

**WEST VIRGINIA
JUDICIAL INVESTIGATION COMMISSION
ANNUAL REPORT - 2022**



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, 2022, through December 31, 2022.

THE COVID 19 PANDEMIC AND MORE

The Covid 19 pandemic, which first started in early 2019, continued into 2022. However, the Office was fully operational on site in 2022 thanks to Covid vaccines. In February 2022, the Commission Office and the Board of Law Examiners moved from shared office space on the 12th Floor of City Center East in Charleston, West Virginia to its own expanded space on the 7th Floor of City Center East. The year also saw the Supreme Court of Appeals of West Virginia purchase City Center East and rename the building as the West Virginia Judicial Tower. The JIC address is now Judicial Investigation Commission, West Virginia Judicial Tower, Suite 700A, 4700 MacCorkle Avenue SE, Charleston, WV 25304.

THE COMMISSION

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

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

Id.

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

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

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

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

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

In 2022, no new members were appointed to the Commission. JIC members in 2022 were the Honorable Alan D. Moats, Chair and Judge of the 19th Judicial Circuit; the Honorable Bridget Cohee, Judge of the 23rd Judicial Circuit; the Honorable Jason Wharton, Judge of the 4th Judicial Circuit; the Honorable James J. Rowe, Senior Status Judge; the Honorable Patricia A. Keller, Judge of the 6th Family Court Circuit; the Honorable Mike Flanigan, Magistrate of Mercer County; F. Layton Cottrill, Jr., Esquire, Vice Chair; 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

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

² The last three on the list are public members.

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

The Commission has full-time staff consisting of Chief Counsel, a Deputy Counsel, an Executive Assistant and a full-time Investigator. RJDP 5. Among many and varied duties, the Chief Counsel and staff have the authority to: (1) receive complaints concerning violations of the Code of Judicial Conduct; (2) review all complaints concerning violations of the Code of Judicial Conduct; (3) investigate information concerning violations of the Code of Judicial Conduct; (4) prosecute violations of the Code of Judicial Conduct before the Judicial Hearing Board and the State Supreme Court; and/or (5) promptly notify the complainant and respondent of the disposition of each matter. RJDP 5.4. Additionally, Commission counsel serves as special counsel in lawyer discipline cases whenever the Office of Lawyer Disciplinary Counsel is conflicted off a matter. 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 both in person and remotely taught multiple classes to various groups in 2022.

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, 1994.³ In 2022, the JIC received (4) four new fatality review referrals. Two of the four fell within the JIC's jurisdiction to investigate. JIC has (5) five fatality review cases pending before the Regional Boards, which last met in 2019.

³ 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.

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 2022, Chief Counsel conducted one (1) such investigation and presented findings to the Administrative Director.

The Commission held six regular meetings and one special meeting during 2022 for a total of six meetings. Six regular meetings took place at the West Virginia Judicial Tower. Regular meetings occurred on February 11, April 8, June 10, August 12, October 14, and December 2, 2022. All pertinent documents were distributed to the Commission approximately two weeks before each meeting so that the members could review the materials and be prepared to discuss them during each session.

Commission meetings are not open to the public. The Commission is not subject to the Open Governmental Proceedings Act contained in W. Va. Code § 6-9A-1, et seq. The Commission is not a "public agency" as defined by W. Va. Code § 6-9A-2(7) since that "does not include courts created by article eight of the West Virginia Constitution." The Commission is an entity created by Rule by the State Supreme Court. Additionally, Commission meetings are not "meetings" as defined by the Act since they are conducted for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or Court of Claims proceeding." *See* W. Va. Code § 6-9A-2(5).

THE CODE OF JUDICIAL CONDUCT

Over the years, many professions have implemented their own codes of ethics. Professional ethics encompass the personal, organizational and communal standards of behavior expected of the various occupations. Formal standards of judicial conduct have existed for approximately 72 years in West Virginia. The first Code of Judicial Conduct was promulgated by the State Supreme Court on March 28, 1947. The current Code was adopted by Order entered November 12, 2015, effective December 1, 2015.⁴

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

⁴ 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.

- 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 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, [Intermediate Court of Appeals,]⁵ 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

⁵ The ICA as its known went into operation on July 1, 2022.

diligence should have known, of the existence of a violation of the Code of Judicial Conduct, shall be dismissed by the Commission.” RJDP 2.12.

After a complaint is received, it is referred to counsel for review. Counsel can send a matter to an investigator for investigation, ask the respondent judge for a response,⁶ or forward it directly to Commission members for study prior to consideration at the next meeting. Complaints referred directly to the Commission for consideration may be dismissed for lack of probable cause, referred to the judge for response, or sent to an investigator for investigation. Responses to complaints and results of investigations are again referred to the Commission for consideration.⁷ The Commission may then: (1) dismiss the matter for lack of probable cause; (2) determine that probable cause does exist but that formal discipline is not appropriate under the circumstances and issue a written admonishment to the respondent judge;⁸ or (3) issue a formal statement of charges when it determines that probable cause does exist and that formal discipline is appropriate. RJDP 2.7. Some complaints contain more than one allegation against a judge, and the Commission may dismiss part of a complaint and find probable cause on part of a complaint. Parties are contacted about the action of the Commission after a decision has been made on a complaint.

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

All proceedings of the Commission are confidential. 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).

⁶ 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.

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

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

Judicial Investigation Commission: How a typical Complaint is handled.

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

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

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

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

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

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

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

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

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

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

EXTRAORDINARY PROCEEDINGS

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

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

RJDP 2.14(a).

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

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

- (1) direct Disciplinary Counsel to file formal charges with the Clerk of the Supreme Court; and
- (2) provide notice to the judge of a right to a hearing on the issue of temporary suspension, said hearing to be in not less than 30 days; with the judge provided notice of the hearing in not less than 20 days before the proceeding; or
- (3) in the alternative, remand the complaint for proceedings pursuant to Rule 2.7(d) and Rule 4.

RJDP 2.14(c).

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

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

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

No extraordinary complaints (RJDP Rule 2.14) complaints were filed in 2022.

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 2022, the Commission issued thirty-two (32) advisory opinions based upon written requests from judicial officers/candidates or the Administrative Director:

- **JIC Advisory Opinion 2022-01:** An ICA judge is required to resign his/her position as county commissioner just prior to taking the oath of office for judge.
- **JIC Advisory Opinion 2022-02:** A senior status magistrate may concurrently serve as a condemnation commissioner.
- **JIC Advisory Opinion 2022-03:** A magistrate cannot provide an affidavit to try to protect the integrity of a law enforcement officer in a search issue.

- **JIC Advisory Opinion 2022-04:** An ICA judge cannot concurrently serve as a judge and President of the State Bar or Past President of the State Bar. An ICA Judge also cannot take a working trip sponsored and paid for by a company who insures lawyers.
- **JIC Advisory Opinion 2022-05:** A temporary family court judge cannot serve as an expert witness in a malpractice action against an attorney for his/her alleged failure to perform certain acts and/or obtain certain outcomes in a divorce action.
- **JIC Advisory Opinion 2022-06:** An administrative assistant to a judge cannot run for the non-judicial position of city councilman/councilwoman and retain his/her judicial position.
- **JIC Advisory Opinion 2022-07:** A judge should disclose for one year after the judicial candidate takes office or for one year after the dissolution of the campaign committee, whichever is longer that a lawyer who appears in front of him/her served as a member of the judge's campaign committee.
- **JIC Advisory Opinion 2022-08:** A deputy magistrate clerk cannot concurrently serve as a city councilman/woman.
- **JIC Advisory Opinion 2022-09:** A family court case coordinator cannot work part time as a court-appointed mediator for judges.
- **JIC Advisory Opinion 2022-10:** Supreme Court staff attorneys and law clerks cannot participate as volunteers for the State Bar's Legal Connect program and the West Virginia Free Legal Answers.
- **JIC Advisory Opinion 2022-11:** A chief probation officer may serve as a certified mentor for the Mountain Challenge Academy as long as the PO is screened from any participation as a PO in the juvenile's criminal case.
- **JIC Advisory Opinion 2022-12:** A magistrate's spouse cannot put a campaign sign in their yard for a close friend running for city council or any other elected position.
- **JIC Advisory Opinion 2022-13:** No judge or staff member can place a campaign sign of any family member running for office in his/her yard even if the candidate resides in the same home since the public will be unable to determine whether the support comes solely from the candidate, the judicial officer/employee or both.
- **JIC Advisory Opinion 2022-14:** The Supreme Court can request funds from a charitable trust closely related to a family member of a sitting justice to help create a Judicial Learning Center.

- **JIC Advisory Opinion 2022-15:** An administrative assistant for a circuit judge cannot work with a state legislator on a proposal that would allow a mother to be charged criminally if she uses drugs while pregnant and the baby is born but dies from said drug use.
- **JIC Advisory Opinion 2022-16:** A law clerk may volunteer with the Center of Consumer Law & Education located at WVU's College of Law.
- **JIC Advisory Opinion 2022-17:** A judge's prior service as a municipal judge and a city councilman does not preclude him/her from presiding over a case where the city is being sued for attempting to assess a "stormwater" fee on all residents. However, the judge must disclose that he/she lives in the city and if anyone objects on that basis he/she should follow Trial Court Rule 17.
- **JIC Advisory Opinion 2022-18:** The ICA may accept a retiring lawyer's donation of his/her modest law library for use by the ICA and its staff.
- **JIC Advisory Opinion 2022-19:** A magistrate clerk must resign from office if his/her spouse is elected magistrate in the same county where the clerk works.
- **JIC Advisory Opinion 2022-20:** A supreme court justice is not disqualified nor must he/she disclose where his/her former service as a legislator is only tangentially related to an injunction matter involving statute.
- **JIC Advisory Opinion 2022-21:** A family court judge cannot concurrently serve as a judge and as a commentator on a national cable tv network show similar to Judge Judy.
- **JIC Advisory Opinion 2022-22:** A magistrate clerk who works part-time as a realtor cannot hire a person whom he/she recently sold a house to as a deputy clerk.
- **JIC Advisory Opinion 2022-23:** A judge who serves on a bench bar committee that does an annual CLE and donates proceeds to charity should not be seen presenting a check to a charity as it could give the appearance however wrong it may be that the judge is abusing the prestige of his or her office to advance the personal or economic interest of the entity. The judge should also not have his name listed in the advertisement for the CLE since it could appear to a reasonable member of the public that the judge was soliciting contributions in violation of Code of Judicial Conduct Rule 3.7.
- **JIC Advisory Opinion 2022-24:** A judge whose spouse is employed by a private school as a transitional kindergarten teacher is not disqualified from presiding in the Hope Scholarship case nor must he/she disclose the information.

- **JIC Advisory Opinion 2022-25:** A magistrate who is a former law enforcement officer should not maintain Law Enforcement Officer Certification.
- **JIC Advisory Opinion 2022-26:** A magistrate should not hire the spouse of a circuit judge as his or her magistrate assistant.
- **JIC Advisory Opinion 2022-27:** A prosecutor who decides to run for judge cannot use the slogan "Prosecutor _____ for Judge."
- **JIC Advisory Opinion 2022-28:** An ICA judge is not *per se* disqualified from presiding over a case involving the sitting governor who appointed him but should disclose the issue in every case involving the governor for a period of one year from the date the judge took office.
- **JIC Advisory Opinion 2022-29:** A supreme court justice is not disqualified from the Hope Scholarship matter nor does he/she have to disclose that she was formerly on an advisory board for a private school that's similar to a parent-teacher association.
- **JIC Advisory Opinion 2022-30:** It is permissible for the Bar Foundation to act as a fiscal agent for the Court's Judicial Learning Center and solicit funds for the project as long as the names of donors and the amounts they give are withheld from the Court.
- **JIC Advisory Opinion 2022-31:** A mental hygiene commissioner cannot concurrently serve as an assistant prosecutor.
- **JIC Advisory Opinion 2022-32:** A judge is not *per se* disqualified from presiding over a case involving a lawyer who represents a staff member's juvenile son. However, the judge must disclose the representation during its pendency in every case involving the lawyer and follow Trial Court Rule 17 where appropriate. The judge may also continue to appoint the lawyer to court-appointed cases since he/she was already on the list but must follow Code of Judicial Conduct Rule 2.13.

STATISTICS

On January 1, 2022, seventeen (17) complaints remained pending before the Judicial Investigation Commission from 2021. From January 1, 2022, through December 31, 2022, the Commission received one hundred and forty-one (141) new complaints for a total of one hundred and fifty-eight (158). Of the 158 complaints, fifty-one (51) required formal investigation. One hundred and eighteen (118) were dismissed by the Judicial Investigation Commission. The Commission had no jurisdiction in six (6) complaints. Three (3) complaints were 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 six (6) admonishments⁹ involving seven (7) complaints. Formal discipline was issued by the State Supreme Court in one (1) statement of charges involving two (2) complaints.¹⁰ Three (3) probable cause complaints (formal statement of charges) involving five (5) ethics complaints were issued by the Judicial Investigation Commission or Special Judicial Investigation Commission in 2022 to go to the Judicial Hearing Board for hearing.¹¹ One (1) probable cause matter (formal statement of charges) was pending from 2021 and involved two (2) complaints.¹² Three (3) of the formal charges involving (5) complaints were pending at the end of the year and are included in the total twenty-two (22) complaints carried over into 2023.¹³ Commission counsel also handled over 867 inquiries from judicial officers/candidates/employees and over 1164 telephone calls from the general public for a total of over 2021 inquiries for 2022.

ADMONISHMENTS

The Judicial Investigation Commission issued six (6) public admonishments in 2022:

In the Matter of the Honorable Phillip T. Gaujot, Magistrate of Monongalia County, JIC Complaint Nos. 130 and 131-2021: On December 1, 2021, a circuit judge filed a complaint on Respondent alleging intemperate behavior. On December 6, 2021, a captain with the Preston County Sheriff's Department filed a complaint on Respondent again alleging intemperate behavior. During the course of the investigation, it was also determined that Respondent had inappropriately requested defense attorneys and a bail bondsman to write letters of support to JDC on his behalf. On April 25, 2022, the Commission publicly admonished Respondent for violating Rules 1.1, 1.2, and 1.3, 2.8(B) and 2.10(A) of the Code of Judicial Conduct.

In the Matter of the Honorable Michael Weiss, Magistrate of Harrison County, JIC Complaint No. 112-2021: On January 26, 2021, a member of the public filed an ethics complaint against Respondent alleging that he acted improperly during an extrajudicial event. During the course of the

⁹ 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.

¹⁰ *Camilletti*.

¹¹ *Williams II, Stotler and Rock*.

¹² *Williams I*.

¹³ *Williams I and II, Stotler and Rock*.

investigation, the JDC also found that Respondent was an administrator/moderator of a Facebook page that could lead a reasonable person to think he was biased in favor of law enforcement. On April 25, 2022, the Judicial Investigation Commission publicly admonished Respondent for violating Rules 1.1, 1.2, 1.3, 2.8(B), 2.10(A) and (B), and 3.1(A), (B) and (C) of the Code of Judicial Conduct.

In the Matter of the Honorable Rudolph Murensky, Judge of the 8th Judicial Circuit, JIC Complaint No. 20-2022: On February 22, 2022, the then Commissioner of the West Virginia Division of Corrections and Rehabilitation filed a complaint on Respondent for his alleged mistreatment of two corrections officers who had transported a defendant to his court for hearing. On April 25, 2022, the Judicial Investigation Commission publicly admonished Respondent for violating Rules 1.1, 1.2, 1.3, 2.2, 2.5(A) and 2.8(B) of the Code of Judicial Conduct in connection with the incident.

In the Matter of the Honorable Matthew Jeffries, Magistrate of Fayette County, JIC Complaint No. 67-2022: On May 25, 2022, a former Magistrate filed an ethics complaint against Respondent alleging that he improperly wore a law enforcement uniform in campaign advertisements/social media postings during his May 2022 run for Magistrate. On August 16, 2022, the Judicial Investigation Commission publicly admonished Respondent for violating Rules 1.1, 1.2, 4.1(A)(3) and 4.2(A)(1) of the Code of Judicial Conduct.

In the Matter of David Hummel, Jr., former Judge of the 2nd Judicial Circuit, JIC Complaint No. 37-2022: On March 25, 2022, Judicial Disciplinary Counsel opened a complaint against Respondent alleging that he engaged in intemperate behavior while conducting an in camera hearing with two minor children in an abuse and neglect proceeding. During the course of the investigation, JDC also learned that Respondent violated his own administrative order publicly showing a concealed weapon during a March 12, 2022 hearing in a civil matter. JDC also learned that Respondent violated drug court policy regarding money obtained from three county commissions in his circuit. Subsequent to the investigation, Respondent entered into an agreement with Judicial Disciplinary Counsel whereby he immediately resigned as Circuit Judge 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 violating Rules 1.1, 1.2, 1.3 and 2.8(B) of the Code of Judicial Conduct. The admonishment was released on December 2, 2022.

In the Matter of Ward Harshbarger, III, former Magistrate of Kanawha County, JIC Complaint No. 129-2022: On November 17, 2022, the Montgomery Police Chief filed a complaint against Respondent alleging three separate instances of judicial intemperance against his officers. Respondent did not contest the allegations. Subsequent to the investigation, Respondent entered into an agreement with Judicial Disciplinary Counsel whereby he 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 violating Rules 1.1, 1.2, 2.3(B) and 2.8(B) of the Code of Judicial Conduct. The admonishment was released on December 15, 2022.

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 2022 and one matter was carried over from 2021.

In the Matter of the Honorable C. Carter Williams, Judge of the 22nd Judicial Circuit, Supreme Court No. 21-0878, JIC Complaint Nos. 78-2021 and 81-2021 (Williams I): At its October 2021 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 except for Rule 1.1 for the various traffic offenses themselves. A hearing before the JHB was set for February 23, 2022.

On or about February 10, 2022, JDC became aware of an August 2021 incident at Walmart involving Respondent and immediately opened ***In the Matter of Williams, JIC Complaint No. 12-2022 (Williams II)***. This matter was consolidated with *Williams I* after the JIC issued another Formal Statement of Charges on or about February 14, 2022. The hearing was then delayed until June 14-16, 2022. Eighty-five exhibits were jointly admitted into evidence at the very beginning of the hearing. JDC called twelve witnesses, including Respondent, during its case-in-chief. Respondent called fourteen witnesses at hearing. Simultaneous proposed findings of fact, conclusions of law and recommended discipline were filed by both parties on or about August 31, 2022. Respondent requested a public admonishment. Because of the extreme nature of the conduct and lack of real remorse, JDC requested a two-year suspension without pay, a public censure for all the lawyer and judicial code violations, a \$5,000.00 fine and costs in the amount of \$11,129.06.

The JHB recommended decision was received on or about September 23, 2022. The JHB found most violations with respect to *Williams I* but dismissed *Williams II* for failing to meet the burden of proof on the allegations pertaining to Walmart. On or about September 29, 2022, Respondent filed a general objection to the JHB recommendations. On or about October 14, 2022, JDC filed its objection to the recommended decision. In its objections, JDC noted that the JIC, by a vote of 9-0 at its October 14, 2022 meeting, expressed support for the JDC position as it believes Respondent lacks any real remorse and because of his repeated failure to accept that the conduct complained of violates multiple provisions of the Code of Judicial Conduct. As such, the JIC is of the opinion that Respondent's discipline should be increased to what the JDC is recommending below. Briefs were submitted by both parties in December 2022 and January 2023. The matter is set for oral argument before the Supreme Court of Appeals of West Virginia on February 8, 2023.

In the Matter of the Honorable David A. Camilletti, Judge of the 24th Family Court Circuit, Supreme Court No. 22-557, JIC Complaint Nos. 71 and 92-2021: On June 22, 2021, a member of the public filed a complaint against Respondent alleging intemperate behavior. On August 17, 2021, the Administrative Director of the Courts filed a complaint again alleging intemperate behavior. On or about July 6, 2022, the JIC issued a seventeen (17) count statement of charges against Respondent. Subsequently, JDC and Respondent entered into an agreement whereby Respondent would admit to various violations of the Code of Judicial Conduct, receive a 12-month suspension with 30 days actual service and the remainder held in abeyance while he completed a probationary period, be publicly reprimanded and pay costs. Respondent also agreed to undergo counseling by a JDC approved professional provider. The agreement was approved by both the JHB and the Supreme Court of Appeals.

A special JDC also investigated two separate complaints against two Family Court Judges: ***In the Matter of the Honorable Glen Stotler, Judge of the 23rd Family Court Circuit***, Supreme Court No. 22-0227, JIC Complaint No. 50-2021; and ***In the Matter of the Honorable Deanna Rock, Judge of the 23rd Family Court Circuit***, Supreme Court No. 22-862, JIC Complaint No. 38-2022. **A special JIC** issued separate formal statement of charges against the two judges. The matters are presently pending before the JHB. A hearing was continued in the *Stotler* case to a date to be determined. A hearing in the *Rock* matter is scheduled for March 2023

JIC ANNUAL STATISTICS COMPARISON

COMPLAINTS BY YEAR PER TYPE OF JUDGE

Year	Justices	CCJ	FCJ	Magistrate	Mental Hygiene Com	No Jurisdiction	Total
2022	1	68	34	29	0	9	141
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	69	945	547	577	26	92	2256

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
2022	141	0	4	1	0	0	2	0	0	7
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	2256	15	36	3	6	4	7	1	0	72

Consistent with the NCSC, discipline cases are counted only for the year in which they conclude.

STATISTICS FROM THE NCSC CENTER FOR JUDICIAL ETHICS

- In 2022, there were approximately 136 public dispositions in state judicial discipline proceedings including 24 in New York; 15 in Texas; 12 in Arizona; 10 in Georgia; 8 in Washington; 7 in West Virginia; 6 in Louisiana; 5 in Alabama; 4 in Arkansas, California, Nevada, New Mexico and Tennessee; 3 in Indiana, Ohio and South Carolina; 2 in Florida, Kansas, Kentucky, Pennsylvania and Vermont; and 1 in Colorado, Maryland, Massachusetts, Michigan, New Hampshire and Wisconsin. There were 22 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/center-for-judicial-ethics>

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:



Alan D. Moats, Chairman

Date: January 26, 2023

ADM/tat