WEST VIRGINIA
JUDICIAL INVESTIGATION COMMISSION
ANNUAL REPORT - 2020

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, 2020, through December 31, 2020.

THE COVID 19 PANDEMIC

In 2020, the world was faced with the Covid 19 pandemic. What started as a virus in China quickly spread around the globe. As of the filing of this report, there have been more than 114 million cases worldwide and more than 2.54 million deaths. In the United States there have been more than 28.7 million cases and more than 514,000 deaths. Over 132,000 West Virginians have had the virus and more than 2,300 inhabitants have died.

Beginning in late March 2020, JIC employees began working from home in an effort to curb the spread of the virus which at that time had no vaccine. Beginning in May 2020, the four staff members rotated in and out of the office one or two days a week while working from home the rest of the time. This ensured continued quality service while at the same time protecting the staff from the virus. This rotation has continued into the new year. However, with the new year came the vaccines and the staff is hopeful to return to the office full time in the near future.

As can be seen from the information outlined below, even though Commission staff spent the majority of the year working remotely, it did not impact the quality of the job performed. Staff members investigated 36 ethics cases during the pandemic, brought formal charges against judicial officers, participated in Judicial Hearing Board hearings, and taught continuing legal education courses. All of this was done remotely using video/audio computer technology and a phone. At the end of the day, West Virginia finished fourth for the number of judicial officers publicly sanctioned by all fifty states and the District of Columbia. Therefore, the Covid 19 Pandemic had minimal impact on the JIC.

2020 also saw some policy/procedure changes. For the first time, the Commission voted to place all Rule 2.7 admonishments on its website. The Commission also voted to send all new advisory opinions via email to all judges. The Commission also earnestly began an enormous project which would place advisory opinions in their entirety on its website. Currently, only a synopsis of each opinion is on the website. Phase one of the project involving the uploading and redacting of all advisory opinions has been completed. The Commission hopes to complete the final two phases by the end of 2021 – weeding out all outdated opinions and making all remaining documents searchable by subject, rule and date issued.

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

[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.

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 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.*

In 2020, two new members were appointed to the Commission – the Honorable James Rowe, Senior Status Circuit Judge and the Honorable Patricia A. Keller, Judge of the 6th Family Court Circuit. They joined the Honorable Alan D. Moats, Judge of the 19th Judicial Circuit; the Honorable Bridget Cohee, Judge of the 23rd Judicial Circuit; the Honorable H.L. Kirkpatrick, III, Judge of the 10th Judicial Circuit; the Honorable Mike J. Woelfel, Magistrate of Cabell County; F. Layton Cottrill, Jr., Esquire; Dr. Cynthia Persily; and Margaret Ann O'Neal.[2]

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 the Chief Counsel, an Assistant Counsel, an Executive Assistant and a full-time Investigator. RJDP 5. The Commission also contracts with a temporary administrative assistant. 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

[2] The last three on the list are public members.

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.[3] 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 16, February 10, March 2, July 7, August 18, November 17, and December 4, 8, and 9, 2020. All courses after March 2, 2020 were taught remotely because of the Covid-19 virus.

While not a part of the work of the Commission, the Chief Counsel and staff are also charged with conducting confidential investigations and preparing reports[4] 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 Court first created State Fatality Review Team by Administrative Order entered on December 7, 1994.[5]

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 2020, Judicial Disciplinary Counsel investigated one (1) such case – none (0) of which have carried over to 2021.

The Commission held six regular meetings and one special meeting during 2020 for a total of seven meetings. Only one regular meeting took place in the Judicial Investigation Commission Conference Room, 4700 MacCorkle Avenue SE, Suite 1200 A, Charleston, West Virginia, and it was on February 21, 2020. The remaining regular meetings were done remotely because of the Covid 19 pandemic. They occurred on April 24, June 26, August 21, October 16, and December 11, 2020. The special meeting occurred on March 4, 2020 and was also held remotely. All pertinent documents were

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[3] From January 1, 2020, through December 31, 2020, JIC received one (1) new special counsel case from ODC. The case was resolved by the end of the year and zero (0) cases were carried over into 2021.

[4] Five (5) fatality review cases were carried over to 2020 from 2019. Between January 1, 2020 and December 31, 2020, five (5) new fatality review referrals were received. Of the total ten (10) cases, five (5) were deemed not proper for investigation, while five (5) matters are still under investigation and have been carried over to 2021.

[5] 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.

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.[6]

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.**

[6] 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 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.

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 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.

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,[7] 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.[8] 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;[9] 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. 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).

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[7] 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.

[8] 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).

[9] 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.

Two (2) extraordinary complaints were carried over from 2019, and one was filed in 2020 for a total of three (3) extraordinary complaints:

> ***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. By Order entered January 30, 2020, the State Supreme Court adopted the JHB recommendations.

***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. By Order entered January 30, 2020, the State Supreme Court adopted the JHB recommendations.

***In the Matter of The Honorable Stephen D. Massie, Magistrate of Raleigh County*, Supreme Court No. 20-0190, JIC Complaint No. 23-2020:** On February 21, 2020, Judicial Disciplinary Counsel opened a second ethics complaint on Respondent (*See* page 20 below). On March 4, 2020, the Commission held a special meeting to consider the new complaint; and by a vote of 7-0 decided to issue a second formal

statement of charges against Respondent. The JIC also unanimously voted to ask the Court to immediately suspend Respondent without pay pursuant to Rule 2.14 of the Rules of Judicial Disciplinary Procedure. The Rule 2.14 Motion was filed on March 5, 2020. By Order entered the same day, the State Supreme Court suspended Respondent without pay effective March 6, 2020. All matters pertaining to this case were placed under seal and were subsequently dismissed as part of an agreement resolving this complaint and the one set forth on page 20 below.

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 2020, the Commission issued twenty-eight (28) advisory opinions based upon written requests from judicial officers/candidates or the Administrative Director:

- **JIC Advisory Opinion 2020-01:** A letter sent by a governmental agency informing a judge of a criminal investigation to a party in a DV case is an *ex parte* communication but the judge cannot inform the judge cannot inform the parties about it because of the confidential nature of the investigation. The judge must therefore recuse himself/herself from the case.
- **JIC Advisory Opinion 2020-02:** A senior status judge who runs for a judicial office may keep his/her senior status. However, if the senior status judge runs for a non-judicial office, he/she must immediately resign his senior status judgeship.
- **JIC Advisory Opinion 2020-03:** A judge may request other persons including lawyers to serve on a committee that would seek additional funding for a memorial endowment honoring his/her children with the WVU College of Law. However, the judge must disclose the nature of the relationship with the lawyers or non-lawyers on the committee in any pending matter before the Court pursuant to Rule 2.11 of the Code of Judicial Conduct.
- **JIC Advisory Opinion 2020-04:** A chief of police who is running for judicial office cannot use photographs or videos of himself/herself on a campaign social media sites or in political advertisements.

- **JIC Advisory Opinion 2020-05:** A judge could not sign a letter in opposition to the impeachment of a United States President.
- **JIC Advisory Opinion 2020-06:** A judge cannot nominate the elected prosecutor who is currently running for re-election for the West Virginia State Bar Citizen Soldier Award.
- **JIC Advisory Opinion 2020-07:** A judge who also raises cattle cannot donate a side of beef to a local domestic violence shelter.
- **JIC Advisory Opinion 2020-08:** A judge who is running for re-election cannot have his/her name and title placed on a fundraising t-shirt that would be given to all participants of a 5k race to benefit a local playground.
- **JIC Advisory Opinion 2020-09:** A judicial candidate cannot purchase a gun to raffle off to raise campaign monies for his/her election. He/She also cannot use campaign funds to purchase a gun to raffle. However, a gun that has been donated may be raffled off for campaign funds.
- **JIC Advisory Opinion 2020-10:** A judge who has twice unsuccessfully tried to disqualify himself/herself from a case in which another judge's assistant is related to one of the parties and where the assistant was later listed as a witness should disclose the relationship in any future matters involving the parties and follow the disqualification rules accordingly upon a proper motion.
- **JIC Advisory Opinion 2020-11:** It is permissible for only the campaign committee of a judicial candidate to give donated food baskets to the needy in the community but only if those who initially donated the items agree.
- **JIC Advisory Opinion 2020-12:** An administrative assistant in the probation office cannot concurrently serve as a poll worker in any election.
- **JIC Advisory Opinion 2020-13:** A judicial candidate may use the endorsement from a member of the House of Delegates who is running for re-election but the judicial candidate cannot endorse any candidates for office.
- **JIC Advisory Opinion 2020-14:** A magistrate who served as a judicial officer in one county and is now living and running for office in another county may use a photo of his/her swearing in from another county only if there is a caption or disclaimer underneath that says the swearing in was from _____ County and that he/she does not hold office in the current county where campaigning.

- **JIC Advisory Opinion 2020-15:** A judge may, *pro se*, prepare a deed for a home that he/she is selling since it is being done without compensation and the matter cannot be construed as the judge using his/her prestige of office to advance any personal or family interests.
- **JIC Advisory Opinion 2020-16:** A bail bondsman who ran successfully for magistrate cannot serve simultaneously in both positions. The magistrate elect must immediately begin the process of divesting himself/herself of the bail bonding company and any bonds before taking office and should refund any monies paid so the individuals can secure new bonds.
- **JIC Advisory Opinion 2020-17:** A law clerk who has taken an unpaid leave of absence cannot be appointed to fill a temporary judicial vacancy.
- **JIC Advisory Opinion 2020-18:** A lawyer cannot concurrently serve as an assistant public defender and a mental hygiene commissioner.
- **JIC Advisory Opinion 2020-19:** A judge can host a makeup party only for family members and close personal friends who are not likely to come before the judge and receive credit/percentage off the purchase of an item as a reward.
- **JIC Advisory Opinion 2020-20:** A judge-elect must immediately resign his/her position as a bail bondsman to avoid any appearance of impropriety and to prevent any further disqualification of cases that he/she would have to preside over.
- **JIC Advisory Opinion 2020-21:** A judge-elect cannot concurrently serve as a judge and a member of a city council. However, a judge-elect who is a council person can serve in that position until he takes the oath as a judge.
- **JIC Advisory Opinion 2020-22:** A judge who has a wife who has entered into a contract for services with a local school board is not per se disqualified from presiding over cases involving the school board but has a duty to disclose the facts and follow Trial Court Rule 17 where applicable.
- **JIC Advisory Opinion 2020-23**: A judge may write a reference letter for an attorney seeking an appointment to the Worker's Compensation Board of Review as long as the judge follows the tenets of Rule 1.3.
- **JIC Advisory Opinion 2020-24**: A judge is not required to disqualify himself/herself from a case or disclose the relationship where the judge and one of the attorneys were members of the same social fraternity/sorority in college since they both went to different schools at different times and did not know one another or were friends at that time.

- **JIC Advisory Opinion 2020-25:** It is improper for a judge to voluntarily write a letter of support on behalf of any litigants in any civil or criminal matter pending or impending in any court or administrative venue. The prohibition also includes any disciplinary proceeding involving judges or lawyers.
- **JIC Advisory Opinion 2020-26:** Placement of CASA money in the State Supreme Court's budget for transfer to the statewide CASA Association was inadvertent. As such, a one-time transfer would not violate the Code of Judicial Conduct since it would be done to correct an error and there would be no other way for CASA to receive the money. However, future continued budget affiliations between the Court, the statewide CASA association and the Attorney General's office would not be proper.
- **JIC Advisory Opinion 2020-27:** A judge is per se disqualified from any matter involving his/her stepdaughter who is a counselor for the local child advocacy center. The judge should disclose the relationship in all other cases involving the center.
- **JIC Advisory Opinion 2020-28:** The Commission stated that a judicial officer cannot simultaneously serve as a magistrate and an EMT or fireman.

STATISTICS

On January 1, 2020, twenty-four (24) complaints remained pending before the Judicial Investigation Commission from 2019. From January 1, 2020, through December 31, 2020, the Commission received one hundred and twenty-four (124) new complaints for a total of one hundred and forty-eight (148). Of the 148 complaints, thirty-six (36) required formal investigation. One hundred and eight (108) were dismissed by the Judicial Investigation Commission when no probable cause was found. The Commission had no jurisdiction in eleven (11) complaints. Zero (0) complaints were withdrawn by the complainant with the approval of the Commission. One (1) complaint was not docketed because the complaint was not verified. The Commission issued four (4) admonishments.[10] Formal discipline was issued by the State Supreme Court in four (4) statement of charges involving five (5) complaints.[11] Three (3) probable cause complaints (formal statement of charges) involving four (4) ethics complaints were issued by the Judicial Investigation

[10] 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.

[11] This includes both *Massie* matters outlined in this report.

Commission to go to the Judicial Hearing Board for hearing.[12] Two of the formal charges involving three complaints and were pending at the end of the year and are included in the total eighteen (18) total complaints carried over into 2021. Commission counsel also handled over 480 inquiries from judicial officers/candidates/employees and over 1006 telephone calls from the general public for a total of over 1480 inquiries for 2020.

ADMONISHMENTS

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

***In the Matter of the Honorable William Holroyd, Magistrate of Mercer County,* JIC Complaint No. 48-2018:** On April 30, 2018, Judicial Disciplinary Counsel filed a judicial ethics complaint against Respondent alleging that he had been charged with the misdemeanor offense of 1st Offense DUI in violation of Rules 1.1, 1.2 and 3.1(A) and (C) of the Code of Judicial Conduct. Since that time Respondent has been in treatment and recovery with WVJLAP while continuing to service as Magistrate. On March 4, 2020, Respondent pled guilty to the lesser charge of reckless driving, was fined $500.00 and ordered to pay costs. On April 28, 2020, the Commission publicly admonished Respondent for violating Rules 1.1, 1.2, and 3.1(A) and (C).

***In the Matter of the Honorable Joshua Butcher, Judge of the 7th Judicial Circuit,* JIC Complaint No. 165-2019:** In December 2019, Judicial Disciplinary Counsel filed a complaint against Respondent alleging that he improperly engaged in extra-judicial conduct with the West Virginia Prosecuting Attorneys Institute after becoming a Circuit Judge and that he improperly used scholarship money that he received and failed to timely provide it to the State Supreme Court as reimbursement for training at the National Judicial College. Respondent replied in writing to the allegations contained in the complaint and gave a sworn statement. On July 6, 2020, the Commission publicly admonished Respondent for violating Rules 1.1, 1.2, and 3.1(B) and (C) of the Code of Judicial Conduct.

***In the Matter of the Honorable Daniel M. Goheen, Magistrate of Cabell County,* JIC Complaint No. 25-2020:** On February 28, 2020, Bain Creasy filed a complaint against Respondent alleging that he was rude to him during attempts to obtain a PSO. By letter dated April 27, 2020,

[12] Again, this includes the *Massie* matter set forth on pages 13 and 14.

Respondent replied to the allegations. Respondent did not deny being rude to Complainant. On July 1, 2020, the Commission publicly admonished Respondent for violating Rule 2.8 of the Code of Judicial Conduct.

***In the Matter of the Honorable Eric Shuck, Judge of the 13th Family Court Circuit,* JIC Complaint No. 56-2020:** On June 16, 2020, Judicial Disciplinary Counsel filed an ethics complaint against Respondent alleging that he improperly conducted a home visit to a litigant's house and failed to memorialize his ruling in a contempt proceeding by order. Respondent replied to the allegations by letter, and on July 24, 2020, he gave a sworn statement. On August 25, 2020, the Commission publicly admonished Respondent for violating Rules 1.1, 1.2, 1.3, and 2.5(A) 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 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 an 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 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.

***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, separate misdemeanor charges brought against a friend who works as a dispatcher for the West Virginia State Police, and his repeated habit of going to crime scenes. 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. On March 20, 2020, Judicial Disciplinary Counsel and Respondent entered into an agreement whereby Respondent would admit to some of the charges and Code violations contained in the formal statement of charges. In exchange for the admissions, the remaining charges and those contained in JIC Complaint No. 23-20/Supreme Court No. 20-0190 would be dismissed (*See* pages 13-14 above). Respondent also agreed to resign his position as Magistrate and to never again seek judicial office in West Virginia. He also agreed to a ten-year moratorium on seeking any non-judicial office in this State. Lastly, he agreed to pay a $1,000.00 fine. The Judicial Hearing Board held a hearing on June 29, 2020. By order entered the same day, the JHN adopted the agreement of the parties as its recommended decision. The JHB also denied Respondent's request for attorney fees and granted JDC's request for the payment of costs. By Order entered August 27, 2020, the State Supreme Court adopted the recommendations of the JHB.

***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. In January 2020, the State Supreme Court adopted the recommendations of the JHB.

In the Matter of the Honorable Dwight A. Williamson, Magistrate of Logan County, Supreme Court No. 20-0654, JIC Complaint No. 57-2020: On June 24, 2020, Judicial Disciplinary Counsel opened a complaint against Respondent alleging that he improperly commented about a pending matter in his Court on Facebook. On August 24, 2020, the JIC filed a one-count formal statement of charges with aggravating factors. Subsequently, both parties entered into an agreement whereby Respondent would admit to the facts and violations of the Code of Judicial Conduct set forth in the statement of charges. Both parties would recommend a thirty-day suspension without pay. The agreed upon Code violations are Rules 1.1, 1.2, 2.2, 2.3(A), 2.4(B) and 2.10(A) and B of the Code of Judicial Conduct. A JHB hearing is set for January 15, 2020.

In the Matter of the Honorable Louise Goldston, Judge of the 13th Family Court Circuit, Supreme Court No. 20-0742, JIC Complaint Nos. 30 and 33-2020: On March 11, 2020, Judicial Disciplinary Counsel opened a complaint against Respondent alleging that she improperly conducted a home visit to a litigant's house and failed to memorialize her ruling in a contempt proceeding by order. On September 23, 2020, the JIC filed a one-count formal statement of charges. Subsequently, both parties entered into an agreement whereby Respondent would admit to the facts and the majority of violations of the Code of Judicial Conduct set forth in the statement of charges. Both parties would recommend a censure and a $5,000.00 fine. The agreed upon Code violations are Rules 1.1, 1.2, 1.3, 2.2, 2.4(B) and 2.5 the Code of Judicial Conduct. A JHB hearing is set for January 15, 2020.

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.[13]

Respectfully submitted,

JUDICIAL INVESTIGATION COMMISSION,

By: Alan D. Moats

Alan D. Moats, Chairperson

Date: March 3, 2021

ADM/tat

[13] The NCSC Center for Judicial Ethics released its 2020 statistics on January 20, 2021, and West Virginia ranked fourth along with Florida for the number of judicial officers/candidates publicly sanctioned or eight (8) for the year. New York publicly sanctioned the most judicial officers in 2020 at twenty-five (25); Texas ranked second at twenty (20), and Arizona ranked third at eleven (11). Twenty-six (26) states publicly disciplined six (6) 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.