

**WEST VIRGINIA  
JUDICIAL INVESTIGATION COMMISSION  
ANNUAL REPORT - 2021**



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, 2021, through December 31, 2021.

## **THE COVID 19 PANDEMIC**

The Covid epidemic continued into 2021 and with it came new strains of the virus. JIC employees continued rotating in and out of the office one or two days a week while working from home the rest of the time. This ensured continued excellent service while at the same time protecting the staff from the virus. By August 2021, JIC staff was back in the office full-time – the majority of the staff having received both Covid shots and a booster.

Even though Commission staff spent almost two thirds of the year working remotely, it did not impact the quality of the job performed. Staff members investigated 35 ethics complaints during the year, Although the number of cases investigated was down one from the previous year, the actual nature of the investigations proved complex. Staff members also continued to participate in Judicial Hearing Board hearings, and taught continuing legal education courses. The majority of the work was done remotely using video/audio computer technology and a phone. The Commission met seven times in 2021. Five of the meetings were held remotely, Once again, the Covid 19 Pandemic had minimal impact on the work performed by the JIC.

2021 also saw a major change to our website, with the inclusion of all JIC Advisory Opinions in their entirety. Staff spent fourteen months uploading and redacting of all advisory opinions, weeding out all outdated opinions and making all remaining documents searchable by subject, rule and date issued. The new advisory opinion website went on line in late December 2021 and the Commission has received many positive comments about the new site.

The Judicial Investigation Commission decided in the Spring of 2020 that it needed to acquire more space. Along with the Board of Law Examiners, the Commission will be moving from the 12<sup>th</sup> Floor of the City Center East Building to the 7<sup>th</sup> Floor. The move will give both entities more space and will provide a dedicated conference room. The move is expected to occur during the first quarter of 2022.

## **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.<sup>1</sup> 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

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<sup>1</sup> 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.

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 2021, two new members were appointed to the Commission – the Honorable Jason Wharton, Judge of the 4<sup>th</sup> Judicial Circuit and the Honorable Mike Flanigan, Magistrate of Mercer County. Judge Wharton replaced The Honorable H.L. Kirkpatrick, III, Vice Chair and Judge of the 10<sup>th</sup> Judicial Circuit, who was termed out of the Commission. Magistrate Flanigan replaced form Cabell County Magistrate Mike J. Woeful who resigned his seat after accepting an appointment as Cabell County Circuit Clerk. Other current JIC members are the Honorable Alan D. Moats, Chair and Judge of the 19<sup>th</sup> Judicial Circuit; the Honorable Bridget Cohee, Judge of the 23<sup>rd</sup> Judicial Circuit; the Honorable James J. Rowe, Senior Status Judge; the Honorable Patricia A. Keller, Judge of the 6<sup>th</sup> Family Court Circuit; F. Layton Cottrill, Jr., Esquire, Vice Chair; Dr. Cynthia Persily; and Margaret Ann O’Neal.<sup>2</sup>

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 contracted with a temporary administrative assistant for the majority of the year to help with the advisory opinion website.. 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

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<sup>2</sup> The last three on the list are public members.



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. 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 remotely taught multiple classes to various groups in 2021.

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 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.<sup>3</sup> In 2021, the JIC received (4) four new fatality review referrals. None of the four fell within the JIC's jurisdiction to investigate. JIC has (3) three fatality review cases pending before the Regional Boards, which last met in 2019.

The Chief Counsel and staff are also tasked with the responsibility of investigating sexual harassment claims within West Virginia's court system. *See* § 12.7 of the West Virginia Judicial Personnel System Manual.

The Commission held six regular meetings and one special meeting during 2021 for a total of seven meetings. Four regular meetings took place in the Judicial Investigation Commission Conference Room, 4700 MacCorkle Avenue SE, Suite 1200 A, Charleston, West Virginia while the first two meetings of the year were held remotely. Regular meetings occurred on February 19, April 23, June 25, August 27, October 22, and December 10, 2020. The special meeting occurred on July 29, 2021 and was held remotely. 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,

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<sup>3</sup> 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.

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.<sup>4</sup>

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 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

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<sup>4</sup> 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.

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,<sup>5</sup> 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.<sup>6</sup> 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

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<sup>5</sup> 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.

<sup>6</sup> 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).

circumstances and issue a written admonishment to the respondent judge;<sup>7</sup> 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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<sup>7</sup> 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.

One extraordinary complaint was filed in 2021:

***In the Matter of Williams, Supreme Court No. 21-0608, JIC Complaint Nos. 78-2021 and 81-2021.*** On or about July 15, 2021, Judicial Disciplinary Counsel filed a complaint against the Honorable C. Carter Williams, Judge of the 22<sup>nd</sup> Judicial Circuit. The complaint involved a July 11, 2021 traffic stop of Judge Williams by a Moorefield Police Officer, the judge's conduct during the stop and his subsequent conduct. Judge Williams contacted JDC that same day to report his conduct but only after he had been forewarned by the Hardy County Prosecutor that he would be filing a judicial ethics complaint. On that same day, Following a thorough investigation, the JIC held a special meeting on July 29, 2021 and by a vote of 9-0 decided to file a Rule 2.14 petition with the Supreme Court seeking Judge Williams suspension without pay pending the outcome of the ethics complaint.

JDC filed the Petition on July 30, 2021. By Order entered August 3, 2021, the Supreme Court deferred any ruling on the suspension without pay. By Order entered September 30, 2021, the Supreme Court declined to suspend Respondent without pay but found "that there is probable cause to believe that the respondent has engaged in a violation of the Code of Judicial Conduct." The Court then

remanded the matter back to the JIC for proceedings in accordance with Rule 2.7(c) and Rule 4 of the Rules of Judicial Disciplinary Procedure. The Court also prohibited the Respondent from “hearing any matter involving the Moorefield Police Department and/or its officers during the pendency of the judicial disciplinary proceedings.” See pages 16 and 17 below for further information.

## 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 2021, the Commission issued twenty-one (21) advisory opinions based upon written requests from judicial officers/candidates or the Administrative Director:

- **JIC Advisory Opinion 2021-01:** A magistrate can concurrently serve as a pastor of a church as long as judicial duties take precedence and there is a clear separation between church and state.
- **JIC Advisory Opinion 2021-02:** A judge should not review or consider any Facebook posts about the subject of a pending or impending case that are referred by a third party. Any similar *ex parte* communication received by the judge should be referred immediately to both the prosecutor and defense attorney to investigate its truthfulness and to take any further action they deem appropriate.
- **JIC Advisory Opinion 2021-03:** A magistrate who is also an ordained minister may not perform marriages or receive a gratuity while at the Courthouse.
- **JIC Advisory Opinion 2021-04:** A judge may apply for the position of U.S. Attorney without having to resign his/her position. However, he/she will have to resign his/her judgeship if nominated for the position.
- **JIC Advisory Opinion 2021-05:** An assistant prosecutor who is appointed judge is disqualified from presiding over any cases in which he/she had any involvement as an assistant prosecutor and must disclose the nature of the relationship in any cases handled by other prosecutors while he/she was there.



- **JIC Advisory Opinion 2021-06:** The Commission declined to address a disqualification issue where the State Supreme Court has already answered the judge's question.
- **JIC Advisory Opinion 2021-07:** A judge can attend and accept an award as part of an annual Children's Memorial Flag Day Ceremony since it is open to the public as a whole and the award would not appear to a reasonable person to undermine the judge's independence, integrity or impartiality.
- **JIC Advisory Opinion 2021-08:** A judge who is a co-defendant with a lawyer in a federal civil lawsuit is not *per se* disqualified from handling any cases involving the lawyer during the pendency of the suit but must disclose the nature of the relationship and follow Trial Court Rule 17.01 *et seq.* whenever applicable.
- **JIC Advisory Opinion 2021-09:** A deputy public defender who is appointed judge is disqualified from presiding over any cases in which he/she had any involvement as a public defender and must disclose the nature of the relationship in any cases handled by other public defenders while he/she was there.
- **JIC Advisory Opinion 2021-10:** A judicial assistant must resign to run for a seat on City Council.
- **JIC Advisory Opinion 2021-11:** A judge can serve *ex officio* on a Community Criminal Justice Board where the service concerns the law, the legal system or the administration of justice.
- **JIC Advisory Opinion 2021-12:** A judge who has more than a de minimis interest in oil and gas interests should disclose the interest in all future cases involving oil and cases and follow Trial Court Rule 17.01 *et seq.* whenever applicable.
- **JIC Advisory Opinion 2021-13:** A law clerk may work weekends at a local winery which is located out of the jurisdiction in which he/she works and any potential matters involving the winery would be subject in a different jurisdiction.
- **JIC Advisory Opinion 2021-14:** A magistrate cannot concurrently engage in part-time employment as a security officer.
- **JIC Advisory Opinion 2021-15:** A magistrate may apply for a vacancy as a circuit clerk without resigning his/her position but must resign at the point the application becomes public or upon acceptance of the new job whichever is sooner.
- **JIC Advisory Opinion 2021-16:** A magistrate cannot participate in a charitable "Jail and bail" event.

- **JIC Advisory Opinion 2021-17:** A judge may serve as a sideline broadcaster for high school football games
- **JIC Advisory Opinion 2021-18:** A family court case coordinator may not participate in a committee sponsored by the Domestic Violence Coalition unless representatives from the defense bar are included in the group.
- **JIC Advisory Opinion 2021-19:** A magistrate can't be a member of the Fraternal Order of Police.
- **JIC Advisory Opinion 2021-20:** A magistrate cannot create his/her own award and give it to a member of the public.
- **JIC Advisory Opinion 2021-21:** A judge or members of his/her staff may accept Christmas tokens/gifts/gift cards from the Bench/Bar Committee or lawyers who may appear before the court as long as the amount of the gift does not exceed the amount set forth in the West Virginia Ethics Act.

## STATISTICS

On January 1, 2021, eighteen (18) complaints remained pending before the Judicial Investigation Commission from 2020. From January 1, 2021, through December 31, 2020, the Commission received one hundred and thirty-eight (138) new complaints for a total of one hundred and fifty-six (156). Of the 156 complaints, thirty-seven (37) required formal investigation. One hundred and twenty (120) were dismissed by the Judicial Investigation Commission. The Commission had no jurisdiction in eight (8) complaints. One (1) complaint was withdrawn by the complainant with the approval of the Commission. Zero (0) complaints were not docketed because the complaint was not verified. The Commission issued seven (7) admonishments.<sup>8</sup> Formal discipline was issued by the State Supreme Court in two (2) statement of charges involving three (3) complaints.<sup>9</sup> One (1) probable cause complaint (formal statement of charges) involving two (2) ethics complaints were issued by the Judicial Investigation Commission to go to the Judicial Hearing Board for hearing.<sup>10</sup> 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 573 inquiries from judicial officers/candidates/employees and over 850 telephone calls from the general public for a total of over 1423 inquiries for 2021.

<sup>8</sup> 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.

<sup>9</sup> This includes *Goldston* and *Williamson*.

<sup>10</sup> This involves the Judge Williams complaints.

## ADMONISHMENTS

The Judicial Investigation Commission issued four (7) public admonishments in 2021:

***In the Matter of the Honorable Sally G. Jackson, Judge of the 24<sup>th</sup> Family Court Circuit, JIC Complaint No. 07-2021:*** On January 11, 2021, Judicial Disciplinary Counsel filed a judicial ethics complaint against Respondent alleging that she had made inappropriate posts on her Facebook account about a pending matter in a Wisconsin Court and pending criminal charges against a former West Virginia legislator who allegedly participated in the January 6, 2021 riot at the nation's Capitol. On February 24, 2021, the Commission publicly admonished Respondent for violating Rules 1.1, 1.2, and 1.3, 2.10(A) and (B) and 3.1(C) of the Code of Judicial Conduct for the Facebook posts.

***In the Matter of Charles N. Poe, Magistrate of Mercer County, JIC Complaint No. 17-2021:*** On January 26, 2021, a member of the public who frequented the Mercer County Courthouse by virtue of his/her employment filed an ethics complaint against Respondent alleging that he sexually harassed the public member in violation of Rules 1.1, 1.2, 1.3, 2.3(A) and (B), and 3.1(C) of the Code of Judicial Conduct. Subsequent to the investigation, Respondent entered into an agreement with Judicial Disciplinary Counsel whereby he immediately resigned as Magistrate and agreed never again to seek judicial office in WV in lieu of formal discipline. By a unanimous vote, the JIC agreed to admonish Respondent for the foregoing violations of the Code. The admonishment was issued on March 12, 2021

***In the Matter of Charles C. Cole, Sr., former Magistrate of Berkeley County, JIC Complaint No. 101-2020:*** On November 12, 2020, the Administrative Director of the Supreme Court of Appeals of West Virginia filed an ethics complaint against Respondent alleging that he harassed a court employee in violation of Rules 1.1, 1.2, 1.3, 2.3(A) and (B), and 2.8(B) of the Code of Judicial Conduct. Subsequent to the investigation, Respondent entered into an agreement with Judicial Disciplinary Counsel whereby he immediately resigned as Magistrate and agreed never again to seek judicial office in WV in lieu of formal discipline. By a unanimous vote, the JIC agreed to admonish Respondent for the foregoing violations of the Code. The admonishment was released on April 29, 2021.

***In the Matters of Randy Nutter and Lisa Taylor, former Magistrates of Pleasants County, JIC Complaint Nos. 121-2020 & 122-2020:*** Judicial

Disciplinary Counsel opened complaints on the two Magistrates in late 2020 after each of them self-reported their involvement in the Slow Down for the Holidays program to raise money to provide Christmas presents for underprivileged children in St. Mary's. Each magistrate admitted to dismissing misdemeanor tickets in exchange for a defendant's pledge to donate a certain sum to the program. Subsequent to the investigation, Respondents entered into agreements with Judicial Disciplinary Counsel whereby each immediately resigned as Magistrate and agreed never again to seek judicial office in WV in lieu of formal discipline. By a unanimous vote, the JIC agreed to admonish Respondents for violating Rules 1.1, 1.2, 1.3, 3.2 and 3.7(A)(2) of the Code of Judicial Conduct. The admonishments were released on August 27, 2021.

***In the Matter of the Honorable Vicki D'Angelo, Magistrate of Jefferson County, JIC Complaint No. 91-2021:*** On August 16, 2021, Jessica Skupnick, who is hearing impaired, filed a judicial ethics complaint against Respondent alleging that she failed to provide her with a sign language interpreter at hearing despite a timely request for one. Respondent denied that a timely request had been made despite evidence to the contrary and proof in the actual court file that Complaint suffered from profound hearing loss. By a unanimous vote, the JIC agreed to admonish Respondent for violating Rules 1.1, 1.2, 2.2 and 2.5(A) of the Code of Judicial Conduct. The admonishment was released on October 28, 2021.

***In the Matter of Michael Headley, former Magistrate Doddridge County, JIC Complaint No. 67-2021:*** On June 14, 2021, Judicial Disciplinary Counsel opened a complaint against Respondent. The gravamen of the complaint was that while a Magistrate-elect, Respondent improperly solicited donations for a charity called "Sheriff Headley's Magical Christmas." While the complaint was pending, Judicial Disciplinary Counsel was informed of another matter involving the Respondent and his assistant. On November 3, 2021, Judicial Disciplinary Counsel contacted Respondent and informed him that if he did not resign that day, a Rule 2.14 extraordinary complaint would be filed seeking a suspension without pay. Both Respondent and his assistant resigned their positions. At its December 2021 meeting, the Commission unanimously agreed to admonish Respondent for the improper solicitations in violation of Rules 1.1, 1.2, 3.1(C) and 3.7(A)(2) of the Code of Judicial Conduct. The admonishment was released on December 15, 2021.



## 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 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. The JHB hearing was held on January 15, 2021. Subsequently, the JHB adopted the parties' joint agreement as its recommended disposition. By Order entered April 15, 2021, the Supreme Court adopted the JHB recommendations and suspended Respondent for a total of thirty (30) days.

**In the Matter of the Honorable Louise Goldston, Judge of the 13<sup>th</sup> 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. The JHB hearing took place on January 15, 2021. Subsequently, the JHB recommended that Respondent be admonished for her conduct and fined \$1,000.00. The JDC and Respondent filed objections to the recommended decision. By a 4-1 majority, the State Supreme Court agreed with the JDC that the sanction was too lenient and censured Respondent for her conduct but left the fine at \$1,000.00. *See In the Matter of Goldston*, \_\_ W. Va. \_\_, 866 S.E.2d 126 (2021).

**In the Matter of Williams, Supreme Court No. 21-0878, JIC Complaint Nos. 78-2021 and 81-2021:** At its October meeting, the JIC voted to issue a statement of charges against Respondent based on the July 11, 2021 traffic stop and other traffic incidents. The eleven-count formal statement of charges was filed on

October 25, 2021. Respondent timely filed an answer in which he admitted to the majority of the conduct set forth in the Formal Charges but denied any violation of the Code of Judicial Conduct. Respondent also raised a number of defenses. A hearing before the JHB is set for February 23, 2022. For more information see pages 10 and 11 above.

## JIC ANNUAL STATISTICS COMPARISON

WV COMPLAINTS BY YEAR PER TYPE OF JUDGE

Year	Justices	CCJ	FCJ	Magistrate	Mental Hygiene Com	No Jurisdiction	Total
2021	5	66	24	33	2	8	138
2020	1	48	29	34	1	11	124
2019	3	82	35	45	2	7	174
2018	24	64	20	34	1	4	147
2017	10	50	45	38	0	6	149
2016	2	66	39	63	1	5	176
2015	1	57	35	29	1	8	131
2014	5	74	44	47	2	2	174
2013	8	78	43	46	0	9	184
2012	7	80	70	41	5	2	205
2011	1	82	41	50	4	8	186
2010	1	65	50	38	3	11	168
2009	0	65	38	50	4	2	159
TOTAL	68	877	513	548	26	83	2115

WV DISCIPLINE BY YEAR PER TYPE OF JUDGE

Year	Total Complaints	Mag Formal Discipline	Mag Admon	FCJ Formal Discipline	FCJ Admon	CCJ Formal Discipline	CCJ Admon	SC Formal Discipline	SC Admon	Total Discipline
2021	138	1	6	1	1	0	0	0	0	9
2020	124	4	2	0	1	0	1	0	0	8
2019	174	3	4	0	0	0	0	1	0	8
2018	147	3	0	0	0	0	0	0	0	3
2017	149	0	5	0	0	1	1	0	0	7
2016	176	1	3	0	0	1	1	0	0	6
2015	131	0	3	0	1	0	0	0	0	4
2014	174	1	2	0	1	1	1	0	0	6
2013	184	1	1	0	1	1	0	0	0	4
2012	205	0	2	1	0	0	0	0	0	3
2011	186	0	3	0	0	0	1	0	0	4
2010	168	0	1	0	1	0	0	0	0	2
2009	159	1	0	0	0	0	0	0	0	1
TOTAL	2115	15	32	2	6	4	5	1	0	65

<sup>1</sup> Discipline cases are counted for the year they are actually completed. This practice is consistent with the National Center for State Courts.

### STATISTICS FROM THE NCSC CENTER FOR JUDICIAL ETHICS

- In 2021, there were 19 public sanctions in Texas; 17 in New York; 9 in West Virginia; 6 in Arizona; 5 in Georgia and New Mexico; 4 in Arkansas, California, Kansas, Nevada and New Jersey; 3 in Florida, Ohio, South Carolina and Tennessee; 2 in Alabama, Colorado, Kentucky, Louisiana, Michigan, North Carolina, Pennsylvania and Washington; and 1 in D.C., Indiana, Maryland, Minnesota, Mississippi, New Hampshire, Vermont and Wisconsin. There were 20 states with no public sanctions.

The Center for Judicial Ethics is a clearinghouse for information about judicial ethics and discipline. The CJE provides research support for the conduct commissions that investigate complaints of judicial misconduct, publishes educational materials for judges, and tracks opinions issued by ethics advisory committees. The CJE publishes the *Judicial Conduct Reporter* and other resources on judicial ethics, including a blog with new posts every Tuesday and Throwback Thursdays. Each year, the CJE responds to hundreds of requests for information from judges, court systems, reporters, and others. Every two years, the CJE presents the National College on Judicial Conduct and Ethics. As a private organization, the CJE does not have the authority to discipline or investigate judges. For more information/resources visit their website at <https://www.ncsc.org/topics/judicial-officers/ethics/centerforjudicialethics>

## CONCLUSION

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

Respectfully submitted,

JUDICIAL INVESTIGATION COMMISSION,

By:



F. Layton Cottrill, Jr., Esquire  
Vice-Chairman<sup>11</sup>

Date:

2/10/22

FLC/tat

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<sup>11</sup> JIC Chairman Alan D. Moats, Judge of the 19<sup>th</sup> Judicial Circuit has been appointed as a temporary Justice of the Supreme Court of Appeals of West Virginia beginning February 7, 2022 following the February 6, 2022 resignation of former Justice Evan Jenkins. Judge Moats will serve as a Justice until such time as Governor Justice has filled the vacancy and the appointee takes the bench. Until that time, Judge Moats will serve as a non-voting *ex officio* member of the JIC.