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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

IN THE MATTER OF:

DO NOT REMOVE

THE HONORABLE LOUISE E. GOLDSTON,
JUDGE OF THE 13TH FAMILY COURT CIRCUIT

Supreme Court No. 20-0742
JIC Complaint Nos. 30 & 33-2020

**LIMITED SUR-REPLY BRIEF TO THE JUDICIAL DISCIPLINARY
COUNSEL'S REPLY BRIEF PERMITTED BY ORDER OF THIS
COURT ENTERED AUGUST 19, 2021 AND RECEIVED
AUGUST 20, 2021**

Now comes the Honorable Louise E. Goldston by way of introduction advances this "Limited Reply" to the two documents attached to the Judicial Disciplinary Counsel's Reply Brief, Exhibit 1 a Lawyer Disciplinary Board Investigative Panel closing document dated April 8, 2021 and Exhibit 2 the Judicial Investigation Commission minutes of a meeting of the Judicial Investigation Commission held by conference call on August 21, 2020.

By way of a general response to Exhibit 1, Judge Louise Goldston was subpoenaed to testify as a part of that investigation. She was unaware of Judge Stotler's letter to the Supreme Court which initiated the investigation which resulted in her statement being taken until after the Judge Stotler's letter was delivered to the Court. She did not initiate the letter from Judge Stotler and did not participate in drafting the letter. As a result of Judge Stotler's letter she testified pursuant to a subpoena to testify from the Lawyer Disciplinary Counsel. She sat for a deposition on the 29th day of April, 2021. The deposition was scheduled to begin at 9:30 o'clock a.m. and ended sometime after 1:00 o'clock p.m. She appeared with counsel. She states by counsel to this Court and to the best of her recollection and to the best of counsel's recollection there is nothing

that has been represented to this Court or to the Judicial Hearing Board which was inconsistent with her sworn statement taken by Disciplinary Counsel, Ms Cipoletti. The transcript of her statement was not provided to her.

The purpose of this Sur-Reply Brief is not to respond and assert any factual disputes she may have, or to assert any disputes to the conclusions contained in Exhibit 1 which she may have to that fifty-one (51) page report but rather to address arguments arising from that fifty-one (51) page report as it may relate to the case at bar or Exhibit 2 as follows:

1. The Judicial Disciplinary Counsel's Brief argues that the Respondent Brief states multiple facts not in evidence or supported by the record and that Exhibit 1 somehow provides proof of the same. It is not clear if Exhibit 1 or Exhibit 2 were submitted in support of that argument; Judge Goldston would point out that both the Brief by Louise Goldston as well as the Judicial Disciplinary Counsel briefing have made arguments that were based on information that may not be part of the transcript of the January 15, 2021 hearing held by the Judicial Disciplinary Hearing Board or exhibits provided to the Judicial Hearing Board. An example is footnote 3 on page 14 of the Judicial Disciplinary Counsel's initial brief wherein there was advanced an opinion on the authority of a Judge to conduct a view outside of the courtroom from the Family Court Judge representative to the JIC which stated that Judge Goldston's visit to Mr. Gibson's home was beyond her authority. That statement is not contained in Exhibit 2 and is not supported by the record. However, the record here is clear, that Judge Stotler as well as the Family Court Association

who has filed an Amicus Brief, and the Judicial Hearing Board (which requested clarity on this question) disagree with the conclusions reached by the Judicial Investigation Commission that a view like that performed by Judge Goldston is in and of itself clearly wrong and outside of any arguable authority of a Family Court Judge.

To the extent that any counsel may have advanced arguments that are based on evidence which was not in the record before the Judicial Hearing Board this counsel hopes that this Court gives all counsel the benefit of the doubt that they were exercising their duty of zealous representation of their client's position. Nonetheless, Judge Goldston would point out that she made those arguments in briefing to the Judicial Hearing Board when briefing was Ordered to be made by that body.

2. The Judicial Disciplinary Counsel argues that Judge Goldston's briefing to the Judicial Hearing Board violates her agreement with the JIC. See page 6 of the JIC's brief which it is submitted is contradicted by the record below. In Judge Goldston's initial brief and the corrected initial brief Judge Goldston, clearly states on page 2 and 3 and on page 25 and 26, and clearly advises the Judicial Hearing Board that she stands by her word and her agreement. She further clearly stated that she is not attempting to abrogate her agreement with the Judicial Disciplinary Counsel. Further on page 17 and 18 of her Reply Brief submitted to the Judicial Hearing Board she communicates the same statement as follows: that she made an agreement and that she will be bound by the same. She again stated that position in her brief to this Court.

3. The Judicial Disciplinary Counsel filed an Objection to the Judicial Hearing Board recommended ruling with regard to cost which they now acknowledge was a mistake.

4. The Judicial Disciplinary Counsel on page 4 and 5 (item numbered 8) of its reply to the West Virginia Family Court Association Response to JDC's Objection To Its Planned Motion For Leave To File An Amicus Brief argues other information not in the record.

5. There is nothing in Exhibit 1 which sheds light on the underlying question of law whether a Judge in a contempt hearing can go to a litigant's home so that litigant can purge themselves of contempt. On page 2 of the JDC's Supplemental Reply To The West Virginia Family Court Associations Filing of June 24, 2021 the JDC seems to acknowledge Judge Goldston's thinking when at Mr. Gibson's home in Reply to a request stated "Judge Goldston told Mr. Gibson she did not put people in jail for contempt."

Although Exhibit 1 discusses Judge Stotler's allegations and testimony of witnesses and dismisses the complaint, Exhibit 1 does not provide clarity on the questions of law herein presented or otherwise provide an opinion on a Judge going outside the courtroom to obtain a view to resolve factual disputes. Of course, after signing a sworn statement Judge Goldston will not change her factual answers. Judge Goldston again reiterates that she is willing to accept the agreement she entered into and she continues to acknowledge the binding effect of the admission she made prior to retaining counsel. However, she has since further looked into the body of law on Judicial Views and whether or not

Judges should be sanctioned for error as opposed to being sanctioned for clear violations which is part and parcel of this Court's final review. Although there is a finding by the Lawyer Disciplinary Investigation Commission (Exhibit 1) that the Judicial Disciplinary Counsel did not violate any professional rules of conduct for lawyers, it does not state an opinion on Judge Goldston's action in going to Mr. Gibson's home and does not advance the questions whether or not there was a clear violation of a judicial canon by Judge Goldston. Neither exhibit provides answers to the question of whether or not Judge Goldston's conduct violated a provision of her judicial code of conduct. It is requested that this Court provide clarity to the judiciary as recommended by the Judicial Hearing Board.

Respectfully Submitted
LOUISE E. GOLDSTON
FAMILY COURT JUDGE FOR THE
THIRTEENTH FAMILY COURT CIRCUIT

By Counsel



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CERTIFICATE OF SERVICE

I, Andrew S. Nason, counsel for the Respondent, do hereby certify that I mailed a true and exact copy of the ***Limited Sur-Reply Brief to the Judicial Disciplinary Counsel's Reply Brief Permitted by Order of this Court Entered August 19, 2021 and Received August 20, 2021*** to the following via regular United States mail, postage prepaid, on this the 27th day of August, 2021.

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