

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF,
THE HONORABLE ROBERT M. MONTGOMERY,
JUDGE OF THE 11TH FAMILY COURT CIRCUIT**

COMPLAINT NO. 219-2024

**PUBLIC ADMONISHMENT OF THE HONORABLE ROBERT M.
MONTGOMERY, JUDGE OF THE 11TH FAMILY COURT CIRCUIT**

The matter is before the Judicial Investigation Commission (“JIC”) upon a complaint filed by David Sanford on November 19, 2024, setting forth certain allegations against the Honorable Robert M. Montgomery, Judge of the 11th Family Court Circuit (“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 found probable cause that Respondent violated Rules 1.1, 1.2, 2.1, 2.5(A), and 2.7 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)¹ as set forth in the following statement of facts and conclusions found by the Commission.

STATEMENT OF FACTS

Judge Montgomery was a Kanawha County Family Law Master from July 17, 2000, until December 2001. He has continuously served as a Family Court Judge in the 11th Family Court Circuit since August 2002. He was last elected to the seat in May 2024, and began his latest eight-year term on January 1, 2025. At all times relevant to the allegations giving rise to the instant complaint, Respondent was serving in his capacity as a Family Court Judge.

¹ The Rule provides that an admonishment shall not be administered if the respondent has been disciplined in the last three years or the misconduct has been of the same nature as misconduct for which the respondent has been disciplined in the last five years. Respondent was last admonished over eleven years ago for similar misconduct.

On October 1, 2013, Respondent was public admonished by the Commission for violations of Canons 1A, 2A, 3A, 3(B)(8) and 3(C)(1) of the former Code of Judicial Conduct in Complaint Nos. 46-2013 and 55-2013. In both cases, the Commission found that Respondent failed to timely prepare orders. In the 2013 admonishment, the Commission stated that Respondent's conduct "reflect[s] a disturbing trend of deferment and unreasonable delay on the part of Judge Montgomery that must stop" and for a time it did. However, this most recent complaint clearly demonstrates a return to dilatory behavior.

A final divorce hearing was held in Complaint's case on May 9, 2023. According to Complainant, Respondent indicated that the Order would be prepared within two weeks of the hearing. Complainant's attorney contacted the Court on several subsequent occasions inquiring as to the status of the final order. Each time, the attorney was advised that the order was forthcoming in the near future. A telephone conference was originally scheduled for November 13, 2023, but was continued to January 22, 2024, and then February 26, 2024. At that hearing, the Court indicated that the recorder had malfunctioned and that there was no recording of the final hearing. Complainant's attorney filed proposed findings and conclusions in July 2024, but the other side failed to file them. On or about February 6, 2025, or 21 months after the final hearing, almost one year after the telephone conference and seven months after the proposed findings and conclusions were filed, Respondent entered the final order in the case.

By letter dated February 28, 2025, Respondent replied to the allegations contained in the complaint. Respondent stated:

The second paragraph indicates that the Complainant's attorney made frequent requests to the status of the final order and I kept extending the completion date. I know I never talked to either attorney myself directly and due to the passage of time do not know what they were told by my staff. But it is painfully obvious that there was not a decision made in the original time frame that I acknowledge was most likely given, therefore, I cannot refute that if counsel stated that is what he was told

by my staff, he is correct.

As to the delay of the entry of the Order, Respondent said that “there are some reasons for a short delay . . . but there is no excuse for the delay that occurred.” Respondent also opined:

I acknowledge that I have gotten behind. This job is very rewarding but is also relentless when you get behind because the filings continue and if I get behind then it can feel overwhelming. As we do not have law clerks or court reporters then when you have to go back you have no transcripts to scan through but you have to listen to complete hours of hearings. I have been doing this job as a family court judge since 2002 and I know that the key is not to get behind. That is the crux of the issue of this case. I am sure at one point I told myself there was no recording, and only notes and one proposed order I could see, then I would work on another case without this issue and eventually this case was lost in the shuffle causing even more delay. This is completely unfair to the litigants. The bottom line is that even if no one ever sent a proposed order, I should have completed one on my own. I apologize to [the litigants] and to all who had to work on this complaint due to my actions.

CONCLUSIONS

By a vote of 9-0, the Commission found that probable cause exists in the matters set forth above to find that the Honorable Robert M. Montgomery, Judge of the 11th Family Court Circuit, violated Rules 1.1, 1.2, 2.1, 2.5(A) and 2.7 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 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.

Rule 2.7 – Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.

The Commission further found that formal discipline was not essential given that Respondent admitted his misdeeds and agreed to refrain from any such conduct in the future. 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 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.

The Comments to Rule 2.5 are also instructive:

- [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 of delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays and unnecessary costs.

Comment [1] to Rule 2.7 states:

Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial or unpopular issues.

The Commission is not unsympathetic to the heavy caseload borne by Family Court Judges.

The fact remains that individuals who run for the position or seek the appointment thereto knew or should have known prior to taking office what the job entails. Respondent's service in the job for for approximately 23 years only drives the point home. He must keep current on all cases and do orders in a timely manner. As Respondent stated, the key is not to get behind and that edict must be applied to every case or justice delayed is justice denied.

Ordinarily, the Commission could bring formal charges against Respondent. Nonetheless, given that Respondent admitted his misconduct, exhibited the appropriate remorse and promised not to engage in any future negligent behavior, the Commission has voted to admonish him. By engaging in such conduct, Respondent violated Rules 1.1, 1.2, 2.1, , 2.5(A) and 2.7 of the Code of Judicial Conduct and is admonished for the same. Respondent is further warned that any future conduct will not be tolerated and will result in formal charges.

Therefore, it is the decision of the Judicial Investigation Commission that the Honorable Robert M. Montgomery, Judge of the 11th Family Court Circuit, 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 9, 2025
Date

ADM/tat