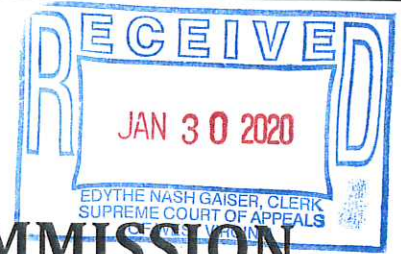


**WEST VIRGINIA
JUDICIAL INVESTIGATION COMMISSION
ANNUAL REPORT - 2019**



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, 2019, through December 31, 2019.

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 ("Commission" or "JIC") 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 JIC, 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 JIC 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 reappointment. 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.*

In February 2019, five new members were appointed to the Commission by the Court. They are: the Honorable Alan D. Moats, Judge of the 19th Judicial Circuit; the Honorable Bridget Cohee, Judge of the 23rd Judicial Circuit; The Honorable Mike J. Woelfel, Magistrate of Cabell County; Dr. Cynthia Persily and Margaret Ann O'Neal.² They joined the Honorable H.L. Kirkpatrick, III, Judge of the 10th Judicial Circuit, the Honorable Christopher C. Wilkes, Senior Status Circuit Judge;³ The Honorable Robert C. Hicks, Judge of the 2nd Family Court Circuit; and F. Layton Cottrill, Jr., Esquire.

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;⁴ (3) file an annual

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.

² Prior to this time, the members of the Commission included: the Honorable Ronald E. Wilson, Judge of the 1st Judicial Circuit; the Honorable Andrew N. Frye, Jr., Senior Status Judge; The Honorable Gail C. Boober, Magistrate of Jefferson County; Robert P. Fitzsimmons, Esquire; and Thomas Burgoyne.

³ In 2019, Judge Wilkes went from serving as a Circuit Judge member to a Senior Status Judge member after retiring from the bench.

⁴ On August 29, 2019, the Commission proposed an emergency rule change to Rule of Judicial Disciplinary Procedure 4.12 to exclude the sentence that "[a]ny period of suspension without pay shall not interfere with the accumulation of a judge's retirement credit and the State shall continue to pay into the appropriate retirement fund the regular payments as if the judge were not under suspension without pay." The proposed amendment was supported by the West Virginia Public Employees Retirement Board. By order effective October 31, 2019, the Court amended Rule 4.12 to exclude the provision in question.

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 the Chief Counsel, an Assistant Counsel, an Executive Assistant and a full-time Investigator. RJDP 5. The Commission also contracts with two 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.⁵ RJDP 5. Each year, Commission counsel also teaches ethics, sexual harassment and other topics to various groups, including but not limited to, mental hygiene commissioners, magistrates, family court judges, circuit court judges, probation officers, law clerks, prosecutors, public defenders, victim advocates and/or law enforcement officers. Commission counsel taught multiple classes to various groups on January 14, February 7, March 6, April 4, May 3, May 20, July 16, August 20, September 25, October 23, November 4, November 19, December 6, and December 18, 2018.

While not a part of the work of the Commission, the Chief Counsel and staff are also charged with conducting confidential investigations and preparing reports⁶ for the State Fatality Review Team to consider in 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

⁵ One (1) special counsel case from ODC was carried over from 2018 to 2019. By Order entered January 10, 2019, the State Supreme Court agreed with the recommended decision of the Subcommittee Hearing Panel of the Lawyer Disciplinary Board in *In re Mark Glover*, Supreme Court No. 18-0093 (Complaint No. 17-04-478), which was handled by Special Counsel. Respondent was found to have violated Rules 7.1, 7.3(a), and 8.4(c) and (d) of the Rules of Professional Conduct and received a 42 month suspension from the practice of law and a public reprimand. From January 1, 2019, through December 31, 2019, JIC received three (3) new special counsel cases from ODC for a total of four (4) active special counsel cases. All four (4) cases were resolved by the end of the year and zero (0) cases were carried over into 2020.

⁶ On January 1, 2019, three (3) cases from 2018 were pending. From January 1, 2019, to December 31, 2019, ten (10) new fatality review referrals were received. Of the total thirteen cases, eight (8) were deemed not proper for investigation, while five (5) matters are still under investigation and have been carried over to 2020..

Court first created State Fatality Review Team by Administrative Order entered on December 7, 1994.⁷

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. In 2019, Judicial Disciplinary Counsel investigated two (2) such cases – none (0) of which have carried over to 2020.

The Commission held six regular meetings during 2019. All of those meetings took place in the Judicial Investigation Commission Conference Room, 4700 MacCorkle Avenue SE, Suite 1200 A, Charleston, West Virginia, on March 22, April 26, June 21, August 23, October 24, and December 13, 2019. 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(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 72 years in West Virginia. The first Code of Judicial Conduct was promulgated by the State Supreme Court on March 28, 1947. The current Code was adopted by Order entered November 12, 2015, effective December 1, 2015.⁸

⁷ 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 Orders entered January 2, 2013, June 16, 2014, January 20, 2016 and April 28, 2017. Those amendments limited the categories of investigation and gave the JIC the authority to decline a matter if it did not fall within one of the requisite categories.

⁸ The new Code is patterned after the 2007 ABA Model Code of Judicial Conduct. The former Code that was in effect through November 30, 2015, was adopted by Order entered October 21, 1992, and went into effect on January 1, 1993. The former Code consisted 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

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

- Canon 1.** A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- Canon 2.** A judge shall perform the duties of judicial office impartially, competently, and diligently.
- Canon 3.** A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.
- Canon 4.** A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Specific Rules are set forth in under each Canon, and Comments are also provided for many of the Rules. The text of the Canons and Rules is authoritative. The Comments provide guidance with respect to the purpose and meaning of the Canons and Rules and are not intended as statements of additional rules.

The text of the Canons and Rules 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 of the Canons and Rules is intended "to be binding" upon judges and judicial candidates. Application I 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 Comment 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, or to municipal judges."

The Scope of the Code notes that a decision on "[w]hether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules." Factors to consider include, but are not limited to, the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, whether there is a pattern of improper activity, whether there have been previous violations, and the effect of the improper activity on the judicial system or others.

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; and Canon 6. Application of the Code of Judicial Conduct.

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,⁹ or forward it directly to Commission members for study prior to 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.¹⁰ 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;¹¹ 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.

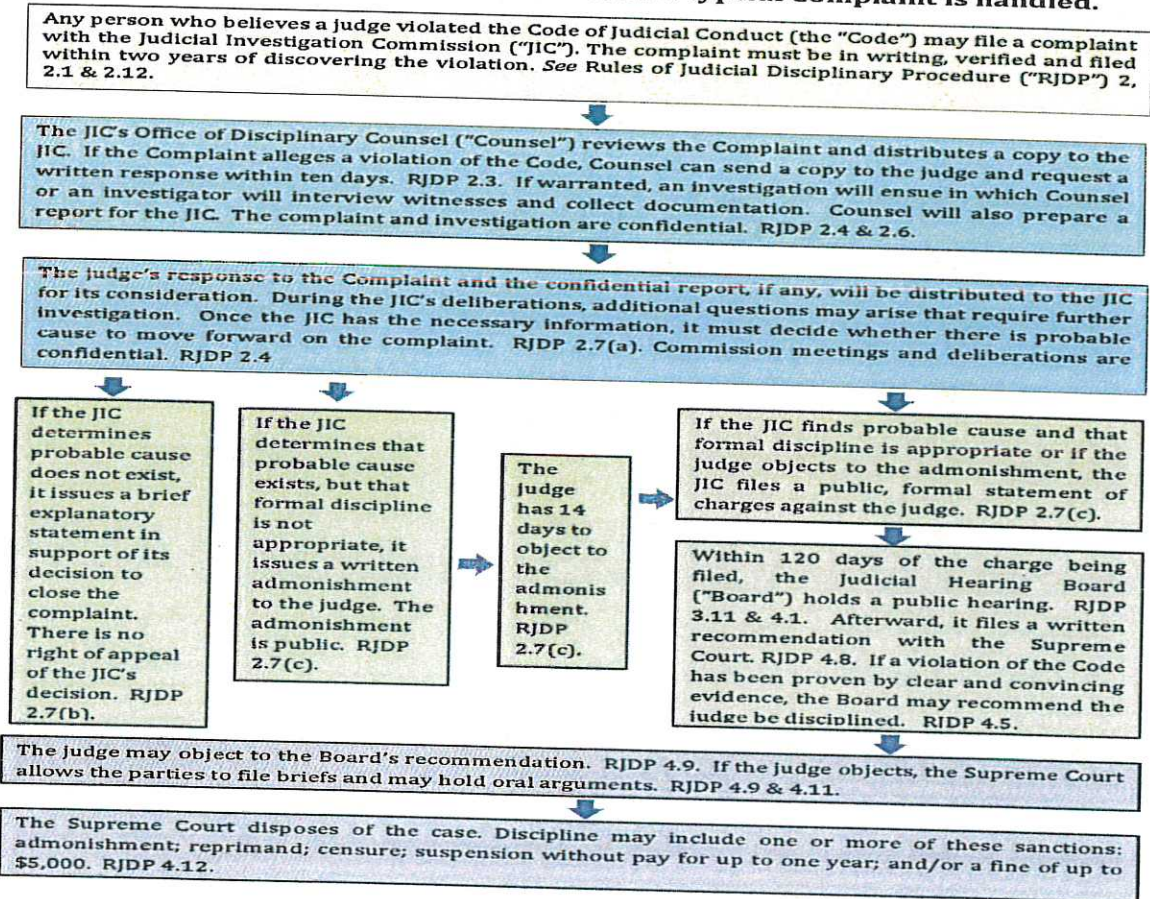
⁹ Any time a complaint is sent to a judge for a response, he/she has ten (10) days after the date of the written notice to reply. RJDP 2.3.

¹⁰ 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).

¹¹ 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.*

All proceedings of the Commission are confidential. RJDP 2.4. 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). In a memorandum decision issued on January 12, 2015, the State Supreme Court reinforced the confidentiality of the judicial disciplinary process with the exception of admonishments and formal disciplinary proceedings. See *Smith v. Tarr*, memorandum decision No. 13-1230 (WV 1/12/15).

Judicial Investigation Commission: How a typical Complaint is handled.



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.

One (1) extraordinary complaint was carried over from 2017, one extraordinary complaint was carried over from 2018 and two were filed in 2019:

In the Matter of the Honorable Julie Yeager, Magistrate of Kanawha County, Complaint No. 77-2017 and Supreme Court No. 17-0635: On July 19, 2017, the Administrative Director for the filed a Rule 2.14 complaint against Respondent. On July 20, 2017, Judicial Disciplinary Counsel filed an investigation report with the Supreme Court on the charges contained in Complaint No. 77-2017. Respondent resigned as Magistrate immediately following the filing of the report. Later that same day, the Supreme Court found "that there is probable cause to believe the [R]espondent has engaged or is currently engaging in serious violations of the Code of Judicial Conduct" and remanded the matter "for the filing of formal charges and proceedings pursuant to Rule[s] 2.7(d) and 4 of the Rules of Judicial Disciplinary Procedure." The matter was also referred to the Prosecuting Attorney of Kanawha County for criminal investigation. Subsequently, the Prosecutor recused himself from the investigation and the Honorable Kristen Keller, Prosecuting Attorney of Raleigh County, was appointed Special Prosecutor.

On November 14, 2017, the JIC filed a Formal Statement of Charges alleging that Respondent had violated Rules 1.1, 1.2, 1.3, 2.4(B), 3.1(C), 3.8(C) and 3.13(A) of the Code of Judicial Conduct when she took over

\$30,000.00 from the West Virginia Magistrate Association without authorization and converted it to her own use. The disciplinary matter was stayed pending the outcome of the criminal case. On March 15, 2019, Respondent pled guilty by way of information to one felony count of embezzlement and one felony count of fraudulent schemes in Kanawha County Circuit Court Case No. 19-F-126(I). Thereafter, Judicial Disciplinary Counsel and Respondent entered into an agreement whereby Respondent would admit the violations of the Code of Judicial Conduct set forth in the formal statement of charges and agree never to run again for public office in West Virginia. In exchange, Judicial Disciplinary Counsel would recommend a public censure, a \$1,000.00 fine and costs. A hearing was held before the Judicial Hearing Board on March 29, 2019. Later that same day, the Judicial Hearing Board entered an Order in which it recommended that the State Supreme Court adopt the agreement entered into by and between Judicial Disciplinary Counsel and Respondent. By order entered June 4, 2019, the State Supreme Court publicly censured Respondent for violating Rules 1.1, 1.2, 1.3, 2.4(B), 3.1(C), 3.8(C) and 3.13(A) of the Code of Judicial Conduct, permanently enjoined her from ever seeking public office, fined her \$1,000.00 and ordered her to pay the costs of the proceeding.

In the Matter of the Honorable Harry Radcliffe, III, Magistrate of Ohio County, Complaint No. 67-2018 and Supreme Court No. 18-0511: On June 6, 2018, the Acting Administrative Director filed a complaint against Respondent alleging that he had been charged by criminal complaint with serious multiple felony criminal offenses in the United States District Court for the Northern District of West Virginia and, concomitantly, has engaged in serious violations of the Code of Judicial Conduct. Later that same day, Judicial Disciplinary Counsel filed a report with the Chief Justice of the State Supreme Court pursuant to Rule 2.14(b) of the Rules of Judicial Disciplinary Procedure. Based upon the report, the Court suspended Respondent without pay and ordered the matter remanded back to the Judicial Investigation Commission to file formal charges. On August 27, 2018, the Judicial Investigation Commission filed a one count formal statement with the Court alleging violations of Rules 1.1, 1.2, 1.3, 2.2, 2.3, 2.4(B) and 2.13(A) of the Code of Judicial Conduct. Subsequently, the Judicial Hearing Board stayed the disciplinary proceedings pending resolution of the criminal charges.

In early April 2019, Respondent and the U.S. Attorney's Office entered into a plea agreement which called for the Magistrate to plead by way of information to one felony count of conspiracy to Impede the Internal Revenue Service in violation of 18 U.S.C. § 371. In exchange for his guilty plea, the U.S. Attorney's Office "will move to dismiss the Indictment in

Criminal Action Number 5:18-CR-33.” On or about April 18, 2019, the U.S. Attorney’s Office filed the Information in the United States District Court for the Northern District of West Virginia. The Information was styled *United States of America v. Radcliffe*, Criminal Case No. 5:19-CR-18. On April 29, 2019, Respondent pled guilty to the Information. By Order entered the same day, the Court accepted the plea but deferred adjudication until sentencing. On May 1, 2019, the Commission filed an Amended Formal Statement of Charges with the Court to reflect that Respondent had pled guilty to an Information. Subsequently, Respondent and Judicial Disciplinary Counsel entered into an Agreement which called for Respondent to admit that the JIC had sufficient evidence to support the contents of Paragraph Nos. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, and 15 of the Amended Formal Statement of Charges including all of the facts stated therein. With respect to Paragraph No. 14, Respondent admitted that he entered his plea of guilty to the Information on April 29, 2019, and the Court accepted the plea on August 2, 2019. Respondent also agreed not to contest that he violated Rules 1.1, 1.2, 2.4(B), and of the Code of Judicial Conduct as a result thereof. Respondent agreed to resign as Magistrate and to never again seek public office in West Virginia. In exchange, the JIC would recommend a public censure, a \$1,000.00 fine and costs.

A hearing was held before the Judicial Hearing Board on August 25, 2019. Later that same day, the Judicial Hearing Board entered an Order adopting the proposed agreement by and between Judicial Disciplinary Counsel and Respondent and recommend the same to the State Supreme Court. By order entered October 3, 2019, the State Supreme Court: (1) publicly censured Respondent for violations of Rules 1.1, 1.2 and 2.4(b) of the Code of Judicial Conduct; (2) permanently enjoined him from ever seeking public office in West Virginia; and (3) ordered him to pay a \$1,000.00 fine and costs of the proceeding.

In the Matter of The Honorable Alton L. Skinner, II, Magistrate of Gilmer County, Supreme Court No. 19-0440, JIC Complaint No. 60-2019: On May 8, 2019, the Administrative Director of the Courts filed an extraordinary complaint against Respondent alleging that he had been charged with multiple felonies by the federal government in *United States v. Clem and Skinner*, United States District Court for the Northern District of West Virginia Criminal Case No. 2:19 cr 19-TSK. On May 8, 2019, the report of Judicial Disciplinary Counsel was filed with the Chief Justice of the Supreme Court of Appeals pursuant to Rule 2.14(b) of the Rules of Judicial Disciplinary Procedure. Later that same day, an Order was entered by the Supreme Court which stated, among other things, that “[R]espondent has been indicted and charged with a serious offense and has engaged or is currently engaging in serious violation of the Code of

Judicial Conduct.” Pursuant to Rule 2.14(d)(1) of the Rules of Judicial Disciplinary Procedure, the Supreme Court directed that Respondent be suspended without pay and be prohibited from hearing any further civil or criminal matter or performing any other judicial function during the pendency of the case. The Order remanded the matter back to the Judicial Investigation Commission for the filing of formal charges.

Based upon the foregoing, on June 21, 2019, the Commission found that there was probable cause to believe that violations of the Code of Judicial Conduct have occurred and that formal discipline is appropriate. Specifically Respondent was charged with violations of Rules 1.1, 1.2, 1.3, 2.2, 2.3(A), 2.4(B) and 2.13(A) of the Code of Judicial Conduct. On October 15, 2019, the U.S. Attorney’s Office entered into a non-prosecution agreement with Respondent which, in part, called for him to cooperate with the JIC case and admit certain facts and violations of the Code of Judicial Conduct. Specifically, the agreement between Judicial Disciplinary Counsel called for Respondent to admit the following:

1. From in or about March 2017 to in or about March 2018, Respondent was significantly involved in the operation of E-Z Out bail bonding company in Lewis County, West Virginia. During this period, Mr. Clem was a Lewis County magistrate who admitted multiple defendants to the bail of E-Z Out;
2. From in or about March 2017 to in or about March 2018, Mr. Clem used his cell phone approximately two-hundred (200) times to call E-Z Out, usually calling Respondent’s cell phone. The vast majority of these telephone calls were in close proximity to arraignments conducted by Mr. Clem and related to bonding. Following these phone calls, Respondent would ensure that an E-Z Out bonding agent appeared at the Lewis County courthouse to post the bonds;
3. In or about February 2018, Respondent personally collected two individuals from the West Virginia Central Regional Jail, whom Mr. Clem had admitted to the bail of E-Z Out, transported the individuals to a financial institution, and accepted their bonding fee payments on behalf of E-Z Out;

4. As a result, Respondent agreed not to contest that he violated Rules 1.1, 1.2, 3.1(A) and (C), and 3.11(C)(1), (3) and (4) of the Code of Judicial Conduct.

Respondent also agreed to resign his position as Magistrate of Gilmer County and to never again to seek public office by election or appointment in West Virginia. In exchange, Judicial Disciplinary Counsel agreed to recommend a public censure and a \$1,000.00 fine. A hearing was held before the Judicial Hearing Board on December 10, 2019. Later that same day, the Judicial Hearing Board entered an Order adopting the proposed agreement by and between Judicial Disciplinary Counsel and Respondent and recommend the same to the State Supreme Court. The matter is now pending before the Supreme Court.

In the Matter of The Honorable Roger D. Clem, Jr., Magistrate of Lewis County, Supreme Court No. 19-0439, JIC Complaint No. 61-2019: On May 8, 2019, the Administrative Director of the Courts filed an extraordinary complaint against Respondent alleging that he had been charged with multiple felonies by the federal government in *United States v. Clem and Skinner*, United States District Court for the Northern District of West Virginia Criminal Case No. 2:19 cr 19-TSK. On May 8, 2019, the report of Judicial Disciplinary Counsel was filed with the Chief Justice of the Supreme Court of Appeals pursuant to Rule 2.14(b) of the Rules of Judicial Disciplinary Procedure. Later that same day, an Order was entered by the Supreme Court which stated, among other things, that "[R]espondent has been indicted and charged with a serious offense and has engaged or is currently engaging in serious violation of the Code of Judicial Conduct." Pursuant to Rule 2.14(d)(1) of the Rules of Judicial Disciplinary Procedure, the Supreme Court directed that Respondent be suspended without pay and be prohibited from hearing any further civil or criminal matter or performing any other judicial function during the pendency of the case. The Order remanded the matter back to the Judicial Investigation Commission for the filing of formal charges.

Based upon the foregoing, on June 21, 2019, the Commission found that there was probable cause to believe that violations of the Code of Judicial Conduct have occurred and that formal discipline is appropriate. Specifically Respondent was charged with violations of Rules 1.1, 1.2, 1.3, 2.2, 2.3(A), 2.4(B) and 2.13(A) of the Code of Judicial Conduct. On October 15, 2019, the U.S. Attorney's Office entered into a non-prosecution agreement with Respondent which, in part, called for him to cooperate with the JIC case and admit certain facts and violations of the Code of

Judicial Conduct. Specifically, the agreement between Judicial Disciplinary Counsel called for Respondent to admit the following:

1. From in or about March 2017 to in or about March 2018, Gilmer County Magistrate Alton Skinner, II, was significantly involved in the operation of E-Z Out bail bonding company in Lewis County, West Virginia. During this period, Respondent was a Lewis County magistrate who admitted multiple defendants to the bail of E-Z Out;
2. From in or about March 2017 to in or about March 2018, Respondent used his cell phone approximately two-hundred (200) times to call E-Z Out, usually calling Magistrate Skinner's cell phone. The vast majority of these telephone calls were in close proximity to arraignments conducted by Respondent and related to bonding. Following these phone calls, Magistrate Skinner would ensure that an E-Z Out bonding agent appeared at the Lewis County courthouse to post the bonds;
3. Between March 2017 and March 2018, on multiple occasions, Respondent willfully failed to present a list of authorized bail bonding companies to a detainee who appeared before him, and instead called Magistrate Skinner directly to ensure that E-Z Out would be the bail bonding company to post the bond.
4. As a result, Respondent agreed not to contest that he violated Rules 1.1, 1.2, 1.3, 2.4(B) and 2.13(A) of the Code of Judicial Conduct.

Respondent also agreed to resign his position as Magistrate of Lewis County and to never again to seek public office by election or appointment in West Virginia. In exchange, Judicial Disciplinary Counsel agreed to recommend a public censure and a \$1,000.00 fine. A hearing was held before the Judicial Hearing Board on December 10, 2019. Later that same day, the Judicial Hearing Board entered an Order adopting the proposed agreement by and between Judicial Disciplinary Counsel and Respondent and recommend the same to the State Supreme Court. The matter is now pending before the Supreme Court.

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 2019, the Commission issued twenty-eight (28) advisory opinions based upon written requests from judicial officers/candidates or the Administrative Director:

- **JIC Advisory Opinion 2019-01:** The Commission stated that a recently appointed circuit judge was entitled as a withdrawing member of his law firm to receive monthly installment payments as a buyout but must during the pendency of the payments disclose them in any case involving the former firm and follow the tenets of Trial Court 17.
- **JIC Advisory Opinion 2019-02:** A 2020 candidate for a seat on the Supreme Court of Appeals of West Virginia may have a Circuit Clerk, who is a close personal friend, serve as his/her campaign treasurer since the Circuit Clerk will not be running for office until 2022.
- **JIC Advisory Opinion 2019-03:** A magistrate cannot serve on the County Fire Board.
- **JIC Advisory Opinion 2019-04:** A circuit judge learned in an abuse and neglect proceeding that the respondent father tested positive for methamphetamine. The judge also learned that the father was going to work at the regional jail as a correctional officer. The judge wanted to know if he could tell the jail about the father's drug test results. The Commission said that the judge could not disclose the information since he learned about it during a confidential proceeding. However, the judge could direct the father to inform the jail of the information and to provide him with proof that the information had been properly disseminated.
- **JIC Advisory Opinion 2019-05:** A magistrate's spouse could serve as a poll worker in a municipal election since the Code of Judicial Conduct states that despite a few restrictions the family members of judges and judicial candidates are generally free to engage in their own political activity including running for office.
- **JIC Advisory Opinion 2019-06:** The Commission advised a member of the West Virginia House of Delegates that he/she did not have to resign from the legislature in order to run for judicial office. The Commission

also stated that if the legislator won the judicial office he/she could retain his legislative seat until such time as he/she took judicial office; however, he would immediately be subject to the majority of the Code provisions upon election.

- **JIC Advisory Opinion 2019-07:** The Commission told a Mental Hygiene Commissioner that other lawyers in his/her firm could not file guardianship cases in the same county where he/she presides even if they are heard by another commissioner.
- **JIC Advisory Opinion 2019-08:** The Commission advised a Magistrate that he/she cannot own a pawn shop since it could violate Rule 3.11(C) of the Code of Judicial Conduct.
- **JIC Advisory Opinion 2019-09:** The Commission advised a former legislator who was now sitting on the State Supreme Court that he/she should voluntarily recuse himself/herself from presiding over any appeal of the right to work law given his/her prior comments in support of the legislation while a legislator.
- **JIC Advisory Opinion 2019-10:** The Commission advised a judge that a charitable fund which accepts donations on behalf of animal rescue organizations could not be set up in the judge's name as it would violate Rules 1.2 and 3.7(A)(2) and (5) of the Code of Judicial Conduct.
- **JIC Advisory Opinion 2019-11:** A magistrate could hold a yard sale in which he/she was selling his/her own items for personal gain.
- **JIC Advisory Opinion 2019-12:** The Commission told a newly appointed circuit judge that he/she could continue to serve as the President of the Board of Directors of a non-profit he had established while a lawyer. However, the judge cannot be the signatory for any legal documents, contracts, rental agreements, etc., and cannot be on the checking account. The judge also cannot engage in any negotiation with prospective renters/leaseholders of the charitable organization's building. The judge should also disclose his/her relationship with the organization in any case involving any renter or leaseholder and follow Trial Court Rule 17. The judge cannot fundraise for the organization or be involved in any press events publicizing donations.
- **JIC Advisory Opinion 2019-13:** The Commission advised a senior status judge that he could submit an affidavit to the U.S. Citizenship and Immigration Service detailing the legitimacy of a son's marriage to a woman from Indonesia and could testify in any proceeding since the testimony would involve factual evidence. However, the judge should not put any affidavit on official letterhead.

- **JIC Advisory Opinion 2019-14:** A newly appointed magistrate could continue to teach NRA handgun safety classes as long as they do not interfere with his/her judicial duties.
- **JIC Advisory Opinion 2019-15:** The Commission clarified JIC Advisory Opinion 2018-22 dealing with a judicial candidate's obligations when a third-party or PAC makes a false or misleading statement about an opposing candidate in a judicial election. The Commission stated that the obligation to disavow is not triggered until the following criteria are met: (a) the statement must involve a fact and not an opinion; (b) the fact must be substantive and significant; (c) the misstatement must actually be false or a material misrepresentation; and (d) the judicial candidate has knowledge of the third-party or PAC's factual statement and its falsity. Once the obligation to disavow is initiated, the Commission finds that the situation is resolved through the timely issuance of a press release to all area news media and a prompt letter to the third-party or PAC notifying it to immediately stop running the false statement in question.
- **JIC Advisory Opinion 2019-16:** The Commission advised a circuit judge that he/she could not give a media interview concerning a rule to show cause that the judge issued against a State agency with a significant case backlog.
- **JIC Advisory Opinion 2019-17:** The Commission held that a *per se* disqualification of a circuit judge was required in a civil case involving a motor vehicle accident where the judge recently appointed the spouse of a party to the lawsuit as Magistrate.
- **JIC Advisory Opinion 2019-18:** A magistrate who had a law degree but had never passed the bar examination and was never a licensed attorney could not state that he had served as an "assistant prosecutor" in his judicial election campaign.
- **JIC Advisory Opinion 2019-19:** A Supreme Court justice who had previously served as a legislator was not required to disqualify himself/herself from presiding over a petition for writ of prohibition brought by a road construction company against a circuit judge hearing an individual's claim against a company alleging that it damaged his real property. As a legislator, the judge had signed a constituent services letter addressed to a witness in the underlying matter. The Commission said that since the legislative office merely acted as a conduit between the witness and the WV Division of Highways to pass information and it was limited to just one instance the justice could preside over the petition.
- **JIC Advisory Opinion 2019-20:** In order for the judges of a judicial circuit to implement an *ad hoc* mediation program for civil cases: (1) the presiding trial judge must not serve as the mediator over a case pending

before him/her; (2) the mediating judge would simply report back on whether the mediation was successful to the trial judge; (3) the mediating judge would not receive any compensation; and (4) either an administrative order is entered or a statute is enacted which allows for the process.

- **JIC Advisory Opinion 2019-21:** The Commission informed a circuit judge that he/she could not appear on a nationally broadcast podcast hosted by Nancy Grace to discuss cold cases from other states.
- **JIC Advisory Opinion 2019-22:** The Commission informed a circuit judge whose spouse was running for governor that he/she could attend fundraisers on behalf of his/her spouse but only outside the marital home. The judge was also advised that he/she cannot appear in a parade with the spouse and cannot introduce him/her or speak about him/her at campaign events. The judge's name and photograph may also appear in the spouse's campaign literature or other official campaign photographs as long as he/she is not identified as a judge.
- **JIC Advisory Opinion 2019-23:** The Commission informed a potential magistrate candidate that he/she could not run for judicial office since he/she had pleaded guilty to the misdemeanor offense of domestic assault.
- **JIC Advisory Opinion 2019-24:** The Commission held in a limited circumstance that a family court judge could use information he/she learned in a proceeding between Wife and Husband No. 1 in the matter between the same Wife and Husband No. 2. The Commission said that although the cases were separate, they both involved the wife, her sex offender boyfriend and children. The Commission found that what happens with the children in one case "necessarily implicates and has a direct impact" on the children of the husband in the other case and "the best interest" of all of the Wife's five children. The Commission said that the judge could allow Husband No. 2 to view in camera the testimony of Husband No. 1's children. Before doing so, the judge must advise all parties in both matters that any evidence pertaining to the children will be admissible in either action.
- **JIC Advisory Opinion 2019-25:** The Commission told a candidate for State Supreme Court that he/she could use photos taken by the recently hired Court photographer since they were in the public domain and available for use by anyone. However, the judicial candidate must remove any judges or other candidates from the pictures or must place a disclaimer with the photo saying that it "is from the public domain and is not indicative of any endorsement or opposition by or for another judge or candidate depicted therein."

- **JIC Advisory Opinion 2019-26:** A circuit judge cannot appoint his/her lawyer brother-in-law or his law partner as guardian *ad litem* in abuse and neglect cases or summary proceedings being heard in the judge's courtroom.
- **JIC Advisory Opinion 2019-27:** The Commission advised a circuit judge that he/she could serve as an *ex officio* member of a charitable organization's new advisory group regarding funding for criminal justice reform initiatives in West Virginia.
- **JIC Advisory Opinion 2019-28:** On a case by case basis and in very limited circumstances, a judge may rent real property to a lawyer although divestiture of the property or rental to a non-lawyer are the preferred options. Circumstances in this instance included: (1) the judge still owned the property with his former law partner who was still occupying the space; (2) the partner had brokered the agreement with a firm who had not previously practiced in the circuit on a regular basis; (3) the judge is in a multi-judge circuit; (4) the judge does not sit in the same county as the location of the rental property; (5) the law firm wishing to rent the property does not do high volume cases likely to end up in court such as criminal or abuse and neglect; (6) there is an option to purchase in the rental agreement; and (7) the judge publicly discloses the relationship with the law firm and disqualifies himself/herself from any case involving the same.

STATISTICS

On January 1, 2019, twenty (27)¹² complaints remained pending before the Judicial Investigation Commission from 2018. From January 1, 2019, through December 31, 2019, the Commission received one hundred and seventy-four (174) new complaints for a total of two hundred and one (201). Of the two hundred and one complaints, forty-three (43) required formal investigation. One hundred and fifty-three (153) were dismissed by the Judicial Investigation Commission when no probable cause was found. The Commission had no jurisdiction in seven (7) complaints. Two (2) complaints were withdrawn by the complainant with the approval of the Commission. Five (5) complaints were not docketed because the complainant was anonymous and no verification was attached. The Commission issued four (4) admonishments.¹³ Formal discipline was issued by the State

¹² Originally twenty-five (25) complaints carried over into 2019 but the Commission reopened two closed complaints to make the total number carried over for the year twenty-seven (27).

¹³ Prior to 1994, the JIC could not admonish a judicial officer. Under the former Rules of Judicial Disciplinary Procedure if probable cause existed to charge a judicial officer, the JIC was required to issue a Formal Statement of Charges in all such matters.

Supreme Court in four (4) statement of charges involving six (6) complaints. Five (5) probable cause complaints (formal statement of charges) involving five (5) ethics complaints were issued by the Judicial Investigation Commission to go to the Judicial Hearing Board for hearing and were pending at the end of 2019. They are included in the total twenty-four (24) complaints that were pending at the end of 2019. Commission counsel also handled over three hundred and two (302) telephone calls from judicial officers/candidates/employees and over four hundred and ninety-seven (497) telephone calls from the general public for over seven hundred and ninety-nine telephone calls in 2019.

ADMONISHMENTS

The Judicial Investigation Commission issued four (4) public admonishments in 2019:

In the Matter of Hank E. Middlemas, former Magistrate of Marion County, JIC Complaint No. 88-2018: On August 27, 2018, Marion County Magistrate Mark Hayes filed a judicial ethics complaint against Respondent alleging that he failed to properly arraign people while on call, repeatedly showed up late for work and routinely gave bonds to defendants in exchange for a waiver of their constitutional right to an attorney. By letter dated August 30, 2018, Respondent replied to the allegations contained in the complaint. On December 10, 2018, Judicial Disciplinary Counsel took a sworn statement from Respondent. Subsequently, Respondent agreed to resign his position as Magistrate and never again seek judicial office in West Virginia. On March 22, 2019, the Commission publicly admonished Respondent for violating Rules 1.1, 1.2, 2.1, 2.5(A), 2.5(B) and 2.16(A) of the Code of Judicial Conduct.

In the Matter of the Honorable Dwight A. Williamson, Magistrate of Logan County, JIC Complaint No. 131-2018: On October 26, 2018, Regina Clark filed a complaint against Respondent. Complainant alleged that Respondent improperly drafted a mutual "cooling off" order in a personal safety order case where only one party had requested relief. Complainant also asserted that Respondent inappropriately advised the parties that they would be subject to criminal penalties if they violated the "cooling off" order. Lastly, she alleged that Respondent made improper public comments about the matter. On April 26, 2019, the Commission publicly admonished Respondent for violating Rules 1.1, 1.2, 2.2, 2.5(A) and 2.10(A) of the Code of Judicial Conduct.

In the Matter of the Honorable Robert L. Bolton, III, Magistrate of Taylor County, JIC Complaint No. 86-2019: On July 8, 2019, the Administrative Director of the Courts filed an ethics complaint against Respondent alleging in part that he engaged in the private practice of law from magistrate court despite being told to stop engaging in the practice. On August 15, 2019, Respondent and Judicial Disciplinary Counsel entered into an agreement which called for him to resign as Magistrate of Taylor County and to not seek judicial office for twenty years or until August 15, 2039. On October 24, 2019, the Commission publicly admonished Respondent for violating Rules 1.1, 1.2, 2.1, 3.1(A), 3.1(C) and 3.10 of the Code of Judicial Conduct.

In the Matter of the Honorable Janine Varner, Magistrate of Ohio County, JIC Complaint No. 124-2019: On September 16, 2019, Judicial Disciplinary Counsel filed a complaint against Respondent alleging that she did not have a high school diploma and therefore did not meet the requirements set forth in W. Va. Code § 50-1-4 that are needed to serve as a magistrate. The complaint also alleged that Respondent improperly indicated that she had completed high school on personnel forms required by the Division of Human Resources for the State Supreme Court. Respondent admitted that she did not have a high school diploma. When Respondent failed to produce a high school diploma or equivalent, Judicial Disciplinary Counsel filed a Rule 2.14 Motion with the Court seeking a suspension without pay. By Order entered September 18, 2019, the Court granted Judicial Disciplinary Counsel's Motion to Suspend without pay and remanded the matter back to the JIC. By letter that same day, Respondent resigned as Magistrate of Ohio County. Thereafter, Respondent passed the GED test. After passage of the test, Respondent was reappointed as Magistrate of Ohio County by the Chief Judge of the 1st Judicial Circuit. On October 24, 2019, the Commission publicly admonished Respondent for violating Rules 1.1 and 1.2 of the Code of Judicial Conduct.

JIC COMPLAINTS TO STATEMENT OF CHARGES

The Judicial Investigation Commission voted to issue two (2) statement of charges arising out of Rule 2.0 JIC complaints filed by Judicial Disciplinary Counsel or members of the public in 2019 and three matters were carried over from 2018.

In the Matter of the Honorable Carrie Wilfong, Supreme Court Nos. 18-0891 and 18-0710 and JIC Complaint No. 112-2015 (Wilfong I): On October 30, 2015, The Honorable James J. Rowe, former Judge of the 11th Judicial Circuit, filed

a complaint on Respondent. On August 8, 2018, Judicial Disciplinary Counsel filed a motion to suspend Respondent without pay and a report pursuant to Rule 2.14 of the Rules of Judicial Disciplinary Procedure. On October 4, 2018, the Supreme Court granted Disciplinary Counsel's Motion and suspended Respondent without pay. On October 15, 2018, Judicial Disciplinary Counsel filed a formal Statement of Charges. Following a hearing, the Judicial Hearing Board filed its recommendations with the Court on November 20, 2018 in which it suggested among other things that Respondent be reprimanded for violating Rules 1.2, 2.5, 2.16 and 3.1 of the Code of Judicial Conduct, that she be reinstated to her position of Magistrate. By Order entered January 10, 2019, the State Supreme Court publicly reprimanded Respondent, immediately reinstated her to her position as Magistrate and ordered her to "comply with and abide by all recommendations and the terms and conditions of the Judicial Hearing Board's November 20, 2018 order. The Court stated that should Respondent fail to "comply with or abide" by the Judicial Hearing Board terms, the Judicial Investigation Commission "shall immediately begin the process to remove her from office under Rule 2.7 of the Rules of Judicial Disciplinary Procedure."

In the Matter of the Honorable Allen H. Loughry, II, Justice of the Supreme Court of Appeals of West Virginia, Supreme Court No. 18-0508 and JIC Complaint Nos. 14-2018, 17-2018 and 32-2018: On February 16, 2018, Judicial Disciplinary Counsel opened judicial ethics Complaint No. 14-2018 against Respondent. On February 20, 2018, The Honorable Mary Ellen Griffith, Judge of the 12th Family Court Circuit, filed Complaint No. 17-2018, against Respondent. On April 2, 2018, Mike Pushkin filed Complaint No. 32-2018 against Respondent. Beginning on February 16, 2016, the Judicial Investigation Commission immediately began an investigation into the complaints. In June 2018, the Judicial Investigation Commission unanimously voted to issue a 32-count formal statement of charges against Respondent. The Formal Statement of Charges was filed on or about June 6, 2018 and alleged multiple violations of the Code of Judicial Conduct and the Rules of Professional Conduct. On that same day, Judicial Disciplinary Counsel filed a Rule 2.14 motion to suspend Respondent without pay pending the outcome of the disciplinary proceedings. On June 8, 2018, a State Supreme Court made up of five circuit judges, by a vote of 5-0, immediately ordered Respondent suspended without pay.

On or about June 19, 2018, a federal grand jury indicted Respondent on 22 felony counts in the United States District Court for the Southern District of West Virginia.¹⁴ On July 2, 2018, the Judicial Hearing Board issued a stay of the disciplinary proceedings upon request of the Respondent pending his federal

¹⁴ Subsequently two superseding indictments were brought and Respondent faced a total of 25 felony counts. However, just prior to trial, the government dismissed three of the counts so Respondent went to trial on 22 of the 24 counts.

criminal trial. Judicial Disciplinary Counsel did not object to Respondent's stay request. On or about October 2, 2018, Respondent went to trial on the federal indictment. Following a two week trial, Respondent was found guilty of eleven felony counts¹⁵ by a federal jury in *United States v. Loughry*, Case No. 2:18-cr-00134. On October 22, 2018, Judicial Disciplinary Counsel filed an Amended Formal Statement of Charges which added a new count that reflected that Respondent had been convicted of eleven felony counts in the United States District Court for the Southern District of West Virginia on October 12, 2018. On November 12, 2018, Respondent resigned his position as Justice. Judicial Disciplinary Counsel and Respondent then entered into an agreement in which Respondent admitted that there was sufficient evidence to prove eight separate charges and multiple violations of the Code of Judicial Conduct and the Rules of Professional Conduct. Respondent also agreed to never again seek public office in West Virginia and that disbarment was the appropriate course. Respondent also agreed that a censure for each violation of the Code of Judicial Conduct and a public reprimand for each violation of the Rules of Professional Conduct and a fine of \$3,000.00 was warranted. Respondent also agreed to pay the costs of the proceeding. In exchange, Judicial Disciplinary Counsel would dismiss the remaining charges. A Judicial Hearing Board hearing was held on February 20, 2019. By Order entered February 22, 2019, the Judicial Hearing Board adopted the agreement entered into by the parties as its recommendation. By Order entered May 16, 2019, the State Supreme Court publicly censured Respondent for violations of the Code of Judicial Conduct, publicly reprimanded him for violations of the Rules of Professional Conduct, annulled his license to practice law, permanently enjoined him from ever seeking public office in West Virginia, fined him \$3,000.00 and ordered him to pay costs of the proceedings in the amount of \$5,871.12.

In the Matter of the Honorable David E. Ferguson, Magistrate of Wayne County, Supreme Court No. 19-0032, JIC Complaint No. 35-2018: On April 9, 2018, a complaint was filed against Respondent by Department of Natural Resources Captain Terry A. Ballard and was given Complaint No. 35-2018. The complaint was predicated in part on a February 21, 2017 incident that occurred while Respondent, his father and another gentleman were fishing at East Lynn Lake spillway on trout stocking day. After a thorough investigation by Judicial Disciplinary Counsel, the matter was presented to the Judicial Investigation Commission at its December 7, 2018 meeting. At that time, the Commission voted to issue a Formal Statement of Charges against Respondent charging him with violations of Rules 1.1, 1.2, 1.3, 2.16(A) and 3.1(C) and (D) of the Code of Judicial Conduct in a two-count document. The Formal Statement of Charges was filed

¹⁵ In early January 2019, the federal judge entered a verdict of not guilty on one of the counts with which Respondent was convicted by the jury in an Order denying one of Respondent's two Motions for a new trial. However, the judge denied the Motion with respect to the remaining 10 counts.

with the Court on January 14, 2019. A two-day hearing was held before the Judicial Hearing Board beginning on June 24, 2019. On August 1, 2019, the Judicial Hearing Board released its recommended decision in which it found that Respondent had engaged in some but not all of the misconduct set forth in the Formal Statement of Charges. The Board recommended that Respondent be suspended for thirty (30) days without pay, be publicly reprimanded, and pay a \$2,000.00 fine and costs of the proceeding. On August 27, 2019, Judicial Disciplinary Counsel submitted its objections to the Judicial Hearing Board's recommended decision. Specifically, Counsel challenged the Board's decision to dismiss some of the charges, the mitigation, and the length of the suspension which it asked to be increased to fifteen months without pay. Judicial Disciplinary Counsel submitted a brief in support of its position on October 28, 2019. Oral argument before the State Supreme Court occurred on January 14, 2020, and the matter is now ripe for decision.

In the Matter of the Honorable Stephen D. Massie, Magistrate of Raleigh County, Supreme Court No. 19-0915, JIC Complaint No. 04-2019: On January 14, 2019, a complaint was filed against Respondent by the Administrative Director. The complaint raised concerns about Respondent's alleged improper involvement in a Domestic Violence Petition filed against his Magistrate Assistant and separate misdemeanor charges brought against a friend who works as a dispatcher for the West Virginia State Police. After a thorough investigation, the matter was presented to the Commission at its August 23, 2019 meeting. The Commission voted to issue a seven-count Formal Statement of Charges against Respondent. The charges were filed with the Clerk of the Supreme Court of Appeals on October 3, 2019. The matter is now pending before the Judicial Hearing Board and a hearing is set for April 2020.

In the Matter of the Honorable Carrie Wilfong, Magistrate of Pocahontas County, Supreme Court Complaint Nos. 19-0170 and 19-0289, JIC Complaint No. 20-2019 (Wilfong II): On February 13, 2019, Judicial Disciplinary Counsel filed a complaint against Respondent alleging that she had violated the terms and conditions set forth by the Judicial Hearing Board and the Court in *Wilfong I*. On February 25, 2019, Judicial Disciplinary Counsel filed a 2.14 Motion to Suspend Respondent without pay. By Order entered February 26, 2019, the Court suspended Respondent without pay and remanded the matter back to the Judicial Investigation Commission. On March 22, 2019, the Judicial Investigation Commission voted to issue a Formal Statement of Charges against Respondent. The charges were filed with the Court on March 26, 2019. On June 11, 2019, Judicial Disciplinary Counsel and Respondent entered into an agreement. One of the terms of the agreement was for Judicial Disciplinary Counsel to recommend provisional dismissal of the charges and continued supervision if Respondent met certain criteria. The matter went before the Judicial Hearing Board on or about October 17, 2019, at which time Judicial Disciplinary Counsel and Respondent

recommended provisional dismissal and continued supervision among other things. Later, that same day, the Judicial Hearing Board adopted the joint recommendations. As of the end of the year, the matter was still pending before the State Supreme Court.

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.¹⁶

Respectfully submitted,

JUDICIAL INVESTIGATION COMMISSION,

By:


Alan D. Moats, Chairperson

Date:

January 29, 2020

ADM/tat

¹⁶ The NCSC Center for Judicial Ethics released its 2019 statistics on January 22, 2020, and West Virginia ranked third along with Arizona for the number of judicial officers/candidates publicly sanctioned or eight (8) for the year. Texas publicly sanctioned the most judicial officers in 2019 at twenty (20) and New York ranked second at twelve (12), while twenty-seven (27) states publicly disciplined seven (7) or less judicial officers in each of their jurisdictions. No (0) judicial officers were publicly sanctioned in twenty (20) states. The Center for Judicial Ethics measured judicial discipline in all 50 states and Washington, D.C. in 2019.