**BEFORE THE JUDICIAL HEARING BOARD OF WEST VIRGINIA**



**IN THE MATTER OF:**

**HONORABLE DEANNA R. ROCK, FAMILY COURT JUDGE OF THE TWENTY-THIRD FAMILY COURT CIRCUIT**

**JIC COMPLAINT NO. 38-2022**
**SUPREME COURT NO. 22-862**

## RECOMMENDED DECISION

On March 22, 2023, the parties, by their counsel, came for a hearing in this matter before the Honorable Russell M. Clawges, Jr., Senior Judge, sitting as Hearing Examiner by designation for the Judicial Hearing Board. On May 15, 2023, the parties submitted proposed Findings of Fact and Conclusions of Law. Finally, on May 18, 2023, the Board conducted a telephonic meeting and upon consideration of the evidence and argument of counsel; the Code of Judicial Conduct and Rules of Judicial Disciplinary Procedure; and the decisions by the Supreme Court of Appeals interpreting the Code and the Rules, the Board hereby renders its Findings of Fact, Conclusions of Law, and Recommended Decision as follows:

### FINDINGS OF FACT

1. On November 21, 2022, the Formal Statement of Charges was filed arising from the following circumstances.

2. In Charge I, the Respondent is accused of violating Rule 1.1 of the Code of Judicial Conduct relative to the alleged violations of other Code of Judicial Conduct provisions.

3. The Board, with one dissent, finds clear and convincing evidence that the Respondent violated Rule 1.1 of the Code of Judicial Conduct as it concludes there is clear and convincing evidence that she violated Rule 2.16(a) of the Code of Judicial Conduct.

4. In Charge II, the Respondent is accused of violating Rule 1.2 relative to the alleged violations of other Code of Judicial Conduct provisions.

5. The Board unanimously finds no clear and convincing evidence that the Respondent violated Rule 1.2 of the Code of Judicial Conduct as her violations of Rule 2.16 do not involve "the independence, integrity, and impartiality of the judiciary," nor "impropriety or the appearance of impropriety" in her role as a judge.

6. In Charge III, the Respondent is accused of violating Rule 2.16(a) of the Code of Judicial Conduct relative to her transmittal to her fellow Family Court Judge Glen R. Stotler, then a member of the Judicial Hearing Board, of draft objections to the Board's recommended decision on behalf of fellow Family Court Judge Louise Goldston.

7. The Board unanimously finds no clear and convincing evidence that the Respondent violated Rule 2.16(a) as it accepts her testimony that the transmittal to Judge Stotler was inadvertent, that she had intended to transmit the document to fellow Family Court Judge David Greenberg, and that such explained her failure to recall the transmittal during her sworn statement.

8. In Charge IV, the Respondent is accused of violating Rule 2.16(a) of the Code of Judicial Conduct relative to her denial of involvement during her sworn statement in a controversial letter by her fellow Judge Glen R. Stotler (the "Stotler letter"), who has charges pending before the Judicial Hearing Board relative to that letter.

9. The Board, with one dissent, finds clear and convincing evidence that the Respondent violated Rule 2.16(a) as she was not candid during a sworn statement about her knowledge of that letter.

10. In Charge V, the Respondent is accused of violating Rule 2.16(a) of the Code of Judicial Conduct relative to her denial of discussing the Stotler letter with Judge Stotler until it had been sent.

11. The Board unanimously finds no clear and convincing evidence that the Respondent violated Rule 2.16(a) relative to this Charge as there may be some efforts that communications were attempted, but insufficient evidence that those communications occurred.

12. In Charge VI, the Respondent is accused of violating Rule 2.16(a) of the Code of Judicial Conduct relative to her denials of assisting with drafting the Stotler letter.

13. The Board unanimously finds no clear and convincing evidence that the Respondent violated Rule 2.16(a) relative to this Charge as it does not conclude that the Respondent was dishonest or lacked candor as it appears she did nothing more than proofread the draft Stotler letter.

14. In Charge VII, the Respondent is accused of violating Rule 2.16(a) of the Code of Judicial Conduct relative to her denials of any "association" with Judge Stotler's letter in correspondence with the Chairperson of the Judicial Investigation Commission.

15. The Board, with one dissent, finds clear and convincing evidence that the Respondent was less than candid in her correspondence with the Chairperson of the Judicial Investigation Commission by denying any "association" with the Stotler letter, which she had reviewed, proofread, and pronounced "looks good" before it was sent.

16. In Charge VIII, the Respondent is accused of violating Rule 1.3 of the Code of Judicial Conduct relative to her communications complaining about Judicial Disciplinary Counsel.

17. The Board unanimously finds no clear and convincing evidence that the Respondent violated Rule 2.16(a) relative to this Charge, as those communications did not involve the Respondent's use of the "prestige of judicial office to advance" her "personal or economic interests," but were from someone subject to a disciplinary process expressing concerns about the disciplinary process.

18. The record evidence regarding these charges can be summarized as follows.

19. A letter drafted at Family Court Judge Glen R. Stotler's direction was downloaded to Respondent's computer on Friday, March 19, 2021, at 3:31 p.m. [Joint Exhibit 1 at 5, Joint Exhibit 10 at 26]. The document was not modified on the Respondent's computer. [Joint Exhibit 10 at 26 showing the last modified date was also March 19, 2021, at 3:31 p.m.].

20. On March 24, 2021, at 10:01 a.m. Judge Stotler's case coordinator faxed a copy of the Stotler letter to the Respondent. Respondent acknowledged receipt at 10:08 a.m. but stated that page two of the letter was missing. Respondent acknowledged receipt of the missing page at 11:00 a.m. At 11:01 a.m. Respondent noted one typo on page two, first paragraph, namely that the year in the parenthesis should be 1956. At 11:05 a.m. Respondent stated, "overall the letters look good. Please ask Judge to call me before you mail. Thanks." [Joint Exhibit 11 at 40-42].

21. One day later, on March 25, 2021, Judge Stotler sent the letter to the Chief Justices and Justices of the Supreme Court, the Chairpersons of the Senate and House Judiciary Committees, the Administrative Director of Courts, and the Respondent as President of the Family Court Judicial Association, accusing the Chief and Deputy Judicial Disciplinary Counsel of misconduct during the investigation and prosecution of complaints against Family Court Judge

Louise Goldston, who was eventually disciplined by the Supreme Court in *Matter of Goldston*, 246 W. Va. 61, 866 S.E.2d 126 (2021), and Family Court Judge Eric Shuck, including the Respondent's edits. [Joint Exhibit 1]

22. On April 6, 2021, at 3:52 p.m., Respondent forwarded an email from her personal email to Judge Stotler's court-issued email with a document titled "Jhb objections." The document was Judge Goldston's draft objections in the *Matter of Goldston*, pending before the Supreme Court. [Joint Exhibit 18 at 68-70] Simultaneously, on April 6, 2021, at 3:52 p.m., Respondent forwarded a second email from her personal email to Judge Stotler's court-issued email titled "FW: Correct Objections" with an attachment entitled "Jhb objections corrected.docx." [Joint Exhibit 19 at 71-73] Judge Stotler presided over the Goldston matter as a Judicial Hearing Board member.

23. Finally, on the same day, Respondent (joined by two other Family Court Judges) sent a letter to the Director of the Division of Courts referencing Judge Stotler's letter of March 25, 2021, and expressing procedural concerns about the use of informal and formal "warnings" by the Office of Judicial Disciplinary Counsel accusing it of "gross overreach," using "its power improperly" to send a warning letter without authority to do so and stating that JDC action was "nothing short of bullying and had a chilling effect on the right of judges to express their concerns." [Joint Exhibit 20 at 74-77]

24. On April 23, 2021, the Respondent (joined by two other Family Court Judges) sent a letter to the Office of Judicial Disciplinary Counsel requesting an advisory opinion regarding the warning letters they had received. [Joint Exhibit 21 at 78-80]

25. On April 27, 2021, the Office of Judicial Disciplinary Counsel advised the Respondent (and two other Family Court Judges) that it had disqualified itself from handling matters involving "any other Judge who may have helped in the submission of Judge Stotler's 3/25/21 letter." The request for an advisory opinion was forwarded to the Judicial Investigation Commission. [Joint Exhibit 24 at 87]

26. That same day, Respondent emailed Judge Stotler stating, "So someone thinks Dave, Mary Ellen and I helped with your letter," and "This makes me very angry. Once again, she is making allegations without proof. Just like her and the problems of that office." [Joint Exhibit 22 at 81]

27. On April 30, 2021, Respondent (joined by two other Family Court Judges) sent a letter to the Judicial Investigation Commission condemning the Office of Judicial Disciplinary Counsel for implying the three of them were involved in the "writing and sending" of Judge Stotler's letter. The Judges expressed resentment at the implication in the April 27, 2021, letter and asserted that Judicial Disciplinary counsel jumped to an unsupported and indecorous conclusion. The judges welcomed Judicial Disciplinary Counsel's disqualification now and in the future, and stated that they "would request an apology, but for the futility of it." [Joint Exhibit 24 at 84-94]

28. On May 13, 2021, an Investigative Panel of the Lawyer Disciplinary Board found no merit to the allegations against the Office of Judicial Disciplinary Counsel stated in the Stotler letter and ordered the matter to be closed. [Joint Exhibit 25 at 145]

29. On May 25, 2021, the Administrative Director filed a complaint against Judge Stotler, which is still pending before the Judicial Hearing Board. [Joint Exhibit 1 at 8]

30. On January 31, 2022, the Respondent gave a sworn statement regarding the complaint against Judge Stotler. [Joint Exhibit 31 at 255-405]

31. Counsel accompanied Respondent during her sworn statement. [Joint Ex. Notebook at 258]

32. Respondent testified that Judge Goldston called her after Judge Goldston received her statement of charges. [Joint Ex. Notebook at 278-279]

33. Respondent testified that even though she had not conducted a home view, which was the issue in Judge Goldston's case, she began researching the legal issue as President of the Family Court Judge's Association. [Joint Ex. Notebook at 281-282]

34. Respondent also indicated that she expressed concerns to Judge Goldston before she had entered an agreement to resolve the disciplinary complaint against Judge Goldston regarding its impact on the judiciary and family court authority to conduct bench views. [Joint Ex. Notebook at 283-284]

35. She testified that, at that time, Judge Goldston did not ask her for assistance, but later Respondent started doing legal research on her own regarding the court's authority to conduct bench views. [Joint Ex. Notebook at 284-285]

36. Eventually, Judge Goldston did elicit letters of support from the Respondent and other Family Court Judges. [Joint Ex. Notebook at 285]

37. Respondent testified that she reviewed her ethical obligations under the Code of Judicial Conduct. [Joint Ex. Notebook at 3]. Respondent interpreted the rules to permit the letter of support because the judges were not "testifying," and she did not believe that judiciary disciplinary proceedings fell were applicable. [Joint Ex. Notebook at 3-4 and 285].

38. Respondent testified that she sent the letter of support for Judge Goldston because that was the help Judge Goldston and her attorney said she could give when asked. [Joint Ex. Notebook at 287]. Respondent acknowledged that she did not believe the letter had any chance of "influencing any outcome because an agreement was reached." [Joint Ex. Notebook at 286]

39. On October 14, 2020, Respondent sent a letter of support for Judge Goldston. [Joint Ex. Notebook at 10].

40. On October 21, 2020, the Judicial Investigation Commission issued Advisory Opinion 2020-25, finding that it was improper for a judge to write a letter of support on behalf of any litigant in a pending criminal or civil matter, including administrative proceedings. [Joint Ex. Notebook at 15-17].

41. On October 22, 2020, the Office of Judicial Disciplinary Counsel sent the Respondent (and the two other Judges) a "warning letter" regarding the letters of support. [Joint Ex. Notebook at 18-19]

42. Respondent further described consoling Family Court Judge Shuck after learning through Judge Goldston that he had received an admonishment for conduct like that at issue in Judge Goldston's case. [Joint Ex. Notebook at 294-297]

43. Respondent explained that despite discussing the issues in Judge Goldston's case with several Family Court Judges, she did not contact Judge Stotler because of his status on the Judicial Hearing Board. [Joint Ex. Notebook at 299]

44. She testified that after Judge Goldston's hearing before the Judicial Hearing Board, Judge Goldston contacted her for litigation support, and she enlisted Family Court Judge Greenberg. [Joint Ex. Notebook at 301]

45. On January 31, 2022, Respondent testified that the first time she saw the Stotler letter mailed 10 months earlier, on March 25, 2021, was when she received one in the mail from Judge Stotler:

> Q. Okay. When you received the March 25th letter, yeah, the 25th letter, was that the first time that you had seen or heard about the contents of the letter?
>
> A. Yes.

[Joint Ex. Notebook at 320]

46. Respondent further described her first conversation with Judge Stotler after allegedly receiving his letter for the first time in the mail as follows:

> A. I think he came -- whenever he came to my courthouse next, you know, I might've just said, "I got a letter from you." And I'm sure we had a conversation then, but I don't remember to what degree we talked about anything.
>
> * * *
>
> Q. Okay. Did you ask him why did you send this letter, why did you send it to me? I mean was there a concern about thanks for roping me into this? I mean did you have a frank conversation with him?
>
> A. I didn't have too much of a frank conversation with him because I could -- I mean the letter is self-explanatory. He believed something wasn't right. And quite frankly, I just was still going to be working on the amicus brief. I kind of still felt like we had that no kind of no talking thing in place.

So all -- I just was "I got a letter from you." You know, I said that I was surprised that he seemed upset about things. And that's -- I didn't ask and he didn't tell and we just went about our business.

Q. Okay. So at no time prior did Judge Stotler say, hey, I'm sending you a letter?

A. No.

[Joint Ex. Notebook at 321, 323]

47. Respondent gave sworn testimony regarding the October 22, 2020, "warning letter" from Judicial Disciplinary Counsel asserting she violated the Code of Judicial Conduct for sending a letter of support for Judge Goldston and a violation of the Code of Judicial Conduct, and the April 27, 2021, letter notifying her that Judicial Disciplinary Counsel had disqualified itself in the wake of the Stotler letter.

48. She complained that, in her opinion, the Judicial Disciplinary Counsel did not have the authority to issue formal "warning letters" or send informal warnings over social media, such as on Facebook Messenger. [Joint Ex. Notebook at 333-334, and 338 to 341]

49. She testified that she had several concerns with JDC sending formal or informal warning letters, including whether the warning is public, whether it needs to be disclosed, how long it will be retained, and what precedent it would set. [Joint Ex. Notebook at 335, 339-341]. The Respondent was concerned whether she needed to disclose the "warning letter" sent to her in her application to be appointed to the Intermediate Appellate Court. [Joint Ex. Notebook at 334]

50. On April 23, 2021, Respondent (and two other Judges) wrote a letter asking for an advisory opinion regarding the authority of Judicial Disciplinary Counsel to issue informal or formal "warning letters," including warnings to judges on social media, the process for a judge to contest such warnings, whether the warnings are retained, whether the warnings can be used against a judge in a future disciplinary proceeding, and whether the warnings are disclosed to the public. [Joint Ex. Notebook at 78-80] Respondent conceded, "So we didn't mind the warning. We just wanted to know the capacity, the lifespan, the consistency of the warning letter" [Joint Ex. Notebook at 346].

51. She then testified that she probably raised the "warning letters" issue with Judge Stotler after receiving the April 26, 2021, Judicial Disciplinary Counsel letter disqualifying themselves from responding to the request for an advisory opinion because it "really made me mad." [Joint Ex. Notebook at 347]

52. She explained the source of her ire as follows:

> Q. Okay. So why did it make you mad? You don't seem like someone who would be quick to anger.
>
> A. Because in this letter she says, "Please be advised that by letter dated April 5th" -- which was the day before I ever sent the letter to Lisa Tackett before anybody knew I had a concern about these warning letters -- "Mr. Lanham and I have disqualified ourselves from handling any new complaints involving Judge Stotler or any other judge who may have helped in the submission of Judge Stotler's 3/25/2021 letter."
>
> That was an allegation borne of zero evidence. That was an allegation against my character, against my ethics based on nothing. Nothing.

[Joint Ex. Notebook at 348]

53. She testified in detail as to discussing her allegation of no involvement in Judge Stotler's letter as follows:

> Q. Okay. Tell me about your conversation with those two?
>
> A. Basically what I just said. We were just -- we couldn't figure out why that allegation was made,

based on what? Because I share a circuit with Judge Stotler because Judge Greenberg is in the eastern panhandle? And how do you figure Mary Ellen Griffith? She's down in the southern part of the state.

We couldn't figure this out, why Terri Tarr would lay such an allegation on us.

Q. Okay. So did you call anybody else aside from Judge Griffith and Judge Greenberg with regards to this letter?

A. No other family court judges.

Q. I don't know what that means. Does that mean you called your priest?

A. Well, I called my mom. I called my husband.

Q. Okay. Okay.

A. I mean I was pissed, like I was tears pissed. Excuse my language because I'm getting mad about it all over again. It was an unfounded allegation.

[Joint Ex. Notebook at 350]

54. Not only did Respondent testify that she was incensed to have been accused, without evidence, of helping with Judge Stotler's letter, but the letter she and two other Family Court Judges collectively authored to the Administrative Director of Courts and others repeated their denial of involvement:

A. And the conversation with Greenberg and Griffith who also read it the same way that I did --

Q. Okay.

A. -- that somehow they couldn't -- she and Mr. Lanham could not help us because we may have helped write that letter, Judge Stotler's letter.

Q. And your letter further states "This implication was completely without merit or foundation and you found it to be misplaced, inappropriate, insulting, biased, prejudicial and, sadly, reproducing the same issues that were highlighted in Judge Stotler's letter."

A. If that's what's in there. I mean the three of us wrote a letter so --

[Joint Ex. Notebook at 356]

55. Despite Respondent's fervent denials in her January 31, 2022, sworn testimony of any involvement in drafting Judge Stotler's letter, a copy of the Stotler letter was downloaded on Respondent's state-issued laptop on March 19, 2021, at 3:31 p.m. [Joint Exhibit 10 at 26]. Respondent testified that she does not remember reviewing the draft letter downloaded to her computer on March 19, 2021. [Joint Exhibit at 572]. The download shows that the last modified time is the same as the creation date. [Joint Exhibit at 26].

56. On March 22, 2021, Judge Stotler's case coordinator sent Respondent a message on Microsoft Teams asking her to confirm her title as President of the Family Court Judicial Association and Keith Hoover's title as Deputy Administrative Director. [Joint Exhibit 11 at 40] Respondent confirmed the titles. [Id.]

57. On March 24, 2021, Respondent reviewed a faxed version of the Stotler letter and suggested one typographical change to the year of the case cited. [Joint Exhibit 11 at 42] Specifically, on March 24, 2021, at 10:01 a.m. Judge Stotler's case coordinator faxed a copy of the Stotler letter to the Respondent. Respondent acknowledged receipt at 10:08 a.m. but stated that page two of the letter was missing. Respondent acknowledged receipt of the missing page at 11:00 a.m. At 11:01 a.m. Respondent noted one typo on page two, the first paragraph, namely that the year in the parenthesis should be 1956. At 11:05 a.m. Respondent told Judge Stotler's case coordinator, "overall the letters look good. Please ask Judge to call me before you mail. Thanks." [Joint Exhibit 11 at 40-42].

58. On March 25, 2021, Judge Stotler's letter, *including the Respondent's revision,* was sent to all five Justices of the Supreme Court of Appeals, the Chairmen of the Senate and House Judiciary Committees, the Administrative Director and Administrative Office of the Courts, and the Respondent, *including the correct contact information she had provided to Judge Stotler's case coordinator*. [Joint Exhibit 52].

59. On April 27, 2021, the Respondent forwarded to Judge Stotler the JDC's April 27, 2021, response advising that the JDC had disqualified themselves, stating, "So someone thinks Dave, Mary Ellen and I helped with your letter. Please read and tell me your response … This makes me very angry. Once again, she is making accusations without proof. Just like her and the problems of that office." [Joint Exhibit 22 at 81]

60. On April 30, 2021, Respondent (joined by two other Family Court Judges) sent a letter to the Judicial Investigation Commission condemning the Office of Judicial Disciplinary Counsel for implying the three of them were involved in the "writing and sending" of Judge Stotler's letter., The Judges expressed resentment at the implication in the April 27, 2021, letter and asserted that Judicial Disciplinary counsel jumped to an unsupported and indecorous conclusion. The Judges welcomed Judicial Disciplinary Counsel's disqualification now and in the future, and stated that they "would request an apology, but for the futility of it." [Joint Exhibit 24 at 84-94]

61. Respondent asserts that she only recalled her involvement in proofreading Judge Stotler's letter after a complaint was filed against her with the Judicial Investigation Commission and she reviewed Microsoft Teams messages between herself and Judge Stotler's case coordinator:

> After Judge Rock gave her statement, she reviewed additional materials, including the documents you provided. In particular, the draft of the Stotler letter that was on her computer prior to March 25, 2021, as well as the IM messages refreshed Judge Rock's memory about seeing a draft of the Stotler letter prior to it being mailed. Judge Rock located both sides of the IM messages she had with Joy Campbell, Judge Stotler's Case Coordinator, starting on March 22, 2021. While not all of the attached IM messages are relevant to this issue, some of them do discuss suggested corrections to the Stotler letter.

The first message relating to the Stotler letter is the IM from Ms. Campbell on 3/22/21 at 2:50 p.m. In this message, Ms. Campbell asked Judge Rock about her official title as well as the title for Keith Hoover. Judge Rock explained her title and confirmed the title for Mr. Hoover was correct. (IM 3/22/21 at 3:11 p.m.). In the IM sent on 3/24/21 at 10:01 a.m., from Ms. Campbell, she asked Judge Rock if she had received the fax from Judge Stotler. In reviewing this IM, Judge Rock believes the document faxed was the Stotler letter. After the Stotler letter was refaxed because a page was missing, Judge Rock noted there was a typo on page 2, first paragraph and also explained the year 1956 needed to be inside the parenthesis. (IM 3/24/21 at 11:01 a.m.). When you review the Stotler letter, 1956 is the date listed for the *Westover* case cited on page 2. After reviewing the faxed Stotler letter, Judge Rock sent an IM explaining, "[O]verall, the letter looks good. Please ask Judge to call me before you mail this. Thanks." (IM 3/24/21 11:05 a.m.).

Having reviewed these documents, Judge Rock now remembers she did read the Stotler letter prior to it being sent and sent IM's to Ms. Campbell noting a couple of corrections. As she testified during her statement, Judge Rock may have proofread some of the documents in Judge Goldston's case "because I was like the grammar person." (Statement, at 48). In her role as President of the Family Court Judicial Association, Judge Rock sometimes was asked to review documents by other Family Court Judges. Therefore, to ensure the accuracy of the record, the correct answer to the question as to whether or not Judge Rock had seen the contents of the Stotler letter prior to March 25, 2021, is yes, she had seen an earlier draft of the letter, had read it, had made some minor suggestions, and had asked Ms. Campbell to have Judge Stotler call Judge Rock before the letter was mailed.

> Judge Rock wanted to inquire whether Judge Stotler actually was going to send the letter or if he simply was venting to get it off of his chest. Judge Stotler did not speak with Judge Rock about this letter prior to it being mailed.

[Joint Ex. Notebook at 439-440]

62. Respondent also parsed language in her April 30, 2021, letter of indignation to the Chairperson of the Judicial Investigation Commission regarding JDC's disqualification from her request for an advisory opinion related to warning letters as follows:

> In going through the sworn statement, counsel for Judge Rock has not been able to locate where you asked this specific question or where Judge Rock gave this answer about not drafting, editing, or preparing the Stotler letter. In the April 30, 2021 letter sent to the Honorable Judge Alan D. Moats, Chairman of the Judicial Investigation Commission, Judge Rock, Family Court Judge Mary Ellen Griffith, and Family Judge David Greenberg asked Judge Moats regarding a warning letter the three of them had received from Judicial Disciplinary Counsel:
>
> > In the aforementioned letter from Ms. Tarr (attached herein as Exh. A), there is a strong and unfounded implication that each of us were involved **in the drafting and the submission of the letter** dated March 25, 2021 by Judge Glen Stotler which was sent to the Supreme Court and various others, including Judge Rock as President of the Family Court Judicial Association.

> In addition to this implication contained in her April 27, 2021 letter being completely without merit or foundation, we find the implication to be misplaced, inappropriate, insulting, biased, prejudicial, and sadly reproducing the very issue we have with the "warning" letters about which we inquired. (Emphasis added).
>
> Judge Rock denies drafting or submitting the Stotler letter, as stated in her letter to Judge Moats. However, as explained above, after having her memory refreshed, Judge Rock acknowledges reviewing an earlier draft of the letter and offering some proofreading suggestions and corrections. Thus, to the extent you are alleging that Judge Rock denied "drafting, editing, or any preparation of" the Stotler letter, Judge Rock's initial response is that she has not found that specific question and answer in her sworn statement. If Judge Rock were to be asked this question, she would deny drafting or submitting the Stotler letter, but would acknowledge proofreading it and making a few suggested corrections prior to Judge Stotler mailing it.

[Joint Ex. Notebook at 440]

63. In other words, the Respondent argues that although she may have proofread the Stotler letter, she did not "draft" or "submit" the letter:

> A. I did not. I did not. Proofing a letter is not substantially contributing to it. It's not writing the letter. It's not submitting the letter. I proofread that letter. I had nothing to do with the generation or sending of that letter.

[Tr. 141]

64. During the hearing, the Respondent persisted in this approach:

> Q. Are you splitting hairs with us today over whether you remember receiving this letter that called for the termination of two public servants, or are you saying you didn't read it or proof it? I'm not sure I understand what your testimony is today. So you forgot in January that you received it and that you were involved in at least edits to it before it went out?
>
> A. My answers to you in January, that is correct. I did not have a recollection in January that I had provided that proofreading to Ms. Campbell on the 24th of March.

[Tr. 47]

65. Relative to her sworn testimony that she was "surprised" to receive Judge Stotler's letter after she had made corrections to it and provided information for inclusion in it, she testified as follows:

> Q. Okay.
> Well, your testimony was that you were surprised to have received it.
> A. I was.
> Q. Why were you surprised? You helped draft it. You've seen it since it was originated. Why would it surprise you?
> A. I did not help to draft it.
> Q. Why would it surprise you? You had had the --
> A. Because Judge Stotler --
> Q. Excuse me, let me finish my question.
> A. I'm sorry.
> Q. You had had the letter in your possession since its origination. Why would it surprise you to receive it?
> A. The fact that -- just that he doesn't speak out about so many things that he was this concerned about things. I was surprised that he was taking action on it.

[Tr. 47-48]

66. She explained her sworn testimony, contradicted by the documentary evidence, regarding her involvement with the Stotler letter, as follows:

> A. I did not have the benefit of going back and looking at my instant messages and my e-mails and my fax machine. My fax machine was gone by this time. But had I had the benefit of looking, I would have gone -- if you would have said, "We want to know if you saw this letter beforehand," I would have looked at this. I would have looked back through all my messages. I would have looked through all my e-mails, and I would have come across the majority of this stuff, yes. And then I would have known.

[Tr. 52]

67. Relative to an implication that she may have sent the Stotler letter to the West Virginia Record, Respondent credibly explained that even though the fax header indicated that it originated from her office, the recipients of any fax from her office were other Family Court Judges, not the West Virginia Record. [Tr. 54-56]

68. Relative to her involvement in drafting Judge Goldston's objections to the Judicial Hearing Board, Respondent credibly explained that her response was, "I don't recall doing that," and she mistakenly forwarded those draft objections to a member of the Judicial Hearing Board. [Tr. 57-60]

69. At the hearing, Respondent reiterated her outrage at being accused of assisting with the Stotler letter:

> Q. It's fair to say that you were pretty enraged by this letter from Ms. Tarr?
> A. Yeah. We all three were.
>
> * * *
>
> Q. You sent an e-mail to Lisa Tackett that said "making your blood boil."
> A. I was upset.
> Q. Okay.
> The letter advises you that she and Mr. Lanham have a conflict as it relates to, essentially, all things Stotler and because your letter of April 6th to Lisa Tackett references the Stotler letter, that she and deputy counsel, we're forwarding your request for an advisory opinion, that was Exhibit 21, to Judge Moats. And you forward this e-mail to Judge Stotler, as well, on April 27th?

A. Correct.
Q. Within an hour of receiving it, correct?
A. Correct.
Q. And --
A. And I believe that e-mail said obvious -- or to the effect somebody thinks that we helped you write your letter.
Q. Which you did, ma'am.
A. We did not.

* * *

A. We didn't help in the submission of Judge Stotler's letter.

* * *

A. We didn't help in the submission of Judge Stotler's letter.

[Tr. 69-72]

70. This is consistent with a second sworn statement given by the Respondent after the filing of formal charges, in which she testified as follows:

Q. Okay. And some of the representations that were in the sworn statement reflect your edits and your assistance with the letter, the March 25th letter. I think we've referred to it as the Stotler letter over and over and over again. So if you're okay with me keeping that same nomenclature, that's fine.

A. That's fine. But I disagree with your categorization that I edited or assisted with it, but just go ahead.

[Joint Ex. Notebook at 490]

71. Respondent explained the discrepancies between the documentary evidence and her sworn statement as follows:

A. The oath is a vow. It is to tell the truth. It is to give your absolute best answer and that is what I did. I relied on my memory, which I thought was correct. The answers I gave, they may have ended up to be factually inaccurate, but they were not deceptive.

And if you look at the areas where I'm accused of being deceptive, there was no benefit for me to gain anything. There was no personal benefit for me. There was no benefit for anybody for me to be dishonest about whether I saw that letter or not. Had I remembered I saw that letter, I would have said to Ms. Cipoletti, I saw that letter. Because it wasn't a violation of the code for me to see that letter.

It's still not a violation of the code for me to see the letter. What has become a violation of the code is my inability to correctly and accurately remember it ten and a half months later.

And I will say when I saw that letter, the allegations in the letter were not new to me. I had been hearing all of this from Judge Goldston through our help in answering those questions from the hearing board. It all came out in the pleadings. It was -- every little -- it came out in pieces, but it was not new to me.

So when I read Judge Stotler's letter, whether it was that Thursday before he mailed it when I made the two punctuation corrections to Ms. Campbell or whether I got it in the mail on, let's say, Monday -- and that's my first clear recollection as I sit here today, is standing behind my desk and opening that letter, the envelope from Judge Stotler.

[Tr. 106-107]

72. Although the contact information she provided was then placed in Judge Stotler's letter, including her own, Respondent claimed that she never connected the two:

Q. And then in 22, there is the beginning of some of the discussions that came up in the instant messages with Ms. Campbell, and she asked you for your title and Mr. Hoover's title. When you looked at those instant messages, did you know at that time by looking at the message that she was doing that in conjunction with what we call the Stotler letter?

A. I did not. And I certainly didn't go back. I mean, no. I was -- it was a workday. The message popped up. I answered it and that was it. I did not know why she was asking me.

73. In addition to her contention that revising the Stotler letter did not constitute editing, drafting, submitting, or contributing to it, Respondent also testified that she did not recall it during her first sworn statement because it was "inconsequential" [Joint Ex. Notebook at 562] ("it was inconsequential to me") to her in March 2021:

Q. Do you remember when you gave your second sworn statement and your explanation as to why you didn't remember it was because the letter was insignificant and inconsequential?

A. That's correct.

Q. Do you stand by the statement that a letter sent to the Supreme Court of Appeals, both of the House and Senate judiciary chairs, you yourself as the Family Court Administrator, Lisa Tackett, as the director of all things family court, calling for the termination of two public servants, you think that's inconsequential using the bench, using the bench and trying to terminate these employees based on allegations, you think that's an inconsequential letter?

A. It was to me at the time. This letter didn't

[Tr. 143-144]

74. This testimony must be viewed within the context of the Family Court Judicial Association resolution of May 13, 2021 [Joint Ex. Notebook at 146-147], which the Respondent signed, requesting the termination of Judicial Disciplinary Counsel based, in part, on the allegations in the Stotler letter for which an Investigative Panel of the Lawyer Disciplinary Board contemporaneously exonerated them:

Q. So do you think it's appropriate that the Family Court Judge Association sent that resolution again requesting the termination of those two employees after doing no investigation, to your knowledge?

A. It's not for me to determine that.

Q. Did you sign on to it as the -- did you not vote for it?

A. There was a vote.

Q. Did you vote for it?

A. I'm not answering that.

Q. You're refusing to answer the question?

A. It's a confidential vote within our association.

Q. Are you refusing to answer my question?

A. Yes, I am.

Q. I'm not asking for anybody else's vote, ma'am. I'm asking for yours. Did you vote to send the resolution?

A. I participated in the vote, yes.

Q. Did you vote yes to send the resolution?

THE WITNESS: Judge Clawges, must I answer that? Because if you tell me I have to, I will.

JUDGE CLAWGES: I can't think of any basis for you not having to answer it. So yes, you have to answer.

A. I did vote for it.

[Tr. 148-149]

75. Respondent testified that at the time of her first sworn statement on January 30, 2022, she did not recall receiving a faxed copy of the Stotler letter on March 24, 2021. Respondent testified that she did not view the letter as "her project" or impactful to her personally. [Joint Ex. Notebook at 539-541]. Respondent testified she was also distracted with other matters at the time. The Respondent's secretary was leaving, so she advertised and reviewed between 20 to 40 emails daily with resumes. [Joint Ex. Notebook at 540]. The Respondent was also assisting as a legislative liaison for the Family Court Judicial Association regarding various bills that would impact family law. [Joint Ex. Notebook at 477-479]. Respondent testified that the Stotler letter was not impactful until she saw it released in the "The West Virginia Record" and started to hear buzz about it. [Joint Ex. Notebook at 540].

76. The Respondent was aware when she gave her sworn statement in the presence of her counsel on January 31, 2022, that the Stotler letter was the subject matter as (a) she asked on January 21, 2022, "about the subject matter" of her impending sworn statement and for "a copy of the relevant complaint" [Joint Ex. Notebook at 232]; (b) she was served with an investigative subpoena in the Judge Stotler disciplinary investigation [Joint Ex. Notebook at 237-239]; and (c) she contacted Judge Stotler, who provided him with a copy of the disciplinary complaint that would be the subject of the Respondent's sworn statement:

> Once I got the subpoena, then I knew. And then I even asked you I said, Could you send me the complaint, but if you're not comfortable sending me the complaint, I'll reach out to the judicial officer and get it.
>
> Judge Stotler did give me his complaint. I reviewed his complaint which had the charge of -- my memory right now is that it was one ex parte communication. I reviewed that rule. I reviewed Rule 2.2 which said as a witness my testimony, my statements were to the matters at issue. And my attorney and I both pointed that out in the beginning of the statement, we believe that it would be at issue.

[Tr. 51]

77. The Respondent's suggestion that she was somehow ambushed in her first sworn statement, which excuses her denials in her communications with the Chairperson of the Judicial Investigation Commission that she had no "association" with Judge Stotler's letter and in her first sworn statement that "the first time that" she "had seen or heard about the contents of the letter" was when she received the final version sent by Judge Stotler, is unconvincing.

78. At the time she received the draft letter, she was President of the Family Court Judicial Association, which had a heightened interest in Judge Goldston's case; she was actively assisting with Judge Goldston's defense, which was what precipitated Judge Stotler's letter; and she had a discussion six months earlier with Family Court Judge Eric Schuck regarding an admonishment he had received for issues like those of Judge Goldston. [Joint Ex. Notebook at 294] ("I had learned through Judge Goldston that he had had an admonishment. … Judge Goldston shared with me that he was quite upset by the admonishment, I mean having physical

ramifications from it, just horribly upset by it. … I wanted to reach out to Eric as a former classmate, but more as President of the Association. I kind of had this mother hen approach ….").

79. Receipt of the draft Stotler letter was not "inconsequential" when considered within this history and context.

80. Charge One of the Statement of Formal Charges relies on Rule 1.1: "A judge shall comply with the law, including the West Virginia Code of Judicial Conduct."

81. As will be discussed, the Board finds clear and convincing evidence that the Respondent violated Rule 1.1 as her conduct violated the Code of Judicial Conduct and finds against Respondent on Charge One of the Statement of Formal Charges.

82. Charge Two of the Statement of Formal Charges relies on Rule 1.2, which provides, "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."

83. The Board finds no clear and convincing evidence that the Respondent violated Rule 1.2 as none of her actions reasonably eroded public confidence in the independence, integrity, or impartiality of the judiciary, as none of the subject actions were in furtherance of her judicial duties, nor did they involve impropriety or the appearance of impropriety in the performance of her judicial duties, and finds for Respondent on Charge Two of the Statement of Formal Charges.

84. Charge Three of the Statement of Formal Charges relies on Rule 2.16(A), which provides, "A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies."

85. The Board finds no clear and convincing evidence that Respondent violated Rule 2.16(A) relative to this Charge as it credits Respondent's testimony that any transmittal of draft objections to Judge Stotler was inadvertent.

86. Charge Four of the Statement of Formal Charges relies on Rule 2.16(A), which provides, "A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies."

87. The Board finds clear and convincing evidence that Respondent violated Rule 2.16(A) relative to this Charge as it is not credible that she forgot that she had seen and reviewed the Stotler letter, indicating "the letter looks good," and discredits her testimony that it was

"inconsequential" within the context of substantial consternation regarding the imposition of discipline on Judge Shuck, the pendency of proceedings against Judge Goldston, the potential impact of the resolution of Judge Goldston's case on the authority of Family Court Judges to conduct bench views, and the eventual adoption of a resolution by the West Virginia Family Judicial Association accusing Judicial Disciplinary Counsel of prosecutorial misconduct, dishonesty, and demanding the termination of their employment. The Board does not find clear and convincing evidence that the Respondent was intentionally dishonest but finds clear and convincing evidence that she was less than candid.

88. Charge Five of the Statement of Formal Charges relies on Rule 2.16(A), which provides, "A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies."

89. The Board finds no clear and convincing evidence that Respondent violated Rule 2.16(A) relative to this Court as it credits Respondent's testimony that she did not discuss the Stotler letter with Judge Stotler before he sent it.

90. Charge Six of the Statement of Formal Charges relies on Rule 2.16(A), which provides, "A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies."

91. The Board finds no clear and convincing evidence that Respondent violated Rule 2.16(A) relative to this Charge as it credits her testimony that she did not draft, edit, or revise the Stotler letter but merely proofread it.

92. Charge Seven of the Statement of Formal Charges relies on Rule 2.16(A), which provides, "A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies."

93. The Board finds clear and convincing evidence that Respondent violated Rule 2.16(A) relative to this Charge for the same reasons as Charge Four and finds it not substantively redundant as it is a separate occasion where Respondent mispresented her involvement in the Stotler letter.

94. Charge Eight of the Statement of Formal Charges relies on Rule 1.3: "A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so."

95. The Board finds no clear and convincing evidence that Respondent violated Rule 1.3 relative to this Charge as a request for the recusal of Judicial Disciplinary Counsel arose from her judicial office, not from personal or economic interests separate from her judicial office.

## CONCLUSIONS OF LAW

1. "The purpose of judicial disciplinary proceedings is the preservation and enhancement of public confidence in the honor, integrity, dignity, and efficiency of the members of the judiciary and the system of justice." Syl. pt. 1, in part, *In re Cruickshanks*, 220 W. Va. 513, 648 S.E.2d 19 (2007).

2. Rule 3.11 of the Rules of Judicial Disciplinary Procedure provides, "The Board shall have the authority to … conduct hearings on formal complaints filed by the Judicial Investigation Commission and make recommendations to the Supreme Court of Appeals regarding disposition of those complaints."

3. Rule 4.5 of the Rules of Judicial Disciplinary Procedure provides, "In order to recommend the imposition of discipline on any judge, the allegations of the formal charge must be proved by clear and convincing evidence."

4. Rule 4.8 of the Rules of Judicial Disciplinary Procedure provides, "[T]he Judicial Hearing Board shall file a written recommended decision with the Clerk of the Supreme Court of Appeals … The decision shall contain findings of fact, conclusions of law, and a recommended disposition."

5. Rule 1.1 of the Code of Judicial Conduct provides, "A judge shall comply with the law, including the West Virginia Code of Judicial Conduct."

6. Accordingly, any violation of the Code of Judicial Conduct is a concurrent violation of Rule 1.1.

7. This underscores the importance of becoming familiar with the Code of Judicial Conduct and conforming one's conduct to its rules and the law in general.

8. It undermines the public's confidence in the judiciary if judges do not assiduously comply with the law.

9. Rule 1.2 of the Code of Judicial Conduct provides, "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."

10. A Comment to this Rule states, "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."

11. Unlike the usual matters that come before the Board, there is an aspect of "inside baseball" relative to this matter in that it exclusively arises from an alleged lack of candor by the Respondent relative to her involvement in a letter written by a fellow Family Court Judge, not directly arising from the performance of her judicial duties, regarding a subject matter that few outside the judiciary and, in particular, Family Court Judges, would have much interest.

12. Rule 2.16(A) provides, "A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies."

13. In the context of an ethical standard, it goes beyond technical truthfulness.

14. As one court has observed in the analogous context of lawyer ethics:

> Candor is required by all rules of ethics that could possibly apply here. One definition of "candor" describes it as being "[t]he quality of being open, honest and sincere." Candor, Black's Law Dictionary (10th ed. 2014). The "duty of candor" under which lawyers operate is a bit broader. It is a "duty to disclose material facts; esp[ecially], a lawyer's duty not to allow a tribunal to be misled by false statements, either of law or of fact, that a lawyer knows to be false." (Id.) Most legal authors and scholars would also include that it is a lawyer's duty not only to be honest but also not to mislead or allow a court to be misled by half-truths or statements which, while technically honest, are calculated to mislead. Model Rules of Pro. Conduct R. 3.3 cmts. 2, 3 (Am. Bar. Ass'n 2013).

*In re Ethics Investigation of Allegations Raised by UDF*, No. 4:22-MC-01-O, 2023 WL 3327251, at *24 (N.D. Tex. Feb. 6, 2023), report and recommendation adopted, No. 4:22-MC-01-O, 2023 WL 3322586 (N.D. Tex. May 9, 2023).

15. Parsing language, especially in the context of a judicial disciplinary investigation and when under oath, is not being "candid." See, e.g., *Moore v. Garnand*, No. CV1900290TUCRMLAB, 2021 WL 1017232, at *5 (D. Ariz. Mar. 17, 2021) ("The Court is not satisfied with Plaintiffs' explanation as to why they did not disclose the IRS letter. Plaintiffs' explanation parses words more than it exhibits candor. Ethical Rule 3.3(a)(1) of the Arizona Rules of Professional Conduct requires candor to the court and subjects an attorney to possible discipline

for "fail[ing] to correct a false statement of material fact or law previously made to the tribunal by the lawyer." Ariz. Rules of Prof'l Conduct ER 3.3. Though Plaintiffs did not expressly made a false statement, they revealed partial information without disclosing the entirety of the relevant facts and thereby created a false impression."); *La Michoacana Nat., LLC v. Maestre*, 611 F. Supp. 3d 87, 94 (W.D.N.C. 2020) ("'Factual statements by counsel that are so carefully worded as to be both technically accurate and misleading by omission are of particular concern, as they reflect an intent to lead the Court down the garden path. Courts rely on the candor of counsel and should not have to parse an attorney's language and representations for loopholes, half-stated exceptions, or "truthiness."'"(citation omitted).

16. Judges are held to a higher standard and, when asked to provide sworn statements in the context of judicial disciplinary investigations, must be both "honest" and "candid," not engage in half-truths or parsing words.

17. Proofreading and pronouncing a draft letter "good" may not be drafting, revising, or preparing the letter but claiming not to have any "association" with the letter and not seeing it until it was sent when it was received, proofread, and returned with at least one correction and with contact information included in the letter is not credible and indicates perhaps not intentional dishonesty, but a lack of candor.

## RECOMMENDED DECISION

1. Rule 4.12 of the Rules of Judicial Disciplinary Procedure provides, "The Judicial Hearing Board may recommend or the Supreme Court of Appeals may impose any one or more of the following sanctions for a violation of the Code of Judicial Conduct: (1) admonishment; (2) reprimand; (3) censure; (4) suspension without pay for up to one year; (5) a fine of up to $5,000; or (6) involuntary retirement for a judge because of advancing years and attendant physical or mental incapacity and who is eligible to receive retirement benefits under the judges' retirement system or public employees retirement system."

2. The same rule provides, "An admonishment constitutes advice or caution to a judge to refrain from engaging in similar conduct which is deemed to constitute a violation of the Code of Judicial Conduct. A reprimand constitutes a severe reproof to a judge who has engaged in conduct which violated the Code of Judicial Conduct. A censure constitutes formal condemnation of a judge who has engaged in conduct which violated the Code of Judicial Conduct."

3. The same rule provides, "The extent to which the judge knew or should have reasonably known that the conduct involved violated the Code of Judicial Conduct may be considered in determining the appropriate sanction."

4. Finally, the same rule provides, "In addition, the Judicial Hearing Board may recommend or the Supreme Court of Appeals may impose any one or more of the following sanctions for a judge's violation of the Rules of Professional Conduct: (1) probation; (2) restitution; (3) limitation on the nature or extent of future practice; (4) supervised practice; (5) community service; (6) admonishment; (7) reprimand; (8) suspension; or (9) annulment."

5. "This Court has the inherent power to inquire into the conduct of justices, judges and magistrates, and to impose any disciplinary measures short of impeachment that it deems necessary to preserve and enhance public confidence in the judiciary." Syl. pt. 8, *In re Watkins*, 233 W.Va. 170, 757 S.E.2d 594 (2013).

6. "[I]t is clearly within this Court's power and discretion to impose multiple sanctions against any justice, judge or magistrate for separate and distinct violations of the Code of Judicial Conduct and to order that such sanctions be imposed consecutively." Syl. pt. 7, in part, *In re Watkins*, 233 W. Va. 170, 757 S.E.2d 594 (2013).

7. Our Court has held, "In determining what sanction or sanctions, if any, to impose under Rule 4.12 of the West Virginia Rules of Judicial Disciplinary Procedure [eff. 2019], this Court will 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. 6, *Matter of Goldston*, 246 W. Va. 61, 866 S.E.2d 126 (2021).

8. As noted, the Board has found clear and convincing evidence for effectively three violations of the Code of Judicial Conduct attendant to Respondent's denials to the Judicial Investigation Commission and her first sworn statement of non-involvement in the Stotler letter.

9. Relative to the five factors: (a) the Respondent's conduct was related to the administration of justice but not to the public's perception of the administration of justice as they

do not arise from the performance of her judicial duties; (b) the charges relate more to personal matters than to Respondent's public persona; (c) the charges do not involve violence or a callous disregard for our system of justice; (4) there has been no criminal indictment, complaints, or other charges; and (5) the Respondent has not been the subject of any other ethics complaints, competent testimony was offered as to her reputation for honesty, integrity, and the impartial performance of her judicial duties, and other than the violations themselves, there are no other aggravating factors.

10. Upon consideration of all the facts and circumstances in this case, the Board makes the following recommendations regarding the discipline to be imposed on the Respondent:

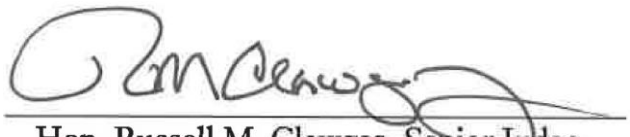
a. The Respondent be reprimanded for violations of Rules 1.1 and 2.16(A).

b. The Respondent be ordered to pay the costs of the proceedings.

The Honorable Michael D. Lorensen and the Honorable Andrew Dimlich disqualified themselves and did not participate in this matter, and the Judicial Hearing Board voted 6-1 to approve this Recommended Decision, with Family Court Judge Brittany Ranson Stonestreet dissenting and voting to find that none of the Charges against the Respondent were sustained by clear and convincing evidence.

The Counsel of the Judicial Hearing Board is directed to provide a copy of this Recommended Decision to the Supreme Court of Appeals and counsel of record.

Entered this 25th day of May 2023.



Hon. Russell M. Clawges, Senior Judge
Judicial Hearing Board