



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

**IN THE MATTER OF:
JAYMIE GODWIN WILFONG,
JUDGE, 20TH JUDICIAL CIRCUIT**

**COMPLAINT NO. 142-2013; 143-2013; 144-2013;
145-2013; and 155-2013**

SUPREME COURT NO.: 14-0379



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I. STATEMENT OF THE CASE

A. NATURE OF PROCEEDINGS

This matter involves five separate judicial ethics complaints against Judge Wilfong.

First, on or about October 14, 2013, Judge Wilfong self-reported to the Judicial Investigation Commission that during the immediate past two years she had been involved in a romantic and sexual relationship with William Travis Carter, the Director of the North Central Community Corrections Program, until his negotiated resignation on or about December 5, 2013, stating in her self-report, designated ID No. 142-2013, that her relationship with Mr. Carter had terminated.

Second, on or about October 15, 2013, Mary Catherine Wendekier, Judge Wilfong's law clerk and an employee of the Supreme Court of Appeals, filed a complaint, designated ID No. 143-2013, in which she reported that (a) Judge Wilfong had confided to Ms. Wendekier in January 2012 that Judge Wilfong had been in an "inappropriate" relationship with Mr. Carter, but that the relationship had terminated; (b) Ms. Wendekier later discovered, contrary to Judge Wilfong's representations, that the relationship between Judge Wilfong and Mr. Carter had continued beyond January 2012; and (c) Ms. Wendekier believed she was obligated to file a complaint as the relationship between Judge Wilfong and Mr. Carter potentially implicated criminal proceedings in which Judge Wilfong was pending.

Third, on or about October 16, 2013, Michael W. Parker, Prosecuting Attorney for Randolph County, filed a complaint, designated ID No. 144-2013, based upon his information and belief that Judge Wilfong had or was still in a romantic relationship with Mr. Carter that (a) created a potential conflict regarding sentencing offenders to the North Central Community Corrections Program, for which Mr. Carter served as Director and as a witness in hearings before Judge

Wilfong; (b) created a potential conflict regarding the adjudication of compliance by offenders sentenced to the Program with its terms and conditions where Mr. Carter served as Director and as a witness in hearings before Judge Wilfong; and (c) created problems with respect to the public's perception of the integrity of the judicial process as the inappropriate relationship between Judge Wilfong and Mr. Carter had become known.

Fourth, on or about October 21, 2013, Christopher W. Cooper, a member of the West Virginia State Bar who practices criminal law in Randolph County, filed a complaint, designated ID No. 145-2013, (a) stating his belief that Judge Wilfong's relationship with Mr. Carter "has placed the entire Randolph County Criminal Bar at peril;" (b) specifically addressing two criminal matters in which he served as defense counsel and Mr. Carter was a primary witness in hearings conducted by Judge Wilfong; and (c) explaining that because of the relationship between Judge Wilfong and Mr. Carter, he believed he had an obligation to file a complaint.

Finally, on or about October 22, 2013, R. Michael Mullins, Heather Weese, Raymond LaMora, and David Wilmoth, members of the West Virginia State Bar in Randolph County and of the Board of the North Central Community Corrections Program filed a complaint, designated ID No. 155-2013, stating that the relationship between Judge Wilfong and Mr. Carter possibly created a conflict of interest and may have violated the Code of Judicial Conduct.

After investigating the five complaints, the Judicial Investigation Commission filed a Statement of Charges with the Supreme Court of Appeals on April 23, 2014, charging Judge Wilfong with two Counts of violating Canon 1 (Integrity of the Judiciary); Canon 2A (Public Confidence in the Judiciary); Canon 2B (Improper Influence); Canon 3B(5) (Bias and Adjudicative Responsibilities); Canon 3C(1) and (2) (Diligent Discharge of Duties); Canon 3E(1) (Disqualification); and Canon 4A (Extrajudicial Activities) of the Code of Judicial Conduct.

On April 28, 2014, Judge Wilfong filed her Response with the Supreme Court of Appeals, admitting many of the factual allegations of the Statement of Charges, but denied any violation of the Code of Judicial Conduct.

The parties exchanged discovery on or about July 22, 2014, with Special Judicial Disciplinary Counsel filing supplemental discovery on or about August 6, 2014. The Parties further tendered Pretrial Memorandum on or about July 29, 2014. At that time, Judge Wilfong filed Motions *in Limine* to exclude evidence not relevant to the Statement of Charges; to exclude evidence not admissible pursuant to Rule 403 of the Rules of Evidence; to exclude any evidence regarding comments made about other members of the judiciary; to exclude evidence of any other sexual acts with persons other than Travis Carter; to exclude any and all exhibits and evidence not charged or irrelevant to the Statement of Charges; and to exclude evidence regarding Judge Wilfong's medical condition. On or about August 1, 2014, Special Judicial Disciplinary Counsel filed "Special Judicial Disciplinary Counsel's Motions *in limine*", "Special Judicial Disciplinary Counsel's Response to Judge Wilfong Jaymie Godwin Wilfong's Motions *in limine*", and "Special Judicial Disciplinary Counsel's Response to Judge Wilfong Jaymie Godwin Wilfong's Motion *in limine* and Motion to file the Same Under Seal." By Order entered August 5, 2014, the Honorable Lawrance Miller ruled upon those motions and that Order was sent to the Clerk of the Supreme Court of Appeals.

The parties filed pre-hearing briefs with the Judicial Hearing Board on August 7, 2014. This matter went to hearing on August 11, 2014, in the Visiting Judges' Courtroom of the Kanawha County Judicial Annex in Charleston, West Virginia. Presiding over this matter was the Judicial Hearing Board, comprised of the Honorable Lawrance S. Miller, Jr., Chairperson; the Honorable Robert G. Chafin, Vice Chairperson; the Honorable Darrell Pratt; the Honorable

Patricia Keller; the Honorable Tina M. Mouser; Holly S. Planinsic, Esquire; Jacqueline K. Ferrell; and George Poole. Ancil G. Ramey, Esquire, served as Counsel for the Judicial Hearing Board. At the hearing, witnesses were permitted to give non-duplicative testimony relevant to (a) whether Judge Wilfong violated the provisions of the Code of Judicial Conduct other than Canons 1 and 2 which Judge Wilfong first conceded as to their violation in her Brief on Appropriate Sanctions submitted on August 7, 2014, four days prior to the hearing, and (b) the appropriate discipline to be imposed for violations of the Code of Judicial Conduct, including any aggravating or mitigating circumstances. [Order at 17-18]. The Board heard testimony from Erin Golden; W. Travis Carter; Christopher Cooper; Phillip Isner; Michael Taylor; and Judge Wilfong. The Board also heard rebuttal testimony from Jennifer Lloyd.¹ Additionally, Special Judicial Disciplinary Counsel's exhibits 1-43 were admitted into evidence and Judge Wilfong's exhibits 1-106 were admitted into evidence. Following the hearing, on or about August 18, 2014, the parties each submitted post-hearing briefs.

On or about August 22, 2014, the Judicial Hearing Board issued an Order which contained its factual findings, conclusions of law and recommended sanctions against Judge Wilfong.

On August 27, 2014, Special Judicial Disciplinary Counsel filed its statement of no objection to the recommendation of the Judicial Hearing Board. On September 22, 2014, Judge Wilfong, by and through counsel, filed her objection to the recommendation.

On the same date, this Honorable Court, determined on its own motion to expedite this matter and pursuant to Rule 4.11 of the Rules of Judicial Disciplinary Procedure, set this matter for hearing for October 21, 2014, on the Rule 19 argument docket.

¹ Jennifer Lloyd, an office manager at Mr. Isner's law firm, testified as a rebuttal witness and Judge Wilfong refuted Ms. Lloyd's testimony. The Judicial Hearing Board indicated in its Order that it did not rely upon this testimony to make its determination. [Order at 22].

B. FINDINGS OF FACT BY JUDICIAL HEARING BOARD

At all times during the matters asserted herein, Jaymie Godwin Wilfong (hereinafter "Judge Wilfong") was a duly elected Circuit Court Judge serving the 20th Judicial Circuit of Randolph County, West Virginia. Judge Wilfong is the only Circuit Court Judge in Randolph County, West Virginia, and Randolph County is the sole county in the 20th Judicial Circuit. Prior to her position on the Circuit Court bench, Judge Wilfong served as the Family Court Judge from January 1, 2003, until December 31, 2008. Judge Wilfong was sworn in on December 31, 2008, and publicly took the position of Circuit Court Judge on January 1, 2009. Her current term of office ends in 2016. By Order entered November 22, 2011, pursuant to the Rules of Judicial Disciplinary Procedure, Judge Wilfong was appointed by the West Virginia Supreme Court of Appeals (hereinafter referred to as "Supreme Court") to the Judicial Hearing Board (hereinafter referred to as "JHB"). Judge Wilfong's appointment on the JHB commenced January 1, 2012, and concluded upon her voluntary resignation on April 23, 2014. [Joint Exhibit 1 at 2].

In or about 2010, Carter approached Judge Wilfong about concerns he had regarding his belief that his wife was having an extramarital affair and how a divorce may affect his relationship with his young child. [Joint Exhibit 1 at 7]. Carter testified he confided problems in his marriage to her because she was a former Family Court Judge. [Order at 18]. Judge Wilfong stated that she encouraged Carter to reconcile with his wife. Judge Wilfong stated over the course of the next year, a close personal relationship developed between Judge Wilfong and Carter. A romantic and ultimately sexual relationship with Carter began in or about late October 2011. [Joint Exhibit 1 at 7]. There were no sexual acts after September 2012. [Joint Exhibit 1 at 11]. For the last 14 months of the relationship between Carter and Judge Wilfong, there were no sexual acts and it was an emotional relationship. [Joint Exhibit 1 at 12].

At all times during the matters asserted herein, William Travis Carter (hereinafter "Carter") was the Director of the North Central Community Corrections program (hereinafter referred to as "NCCC") until his negotiated resignation on or about December 5, 2013. [Joint Exhibit 1 at 2]. Commissioner Michael Taylor testified that Randolph County expended approximately Fifty Thousand Dollars (\$50,000) in the investigation and resolution of Mr. Carter's employment with the Program after disclosure of his relationship with Judge Wilfong. [Order at 20]. Carter attributed his resignation as Director to the erosion of respect with those with whom he worked after the public disclosure of their relationship and the attendant press coverage. [Order at 18].

Pursuant to W. Va. Code § 62-11C-6(e)(1), Judge Wilfong serves as a non-voting Circuit Court Judge member of the NCCC Board. Pursuant to W. Va. Code § 62-11C-7(a), Judge Wilfong is able to set the participation fee amount and may require the payment of a participation fee to participate in community corrections programs, like NCCC. Pursuant to W.Va. Code § 62-11C-7(b) all fees are to be paid to the NCCC Board. Judge Wilfong has not altered the participation fee. [Joint Exhibit 1 at 6]. Until October 2013, Judge Wilfong regularly attended the NCCC Board meetings and participated in discussions regarding Board issues, including, but not limited to: operational budgets for Carter's office and Carter's salary. [Joint Exhibit 1 at 8]. At no time, did Judge Wilfong disclose the relationship with Carter to the NCCC Board. Despite not attending the board meetings since her disclosure of the relationship with Carter in October 2013, Judge Wilfong has not resigned her *ex officio* position on the NCCC Board. [Joint Exhibit 1 at 8]. However, after the Statement of Charges was filed, Judge Wilfong has attended one board meeting of the NCCC on May 8, 2014. [Joint Exhibit 1 at 8].

Until she self-reported her actions in October 2013, Judge Wilfong did not seek guidance from the JIC about the ethical implications of this relationship with Carter.² [Joint Exhibit 1 at 7].

From October 2011 until October 2013, Carter and/or his subordinate staff from NCCC appeared before Judge Wilfong in approximately forty-six (46) criminal matters to offer sworn testimony and/or unsworn testimony to Judge Wilfong to enable her to evaluate possible alternative sentencing at NCCC or to evaluate whether participants have violated terms of placement at NCCC. There were two occasions between August 1, 2011, through October 14, 2013, that members of Carter's NCCC staff gave sworn testimony before Judge Wilfong. Judge Wilfong did not disclose the relationship with Carter on the record to the parties in any of the above-referenced court proceedings. [Joint Exhibit 1 at 8].

She has used the NCCC program before her relationship with Carter, during the relationship with Carter, during the break ups of her relationship with Carter, and after Carter's resignation from the agency. [Joint Exhibit 1 at 9]. Erin Golden, who succeeded Travis Carter as Director of NCCC, was an employee of Carter's during the affair. She testified about Judge Wilfong's involvement in NCCC, including approving the payment of bills. She also testified that Judge Wilfong would call NCCC repeatedly and she would, ultimately, if unable to find Carter, contact Ms. Golden and demand to speak with Mr. Carter. [Order at 18].

² There were three occasions that Judge Wilfong contacted the JIC counsel for informal ethics advice. Each of the calls involved questions of disqualification/recusal. The calls pertained to a staff member's son working at the prosecutor's office; a staff member dating a law enforcement officer/home confinement officer; and whether she could interview a family friend for a position in the court system. The calls occurred in or about January through March 2012. On each occasion, the informal advice given was that it appeared that the relationship at least needed to be disclosed. Judge Wilfong was also informed that an informal opinion carried no weight in any disciplinary proceeding and that she should seek a formal opinion from the JIC.

During the course of the relationship with Carter, Judge Wilfong disclosed the nature of the relationship with Carter to certain individuals, such as: her long-time judicial secretary and court employee, Tamatha Snodgrass; her law clerk and court employee Mary Catherine Wendekier, Assistant Prosecutor Lori A. Gray; and Attorney Phillip S. Isner. [Joint Exhibit 1 at 9]. Additionally, Heidi Hawkins³ is the Chief Probation Officer and has worked as a Probation Officer in Randolph County since 2003. At the end of 2011, Judge Wilfong told her that she was having a physical affair with Travis Carter. Judge Wilfong indicated that they were in love and that it was a serious relationship. Sometime later, at which time was unknown to Heidi Hawkins, but after the conversation she had with Judge Wilfong, Judge Wilfong texted to her that she and Travis Carter were breaking up. [Joint Exhibit 2 at Hawkins Stipulation].

During the course of the relationship with Carter, court personnel witnessed Carter entering and exiting Judge Wilfong's chambers from a non-public entrance. During the course of the relationship with Carter, at times when Carter and Judge Wilfong were in her judicial chambers, it became necessary for court personnel to interrupt Judge Wilfong and Carter in order to insist that Judge Wilfong continue with daily court proceedings. [Joint Exhibit 1 at 11]. By her actions of carrying on the affair in her judicial chambers and during the course of the business day, Judge Wilfong stipulated that she acted in violation of her responsibilities as the immediate supervisor. [Joint Exhibit 1 at 9]. By her actions of carrying on the affair in her judicial chambers and during the course of the business day, the court employees were placed in a position to explain the circumstances surrounding the appearance of Judge Wilfong's relationship with Carter. [Joint

³ Heidi Hawkins sits on the Board of the NCCC. She has no knowledge that the procedure for the use of the NCCC changed before, during or after the relationship with Travis Carter. Heidi Hawkins has no knowledge that any case was affected by the relationship with Travis Carter. [Hawkins Stipulation Joint Exhibit 2].

Exhibit 1 at 9]. During the course of the relationship with Carter, Judge Wilfong performed sexual acts upon Carter in her judicial chambers between court proceedings. [Joint Exhibit 1 at 11]. As the relationship with Carter was intermittent, on one occasion court personnel, members of the Bar, and members of the gallery in the courtroom witnessed Judge Wilfong crying or otherwise emotionally distraught while presiding over a court proceeding. [Joint Exhibit 1 at 12]. Carter also testified about Judge Wilfong's unsolicited appearance at a Magistrate Court proceeding to support his mother who had been involved in an incident involving her motor vehicle with another driver. [Order at 18].

Judge Wilfong enlisted the assistance of Assistant Prosecuting Attorney ("APA") Lori A. Gray, *now Haynes*, a licensed member of the Randolph County Bar, to further her relationship and her sexual contact with Carter by repeatedly requesting the use of and utilizing Gray's personal residence to meet with Carter. [Joint Exhibit 1 at 9]. Judge Wilfong and Attorney Gray's friendship pre-dated Attorney Gray's memberships to the West Virginia State Bar and Judge Wilfong's election to the bench. Judge Wilfong and Attorney Gray had worked at another law firm in Elkins, West Virginia. [Joint Exhibit 1 at 10]. Prior to becoming an assistant prosecutor for Randolph County, West Virginia, Gray practiced criminal and family law before Judge Wilfong. Over the course of the relationship, Attorney Gray appeared in Judge Wilfong's courtroom and represented criminal defendants on felony matters wherein Carter and his staff were called upon to offer opinions about placement and/or revocation of placement in NCCC. [Joint Exhibit 1 at 10]. After joining the prosecutor's office, APA Gray was assigned primarily to Magistrate Court in Randolph County, West Virginia. APA Gray utilized Carter's NCCC program as a form of alternative sentencing for defendants. [Joint Exhibit 1 at 10].

Judge Wilfong also enlisted the assistance of Attorney Phillip S. Isner, a licensed member of the Randolph County Bar, who practices law before Judge Wilfong, to further her relationship and sexual contact with Carter by requesting the use of and utilizing Isner's garage at his personal residence to meet with Carter on two occasions. [Joint Exhibit 1 at 10]. Isner testified that he and Judge Wilfong were acquaintances with Judge Wilfong since both were small children. He further testified that he and Judge Wilfong began texting each other initially on professional matters, but that the relationship gradually progressed until it was conducted on a nearly daily basis. Isner testified about the evolution of their texting to the point that it became flirtatious in nature and the discomfort that the texting eventually caused him to the point of bringing it to Judge Wilfong's attention. Isner testified that Judge Wilfong disclosed her relationship with Mr. Carter and he advised her that he believed it required disclosure because of the potential ethical issues presented. [Order at 19-20]. Over the course of the relationship, Isner appeared in Judge Wilfong's courtroom and represented criminal defendants on several felony matters wherein Carter and his staff were called upon to offer opinions about placement and/or revocation of placement in NCCC. [Joint Exhibit 1 at 10].

On or about April 11, 2013, the Supreme Court Administrator contacted Judge Wilfong and raised concerns about the ethical implications of the relationship with Carter and her judicial office. During a subsequent call to the Administrator, Judge Wilfong later advised the Supreme Court Administrator the relationship with Carter terminated in or about April 2013, but it was after the call from the Supreme Court Administrator. [Joint Exhibit 1 at 7]. Carter also testified about the intervention of Mr. Canterbury and its temporary impact of ending their relationship. [Order at 18]. Judge Wilfong and Carter again commenced their relationship in or about May 2013 and continued until the time of her self-report in October 2013. [Joint Exhibit 1 at 7].

Steven J. Jory is a West Virginia licensed attorney of forty-four (44) years and he began his practice with the United States Justice Department and thereafter engaged in private practice in Elkins, West Virginia. In that capacity, he has known Judge Wilfong since she came to Elkins to practice law and when she joined the Judiciary. During the course of this relationship, he has on occasions discussed matters with Judge Wilfong regarding varied subjects and he would consider her a friend. In that same light, he had a discussion with Judge Wilfong in April 2013 wherein he discussed with her that he heard rumors that she was having an extramarital relationship with Travis Carter. Judge Wilfong told Mr. Jory that Steve Canterbury called and told Judge Wilfong she had to self-report this relationship if it was going to continue. It was stipulated that Judge Wilfong agreed and said she had decided to end the affair. In fact, on April 22, 2013, they had a communication wherein Judge Wilfong indicated to Steve Jory that things were getting back on track, which Mr. Jory believed meant that she had broken off the relationship with Travis Carter. [Joint Exhibit 2 at Jory Stipulation].

On October 10, 2013, Teresa Tarr, Chief Counsel for the Judicial Investigation Commission⁴, was made aware that there were rumors and allegations that Judge Wilfong was having an affair with the Executive Director of NCCC. She contacted the Chair of her Commission to inquire if the Board wanted her to initiate an investigation into these allegations. The Commission believed that Tarr had no actual knowledge and that because no complaint had been filed that Tarr could not initiate a complaint on her own accord, but the Commission directed Tarr to contact Judge Wilfong to advise if such information were true that she must disclose the same in proceedings involving the NCCC. [Joint Exhibit 2 at Tarr Stipulation].

⁴ Teresa A. Tarr has been a licensed West Virginia attorney for nearly twenty-four (24) years and has been the Chief Judicial Disciplinary Counsel for the Judicial Investigation Commission since November 16, 2011.

Tarr contacted Judge Wilfong's office and was advised that Judge Wilfong was not in the office and was at the judicial conference in Charleston, West Virginia. Tarr left a message with Tamatha Snodgrass that requested that Wilfong call her back on Tuesday, October 15, 2013, because Tarr was leaving for a previously planned vacation over the Columbus Day weekend. Tarr then left the office. [Joint Exhibit 2 at Tarr Stipulation].

Judge Wilfong then contacted Mr. Jory, who was on a vacation trip to Florida, and asked for Tarr's cell phone number so she could have a discussion with the counsel for JIC. Mr. Jory had communications with her and indicated that there were lawyers in town who said they felt they were obligated to file an ethics complaint against her and he thought that it would be better if she self-reported. She asked Mr. Jory to let them know that she was going to self-report immediately. During that communication, Judge Wilfong also indicated to Mr. Jory that the affair had continued after April 2013 and she realized she needed to self-report and that she understood the seriousness of this matter. [Joint Exhibit 2 at Jory Stipulation].

Judge Wilfong texted Tarr several times and requested that Tarr call her immediately. Tarr called Judge Wilfong and advised her that the JIC had been made aware of the allegations of the affair with Carter and that if the same were true, she needed to disclose the same in court matters involving the NCCC. The following morning, October 11, 2013, Judge Wilfong advised Tarr by text message that she intended to "self-report" her actions to the JIC and that she would do so on Tuesday, October 15, 2013. After being advised by text that Wilfong intended to self-report and she had questions about the same, Tarr then conferred with Judge Wilson. Tarr then advised Wilfong that the decision to self-report was up to her, but suggested that she should take some time to consider her actions and act in a prudent, rational manner. [Joint Exhibit 2 at Tarr Stipulation].

On Saturday, October 12, 2013, Judge Moats received a telephone call from Judge Wilfong asking to meet that evening. Judge Moats suggested they meet in the Taylor County Courthouse in his Chambers. Thereafter, Judge Wilfong appeared in Judge Moats' chambers. Judge Moats was Judge Wilfong's mentor judge when she came on the bench and it was not unusual for them to have conversations about various matters, both professional and personal. Judge Wilfong explained to Judge Moats that she was having an affair with Travis Carter and indicated that she intended to self-report these actions to JIC. Judge Moats did not (during this conversation) tell Judge Wilfong that Judge Wilfong should not self-report this issue. Judge Moats did tell Judge Wilfong that she should take her time and be as accurate and succinct as she possibly could in self-reporting to the JIC. [Joint Exhibit 2 at Moats Stipulation]. Judge Wilfong testified in her February 13, 2014 sworn statement that Judge Moats said he was not sure she needed to self-report, however, the stipulation makes clear that Judge Moats did not (during this conversation) tell Judge Wilfong that Judge Wilfong should not self-report this issue. [SJC Exhibit 32 Bates No. 1172-1173]. Judge Moats had no further conversations after the October 12, 2013 meeting regarding this matter. [Joint Exhibit 2 at Moats Stipulation].

On or about October 14, 2013, Judge Wilfong self-reported to the Judicial Investigation Commission (hereinafter referred to as "JIC") stating that during the past two years, she had been involved in a romantic and sexual relationship with Carter. She stated that the relationship was intermittent and Judge Wilfong did not engage in any sexual acts for the last 14 months of the relationship. Judge Wilfong stated in the October 14, 2013 self-report that the relationship with Carter was terminated. [Joint Exhibit 1 at 3]. Thereafter, on Tuesday, October 15, 2013, Judge Wilfong indicated to Mr. Jory that she self-reported on October 14, 2013, by facsimile. [Joint Exhibit 2 at Jory Stipulation]. On October 15, 2013, the JIC received a faxed copy of a self-report

dated October 14, 2013; a request for an informal opinion regarding the misconduct; and a faxed copy of the complaint of Michael Parker (ID Number 144-13). [Joint Exhibit 2 at Tarr Stipulation].

On or about October 16, 2013, Complainant Mary Wendekier (I.D. No. 143-2013) who is Judge Wilfong's law clerk, a court employee, and a member of the West Virginia State Bar, filed a judicial ethics complaint and stated that in or about January 2012, Judge Wilfong confided to her that she had been in an "inappropriate relationship" with Carter. Judge Wilfong apologized to Complainant Wendekier and advised her that the relationship had ended and was not ongoing. Complainant Wendekier filed the judicial ethics complaint when it came to her attention that the relationship between Judge Wilfong and Carter continued beyond January 2012, and she stated in her complaint she was duty bound to file the ethics complaint as she believed that the relationship potentially affected criminal matters pending before Judge Wilfong that involve NCCC. [Joint Exhibit 1 at 3].

On or about October 16, 2013, Complainant Michael Parker (I.D. No. 144-2013), the Prosecuting Attorney for Randolph County and member of the West Virginia State Bar⁵, filed a judicial ethics complaint and stated upon information and belief, that Judge Wilfong is or had been involved in a romantic relationship with Carter. [Joint Exhibit 1 at 3-4]. Mr. Parker was handling two (2) cases involving Marc Courtney and Jeremy Scott Davis and both defendants were represented by Attorney Christopher W. Cooper. Parker and Cooper met to discuss the revocation of bond. [Joint Exhibit 2 at Parker Stipulation]. It was determined that Mr. Carter would have to be

⁵ Michael W. Parker has been a lawyer admitted to practice in the State of West Virginia since 2004. He was a law clerk for Judge Henning for nine (9) months then an Assistant Prosecutor for two (2) years and nine (9) months. Thereafter, he worked for McNeer, Highland, McMunn & Varner for four (4) years. In January of 2012, he was appointed to the position of Prosecuting Attorney of Randolph County. As the Prosecuting Attorney, he is a member of the NCCC Board of Directors. Since January of 2012, he has attended the meetings of the NCCC. [Parker Stipulation Joint Exhibit 2].

called to the witness stand in the revocation hearing. The two discussed the information and belief that Mr. Cooper's clients believed that Judge Wilfong and Carter were having an affair. Ultimately, both agreed that Mr. Carter would not be able to testify because of this relationship with Judge Wilfong. Other than this issue which necessitated the actions by Cooper and Parker, Mr. Parker is not aware of any case that Travis Carter appeared and testified under oath before Judge Wilfong during his term of office. [Joint Exhibit 2 at Parker Stipulation].

Complainant Parker stated that Judge Wilfong serves on the board of directors for NCCC. [Joint Exhibit 1 at 4]. Mr. Parker does not recall Judge Wilfong ever advocating for a raise for Travis Carter during any meeting of the NCCC, nor does he believe that to be true. As a non-voting member, Judge Wilfong did not control the actions of the Board members who were in fact entitled to vote, but she would participate in the discussions prior to taking a vote. [Joint Exhibit 2 at Parker Stipulation]. However, during the course of the relationship with Carter, Judge Wilfong assured Carter that she would advise County Commissioner President Michael Taylor that she would stop utilizing NCCC if Carter was no longer its Executive Director. [Joint Exhibit 1 at 11]. Moreover, Michael Taylor testified about Judge Wilfong's advocacy of the NCCC vis-à-vis the Commission and him personally, including budgetary matters regarding Carter and the NCCC. Specifically, Taylor testified about Judge Wilfong's intervention on Mr. Carter's behalf regarding the purchase of a new vehicle for Mr. Carter. Taylor further testified about Judge Wilfong's intervention on Mr. Carter's behalf regarding a dispute between the Program and the Commission over spending authority. [Order at 20]. Taylor testified that it was his recollection that the denial for the request for computer equipment caused Judge Wilfong to convene a meeting with the necessary representatives to determine who had ultimate spending authority for Carter's program

expenditures. Taylor was required to seek a legal opinion from an outside law firm that supported his position that the Randolph County Commission had the authority.

Parker is personally aware that approximately 40% of the defendants who are indicted on a felony charge in Randolph County, and are given Pretrial Bond Release, are ordered to use the NCCC program and are required to report to NCCC on a daily basis, as well as submit to urinalysis. The urinalysis is done on at least a one (1) time a week basis and on some cases multiple times per week at the discretion of the NCCC. Mr. Parker believes that this practice has been in place before he became the Prosecuting Attorney and has continued since that time. It has not changed during his term as the Prosecuting Attorney. [Joint Exhibit 2 at Parker Stipulation]. He is aware that the defendant must pay Twenty Five Dollars (\$25.00) per month and Ten Dollars (\$10.00) per each urinalysis that is given, and that the money received from the supervision and tests goes directly to the NCCC.⁶ [Joint Exhibit 2 at Parker Stipulation].

Complainant Parker further stated Judge Wilfong also sentences criminal defendants to NCCC. [Joint Exhibit 1 at 4]. If a referral was made to the NCCC post-conviction, the defendant was required to pay One Hundred Dollars (\$100.00) per month and Ten Dollars (\$10.00) for each urinalysis that was given, and believes that that has been the fee since the inception of the program. Mr. Parker is aware that the fee that is charged is customary of other programs around the state and is not in any way exorbitant or unreasonable.⁷ [Joint Exhibit 2 at Parker Stipulation.]

⁶Parker also believes that random drug screening provides for more accountability for offenders who are participating in the NCCC program and, as such, promotes their continued sobriety. [Parker Stipulation Joint Exhibit 2].

⁷ Parker does not believe that Judge Wilfong sentenced people to the program in order to facilitate a source of funding for Travis Carter's job. Most of the money for the program comes from grant funding, not from the payment of these fees. [Parker Stipulation Joint Exhibit 2].

Complainant Parker stated that Carter and/or his employees appear before Judge Wilfong to give sworn testimony and to make recommendations to Judge Wilfong whether defendants are suitable candidates for participation in the program and whether defendants should be restored to the program or terminated following a violation of terms and conditions of the program. [Joint Exhibit 1 at 4]. Specifically, employees of the NCCC would regularly appear in the courtroom to make recommendations of who would be a suitable candidate for NCCC on a pretrial bond. NCCC employees would also prepare and provide a letter to Mr. Parker upon belief that a participant in the program had violated the supervision requirements. If a revocation was filed and the hearing was contested, the NCCC employee would testify about the violation. If the hearing was uncontested, the NCCC employee would provide an opinion as to whether they would accept the participant back in the program. NCCC employees also would make recommendations of who would benefit from the NCCC after either a guilty plea or final adjudication.⁸ [Joint Exhibit 2 at Parker Stipulation]. Specifically, in or about July 2013, Mr. Parker was involved in a bond hearing with defendant, Cody Harris, where Mr. Carter was to be called as a witness. Prior to giving his testimony, Mr. Carter had asked Mr. Parker that he be replaced by his subordinate, Erin Golden, to prevent testimony before Judge Wilfong. [Joint Exhibit 2 at Parker Stipulation]. Judge Wilfong acknowledged in her testimony that she asked Mr. Carter to have the Prosecuting Attorney's office have someone other than Mr. Carter testify at a revocation hearing. [Order at 21 and SJC Exhibit 31 at Bates No. 000737]. Based partly on Erin Golden's testimony, Mr. Harris's bond was violated.⁹ [Joint Exhibit 2 at Parker Stipulation].

⁸ Parker believed that this practice has been in place before Judge Wilfong took the bench. Judge Henning, the previous Circuit Court Judge, utilized the same procedure. [Parker Stipulation Joint Exhibit 2].

⁹ Parker believes that Mr. Harris' bond should have been violated and Parker was responsible for asking the Court to revoke the bond because that was his job as the Prosecuting Attorney. The bond revocation was not initiated by Judge Wilfong. [Parker Stipulation Joint Exhibit 2].

On or about October 21, 2013, Complainant Christopher Cooper (J.D. No.145-2013), a member of the West Virginia State Bar, who practices criminal law in Randolph County, West Virginia, filed a judicial ethics complaint against Judge Wilfong. Complainant felt duty bound to file the judicial ethics complaint and to file appropriate motions before the Court regarding disqualification and/or recusal. [Joint Exhibit 1 at 5]. One disqualification motion was granted by Judge Wilfong and one was denied, however, the later ruling by this Court disqualified her from both cases. Judge Wilfong Cooper testified at the hearing and stated that he had been friends with Judge Wilfong since his admission to the bar in 2000 and had worked on her campaign for Family Court Judge. The judicial complaint arose from the complaints of two of his clients, Mark Courtney and Jeremy Davis, who were scheduled for a hearing before Judge Wilfong to revoke their participation in NCCC. When the clients learned that Carter would be the witness, the clients became concerned as they had heard rumors of a sexual relationship between Judge Wilfong and Carter. Cooper also testified about his meeting with Parker to discuss his clients' complaints about having a hearing with Judge Wilfong presiding and Carter participating in light of their relationship and the determination that the two were required to report this conduct to the JIC. [Order at 18-19].

On or about October 22, 2013, Complainants Mike Mullens, Esquire, Heather Weese, Esquire, Raymond LaMora, Esquire, and David Wilmoth, Esquire (I.D. No. 155- 2013), all active members of the West Virginia State Bar who serve on the Board of Directors for the NCCC, filed judicial ethics complaints because Complainants believed that Judge Wilfong's relationship with Carter possibly created a conflict of interest and may have violated provisions of the Code of Judicial Conduct. [Joint Exhibit 1 at 6]. Each of these Complainants believed that after October 15, 2013, when they read in the Inter-Mountain Newspaper of the affair between Judge Wilfong

and Travis Carter and as Board Members of North Central Community Corrections Board, they decided they needed to report this activity to the JIC. The four individuals believed it was necessary to file a Complaint against Judge Wilfong. Prior to this time, the undersigned's did not have first-hand knowledge that a relationship, other than a professional one, had been maintained between Mr. Carter and Judge Wilfong. [Joint Exhibit 2 at Mullens, Wilmoth, Weese, and Lamora Stipulation].

After the filing of the formal statement of charges, on or about May 1, 2014, Complainant Parker filed a petition to disqualify Judge Wilfong from presiding over any and all cases handled by the Randolph County Prosecuting Attorney's Office and requested the appointment of a special judge. [Joint Exhibit 1 at 4 and SJC Exhibit 41 at 1628-1635] Judge Wilfong denied Complainant Parker's petition and by letter dated May 1, 2014, Judge Wilfong advised the Chief Justice of her decision to deny the petition and set forth her reasoning for the same, including that Judge Wilfong had presided over cases involving the Prosecuting Attorney for the previous 7 months without objection. [Joint Exhibit 1 at 4-5 and SJC Exhibit 41 at 1636-1639]. By Order entered May 1, 2014, in accordance with Trial Court Rule 17.01(c), the Chief Justice determined that the matters set forth in the petition to disqualify were sufficient to warrant disqualification to avoid even the appearance of impropriety. [Joint Exhibit 1 at 5 and SJC Exhibit 41 at 1640]. The Chief Justice appointed two senior status judges to hear the cases as outlined in the petition.¹⁰ [Joint Exhibit 1 at 5]. The current *per diem* rate for senior status judges is Four Hundred and Thirty-Five Dollars.

¹⁰ The Board noted that the Chief Justice's order states, "the Honorable Thomas W. Steptoe, Jr. and the Honorable Thomas H. Keadle, Senior Status Judges, be, and they hereby are, recalled . . . for the purpose of presiding over any and all cases prosecuted or otherwise handled by the Randolph County Prosecuting Attorney's Office, with said assignment to continue until the Chief Justice deems the assignment is no longer needed."

On or about May 1, 2014, Complainant Weese filed a petition to disqualify Judge Wilfong on her pending cases. Complainant Mullins and Complainant LaMora filed similar petitions to disqualify Judge Wilfong on May 2, 2014. Attorney Bader Giggenbach and Attorney Isner also filed petitions to disqualify Judge Wilfong on May 5, 2014. Judge Wilfong granted the additional petitions to disqualify by Orders entered May 5, 2014. [Joint Exhibit 1 at 6 and SJC Exhibit 42 at Bates No. 1641- 1678].

During her testimony, Judge Wilfong admitted that she confided her problems to Carter and agreed that her emotional bond with Mr. Carter between 2011 and 2013 was stronger than their sexual relationship. She admitted that she advised Mr. Carter that she “had his back” about things related to his employment of which even he was unaware. [Order at 20-21]. She finally acknowledged that she was aware there was a conflict and that presiding over cases in which Mr. Carter and/or his employees appeared from 2011 through 2013, when she was involved in an intimate relationship with Mr. Carter, was improper. She further acknowledged that she never advised criminal defendants or their counsel of her intimate relationship with Carter in the proceedings conducted between 2011 and 2013. [Order at 21].

The integrity of the judicial system was harmed by Judge Wilfong's actions and she acknowledges the same. Judge Wilfong's relationship with Carter and the revelations about it have caused harm to the judiciary, in general, because of Carter's position as the Director of the NCCC program and Judge Wilfong's position as the Circuit Court Judge. [Joint Exhibit 1 at 12]. Carter testified that he warned Judge Wilfong during their relationship about the potential impact on her office and career. [Order at 18]. Mr. Parker is of the opinion that the relationship between Judge Wilfong and Travis Carter did not impact the outcome of any case. However, Mr. Parker does believe that the revelation of and the widespread community knowledge of the relationship

between Judge Wilfong and Travis Carter has had a negative impact on the public's perception on the judicial process and its integrity. [Joint Exhibit 1 at 4 and Parker Stipulation Joint Exhibit 2]. Cooper stated that he believed that Judge Wilfong's "relationship [with Carter] has placed the entire Randolph County Criminal Bar at peril." [Joint Exhibit 1 at 5]. Cooper further testified about the negative impact of Judge Wilfong's relationship with Carter on the legal community, the loss of trust in the legal system, and the relentless press attention to the controversy. He also testified about the discomfort he has felt appearing before Judge Wilfong as he is viewed now as a "judicial rat" and up until she was disqualified she mentioned his filing of the complaint against her at the commencement of every proceeding. Commissioner Taylor also testified about the negative impact on the county's perception of the judiciary and elected officials in general caused by Judge Wilfong's conduct. Isner testified that he ceased all communications with Judge Wilfong since October of 2013 and further testified about his trepidation about testifying at the hearing and future potential retribution. [Order at 18-19].

II. SUMMARY OF ARGUMENT

Judge Wilfong is held to a higher standard of personal and professional conduct. As such, illicit sexual relationships involving judges are inconsistent with the "high standards of conduct" required of judges, particularly where those relationships involve persons who appear before a judge; sexual relations are conducted on courthouse property and/or during court hours; others with whom a judge worked and/or over whom a judge had power were placed in a compromising situation, including members of the local bar, by a judge's privately disclosing the existence of the relationship while implicitly and/or expressly requesting that they keep the judge's secret; and the judge participates in the administration of a program in which the person with whom the judge is engaging in an illicit relationship serves as the program's director, in such a manner as to (a)

undermine public confidence in the judiciary; (b) create the appearance that a judge's social relationship improperly influenced a judge's conduct or judgment; (c) prevent a judge from diligently discharging the judge's administrative duties; (d) present sufficient grounds for a judge to disqualify himself or herself in any matters involving a person with whom the judge is conducting an illicit relationship; (e) cast reasonable doubt on the judge's impartiality in matters involving either the person with whom the judge is carrying on the illicit sexual relationship or those persons who have personal knowledge of the illicit sexual relationship; (f) demean the office of the judge who conducted the illicit sexual relationship under such circumstances; and (g) interfere with the proper performance of the judge's official duties.

Judge Wilfong has committed eleven violations of the Code of Judicial Conduct. With respect to Judge Wilfong's violations of Canon 1, Canon 2A, Canon 2B, Canon 3C(1), and Canon 3C(2) pursuant to Count I of the Statement of Charges, Judge Wilfong should be: Censured; Suspended for a period of one-year without pay; Fined the sum of \$5,000; and Ordered to pay the costs of the proceeding. With respect to Judge Wilfong's violations of Canon 3E(1) and Canon 4A pursuant to Count I of the Statement of Charges, Judge Wilfong should be: Censured; Suspended for a period of one-year without pay; Fined the sum of \$10,000; and Ordered to pay the costs of the proceeding. Finally, with respect to Judge Wilfong's violations of Canon 1, Canon 2A, Canon 2B, and Canon 4A pursuant to Count II of the Statement of Charges, Judge Wilfong should be: Censured; Suspended for a period of one-year without pay; Fined the sum of \$5,000; and Ordered to pay the costs of the proceeding.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to Rule 4.11 of the Rules of Judicial Disciplinary Procedure, this matter was set for hearing, and upon its own motion, this Honorable Court expedited this matter. Oral argument for this matter is set for Tuesday, October 21, 2014, pursuant to Rule 19 of the Rules of Appellate Procedure.

IV. ARGUMENT

A. STANDARD OF PROOF

Rule 4.5 of the Rules of Judicial Disciplinary Procedure states that “[i]n order to recommend the imposition of discipline of any judge, the allegations of the formal charge must be proved by clear and convincing evidence.”

“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).

B. CONCLUSIONS OF LAW OF THE JUDICIAL HEARING BOARD

“Always mindful of the primary consideration of protecting the honor, integrity, dignity, and efficiency of the judiciary and the justice system, this Court, in determining whether to suspend a judicial officer with or without pay, should consider various factors, including, but not limited to, (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).

With respect to the Cruickshanks factors, the Board concluded (a) Judge Wilfong’s misconduct was directly related to the administration of justice and the public’s perception of the administration of justice; (b) although Judge Wilfong’s misconduct arose from a private sexual relationship, because of the manner in which she elected to conduct that relationship, it became related to the performance of her official duties and the public’s perception of the judiciary; (c) Judge Wilfong’s misconduct did not involve violence and although it did involve an insensitivity to her subordinates and others involved in the judicial process, it did not rise to the level of callousness; (d) Judge Wilfong’s misconduct implicates no criminal violations; and (e) there are both aggravating and mitigating factors to be considered in the determination of the appropriate discipline.

1. Count I – Judicial Conduct – Inappropriate Relationship

Count I of the Statement of Charges, related to the circumstances surrounding Judge Wilfong’s relationship with Mr. Carter, charges her with violations of Canon 1, Canon 2A, Canon 2B, Canon 3B(5), Canon 3C(1), Canon 3C(2), Canon 3E(1), and Canon 4A.

With respect to Canon 1, which provides, “An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.” Judge Wilfong has recently admitted and the

Board concludes that the clear and convincing evidence presented establishes the violation as she failed to maintain the “high standards of conduct” expected of judges when she elected to conduct her illicit sexual relationship in the courthouse during court hours; placed others in an untenable position when she disclosed and/or used them to facilitate her illicit sexual relationship; represented to others that the relationship has or was ending, but then continued or resumed the relationship because of the ethical problems the relationship presented; and failed to disqualify herself in matters where her impartiality might reasonably be questioned based upon her relationship with Mr. Carter.

With respect to Canon 2A, which provides, “A judge shall . . . avoid impropriety and the appearance of impropriety in all of the judge's activities, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary,” Judge Wilfong has recently admitted and the Board concludes that the clear and convincing evidence establishes the violation as her actions referenced above were improper, appeared improper, and did not promote but undermined public confidence in the integrity and impartiality of the judiciary.

With respect to Canon 2B, which provides, “A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment,” Judge Wilfong has recently admitted and the Board concludes that the clear and convincing evidence establishes the violation as she permit her relationship with Mr. Carter to adversely affect the performance of her judicial duties and judgment.

With respect to Canon 3B(5), which provides, “A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall

not permit staff, court officials and others subject to the judge's direction and control to do so," the Board concludes that the evidence does not establish the violation, as Judge Wilfong's alleged misconduct was not based upon any protected classification and there is no evidence that Judge Wilfong exhibited actual bias or prejudice regarding any litigant or permitted those under her direction and control to do so.

With respect to Canon 3C(1), which provides, "A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business," the Board concludes that the clear and convincing evidence establishes the violation as Judge Wilfong permitted her relationship with Mr. Carter to negatively impact the performance of her official duties, including having sexual relations with Mr. Carter in her chambers during court hours; representing to court officials that her relationship with Mr. Carter had or would be ending, then continuing or resuming the relationship; and confiding in her secretary and law clerk the existence of the relationship which placed them in a difficult position with respect to the performance of their official duties.

With respect to Canon 3C(2), which provides, "A judge shall require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties," the Board concludes that the clear and convincing evidence establishes the violation as Judge Wilfong involved her secretary, her law clerk, an assistant prosecutor, local attorneys, and others in a manner that compromised their ability to faithfully perform their official duties, including by repeatedly misrepresenting to them that she understood the ethical ramifications of her relationship with Mr. Carter and, because of those ramifications,

that she would terminate the relationship and/or otherwise disclose its existence to avoid the appearance of any conflict of interest.

With respect to Canon 3E(1), which provides, "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where . . .," the Board concludes that the clear and convincing evidence establishes the violation as Judge Wilfong should have disqualified herself in any matter involving the North Central Community Corrections Program while she was involved in a relationship with Mr. Carter; in any matter involving Ms. Gray after she had disclosed her relationship to Ms. Gray and either expressly or impliedly expected Ms. Gray to keep the relationship confidential; in any matter involving Mr. Isner after she had disclosed her relationship to Mr. Isner and either expressly or impliedly expected Mr. Isner to keep the relationship confidential; and in any matter involving any other attorney or party after she had disclosed her relationship to such other attorney or party and either expressly or impliedly expected the attorney or party to keep the relationship confidential.

With respect to Canon 4A, which provides, "A judge shall conduct all of the judge's extra-judicial activities so that they do not: (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; (2) demean the judicial office; or (3) interfere with the proper performance of judicial duties," the Board concludes that the clear and convincing evidence establishes the violation as Judge Wilfong's conduct (a) cast reasonable doubt on her capacity to act impartially as a judge; (b) demeaned her office; and (c) interfered with the proper performance of her judicial duties.

2. Count II – Judicial and Extra-Judicial Conduct – North Central Community Corrections

Count II of the Statement of Charges, related to the circumstances surrounding Judge Wilfong's relationship with Mr. Carter, charges her with violations of Canon 1, Canon 2A, Canon 2B, and Canon 4A.

With respect to Canon 1, which provides, "An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective," Judge Wilfong has recently admitted and the Board concludes that the clear and convincing evidence presented establishes the violation as she failed to maintain the "high standards of conduct" expected of judges when she engaged in an undisclosed relationship with Mr. Carter from 2011 to 2013 when she was also serving as an *ex officio* member of the Program at which he served as its Director, including reviewing and approving the payment of Program bills; advocating on Mr. Carter's and the Program's behalf, including regarding the purchase of a new vehicle for Mr. Carter; and presiding over matters involving the Program in which she exercised discretionary judicial authority.

With respect to Canon 2A, which provides, "A judge . . . avoid impropriety and the appearance of impropriety in all of the judge's activities, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary," Judge Wilfong has recently admitted and the Board concludes that the clear and convincing evidence establishes the violation as her actions referenced above were improper, appeared improper, and did not promote but undermined public confidence in the integrity and impartiality of the judiciary.

With respect to Canon 2B, which provides, "A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment," Judge Wilfong has recently admitted and the Board concludes that the clear and convincing evidence establishes the violation as she permitted her relationship with Mr. Carter to adversely affect the performance of her judicial duties and judgment, including with respect to her service as an *ex officio* member of the Program.

With respect to Canon 4A, which provides, "A judge shall conduct all of the judge's extra-judicial activities so that they do not: (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; (2) demean the judicial office; or (3) interfere with the proper performance of judicial duties," the Board concludes that the clear and convincing evidence establishes the violation as Judge Wilfong's sexual relationship with Mr. Carter (a) cast reasonable doubt on her capacity to act impartially as a judge; (b) demeaned her office; and (c) interfered with the proper performance of her judicial duties, including her service as an *ex officio* member of the NCCC Board.

3. Mitigating Factors

The following were determined as mitigating factors: 1. the five complaints before the Board are the first disciplinary complaints since her judicial service began in 2003; 2. Judge Wilfong has otherwise performed her judicial duties in a satisfactory manner and was appointed as a member of the Judicial Hearing Board on which she served prior to her resignation; 3. During her service as Circuit Judge, she has been involved in a number of initiatives to improve the judicial system; 4. No litigant filed a complaint and has otherwise, at least to this point, complained that Judge Wilfong's relationship improperly influenced her discretionary rulings in any particular

matter; 5. Judge Wilfong has some support from the community and her family, including her husband; and 6. Eventually, after a period of two years, Judge Wilfong did self-report.

4. Aggravating Factors

The following were determined as aggravating factors: 1. Judge Wilfong was well-aware of the ethical implications of her relationship with Carter for two years before she self-reported; 2. Judge Wilfong repeatedly represented to court officials and attorneys, genuinely concerned about her and the ethical implications of her continued relationship with Carter that she had ended or was ending the relationship, then either continued or resumed the relationship thereafter without advising those court officials and attorneys that she had done so; 3. Judge Wilfong compromised others with whom she worked and/or whom she had power as the only Circuit Court Judge in Randolph County, including members of the local Bar, by privately disclosing the existence of the relationship while implicitly and/or expressly requesting that they keep her secret, which patently involved obvious and multiple conflicts of interest; 4. Judge Wilfong used her power as a Circuit Court Judge to further her improper relationship with Carter and to advance the interests of Carter and NCCC; 5. Judge Wilfong demonstrated, over a two-year period, a fundamental lack of candor, judgment, integrity, and fairness; 6. Judge Wilfong only self-reported after being contacted by Counsel for the Judicial Investigation Commission about its investigation of her relationship with Carter, which precipitated the termination of Carter's employment; the expenditure of about \$50,000.00 by the Randolph County Commission, the imposition of administrative and financial burdens on the West Virginia Judiciary as a result of her disqualification from all cases handled or otherwise prosecuted by the Randolph County Prosecutor, including the recall of two Senior Status Judges, from May 1, 2014, to the present and to continue indefinitely; and the potentially irreversible damage to her relationships with the local bar, county officials, and members of the

public; and 7. Although in her response, she admitted factual allegations essentially constituting multiple violations of the Code of Judicial Conduct, Judge Wilfong persisted in her denial of any violations until only a few days before the hearing.

C. RECOMMENDED SANCTIONS BY THE JUDICIAL HEARING BOARD

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.

“Pursuant to Article VIII, Sections 3 and 8 of the West Virginia Constitution and Rule 4.12 of the Rules of Judicial Disciplinary Procedure, 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). In In re Watkins, 233 W. Va. 170, 757 S.E.2d 594 (2013), for example, our Court recently imposed a four-year suspension on a Family Court Judge, through the end of the term of his office, whose intemperance

and failure to conform to multiple requirements of the Code of Judicial Conduct demonstrated a profound threat to the integrity of the judiciary.

The Board concluded, based both upon Judge Wilfong's admission¹¹ and other clear and convincing evidence, that Judge Wilfong violated eleven separate Canons of the Code of Judicial Conduct. Based upon the eleven violations, the Board determined it was limited to (a) the imposition of an admonishment, reprimand, or censure for each of the eleven violations; (b) a suspension without pay for up to one year for each of the eleven counts or a total suspension of eleven years; and (c) a fine of up to \$5,000 for each of the eleven counts or a total fine of \$55,000. The Judicial Hearing Board recommended that the Court impose the following sanctions:

With respect to Judge Wilfong's violations of Canon 1, Canon 2A, Canon 2B, Canon 3C(1), and Canon 3C(2) pursuant to Count I of the Statement of Charges, Judge Wilfong should be:

- a. Censured;
- b. Suspended for a period of one-year without pay;
- c. Fined the sum of \$5,000; and
- d. Ordered to pay the costs of the proceeding.

With respect to Judge Wilfong's violations of Canon 3E(1) and Canon 4A pursuant to Count I of the Statement of Charges, Judge Wilfong should be:

- e. Censured;
- f. Suspended for a period of one-year without pay;

¹¹ Because it was not credible to do so, Judge Wilfong eventually agreed not to contest violations of Canons 1 and 2 of the Code of Judicial Conduct that her multiple transgressions have undermined public confidence in the judiciary in Randolph County. [Order at 38]

- g. Fined the sum of \$10,000; and
- h. Ordered to pay the costs of the proceeding.

With respect to Judge Wilfong's violations of Canon 1, Canon 2A, Canon 2B, and Canon 4A pursuant to Count II of the Statement of Charges, Judge Wilfong should be:

- i. Censured;
- j. Suspended for a period of one-year without pay;
- k. Fined the sum of \$5,000; and
- l. Ordered to pay the costs of the proceeding.

Judge Wilfong recommended to the Board that she be publicly reprimanded. This lenient sanction should be rejected as it fails to assure the public that the system is protecting the administration of justice through its disciplinary proceedings. Judge Wilfong's request for a public reprimand again demonstrates a failure to grasp the breadth of her misconduct. Judge Wilfong wrongfully contends that this involves a personal, moral failing on her part and that she should not be disciplined for conduct. The Iowa Court in 2001, also rejected a similar argument and stated while it is "loathe to interfere in such personal matters" the "private aspects of the affair are secondary to the public problems it has created." In the Matter of Gerard, 631 N.W.2d 271 at 277 (2001). Moreover, being a judge is not an avocation. Judge Wilfong knowingly "accept[ed] restrictions on [her] conduct 'that might be viewed as burdensome by the ordinary citizen'" In re Eads, 362 N.W.2d 541 (1985). *See In Matter of Gorby*, 176 W. Va. 11, 339 S.E.2d 697 (1985).

The Board reasoned that with respect to the ability to punish extra-judicial conduct, this Court has done so where that extra-judicial conduct constituted a violation of the Code of Judicial Conduct. *See, e.g. Matter of Gorby*, 176 W. Va. 11, 339 S.E.2d 697 (1985)(magistrate who engaged in injudicious behavior at a high school football game unrelated to his duties was

suspended for six months); West Virginia Judicial Inquiry Commission v. Dostert, 165 W. Va. 233, 271 S.E.2d 427(1980)(judge who assumed a partisan role in assisting and directing law enforcement officials in making arrests while failing to comply with mandatory provisions of weapons laws while carrying a gun while engaging in those activities was censured, suspended for six months, and ordered to pay costs). With respect to sexual misconduct, this Court has also held that it may constitute a violation of the Code of Judicial Conduct. *See, e.g., In re Toler*, 218 W. Va. 653, 625 S.E.2d 731 (2005)(magistrate charged with sexual misconduct involving four complainants was suspended for four years, censured, fined \$20,000, and ordered to pay costs); Matter of Hey, 193 W. Va. 572, 457 S.E.2d 509 (1995)(judge who was charged with being intoxicated while performing judicial duties and sexually harassing court employees was suspended from the practice of law, censured, fined \$10,000, and ordered to pay costs); see also West Virginia Judicial Inquiry Commission v. Casto, 163 W. Va. 661, 665, 263 S.E.2d 79, 82 (1979)(“A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.’ Other jurisdictions have interpreted this Canon as prohibiting a variety of judicial, including the sexual conduct of a judge in his private life.”)(Citation omitted).

Judge Wilfong’s involvement of her court staff, her use of her judicial chambers and her use of her judicial power to further her sexual relationship with Carter forms an unbreakable nexus to the court system. Similar to this case, the Iowa Gerard Court also focused upon the sexual conduct that occurred in the court house and held that the because the sexual misconduct occurred in the court house has “compounded the harm to the public confidence” and “was a serious misuse of the judge’s privilege to work and serve there as a servant of the citizens”. In the Matter of Gerard, 631 N.W.2d at 277 (2001). The Watkins Court also discussed the need for a judge to pay

particular attention to their actions and how appearances of impropriety can dramatically impact our system. In re Watkins, 233 W.Va. 170, 757 S.E.2d 594 (2013). The Court cited to a quote from a Clarksburg lawyer (who rose to be counsel for the IRS) who stated:

A judge is a leader whether he wants to be or not. He cannot escape responsibility in his jurisdiction, for setting the level of the administration of justice and the practice of law.

The Watkins Court continued:

Citizens judge the law by what they see and hear in courts, and by the character and manners of judges and lawyers. “The law should provide an exemplar of correct behavior. When the judge presides in court, he personifies the law, he represents the sovereign administering justice and his conduct must be worthy of the majesty and honor of that position.” Matter of Ross, 428 A.2d 858, 866 (Me.1981). Hence, a judge must be more than independent and honest; equally important, a judge must be perceived by the public to be independent and honest. Not only must justice be done, it also must appear to be done.

Canon 2A demands that judicial officers “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary”. Judge Wilfong’s refusal to recuse herself from the cases that involved Carter, the NCCC, and certain members of the Bar was improper and directly relates to the administration and the perception of the administration of justice. Her refusal to-- at a minimum -- disclose the same to parties in her court room to afford the affected parties an opportunity to seek her disqualification was also patently wrong and directly relates to the administration and the perception of justice in Randolph County. *See* Syl. Pt. 2 and Syl. Pt. 3 State ex rel Brown v. Dietrick, 191 W.Va. 169, 444 S.E.2d 47 (1994). The Dietrick Court has a brief examination of criminal cases that were adversely affected by a judge’s failure to properly disqualify and recuse. State ex rel Brown v. Dietrick, 191 W.Va. at 174, 444 S.E.2d 47 (1994). “Judges must do all that is reasonably necessary to minimize the appearance of impropriety. They must remain cognizant of the fact that even in situations where they personally

believe that their judgment would not be colored, public perception may differ.” In re Frank, 753 So.2d 1228, 1240 (2000). Judge Wilfong’s decision to implicate the attorneys in the Bar before her to further her sexual relationship with Carter was egregious and warranted her disqualification involving those attorneys. In the Matter of Means, 192 W.Va. 380, 452 S.E.2d 696 (1994)¹² [former family law master publicly reprimanded for hearing cases from lawyers who have continuing financial and business dealings with the judge]. Quite simply, it was not Judge Wilfong’s right to make the sole decision that an affected party could not reasonably question her impartiality. Judge Wilfong was under an affirmative duty to disclose or recuse herself in cases that involved the lawyers she entangled and the cases that involved NCCC.

Moreover, in In re Lee, 336 So.2d 1175 (Fla. 1976), a case cited with approval by this Court in Casto, a judge was reprimanded for engaging in sexual activities in an automobile on a public parking lot with a woman who was not his wife. *See also* Matter of Fournier, 325 S.C. 194, 480 S.E.2d 738 (1997)(court imposed maximum available sanction of reprimand after judge resigned following charges of regularly engaging in sexual activity in his car in a business’ parking lot). In In re Snyder, 336 N.W.2d 533 (Minn. 1983), a judge was censured and ordered to pay cost where he had engaged in an adulterous relationship for over year; continued the relationship after receiving notice of a disciplinary investigation; and prepared a false notice of a secretarial course for the wife to show her husband so that she could accompany the judge to a judges’ meeting. *See, also, Matter of Agerter*, 353 N.W.2d 908, 912-913 (Minn. 1984)(“The Board contends that Judge Agerter’s [sexual] liaison may have brought the judicial office into disrepute, in violation of Rule 4(a)(3), or have been an impropriety eroding public confidence in the integrity of the judiciary in

¹² Judge Wilfong cites to this case in support of her request for a public reprimand.

violation of Canon 2 of the Code of Judicial Conduct. We cannot say that the Board was without authority in this instance to investigate the sexual misconduct allegation.”).

Courts have also imposed various forms of discipline on judges whose sexual relationships were carried on during court hours, on court premises, involved court employees; and/or involved others who appeared before the judge in the exercise of his or her official duties. In In re Miller, 949 So.2d 379, 394 (La. 2007), for example, the court ordered a judge’s removal from office where he engaged in a ten-year adulterous relationship with his secretary; where the couple engaged in sexual activity on court property; where he fathered his secretary’s child during that relationship; where he made payments to his secretary in lieu of formal child support; where the judge thereafter presiding over his secretary’s divorce proceedings; and where the judge violated a federal court order enjoining the judge from further contact with his then former secretary after she terminated the relationship, stating with respect to the adulterous relationship, “We agree with the Commission that an adulterous affair is not a *per se* violation of the Code of Judicial Conduct, but the Judge’s rather open and notorious sexual conduct with his secretary at the courthouse, coupled with the other factors involved in the relationship, clearly brought the judicial office into disrepute.”

In In re Hammond, 224 Kan. 745, 745, 585 P.2d 1066, 1066 (1978), the court censured a judge and ordered him to pay costs based upon the following: “that Respondent, while serving as a district judge, had sexual relations in his chambers with one of his female employees; that he made demands for sexual relations with another; that sexual relations with the Respondent were made a condition of the continued employment of each of the two female employees; and that one was terminated for refusing to continue a physical relationship with Respondent, and the other for refusing to have such a relationship.”

In In re Gerard, 631 N.W.2d 271, 277 (Iowa 2001), the court suspended a judge for 60 days without pay who had engaged in an adulterous relationship for a period of two months with an assistant county attorney, including engage in sexual acts in the courthouse, and who did not disqualify himself in cases in which the attorney appeared before him during the relationship, noting “We recognize that this was intended to be a private relationship between consenting adults. Although both were married to other people, we normally would be loath to interfere in such personal matters. In this case, however, the private aspects of the affair are secondary to the public problems it has created.”

In In re Adams, 932 So.2d 1025 (Fla. 2006), the court reprimanded judge who had engaged in a romantic relationship over a period of two months with an attorney who appeared before him in matters during the course of that relationship without the judge’s disqualification.

In In re Kivett, 309 N.C. 635, 309 S.E.2d 442 (1983), for example, a judge was removed from office based, *inter alia*, upon his improper relationship with a bail bondsman where the bondsman procured women for the judge; the two men socialized together, hunting for female companionship and visiting a topless bar; the bondsman made his lake house and his bonding office apartment available free of charge to the judge, who had illicit sexual relations with women there; the bondsman testified that he guarded the judge’s door while the judge engaged in sexual relations with a female juror in chambers; and the judge allowed the bondsman to communicate with him concerning pending criminal cases in which the bondsman had an interest, or over which the judge presided, or both.

In In the Matter of Harrelson, 376 S.C. 488, 657 S.E.2d 754 (2008), the court reprimanded a judge who admitted to engaging in sexual encounters with two different married administrative assistants employed by the central traffic court in which the judge presided.

In In re Flanagan, 240 Conn. 157, 190, 690 A.2d 865, 881 (1997), the court censured a judge who had engaged in a consensual affair with a married court reporter regularly assigned to his courtroom for over three years stating, "A judge's conduct is held to a higher standard than that of the average citizen, and must be beyond reproach, at least when that conduct is directly connected to his professional office and functions."

In In the Matter of Gelfand, 70 N.Y.2d 211, 518 N.Y.S.2d 950, 512 N.E.2d 533 (1987), a judge was removed from office after engaging in an extramarital sexual relationship with a law assistant and then misusing his position in an attempt to prolong the relationship after it was terminated by the assistant.

In Matter of Edwards, 694 N.E.2d 701 (Ind. 1998), the court removed a judge from office, enjoined him from seeking future judicial office, disbarred him, and fined him \$100,000 for, *inter alia*, presiding over a domestic relations matter during a period in which he was having a sexual relationship with the wife in that domestic relations matter, and previously presenting a client, while an attorney, with a false judicial decree of divorce, lying to judges about his representation of the client, and performing legal services for the client in exchange for sexual favors. *See also* Matter of Mendenhall, 316 S.C. 196, 447 S.E.2d 858 (1994)(disbarring and reprimanding retired family court judge for engaging in sexual relations with party for a period of years during which party had contested matters before judge); In re Harris, 713 So.2d 1138 (La. 1998)(court suspended judge for 60 days without pay for engaging in extramarital affair with parolee who was released from prison on parole pursuant to sentence imposed by judge even though relationship did not start until parolee was released from prison).

In In re Chrzanowski, 465 Mich. 468, 490, 636 N.W.2d 758, 771 (2001), a judge was suspended for one-year without pay for, *inter alia*, appointing an attorney with whom she was

having an affair to 56 criminal cases, stating that, “Respondent's conduct on the bench was unbecoming of the office that she holds. Her actions undermined public confidence in the integrity and impartiality of the judiciary, and were prejudicial to the administration of justice.”

In In re Abrams, 227 Ariz. 248, 257 P.3d 167 (2011), the court suspended the law license of a judge for two years after he resigned when judicial disciplinary proceedings were initiated in conjunction with, *inter alia*, an affair with a criminal defense attorney who frequently appeared before him without disclosure or disqualification.¹³

Finally, in In re McCree, 495 Mich. 51, 86, 845 N.W.2d 458, 476 (2014), the Michigan Supreme Court recently suspended a judge for six years without pay who had an affair with a child support obligee appearing before him; who had numerous ex parte communications with witness about the case; who extended special treatment to the obligee in the case; and who when the relationship soured, sought to employ the prosecutor’s office as leverage against her by concocting charges of stalking and extortion, stating that, “We agree with the JTC that a removal, without more, would be an insufficient sanction in this case. If we were to remove Respondent and he was reelected in 2014, that would amount to a less than one-year suspension (less than two years including his interim suspension), which we believe is clearly insufficient given the seriousness of

¹³ See, also, The Florida Bar v. Gardiner, 2014 WL 2516419 (Fla.) (disbarring attorney who formerly as a judge commenced and developed a significant personal and emotional relationship with the prosecuting attorney in a capital murder case over which she presided, as evinced by 949 cellular telephone calls and 471 text messages over a five-month period prior to imposing death sentence, without disclosing the relationship to the defense); Florida Bar v. Corbin, 540 So.2d 105, 106–07 (Fla. 1989) (suspending attorney for three years after he resigned from the bench, based on his criminal conviction of attempted sexual activity with a minor while serving as a judge); In re Brooks, 264 Ga. 583, 449 S.E.2d 87, 88 (1994) (suspending attorney for three years after he left the bench, based on multiple misdemeanor convictions of sexual battery while serving as a judge); In re Higgins, 79 A.D.2d 145, 436 N.Y.S.2d 71, 71–72 (1981) (suspending attorney for two years after he resigned from the bench, based on his soliciting and agreeing to accept sexual favors from a woman whom he suggested would receive in return favored treatment in his family court).

his misconduct. This Court has a duty to preserve the integrity of the judiciary. Allowing Respondent to serve as a judge after only a one-year suspension will not, in our judgment, adequately preserve the integrity of our state's judiciary.”

It can be argued that an illicit sexual relationship conducted by a judge with someone wholly unrelated to the judge’s official duties and not on the courthouse premises or during court hours of which no one with whom the judge works has any knowledge implicates none of the Code of Judicial Conduct, but that same relationship carried on in the manner in which it was conducted in this case implicates many of the Canons of the Code of Judicial Conduct.

As the commentary to Canon 2 of the Code of Judicial Conduct states:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge’s conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge.

This concept is an ancient one. *See Sarisohn v. Appellate Division, Second Dept., Supreme Court of State of N.Y.*, 265 F. Supp. 455, 458 n.2 (E.D. N.Y. 1967)(“‘For unto whomsoever much is given, of him much shall be required: and to whom men have committed much, of him they will ask the more.’ Luke 12:48.”).

Judge Wilfong correctly observed during her testimony that she understood the solemn trust placed in her when she was elected to the office of Circuit Judge and in exchange for the public’s respect, confidence, and honor in her and in the judicial system in which she played a vital role, she repeatedly and knowingly violated that trust.

As noted in the commentary to Canon 1 of the Code of Judicial Conduct:

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. . . . Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

V. CONCLUSION

Judge Wilfong, Circuit Court Judge, is the highest ranking judicial officer in Randolph County, West Virginia and for 2 years she had an extramarital affair with the Executive Director of the North Central Community Corrections Program. She was a member of the North Central Community Corrections Board and failed to disclose the same to the other board members. Judge Wilfong utilized her position of power and influence to gain resources for Carter by lobbying the President of the Randolph County Commission. Judge Wilfong wilfully failed to disclose or otherwise disqualify herself in cases that involved Carter and his staff at NCCC. She involved other members of the Bar to further her relationship with Carter and failed to disqualify herself from cases that involved those lawyers. Judge Wilfong utilized her judicial chamber in the peoples' court house to perform sexual acts upon Carter and relied upon her staff to explain Carter's constant presence in her office to the public. Judge Wilfong's constant pursuit of Carter impaired the people court's ability to function as well as the daily operations of NCCC. Finally, even after being advised by the Court Administrator and a senior member of the Bar of the ethical implications of the relationship, despite assuring the two that the relationship was over, she immediately rekindled the same.

Judge Wilfong's misconduct calls into question her judgment and brings the Randolph County system of justice into disrepute. Public confidence in the judiciary is a fragile thing-- Judge Wilfong should be suspended from office "not to punish the judge for [her] extensive wrongdoing, but to relieve from the bench a person whose further service will be detrimental to the judicial branch of government." In re Watkins, 233 W.Va. 170, 757 S.E.2d 594 at 602 (2013).

In reaching its recommendation as to sanctions, the Judicial Hearing Board considered the facts—both stipulated and proven by the evidence, the aggravating factors and mitigating factors, and relevant case law. Accordingly, Special Judicial Counsel requests that this Honorable Court adopt the recommendations of the Judicial Hearing Board in its entirety.

Respectfully submitted,
Special Judicial Disciplinary Counsel
By Counsel



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CERTIFICATE OF SERVICE

This is to certify that I, Rachael L. Fletcher Cipoletti, and David A. Jividen, Special Judicial Disciplinary Counsel for the Judicial Investigation Commission, have this day, the 3rd day of October, 2014, served a true copy of the foregoing "**Brief of Special Judicial Disciplinary Counsel**" upon David A. Sims, Esquire, and Harry Deitzler, Esquire, counsel for Judge Wilfong Jaymie Godwin Wilfong, by mailing the same via United States Mail with sufficient postage, to the following addresses:

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