

**WEST VIRGINIA
JUDICIAL INVESTIGATION COMMISSION
ANNUAL REPORT - 2014**



Pursuant to Rule 1.11(3) of the Rules of Judicial Disciplinary Procedure, the West Virginia Judicial Investigation Commission respectfully submits this Annual Report for its activities during the period of January 1, 2014, through December 31, 2014.

THE COMMISSION

The Supreme Court of Appeals of West Virginia has plenary rule-making authority, and the rules it adopts have the force and effect of a statute. *See* W. Va. Const., art. VIII, §§ 3 and 8. Additionally, when a rule adopted by the Court conflicts with another statute or law, the rule supersedes the conflicting statute or law. W. Va. Const., art. VIII, § 8. The Court has “general supervisory control over all intermediate appellate courts, circuit courts and magistrate courts,” and “[t]he chief justice shall be the administrative head of all the courts.” W. Va. Const., art. VIII, § 3. The Court also has the authority to “use its inherent rule-making power” to “prescribe, adopt, promulgate, and amend rules prescribing a judicial code of ethics, and a code of regulations and standards of conduct and performances for justices, judges and magistrates, along with sanctions and penalties for any violation thereof.” W. Va. Const., art. VIII, § 8. Under this constitutional authority, the Court can:

censure or temporarily suspend any justice, judge or magistrate having the judicial power of the State, including one of its own members, for any violation of any such code of ethics, code of regulations and standards, or to retire any such justice, judge or magistrate who is eligible for retirement under the West Virginia judges’ retirement system (or any successor or substituted retirement system for justices, judges, and magistrates of this State) and who, because of advancing years and attendant physical or mental incapacity, should not, in the opinion of the Supreme Court of Appeals, continue to serve as a justice, judge or magistrate.

Id.

The Constitution also affords a justice, judge or magistrate due process before receiving any sanction or penalty:

[N]o justice, judge or magistrate shall be censured, temporarily suspended or retired under the provisions of this section unless he shall have been afforded the right to have a hearing before the Supreme Court of Appeals, nor unless he shall have received notice of the proceedings, with a statement of the cause or causes alleged for his censure, temporary suspension or retirement

Id. A justice or judge may only be removed from office by impeachment by the West Virginia Legislature, and a magistrate may only be removed from office in the manner provided by law for removal of county officers. *Id.*

By Order entered December 15, 1982, the Court created the Judicial Investigation Commission ("Commission" or "JIC") to exist as of 12:01 A.M., December 16, 1982.¹ At that time, the Court also adopted the Rules of Judicial Disciplinary Procedure. By Order entered May 25, 1993, effective July 1, 1994, the 1982 Rules and subsequent amendments were superseded by the current Rules of Judicial Disciplinary Procedure ("RJDP").

In creating the JIC, the Court recognized that "[t]he ethical conduct of judges is of the highest importance to the people of the State of West Virginia and to the legal profession. Every judge shall observe the highest standards of judicial conduct." RJDP 1. The JIC consists of nine members: three circuit judges; one magistrate; one family court judge; one retired circuit judge; and three members of the public. RJDP 1.1. The Court appoints all members, who serve staggered terms of three years. RJDP 1.2 and 1.3. Commission members who complete one full term are twice eligible for re-appointment. Any member who is appointed to fill a vacancy and who has served less than one year shall be eligible for three reappointments. RJDP 1.6. Five members of the Commission constitute a quorum. RJDP 1.8. The Commission "shall act only with the concurrence of a majority of those present and voting." *Id.*

The Commission has the authority to: (1) determine whether probable cause exists to formally charge a judge with a violation of the Code of Judicial Conduct or that a judge, because of advancing years and attendant physical or mental incapacity should not continue to serve; (2) propose rules of procedure for judicial disciplinary proceedings for promulgation by the Supreme Court of Appeals; (3) file an annual report with the Supreme Court of Appeals on the operation of the Commission; (4) inform the public about the existence and operation of the judicial disciplinary system, the filing of formal charges, and the discipline imposed or recommended on formal charges; (5) delegate, in its discretion, to the Chairperson or Vice-Chairperson, the authority to act for the Commission on administrative and procedural matters; (6) nominate, for selection by the Supreme Court of Appeals, candidates for the position of Judicial Disciplinary Counsel; and (7) engage in such other activities related to judicial discipline as it deems appropriate. RJDP 1.11.

The Commission has full-time staff consisting of Chief Counsel, Assistant Counsel, and an Executive Assistant.² RJDP 5. The Commission also contracts with four part-time Investigators. Among many and varied duties, the Chief Counsel and staff have the authority to: (1) receive complaints concerning violations of the Code of Judicial Conduct; (2) review all complaints concerning violations of the Code of Judicial Conduct; (3) investigate information concerning violations of the Code of Judicial Conduct; (4) prosecute violations of the Code of Judicial Conduct before the Judicial

¹ At that time, the Judicial Inquiry Commission, created by Rule promulgated on October 1, 1976, ceased to exist. The Chairman and the Executive Secretary of the Judicial Inquiry Commission provided all of the agency's records, files and reports on cases to the Judicial Investigation Commission.

² The position changed from Executive Secretary to Executive Assistant in December 2014.

Hearing Board and the State Supreme Court; and/or (5) promptly notify the complainant and respondent of the disposition of each matter. RJDP 5.4 Additionally, Commission counsel serves as special counsel in lawyer discipline cases whenever the Office of Lawyer Disciplinary Counsel is conflicted off a matter.³ RJDP 5.

While not a part of the work of the Commission, the Chief Counsel and staff are also charged with conducting confidential investigations and preparing reports⁴ for the Regional and State Fatality Review Teams to consider in their efforts to ensure that court processes, procedures and actions minimize the risk of harm to people involved within the system. Chief Counsel and staff have been involved in this process since the State Supreme Court first created Regional and State Fatality Review Teams by Administrative Order entered on December 7, 1994.⁵ The Chief Counsel and staff are also tasked with the responsibility of investigating sexual harassment claims within West Virginia's court system. *See* § 12.7 of the West Virginia Judicial Personnel System Manual.

The Commission held six regular meetings during 2014. Five of those meetings took place in the Judicial Investigation Commission Conference Room, 4700 MacCorkle Avenue SE, Suite 1200 A, Charleston, West Virginia, on January 17, March 14, May 16, August 1, and December 12, 2014. Another meeting was held on September 19, 2014, in Martinsburg, West Virginia, at the Berkeley County Judicial Center. Additionally, the Commission met by conference call on April 18, 2014, and November 17, 2014. Copies of all pertinent documents were distributed to the Commission approximately two weeks before each meeting so that the members could review the materials and be prepared to discuss them during each session.

Commission meetings are not open to the public. The Commission is not subject to the Open Governmental Proceedings Act contained in W. Va. Code §6-9A-1, et seq. The Commission is not a "public agency" as defined by W. Va. Code § 6-9A-2(7) since

³ Four (4) special counsel cases from ODC were carried over from 2013 to 2014. From January 1, 2014, through December 31, 2014, JIC received eleven (11) new special counsel cases from ODC for a total of fifteen (15) active special counsel cases. Eleven (11) cases were resolved before December 31, 2014. Four (4) complaints remained pending at the end of 2014 and carried over into 2015. Of the four (4) pending cases, three (3) were received on or after October 29, 2014.

⁴ From January 1, 2014, through December 31, 2014, one hundred and sixty (160) new fatality review referrals were received. Of the one hundred and sixty (160) received, thirty-five (35) were deemed not proper for investigation, while seventy-seven (77) matters were investigated by the JIC. The remaining 48 matters were pending determination whether or not to be investigated as of December 31, 2014. JIC Counsel and Investigators participated in the State Fatality Review meetings held on June 23 and 24, 2014. JIC Counsel and Investigators also participated in Region I meetings held on July 31, and December 8, 2014, the Region II meeting held on July 15, 2014, and the Region III meeting held on August 28, 2014.

⁵ The Court amended the accompanying Protocol for Fatality Review Teams by Administrative Orders entered on December 4, 1998, and May 24, 2000. By Order entered December 2, 2005, the Court broadened the scope of the investigations to include fatalities of any child involved in court proceedings. The Court again amended the Protocol by Orders entered January 2, 2013 and June 16, 2014. The last amendment limited the categories of investigation and gave the JIC the authority to decline a matter if it did not fall within one of the requisite six categories.

that “does not include courts created by article eight of the West Virginia Constitution.” The Commission is an entity created by Rule by the State Supreme Court. Additionally, Commission meetings are not “meetings” as defined by the Act since they are conducted for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or Court of Claims proceeding.” See W. Va. Code § 6-9A-2(5).

THE CODE OF JUDICIAL CONDUCT

Over the years, many professions have implemented their own codes of ethics. Professional ethics encompass the personal, organizational and communal standards of behavior expected of the various occupations. Formal standards of judicial conduct have existed for approximately 68 years in West Virginia. The first Code of Judicial Conduct was promulgated by the State Supreme Court on March 28, 1947. The current Code⁶ was adopted by Order entered October 21, 1992, effective January 1, 1993.

The Code of Judicial Conduct is made up of six Canons:

- Canon 1. A judge shall uphold the integrity and independence of the judiciary.**
- Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.**
- Canon 3. A judge shall perform the duties of judicial office impartially and diligently.**
- Canon 4. A judge shall so conduct the judge’s extra-judicial activities as to minimize the risk of conflict with judicial obligations.**
- Canon 5. A judge or judicial candidate shall refrain from inappropriate political activity.**
- Canon 6. Application of the Code of Judicial Conduct.**

⁶ On February 10, 2012, the Commission considered a request by the Court to review and consider making changes to the Code of Judicial Conduct. A subcommittee was then formed consisting of the three circuit court judges, the senior status judge, the family court judge and chief counsel. Each subcommittee member was assigned a portion of the Code to review and make proposed changes. On February 18, 2013, the subcommittee met in Morgantown and unanimously approved draft changes to the Code. The proposed changes were then circulated to the full Commission. At its May 3, 2013 meeting, the Commission unanimously adopted the proposed revisions as amended. The revisions were submitted to the Court on or about May 17, 2013. The proposed changes were then sent out for public comment. The public comment period ended in late October 2013. In December 2013, the Court sent the proposed revisions back to Chief Counsel with directions to adopt the ABA’s new Model Code format. Those additional changes were submitted on or about May 15, 2014, and are now pending before the Court.

Specific rules are set forth in Sections under each Canon, and Commentary is also provided for many of the rules. The text of the Canons and Sections is authoritative. The Commentary provides guidance with respect to the purpose and meaning of the Canons and Sections and is not intended as a statement of additional rules.

The text of the Canons and Sections sets forth the minimum conduct below which no judge or candidate for election or appointment to judicial office can fall without being subject to discipline. The text is intended "to be binding" upon judges and judicial candidates. Canon 6A of the Code of Judicial Conduct defines "judge" as "[a]nyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including but not limited to Justices of the Supreme Court of Appeals, Circuit Judges, Family [Court Judges], Magistrates, Mental Hygiene Commissioners, Juvenile Referees, Special Commissioners and Special Masters." The Commentary makes clear that the Code of Judicial Conduct "does not apply to an administrative law judge, hearing examiner or similar officer within the executive branch of government." The Code also does not apply to municipal judges.

The Preamble to the Code notes that a decision on "[w]hether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text." Factors to consider include, but are not limited to, the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the conduct on others or the judicial system.

PROCEDURE FOR HANDLING COMPLAINTS

Any person may file an ethics complaint against a judge or a candidate for judicial office with the Judicial Investigation Commission. RJDP 2. The complaint must be in writing and must be verified by the Complainant. RJDP 2.1. Any complaint "filed more than two years after the complainant knew, or in the exercise of reasonable diligence should have known, of the existence of a violation of the Code of Judicial Conduct, shall be dismissed by the Commission." RJDP 2.12.

After a complaint is received, it is referred to counsel for review. Counsel can send a matter to an investigator for investigation, ask the respondent judge for a response,⁷ or forward it directly to Commission members for study prior to consideration at the next meeting. Complaints referred directly to the Commission for consideration may be dismissed for lack of probable cause, referred to the judge for response, or sent to an investigator for investigation. Responses to complaints and

⁷ Any time a complaint is sent to a judge for a response, he/she has ten days after the date of the written notice to reply. RJDP 2.3.

results of investigations are again referred to the Commission for consideration.⁸ The Commission may then: (1) dismiss the matter for lack of probable cause; (2) determine that probable cause does exist but that formal discipline is not appropriate under the circumstances and issue a written admonishment to the respondent judge;⁹ or (3) issue a formal statement of charges when it determines that probable cause does exist and that formal discipline is appropriate. RJDP 2.7. Some complaints contain more than one allegation against a judge, and the Commission may dismiss part of a complaint and find probable cause on part of a complaint. Parties are contacted about the action of the Commission after a decision has been made on a complaint.

All information provided, documents filed or testimony given with respect to any investigation or proceeding under the Rules of Judicial Disciplinary shall be privileged in any action for defamation. RJDP 2.5. Additionally, all members of the Commission, the Judicial Committee on Assistance and Intervention, the Office of Disciplinary Counsel, and their employees, shall be absolutely immune from civil suit in the same manner as members of the judiciary in this State for any conduct in the course of their official duties. RJDP 2.5.

All proceedings of the Commission are confidential except that when a complaint has been filed or an investigation has been initiated, the Office of Disciplinary Counsel may release information confirming or denying the existence of a complaint or investigation, explaining the procedural aspects of the complaint or investigation, or defending the right of the judge to a fair hearing. Prior to the release of information confirming or denying the existence of a complaint or investigation, reasonable notice shall be provided to the judge. RJDP 2.4. All admonishments issued by the Commission "shall be available to the public." RJDP 2.7(a). "After the filing and service of formal charges, all documents filed with the Clerk of the Supreme Court of Appeals and the Judicial Hearing Board shall be available to the public." RJDP 2.7(d).

⁸ Within sixty days of receiving a report, the Commission shall file a written decision regarding whether there is probable cause to formally charge the respondent judge with a violation of the Code of Judicial Conduct or that the respondent judge, because of advancing years and attendant physical or mental incapacity should not continue to serve or whether the matter should be further investigated by the Office of Disciplinary Counsel. RJDP 2.7(a).

⁹ A respondent judge has fourteen (14) days after the receipt of a Judicial Investigation Commission admonishment to object. RJDP 2.7(c). If the respondent judge or Disciplinary Counsel timely files an objection, a formal statement of charges shall be filed with the Clerk of the Supreme Court. *Id.*

Judicial Investigation Commission: How a typical Complaint is handled.

Any person who believes a judge violated the Code of Judicial Conduct (the "Code") may file a complaint with the Judicial Investigation Commission ("JIC"). The complaint must be in writing, verified and filed within two years of discovering the violation. See Rules of Judicial Disciplinary Procedure ("RJDP") 2, 2.1 & 2.12.



The JIC's Office of Disciplinary Counsel ("Counsel") reviews the Complaint and distributes a copy to the JIC. If the Complaint alleges a violation of the Code, Counsel can send a copy to the judge and request a written response within ten days. RJDP 2.3. If warranted, an investigation will ensue in which Counsel or an investigator will interview witnesses and collect documentation. Counsel will also prepare a report for the JIC. The complaint and investigation are confidential. RJDP 2.4 & 2.6.



The judge's response to the Complaint and the confidential report, if any, will be distributed to the JIC for its consideration. During the JIC's deliberations, additional questions may arise that require further investigation. Once the JIC has the necessary information, it must decide whether there is probable cause to move forward on the complaint. RJDP 2.7(a). Commission meetings and deliberations are confidential. RJDP 2.4



If the JIC determines probable cause does not exist, it issues a brief explanatory statement in support of its decision to close the complaint. There is no right of appeal of the JIC's decision. RJDP 2.7(b).



If the JIC determines that probable cause exists, but that formal discipline is not appropriate, it issues a written admonishment to the judge. The admonishment is public. RJDP 2.7(c).



The judge has 14 days to object to the admonishment. RJDP 2.7(c).



If the JIC finds probable cause and that formal discipline is appropriate or if the judge objects to the admonishment, the JIC files a public, formal statement of charges against the judge. RJDP 2.7(c).



Within 120 days of the charge being filed, the Judicial Hearing Board ("Board") holds a public hearing. RJDP 3.11 & 4.1. Afterward, it files a written recommendation with the Supreme Court. RJDP 4.8. If a violation of the Code has been proven by clear and convincing evidence, the Board may recommend the judge be disciplined. RJDP 4.5.



The judge may object to the Board's recommendation. RJDP 4.9. If the judge objects, the Supreme Court allows the parties to file briefs and may hold oral arguments. RJDP 4.9 & 4.11.



The Supreme Court disposes of the case. Discipline may include one or more of these sanctions: admonishment; reprimand; censure; suspension without pay for up to one year; and/or a fine of up to \$5,000. RJDP 4.12.

EXTRAORDINARY PROCEEDINGS

Rule 2.14 of the Rules of Judicial Disciplinary Procedure provide that when the Administrative Director of the Courts has received information that a judge:

- (1) has been convicted of a serious offense;
- (2) has been indicted or otherwise charged with a serious offense;
- (3) has engaged or is currently engaging in a serious violation of the Code of Judicial Conduct, or;
- (4) has become unable or unwilling to perform official duties, the Administrative Director may file a complaint with Disciplinary Counsel.

RJDP 2.14(a).

Upon receipt of such complaint, Judicial Disciplinary Counsel shall conduct an immediate investigation and shall within ten days present to the Chief Justice of the Supreme Court a report indicating whether, in the opinion of Judicial Disciplinary Counsel, the integrity of the legal system has been placed into question by virtue of a judge's (1) having been convicted of a serious offense; (2) having been indicted or otherwise charged with a serious offense; (3) having engaged in or currently engaging in a serious violation of the Code of Judicial Conduct; or (4) inability or unwillingness to perform his or her official duties. RJDP 2.14(b). The Office of Disciplinary Counsel shall attempt to provide reasonable notice to the judge prior to the filing of this report. *Id.*

Upon receipt of the report, the Chief Justice shall determine whether probable cause exists. RJDP 2.14(c). A finding of probable cause shall be in lieu of a probable cause finding made by the Judicial Investigation Commission pursuant to Rule 2.7(c). *Id.* The Court may order the judge not to hear any further civil or criminal matters or perform other judicial functions while the matter is pending, with or without pay. RJDP 2.14(d). The Court may also:

- (1) direct Disciplinary Counsel to file formal charges with the Clerk of the Supreme Court; and
- (2) provide notice to the judge of a right to a hearing on the issue of temporary suspension, said hearing to be in not less than 30 days; with the judge provided notice of the hearing in not less than 20 days before the proceeding; or

(3) in the alternative, remand the complaint for proceedings pursuant to Rule 2.7(d) and Rule 4.

RJDP 2.14(c).

If a respondent judge requests a hearing on a temporary suspension, the Court will set up a briefing schedule, and the matter will be set for oral argument. After the hearing, the Court may keep the suspension in place, may modify the suspension, or may lift the suspension. Any suspension with or without pay stays in effect while the matter is pending before the Judicial Hearing Board and until the Court disposes of the formal charges. Any judge who prevails in a Rule 2.14 matter may be entitled to reinstatement with back pay plus attorney fees.

Both the details of the complaint filed by the Administrative Director of the Courts and the investigation conducted by the Office of Disciplinary Counsel under this rule shall be confidential, except that when a formal charge has been filed with the Clerk of the Supreme Court, all documents filed with the Clerk and the Judicial Hearing Board shall be made available to the public.

However, Disciplinary Counsel may release information confirming or denying the existence of a complaint or investigation, explaining the procedural aspects of the complaint or investigation, or defending the right of the judge to a fair hearing. Prior to the release of information confirming or denying the existence of a complaint or investigation, reasonable notice shall be provided to the judge.

In 2014, four (4) extraordinary complaints were filed and one (1) extraordinary complaint was carried over from 2013:

In the Matter of D. Mark Snyder, Judge of the 11th Family Court Circuit, JIC Complaint No. 160-2013 and Supreme Court No. 13-1140:

On November 5, 2013, the Administrative Director filed a complaint against Respondent alleging that he had engaged in a serious violation of the Code of Judicial Conduct. More specifically, Respondent had been charged with the misdemeanor offense of Battery on a Health Care Worker in violation of W. Va. Code § 61-2-10b(d) in Kanawha County Magistrate Court Case No. 13-M-7761. On November 13, 2013, Counsel filed a Report with the Chief Justice. By Order entered November 20, 2013, the Court held the ethics matter in abeyance pending the resolution of the underlying criminal complaint. The Court also ordered the Report of Judicial Disciplinary Counsel to remain under seal. Counsel then filed a First Supplemental Report on January 23, 2014. Respondent went to trial on the battery charge on Wednesday, August 6, 2014. Following a two-day trial, the jury returned with a verdict of not guilty during the afternoon

hours of Thursday, August 7, 2014. On August 8, 2014, Counsel filed a Second Supplemental Report with the Court. On August 22, 2014, Counsel filed a Third and final Supplemental Report with the Court. By Order entered September 17, 2014, the Court did not find probable cause to believe that Respondent has engaged or is currently engaging in a serious violation of the Code of Judicial Conduct and dismissed the matter.

In the Matter of Jamison Conrad, Mental Hygiene Commissioner for Fayette County, JIC Complaint No. 01-2014 and Supreme Court No. 14-0036: On January 3, 2014, the Administrative Director filed a complaint against Respondent alleging that he had been charged with a serious offense. Specifically, Respondent was charged with the felony offense of Accessory After the Fact to Malicious Wounding. On January 16, 2014, Judicial Disciplinary Counsel filed a report with the Court. By order entered January 23, 2014, the Court found that there was probable cause to believe that Respondent had engaged or is currently engaging in serious violations of the Code of Judicial Conduct. The Court also ordered that Respondent was suspended from serving as a Mental Hygiene Commissioner during the pendency of the proceedings. The Court then stayed the matter pending the outcome of the underlying matter. On January 23, 2014, Counsel submitted a supplemental report notifying the Court that Respondent had filed a waiver of preliminary hearing in the Magistrate Court of Kanawha County. On May 21, 2014, Counsel filed a second supplemental report notifying the Court that on May 16, 2014, a Kanawha County Grand Jury indicted Respondent on one felony count of accessory after the fact to malicious wounding and one misdemeanor count of obstructing. On or about September 26, 2014, Counsel filed a third supplemental report in which she informed the Court that the criminal charges against Respondent had been dismissed by Order entered by the Honorable Carrie Webster, Judge of the 13th Judicial Circuit. Counsel also advised the Court that the Office of Lawyer Disciplinary Counsel had transferred their companion case of I.D. No. 14-03-008 to Judicial Disciplinary Counsel. On or about December 16, 2014, Counsel filed her fourth and final supplemental report with the Court. Counsel also filed a Motion to Lift the Stay.

In the Matter of Ward Harsbarger, Magistrate of Kanawha County, JIC Complaint No. 36-2014 and Supreme Court No. 14-0306: On March 13, 2014, the Administrative Director filed a complaint against Respondent alleging that he engaged in serious violations of the Code of Judicial Conduct. More specifically, the Administrative directed alleged that on or about February 26, 2014, Respondent failed to follow appropriate procedures outlined in W. Va. Code § 48-27-304 in connection with the attempted filing of a domestic violence petition by the

former wife of the then elected Prosecuting Attorney of Kanawha County. On March 27, 2014, Disciplinary Counsel filed her report with the Chief Justice. By Order entered April 10, 2014, the Supreme Court found probable cause to believe that Respondent engaged in a serious violation of the Code of Judicial Conduct and remanded the matter back to the Judicial Investigation Commission for the filing of formal charges. On April 11, 2014, Disciplinary Counsel filed a two count formal statement of charges against Respondent. In Count I, Respondent was charged with failing to follow appropriate procedures pertaining to a domestic violence protective order in violation of Canons 1, 2A, 2B, 3A, 3B(1), 3B(2), 3B(5), 3B(7), 3B(8) and 3C(2) of the Code of Judicial Conduct. In Count II, Respondent was charged with revealing confidential information pertaining to the domestic violence protective order in violation of Canons 1A, 2A, 3A, 3B(2), 3B(9), 3B(11) and 3C(2) of the Code of Judicial Conduct. A hearing was held on May 5, 2014. By Order entered the same day, the Judicial Hearing Board found that Respondent violated Canons 2A, 3A, 3B(1), 3B(2), 3B(7), 3B(8) and 3C(2) of the Code of Judicial Conduct with respect to Count I and that he violated Canons 1A, 2A, 3A, 3B(2), 3B(9), 3B(11) and 3C(2) of the Code of Judicial Conduct with respect to Count II. The Judicial Hearing Board recommended that Respondent receive a public censure, a \$2,000.00 fine and pay the costs of the investigation. By Order entered May 27, 2014, the Supreme Court adopted the recommendations the Judicial Hearing Board.

In the Matter of Mark A. Gorby, Magistrate of Harrison County, Complaint No. 135-2014 and Supreme Court No. 14-1022: On October 10, 2014, the Administrative Director filed a complaint against Respondent alleging that he had been charged by criminal complaint with serious criminal offenses and, concomitantly, has engaged in a serious violation of Canon 2A of the Code of Judicial Conduct. More specifically, the Administrative Director alleged that Respondent had been charged with five felony counts of sexual abuse by a parent, guardian, custodian or person in a position of trust to a child in violation of W. Va. Code § 61-8D-5. On October 10, 2014, the report of Judicial Disciplinary Counsel was filed with the Court. On the same day, the Court entered an Order in which it found that "there is probable cause to believe the Respondent has engaged or is currently engaged in a serious violation of the Code of Judicial Conduct. The Court also suspended the Respondent without pay. The matter was remanded back to the JIC for the filing of formal charges. On November 21, 2014, a formal statement of charges was filed with the Court. The matter is currently pending the outcome of the underlying criminal proceedings.

In the Matter of Scot A. Lawrence, Magistrate of Putnam County, Complaint No. 137-2014 and Supreme Court No. 14-1116: On October 20, 2014, the Administrative Director filed a complaint against Respondent alleging that he had engaged in a serious violation of Canon 2A of the Code of Judicial Conduct. On October 28, 2014, Judicial Disciplinary Counsel filed her report with the Chief Justice. By Order entered October 30, 2014, the Court by a vote of 4 to 1 did not find probable cause to believe that Respondent has engaged or is currently engaging in a serious violation of the Code. The Court remanded the matter back to the JIC for further investigation and, if warranted, the filing of formal charges. The Court prohibited Respondent from presiding over domestic violence cases until such time as any proceedings before the JIC and the Court are fully concluded. The matter is currently pending.

ADVISORY OPINIONS

A judge or the Administrative Director of the Courts may, by written request to the Commission, seek an advisory opinion as to whether certain specific actions may constitute a violation of the Code of Judicial Conduct. The Commission may render a reply in writing as it may deem appropriate. An advisory opinion is not binding upon the Judicial Hearing Board or the Supreme Court, but shall be admissible in any subsequent disciplinary proceeding involving the judge who made the request. RJDP 2.13.

During 2014, the Commission issued twenty-three (23) advisory opinions based upon written requests from judicial officers or the Administrative Director:

- **JIC Advisory Opinion 2014-01:** Recognizing the breadth of the term “member of the judge’s family,” a judge could honor the request of a recently deceased mentor and close friend that the judge serve as the personal representative of the deceased friend’s estate given that no one else was available to perform the task.
- **JIC Advisory Opinion 2014-02:** A judge who becomes aware of a possible conflict of interest on the part of an attorney appearing before him in a divorce case should raise the conflict facts with both parties to confirm his understanding of them and then give each side an opportunity to take appropriate action.
- **JIC Advisory Opinion 2014-03:** A Family Court Judge could publish a book, and receive compensation for it, as long as the source of such monetary payments does not give the appearance of influencing the

judge's performance of judicial duties or give the appearance of impropriety and as long as the judge reports the compensation that is received as required by law.

- **JIC Advisory Opinion 2014-04:** Once a person who is a finalist for an appointment to fill a Circuit Court Judge vacancy declares his or her candidacy to run for the open position, he/she is then permitted to campaign and to establish a committee which can solicit funding and support for the election.
- **JIC Advisory Opinion 2014-05:** A judge cannot participate in a Family Refuge Center's domestic violence related "STOP Team" given the makeup of the group and the fact that the core members of the group (prosecutor's office, law enforcement) regularly appear before the judge on behalf of the state in contested cases. It would also be inappropriate for the judge to send a letter of support on behalf of the Family Refuge Center to aid in an attempt to obtain grant money.
- **JIC Advisory Opinion 2014-06:** A candidate for judicial election may have his or her campaign committee solicit publicly stated support from various police organizations but the candidate should have absolutely no involvement in the committee's attempts to solicit such endorsements or financial support.
- **JIC Advisory Opinion 2014-07:** A judge is precluded from presiding over any cases that were previously handled by his/her spouse in magistrate court.
- **JIC Advisory Opinion 2014-08:** A judge may post a bond for his sister in connection with her service as the Administratrix of the estate of their recently deceased grandmother since the action involved a member of the judge's family; all parties had agreed to the resolution of the matter; and it was highly unlikely that the action would interfere with the proper performance of the judge's judicial duties, be perceived as exploiting the judge's position or create an appearance of impropriety.
- **JIC Advisory Opinion 2014-09:** In order to avoid creating an appearance of impropriety, a Mental Hygiene Commissioner should not display campaign signs for two candidates for Family Court Judge in front of his law office.
- **JIC Advisory Opinion 2014-10:** A newly appointed judge, who had been the elected prosecuting attorney in the county for many years, did not have to disqualify himself from presiding over every civil abuse and neglect proceeding that was pending at the time he became judge since he had not had any actual involvement in the majority of those matters. However, the judge should disqualify himself from any case in which he had any level of participation and should disqualify himself from any

abuse and neglect case in which there was a corresponding criminal case. The judge should disclose his prior employment in all other abuse and neglect cases that were pending at the time he became a judge and if any party objected, then he should disqualify himself.

- **JIC Advisory Opinion 2014-11:** A judge who has campaign signs or paraphernalia on his/her private vehicle could park at a public parking spot as long as it was located more than 300 feet away from the courthouse/county premises, referencing the language of WV Code, Section 3-3-9 that no person may do any electioneering on election day within three hundred feet of the outside entrance to the building housing a polling place.
- **JIC Advisory Opinion 2014-12:** A magistrate may attend meetings of the Regional Jail Authority's Cost Containment Committee since Canon 4B permits a judge to participate in extra-judicial activities concerning the administration of justice. However, the magistrate should not make any pledges or promises concerning future actions or decisions, other than a faithful and impartial performance of the duties of the office.
- **JIC Advisory Opinion 2014-13:** A judge should not request a prosecutor to handle truancy cases in a specific manner since such a request could create an appearance that the judge was assuming the functions belonging to the prosecutor, thereby creating an appearance of impropriety.
- **JIC Advisory Opinion 2014-14:** The Commission advised that it would not constitute a violation of the Code of Judicial Conduct for a judge to appoint the spouse of the judge's current law clerk to a fiduciary position reviewing the filings of guardian/conservators.
- **JIC Advisory Opinion 2014-15:** A magistrate could not be a general partner in a pizzeria while also serving as a magistrate, since Canon 4D(3) provides, with limited exceptions, that a judge shall not serve as an officer, director, manager, general partner, or employee of any business. The Commission advised that, in this case, none of the limited exceptions to the general prohibition were applicable.
- **JIC Advisory Opinion 2014-16:** A judge who served as an administrator of a relative's estate cannot be a special commissioner in a land sale of real property that was ordered sold following a partition suit.
- **JIC Advisory Opinion 2014-17:** A judge can be a member of a class action lawsuit or can file his/her separate legal action. However, a judge is precluded from serving as a representative plaintiff in a class action lawsuit.
- **JIC Advisory Opinion 2014-18:** A judge cannot concurrently serve as a JAG Officer because the services provided in the latter position constitute

the practice of law in violation of Article VIII, § 8 of the West Virginia Constitution; West Virginia Code § 51-2A-4(b); and Canon 4G of the Code of Judicial Conduct.

- **JIC Advisory Opinion 2014-19:** A judge may make a short statement on WVPBS about the historical, social and cultural significance of the first female United States Senator in West Virginia since the discussion would be general in nature and the judge would not talk about any candidates or candidacies.
- **JIC Advisory Opinion 2014-20:** A judge may participate in a Citizen's Law School since his/her role will be limited to welcoming the public and introducing the evenings subject and speakers; he/she will not answer any substantive questions; and there is no remuneration.
- **JIC Advisory Opinion 2014-21:** An attorney who works in the same firm as a Mental Hygiene Commissioner may not appear in front of his co-worker but can appear in front of the other Mental Hygiene Commissioners in guardian/conservator cases as long as his/her MHC co-worker's order of appointment limits his/her authority to preside only over involuntary hospitalization hearings; the MHC co-worker has not acted as a fact-finder in any guardianship/conservator matters; and the MHC co-worker disqualifies himself/herself whenever a conflict develops.
- **JIC Advisory Opinion 2014-22:** Two years is sufficient time for a judicial officer to disclose a prior relationship with two attorneys who represented him/her in a prior legal matter that concluded just a few months before he/she took office. After two years, the judicial officer does not have to disclose the prior representation if there is no factual basis that requires him/her to do so.
- **JIC Advisory Opinion 2014-23:** A judge may be listed as a reference on an application for judicial appointment since it is not considered as a public endorsement of a candidate for office.

STATISTICS

On January 1, 2014, ninety-seven (97) complaints remained pending before the Judicial Investigation Commission from 2013. From January 1, 2014, through December 31, 2014, the Commission received one hundred and seventy-four (174) new complaints¹⁰ for a total of two-hundred and seventy-one (271). Of the two-hundred and seventy-one (271) complaints, forty-three (43) required formal investigations. Two hundred and four (204) were dismissed by the Judicial Investigation Commission when

¹⁰ This figure includes extraordinary complaints filed pursuant to RJDP 2.14.

no probable cause was found. One (1) extraordinary complaint was dismissed by the Supreme Court when no probable cause was found. The Commission had no jurisdiction in four (4) complaints; and six (6) complaints were not docketed because the matters had been addressed in previous complaints. No (0) complaints were withdrawn by the complainant with the approval of the Commission. The Commission issued admonishments in five (5) complaints involving four judicial officers. The admonishments are more fully set forth below. Five (5) complaints were Rule 2.14 extraordinary procedures. Three (3) probable cause complaints (formal statement of charges) were issued by the Judicial Investigation Commission to go to the Judicial Hearing Board for hearing.¹¹ Forty-four (44) complaints were pending at the end of 2014.¹²

ADMONISHMENTS

In the Matter of the Honorable Omar Aboulhosn, Judge of the 9th Judicial Circuit: Respondent was admonished in Complaint No. 91-2013 for violating Canons 1A, 2A, 3B(5) and 3B(8) of the Code of Judicial Conduct for going to the home of a litigant in a divorce case that he was presiding over to direct the seizure of assets following the entry of an Order of Seizure.

In the Matter of the Richard Fowler, former Magistrate of Mercer County: After he resigned from the bench, Respondent was admonished for violating Canons 1A, 2A, 2B, 3A, 3B(1), 3B(2), 3B(5), 3B(7), 3B(8), 3E(1)(a) and 4A of the Code of Judicial Conduct in Complaint No. 125-2013 for having improper communications with and attempting to create inappropriate intimacy with a woman who was involved in proceedings before him.

In the Matter of the Honorable Amy J. Swisher, Judge of the 19th Family Court Circuit: Respondent was admonished in Complaint Nos. 57-2014 and 63-2014 for violating Canons 1A, 2A, 3B(2) and 3B(4) and

¹¹ *In the Matter of Ward Harsbarger*, Magistrate of Kanawha County, Complaint No. 36-2014 and Supreme Court No. 14-0306 and *In the Matter of Mark Gorby*, Magistrate of Harrison County, Complaint No. 135-2014 and Supreme Court No. 14-1022 are set forth on pages __ and __ above, and *In the Matter of Jaymie Godwin Wilfong*, Judge of the 20th Judicial Circuit, Complaint Nos. 142-3013, 143-2013, 144-2013, 145-2013 and 155-2013 and Supreme Court No. 14-0379 is set forth below.

¹² This figure includes the extraordinary complaints filed in *In the Matter of Jamison Conrad*, Mental Hygiene Commissioner for Fayette County, JIC Complaint No. 01-2014 and Supreme Court No. 14-0036; *In the Matter of Mark A. Gorby*, Magistrate of Harrison County, Complaint No. 135-2014 and Supreme Court No. 14-1022; and *In the Matter of Scot A. Lawrence*, Magistrate of Putnam County, Complaint No. 137-2014 and Supreme Court No. 14-1116. Of the forty-four (44) complaints carried over into 2015, twenty-two (22) were received between December 1 and December 31, 2014. The JIC's last meeting was held on December 12, 2014, and the cut off for placing complaints on the agenda is typically two weeks before a meeting.

4A of the Code of Judicial Conduct for her lack of candor involving an alleged violation by Complainant of a personal safety order.

In the Matter of the Honorable Larry W. Ours, Magistrate for Grant County: Respondent was admonished in Complaint No. 122-2014 for violating Canons 1A, 2A, 3B(2), 3B(7) and 3B(8) of the Code of Judicial Conduct for improperly sending a litigant in a civil wrongful occupation case to jail on a charge of first offense contempt without benefit of a hearing.

JIC INITIATED COMPLAINTS TO STATEMENT OF CHARGES

In the Matter of Jaymie Godwin Wilfong, Judge of the 20th Judicial Circuit, Complaint Nos. 142-3013, 143-2013, 144-2013, 145-2013 and 155-2013 and Supreme Court No. 14-0379: Between October 14 and October 22, 2013, the Judicial Investigation Commission received five separate complaints involving Respondent and her relationship with the Director of the North Central Community Corrections Program. The complaints included a self-report by Respondent. The matters were transferred to the Chief Lawyer Disciplinary Counsel because Chief Counsel for the Judicial Investigation Commission was a potential witness. After a thorough investigation, the Judicial Investigation Commission filed a formal statement of charges on April 23, 2014, charging Respondent with violating Canons 1, 2A, 2B, 3B(5), 3C(1), 3C(2), 3E(1) and 4A of the Code of Judicial Conduct. On August 11, 2014, the case against Respondent was heard by the Judicial Hearing Board. In a written order dated August 22, 2014, the Hearing Board concluded that Respondent had either admitted, or that it found by clear and convincing evidence, that she committed eleven separate violations of seven of the eight Canons. The Hearing Board found insufficient evidence to establish any violation of Canon 3B(5). By Order entered August 22, 2014, the Hearing Board recommended that Respondent be suspended for a total of three years without pay, censured for each of the eleven violations, fined a total of \$20,000.00 and ordered to pay the costs of the investigation and hearing. Respondent subsequently objected to the recommended decision. Briefs were submitted to the Supreme Court by Special Counsel and Respondent and oral argument was conducted on October 21, 2014. On or about October 30, 2014, the Supreme Court issued an opinion in which it upheld the Hearing Board's decision that Respondent committed eleven violations of seven Canons. *See In re Wilfong*, ___ W. Va. ___, 765 S.E.2d 283 (2014). The Court reduced her suspension without pay from three years to a term-ending suspension without pay. *Id.* The Court also set aside the

fine recommended by the Hearing Board, censured her for each of the eleven violations and required her to pay the costs of the proceeding. *Id.*

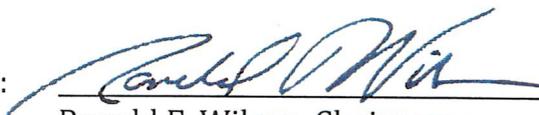
CONCLUSION

Public confidence in the independence, integrity, and impartiality of judges, high standards that the members of the judiciary place upon themselves, and an autonomous disciplinary system that holds judicial officers answerable for their conduct are essential to the rule of law. The members of the West Virginia Judicial Investigation Commission are certain that the Commission's work contributes to those goals, a heightened awareness of the appropriate ethical standards, and the fair and proper administration of justice.

Respectfully submitted,

JUDICIAL INVESTIGATION COMMISSION,

By:


Ronald E. Wilson, Chairperson

Date:

15 JANUARY 2015

REW/tat