Respondent made 71 separate posts/photos relating to jewelry sales between 2018 and 2022 on her Facebook page. She also admitted to making a few posts in 2023. There are also approximately 143 separate posts/photos pertaining to sales of non-jewelry items between 2017 and 2022, and again she admitted to making similar posts in 2023. More recently, Respondent sold a pair of size 7, red and black Nike tennis shoes for a male relative for \$20.00 because they were too small for the individual. She placed a photo of the shoes for sale on her Facebook page. The background for the shoes, which could easily be seen in the photo, was her Magistrate office.

Respondent also admitted during her sworn statement that she occasionally sold jewelry at the courthouse. On one occasion in 2019 or 2020, Respondent brought jewelry to the courthouse. She set up the items on a counsel table in a magistrate courtroom during lunch and sold her wares to employees there. She has also been known to take jewelry to different offices in the courthouse to sell to employees. In her July 11, 2023 response, Respondent replied:

[I] only asked the girls here at work maybe 3 times in all the years, and it was only the 5 secretaries I seen daily. [W]e never talk about jewelry or me trying to sell jewelry to them all the time. It was a few pieces a couple of times in 5 years, which now I see I shouldn’t have done. . . .

In her May 23, 2023 response, Respondent acknowledged that on occasion while at work as a Magistrate she accessed the jewelry company website using a court computer. Respondent stated:

Several times, not anytime recent though when I would not have any court and would be in my office to wait on arraignments, DVPS, PSOS, warrants or any other court related issues to come in I have went to [the company's site] on my computer just to look at what new jewelry that [they] had, however as soon as my assistant would call and say for example, can you do an arraignment, DVP, PSO or whatever, I immediately said sure and closed out the website.

Respondent also admitted from time to time meeting people in the courthouse parking lot to give them their purchases.

Respondent received pay in person by cash, via Facebook Messenger, by Cash App or by PayPal. Respondent linked her court email address to the PayPal account. She also shared the account with a relative although only her court email address is listed on the account. When anyone paid Respondent on PayPal they could readily see her court email address. From February 2021 through February 2023, there were approximately 135 PayPal Transactions totaling \$3,401.59. Respondent acknowledged that approximately two-thirds of those transactions belonged to her.

Each year judges are supposed to submit a Judicial Financial Disclosure Statement. The form requires them to provide extrajudicial compensation that they have received throughout the year. In 2020, Respondent stated that she received no such income on the form she provided to the Court. Respondent failed to provide forms for 2021 or 2022. Each year, judges are also required to fill out a Financial Disclosure Statement with the West Virginia Ethics Commission in which they are required to list "all sources of income over \$1,000 including employment during the past calendar year." For 2022 and 2021, Respondent only disclosed her income from her Magistrate position. She failed to disclose any income derived from her jewelry sales or that she worked on commission for a specific jewelry company.

Respondent also had inappropriate memes on her Facebook page. On May 20, 2022, Respondent posted a photo of a woman wearing a bikini and ankle monitor. She was at a gas station

filling her car with gas. The caption read: “Summers Close Enough. Time to Strut Those Bikinis and Ankle Monitors.” The post generated 24 likes, four comments and one share. On November 3, 2021, Respondent shared a post from the group, “I Support Law Enforcement Officers.” The post asked, “Would you help an officer in distress?” and said, “Share if you would.” It also contained a photo of a law enforcement officer sitting on the ground behind a police vehicle. Above the post, Respondent wrote, “Absolutely!!!!” Concerning the first meme, Respondent stated, “I was doing [them] as a joke or a funny post I had shared from someone else. Regarding both memes, Respondent said, “I do see now that was of poor judgement and I do sincerely apologize for that.”

CONCLUSIONS

The Commission unanimously⁵ found that probable cause exists in the matters set forth above to find that the Honorable Susan A. Honaker, Magistrate of Mercer County, violated Rules 1.1, 1.2, 1.3, 2.1, 3.1(A), (B), (C) and (D), 3.11(B)(1) and (2) and (C)(4), 3.12 and 3.15(A)(1) 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.

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.

⁵ The vote was 7-0. The Honorable Michael D. Flanigan, Magistrate of Mercer County, recused himself. Vice-Chair Layton Cottrill was absent.

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; . . .

3.11 – Financial, Business or Remunerative Activities

- (B) A judge shall not serve as an . . . employee of any business entity except that a judge may manage or participate in:
 - (1) a business closely held by the judge or members of the judge's family; or
 - (2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.
- (C) A judge shall not engage in financial activities permitted under Paragraphs (A) or (B) if they will:
 - (4) result in violation of other provisions of this Code.

3.12 – Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity or impartiality.

3.15. – Reporting Requirements

- (A) A judge shall publicly report the amount or value or:
 - (1) Compensation received for extrajudicial activities as permitted by Rule 3.12;

The Commission further found that formal discipline was not essential as Respondent had no prior disciplinary actions. Nonetheless, the Commission found that the violations coupled with the previous warning 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.

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 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

Comments [4], [5] and [6] to Rule 3.1 provide:

[4} 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 . . . sex, gender . . . age . . . or socioeconomic status.

- [5] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive.
- [6] The same Rules of the Code of Judicial Conduct that govern a judicial officer's ability to socialize and communicate in person, on paper, or over the telephone also apply to the Internet and social networking sites like Facebook.

Comment [1] to Rule 3.11 states that "it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising" and that "it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties." Comment to Rule 3.12 notes that "[c]ompensation derived from extrajudicial activities may be subject to public reporting.

Respondent violated the Code of Judicial Conduct by failing to (1) seek prior approval from the Administrative Director to sell jewelry on commission; (2) fully separate her judicial duties from her extrajudicial activity of selling jewelry/non-jewelry items; and (3) properly report the income derived from such sales. We also find that Respondent violated the Code by placing inappropriate memes on her Facebook page that created the appearance, however wrong it may be, that she was pro law enforcement and anti-defendant in criminal cases.

Ordinarily, the Commission could bring formal charges against Respondent. However, given that Respondent has no prior discipline, fully cooperated in the investigation, admitted her wrongdoing, expressed genuine remorse, and agreed to never again intermingle her Magistrate position with any sales, the Commission has unanimously voted to admonish her.


The Commission is not saying that a judicial officer can never sell anything of value to a third party. What we wish to make clear is that the judicial officer must seek prior approval if he/she is selling on commission for a company and that he/she must not intermingle his/her judicial office in any fashion with the sale. For example, the judicial officer should not list himself/herself as a judge on the same site in which the item is sold, must refrain from conducting any such business at the

courthouse or on his/her court-issued computer or phone, or link his/her court email address to a PayPal or other account for which payment is accepted.


By engaging in such conduct, Respondent violated Rules 1.1, 1.2, 1.3, 2.1, 3.1(A), (B), (C) and (D), 3.11(B)(1) and (2) and (C)(4), 3.12 and 3.15(A)(1) of the Code of Judicial Conduct and is admonished for the same.

Therefore, it is the decision of the Judicial Investigation Commission that the Honorable Susan A. Honaker, Magistrate of Mercer County, be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes Magistrate Honaker for her 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



Date

ADM/tat