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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

BEFORE THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

IN THE MATTER OF:
JUDGE WILLIAM M. WATKINS, III
Putnam County Family Court Judge

SUPREME COURT NO.: 12-1008
COMPLAINT NOS.: 112-2012, 152-2011
18-2012, 74-2012
77-2012, 113-2012
126-2012

BRIEF OF SPECIAL JUDICIAL DISCIPLINARY COUNSEL

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I. STATEMENT OF THE CASE

A. HISTORY OF THE PROCEEDINGS

This is a disciplinary proceeding against William M. Watkins, (hereinafter "Respondent"). At the time of the complaints, the investigation, the judicial ethics hearing and the recommendation of the Judicial Hearing Board, Respondent was the duly elected Family Court Judge and was actively serving Putnam County, West Virginia.

On or about July 17, 2012, the Administrative Director of the Courts filed an extraordinary complaint against Respondent alleging that he violated Article III, Section 17 of the West Virginia Constitution, Canon 3B(8) of the *Code of Judicial Conduct* and Trial Court Rules 16.06 and 16.13. By letter dated July 18, 2012, based on a conflict of interest, pursuant to Rule 5 of the Rules of Judicial Procedure, Teresa A. Tarr, Counsel for the Judicial Investigation Commission, forwarded this matter to the undersigned Special Counsel for investigation.

On or about July 30, 2012, the report of Special Judicial Disciplinary Counsel was filed with the Chief Justice of the Supreme Court of Appeals pursuant to Rule 2.14(b) of the Rules of Judicial Procedure. The report addressed the allegations contained in the original complaint and new allegations that surfaced as a result of the investigation. On or about July 31, 2012, an Order was entered by the Supreme Court of Appeals which stated there was probable cause to believe that Respondent has engaged in a serious violation of the *Code of Judicial Conduct*. Therefore, the matter was remanded to the Judicial Investigation Commission for the filing of formal charges and proceedings before the Judicial Hearing Board pursuant to Rule 2.7(d) and Rule 4 of the Rules of Judicial Disciplinary Procedure.

Based upon the Order of the Supreme Court of July 31, 2012, and the finding of the Supreme Court that there was probable cause that a violation of the *Code of Judicial Conduct* occurred, on August 9, 2012, Special Judicial Disciplinary Counsel filed a two (2) count Statement of Charges which encompassed judicial code violations arising from Respondent's actions in the *Black* divorce matter and with respect to his failures as it pertained to the proper administration of the Domestic Violence Registry in Putnam County, West Virginia.

On or about August 30, 2012, the Administrative Director of the Courts filed a second extraordinary complaint against Respondent alleging that he violated Canons 1A and 3A(4) of the *Code of Judicial Conduct*. Based on a continuing conflict of interest, pursuant to Rule 5 of the Rules of Judicial Procedure, Teresa A. Tarr, Counsel for Judicial Investigation Commission, forwarded this second matter to the undersigned Special Counsel for investigation. On or about August 31, 2012, the report of Special Judicial Disciplinary Counsel was filed with the Chief Justice of the Supreme Court of Appeals pursuant to Rule 2.14(b) of the Rules of Judicial Procedure.

A Five Count Statement of Charges was filed against Respondent on August 31, 2012, with the Clerk of the Supreme Court.

Respondent filed his Answer to the August 9, 2012 Statement of Charges on September 7, 2012.

Respondent filed his Answer to the August 31, 2012 Statement of Charges and an accompanying motion to file the same out of time on October 10, 2012.

On September 5, 2012, by a 3-2 vote, the Court elected not to temporarily suspend Respondent and remanded the second Statement of Charges to the Judicial Hearing Board for a hearing forthwith.

The Judicial Hearing Board issued a Consolidation and Scheduling Order on September 21, 2012, that consolidated the two Statement of Charges for purposes of hearing and disposition.

At the November 27, 2012 hearing, the parties jointly presented stipulations and evidence with respect to findings of facts and conclusions of law, wherein Respondent admitted to thirty-three (33) violations of the *Code of Judicial Conduct*. The parties recognized and understood that "stipulations or agreements made in open court by the parties in the trial of a case and acted upon are binding and a judgment founded thereon will not be reversed." Syl. pt. 3, *In the Matter of Starcher*, 202 W.Va. 55, 501 S.E.2d 772 (1998) ("facts stipulated by the parties before the judicial misconduct hearing and entered into record by the Judicial Hearing Board constitute proof by clear and convincing evidence"). In addition to the stipulations, the parties also agreed to make a joint recommendation as to the discipline to be imposed. The parties understood, acknowledged, and agreed that any joint recommendations proposed by Special Judicial Disciplinary Counsel and Respondent were not binding on the Judicial Hearing Board or the Supreme Court of Appeals and that the Supreme Court of Appeals, as the final arbiter of judicial ethics, might implement such other discipline as it deems appropriate. The Judicial Hearing Board admitted Sixty-Three (63) joint exhibits into evidence. Respondent testified on his own behalf and no other sworn witness testimony was presented at the hearing.

On December 3, 2012, the Judicial Hearing Board exercised its independent judgment and recommended to this Honorable Court that:

1. Respondent should be censured on each of his violations of the *Code of Judicial Conduct*;

2. Respondent should be suspended, without pay, until his present term of office ends on December 31, 2016; and,

3. Respondent should pay the costs associated with the investigation and prosecution of these proceedings which at the time of execution of the Stipulations and Recommended Discipline were Seventeen Thousand, Seven Hundred and Fifty Nine Dollars and Twenty-One Cents ($17,759.21).

On or about December 12, 2012, the Chief Justice was advised that Respondent was unavailable to preside over his docket. Pursuant to W.Va. Code § 51-2A-19(c), the Chief Justice appointed a temporary Family Court Judge to preside over Respondent's docket from December 12, 2012, until December 31, 2012.

Pursuant to Rule 4.9 of the Rules of Judicial Disciplinary Procedure, on December 26, 2012, Special Judicial Disciplinary Counsel consented to the recommended disposition.

On December 31, 2012, Respondent filed a motion to stay the proceedings. On January 2, 2013, Respondent filed a motion to dismiss the matter and filed his objection to the Judicial Hearing Board's recommendation.

By Order entered January 3, 2012, the Court refused the motion to stay the case and pursuant to Rule 19 of the Revised Rules of Appellate Procedure set the matter for oral argument.

On January 4, 2013, Respondent advised the Chief Justice of this Honorable Court that he was taking a medical leave of absence effective immediately. Pursuant to W.Va. Code § 51-2A-19(c), the Chief Justice appointed a temporary Family Court Judge to preside over Respondent's docket.

B. STIPULATED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

COUNT I
The Black Matter

Rule 2.14(a) of the Rules of Judicial Disciplinary Procedure provides in pertinent part that "[w]hen the Administrative Director of the Courts has received information that a judge. . . (3) has engaged or is currently engaging in a serious violation of the *Code of Judicial Conduct*. . . the Administrative Director may file a complaint with Disciplinary Counsel.

Rule 2.14(b) of the Rules of Judicial Disciplinary Procedure states in relevant part:

> Upon receipt of such complaint, 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 Disciplinary Counsel, the integrity of the legal system has been placed into question by virtue of a judge's. . . (3) having engaged in or currently engaging in a serious violation of the *Code of Judicial Conduct*; or (4) inability or unwillingness to perform official duties. The Office of Disciplinary Counsel shall attempt to provide reasonable notice to the judge prior to the filing of this report.

On or about July 17, 2012, the Administrative Director of the Courts filed against Putnam County Family Court Judge William M. Watkins, III (hereinafter "Respondent"), alleging that he violated Article III, Section 17 of the West Virginia Constitution, Canon 3B(8) of the *Code of Judicial Conduct* and Trial Court Rules 16.06 and 16.13.

By letter dated July 18, 2012, based on a conflict of interest, pursuant to Rule 5 of the Rules of Judicial Procedure, Teresa A. Tarr, Counsel for Judicial Investigation Commission, forwarded this matter to the undersigned acting as Special Counsel for investigation. By letter dated July 18, 2012, the undersigned provided a copy of the extraordinary complaint filed by Mr. Canterbury to

Respondent, advised of the abbreviated time period as outlined in Rule 2.14(b) of the Rules of Judicial Disciplinary Procedure, and requested a response within five (5) days of receipt of the letter.

On or about July 30, 2012, the report of Special Judicial Disciplinary Counsel was filed with the Chief Justice of the Supreme Court of Appeals pursuant to Rule 2.14(b) of the Rules of Judicial Procedure. The report addressed the allegations contained in the original complaint and new allegations that surfaced as a result of the investigation. On or about July 31, 2012, an Order was entered by the Supreme Court of Appeals which stated there was probable cause to believe that Respondent has engaged in a serious violation of the *Code of Judicial Conduct*. Therefore, the matter was remanded to the Judicial Investigation Commission for the filing of formal charges and proceedings before the Judicial Hearing Board pursuant to Rule 2.7(d) and Rule 4 of the Rules of Judicial Disciplinary Procedure.

On August 7, 2012, Respondent sent a facsimile to Ms. Cipoletti that indicated he had been on vacation from July 20, 2012 until August 6, 2012. Respondent indicated that he did not commit a violation of the judicial canons. Respondent stated that the Circuit Court "has no jurisdiction to run my docket." He further stated "[w]hen the Supreme Court directed me to act, I did so within 24 hours." Finally, "[t]he only problem on this case was two lawyers who could not follow clear instructions from the Court."

Based upon the Order of the Supreme Court of July 31, 2012, and the finding of the Supreme Court that there is probable cause that a violation of the *Code of Judicial Conduct* has occurred, Special Judicial Disciplinary Counsel filed formal charges.

On or about February 29, 2008, Petitioner J. Black filed a petition for divorce from N. Black in the Putnam Circuit Court. (08-D-100). A final divorce decree was entered by on or about

November 14, 2008. After the entry of the final order, disputes arose between the parties as it pertained to equitable distribution.

On or about July 6, 2010, Counsel for Respondent N. Black filed "Respondent's Second Motion to Enter QDROs." Counsel for Petitioner J. Black in his July 9, 2010 "Response to Respondent's Second Motion to Enter Qualified Domestic Relations Order, Counter Motion for Further Proceedings on Equitable Distribution, and Motion for Sanctions and Attorney's Fees" specifically requested a hearing to resolve the issues outlined in the parties competing motions.

Respondent subsequently entered the Qualified Domestic Relations Orders as requested by counsel for Respondent N. Black, but by letter dated September 13, 2010, advised counsel for Petitioner J. Black that he would not conduct a hearing on Petitioner's July 9, 2010 Motion. Based on Respondent's refusal to conduct a hearing on the matter, on or about November 17, 2010, counsel for Petitioner filed a petition for *writ* of *mandamus* with the Putnam County Circuit Court. By Order entered February 7, 2011, the Honorable Putnam County Circuit Court Judge O.C. Spaulding granted Petitioner's petition and issued an Order granting the *writ* of *mandamus* and specifically ordered Respondent to convene a hearing on the issues raised in Petitioner J. Black's July 9, 2010 Motion within thirty (30) days of entry of the Order.

A fax memorandum was sent to the parties from Respondent on March 7, 2011, that stated "[i]s there some reason neither side has sent a Proposed Order distributing the remaining funds and giving Conrad credits as I ordered? That requires no hearing." Counsel for Petitioner J. Black responded by letter dated March 8, 2011, to Respondent and attempted to outline for Respondent the issues that needed to be resolved.

A hearing was conducted on the July 9, 2010 Motion on June 1, 2011, and at the conclusion of the hearing, Respondent informed the parties he would take the matter under advisement.

By letter dated August 9, 2011, Counsel for Petitioner J. Black sent a letter to Respondent inquiring as to a need to provide briefs by the parties to assist in the preparation of an Order from the June 1, 2011 hearing. By letter dated September 15, 2011, Counsel for Petitioner J. Black sent another letter to Respondent inquiring as to any need to provide briefs by the parties to assist in the preparation of an Order from the June 1, 2011 hearing. By letter dated September 19, 2011, Counsel for Respondent N. Black sent a letter to Respondent offering to prepare a proposed order and/or briefs in the matter.

After the passage of nearly 5 months, Counsel for Petitioner J. Black filed a second *writ* of *mandamus* in the Circuit Court of Putnam County requesting an Order to require Respondent to issue a ruling on the July 9, 2010 motion. On or about December 20, 2011, the Honorable Circuit Court Judge Stowers granted the second petition for *writ* of *mandamus* and ordered Respondent to issue a decision within sixty (60) days of entry of the Order.

After the deadline passed and no decision was issued by Respondent, on or about March 2, 2012, Counsel for Petitioner J. Black filed a third (renewed) petition for *writ* of *mandamus*. On or about April 20, 2012, Judge Stowers entered an Order granting the Renewed *Writ* of *Mandamus* and ordered Respondent to issue a decision within fifteen (15) days of entry of the Order.

After the deadline passed and no decision was issued by Respondent, on or about June 12, 2012, Counsel for Petitioner J. Black filed a fourth petition in this case for *Writ* of *Mandamus* with the Supreme Court of Appeals. (No. 12-0720). By Order entered June 19, 2012, the Supreme Court of Appeals considered and ordered that a rule against Respondent be returnable to the Court by June 28,

2012, commanding and directing Respondent to show cause, if any, as to why a *writ* of *mandamus* should not be awarded against him. By Memorandum Decision dated July 5, 2012, the Supreme Court of Appeals granted the *writ* of *mandamus*. The decision further ordered Respondent to render a decision on the motions pending in the Black matter within five (5) days or a contempt proceeding would be conducted on August 7, 2012, against Respondent. See *State of West Virginia ex. rel. John J. B. v. The Honorable William M. Watkins, III*, 2012 W.L. 317 6382 (WV) (Unpublished).

By Order entered July 6, 2012, Respondent issued an Order. By letter dated July 6, 2012, counsel for Petitioner J. Black advised the Supreme Court of Appeals that the *mandamus* matter was moot. By Order entered July 9, 2012, the Supreme Court of Appeals dismissed the *mandamus* matter from its docket. By Order entered July 12, 2012, Respondent issued an Order in the Black matter entitled "Addendum to Order dated July 6, 2012."

The undersigned caused the instant complaint to be sent to Respondent by First Class Mail and requested a written response to the same within five (5) days. In an attempt to get a response from Respondent, on July 20, 2012, Investigator Watson made "several" calls to Respondent's office and no calls were returned by Respondent or his staff. After learning of a memo that was circulated to certain staff at the Circuit Court that Respondent was going to be on vacation for two (2) weeks, Investigator Watson contacted Respondent via a cellular telephone number and requested a time to interview him. At Respondent's direction, Investigator Watson traveled to Respondent's home to conduct the interview. Respondent stated to the Investigator that the Circuit Court had no authority over the Family Court and it did not have the authority to "compel me to do anything." Respondent stated that the only Court with any authority over him was the Supreme Court and when that Court issued its mandamus he acted within 24 hours.

By willfully and continuously refusing to recognize the rightful power of the Circuit Court of Putnam County, West Virginia[1] and his refusal to comply with the three prior Circuit Court Orders and the Supreme Court Order of June 19, 2012, Respondent has agreed that he violated Canon 1A of the *Code of Judicial Conduct* and Canon 2A of the *Code of Judicial Conduct*.

By failing to timely issue an Order in this matter, Respondent has agreed that he violated Canon 3B(1) of the *Code of Judicial Conduct* and Canon 3B(8) of the *Code of Judicial Conduct*.

COUNT II
Domestic Violence Protective Order Registry

"Effective January 2, 2010, a court which enters a protective order pursuant to this article shall immediately register such order in the domestic violence database established pursuant to the provisions of section twenty-one [51-1-21], article one, chapter fifty-one of this code...." West Virginia Code § 48-27-802(b). Domestic Violence Civil Proceedings Rule 21(b) requires the family court judge to immediately enter all domestic violence related orders on the West Virginia domestic violence database.

On or about March 11, 2009, Respondent sent Lisa Tackett, Director of the Division of Family Court Services and Steven D. Canterbury, Administrative Director, a memo via facsimile stating that his Office did not have time for the project. Since the inception of the registry, despite multiple attempts to provide Respondent and his staff additional training on the Registry, Respondent failed to be compliant with the requirements of the Domestic Violence Registry.

Angela D. Saunders, Director of the Division of Court Services, and her staff continuously requested that Respondent's office place final protective orders on the domestic violence protective order registry. Upon training Putnam County 911 staff, the registry staff were advised that the

[1] *State of West Virginia ex. rel. Silver v. Wilkes*, 213 W. Va. 692, 584 S.E. 2d 548 (2003).

Putnam County 911 staff often receive Domestic Violence Orders several days late from the Putnam County Family Court.

On October 20 and 27, 2010, emails were sent by registry staff requesting Respondent to upload an order regarding case 10D-0249. The email included information that the respondent was in the possession of a firearm. A prior arrest record showed that he had been arrested for following the petitioner with a loaded firearm. After several requests from Registry staff, the order was eventually uploaded.

On December 14, 2010, registry staff sent an email asking Putnam County Family Court staff to upload the order regarding case 10D-0435. Registry staff made several phone calls, however, nearly nine months later the order had still not been uploaded. Another email dated August 8, 2011, was sent by Registry staff requesting the order regarding case 10D-0435 to be submitted to the Registry.

Respondent issued a protective order for Ms. L. Hage[2] in her divorce matter on or about September 28, 2011. After reviewing the registry, Ms. Saunders advised that Ms. Hage had two expired protective orders, but no lifetime protective order had ever been registered. At a second contempt hearing in Ms. Hage's domestic violence protective order held on July 27, 2012, Special Family Court Judge Keller entered a protective order *nunc pro tunc* and placed the final protective order on the domestic violence registry retroactive to September 28, 2011, the date when Respondent issued the final protective order. Special Family Court Judge Keller indicated in her Order that "[i]t is the responsibility of the family court to enter protective orders on the registry and they failed to do so."

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[2] Ms. Hage is the wife of Complainant Reverend Art D. Hage. Mr. Hage has filed two complaints against Respondent with the Judicial Investigation Commission.

By refusing and/or failing to cause any and all domestic violence related orders to be properly registered in the West Virginia Domestic Violence Registry, Respondent has agreed that he violated Canon 2A of the *Code of Judicial Conduct* and Canon 3C(1) of the *Code of Judicial Conduct*.

COUNT III
Complaints by Arthur D. Hage

On or about December 2, 2010, L.Hage sought and received a domestic violence protective order in Putnam County Case Number 10-DV-323 against Complainant Arthur D. Hage (hereinafter "Complainant"). A final hearing was held on the domestic violence protective order on or about December 14, 2010. Respondent issued a Domestic Violence Protective Order against Complainant and found that "[t]he Petitioner gave credible evidence that the Respondent had been domineering and abusive throughout the marriage. Most recently the Respondent had approached her in an aggressive manner screaming and abusing her placing her in reasonable fear of physical harm by his threatening acts. Corroborated by her daughter."

On or about January 10, 2011, L.Hage filed a petition for divorce from Complainant and the same was styled Putnam County Case Number 11-D-6. On or about May 16, 2011, there was a hearing conducted by Respondent on L.Hage's motion for contempt for Complainant's violation of the domestic violence protective order. Complainant was represented by counsel. L.Hage was represented by counsel. Respondent found Complainant in willful and contumacious violation of the domestic violence protective order. Respondent extended the domestic violence protective order until 2030 and required Complainant to post a Five Thousand Dollar ($5,000.00) performance bond.

On or about August 22, 2011, there was another hearing conducted by Respondent in the divorce matter on Complainant's motion to have his wife evaluated. Complainant was represented by counsel. L.Hage was represented by counsel. After taking evidence, Respondent denied

Complainant's motion. After Complainant refused to admit irreconcilable differences as a ground of divorce, Respondent took judicial notice of the domestic violence protective order and made a finding of cruel and inhuman treatment as a valid ground for divorce. Respondent directed Attorney Wallace to prepare the bifurcated final divorce order and reaffirmed the protective order.

On or about September 28, 2011, there was another hearing in the now bifurcated divorce matter conducted by Respondent to discuss the outstanding property issues. Complainant was represented by counsel. L.Hage was represented by counsel.

Complainant filed an appeal from the Family Court Final Order on or about October 6, 2011. On October 17, 2011, Complainant filed a judicial ethics complaint alleging that Respondent was prejudiced against him in his divorce case.

By letter dated November 14, 2011, Respondent filed a reply to the complaint and stated that he was not prejudiced against Complainant. Respondent said he yelled at Complainant because he refused to comply with the Court's orders, and only did so when he was placed under a performance bond. Respondent stated "[t]he cruelty and abuse [Complainant's] wife suffered at his hands shocked the conscience of the Court."

On January 27, 2012, Complainant filed a second judicial ethics complaint against Respondent and reiterated his original complaints. On or about May 1, 2012, Complainant filed a civil suit against Respondent in the Putnam County Circuit Court styled 12-C-134.

On June 4, 2012, Complainant filed a third judicial ethics complaint concerning hearings held on May 22 and 23, 2012. Complainant said that during the May 23, 2012 hearing, Respondent was "cussing and yelling at the top of his lungs." Respondent conducted a May 22, 2012 hearing on a petition for contempt filed by counsel for L. Hage. L. .Hage appeared with counsel and Complainant

appeared *pro se.* Respondent again found Complainant to be in willful and contumacious contempt of the domestic violence protective order. Respondent further directed Complainant to prepare a financial disclosure so Respondent could determine Complainant's financial ability to pay the appropriate sanctions.

The parties then reconvened for the May 23, 2012 hearing to assess the financial sanctions. The following exchange occurred:

> **Respondent:** *Before we get started... Mr. Hage, if you say one word out of turn you're going to jail . . . do you understand me? Yes or no?*
>
> **Complainant:** *Yes.*
>
> **Respondent:** *After we closed here you went out there talked to a reporter... five seconds after you left here despite my admonition. This morning I now see an article from your little buddy Smith with a picture of my home... my home on the front page*
>
> **Complainant**: [inaudible]
>
> **Respondent:** *SHUT UP!* [sound distortion] *Did I tell you to speak? My wife is disabled, she is there alone... and you, you disgusting piece of . . . you put our picture of my house . . . because of you . . . my wife is there alone . . . my house has been vandalized four times you realize that of course because I'm sure you're probably in on it laughing about it.*
>
> *I swear to you.*
>
> *You're responsible. You are responsible. I am holding you personally responsible for anything that happens at my house. I promise you.. I promise you... if I so much as see somebody blinking at my home, my wife, my family.. You and me are gonna have a problem.*
>
> *It's disgraceful that you and your little buddies do not have the guts, the integrity, just the human decency, but no you gotta threaten my family now, well buddy, its personal.. it is personal.. You have threatened my family and I promise you you will not hear the end of it from me.*
>
> *In fact.*

I'm going to recuse . . . I tell you I'm too angry to even be appropriate in this case. I'm sorry I can not tolerate that circumstance . . . I mean . . . I'm [sic] forgive me, but you know when you threaten my family . . . You know I put up with a lot in this job but I'm not gonna put up with that.

You're personally responsible. Please understand that I will resign this bench and I will personally see to it that you never see a free day in your life. You understand that? You're going to jail. I swear to God.

I'm sorry Ms. Wallace, Ms. Hage. I'm just...

Attorney Wallace: *Your Honor, we understand we are just concerned about losing the house...*

Respondent: *I shouldn't . . . I . . . I . . . I won't I won't recuse myself.. I'm just very upset. And, I apologize.*

Where's the financial disclosure he was supposed to come up with?

Whereupon, Respondent then called the hearing, put the parties under oath and took up the pending issues in the domestic case.

As Attorney Wallace placed her proffer for her motion on the record, a bailiff entered the room to deliver documents to Respondent and Respondent inquired of him:

Respondent: *Oh, we got friends out there too?*

Bailiff: *Yeah . . . that thinks it's funny.*

Respondent: *Who?*

Bailiff: *I don't know a bald headed guy that's with him*

Respondent: *Did you bring along a comedian Mr. Hage?*

Complainant: *He's my chauffeur, Sir.*

Respondent: *He's your chauffeur? Did you put him out of the building?*

Bailiff: *Not yet Judge, I didn't know what you wanted to do.*

Respondent: *Out of the building . . . I want him out of the building right now. And if he smiles, I want him in here to ask him what's so damn funny. Alright Mr. Hage what's your response?*

Complainant: *My response is that I can not sign this because it's against my conviction.*

Respondent: *Okay. Umm anybody in particular you wish to appoint?*

Attorney Wallace: *Umm I know Rick Witt does it. Um I have an Order ready because I mean they are waiting to close on this house...*

Respondent: *I understand*

Attorney Wallace: *And we don't want to lose it*

Respondent: *That's why I don't want I certainly don't want Ms. Hage to suffer because her husband decides that uh he's gotta get personal . . . ex-husband . . .*

Attorney Wallace: *I have an Order.*

Respondent: *So I appoint Richard Witt and I'm gonna direct that Mr. Hage pay him the sum of Five Hundred Dollars for his services no later than Friday.*

Attorney Wallace: *Can I just write that into this Order, your honor, so we can get it signed today? The five hundred dollars.*

Respondent: *Okay.*

Complainant: *I'll sign it. I don't have that kind of money, I'll go ahead and sign it.*

Respondent: *It makes no difference to me, Sir.*

Complainant: *I don't have the money.*

Respondent: *I don't care. You'll find it. Okay. How do you eat?*

Complainant: *I don't eat, sir.*

Respondent: *Okay.*

Complainant: *Very little, if nothing.. I only make five [inaudible]*

Respondent: *So you're gonna sit here and lie to me under oath. You just said you didn't eat, so you should be dead by now. So, that's a lie.*

Complainant: *I've almost died five times.*

Respondent: *You're supposed to be a man of God, how come in here and swear to God to tell the truth and the very first thing out of your mouth is a lie. It's a lie. It's a damn lie and you know it's a damn lie.*

I'd love for I'd love for your parishioners to know that the first thing you do when you swear to God to tell the truth you come in here and tell a lie.

But you know I'm above that sort of thing.. I'm above. .

Complainant: *I can not.*

Respondent: *Shut up. I didn't tell you to talk. Did I tell you to talk? What did I tell you right at the beginning of the hearing... are you deaf? Huh? You're threatening my family. You are personally responsible for it. Personally. Do you really want me to take every bit of my attention and put it on you. Because I tell you what I've already contacted the Supreme Court. M-kay.* [sic]. [inaudible] *Is there a deed there for him to sign?*

Attorney Wallace: *No, I do not have the deed, your Honor.*

Respondent: *It is Five Hundred bucks, Mr. Hage. You've wasted our time. Also, I will entertain a motion for attorneys fees for these past couple of hearings. It's absurd.*

Respondent continued to tell Complainant to "shut-up" and then, after reviewing the financial disclosure, he advised that he would be referring the violation of the protective order to the prosecuting attorney with the strong recommendation that Complainant be prosecuted.

Despite Respondent's behavior in the May 23, 2012 hearing, Respondent did not file a motion to recuse himself in this matter until June 28, 2012. An Administrative Order was entered on or about July 6, 2012 appointing the Honorable Patricia Keller to hear the case.

Respondent has agreed that his actions in the May 23, 2012 hearing violated Canon 1A; Canon 2A; Canon 2B; Canon 3B(2); Canon 3B(3); Canon 3B(4); Canon 3B(5); and Canon 3E(1)(a) of the *Code of Judicial Conduct.*

Respondent has agreed that his recognition on the record of his inability to impartially rule, but his refusal to take such proper steps to recuse himself from the case at the May 23, 2012, hearing violated Canon 2A, Canon 2B and Canon 3B(1) of the *Code of Judicial Conduct.*

COUNT IV
Complaint by Sharon Stinson

Complainant, Sharon Stinson (hereinafter "Complainant"), is a party in a custody action styled *Sharon Spaulding (now known as Stinson) v. Zachary Wayne Pauley*, Putnam Family Court Case No. 11-D-393. Respondent presided over the case. On January 18, 2012, Complainant Stinson filed a Petition for Modification of Parenting Time. A hearing on the Petition was held on April 12, 2012.

During the hearing, Respondent said, "Oh, shit . . ." He asked Complainant about her child by inquiring "what time do you put the little stinker to bed." Respondent then stated, "Okay, we've crapped around enough on this thing."

Respondent then engaged in a conversation with Complainant about visitation every Saturday at McDonald's with the child's father:

Complainant: *I can't do this every Saturday. I watch my nephew and I've got . .*

Respondent: *Do you want to lose custody? You're gonna take care of this. This is a priority. This is a court order.*

At some point, the following colloquy occurred between the two about the father of her child who was also present in the courtroom:

Respondent: *She picked him to have a child with.*

Complainant: *No actually I didn't. It was an accident.*

Respondent: *Well, honey. It ain't an accident. You don't get em off of toilet seats. Okay.*

On one occasion during the hearing, Complainant interrupted Respondent:

Complainant: *There is something wrong. I'm sorry for cutting you off. I really truly am but this is a . . .*

Respondent: *You're going to be really sorry for cutting me off if I lose my temper but go ahead. What do you have to say?*

Respondent also made comments about the father. He stated that "Mr. Pauley got into some dumb shit." He next stated that "rather than spend 50 hours to see who was the biggest jackass in the whole operation." Lastly, Respondent stated with respect to the father that "he knows if he screws up it's his ass."

Upset by the comments, Complainant filed an ethics complaint against Respondent on May 3, 2012, with the Judicial Investigation Commission.

On May 15, 2012, Special Judicial Disciplinary Counsel sent Respondent a letter requesting a response to the Complaint. By letter dated June 4, 2012, Respondent replied in pertinent part:

> The only curse words I uttered was to [the] effect that the father had been a "dumb shit" when he got in trouble, for which I apologized. I use earthy language at times to make a point. Ms. Stinson disagrees with my decision. That's why we have appellate courts. There is nothing that even remotely alleges an ethics violation. The sad thing is that in the time I've had to take to respond to this nonsense means that four hearings now have to be postponed. Inasmuch as I now have over 2600 hearings per year, that means at least 8 people will have to wait an additional 3 or 4 months to have their case resolved. I would appreciate it in the future that you keep this in mind and perhaps do a little investigation on your own before you waste more valuable court time.

Respondent has agreed that his actions in the April 12, 2012 hearing violated Canon 1A; Canon 2A; Canon 3B(3); Canon 3B(4) and Canon 3(B)(5) of the *Code of Judicial Conduct.*

COUNT V
Complaint by Robert R. Harper, Sr.

Robert Ray Harper, Sr. (hereinafter "Complainant") was a party in a divorce/child support action styled *State ex rel. Joyce Annette Harper v. Robert Ray Harper, Sr.*, Putnam County Civil Action No. 78-C-462. By Order entered May 19, 2000, Complainant's ex-wife was awarded back child support plus interest. At the time, Complainant was ordered to pay his ex-wife Forty Three Thousand, Eight Hundred and Thirty-Eight Dollars and Sixty Cents ($43,838.60). Additionally, the West Virginia Department of Health and Human Resources was awarded a judgment against Complainant in the amount of Four Hundred Ninety-Seven Dollars and Eight Cents ($497.08), which represented reimbursement of child support benefits for the same period. Complainant was required to make monthly payments to the Child Support Enforcement Division, which would in turn disburse the money to the appropriate individual/entity.

On or about November 26, 2008, the Bureau of Child Support Enforcement (hereinafter "BCSE") obtained a writ of execution against Complainant. On August 2, 2011, a hearing was held in the matter. At some point during the hearing, Complainant outlined his medical problems, including the fact that he had a prosthetic leg. Complainant also informed Respondent of a pending malpractice case that he had against Cleveland Clinic. Respondent mentioned that he had a heart procedure at CAMC. He stated that CAMC "did three heart caths on me – none of which they needed to do." He then told Complainant that "they probably would give you a heart cath for your knee." The Order reflecting the outcome of the hearing was entered December 19, 2011. A judgment was granted against Complainant and in favor of his ex-wife for child support arrearages plus interest in the amount of $53,880.31. The Order also provided:

> Mr. Harper has a pending malpractice action against the Cleveland Clinic. His attorney is Sara Jones of Kesner, Kesner and Bramble. He and his attorney shall notify the Court and BCSE of any settlement or award, and they shall not dispose of any monies until a hearing may be held. Failure of Mr. Harper to comply with this requirement will be willful and contumacious contempt of court and he will be incarcerated until he complies.

At a January 26, 2012 hearing, Complainant was ordered to appear to show cause for his failure to handle the settlement proceeds as previously ordered by the Court. Respondent presided over the hearing. During the hearing, Respondent yelled at Complainant, "Where's the money?" Complainant stated that he could not disclose the money because of a confidential settlement agreement. The following then took place:

Respondent: *The money is supposed to be available.*

Complainant: *The money for her is available, sir.*

Respondent: *Where is it?*

Complainant: *Well, contact my lawyer. . . .*

Respondent: *No, God damn it.*

Complainant: *Don't cuss me, sir . . .*

Respondent: *I'm gonna cuss you cause you came into my courtroom and lied.*

Complainant: *I didn't lie.*

Respondent: *Ok, Well, you're gonna sit in jail until you pay her the money.*

Complainant: *Ok.*

Respondent: *Huh? What'd you say?*

Complainant: *I said okay if that's what you wanna hear my side of it that's fine.*

Respondent: *No. I wanna know how come she hadn't been paid yet that's what I wanted to know.*

Complainant: *Her money is up there at the lawyer's office.*

Respondent: *Well, why hadn't she been paid?*

Complainant: *Well, contact my lawyer, sir. I don't . . .*

Respondent: *I don't* (slammed something down hard)

Complainant: *I do not know . . .*

Respondent: *It's not my job.*

Complainant: *Okay.*

Respondent: *Okay. Take his ass into custody. I'm tired of it. Now you call up your lawyer and you find out how to get your butt out and that's to sign over the money. Got me? Great.*

During the exchange, Respondent spoke in a raised voice and at times yelled at the Complainant. Following the hearing, Respondent was incarcerated in the Western Regional Jail for contempt.

On February 7, 2012, Complainant's attorney filed a Motion for Emergency *Ex Parte* Relief based on his client's poor health. In addition to his prosthetic leg, Complainant also suffers from diabetes, heart disease, bleeding ulcers, high blood pressure, scoliosis, arthritis and bursitis. While incarcerated, Complainant supposedly contracted tuberculosis during an outbreak at the jail.

A hearing was held on the motion on February 15, 2012. Respondent presided over the hearing. At the conclusion of the hearing, Respondent agreed to release Complainant on a Fifty Thousand Dollars ($50,000.00) personal recognizance bond. Complainant was further ordered to provide complete financial disclosure within ten days. Respondent also advised that Complainant "is gonna pay or he goes right back to jail."

Another hearing was held on March 8, 2012 to review the financial disclosures. Once again, Respondent presided over the matter. Complainant's attorney raised a statute of limitations argument concerning back child support. During the discussion, Respondent stated: "Hell, I was Gary Stanley's lawyer. What are you talking about? It took me two years to get paid and I got him on a damn ____ from the BCSC."

Respondent also addressed the issue of how Complainant spent his settlement money and whether there was any left over to pay toward back child support. Respondent focused in part on Complainant's 2011 purchase of a used Dodge truck. Respondent stated, "I swear to God if that vehicle disappears before the next time we're here he's gonna be gone til I get tired."

Respondent then ordered Complainant to provide a detailed financial accounting by March 16, 2012. He also set a review hearing for April 19, 2012, to address the financial accounting and the statute of limitations defense. Respondent became angry toward the end of the April 19, 2012, hearing and confronted Complainant about personal statements he made about the Judge. The following exchange occurred:

> **Complainant:** *Nobody does nothing free for me. I took care of my son. I helped him when he needed it because of his work* ____
>
> **Respondent:** *Oh be quiet. That is a bunch of crap. You know by the way sir, I'm very familiar with your assault on one of our attorneys around here and all the choice things and threats you had to make about me. You aren't man enough to say it to me in court but you're really good about talking about me behind my back. I know about you accosting somebody so I don't much care for your freaking attitude. You know you come in here you cop an attitude like you've got -- like you're the victim here. You sit there and you have not taken care of your children and that is disgraceful. And I don't find any of these statements here to be at all legitimate -- at all legitimate. You give me not one scrap of piece of paper. You come up -- just make stories. What date was the loan from Mr. Simmons? Start with that. Where's your documentation? You don't have any. C.J. Timmons. Give me some documentation. Nothing. Kenny Baldwin. Do you have any documentation, sir? What date was the loan?*

Complainant: *He wanted money for –*

Respondent: *What date was the loan? I didn't ask you what he wanted it for. What date was the loan? You've told me you've paid him $14,400.00. On what date did he loan you $14,400?*

Complainant: *I don't know the exact –*

Respondent: *Okay. Okay.*

Complainant: *At this moment, no.*

Respondent: *Mr. -- ohh mmm. Mr. Bailey I'm sorry but this is completely unsatisfactory. This isn't even remotely in compliance with my order. Your client is in willful and contumacious contempt of court. He has not provided a scintilla – not one scrap of paper that's verifiable. Not a contract. Not a bank account. Nothing. As far as I'm concerned every dime of that money – How much is arrearages now?*

BSCE: *$46,973.78.*

Respondent: *$46,973.48. And he's got until the end of May to pay that in full.*

Mr. Bailey: *Yes, Your Honor.*

Respondent: *Now, is that truck here?*

Complainant: *Yes, sir.*

Respondent: *All right. We're gonna have a lien on that truck today. I'm not here to be cruel but you are even trying and it really offends me that you have over a $100,000.00 and you have such contempt for your children and this Court that you would just basically spit in my face and spit in her face. You're not much of a man. . .*

Once again, Respondent spoke in a raised voice and at times yelled at the Complainant during this colloquy. An Order reflecting the outcome of the April 19, 2012 hearing was entered on May 15, 2012. The Order required Complainant to pay the arrearages by May 31, 2012. Complainant's Attorney filed a Motion to Reconsider on June 12, 2012. On July 6, 2012, Respondent sent Complainant's Attorney a facsimile transmission which stated:

> I have been advised that as of July 6, 2012, the Interrogatories in Aid of Execution have not yet been answered. I, therefore, direct the BCSE to set a show cause hearing as soon as possible. As I understand the statute, this will probably be the shortest hearing in recent memory, since my understanding is that should Mr. Harper still refuse to answer, "the sheriff shall keep him safely" until he does is my only available remedy. Mr. Bailey, I am aware of Mr. Harper's myriad of health problems, but his simply ignoring court orders cannot continue. As they say, HE holds the key to his jail cell.

Respondent has agreed that his actions in the August 2, 2011, January 26, 2012, February 15, 2012, March 8, 2012, and April 19, 2012, hearings violated Canon 1A; Canon 2A; Canon 3B(3); Canon 3B(4) and Canon 3(B)(5) of the *Code of Judicial Conduct*.

COUNT VI
Complaint by Tammy Jo Lambert

On or about November 16, 2010, based on a petition filed by Complainant Tammy Jo Lambert (hereinafter "Complainant"), Respondent issued a Domestic Violence Protective Order against Complainant 's then husband for acts that threatened the safety of Complainant Lambert. The case was styled 10-DV-286.

On or about May 11, 2011, Complainant filed an appeal to the Circuit Court of Putnam County, West Virginia, with regards to a ruling in her domestic case styled Case Number 98-D-351. By Order entered June 10, 2011, the appeal was granted by the Circuit Court of Putnam County, West Virginia and remanded to the Family Court of Putnam County, West Virginia for additional hearing. Respondent conducted a hearing on the matter on or about August 25, 2011. Both parties appeared *pro se*. During the hearing, the following exchange occurred between Respondent and Complainant when discussing the income of Complainant Lambert's ex-husband:

Complainant: *I wasn't here for a hearing.*

Respondent: *Then, why are you shooting off your fat mouth about what happened. Shut up!* [noise distortion]. *I don't need an attitude here. I don't need an attitude. This is a court room. Don't speak. Oh, you think its funny. You think I'm a funny guy?*

Respondent: [Noise distortion] [Inaudible yelling]

Complainant Lambert: *I think Spaulding overruled you for a reason.*

Respondent: *Shut up! You stupid woman. Can't even act properly. One more word out of you that you aren't asked a question you're out of here and you will be found in direct contempt of court and I will fine you appropriately. So, shut your mouth. You know I hate it when people are just acting out of sheer spite and stupidity. Oh, yeah. Well you know exactly what's going on don't you?*

Respondent then continued to conduct the hearing and made factual findings necessary to make the findings in the domestic case with respect to Complainant 's ex-husband's ability to pay. It is noted that Complainant then broke down into tears when testifying about how much difficulty she has experienced since she divorced her ex-husband and left the abusive marriage.

Respondent and Complainant Lambert later had the following exchange:

Respondent: *[T]he question was quite simply, Mr. Null has X number of dollars, he has Y amount of expenses. I want him to pay so you can count on that money being there. So, I have . . . I have a problem. He needs to survive. He needs to have some money. Okay?*

Complainant: *How about me?*

Respondent: *And, you're exactly right, too. But, you're this is this is . . . you've got a judgment for your money. You're entitled to your money. What I'm saying is under burden of contempt of court what can I legitimately tell Mr. Null what he has to do or I will lock his ass up.*

Complainant: *Really?*

Respondent: *Yeah, really.*

Complainant: [*laughter and sniffing*].

Respondent: *Just get up and get out of my courtroom right now. I warned you but you still got to run your mouth, that's fine. Get out of here.*

Complainant: *That's alright, God will be the judge.*

Respondent then attributed the income to Complainant 's ex-husband and indicated that he was ruling on the matter, but would note Complainant's objections.

Complainant stated in her judicial ethics complaint that on or about July 4, 2012, the local television news contacted her and she advised a reporter that Respondent "screamed" at her during the August 25, 2011 hearing. Complainant further stated that a report of her complaints with her name ran several times on the local news. Complainant stated that on or about July 10, 2012, she went to the Office of the Circuit Clerk to request three (3) copies of the August 25, 2011, domestic hearing. She stated that she was advised at that time the Family Court had her domestic file and she would have to return at a later date to retrieve the disc.

On or about July 30, 2012, Complainant stated that she received a telephone call from a staff member of Respondent and she then went to pick up her disc from the court on about July 31, 2012. On or about August 14, 2012, Complainant filed a judicial ethics complaint about how she was treated by Respondent and Complainant also alleged that parts of the hearing disc were altered.

On or about August 30, 2012, Respondent filed a response to this complaint and stated that "after being admonished 3 times to not interrupt, the 4th time the Court yelled at Ms. Lambert. The Court then proceeded with the hearing, but when Ms. Lambert was given an opportunity to express her side of things, she chose instead to insult the Court with a sarcastic 'Oh really?' at which point she was politely ordered to leave and shortly thereafter the hearing was concluded." Respondent stated that he did not believe "that briefly yelling at an out-of-order litigant is improper."

Respondent has agreed that his actions in the August 25, 2011, hearing violated Canon 1A; 2A; Canon 3B(3); Canon 3B(4); of the *Code of Judicial Conduct*.

COUNT VII
Complaint by Mark Halburn

On May 15, 2012, Complainant Mark Halburn (hereinafter "Complainant") filed a complaint against Respondent alleging that Respondent failed to recuse himself from Complainant's divorce case despite having represented Complainant's ex-wife in a bankruptcy matter. Complainant stated that when he brought the perceived conflict to the attention of Respondent and further complained that his First Amendment rights were being violated and/or he was being mistreated by Respondent's employees, Respondent replied by letter dated December 15, 2011, which stated:

> Thank you for pointing out that I need to get my homeowner's dues caught up. I hadn't been aware of this until now.
>
> I cannot speak to litigants. Period. If you think I should recuse myself, please file the appropriate pleadings and I will review it. I was not aware that I had filed a bankruptcy petition on behalf of your wife.
>
> I have reviewed your complaint, and your perspective seems to be held by you. Every other witness describes you as rude, obnoxious, loud, unprofessional and generally acting like the south end of a north-bound horse. I choose to believe them.
>
> Thank you for this opportunity to respond.

Respondent has agreed that his letter violated Canon 1A and Canon 3B(4) of the *Code of Judicial Conduct*.

C. ADDITIONAL FINDINGS OF FACT BY THE JUDICIAL HEARING BOARD

The Judicial Hearing Board made additional findings of fact that Respondent first became a Family Court Judge in 2002 and noted that Respondent was reelected as a Family Court Judge in

2008 and his present term ends on December 31, 2016. The Hearing Board further found that the multiple complaints against Respondent indicate that: (a) Respondent has demonstrated a contempt for authority in the form of the Supreme Court of Appeals; the Circuit Court of Putnam County; the Office of the Administrative Director of Courts; and the Judicial Investigation Commission; (b) Respondent has demonstrated a refusal to manage his Office in conformity with the statutes, rules, and regulations governing the Family Courts; (c) Respondent has demonstrated a lack of diligence in the performance of his official duties; (d) Respondent has demonstrated a lack of courtesy, civility, decorum, and judicial comportment in the conduct of hearings and in correspondence even where, in the case of correspondence, Respondent would have had time for more careful reflection; (e) Respondent has demonstrated a preference for using threats, intimidation, profanity, and shouting rather than the tools available to judges, including civil and criminal contempt, to deal with admittedly difficult litigants in a manner that conforms to the requirements of the *Code of Judicial Conduct*; (f) Respondent has demonstrated a failure to properly and promptly disqualify himself even after acknowledging, on the record, that he could not continue to preside in an impartial and unbiased manner; and (g) Respondent has demonstrated a failure to control his anger and his emotions when dealing either with authority in the form of the Supreme Court of Appeals; the Circuit Court of Putnam County; the Office of the Administrative Director of Courts; and the Judicial Investigation Commission, or with attorneys and litigants who appear before him. *See* December 3, 2012 Order.

The Board further noted that despite his testimony that it did not believe that Respondent was sincere in his expression of remorse and contrition. The Board justified its position by citing to

Respondent's **response** to the unsworn statement of a Complainant[3] and noted that "Respondent turned in his chair, leaned back, crossed his arms, and glared at complainant in an angry and confrontational manner, which stood in stark contrast to Respondent's demeanor during his own testimony." The Board further premised their position that Respondent lacked remorse by referencing statements made in an October 31, 2012 evaluation wherein Respondent made comments about the credibility and strength of the disciplinary case and noted that the Court was only pursuing the case because of pressure from the public. The Board was concerned that on November 13, 2012, less than two weeks later, Respondent signed the Stipulations and Recommended Discipline admitting to all of the charges against him and consenting to discipline. *See* December 3, 2012 Order and Joint Stipulations. The Board also made additional findings that based upon the evaluation that Respondent's misconduct was likely to recur and could not be likely be deterred by appropriate intervention.

D. AGGRAVATING FACTORS

The parties stipulated to certain aggravating factors which included: 1. Respondent's behavior exhibits a pattern and practice of a failure to maintain the honorable, high standards of conduct and integrity that the Canons require of him; 2. Respondent's behavior exhibits a pattern and practice of a failure to act in a manner that promotes public confidence in the integrity of the judiciary as the Canons require of him; 3. Respondent's behavior exhibits a pattern and practice of an abject failure to treat litigants in his court room with the respect and dignity that the Canons require of him; and 4. Respondent's behavior exhibits a pattern and practice of an abject failure to maintain and require decorum and order in his court room that the Canons require of him.

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3 It is noted that the contents of the unsworn statement did not appear to be at all relevant to the Judicial Hearing Board,

In addition to these, the Judicial Hearing Board noted the following additional aggravating factors: 1. Respondent did not cooperate in the investigatory phase of these proceedings; 2. Respondent, as recently as October 31, 2012, continued to maintain he would be exonerated and that these proceedings were the product of either a misunderstanding or a lack of appreciation of the job of a Family Court Judge; 3. Respondent's behavior indicated a loss of control over his emotions and conduct; 4. Respondent's behavior indicated a pattern of disrespect for authority; 5. Respondent's behavior indicated a lack of self-awareness; 6. Respondent's behavior indicated an inability to manage his office in conformity with the applicable legal requirements and standards; and 7. Respondent's behavior indicated an inability to manage his caseload in conformity with the applicable legal requirements and standards.

E. MITIGATING FACTORS

The parties stipulated to certain mitigating factors[4]: 1. Respondent has been a member in good standing of the West Virginia Bar Association and licensed to practice law in the Courts of this State for Thirty-Four (34) years; the vast majority of the Respondent's career has been devoted to the practice of domestic relations; that prior thereto the Respondent served in the United States Marine Corp; 2. Respondent has been a Family Court Judge since 2002 and has had no prior discipline by the Judicial Investigation Commission, the Judicial Hearing Board or the Supreme Court of Appeals; 3. Respondent is the Family Court Judge in Putnam County, an area which has, during the tenure of Respondent, seen a significant growth in population, and has a substantial number of litigated

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but the December 3, 2012 Order focuses on Respondent's response to the same.

[4] The Board rejected the stipulated mitigating factor that by admitting to all of the allegations that Respondent had taken responsibility for his actions. The Board premised this decision by again referencing the reports by the evaluators and Respondent's testimony and demeanor at the hearing. Moreover, the Board noted that the factual allegations and legal implications of each complaint were generally undisputed with only the issues of explanation or mitigation of the

domestic relation matters; 4. Respondent is well respected and enjoys a favorable working relationship with those members of the Bar who regularly practice before Respondent's Court; 5. Respondent is an active participant in the Family Court Association and has served in the past as President and on committees in an effort to improve the operation and functioning of the Family Court System in West Virginia; 6. On numerous occasions, Respondent has been designated by the Chief Justice of the Supreme Court of Appeals to attend to the docket and cases of other Family Court Judges who, for one reason or another (recusal, illness, etc.), were unable to attend to their own dockets; 7. After the two formal Statements of Charges were issued, Respondent has demonstrated full cooperation with these proceedings; 8. By way of background and explanation, as opposed to by way of excuse, during the relevant time periods involved in the Complaints filed herein, Respondent has suffered from significant medical and physical problems; additionally, during the relevant time periods involved in these Complaints, Respondent's wife has likewise suffered from significant medical and physical problems; 9. As a direct result of the medical and physical problems suffered by the Respondent, as well as his wife, Respondent has had to bear the additional stress and pressure of his personal life, which could have had a direct effect on Respondent's ability to modulate his personal feelings and expressions of anger in the courtroom during particularly stressful hearings; 10. As a direct result thereof, Respondent has agreed to seek intensive counseling to develop better strategies to deal with such situations; 11. Respondent, by upbringing, military background and practice emphasis, has over the many years of his adult life expressed himself in ways that he believed the "every day citizen" would understand and comprehend; as a result of the experience the Respondent has had relative to these charges, he understand and comprehends that

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offending behavior remaining.

oftentimes the public prefers and the judiciary demands a higher standard from Judges; and 12. Respondent personally and professionally deeply regrets the fact that it became necessary for the filing of Statements of Charges involving his actions and abhors the notion that his action could reflect adversely upon the Judiciary of the State of West Virginia.

In addition to these, the Judicial Hearing Board found the following additional mitigating factors: 1. Respondent's psychological profile may have predisposed him to difficulties dealing with the combined effects of stress, workload, and personal issues unrelated to his judicial duties; and 2. Some, but not all, of Complainants may have engaged in aggressive, confrontational, and punishable misconduct, but it noted that Respondent's reactions to that conduct was either grossly disproportionate and/or constituted a clear violation of the *Code of Judicial Conduct.*

II. SUMMARY OF ARGUMENT

Based upon the number of violations; the nature of the violations; the severity of the violations; the duration of the violations; the adverse impact of the violations upon Complainants; the adverse impact upon the public's perception of the judiciary; the adverse impact upon the efficient and effective administration of justice; the adverse impact upon justice and the appearance of justice; Respondent's apparent failure to take meaningful responsibility for his misconduct; and the unlikelihood that Respondent will be able to conform his conduct to the requirements of the *Code of Judicial Conduct*, pursuant to the permissible sanctions outlined in Rule 4.12 of the Rules of Judicial Disciplinary Procedure, Respondent should be publicly censured for each violation; suspended without pay for the remainder of his term in office and pay the costs associated with the investigation and prosecution of this case.

III. STATEMENT REGARDING ORAL ARGUMENT

The Court's January 3, 2013 Order set this matter for oral argument and consideration under Rule 19 of the Revised Rules of Appellate Procedure.

IV. ARGUMENT

" In cases in which this Court is asked to discipline judicial officers, we independently review the record to determine if the findings of fact and recommendations of the Hearing Board are appropriate. As we stated in Syllabus Point 1 of *In re Browning,* 192 W.Va. 231, 452 S.E.2d 34 (1994), " '[t]he Supreme Court of Appeals will make an independent evaluation of the record and recommendations of the Judicial [Hearing] Board in disciplinary proceedings.' Syllabus Point 1, *West Virginia Judicial Inquiry Commission v. Dostert,* 165 W.Va. 233, 271 S.E.2d 427 (1980)." Included "within this independent evaluation is the right to accept or reject the disciplinary sanction recommended by the Board." *Matter of Crislip,* 182 W.Va. 637, 638, 391 S.E.2d 84, 85 (1990).

A. BURDEN OF PROOF

"The purpose of judicial disciplinary proceedings is the preservation and enhancement of public confidence in the honor, integrity, dignity, and efficiency of the members of the judiciary and the system of justice." *In the Matter of Gorby*, 176 W. Va. 16, 339 S.E.2d 702 (1985). "In a disciplinary proceeding against a judge, in which the burden of proof is by clear and convincing evidence, where the parties enter into stipulations of fact, the facts so stipulated will be considered to have been proven as if the party bearing the burden of proof has produced clear and convincing evidence to prove the facts so stipulated." Syl. pt. 4, *Matter of Starcher*, 202 W. Va. 55, 501 S.E.2d 772 (1998). Thus, based upon the signed stipulations presented in this matter and Respondent's

testimony in support of the same it is undisputed that Special Judicial Disciplinary Counsel has clearly met the burden of proof in this case.

B. SANCTION

Article VIII, Section 8 of the West Virginia Constitution states in relevant part that '[u]nder its inherent rule-making power, which is hereby declared, the supreme court of appeals shall, from time to time, 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, and the supreme court of appeals is authorized to 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...". It is noted that there is no limitation placed upon the length of the suspension of a judge in the text of the constitution.

Rule 4.12 of the Rules of Judicial Disciplinary Procedure provides:

> The Judicial Hearing Board may recommend or the Supreme Court of Appeals may impose any one or more of the following sanctions for a violation of the *Code of Judicial Conduct*: (1) admonishment; (2) reprimand; (3) censure; (4) suspension without pay for up to one year; (5) a fine of up to $5,000; or (6) involuntary retirement for a judge because of advancing years and attendant physical or mental incapacity and who is eligible to receive retirement benefits under the judges' retirement system or public employees retirement system. Any period of suspension without pay shall not interfere with the accumulation of a judge's retirement credit and the State shall continue to pay into the appropriate retirement fund the regular payments as if the judge were not under suspension without pay. An admonishment constitutes advice or caution to a judge to refrain from engaging in similar conduct which is deemed to constitute a violation of the *Code of Judicial Conduct*. A reprimand constitutes a severe reproof to a judge who has engaged in conduct which violated the *Code of Judicial Conduct*. A censure constitutes formal condemnation of a judge who has engaged in conduct which violated the *Code of Judicial Conduct*. The extent to which the judge knew or should have reasonably known that the

conduct involved violated the *Code of Judicial Conduct* may be considered in determining the appropriate sanction.

Rule 4.12 of the Rules of Judicial Disciplinary Procedure indicates clearly that the Court may sanction Respondent for **each** violation of the *Code of Judicial Conduct*. Accordingly, it is clear that this Court can censure[5] Respondent and suspend Respondent for up to one year **per** violation of the *Code of Judicial Conduct*. The *Toler* Court stated that "it is clearly within this Court's power and discretion to impose multiple sanctions against any justice, judge or magistrate for separate and distinct violations of the *Code of Judicial Conduct* and to order that such sanctions be imposed consecutively." Syl. pt. 5, *In re Toler*, 218 W. Va. 653, 625 S.E.2d 731 (2005). The *Toler* Court explained "to hold a violator of the *Code of Judicial Conduct* who has committed only one offense to the same exact standard and subject that offender to the same sanctions as a violator who has committed four, five, or fifty separate acts of misconduct would suggest unreasonable disparate treatment and this Court must give proper consideration and weight to the severity of each of the independent acts of judicial misconduct when deciding appropriate sanctions." *In re Toler*, 218 W. Va. at 661, 625 S.E.2d at 739 (2005).

Despite the clear authority, Respondent, who has admitted to committing Thirty-Three (33) violations of the *Code of Judicial Conduct* suggests that the Judicial Hearing Board's recommendation that Respondent be suspended without pay for four (4) years is too harsh and is in violation of the Constitution. It is understood that pursuant to W.Va. Code § 51-2A-17, a family court judge may only be removed from office by impeachment pursuant to the provisions of the Section 9, Article IV of the West Virginia Constitution. However, the Judicial Hearing Board is not

5 Respondent's objection focuses primarily on the suspension, not the censure or the costs assessed in this matter.

recommending that Respondent be *removed* from the Office of the Family Court Judge, only *suspended* from that position for a finite period of time. Respondent's position as Family Court Judge would not be vacated by the suspension. Respondent would be the *suspended* Family Court Judge of Putnam County, West Virginia, until and unless such time arises that Respondent is removed via proper impeachment proceedings or he resigns from the position. Moreover, as this Court has been forced to appoint a temporary judge in Respondent's most recent absences, the citizens of Putnam County, West Virginia would not be unduly prejudiced by the just suspension of Respondent as this Court could just appoint a temporary judge. Accordingly, the Judicial Hearing Board's recommendation is not in violation of the Constitution.

In determining whether this Honorable Court should suspend a judicial officer, under *Cruikshanks*, there are at least 5 factors that should be considered: (1) whether the charges of misconduct are directly related to the administration of justice or the public's perception of the administration of justice, (2) whether the circumstances underlying the charges of misconduct are entirely personal in nature or whether they relate to the judicial officer's public persona, (3) whether the charges of misconduct involve violence or a callous disregard for our system of justice, (4) whether the judicial officer has been criminally indicted, and (5) any mitigating or compounding factors which might exist." Syl. pt. 3, *In the Matter of Cruickshanks*, 220 W. Va. 513, 648 S.E.2d 19 (2007). Leaving aside the fourth factor, an analysis of the facts and violations under the enumerated factors in *Cruickshanks* supports the recommendation that Respondent be suspended.

The charges in this matter, specifically as it pertains to his conduct in the *Black* divorce matter and his failure as it pertains to the domestic violence registry program are directly related to the administration of justice. As the Court recognized in *Sommerville* a disciplinary charge may be

sustained on the unreasonable delay in a case. *In re Sommerville,* 178 W.Va. 694, 364 S.E.2d 20 (1987). Additionally, elaborating on the issue relating to delay and dilatory behaviors, this Court stated in *King* "[d]isciplinary sanctions are more frequently imposed upon offenders who exhibit an extensive pattern of delay. If, for example, an individual engages in numerous instances of unnecessary delay in deciding cases or persistently fails to adequately perform administrative functions, disciplinary sanctions will be imposed." *In the Matter of Wayne King,* 184 W.Va. 177, 399 S.E.2d 888 (1990). (citations omitted).

In *Black*, Respondent willfully refused to properly enter a divorce order which necessitated one party to file 3 petitions for *writs* of *mandamus* with the Circuit Court. Ultimately, the litigant was forced to file a final *writ* of *mandamus* with this Honorable Court. The lack of finality in such an emotionally charged matter like a contested divorce and the additional financial costs to the litigants is inexcusable. Moreover, Respondent does not dispute that his course of conduct in the *Black* case is a violation of the *Code of Judicial Conduct.*

Additionally, Respondent's failure to properly and timely enter Orders and Temporary Orders into the domestic violence registry in violation of the applicable statute and the accompanying Family Court Rules is inexcusable. Respondent's misconduct is a deliberate violation of West Virginia Code § 48-27-802(b) and Domestic Violence Civil Proceedings Rule 21(b). *See* Syl. Point 2, *In re Pauley*, 173 W.Va. 475, 318 S.E.2d 418 W.Va. (1984). "The deliberate failure to follow mandatory criminal procedures constitutes a violation of the Judicial Code of Ethics." Respondent displayed disdain for this critical registry from its outset. See Exhibit 19, Bates No. 00233. His failure, in violation of statutory law, impacted the administration of justice and endangered the lives of those who would be protected by the proper issuance of an Order, as well as law enforcement.

Domestic violence cases are of the utmost importance and must be handled efficiently and effectively by our judicial officers. See *Syl. Point 6, In the Matter of June G. Browning*, 192 W.Va. 231, 452 S.E.2d 34 (1994). Again, Respondent does not dispute that this continued course of misconduct was in violation of the *Code of Judicial Conduct.*

Even more disturbing, throughout the *Black* case and throughout the investigation of these proceedings, Respondent, a sitting judicial officer of this State, openly and repeatedly refused to acknowledge the inherent supervisory power of the Circuit Court of Putnam County, West Virginia. See *State of West Virginia ex. rel. Silver v. Wilkes*, 213 W. Va. 692, 584 S.E. 2d 548 (2003). Respondent inexplicably maintained a position that is clearly contrary to law and amounts to a callous and flagrant disregard for our system of justice. Respondent does not dispute the same is in violation of the *Code of Judicial Conduct.*

Additionally, it is noted that the Judicial Hearing Board took notice of the difficulty of *some* of the Complainants in these cases. It is not disputed that courtrooms can be emotional and the litigants can be volatile at times. It is further not disputed that Respondent, as the Judge, has many legitimate tools at his disposal to perform his duty to maintain decorum in the courtroom, such as contempt and even gaveling out of the proceedings for a short recess. In these cases, instead of attempting to comport himself consistent with the Canons and to exercise his role as the exemplar of dignity, Respondent's behavior was abusive, profane, threatening and intemperate. Respondent does not dispute the same is in violation of the *Code of Judicial Conduct.*

Moreover, "[j]udges may be appropriately disciplined for using abusive, insulting, intemperate, obscene, profane, threatening, vulgar, or other offensive language." *In re Pauley*, 173 W. Va. 228, 235, 314 S.E.2d 391, 398 (1983) (citations omitted). In *Matter of Gorby*, 176 W. Va. 11,

339 S.E.2d 697 (1985), a magistrate who engaged in injudicious behavior at a high school football game unrelated to his duties was suspended for six months. The Judicial Hearing Board cited to a wealth of cases that supported the recommendation to suspend Respondent for his pattern of abusive, profane, vulgar and offensive behaviors in violation of the *Code of Judicial Conduct*.[6]

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6 See *Disciplinary Counsel v. Campbell*, 126 Ohio St.3d 150, 931 N.E.2d 558 (2010)(imposing a one-year suspension with six months stayed for, among other things, likening an attorney's behavior of a "horse's ass" and making negative comments in open court about county commissioners); *Disciplinary Counsel v. Parker*, 116 Ohio St.3d 64, 876 N.E.2d 556 (2007)(imposing an eighteen-month suspension with six months stayed on a judge with narcissistic-personality disorder for acts of bias, coercion, intemperance, and dishonesty included humiliating a victim of domestic violence in court and repeatedly mistreating participants in court proceedings); *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 815 N.E.2d 286 (2004)(imposing a two-year suspension with one year stayed on conditions on a judge who engaged in a pattern of misrepresentation and rude, undignified, and unprofessional conduct that included abusive verbal outbursts, unjustified expulsions from the courtroom, and berating or humiliating persons in the presence ofothers); *Re Judicial Disciplinary Proceedings against Gorenstein,* 147 Wis. 2d 861, 434 N.W.2d 603 (1989)(two-year suspension for judge who, in addition to other reprehensible conduct, using threatening and abusive language toward attorneys who appeared before him); *Matter of Seraphim*, 97 Wis. 2d 485, 294 N.W.2d 485 (1980)(imposing three-year suspension on judge for, among other things, berating and disparaging counsel and litigants, and disrespecting other trial and appellate courts); *Re Bennett*, 403 Mich. 178, 267 N.W.2d 914 (1978)(imposing one-year suspension for judge who had engaged in numerous incidents of misconduct, including the use of vulgar language directed towards counsel); *Matter of Del Rio*, 400 Mich. 665, 256 N.W.2d 727 (1977)(five-year suspension regardless of an intervening election for judge who, among other things, used threatening language toward attorneys and litigants); *Matter of Mikesell*, 396 Mich. 517, 243 N.W.2d 86 (1976)(judge suspended for eighteen months for repeatedly and persistently subjected counsel appearing before him to discourtesies, harassment, unjust criticism, and abuse).

In other cases, judges have been removed and/or prohibited from holding judicial office under somewhat similar circumstances. See *Inquiry Concerning Fowler*, 287 Ga. 467, 696 S.E.2d 644 (2010)(probate judge removed from and prohibited from holding judicial office for, inter alia, failing to comply with the statutes, rules, and regulations applicable to his office, and for abusing and insulting parties appearing before him); *In re Bartie*, 138 S.W.3d 81 (Tex. Rev. Trib. 2004)(judge's frequent and repeated use of obscene language in courtroom violated duty to be patient, dignified, and courteous to litigants and cast public discredit upon judiciary or administration of just, as grounds for recommendation that he be removed from bench and forever barred from holding judicial office); *In re Shea*, 759 So.2d 631 (Fla. 2000)(judge's pattern of hostile conduct towards attorneys, court personnel, and judges, among other things, warranted his removal from office); *In re Inquiry Concerning Holien*, 612 N.W.2d 789 (Iowa 2000)(removal of district associate judge for cause was warranted by judge's refusal to keep her court open to the public, her persistent violation of rules of criminal procedure regarding arraignments and trial settings, her rude, disrespectful and hostile treatment of fellow judges, attorneys, defendants, court reporters, court clerk's office staff, peace officers, and other court personnel); *In re Romano*, 93 N.Y.2d 161, 690 N.Y.S.2d 849, 712 N.E.2d 1216 (1999)(outspoken insensitivity about charges of domestic violence and sexual abuse; uttering profane and disparaging remarks about a complainant; and attempting to instigate a criminal complaint to benefit a friend and client constituted a serious abuse of judicial authority and demonstrated a pattern of serious disregard for the standards of judicial conduct warranting removal from office); *Mississippi Com'n on Judicial Performance v. Spencer*, 725 So.2d 171 (Miss. 1998)(removing judge was warranted for ex parte communications, demeanor and disrespect for litigants and witnesses, failure to sign cases and act on affidavits, and sexual comments); *Re Graham*, 620 So. 2d 1273 (Fla. 1993)(removal ordered for judge who, among other things, needlessly used vulgar and offensive language in court proceedings); *Kloepfer v Commission on Judicial Performance,* 49 Cal. 3d 826, 264 Cal. Rptr. 100, 782 P.2d 239 (1989)(judge removed from office who questioned the competence of attorneys who appeared before him, as well as engaged in other misconduct toward defendants and witnesses); *Re*

Perhaps, it is the fifth *Cruickshanks* factor, the existence of mitigating and aggravating factors, that is the tipping point in the undersigned's argument. This case is not isolated to one example of dilatory behavior or one statutory failure or one intemperate moment from the bench. The aggravating factors present in these cases outweigh the offer of mitigation. See *Supra.*

While Respondent may be displeased with the decision, the decision to reject the stipulated recommendations as to discipline in this case was clearly within the power and discretion of the Judicial Hearing Board. At the conclusion of the November 27, 2012 hearing, the Judicial Hearing Board reviewed all of the evidence presented in this case and heard the testimony of Respondent firsthand and, simply put, did not find his testimony about remorse or his ability to rehabilitate himself to be credible. This finding is particularly critical when determining the relevant sanctions in this case.[7] Respectfully, the additional findings of fact by the Judicial Hearing Board should not be disturbed as these members "are much closer to the pulse of the hearing to resolve such issues as credibility and conflict of facts" *See* Footnote 4, *Matter of Browning*, 192 W.Va. 231, 452 S.E.2d 34 (1994). As noted further by the *Browning* Court, the burden to set aside these additional critical

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Yaccarino, 101 N.J. 342, 502 A.2d 3 (1985)(removal from office where judge, among other things, directed hostile and threatening comments towards attorneys and litigants); *Aldrich v State Com. on Judicial Conduct*, 58 N.Y.2d 279, 460 N.Y.S.2d 915, 447 N.E.2d 1276 (1983)(judge removed from office for, among other things, using threatening language towards litigants); *In re Jordan*, 290 Or. 303, 622 P.2d 297 (1981)(judge removed from office for, among other things, using vulgar or obscene language); *Matter of Yengo*, 72 N.J. 425, 371 A.2d 41 (1977)(judge removed from office for, along with other improper conduct, the demeaning language he used in speaking to attorneys who appeared before him); *Cannon v Commission on Judicial Qualifications*, 14 Cal.3d 678, 122 Cal. Rptr. 778, 537 P.2d 898 (1975)(judge removed from office for deliberately ridiculing qualified members of the bar without cause); *Geiler v Commission on Judicial Qualifications*, 10 Cal.3d 270, 110 Cal. Rptr. 201, 515 P.2d 1 (1973)(judge who, among other things, habitually peppered instructions to his clerk and the court calendar coordinator with such expletives as "mother fucker," "fucking," "bitch," and "son of a bitch" was removed from office).

7 In his objection, Respondent makes note of electronic mail that was sent *prior* to the November 27, 2012 hearing that seems to relay preliminary impressions of certain members of the Judicial Hearing Board. While the undersigned it not certain the members of the Hearing Board intended the parties to be copied on the electronic mail, as it may have been designed to be a discussion amongst the members of the Judicial Hearing Board, the same is irrelevant as the hearing had not taken place and the Hearing Board had not been presented with the evidence at the time of the submission of the electronic mail.

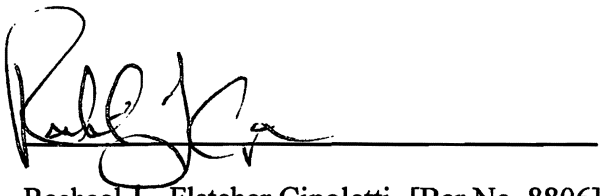
findings of facts by the Judicial Hearing Board is on the Respondent. Respondent must demonstrate the findings of fact are not supported by evidence in the record. See Footnote 4, *Matter of Browning*, 192 W.Va. 231, 452 S.E.2d 34 (1994). Respondent is unable to meet this burden. The Hearing Board went to great lengths in its December 3, 2012, to demonstrate from the evidence the basis for these critical findings of fact. Accordingly, while understandably damning, the additional findings of facts made by the Judicial Hearing Board should not be disturbed and should be adopted by this Honorable Court.

VI. CONCLUSION

Socrates famously stated that "[f]our things belong to a judge: to hear courteously; to answer wisely; to consider soberly; and to decide impartially." American Judicature Society, Handbook for Judges, 29 (1961). This case demonstrates an experienced judge who committed and admitted to Thirty-Three (33) violations of the *Code of Judicial Conduct*. Respondent has engaged in a cumulative pattern of failing to comport himself within the bounds of the *Code of Judicial Conduct*. Respondent's deficiencies are not limited to just one area of his judicial responsibilities. Respondent has failed to comport himself in a judicial manner on several occasions. Respondent has failed to adhere to statutory law, administrative rules and has failed to ensure that his Office functions in a manner that properly, professionally and efficiently serves the people of Putnam County, West Virginia. Respondent has failed to recognize the supervisory authority of a higher Court necessitating additional pleadings and financial and emotional costs to litigants. Moreover, Respondent's statements in the October 2012 evaluation and his conduct in the November 2012 hearing made clear to the Judicial Hearing Board that he is either unwilling or incapable of meaningful change.

It is this Court's inescapable duty to protect the integrity of its Courts and our system of justice. Accordingly, pursuant to the permissible sanctions outlined in Rule 4.12 of the Rules of Judicial Disciplinary Procedure, Respondent should be publicly censured for each violation; suspended without pay for the remainder of his term in office; and pay the costs associated with the investigation and prosecution of these cases.

Respectfully submitted,
By Counsel



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CERTIFICATE OF SERVICE

This is to certify that I, Rachael L. Fletcher Cipoletti, Special Judicial Disciplinary Counsel for the Judicial Investigation Commission, have this day, the 16th day of January, 2013, served a true copy of the foregoing **"Brief of Special Judicial Disciplinary Counsel"** upon Robert P. Martin, Esquire, counsel for Respondent William M. Watkins, and Ancil G. Ramey, Esquire, Counsel for the Judicial Hearing Board, by mailing the same via United States Mail, both certified and first class, with sufficient postage, to the following addresses:

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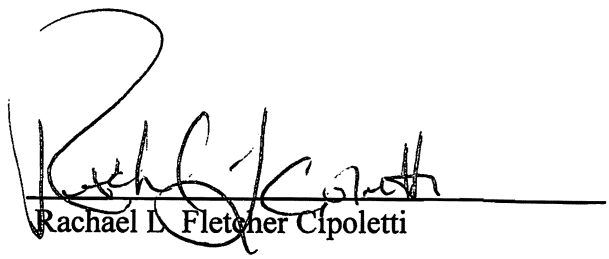

Rachael L. Fletcher Cipoletti