

**JUDICIAL INVESTIGATION COMMISSION**

**ANNUAL REPORT - 2012**



**SUPREME COURT OF APPEALS OF WEST VIRGINIA**

Pursuant to Rule 1.11(3) of the Rules of Judicial Disciplinary Procedure, the Judicial Investigation Commission of West Virginia respectfully submits this Annual Report for its activities during the period of January 1, 2012, through December 31, 2012.

## THE COMMISSION

The Supreme Court of Appeals of West Virginia is required by Article 8, Section 8 of the Constitution of West Virginia to use its inherent rule-making power to "from time-to-time, prescribe, adopt, promulgate, and amend rules prescribing a judicial code of ethics, and a code of regulations of standards of conduct and performances for justices, judges and magistrates, along with sanctions and penalties for any violation thereof." Under this constitutional authority the Court "is authorized to censure or temporarily suspend any justice, judge or magistrate having the judicial power of this State, including one of its own members, for any violation of any such code of ethics, code of regulations and standards, or to retire any such justice, judge or magistrate who is eligible for retirement under the West Virginia judges' retirement system (or any successor or substitute retirement system for justices, judges, and magistrates of this State) and who, because of advancing years and attendant physical or mental incapacity, should not, in the opinion of the Supreme Court of Appeals, continue to serve as a justice, judge or magistrate."

The Constitution provides that "no justice, judge or magistrate shall be censured, temporarily suspended or retired under the provisions of this section unless he shall have been afforded a right to have a hearing before the Supreme Court of Appeals, nor unless he shall have received notice of the proceedings, with a statement of the cause or causes alleged for his censure, temporary suspension or retirement, at least 20 days before the day on which the proceeding is to commence." When rules authorized by this provision of the Constitution are "prescribed, adopted and promulgated, they shall supersede all laws and parts of laws in conflict therewith, and such laws shall be and become of no further force or effect to the extent of such conflict." Under the constitutional provision "[a] justice or judge may be removed only by impeachment in accordance with provisions of section nine, article four, of this Constitution. A magistrate may be removed from office in the manner provided by law for the removal of county officers."

By Order entered December 15, 1982, the Supreme Court of Appeals of West Virginia created the Judicial Investigation Commission to exist as of 12:01 A.M., December 16, 1982. At that time, the Judicial Inquiry Commission, created by Rule promulgated October 1, 1976, ceased to exist. The Chairman and the Executive Secretary of the Judicial Inquiry Commission provided to the Judicial Investigation Commission all of the records, files, and reports on cases of the Judicial Inquiry Commission. By Orders entered November 29, 1989, and December 20, 1989, effective January 1, 1990, and an Order entered November 29, 1990, effective January 1, 1991, and an Order entered March 24, 1993, effective July 1, 1993, the Supreme Court of Appeals of West Virginia further amended the Rules of Procedure for the Handling of Complaints Against Justices, Judges, and Magistrates which are now the Rules of Judicial Disciplinary Procedure. By Order entered on May 25, 1993, effective

July 1, 1994, the Rules of Judicial Disciplinary Procedure superseded the prior Rules of Judicial Disciplinary Procedure adopted December 15, 1982, and amended by Orders as stated hereinabove.

The West Virginia Rules of the Judicial Disciplinary Procedure, Rule 1, establishing the Judicial Investigation Commission, states "the ethical conduct of judges is of the highest importance to the people of the State of West Virginia and to the legal profession. Every judge shall observe the highest standards of judicial conduct. In furtherance of this goal, the Supreme Court of Appeals does hereby establish a Judicial Investigation Commission [Commission] to determine whether probable cause exists to formally charge a judge with a violation of the Code of Judicial Conduct promulgated by the Supreme Court of Appeals to govern the ethical conduct of judges or that a judge, because of advancing years and attendant physical and mental incapacity, should not continue to serve."

The West Virginia Rules of Judicial Disciplinary Procedure, Rule 2, using the Code of Judicial Conduct definition, defines "judge" as "anyone whether or not a lawyer who is an officer of a judicial system and who performs judicial functions including but not limited to Justices of the Supreme Court of Appeals, Circuit Judges, Family Court Judges, Magistrates, Mental Hygiene Commissioners, Juvenile Referees, Special Commissioners, and Special Judges."

The Commission consists of nine members: three circuit judges; one magistrate; one family court judge; one retired circuit judge; and three members of the public. The Supreme Court of Appeals appoints all members of the Commission.

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

The Commission held five regular meetings during 2012, in the Judicial Investigation Commission Conference Room, 4700 MacCorkle Avenue SE, Suite 1200 A, Charleston, West Virginia, on February 10, April 20, June 1, August 29, and November 16, 2012. Copies of all pertinent documents are distributed to the members of the Commission prior to each meeting so that they may review the materials and be prepared to discuss them actively in the meeting. The Commission has a support staff

of a full-time Executive Secretary, full-time Counsel, and three part-time Investigators, who conduct investigations of complaints.<sup>1</sup>

## PROCEDURE FOR HANDLING COMPLAINTS

Complaints filed with the Commission are referred to counsel, who reviews each complaint and either refers it to an investigator for investigation, asks the respondent judge for a response, or sends it directly to the members of the Commission for study prior to consideration at the next meeting. Those complaints that are referred directly to the Commission for consideration at a meeting are dismissed for lack of probable cause, referred to the judge for response or referred to an investigator for investigation.

Prior to a finding of probable cause by the Commission, a respondent judge shall be notified in writing of the nature of the complaint. The judge shall have ten days after the date of the notice to file a written response to the complaint. All decisions on whether probable cause exists to refer the complaint to the Judicial Hearing Board are made by the Commission at meetings with a majority of the members in attendance. Likewise all decisions on dismissal of complaints are made by the Commission at meetings with a majority of the members in attendance. Parties are contacted about the action of the Commission after a decision has been made on a complaint.

Some complaints contain more than one allegation against a judge, and the Commission may dismiss part of a complaint and find probable cause on part of a complaint.

By Orders entered March 24, 1993, effective July 1, 1993, and May 25, 1993, effective July 1, 1994, the Rules of Judicial Disciplinary Procedure were amended to include a provision that all information provided, documents filed or testimony given with respect to any investigation or proceeding under the Rules of Judicial Disciplinary shall be privileged in any action for defamation. All members of the Commission, the Judicial Committee on Assistance and Intervention, the Office of Disciplinary Counsel, and their employees, shall be absolutely immune from civil suit in the same manner as members of the judiciary in this State for any conduct in the course of their official duties.

All proceedings of the Commission are confidential except that when a complaint has been filed or an investigation has been initiated the Office of Disciplinary Counsel may release information confirming or denying the existence of a complaint or

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<sup>1</sup> While not a part of the work of the Commission, Counsel to the Judicial Investigation Commission pursuant to the Protocol for Fatality Review Teams, initially promulgated by the Supreme Court of Appeals in 1994 and amended in 1998 and 2000, is charged with initiating a confidential investigation and preparing a report for a designated Fatality Review Team. These reports are subsequently presented to a Fatality Review Team at a scheduled meeting. Commission staff is utilized in the investigation and preparation of these reports. During 2012 there were fifty-seven (57) new fatalities referred to the Commission for investigation.



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

## EXTRAORDINARY PROCEEDINGS

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

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

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

Upon receipt of the report, from the Chief Justice, the Supreme Court shall determine whether probable cause exists. A finding of probable cause hereunder shall be in lieu of a probable cause finding made pursuant to Rule 2.7(c). If it is determined that probable cause exists, the Court may:

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

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

If the judge has been convicted of a serious offense or has been indicted or otherwise charged with a serious offense, the Chief Justice may order that the judge not hear any further civil or criminal matters or perform other judicial functions while the matter is pending, with or without pay.

If pursuant to the rule on extraordinary proceedings the Court finds probable cause to believe that a judge has engaged or is currently engaging in a serious violation of the Code of Judicial Conduct or has become unable or unwilling to perform his or her official duties, the Court may direct that the judge not hear any further civil or criminal matters or perform other judicial functions while the matter is pending, with or without pay.

After the hearing on the issue of suspension, the Court may temporarily suspend the judge with or without pay while the matter is pending before the Judicial Hearing Board and until the Court has disposed of the formal charges.

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

However, Disciplinary Counsel may release information confirming or denying the existence of a complaint or investigation, explaining the procedural aspects of the complaint or investigation, or defending the right of the judge to a fair hearing. Prior to the release of information confirming or denying the existence of a complaint or investigation, reasonable notice shall be provided to the judge. Two extraordinary procedures were filed in 2012. Synopses of these cases are as follows:

**In the Matter of Magistrate Carol Fouty, Complaint No. 33-2012; Supreme Court No. 12-0446.** On March 6, 2012, the Administrative Director of the Courts filed a complaint against Magistrate Fouty alleging violations of the Code of Judicial Conduct. The Complaint was filed pursuant to Rule 2.14(a) of the Rules of Judicial Disciplinary Procedure. On March 19, 2012, the report of Judicial Disciplinary Counsel was filed with the Chief Justice of the State Supreme Court. On April 3, 2012, Counsel filed a supplemental report with the Chief Justice. On April 9, 2012, the State Supreme Court entered an Order finding probable cause and suspending Magistrate Fouty without pay pending resolution of the matter. On April 10, 2012, Counsel filed a five-count formal Statement of Charges against Magistrate Fouty with the State Supreme Court. On May 10, 2012, Magistrate Fouty, by counsel, filed a Response to the Statement of Charges and a Motion to Lift the Suspension. On June 6, 2012, a Rule 20 hearing was held before the State Supreme Court on Magistrate Fouty's suspension without pay. On June 12, 2012, the Court issued an opinion upholding the suspension without pay. See *In re Fouty*, 229 W. Va. 256, 728 S.E.2d 140 (2012).

The parties entered into Stipulated Findings of Fact and Conclusions of Law and Recommended Discipline prior to the Judicial Hearing Board Hearing on August 8, 2012. The Stipulations pertained to Count 1 of the Statement of Charges. Magistrate Fouty acknowledged that she violated Canons 1, 2A, 2B, 3A, 3B (1), 3B(2), 3B(7), 3E, and 4A(1), (2) and (3) of the Code of Judicial Conduct by: (1) dismissing a simple possession citation against a young lady on January 30, 2012 without the knowledge of or any input from the prosecutor, any assistant prosecutor or the arresting officer; (2) then hiring the young lady to work in her home after the ticket had been dismissed; and (3) next asking the arraigning magistrate for a personal recognizance bond for the young lady when she was being arraigned on two misdemeanor simple possession and one misdemeanor DUI charge on February 27, 2012. Magistrate Fouty also stipulated to the aggravating factor of having been the subject of prior discipline on three occasions. The Stipulated Findings, Conclusions and Recommended decision were tendered to the Judicial Hearing Board at the August 8 hearing along with 11 exhibits in support thereof. On August 13, 2012, the Judicial Hearing Board issued an Order recommending the following discipline with respect to Magistrate Fouty: (1) that she immediately resign her position as Magistrate; (2) that Respondent not take office if elected in the November 2012 General Election; and (3) that she pay costs in the amount of \$6,387.89. These recommendations were based on the underlying agreement between JIC Counsel and Magistrate Fouty. Additionally, the Board recommended that Magistrate Fouty also be censured. The matter was still pending before the State Supreme Court at the end of the year.<sup>2</sup>

**In the Matter of Judge William M. Watkins, III, Putnam County Family Court Judge. Complaint Nos. 112-2012, 152-2011, 18-2012, 74-2012, 77-2012, 113-2012 and 126-2012; Supreme Court No. 12-1008.**

On July 17, 2012, the Administrative Director of the Courts filed a complaint against Judge Watkins alleging violations of the Code of Judicial Conduct, Article III, Section 17 of the West Virginia Constitution and Trial Court Rules 16.06 and 16.13. The Complaint, which was given Complaint No. 112-2012, was filed pursuant to Rule 2.14(a) of the Rules of Judicial Disciplinary Procedure. The allegations involved: (1) the failure to file an Order reflecting the outcome of a July 1, 2011 hearing on a Second Motion to Enter Qualified Domestic Relations Order, a Counter Motion for Further Proceedings on Equitable Distribution and a Motion for Sanctions and Attorney's Fees filed in a post-divorce proceeding; and Judge Watkins' refusal to recognize the rightful power of the Circuit Court of Putnam County over the Family Court. Based on a conflict of interest and pursuant to Rule 5 of the Rules of Judicial Conduct, the matter was assigned to Special Counsel. On July 30, 2012, the report of Special Counsel was filed with the Chief Justice of the State Supreme Court. In addition to the issues raised by the Administrative Director, Special Counsel asserted that Judge Watkins failed to properly register domestic violence related orders with the West Virginia Domestic Violence Registry. On July 31, 2012, the State Supreme Court entered an Order finding probable cause on the three allegations and remanding the matter back to the Judicial

<sup>2</sup> By Order entered January 9, 2013, the State Supreme Court adopted the Judicial Hearing Board Order of August 13, 2012.

Investigation Commission for the filing of formal charges. On August 9, 2012, Special Counsel filed a two-count formal Statement of Charges against Judge Watkins with the State Supreme Court alleging violations of Canons 1A, 2A, 3B(1), 3B(8) and 3C(1) of the Code of Judicial Conduct.

Meanwhile, on August 29, 2012, Special Counsel presented the results of her investigation into Complaint Nos. 152-2011, 18-2012, 74-2012, 77-2012, 113-2012, 126-2012 to the Judicial Investigation Commission. The majority of the allegations contained in the complaints related to Judge Watkins' comportment in the courtroom while presiding over various matters. Another allegation centered on Judge Watkins' failure to recuse himself in a matter where he was clearly biased against one of the parties. The last allegation pertained to the lack of civility demonstrated by Judge Watkins' in a letter written to a litigant. Following the presentation by Special Counsel and pursuant to Rule 2.7 of the Rules of Judicial Disciplinary Procedure, the Judicial Investigation Commission found that probable cause existed for each of the complaints, that formal discipline was appropriate and directed the filing of a formal statement of charges with the State Supreme Court. On August 31, 2012, Special Counsel filed a five-count formal Statement of Charges against Judge Watkins with the State Supreme Court alleging violations of Canons 1A, 2A, 2B, 3B(1), 3B(2), 3B(3), 3B(4), 3B(5), 3B(8) and 3E(1)(a) of the Code of Judicial Conduct.

The State Supreme Court ordered the two sets of statement of charges consolidated by Order entered September 21, 2012. Judge Watkins, by counsel, timely filed answers to the Statement of Charges. The parties entered into Stipulated Findings of Fact and Conclusions of Law and Recommended Discipline prior to the Judicial Hearing Board Hearing on November 27, 2012. Stipulations pertained to all counts of both sets of Statement of Charges. Judge Watkins acknowledged that he violated Canons 1A, 2A, 2B, 3B(1), 3B(2), 3B(8), 3C(1) and 3E(1)(a) of the Code of Judicial Conduct by: The Stipulated Findings, Conclusions and Recommended decision were tendered to the Judicial Hearing Board at the November 27 hearing along with exhibits in support thereof. Judge Watkins testified at hearing. On December 3, 2012, the Judicial Hearing Board issued an Order recommending the following discipline with respect to Judge Watkins: (1) that he be censured on each of his twenty-four violations of the Code of Judicial Conduct; (2) that he be suspended, without pay, until his present term of office ends on December 31, 2016; and (3) that he pay costs associated with the investigation and prosecution of the case. The matter was pending before the State Supreme Court at the end of the year.

## **ADVISORY OPINIONS**

A judge or the Administrative Director of the Courts may, by written request to the Commission, seek an advisory opinion as to whether certain specific actions contemplated may constitute a violation of the Code of Judicial Conduct. The Commission may render in writing such advisory opinion as it may deem appropriate. An advisory opinion is not binding upon the Judicial Hearing Board or the Supreme



Court, but shall be admissible in any subsequent disciplinary proceeding involving the judge who made the request. During 2012 there were (24) issues raised in advisory opinion requests, and a synopsis of the Commission's opinion on each follows:

- **JIC Advisory Opinion 2012-1:** If a candidate for elected judicial office does not accept any contributions from anyone, then he/she does not have to have a campaign committee. This Opinion overrules the prior contrary Opinions of 2000 and 2004 on this issue. Canon 5C(2).
- **JIC Advisory Opinion 2012-2:** A non-incumbent candidate for Magistrate does not have to resign his/her seat on City Council in order to run for judicial office. However, if the candidate is elected then he/she must immediately resign from City Council. Canon 5A(2).
- **JIC Advisory Opinion 2012-3:** A Magistrate must immediately resign from office upon announcing his/her candidacy for sheriff. Canon 5A(2).
- **JIC Advisory Opinion 2012-4:** A candidate for judicial office may make a loan to his/her campaign committee for the purpose of financing his/her campaign. It is also possible for the candidate to seek repayment of the loan using campaign contributions when they become available. However, it is up to the campaign committee to determine the manner, method, means and time frame for the loan repayment. Canon 5C(2).
- **JIC Advisory Opinion 2012-5:** If a person who is a general contractor and sole proprietor of a company should be elected Magistrate, he/she should examine the provisions of Canon 4D(3) concerning the restrictions on outside financial activities. The Commission, while pointing out that the issue was premature, also advised that the individual should be aware of a judicial officer's obligation to obtain authorization from the Administrative Director of the Supreme Court before engaging in outside employment. Canon 4D(3).
- **JIC Advisory Opinion 2012-6:** A Mental Hygiene Commissioner must resign the position immediately upon becoming a candidate for the House of Delegates, a non-judicial office. Once a candidate, he/she could not be appointed Mental Hygiene Commissioner for the limited purpose of serving as the substitute Drug Court Judge during the pendency of the election. Canons 6A and 5A(2).
- **JIC Advisory Opinion 2012-7:** A candidate for election as Magistrate must resign from a branch of the West Virginia Federation of Democratic Women and should also resign her position as treasurer of, and her membership in, the Court

Appointed Special Advocate (CASA) organization, since, as treasurer she would necessarily be involved in fundraising activities. The Commission further advised that she should also resign from the position of membership chairman of the local county Sportsmen's Club, since this position involves the solicitation of funds. The Commission advised that she could serve with the Greater Federation of Women's Clubs and could also remain a member of the Volunteer Income Tax Assistance program. Canons 6A, 5A(1) and 4C(3).

- **JIC Advisory Opinion 2012-8:** A probation officer whose spouse was running for Magistrate is limited in what he/she can do for the campaign. As set forth in a 2-25-94 Advisory Opinion, the husband could attend campaign rallies or other social functions but could not provide volunteer manual labor for the campaign and could not engage in any fundraising activities. In addition, the probation officer husband could not drive a vehicle normally driven by his wife when the vehicle had campaign signs or posters on it. Neither would the husband be permitted to deliver or pick up items from the printers or commercial advertisers at the request of his wife or any member of her campaign committee. The Commission also referenced a 3-15-04 Advisory Opinion in advising that the husband's campaign activity could only occur "after office hours and outside the area where court proceedings are conducted." The Commission noted that if the probation officer's wife should be elected Magistrate, the issue of possible reassignment of the probation officer would be best handled by the relevant Circuit Judge. Canons 5A(3)(a) and 3(C)(2) (2/21/12).
- **JIC Advisory Opinion 2012-9:** A Judge may write a letter of recommendation on behalf of his/her law clerk, since the Judge has personal knowledge of the clerk's work ethic and habits. This Opinion overrules, in part, a May 3, 1990 Advisory Opinion which stated that if letterhead was used, then the words "personal and confidential" had to appear on the face of the document. Canon 2B.
- **JIC Advisory Opinion 2012-10:** A Family Court Judge who became aware, in connection with a divorce case, of a possible misappropriation of funds in violation of a Circuit Court order entered several years ago in a personal injury case may, pursuant to Family Court Rule 6(c)'s "for good cause shown" provision, disseminate information about the possible misappropriation to the Circuit Court. Canons 3B(11) and 6A.
- **JIC Advisory Opinion 2012-11:** A candidate for election to judicial office may use a PayPal button on his/her campaign committee's official web page to collect campaign contributions. Canon 5C(2).

- **JIC Advisory Opinion 2012-12:** A Magistrate's campaign committee can donate money to a civic or charitable organization. If the Magistrate does not have a campaign committee, then he/she may donate money as an individual, but not as a candidate. A campaign committee can donate a basket to the civic or charitable organization to be used as a door prize and that the basket may contain campaign material but stated that the basket may not be raffled off because to do so would constitute the solicitation of funds. A Magistrate candidate may not sell raffle tickets or food, collect money for a 50-50 drawing or call numbers. However, the Magistrate candidate may purchase a ticket and participate in a 50-50 drawing or bid on a silent auction. Canons 4(3) and 5.
- **JIC Advisory Opinion 2012-13:** A Judge's law clerk can make a contribution to the political campaign of an out-of-state Judge by whom the law clerk was previously employed. Canon 5.
- **JIC Advisory Opinion 2012-14:** It would be impermissible for a judge's law clerk to concurrently serve as a Mental Hygiene Commissioner. Canon 3C(2).
- **JIC Advisory Opinion 2012-15:** A part-time Mental Hygiene Commissioner may concurrently practice as a part-time city attorney. Canon 6(C).
- **JIC Advisory Opinion 2012-16:** A Judge may submit a letter of recommendation for an applicant for a judicial vacancy but only if it is not considered a public endorsement of the individual but is used solely by the appointing authority and can remain confidential. Canon 2B.
- **JIC Advisory Opinion 2012-17:** In connection with a planned golf outing fund raising event, a judicial candidate shall not personally solicit campaign contributions but may, however, establish campaign committees to solicit and accept reasonable campaign contributions. The candidate may attend the golf function if the sale of tickets and/or entry fees is handled without the candidate's knowledge or input. A campaign committee can allow an individual sponsor for each of the 18 holes but the candidate then would be unable to attend the outing since it would be likely that the candidate would learn the identity of the sponsors. The Commission also advised that the candidate must also comply with statutory requirements pertaining to campaign finances. Canon 5C.
- **JIC Advisory Opinion 2012-18:** A part-time Mental Hygiene Commissioner may serve concurrently as a part-time, appointed Municipal Judge, with the understanding that any resulting conflicts of interest must be handled appropriately. Canon 6C

- **JIC Advisory Opinion 2012-19:** A non-incumbent candidate for judicial office may be in violation of the Code of Judicial Conduct when his/her actions result in a domestic violence order being issued. The Commission further advised that Canon 3D(1) requires judicial officers to take appropriate action, which may involve filing a complaint with the Judicial Investigation Commission, when they receive information indicating a substantial likelihood that another person subject to the Code of Judicial Conduct has violated provisions of the Code. Canons 6, 5A, 3D.
- **JIC Advisory Opinion 2012-20:** Mere participation in a candidate's debate is not a *per se* violation of Canon 5. A potential violation depends on what a candidate can and cannot say during a campaign. Judicial candidates should follow the tenets of Canon 5 when speaking publicly at events such as debates. Candidates should have the moderator read the relevant provisions of Canon 5 to the audience so that it will know the limitations imposed on all who participate. Canon 5.
- **JIC Advisory Opinion 2012-21:** A judicial officer who is dating a DHHR Youth Services Supervisor does not have to disqualify himself/herself from presiding over all juvenile cases simply because he/she is dating the supervisor. However, the judicial officer must disclose the relationship in every juvenile case involving members of the supervisor's unit and if there is an objection to him/her presiding because of the relationship, the judicial officer must then take the appropriate steps pursuant to West Virginia Trial Court Rules 17.01, *et seq.* Canon 3E.
- **JIC Advisory Opinion 2012-22:** A magistrate whose father was elected Sheriff of the same county in which he/she serves is disqualified from presiding over any cases involving his/her father. If the case does not involve the father but does involve other deputies, the magistrate must disclose on the record the relationship with his sheriff/father and follow the tenets of *Brown v. Dietrick*, 191 W.Va. 169, 444 S.E.2d 47 (1994). Canon 3E.
- **JIC Advisory Opinion 2012-23:** A judge who receives an anonymous note containing a \$20.00 bill that he/she believes is a possible threat should promptly notify Court Security and the Sheriff and should give the \$20.00 bill to the Sheriff as potential evidence.
- **JIC Advisory Opinion 2012-24:** A judicial officer who served as a hearing examiner for a state agency prior to his/her election cannot prepare a recommended hearing examiner decision upon becoming judge even though the transcript and proposed findings and conclusions were not received until after he/she took office as judge. To do otherwise would violate the prohibition that a judge shall not practice law. Canon 4G.



## STATISTICS

On January 1, 2012, there were 52 complaints which remained pending before the Judicial Investigation Commission. During 2012, 205 new complaints were received for a total of 257 to be considered by the Commission. Of these 257 complaints considered, 67 required formal investigations. One hundred and ninety-two 192 complaints were dismissed when no probable cause was found. It was determined that the Commission had no jurisdiction in 2 complaints.<sup>3</sup> Zero 0 complaints were withdrawn by the complainant with the approval of the Commission. There were 72 pending complaints at the end of 2012.<sup>4</sup> Probable cause was found on 9 complaints and sent on to the Judicial Hearing Board for hearings. Complaint Numbers and 33-2012 and 112-2012 were extraordinary proceedings brought pursuant to Rule 2.14 of the Rules of Judicial Disciplinary Procedure and a synopsis of each is listed under that heading. The remaining 7 complaints (Complaint Nos. 152-2011, 18-2012, 74-2012, 77-2012, 113-2012 and 126-2012) proceeded through the Judicial Investigation Commission and on to the Judicial Hearing Board pursuant to Rule 2.7 of the Rules of Judicial Disciplinary Procedure. Since those complaints were consolidated with Complaint No. 112-2012, their synopses are also contained under the heading of Extraordinary Proceedings.

Lastly, the Commission issued two admonishments.<sup>5</sup> A synopsis of the admonishments is as follows:

**In the Matter of Magistrate Richard D. Fowler, Magistrate for Mercer County, Complaint No. 82-2011:** Magistrate Fowler was admonished for violating Canons 1A, 2A, 2B, 3A, 3B(1) and 2, 3E(1)(a), and 4D(3) of the Code of Judicial Conduct for: (1) lying to the JIC Investigator; (2) dating the wife/victim of a defendant who had appeared before him for arraignment on wanton endangerment, stalking and domestic assault charges; and (3) engaging in concurrent employment at the Princeton Speedway without prior approval from the Administrative Director of the State Supreme Court and in violation of an administrative directive contained in the State Supreme Court's Personnel Manual § 11.4 – Limitations on Outside Employment.

**In the Matter of Magistrate Charles Byrnside, Magistrate for Boone County, Complaint No. 138-2011:** Magistrate Byrnside was admonished for violating Canons 1A, 2A, 2B, 3A, 3B(1), 3B(3), 3B(4) and 3E(1)(a) for the following: Prior to taking office in 2004, Magistrate Byrnside was a partner in a business which subdivided a parcel of property and built

<sup>3</sup> This figure is not included in the 192 Complaints that were closed.

<sup>4</sup> The figure for the complaints pending at the end of 2012 includes the 9 complaints sent on to the Judicial Hearing Board as no final decision had been made in them by the end of 2012.

<sup>5</sup> This figure is also not included in the number of complaints dismissed in 2012.

homes for sale. An attorney bought one of the homes. A dispute arose between the attorney and the Magistrate as to whether the attorney owed a balance on the purchase price. After taking office, Magistrate Byrnside requested payment from the attorney, who now appeared in front of him, on several occasions. The two were heard having an animated discussion over the disagreement while in the courtroom in September 2011. Subsequently, the Circuit Court entered an Order reassigning the attorney's current cases to other magistrates.

Respectfully submitted,  
JUDICIAL INVESTIGATION COMMISSION

By:

  
Ronald E. Wilson, Chairperson

Date

2/18/13