

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

**COMPLAINT NOs. VCRB 2017-084
VCRB 2018-065**

**SONYA DINGESS PORTER,
Sheriff, Logan County**

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and Sonya Dingess Porter freely and voluntarily enter into the following Conciliation Agreement pursuant to W. Va. Code § 6B-2-4(t) to resolve all potential charges arising from allegations in the above-referenced Complaint.

Findings of Fact

1. Sonya Dingess Porter ("Respondent") is the Sheriff of Logan County, West Virginia, and has served in that position since January 1, 2013.
2. At all times pertinent herein, Respondent was a "public official" as defined in the Ethics Act at W. Va. Code § 6B-1-3(k).
3. The Ethics Commission has jurisdiction over alleged violations of the Ethics Act committed by public officials such as the Respondent. W. Va. Code § 6B-1-1 through § 6B-3-11.
4. Iva Adams is the daughter of the Respondent and is currently employed by the Sheriff's Department as a Deputy Sheriff. Iva Adams is not financially dependent upon the Respondent.
5. Iva Adams began her employment with the Sheriff's Department in September 2008 when she was hired by the County as a part-time Records Clerk who

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was assigned to the Sheriff's Department. At the time of her hiring, the Respondent was a Deputy Sheriff and the Sheriff was W. E. Hunter.

6. When the Respondent became the Sheriff in January 2013, Iva Adams continued her employment as a Records Clerk and, in February 2016, upon graduating from college, became full-time. The Respondent's Chief Deputy, Michael Mayes, was responsible for supervising her.

7. On October 1, 2016, Iva Adams became the County's Victim Services Coordinator. She was assigned to work in the Sheriff's Department but also provided services to other public agencies, including the West Virginia State Police and the cities of Chapmanville, Logan and Man. Chief Deputy Mayes continued to supervise her except for a period when he was out on medical leave.

8. In 2017, Iva Adams applied to become a Deputy Sheriff. The civil service requirements for hiring deputy sheriffs are set forth in the West Virginia Code. See W. Va. Code §§ 7-14-1 through 7-14-21 (establishing civil service system for deputy sheriffs) and in the Regulations of the Deputy Sheriff's Civil Service Commission of Logan County, West Virginia ("Regulations").

9. In May 2017, pursuant to the hiring process set forth in the Code and Regulations, the Respondent notified the Logan County Deputy Sheriff's Civil Service Commission (hereinafter "Civil Service Commission") that she may be hiring a new deputy and requested that the Civil Service Commission administer a civil service examination for the position(s).

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10. On June 30, 2017, the Civil Service Commission posted the required notice at the Logan County Courthouse advising the public that there would be a test for deputy sheriffs' positions on August 3, 2017. The Civil Service Commission also advertised the test date and location in the July 11, 2017, and July 18, 2017, editions of The Logan Banner newspaper.

11. The Civil Service Commission administered the test on August 3, 2017. The West Virginia Division of Personnel then scored and reported the test results. The Civil Service Commission posted the test results at the Courthouse on August 30, 2017. The Sheriff was not involved in administering or scoring the written examination.

12. On September 23, 2017, pursuant to the Code and Regulations, the Logan County Sheriff's Department conducted a strength and agility test. Chief Deputy Michael Mayes was responsible for administering the test to the applicants and determining who passed or failed. The Respondent was not responsible for determining which applicants passed or failed but was present for part of the strength and agility test.

13. Pursuant to the hiring process, applicants who passed the physical agility testing underwent a polygraph test and background check, and the Civil Service Commission created a Master Hiring List. The Respondent was not involved in conducting the polygraph test and background check or creating the Master Hiring List.

14. On December 15, 2017, in accordance with the West Virginia Code, the Respondent sent a letter to the President of the Civil Service Commission requesting the names of the top three eligible candidates from which the Sheriff could select a new Deputy.

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15. The Civil Service Commission certified the names of three persons from the Master Hiring List and the Sheriff's Department Interview Board proceeded to conduct interviews of those persons. The Interview Board members were Respondent Porter, Chief Deputy Michael Mayes, Lt. M.C. Sutherland, Sgt. Matthew B. Carter and Sgt. Nicholas M. Booth.

16. The Respondent continued to request the names of eligible applicants per Code and Regulations, and the Interview Board continued to interview applicants, until the Interview Board unanimously selected, subject to County Commission approval, three persons to serve as Deputy Sheriffs. The persons selected by the Interview Board were Johnny Morrison, Alexander Brooks, Iva Adams and Gage Harvey, but Brooks withdrew his name from consideration. The Respondent participated in interviewing her daughter and the other applicants.

17. At its February 5, 2018, regular meeting, the County Commission considered the Respondent's requests to hire Morrison, Adams and Harvey. The Respondent was present at the meeting and made the hiring requests. The County Commission unanimously voted to approve the employment of all three candidates.

18. The West Virginia Code does not require the Sheriff to appear before the County Commission to make deputy sheriff hiring recommendations, but the Respondent, like her predecessors, historically has done so.

19. According to the County Commission's February 5, 2018, meeting minutes, the effective date of Iva Adams' employment as a Deputy Sheriff was February 1, 2018. She resigned her Victims Coordinator Services position prior to becoming a Deputy SDP rdp

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Sheriff. As a Deputy Sheriff, she is still under the direct supervision of Chief Deputy Mayes.

Relevant Legal Provisions

W. Va. Code § 6B-2-5(b) which states, in relevant part:

Use of office for private gain – (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

W. Va. Code § 6B-2-5(b)(4) states:

A public official or public employee may not show favoritism or grant patronage in the employment or working conditions of his or her relative or a person with whom he or she resides: *Provided*, That as used in this subdivision, "employment or working conditions" shall only apply to government employment: *Provided, however*, That government employment includes only those governmental entities specified in subsection (a) of this section.

W. Va. Code R. § 158-6-3 (2017)

3.1. As used in this section, the term "nepotism" means favoritism shown or patronage granted in employment or working conditions by a public official or public employee to relatives or persons with whom the public official or public employee resides.

3.2. The Ethics Act prohibits public officials and public employees from knowingly and intentionally using their office or the prestige of their office for their own private gain or the private gain of another person. Nepotism is one form of the use of office for private gain because if public officials or employees use their positions to give an unfair advantage to relatives or persons with whom the public official or employee resides, the primary benefit to such action is to the public official or employee or another person rather than to the public.

3.3. "Relative" means spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law or daughter-in-law.

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3.4. A public official or employee may not influence or attempt to influence the employment or working conditions of his or her relative or a person with whom he or she resides.

3.5. A public agency, including its officials and employees, must administer the employment and working conditions of a relative of a public employee or a public official or a person with whom the public official or employee resides in an impartial manner.

3.5.a. To the extent possible, a public official or public employee may not participate in decisions affecting the employment and working conditions of his or her relative or a person with whom he or she resides. If he or she is one of several people with the authority to make these decisions, others with authority shall make the decisions.

3.5.b. A public official or public employee may not directly supervise a relative or a person with whom he or she resides. This prohibition includes reviewing, auditing or evaluating work or taking part in discussions or making recommendations concerning employment, assignments, compensation, bonuses, benefits, discipline or related matters. This prohibition does not extend to matters affecting a class of five or more similarly situated employees.

3.5.c. Notwithstanding the limitations in this subsection, if a public official or public employee must participate in decisions affecting the employment, working conditions or supervision of the public official or public employee's relative or a person with whom the public official or public employee resides, then:

3.5.c.1. An independent third party shall be involved in the process. A public official or public employee may not use a subordinate for the independent third party unless it is an elected public official who may not lawfully delegate the powers of his or her office, e.g., county assessor or county clerk; and,

3.5.c.2. The public official or employee shall exercise his or her best objective judgment in making the decision, and be prepared to justify his or her decision.

3.6. A public official may not vote on matters affecting the employment or working conditions of a relative unless the relative is a member of a class of persons affected. A class shall consist of not fewer

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than five similarly situated persons. For a public official's recusal to be effective, he or she must excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests and recusing him or herself from voting on the issue.


Conciliation of Violation

I, Sonya Dingess Porter, the Respondent, admit that I violated the West Virginia Governmental Ethics Act, at W. Va. Code § 6B-2-5(b), and related Legislative Rule, W. Va. C.S.R. § 158-6-3 (2017), through my involvement in hiring my daughter Iva Adams as a Deputy Sheriff. The West Virginia Code gives an elected sheriff the authority, with the consent of the county commission, to appoint deputy sheriffs. An elected sheriff must comply with the West Virginia Code, including the civil service provisions, when appointing deputies. Nothing in the laws governing the hiring of deputies, however, required me to be present for the physical agility testing, to participate in my daughter's interview or to appear before the County Commission to ask that it approve her hiring.

To resolve this matter, I am entering into this Agreement. I understand that for this Conciliation Agreement to be finalized, that the Ethics Commission must approve it and determine which sanctions to impose.

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

1. A public reprimand;
2. A fine in the amount of \$5,000 to be paid to the Ethics Commission by June 30, 2019, and

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3. Training on the West Virginia Governmental Ethics Act, either in person or by viewing the training provided on the Ethics Commission's website, at ethics.wv.gov, before June 30, 2019. I shall provide written confirmation of the completion of this training to the Ethics Commission.

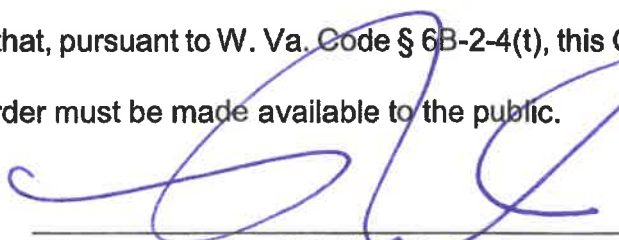
I further agree that I will continue to have the Chief Deputy supervise Iva Adams and that I will not be involved in any decisions affecting her employment or working conditions.

I understand and agree that if the Ethics Commission fails to approve this Conciliation Agreement, then this Conciliation Agreement is null and void and the Complaint against me will proceed before the Probable Cause Review Board, where it will be processed in accordance with the West Virginia Code and the Ethics Commission's Legislative Rules.

If the Ethics Commission approves the Agreement, it will enter an Order in which it approves the Agreement and sets forth the sanctions listed above.

Both parties understand that, pursuant to W. Va. Code § 6B-2-4(t), this Conciliation Agreement and Commission Order must be made available to the public.

04/04/19
Date



Lawrence J. Tweel, Acting Chairperson
West Virginia Ethics Commission

3/27/19
Date



Sonya Dingess Porter, Respondent

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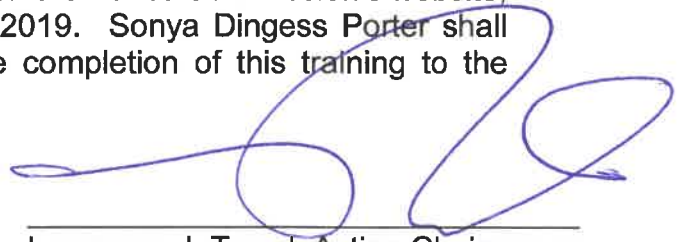
**SONYA DINGESS PORTER,
Sheriff, Logan County**

COMMISSION'S ORDER

After considering the Findings of Fact, Relevant Legal Provisions and Conciliation of Violation in the Conciliation Agreement, the West Virginia Ethics Commission finds that the Conciliation Agreement is in the best interest of the State and Sonya Dingess Porter as required by W. Va. Code § 6B-2-4(t). In accordance with W. Va. Code § 6B-2-4(s), the Commission imposes the following sanctions:

1. A public reprimand;
2. A fine in the amount of \$5,000 to be paid on or before June 30, 2019, and
3. Training on the West Virginia Governmental Ethics Act either in person or by viewing the training provided on the Ethics Commission's website, at ethics.wv.gov, before June 30, 2019. Sonya Dingess Porter shall provide written confirmation of the completion of this training to the Ethics Commission.

04/04/19
Date



Lawrence J. Tweel, Acting Chairperson
West Virginia Ethics Commission