

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on January 30, 2020, the following order was made and entered:

IN THE MATTER OF: ROGER D. CLEM, JR.  
Former Magistrate of Lewis County

No. 19-0587

**ORDER**

On December 10, 2019, the Judicial Hearing Board, by its Chair, the Honorable Darrell Pratt, presented to the Court its recommended decision recommending that the parties' agreement and recommended sanctions, as set forth therein, be adopted. Neither consent nor objection have been filed by Judicial Disciplinary Counsel or the respondent.

Upon consideration, the Court is of the opinion to and does hereby concur with and accept the recommended sanctions of the Judicial Hearing Board pursuant to Rule 4.12 of the Rules of Judicial Disciplinary Procedure. It is therefore ORDERED that:

- (1) The respondent, Roger D. Clem, Jr., shall be, and he hereby is, publicly censured for violating Rules 1.1, 1.2, 1.3(A) and (C), and 3.11(C)(1), (3) and(4) of the Code of Judicial Conduct;
- (2) It is acknowledged that respondent has resigned from his position as magistrate;
- (3) The respondent shall be, and he hereby is, permanently enjoined from ever again seeking public office, by appointment or election, in the State of West Virginia; and
- (4) The respondent is fined in the total amount of One Thousand Dollars (\$1,000.00) for the foregoing violations of the Code of Judicial Conduct.

It is ordered that final disposition of this matter has been entered, and this matter is therefore dismissed from the docket of this Court.

Service of an attested copy of this order upon all parties shall constitute sufficient notice of the contents herein.

A True Copy

Attest: /s/ Edythe Nash Gaiser  
Clerk of Court





**BEFORE THE JUDICIAL HEARING BOARD OF WEST VIRGINIA**

**IN THE MATTER OF:  
THE HONORABLE ROGER D. CLEM, JR.,  
MAGISTRATE OF LEWIS COUNTY**

**SUPREME COURT No. 19-0439  
JIC COMPLAINT No. 61-2019**

**RECOMMENDED DECISION**

This matter came on for hearing on December 10, 2019, before the Honorable Russell M. Clawges, Jr., sitting as Hearing Examiner by designation for the Judicial Hearing Board.

At the hearing, the parties presented an Agreement and Exhibits in support of the Agreement, and the parties presented whatever evidence and/or argument they desired in support of the Agreement.

Thereafter, the Board conducted a telephonic meeting and upon consideration of the Agreement; the Exhibits in support of the Agreement; the other evidence and argument of counsel; and the Code of Judicial Conduct and Rules of Judicial Disciplinary Procedure, as well as the decisions by the Supreme Court of Appeals interpreting the Code and the Rules, the Board adopts the Agreement as its Findings of Fact and Conclusions of Law as follows:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The parties in this matter entered into an Agreement, the terms of which are as follows:
2. The terms of the Agreement were as follows:
  - a. At all times during the matters asserted herein, Roger D. Clem, Jr., (hereinafter "Respondent") was a duly elected magistrate of Lewis County. Respondent became a magistrate on or about January 1, 2013, and served continuously until he was suspended without pay by Order of the Supreme Court of Appeals of West Virginia entered on May 8, 2019, and his subsequent resignation effective October 25, 2019.
  - b. On May 8, 2019, the Administrative Director of the Courts, pursuant to the provisions of Rule 2.14 of the Rules of Judicial Disciplinary Procedure, filed a complaint against Respondent alleging that he had been charged by



criminal complaint with serious criminal offenses and, concomitantly, has engaged in serious violations of the Code of Judicial Conduct.

- c. In his complaint, the Administrative Director asserted:

This complaint is an extraordinary complaint filed pursuant to Rule 2.14 of the Rules of Judicial Disciplinary Procedure. On May 7, 2019, Magistrate Clem was indicted by a federal grand jury in the United States District Court for the Northern District of West Virginia on felony charges. Pursuant to Rule 2.14(a)(2), Magistrate Clem has been indicted or otherwise charged with serious offenses which may constitute grave violations of Rules 1.1, 1.2, 1.3, 2.2, 2.3(A), 2.4(B) and 2.13 of the Code of Judicial Conduct.

- d. The federal criminal case was styled *United States v. Clem and Skinner*, United States District Court for the Northern District of West Virginia Criminal Case No. 2:19 cr 19-TSK. Respondent was indicted on one count of conspiracy to commit mail fraud and wire fraud in violation of 18 U.S.C. §§ 1341, 1343 and 1349, two counts of wire fraud in violation of 18 U.S.C. §§ 1342 and 1343, two counts of mail fraud in violation of 18 U.S.C. §§ 1341 and 1342, and one count of obstruction of justice in violation of 18 U.S.C. 1512(c)(2).

- e. The federal indictment contained a narrative of facts which alleged the following: The wife of former Gilmer County Magistrate Alton L. Skinner II, ("Magistrate Skinner") is the owner/operator of E-Z Out Bail Bonding Company "E-Z Out." Former Magistrate Skinner's son is an authorized bonding agent for the company. Respondent and Magistrate Skinner engaged in a conspiracy to benefit E-Z Out and at the detriment of the remaining bail bonding companies in the area.

- f. The indictment further alleged that Respondent would take official actions favorable to E-Z Out including, but not limited, to setting an unnecessary surety bond. He would make fraudulent comments to detainees appearing before him and friends and family of detainees appearing before him that were favorable to E-Z Out to the exclusion of other authorized bonding companies working in the area. He would conceal from detainees appearing



before him and their friends and family certain material facts, including, but not limited to, the existence of other authorized bonding companies in addition to E-Z Out. Respondent would fail to disclose material facts, which he was under a legal, professional, and contractual duty to disclose, to detainees appearing before him, to their friends and family and to the other authorized bonding companies, including, but not limited to, his relationship with Magistrate Skinner.

- g. The indictment also alleged that Respondent would place a telephone call to former Magistrate Skinner to arrange the bond of a detainee without presenting a list of authorized bonding companies and that he would place a telephone call to Magistrate Skinner to arrange for agents of E-Z Out to be present at the arraignment of a detainee without being so requested by the detainee or a representative of the detainee and without presenting a list of authorized bonding companies to the detainee. Magistrate Skinner allegedly ensured that the underwriting of E-Z Out was maintained through Lexington National via use of the mail and interstate and foreign wire transmissions and ensured the collection of the bonding fees, including the collection of funds retrieved via interstate and foreign wire transmission. Lastly, the indictment alleged that Respondent attempted to impede a grand jury investigation.
- h. On May 8, 2019, the report of Judicial Disciplinary Counsel was filed with the Chief Justice of the Supreme Court of Appeals pursuant to Rule 2.14(b) of the Rules of Judicial Disciplinary Procedure.
- i. Later that same day, an Order was entered by the Supreme Court which stated, among other things, that “[R]espondent has been indicted and charged with a serious offense and has engaged or is currently engaging in serious violation of the Code of Judicial Conduct.”
- j. Pursuant to Rule 2.14(d)(1) of the Rules of Judicial Disciplinary Procedure, the Supreme Court directed that Respondent be suspended without pay and



be prohibited from hearing any further civil or criminal matter or performing any other judicial function during the pendency of the case.

- k. The Order remanded the matter back to the Judicial Investigation Commission for the filing of formal charges.
- l. Based upon the foregoing, on June 21, 2019, the Commission by a vote of 8-0 found that there was probable cause to believe that violations of the Code of Judicial Conduct have occurred and that formal discipline is appropriate. Specifically Respondent was charged with violations of Rules 1.1, 1.2, 1.3, 2.2, 2.3(A), 2.4(B) and 2.13(A) of the Code of Judicial Conduct.
- m. On October 15, 2019, the U.S. Attorney's Office entered into a non-prosecution agreement with former Magistrate Clem which, in part, calls for him to cooperate with the above captioned JIC case and admit to the following provisions and violations of the Code of Judicial Conduct as set forth in Paragraph No. 15 below.
- n. By Order entered October 22, 2019, the Honorable Thomas S. Kleeh, United States District Judge for the Northern District of West Virginia granted the U.S. Attorney's unopposed Motion to Dismiss the federal indictment against former Magistrate Clem without prejudice noting that "[t]he Government has elected to dismiss the Indictment as to both Defendants pursuant to non-prosecution agreements as is within its discretion."
- o. Former Magistrate Clem and Judicial Disciplinary Counsel understand, acknowledge and agree to the following terms and conditions with respect to the above-captioned matter:
  - i. "[A]greements made in open court by the parties in the trial of a case and acted upon are binding and a judgment founded thereon will not be reversed;" Syllabus pt. 3, *In the Matter of Starcher*, 202 W. Va. 55, 501 S.E.2d 772 (1998);
  - ii. The burden of proof in judicial disciplinary cases is clear and convincing evidence. *Id.*;



iii. Former Magistrate Clem agrees that the JIC has clear and convincing evidence to support the following facts:

1. From in or about March 2017 to in or about March 2018, former Gilmer County Magistrate Alton L. Skinner, II was significantly involved in the operation of E-Z Out bail bonding company in Lewis County, West Virginia. During this period, Respondent was a Lewis County magistrate who admitted multiple defendants to the bail of E-Z Out.
2. From in or about March 2017 to in or about March 2018, Respondent used his cell phone approximately two-hundred (200) times to call E-Z Out, usually calling Mr. Skinner's cell phone. The vast majority of these telephone calls were in close proximity to arraignments conducted by Respondent and related to bonding. Following these phone calls, Mr. Skinner would ensure that an E-Z Out bonding agent appeared at the Lewis County courthouse to post the bonds.
3. Between March 2017 and March 2018, on multiple occasions, Respondent willfully failed to present a list of authorized bail bonding companies to a detainee who appeared before him, and instead called Mr. Skinner directly to ensure that E-Z Out would be the bail bonding company to post the bond.



- iv. As a result of the admissions set forth in Paragraph Nos. (2)(o)(iii)(1)-(3) above, the Respondent will not contest that he violated Rules 1.1, 1.2, 1.3, 2.4(B) and 2.13(A) of the Code of Judicial Conduct.
- v. Respondent will and has resigned his position as Magistrate of Lewis County, having provided a copy of his resignation letter to Judicial Disciplinary Counsel.
- vi. Respondent agrees never again to seek public office by election or appointment in West Virginia.
- vii. Judicial Disciplinary Counsel and Respondent agree to jointly recommend to the Judicial Hearing Board and the Supreme Court of Appeals of West Virginia that Respondent be censured in the above-captioned matter for violating Rules 1.1, 1.2, 1.3, 2.4(B), and 2.13(A) of the Code of Judicial Conduct and that Respondent be fined a total of \$1,000.00.
- viii. Both parties understand, acknowledge, and agree that the decision to accept the recommendation of a censure, a fine, and costs rests solely within the purview of the Judicial Hearing Board and the Supreme Court of Appeals of West Virginia. The parties understand, acknowledge, and agree that the Judicial Hearing Board and the Supreme Court of Appeals of West Virginia have the authority to recommend or give either a more or less severe sanction or sanctions outlined in Rule 4.12 of the West Virginia Rules of Judicial Disciplinary Procedure.
- ix. Respondent understands, acknowledges and agrees that if at a future time he seeks public office by election or appointment, this action would void this agreement and Judicial Disciplinary Counsel would be able to take such further action on the matter as it deems appropriate.



p. All parties also agreed to do everything necessary to ensure that the terms of their Agreement take effect.

3. Finding them to be well-supported by the law and the evidence, the Board adopts the findings of fact and conclusions of law set forth in the parties' Agreement, including the conclusion that the Respondent violated Rules 1.1, 1.2, 1.3, 2.4(B) and 2.13(A) of the Code of Judicial Conduct.

#### RECOMMENDED DISCIPLINE

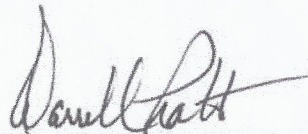
1. R. Jud. Disc. P. 3.11 provides, "The Board shall have the authority to . . . conduct hearings on formal complaints filed by the Judicial Investigation Commission and make recommendations to the Supreme Court of Appeals regarding does disposition of those complaints . . ."

2. R. Jud. Disc. P. 4.12 lists the permissible sanctions when the Board determines there has been a violation of the Code of Judicial Conduct.

3. Based upon the law and evidence presented, the Board recommends as follows:

- a. That Respondent's resignation of his position as Magistrate of Lewis County be acknowledged;
- b. The Respondent be precluded from ever again seeking public office by election or appointment in West Virginia;
- c. The Respondent be censured in the above-captioned matter for violating Rules 1.1, 1.2, 1.3, 2.4(B), and 2.13(A) of the Code of Judicial Conduct; and
- d. The Respondent be fined a total of \$1,000.00.

The preceding Recommended Decision having been unanimously considered and approved by the Judicial Hearing Board, it is entered on the 10<sup>th</sup> day of December 2019, by its Chairperson as follows:



Hon. Darrell Pratt, Judge  
Chairperson, Judicial Hearing Board