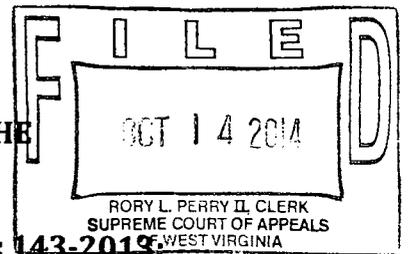


**BEFORE THE SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA**



**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

BRIEF OF RESPONDENT JAYMIE GODWIN WILFONG

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TABLE OF CONTENTS

I.	SUMMARY OF ARGUMENT.....	1
	A. STANDARD OF REVIEW.....	2
	B. STATEMENT OF RELEVANT FACTS.....	2
	C. NATURE OF PROCEEDING.....	4
II.	DISCUSSION OF AUTHORITY.....	17
III.	STANDARD OF PROOF AND ANALYSIS OF ALLEGATIONS.....	20
IV.	SPECIAL COUNSEL'S FAILURE TO MEET THEIR BURDEN.....	22
V.	PUBLIC PERCEPTION OF JUDGE WILFONG.....	25
VI.	MITIGATING FACTORS.....	28
VII.	CONCLUSION.....	30

TABLE OF AUTHORITIES

Cases:

In Re Browning

192 W.Va. 231, 452 S.E.2d 34 (1994).....2

West Virginia Judicial Inquiry Commission v. Dostert

165 W.Va. 233, 271 S.E.2d 427 (1980).....2,19

Matter of Crislip

182 W.Va. 637, 638, 391 S.E.2d 84, 85 (1990).....2

Committee On Legal Ethics v. Karl

192 W.Va. 23, 449 S.E.2d 277 (1994).....5

Matter of Troisi

202 W.Va. 390, 504 S.E.2d 625 (1998).....5

In Re Pauley

173 W.Va. 228, 314 S.E.2d 391 (1983).....19

Matter of Phalen

197 W.Va. 235, 237-38, 475 S.E.2d 327, 329-331 (1996).....17, 19

Matter of Rice

200 W.Va. 401, 402-03, 489 S.E.2d 783, 784-85 (1997).....19

In Re Watkins

233 W.Va. 170, 757 S.E.2d 594 (2013).....24

West Virginia Rules and Statutes

Code of Judicial Conduct Canon 1.....1,17

Code of Judicial Conduct Canon 2A.....1,17,18,19

Code of Judicial Conduct Canon 2B.....17,19

Code of Judicial Conduct Canon 3(B)(5).....5

Code of Judicial Conduct Canon 3(B)(7).....17,19

Code of Judicial Conduct Canon 3(B)(11).....17,19

R. Judicial Dis. Proc. Rule 4.12.....5
R. Judicial Dis. Proc. Rule 4.5.....5
W.Va. Const. Art. VIII Section 3.....5
W.Va. Const. Art. VIII Section 8.....5

I. SUMMARY OF ARGUMENT

The actions of Judge Jaymie Godwin Wilfong do not warrant the imposition of the metaphorical capital punishment from this Court; nor do the facts warrant anything close to the sanctions recommended by the Judicial Hearing Board (JHB). The JHB mistakenly concluded that Judge Wilfong had not admitted her sins, violations of Canons 1 and 2A of the Judicial Canons, as they mention it many times in the Recommended Decision, but the members just got that wrong. It is clear, the JHB did not read Judge Wilfong's Response to the Formal Statement of Charges, which she filed in April 2014 states:

*I deny that I intentionally violated any of the Canons of the Code of Judicial Conduct. I tried very hard to preserve the integrity of the judiciary, but as this investigation has revealed, **there is little question that the integrity of the judiciary has been harmed.** Even though I did not do anything that was legally wrong, it was morally wrong and it gave others the ability to question my integrity. **It is with a heavy heart that I acknowledge my actions have adversely affected the integrity of the judiciary, and in hindsight, I understand the improper appearance they have caused.***

(Emphasis added). (See Jaymie Godwin Wilfong's Response to Formal Statement of Charges at page 26). Judge Wilfong told the JHB she deserves to be punished; that she was willing to accept the punishment due her; but nothing that Judge Wilfong has done justifies the adoption of the sanctions JHB recommends to this Court. Imposing the death penalty accomplishes nothing but to end an otherwise stellar career of a female judge in a small rural county in West Virginia, who unseated a sitting judge by election of the people of her county, and when there was no evidence of any kind that the affair ever affected the outcome of one case.¹ Violations of Canons 1 and 2A are not justification for the imposition of the sanctions that have been recommended for Judge Wilfong . There was just no proof by clear and convincing evidence that Judge Wilfong did

¹ These are facts that Special Counsel wants this Court to ignore.

anything else that was a violation of the Judicial Canons, other than the two she admitted to a long time ago.

A: STANDARD OF REVIEW

“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). Syllabus Point 1, In re Browning, 192 W.Va. 231, 452 S.E.2d 34 (1994). Clearly this Court has determined it shall review these matters de novo. This Court should review the entirety of the record below and reach a different conclusion, one that is fair to Judge Wilfong, preserves the integrity of the judiciary, and restores confidence in the judicial process. In doing so, this Court needs to be mindful the burden of proof is by clear and convincing evidence, and that justice does not require this Court’s adoption of the sanctions JHB has recommended.

B: STATEMENT OF RELEVANT FACTS

As was stipulated to and the evidence presented, Judge Wilfong engaged in an intermittent affair over a period of just over two years.² The physical acts of the affair ended in August of 2012, a year and three months later, the affair was self-reported by Judge Wilfong. The two had engaged in

² Intermittent, meaning it was on again off again, something that the JHB mistakenly forgot to include in their decision making process.

intercourse one time and it did not take place at the courthouse. Since the self-report and the following Complaints, another year has passed. During that time, Judge Wilfong's affair has made the news many times over, after she admitted everything that she had done, in intimate detail, yet as the Respondent's Exhibits reveal, she maintains support from those people who elected her to serve as their judge. This Court should punish Judge Wilfong for her admitted sins, but not in the way that JHB has recommended.

As this Court is aware, there were four separate Complaints and the self-report of Judge Wilfong, all of which were filed within days of each other in October 2013. As Judge Wilfong provided in her Response to the Statement of Charges, the affair was wrong; she recognized why the complaints were filed; and, she thanked several of the members who filed them against her, as it permitted her to see the matter from another perspective.

This Court should recognize that Judge Wilfong continued to preside over judicial proceedings, with a few exceptions, and Complainants routinely waived any objection, indicating Judge Wilfong was fit to do her job. The judicial system in Randolph County continued to operate, uninterrupted, as it had prior to October 2013. For nearly seven months, the Complainants continued to come to Court; Judge Wilfong continued to do her job; Judge Wilfong disclosed the filing of the Complaints by each Complainant before each hearing; Judge Wilfong permitted people to freely choose if they wanted her to continue to hear their cases; yet, people, including the lawyers practicing in front of her who had filed complaints, continued to let her do her job as the Circuit Judge of the 20th Judicial Circuit, but for two cases in which W. Travis Carter was scheduled to be a witness (where she voluntarily recused herself) and two other cases (a mother and father in an abuse and neglect case) who requested her disqualification. Judge Wilfong denied the motions in the abuse and neglect case, and was directed by the WVSCA to stay on those cases. It

was not until after Judge Wilfong filed her Response to the Formal Statement of Charges that the Complainants began moving to disqualify Judge Wilfong under the auspices they were advised by Special Disciplinary Counsel they were going to be witnesses at hearing before the JHB. Complainants are all lawyers. They knew from the beginning they would be called to testify; accordingly, it is logical to assume there was some intervening factor, and that was Judge Wilfong's filing of her Response to the Formal Statement of Charges. What Judge Wilfong pointed out in her Response is that the Complainants had known of the affair for a long time and did not file any complaints against her. The issue was they must not have believed it to be an issue or they would have reported it earlier, just as Judge Wilfong did not recognize the impact it was having on the judiciary and the appearance of impropriety it had created, instead it was interpreted as an attack on them and a wholesale motions to disqualify came forward.

C: NATURE OF PROCEEDINGS

This matter came on for Final Hearing before the JHB on August 11, 2014. The parties came to a resolution of all pertinent facts by stipulation, except admitting findings of other violations, as there was no factual basis to support a conclusion, by clear and convincing evidence that other violations of the Judicial Canons occurred. Additionally, the parties stipulated as to what the testimony of the following individuals would be: The Honorable Alan D. Moats, Michael W. Parker (Randolph County Prosecuting Attorney), Heidi Hawkins (Randolph County Chief Probation Officer), Stephen G. Jory, Esquire, R. Mike Mullens, Esquire, David Wilmoth, Esquire, Heather Weese, Esquire, Raymond LaMora, III, Esquire and Teresa A. Tarr, Esquire, so that these people would not need to be called to provide live testimony. Despite all of the stipulations of fact and witness testimony, Special Counsel called seven witnesses in an attempt to prove the other violations alleged. She also clearly attempted to bias the Judicial Hearing Board against Judge

Wilfong. As this brief demonstrates, the testimony from those seven witnesses does not justify a finding of any additional facts or violations of the Judicial Canons; nor do any of the stipulations submitted; nor do any of the exhibits justify a finding of any additional violations. What this Court should conclude is simple, Jaymie Godwin Wilfong deserves a second chance. Removing her from office merely creates uncertainty and frustration of the citizens of Randolph County, who clearly support her remaining in office, when it is unnecessary and when it was certainly not proven by clear and convincing evidence. “ ‘Pursuant to article VIII, section 8 of the West Virginia Constitution, this Court has the inherent and express authority to “prescribe, adopt, promulgate and amend rules prescribing a judicial code of ethics, and a code of regulations and standards of conduct and performances for justices, judges and magistrates, along with sanctions and penalties for any violation thereof [.]” ’ Syllabus Point 5, Committee On Legal Ethics v. Karl, 192 W.Va. 23, 449 S.E.2d 277 (1994).” Syllabus Point 4, Matter of Troisi, 202 W.Va. 390, 504 S.E.2d 625 (1998). 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 sanctions against any justice, judge or magistrate for violations of the Code of Judicial Conduct. Moreover, pursuant to Rule 4.5 of the Rules of Judicial Disciplinary Procedure, the burden of proof to be applied in judicial disciplinary proceedings is that the allegations of the formal charge must be proved by clear and convincing evidence in order to recommend the imposition of discipline on any judge. See Syllabus Point 4, In re Pauley, 173 W.Va. 228, 314 S.E.2d 391 (1983).

Upon de novo review, this Court will recognize that the investigation, prosecution, and development of this case has been askew the beginning. Judge Wilfong admitted everything in her sworn statement. Despite this, Special Disciplinary Counsel had a private investigator out

interviewing people about things that have absolutely no relevance to any of the Statement of Charges, for many months prior to the hearing, and for three days after the hearing, which developed the following testimony, evidence, and lack of evidence:

- Mike Taylor's testimony that the County Commission's forensic investigation of Mr. Carter's phone and computer and Mr. Carter's actions cost the County approximately \$50,000.00.³ Mike Taylor also testified that the Randolph County Commission and W. Travis Carter entered into a settlement agreement whereby neither would sue the other.⁴ Now, why would that happen if there was not more to the story? Under the cloak of "confidential settlement agreement", Mr. Taylor was able to avoid any questions about the situation.
- Mr. Taylor could not dispute that the only request for a raise for Travis Carter was advocated by Judge Wilfong in 2009, two and one-half years before any relationship began. He also neglected to point out that Judge Wilfong did advocate for a raise for Ms. Golden during this time period. (See also NCCC Minutes of 3/12/12, indicating that the Board of NCCC had approved a raise for Ms. Golden the prior year, but that the Randolph County Commission would not approve it, indicative of more control issues between the NCCC Board and the Randolph County Commission). There is no record that Mr. Carter even requested a raise during the time frame of the relationship. (See NCCC Board Minutes offered by Respondent).
- Mike Taylor's testimony that Judge Wilfong "demanded" all new furniture in 2009, later admitting on cross-examination that there was little furniture left in the office after Judge Henning left, and as Judge Wilfong testified, the furniture belonged to Judge Henning, which is why he took it, all facts that Mr. Taylor forgot to mention during his testimony. This testimony certainly does not support any violations of the Judicial Canons.
- Mike Taylor's testimony that Judge Wilfong Ordered the Commission to provide a parking space for her and the Magistrates in 2009, two years before any alleged affair. This evidence is certainly not supporting any violations of the Judicial Canons.
- Mike Taylor's testimony that Judge Wilfong pushed the Commission to purchase a car for Mr. Carter purportedly during the affair, which was clearly false, and a four year old car magically became a two year old car because Mr. Taylor clearly wants Judge Wilfong

³When he was asked the night before his testimony what he was going to be testifying about, he told Respondent's counsel he could not discuss it with him. Yet, the payment of \$50,000.00 to conduct the investigation is public information that he could have disclosed, but did not.

⁴ Again, another public document that Respondent asked about, but Mr. Taylor refused to discuss.

removed from office. These factual mistakes by Mr. Taylor should not be ignored by this Court, as they are a clear indication of the bias and prejudice he holds against Judge Wilfong.

- When Mike Taylor was called by Respondent's counsel, Respondent's counsel was not aware he was being represented by an attorney or was "relying" on the advice of any attorney. In fact, his attorney he was supposedly relying upon was not present in the courtroom the day of the JHB proceedings and he certainly did not rely upon any such advice that day. He freely met with Special Counsel, without his counsel present, and without any parameters placed on those discussions. Yet, he could not even tell counsel for Respondent what topics he was expected to testify about the next day.
- Phillip Isner, Esquire's testimony that he no longer has any interest in a friendship with the Respondent, and that he was made "uncomfortable" because a few of her texts that had occurred years before any affair.⁵ Mr. Isner testified that he and Judge Wilfong had been friends for many years, and that he thought nothing of it when she requested to use his garage once, maybe twice. In fact, there is nothing in the record at all to suggest that Judge Wilfong used her position to force or in any way coerce Mr. Isner to allow the use of his garage. The simple fact is that Mr. Isner and Judge Wilfong had a friendly relationship and a professional relationship. Mr. Isner was wholly supportive of Judge Wilfong until she filed her Response to the Statement of Charges most likely because he believed his knowledge of the relationship would spill over to an ethics complaint against him for failing to file one against Judge Wilfong.⁶ Though Mr. Isner testified he asked Judge Wilfong if she thought she had to disclose the relationship on the record, it is clear that Mr. Isner knew of the relationship, but did not report it at any time. Again, this is not to say that he should have filed a Complaint, and is, in some way, unethical. Judge Wilfong is not suggesting that at all. The point is that perhaps he never saw it as a conflict either. Special counsel wants to beat up Judge Wilfong for not reporting it earlier, but as Judge Wilfong explained she really did not see the conflict in the beginning as Travis Carter did not testify in front of her.
- Though Mr. Isner testified he asked Judge Wilfong if she thought she had to disclose the relationship on the record, which she disputes, but as Judge Wilfong explained she really did not see the conflict in the beginning as Travis Carter did not testify in front of her and her actions had not impacted a case pending before her.
- Complainants R. Mike Mullens, Esquire, David Wilmoth, Esquire, Heather Weese, Esquire and Raymond LaMora, III, Esquire, who are all members of the NCCC Board provided by stipulation that before October 15, 2013, none of them had first-hand knowledge that a relationship, other than a professional one, had been maintained

⁵ Yet, Mr. Isner never filed any Complaints of any kind against Judge Wilfong, even though he let Judge Wilfong use his garage to hide her vehicle.

⁶ See Affidavit of Sierria Staten attached hereto as Appendix A.

between Mr. Carter and Judge Wilfong. After October 15, 2013, when they read about the affair in the local newspaper, they decided they needed to report the activity to the JIC, and to file a Complaint against Judge Wilfong.⁷ These lawyers would have first-hand knowledge of any improper influence by Judge Wilfong while on the Board of the NCCC, but they did not mention any such improper influence being exercised by Judge Wilfong.

- Complainant Michael W. Parker has been the Prosecuting Attorney of Randolph County since January 2012. Mr. Parker stated Judge Wilfong did not sentence people to the program in order to facilitate a source of funding for W. Travis Carter's job. Most of the money for the program comes from grant funding, not from the payment of the fees as the Special Counsel attempted to prove during the hearing before the JHB in an effort to prove the other violations of the Judicial Canons.⁸
- Mr. Parker did 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, negating any evidence that Judge Wilfong somehow used her influence at all.
- Mr. Parker was not aware of any case that Travis Carter appeared and testified under oath before Judge Wilfong during his term of office. He decided who should be violated or not from the program. If a NCCC revocation hearing was contested, the NCCC employee would testify about the violation. If the NCCC revocation was not contested, the NCCC employee would merely give an opinion as to whether or not they would accept the participant back in the program.
- Mr. Parker provided that Judge Wilfong was a non-voting member of the NCCC Board, and did not control the actions of the Board members, again negating any improper influence or other violations of the Judicial Canons.
- Michael Parker provided that Judge Wilfong recused herself from two cases, wherein Travis Carter would have to testify, which Mr. Parker believed was proper, which again negates any improper influence or other violations of the Judicial Canons.
- Mr. Parker filed a Complaint on October 15, 2013, but did not seek the disqualification of Judge Wilfong until after he was advised he was going to be a witness against her during these proceedings.
- Stephen G. Jory, Esquire's stipulated testimony proves he was aware of the affair between Judge Wilfong and W. Travis Carter, long before the same was reported to the

⁷ One thing was learned from Mr. LaMora, he had not ever seen the proposed stipulation prior to Respondent's counsel providing him with a copy of the same. Yet, somehow this is supposed to be okay?

⁸ The entire premise of this testimony was proven to be false. Erin Golden testified that they have not spent one dollar from the fees collected; that it is in a bank account, earning interest, and has not ever been touched.

JIC, yet he did not file any complaint with the JIC. Perhaps he did not see the problems the affair was having, as Judge Wilfong testified she did not, initially. He certainly did not provide any stipulated fact that would warrant a finding of any of the Judicial Canons. Judge Wilfong testified there were two discussions in person, the first occurring in the fall of 2012 at Mr. Jory's house and one in her office later on.

- Teresa A. Tarr, Esquire is Chief Judicial disciplinary Counsel for the Judicial Investigation Commission. She became aware of rumors and allegations that Judge Wilfong was having an affair with the Executive Director of NCCC on October 10, 2013. Upon contacting the Chair of her Board, she was advised she could not initiate a complaint on her own, as she had no actual knowledge, and as no complaint has been filed, but she was directed to contact Judge Wilfong to advise if such information were true that she must disclose the same in proceedings involving the NCCC. She certainly did not provide any evidence of any violations of the Judicial Canons.⁹
- Honorable Alan D. Moats, who serves as the Circuit Judge for the 19th Judicial Circuit and was also Judge Wilfong's mentor when she came onto the bench, provided that he received a call from Judge Wilfong on Saturday, October 12, 2013, asking that they meet. Judge Moats agreed to meet Judge Wilfong at his chambers that evening. At the meeting, Judge Wilfong explained the situation regarding the affair with Travis Carter to Judge Moats. Judge Moats did not tell Judge Wilfong she should not self-report this issue, but did tell her to take her time and be as accurate and succinct as she possibly could in self-reporting to the JIC. He certainly did not provide any evidence of any violations of the Judicial Canons.
- Lori Gray, or how she is known now, Lori Gray Haynes, stipulated that Judge Wilfong's friendship with her predates Judge Wilfong taking the Family Court Bench (See Stipulations of Fact) and the evidence further supports that Ms. Gray initially offered the residence to Judge Wilfong, and thereafter, Judge Wilfong requested the continued use of it approximately four times. There is no evidence it was after September of 2012 when the nature of the relationship changed to an emotional one. Although this is not contained in the Stipulation, it is important to point out that there is no evidence of any coercion or pressure to get Ms. Gray to allow the use of her home, specifically in light of the fact that she offered it in the first place. Additionally, it should be pointed out that during this period of time, Lori Gray was not an Assistant Prosecuting Attorney, a point that the JHB seemed to have missed in the Final Order.
- Erin Golden, who is now the Executive Director of NCCC, took the place of W. Travis Carter after his negotiated resignation from his position. Erin Golden's testimony puts to rest the notion that Judge Wilfong put people on the NCCC program to make money for Travis Carter, for his salary, or to sustain the program. Her testimony was clear that the money collected from the fees goes in the bank, where it is, and has always been and

⁹ It seems axiomatic that Ms. Tarr, who is disqualified from prosecuting Judge Wilfong, shares office space with the person who is prosecuting her now, but there is now no disqualification.

that they have never touched a penny of it for any reason. Special Counsel tried to convince this panel that Judge Wilfong was improperly using her office to benefit W. Travis Carter and to keep his job. The problem is that notion was completely eliminated with the testimony of Erin Golden. Counsel for Respondent did not know what happened to that money when he asked the question, but Erin Golden made it perfectly clear that Judge Wilfong did not violate any rules by benefitting Travis Carter in utilizing the program. This was evidence that Special Counsel likely knew from the investigator, but forgot to point out during his questioning of this witness. Contrary to similar allegations from Special Counsel, Erin Golden testified that she thinks there may have been one time when Judge Wilfong demanded to speak with Mr. Carter, but gives no details as to when or why that had occurred. Again, Special Counsel could have elicited those details, but when the testimony was not supportive of Special Counsel's position, the details were left unanswered, which hardly meets the burden of clear and convincing evidence. Ms. Golden also spoke of the policy for one of the designated persons to sign off on the bills of NCCC in the \$500.00 - \$1,000.00 range. Erin Golden was a math major and was responsible for the finances of the organization. If there was anyone in a position to know if something was going on that should not have been, Erin Golden would have known about it. Furthermore, there is nothing to suggest that this was improper, in any way as Judge Wilfong testified and is reflected in the NCCC Minutes of 8/4/11, which are contained in Respondent's exhibits. Erin Golden did not offer any testimony that supported any conclusion there were any violations of the Judicial Canons.

- W. Travis Carter was the Director of NCCC and the other half of the affair. Perhaps most significant in Travis Carter's testimony is what he did not say. The trial brief submitted by Special Judicial Disciplinary Counsel presented information that Judge Wilfong demanded Carter come to her office daily, thereby leaving others at NCCC to do his job. There was absolutely no evidence of this presented, from Travis Carter or otherwise. There was no evidence presented that there was any improper influence of a case, or that the relationship had any impact on a case. There was nothing to even suggest that the participation numbers of NCCC had changed in a meaningful way before, after or during the relationship. Had any of this information been true, you can bet that Special Counsel would have made an issue of it and had Mr. Carter testify about it. As Judge Wilfong testified, she used the program in the same way before, during and after the relationship with Mr. Carter. There is certainly no evidence to support a contention that there was anything improper about it. The only thing Travis Carter presented that was even remotely suggested anything negative about Judge Wilfong was that approximately a year after he had community service workers cleaning up after a Forest Festival party/dance, Wilfong called him and questioned his judgment of using community service people for this purpose. He acknowledged there was alcohol present and that his community service personnel, some with alcohol and drug issues, were present cleaning up after the event occurred. And, he mentioned this conversation was a year after the fact, which would logically indicate that the yearly function was about to occur again. Judge Wilfong was merely pointing out to Mr. Carter that it was not a good

idea to utilize his community service workers for those events, but to instead use the community service workers to set up chairs and do other things where alcohol was not present.

- Complainant Christopher Cooper, Esquire testified how difficult it was for him to file his complaint, which Judge Wilfong confirmed. He called the relationship between Wilfong and Carter: "The worst kept secret in the courthouse." And, for the two years it was not a secret; not one of the complainants made an issue of it; and it was not until it came time for W. Travis Carter to testify before Judge Wilfong did any of the Complainants believe it was an issue. This is not to say that Mr. Cooper or anyone else should have filed earlier, and is in, some way, unethical. The simple point is, that perhaps Mr. Cooper did not file earlier because he did not see a direct conflict, either, just as Judge Wilfong did not, earlier. When asked, Mr. Cooper had no evidence whatsoever that he has been treated any differently by Judge Wilfong after his Complaint was filed. He could present no evidence this relationship had any impact whatsoever on any case. He said feelings had been hurt, both his and hers. But, he is still receiving the same amount of court-appointments, which make up the bulk of his practice; he is still getting abuse and neglect cases; and it has been business as usual for him. Mr. Cooper testified that it is a sad state in the Randolph County Courthouse. It is sad because people filed complaints against Judge Wilfong and because they were notified they were to be witnesses. What Mr. Cooper forgot to say was for approximately seven months after filing his Complaint, Judge Wilfong continued to do her job and the system continued, "business as usual." After each Complainant learned they were going to be witnesses for Special Counsel, they sought Judge Wilfong's disqualification.
- Jaymie Godwin Wilfong was elected as Family Court Judge in 2002 when she defeated the incumbent family court judge. She took office on January 1, 2003. In 2008, Judge Wilfong defeated the incumbent Circuit Judge and took office as Randolph County Circuit Judge on January 1, 2009. She has been a practicing attorney since 1995. Her ethical record, both as a judge and as a lawyer, is spotless. Judge Wilfong took full responsibility for her actions that have resulted in these charges being filed. By her words and her demeanor, she clearly demonstrated sincere remorse and regret for her the affair between her and Travis Carter, on both a personal and professional level. She expressed remorse that the attorneys have been put in an uncomfortable position, and regretted that her actions caused the Judicial Hearing Board, of which she was a member until her resignation, to convene.
- Judge Wilfong understands her actions have compromised the integrity of the judiciary and created an appearance of impropriety. She expressed that she will not disappoint the Judicial Hearing Board if they saw fit to give her a second chance to continue the job she was elected to do. Judge Wilfong testified that she is grateful to those who filed the Complaints against her because they were the catalyst that ended the affair, and as a result, saved her marriage. She testified that she has no intention of seeking revenge against anyone involved, that retribution is not in her -- and that she is grateful the

Complainants had the courage to file the complaints. And, she pointed out during her testimony that it was business as usual at the courthouse until the attorneys determined they were going to be called as witnesses. Judge Wilfong testified and truly believes, and the record supports, there is absolutely no evidence that her relationship with Mr. Carter had any impact on any case whatsoever.

- Judge Wilfong pointed out that the six letters disclosed from Special Counsel are not from litigants who have been involved in a case within the Randolph County Circuit Court. A review of the evidence indicates these people are supporters of a criminal defendant who was a convicted of a sexual offense and had no involvement with NCCC.
- Judge Wilfong testified that she has been consistent with her support of NCCC and has supported the program since she began as Circuit Judge in 2009. She used NCCC as a term of bond because it gave structure to the pre-trial defendants. It ensured security for the public, and if a defendant wanted to start services, they could do so. Many participants did not pay their NCCC fees and she did not know of NCCC ever going after the payment of these fees.
- As Judge Wilfong testified, she attempted to strengthen the relationship between Mr. Taylor and Travis Carter, encouraging Carter to try to keep Taylor "in the loop." The Minutes from the NCCC meetings suggest Mr. Carter committing to go to at least one Randolph County Commission meeting per month, which was an effort by the NCCC to cooperate with the Commissioners. (See NCCC Minutes 9/8/11).
- Judge Wilfong admitted in her testimony she made the statement she would have gone to Mr. Taylor and said she would not use NCCC if Travis Carter was not the director. Though she never did that, she explained that it was critical to her to have someone in that position who would hold the participants accountable so the public would be safe. Judge Wilfong testified she would make the same comment about Erin Golden, the current Executive Director, at this time, because Ms. Golden is doing a good job of managing the program. As the JHB pointed out, Judge Wilfong stated in a text to Mr. Carter that she had his back, even with issues to which he did know about. The record in this case is replete with the factual basis that Judge Wilfong was a supporter of Community Corrections, before, during and after the affair took place. She supported Mr. Carter in his position, as he was an effective leader, and she could count on him. She sought to improve the program, strengthen the bond between Mr. Carter and Mike Taylor, and was a positive board member, as would be expected. Stating that she "had his back" cannot be twisted into some form of improper action, without clear and convincing evidence to support that. Not only is there not clear and convincing evidence that supports this, there is, in fact, none. Regardless, the JHB imputed meaning to the term, and determined it to be a violation of the Judicial Canons.
- As was obvious with Michael Taylor and was testified to by both Travis Carter and Judge Wilfong, there has been a long-term dispute between the Board of NCCC and the

Randolph County Commission as to who had control over decisions affecting NCCC. (See NCCC Minutes of 1/13/11 and 3/24/11).

- As Judge Wilfong testified, the 2008 vehicle which Mr. Taylor testified about was a problem in two different ways. First of all, it was a car and was not 4WD. The terrain traveled and bad weather were not suitable for a car. Secondly, both Erin Golden and Travis Carter told Judge Wilfong that the brakes had completely gone out two to three times on Interstate 79. As was pointed out by Mr. Taylor's cross-examination, the first request for the new vehicle pre-dated the relationship between Wilfong and Carter. (See NCCC Minutes 4/28/11). And, Special Counsel had these minutes and knew the truth, but instead they try to paint the picture that Judge Wilfong was going out on a limb to help Travis Carter get a new car. There was grant funding for the purchase of the vehicle and the Board of NCCC had approved the purchase a year earlier.
- As Judge Wilfong testified, the only time she advocated for a raise for Travis Carter was in 2009, two and one half years before any relationship began. There is no evidence to the contrary. (See NCCC Minutes, which will show no discussion of a raise for Travis Carter, except for the small percentage increment offered to each county employee). Judge Wilfong did seek to obtain a raise for Erin Golden of NCCC, to seek parity with the other employees in the other branches of NCCC. (See NCCC Minutes of 3/22/12 and 7/11/13). Had she advocated for one for Travis Carter, it would have been in the minutes. The truth is it just did not happen after 2009 and Michael Taylor knows it. He could not remember things that helped Judge Wilfong, but he was clear on things that he thought hurt her. Selective memory is always a questionable trait in any witness.
- The investigator for Special Counsel interviewed Judge Wilfong's former Court Reporter who was fired by Judge Wilfong in 2010, even though this affair did not even begin until late 2011.
- The investigator for Special Counsel did not bother to question the current Court Reporter, Leslie Hart, who has sat in court with Judge Wilfong, every day, since 2010. Special Counsel finally met with Ms. Hart for approximately five minutes during the week prior to the hearing, after the Respondent listed Ms. Hart as a potential witness.¹⁰
- The investigator questioned Mr. Carter, his wife, his wife's parents and at least one of his parents. Even though Judge Wilfong had admitted she and Mr. Carter went to speak to Judge Wilfong's parents, the investigator did not, in any way, seek to speak to any members of Judge Wilfong's family.
- The investigator discovered a new witness, Jennifer Lloyd, who testified that she encountered Matt Wilfong and Jaymie Wilfong in the Elkins Walmart sometime in the two and one half weeks prior to the hearing of August 11, 2014. During the encounter,

¹⁰ See attached affidavit of Leslie Hart attached hereto as Appendix B.

according to Ms. Lloyd's testimony, she told Matt Wilfong that she joined and un-joined the Face Book page supporting Judge Wilfong because she did not think it was a good idea to be a member of the page so she un-joined. She further relayed that Mr. Wilfong told her she had no business throwing rocks. She testified that she left the aisle Mr. Wilfong was in and then ran into Judge Wilfong in the next aisle, who said something along the lines of "Matt and I will laugh last." She testified that she perceived this as a veiled threat. Ms. Lloyd testified that she perceived these comments as a veiled threat. Judge Wilfong took the stand and testified that no part of this statement was true.

- Though Ms. Lloyd's testimony is mentioned in the Order from the JHB, the JHB noted in a footnote they did not consider this evidence in arriving at their decision. However, how could that be possible? The issue of whether or not Judge Wilfong testified honestly, and the issue of retaliation were placed front and center by this witness's testimony.
- Following the hearing, Respondent learned, inadvertently, that Special Counsel sent the investigator to the Elkins Walmart on August 12, August 13, and August 14, 2014 to review surveillance video.¹¹ After three days, the investigator left empty handed because there was no confrontation between Judge Wilfong's husband or Judge Wilfong and Ms. Lloyd on any videotape.¹² Despite knowing on August 14, some four days prior to the Reply Brief being due to the JHB and before the JHB made their decision, Special Counsel made no effort to relay this exculpatory evidence to counsel for the Respondent, nor to the JHB.¹³

The post-hearing investigation of Judge Wilfong is suspect at best. Obviously, Special Counsel was convinced that Judge Wilfong was lying, otherwise why spend three days of investigation time in an attempt to locate the video evidence of something that did not occur? The investigator could have gone to the Wal-Mart store before the hearing to verify the veracity of Ms. Lloyd's testimony, but did not, even though Special Counsel was aware of her alleged testimony at least a week prior to the hearing. At the very least, this discovery of a lack of corroborating evidence, which is wholly exculpatory, should have been disclosed by Special Counsel to the JHB, but it was not even mentioned.

¹¹The hearing before the JHB was August 11, 2014.

¹²Wal-Mart security rivals that of a casino. There are cameras everywhere.

¹³ See attached affidavit of Judge Wilfong attached hereto as Appendix C.

Judge Wilfong honestly and most openly admitted the affair, including its sordid details, and took responsibility for it at her sworn statement. Based upon the request from Special Counsel, she personally reviewed approximately six hundred hearings, compiled a list of all hearings in which an officer from North Central Community Corrections appeared, in any manner, and determined that Mr. Carter had never testified before her and that members of his staff had only testified in front of her on two occasions. Most importantly, not one witness ever testified by stipulation or live testimony that the affair ever affected one case, which should be the standard by which this Court judges the conduct of Judge Wilfong and imposes a sanction that keeps that fact in mind.

This case, quite simply and alarmingly, has been a witch hunt, and there are no known boundaries in place which could have prevented this, or to prevent it from happening again. Judge Wilfong did wrong, and she has fully and continually taken responsibility. When Special Counsel could not find any evidence of wrongdoing in the cases that Judge Wilfong handled, the witch hunt began.¹⁴ The simple fact that this case has pended in excess of a year, while Special Counsel has led an uninhibited investigation looking for any possible defect in Judge Wilfong's character, is just unacceptable, and is not indicative of how these cases should be handled. Judge Wilfong cooperated fully in this investigation. When the request was made to take the sworn statement it was scheduled quickly and Judge Wilfong fully complied with the subpoena from Special Counsel.¹⁵ Judge Wilfong did not dispute the affair; or what had taken place; or where it had taken place. She told the truth, knowing that it would all be public for everyone to read, see and hear.

¹⁴ The very first evidence Special Counsel requested (evidence regarding harm to cases or litigants) would have been the most relevant and most important.

¹⁵ The sworn statement had to be rescheduled once due to the "water crisis" from the Freedom Industries spill, which resulted in the canceling of Respondent's hotel reservation and the closure of the Office of Disciplinary Counsel.

Yet, the hunt continued for an additional six months. Admitting to violations of Canons 1 and 2A were simply not enough for the Special Counsel. There just had to be more to the story and she was determined to find it. Instead, she found nothing more than what Judge Wilfong testified to during her sworn statement.

A review of the Stipulations of Fact will tell this Court that Judge Wilfong has stipulated that the integrity of the judicial system was harmed by her actions and that her relationship with Carter and the revelations about it have caused harm to the judiciary, in general, because Carter's position as the Director of the NCCC program and her position as the Circuit Court Judge. In fact, Wilfong had previously admitted that the relationship had the appearance of impropriety and that the integrity of the judiciary was harmed as a result of the affair in her Response to the Formal Statement of Charges in April 2014. The Stipulations of Fact further support Judge Wilfong position that the burden of proof was not met:

- Judge Wilfong's law clerk, Mary Wendekier, believed in January 2012, after being so advised by Judge Wilfong, that the relationship had ended. According to the stipulations, Ms. Wendekier filed a complaint on or about October 16, 2013 when it came to her attention the relationship had continued. Respondent argues that this, to its logical conclusion, says that Judge Wilfong's law clerk, who sits in on criminal cases in the courtroom, and whose office joins Judge Wilfong's, did not know from January 2012 until October 2013 that the relationship was ongoing. In her complaint, she stated that she believed the relationship potentially affected criminal matters pending before the Respondent. However, aside from her statement, there is absolutely no evidence to support that whatsoever. Further, there is absolutely no evidence that Ms. Wendekier has suffered any retribution by Judge Wilfong, and Ms. Wendekier continues to work for Judge Wilfong today. Such evidence, that Ms. Wendekier believed that the relationship potentially affected criminal cases is not proof by clear and convincing evidence.
- There were only two times between August 1, 2011 and October 14, 2013 when members of Carter's staff gave sworn testimony before Respondent. Mr. Carter never did. (See Parker Stipulation and Wilfong Sworn Statement for further support). The vast majority of times that NCCC appeared, they were merely providing updates on the participants in the program, as Judge Wilfong testified.

- That while Judge Wilfong's staff would interrupt Wilfong and Carter for Wilfong to continue with the court schedule, her staff did, prior to the relationship with Carter, and now does, after its termination, continue to do this to help her keep the daily hearing schedule moving forward and not to fall behind. There is absolutely nothing to suggest that Judge Wilfong is or has been negligent in the execution or performance of her duties.
- Many of the additional stipulations, while they may be factual, merely demonstrate the personal, intimate record of the affair, which were discovered, in large part, due to Wilfong's candor during her sworn statement under oath during questioning by Special Counsel.

II. DISCUSSION OF AUTHORITY

This Court is well aware of what the abuse of one's judicial office looks like. Just look at Matter of Phalen, the parties requested a reduction in child support payments due to the husband's illness and decrease in income. Phalen entered an order was reflecting the agreement by the parties. However, before the order was communicated to the parties, Phalen telephoned the husband and visited his home for the purpose of trying to get him to sell Amway products. Phalen next telephoned the wife and attempted to gain her interest in selling Amway products, but she said no. A complaint was filed and the Commission determined that probable cause existed for a complaint to be filed with the West Virginia Judicial Hearing Board charging Mr. Phalen with violating Canons 1, 2A, 2B, 3A, 3B(7), and 3B(11) of the Code of Judicial Conduct. The Board conducted an evidentiary hearing on this matter on November 3, 1995. The Board concluded: (1) The family law master used information he obtained in a judicial hearing to attempt to promote his own personal financial gain, and (2) he did not promote public confidence in the integrity and impartiality of the judiciary by visiting the home of a litigant and attempting to have the litigant sell Amway products. **The Board unanimously proposed that the family law master be reprimanded.** (Emphasis added). Phalen disagreed, claiming he did not violate the other Canons. This Court held that:

...Canon 1 is far more potent and meaningful than Mr. Phalen would have it. No greater assault on the integrity and independence of the judiciary can be found than to have litigants exposed to judges soliciting them for whatever “fancy” judges might have. See *In the Matter of Hey*, 193 W.Va. 572, 457 S.E.2d 509 (1995) (sanctions imposed on judge for sexual harassment); *In the Matter of Mendez*, 192 W.Va. 57, 450 S.E.2d 646 (1994) (criminal and ethical sanctions imposed on magistrate for unlawful solicitation and acceptance of campaign funds); *In the Matter of Gainer*, 185 W.Va. 8, 404 S.E.2d 251 (1991) (ethical sanctions imposed on magistrate for sexual fondling of woman). We noted *In the Matter of Gorby*, 176 W.Va. 11, 14, 339 S.E.2d 697, 700 (*Gorby I*), *modified on other grounds*, 176 W.Va. 16, 339 S.E.2d 702 (1985):

“ “The office of judge is one in which the general public has a deep and vital interest, and, because that is true, the official conduct of judges, as well as their private conduct, is closely observed. When a judge, either in his official capacity or as a private citizen, is guilty of such conduct as to cause others to question his character ..., the people not only lose respect for him as a [person] but lose respect for the court over which he presides as well.” ’ ’ Quoting *In re Haggerty*, 257 La. 1, 29, 241 So.2d 469, 478 (1970), quoting *Stanley v. Jones*, 201 La. 549, 562-563, 9 So.2d 678, 683 (1942).

Matter of Phalen, 197 W. Va. 235, 237-38, 475 S.E.2d 327, 329-331 (1996). This Court went on to conclude that Phalen had violated Canon 2A:

“Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges.... 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 financial stake Mr. Phalen held in this matter overshadows any financial gain the litigants might have obtained from accepting his proposal. As we stated succinctly in *In the Matter of Neely*, 178 W.Va. 722, 727, 364 S.E.2d 250, 255 (1987), “it is improper for a judge to take advantage of his position to reap a personal benefit-or even to appear to do so.” The Open Courts Clause of Section 17 of Article III of the West Virginia Constitution does not permit, as a condition to access to the courts, that litigants must help line the pockets of judicial officers by selling trinkets. In the Syllabus of *Neely, supra*, we held: “A judge or justice violates Canon 2A ... when he requires his secretary to care for his child as a condition of employment, because such action creates the appearance of impropriety and undermines public confidence in the judiciary.” Mr. Phalen’s pernicious arrangement, if left unchecked, would not merely “undermine” public confidence in the judiciary, it would “utterly destroy” such confidence.

197 W. Va. 235, 240, 475 S.E.2d 327, 332 (1996). This Court went on to find that Phalen violated Canons 2B, 3B(7), and 3B(11) by clear and convincing evidence. “Accordingly, based upon these findings, we issue a public reprimand and order Mr. Phalen to pay the costs of the proceedings.” 197 W. Va. 235, 243, 475 S.E.2d 327, 335 (1996). A similarly egregious situation occurred when the Commission charged Magistrate Rice with violation of Canon 2A and 2B of the Code of Judicial Conduct. The JHB found that Mr. Rice had violated Canons 2A and 2B by contacting an arresting officer and prosecuting attorney concerning an action pending against Mr. Rice’s son-in-law. The Board recommended that Mr. Rice be admonished and required to pay the costs of the proceedings. After an independent review of the record, we adopt the recommendations of the Board. Matter of Rice, 200 W. Va. 401, 402-03, 489 S.E.2d 783, 784-85 (1997).

When the evidence is conflicting, this Court has said:

In Syllabus Point 1 of West Virginia Judicial Inquiry Commission v. Dostert, 271 S.E.2d 427 (W.Va.1980), we defined our role in judicial disciplinary proceedings as follows: “The Supreme Court of Appeals will make an independent evaluation of the record and recommendations of the Judicial [Hearing] Board in disciplinary proceedings.” We therefore review the Board’s findings of fact, as well as its conclusions of law based upon those findings. The testimony given before the Board was evenly divided at best and ambiguous at worst. There are a number of important contradictions in the testimony of those present at the time the incident at issue took place. Some of this conflict is undoubtedly attributable to the four year lapse between the date of the incident and the date of the hearing before the Judicial Hearing Board. All of the witnesses, except Magistrate Pauley, made reference to the length of time which had elapsed in encountering difficulty in recalling specific details.

In re Pauley, 173 W. Va. 228, 230-31, 314 S.E.2d 391, 393-94 (1983). Based upon that dispute in the testimony, this Court dismissed the charges against Pauley because there was no proof by clear and convincing evidence.

III. STANDARD OF PROOF AND ANALYSIS OF ALLEGATIONS

As the members of the Judicial Hearing Board are aware, ethical violations alleged must be proved by clear and convincing evidence. Taking a look at the two counts, the only violations that can be proven are those which Judge Wilfong has admitted to since April 2014 - that her actions compromised the integrity of the judiciary and created an appearance of impropriety. Further, while her self-report and Amended Answer did not formally state that her actions have compromised the integrity of the judiciary and created an appearance of impropriety, her words conveyed all the relevant facts which support those findings even earlier than April 2014. There is nothing to support that she has been anything other than truthful in this difficult and embarrassing situation. Specifically, the evidence does not show, by any standard, and certainly not by clear and convincing evidence that Judge Wilfong, through her actions, has:

- A. Eroded the public's confidence in the judiciary. There is no real evidence to support a clear and convincing finding by the JHB that this has occurred.
- B. Given an impression of improper influence. Despite the less than candid testimony of Mike Taylor, there is no evidence to support a clear and convincing finding by the JHB that this has occurred.
- C. Used her office to advance her personal interest. Despite the less than candid testimony of Mike Taylor, there is no evidence to support a clear and convincing finding by the JHB that this has occurred. There is considerable evidence to the contrary.
- D. Performed her duties with bias or prejudice. There is no evidence to support such a finding.
- E. Failed to diligently discharge her duties as Circuit Judge. There is no evidence to support such a finding.

F. Failed to require her staff to observe standards of fidelity and diligence. There is no evidence to support this finding.

Further, there is no clear and convincing evidence that:

A. The relationship affected the performance of her duties as Circuit Court Judge.

B. The relationship affected the performance of court employee's performance of their duties.

C. Judge Wilfong involved others in this situation in a manner that compromised their ability to do their duties.

D. Judge Wilfong told others she would end the relationship or self-report it.

E. Judge Wilfong did anything to benefit Travis Carter or NCCC as a result of, or because of, the relationship.

F. Judge Wilfong permitted the relationship to affect her duties and judgment as Circuit Court Judge.

G. Judge Wilfong, in any way, compromised others with whom she worked with and/or over whom she had power as Circuit Court Judge.

H. Judge Wilfong implied or expressed to anyone the requirement that they keep the secret of the limited sexual affair, which was primarily emotional in nature. In fact, Chris Cooper testified it was "the worst kept secret in the court house."

I. Judge Wilfong, in any way, used her power to further her relationship with Travis Carter and/or to advance the interests of Mr. Carter and the Program. There is no clear and convincing evidence that anything she did to improve the program had anything at all to do with the relationship, or was improper in any way. There is a lot of evidence to the contrary.

J. Judge Wilfong self-reported only after the Randolph County Commission spent approximately \$50,000.00 to investigate. This is not true at all.

K. Judge Wilfong denied any violations until a few days before the hearing before the JHB, which is just wrong.

L. Judge Wilfong falsely told people the relationship was ending, when it was not. This testimony was misunderstood, at best. Judge Wilfong did end the relationship, but would be pursued again by Travis Carter, and they would get back together as a couple. Judge Wilfong never lied to anyone about the affair ending, it rekindled.

M. Judge Wilfong has not treated anyone unfairly (litigant or attorney) or has given any reason for anyone to believe she will retaliate if she remains on the bench.

N. Judge Wilfong is, in any way, unfit for her position.

O. Judge Wilfong was never told to self-report until October 2013. This dispute was with Stephen G. Jory's stipulation, which Judge Wilfong disagreed, and testified that Mr. Jory did not tell her to self-report anything until October of 2013 when he told her there were lawyers in town who planned to file complaints against her.

P. Any other violations have occurred. There is no evidence to support this finding.

As such, all allegations against Judge Wilfong, except the two which she has admitted since April 2014, and provided a factual basis for in her self-report of October 2013 and her subsequent Amended Answer, should be dismissed and she should be punished for the violations she has admitted to committing. To do anything more would be a miscarriage of justice.

IV. SPECIAL COUNSEL'S FAILURE TO MEET THEIR BURDEN

One only needs to glance over the Brief of Special Counsel to understand how much Disciplinary Counsel alleged it could prove against Judge Wilfong, in comparison to what actually

was proven. Disciplinary Counsel has alleged "facts," with absolutely no proof to support the allegations. They include, but are not limited to:

- Steve Jory told Judge Wilfong to self-report the relationship. Further, that Judge Wilfong told Steve Jory she would self-report the relationship during an earlier conversation. These allegations were just not true.
- Wilfong called the JIC over ten times in an hour and repeatedly demanded Teresa Tarr's personal cell number and that Judge Wilfong demanded that Teresa Tarr call her immediately, all of which was not true.
- Wilfong performed sexual acts on Carter between court proceedings and that Wilfong demanded that Carter come to her chambers on a daily basis, neither of which were true.
- Wilfong's actions disrupted NCCC's daily operations and placed an additional burden on remaining staff, which was just not true.
- Wilfong took advantage of her close friendships with Attorneys Gray and Isner, which is simply not true.
- Since 2012, all pre-trial defendants are required to utilize the NCCC as a condition of bond, simply not true.

Without question, the only infraction Special Counsel has proven is that which Judge Wilfong has openly admitted, before the JHB and earlier during her sworn statement, and earlier in her Response to Statement of Formal Charges. Her actions placed the integrity of the judiciary in question, and created an appearance of impropriety. While this Court has the authority to suspend Judge Wilfong for a year on each violation, the circumstances presented before JHB do not justify this. This is a case where Judge Wilfong has accepted responsibility for her actions; has faced intense public humiliation; and has laid her fate in the hands of the West Virginia Supreme Court of Appeals with a request for mercy, not the capital punishment the JHB has asked this Court to consider.

There are no cases cited where an appearance of impropriety has caused a Judicial Officer to be suspended in West Virginia. There are none. There are no cases cited where an infraction that impacted the integrity of the judiciary caused a Judicial Officer to be suspended in West Virginia. There are none. Moreover, this case is riddled with factors that mitigate in favor of Judge Wilfong receiving a public reprimand. The Cases cited by Special Counsel are not on point, and all are substantially different than the immediate case before this Court.

In perhaps the most recent case to go before the Judicial Hearing Board, In Re Harshbarger, Magistrate Harshbarger was publicly censured, fined \$2,000.00 and assessed costs (approximately \$3,800.00) for mishandling a domestic violence petition, not following proper procedure, and talking about the confidential petition with another person. This was Magistrate Harshbarger's *third* ethics violation. It is troubling that from the commission of Magistrate Harshbarger's actions up to and including the accepted recommended disposition of the Judicial Hearing Board by the West Virginia Supreme Court of Appeals, Magistrate Harshbarger's case was disposed of in a little over three months. In this instant case, Judge Wilfong has been under intense scrutiny since October 2013, while the intensive investigation continued, even post hearing, ultimately never revealing any more than what Judge Wilfong honestly disclosed when asked under oath in February 2014 at her sworn statement.

In a rather serious case, which was before the West Virginia Judicial Hearing Board, In Re Watkins, 233 W.Va.170, 757 S.E.2d 594 (2013), it is worth pointing out that, among other sanctions, Judge Watkins was suspended until the remainder of his term. What is not obvious by the opinion is that Special Counsel also prosecuted that case and her recommendation to the Judicial Hearing Board regarding suspension was that Judge Watkins be suspended for *six months*. Yet, in this case, she sought a four year suspension for Judge Wilfong.

Special Counsel cites In Re Watkins, *Id.* at 602, when she states that 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." Disciplinary Counsel neglects to show how Judge Wilfong's continued service will be detrimental to the judicial branch of government, or anything other than the express wishes of the people of Randolph County. Further, it is disingenuous to argue that, after ten months of investigating, without filing a motion to the West Virginia Supreme Court of Appeals for Judge Wilfong's temporary suspension, she should now be suspended to protect the judicial branch of government. It seems rather odd that it is just now come to light that the judicial branch must be protected by suspending Judge Wilfong for a period of three years.

V. PUBLIC PERCEPTION OF JUDGE WILFONG

There can be no dispute that the public's opinion is critical in analyzing this situation and determining an appropriate punishment. The JHB has made the finding that Judge Wilfong has "some" public support. In fact, there has been an enormous outpouring of public support for Judge Wilfong, including a letter drive which produced nearly one hundred letters in one week and a spontaneous Facebook group to "Support Judge Jaymie Godwin Wilfong" which had over five hundred, twenty members join in less than one week. That number now stands at 649. According to Judge Wilfong, at least half who wrote or posted, Judge Wilfong does not know. There is no better indicator to determine if the integrity of the judiciary is intact other than to see if the people of the jurisdiction continue to support the judicial officer.

Although the letters and posts have all been entered into evidence, Respondent highlights just a few of them here. The quotes from the written letters and posts are stated here in their original form, so as to not unintentionally change their meaning.

- A. "I believe I was meant to meet Judge Wilfong because I do believe without a doubt had I not been blessed by God to end up in front of her I do not believe I would be alive today." - Letter, Dawn DePriest
- B. "Jaymie Godwin Wilfong showed mercy to someone that was close to my heart one time and I have never forgotten that and she has a sweet spirit and a honest heart and I met her once and she won my heart and so she has my support." - Letter, Diana Lynn Ryder
- C. "I am 84 years old lived in Randolph all my life. There are lots of people and things has passed by me. I have had the most honorable pleasure of meeting Judge Wilfong, and the relief of her saying if I can ever help you please call". I am so proud that she is in office to protect and defend us elders in this so mixed up society. I will feel relief knowing she will hold her office, and we as the public will at this time defend and protect her - thank you for your time." - Letter, Martin Wade Vandevender
- D. "Moreover, the nicest and best thing I can honestly remember after four years in the United States is that meeting and knowing someone like Judge Jaymie Godwin Wilfong." - Letter, Abdullah Saud Alharb
- E. "In making your decision about our Judge, I ask that you please take into consideration the sentiments of the people of this great County. I can tell you from personal knowledge her support does not end here at my church - it is like this county-wide." - Letter, Dr. Curlie E. Ray, Jr. (who also presented a petition signed by members of his church, and has been admitted into evidence).
- F. "It does not matter who you are or what you have to her, she treats everyone the same, equally and fairly." - Letter, Brenda Dasher
- G. "I urge you to look at the big picture, specifically all the strides which have been made exclusively due to her hard work and dedication." - Letter, Dr. Craig Hyre
- H. "There has been so much negative publicity concerning this situation. Our concern is that all the positive influences that have come from the judge's service to the community will be lost...Her personal involvement has a significant impact in the outcomes for the young people that appear before her." - Letter, Dr. Frank and Robin Mams

- I. "We, the people, voted for her as our judge and I firmly believe should we have an election tomorrow Judge Wilfong would be elected based on her job performance." - Letter, Wanda M. Jones Siler
- J. "The people continue to speak in support of Judge Wilfong' I hope you will consider our voice in making your decision." - Letter, Debbie Ware
- K. "I just want to say that Mrs. Jayme Wilfong is a great person and terrific judge. We are all human, and none of us is perfect...everyone has made mistakes. That does not change the fact that she is the best judge we have ever had. She is a very caring person who always does the right thing in her cases. Because of her my daughter is off drugs now and is my daughter I once knew and the credit all goes to Mrs. Wilfong. Because of her compassion for our community we have the drug court program, which has changed many people's lives for the better. Please everyone, the good this woman has done needs to be addressed. Myself and my entire family support you and stand behind you 100%.You remain in my prayers. GOD will see you through all of this. GOD BLESS YOU." - Facebook, Hilda Rexrode
- L. "...I don't know Jayme personally but I do know that she is only human, just like the rest of us. What she did was NOT the first time this has ever happened. I'm sure it won't be the last. Her personal life is just that, hers! My question is, why is she being singled out?" - Facebook, Tina Rider Tyson
- M. "Randolph County cannot afford to lose this tough but fair representative. She has my full support, now and always." - Facebook, Shannon Morral Titchnell
- N. "Jamie has seen my family and I go thru some very hard times. She has always been fair and good to us. I think she is a wonderful person who loves her job and should be able to continue doing it..." - Facebook, Dorothy Scott
- O. "Few individuals have made such a positive impact on our community. Jaymie is a mentor, educator and advocate, always striving to be supportive to the community where she lives. It is great to see that support given back to her..." - Facebook, Debbie Tysor

How many of us have letters in our files that mimic those of support for Judge Wilfong? Despite what happened, she still enjoys wide-ranging support from the citizens of Randolph County, because they know her. They know she has learned her lesson and most importantly, they recognize that we are all human and all have human frailties that cannot be ignored.

VI. MITIGATING FACTORS

Judge Wilfong asks that the members of the Court to consider the following mitigating factors in determining her fate:

A. Jaymie Godwin Wilfong was a practicing attorney for seven years, elected to Family Court Judge (Randolph, Tucker and Grant Counties) for a term of six years, and elected to Randolph County Circuit Court Judge (of which she has served nearly six years). In that time, aside from this instant situation, her ethics profile is impeccable. She has never been disciplined by the Office of Disciplinary Council or the Judicial Hearing Board.

B. Judge Wilfong began the Randolph County Juvenile Drug Court in the fall of 2010, and serves as its presiding officer. Managing and running the program is very time consuming, but Judge Wilfong sees the benefits it has afforded our youth and will continue to serve if given the opportunity.

C. Judge Wilfong began the Randolph County Adult Drug Court in the fall of 2012, and serves as its presiding officer. Managing and running the program is very time consuming, but Judge Wilfong sees the benefits it has afforded our county and will continue to serve if given the opportunity.

D. Judge Wilfong implemented a successful program in Randolph County called "People's Law School," which is designed to educate the public on various important areas of the law. The program is taught primarily by volunteer attorneys, and just completed its fourth consecutive year.

E. Judge Wilfong is a former member of the Judicial Hearing Board. She resigned this position in the wake of these charges, so as to not create further angst to her colleagues.

F. Judge Wilfong does outreach programs with the Randolph County school system, and has visited every elementary school, middle school and high school in Randolph County. (See Respondent's Response to Formal Statement of Charges).

G. Judge Wilfong is a member of the Juvenile Justice Commission, appointed by Justice Workman. (Wilfong Sworn Statement).

H. There has been an enormous outpouring of public support for Judge Wilfong.

I. Judge Wilfong has been thoroughly punished over the past ten months. She has endured graphic and cruel media coverage. She has submitted to a lengthy investigation process that has yielded nothing more than she disclosed in her self-report, her Amended Answer, and her sworn statement. She has faced this situation on a daily basis, and continued to serve the people of Randolph County.

J. Judge Wilfong has been honest and truthful in the investigative process, admitting to facts that others would likely deny, as they could not be proven by clear and convincing evidence.

K. Judge Wilfong has fully accepted responsibility for her actions, makes no excuses, and blames no one else for her significant error in judgment. She understands her wrong doing and its impact on the judiciary and stands ready to be punished.

L. There is absolutely no evidence that this inappropriate relationship, in any way, impacted a case.

M. Judge Wilfong has made multiple public apologies, beginning in October 2013.¹⁶

¹⁶ ...[i]n certain limited circumstances, modification of a sanction imposed pursuant to a judicial disciplinary proceeding may be appropriate. See, e.g., Long v. Judicial Retirement and Removal Commission, 610 S.W.2d 614, 615 (Ky.1980); State ex rel. Williams v. Haworth, 551 P.2d 676, 679 (Okla.Jud.1976). The petitioner in the instant proceeding is not only remorseful with respect to past misconduct, but evidences a heightened sensitivity to the maintenance of public respect for the judiciary and its officers. Accordingly, we hereby reduce Magistrate Gorby's suspension without pay from six months to five months, terminating on December 11, 1985. Matter of Gorby, 176 W. Va. 16, 17, 339 S.E.2d 702, 703 (1985).

N. By removing Judge Wilfong temporarily from all criminal, abuse/neglect and juvenile cases to avoid even an appearance of impropriety while this case is being resolved, Judge Wilfong has been removed from approximately eighty percent of her caseload, resulting in a "defacto suspension" since May 2, 2014.

VII. CONCLUSION

Judge Wilfong, while pointing out many inconsistencies in the record herein, does not make any excuses for the affair which she willingly participated in nor does she attempt to justify her own actions. There is no excuse for her behavior, professionally or personally. She does, however, ask this Honorable Court to look at her circumstances and judge her fairly and impartially, and consider her twelve years on the bench - not just this transgression, which has played out publicly, when determining her fate.

In his very candid letter to the Judicial Hearing Board, which is part of the evidence, Justice Larry Starcher writes, "I hope the board will be sensitive to the fact that Judge Wilfong has been "paying a penalty" for the last several months. And, I ask that the Board recognize Judge Wilfong has had a good reputation for her judicial performance prior to this matter. While her conduct is inexcusable, we should not "make an example" of her by stripping this *female* judge from her office, and her livelihood. If she is to lose her office, let it be by the will of the Randolph County voters."

It is fitting to close with a comment from one of the many letters introduced into the record in support of Judge Wilfong, written by Jesse Shreve, Jr.: "We all make mistakes in our personal lives that given the chance I'm sure we would change if we could, fortunately for most of us our mistakes at home don't make front page news...God help us all if it did." The details of this relationship have been in the local paper a great deal. The reason is questionable.

Judge Wilfong kindly requests that the West Virginia Supreme Court of Appeals make a decision that is fair; that is supported by clear and convincing evidence; that is warranted by the facts, testimony, exhibits, and stipulations; and that is justified. Most of all, Judge Wilfong asks that you grant her mercy. She is not deserving of the death sentence that Special Counsel wants to be imposed. Reject the notion that Judge Wilfong cannot be trusted to continue to do what the people of Randolph County elected her to do; if those people no longer trust her, let them remove her from office. Reprimand her for her conduct and give her a second chance, as the totality of the circumstances clearly warrants it.

Respectfully submitted,

Jaymie Godwin Wilfong
Respondent



David A. Sims (WV Bar No. 5196)
LAW OFFICES OF DAVID A. SIMS, PLLC
P.O. Box 5349
Vienna, West Virginia 26105
304-428-5291

CERTIFICATE OF SERVICE

This is to certify that I, David A. Sims, has this day, the 14th day of October, 2014, served a true copy of the foregoing "Motion to Exceed Page Limitation of Brief Imposed by Rule 38 of the Rules of Appellate Procedure" upon Rachael L. Fletcher Cipoletti and David A. Jividen, Special Judicial Disciplinary Counsel for the Judicial Investigation Commission, by mailing the same via United States Postal Service, postage pre-paid, to the following address:

Rachael Fletcher Cipoletti, Esq.
David A. Jividen, Esq.
State of WV Office of Disciplinary Counsel
City Center East, Suite 1200C
4700 MacCorkle Avenue, SE
Charleston, WV 25304

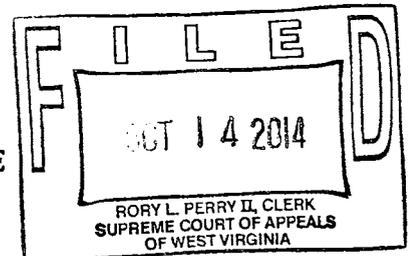


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-and-

Harry Deitzler, Esq. (WV State Bar No.: 981)
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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

APPENDIX TO BRIEF OF RESPONDENT JAYMIE GODWIN WILFONG

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TABLE OF CONTENTS

	<u>Page</u>
Affidavit of Jaymie Godwin Wilfong (October 13, 2014)	1
Affidavit of Leslie W. Hart (October 9, 2014)	4
Affidavit of Sierria M. Staten (October 6, 2014)	7

AFFIDAVIT

STATE OF WEST VIRGINIA;

COUNTY OF RANDOLPH, to wit:

I, Jaymie Godwin Wilfong, after being duly sworn, do hereby state the following, to the best of my knowledge:

On Monday, August 11, 2014, the Judicial Hearing Board (hereinafter "JHB") convened in Charleston, West Virginia for the formal proceeding, which is the subject of this matter.

At the hearing before the Judicial Hearing Board, counsel for the Office of Disciplinary Counsel, Rachel Fletcher Cipoletti (hereinafter "ODC Counsel") presented a "rebuttal witness" by the name of Jennifer Lloyd. Jennifer Lloyd is currently, and was at the time of the hearing, the secretary of Phillip S. Isner, an attorney in Elkins, West Virginia. Mr. Isner was also one of ODC Counsel's witnesses. Although Jennifer Lloyd was disclosed as a possible witness the week prior to the hearing, and ODC Counsel was directed by Judge Miller (Chair of JHB) to disclose the nature of ODC Counsel's witnesses, ODC Counsel did not disclose this information.

At the conclusion of both sides' cases-in-chief, Ms. Lloyd took the stand in rebuttal and testified that sometime during the previous two and one-half weeks, she had been confronted in the Elkins Walmart by my husband, Matt Wilfong, and myself. Ms. Lloyd testified that my husband questioned her about why she had joined and unjoined a Facebook page which had been started to support me. Ms. Lloyd testified that she told my husband she had joined the Facebook page to look, but later unjoined, thinking it was not proper, in light of the fact that she was employed by Mr. Isner. She further testified that Matt Wilfong then told her she was not one to be throwing stones. According to Ms. Lloyd's testimony, she left that aisle in Walmart and ran into me in the next aisle where that I told her Matt and I would "laugh last."

Ms. Lloyd's testimony was fabricated, in its entirety. I took the stand to testify that Ms. Lloyd's testimony was a not true. After my testimony, the JHB retired to discuss the case.

I was very upset about Ms. Lloyd's testimony because although I knew she had lied, I could not think of any reason Ms. Lloyd would make up this story. I believed her testimony, and mine, would likely be judged in light of this point. And, if the members of the JHB believed Ms. Lloyd's testimony, the JHB would believe I had given false evidence and that I had bullied Ms. Lloyd. As such, I was concerned this would make the members of the JHB believe I would seek retribution against those who were called to testify against me or those who filed the complaints.

As Ms. Lloyd's testimony was untrue, it was obvious to me that ODC Counsel did not check into the factual basis of Ms. Lloyd's testimony prior to the hearing taking place,

despite the fact that Ms. Lloyd had testified that she relayed this information to ODC Counsel approximately one week earlier.

In the immediate days after the JHB hearing, I contacted Aaron Stuck, Loss Management of the Elkins Walmart, to discuss obtaining video surveillance which would disprove Ms. Lloyd's testimony. However, through my discussions with Mr. Stuck, I learned that the Elkins Walmart has approximately 200 surveillance cameras. Mr. Stuck and I discussed that while this video surveillance would certainly show the absence of an encounter between Jennifer Lloyd and my husband and I, two and one half weeks of video feed, twenty-four hours a day, in a store with approximately two hundred cameras would be the equivalent of over ten years of continuous video. As I was trying to prove that something did not happen, this was not helpful.

Mr. Stuck had advised me that the surveillance video is only retained for approximately two months before it is overwritten. As a default, we subpoenaed the video feed for the three cameras which covered the three entrances/exits to the Elkins Walmart from July 21, 2014 (which was the day the Facebook group was started) until August 8, 2014 (the business day prior to the August 11, 2014 JHB hearing). This nineteen day period was more than enough to cover the two and one-half weeks Jennifer Lloyd testified to, and covered all possible dates, starting with the inception of the Facebook group she testified about. I do not recall being inside the Elkins Walmart during this period of time, and the video feed of the entrances/exits would support that. This would be approximately fifty-seven days of continuous video, but I would have it, to preserve, in the event I needed it to defend myself.

Mr. Stuck received the subpoena and prepared the data. I made arrangements to pick up the flash drives from Mr. Stuck at the Elkins Walmart in late September 2014. At that time, I met and spoke to Mr. Stuck, in person, for the first time. As a result of that meeting, and follow-up discussions from that meeting, I can state the following:

1. While picking up the flash drives, I explained to Mr. Stuck that I didn't think I had even been in the Elkins Walmart during the months of July and August 2014, and certainly not during the period of time in question.
2. Mr. Stuck agreed and didn't think I was in the store during that period of time, either.
3. Mr. Stuck indicated that "they" had also been there (at the Elkins Walmart) looking for evidence of this alleged event. I asked if he meant the "ethics people," and he said yes. He further disclosed that "they" left, empty-handed, because there wasn't any evidence of the alleged incident to be found.
4. A few days later, on September 24, 2014, I called Mr. Stuck again, and asked if he could tell me exactly who was at the Elkins Walmart looking for this evidence, and on what date(s). Mr. Stuck told me that he had the information written down in his office, and that he would call me back when he returned to his office.

5. Mr. Stuck returned my call within the hour and advised me that Jim Watson, "an investigator for the Supreme Court" had been there at the Elkins Walmart on August 12, August 13 and August 14, looking for evidence of this alleged confrontation (between Jennifer Lloyd and Matt/Jaymie Wilfong). He further told me that Mr. Watson had been there with him (Aaron Stuck) for two and one half days, reviewing extensive video surveillance. Dates of particular interest to Mr. Watson were July 26 and July 27, 2014. Mr. Stuck told me that he was with Mr. Watson during the review of the footage over the three-day period in August.

6. Mr. Stuck indicated that Mr. Watson walked away "empty handed," as no evidence supporting an encounter between Jennifer Lloyd and Matt Wilfong/myself was found.

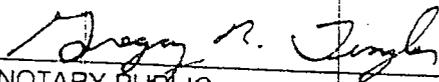
Through subsequent conversations with Mr. Stuck, and counsel for Walmart, Matthew Moncur from Arkansas, I have been advised that it would violate Walmart's policy for Mr. Stuck to provide a voluntary affidavit regarding this information, but that if Mr. Stuck were to be subpoenaed to provide a sworn deposition, Mr. Moncur would not object to it.

As of the date of this Affidavit, ODC Counsel has never disclosed to my attorneys, to me, or to the JHB, this search for evidence, nor have they disclosed the fact that after spending nearly three days to find it, it appears to not exist.



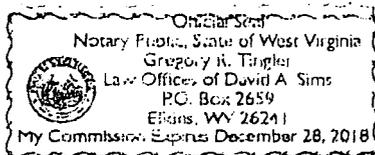
Jaymie Godwin Wilfong

Taken, sworn to, and subscribed before me this 13th day of October 2014.



NOTARY PUBLIC

My Commission Expires: 12/28/18



AFFIDAVIT

STATE OF WEST VIRGINIA;

COUNTY OF RANDOLPH, to wit:

I, Leslie W. Hart, after being duly sworn, do hereby state the following, to the best of my knowledge:

I have been the court reporter in the 20th Judicial Circuit, Randolph County, West Virginia, since November 1, 2010. Initially, I was an ERO. I obtained state certification in April, 2011 and since that time have served as the Official Court Reporter in the circuit.

In the latter part of 2011 our court docket began to rapidly increase and it has consistently continued to do so. This volume mainly stemmed from all areas in the prosecutor's office, i.e., criminal, abuse and neglect, and juvenile cases. To-date, we hold court every day of the week. Our docket is best described as overly full; some days carrying 25-40 hearings a day on criminal motion days and/or juvenile days. Prior to May of 2014, we infrequently would take breaks throughout the day, and most days we would work through our lunch hour, taking maybe 20 minutes to grab a bite to eat. It became commonplace to work past the regular work day to finish the day's docket.

I have observed Judge Wilfong constantly being interrupted to sign orders, documents, and respond to various issues and/or emergencies. I have observed delays in our day's docket due to these type issues. Most frequently we utilized that delay to take a much needed restroom break. I have never observed Judge Wilfong to rush or press through a day's docket. Judge Wilfong is extremely thorough and very conscientious. This does mean that the hearings may take a little longer, but all sides have ample opportunity to be heard.

I have never observed Judge Wilfong to treat any party, litigant and/or his or her counsel unfairly or with disrespect. I have observed Judge Wilfong treat even the most undesirable parties with respect and consideration. I am most impressed with Judge Wilfong's sincere compassion for our juveniles. I have consistently observed Judge Wilfong to be truly vested in the welfare of the juveniles. If that meant we spent an hour on one juvenile hearing or stayed until 6:30 at night finishing up the juvenile docket, I gladly did so because I saw, first hand, attention being given where attention was due.

No one has ever complained or commented to me about being treated unfairly or unjustly; that extends to counsel who practice in our circuit. To the contrary, I have only heard compliments, praise, and thankfulness for the time and attention given to proceedings. I am approached regularly in the public with appreciation and sentiments of gratitude.

I have observed Judge Wilfong do so many different things in and for our community above and beyond what is required of her. She frequently goes into the schools and reads or speaks. Students/classrooms come in and visit our courtroom and she explains to them what we do and the judicial process. She has arranged and put on a People's Law School each year since February 2011 because she wanted to open the courtroom up to the public, inform them on topics they desire to learn about, and she is so proud of our local attorneys. She instituted both a Juvenile Drug Court and an Adult Drug Court in our county, both of which have been overwhelmingly successful. She teaches a law class at our local Davis & Elkins College. She spends endless hours doing whatever she can where there is a need. I truly couldn't be more proud of her and though this job is extremely taxing and our schedule is at times vigorous, I endure it because I see what a much needed difference she is making here in our county.

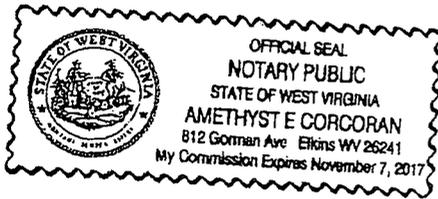
After complaints were filed in October of 2013, and throughout the first of May, 2014, I never observed Judge Wilfong treat any of the attorneys who filed complaints against her differently, nor did I ever observe or hear her comment begrudging any of the filing attorneys. To the contrary, I only saw and heard her be respectful to the attorneys who filed, no different than before October, 2013. I observed the same daily routine as before the filings, with the exception of a disclosure statement made at the beginning of every proceeding requesting objection to her hearing the case. I would note that, with the exception of maybe two times, the attorneys never had any objection to her continuing to sit and hear the cases. The two occasions where there was objection, it was presented to the Supreme Court for decision as to whether or not Judge Wilfong was to continue to hear the case. I never observed any attorney as uncomfortable, angry, or discontent in any regard with Judge Wilfong prior to the filings in October of 2013, nor did I observe any such demeanor after the filings and throughout the first of May, 2014.

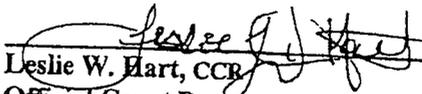
To the best of my knowledge Travis Carter never testified in any proceedings. In October of 2013 I assisted in pulling hundreds of proceedings to be reviewed for any possible participation and/or appearance by Mr. Carter. Though Mr. Carter's presence in the courtroom was sparse, I never observed Judge Wilfong to give any greater weight or credibility to Mr. Carter's recommendations in any proceeding. It was very infrequent that he was called upon during a proceeding, even when he was present. I have never observed, nor has it ever been suggested to me, that Judge Wilfong mishandled any case or treated any Community Corrections participant differently as a possible result of the relationship with Mr. Carter.

I am aware both the Randolph County Commission and the Office of Disciplinary Counsel conducted investigations into this matter. Throughout both investigations, no one ever interviewed me or spoke to me regarding what I knew and/or observed. No one even requested to speak with me. No one asked me to pull proceedings or prepare transcripts from proceedings, with the exception of Judge Wilfong who reviewed audio and notes of

hundreds of proceedings to disclose dates and times when Mr. Carter was present in the courtroom. I am advised that Judge Wilfong listed me on her witness list for the August 11, 2014 hearing before the JIC panel. A couple of days before that hearing I was requested to meet with ODC attorney Cipoletti and attorney Jividen, which I did. That meeting lasted less than five minutes and I was advised they did not need me at the hearing on August 11, 2014.

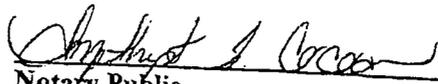
Given my interactions with and observance of Judge Wilfong both before and after the filings of the at-issue complaints, I do not believe Judge Wilfong harbors any negativity or hostility towards anyone in this matter, especially the attorneys who filed complaints against her. Over the past year I have only observed her assuming complete responsibility for her actions and consistently maintaining nothing but remorse and repentance. I have observed nothing in Judge Wilfong to indicate that she fosters any animosity, only a sincere desire to return to a job that she truly loves and regards.




Leslie W. Hart, CCR
Official Court Reporter
20th Judicial Circuit
Randolph County, West Virginia

Taken, sworn to and subscribed before me this 9th day of October, 2014.

My commission expires: November 7, 2017


Notary Public

AFFIDAVIT

STATE OF WEST VIRGINIA

COUNTY OF RANDOLPH, to-wit:

I, Sierria M. Staten, after being duly sworn, do hereby state the following, to the best of my knowledge:

I have known Phillip S. Isner for approximately eight years, and we have dated intermittently during that period of time. Through my relationship with Mr. Isner, I became friends with Jaymie Godwin Wilfong in June 2011.

I dated Phil Isner from July 2013 until February 2014. During that period of time, Phil and I discussed the complaints which were pending against Jaymie Wilfong. Throughout this entire period of time, Mr. Isner was wholly supportive of Jaymie Godwin Wilfong and was very much hoping the matter would resolve in her favor. If Mr. Isner now is of the opinion that he no longer wishes to have a friendship with Jaymie Wilfong, that opinion would have had to develop after February 2014, because as of that time, their relationship was friendly. There were social events Phil and I would attend that Jaymie and her husband would show up at. It was not unusual for us to sit together at some of these events. In fact, Phil Isner, Matt Wilfong (Jaymie Wilfong's husband) and Michael Parker (the Prosecuting Attorney) were all planning on attending a professional football game together in December 2013.

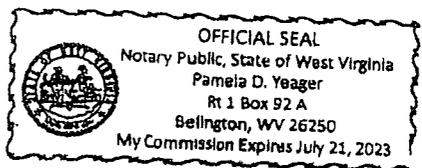
I am aware that Phil Isner and Jaymie Wilfong were or are friends, and that their friendship pre-dated Jaymie Wilfong taking the bench as Family Court Judge. It is further my understanding that Mr. Isner testified on August 11, 2014 that Jaymie Wilfong had texted him several years earlier and that two of her texts made him "uncomfortable." Having been around Mr. Isner for years, and having met Jaymie Godwin Wilfong through Mr. Isner, I can say that if he was, or has been, in any way, uncomfortable around Jaymie Godwin Wilfong, he certainly never acted like it. I am also aware that Jaymie Godwin Wilfong used Mr. Isner's garage on one or two occasions. This request did not, in any way, cause concern for Mr. Isner, nor did it make him uncomfortable in any way.

Sierria M. Staten
Sierria M. Staten

Taken, sworn to, and subscribed before me this 16 day of ^{October}~~September~~, 2014.

Pamela D. Yeager
NOTARY PUBLIC

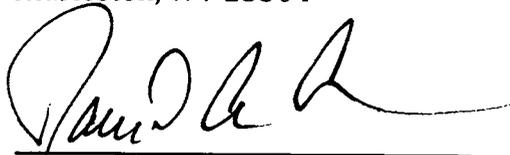
My Commission Expires: July 21, 2023



CERTIFICATE OF SERVICE

This is to certify that I, David A. Sims, has this day, the 14th day of October, 2014, served a true copy of the foregoing "Brief of Respondent Jaymie Godwin Wilfong" upon Rachael L. Fletcher Cipoletti and David A. Jividen, Special Judicial Disciplinary Counsel for the Judicial Investigation Commission, by mailing the same via United States Postal Service, postage pre-paid, to the following address:

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David A. Jividen, Esq.
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Charleston, WV 25304



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