

**BEFORE THE WEST VIRGINIA ETHICS COMMISSION**

**IN RE:**

**KEN MERRITT**

**COMPLAINT NO. CIC 2008-02**

**CONCILIATION AGREEMENT**

The West Virginia Ethics Commission and Ken Merritt freely and voluntarily enter into the following Conciliation Agreement pursuant to West Virginia Code § 6B-2-4(s) to resolve all potential charges arising from the above-referenced complaint.

**FINDINGS OF FACT**

The following facts are hereby stipulated and agreed upon by the West Virginia Ethics Commission and Ken Merritt, and are taken as true and correct:

1. Ken Merritt (Respondent) was the elected Sheriff of Wood County at all times relevant herein.
2. In April 2006, Sheriff Merritt's son, Brian Merritt, without Sheriff Merritt's knowledge, took Sheriff Merritt's County issued BP credit card and used it to make unauthorized charges.
3. In May 2006, Robin Jenkins, a family friend, informed Sheriff Merritt that Brian Merritt had taken Respondent's County issued BP credit card and was using it for his own personal use. Respondent asserts that he does not recall this conversation.

  
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4. Upon learning that his son had taken the card and was using it, Sheriff Merritt did not immediately take action to notify the appropriate County officials that: the credit card had been stolen; that County funds may have already been used to pay for unauthorized charges; or they should examine future bills carefully to avoid the County paying for his son's unauthorized charges. Respondent asserts that he took timely action to address this matter including cancelling relevant cards.

5. At some point, Brian Merritt also took his father's County issued Exxon and Chevron credit cards and used the Exxon card, without Sheriff Merritt's knowledge.

6. On or about June 16, 2006 the Sheriff's secretary, Teresa Wade, brought to the attention of the Chief Deputy Tom Smith some unusual charges on the Department's Exxon credit card statement. On the morning of June 16, 2006, Chief Deputy Smith instructed Sergeant Brent Gandee to look into this matter.

7. On June 16, 2006, Respondent instructed Chief Deputy Smith not to investigate because Respondent suspected his son's girlfriend had taken the card. He stated that he did not want to prosecute her because she was the mother of his grandchild and it would prevent him from seeing his grandchild and that since it was his county card that was lost, the Respondent would pay all unauthorized charges.

8. Brian Merritt made unauthorized purchases in excess of \$1,000.

9. At some point on or after June 16, 2006, Sheriff Merritt made payments to the credit card companies in question for the unauthorized charges, and reimbursed the County for payments made from County funds for his son's unauthorized charges. The County did not incur any fees or costs associated with Respondent's son's use of the

  
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credit cards.

10. Following an investigation, on May 20, 2009 the Probable Cause Review Board found probable cause to believe that Respondent violated the Ethics Act. Probable cause means that the reliable evidence which the Review Board considered shows that it is more likely than not that Respondent violated the Ethics Act. It is not a final determination that Respondent has, in fact, violated the Ethics Act.

11. The prosecution of this complaint has been delayed for years due to the Respondent having to address ongoing medical issues.

#### RELEVANT LEGAL PROVISIONS

West Virginia Code § 6B-2-5(b) provides, in relevant part, that a public official may not knowingly and intentionally use his office or the prestige his office his own private gain or that of another person.

#### CONCILIATION OF VIOLATION

I, Ken Merritt, former Wood County Sheriff, based upon my current knowledge and understanding of the West Virginia Governmental Ethics Act, freely and voluntarily acknowledge that under the circumstances hereinabove set forth, I may have violated W. Va. Code § 6B-2-5(b). It was never my intention to violate the Ethics Act, but I acknowledge that my judgment was clouded as a result of the family relationship, and that intent for proving a violation of the Ethics Act, may not be relevant.

Due to all of the foregoing circumstances, I believe that it is in my best interest,

  
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my family's best interest, and the public's best interest to resolve this matter without further proceedings.

I understand that in order for this Conciliation Agreement to be finalized, the Commission must approve it and must further make a determination concerning which, if any, sanctions to impose.

In consideration for the settlement of this matter, I agree to the Commission's imposition of the following sanctions:

1. Public reprimand;
2. Reimburse the Ethics Commission \$2,000 for the cost of its investigation; and
3. Fine not to exceed \$1,500.

Further, by signing this agreement, it is understood and agreed that I am not admitting that I engaged in any criminal conduct concerning the use of the subject credit cards issued to the Wood County Sheriff's Department. The parties agree that the Ethics Commission has not and will not make a criminal referral regarding the allegations in the instant complaint.

In the event the Commission enters an Order imposing any sanctions other than those specifically set forth above, then this Conciliation Agreement is null and void and the case shall proceed to a public hearing on the merits.

I understand that pursuant to W. Va. Code § 6B-2-4(s), the Conciliation Agreement and Order must be made available to the public.

  
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Date: 7/2/12

  
R. Kemp Morton, III, Chairperson  
W. Va. Ethics Commission

Date: 7-9-12

  
Ken Merritt, Respondent

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BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

KEN MERRITT

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COMMISSION'S ORDER

After considering the foregoing FINDINGS OF FACT, RELEVANT LEGAL PROVISIONS and CONCILIATION OF VIOLATION, the West Virginia Ethics Commission finds that the Conciliation Agreement is in the best interest of the State and the Respondent, as required by West Virginia Code § 6B-2-4(r). In accordance with West Virginia Code § 6B-2-4(r), the Commission imposes the following sanctions:

- (1) The West Virginia Ethics Commission hereby **Orders** that the former Wood County Sheriff, Ken Merritt, should be and hereby is **publicly reprimanded**;
- (2) The West Virginia Ethics Commission hereby **Orders** Respondent Ken Merritt to pay **\$3,5000** for his actions, as follows:
  - a. Reimburse the West Virginia Ethics Commission **\$2,000** for the costs incurred to investigate this complaint; and
  - b. Pay a fine of **\$1,500** to the West Virginia Ethics Commission;
  - c. These monetary sanctions are to be paid as follows: \$500 within thirty days of the entrance of this Order, and \$3,000 in twelve equal monthly installments of \$250, payable to the West Virginia Ethics Commission; and,

- (3) If Ken Merritt defaults on any payment ordered herein, he shall be responsible for all costs of the Ethics Commission's enforcement of this Order, including, without limitation, costs and attorney fees.

Date 8/2/12

  
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Jonathan E. Turak, Acting Chairperson  
W. Va. Ethics Commission