

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF
THE HONORABLE JOSEPH E. ROXBY,
MAGISTRATE OF OHIO COUNTY**

COMPLAINT NO. 180-2024

**PUBLIC ADMONISHMENT OF THE HONORABLE JOSEPH E. ROXBY
MAGISTRATE OF OHIO COUNTY**

The matter is before the Judicial Investigation Commission (“JIC”) upon a complaint filed by Wheeling Police Chief Shawn Schwertfeger setting forth certain allegations against the Honorable Joseph E. Roxby, Magistrate of Ohio 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 found probable cause that Respondent violated Rules 1.1, 1.2, 2.5(A) and 2.8(B) 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 has continuously served as a magistrate in Ohio County since January 1, 2009. He opted not to run in the May 2024 election and will retire on December 31, 2024. Respondent has not been the subject of any prior discipline. At all times during the facts giving rise to the instant complaint, Respondent was serving in his capacity as a magistrate.

On or about May 4, 2024, a defendant was arrested by the Wheeling Police Department (“WPD”) and charged with numerous violent felonies including 3rd offense domestic battery, strangulation, burglary and assault during the commission of a felony. According to an assistant prosecutor, if convicted of any one of the offenses, the defendant “faces a potential sentencing of

life” based upon his prior record which consist of 11 felony and 33 misdemeanor convictions. Respondent conducted the defendant’s initial arraignment. Bond was set at \$10,000.00 cash, and one of the provisions was that the defendant have no contact with the alleged victim. Unable to post bond, the defendant was transported to the regional jail where he has remained incarcerated to this day.

At some point, the defendant began attempting to contact the alleged victim by making multiple calls to her telephone number using the jail phone. The alleged victim consulted with the assistant prosecutor, through a law enforcement officer, who advised her to obtain a domestic violence protective order (“DVPO”) in order to possibly charge the defendant with something if he persisted in his calls. According to the assistant prosecutor, the defendant could not be charged with a bond violation as he had never been admitted to bond and was under no obligation to refrain from contacting the alleged victim from jail.

The next day the alleged victim, a relative and a WPD domestic violence advocate appeared in Magistrate Court before Respondent in an effort to obtain an emergency protective order. After the three explained their purpose for being there, Respondent raised his voice and said that the request was a waste of the Court’s time and that a DVP is just a piece of paper that in the long run is not going to matter. Respondent also stated that the WPD needed to do its job and file new charges or do something else instead of caring about getting its [arrest] numbers up. Respondent then told the alleged victim that it was fine if she wanted to come down and waste the Court’s time by attending the hearing, that he will grant the petition but that it was pointless. He also repeatedly asked the victim why she was in the room and why she was there. Respondent’s actions caused the victim to cry because she felt like he was personally attacking her. According to the victim advocate, Respondent apologized to the alleged victim, told her he was not yelling

at her but instead was yelling at WPD. The advocate then explained her role to Respondent and said if he had any problems he needed to contact the assistant prosecutor or the police officers involved in the matter. The advocate said that Respondent then “whipped his chair around causing [the alleged victim] to flinch” and “stormed out of the room continuing to yell in his office about how our department is simply worried about numbers and just loves to waste the Court’s time.” The alleged victim was very upset and made comments “about why this is one of the reasons women do not report” domestic violence. Despite his comments, Respondent did grant the DVP. It should be noted that at some point after the DVP the jail blocked the defendant from calling the alleged victim although that was not done at the request of the Respondent.

On September 12, 2024, Complainant filed a judicial ethics complaint against Respondent. By letter dated September 13, 2024, Judicial Disciplinary Counsel requested that Respondent reply to the allegations contained in the complaint. Respondent replied by letter dated September 26, 2024. Importantly, Respondent did not deny the allegations contained in the complaint. Instead Respondent stated:

I believe that this Judicial Complaint is a direct result of two things: First my belief that the legal system needs to do much more for victims of domestic violence than what is currently offered. Second, my observation of many missed opportunities such as the current situation, to provide meaningful protection of victims of domestic violence and to avoid the infliction of additional trauma by going the extra mile and utilizing common sense problem solving skills. . . . [T]his entire situation could had been avoided had the victim’s advocate, the [WPD} and/or the Ohio County Prosecutor’s office called the Northern Regional Jail and instituted a block on the victim’s phone number instead of putting the victim through a second Domestic Violence Protective Order hearing and perhaps false hope as to the efficacy of the same. . . . I am more than willing to enter an emergency [DVPO] ANYTIME the facts and the law support the entry of one, but the entry of such an order, particularly in this situation would not do what the victim really wanted done – stopping the phone calls of the accused. A quick assessment of the situation easily revealed that while entry of an emergency [DVPO] would include a no-contact provision, the penalty for violation of the order would be incarceration, which is meaningless since the defendant is already incarcerated. . . . The entry of a [DVPO] would not physically prevent additional phone calls to her. It was apparent that the victim

advocate was embarrassed when I explained this situation to the victim. It is also apparent that both the [WPD} and the Ohio County Prosecutor's Office were embarrassed when they missed an opportunity to easily and practically provide the victim with the result she was seeking. I do acknowledge that the victim was upset when she was explained the reality of the situation. I recognized this, quickly apologized and explained to her that "I was frustrated for her not at her."

CONCLUSIONS

By a vote of 7-0,¹ the Commission found that probable cause exists in the matters set forth above to find that the Honorable Joseph E. Roxby, Magistrate of Ohio County, violated Rules 1.1, 1.2, 2.5(A), and 2.8(B) 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 2.5 – Competence, Diligence and Cooperation

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

Rule 2.8 – Decorum, Demeanor and Communication with Jurors

- (B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials and other with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials and others subject to the judge's direction and control.

The Commission further found that formal discipline was not essential given that Respondent admitted his misdeeds. Nonetheless, the Commission found that the violations were serious enough to warrant a public admonishment.

¹ Two members were absent from the meeting.

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.

Comment [1] to Rule 2.5 provides 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 2.8 states that “[t]he duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5. . . .”

Instead of attempting to avoid additional trauma to the alleged victim, Respondent clearly caused her significant pain. Respondent had two options – to grant or deny the alleged victim’s

DVP. He does not need to become frustrated with the situation and lecture her about his perceived failings of the system. As we all should know, raising your voice to someone only feels good while you're doing it. As soon as they're gone, all the discerning individual wants to do is take it all back. Respondent had absolutely no business engaging in such conduct. By doing so, he clearly violated the Code of Judicial Conduct and is admonished for the same.

Ordinarily, the Commission could bring formal charges against Respondent. However, given that Respondent has no prior discipline and is retiring at the end of the year, the Commission has voted to admonish him. By engaging in such conduct, Respondent violated Rules 1.1, 1.2, 2.5(a) and 2.8(B) 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 Joseph E. Roxby, Magistrate of Ohio 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

December 11, 2024
Date