IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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IN THE MATTER OF:
THE HONORABLE DEANNA R. ROCK,
FAMILY COURT JUDGE of the 23rd FAMILY COURT CIRCUIT

COMPLAINT NO. 38-2022
SUPREME COURT NO.: 22-862

BRIEF OF SPECIAL JUDICIAL DISCIPLINARY COUNSEL

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I. STATEMENT OF THE CASE

A. NATURE OF PROCEEDINGS AND PROCEDURAL HISTORY

Formal charges were filed against the Honorable Deanna R. Rock (hereinafter "Respondent") with the Clerk of the Supreme Court of Appeals on or about November 21, 2022, and served upon Respondent via certified mail by the Clerk on November 30, 2022. Respondent, by and through counsel, filed her Answer to the Statement of Charges on or about December 28, 2022. On or about January 20, 2023, Special Judicial Disciplinary Counsel filed Special Judicial Disciplinary Counsel's Interrogatories; Request for Production; and Request for Admissions. On that same date, Respondent filed Respondent's Written Discovery. On or about February 17, 2023, Special Judicial Disciplinary Counsel filed Special Judicial Disciplinary Counsel's Response to Respondent's Written Discovery. On that same date, Respondent filed Respondent's Answers to Special Judicial Disciplinary Counsel's Written Discovery. On or about February 21, 2023, Special Judicial Disciplinary Counsel filed Special Judicial Disciplinary Counsel's Production of Discovery. On or about March 15, 2023, Special Judicial Disciplinary Counsel filed Special Judicial Disciplinary Counsel's Witness List. On that same date, Respondent filed Respondent's Exhibit and Witness List. On or about March 17, 2023, Lawrence J. Smith made a motion to "bring and use electronic devices to record, and take images of the evidentiary hearing." By order entered March 20, 2023, Judge Clawges granted in part, and denied in part, Mr. Smith's motion.

Thereafter, this matter proceeded to hearing in Morgantown, West Virginia, on March 22, 2023. The Honorable Russel M. Clawges, Jr. served as Hearing Examiner in this matter. Rachael L. Fletcher Cipoletti appeared as Special Judicial Disciplinary Counsel. Lonnie C. Simmons appeared on behalf of Respondent, who also appeared. The Hearing Examiner heard testimony

from The Honorable Charles Parsons; Victor Alan Riley, Esquire; Joy Renee Campbell; and Respondent. In addition, Joint Exhibits 1-34 were admitted into evidence.

On or about May 15, 2023, Special Judicial Disciplinary Counsel filed "Special Judicial Disciplinary Counsel's Proposed Findings of Fact, Violations of the Code of Judicial Conduct, and Recommended Sanctions." On that same date, Respondent filed "Respondent's Proposed Findings of Fact and Conclusions of Law."

On or about May 25, 2023, the Judicial Hearing Board (hereinafter "JHB") filed their "Recommended Decision." The JHB recommended that (a.) The Respondent be reprimanded for violations of Rules 1.1 and 2.16(A); and (b.) The Respondent be ordered to pay the costs of the proceedings.

On or about June 15, 2023, Respondent filed "Respondent's Consent to the Judicial Hearing Board's Recommendations Exonerating Her on Five, But Objection to the Recommendations Sustaining Three Charges."

On or about June 26, 2023, SJDC filed her Objection to the JHB Recommended Decision.

B. FINDINGS OF FACT

Respondent became a licensed member of the West Virginia State Bar on May 13, 2004. [Joint Exhibit 1 at 1]. As a member of the West Virginia State Bar, Respondent was not sanctioned by the Lawyer Disciplinary Board or the Supreme Court of Appeals of West Virginia. [Joint Exhibit 1 at 1].

Respondent was elected in an uncontested election to serve as a Family Court Judge for a new seat in the Twenty-Third Family Court Circuit (Hampshire, Mineral and Morgan Counties) in May 2016 and she took office on January 3, 2017. [Joint Exhibit 1 at 1]. As a member of the judiciary, Respondent has not been sanctioned by the Judicial Investigation Commission or the

Supreme Court of Appeals of West Virginia. [Joint Exhibit 1 at 2]. Respondent and the Honorable Glen R. Stotler are the only family court judges in the Twenty-Third Family Court Circuit. Respondent's primary office is in Mineral County, and FCJ Stotler's primary office is located in Morgan County, West Virginia. [Joint Exhibit 1 at 2]. Respondent served as the President of the West Virginia Family Court Judicial Association from January 1, 2020, until May 11, 2021. [Joint Exhibit 1 at 2].

On or about August 25, 2020, the Judicial Investigation Commission (hereinafter "JIC") found probable cause existed and pursuant to Rule 2.7 (c) issued an Admonishment to FCJ Shuck for conducting "home visits" and the JIC stated that such home visits were not authorized by any statute, rule or case law and that they were "ill-advised and inappropriate." [Joint Exhibit 1 at 2]. FCJ Shuck was publicly admonished for his violations of Rules 1.1; 1.2; 1.3; and 2.5(a) of the Code of Judicial Conduct. FCJ Shuck did not object to the admonishment. [Joint Exhibit 1 at 2].

On September 23, 2020, JDC filed a Statement of Charges with the Clerk of Court after the JIC found probable cause and voted to issue a One-Count formal Statement of Charges against FCJ Goldston charging her with violating Rules 1.1, 1.2, 1.3, 2.2, 2.4(B), 2.5 and Rules 3.1(A), (B) and (D) of the Code of Judicial Conduct. [Joint Exhibit 1 at 3]. On or about September 30, 2020, FCJ Goldston and her counsel entered into a written agreement with the JDC whereby she would admit to (1) all of the facts contained in paragraphs 1 through 14 of the formal statement of charges; and (2) violating Rules 1.1, 1.2, 1.3, 2.2(A), 2.4(B) and 2.5 of the Code of Judicial Conduct for her behavior set forth therein. [Joint Exhibit 1 at 3]. The parties set forth factors in mitigation. The parties further agreed to recommend sanctions of a censure, a $5,000.00 fine and the payment of costs. The agreement was signed by FCJ Goldston and her Counsel Andy Nason on September 30, 2020, and by JDC on October 5, 2020. [Joint Exhibit 1 at 3].

Sometime after ethics charges had been issued against her, FCJ Goldston called Respondent to advise her of the charges because she represented to Respondent that she thought it was possible Respondent, as the President of the West Virginia Family Court Judicial Association, might receive some press inquiries. [Joint Exhibit 1 at 3] The media never contacted Respondent about this ethics matter. After learning of the charges, Respondent began looking into the issue of home views and was concerned that this issue could impact other Family Court Judges and Respondent communicated this concern to FCJ Goldston. [Joint Exhibit 1 at 3]. Although Respondent testified that she believed FCJ Goldston's admissions would impact "judges in general" she acknowledged that despite her attempts to recruit her counterpart with the Circuit Court Judges Association that ultimately the Circuit Court Judges did not intervene in FCJ Goldston's case. [Transcript at 27-28].

In October of 2020, Respondent had a conversation with FCJ Goldston and Respondent asked her "Is there anything we can do to help?" [Joint Exhibit 1 at 3]. FCJ Goldson checked with her lawyer and responded, "If you guys want to send a letter of support about her character and her reputation, that might be helpful." [Joint Exhibit 1 at 3]. Respondent, FCJ Griffith, and FCJ Greenberg reviewed their ethical obligations under Rule 3.3 of the West Virginia Code of Judicial Conduct, entitled "Testifying as a Character Witness." [Joint Exhibit 1 at 3]. This rule specifically prohibits all judges from "testify[ing] as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when subpoenaed to testify." [Joint Exhibit 1 at 4]. Because they were not providing any testimony, Respondent, FCJ Griffith, and FCJ Greenberg concluded that sending letters in support of FCJ Goldston was not prohibited by this or any other rule. [Joint Exhibit 1 at 4]. On or about October 14 and 15, 2020, Respondent, along with two other family court judges, sent letters of

support for FCJ Goldston to the Judicial Investigation Commission. [Joint Exhibit 1 at 4; Joint Exhibit 2 at 10; Joint Exhibit 3 at 11-12; and Joint Exhibit 4 at 13-14].

The letters were presented to the Judicial Investigation Commission at its October 16, 2020 meeting, and the Commission directed JDC to advise Respondent (and the other two FCJs) that the letter was in violation of Rules 1.3, 2.10(A), and 3.3 of the Code of Judicial Conduct, and although it did not direct that a complaint be opened, JDC was directed to send a letter warning the judges about the conduct. On the same date, JDC Lanham contacted Respondent by telephone to advise Respondent that the letters were in violation of the Code of Judicial Conduct. [Transcript at 64]. Respondent then sent a text to other Family Court Judges advising not to send the letters. [Transcript at 66].

On or about October 21, 2020, the JIC issued Advisory Opinion 2020-25 stating that it was "improper for any judge to voluntarily write a letter of support on behalf of any litigants in any civil or criminal matter pending or impending in any court or administrative venue." [Joint Exhibit 1 at 4 and Joint Exhibit 5 at 15-17]. By letter dated October 22, 2020, Respondent was advised that the JIC had reviewed her submitted letter in support of FCJ Goldston and was of the opinion that the letter was in violation of Rules 1.3, 2.10(A), and 3.3 of the Code of Judicial Conduct. The JIC did not open a complaint, but instead warned Respondent about the violative conduct. [Joint Exhibit 1 at 4 and Joint Exhibit 6 at 18]. The letter was signed by JDC Lanham but is evident that the letter was sent with the direction and authority of the Judicial Investigation Commission. [Joint Exhibit 6 at 18].

FCJ Goldston's disciplinary hearing was held on January 15, 2021. On January 20, 2021, JDC filed a Motion to Disqualify FCJ Stotler from the Goldston judicial disciplinary matter. [Joint Exhibit 1 at 4]. By Order prepared by counsel for the JHB and entered January 22, 2021, FCJ

Stotler declined to disqualify himself. On the same day, Judge Lorensen, Chairperson of the Judicial Hearing Board, required post hearing briefs by the parties addressing legal issues delineated by questions a-l.

Attorney Nason filed a Response to the Judicial Hearing Board Questions on or about February 12, 2021. On or about February 16, 2021, JDC filed its post-hearing brief. On February 16, 2021, an amicus brief was filed by John Bryan, Esquire and the same was ordered filed by order entered by the JHB on February 19, 2021. Attorney Nason filed a corrective brief on February 22, 2021. Attorney Nason also filed a Response Brief with the JHB on or about March 1, 2021.

On or about March 16, 2021, the JHB issued its recommended decision in the Goldston matter. The decision reflected that two JHB members wanted a censure, with the reduced fine. FCJ Stotler dissented because in his opinion there was no clear and convincing evidence that FCJ Goldston violated any provision of the Code.[1]

On or about March 18, 2021, FCJ Stotler's Family Court Coordinator, J.R. Campbell, typed the first draft of the "Stotler letter" as FCJ Stotler dictated the substance to her from his hand-written notes. The Microsoft Word document properties indicate that the creator was "Joy Campbell" and it was saved on J.R. Campbell's court-issued computer. [Joint Exhibit 1 at 5 and Joint Exhibit 10 at 25]. On March 19, 2021, the Microsoft Word document entitled "Dear Chief Justice Jenkins" --the March 18th version of the "Stotler letter" created on J.R. Campbell's computer the day prior-- was opened and automatically saved on Respondent's court-issued computer. [Joint Exhibit 1 at 5 and Joint Exhibit 10 at 26].

[1] FCJ Stotler's dissenting opinion fails to address or reconcile FCJ Goldston's knowing, voluntary admission to violating thirteen separate rules of the Code of Judicial Conduct.

Approximately **five** minutes after opening and saving the first draft of the "Stotler Letter" on her computer, on Friday March 19, 2021 at 3:36 pm, Respondent sends a Teams Message to J.R. Campbell "are your phones working?" [Joint Exhibit 11 at 32]. Within **eight** minutes after opening and saving the first draft of the "Stotler Letter", Respondent asks "is Judge still there?" [Joint Exhibit 11 at 33]. After being advised that FCJ Stotler was out for the day, Respondent indicates that she will get a hold of him on Monday. [Joint Exhibit 11 at 34]. First thing on March 22, 2021--Monday morning-- Respondent again sends J.R. Campbell a Teams message about a fax that FCJ Douglass wants FCJ Stotler to see, but that Respondent does not want to send via email. [Joint Exhibit 11 at 36-38].

Later that afternoon, Respondent and J.R. Campbell began to put the final touches on the "Stotler letter". On March 22, 2021, at 2:50 pm, J.R. Campbell asked Respondent about her official title as well as the title for Keith Hoover. [Joint Exhibit 1 at 5 and Joint Exhibit 11 at 40]. On March 22, 2021, at 3:11 p.m., Respondent responded with her title and confirmed the title for Mr. Hoover was correct. [Joint Exhibit 1 at 5 and Joint Exhibit 11 at 40].

In the IM sent on March 24, 2021, at 10:01 a.m., from Ms. Campbell, she asked Respondent if she had received a fax that morning. [Joint Exhibit 11 at 40]. The Teams message states "Good morning. Boss wants to know if you received his fax sent about five minutes ago." Despite Respondent's, FCJ Stotler's and Ms. Campbell's prior sworn testimony to the contrary, Respondent has since stipulated that the fax was the "Stotler letter". After the "Stotler letter" was refaxed because a page was missing, Respondent noted there was a typo on page 2, first paragraph and explained the year 1956 needed to be inside the parenthesis. (IM 3/24/21 at 11:01 a.m.). [Joint Exhibit 11 at 42]. After reviewing the faxed "Stotler letter", Respondent 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.). [Joint Exhibit 1 at 5 and Joint Exhibit 11 at 41-42]. All of Respondent's edits made to the drafts of the "Stotler letter" were incorporated into the final version of the "Stotler letter."

On or about March 25, 2021, FCJ Stotler sent and/or directed his staff to send the "Stotler letter" dated March 25, 2021, addressed to Chief Justice Jenkins and carbon copied Supreme Court Justice Walker; Supreme Court Justice Armstead; Supreme Court Justice Hutchison; Supreme Court Justice Wooton; Charles S. Trump, IV, Esquire, Chairman, Senate Judiciary Committee; Moore Capito, Esquire, Chairman House Judiciary Committee; Lisa A. Tackett, Director, Administrative Office; Joseph Armstrong, Administrative Director; and Respondent in her capacity as the President of the Family Court Judicial Association. [Joint Exhibit 1 at 6]. FCJ Stotler alleged that Chief Judicial Disciplinary Counsel and Deputy Judicial Disciplinary Counsel engaged in serious misconduct during the investigation and prosecution of two Family Court Judges.

In his letter to the Chief Justice, FCJ Stotler, in his capacity as a member of the Judicial Hearing Board stated that it was his "observation" that the conduct and practices of JDC in both cases was questionable and concerning and it was "evident to [him]" that JDC is abusing power and authority in the way that they deceive and intimidate judges into entering into agreements with the threat that if they fail to do so, the judges will be subject to far more severe penalties and consequences. He further alleged that JDC requests judges to appear at their office under the "disguise of just being a friendly interview and, once there, the judges are sworn in and interrogated." He further alleged that when Judges inquire of JDC if they should have an attorney to represent them, they are advised they do not need an attorney. Further, he alleged that the judges have "no idea of what they are being subjected to and therefore are given no opportunity to be

prepared to address the issues and interrogation to which they are subjected." FCJ Stotler further asserted that "[i]t is evident that during the interrogation that the JDC actually misrepresents the law to coerce judges into agreements." He further alleged that "[i]t is evident the JDC misstates the facts to achieve their goal." He stated "[i]t is evident the JDC does not believe they are answerable to anyone for their actions, their conduct, or their practices." FCJ Stotler requested that Chief Counsel and Deputy Counsel be investigated, seriously reprimanded and/or terminated from their respective positions. [Joint Exhibit 12 at 52-54].

By emails dated March 30, 2021, Respondent, along with Attorney Rick Staton, FCJ Greenberg, and FCJ Douglas received two emails from FCJ Goldston containing her first draft of her objections to the Judicial Hearing Board's recommendation. It is noted that the email was sent from FCJ Goldston's personal email account to the judicial officer's personal email accounts. [Joint Exhibit 18 and Joint Exhibit 19].

On or about April 2, 2021, an article was written by reporter Chris Dickerson and published by the West Virginia Record entitled "Family court judge chastises Judicial Disciplinary Counsel, says they abuse power." [Joint Exhibit 1 at 6 and Joint Exhibit 17 at 65-67]. Despite the letter's widespread audience, to date the same had not been reported on by the press. Mr. Chris Dickerson, a reporter for the West Virginia Record, received an anonymous email of the "Stotler letter" which had the fax line blacked out and some writing in blue ink that was crossed out. [Joint Exhibit 1 at 6]. The blacked-out portion of the "Stotler Letter" indicates the letter was faxed on March 31, 2021, at 11:15 a.m. [Joint Exhibit 1 at 6 and Joint Exhibit 14 at 56-58], The blacked-out portion further bears the name "Judges Stotler/Rock."

On or about April 6, 2021, while the FCJ Goldston disciplinary matter was still pending before the Supreme Court of Appeals, Respondent emailed a document drafted by or on behalf of

FCJ Goldston entitled "jhb objections corrected" from her personal email account to FCJ Stotler's court-issued email account. [Joint Exhibit 1 at 6 and Joint Exhibit 18 at 68-70]. On the same date, Respondent emailed FCJ Stotler a forwarded second email subject titled "Fw: Corrected objections." The email contained an attachment entitled "jhb objections corrected.docx". The body of the original email was composed by FCJ Goldston and contained the message "I didn't finish my last sentence". The email was sent from Respondent's personal email account to FCJ Stotler's court-issued email account. [Joint Exhibit 1 at 6-7 and Joint Exhibit 19 at 71-73].

Additionally, by letter dated April 6, 2021, Respondent (and two other FCJs) sent a letter to Lisa Tackett, Director of the Division of Court Services at the Supreme Court of Appeals. [Joint Exhibit 1 at 7 and Joint Exhibit 20 at 74-77]. The letter started "[i]n light of the letter Deanna Rock, President of the Family Judicial Association, recently received concerning the actions of Judicial Disciplinary Counsel, please find attached the letters received by the undersigned judges as provided to us by the Judicial Disciplinary Counsel (hereinafter the "JDC")." The letter discussed the judges' belief that the issuance of the warning letters was improper and concluded by stating "[i]n our opinion, this action by the JDC is a gross overreach of their job description and function within the process. The JDC used its power to improperly send a warning to a judge (three in this situation) when the JDC is clearly not authorized to do so. This was nothing short of bullying and had a chilling effect on the rights of judges to express their concerns." [Joint Exhibit 20 at 74-77].

As evidenced by the face of the October 2020 warning letter, the accusations regarding JDC's conduct in the April 6, 2021, letter, to which Respondent admitted to drafting on behalf of the three judges, are patently false. [Transcript at 62]. The letter to Lisa Tackett is simply another

means to regurgitate unfounded accusations of misconduct by JDC to further the campaign against these two lawyers.

On or about April 12, 2021, Judge Alan D. Moats, Chairperson of the Judicial Investigation Commission, provided to the Office of Lawyer Disciplinary Counsel (hereinafter "ODC") the March 25, 2021, letter, addressed to the Chief Justice of the Supreme Court of Appeals[2] and signed by the FCJ Stotler[3]. As a result, through its express authority in the Rules of Lawyer Disciplinary Procedure, ODC opened ethics complaints against Teresa A. Tarr, and Brian J. Lanham, both licensed members of the West Virginia State Bar.

On or about April 23, 2021, Respondent (and two other FCJs) drafted a letter addressed to JDC Tarr and requested an advisory opinion regarding JDC or JIC warnings. The judges attached the October 2020 warning letters, the April 6, 2021, letter, and the JIC Admonishment of FCJ Sally G. Jackson issued by the JIC on or about February 24, 2021. [Joint Exhibit 1 at 7 and Joint Exhibit 21 at 78-80]. Respondent testified that they sent this letter requesting an advisory opinion because the April 6, 2021, letter addressed to Ms. Tackett and sent to JDC, did not get a response. [Transcript at 67]. However, Respondent acknowledged in her testimony before the JHB that there was no question posed to the JIC about contemplated judicial conduct pursuant to Rule 2.13 of the Rules of Judicial Disciplinary Procedure. [Transcript at 68-69]. Instead, the April 23, 2021, letter

[2] Supreme Court Justice Walker, Supreme Court Justice Armstead, Supreme Court Justice Hutchison, Supreme Court Justice Wooton, Charles S. Trump, IV, Esquire, Chairman, Senate Judiciary Committee, Moore Capito, Esquire, Chairman, House Judiciary Committee, Lisa A. Tackett, Director, Administrative Office, Joseph Armstrong, Administrative Director, and FCJ Deanna Rock, President of the Family Court Judicial Association are all carbon copied on FCJ Stotler's letter.

[3] Neither the Chair of the Judicial Hearing Board, nor the Chair of the Judicial Investigation Commission are copied on the letter. By letter dated April 2, 2021, FCJ Stotler apologized to the Chair of the JIC for the oversight and forwarded a copy of the March 25, 2021, letter.

was simply another opportunity for Respondent to use the power and prestige of her bench to make meritless accusations of misconduct about JDC. [Joint Exhibit 21 at 78-80]

On or about April 27, 2021, JDC Tarr responded by letter to the request for an advisory opinion and advised that her Office has disqualified themselves from handling any new complaints that involve Judge Stotler or any other judge who may have helped in the submission of the "Stotler letter" and because the April 6, 2021 letter relates in part to the Stotler matter, her Office was also disqualifying itself. [Joint Exhibit 24 at 87]. JDC Tarr advised that she was forwarding the request for an advisory opinion to the Chair of the JIC. [Joint Exhibit 24, at 87].

Respondent was upset after receiving this April 27, 2021, letter. [Transcript at 69]. She sent an email to Lisa Tackett that said "it was making [her] blood boil" [Joint Exhibit 23 at 82]. Although it is noted that JDC Tarr did not accuse or even imply that Respondent or the other Family Court Judges were involved in drafting the "Stotler letter," it is noted that a little more than month after aiding in the drafting of the letter, Respondent was enraged that she was being accused of being associated with the "Stotler letter." On April 27, 2021, Respondent sent an email to FCJ Stotler. The email included the response from JDC Tarr to a request for an advisory opinion by Respondent and two other family court judges. [Joint Exhibit 22 at 81]. Respondent requested a response from FCJ Stotler and stated that "[t]his 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].

On or about April 30, 2021, Respondent (and two other FCJs) sent a letter via email to the Chair of the JIC criticizing JDC Tarr for implying that they were involved in the drafting and submission or the writing or sending of the "Stotler letter." [Joint Exhibit 1 at 7 and Joint Exhibit 24 at 84-94]. Respondent, with the prestige of her bench, advised the Chair of the JIC that JDC's "unfounded implication" that they were involved in the drafting of the "Stotler letter" was

"misplaced, inappropriate, insulting, biased, prejudicial, and sadly reproducing the very issue we have with the "warning" letters." [Joint Exhibit 24 at 84]. The letter further states that "we have lost all faith in Ms. Tarr's and Mr. Lanham's ability to ever be impartial or unbiased toward the three of us." [Joint Exhibit 24 at 85]. Moreover, although the letter purports to seek an advisory opinion about contemplated judicial conduct, it is evident this letter is just another means to make a baseless attack against JDC. The letter is on judicial letterhead lending the prestige of her bench to give weight to her baseless accusations to recuse JDC from investigating them in the future. [Joint Exhibit 24 at 85].

At the 2021 Spring Family Court Judge's Education Conference held on May 11-13, 2021, Respondent, along with two other Family Court Judges[4] presented a continuing legal education seminar entitled "Facing a Judicial Complaint and/or Investigation and Other Judicial Investigation Issues". Immediately following the presentation, the Family Court Judges went into executive session and voted to issue "Resolution of the West Virginia Family Judicial Association May 13, 2021" to the Supreme Court of Appeals of West Virginia and the Judicial Investigation Commission. [Joint Exhibit 26 at 146-147]. The vote occurred on May 13, 2021, but the resolution was not sent to the Supreme Court and the JIC until May 28, 2021. The Resolution, which was drafted in part by Respondent, regurgitates the accusations from the "Stotler letter" and requests that:

> because of the excesses, offenses, and unauthorized practices of Teresa Tarr and Brian Lanham, Judicial Disciplinary Counsel, and accordingly and forthwith remove and terminate the employment of Teresa Tarr and Brian Lanham as Judicial Disciplinary Counsel.

[Joint Exhibit 26 at 147].

[4] FCJ Keller, a sitting member of the Judicial Investigation Commission, gave an introductory overview of the judicial discipline process.

On or about May 13, 2021, the Investigative Panel of the Lawyer Disciplinary Board issued its closing of the investigations of JDC Tarr and JDC Lanham. The Investigative Panel found no merit to the allegations and ordered the matters closed. The Panel directed the public closing be sent to the Chairperson of the JIC and the Administrative Director of the Supreme Court of Appeals. [Joint Exhibit 25 at 145]. In its May 13, 2021, decision, the Investigative Panel of the Lawyer Disciplinary Board noted:

> It is shocking that a long-standing member of the judiciary bestowed with the honor of being part of the system designed to protect and preserve the integrity of the judicial system would make such baseless accusations designed solely to impugn the integrity of two members of the West Virginia State Bar. It does not appear that FCJ Stotler conducted any factual investigation into the allegations regarding JDC before regurgitating the untimely, unsupported allegations made by FCJ Goldston and sending an *ex parte* communication, written on his official court letterhead, to the Supreme Court. Additionally, the Judicial branch of government has the exclusive authority to regulate the practice of law in the State of West Virginia, but FCJ Stotler's letter was also sent to members of the Legislature. The Investigative Panel of the Lawyer Disciplinary Board directs Chief Counsel to provide this disposition to both the Chairperson of the Judicial Investigation Commission and the Administrative Director of the Supreme Court of Appeals.
>
> The law is not an arena wherein we vilify civility, curse thorough preparation, and denigrate skilled, zealous advocacy. The Investigative Panel of the Lawyer Disciplinary Board finds no merit to the allegations made against Respondent Tarr and Respondent Lanham and orders these matters be closed.

[Joint Exhibit 25 at 144-145].

On or about May 25, 2021, the Administrative Director of the Supreme Court of Appeals of West Virginia filed a judicial ethics complaint against FCJ Stotler with the Judicial Investigation Commission (I.D. No. 50-2021). [Joint Exhibit 1 at 8].

On or about June 28, 2021, the JIC advised Respondent and the other Family Court Judges that the request for an advisory opinion was taken up at their June 25, 2021, meeting and they voted to decline the request as it did not comport with Rule 2.13 of the Rules of Disciplinary Procedure. [Joint Exhibit 27 at 148].

On or about November 15, 2021, during the investigation of FCJ Stotler's ethics complaint, Special Judicial Counsel took the sworn statement of his family case coordinator, Joy Renee Campbell. [Joint Exhibit 28 at 149-212]. As a court employee, Ms. Campbell knew she was subject to the Code of Judicial Conduct, which includes an obligation to give truthful, candid, and cooperative testimony in a disciplinary investigation. [Transcript 197-199 and SJC Exhibit 1]. Ms. Campbell testified that she recalled typing the "Stotler letter" while FCJ Stotler dictated the substance to her in her office. [Joint Exhibit 28 at 174]. She testified she believed she typed it on or about March 18 or 19 of 2021. [Joint Exhibit 28 at 175]. She falsely testified that nobody other than FCJ Stotler reviewed the letter prior to her mailing the same. [Joint Exhibit 28 at 176-177]. She falsely stated that she was surprised but there were no changes made to the original draft of the letter. [Joint Exhibit 28 at 177-178]. She falsely testified that she did not give the "Stotler letter" to anyone other than FCJ Stotler. [Joint Exhibit 28 at 207]. She falsely testified that she did not make any corrections or edits to the "Stotler letter" other than those by FCJ Stotler. [Joint Exhibit 28 at 208]. Ms. Cambell's sworn testimony in November of 2021 is not consistent with the evidence, but it is wholly consistent with FCJ Stotler's sworn statement and his verified answer to his ethics complaint. It is noted that pursuant to a subpoena issued by Respondent, Ms. Campbell testified at Respondent's disciplinary hearing that she was aware of FCJ Stotler's position both in his verified response and his own sworn statement when she gave her sworn statement in November of 2021. [Transcript at 193]. To further demonstrate her motive to testify consistent with FCJ Stotler, she testified at Respondent's disciplinary hearing that she served at the will and pleasure of FCJ Stotler and that "he can hire or fire her." [Transcript at 200].

Pursuant to a confidential investigation subpoena issued by the Clerk of the Supreme Court, on or about January 31, 2022, Respondent appeared, both personally, and by and through counsel,

and gave a sworn statement to Special Judicial Counsel during the confidential investigation of the judicial ethics complaint filed against FCJ Stotler. [Joint Exhibit 1 at 8 and Joint Exhibit 31 at 255-405]. To accommodate Respondent, Special Judicial Counsel traveled to Respondent's office to take the sworn statement. [Joint Exhibit 29 at 216]. After receiving a copy of the confidential investigative subpoena, Respondent was aware of the subject matter of the investigation at the time of her January 31, 2022, statement. [Transcript at 51 and Joint Exhibit 29 at 237-240]. Respondent received and reviewed FCJ's Stotler's judicial ethics complaint prior to her January 31, 2022, sworn statement. [Transcript at 51]. Respondent received and reviewed FCJ Stotler's answer to the judicial ethics complaint. [Joint Exhibit 31 at 385]. At the time of the January 31, 2022, sworn statement, Respondent was in possession of her court-issued computer that possessed the Teams messages, emails, and the original draft of the "Stotler letter." [Transcript at 53].

At her January 31, 2022 sworn statement, Respondent was asked:

> Q .... do you know what you're CC'd on this letter?
> A. I do not.
> ...

[Joint Exhibit 31 at 316].

Having been involved with the "Stotler Letter" since its genesis, Respondent knew she was going to be copied on the letter. Indeed, neither Keith Hoover nor Respondent were listed on the March 18th version of the letter, but both were present on the final March 25th version of the letter, complete with their official titles provided by Respondent to Ms Campbell. [Transcript at 42].

> 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 Exhibit 31 at 320].

This statement is false. This statement was not candid or truthful. The forensic data from Respondent's court issued computer clearly proves the first draft of the Stotler letter was created

on Respondent's computer on Friday, March 19, 2021, at 3:31pm. [Joint Exhibit 10 at 26 and Transcript at 39].

Q. Did Judge Stotler speak to you about the contents of the letter before he sent it to you on the 25th?
A. No.
Q. Even to say I'm sending you a letter?
A. No.

[Joint Exhibit 31 at 320-321].

As the forensic evidence clearly demonstrates, these statements are not truthful and are not candid. Respondent was provided with a copy of the first draft of the letter on March 19th -- one day after it was originally drafted. Indeed, within five minutes of opening the first draft on her computer, she initiated contact with FCJ Stotler's office inquiring if FCJ Stotler was still at the office. [Joint Exhibit 11 at 32-33]. When questioned about this at the final hearing, Respondent testified that the messages related to outstanding orders, but it is noted there are no discussions of any orders in the instant messages on Monday morning. [Transcript at 43].

On the morning of March 24th, Ms. Campbell sent Respondent a message at FCJ's Stotler's request inquiring about whether she received the faxed copy of the "Stotler Letter" [Joint Exhibit 11 at 40]. It is evident from its first draft to its final draft, Respondent participated in meaningful discussions about the "Stotler Letter." Indeed, the forensic data clearly establishes that Respondent gave her final seal of approval of the "Stotler letter" and requested to speak with FCJ Stotler before the letter was mailed. [Joint Exhibit 1 at 5 and Joint Exhibit 11 at 41-42].

Respondent admitted that the "Stotler letter" was "not impactful" to her until it was released in the "The West Virginia Record and she "started to hear a buzz about it" and she thought, "oh this might've ruffled some feathers." [Joint Exhibit 34 at 538]. At her January 31, 2022 sworn statement Respondent testified:

No. And, if I can just say here, I knew the beginning Judge Stotler was on the hearing board. I knew that Lou [FCJ Goldston] had reached out to me to tell me what she told me because I was president. I had concerns, but I knew I couldn't talk to Judge Stotler.

Judge Stotler knew he couldn't talk to me. We didn't even have a conversation about not having a conversation. We just knew because of the rules that we couldn't do it.

[Joint Exhibit 31 at 299].

Although her memory was incomplete at her January statement, Respondent has since acknowledged she faxed the "Stotler letter" to several Family Court Judges but denies that she faxed this letter to Chris Dickerson. [Joint Exhibit 1 at 6]. To be clear, although it is evident that Respondent caused the "Stotler letter" to be disseminated publicly and that dissemination led to the same being sent to a reporter, Special Judicial Counsel does not suggest that Respondent emailed her faxed copy of the "Stotler letter" directly to Chris Dickerson.

Respondent further testified that "within a week of receiving the [Stotler] letter" she spoke with FCJ Stotler. [Joint Exhibit 31 at 323].

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 to Judge Stotler say, hey, I'm sending you a letter?

A. No.

[Joint Exhibit 31 at 323].

The forensic evidence clearly demonstrates that Respondent received advance drafts of FCJ Goldston's objections to the JHB recommendation as early as March 30, 2021. [Joint Exhibit

18 at 68 and Joint Exhibit 19 at 71]. However, when questioned by Special Judicial Counsel on January 31, 2022, about her role in the drafting of FCJ Goldston's response to the objections, Respondent testified "none." [Joint Exhibit 31 at 311-312]. Indeed, she testified in January of 2022 that she did not recall reviewing the objections before they were filed with the Court. [Joint Exhibit 31 at 312] However, after being confronted with forensic evidence to demonstrate the false nature of her January 2022 statements, at her disciplinary hearing she testified extensively about the pattern and practice she and the other family court judges had when they were assisting FCJ Goldston. [Transcript at 59-60].

Moreover, despite her January 2022 testimony that she knew she couldn't speak to FCJ Stotler about the FCJ Goldston matter, Respondent provided draft objections of the JHB recommendation in advance of filing with the Supreme Court to FCJ Stotler-- a sitting member of the Judicial Hearing Board. The forensic evidence clearly demonstrates that despite this testimony she sent those very draft objections to FCJ Stotler by email on April 6, 2021. [Joint Exhibit 18 at 68 and Joint Exhibit 19 at 71]. At her disciplinary hearing, Respondent testified that she sent those emails to FCJ Stotler "by mistake" – twice. [Transcript at 57]. Incredulously, Respondent testified that she intended to send the email not to FCJ Stotler, but to FCJ Greenberg who she acknowledged was listed as a recipient of the original emails from FCJ Goldston and whose email address does not begin with the same letter. [Transcript 58-61].

On or about March 15, 2022, the Special Judicial Commission directed a Statement of Charges to be filed against FCJ Stotler (Supreme Court No. 22-0227) and the hearing in that matter was held before the Judicial Hearing Board[5] on July 24, 2023. Unlike Respondent who has refused to acknowledge her wrongful conduct at any stage, when he appeared before the Judicial Hearing

Board, FCJ Stotler admitted that he violated Rule 1.1 [Compliance with the Law] of the Code of Judicial Conduct because he failed to comply with the Code of Judicial Conduct. He further admitted that his conduct violated Rule 1.2 [Confidence in the Judiciary] of the Code of Judicial Conduct. Finally, FCJ Stotler admitted that he violated Rule 2.10 [Judicial Statements on Pending or Impending Cases] of the Code of Judicial Conduct. After reviewing the stipulations and the stipulated exhibits, on the same date, the Judicial Hearing Board issued its Recommended Decision and found that sending the "Stotler letter" to the Supreme Court while FCJ Goldston's matter was pending violated Rules 1.1; 1.2; and 2.10 of the Code of Judicial Conduct.

The Judicial Hearing Board further found that FCJ Stotler's position as a member of the Judicial Hearing Board at the time of the offense was aggravating. Additionally, the Judicial Hearing Board determined that his prior lack of discipline was mitigating, as was FCJ Stotler's resignation of his position as Family Court Judge effective December 31, 2023, that was tendered to the Governor of the State of West Virginia by letter dated July 18, 2023. In its recommendation to this Court, the Judicial Hearing Board adopted the recommendations of the parties as to discipline, and in light of the evidence, the law, and the factors of aggravation and mitigation recommended that FCJ Stotler be reprimanded and bear the costs of the proceedings. FCJ Stotler's judicial disciplinary matter remains pending before this Honorable Court.

C. VIOLATIONS OF THE CODE OF JUDICIAL CONDUCT

CHARGE ONE—Rule 1.1 Compliance With the Law. A judge shall comply with the law, including the West Virginia Code of Judicial Conduct. The Judicial Hearing Board found the evidence established by clear and convincing evidence that Respondent's course of conduct did not comply with the Code of Judicial Conduct. [Recommended Decision at 22 and 24]

CHARGE TWO – Rule 1.2 Confidence in the Judiciary. 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. The Board determined that her none of her actions 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" [Recommended Decision at 22] The Judicial Hearing Board reasoned that this matter was more "inside baseball" and involved a "subject matter that few outside of the judiciary and, in particular, Family Court Judges, would have much interest." [Recommended Decision at 25]

However, the evidence established that Respondent acted in a concerted effort with FCJ Stotler to protect their perceived powers as family court judges and used the power of the family court bench to bully and berate two life-long public servants whose primary function is to protect the public and preserve the integrity of the judiciary—and, then lied about it. The ethical conduct of judges is of the highest importance to the people of the State of West Virginia and the Board recognized in its decision that it "undermines the public's confidence in the judiciary if judges do not assiduously comply with the law." [Recommended Decision at 24] FCJ Stotler has admitted that his conduct of drafting and sending the "Stotler letter" was in violation of this Rule, and with due respect to the Board, the evidence establishes that Respondent's actions have equally compromised her integrity and undermined public confidence in the judiciary.

CHARGE THREE—Rule 2.16(a) Cooperation with Disciplinary Authorities. A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies. The uncontroverted evidence established despite her January 31, 2022, sworn testimony, Respondent received FCJ Goldston's drafted objections to the Judicial Hearing Board's decision on March 30, 2021, approximately ten (10) days prior the filing of the same with the Clerk of the Supreme Court.

Not only did Respondent receive the draft pleadings prior to FCJ Goldston filing the same with this Court, the evidence established that Respondent also provided the draft versions of these pleadings to FCJ Stotler-- twice. The Board accepted Respondent's testimony that the email transmittal to FCJ Stotler was "inadvertent" and "her failure to recall" that she sent FCJ Goldston's draft pleadings to a sitting member of the Judicial Hearing Board. [Recommended Decision at 2].

However, the Board's finding fails to reconcile that despite her evolving testimony at her final disciplinary hearing, during her January 31, 2022, sworn statement when questioned about her involvement with FCJ Goldston's pleadings at this time, Respondent denied *any* involvement. [Joint Exhibit 31 at 311-312]. Indeed, she testified in January of 2022 that she did not recall even reviewing the objections before they were filed with the Court. [Joint Exhibit 31 at 312]. Once again, to mislead Special Judicial Counsel about her actions and minimize exposure, the evidence establishes by clear and convincing evidence that Respondent's statements under oath to Special Judicial Counsel were not in the spirit of cooperation; were not candid; and were not honest.

CHARGE FOUR-- Rule 2.16(a) Cooperation with Disciplinary Authorities. A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies. Despite receiving and reviewing a copy of the first version "Stotler letter" on or about March 19, 2021, on or about January 31, 2022, Respondent testified that prior to her receipt of the March 25, 2021, letter she had not previously seen or heard about the contents of the "Stotler letter." The Board found the evidence established by clear and convincing evidence that Respondent was not candid and was in violation of the Code of Judicial Conduct. [Recommended Decision at 2 and 22-23]

CHARGE FIVE-- Rule 2.16(a) Cooperation with Disciplinary Authorities. A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies. The Board found there although there may have been efforts by Respondent to communicate with FCJ Stotler

in relation to the "Stotler Letter" there was insufficient evidence to establish that Respondent communicated directly with FCJ Stotler and therefore, this charge could not be sustained. On or about January 31, 2022, Respondent testified that that she did not discuss the "Stotler Letter" with FCJ Stotler until after the letter was sent by his office. Indeed, on January 31, 2022, to bolster her position that she had no involvement with the drafting of the letter, she testified to her belief that she was not permitted to talk to FCJ Stotler. However, the evidence is clear that – at an absolute minimum-- Respondent communicated with an employee in FCJ Stotler's direct control and supervision and about the "Stotler Letter" prior to his office sending the same out to its recipients and that she requested contact with FCJ Stotler prior to sending. Once again, in an effort to mislead Special Judicial Counsel about her actions and minimize exposure, Respondent did not disclose any communications – attempted or otherwise -- with FCJ Stotler or FCJ Stotler's staff. The evidence establishes by clear and convincing evidence that Respondent's statements under oath to Special Judicial counsel were not in the spirit of cooperation; were not candid; and were not honest.

CHARGE SIX -- Rule 2.16(a) Cooperation with Disciplinary Authorities. A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies. The Board determined that because she "did nothing more than proofread the draft" that there was insufficient evidence to sustain this charge. [Recommended Decision at 2] Despite receiving a copy of the first draft of "Stotler letter" on or about March 19, 2021, and again receiving a faxed draft version on March 24, 2021, reviewing the same and providing edits and corrections to the employee in FCJ Stotler's direct control that were fully incorporated into the final version of the controversial "Stotler letter" Respondent testified on January 31, 2022, that she had nothing to do with the letter and did not help with the letter.

The Board's justification in not sustaining this charge may have some merit had Respondent been even the slightest bit forthcoming in her sworn testimony, but Respondent did not disclose any involvement with the "Stotler letter" no matter how minimal. In fact, she disavowed all knowledge of its mere existence until she received the final version along with its other addresses. The Board's reasoning that "[p]arsing language, especially in the context of a judicial disciplinary investigation and when under oath, is not being candid" [Recommended Decision at 25] and its finding that Respondent is not guilty of this charge because it determined that she was a "proofreader" rather than a "drafter" is not consistent as it fails to acknowledge the critical fact that she consistently failed to disclose either or any role. The evidence establishes by clear and convincing evidence that Respondent's statements under oath to Special Judicial counsel were not in the spirit of cooperation; were not candid; and were not honest.

CHARGE SEVEN – Rule 2.16(a) Cooperation with Disciplinary Authorities. A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies. Despite her involvement with the drafting of the "Stotler letter" by letter dated April 30, 2021, approximately thirty-five days after the "Stotler letter" was mailed, Respondent (and two other FCJs) not only accused JDC of being biased and impartial, but specifically represented to the Chairperson of the Judicial Investigation Commission that "..there is NO association between the three of us and the writing or sending of Judge Stotler's letter." The April 30 letter to the Chair of the Judicial Investigation Commission was drafted by Respondent. The Board found the evidence established by clear and convincing evidence that Respondent was not 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 to its widespread audience. The Board determined it was a separate

occasion where Respondent "misrepresented her involvement in the Stotler letter." [Recommended Decision at 3 and 23]

CHARGE EIGHT –Rule 1.3 Avoiding Abuse of the Prestige of Judicial Office. 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. The Board determined this charge could not be sustained because the request was from "someone subject to a disciplinary process expressing concerns about the disciplinary process" and because "the recusal of Judicial Disciplinary Counsel arose from her judicial office, not from personal or economic interests separate from her judicial office." [Recommended Decision at 3 and 24] Respectfully, Respondent used prestige of her bench to bolster allegations of misconduct by JDC with other members of the judiciary, namely the Judicial Investigation Commission. She bootstrapped her regurgitation of meritless accusations of misconduct with a judicial lifetime request to be coated in Teflon from any future investigations by the subject Judicial Disciplinary Counsel. If it is violative of Rule 1.3 to use the bench's prestige to help someone certainly, then it is equally violative of the Rule to use the bench's prestige to attempt to harm.

II. SUMMARY OF ARGUMENT

The Judicial Hearing Board[6] properly found that the evidence established by clear and convincing that by violated the Code of Judicial Conduct that Respondent violated Rule 1.1 of the Code of Judicial Conduct. The Judicial Hearing Board further found that because she was involved in the drafting of the "Stotler letter" yet denied involvement with the "Stotler letter" during her sworn statement she violated Rule 2.16(a) of the Code of Judicial Conduct. The Judicial Hearing also found that Respondent was not candid in her correspondence to the Chairperson of the Judicial

[6] The Judicial Hearing Board's findings of these violations of the Code of Judicial Conduct were 6-1 with FCJ Stonestreet dissenting and voting that none of the charges were sustained by clear and convincing evidence.

Investigation Commission by denying any "association" with the "Stotler letter" even though she had reviewed, proofread, and pronounced that the letter "looks good" before it was sent that she again violated Rule 2.16(a) of the Code of Judicial Conduct.

However, despite clear and convincing evidence presented, the Judicial Hearing Board failed to find two additional violation of Rule 2.16(a) of the Code of Judicial Conduct; it failed to find a violation of Rule 1.2; and it failed to find a violation of Rule 1.3 of the Code of Judicial Conduct. In addition to failing to find the evidence establish by clear and convincing evidence that Respondent violated the additional rules, perhaps the most troubling aspect of the Judicial Hearing Board's recommendation is the recommended discipline for the finding of multiple violations of the Code of Judicial Conduct is woefully inadequate and is not consistent with prior judicial discipline decisions. Moreover, the recommended discipline undermines the stated objective of all judicial disciplinary proceeding which is to "preserve public confidence in the integrity and impartiality of the judiciary." Matter of Wilfong, 234 W.Va. 394, 407, 765 S.E.2d 283, 296 (2014).

Special Judicial Counsel prays that this Honorable Court will find consistent with the evidence that Respondent committed the additional charged violations of Rule 1.2; 1.3 and the remaining Rule 2.16(a) violations of the Code of Judicial Conduct. Additionally, Special Judicial Counsel prays that based upon the multiple violations of the Code of Judicial Conduct, in order to uphold the duty to protect the integrity of the Court and preserve the public's confidence in our judiciary, that this Honorable Court suspends Respondent from the bench without pay for the remainder of her term of elected office; censures Respondent; issues a Fine in the amount of Five Thousand Dollars ($5,000.00); and orders Respondent to pay the costs of associated with the investigation and prosecution of these proceedings.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to Rule 19 of the Rules of Appellate Procedure, this Honorable Court's Order set this matter for oral argument to take place during the September 2023 Term of Court.

IV. ARGUMENT

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." In the Matter of Gorby, 176 W.Va. 16, 339 S.E.2d 702 (1985).

Rule 4.5 of the West Virginia Rules of Disciplinary Procedure requires the allegations of a complaint in a judicial disciplinary proceeding must be proved by clear and convincing evidence." Matter of Goldston, 246 W. Va. 61, 71, 866 S.E.2d 126, 136 (2021). The Supreme Court has held that "[s]tipulations or agreements made in open court by the parties in the trial of a case and acted upon are binding and a judgment founded thereon will not be reversed." Syl. Pt. 3, in part, Matter of Starcher, 202 W. Va. 55, 501 S.E.2d 772 (1998). The Supreme Court further held that:

> [i]n a disciplinary proceeding against a judge, in which the burden of proof is by clear and convincing evidence, where the parties enter into stipulations of fact, the facts so stipulated will be considered to have been proven as if the party bearing the burden of proof has produced clear and convincing evidence to prove the facts so stipulated.

Id. at 56-57, 501 S.E.2d at 773-74, Syl. pt. 4.

As the evidence clearly demonstrates that Respondent violated several provisions of the Code of Judicial Conduct, the question then becomes what sanctions should be imposed. In relevant part, Rule 4.12 of the Rules of Judicial Disciplinary Procedure provides that for each violation of the code Respondent may be (1.) Admonished; (2.) Reprimanded; (3.) Censured; (4.) Suspended without pay for up to one year; or 5. Fined up to $5,000.00. "[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." Syllabus Point 5, In re Toler, 218 W.Va. 653, 625 S.E. 2d 731 (2005).

"Under our Constitution, only the Legislature has the power to remove a [circuit] court judge from office, and it may do so only by impeachment." Matter of Watkins, 233 W.Va. at 174, 757 S.E.2d at 598. "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." Syllabus Point 8, Matter of Watkins, 233 W.Va. at 173, 757 S.E.2d at 597. "The limited constitutional power of this Court includes the authority to suspend a judge from office for a period of years that may equal or exceed the remainder of his or her term." Matter of Wilfong, 234 W. Va. 394, 407–08, 765 S.E.2d 283, 296–97 (2014).

When deciding what sanction is appropriate in a particular case, consideration is guided by the following factors:

> 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. 3, Matter of Cruickshanks, 220 W.Va. 513, 648 S.E.2d 19 (2007); Matter of Ferguson, 242 W. Va. 691, 699, 841 S.E.2d 887, 895 (2020).

Leaving aside the fourth factor, an analysis of the facts and violations under the enumerated factors in Cruickshanks supports the recommendation that Respondent should, in addition to other sanctions, be suspended without pay from the bench.

1. **The charged misconduct is directly related to the administration of justice and the public's perception of the administration of justice.**

The Judicial Hearing Board determined that Respondent's misconduct of repeatedly lying to Judicial Disciplinary Counsel in the investigation of judicial officer was directly related to the administration of justice. [Recommended Decision at 27] However, the Judicial Hearing Board erred in its determination that Respondent's conduct was not related to the public's perception of the administration of justice as it found it did not arise from her performance of judicial duties. [Recommended Decision at 27-28]. This reasoning is contrary to the evidence and fails to acknowledge the role that judges (and lawyers) play in the preservation of society. The Ferguson Court determined "...lying to the JDC cast a pallor on the "honor, integrity, dignity, and efficiency of the judiciary and the justice system[.]" Matter of Ferguson, 242 W. Va. 691, 700, 841 S.E.2d 887, 896 (2020). Although, the Judicial Hearing Board properly determined that Respondent's statements at her January 31, 2022, sworn statement and to the Judicial Investigation Commission were not truthful, the duty of candor encompasses far more than refraining from knowing untruths candor demands that judges not only avoid deliberate falsehoods, but also make forthright disclosures.

The Smoot Court reminds us that the "[p]ublic expects lawyers to exhibit the highest standards [of] integrity and honesty. Lawyers have a duty not to engage in conduct involving dishonesty, fraud, or interference with the administration of justice. Lawyers are officers of the court and must operate within the bounds of the law and act in a manner to maintain the integrity of the Bar." Lawyer Disciplinary Board v. Douglas Smoot, 228 W.Va. 1, 716 S.E.2d 491, 506

(2010) (*quoting* Lawyer Disciplinary Bd. v. Stanton, 225 W.Va. 671, 678, 695 S.E.2d 901, 908 (2010)). Moreover, the Smoot Court noted that "[a] lawyer's duties to the public, the legal system, and the profession are further reflected in the Rules of Professional Conduct, which establish a duty of candor to a tribunal (Rule 3.3)." Smoot at 506.

Indeed, the Supreme Court routinely sanctions lawyers for breaches of their duty of "candor" to the Courts of this State. *See* Lawyer Disciplinary Board v. Turgeon, 210 W.Va. 235, 557 S.E.2d 235 (2000); Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 579 S.E.2d 550 (2003); Lawyer Disciplinary Board v. Elswick, 231 W.Va. 684, 749 S.E.2d 577 (2013); Lawyer Disciplinary Board. v. Busch, 233 W. Va. 43, 754 S.E.2d 729 (2014); Lawyer Disciplinary Board v. Munoz, 240 W. Va. 42, 807 S.E.2d 290 (2017); Lawyer Disciplinary Board v. Ryan, 241 WVa. 264, 823 S.E.2d 702 (2019); Lawyer Disciplinary Board v. Grindo, 243, W.Va. 130, 842, S.E.2d 683 (2020); Lawyer Disciplinary Board v. Morgan, 243 W.Va. 627, 849 S.E.2d 627 (2020); Lawyer Discipliary Board v. Cain, 245 W.Va. 693, 865 S.E.2d 95 (2021); Lawyer Disciplinary Board v. Macia, 246 W.Va. 317, 873 S.E.2d 848 (2022); Lawyer Disciplinary Board v. Tyson, W.Va. , 880 S.E.2d 97 (2022); and Lawyer Disciplinary Board v. Schillace, ___, W.Va.__, 885 S.E.2d 611 (2022). The Munoz Court reasoned "[t]he honor of practicing law "does not come without the concomitant responsibilities of truth, candor and honesty.... [I]t can be said that the presence of these virtues in members of the bar comprises a large portion of the fulcrum upon which the scales of justice rest." Lawyer Disciplinary Board v. Munoz, 240 W. Va. 42, 807 S.E.2d 290 (2017) (*citing* Jones' Case, 137 N.H. 351, 628 A.2d 254, 259 (1993)). Certainly, when a lawyer ascends to the bench and becomes a member of the judiciary, this responsibility to be truthful, candid, and honest is not diminished; but that responsibility is indeed enhanced.

FCJ Stotler and Respondent believed the agreed upon admissions in FCJ Goldston's case threatened their perceived powers as family court judges. [Transcript at 27-29]. In a concerted effort with FCJ Stotler, Respondent used the power of the family court bench to bully and berate two life-long public servants to protect and preserve the perceived powers of the family court bench.[7] Respondent's repeated use of her bench to bully the disciplinary counsel attorneys brings the judiciary's reputation for evenhandedness and the fair administration of justice into disrepute. The Ferguson Court suspended a magistrate who attempted to intimidate and coerce law enforcement officers into not doing their jobs, including producing his court identification on the scene of the incident—and subsequently lied to Disciplinary Counsel. Matter of Ferguson, 242 W. Va. 691, 701, 841 S.E.2d 887, 897 (2020).

The Code of Judicial Conduct states that it is "improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind" and there are prohibitions about the use of judicial letterhead to gain advantage, even on behalf of others. *See* Comments to Rule 1.3 of the Code of Judicial Conduct. Indeed, the public leveraging of the judicial bench flies in the face of the role of public officials, including judges, as public servants. Even lending the prestige of judicial office for a seemingly altruistic motive of writing a letter of recommendation for another person has its express limits under the Code. *See* Comment 2 to Rule 1.3 of the Code of Judicial Conduct. Certainly, Respondent's continued use of judicial letterhead

[7] The Court held that Judge Goldson's conducted search of former husband's home was not a judicial power, but an act of executive function and determined that the judge's stipulation of facts relating to judge's entry into, and search of former husband's home was clear and convincing evidence of judge's violations of Rules of Code of Judicial Conduct. The Court issued a censure with fine of $1,000. Matter of Goldston, 246 W. Va. 61, 866 S.E.2d 126 (2021).

and her position as a family court judge to destroy the careers of two lawyers is violative of Rule 1.3 of the Code of Judicial Conduct.

2. The charged misconduct relates directly to the judicial officer's public persona.

The Judicial Hearing Board determined that the charges were more personal than to her public persona. [Recommended Decision at 28] However, as evidenced by her repeated use of her judicial letterhead bearing the seal of the State of West Virginia, the charged misconduct in this matter directly relates to Respondent's judicial officer's public persona. In addition to her stunning lack of candor in the investigation of another judicial officer, she leveraged the power of her bench to pursue her agenda and utilized court resources to further her campaign. Like lawyers, the Court has stated that "a judicial officer, cannot so conveniently shed the obligations of her office. To permit a judicial officer to simply pick and choose when he or she wishes to be subject to the obligations of his or her judicial position would result in an unworkable system where ethics are subject to personal whims. In re Cruickshanks, 220 W. Va. 513, 517, 648 S.E.2d 19, 23 (2007). "...the Code of Judicial Conduct works weekends too." Matter of Williams, No. 21-0878, 2023 WL 3243959, at 14 (W. Va. May 4, 2023).

3. The charged misconduct demonstrates a callous disregard for our system of justice.

The Judicial Hearing Board correctly determined that the charges did not involve violence, but most certainly the charged misconduct does demonstrate a callous disregard for our system of justice which is based upon the premise that truth will prevail. [Recommended Decision at 28] Lying under oath severely undermines the authority of our courts and there can be no greater assault to the pursuit of justice when a judicial officer lies under oath. Cases should be decided by what the evidence reveals to the finder of fact, not by evidence that is successfully concealed. Respondent's actions are antithetical to the role of a judge who is sworn to uphold the law and

seek the truth. Her actions are violative of necessary traits indispensable to a judge and render her unfit to sit in judgment of others. The Louisiana Supreme Court noted that there "are few judicial actions in our view that provide greater justification for removal from office than the action of a judge in deliberately providing false information to the Commission in the course of its investigation." Further reasoning that "any discipline other than removal for such blatant misrepresentations might well encourage others who are investigated by the commission to prevaricate and develop faulty memories." In re King, 2003-1412 (La. 10/21/03), 857 So. 2d 432, 450 (internal citations omitted.). The Louisiana Supreme Court concluded "[i]n our view, any discipline less than removal would undermine the entire judicial discipline process and diminish the strict obligation of judges to be truthful in the face of an investigation by the Commission." Id at 451.

In 2011, the Michigan Supreme Court in sanctioning a judge who amongst other things, violated Rule 2.16(a) of the Code of Judicial Conduct found that by failing to be candid and honest with the Board and its agents, the judge engaged in conduct that threatens a basic tenet essential to the integrity of the judicial system and articulated:

> Rule 2.16(A) of the Code of Judicial Conduct states, "[a] judge shall cooperate and be candid and honest with judicial ... disciplinary agencies." A duty to be candid and honest with judicial disciplinary agencies requires a judge to be truthful and to refrain from being dishonest and making deliberately false statements to the Board and its agents. *See* In re King, 857 So.2d 432, 449 (La.2003) ("As recognized by other jurisdictions, [h]onesty is a minimum qualification expected of every judge." (citation omitted) (internal quotation marks omitted)); Webster's Third New Int'l Dictionary, 325, 1086 (1961) (defining "candid" as "indicating or suggesting sincere honesty and absence of deception and duplicity" and defining "honest" as "free from fraud or deception: legitimate, truthful"). This duty also includes a duty not to make material omissions during a disciplinary investigation. *See* Adams v. Comm'n on Judicial Performance, 10 Cal.4th 866, 42 Cal.Rptr.2d 606, 897 P.2d 544, 568 (1995) (disciplining a judge for making false statements and material omissions during a judicial disciplinary investigation); *see also* Heidbreder v. Carton, 645 N.W.2d 355, 367 (Minn.2002) ("A misrepresentation may be made by

an affirmative statement that is itself false or by concealing or not disclosing certain facts that render facts disclosed misleading.").

In re Conduct of Karasov, 805 N.W.2d 255, 268–69 (Minn. 2011). The Karasov Court also relied upon its reasoning in In re Ferrara which stated "[j]udges, occupying the watchtower of our system of justice, should preserve, if not uplift, the standard of truth, not trample it underfoot or hide in its shady recesses." In re Conduct of Karasov, 805 N.W.2d 255, 276 (Minn. 2011) (*citing* In re Ferrara, 458 Mich. 350, 582 N.W.2d 817, 827 (1998)).

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." In the Matter of Gorby, 176 W.Va. 16, 339 S.E.2d 702 (1985). Respondent has failed to acknowledge the impact her actions had on the system of judicial discipline which is designed to preserve and enhance the public confidence of the judiciary. Her role in the creation of FCJ Stotler's ex parte benchslap[8] of judicial disciplinary counsel and her role in regurgitating those accusations with a reckless disregard for the truth[9] of the same demonstrates a callous disregard for our system. Respondent acknowledged that no investigation of these accusations was performed by her prior to sending this Resolution calling for the termination of these two lawyers. [Transcript at 148]. Moreover, despite acknowledging that no investigation into the allegations took place by her (or any other family court judges), she testified at her disciplinary hearing that she did not believe her behavior was reckless as a member of the

[8] A "benchslap" is formally defined as "a judge's sharp rebuke of counsel, a litigant, or perhaps another judge, esp., a scathing remark from a judge or magistrate to an attorney after an objection from opposing counsel has been sustained." *Benchslap*, Black's Law Dictionary (10th ed. 2011). "While the term "benchslap" is a relative newcomer to legal vocabulary, the act of a judge using his or her position of power to demean a lawyer in writing dates back hundreds of years." Joseph P. Mastrosimone, Benchslaps, 2017 Utah L. Rev. 331, 345 (2017).

[9] Rule 8.2(a) of the Rules of Professional Conduct states "a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office."

judiciary. [Transcript at 150]. Like the reasons the Supreme Court has sanctioned lawyers for making false or reckless statements about judicial officers,[10] judicial officers are equally tasked with the preservation of the system and statements made by judicial officers about lawyers are relied upon by the public. As such, false statements from the bench about the bar unfairly undermine public confidence in the administration of justice. Public shaming was at the core of FCJ Stotler's ex benchslap and this abuse of his judicial power did not fulfill any claimed duty to report lawyer misconduct by FCJ Stotler, but it is indeed on its face a violation of the Code of Judicial Conduct. The "Stotler letter" and its continued references and regurgitations by Respondent is an egregious example of what people fear judges can do with their benches – there is no fact finding required and the truth is irrelevant--if they don't like you or don't like the legal position you are advancing, they can use the bench to destroy you.

4. Mitigating and Aggravating Factors.

It was stipulated to by the parties, and is mitigating as to sanction, that Respondent was not the subject of any lawyer disciplinary action as a member of the West Virginia State Bar. Additionally, aside from the instant, albeit egregious, Statement of Charges, she also has never been the subject of any judicial disciplinary discipline. This is the only factor in mitigation. Although the Judicial Hearing Board determined there were no factors in aggravation, there are, however, several factors in aggravation present. [Recommended Decision at 28].

First and foremost, Respondent's complete lack of remorse for her course of conduct or any awareness of their impact on the public's perception of the judicial system. Indeed, her testimony at her disciplinary hearing was narrowly focused on how the accusation that she testified

[10] *See e.g.* Lawyer Disciplinary Board v. Hall, 234 W. Va. 298, 765 S.E.2d 187 (2014) [attorney suspended for 3 months for violation of rule prohibiting attorney from making a false or reckless statement concerning the qualifications or integrity of a judge].

falsely has impacted her as a judicial officer. [Transcript at 108]. The Supreme Court recently held that "the failure to acknowledge the wrongful nature of conduct is a significant factor to consider...." Matter of Williams, No. 21-0878, 2023 WL 3243959, at 21 (W. Va. May 4, 2023).

Second, Respondent committed multiple violations of the Code of Judicial Conduct and "[t]o hold a violator of the Code of Judicial Conduct who has committed only one offense to the same exact standard and subject that offender to the same sanctions as a violator who has committed four, five, or fifty separate acts of misconduct would suggest unreasonable disparate treatment." Matter of Williams, No. 21-0878, 2023 WL 3243959, at 20 (W. Va. May 4, 2023) *citing* In re Toler, 218 W. Va. 653, 661, 625 S.E.2d 731, 739 (2005).

Finally, in her defense of her charges relating to her lack of candor, she suggested that she forgot about her involvement in the letter and referred to the "Stotler letter" as "insignificant" and "inconsequential" to her. [Transcript at 143]. While the self-preserving testimony demonstrates a callous regard for the fallout of her course of conduct, it is equally disingenuous. When she was initially asked in January of 2022 about the receipt of the "Stotler letter" every aspect of it seemed significant, including that it was sent via mail. She testified:

> A. I thought it was just a piece of mail from Judge Stotler. And I remember thinking what's he mailing to me because—well, I just don't think I've ever gotten mail from him.
> Q. Okay. Were you surprised when you received the letter?
> A. I was.

[Joint Exhibit 31 at 317].

When further questioned about the letter, she testified that she was "surprised" that she received the "Stotler letter" [Joint Exhibit 31 at 317]. Respondent testified that approximately three (3) days later, she called Lisa Tackett about the letter because she too was copied on the letter. Respondent testified and agreed that Lisa Tackett expressed "surprise". [Joint Exhibit 31 at 319].

Indeed, when pressed further about the conversation she testified "[i[t was basically kind of, wow, I mean that was it. I mean there was nothing, you know memorable about it. I just know that I reached out to her about it." [Joint Exhibit 31 at 320]. The allegations in the "Stotler letter" formed the basis of a vote and drafted Resolution to the Supreme Court and the JIC calling for the termination of two public servants. Everything about the "Stotler letter" was noteworthy. It is simply incredulous to assert that an ex parte letter written by a sitting member of the Judicial Hearing Board accusing Judicial Disciplinary Counsel of heinous prosecutorial misconduct that was used as the point of the spear in a full-scale attack of two public servants by members of the family court bench, including Respondent, was "inconsequential" or "insignificant." Indeed, based upon the evidence, the Judicial Hearing Board discredited this testimony [Recommended Decision at 23] and this testimony demonstrates a continuation of charged misconduct, specifically: a stunning lack of candor.

Finally, although she has had an unblemished career as a lawyer and a judge, Respondent has been a licensed member of the West Virginia State Bar since May 13, 2004, and a member of the judiciary since January 1, 2017, and her substantial experience is also an aggravating factor.

V. CONCLUSION

"[T]he bedrock of the public's submission to the judiciary's authority is the public's faith in its integrity, impartiality, and fairness." Matter of Callaghan, 238 W. Va. 495, 511, 796 S.E.2d 604, 620 (2017). The stated objective of all judicial disciplinary proceeding is to "preserve public confidence in the integrity and impartiality of the judiciary." In re Wilfong, 234 W.Va. 394, 407, 765 S.E.2d 283, 296 (2014).

Respectfully, the Judicial Hearing Board's recommendation of discipline is not consistent with prior decisions of this Court, and it woefully fails to assure the public that our Court will act

to protect and preserve the integrity of the judiciary when one of our own commits such a unrepentant assault against honesty. Moreover, any discipline other than removal from the bench will surely encourage others judges to develop convenient memory losses when faced with investigation into their conduct or others. Judges have an obligation under the Code of Judicial Conduct to "cooperate" and "be candid" and "honest" and anything short of a term ending suspension will ultimately undermine the entire judicial discipline process by diminishing the obligation of judges to be truthful in the face of an investigation.

Based upon the multiple violations of the Code of Judicial Conduct, to uphold the duty to protect the integrity of the Court and preserve the public's confidence in our judiciary, Respondent should be suspended from the bench without pay for the remainder of her term of elected office; Respondent should be censured; she should be fined in the amount of Five Thousand Dollars ($5,000.00); and Respondent should be ordered to pay the costs associated with the investigation and prosecution of these proceedings.

Respectfully submitted,
By counsel

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CERTIFICATE OF SERVICE

This is to certify that I, Rachael L. Fletcher Cipoletti, Special Judicial Disciplinary Counsel, have this day, the 7th day of August, 2023, served a true copy of the foregoing "BRIEF OF SPECIAL JUDICIAL DISCIPLINARY COUNSEL" upon Lonnie C. Simmons, counsel for Respondent The Honorable Deanna R. Rock, and to Ancil G. Ramey, Clerk to the Judicial Hearing Board, electronically through File and Serve Xpress to the following addresses:

Lonnie C. Simmons, Esquire
lonnie.simmons@dbdlawfirm.com

Ancil G. Ramey, Esquire
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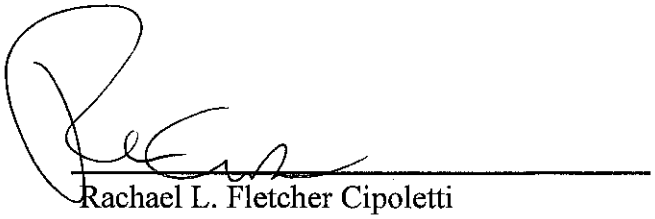
Ancil.Ramey@steptoe-johnson.com



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