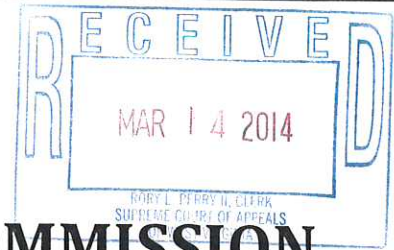


WEST VIRGINIA
JUDICIAL INVESTIGATION COMMISSION
ANNUAL REPORT - 2013



Pursuant to Rule 1.11(3) of the Rules of Judicial Disciplinary Procedure, the West Virginia Judicial Investigation Commission respectfully submits this Annual Report for its activities during the period of January 1, 2013, through December 31, 2013.

THE COMMISSION

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

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

Id.

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

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

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

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

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

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

The Commission has full-time staff consisting of Chief Counsel, Assistant Counsel, and the Executive Secretary. RJDP 5. The Commission also contracts with

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

three part-time Investigators. Among many and varied duties, the Chief Counsel and staff have the authority to: (1) receive complaints concerning violations of the Code of Judicial Conduct; (2) review all complaints concerning violations of the Code of Judicial Conduct; (3) investigate information concerning violations of the Code of Judicial Conduct; (4) prosecute violations of the Code of Judicial Conduct before the Judicial Hearing Board and the State Supreme Court; and/or (5) promptly notify the complainant and respondent of the disposition of each matter. RJDP 5.4 Additionally, Commission counsel serves as special counsel in lawyer discipline cases whenever the Office of Lawyer Disciplinary Counsel is conflicted off a matter.² RJDP 5.

While not a part of the work of the Commission, the Chief Counsel and staff are also charged with conducting confidential investigations and preparing reports³ for the Regional and State Fatality Review Teams to consider in their efforts to ensure that court processes, procedures and actions minimize the risk of harm to people involved within the system. Chief Counsel and staff have been involved in this process since the State Supreme Court first created Regional and State Fatality Review Teams by Administrative Order entered on December 7, 1994.⁴ The Chief Counsel and staff are also tasked with the responsibility of investigating sexual harassment claims within West Virginia's court system. See § 12.7 of the West Virginia Judicial Personnel System Manual.

The Commission held six regular meetings during 2013. Five of those meetings took place in the Judicial Investigation Commission Conference Room, 4700 MacCorkle Avenue SE, Suite 1200 A, Charleston, West Virginia, on January 25, March 1, May 3, July 19, and November 1, 2013. Another meeting was held on September 13, 2013, in Martinsburg, West Virginia, at the Berkeley County Judicial Center. Copies of all pertinent documents were distributed to the Commission approximately two weeks before each meeting so that the members could review the materials and be prepared to discuss them during each session.

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

² In 2013, thirteen (13) ODC complaints were reviewed by Commission counsel because the Office of Lawyer Disciplinary Counsel had a conflict. Nine (9) of the complaints were resolved before December 31, 2013. Four (4) complaints remained pending at the end of 2013.

³ From January 1, 2013, through December 31, 2013, there were fifty-seven (57) new fatalities referred to the Commission for investigation.

⁴ The Court amended the accompanying Protocol for Fatality Review Teams by Administrative Orders entered on December 4, 1998, and May 24, 2000. By Order entered December 2, 2005, the Court broadened the scope of the investigations to include fatalities of any child involved in court proceedings. The Court again amended the Protocol by Order entered January 2, 2013.

2(7) since that “does not include courts created by article eight of the West Virginia Constitution.” The Commission is an entity created by Rule by the State Supreme Court. Additionally, Commission meetings are not “meetings” as defined by the Act since they are conducted for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or Court of Claims proceeding.” See W. Va. Code § 6-9A-2(5)

THE CODE OF JUDICIAL CONDUCT

Over the years, many professions have implemented their own codes of ethics. Professional ethics encompass the personal, organizational and communal standards of behavior expected of the various occupations. Formal standards of judicial conduct have existed for approximately 67 years in West Virginia. The first Code of Judicial Conduct was promulgated by the State Supreme Court on March 28, 1947. The current Code⁵ was adopted by Order entered October 21, 1992, effective January 1, 1993.

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

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

⁵ On February 10, 2012, the Commission considered a request by the Court to review and consider making changes to the Code of Judicial Conduct. A subcommittee was then formed consisting of the three circuit court judges, the senior status judge, the family court judge and chief counsel. Each subcommittee member was assigned a portion of the Code to review and make proposed changes. On February 18, 2013, the subcommittee met in Morgantown and unanimously approved draft changes to the Code. The proposed changes were then circulated to the full Commission. At its May 3, 2013 meeting, the Commission unanimously adopted the proposed revisions as amended. The revisions were submitted to the Court on or about May 17, 2013. The proposed changes were then sent out for public comment. The public comment period ended in late October 2013. In December 2013, the Court sent the proposed revisions back to Chief Counsel with directions to adopt the ABA’s new Model Code format.

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

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

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

PROCEDURE FOR HANDLING COMPLAINTS

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

After a complaint is received, it is referred to counsel for review. Counsel can send a matter to an investigator for investigation, ask the respondent judge for a response,⁶ or forward it directly to Commission members for study prior to

⁶ Any time a complaint is sent to a judge for a response, he/she has ten days after the date of the written notice to reply. RJDP 2.3.

consideration at the next meeting. Complaints referred directly to the Commission for consideration may be dismissed for lack of probable cause, referred to the judge for response, or sent to an investigator for investigation. Responses to complaints and results of investigations are again referred to the Commission for consideration.⁷ The Commission may then: (1) dismiss the matter for lack of probable cause; (2) determine that probable cause does exist but that formal discipline is not appropriate under the circumstances and issue a written admonishment to the respondent judge;⁸ or (3) issue a formal statement of charges when it determines that probable cause does exist and that formal discipline is appropriate. RJDP 2.7. Some complaints contain more than one allegation against a judge, and the Commission may dismiss part of a complaint and find probable cause on part of a complaint. Parties are contacted about the action of the Commission after a decision has been made on a complaint.

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

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

⁷ Within sixty days of receiving a report, the Commission shall file a written decision regarding whether there is probable cause to formally charge the respondent judge with a violation of the Code of Judicial Conduct or that the respondent judge, because of advancing years and attendant physical or mental incapacity should not continue to serve or whether the matter should be further investigated by the Office of Disciplinary Counsel. RJDP 2.7(a).

⁸ A respondent judge has fourteen (14) days after the receipt of a Judicial Investigation Commission admonishment to object. RJDP 2.7(c). If the respondent judge or Disciplinary Counsel timely files an objection, a formal statement of charges shall be filed with the Clerk of the Supreme Court. *Id.*

Judicial Investigation Commission: How a typical Complaint is handled.

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



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



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



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



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



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



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



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



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



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

EXTRAORDINARY PROCEEDINGS

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

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

RJDP 2.14(a).

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

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

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

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

RJDP 2.14(c).

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

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

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

In 2013, two (2) extraordinary procedures were filed:

In the Matter of Michael Thornsberry, Complaint No. 111-2013 and Supreme Court No. 13-0828: On August 14, 2014, the Administrative Director filed a complaint against Respondent alleging that he had been charged with committing serious criminal offenses which would constitute a violation of the Code of Judicial Conduct. On that same day, a federal grand jury had returned an indictment against Respondent charging him with two felony counts of conspiring to violate a person's constitutional rights in contravention of 18 U.S.C. § 241. On August 15, 2013, Judicial Disciplinary Counsel filed a report with the Chief Justice. On that same day, the Court entered an Order which stated that "there is probable cause to believe that Respondent engaged or is currently engaging in a serious violation of the Code of Judicial Conduct." The Court directed that Respondent be suspended without pay and that he be prohibited from hearing any further civil or criminal matter or

performing any other judicial function during the pendency of the proceeding. The Court also suspended his license to practice law. The Court remanded the matter back to the Commission for the filing of a Formal Statement of Charges. On September 17, 2013, the Judicial Investigation Commission filed the formal charges. On September 19, 2013, the U.S. Attorney for the Southern District of West Virginia filed an information against Respondent charging him with another violation of 18 U.S.C. § 241. On September 20, 2013, the Judicial Investigation Commission filed an Amended Formal Statement of Charges to reflect the addition of the felony charge contained within the information. Subsequently, Respondent entered into a plea agreement with the Government whereby he would plead guilty to the felony charge contained in the information. He also agreed to resign his judgeship, to never again seek public office and to consent to disbarment. In exchange, the Government agreed to dismiss the two-count indictment. Respondent pled guilty to the information on October 2, 2013.

On that same day, Respondent tendered his letter of resignation as Judge of the 30th Judicial Circuit to the Chief Justice of the Supreme Court and the Governor of West Virginia. Disciplinary Counsel then filed Motions to Accept Respondent's Consent to Disbarment and to Recommend Dismissal of the Formal and Amended Formal Statement of Charges as Moot with the Judicial Hearing Board. The Motions were considered by the Judicial Hearing Board on October 17, 2013. By Order entered that same day, the Board unanimously granted the Motions and recommended to the Court that it dismiss the Statements of Charges as mooted by Respondent's Affidavit of Disbarment, his resignation as Judge of the 30th Judicial Circuit and his agreement never again to seek public office. On October 18, 2013, Disciplinary Counsel presented to the Supreme Court a petition praying for the acceptance of the annulment of Respondent's license to practice law and a Motion to Dismiss the formal charges. By Orders entered October 21, 2013, the Court annulled Respondent's license to practice law by voluntary consent and granted the Motion to Dismiss the formal charges.

In the Matter of D. Mark Snyder, Complaint No. 160-2013 and Supreme Court No. 13-1140: On November 5, 2013, the Administrative Director filed a complaint against Respondent

alleging that he had engaged in a serious violation of the Code of Judicial Conduct. More specifically, Respondent had been charged with the misdemeanor offense of Battery on a Health Care Worker in violation of W. Va. Code § 61-2-10b(d) in Kanawha County Magistrate Court Case No. 13-M-7761. On November 13, 2013, Counsel filed a Report with the Chief Justice. By Order entered November 20, 2013, the Court held the ethics matter in abeyance pending the resolution of the underlying criminal complaint. The Court also ordered the Report of Judicial Disciplinary Counsel to remain under seal. The criminal case is set for jury trial on April 14, 2014.

ADVISORY OPINIONS

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

During 2013, the Commission issued seventeen advisory opinions based upon written requests from judicial officers or the Administrative Director:

- **JIC Advisory Opinion 2013-01:** A judicial officer could not serve on Emergency Ambulance Authority Board because members of the organization would be involved in proceedings that would ordinarily come before the judge. Emergency Medical Technicians and other emergency ambulance personnel are regularly called as witnesses in criminal and civil cases involving injuries to a person.
- **JIC Advisory Opinion 2013-02:** A judicial officer need not disqualify himself/herself from presiding over a case involving two attorneys who represented him in a prior legal matter. However, the judicial officer must disclose the prior relationship to all parties, and thereby giving them an opportunity to object if they so desire.
- **JIC Advisory Opinion 2013-03:** A judicial officer, whose daughter and fiancé work in different local law firms, is precluded from presiding over any cases directly involving them. However, the judicial officer

does not have to disqualify himself/herself from presiding over cases involving other members of the law firms but is required to disclose his/her relationship with his/her daughter and her fiancé in every case involving the firms in question.

- **JIC Advisory Opinion 2013-04:** A judicial officer involved with a Memorandum of Understanding between the County Board of Education, the Supreme Court of Appeals of West Virginia and school-based truancy probation officers need not disqualify himself/herself from any cases involving the Board of Education since the MOU specifies that the Board has no supervisory authority over the probation officer and recognizes that the probation officer is an employee of the Court.
- **JIC Advisory Opinion 2013-05:** A circuit judge would not be permitted to hear the appeal of a matter over which he/she had presided while serving as a Family Court Judge. A waiver of conflict would not be sufficient to overcome the need for disqualification.
- **JIC Advisory Opinion 2013-06:** A judicial officer, who knew socially a doctor indicted by a federal grand jury, should file a motion to quash a subpoena issued to him by the doctor's attorney to appear as a character witness in the criminal trial since the demands of justice did not require the judicial officer's testimony. The judicial officer was also advised that he should disqualify himself/herself from the criminal case of the doctor's attorney who had been indicted by a state grand jury.
- **JIC Advisory Opinion 2013-07:** A Mental Hygiene Commissioner should not concurrently serve on the Day Report Center Board since it is likely that the Day Report Center officers would regularly be involved in court proceedings at various judicial levels and would regularly be engaged in adversary proceedings in the various courts.
- **JIC Advisory Opinion 2013-08:** A judicial officer need not disqualify himself/herself from cases involving a lawyer with whom the judge had served as co-counsel in two cases over five years ago and that he/she did not have to disclose the prior relationship since only two cases were involved and since the judge's social relationship with the lawyer was even more limited than the business relationship.
- **JIC Advisory Opinion 2013-09:** A judicial officer is permitted to serve on a Volunteer Fire Department Board provided that such service does not contravene the provisions of Canon 4 of the Code of Judicial Conduct including the requirements not to solicit funds on behalf of the

organization, not to give investment advice and not to serve if it is likely that the entity is engaged in proceedings that would ordinarily come before him/her. The judicial officer may also use an extra concert ticket that was given to his/her spouse for volunteer work that the spouse performed at a golf tournament.

- **JIC Advisory Opinion 2013-10:** A magistrate's wife cannot work as a bail bondsperson because the situation could lead to difficulty with the magistrate's on-call duties and case reassignments. The situation could also create an appearance of impropriety. A bail bondsman earns his/or her pay by charging a percentage fee of the bond amount he puts up for a defendant in a criminal case. Magistrates preside over misdemeanors and conduct preliminary examinations in felonies. As such, one of the primary duties of a magistrate in these criminal cases is to set bond and to preside over bond revocation motions.
- **JIC Advisory Opinion 2013-11:** A recently appointed judge could retain a 25% interest in a real estate company that has only one asset – a home that has yet to be sold and as long as there are no new building ventures. If the company decides to expand, the judicial officer must immediately divest himself/herself of his/her share of the business. The judge could also lease or sell his/her share of his/her former office building to his/her former law partners who also happen to his/her first cousins and unlikely to appear before him/her in court.
- **JIC Advisory Opinion 2013-12:** In a situation in which a judge's wife is a plaintiff in a lawsuit against a state agency, the judge should make a timely disclosure of the information in every case involving the agency that comes before the judge. If a party objects to the judge continuing to preside of the matter, the judge must take the appropriate steps pursuant to Trial Court Rule 17.01, et seq.
- **JIC Advisory Opinion 2013-13:** It is permissible for a local Bar Association to honor a retired judicial officer by raising funds for Legal Aid of West Virginia as long as the planning, solicitation and collection of donations occurs after the judge has fully retired and is no longer subject to the Code of Judicial Conduct.
- **JIC Advisory Opinion 2013-14:** The Commission declined to answer whether a family court judge would be conflicted off cases if his wife was employed either full-time or on a contractual basis by a firm or solo practitioner who appears in the judge's court and the wife either works on general matters including domestic-related work that is not lodged in the judge's court or her job excludes all domestic-related

work in any court. The Commission found the request too hypothetical in nature.

- **JIC Advisory Opinion 2013-15:** A magistrate could volunteer for SPARKS, a non-profit youth empowerment program that provides tutoring, life skills and fitness instruction to students in fifth through twelfth grades. The magistrate must comply with the tenets set forth in Canon 4C(3) of the Code of Judicial Conduct and must obtain prior approval from the Chief Judge of the Circuit before volunteering.
- **JIC Advisory Opinion 2013-16:** Mental Hygiene Commissioners can act as attorneys or guardians *ad litem* in Guardianship/Conservator cases subject to certain limitations: (1) the Mental Hygiene Commissioner must not have acted as a fact-finder in any Guardianship/Conservator matter; (2) the order of appointment as a Mental Hygiene Commissioner must limit his or her authority to preside only over involuntary hospitalization hearings; and (3) the Mental Hygiene Commissioner must disqualify himself/herself whenever a conflict develops. To the extent the opinion was inconsistent with the February 27, 2004 opinion, the latter is overruled.
- **JIC Advisory Opinion 2013-17:** A judge does not have to disqualify himself/herself in a juvenile delinquency case involving the step-daughter of a magistrate who serves in the same county. All parties have waived any potential conflict and asked the judge to hear the matter.

STATISTICS

On January 1, 2013, seventy-two (72) complaints remained pending before the Judicial Investigation Commission from 2012. From January 1, 2013 through December 31, 2013, the Commission received one hundred and ninety-five (195) new complaints⁹ for a total of two-hundred and sixty-seven (267). Of the two-hundred and sixty-seven (267) complaints, thirty-four (34) required formal investigations. One hundred fifty-five (155) were dismissed when no probable cause was found. The Commission had no jurisdiction in eight (8) complaints; and three (3) complaints were not docketed because the matters had been addressed in previous complaints. No (0) complaints were withdrawn by the complainant with the approval of the Commission. The Commission issued admonishments in three

⁹ This figure includes extraordinary complaints filed pursuant to RJDP 2.14.

(3) complaints listed below. Two (2) complaints were Rule 2.14 extraordinary procedures. One (1) probable cause complaint (formal statement of charges) was issued by the Judicial Investigation Commission to go to the Judicial Hearing Board for hearing.¹⁰ Ninety-seven (97) complaints were pending at the end of 2013.¹¹

ADMONISHMENTS

In the Matter of the Honorable Robert M. Montgomery, Judge of the 11th Family Court Circuit : Respondent was admonished in Complaint No. 46-2013 and Complaint No. 55-2013 for violating Canons 1A, 2A, 3A, 3B(8) and 3C(1) of the Code of Judicial Conduct. In Complaint No. 46-2013, the Judge failed to enter the requisite Order until two and a half years after a mandate from the State Supreme Court and some twenty months after the last hearing held in the case. In Complaint No. 55-2013, the Commission found that Respondent failed to timely issue a final divorce order in Complainant's case. The final hearing was held in December 14, 2012, and no other hearings were held after that time. The Final Order was entered almost eight months later on August 2, 2013.

In the Matter of the Honorable Patricia Murphy, Magistrate of Ohio County: Respondent was admonished for violating Canons 1A, 2A, 2B, 3A, 3B(1), 3B(2), 3B(5), 3B(7), 3B(9) and 3E(1)(a) of the Code of Judicial Conduct in Complaint No. 181-2012. Respondent went out during off hours while on call to arraign the friend of a second cousin. The Commission noted that if Respondent wanted to conduct arraignments during off hours she must do so for everyone who is arrested and not just those individuals who have access to her by virtue of some relationship. The Commission also found that Respondent failed to follow proper procedure when arraigning her second cousin's friend. The Commission also determined that Respondent improperly conducted her own investigation into the matter, had improper *ex parte* communication with a potential witness, and inappropriately communicated with news reporters about the matter while it was still pending.

¹⁰ *In the Matter of Michael Thornsby*, Complaint No. 111-2013 and Supreme Court No. 13-0828. See pages 9 and 10 of this report for further explanation.

¹¹ This figure includes the extraordinary complaint filed in *In the Matter of D. Mark Snyder*, Complaint No. 160-2013 and Supreme Court No. 13-1140. Of the 97 complaints carried over in 2014 forty-four (44) were received between October 15 and December 31, 2013. The JIC's last meeting was held on November 1, 2013, and the cut off for placing complaints on the agenda is typically two weeks before a meeting.

CONCLUSION

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

Respectfully submitted,

JUDICIAL INVESTIGATION COMMISSION,

By: 
Ronald E. Wilson, Chairperson

Date: 14 MARCH 2014

REW/tat