

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF,
DAVID HUMMEL, JR.,
FORMER JUDGE OF THE 2ND JUDICIAL CIRCUIT**

COMPLAINT NO. 37-2022

**PUBLIC ADMONISHMENT OF DAVID HUMMEL, JR.,
FORMER JUDGE OF THE 2ND JUDICIAL CIRCUIT**

The matter is before the Judicial Investigation Commission (“JIC”) upon a complaint filed by Judicial Disciplinary Counsel (“JDC”) setting forth certain allegations against the David Hummel, Jr., former Judge of the 2nd Judicial Circuit (“Respondent”). An investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure (“RJDP”). After a review of the complaint, the Judge’s written responses and sworn statement, the information and documents obtained from the investigation, the November 23, 2022 agreement between JDC and Respondent (*see attached*), his resignation letter, and the pertinent Rules contained in the Code of Judicial Conduct, the JIC found probable cause that Respondent violated Rules 1.1, 1.2, 1.3, 2.8 (B) of the Code of Judicial Conduct at its December 2, 2022 meeting. Since Respondent has resigned his judgeship and agreed never again to seek judicial office in West Virginia by election or appointment as part of the agreement, the JIC found that formal discipline was not necessary but that Respondent be publicly admonished pursuant to RJDP 1.11 and 2.7(c) as set forth in the following statement of facts and conclusions of law.

STATEMENT OF FACTS

Respondent served as a Judge of the 2nd Judicial Circuit from January 1, 2009, through November 23, 2022. He served continuously as Judge in that position for almost 14 years. At all times relevant to the instant complaint, Respondent was serving in his capacity as a Circuit Judge.

A. In re: K.B.R. & L.R. 246 W. Va. 682, 874 S.E.2d 794 (2022).

On or about March 9, 2022, a matter involving Respondent was referred to the JIC. After a thorough review of various pleadings and transcripts, JDC opted to open a judicial ethics complaint against Respondent on March 25, 2022.

On or about December 19, 2019, DHHR filed an abuse and neglect petition alleging that the natural father of two minor daughters had sexually abused them. Respondent presided over the matter. A two-day adjudicatory hearing was held on July 28 and August 18, 2020. At that time, Respondent heard testimony from several witnesses. At least three of the witnesses testified that the daughters were consistent in their reports of the alleged abuse. The Court record also contained video-recordings of the children's interviews with the CAC. Despite this information, Respondent held *in camera* interviews with both girls. Only the guardian *ad litem*, Respondent and members of the judge's staff were present for the interviews.

Both children were reluctant witnesses. Both were easily distracted during their respective interviews. At the very beginning of her interview, the elder child indicated that she did not want to discuss the allegations. At certain times, both children hid under a table in the judge's chambers. During the interview, Respondent repeatedly accused the elder daughter, then age seven, of lying which in turn brought her to tears. Respondent concluded that the younger daughter, then age six, had implicated the mother in a "sinister" plot to falsify allegations against the father even though the judge was the first person to use the word "plan" when questioning the little girl.

On August 21, 2020, Respondent issued a final order in the matter holding that the children were not abused or neglected and dismissing the petition. In the final order, Respondent failed to make the requisite findings of fact and conclusions of law as required by W. Va. Code § 40-4-601(i). The Supreme Court remanded the matter back to Respondent by order entered March 16, 2021, with

instructions to “forthwith issue a new order containing the findings of fact and conclusions of law necessary to establish whether the children were abused and/or neglected.”

On or about April 7, 2021, Respondent issued a revised final order which held that there was no clear and convincing evidence of any abuse or neglect by the father, reinstating the parenting time ordered previously by the Family Court and dismissing the action from the active docket. The matter was again appealed to the Supreme Court. In the May 27, 2022 opinion, the State Supreme Court found that Respondent violated Rule 8(a) of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings (“WVRPCANP”), Rules 611(a)(3) and (c) of the West Virginia Rules of Evidence (“WVRE”) and established case precedent on leading witnesses in his questioning of the children. Based upon this, the Court vacated the lower court’s order dismissing the abuse and neglect petition and remanded the matter back to a different judge for further proceedings consistent with the opinion.

In so holding, the Court noted that “the manner in which the circuit court conducted the interviews of the children violated the protection from psychological harm afforded by [WVRPCANP] Rule 8.” *Id.* at ___, 874 S.E.2d at 802. The Court stated that Respondent violated WVRE 611(a)(3) by not only failing to protect the older girl from harassment but also by “perpetrat[ing]” the harassment insofar as it repeatedly accused her of lying and left her in tears.” *Id.* The Court further stated that “[e]ven assuming, arguendo, that [the elder girl’s] bursting into tears was an acceptable risk in taking the child’s testimony, we cannot conceive of any reasonable method or purpose of questioning a child which involves openly and directly accusing the child of lying.” *Id.* With respect to the younger child, the Court said Respondent erred in asking her “leading questions that cause a reviewer to question whether they were calculated to confirm a pre-existing suspicion rather than elicit truthful testimony.” *Id.* at ___, 874 S.E.2d at 803.

B. Violating Drug Court Policy Regarding Money Obtained from the Marshall, Wetzel and Tyler County Commissions.

W. Va. Code § 62-15-9(a) states that the Supreme Court of Appeals is responsible for court funding, administration and continuance or discontinuance of drug courts. The administrative director or his designee, which is the Division of Probation Services, oversees the planning, implementation and development of these courts. Adult Drug Courts can partner with non-profit organizations or local business to be a responsible party to accept donations and manage those funds for drug court. Drug Courts can also establish their own 501(c)(3) status as a non-profit and can accept donations or hold fundraisers but must set up a voluntary board and a financial officer who is not a government employee.

Respondent has served as the Adult Drug Court Judge for the 2nd Judicial Circuit from 2009 to his resignation. From 2009 through May 31, 2019, the service provider for the Adult Drug Court was the local Day Report Center. At least two of the three County Commissions in the 2nd Circuit supported the Day Report Center with annual contributions.

In 2019, Respondent sought to change the service provider from the Day Report Center to a local private mental health facility. Respondent went to the three County Commissions and asked them to either reallocate the money they were providing the Day Report Center for Drug Court to the private mental health facility or to provide new funding. Specifically, Respondent asked for \$15,000.00 from each Commission to continue funding a Case Coordinator. He also asked for an additional \$15,000.00 each to cover other Adult Drug Court expenses. The three County Commissions agreed and provided \$30,000.00 each for a total of \$90,000.00 for the endeavor.

Unbeknownst to the County Commissions, only half of the money was maintained by the mental health provider for the Case Coordinator. Respondent requested and received the remainder back from the mental health provider and had it improperly placed with a general receiver pursuant to W. Va. Code § 51-6-1 which states:

Each circuit court, and every other court of record having jurisdiction to try or hear suits in chancery or actions at law, may appoint a general receiver of the court, who shall hold his office at its pleasure, and whose duty it shall be, unless it be otherwise specially ordered, to receive, take charge or, and invest in such stock or other security as the court may order, and in the manner required by such order, all moneys paid into

court, or into bank or other place of deposit under any judgment, order or decree of such court, and standing subject to its orders; and also to pay out or dispose of the same as the court may order or decree; and to this end the general receiver shall have authority to check for, receive and give acquaintances for, all such moneys.

In *Nolan v. Guardian Cal & Oil Co.*, 119 W. Va. 545, 119 S.E. 347 (1937). the State Supreme Court stated that “[a] receiver may only be appointed in a pending case. A suit does not lie for the sole purpose of appointing a receiver, but the court must have jurisdiction of the suit on some other ground, before it can make the appointment.” From soliciting the money from the County Commissions to placing it with the general receiver, Respondent repeated the whole process again in 2020. As a result of his actions, Respondent had direct control over the money placed with the general receiver. Importantly, during this time Respondent used thousands of dollars housed with the general receiver for improper purposes.

C. Violating Respondent’s Own Administrative Order Regarding Firearms in the Courtroom.

W. Va. Code § 61-7-11a(g)(1) makes it unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law. Violators of this provision are guilty of a felony and if convicted can be sentenced to a state correctional facility for a definite term of two to ten years. Law enforcement officers acting in their official capacity and persons having an order by a court with jurisdiction over the premises are exempted from this provision. *Id.*

On or about April 4, 2013, Respondent, the Chief Judge of the 2nd Judicial Circuit, entered an order allowing all circuit court judges, family court judges, Supreme Court Justices and Senior Status Judges to “possess a firearm in and about the premises constituting Courthouses and/or Magistrate Courts throughout the 2nd Judicial Circuit. The order further directed that “[a]ll such persons shall take reasonable and necessary measures to ensure that **any firearm he or she may possess on the aforesaid**

premises is concealed such that same is not displayed” (emphasis added). Respondent made the order retroactive to his start date of January 1, 2009.¹

During a rare Saturday hearing in a civil case that occurred on March 12, 2022, Respondent removed a firearm from a place of concealment on his person and put it on the bench in open view for the remainder of the proceeding. At one point, he picked up the gun and displayed it for all to see. The act was captured on Court security video. Stories about the incident went viral in the national news subsequent to the incident.

As a result of the investigation into these matters, JDC entered into an agreement signed by Respondent’s attorney and Respondent on or about November 23, 2022, in which he agreed to immediately resign from his judgeship, to never again seek judicial office in West Virginia by election or appointment, and to accept an admonishment from the JIC for violations of the Code of Judicial Conduct as a result of his behavior outlined above.

CONCLUSIONS

The Commission unanimously² found that probable cause exists in the matters set forth above to find that David Hummel, Jr., former Judge of the 2nd Judicial Circuit, violated Rules 1.1, 1.2, 1.3 and 2.8(B) of the Code of Judicial Conduct as set forth below:

1.1 – Compliance With the Law

A judge shall comply with the law, including the West Virginia Code of Judicial Conduct.

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.

¹ In three separate 1994 Orders, the then Chief Judge exempted certain individuals from the prohibition to carry firearms into the Marshall, Wetzel and Tyler County Courthouses including judges, family law masters, magistrates, prosecutors and their investigators, and correctional officers while on duty. The order did not address concealment of the firearm.

² The vote was 7-0 with two members absent from the meeting.

1.3 – Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

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 others with whom the judge deals in an official capacity. . . .

The Commission further found that formal discipline was not essential as Respondent had agreed to immediately resign as judge and to never again seek judicial office by election or appointment. However, the Commission found that the violations were grave enough to warrant a public admonishment.

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 [4] states that

“[j]udges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.” 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 1.3 notes that “[i]t is improper for a judge to use or attempt to use his or her position to . . . gain deferential treatment of any kind.” 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 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.”

With respect to the abuse and neglect proceeding, Respondent violated Rule 1.1 of the Code of Judicial Conduct by violating WVRPCANP Rule 8, WVRE 611 and established case law with respect to the use of leading questions. Respondent knew or should have known better. He is a longtime lawyer and former assistant prosecutor. At the time of the incident, he was a seasoned veteran of the Court. He had absolutely no business calling a child of tender years a liar or suggesting to an impressionable six-year-old that she had engaged in some “sinister plan” regarding her father. By engaging in this conduct, he also violated Rules 1.2 and 2.8(b). When dealing with young children, judges should remember at all times that they are not wooden toys that can be repaired with ease. They are living beings with thoughts and feelings who are coming into a huge unknown called “Court” to talk to what a child may perceive as a scary individual called “Judge” and must be treated with charity, understanding and patience. Respondent failed to do so and is admonished for his conduct.

Concerning Drug Court, Respondent used his position as judge to obtain money from the County Commissions. He then incorrectly placed half the money with a general receiver when that

process is clearly designed for active court cases and not the funding in question. He inappropriately retained absolute control of the money and spent several thousands of dollars for improper purposes. By doing so, Respondent violated Rules 1.1, 1.2 and 1.3 of the Code of Judicial Conduct and is admonished for the same.

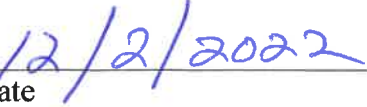
Lastly, it is incredulous for a judge to violate his own administrative order but that is what Respondent did when he pulled out a gun and showed it in the courtroom. It is no wonder to this Commission that his conduct resulted in nationwide publicity. He not only humiliated himself but he also caused great embarrassment to the court system as a whole and is admonished for his actions.

Therefore, it is the decision of the Judicial Investigation Commission that David Hummel, Jr., former Judge of the 2nd Judicial Circuit be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes former Judge Hummel 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



Date

ADM/tat

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF:
THE HONORABLE DAVID HUMMEL JR.
JUDGE OF THE 2ND JUDICIAL CIRCUIT**

JIC COMPLAINT NO. 37-2022

AGREEMENT

Judge David Hummel Jr, Judge of the 2nd Judicial Circuit, and Teresa A. Tarr and Brian J. Lanham, Judicial Disciplinary Counsel hereby enter into this Agreement consisting of the following terms:

1. On March 25, 2022, Judicial Investigation Commission (JIC) opened Complaint No. 37-2022 against Respondent.

2. JIC Counsel immediately began an investigation into the complaint. After a lengthy and thorough investigation, JIC Counsel spoke with Respondent in an effort to resolve the complaint without filing a statement of charges.

3. Judge Hummel and Judicial Disciplinary Counsel understand, acknowledge and agree to the following terms and conditions:

a. Judge Hummel agrees to resign his position as Judge of the 2nd Judicial Circuit of West Virginia by 9 a.m., November 23, 2022, effective 5 p.m., November 23, 2022;

b. Judge Hummel agrees to never again seek judicial office by election or appointment in West Virginia; and

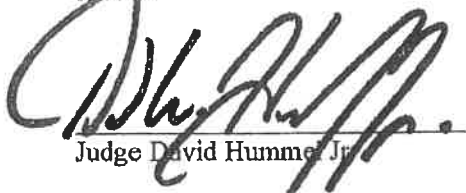
c. JIC agrees to recommend to the Judicial Investigation Commission that the Commission issue an admonishment in the above-captioned matter which will reflect that Respondent;

i. violated Rules 1.1, 1.2 and 2.8(B) of the Code of Judicial Conduct for his conduct in the questioning of children during an *in camera* hearing,


- ii. violated Rule 1.1 of the Code of Judicial Conduct for his conduct in displaying a weapon while on the bench.
 - iii. violated Rules 1.1, 1.2 and 1.3 of the Code of Judicial Conduct for his conduct in failing to follow the Supreme Court Policy regarding funds meant for the 2nd Circuit Adult Drug Court.
- d. Both parties acknowledge that the allegations above in subsection c.(iii) have not been the subject of a formal charge by the JIC and Judge Hummel has not filed a written response to the subject allegation. However, Judge Hummel has had an opportunity to explain his position in a lengthy interview.
 - e. Both parties understand, acknowledge and agree that the decision to accept or reject this agreement is solely within the purview of the Judicial Investigation Commission. The parties understand, acknowledge and agree that the Judicial Investigation Commission has the authority to reject this agreement and if it chooses to do so that Judge Hummel and Judicial Disciplinary Counsel will be returned to their original positions and that the Formal Statement of Charges shall be filed forthwith.
 - f. Judge Hummel further understands, acknowledges and agrees that any admonishment issued by the Judicial Investigation Commission is public pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure.
 - g. Judge Hummel further understands and acknowledges that if he files an objection to any admonishment issued by the Judicial Investigation Commission then the Commission shall be required to file the Formal Statement of Charges in its entirety pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure.
 - h. Judge Hummel understands, acknowledges and agrees that he is entering into this Agreement freely and voluntarily because it is in his best interest and that no other

inducements have been promised other than what is contained within the four corners of this document. All parties agree to do everything necessary to ensure that the foregoing terms of this agreement take effect.

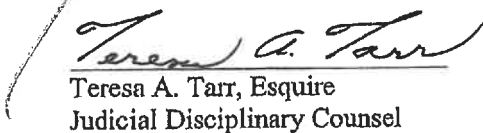
AGREED:


Judge David Hummel Jr.

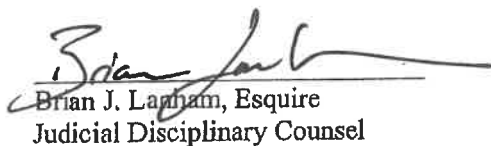
11.23.22
Date


Attorney for Judge Hummel

11-23-22
Date


Teresa A. Tarr, Esquire
Judicial Disciplinary Counsel

11/23/2022
Date


Brian J. Lapham, Esquire
Judicial Disciplinary Counsel

11-23-22
Date

Second Judicial Circuit

FROM THE CHAMBERS OF
DAVID W. HUMMEL, JR.
Judge



MARSHALL COUNTY COURTHOUSE
SEVENTH STREET
MOUNDSVILLE, WEST VIRGINIA 26041
TELEPHONE (304) 845-3505
FAX (304) 845-2522
E-MAIL davidhummel@courtswv.gov

West Virginia

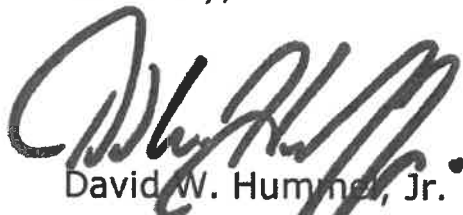
Marshall, Putnam, Tyler Counties
November 23, 2022

The Honorable James C. Justice, II
Governor of the State of West Virginia
State Capitol
1900 Kanawha Blvd. East
Charleston, WV 25305

Dear Governor,

I write to advise that as of the close of business today, I am resigning the position of Circuit Court Judge of the Second Judicial Circuit. It has been a terrific honor to serve in this role since January of 2009.

Sincerely,



David W. Hummel, Jr.
Circuit Court Judge

cc: Chief Justice John Hutchison