

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**IN THE MATTER OF:
HONORABLE C. CARTER WILLIAMS,
Judge of the 22nd Judicial Circuit**

**SUPREME COURT NO. 21-0878
JIC COMPLAINT NOS. 78-2021
& 81-2021
& 12-2022**

RESPONDENT'S BRIEF

**Counsel for Respondent
Honorable C. Carter Williams**

**J. Michael Benninger
W.Va. State Bar No. 312
Benninger Law PROFESSIONAL LIMITED LIABILITY COMPANY
P.O. Box 623
Morgantown, WV 26507
(304) 241-1856
mike@benningerlaw.com**

**Timothy R. Linkous, Esquire
W.Va. State Bar No. 8572
Linkous Law, PLLC
10 Cheat Landing, Suite 200
Morgantown, WV 26508
(304) 554-2400
tim@linkouslawpllc.com**

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RESPONDENT'S BRIEF

NOW COMES Respondent C. Carter Williams (Judge Williams), Judge of the 22nd Judicial Circuit, and submits this brief pursuant to Rule 4.11, West Virginia Rules of Judicial Disciplinary Procedure, Rules 10, 35(b), 36, and 38, West Virginia Rules of Appellate Procedure, and this Court's *Order* entered October 5, 2022. This brief sets forth the factual and legal basis for the objection¹ to the *Recommended Decision* (JHB RD) entered by the Judicial Hearing Board (JHB) on September 22, 2022, the response to *Judicial Disciplinary Counsel's Brief* (JDC Brief) filed November 17, 2022, and Judge Williams' requested disposition of the instant disciplinary case² initiated against him by Judicial Investigation Commission (JIC) and its counsel, Judicial Disciplinary Counsel (JDC).

INTRODUCTION

This disciplinary proceeding presents a set of factually, legally, and procedurally unique features. The genesis of this matter was the traffic stop effectuated on Judge Williams' vehicle at 7:25 p.m. on Sunday July 11, 2021, by a police officer employed by the Moorefield Police Department. The traffic stop and encounter between the police officer and Judge Williams was

¹ Although not mandated by Rule 35, Judge Williams will assign error herein for purposes of focusing his objection to the JHB RD and assertions made by JID and JDC in the JDC Brief.

² As reflected by the docket in Case No. 21-0608 (JIC Complaint Nos. 78-2021 and 81-2021), JIC and JDC first initiated extraordinary proceedings against Judge Williams on July 30, 2021, by filing their *Motion to Suspend without Pay and Memorandum Report of JIC/JDC Council* [sic] pursuant to Rule 2.14, *West Virginia Rules of Disciplinary Procedure*. By *Order* dated August 3, 2021, this Court deferred ruling upon the motion to suspend and, instead, referred the matter to the West Virginia Judicial and Lawyer Assistance Program ("WVJLAP") "so that the WVJLAP can expeditiously determine what type of medical professional, **and who the medical professional will be**, to perform the psychological or psychiatric assessment and evaluation" of Judge Williams concerning his fitness to serve as a judicial officer. (Emphasis added). The *Order* also adopted the voluntary agreement previously made between Judge Williams and Chief Judge Carl that any matter involving the Moorefield Police Department would be heard by Judge Carl during the pendency of the disciplinary proceedings. On August 30-31, 2021, Judge Williams underwent a comprehensive multi-disciplinary medical, psychological, and psychiatric evaluation at Vanderbilt University Medical Center, performed by medical specialists working in the Vanderbilt Comprehensive Assessment Program ("VCAP"), a WVJLAP-approved provider; and the reports of same were circulated and filed. Thereafter, this Court entered its *Order* on September 30, 2021, finding probable cause and remanding the matter to JIC for "proceedings in accordance with Rules 2.7(c) and 4," thereby effectively denying the motion to suspend and resolving the first disciplinary proceeding initiated by JIC against Judge Williams.

recorded in its entirety by the bodycam worn by the officer. The recording of the encounter reveals a “contentious”³ verbal exchange focused entirely upon whether West Virginia’s cell phone law⁴ prohibited a driver from holding a cell phone in his hand while operating a motor vehicle. Believing that the officer had not heard his explanation as to the actual scope of the cell phone law and had ignored his offer to examine his cell phone, Judge Williams persisted in expressing his then-existing frustration by contacting Lieutenant Burrows, his friend, and the person with whom he had communicated throughout the weekend on another police matter involving a missing person. Perceiving it necessary, despite not receiving a ticket, Judge Williams telephoned the former and current police chiefs to discuss the event as well as the scope and reach of the cell phone law. In the continuation of his response to being stopped for simply holding his cell phone in his hand and not using it as prohibited by statute, Judge Williams concluded by visiting his close long-time friend, Mayor Carol Zuber, to show her the statute and to discuss his concern that the local younger officers were not fully informed as to the legally proscribed conduct in the statute.

The unique legal feature of this judicial disciplinary proceeding is of constitutional magnitude.⁵ As pled affirmatively in the Third Defense in *Respondent Honorable C. Carter*

³ See Exhibit 27. By letter dated July 20, 2021, to JDC, Prosecutor See, the original complainant in this matter (at the same time he was determining what criminal charges to file against Judge Williams at the request of the Moorefield Police Department), acknowledged that he conducted an investigation of the July 11, 2021 occurrence “[a]t your direction,” and provided JDC and JIC with bodycam footage, affidavits, recorded interviews, CAD Report, CAD 9-1-1 Report, and “documentation of prior interactions between Judge Williams and West Virginia State Police in Hardy County.” Notably, Rule 2.2 mandates that JDC “**shall investigate all complaints**” made against judges, rather than delegate the investigation to a local prosecutor. (Emphasis added)

⁴ W. Va. Code §17C-14-15.

⁵ The Preamble and Scope [5] of the West Virginia Code of Judicial Conduct states that the Rules, “are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, decisional law, and with due regard for all relevant circumstances.” Further, Scope [6] commands that, “[a]lthough the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline.”

Williams' Answer and Affirmative Defenses, Judge Williams' personal conduct during this extrajudicial occurrence is protected by the First Amendment to the United States Constitution and Article III Section 7 of the West Virginia Constitution. On a number of occasions, this Court has acknowledged that, "[t]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers." *State ex rel. Wilmoth v. Gustke*, 179 W.Va. 771, 774, 373 S.E.2d 484, 487 (1988), citing *Houston v. Hill*, 482 U.S. 451, 462-463, 107 S.Ct. 2502, 2510, 96 L.Ed.2d 398, 412-413 (1987) ("Speech is often provocative and challenging... But it is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest"). Additionally, in *Hey*, this Court recognized that, when exercising its power to discipline judges, it has a "duty not to ignore judges' constitutionally protected rights", and, in that regard, this Court held,

3. The State's interests in maintaining and enforcing the judicial canons against judges' speech are sufficiently served by their specific prohibitions so that the general prohibitions in Canons 1, 2, and 3 of the Judicial Code of Ethics (and now the Code of Judicial Conduct) **may not be used to punish judges for their public remarks that do not concern a pending or impending matter and that do not violate either a specific prohibition or some other law.** (Emphasis added.)

Syl. Pt. 3, *In re Hey*, 192 W.Va. 221, 226, 452 S.E.2d 24, 29 (1994). Application of the Constitutional principles previously adopted by this Court, the United States Supreme Court, and other courts may very well be dispositive of the issues presented in this matter--those issues being purely personal, extrajudicial contact with police personnel following the traffic stop, the scope of which includes the manner, tone, and content of Judge Williams' speech.

The record reveals that at no time during this three-hour extrajudicial occurrence did Judge Williams ask any of these police officials to refrain from issuing him a ticket. Instead, it is undisputed that Judge Williams verbally requested, on at least 12 occasions during the traffic

stop, that the officer simply issue him a ticket. Lieutenant Burrows confirmed his willingness to receive a citation. The former police chief and the mayor described their impressions that Judge Williams just wanted to vent his frustration and he did so with people known to him within the police department structure. To a person, each stated that Judge Williams was acting in a manner demonstrably out of character for him. Speaking to Judge Williams' character at the time, Lieutenant Burrows described:

This behavior of Carter, in my opinion, is totally out of character. Over a short period of time, I have noticed some changes in his attitude and demeanor. I have been concerned for his overall health and well-being. I have been concerned that there may be some sort of medical issue that is causing his recent behavior and mannerisms. I believe he doesn't even know or recognize the degree to which his behavior has recently been changed and/or affected. (Ex. 24, 27, Lt. Burrows Affidavit).

Curiously, there have been two proceedings filed by JIC and JDC against Judge Williams, based upon this short-lived extrajudicial activity - the extraordinary one filed initially under Rule 2.14 and the two consolidated *Formal Statements of Charges* - both seeking to suspend and effectively remove him from the judicial position to which he was elected. In response to the initial filing, this Court, by *Order* entered July 30, 2021, in No. 21-0608, referred the matter to WVJLAP with specific instructions to objectively determine Judge Williams' fitness to serve as a judge. The *Order* further directed WVJLAP to independently select the medical professionals to perform the necessary evaluation, without control being asserted by JIC, JDC, or Judge Williams.

Having complied with this Court's *Order*, Judge Williams traveled to Nashville, Tennessee, and underwent VCAP's rigorous, multi-disciplinary evaluation, at his own expense. Upon completion of their evaluation, VCAP issued its *Final Report and Summary Letter REVISED on 9/23/21* and answered the sentinel question presented as to why Judge Williams

“egregiously overreacted”⁶ to the traffic stop. The answer provided by VCAP, WVJLAP’s own selected medical expert, which has been largely ignored and discounted by JIC, JDC, and JHB throughout the entirety of this judicial disciplinary proceeding, states as follows:

The exacerbation of a chronic and severe anxiety disorder in the context of worsening psychosocial stressors, and possible medication side effects, appears to be the cause of Judge Williams’ inability to self-regulate during and after the traffic stop. Judge Williams and collateral sources report that he has been contrite, apologetic, and cooperative since that time.

RECOMMENDATIONS

Based upon this evaluation and with a reasonable degree of medical certainty, Judge Williams is fit to practice at this time. (Ex. 71)

In spite of knowing that Judge Williams was deemed by VCAP to be fit to serve; had been laboring under clinically significant medical and mental health conditions at the time of his out-of-character, single episode of aberrant behavior on July 11, 2021; was taking a prescribed medication for allergies for which the FDA has issued a Black Box warning concerning serious neuropsychiatric events which include the side effects of agitation, aggression, depression, and sleep disturbances;⁷ had not engaged in a pattern of similar misconduct or other disqualifying conduct under Rule 2.7(c); lacked any lawyer or judicial disciplinary history; was honest and cooperative with JDC and others; and was introspective, genuinely remorseful, and accepting of full responsibility, JIC and JDC disregarded the overwhelming weight of the evidence and sought to remove him from the bench. JIC and JDC then proceeded with developing and

⁶ JHB RD ¶ 57.

⁷ See Ex. 71, which recites, “Judge Williams’ medications at the time, singly and/or in combination, may have contributed to both his increased tremor and belligerent attitude that he exhibited.” During the hearing, Dr. Findlayson spoke to the Black Box warning for the medication, “Singulair,” which Judge Williams had been prescribed and was taking prior to July 11, 2021. Those warnings included the risk of serious neuropsychiatric symptoms, agitation, aggression, depression, and sleep disturbances. Additionally, common side effects are listed as hostility, insomnia, obsessive-compulsive symptoms, tic, and tremor. Notably, since being informed of the serious risks of the medication by VCAP evaluators, Judge Williams has discontinued use of this medication and has no longer experienced any side effects similar to those observed on July 11, 2021. (Ex. 87).

projecting a number of false narratives concerning Judge Williams, and also his wife, through the two subsequently filed statements of charges. The fact that Judge Williams decided to exercise his due process rights in this challenging system does not mean that he has not accepted responsibility for the entirety of his behavior, as suggested by those prosecuting him, simply because he disagrees with the characterizations of his words and acts adopted and repeatedly asserted by JIC and JDC. (HT 06/15/2022, pp. 33-47.)

While Judge Williams first learned, during the traffic stop, that his driver's license had recently expired and has never disputed his lapse and violation of law in that regard, the basis of the stop being the use of his cell phone was the source of contention. Significantly, soon after the stop, Judge Williams was subjected to an unlawful misdemeanor criminal charge filed against him by Chief Rigglesman for an alleged violation of W. Va. Code § 17C-14-15. (Ex. 30). As noted below, Chief Rigglesman admitted during the hearing that no evidence existed that Judge Williams was using his cell phone at the time of the traffic stop and there was no probable cause for the citation to be issued.

JHB's conclusion that, "the instant case is much more than a traffic stop for cell phone usage and if the Respondent had behaved in a professional manner during the stop, this matter never would have resulted in a formal disciplinary proceeding," squarely calls the sentinel question into focus. (JHB RD, ¶ 51.) Indeed, this case has now evolved into much more because of the actions of others who have been charged with the duties of objectively evaluating his behavior within applicable constitutional, statutory, and professional regulatory rules based upon a fair and reasonable evaluation of all the evidence constituting the record in this matter. Unfortunately, the undisputed substantial evidence establishing Judge Williams' human, medical, and mental health conditions at the time of the traffic stop, which clearly caused and

contributed to his reaction, has largely been ignored. Likewise, the JHB RD does not address the significant constitutional right of free speech which protects Judge Williams' right to speak freely to Officer Johnson in the manner shown on the bodycam video recording and to speak with the other police personnel he subsequently contacted in the matter. In the absence of any evidence of illegal hindrance to Officer Johnson in the performance of his duties, or the use of any profane, obscene, vulgar, derogatory, or opprobrious language, Judge Williams had a First Amendment right to question and challenge the actions of Officer Johnson in this case.⁸

To the exact point, Judge Williams was attempting to express his concerns that the young police officers in that jurisdiction erroneously interpreted the scope and prohibition of § 17C-14-15, "[t]his officer advised Mr. Williams that you cannot have a cell phone in your hand while driving." (Ex. 24, 27, 28, Officer Johnson's Affidavit). The objective conclusion is that Judge Williams was subjected to an unlawful criminal charge, and is being maligned by the false narratives that he is a racist, a shoplifter, dishonest, uncooperative, and intended harm to Officer Johnson. To the contrary, there is no evidence in the record that he sought personal advantage or gain, abused his power and prestige as a judicial officer, or caused any public affront or loss of confidence in the judicial system. JDC failed to prove (inferred, intimated, or implied⁹) by clear and convincing evidence that Judge Williams' conduct, impacted by his then-existing medical and mental health state, should subject him to sanction.

⁸ The record in this case does not reveal any unprofessional behavior by Judge Williams which would have subjected him to any judiciary scrutiny if same had occurred in a courtroom while representing himself on the same issue. See Fn. 1, JHB RD, p. 5.

⁹ JHB RD, ¶¶ 13, 15, 21, 25, 27, and 29.

OBJECTION, ASSIGNMENTS OF ERROR, AND STANDARD OF REVIEW

In accordance with the requirements of Rules 10 and 38, this Court's exclusive power to sanction, and its "plenary" and "independent" *de novo* standard of review¹⁰, Judge Williams objects and assigns error to the JHB RD as follows:

1. The Findings of Fact set forth in ¶¶ 1 through 21 of the JHB RD, without reference or citation to any specific portion of the record, witness testimony, or exhibit, fail to elucidate for Judge Williams and this Court the evidentiary basis for JHB's conclusions that Judge Williams committed violations, as charged therein, by clear and convincing evidence; therefore, same are clearly erroneous.¹¹

2. The Conclusions of Law set forth in ¶¶ 7, 9, 11, 19, 21, 27, 29, 31, and 37 of the JHB RD, that Judge Williams committed violations, as charged therein, are not supported by clear and convincing evidence required by Rule 4.5 and the holding in *In re Ferguson, infra*.¹²

3. The Recommended Discipline and the findings of fact and conclusions of law set forth in ¶¶ 45, 46, 47, 48, 49, 51, 56, and 58 of the JHB RD are not supported by clear and convincing evidence as required by West Virginia law and are clearly erroneous because:

¹⁰ See *Matter of Goldston*, 246 W.Va. 61, 866 S.E. 2d 126, 133 (2021), *Matter of Starcher*, 202 W.Va. 55, 60, 501 S.E.2d 772, 777 (1998).

¹¹ See Rules 4.3, 4.5, and 4.8, W.Va. Rules of Judicial Disciplinary Procedure; Rule 52, W.Va. Rules of Civil Procedure; and holding in *Ellis v. Grant Thornton LLP*, 530 F.3d 280, (4th Cir. 2008). (A finding of fact is clearly erroneous when, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.")

¹² See *O'Dell v. Stegall*, 226 W.Va. 590, 203 S.E.2d 561 (2010) (Clear and convincing evidence is the highest possible standard of civil proof and "is the measure or degree of proof that will produce in the mind of the fact-finder a firm belief or conviction as to the allegations sought to be established.") The most comprehensive definition of clear and convincing evidence is set forth in the collection of cases cited in *Heaster v. Robinson*, No. 17-0558, May 14, 2018, WL 2193244 (unpublished West Virginia Memorandum Decision).

- (a) The JHB's reliance on *In re Ferguson, infra*, is misplaced as Magistrate Ferguson's conduct is clearly factually and legally distinguishable from Judge Williams' actions demonstrated by the full and complete record in the instant judicial disciplinary proceeding;
- (b) The JHB failed to fully consider and apply the factors required by the holding in *In re Cruickshanks, infra*;
- (c) The JHB failed to fully consider and give appropriate weight to the substantial evidence developed in this judicial disciplinary proceeding as a result of the referral of the matter to WVJLAP, the VCAP diagnosis of medical and mental health conditions and findings referable to Judge Williams' actions on July 11, 2021, and his strict, faithful compliance with all terms of his Monitoring Agreement entered into October 20, 2021, prior to charges being levied against him by JIC and JDC;
- (d) The JHB wholly failed to acknowledge that, but for the false narratives and appearances created by the filings made by JIC and JDC that Judge Williams was a racist or acted in a racially insensitive way, was a shoplifter acting with his wife at Wal-Mart, was dishonest, and lacked remorse, this matter would have remained a personal, extrajudicial encounter with police personnel and would not have been subject to viral internet publication;
- (e) The JHB wholly failed to consider Mr. Maher's uncontested expert testimony that the internet traffic and chatter following the posting of video and written content by the "civil rights lawyer" were predominantly produced by computer machine (BOT) and, thus, would have had only a *de minimis* effect on the public's perception of the administration of justice and Judge Williams' public persona;
- (f) The JHB wholly failed to consider the testimony of a number of witnesses who presented uncontested, credible evidence that the citizens in the counties where Judge Williams serves as a judicial officer do not ascribe to the belief that his actions on July 11, 2021, harmed or adversely affected the public's perception of the judiciary and the administration of justice, nor diminished public confidence in the honor, integrity, dignity, and efficiency of the judiciary;
- (g) The JHB failed to consider and weigh sanctions under Rule 4.12, other than suspension without pay, such as admonishment (especially applicable here due to this Court's *Order* referring the matter to WVJLAP and Judge Williams otherwise objectively qualified for consideration because there was no real factual or legal basis for JIC and JDC to allege "a pattern of similar misconduct" under Rule 2.7(c)); reprimand; or censure;

- (h) The JHB failed to exclude the “expert witness” cost assessment in the amount of \$4,500.00, for David A. Clayman, Ph.D., Clinical and Forensic Psychologist, who did not testify and authored two reports without having any contact with Judge Williams, first submitted post-hearing as Exhibit 1 to *JDC Proposed Findings of Fact, Conclusions of Law, and Recommended Decision*, as being unauthorized by court order and specifically contrary to this Court’s *Order* entered August 3, 2021, vesting WVJLAP with sole responsibility to determine “the medical professional” to perform the psychological and psychiatric evaluation and assessment of Judge Williams; and,
- (i) The JHB’s wholesale failure to consider *Respondent’s Post-Hearing Brief* and the substantial quantum of persuasive, uncontradicted evidence establishing Judge Williams’ medical condition, mental health status, existing state of mind, real intent and purpose of his challenge to being stopped by the police officer and his subsequent contact with other police personnel on July 11, 2021, and his challenge to the numerous BOT-generated internet content offered by JIC and JDC in support of the assertion Judge Williams’ personal, extrajudicial actions caused harm and adverse public opinion of the judiciary.

Judge Williams assigns these points as error and requests that this Court carefully review the entire record objectively despite the relentless adherence to the narratives and appearances assigned by others to his conduct.

STATEMENT OF CASE

As previously set forth in *Respondent’s Post-Hearing Brief*, the relevant statements of factual and procedural history are restated fully herein.

Judge Williams’ Background Information

Judge Williams is a lifelong resident of Hardy County, West Virginia. He graduated from Moorefield High School in 1984 and, thereafter, attended West Virginia University and earned his undergraduate degree in 1988. That year, he was admitted to the West Virginia University College of Law and graduated therefrom in 1991. (Ex. 15, pp. 4 and 5) After passing the West Virginia Bar Examination in July 1991, Judge Williams was admitted to practice law in this State on September 23, 1991. (Ex. 1, p. 1; Ex. 15, p. 5)

His law career began as an associate with the firm of Bowles Rice LLP in its Martinsburg office and, in 1993, he served as an Assistant Prosecuting Attorney in Hampshire County, West Virginia, until 1995. That year, he joined the Geary law firm, located in Petersburg, West Virginia, and worked there until he joined the West Virginia Attorney General's Office in 1999. (Ex. 15, pp. 5 and 6) Judge Williams worked for the next 18 years, until the end of 2016, as an Assistant Attorney General in various legal positions relating to the Bureau for Children and Families and Adult Protective Services. (Ex. 15, pp. 6-7) At no time during his 25-year legal career, prior to ascending to the circuit court bench in January 2017, did Judge Williams have any adverse ethics or legal disciplinary action or history. (Ex. 1, p. 19; Ex. 3, p. 4; Ex. 15, pp. 21-22) As a matter of fact, Judge Williams testified:

And, yes, Ms. Tarr, what I have said from day one, I was raised in such a way to respect authority. I have never been in trouble in my life. Never had an ethical issue in my life. I have tried to live my life as honestly and honorably as I can. This is not representative of who I am. Yes, what I did there is disrespectful to law enforcement. I was wrongly inappropriately defending myself.

(H.T. 06/15/2022, p. 68)

In May 2016, Judge Williams was elected in the 22nd Judicial Circuit to the circuit court bench for an eight-year term. His circuit includes Hardy, Hampshire, and Pendleton Counties. (Ex. 1, p. 1) These counties are primarily where he lived, worked, raised his family, and regularly engaged as an active member of the community. Notably, every witness speaking to Judge Williams' character described him as being known for his strong work ethic and good moral character and as being well-respected by his colleagues and staff. (HT 06/15/2022, pp. 126-127, 131-132) Long-time Hardy County Magistrate Craig A. Hose, serving since 1992 and having known him since grade school, provided insight as to his personal knowledge and observations of and feelings toward Judge Williams and testified:

I would say Judge Williams has the respect of the people in the courthouse, to my knowledge. I have not had anyone come to me and say, *I hope* – I mean, that’s what I’m saying. No one has ever come to me and say, *I hope he fries*, or, *I hope they nail him*. Or, they’re like, *What’s this regarding with Carter?* They call him Carter. Again, we live in a small town. I don’t want to say that – like Andy Griffith, but that’s true. We’re not Kanawha or Cabell County. And we’re a small town. Everyone knows everyone. And so the people say, *What’s this with Carter? That’s so unlike him*. And that’s what they say.

(HT 06/15/2022, p. 126) Magistrate Hose further testified, under cross-examination by JDC:

- Q. [Lanham] You testified that you think that Judge Williams is of high moral character; is that correct?
- A. [Hose] Judge Williams, yes. Yes, absolutely. I mean, church-going person. I know the lady he married from Mineral County. I went to college with her. His father is a well respected man from (Hasker) Industries, used to work for (Indistinguishable word). His mother ran a business here. All these Williamses in that family are respected, yes, sir.

(HT 06/15/2022, p. 127)

Moreover, Chief Circuit Judge H. Charles Carl, III, testified that he had no concerns as to Judge Williams’ fitness, character, and health to continue to serve with him as a circuit judge in the 22nd Judicial Circuit and that, “[h]e’s absolutely honest and trustworthy” and is hardworking and conscientious “[m]ore than anyone I know.” (HT 06/14/2022, p. 240) Judge Carl’s testimony further assured:

That’s how I feel about him. I mean, I have been around him all this time as a judge, as an attorney, and as a person. That’s not the kind of person he is. He’s not a thief. He’s not a criminal. He’s not a liar. He’s very -- he’s very trustworthy. He’s a man of integrity. If he tells you something, he’s going to do it. I don’t have any compunctions at all or any concerns at all.

Ultimately I’m responsible as Chief Judge for the administration of the court system there. I don’t have any problem with it at all. I can’t think of anybody that would do a better job than him.

(HT 06/14/2022, p. 241)

Judge Williams has been married to Tona C. Williams, a dentist, for approximately 18 years, and they are the parents of two teenage daughters. (HT 06/15/2022, pp. 129-131) Mrs. Williams related that, “my husband takes his job very seriously,” and that, “he has a work ethic that is unparalleled.” (HT 06/15/2022, p. 131) Around the time that COVID impacted judicial processes in early 2020, she observed Judge Williams having difficulty sleeping and “would get a couple hours sleep and just keep going,” and that, “he dropped 20 pounds very quickly,” and “[h]is heart raced all the time.” Mrs. Williams further related that, “[h]e had gone to doctors to try to figure out, you know, *Something is not right*. I don’t -- *Something is wrong with me*. I mean he -- yeah, we knew that there was something, you know not right. And finally he was diagnosed with anxiety.” (H.T. 06/15/2022, p. 133)

Judge Williams readily admitted, in hindsight, as to his general health condition that, “I wasn’t probably on top of my health the way I should have been, looking back.” (HT 06/15/2022, pp. 45-46) In fact, during their first telephone conversation, Judge Williams and JDC discussed the health problems related to his inability to sleep and caseload as issues troubling him in 2020. (Ex. 15, p. 121) In cooperating fully with JDC, Judge Williams provided medical releases so that JDC could obtain his medical records, and they have been made a part of the record in this proceeding. (Ex. 61, 62, 64, 65, 66, 67, 68, and 69) The medical records confirm Judge Williams’ description of the medical issues which caused his request for leave from work, provided during his sworn statement on October 6, 2021. (Ex. 15, pp. 125-128) The record reveals that, by letter dated February 11, 2020, Judge Williams requested temporary appointment of a senior status judge to fill in for him due to his evolving “personal health matters.” (Ex. 19) The next day, an Administrative Order was entered granting his request and

appointing SSJ Parsons to begin on February 24, 2020. (Ex. 19) Judge Williams returned to work in May 2020.

It was recognized by Chief Judge Carl that the caseload existing post-COVID was causing Judge Williams difficulty and contributing to his reemerging and worsening health condition. His hearing testimony reveals that:

- Q. [Benninger] From your contact with Judge Williams and your knowledge of his work habits, his work load, his conscientiousness, what was your assessment as a colleague of what he was experiencing as a judicial officer at that time?
- A. [Carl] We were -- we were extremely busy at that time. You know, the complications with COVID, we worked through that. We had trials. We were still having hearings. We were doing Teams -- whatever it was. I can't even remember what we were on -- either at that time Polycom or whatever. But we prided ourselves on keeping the efficient administration of justice in our circuit. And that -- it was, you know, I don't know, maybe that's not what you're looking for?

(HT 06/14/2022, pp. 224-225)

As it relates to his mindfulness of personal responsibilities concerning the renewal of the driver's license, the vehicle registration, his need for ongoing healthcare maintenance, and recognition of the consequences of his anxiety disorder, Judge Williams testified as follows:

- Q. [Tarr] You also deny engaging in a pattern and practice of misconduct as it relates to the three traffic violations that occurred between April and July; is that correct? Of 2021; is that correct?
- A. [Williams] I mean, I don't believe that makes a pattern. I would say the two things that expire, my operators for a couple months, my registration for several months. The context of that is, during that time, I pretty much just let my personal life lapse. I was coming off 90 days, 90 days, had five jury trials. One of which was six days. Six-day jury trial. One whole day to pick a jury. Multiple, many days of pretrial hearings. All the while all your cases, the world keeps spinning. I had three more jury trials during that time which were three days. Two of which were substantial civil trials, which are even harder because of the complexities of the causes of action and defenses. Another one, an armed robbery in our town, which I don't know that's ever happened, that Officer Burrows and Officer

Reckart actually testified in. That was three days. Very taxing. Through all that. And another one-day civil trial. Five jury trials in 90 days, during the time that these things were expiring. That's not an excuse. I never made an excuse. I should have been on top of it. I shouldn't have let my registration expire. I shouldn't have let my operators expire. But that -- that's the world I was living in.

I wasn't probably on top of my health the way I should have been, looking back. There's a lot of reasons, a lot of things that were going on. Not making an excuse. Don't have an excuse.

As far as the seatbelts go, yes, probably once in a while I forget to wear a seatbelt. That's probably true. I try not to. I probably do.

As far as Corporal Vaubel, when I pulled up to the checkpoint, he didn't remember I -- whether I had my seatbelt on. I don't remember if I had it on. I was in a white Ford Fusion because my truck had hit a deer. I had hit a deer a couple weeks before. It was in the shop. When I drove up, it was right after dark. They were conducting the checkpoint. I gave him my operators, and he said, *Where you going tonight, sir?* I said, *Up town to my office.* He said *Where's your office?* I said, *At the courthouse.* I didn't say I was Judge Williams. He looked -- he had his flashlight, he looked at my operators. He said, *Oh.* He recognized me. I had a hat on. I said, *Do you need the registration? It is a rental car.* He said, *No.* And I drove on. That was the context.

And I don't to this day know whether I had a seatbelt on or not. But, yes, probably there are times -- not often -- that I forget to wear a seatbelt.

Yes, I did roll a stop sign. It was prior to 2020. It was a workday. It wasn't a Sunday. And it wasn't in the warm weather, not in January. I don't know where that day came from. And I pulled over within 100 feet of where the officer was stopped. And during that time, I did not introduce myself first. I said, *I'm sorry that I rolled the stop sign.* I apologized to him. I said, *I should know better, I'm one of the Circuit Judges.* That's all I said.¹³

(HT 06/15/2022, pp. 44-47) These human circumstances were existing in Judge Williams' life

¹³ The January 20, 2020, rolling stop occurrence was the first encounter between Judge Williams and Officer Johnson of the Moorefield Police Department. It was cordial, uneventful, and did not result in any citation being given. Thus, Officer Johnson would have known Judge Williams prior to the traffic stop on Sunday evening July 11, 2021. (HT 06/14/2022, p. 52) And there was an acknowledgement by Officer Johnson that Judge Williams did not ask for any favors or utilize the prestige of his office to avoid being cited. *Id.*

and were illustrative of his condition during the relevant time period prior to the Sunday evening July 11, 2021 traffic stop and encounter with Officer Johnson (and the brief contact with other police personnel within the Moorefield Police Department which followed within two-and-one-half hours thereafter) and contributed to his reaction at issue in this proceeding.

In spite of everything that had been said and done, and the record now being complete as to Judge Williams' status prior to and existing on July 11, 2021, Carol Zuber, Mayor of Moorefield, West Virginia, and its Police Commissioner, testified unequivocally that:

Carter -- Carter Williams has impeccable character and a reputation. And he is a good man. And I think that that night, just like all of us at some point, sometimes just the littlest thing can aggravate us. But that was not Carter's normal. Carter is a well respected person in our community.

(HT 06/14/2022, p. 157) Likewise, Lieutenant Burrows testified:

He's been helpful with the church. A lot of people look up to Carter. People like me. Just everybody looks up to Carter. He's just a very kind man. I mean, any time you would see Carter, he always had a smile. He was always somebody that you can laugh with, joke with, even cry with if you needed to. He's just a really good man. His whole family. They are good people.

(HT 06/14/2022, p. 82)

JDC did not present any witness or a scintilla of evidence which contradicted or created any issue of fact as to Judge Williams' character and reputation and his existing medical and mental health conditions, workload, and life circumstances. These circumstances obviously contributed to Judge Williams' aggravation, demonstrated by Officer Johnson's bodycam video recording, after being stopped for holding his cell phone in his right hand (which was feared to be lost and had just been found under the seat of his car) as he proceeded home on Sunday evening after leaving the local ice cream and bakery shop where he had an outing with his family.

July 11, 2021 Traffic Stop and Encounter with Officer Johnson

On Sunday evening, July 11, 2021, Judge Williams and his family stopped at the ice cream and bakery shop in downtown Moorefield, West Virginia. The shop is owned by Scott Carlson and his wife. (HT 06/14/2022, p. 27; Ex. 15, pp. 23-24) Shortly after leaving the shop to travel home, Judge Williams realized he had lost his cell phone. He returned to the shop and spoke to Mr. Carlson. The search for the cell phone within the shop was unsuccessful, and so a call was placed to it, which returned a voicemail message. (HT 06/14/2022, p. 28; Ex. 15, pp. 24-25) Judge Williams then left the shop, entered his vehicle, and proceeded home to be with his teenage daughters who were there alone with friends. He admitted under examination by JDC that he was upset before encountering Officer Johnson at the time of the traffic stop. (Ex. 15, pp. 31-32) Judge Williams further testified:

So I headed home and you're talking a couple blocks. Main Street kind of goes down north and makes a bend a block or two from where we were. It was along there. the phone -- I heard something sort of thump or, you know, something comes out under your seat and I figured it was my phone. It was actually this phone right here, actually.

So I reached down to get it. It was on the side and it was -- I mean probably within seconds, I pulled it up and had it in my right hand like this, had a hold of the wheel like this. And as fate would have it, the officer was coming by and that's where it happened.

(Ex. 15, pp. 25-26) The cell phone records conclusively prove that Judge Williams was not using his phone at the time of the stop. (Ex. 26) Had Officer Johnson accepted Judge Williams' offer to look at the phone, the question as to whether he was "using" a cell phone, as defined by W. Va. Code § 17C-14-15(b)(8), would have been answered immediately at the scene.¹⁴

¹⁴ In spite of being offered the opportunity to review Judge Williams' cell phone records for July 11, 2021, during his sworn statement on October 6, 2021, (Ex. 15, p. 87) JDC falsely asserted in footnote 1 of the *Formal Statement of Charges*, filed on October 25, 2021, "[i]t is unclear whether Respondent was talking on the phone at the time. Respondent has repeatedly denied the same. However, Officer Johnson told Lt. Burrows that he observed Respondent talking." (Ex. 1, p. 4) Judge Williams' cell phone records (Ex. 26) and Officer Johnson's testimony

Officer Johnson recalled he was patrolling on U. S. Route 220, heading southbound, and Judge Williams' vehicle was observed traveling north at approximately 25 miles an hour. (HT 06/14/2022, p. 35) At that time, he "observed him have a cell phone in his right hand, so I conducted a traffic stop on him." (HT 06/14/2022, p. 35) The cell phone was in his right hand "on top of the steering wheel" and not by his ear or to the side or in front of his face. (HT 06/14/2022, pp. 35, 58) Officer Johnson further stated, "I activated my patrol vehicle's emergency lighting, spun around on him, and he came to a complete stop on Jefferson Street." (HT 06/14/2022, p. 36)

Upon making the traffic stop, confirmed by the bodycam video footage, Officer Johnson activated his bodycam recorder, made a radio report to dispatch, and departed his cruiser. (Ex. 22) The video recording clearly establishes that, when Officer Johnson approached the driver's side door of Judge Williams' vehicle, Judge Williams asked why he had been stopped. After Officer Johnson responded that he observed Judge Williams holding a cell phone in his right hand, they began verbally debating the lawfulness of holding a cell phone while driving a vehicle when it was not being used for any purpose. (Ex. 22) In fact, Officer Johnson admitted during examination that he did not observe Judge Williams at any time talking or otherwise using the

conclusively prove that he was not talking on his cell phone at the time of the stop. During his July 21, 2021 sworn statement to JDC, more than three months before the filing of the *Formal Statement of Charges*, JDC specifically asked, "Did you observe him talking?" and he responded, "I did not." (Ex. 44, p. 14) Officer Johnson confirmed his earlier statement, when he again unequivocally testified, "I did not see him talking." (Hearing Testimony, 06/14/2022, p. 58) After consultation with Prosecuting Attorney See, Chief Rigglesman thereafter caused Uniform Citation No. 160102021000024 to be issued in the Magistrate Court of Hardy County, West Virginia, charging Judge Williams with unlawful cell phone use, in violation of § 17C-14-15. (Ex. 31) Also, after reviewing the bodycam video and Officer Johnson's after-action report, which clearly indicated the officer had not seen him talking on the phone, Chief Rigglesman confirmed that, although a citation was issued against Judge Williams for unlawful cell phone use, there was no evidence establishing probable cause to have done so and he had no objection to the dismissal of the citation. (Hearing Testimony, 06/14/2022, p. 110, 118) To date, there has been no reasonable or factually based explanation as to why Judge Williams was ever charged with unlawful cell phone use under the circumstances of this case, or why JDC included Footnote 1 in the *Formal Statement of Charges*.

cell phone he was holding in his right hand. (HT 06/14/2022, p. 58) Importantly, Officer Johnson acknowledged the basis of Judge Williams' challenge to being stopped and testified:

Q. [Benninger] Okay. But we can agree that the sum and substance of the challenge -- the encounter that we have just seen on the video -- was over that? Was over him holding the phone, his belief that he wasn't violating the law, and he was trying to tell or show you that. That's what this encounter was really about; correct? In all fairness?

A. [Johnson] I'd say so.

(HT 06/14/2022, p. 59)

Specifically, the bodycam footage of the traffic stop and the entire encounter between Judge Williams and Officer Johnson proves that Judge Williams, in spite of being repeatedly questioned by the officer, did not attempt to avoid being given a ticket. Instead, he actually directed on numerous occasions (approximately 12 times) that the officer issue one; did not attempt to use the prestige of his office to advance his position to get out of a ticket; did not use any foul or profane language; did not use any racial terms or words; did not scream at the officer; did not exit his vehicle; did not obstruct the officer in any way; and did not do anything but challenge the accusation that he had been using his cell phone at the time of the stop in violation of West Virginia law. (HT 06/15/2022, p. 61; Ex. 22) In fact, contrary to Officer Johnson's testimony, the bodycam video shows that Judge Williams offered his cell phone to him for examination before departing. (HT 06/14/2022, pp. 58-59; Ex. 22)

Judge Williams described his behavior during the encounter with Officer Johnson this way: "For whatever reason on that day, I was going to defend myself, advocate for myself. Like Custer on his hill. And get -- die. And that's what it felt like. And that was the mode apparently I was in." (HT 06/15/2022, p. 58) The record is replete with Judge Williams' acceptance of

responsibility for his words and actions during the extrajudicial encounter with the officer.¹⁵

And, Judge Williams timely sent a letter of apology to the Chief of Police and Officer Johnson and personally apologized to Officer Johnson when free to do so after his testimony was completed on June 14, 2022. (Ex. 86; HT 06/15/2022, p. 38)

Post-Traffic Stop Telephone Calls to and Encounter with Other Police Personnel

Judge Williams made telephone calls to Lieutenant Burrows, Chief Rigglesman, and Detective Reckart (who was the Chief of Moorefield Police Department for a number of years), and made a visit to Mayor Zuber's home after being stopped by Officer Johnson. While, on its face, it is difficult to understand why he continued to argue the law relating to the use of a cell phone while driving, when he did not even receive a traffic citation at the time of the stop, Judge Williams explained to JDC when asked during his sworn statement:

I just think at the time -- at the time, a lot of things going on in my life and my health. I'm not saying it's an excuse. Things going on with my daughters, their health.

So we had come out of probably April, May, June, an impossible trial schedule. When I came back to work in 2020 after I had been off and part of February/March, part of April, things were slowed for a while because, you know, the court had closed courts and COVID, there wasn't that much going on.

When it finally did open, we -- we had to catch up. We've never caught up, frankly. And by the next year, this year, 2021 and those months preceding this, I think I even said this, nearly killed my staff. We had three or four civil trials. Three of them, multi-days, one of them six days, two of them, three days.

We were working, it seemed like around the clock. And while you're in trial, the world still spins and your other cases go on. Every judge deals with it. I know certainly, it's no different for any of the rest of them than me.

And my daughters have scoliosis and they'd had -- they'd had problems and we'd had issues with my daughters leading up to that. The year before, my daughter had back surgery. They both had to wear back braces. My one daughter still does.

¹⁵ See Judge Williams' July 16, 2021, self-report letter.

I found out in April that I had a lesion on my retina that could be progressive, genetic, which could be progressive, I could lose my sight in that eye.

I'm not saying any of this is an excuse and I said that in my letter, but at the time, just I feel like I was probably just like a powder keg that needed a little bit of a spark. I'm not saying -- I'm saying I made a federal case out of that and stayed angry and upset for a while.

(Ex. 15, pp. 57-59)

Contrary to the accusations made by JDC that Judge Williams acted with a motive to avoid responsibility for his actions and that he acted in a racially motivated way toward Officer Johnson, Lieutenant Burrows testified that, "Carter was willing to take the ticket to begin with," and it was her decision to call the officer simply to help diffuse the situation. (HT 06/14/2022, p. 68) She further testified that she did not think the use of the word "boy" by Judge Williams was racially motivated. When asked if she thought that the use of the words "thug" and "boy" in combination was in any way racially motivated, she said, "I still don't think so." (HT 06/14/2022, p. 91) When specifically asked if she felt Judge Williams thought her officers were thugs, she responded:

A. [Burrows] No, I know -- I think he was just mad. He was just having a bad day. Whatever has been going on here over a short period of time, I just think he was venting, just upset. I don't know what was going on.

Q. [Benninger] But it was different?

A. [Burrows] Yes, it was different, because he's never acted this way before, and he hasn't acted this way since.

(HT 06/14/2022, pp. 94-95)

When asked about questioning the police department's actions, Judge Williams explained:

Q. [Tarr] Lieutenant Burrows testified that you said your treatment from Officer Johnson makes you question Moorefield P.D. cases. Did you say that?

A. [Williams] I don't recall saying that. Don't recall saying it. May have.

Q. [Tarr] But again --

A. [Williams] And if I did, it was in the context of what I felt at the time was about the cell phone law. What he said at the stop was, "Can't have a cell phone in your hand." And I don't think that's clearly what the statute says. So if I said that, it was in that context. I don't think that when you have a clear statute, you should be able -- before you stop or cite someone, you should know what the word *use* means. That's my opinion.

(HT 06/15/2022, p. 85)

Likewise, Chief Riggleman testified that he had never had a negative courtroom experience with Judge Williams that would make him hold anything against him. (HT 06/14/2022, p. 95) Nor did Judge Williams' use of the word "boy" in his telephone conversation with Chief Riggleman lead him to believe that race was an issue:

Q. [Benninger] These preliminary matters, these preliminary matters -- he referred to Officer Johnson as *one of your boys*?

A. [Riggleman] Yes, sir.

Q. [Benninger] So you have eight or nine, ten [sic] officers?

A. [Riggleman] Ten now, sir.

Q. [Benninger] All young men?

A. [Riggleman] Yes, sir.

Q. [Benninger] And did you in any way take that tone, word choice, phrase, as racial in any way?

A. [Riggleman] Absolutely not.

Q. [Benninger] Got it. And that's not in this case as far as you're concerned; correct?

- A. [Riggleman] What's that, sir?
- Q. [Benninger] Race is not in this case?
- A. [Riggleman] No, not in my opinion.

(HT 06/14/2022, pp. 103-104)

As the reviewing supervising officer, Chief Riggleman testified about the bodycam video footage:

- Q. [Benninger] Was there anything about that footage -- which was the only encounter issue here for Officer Johnson -- where you felt as a reviewing officer of this encounter with one of your men, was anything -- someone challenging the stop, the basis for it, factually? Was it anything more than that?
- A. [Riggleman] Yeah. No, I would agree with you. He was challenging. But other than that, no.

(HT 06/14/2022, pp. 105-106) He further testified:

- Q. [Benninger] All told then, is it your impression now having experienced this contact with Judge William [sic], the phone call, specific, and all that you have learned through your department from discussing it with your people, your officers, that this was an out of character encounter that lasted a -- two or three hours on a Sunday evening; correct?
- A. [Riggleman] Yes, sir.

(HT 06/14/2022, p. 108) Importantly, Chief Riggleman confirmed:

- Q. [Benninger] At no time based on all of your knowledge of this encounter on Sunday evening, lasted couple -- three or four hours -- did you ever hear anybody ask that -- tell you -- or any evidence that Judge Williams ever asked for any favor, deferential treatment. Don't issue me a citation for anything, cell phone, driver's license, ticket, registration, whatever; that didn't happen, did it?
- A. [Riggleman] No, sir.

(HT 06/14/2022, pp. 110-111)

In continuing the outreach to familiar police personnel for the purpose of venting his frustration that his statements concerning the cell phone were not being heard or considered, Judge Williams telephoned Detective Reckart, who had just resigned on July 1, 2020, after serving a number of years with the Moorefield Police Department.¹⁶ Detective Reckart related that he had known Judge Williams for years, was well-acquainted with him, and had appeared before him in cases; and they spoke cordially. (HT 06/14/2022, p. 129) Judge Williams had on a prior occasion reached out to Detective Reckart by telephone “in regards to a problem at his father’s residence with his step-brother.” (HT 06/14/2022, p. 129)

As with the earlier telephone calls with Lieutenant Burrows and Chief Riggleman, Judge Williams remained upset, even though he had not received a traffic citation, and consistently vented about being stopped “for a cell phone violation,” when he simply was holding it in his hand. He stated that, “Officer Johnson didn’t care about his circumstances,” or “about how the cell phone and so forth came in his hand.” (HT 06/14/2022, p. 125) At no time during the brief telephone conversation did Judge Williams ask Detective Reckart to do anything on his behalf to enhance his position or to keep him from getting a traffic citation. (HT 06/14/2022, pp. 136-138)

In confirming the information provided by Judge Williams during their telephone call, Detective Reckart did watch the bodycam footage, acknowledged that Judge Williams repeatedly informed Officer Johnson that he was not using the telephone, and had requested Officer Johnson simply to give him a ticket. Detective Reckart understood the purpose of the call made to him to be “I think he was wanting me to listen to tell me about a situation that occurred. But he really never tried to elicit a response much from me, sir.” (HT 06/14/2022, p. 137)

¹⁶ Detective Reckart served for a period of 26 years with the West Virginia State Police and retired therefrom and is now serving as a municipal judge for Romney, West Virginia, and Moorefield, West Virginia. (HT 06/14/2022, p. 122)

Most importantly, Judge Williams did not threaten to change his view of any of the cases brought by the Moorefield Police Department pending before him, as suggested by JDC during the interrogation of Detective Reckart. (HT 06/14/2022, p. 127) In explaining his position, Judge Williams made clear that his “concern was that their officer clearly, to me -- to me -- didn’t know what the statute said when he was at the scene.” (HT 06/15/2022, p. 93) There is no evidence that any further relevant contact was made with or action was taken by Detective Reckart after the brief telephone conversation on Sunday evening, July 11, 2021.

The last person Judge Williams contacted after the traffic stop was his long-time friend Carol Zuber, and she related “it was not unusual for Carter to come visit me.” (HT 06/14/2022, pp. 140-141) Their relationship spanned decades and was not only personal, but, to some extent professional. Mrs. Zuber is the mayor of Moorefield, West Virginia, and the police commissioner of its police department. Judge Williams’ purpose for contacting Mayor Zuber was described by her at the hearing. Despite JDC’s assertions to the contrary, the following question and answer clearly prove that Judge Williams had no other motive or intent than to speak to a friend about what had transpired a couple hours before when the police officer involved would not listen or take any action to consider his statements that he was not using the cell phone at the time of the traffic stop:

- Q. [Benninger] Did you perceive him coming to you more as a friend just to vent or to explain that he wanted somebody to listen to him, that he wasn’t violating the law with regard to the cell phone?
- A. [Zuber] Absolutely. I think he came to me as a friend. And knowing that I just had taken office as Mayor, he was just kind of venting.
- Q. [Benninger] And the only thing that he said negatively -- as I understand it -- about the Police Department, was that they came unprepared sometimes, and he thought they should do better?

A. [Zuber] Yes.

(HT 06/14/2022, p. 150)

In relating the reason he went to see Mayor Zuber, Judge Williams stated:

I was -- I was still a little upset about it. Wanted to talk to a friend. That's why I went to see Carol Zuber. She's been a friend of mine for as long as I can remember. But I wouldn't say I was angry or irate. Anything like that.

He continued to explain that:

I took the statute. The cell phone use statute, highlighted what use meant. I gave it to her. I explained to her what Officer Johnson had said. I said basically to her, *They are on their cell phones, too.* And I said, *Basically if you're going to say I'm on mine, when I'm not, and you're on yours, you should make sure that it is on for official business.* That's what I showed her the statute. And I said, *I was concerned that he didn't know what the statute was,* which was clear to me as part of the reason I went.

(HT 06/14/2022, pp. 91-92) He further testified:

But, I mean, it is a small place. I mean, if you have concerns, you want the system to work well. So I wasn't giving any advice, but my concern was that their officer clearly, to me -- to me -- didn't know what the statute said when he was at the scene.

(HT 06/14/2022, p. 93) Mayor Zuber confirmed:

I mean, he was just upset when he came in. But, I mean, he wasn't like out of control upset. He was just visibly upset, that they wouldn't -- he wanted to show them, and they wouldn't -- he wasn't given that opportunity to show his cell phone. He was just upset about that.

(HT 06/14/2022, p. 142)

The record, as it directly pertains to the telephone calls with Lieutenant Burrows, Chief Riggleman, and Detective Reckart, and the visit with Mayor Zuber, is reasonably and credibly distilled to its essence: (a) Judge Williams had an emotional reaction to not being listened to or believed as to why and how he came to be holding the cell phone at the time of the stop and that he was not using it, as prohibited by West Virginia law; (b) Officer Johnson failed to understand

that West Virginia law did not prohibit a motorist from holding a cell phone at the time of operating a motor vehicle; and, (c) not one witness suggested, inferred, or testified that Judge Williams used his position or prestige of office to avoid being issued a traffic citation for any offense. In fact, the contrary is proved by clear and convincing evidence -- Judge Williams repeatedly requested that he be given a traffic citation as an alternative to continuing to debate the status of West Virginia law with Officer Johnson at the time and place of the traffic stop.

A careful and objective review of the bodycam footage establishes that the brief encounter between them was about nothing other than the fact a motorist was holding a cell phone, in the absence of any use of same, and a police officer's failure to understand the scope of a criminal statute he was attempting to enforce. This type of brief, lawful encounter between a citizen (albeit, a circuit judge engaging in personal extrajudicial activity) and a police officer is protected by the State and Federal Constitutions. Remarkably, the record conclusively establishes that at no time during his encounter with Officer Johnson or in his subsequent brief communications with Lieutenant Burrows, Chief Rigglesman, Detective Reckart, and Mayor Zuber did he ask for a favor, to be relieved of a traffic citation, or for any other personal benefit. These witnesses, called by JDC, all understood that Judge Williams was "venting" and communicating with them his frustration that Officer Johnson would not listen to his explanation as to why he was holding his cell phone and not using it as prohibited by § 17C-14-15.

Moreover, not one single witness provided a factual basis for or gave credence to the false narrative created in this judicial disciplinary proceeding that Judge Williams was a racist, that he spoke and acted in a manner which demonstrated a racial bias against Officer Johnson, or that he took any action to harm him as a member of the Moorefield Police Department.¹⁷ Even

¹⁷ The injection of race into this case is the first and most egregious false narrative created by JDC. It is only bested by its knowingly false assertion in its filings that Judge Williams and his wife appeared to have "shoplifted" from

Officer Johnson, in his July 21, 2021 sworn statement given to JDC, affirmed that Judge Williams only called him “a young man.” (Ex. 44, p. 8) In spite of the fact that Officer Johnson, Lieutenant Burrows, Chief Rigglesman, and Mayor Zuber all testified¹⁸ that they did not believe or construe that anything Judge Williams said or did as a result of the traffic stop was racial in nature, JDC injected race into this proceeding by their filings with this Court (*Motion to Suspend Without Pay and Memorandum Report of JIC/JDC Council [sic] Pursuant to Rule 2.14 of the West Virginia Rules of Judicial Disciplinary Procedure*, filed under seal on July 30, 2021 (¶ 59, p. 29, which declares, “[r]espondent’s language toward and about Officer Jonson has an appearance of being racially charged.”); (Ex. 1, p. 4). The racial overtones continued with JDC’s questioning of Judge Williams and how his encounter with Officer Johnson would be viewed in light of the recent George Floyd incident during his sworn statement on October 6, 2021 (Ex. 15, pp. 146-150; Ex. 85). In spite of all of the witness testimony to the contrary, the racial insinuations further continued, during Judge Williams’ June 15, 2022 hearing, when he was asked about Martin Luther King, Jr.’s interpretation of the word “boy” in his 1963 Birmingham, Alabama letter. (HT 06/15/2022, pp. 42-44)

Judge Williams responded to JDC’s persistent assertion that his use of the word “boy or one of your boys” as intrinsic evidence of his racial bias as follows:

their local Wal-Mart store when contrary facts were known from their interviews with Christine Crites, the Loss Prevention associate directly involved with and responsible for identifying all shoplifters and the only person who had firsthand knowledge of the occurrences involving Judge Williams. (HT 06/15/2022, pp. 9-29; *Respondent’s Motion to Dismiss and Incorporated Memorandum of Law Relating to 2nd Formal Statement of Charges*, filed under seal on May 23, 2022; Ex. 53, 54, and 55)

¹⁸ No witness testified that Judge Williams’ use of the word “boy” demonstrated any racial animus toward Officer Johnson. In addition, Prosecutor See stated, “I never even knew that that was a racist word until my assistant told me about how the -- I would’ve never known that and I can tell you I do not think Judge Williams is racist at all. I would use the word “boy” just like he would.” (Ex. 50, p. 16) Likewise, Chief Judge Carl stated that Judge Williams has never made any racial comments to him, “Absolutely not.” (Ex. 48, p. 21).

Q. [Tarr] You deny -- do you admit to calling Officer Johnson *boy* to Lieutenant Burrows?

A. [Williams] I made references to saying *your boy* or *one of your boys*, and I'm sure I said that to Officer Burrows. I think I said, *Your boy Johnson*. I said, *One of your boys*, to the Chief. He testified to that yesterday. I said in my statement, say it today, it is a term of speech. It is referencing younger men. I'm 56 years old. My nephews are in their 30s. I still call them *boys*. It was never meant to be anything racial at all. I'm not -- I'm not -- a lot of things, ma'am, I'm not a racist. I'm certainly not a thief. So --

Q. [Tarr] I'm sorry? Go ahead.

A. [Williams] Go ahead.

Q. [Tarr] You would agree that it creates an appearance issue, that --

A. [Williams] No, I would not.

Q. [Tarr] -- that you may be biased against African Americans; is that correct?

A. [Williams] No, I would not. Not from where I come from. And I didn't distinguish -- I made reference to Mayor Zuber that the force is made up -- they're kids. To me they're kids. They're boys. I'm not saying that's a terribly -- the best choice of terms. But in my references, it was to young officers. In retrospect, that's probably not the best way to say it. But I certainly didn't perceive it as any racial slander or disparagement or the appearance thereof. I have never -- I have never done that. I told you in my statement, my three best friends on the planet are African American men. One of which I have known all my life. One of which I have known since second grade. And one of which is like a son to me that's from Jamaica.

(HT 06/15/2022, pp. 40-41) Judge Williams summed up his disagreement with JDC's perception of his vernacular in these few words, "I had no intention whatsoever of that. I'm not at all racially motivated. And that never crossed my mind. It did not. Again, where I come from, yes, we come from different places." (HT 06/15/2022, p. 42-43) He concluded:

But regardless of that, and far beyond that, Ms. Tarr, I have had to withstand this and be called a racist in this culture, and a thief, and a liar. That's just about as

bad as you can be called. And I'm none of those, ma'am. I have never been. I'm a lot of things, I'm not those.

(HT 06/15/2022, p. 64)

Self-Report, Complaint, and JDC Actions

After receiving Judge Williams' verbal self-report by telephone on July 15, 2021, which was recorded without his knowledge and permission¹⁹, JDC opened Complaint No. 78-2021. (Ex. 11) Judge Williams followed his verbal self-report to JDC with his written one dated July 16, 2021. (Ex. 12) As a result of receiving Judge Williams' written self-report, JDC opened an additional Complaint No. 81-2021. By correspondence dated July 20, 2021, Hardy County Prosecuting Attorney Lucas J. See submitted his complaint against Judge Williams with attached documentation he had accumulated, prepared, and generated as a result of his conference with retired judge Donald Cookman and as directed by JDC.²⁰ (HT 06/14/2022, p. 172) Immediately thereafter, JDC conducted interviews and obtained sworn statements from a number of potential witnesses, including Officer Johnson, Lieutenant Burrows, Chief Riggleman, Steve Reckart, Judge Carl, Mayor Zuber, Prosecutor See, and Trooper Vaubel. (Ex. 44-51) A careful review of the documentation prepared and transmitted by Mr. See and the sworn statements taken by JDC reveal the manner in which the investigation began and was conducted and how the scope and focus of the inquiry shifted from a simple traffic stop and citizen-police encounter to something broader and more dramatic.²¹

¹⁹ HT 06/15/2022, p. 37.

²⁰ Judge Cookman retired in 2013, and the record is not clear why Mr. See sought his advice in this matter as opposed to first reporting his concerns to then-Chief Judge Carl. (HT 06/14/2022, pp. 172, 208-210) See also Ex. 27.

²¹ During this early time period, Judge Williams fully cooperated with each of JDC and JIC's requests for information, medical documentation (Ex. 61, 62, 63, 64, 65, 66, 67, 68, and 69), and urine test samples. (Ex. 60) In spite of his cooperation and candor, JDC informed him during one of their telephone conferences prior to his sworn statement given on October 6, 2021, that "I was going to be suspended." (HT 06/15/2022, p. 103)

**Rule 2.14 Motion, Rulings, Referral
to JLAP, and VCAP Evaluation**

On July 30, 2021, JDC filed its *Motion to Suspend Without Pay and Memorandum Report of JIC/JDC Council* [sic] *Pursuant to Rule 2.14 of the West Virginia Rules of Judicial Disciplinary Procedure* (filed under seal), seeking Judge Williams' immediate suspension without pay. The Court entered its order on August 3, 2021, deferring the motion and referring Judge Williams and the matter to the West Virginia Judicial and Lawyer Assistance Program (WVJLAP) so that it could "expeditiously determine what type of medical professional, and who the medical professional will be, to perform the psychological or psychiatric assessment and evaluation" upon Judge Williams and also adopting the agreement he and Chief Judge Carl made to switch criminal dockets so that Judge Williams would not preside over criminal cases in Hardy County due to concerns expressed by Chief Riggleman to Mr. See.

Judge Williams then contacted WVJLAP and made arrangements to be comprehensively evaluated at Vanderbilt University Medical Center through the Vanderbilt Comprehensive Assessment Program (VCAP) on August 30 and 31, 2021, at his own expense. VCAP's medical director, A. J. Reid Findlayson, M.D., issued the VCAP reports on September 21 and September 23, 2021, and concluded that Judge Williams was fit to practice with specific recommendations based upon his clinical and medication history, comprehensive medical evaluation, records and document review, and self-report information. (Ex. 70 and 71)

Upon receipt of the initial and corrected VCAP reports, JDC filed motions to supplement the record, as directed by the Court's August 3, 2021 order. By order entered September 30, 2021, the Court granted the motions to supplement the record with the VCAP reports, found

probable cause existed, and remanded the matter to JIC specifically for proceedings “in accordance with Rule 2.7(c) and Rule 4.”²²

Thereafter, Judge Williams and his counsel were summoned by JDC to its offices for a sworn statement on October 6, 2021, which statement lasted approximately 5 hours, was videorecorded, and made a part of the record. (Ex. 85) On October 20, 2021, Judge Williams agreed to participate and executed the WVJLAP *Monitoring Agreement* and acknowledged that United States Magistrate Judge Michael J. Aloï would serve as his Peer Monitor; and same was provided to JDC by Robert E. Albury, Jr., JD, LADC, Executive Director, by letter dated November 17, 2021. (Ex. 73)

Mr. Albury testified that initially he and JDC had a discussion concerning the use of Dr. Clayman as the expert to conduct the Judge Williams’ court-ordered evaluation. Specifically, he stated:

- Q. [Benninger] At that time did you offer or notify Judge Williams that Doctor Clayman was a -- one of the options as to JLAP-approved provider?
- A. [Albury] No. Terri Tarr, the disciplinary counsel, when I received the order and spoke to her, had indicated that she used Doctor Clayman. And I explained to her that he was not an approved provider. That his evaluations were limited to psychological. That our approved providers were multi-disciplinary team evaluations that included internal medicine evaluations, psychiatric evaluations, psychological evaluations, psychological testing including neuropsychological and cognitive screening, as well as clinical evaluations, collateral -- review of collateral documentation and collateral interviews. So, no, our best practices are more comprehensive when it comes to evaluation than (Indistinguishable words) would have provided for.

(HT 06/16/2022, pp. 7-8)

²² JDC and JIC disregarded the Court’s directive to proceed “in accordance with Rule 2.7(c)” and, in the absence of any of the seven factors enumerated which limit the issuance of an admonishment in face of a probable cause finding, subsequently issued two separate *Formal Statements of Charges*, thereby forcing Judge Williams to defend numerous charges including the objectively false ones asserting he was a racist and a shoplifter.

In spite of the evaluation being court-ordered and WVJLAP being directed to arrange same, and knowing Dr. Clayman was not an approved provider, JDC proceeded without consent of Judge Williams or approval from the Court to employ him to conduct a records review in this proceeding. Dr. Clayman, who is not a medical doctor or physician, created and prepared two reports, which were submitted by JDC as evidence, without interviewing or having any contact with Judge Williams, whatsoever, or being professionally qualified to evaluate and comment upon the medical and medication issues at the center of the mandated evaluation. (Ex. 79 and 80) Having done so, Dr. Clayman violated the controlling guidelines published by the American Psychological Association, as well as violated West Virginia law for which he can be subjected to professional discipline, pursuant to W. Va. CSR §§ 17-4-1, *et seq.*; W.Va. CSR § 17-3-6; W.Va. CSR §§ 17-6-1, *et seq.* (§12.6 states “Psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions.”)²³ His reports and anticipated testimony were subject to the challenge presented in *Respondent’s Motion in Limine* filed on February 1, 2022. Although the motion was withdrawn in anticipation of Dr. Clayman’s appearing as a witness at the hearing, he was never called to testify by JDC when it had the opportunity to do so prior to the close of the evidence.

Notably, Dr. Clayman’s reports were obviously designed to criticize and cast doubt upon the comprehensive VCAP report and the findings and recommendations it contained and opined:

Thus, there is no indication that Judge Williams was more vulnerable at that moment of the traffic stop than he would have been at any other time. It becomes unlikely that the circumstances can be attributed to montelukast or either of the other drugs alone or in combination. No trigger has been identified for his problems with Officer Johnson and his subsequent contact with city officials that

²³ JHB and the Court may take judicial notice, pursuant to WV R Evid 201, of the regulation cited as applied to Dr. Clayman’s reports submitted by JDC. (Ex. 79 and 80)

night. Also, Judge Carl did express some concern about how Judge Williams was presenting himself.

(Ex. 79) Dr. Clayman is not a licensed medical doctor or trained psychiatrist; and he possesses no professional qualifications to prescribe, monitor, or even comment on the side effects of any medication being taken by Judge Williams prior to the July 11, 2021 traffic stop encounter. (Ex. 78) Dr. Findlayson confirmed this fact during his testimony and stated:

A. [Findlayson] That is fair. The second -- the supplemental report that I was provided from Doctor Clayman's opinion was that stress, anxiety, and the effects of the Montelukast were possible, but not a likely influence. I - - I would -- go with the opinion of the internists that participated in his evaluation rather than Doctor Clayman's guess as to whether it was likely or not, especially since he hadn't even evaluated him.

Q. [Benninger] And he's not a medical doctor?

A. [Findlayson] As far as I know, he's not.

(HT 06/15/2022, p. 200) It is difficult for any objective review of Judge Williams' reaction during the July 11, 2021 traffic stop and subsequent behavior and his immediate prior medical and psychiatric history, including the use of Singulair with its known black box warning concerning known neuropsychiatric events, to reach any other conclusion than it had a contributing causal relationship to his actions on that day. (Ex. 87)

Moreover, the use of Dr. Clayman in this proceeding and the terms and conditions of the *Monitoring Agreement* was subject to critical exchange between Mr. Albury and JDC prior to the hearing. (Ex. 72 and 75) The conflict between JDC and WVJLAP is palpable and is demonstrated by the following exchange during the hearing:

A. [Albury] Well, as I said about the rule -- JIC's rule. And the order recognized us as an independent evaluation resources. If there's no indication of a treatable condition, then there would be no basis for which us [sic] to be involved.

And Brian, I feel like I have discussed this with you (Indistinguishable words). We are an independent, objective agency of the Supreme Court, established as a resource for JIC, as well as an assistant resource for members of the legal profession. I have no dog in this fight. You know, I'm just here to provide you what you need to hear. I don't know if it is what you want to hear. And provide assistance as well.

Q. [Lanham] Mr. Albury, I'm sorry if I offended you. I didn't mean to be adversarial. My question (Overtalking) --

A. [Albury] (Indistinguishable words) this has been an ongoing issue.

Q. [Lanham] I'm sorry. Let me rephrase the question. And if it comes across as adversarial, that's not what I mean.

Would you agree that the point of your job is treatment and not discipline?

A. [Albury] My -- the purpose of my job pursuant to our rule, and your rule, is to provide evaluations to determine whether there is any physical, mental, emotional or behavioral health issue which may be a mitigating factor for you to use in your investigation and decision. And if there is the criteria for our involvement, yes, for us to (Indistinguishable words) about the accountability and whatever mental, physical resource (Indistinguishable words) he way may [sic] require. So, it is a full load.

Q. [Lanham] Thank you, Mr. Albury. I apologize if I offended you. That was not my intention.

I have no further questions, Your Honor.

(HT 06/16/2022, pp. 36-38)

The issue of whether Judge Williams was required to voluntarily submit to an evaluation by Dr. Clayman, as requested by JIC, was conclusively resolved by Mr. Albury's direct testimony:

Q. [Benninger] Do you perceive as an agency of the court, acting under the August 3 order in 21-0608 that Judge Williams was ever required to submit to any additional evaluations unless Court ordered to do so in this particular matter?

A. [Albury] Will you repeat that?

Q. [Benninger] Can it be read back? I can do it.

In this particular case, since this was a Court ordered matter from our high court, August 3, 2021 case, 21-0608, commanding you to proceed on its behalf to have this JLAP evaluation, do you perceive that it was required of Judge Williams, absent additional Court order, direction from the Court, or this Board, to submit to any requests from anyone else, Doctor Clayman or anyone else, to submit any information, documentation, or an evaluation, other than as you prescribed?

- A. [Albury] No. And as I mentioned, both the JIC rule as amended, you know, and the Court have established and provided us an independent resource for JIC and the Court, for exactly the purposes of evaluation referrals.

(HT 06/16/2022, p. 29)

Five days after the *Monitoring Agreement* was executed, and after having available the Court's orders (and knowing its specific directives) and the VCAP reports, JIC issued its first *Formal Statement of Charges* on October 25, 2021. JIC later issued its second *Formal Statement of Charges* on February 14, 2022.

Wal-Mart

In spite of the wholesale lack of factual support and their lack of relevancy to the traffic encounter with Officer Johnson on July 11, 2021, and the contact with other police personnel later than evening, JDC included two Wal-Mart self-checkout "non-event" occurrences in its investigation and submission to the Court and JIC. Both occurrences involved accidental and innocent self-checkout mistakes made by Judge Williams because he became distracted by interactions with other persons during the checkout process. The first occurrence was in July of 2019, almost two years prior to July 11, 2021, and became an issue when Chief Rigglesman informed JDC of it during his recorded interview on July 21, 2021. The transcript of Ms. Crites' February 10, 2022, recorded interview reveals:

MS. CRITES: And both times it appears 100 percent that he was distracted.

MR. HUDSON: Distracted --

MS. CRITES: The first time was by an associate who knew him and walked up to him and was talking to him as he was finishing up. There was actually a receipt left from the customer before him. He's talking to the associate, he scans his merchandise, reaches over and grabs the receipt and they both walk out the door talking. So it was just pure 100 percent distraction.

MR. HUDSON: Okay.

MS. CRITES: And the second one, he certainly appeared to be distracted by a gentleman that was at another register that he started talking to.

(Ex. 53, pp. 3-4)

Without having any firsthand information of the occurrence because Detective Reckart handled it, Chief Riggleman related:

There was actually a shoplifting incident that occurred here at a local WalMart a year or so back where him and his wife in there shopping and they had a couple hundred dollars' worth of groceries and he just pushed the cart out, and then when WalMart made a deal out of it, they allowed him to come back and pay for the goods and no charges were filed out of respect of who he was. But I mean there's a point in time when, you know, your position doesn't let you get away with everything, so --

(Ex. 46, pp. 28-29)

JDC's investigator continued the questioning of Chief Riggleman, and the response was revealing as to his state of mind and supposition concerning Judge Williams:

Q. [Hudson] This is the first we're hearing about the WalMart incident. Can you tell us what you know about that date and where and what happened?

A. [Riggleman] It was the Moorefield WalMart and, honestly, like I said, I had actually recalled this now, just thinking about it. I would have to look up and research the date of the incident and WalMart, I'm sure -- I'm not sure if anything was even filed on our end. I know Detective Reckhart [sic] had handled that matter, but I know the Moorefield WalMart, they'll probably have a report on it.

And it may have just been an accidental thing. My understanding was at the time, him and his wife were talking to somebody and maybe they were

under the impression that one of them had paid for the groceries, you know, and they just kind of -- it was maybe an accidental situation, but I mean he was allowed to resolve it with WalMart. And I don't know if that was credit to his position or not.

I just feel, you know, if you're the Circuit Court Judge, you know, you of all people should be, you know, set an example. Say with me as Chief of Police, my way of living and the way I do things is completely different that I normally would have prior to this job. You know, we have a standard to set and it's just different.

Q. [Hudson] How long ago was that incident at WalMart? Do you have a ballpark? Year, two years, three years?

A. [Riggleman] It is probably within the past two years.

Q. [Hudson] And do you have any paperwork on that incident?

A. [Riggleman] I would have to go dig for it or look at our files here. I'm sure something was filed on it. It was either a daily occurrence, something was documented or there was a case file created. I'll just have to look for it.

Q. [Hudson] If I find it, what I can do is I can scan pdf or whatever and I can send it through that link if you guys want me to do that.

BY MS. TARR:

Q. [Tarr] This is Terri again. Can I ask you to -- if you have any paperwork on either or the traffic stops was [sic] well to scan that in and send it to us. My email address is Teresa -- let me know when you're ready.

MR. HUDSON: I can send it to him.

A. [Riggleman] Go ahead.

(Ex. 46, pp. 28-30)

In response to the request for documentation, Chief Riggleman provided JDC his written note titled, "Shoplifting," dated 7/21/20, and it was thereafter presented to the Court by JDC on July 30, 2021, in the Rule 2.14 motion as part of Exhibit 7 attached thereto. Neither Detective Reckart nor any Wal-Mart personnel (Christine Crites) involved in the occurrence was contacted

before the filing was made. However, in follow-up, JDC specifically inquired about the initial Wal-Mart occurrence during Judge Williams' sworn statement on October 6, 2021. In that regard, the following questions and answers specifically provide the entire limited scope of the inquiry:

- Q. [Tarr] There was an incident at WalMart where you and your wife supposedly left and didn't pay or forgot to pay.
- A. [Williams] That's been -- that's been a couple years ago. My wife wasn't there.
- Q. [Tarr] What happened?
- A. [Williams] I don't know what I was shopping for. I think I was at the -- there's a little square, self-checkout. There was a lady there that worked at WalMart that I knew. I was right on the end. I was talking to her. I'm pretty sure I put my debit card in. There was a receipt there.

I remember on the screen, it was exactly \$52. We laugh about it. The lady, she still works there. I grabbed the receipt, grabbed my stuff, went out the door. My wife wasn't with me.

The next day, I got a call from WalMart and they said that I hadn't paid. So I thought, Oh, my God, I rode back up and paid. I certainly didn't -- the lady was there. I was talking to her. There was a receipt there. I just didn't check it. I grabbed it and out the door.

- Q. [Tarr] Did you look at the receipt later to see if it matched the \$52?
- A. [Williams] I honestly don't know. I don't know that I even had it the next day, but I -- but I remember that because I even said something to her at the time, it's exactly \$52, but I don't know if it was a receipt of someone before me. I don't know. I don't know that.
- Q. [Tarr] And you were never charged with anything from WalMart?
- A. [Williams] No, I wasn't. No. And I certainly didn't intend to take off from WalMart? [sic]

(Ex. 15, pp. 118-119)

The hearing on the initial *Formal Statement of Charges* was scheduled for February 23, 2022. On February 10, 2022, 13 days before the scheduled hearing, JDC apparently learned from Chief Rigglesman that Judge Williams had an additional unintentional occurrence at Wal-Mart sometime in August 2021.²⁴ Also on that date, and notably for the very first time, JDC interviewed Christine Crites, the Wal-Mart Asset Protection Associate involved in both occurrences. (Ex. 53) During the interview, Ms. Crites informed JDC's investigator that there were only two occurrences -- one long before and one shortly after the July 11 traffic stop. Ms. Crites made it clear that she was the one responsible for evaluating self-checkout incidents, that Judge Williams had become distracted during both occurrences, and that his actions were unintentional and accidental. She agreed to provide video of the most recent occurrence. (Ex. 53, pp. 3, 4)

Ms. Crites did not inform JDC that Judge Williams' wife was involved in the first occurrence at the self-checkout station and was never asked before charges were filed as to the accuracy of the hearsay information provided by Chief Rigglesman and Detective Reckart (who, by the way, were two of the persons telephoned by Judge Williams shortly after the July 11, 2021 traffic stop by Officer Johnson because he was holding a cell phone in his right hand.)

During the hearing, Ms. Crites unequivocally testified that:

Q. [Tarr] Okay. Now at some point we were advised by Chief Rigglesman and Detective Reckart that one of the amounts was \$300?

A. [Crites] No, that's not true.

Q. [Tarr] Okay. And do you know why they would tell us it was \$300?

A. [Crites] I don't know.

²⁴ See *Respondent's Motion to Dismiss and Incorporated Memorandum of Law Relating to 2nd Formal Statement of Charges*, p. 4, (filed under seal on May 23, 2022).

Q. [Tarr] Okay. And then at another -- well, during the same conversation, we were advised that Judge Williams' wife may have been present at the first incident?

A. [Crites] No.

Q. [Tarr] So it is your answer that she was not present in the first incident?

A. [Crites] She was not present at the first one. He was by himself, until he started talking with our associate.

Q. [Tarr] Okay. So just to make clear, there were only two incidents where he left --

A. [Crites] That's correct.

Q. [Tarr] -- without paying. That's correct?

A. [Crites] That's correct.

(HT 06/15/2022, pp. 11-12)

Ms. Crites further confirmed the falsity of the allegations contained in the second *Formal Statement of Charges*:

Q. [Benninger] The fact of the matter is, you never told any police officer, JIC, Mr. Hudson, or anyone else that Mrs. Williams, Judge's wife, was ever in the store and was involved in either incident, correct?

A. [Crites] No, I have never said that.

Q. [Benninger] And yet in the filings made with this Court, and that got republished and published over again, it contained that information, did it not?

A. [Crites] It did.

Q. [Benninger] And it was absolutely false then and now?

A. [Crites] Correct. One of the reports even suggested that it was a woman other than his wife. One of the YouTube videos.

Q. [Benninger] And that -- that he took \$300 worth of merchandise, when in fact it was \$30?

A. [Crites] Correct.

(HT 06/15/2022, pp. 24-25)

Chief Riggleman was also contacted by JDC's investigator on February 10, 2022, and was questioned:

Q. [Mr. Hudson] Hey, I was calling to -- I talked to Terry this morning, and she was telling me that there's -- there was a second incident at this Walmart where Judge Williams may have walked out with something.

A. [Riggleman] Yeah, it was -- it was one of those deals, and yeah, like I told her, I don't -- I don't -- I have to go back and look, but I don't think anything was done on it. So I went down for a shoplifting complaint. I was working a case, and while I was down there, the asset protection woman gave me a picture of -- you know, it was Carter Williams. And I think the first time, it was like three or \$400 when he did it back, you know, a long time ago.

But this one here, I think it was only like a couple dollars, and he had like under-scanned or forgot to scan something. And I told her, I was like, if you have his number, just get ahold of him. And she called him, and he came down and resolved it.

Q. [Mr. Hudson] Okay.

A. [Riggleman] But I think the issue was, he was doing the whole scan checkout thing, and somebody came up and started talking to him. I mean, like I told her, it was one of those deals, you know, I -- it doesn't -- in my opinion, it has nothing to do with the case or whatever.

(Ex. 56, pp. 3-4) Chief Riggleman concluded, "but there was no case, there was no investigation, he was never charged. Walmart didn't want to pursue anything. I think it was just one of those, it was an honest mistake kind of deals." (Ex. 56, p. 5)

The next day, February 11, 2022, three days before JDC sought and obtained the second *Formal Statement of Charges*, a debate continued over the total confusion as to the date of the initial Wal-Mart incident (Ex. 57, pp. 12-17); however, Chief Riggleman admitted, "[s]o on the 7/20 or 21, whatever I wrote on that note, I have no idea. That could have been a date that you

guys had called to talk to me, and it could have been -- I have no idea.” (Ex. 57, p. 17) ²⁵ Chief Riggleman acknowledged, “it was just the one that Reckart had done whenever he did one, and I didn’t really have anything in that. I just -- you know, he just told me about it in the office. We were talking, and he told me about it.” (Ex. 57, p. 7) JDC was then given Reckart’s telephone number. (Ex. 57, p. 15)

Shortly after the Riggleman call, JDC contacted Detective Reckart and the date debate continued to be an issue, but what remained steady was, “they weren’t interested in pursuing anything.” (Ex. 58, p. 4) However, Reckart related false information about Judge Williams’ wife being with him and the value of merchandise allegedly involved, but did agree that “the associate as well as myself, didn’t pay much attention because we thought it may have been a mistake.” (Ex. 58, p. 7)

In spite of the fact that Judge Williams testified during his sworn statement on October 6, 2021, that his wife was not present, and the amount of merchandise involved in the initial occurrence was not \$300, neither JDC nor JIC bothered to simply contact Ms. Crites at that time. Ms. Crites was the only person to have firsthand knowledge and information (other than Judge Williams) as to the obvious inaccuracies of the uninformed hearsay reports of Chief Riggleman and Detective Reckart concerning who was involved, the value of merchandise, and the date of the initial occurrence. She was the only person who could have confirmed or refuted the alleged wrongdoing; and she did so unequivocally at the June 2022 hearing.

Judge Williams fully and credibly responded to JDC’s inquiry at the hearing as to why the August 18, 2021 Wal-Mart occurrence was not mentioned in response to the specific question posed to him concerning “an incident at Walmart where you and your wife supposedly left and

²⁵ The date of Chief Riggleman’s first interview by JDC was July 21, 2021 – not July 21, 2020.

didn't pay or forgot to pay." (Ex. 15, p. 118) In response to JDC's assertion that Judge Williams was not cooperative and was less than candid, the following relevant, credible testimony was provided:

Q. [Tarr] I'm going to ask you about Wal-Mart. In August of 2021, you left Wal-Mart without paying for items. Yes?

A. [Williams] Yes.

Q. [Tarr] In your sworn statement we asked you about Wal-Mart in general?

A. [Williams] No, you asked me specifically, Ms. Tarr, about an incident that involved my wife and me at Wal-Mart, where we apparently walked out with some items. I had reviewed Chief Rigglesman's sworn statement to you where he said that about that incident. But -- the August incident had not occurred when he made that statement. You asked me specifically about me and my wife. That was the incident specifically that you asked about. That you asked -- had you asked about any other Wal-Mart instances, I may have told you that. But under the circumstances, with what you heard Ms. Crites testify, what am I to report? That I didn't get charged? That I didn't steal something on purpose? I mean, I'm a human being. At the time I was under considerable amount of stress. You had called recently to tell me I was going to be suspended. That's a lot of stress. I had a medication change. It takes a while to get used to your medication. I had gone up town during my lunch hour to get a few items. I think I saw some toothpaste, deodorant, shampoo. During my lunch hour. It was \$30 dollars. In the middle of the day. I spent almost ten thousand a year, me and my family, at Wal-Mart, yearly, for the last three years. I averaged it out. I have been -- I have been shopping there for -- since it opened. I continued to shop there. I didn't steal anything. I never stole anything in my life. And so at some point, what part of my life do I have to continue to report? That's -- that's it.

Q. [Tarr] The incident occurred in August, correct?

A. [Williams] It was.

Q. [Tarr] Okay. And the question -- I'm going to ask you to read the question.

A. [Williams] I have read it.

Q. [Tarr] --1 through 3?

A. [Williams] “There was an incident at Wal-Mart where you and your wife supposedly left and didn’t pay or forget to pay.” I said, “that’s been a couple years ago. My wife wasn’t there.”

That was specifically -- you asked me about the Wal-Mart incident that Chief Rigglesman described in his sworn statement to you. Which by the way, was false about my wife and me. And has ballooned into something \$300 worth. But that aside -- that aside, that’s what you asked me about.

Q. [Tarr] So even though we asked you about the incident at Wal-Mart, and we didn’t know about the second incident at the time, and knew that we were interested in what happened at Wal-Mart, you didn’t tell us about that second incident?

A. [Williams] I did not. And I didn’t feel it was my duty to report that. You asked a question right before that, if I drove around with my shirt off. I assumed that you weren’t that interested in that either. I’m not sure if that’s a crime. So, I’m -- I’m not sure what I report.

Q. [Tarr] You would agree --

A. [Williams] A nonevent?

(HT 06/15/2022, pp, 102-105)

Notably, the troubling, false information concerning Mrs. Williams’ involvement in the July 31, 2019 Wal-Mart occurrence (Ex. 34d.; HT 06/15/2022, p. 25) and the \$300 value of merchandise was created from thin air by Chief Rigglesman based upon his vague recount of an office discussion he had with Detective Reckart. (Ex. 57, pp. 5, 7-8) Judge Williams was understandingly sensitized and focused on the egregious falsity of the unsubstantiated and unverified account of alleged felony misconduct by his wife and him, having read what was reported in Chief Rigglesman’s July 21, 2021 sworn statement (concerning his wife and the value of merchandise) before his voluntary appearance on October 6, 2021 for his sworn statement. Mrs. Williams testified during the hearing that she had to assuage her mother’s concern that she and Judge Williams had committed a criminal offense from the multiple media reports republishing false information gleaned from and contained in JDC’s second *Formal Statement of*

Charges. (Ex. 2) Mrs. Williams testified, “[s]he asked me if I paid it back. I said, *Mom, it never happened. It didn’t happen.*” (HT 06/15/2022, p. 141) She also had to explain to her daughters:

And I had to tell my daughters, you know, *When you read this, hear this, it is not true. When you see that mom and dad walked out of Wal-Mart with \$300 worth of stuff, you know, you have to tell your daughters. And they’re saying, Well, how can they say that, Mom. I said, Hon’, I don’t know. Someone is out to destroy your character, I guess they can say anything they want to say.*

(HT 06/15/2022, p. 140)

Christine Crites testified that, after reading the media reports of Judge Williams’ alleged shoplifting occurrences set forth in the second *Formal Statement of Charges* on February 24, 2022, she telephoned JDC and reported to Investigator Hudson:

Q. [Benninger] And did he tell you -- what did he say?

A. [Crites] “We understand that it wasn’t a shoplifting because you clearly said, and it looked like on the video, he had no intent. Right?”

And I answered, “That’s exactly right.”

Q. [Benninger] That’s the problem, isn’t it? They knew well in advance of the statement of charges being filed that got filed in the public Court file, and reported falsely --

MS. TARR: Your Honor, I’m going to object to him testifying. He can ask questions, but he’s testifying.

THE COURT: He’s allowed to lead. I mean, it’s -- he is cross-examining the witness. He’s allowed -- I mean just in the same way I let Mr. Lanham use the words he wanted to use to ask questions that Mr. Benninger didn’t particularly appreciate, I’m going to reciprocate and give him the same leeway.

BY MR. BENNINGER:

Q. That’s the problem? That’s why you called back because you conveyed to JIC, Mr. Hudson, a number of times before they come back and charge him with some impropriety reference Wal-Mart Two incident six weeks after this that was false; correct?

A. [Crites] Correct.

Q. [Benninger] And that was the public filing in false information that got reprinted and published over and over again that harmed not only him, but you?

A. [Crites] Correct.

(HT 06/15/2022, pp. 21-22)

Judge Williams' position as to his focus on the false accusations made against his wife and him by Chief Riggelman, and his response to the specific question referencing such accusations as explaining why he did not volunteer any information regarding another "non-event," is wholly substantiated by Prosecuting Attorney Lucas See's February 15, 2022, statement given to JDC during the telephone interview, one day after charging Judge Williams with numerous ethical violations:

Q. [Hudson] Yeah. And I know that you are one of the initial reporters by professional conduct standards that spoke with us. Why didn't we -- I mean, just for my -- why didn't we get a call about this one?

A. [Mr. See] I mean, because -- I mean, what was there to report, that he inadvertently paid for -- that he forgot to pay? I mean, it wasn't something that I would report it --

Q. [Hudson] Uh-huh.

A. [Mr. See] -- initially. I mean --

Q. [Hudson] Yeah.

A. [Mr. See] -- I have a duty to report, but I didn't think it was anything to report. It was completely unrelated, and it was an inadvertent -- I mean, he didn't commit a crime. He inadvertently didn't pay for something. What was --

Q. [Hudson] Okay.

A. [Mr. See] -- to report, was my position.

(Ex. 59. pp. 11-12.)

Mr. See's hearing testimony was equally compelling on the issue of the falsity of the information reported by Chief Rigglesman and Detective Reckart and included in the public filings made in this proceeding:

Q. [Benninger] So however it got out as to his wife and he walked off with \$300 of merchandise is absolutely false; correct?

A. [See] Correct.

Q. [Benninger] And in fact, you hold -- you are the chief law enforcement authority in your county? Yes?

A. [See] Yes.

Q. [Benninger] And you made an independent determination -- at least as to the second episode which occurred, what, August 18 of 2021, six weeks after the encounter with Officer Johnson -- that there was no probable cause or evidence to charge Judge Williams with any shoplifting offense?

A. [See] In fact, when I spoke with Chief Rigglesman, I said, "Do you think Judge Williams is a thief?" And he said, "No." And I said, "Well, we're not going to treat him like a thief then, so he shouldn't be charged."

Q. [Benninger] How about Christine Crites? We're going to hear from her.

A. [See] Christine Crites felt the same way. I think it was obvious from the video it was inadvertent. I mean, he's talking to somebody.

(HT 06/14/2022, pp. 188-189, Ex. 33)

The record is replete with numerous false reports of Judge Williams being a racist, a shoplifter, and abusive in using his position for his personal gain, (Ex. 39) which were broadcast in the written and internet media, derived from, and based upon the filings made by JDC and JIC. Initially, the bodycam video footage of the traffic stop was released by the Moorefield Police Department pursuant to Attorney John H. Bryan's e-mail FOIA request dated November 4, 2021, which referenced a West Virginia Record media report following the filing of the *Formal Statement of Charges* on October 25, 2021, which specifically referenced race and identified

Officer Johnson as an “African American.” (Ex. 82) After the release of the bodycam video, online media posts concerning the incident exploded, without any apparent verification for accuracy of reporting. The West Virginia Record publication of November 17, 2021, attributes contrived, false, malicious, and defamatory quotes to Judge Williams which have no basis in fact, and no evidence has been presented in this proceeding to support them. (Ex. 39)

Disturbingly, the West Virginia Record, on June 13, 2022, one day prior to the commencement of the hearing in this proceeding, reported without qualification that, “Hardy Circuit Judge C. Carter Williams has been accused of shoplifting at least twice from the local Walmart.” (Ex. 81) These false and harmful publications could have been avoided had there been a single telephone call made by JDC to Ms. Crites to verify Judge Williams’ sworn statement testimony, given on October 6, 2021. Ms. Crites would have readily confirmed, as she did under oath at the hearing, that his actions were accidental and unintentional, that his wife was not present, and that the value of the merchandise was not \$300.

In additions, had any credence been given to and follow-up investigation had been conducted as to the photographs and testimony he provided concerning his lifetime relationship with close friends and colleagues who happened to be persons of color, there should have been no issue of race injected into this disciplinary proceeding . (Ex. 15, pp. 152-154; Ex. 35) Attorney Joyce Stewart and Pastor Daniel Stearns both testified, as people of color who have had decades of contact with Judge Williams, that he has never demonstrated any racial bias or animus. (HT 06/15/2022, pp. 147 and 221) Likewise, Officer Johnson, himself, as well as Lieutenant Burrows, Chief Rigglesman, Detective Reckart, and Mayor Zuber affirmed Judge Williams’ lack of any racial bias.

JDC's knowing disregard of evidence contrary to its theory of the case, provided by Ms. Crites to JDC's investigator, Mr. Hudson, when she called to complain about the false media reports of the Wal-Mart occurrences is demonstrated by the following:

MS. CRITES: Well, I'm a little concerned.

MR. HUDSON: Why's that?

MS. CRITES: There was an article that was printed today in the Hampshire County Review --

MR. HUDSON: Uh-huh.

MS. CRITES: -- regarding new charges against Carter Williams, and it had some statements in there regarding Walmart that were just a little bit off. It said that he shoplifted twice, and that one time the value of the merchandise was over \$300, and Walmart chose not to prosecute. And I'm a little concerned about these statements that they have in there.

MR. HUDSON: Are the -- the statements, are they what the news -- I haven't seen the article -- are they what the newspaper is saying that -- because you know, they --

MS. CRITES: Yeah. It's an article on Facebook under Hampshire County Review --

MR. HUDSON: Uh-huh.

MS. CRITES: -- which is the Hampshire County newspaper.

MR. HUDSON: Yeah, but if they obtain the information from the court in the -- in the filings, we can't really do anything with what they obtain and how they infer if it's a shoplifting or if it's not. We understand that it wasn't a shoplifting, because you clearly said, and it looked like on the video, he had no intent, right?

MS. CRITES: That's exactly right.

(Ex. 55, pp. 2-3, 4-5)

In speaking to the issue of adversity upon the judicial system, Sheriff Steven Dawson of Hardy County and Sheriff Nathan Sines of Hampshire County both affirmed that they did not

perceive any adverse effect upon the legal system and their administration of justice in their respective counties. (HT 06/15/2022, pp. 155 and 164) Former state delegate and former county commissioner, Harold Michael echoed the sentiments of both Sheriffs when he testified as follows:

Q. [Benninger] Have you had the opportunity to be out and about and among the people, conversing with them, listening and talking, and do you have an opinion in whether this event as reported has been negatively or positively as its been would have an adverse effect on his ability to continue judging in your circuit?

A. [Michael] Yes, I have a strong opinion of that. I don't think it would have any effect on his ability to continue as judge at all. He's done a superb job as judge. Just -- I dealt with him when he was with the Department of Human Services years ago, child abuse and neglect cases, that kind of stuff, so I know his work ethic. But when I became a County Commissioner, it was very apparent to me that Judge Williams would -- not only had the best work ethic of anybody I knew, he was there early and stayed late, and he handled a lot of cases. But he was instrumental in helping the County Commission, and particularly our Regional Jail situation where we went from \$75,000 a month to down about \$30,000 a month as far as what it is costing Hardy County taxpayer. [sic]

So, yeah, not just me personally, but people I have talked to, they just don't understand what all -- what all this commotion is over, to tell you the truth. Or why there's been sort of what appears to me to be some kind of vendetta against Carter.

(HT 06/15/2022, pp. 251-252)

Likewise, David Maher testified that a significant number of the internet media posts were computer machine (bot) generated comments made in response to the initial posting of YouTube video content by the "Civil Rights lawyer." Mr. Maher testified that 44% of views were bots and,

[t]here's no way to tell from a public perspective where those people are coming from. The only thing you could see is that the ratio of West Virginia traffic would

apply to most Web activities. So comments, views, everything would fall within that ratio of half a percent coming from West Virginia.

(HT 06/15/2022, pp. 242, 243-244) In sum, JDC produced no witness or evidence that any of the internet statements and posts submitted by JDC were written or created by actual, live persons, much less any persons living in West Virginia. In contrast, Judge Williams produced undisputed evidence through numerous witnesses, including former and current elected state and county officials, that contradicted the assertions by JDC that his conduct had any adverse effect, perceived or otherwise, on the judiciary and his ability to serve as a Circuit Judge in the 22nd Judicial Circuit.

Assigning blame to Judge Williams for bringing harm to the judiciary, under the totality of the circumstances presented here, is clearly **not** appropriate and wholly inconsistent with the purpose of judicial discipline and the rights and responsibilities of the participants in the process.

Formal Statements of Charges and Answers

JIC issued its first *Formal Statement of Charges* against Judge Williams on October 25, 2021, and it was filed with the Court on October 25, 2021. It contained 11 discrete charges, with each charge containing multiple allegations of violations of the Code of Judicial Conduct, set forth in 61 numbered paragraphs. Notably, in an obvious attempt to bring the case within one or more of the exceptions to admonishment contained in Rule 2.7(c), JDC and JIC asserted in Charge XI that Judge Williams “engaged in a pattern and practice” of using his public office for private gain and in violating state traffic laws. (Ex. 1, p. 19) In response, Judge Williams timely filed *Respondent Honorable C. Carter Williams’ Answer and Affirmative Defenses* on or about November 23, 2021. (Ex. 3) The affirmative defenses presented provide a clear road map to the factual, constitutional, and procedural positions asserted by Judge Williams and developed during the prehearing and hearing proceedings and relied upon and discussed below.

On February 14, 2022, JIC and JDC issued and filed their second *Formal Statement of Charges*,²⁶ relating solely to the two Wal-Mart occurrences referenced above. The dates of those occurrences are July 31, 2019, and August 18, 2021. (Ex. 2) Again, in response, Judge Williams timely filed *Respondent Honorable C. Carter Williams' Answer and Affirmative Defenses* on or about March 14, 2022. (Ex. 4) Like before, his responsive pleading to these charges also provide the factual, constitutional, and procedural defenses being asserted. Each of the charges made against Judge Williams are based upon his personal and extrajudicial activities, unrelated to the administration of justice and his judicial activities.

Pre-Hearing Discovery, Motions, and Proceedings

Subsequent to the filing of each *Formal Statement of Charges*, Judge Williams and JDC engaged in written discovery, and the relevant disclosures are made a part of the record. In contemplation of the hearing scheduled for February 23, 2022, and after learning that Chief Judge Carl suffered a heart attack the week before thereby becoming unavailable as a witness for both Judge Williams and JDC, Judge Williams filed *Respondent's Motion to Continue Hearing* on January 25, 2022. By order entered February 1, 2022, the Chairperson denied the motion to continue and granted leave to the parties to submit a stipulation of his testimony or to schedule a post-hearing proceeding to present Judge Carl's testimony before the close of the evidence. On February 1, 2022, Judge Williams filed *Respondent's Motion in Limine*, seeking the exclusion of online media, social media, and video posts on the internet, Dr. Clayman's "synopsis report," dated January 26, 2022, and extrinsic "other acts evidence," under Rule 404(b). Following the prehearing conference on February 4, 2022, the Chairperson entered an order on February 9, 2022, denying the motion regarding media evidence but reserving the right, until after the

²⁶ Judge Williams was not provided any opportunity to file a written response prior to the issuance of the additional charges as required by Rule 2.3.

evidentiary hearing, to weigh and consider such evidence and memorializing the withdrawal of the objection to Dr. Clayman's evidence and JDC's withdrawal of its intent to introduce uncharged "other acts evidence."²⁷

Following the filing of the second *Formal Statement of Charges*, Judge Williams filed *Respondent's Motion to Dismiss and Incorporated Memorandum of Law Relating to 2nd Formal Statement of Charges*, asserting three separate grounds supporting dismissal of the charges filed relating to the two Wal-Mart occurrences. By order entered June 3, 2022, the Chairperson denied Judge Williams' motion without prejudice to raise the issue at a later time. Counsel for Judge Williams renewed the prehearing motions at the conclusion of the hearing. (HT 06/16, 2022, pp. 59-60) Lastly, on June 24, 2022, JIC and JDC filed its *Motion to Supplement the Record Post Hearing*, to which Judge Williams filed *Respondent's Response to JIC/JDC Motion to Supplement the Record Post Hearing*. By order entered July 7, 2022, the Chairperson denied the attempt by JDC to add yet another YouTube video to the evidentiary record.²⁸ The evidentiary record having been closed at the conclusion of the hearing on June 16, 2022, and the transcript of the hearing and other proceedings having been prepared and filed, the following proposed findings of fact and conclusions of law are ripe for consideration by this Court.

Compliance with *Monitoring Agreement*

The testimony of Mr. Albury and Judge Aloï confirm the commitment made by Judge Williams to adhere to the rigorous conditions of this WVJLAP *Monitoring Agreement*. Mr. Albury testified in relevant part:

²⁷ Even though Dr. Clayman was listed as an expert witness by JDC, he was not called to testify at the hearing. The "other acts evidence" at issue was comprised of other alleged uncharged traffic offenses, without meaningful factual specification, prior to and after Judge Williams ascended to the bench and the July 31, 2019, Wal-Mart occurrence reported by Chief Rigglesman and subject to the specific inquiry during Judge Williams' sworn statement.

²⁸ The Court's docket sheets in Case Nos. 21-0608 and 21-0878 provide the action log of the filings in each case and their consolidation.

- Q. [Benninger] Can you give us a summary of his compliance, and in your opinion, his performance under the monitoring agreement?
- A. [Albury] Well, he has maintained and continued to maintain compliance. He has embraced the opportunity -- or he has embraced the monitoring, this core structure and accountability, as an opportunity rather than an imposition. He has made every effort to comply and to maintain contact with us and participate in JLAP functions, such as our annual retreat, weekly support group. He's developed personal peer relationships with other members of lawyers and Judges who are members of the support group. So, yeah, he -- from a compliance standpoint, I will say there has been no evidence of any -- what I would refer to as emotional relapse, behavioral relapse, or from an historical perspective, which somebody had previously mentioned. Now we're going on ten months. There's been no evidence of any dysfunction on the part of (Indistinguishable words).

(HT 06/16/2022, pp. 23-24)

Moreover, Judge Williams' peer monitor, Magistrate Judge Aloï, testified:

- Q. [Benninger] Given that have you actually served a number of years as a Circuit Judge, a trial court judge, and now as an active Federal Magistrate for years, do you see any risk factors, or potential adverse problems that he may -- given his anxiety and depression diagnosis, the medication and the counseling, and follow-up care that is mandated, and he's following through this time, the -- that we should be aware of? Or have you talked it out already?
- A. [Aloï] No, I see -- I see no risk factors whatsoever. And let me -- let me say this in context: We are all at risk every day we're on the bench. We are at risk in that we're exposed to trauma in every way. I think Judge Williams is, quite frankly, in a better position to be less risk because he's worked hard, at least in the last year, as to really gathering the tools that help you to deal with those things. Whereas a lot of judges, we just have never done that. He understands the triggers in a way that a lot of us don't. He already has a built-in support system, with me, with the recovery group of lawyers and judges, with his counselor, with the psychiatrist. He has a stronger, probably, support system than any of us do.

And so with that, that gives me increased confidence that he is in a good position to deal with those moments when they happen -- when they happen.

And in terms of remorse and regret about this episode that happened with the police officer, and the follow-up, the other officials, that remorse and embarrassment and humiliation is deep. It is long lasting. It has been life changing. And I -- he has learned about that in a way that -- that I think it made him a better judge and better person.

(HT 06/16/2022, pp. 52-53) Judge Williams' diligence and persistence in complying with the strict requirements of his monitoring agreement through the date of the hearing is documented in the *WVJLAP Log* submitted to JHB. (Ex. 83)

JHB's Recommended Decision

The JHB RD upon which this Court may act is strikingly deficient in a number of important ways. First, it is utterly devoid of any findings of fact referenced to any record evidence. There is no citation to the hearing transcript, any witness testimony, or any exhibit admitted in the proceeding. Next, the recommended decision does not provide any analysis of, reference to, or noted weight, credibility, or persuasiveness of any evidence it has found to establish clear and convincing evidence as to any charge made against Judge Williams in this judicial disciplinary proceeding. Because Rule 4.3 informs that the rules of civil procedure and evidence apply in this proceeding, the command of Rule 52 requiring such findings of fact and reasoned conclusions of law has been violated.

To the extent this Court finds that the recommended decision is entitled to any deference, then Judge Williams objects to and asserts the conclusions of law set forth in ¶¶ 7, 9, 11, 19, 21, 25, 27, 29, 31, and 37 are not supported by clear and convincing evidence. Judge Williams does not object to the conclusions of law set forth in ¶¶ 13, 15, 17, 23, 33, and 35. Further, Judge Williams does object to ¶¶ 45, 46, 47, 48, 49, 51, 52, 56, 57, and 58. The objections are based upon the relevant facts set forth above and the argument made below.

ARGUMENT

A. WITH THE EXCEPTION OF THE ADMITTED VIOLATIONS OF RULE 1.1 RELATING TO MINOR TRAFFIC OFFENSES, ALL OTHER CHARGES CONTAINED IN THE FORMAL STATEMENT OF CHARGES ISSUED OCTOBER 25, 2021, SHOULD BE DISMISSED BECAUSE THEY INFRINGE UPON JUDGE WILLIAMS' CONSTITUTIONALLY PROTECTED FREE SPEECH RIGHTS.

While it is clear that this Court is the final arbiter of whether Judge Williams' speech and conduct, on July 11, 2021, violated the Code of Judicial Conduct, it must not ignore its duty to protect his constitutional right to criticize and challenge Officer Johnson as a result of the subject traffic stop. *In re Hey*, 192 W.Va. 221, 226, 452 S.E.2d 24, 29 (1994). Such speech, no matter that it was provocative, challenging, contentious, or an egregious overreaction is protected against censorship and punishment under the holding in *Houston v. Hill*, 482 U.S. 451, 462-463, 107 S.Ct. 2502, 2510, 96 L.Ed.2d 398, 412-413 (1987). As noted above, this Court adopted the holding in *Hill* in its decision in *State ex rel. Wilmoth v. Gustke*, 179 W.Va. 771, 774, 373 S.E.2d 484, 487 (1988). Because Judge Williams did not use any "fighting words or opprobrious language" during any of his discussions and interactions with anyone on July 11, 2021, the decision in *Hill* and *Wilmoth* should control the disposition of this judicial disciplinary proceeding.

Moreover, a careful review of the Code of Judicial Conduct does not reveal any specific provision which would inform Judge Williams or any other judicial officer that the speech used by him and the contact he made with police personnel on July 11, 2021, would result in disciplinary action against him in this purely personal and extrajudicial context. Similarly, this Court in *In re Hey* addressed Judge Hey's critical commentary on his personal and extrajudicial disciplinary proceeding and held that, "[w]hile offensive expression may raise questions about the speaker's temperament and discretion, the Constitution requires that those questions must be

answered by the public through the ballot box and not by this Court through disciplinary proceedings.” *Id.*, at 34. Thus, all charges in this proceeding, with the exception of those identified below, directly related to Judge Williams’ traffic law violations offending Rule 1.1, should be dismissed.

B. JDC FAILED TO MEET THE REQUIRED STANDARD OF PROOF SET FORTH IN RULE 4.5 AND JHB HAS ERRONEOUSLY FOUND THAT JUDGE WILLIAMS VIOLATED THE RULES OF JUDICIAL CONDUCT CHARGED IN THE OCTOBER 25, 2021, FORMAL STATEMENT OF CHARGES BY CLEAR AND CONVINCING EVIDENCE

The standard of proof in this judicial disciplinary proceeding is well known and flows from Rule 4.5. What is confounding is the meaning and application of the clear and convincing evidentiary standard. This Court has articulated a meaningful set of guideposts to be considered by a fact finder like JHB, and this Court on *de novo* review, when tasked to review an evidentiary record. As noted above, the *O’Dell* and *Heaster* decisions provide the best workable definition of clear and convincing evidence and, undoubtedly, will be applied by this Court in its review of the record in the instant case. The definition is:

"Clear and convincing evidence . . . is the highest possible standard of civil proof[.] . . It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases." *Cramer v. West Virginia Dept. of Highways*, 180 W.Va. 97, 99 n. 1, 375 S.E.2d 568, 570 n. 1 (1988) (citation and internal quotation marks omitted); see [*9] also *Coleman v. Anne Arundel Police*, 369 Md. 108, 797 A.2d 770, 781 n. 16 (Md. 2002) ("To be clear and convincing, evidence should be clear in the sense that it is certain, plain to the understanding, and unambiguous and convincing in the sense that it is so reasonable and persuasive as to cause you to believe it.") (citation and internal quotation marks omitted); *Maxwell v. Carl Bierbaum, Inc.*, 48 Ark. App. 159, 893 S.W.2d 346, 348 (Ark.App. 1995) ("Clear and convincing evidence has been defined as proof so clear, direct, weighty, and convincing as to enable the fact finder to come to a clear conviction, without hesitation, of the matter asserted[.] [I]t is that degree of proof that will produce in the trier of fact a firm conviction as to the allegation sought to be established.") (citation omitted); *Colorado v. New Mexico*, 467 U.S. 310, 316, 104 S. Ct. 2433, 81 L. Ed. 2d 247 (1984) (the party with the burden of persuasion may prevail only if he can "place in the ultimate factfinder an abiding conviction that the truth of [his] factual contentions are highly probable.") (citation and internal quotation marks omitted). *Heaster v. Robinson, supra*.

Remarkably, this Court is left with no findings of fact, no findings as to credibility or weight and persuasiveness of any witness testimony or exhibit comprising the record, and no citation thereto in the summary and conclusory JHB RD. Regardless of these procedural defects, a fair, independent review of the comprehensive record developed in this proceeding reveals:

1. The entirety of Judge Williams' conduct under scrutiny, gathered by the broad dragnet investigation, was personal and extrajudicial.
2. At the time of the July 11, 2021, traffic stop, Judge Williams' encounter with the police officer, however described, was recorded on the bodycam and immediately raised a question as to his then-existing medical and mental health status.
3. The short-lived period of time (approximately three hours) during which Judge Williams made contact with other police personnel known to him evidenced his inability to self-regulate, as diagnosed by VCAP.
4. The contact and communications with each of the police personnel focused upon Judge Williams' frustration with his perception, rightly or wrongly, that others were not listening to his informed interpretation and belief that the cell phone law was not being properly understood and applied (which interpretation and belief was correct).
5. Judge Williams' identity was readily known by Officer Johnson and others with whom he engaged on the traffic encounters and, at no time did he ever request that he be treated differently or receive any special preference or seek any personal benefit as a result of his judicial position and the prestige of his office.
6. Judge Williams did not, verbally or otherwise, seek to have Officer Johnson fired or be the subject of any adverse employment or legal action.
7. Judge Williams did not intimate, state, or act in any way which demonstrated that he would perform his official judicial duties with bias or prejudice or fail to be fair and impartial toward any person associated with the Moorefield Police Department.
8. Judge Williams did not act in any manner that was threatening or called into question the independence, integrity, or impartiality of the judiciary in which he serves.
9. When Judge Williams first learned of any concern by the members of the Moorefield Police Department that he may be biased against them as a result of the traffic stop, he voluntarily and immediately removed himself from their cases and enlisted Chief Judge Carl's assistance in doing so.

10. Likewise, after learning of concerns about his behavior, he informed Chief Judge Carl, discussed the matter with Prosecuting Attorney See, and made a self-report to JDC.
11. Judge Williams has been candid, cooperative, remorseful, and apologetic to all involved in the occurrence and this judicial disciplinary proceeding.
12. On July 11, 2021, Judge Williams acted out of character and in a manner influenced by his then-existing medical and mental health conditions and prescribed medications.
13. Judge Williams has taken every opportunity, since July 11, 2021, to better understand his behavior and his medical and mental health conditions; and he has maintained all recommended medical and mental healthcare relationships so as to prevent any reoccurrence and complied faithfully with all recommendations made by VCAP and all conditions of his WVJLAP Monitoring Agreement.
14. Finally, Judge Williams has acknowledged, or not refuted, each of his alleged infractions of traffic laws set forth in the charges filed against him by JIC and JDC.

The record also is devoid of any evidence produced by JDC, or otherwise, that the public confidence in the judiciary was harmed or eroded by Judge Williams' actions and words. To the contrary, numerous witnesses were called to refute any such allegations. These points are more fully set forth below in the proposed findings of facts as they relate to each of the charges made against Judge Williams in this matter.

C. THE RELIANCE BY JDC AND JHB ON *IN RE FERGUSON* IS WHOLLY MISPLACED BECAUSE MAGISTRATE FERGUSON'S CONDUCT IS SIGNIFICANTLY DISTINGUISHABLE FROM JUDGE WILLIAMS' BEHAVIOR AT ISSUE ESTABLISHED BY THE RECORD IN THE INSTANT DISCIPLINARY PROCEEDING.

From the inception of this matter, JDC and JIC have posited that Judge Williams' conduct was at least equivalent to, or arguably worse, than Magistrate Ferguson's. This position is not supported by a careful, objective review of the evidence. JHB erroneously endorses that

position and recites it in its JHB RD, despite the obvious distinctions in their conduct.²⁹ This position and conclusion are inapposite to the record and appear to be wholly result-driven, referable to the sanction to be imposed. JHB RD's failure to make findings of fact, findings as to the credibility of the witnesses, and findings as to meaningful similarities in the conduct driving its conclusions of law is clearly contrary to this Court's instruction in *Ferguson* that "[m]atters of suspension due to accusations of judicial misconduct are reviewed and decided based on the unique facts and circumstances of each case." *In re Ferguson*, 242 W. Va. 691, 701, 841 S.E.2d 877, 897 (2020), (citing *In re Fouty*, 229 W.Va. 256, 728 S.E.2d 140 (2012)).

The readily apparent factual distinctions rendering *Ferguson* inapplicable to the instant case are as follows:

1. Magistrate Ferguson knowingly violated the law when he exceeded his creel limit – while Judge Williams did not knowingly violate any laws.
2. Magistrate Ferguson intentionally violated the law when he exceeded his creel limit – while Judge Williams did not intentionally violate any laws.
3. Magistrate Ferguson attempted to conceal his unlawful acts by giving fish in excess of creel limit to his father and a third person – while Judge Williams did not attempt to conceal any facts relating to his holding of the cell phone.
4. Magistrate Ferguson, by giving his fish in excess of his creel limit to his father and the third person, thereby enlisting them in the violation of law as well – while Judge Williams did not conspire with or act in concert with anyone to violate law.
5. Magistrate Ferguson, when confronted by law enforcement officers, knowingly and intentionally lied about the presence of a third person – while Judge Williams was completely honest and forthcoming with Officer Johnson at all times.
6. Magistrate Ferguson, when confronted by law enforcement officers, knowingly and intentionally lied about exceeding the creel limit – while Judge Williams was completely honest and forthcoming with Officer Johnson at all times.

²⁹ JHB parrots language from the *Ferguson* decision, "[t]his case is about much more than catching fish" when it made a similar declaration in the JHB RD "[s]imilarly, the instant case is much more than a traffic stop for cell phone usage." JHB RD, ¶ 51.

7. Magistrate Ferguson again attempted to conceal his unlawful actions by removing fish from his stringer so that it appeared he had five fish rather than six – while Judge Williams did not conceal or hide any evidence and offered his cell phone to Officer Johnson for inspection to prove that he was not violating any law.
8. Magistrate Ferguson knowingly and intentionally intimidated law enforcement officers by putting his hands in his pockets, suggesting that he had a weapon, as he approached them – while Judge Williams never left his vehicle, kept his hands in view at all times, and never made any physically threatening or obstructing movements intended to hinder Officer Johnson.
9. Magistrate Ferguson, upon becoming angry, made a flippant, sarcastic comment about being accused of potentially shooting a law enforcement officer – while Judge Williams never made threatening, sarcastic, or flippant remarks to Officer Johnson other than “give me a ticket.”
10. Magistrate Ferguson became increasingly and progressively angry and hostile toward law enforcement officers – while Judge Williams, though adamant in his position, did not escalate his emotional state throughout the encounter with Officer Johnson and did not respond inappropriately to the Officer’s repeated inquiries about his shaking and tremor (part of his underlying medical condition) and why he was angry.
11. Magistrate Ferguson flailed his arms about while interacting with law enforcement officers – while Judge Williams did not conduct himself in such a physically threatening manner.
12. Magistrate Ferguson repeatedly told law enforcement officers that the charges being made against him “were not going anywhere” – while Judge Williams asked at least twelve (12) times to be issued a ticket so that he could present his case in court.
13. Magistrate Ferguson attempted to intimidate law enforcement officers in numerous ways – while Judge Williams did not say anything to Officer Johnson to intimidate him.
14. Magistrate Ferguson’s encounter with law enforcement officers was so confrontational that it lasted 30-45 minutes rather than the typical 5-10 minutes DNR officers are accustomed to – while Judge Williams encounter with Officer Johnson lasted less than 10 minutes and was fully documented by the bodycam video.
15. Magistrate Ferguson was guilty of the crime for which he was approached by law enforcement officers – while Judge Williams was not guilty of violating the cell phone law, and the undisputed admission of Officer Johnson and Chief Riggleman established, to an absolute certainty, that no probable cause existed to charge Judge Williams with violation of that law.
16. Magistrate Ferguson improperly accused law enforcement officers of lying at the scene – while Judge Williams did not accuse Officer Johnson of lying, but, rather, lawfully challenged Officer Johnson’s interpretation and application of the cell phone law.

17. Magistrate Ferguson failed to make a self-report to the JDC – while Judge Williams timely made a verbal self-report, followed up by a written self-report letter.
18. Magistrate Ferguson continued to improperly accuse law enforcement officers of lying about the details of the encounter at the hearing before the JHB – while Judge Williams never accused Officer Johnson of lying.
19. Magistrate Ferguson’s father joined Magistrate Ferguson in being hostile to the law enforcement officers and even directed profane, vulgar language to them - while Judge Williams never used any profanity whatsoever.
20. Magistrate Ferguson attempted to intimidate law enforcement officers in an effort to avoid the ticket – while Judge Williams asked Officer Johnson twelve times (12) at the scene, to “give me a ticket” and, in his interactions with others later that night, every single person testified that he was not attempting to avoid a ticket. Indeed, Judge Williams had not been ticketed at the scene, as typically occurs in most routine traffic stops. (A ticket for a cell phone violation is never issued days later especially when there is clearly no probable cause supporting such charge.) Therefore, there was no reasonable basis for Judge Williams to believe that he would later be issued a ticket or for anyone else to infer, imply, or intimate that he was trying to avoid a ticket, in the absence of verbalizing such a request, when he made contact with other police personnel that evening.
21. Magistrate Ferguson was untruthful in his sworn statement to the JDC - Judge Williams was candid at all times - at the scene of the traffic stop, in his interactions with others that evening, in his self-report letter, during his initial recorded interview with JDC, during his five-hour long recorded sworn statement (Ex. 85), and during his hearing testimony.
22. Magistrate Ferguson had no medical explanation for his conduct, in whole or part – to the contrary, Judge Williams has a credible clinical diagnosis, confirmed by WVJLAP and VCAP, which clearly was a substantial contributing factor to his conduct on July 11, 2021.
23. Magistrate Ferguson had no basis for a referral to WVJLAP – while Judge Williams objectively presented a basis for such referral, recognized immediately by this Court, and he willingly submitted to the evaluation at VCAP and has been tireless in his compliance with the recommendations made for his recovery and all terms and conditions of his Monitoring Agreement and his conduct, behavior, and condition has improved to baseline without another, single adverse event.
24. Magistrate Ferguson did not present evidence that his conduct was out of character for him – while Judge Williams produced numerous witnesses who testified that this was an out of character event.

25. In Magistrate Ferguson's trial before the JHB, the JHB made specific findings of fact as to the credibility of witnesses which was a deciding factor for this Court – while the JHB RD in this case made no findings of fact as to the credibility of witnesses.
26. This Court found that there were only two (2) mitigating factors that applied to Magistrate Ferguson's case – while there are at least ten (10) mitigating factors that apply to Judge Williams and his situation.

Therefore, Judge Williams submits that the *Ferguson* case appears to have been properly decided upon the unique fact and circumstances in it, however, the distinctions noted above should remove it from the list of controlling authority when this Court determines the appropriate sanction in this case.

D. JDC AND JHB HAVE FAILED TO CONSIDER NUMEROUS MITIGATING FACTORS CLEARLY ESTABLISHED BY THE UNCONTROVERTED EVIDENCE AND TO CREDIT THEM IN THEIR RESPECTIVE RECOMMENDED SANCTIONS.

As to the issue of appropriate sanction, this Court has repeatedly articulated the factors which must be considered, and they are:

12. Always mindful of the primary consideration of protecting the honor, integrity, dignity, and efficiency of the judiciary and the justice system, this Court, in determining whether to suspend a judicial officer with or without pay, should consider various factors, including, but not limited to, (1) whether the charges of misconduct are directly related to the administration of justice or the public's perception of the administration of justice, (2) whether the circumstances underlying the charges of misconduct are entirely personal in nature or whether they relate to the judicial officer's public persona, (3) whether the charges of misconduct involve violence or a callous disregard for our system of justice, (4) whether the judicial officer has been criminally indicted, and (5) any mitigating or compounding factors which might exist.

Syl. Pt. 12, *In re Callaghan*, 238 W.Va. 495, 796 S.E.2d 604 (2017), citing Syl. Pt. 3, *In re Cruickshanks*, 220 W.Va. 513, 648 S.E.2d 19 (2007).

The review of the record reveals that the charges of misconduct made against Judge Williams do not relate to the administration of justice, as there was no hinderance to the investigation and charging him with traffic offenses. All of such charges of misconduct were

wholly personal in nature, extrajudicial, and did not involve any callous disregard for the system of justice. While not excusable, the implicated criminal offenses (ex. rolling a stop sign or seat belt violation) are minor traffic offenses which may have been experienced by many other members of the Judiciary and Bar of this State.

With specific reference to identification and application of mitigating factors, this Court has said:

3. Mitigating factors which may be considered in determining the appropriate sanction to be imposed against a lawyer for violating the Rules of Professional Conduct include: (1) absence of a prior disciplinary record; (2) absence of a dishonest or selfish motive; (3) personal or emotional problems; (4) timely good faith effort to make restitution or to rectify consequences of misconduct; (5) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (6) inexperience in the practice of law; (7) character or reputation; (8) physical or mental disability or impairment; (9) delay in disciplinary proceedings; (10) interim rehabilitation; (11) imposition of other penalties or sanctions; (12) remorse; and (13) remoteness of prior offenses.

Syl. Pt. 3, *Lawyer Disciplinary Board v. Scott*, 213 W.Va. 209, 579 S.E.2d 550 (2003).

Of the thirteen discrete factors this Court has mandated to be considered, JHB identified only four³⁰ and failed to address the balance of the factors which were proved by Judge Williams in this case. Specifically:

1. **Absence of a prior disciplinary record** – Judge Williams has no prior disciplinary record;
2. **Absence of a dishonest or selfish motive** - Judge Williams was honest and candid and did not act with a selfish purpose or motive;
3. **Personal or emotional problems** – Judge Williams was diagnosed with relevant medical and mental health conditions as reflected in the VCAP report and his medical records, which are Exhibits in this proceeding (Ex. 60-71);
4. **Timely good faith effort to make restitution or to rectify consequences of misconduct** – Judge Williams immediately renewed his driver's license online after learning of its expiration, pled no contest and paid a fine for the offense, apologized to Officer Johnson and the other police personnel for his

³⁰ JHB RD, ¶ 48.

involving them in the matter and the manner in which he communicated his concerns;

5. **Full and free disclosure to disciplinary board or cooperative attitude toward proceedings** – Judge Williams made a timely report to Chief Judge Carl, discussed the matter with Prosecuting Attorney See, made a verbal and written self-report to JDC, and has cooperated fully throughout this proceeding;
6. **Inexperience in the practice of law** – This mitigation factor does not apply to this case because Judge Williams has experience in the practice of law and has experience as a Circuit Judge;
7. **Character or reputation** – Judge Williams possesses good character and reputation in his community and his Judicial Circuit;
8. **Physical or mental disability or impairment** – As documented by the VCAP report, Judge Williams was experiencing physical and mental health problems on July 11, 2021, and those have largely resolved because of his follow-up according to the recommendations made to him for rehabilitation and maintenance of his health;
9. **Delay in disciplinary proceedings** – Judge Williams has not caused any delay in this Judicial Disciplinary Proceeding as the only delay was the filing of the February 14, 2022, *Formal Statement of Charges*;
10. **Interim rehabilitation** – Judge Williams has faithfully followed the recommendations made for him by VCAP and same have been incorporated into the WVJLAP Monitoring Agreement dated October 20, 2021, (Ex. 73), and Judge Williams has not experienced any recurrence of the conditions contributing to his behavior on July 11, 2021;
11. **Imposition of other penalties or sanctions** – Judge Williams has strictly complied with the terms and conditions of his Monitoring Agreement, which is in force until October 20, 2026, and may be considered as a basis for retroactivity³¹ of any sanction to October 20, 2021;
12. **Remorse** – Judge Williams has been apologetic and remorseful for his behavior; and,
13. **Remoteness of prior offenses** – Judge Williams' prior traffic offenses were remote in time to July 11, 2021, and did not result in citations being issued.

³¹ See *Office of Disciplinary Counsel v. Alderman*, 229 W.Va. 656, 734 S.E.2d 737 (2012) (This Court approved retroactive application of license suspension under certain conditions of rehabilitation.)

With these mitigation factors in mind, Judge Williams submits that the sanction to be imposed should not include the suspensions requested by JDC and recommended by JHB as other more appropriate ones should be considered from those available in Rule 4.12.

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS
OF LAW RELATING TO THE OCTOBER 25, 2021 AND
FEBRUARY 14, 2022 FORMAL STATEMENTS OF CHARGES**

As previously set forth in *Respondent's Post-Hearing Brief*, the operative facts relevant to Charge I through Charge XI set forth in the October 25, 2021, *Formal Statement of Charges* and the separate violations alleged therein are generally set forth above, incorporated herein, and hereby restated in a concise manner below:

1. As to Charge I, the undisputed facts establish that Judge Williams had lost his cell phone after spending time with his family at the ice cream shop and retrieved it while driving home after he heard it fall to the driver's side floor of his vehicle. He picked the cell phone up and was holding it in his right hand against the steering wheel.

2. The evidence conclusively established that the phone being held by Judge Williams was visible to Officer Johnson as he passed him driving in the opposite direction on U.S. Route 220.

3. While there was arguably reasonable suspicion for Officer Johnson to make the traffic stop of Judge Williams' vehicle, the evidence conclusively established that he was not seen by anyone talking or using the cell phone as prohibited by § 17C-14-15; and probable cause was not established to support any citation being issued.

4. The body cam video of the encounter between Officer Johnson and Judge Williams clearly shows that Judge Williams identified himself (even though Officer Johnson had

previously stopped him on a prior occasion and would have recognized him) and asked why he was being stopped.

5. The evidence, including Officer Johnson's hearing testimony concerning his perception and interpretation of the encounter portrayed in its entirety by the body cam video footage, clearly establishes that Judge Williams' reaction, however described, "[w]as over him holding the phone, his belief that he wasn't violating the law, and he was trying to tell or show you that." (HT 06/14/2022, p. 59)

6. The body cam video footage also establishes that Judge Williams did not call or address Officer Johnson as "boy" and instead referred to him as "young man," "sir," and "son," and he did not use profane language, did not yell or scream at him, did not threaten him, and certainly did not ask for any preference, beneficial treatment, or seek to avoid being issued a ticket. To the contrary, on at least 12 occasions during the protracted back and forth encounter Judge Williams verbalized, "just give me a ticket."

7. When asked whether he believed that the nature and context of the encounter with Judge Williams was racial, Officer Johnson testified "I never said it was." (HT 06/14/2022, p. 51)

8. The evidence further establishes that the call made to Lieutenant Burrows during the traffic stop was not for the purpose of using his position to avoid being issued a traffic citation. To the contrary, Lieutenant Burrows testified that "Carter was willing to take the ticket to begin with." (HT 06/14/2022, p. 68)

9. Lieutenant Burrows further testified that Judge Williams' use of the words "boy" and "thug" during her brief telephone conversation with him was in no way racially motivated. (HT 06/14/2022, p. 91)

10. During the encounter with Officer Johnson, Judge Williams first learned that his driver's license had expired. After departing the traffic stop, Judge Williams immediately returned home and renewed his license online as administratively permitted by the DMV.

11. Judge Williams has repeatedly acknowledged that he unintentionally failed to renew his West Virginia driver's license in a timely manner, rectified the oversight immediately after being informed by Officer Johnson that it had expired, and pled no contest to the charge of an expired operator's license in violation of § 17B-2-1 (improperly charged on the citation issued to him as § 17B-2-12).

12. As to Charges II-V, the evidence establishes that Judge Williams made contact with Chief Rigglesman, Detective Reckart, Lieutenant Burrows, and Mayor Zuber for the single purpose of venting his frustration that his statements concerning the cell phone were not being heard.

13. The evidence conclusively establishes that Judge Williams did not state or act in any way which conveyed an intent to avoid being issued a traffic citation for unlawful cell phone use. Each of the foregoing individuals testified that he never asked to avoid the ticket.

14. The evidence also conclusively establishes that these witnesses did not interpret the use of the word "boy," or any other term used by Judge Williams, to be racially motivated or demonstrating bias or prejudice or intended to be demeaning. In fact, no witness testified that Judge Williams' comments were racially motivated, nor did they even perceive his comments as racially motivated.

15. As to Charge VI, and with respect to Officer Johnson's prior criminal felony charge, reported publicly by the local media, Judge Williams' statements were not made with any animus or any intent that anyone should take any adverse action against him (*i.e.*, have him

fired). Each of the witnesses acknowledged their perception of Judge Williams' words as consistent with this finding. In addition, the record establishes that Judge Williams made no formal complaint or took any other action against Officer Johnson; and the record also shows that Judge Williams simply believed and accurately stated that Officer Johnson did not understand the scope and meaning of the cell phone law.

16. Once informed that there were concerns expressed by Chief Rigglesman about his presiding over cases involving the Moorefield Police Department, Judge Williams immediately contacted supervising Chief Circuit Judge Carl and arrangements were made to switch dockets. In doing so, there has been no adverse effect or delay in the functioning of the Judiciary in those counties. Moreover, it was established by the testimony of the police officers involved that there is no present concern over Judge Williams being biased or prejudiced against them or resuming as the presiding judge on their cases.

17. As to Charges VII-X, Judge Williams did not dispute that he may not have been wearing his seat belt when encountered by the police at a checkpoint set up by them pursuant to the "Click it or Ticket" program and at a separate traffic stop. He was not cited on either occasion. In addition, Judge Williams did not dispute that he was stopped by Officer Johnson for rolling through a stop sign, for which he was also not cited. Likewise, Judge Williams did not dispute that he was stopped by Officer Vaubel for an expired license plate registration on his vehicle, for which he again was not cited.

18. However, no witness testified that Judge Williams used his official position or requested special or favorable treatment to avoid being issued a citation on any of these occurrences as alleged by JDC. Under West Virginia law, seat belt, license and registration, and

failure to obey traffic control device (stop sign) violations are not serious traffic offenses (unlike DUI, speeding, reckless or careless driving, failure to maintain control, etc.).

19. As to Charge XI, the evidence presented fails to establish a factual basis that Judge Williams' conduct on July 11, 2021, during the traffic stop and subsequent contact with others that evening, constitutes a pattern and practice of using his public office for private gain, especially when not one witness testified that he ever asked for any favor or special treatment or that any action be taken on his behalf. Likewise, there was no testimony that Judge Williams asked, or even suggested, that he not be given a ticket for unlawful cell phone use. In fact, Judge Williams, as shown on the bodycam video (Ex. 22) repeatedly asked the officer to simply give him a ticket. His repeated assertion that he was not using the phone, and thus not violating West Virginia law, was the singular message he consistently conveyed to those persons he contacted.

20. Judge Williams acknowledged that his driver's license had expired in April 2021. He accepted responsibility and entered an appropriate plea to the citation issued to him on July 15, 2021, by Chief Rigglesman.

21. The record also clearly establishes that Judge Williams encountered law enforcement in traffic-related situations for which he was never cited and never convicted. These situations are insufficient to establish a pattern and practice of conduct sufficient to warrant enhanced discipline or a finding that they constitute an aggravating factor.

22. As to the aggravating factors charged, the record clearly establishes, as noted above, that Judge Williams accepted responsibility for driving with an expired driver's license. His plea necessarily encompassed his actions when he left the scene of the traffic stop and drove immediately the short distance to his residence on July 11, 2021 (the date identified in the citation) as he was not stopped for that offense and was not issued a citation at the scene. JDC's

attempt to bootstrap enhanced discipline based upon its allegation demonstrates the overreach permeating this proceeding.

23. There is no factual basis for JDC to continue to seek enhancement of discipline in this case based upon traffic stops for minor, uncharged violations of seatbelt, vehicle registration, and traffic signal statutes. These infractions are not aggravating factors, nor do they establish a pattern and practice, as noted above.

24. As to Mitigating Factors, Judge Williams agrees with JDC's assertion that he has not been subject to any prior legal or judicial discipline and has cooperated with the JIC investigation, and the record establishes same.

25. In addition, Judge Williams has presented credible evidence of additional mitigating factors, including: his timely, good faith, complete self-report (verbally and in writing) to JDC; his demonstration of remorse for his conduct during his encounter with Officer Johnson and other police personnel on July 11, 2021; his timely, genuine, and appropriate verbal and written apologies made to those involved with him on July 11, 2021, and their acceptance of same; his acceptance of responsibility and entry of a plea for the offense of driving with an expired driver's license on July 11, 2021; his conduct at issue was entirely personal and extra-judicial in nature; the lack of dishonesty, selfish motive, or attempt to gain any personal advantage (other than to inform others that he was not using his cell phone and simply holding it in his hand was not a violation of law, both of which were proved by the evidence); his adherence to the schedule in and cooperative attitude toward this proceeding; his character and reputation for honesty, integrity, and work ethic; his then-existing physical and mental conditions; and his voluntary participation in the 5-year WVJLAP program and considerable actions in seeking interim and long-term rehabilitation for same, all of which the evidence

establishes have been ongoing and successful. To the present, Judge Williams continues to perform his duties as a presiding Judge in the 22nd Judicial Circuit, and additionally as the Chairperson of the Court Improvement Program Oversight Board.

Upon these findings of fact, this Court should conclude, as a matter of law, that Charges I through X and the alleged violations of Rules 1.1, 1.2, 1.3, 2.2, 2.3(A) and (B), 2.8(B), 2.10(A) and (B), 2.16(B), 3.1 (A), (B), (C) and (D) of the Code of Judicial Conduct and Rules 8.4(a), (c), and (d) of the Rules of Professional Conduct, therein contained, have not been proved by clear and convincing evidence,³² with the exception that the alleged Rule 1.1 violations charged therein as they relate to the following were proven by clear and convincing evidence: Judge Williams entered a plea to driving on an expired driver's license on July 11, 2021; he failed to obey a stop sign; and he inadvertently allowed his registration to lapse, for neither of which he received a charge.

As previously set forth in *Respondent's Post-Hearing Brief*, the operative facts relevant to Charge I set forth in the February 14, 2022, *Formal Statement of Charges* and the separate violations alleged therein are generally set forth above, incorporated herein, and hereby restated in a concise manner below:

1. Ms. Crites, as Wal-Mart's Asset Protection associate, was the person primarily responsible for identifying, documenting, securing evidence of, and reporting and prosecuting intentional, criminal shoplifting incidents for the Moorefield, West Virginia, store during the 2019 through 2021 time period when Judge Williams had his two unintentional, distracted self-checkout mishaps.

³² The most comprehensive definition of clear and convincing evidence is set forth in the collection of cases cited in *Heaster v. Robinson*, No. 17-0558, May 14, 2018 WL 2193244 (unpublished West Virginia Memorandum Decision).

2. After reviewing the videos of both incidents (July 31, 2019 and August 18, 2021), Ms. Crites concluded that Judge Williams had become distracted on both occasions by other persons (a Sales associate and another shopper) after successfully completing the scanning function of the self-checkout process but before completing the final payment step of the process.

3. Ms. Crites credibly described her decision-making process in determining when a person unintentionally fails to complete the self-checkout process at her store, advised that it happens “[h]undreds and hundreds of times,” and stated that contact is made with the person involved to inform them of their oversight and to obtain payment for the merchandise purchased by the shopper. (HT 06/15/2022, p. 22-23)

4. In the text message exchange between Judge Williams and Christine Crites on August 1, 2019, following her call to inform him that he failed to complete the payment process during his self-checkout, Judge Williams thanked her for “letting me know about my payment issue from yesterday,” advised that he paid it, apologized “for the inconvenience to you all at Walmart” and admitted “I had absolutely no idea I did that.” Ms. Crites responded, “No worries...it happens more often than you would think.” (Ex. 34d.)

5. Detective Reckart testified that the July 31, 2019, occurrence was not turned over to him for investigation, but simply arose during “casual conversation between she and I concerning Judge Williams, who had not paid for some items and left the store, but was contacted and returned to pay for them.” (HT 06/14/2022, p. 124)

6. Ms. Crites’ testimony, bolstered by Judge Williams, Mrs. Williams, and Mr. See’s testimony, conclusively established that Mrs. Williams was not present and never involved in the

first Wal-Mart occurrence and the value of the merchandise was \$30.00 not \$300.00, as reported by Chief Riggleman. (HT 06/15/2022, pp. 11-12, 25, 140; HT 06/14/2022, p.188)

7. Chief Riggleman was never involved in the 2019 Wal-Mart occurrence and learned about it through hearsay conversation with Detective Reckart in the office, was confused about the factual details and date of the occurrence and could not, without any certainty, describe when and under what circumstances he made the “Shoplifting” note dated 7/21/20, recited ¶ 12 of the second *Formal Statement of Charges*.

8. Ms. Crites further testified that, in reviewing the video recording of the August 18, 2021, occurrence, she was uncertain if it was Judge Williams or his brother shown in the image and she printed a photo to assist her in making the identification. (HT 06/15/2022, p. 14) While working another shoplifting complaint at Wal-Mart, Chief Riggleman testified that Ms. Crites “gave me a picture” to assist her in identifying whether the person was Judge Williams. (Ex. 56, p. 3)

9. Chief Riggleman then contacted Mr. See and they discussed the second Wal-Mart self-checkout occurrence; and neither felt that Judge Williams was a thief nor was there probable cause to charge him with a shoplifting offense. (HT 06/14/2022, p. 189) Chief Riggleman did not testify at the hearing concerning his involvement in the second Wal-Mart.³³

10. On September 13, 2021, Mr. See texted Judge Williams and asked if he was in the office, telling him that he needed to discuss something with him. Judge Williams, who had COVID at the time, was not in the office, was conducting hearings from his home, and asked if

³³ It should be noted that fundamental fairness and notions of constitutional due process command greater deference and evidentiary value be given to sworn testimony of the witnesses who actually appear and testify at the hearing before the JHB on a particular issue. The prior *ex parte* statements obtained by JDC, without the presence and participation of Judge Williams and his counsel and without their ability to cross examine the witness, should be viewed with caution in the absence of actual hearing testimony. Notably, JDC was forced to impeach their own witnesses, Lt. Burrows and Mayor Zuber, with regard to their hearing testimony on relevant points which were perceived to conflict with the earlier *ex parte* statements and affidavits secured by Mr. See.

he could call Mr. See that next day. (Ex 34a.) During their brief telephone call on September 14, 2021, Mr. See informed Judge Williams of the August 18, 2021, second Wal-Mart occurrence. Judge Williams asked Mr. See to “get that amount from Ms. Crites tomorrow.” (Ex. 34b.) In his subsequent call with Ms. Crites, Mr. See obtained the amount of \$42.21 and then informed Judge Williams *via* text that he would “stop by your house and get a check.” (Ex. 34b.) Mr. See thereafter assisted in providing Ms. Crites with the payment. (Ex. 34b.; HT 06/14/2022, p. 183) When asked why he assisted with such payment, Mr. See said he would extend that courtesy to any colleague or anyone that he knew. (HT 06/14/2022, p. 196). Judge Williams and his entire family had COVID at the time or, otherwise, he would have taken the payment to Wal-Mart himself.

11. At the time Judge Williams contacted WVJLAP pursuant to the Court’s Order entered August 3, 2021, in Case No. 21-0608 and presented to VCAP on August 30-31, 2021, he was unaware that there was another Wal-Mart self-checkout mishap on August 18, 2021. (HT 06/15/2022, p. 104)

12. Judge Williams credibly explained why he was focused upon and answered the specific question asked by JDC during his October 6, 2021, sworn statement relating to “an incident at Wal-Mart where you and your wife supposedly left and didn’t pay or forget to pay.” (HT 06/15/2022, p. 104-105) A review of the sworn statement transcript, and the videotape recording of it, clearly reveals that Judge Williams answered the specific question asked fully and accurately and was never asked about any other Wal-Mart incidents. (Ex. 15, p. 118, Ex. 85)

13. There has been no evidence presented, direct or circumstantial, that Judge Williams committed any criminal offense, asked for any special treatment, abused his power of or used the prestige of his office to gain a personal benefit or enhance his position, failed to

cooperate with JDC concerning the occurrence, or engaged in any ethical misconduct with regard to either Wal-Mart occurrence.

14. There has been no evidence presented, direct or circumstantial, that would appear to a reasonable person to undermine Judge Williams' independence, integrity, or impartiality; or that he acted with impropriety or in a manner which leads to the appearance of same with regard to either Wal-Mart occurrence.

15. There has been clear evidence presented that false information concerning Judge Williams and his wife, as well as the value of Wal-Mart merchandise, has been repeatedly propagated into the public domain as a result of the baseless public filing made by JDC and narratives advanced therein which were republished in the media.

16. Judge Williams and his wife were, and continue to be, frequent shoppers at the Moorefield Wal-Mart store and spent thousands of dollars there on an annual basis in years 2019 through the present. (Ex. 33)

Upon these findings of fact, this Court should conclude, as a matter of law, that Charge I and the alleged violations of Rules 1.1, 1.2, 1.3, 2.16(A), and 3.1(C) of the Code of Judicial Conduct and Rules 8.4(a), (c), and (d) of the Rules of Professional Conduct, therein contained, have not been proved by clear and convincing evidence.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to Rule 19, this matter has been scheduled for oral argument on February 8, 2023.

CONCLUSION AND REQUESTED DISPOSITION

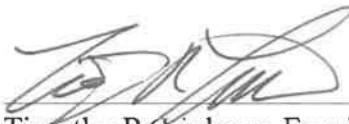
Judge Williams and his counsel respectfully request that the sanction to be imposed in this case be appropriate, and believed to be an admonishment, reprimand or censure, considering

the relevant factors identified above and not be a suspension, without pay. In addition, if this Court concludes that a suspension is warranted, then same should be made to run retroactively to October 20, 2021, the date Judge Williams began his five-year commitment under the stringent terms and conditions of his WVJLAP Monitoring Agreement or be suspended so long as he maintains compliance with said Monitoring Agreement. Last, Judge Williams specifically requests that an order be entered denying JDC's cost associated with its unauthorized retention and use of Dr. Clayman, as a non-testifying, consulting expert and unapproved WVJLAP provider.

Respectfully submitted this 29th day of December, 2022.



J. Michael Benninger, Esquire
W. Va. State Bar No. 312
Barbara R. Benninger, Esquire
W. Va. State Bar No. 4963
Benninger Law PROFESSIONAL LIMITED LIABILITY COMPANY
P. O. Box 623
Morgantown, WV 26507
(304) 241-1856
mike@benningerlaw.com
barb@benningerlaw.com



Timothy R. Linkous, Esquire
W. Va. State Bar No. 8572
Linkous Law, PLLC
10 Cheat Landing, Suite 200
Morgantown, WV 26508
(304) 554-2400
tim@linkouslawpllc.com

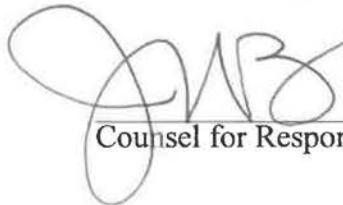
Counsel for Respondent

CERTIFICATE OF SERVICE

I, J. Michael Benninger, counsel for Respondent, do hereby certify that on December 29, 2022, the foregoing *Respondent's Brief* was duly served upon the Judicial Disciplinary Counsel and counsel for the Judicial Hearing Board via email and by depositing true and exact copies thereof in the regular course of the United States Mail, First Class, postage prepaid, addressed as follows:

Teresa A. Tarr, Judicial Disciplinary Counsel
teresa.tarr@courtswv.gov
Brian J. Lanham, Judicial Disciplinary Deputy Counsel
brian.lanham@courtswv.gov
Judicial Investigation Commission
City Center East Suite 1200A
4700 MacCorkle Avenue SE
Charleston, WV 25304

Ancil G. Ramey, Esquire
Ancil.Ramey@Steptoe-Johnson.com
Steptoe & Johnson PLLC
P. O. Box 2195
Huntington, WV 25722-2195
Counsel for the Judicial Hearing Board



Counsel for Respondent