

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

COMPLAINT NO. VCRB 2020-12

**DON DeWITT,
Chief of Police,
City of McMechen**

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and Don DeWitt 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. Don DeWitt ("Respondent" or "DeWitt") is employed by the City of McMechen as its Chief of Police.
2. At all times pertinent herein, DeWitt was a "public employee" or "public official" as defined in the Ethics Act, at W. Va. Code §§ 6B-1-3(j) and (k).
3. The Ethics Commission has jurisdiction over alleged violations of the Ethics Act committed by public employees or officials, such as DeWitt. W. Va. Code §§ 6B-1-1 through 6B-3-11.
4. On May 2, 2019, the Ethics Commission issued Advisory Opinion 2019-14, holding that a city police officer may not include pictures of himself in uniform in his campaign material because the uniform conveys the endorsement of his police agency.
5. DeWitt was a candidate for the office of Marshall County Magistrate. On January 21, 2020, DeWitt posted a campaign video of himself on his campaign Facebook page. The video shows DeWitt sitting in his City of McMechen cruiser and wearing his

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City of McMechen law enforcement uniform while he discusses his background and qualifications for the position. DeWitt filmed the video, which was only several minutes long, while on duty using his personal cellular phone.

6. DeWitt states that when he posted the video of himself in his uniform, he was unaware of the Ethics Commission's May 2019 ruling in Advisory Opinion 2019-14.

7. After receipt of the instant Complaint, DeWitt removed the video from his Facebook page.

8. The primary election was held on June 9, 2020, and DeWitt was not elected to the position.

RELEVANT LEGAL PROVISIONS

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

Use of public 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. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

W. Va. Code R. § 168-6-5.2 states:

Improper Use - Public officials and public employees may not use government property for personal projects or activities that result in private gain.

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Advisory Opinion 2019-14 states, in relevant part:

[A] city police officer may not include pictures of himself in uniform in his campaign material because it conveys the endorsement of his police agency. This would result in the type of private gain the Ethics Act is intended to prohibit.

Advisory Opinion 2020-08 states, in relevant part:

[T]he badge should be treated in the same manner as the uniform and therefore may not be included in campaign photographs. [This Opinion, however, was issued after the instant Complaint was filed and does not apply to the allegations in the Complaint as the holding is prospective only.]

CONCILIATION OF VIOLATION

I, Don DeWitt, the Respondent, admit that I violated the private gain provision in the West Virginia Governmental Ethics Act, at W. Va. Code § 6B-2-5(b), when I posted the video of myself in my law enforcement uniform on my Facebook page as part of my campaign for the office of Marshall County Magistrate. I further state that I should not have filmed the campaign video while on duty or in the City of McMechen police cruiser.

In order to resolve this matter, I am entering into this Conciliation Agreement. I understand that for this Agreement to be finalized, 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. An Order directing me to cease and desist from including pictures and videos of myself in uniform in campaign material, including on social media or website pages.
2. An Order directing me to cease and desist from using my police cruiser and City work time for campaign activities.

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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, within 30 days of entry of the Order approving the Conciliation Agreement. I shall provide written confirmation of the completion of this training to the Ethics Commission within five business days of completing the training.

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 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 West Virginia Code § 6B-2-4(t), this Conciliation Agreement and Commission Order must be made available to the public.

8/6/20
Date

Robert J. Wolfe
Robert J. Wolfe, Chairperson
West Virginia Ethics Commission

07-16-2020
Date

Don DeWitt
Don DeWitt, Respondent

DD [Signature]

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

COMPLAINT NO. VCRB 2020-12

**DON DeWITT,
Chief of Police,
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COMMISSION'S ORDER

After considering the Findings of Fact, Relevant Legal Provision 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 Don DeWitt 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. The Ethics Commission hereby **ORDERS** Respondent DeWitt to cease and desist from including pictures and videos of himself in uniform in campaign material, including on social media or website pages.
2. The Ethics Commission hereby **ORDERS** Respondent DeWitt to cease and desist from using his police cruiser and City work time for campaign activities.
3. Respondent DeWitt shall undergo 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 September 8, 2020, and he shall provide written confirmation of the completion of this training to the Ethics Commission within five business days of completing the training.

Date

8/6/20


Robert J. Wolfe, Chairperson
West Virginia Ethics Commission