

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF
THE HONORABLE DANNE J. VANCE,
MAGISTRATE OF CABELL COUNTY**

COMPLAINT NO. 170-2023

**PUBLIC ADMONISHMENT OF THE HONORABLE DANNE J. VANCE,
MAGISTRATE OF CABELL COUNTY**

The matter is before the Judicial Investigation Commission (“JIC”) upon a complaint filed by Sparkle Wade (“Complainant”) against the Honorable Danne J. Vance, Magistrate of Cabell 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, the information and documents obtained from the investigation and the pertinent Rules contained in the Code of Judicial Conduct, the JIC unanimously found probable cause that Respondent violated Rules 1.1, 1.2, 2.2, 2.5(A) and 2.6(A) of the Code of Judicial Conduct at a recent meeting and ordered that he 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 first elected to the bench in November 2012 and took office on January 1, 2013. He has served continuously as a magistrate since that time. At all times relevant to the investigation, Respondent was serving as Magistrate of Cabell County. Respondent has not been the subject of any prior judicial discipline. Prior to becoming Magistrate, Respondent served for a long time as a law enforcement officer with the Barboursville Police Department.

In late September or early October 2023, a wrongful occupation/eviction proceeding was filed against Complainant in Cabell County Magistrate Court. On or about October 2023, Complainant filed a 12 page answer and counterclaim. At the top of page 2 in bold print she clearly requested a “trial by jury.” Respondent was assigned to preside over the case.

A hearing was held on October 16, 2023 at which time Complainant reiterated her desire for a jury trial. Respondent denied the request. At the conclusion of the hearing, Respondent ruled in favor of the property owner and required Complainant to vacate the property no later than November 3, 2023.

On November 27, 2023, Complainant filed a judicial ethics complaint against Respondent. The chief allegation was that Respondent failed to afford Complainant a jury trial despite her timely request for one. Concerning the October 16, 2023 hearing Complainant stated:

[W]e [stated] that we were there to get a future date set for a jury trial in which my counterclaim would be heard, to which Magistrate Vance stated that there was not going to be a jury trial. Magistrate Vance was asked several times throughout the hearing as to why he was not allowing a jury trial. Magistrate Vance's first response . . . was that . . . the Court did not have enough time to get the jurors together. It was stated to Magistrate Vance that by law that is not an excusable reason to not allow a citizen their right to a trial by jury. Magistrate Vance was asked a second time why he was not allowing a jury trial, to which [he] then stated that it was because [Complainant] had not [answered] in proper time to be given a jury trial. After minutes of conversation had passed Magistrate Vance responded, "I don't even see where it says that you wanted a jury trial. . . ." I replied, "The request for a jury trial is in my Answer." Magistrate Vance then picked up my Answer and said, "These 12 pages? Its too many papers, I'm not reading that." It was quite clear at this point that Magistrate Danne J. Vance was not going to abide by the Rules of West Virginia Civil Procedure or the Oath of Justices and Judges. Toward the end of the hearing, Magistrate Vance was asked a final time as to why he was not allowing a jury trial in which my counterclaim could be heard and Magistrate Vance replied, "because I'm just not."

The matter was presented to the JIC at its February 9, 2024 meeting at which time it voted to request a response from the Respondent. By letter dated February 12, 2024, Respondent was asked to reply to the allegations contained in the complaint. In an undated letter, Respondent simply stated:

I errored the dates by looking at dates October 3, 2023, and request for Jury Trial, and October 10, 2023, request for Jury Trial. I realized I should have checked further into dates individually. This was my mistake and it will not happen again.¹

Interestingly, Respondent did not deny any of the statements attributed to him in the ethics complaint.

¹ Rule 4(b)(4) of the Rules of Civil Procedure for Magistrate Courts states that "In cases of unlawful entry and detainer and wrongful occupation of residential rental property [the answer shall be filed] within 5 [business] days after service of the summons and complaint. Complainant was served on or about October 3, 2023, and her answer was due on or before October 11, 2023 given there was a weekend and a holiday which could not be counted in the computation. Thus, she timely filed her answer and request for a jury trial on October 10, 2023.

CONCLUSIONS

The Commission unanimously² found that probable cause exists in the matters set forth above to find that The Honorable Danne J. Vance, Magistrate of Cabell County, violated Rules 1.1, 1.2, 2.2, 2.5(A) and 2.6(A) 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.

2.2 – Impartiality and Fairness

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

2.5 – Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties, competently and diligently.

2.6 – Ensuring the Right to be Heard

(A) 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.

The Commission further found that formal discipline was not essential as Respondent had no prior disciplinary actions. Nonetheless, 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

² The vote was 8-0 with the Honorable Patricia A. Keller, Judge of the 6th Family Court Circuit recusing herself.

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 [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 2.2 states that “[t]o ensure impartiality and fairness to all parties; a judge must be objective and open-minded.” Comment [2] states 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 2.5 notes that “[c]ompetence 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.” Comment [1] to Rule 2.6 provides that “[t]he right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected **only if procedures protecting the right to be heard are observed**” (emphasis added).

Respondent violated the Code of Judicial Conduct by not affording a jury trial to Complainant. Rule 6A of the Rules of Civil Procedure for Magistrate Court governs jury trials and states:

- (a) *Right to elect.* -- A party to a civil action in magistrate court has the right to elect that the matter be tried by a jury when the amount in controversy exceeds twenty dollars or involves possession to real estate. . . .

- (b) *Assertion of the right.* – The election must be made in writing by the party asserting the right any time after the commencement of the action but not later than . . . (2) 5 days after service of the summons and complaint in cases involving expedited proceedings such as actions for unlawful entry and detainer and wrongful occupation. When the right to a jury trial is asserted in a case involving an expedited proceeding, the trial shall be scheduled as soon as a jury panel can be assembled.

Complainant timely asked for a jury trial and should have received one as a matter of right. All Respondent had to do was check the Answer and he would have seen the written request on page 2. He then could have reset the date for jurors to come in and hear the matter. Respondent was too indolent to do so even though it would have only taken a matter of minutes. As a result, Complainant lost her right to a jury trial. Respondent is warned, as Novelist Earl Derr Biggers once said, that “a careless shepherd makes an excellent dinner for wolves.” Respondent is reminded that he must remain vigilant in protecting the rights of litigants who appear before him. Continued failure to do so in the future may result in more severe discipline.

Ordinarily, the Commission could bring formal charges against Respondent. However, given that Respondent has no prior discipline, the Commission has unanimously voted to admonish him. By engaging in such conduct, Respondent violated Rules 1.1, 1.2, 2.2, 2.5(A) and 2.6(A) 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 Danne J. Vance, Magistrate of Cabell County, be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes Respondent 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

April 19, 2024
Date

ADM/tat