

WEST VIRGINIA JUDICIAL INVESTIGATION COMMISSION

2023 ANNUAL REPORT



Pursuant to Rule 1.11(3) of the Rules of Judicial Disciplinary Procedure, the West Virginia Judicial Investigation Commission (JIC) respectfully submits this Annual Report for its activities from January 1, 2023, through December 31, 2023.

THE COMMISSION

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

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

Id.

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

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

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

By Order entered December 15, 1982, the Court created the Judicial Investigation Commission ("Commission" or "JIC") to exist as of 12:01 A.M., December

16, 1982.¹ At that time, the Court also adopted the Rules of Judicial Disciplinary Procedure. By Order entered May 25, 1993, effective July 1, 1994, the 1982 Rules and subsequent amendments were superseded by the current Rules of Judicial Disciplinary Procedure (“RJDP”).

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

In 2023, Dr. Cynthia Persily, Public Member, resigned effective June 30. Dr. John Barnette was appointed to replace her. Other JIC members in 2023 were the Honorable Alan D. Moats, Chair and Senior Status Circuit Judge; the Honorable Bridget Cohee, Judge of the 23rd Judicial Circuit; the Honorable Jason Wharton, Judge of the 4th Judicial Circuit; the Honorable James J. Rowe, Senior Status Circuit Judge; the Honorable Patricia A. Keller, Judge of the 6th Family Court Circuit; the Honorable Mike Flanigan, Magistrate of Mercer County; F. Layton Cottrill, Jr., Esquire, Vice Chair; and Margaret Ann O’Neal.²

The Commission has the authority to: (1) determine whether probable cause exists to formally charge a judge with a violation of the Code of Judicial Conduct or that a judge, because of advancing years and attendant physical or mental incapacity should not continue to serve; (2) propose rules of procedure for judicial disciplinary proceedings for promulgation by the Supreme Court of Appeals; (3) file an annual report with the Supreme Court of Appeals on the operation of the Commission; (4) inform the public about the existence and operation of the judicial disciplinary system, the filing of formal charges, and the discipline imposed or recommended on formal charges; (5) delegate, in its discretion, to the Chairperson or Vice-Chairperson, the authority to act for the Commission on administrative and procedural matters; (6) nominate, for selection by the Supreme Court of Appeals, candidates for the position of Judicial Disciplinary Counsel; and (7) engage in such other activities related to judicial discipline as it deems appropriate. RJDP 1.11.

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

² The last two on the list are public members.

The Commission has full-time staff consisting of Chief Counsel, a Deputy Counsel, an Executive Assistant and a full-time Investigator. RJDP 5. Among many and varied duties, the Chief Counsel and staff have the authority to: (1) receive complaints concerning violations of the Code of Judicial Conduct; (2) review all complaints concerning violations of the Code of Judicial Conduct; (3) investigate information concerning violations of the Code of Judicial Conduct; (4) prosecute violations of the Code of Judicial Conduct before the Judicial Hearing Board and the State Supreme Court; and/or (5) promptly notify the complainant and respondent of the disposition of each matter. RJDP 5.4. Additionally, Commission counsel serves as special counsel in lawyer discipline cases whenever the Office of Lawyer Disciplinary Counsel is conflicted off a matter. RJDP 5. Each year, Commission counsel also teaches ethics, sexual harassment and other topics to various groups, including but not limited to, magistrates, family court judges, circuit court judges, law clerks, prosecutors, circuit clerks and court reporters. Commission counsel both in person and remotely taught multiple classes to various groups in 2023. Additionally, for the first time ever, Commission staff, in conjunction with General Counsel for the West Virginia Secretary of State's Office and the West Virginia Ethics Commission, conducted an online training for potential candidates in the 2024 judicial elections and their committee members. The training was approved for CLE credit, was held on November 16, 2023 and was videotaped for future use.

While not a part of the work of the Commission, the Chief Counsel and staff are also charged with conducting confidential investigations and preparing reports for the State Fatality Review Team to consider in efforts to ensure that court processes, procedures and actions minimize the risk of harm to people involved within the system. Chief Counsel and staff have been involved in this process since the State Supreme Court first created State Fatality Review Team by Administrative Order entered on December 7, 1994.³ In 2023, the JIC received (8) eight new fatality review referrals. Two of the eight fell within the JIC's jurisdiction to investigate. JIC has (7) seven fatality review cases pending before the Regional Boards, which last met in 2019.

The Chief Counsel and staff are also tasked with the responsibility of investigating sexual harassment claims within West Virginia's court system. See § 12.7 of the West Virginia Judicial Personnel System Manual. In 2023, Chief Counsel conducted one (1) such investigation and presented findings to the Administrative Director.

³ The Court amended the accompanying Protocol for Fatality Review Teams by Administrative Orders entered on December 4, 1998, and May 24, 2000. By Order entered December 2, 2005, the Court broadened the scope of the investigations to include fatalities of any child involved in court proceedings. The Court again amended the Protocol by Orders entered January 2, 2013, June 16, 2014, January 20, 2016 and April 28, 2017. Those amendments limited the categories of investigation and gave the JIC the authority to decline a matter if it did not fall within one of the requisite categories.

The Commission held six regular meetings in 2023. The meetings took place at the West Virginia Judicial Tower. Regular meetings occurred on February 10, April 14, June 2, August 4, October 13, and December 8, 2023. All pertinent documents were distributed to the Commission approximately two weeks before each meeting so that the members could review the materials and be prepared to discuss them during each session.

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

THE CODE OF JUDICIAL CONDUCT

Over the years, many professions have implemented their own codes of ethics. Professional ethics encompass the personal, organizational and communal standards of behavior expected of the various occupations. Formal standards of judicial conduct have existed for approximately 76 years in West Virginia. The first Code of Judicial Conduct was promulgated by the State Supreme Court on March 28, 1947. The current Code was adopted by Order entered November 12, 2015, effective December 1, 2015.⁴

The Code of Judicial Conduct is made up of four Canons:

- Canon 1. A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.**
- Canon 2. A judge shall perform the duties of judicial office impartially, competently, and diligently.**
- Canon 3. A judge shall conduct the judge’s personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.**

⁴ The new Code is patterned after the 2007 ABA Model Code of Judicial Conduct. The former Code that was in effect through November 30, 2015, was adopted by Order entered October 21, 1992, and went into effect on January 1, 1993. The former Code consisted of six Canons: Canon 1. A judge shall uphold the integrity and independence of the judiciary; Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities; Canon 3. A judge shall perform the duties of judicial office impartially and diligently; Canon 4. A judge shall so conduct the judge’s extra-judicial activities as to minimize the risk of conflict with judicial obligations; Canon 5. A judge or judicial candidate shall refrain from inappropriate political activity; and Canon 6. Application of the Code of Judicial Conduct.

Canon 4. A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Specific Rules are set forth under each Canon, and Comments are also provided for many of the Rules. The text of the Canons and Rules is authoritative. The Comments provide guidance with respect to the purpose and meaning of the Canons and Rules and are not intended as statements of additional rules.

The text of the Canons and Rules sets forth the minimum conduct below which no judge or candidate for election or appointment to judicial office can fall without being subject to discipline. The text of the Canons and Rules is intended “to be binding” upon judges and judicial candidates. Application I of the Code of Judicial Conduct defines “judge” as “[a]nyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including but not limited to Justices of the Supreme Court of Appeals, [Intermediate Court of Appeals,]⁵ Circuit Court Judges, Family Court Judges, Magistrates, Mental Hygiene Commissioners, Juvenile Referees, Special Commissioners and Special Masters.” The Comment makes clear that the Code of Judicial Conduct “does not apply to an administrative law judge, hearing examiner or similar officer within the executive branch of government, or to municipal judges.”

The Scope of the Code notes that a decision on “[w]hether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules.” Factors to consider include, but are not limited to, the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, whether there is a pattern of improper activity, whether there have been previous violations, and the effect of the improper activity on the judicial system or others.

PROCEDURE FOR HANDLING COMPLAINTS

Any person may file an ethics complaint against a judge or a candidate for judicial office with the Judicial Investigation Commission. RJDP 2. The complaint must be in writing and must be verified by the Complainant. RJDP 2.1. Any complaint “filed more than two years after the complainant knew, or in the exercise of reasonable diligence should have known, of the existence of a violation of the Code of Judicial Conduct, shall be dismissed by the Commission.” RJDP 2.12.

After a complaint is received, it is referred to counsel for review. Counsel can send a matter to an investigator for investigation, ask the respondent judge for a

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

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

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

All proceedings of the Commission are confidential. RJDP 2.4. Admonishments issued by the Commission “shall be available to the public.” RJDP 2.7(a). “After the filing and service of formal charges, all documents filed with the Clerk of the Supreme Court of Appeals and the Judicial Hearing Board shall be available to the public.” RJDP 2.7(d). In a memorandum decision issued on January 12, 2015, the State Supreme Court reinforced the confidentiality of the judicial disciplinary process with the exception of admonishments and formal disciplinary proceedings. *See Smith v. Tarr*, memorandum decision No. 13-1230 (WV 1/12/15). In mid to late 2022, the Commission requested a change in RJDP Rule 2.4 to more accurately reflect the confidentiality rule consistent with the holding of *Smith*. The Supreme Court sent the proposed Rule change out for public comment late in 2023. No comments were received and it is expected that the Rule change will be adopted in early 2024.

⁶ Any time a complaint is sent to a judge for a response, he/she has ten (10) days after the date of the written notice to reply. RJDP 2.3.

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

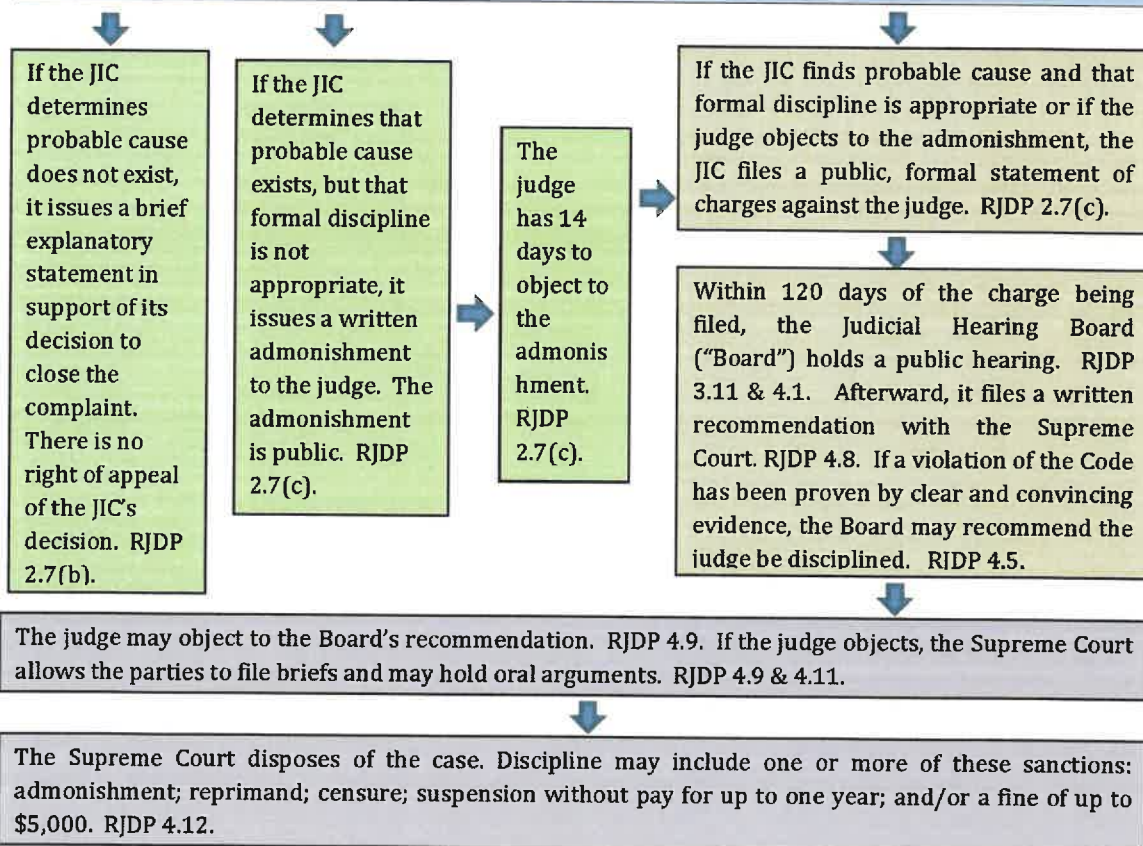
⁸ A respondent judge has fourteen (14) days after the receipt of a Judicial Investigation Commission admonishment to object. RJDP 2.7(c). If the respondent judge or Disciplinary Counsel timely files an objection, a formal statement of charges shall be filed with the Clerk of the Supreme Court. *Id.*

Judicial Investigation Commission: How a typical Complaint is handled.

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

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

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



EXTRAORDINARY PROCEEDINGS

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

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

RJDP 2.14(a).

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

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

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

RJDP 2.14(c).

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

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

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

No extraordinary complaints (RJDP Rule 2.14) complaints were filed in 2023.

ADVISORY OPINIONS

A judge or the Administrative Director of the Courts may, by written request to the Commission, seek an advisory opinion as to whether certain specific actions may constitute a violation of the Code of Judicial Conduct. The Commission may render a reply in writing as it may deem appropriate. An advisory opinion is not binding upon the Judicial Hearing Board or the Supreme Court but shall be admissible in any subsequent disciplinary proceeding involving the judge who made the request. RJDP 2.13.

During 2023, the Commission issued twenty-nine (29) advisory opinions based upon written requests from judicial officers/candidates or the Administrative Director. According to the National Center for State Courts (NCSC) Center for Judicial Ethics, the JIC was also the first judicial conduct commission in the country to issue a formal advisory opinion on artificial intelligence (AI):

- **JIC Advisory Opinion 2023-01:** Given that the judge is the only circuit judge in the jurisdiction and the doctrine of necessity, he/she may arraign a defendant on a recidivist information even though he/she was the prosecutor in one or more of the predicate prosecutions. The judge

should disclose the relationship before presiding over the recidivist case and follow Trial Court Rule 17.

- **JIC Advisory Opinion 2023-02:** A magistrate can serve on a local scholarship committee through the local library as long as he/she does not solicit funds outside the parameters of Rule 3.7(A)(2).
- **JIC Advisory Opinion 2023-03:** A judge should disclose the representation of a lawyer who appears before him/her for a period of one year from the date the representation concluded or he/she received payment whichever is greater.
- **JIC Advisory Opinion 2023-04:** A judge may preside over a grand jury matter involving two county employees and where one of them was a long ago former business partner of the judge's father.
- **JIC Advisory Opinion 2023-05:** A judge should disclose that a lawyer who appears before him/her is running against him in the upcoming election and follow Trial Court Rule 17 where appropriate. A judge should continue to appoint an opposing candidate or his/her campaign manager to court appointed cases during the pendency of the election.
- **JIC Advisory Opinion 2023-06:** A judge is not required to disclose or disqualify himself/herself if a member of his/her campaign committee appears before him/her when the campaign committee had to be reopened on a technicality.
- **JIC Advisory Opinion 2023-07:** A probation officer cannot work concurrently for the sheriff's department.
- **JIC Advisory Opinion 2023-08:** A magistrate can start a part-time LLC selling items on Amazon.
- **JIC Advisory Opinion 2023-09:** A magistrate can hold a training pertaining to juvenile cases if all sides are represented at the training.
- **JIC Advisory Opinion 2023-10:** A mental hygiene commissioner cannot concurrently serve as an assistant prosecutor in a different county.
- **JIC Advisory Opinion 2023-11:** A senior status magistrate cannot concurrently work as courthouse security.
- **JIC Advisory Opinion 2023-12:** A circuit judge can establish and participate in a teen court program even though his/her spouse has a business contract with the local board of education
- **JIC Advisory Opinion 2023-13:** A new magistrate cannot concurrently serve with his senior status magistrate father in the same county and is disqualified from presiding over cases formerly heard by his/her father.

- **JIC Advisory Opinion 2023-14:** A judge and his/her spouse cannot be members of the County Republican Club.
- **JIC Advisory Opinion 2023-15:** A judge who already owned buildings with lawyers as tenants may continue to rent to lawyers since: (1) the judge already owned the building, (2) the judge is in a multi-judge circuit and there are a sufficient number of lawyers practicing there; and (3) the judge would disqualify himself/herself from any cases involving the lawyer/renters.
- **JIC Advisory Opinion 2023-16:** A member of the legislature who plans on running for office cannot serve on a judge's campaign committee or hold a fundraiser for a judicial candidate.
- **JIC Advisory Opinion 2023-17:** A judge cannot appear as a guest on a lawyer infomercial.
- **JIC Advisory Opinion 2023-18:** A judge must disclose in any case involving the public defender's office that his future daughter-in-law works there as a Parental Resource Navigator and follow Trial Court 17 where applicable. The same judge is disqualified in any case where the daughter-in-law is an actual participant.
- **JIC Advisory Opinion 2023-19:** A campaign committee cannot sponsor a fundraiser for a charitable organization with the sponsorship listed under the judge's name.
- **JIC Advisory Opinion 2023-20:** A judicial candidate can put his/her political party status on campaign materials but must state "[party affiliation] running for the non-partisan position of judge."
- **JIC Advisory Opinion 2023-21:** A magistrate would be disqualified from presiding over cases that actually involve the sheriff if his/her spouse is elected to the position and must disclose as to all other cases involving any other members of the department and follow the tenants of *State ex rel. Brown v. Dietrick*, 191 W. Va. 169, 444 S.E.2d 47 (1994) where appropriate. The magistrate should also follow the doctrine of necessity as applied in *Brown* concerning after hours and weekend arraignments.
- **JIC Advisory Opinion 2023-22:** A judge may use artificial intelligence in limited work instances.
- **JIC Advisory Opinion 2023-23:** A judge cannot go on television or other media and comment when the topic involves a pending or impending case before any Court. A judge may appear to address Court procedures if the subject is about general court procedures and not tied to any specific pending or impending case.

- **JIC Advisory Opinion 2023-24:** A judge cannot serve as a volunteer fireman or EMT.
- **JIC Advisory Opinion 2023-25:** Individuals running concurrently for any office in the same year as a judge cannot serve on the judge's campaign committee or sponsor a fundraiser for the judge.
- **JIC Advisory Opinion 2023-26:** A legislator who decides to run for judge can state what legislation he/she sponsored while a legislator, list what awards he/she received during his/her legislative tenure, state his membership in organizations such as the NRA, WVCDL or Republican National Lawyers Association, and state his/her legislative committee memberships
- **JIC Advisory Opinion 2023-27:** A staff member for a judge may engage in limited participation in his/her bosses' campaign as long as it is strictly voluntarily, done on the employee's own time and no court resources are used for the campaign.
- **JIC Advisory Opinion 2023-28:** A judge cannot have a bumper sticker on his/her car that says, "Stop the GOP."
- **JIC Advisory Opinion 2023-29:** A judge cannot designate a courthouse employee as a conduit for fundraising between a charity and the breeder of a therapy dog.

STATISTICS

On January 1, 2023, twenty-two (22) complaints remained pending before the Judicial Investigation Commission from 2022. From January 1, 2023, through December 31, 2023, the Commission received one hundred and ninety-one (191) new complaints for a total of two hundred and thirteen (213) complaints. Of the 213 complaints, forty-nine (49) required formal investigation. One hundred and fifty five (155) were dismissed by the Judicial Investigation Commission. The Commission had no jurisdiction in fifteen (15) complaints. Zero (0) complaints were withdrawn by the complainant with the approval of the Commission. Zero (0) complaints were not docketed because the complaint was not verified. The Commission issued six (6) admonishments⁹ involving eight (8) complaints. Formal discipline was issued by the State Supreme Court in two (2) statement of charges

⁹ Prior to 1994, the JIC could not admonish a judicial officer. Under the former Rules of Judicial Disciplinary Procedure if probable cause existed to charge a judicial officer, the JIC was required to issue a Formal Statement of charges in all such matters.

involving (4) complaints.¹⁰ Zero (0) probable cause complaints (formal statement of charges) involving zero (0) ethics complaints were issued by the Judicial Investigation Commission in 2023 to go to the Judicial Hearing Board for hearing. One (1) probable cause matter (formal statement of charges) was pending from 2022 and involved one (1) complaint.¹¹ This matter was also pending at the end of 2023 and is included in the total thirty-one (31) complaints carried over into 2024.¹² Commission counsel also handled over 1088 inquiries from judicial officers/candidates/employees and over 1243 telephone calls from the general public for a total of over 2331 inquiries for 2023.

ADMONISHMENTS

The Judicial Investigation Commission issued six (6) public admonishments in 2023. Copies of all admonishments in their entirety can be found on the JIC website:

In the Matter of the Honorable Phillip T. Gaujot, Magistrate of Monongalia County, JIC Complaint Nos. 84 and 133-2022: On July 21, 2022, the Director of the Monongalia County Dog Wardens and Canine Adoption Center filed a complaint on Respondent alleging, in part, bias in favor of a defendant in an animal cruelty case.. On November 28, 2022, JDC opened a separate complaint against Respondent alleging intemperate behavior toward a deputy magistrate clerk. During the course of the investigation, it was also determined that Respondent was chronically late for work even though he had been living across the street from the courthouse, had a habit of engaging in unwanted hugging or touching of people at the courthouse, and took improper photos and/or sent inappropriate memes/texts from his court-issued cell phone. As a result of the investigation, Respondent agreed to immediately resign his position, never seek judicial office again and accept a JIC admonishment. Respondent resigned on February 27, 2023. On February 28, 2023, the Commission publicly admonished Respondent for violating Rules 1.1, 1.2, 1.3, 2.1, 2.2, 2.3(B), 2.5(A) and (B), 2.8(B), 2.9, and 3.1(A) through (E) of the Code of Judicial Conduct.

In the Matter of the Honorable Susan A. Honaker, Magistrate of Mercer County, JIC Complaint No. 72-2023: On January 26, 2021, a member of the public filed an ethics complaint against Respondent alleging that she improperly blended her outside employment with her work as a

¹⁰ *Williams and Stotler*. The charges contained in *Williams II* arising out of Complaint No. 12-2022 were dismissed by the Supreme Court. See below.

¹¹ *Rock*.

¹² *Rock*.

Magistrate and that she posted inappropriate memes on Facebook. On August 4, 2023, the Judicial Investigation Commission publicly admonished Respondent for violating Rules 1.1, 1.2, 1.3, 2.1, 3.1(A) through (D), 3.11(B)(1) and (2) and (C)(4), 3.12 and 3.15(A)(1) of the Code of Judicial Conduct.

In the Matter of the Honorable Jody Purkey, Magistrate of Wood County, JIC Complaint No. 65-2023: On May 11, 2023, Administrative Director Joe Armstrong filed a complaint against Respondent alleging intemperate behavior toward a magistrate assistant during work hours. On August 4, 2023, the Judicial Investigation Commission publicly admonished Respondent for violating Rules 1.1, 1.2, 2.5(B) and 2.8(B) of the Code of Judicial Conduct in connection with the incident.

In the Matter of the Honorable Donald Sansom, Magistrate of Mingo County, JIC Complaint Nos. 55-2022 and 91-2022: On May 2, 2022, a Mingo County Sheriff's Sergeant filed a complaint on Respondent alleging that he allowed non-lawyers to file legal instruments on behalf of litigants, non-lawyers to submit pleas on behalf of defendants on traffic citations and a defendant to spend needless time in jail and modified an Order after the fact without prior notification to a party or conducting further hearing. On August 16, 2022, JDC filed an unrelated complaint on Respondent alleging improper social media posts. On August 4, 2023, the Judicial Investigation Commission publicly admonished Respondent for violating Rules 1.1, 1.2, 1.3, 2.2, 2.5(A), 2.6(A), 3.1(C) and 3.7(A)(2) of the Code of Judicial Conduct.

In the Matter of John Paul Riggs, former Magistrate of Pleasants County, JIC Complaint No. 136-2022: On December 7, 2022, Respondent was arrested and charged with the misdemeanor offense of Aggravated DUI. The next day JDC opened a complaint against Respondent. During the pendency of the criminal case, Respondent was precluded from presiding over DUI cases. On May 1, 2023, Respondent pled guilty to Non-Aggravated DUI and was fined \$100.00. On or about September 20, 2023, Respondent resigned as Magistrate effective October 2, 2023. From the time JDC opened a complaint on him until the effective date of his resignation, Respondent was in treatment with WVJLAP. By a unanimous vote, the JIC agreed to admonish Respondent for violating Rules 1.1, 1.2, and 3.1(A), (B) and (C) of the Code of Judicial Conduct. The admonishment was released on October 13, 2023.

In the Matter of the Honorable Steve Jones, Judge of the 4th Family Court Circuit, JIC Complaint No. 106-2023: On July 31, 2023, a domestic violence petitioner filed a complaint against Respondent alleging that

even though he is a mandatory reporter for child abuse and neglect, Respondent failed to report the findings he made with respect to DVPs he issued on behalf of her sons to DHHR within 24 hours of the entry of the orders. Respondent did not contest the allegations. By a unanimous vote, the JIC agreed to admonish Respondent for violating Rules 1.1, 1.2, 2.2 and 2.5(A) of the Code of Judicial Conduct. The admonishment was released on December 12, 2023.

JIC COMPLAINTS TO STATEMENT OF CHARGES

One matter was carried over from 2021 and resolved by the State Supreme Court in May 2023.

In the Matter of the Honorable C. Carter Williams, Judge of the 22nd Judicial Circuit, Supreme Court No. 21-0878, JIC Complaint Nos. 78-2021 and 81-2021 (Williams I): At its October 2021 meeting, the JIC voted to issue a statement of charges against Respondent based on the July 11, 2021 traffic stop and other traffic incidents. The eleven-count formal statement of charges was filed on October 25, 2021. Respondent timely filed an answer in which he admitted to the majority of the conduct set forth in the Formal Charges but denied any violation of the Code of Judicial Conduct except for Rule 1.1 for the various traffic offenses themselves. A hearing before the JHB was set for February 23, 2022.

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

The JHB recommended decision was received on or about September 23, 2022. The JHB found most violations with respect to *Williams I* but dismissed *Williams II* for failing to meet the burden of proof on the allegations pertaining to Walmart. The JHB recommended a 90 day suspension without pay among other discipline.

On or about September 29, 2022, Respondent filed a general objection to the JHB recommendations. On or about October 14, 2022, JDC filed its objection to the recommended decision. In its objections, JDC noted that the JIC, by a vote of 9-0 at its October 14, 2022 meeting, expressed support for the JDC position as it believed Respondent lacked any real remorse and because of his repeated failure to accept that the conduct complained of violated multiple provisions of the Code of Judicial Conduct. As such, the JIC opined that Respondent's discipline should be increased to what the JDC recommended below. Briefs were submitted by both parties in December 2022 and January 2023 and the matter was argued before Supreme Court of Appeals of West Virginia on February 8, 2023.

In an opinion filed May 4, 2023, the Court found that Respondent's conduct with respect to *Williams I* violated various provisions of the Code of Judicial Conduct and the Rules of Professional Conduct and was not protected free speech. The Court also found that the JDC failed to prove by clear and convincing evidence that Respondent exhibited racial bias with respect to *Williams I* or the charges contained in *Williams II*. Respondent received a six-month suspension without pay, a public censure, and a \$5,000.00 fine and ordered to pay a majority of the costs associated with the proceedings. See *In the Matter of Williams*, 248 W. Va. 106, 887 S.E.2d 231 (2023).

A special JDC also investigated two separate complaints against two Family Court Judges. They were *In the Matter of the Honorable Glen Stotler, Judge of the 23rd Family Court Circuit*, Supreme Court No. 22-0227, JIC Complaint No. 50-2021; and *In the Matter of the Honorable Deanna Rock, Judge of the 23rd Family Court Circuit*, Supreme Court No. 22-862, JIC Complaint No. 38-2022. A special JIC issued separate formal statement of charges against the two judges. continued in the *Stotler* case to a date to be determined.

With regard to *Stotler*, the Special JDC and Respondent entered into an agreement whereby Respondent admitted to violating Rules 1.1, 1.2 and 2.10 of the Code of Judicial Conduct for his part in sending a letter to the State Supreme Court critical of JDC for its alleged handling of another pending case involving a family court judge while serving as a member of the JHB presiding over the case. The pending family court case had yet to be submitted to the State Supreme Court for final resolution. In exchange for the agreement, Respondent received a public reprimand and was required to pay the costs of the proceeding. Meanwhile, on July 18, 2023, Respondent notified the State Supreme Court that he would resign his position as family court judge effective December 31, 2023.

Following a hearing, the JHB adopted the agreement by recommended decision dated July 24, 2023. By Order entered October 12, 2023, the State Supreme Court adopted the JHB recommended decision publicly reprimanding Respondent for

the requisite Code violations and ordered him to pay costs in the amount of \$3,562.38.

Concerning *Rock*, a hearing was held before the JHB on March 22, 2023. By recommended decision entered May 25th 2023, a majority of the JHB found that Respondent violated Rule 1.1 on one occasion and Rule 2.16(A) (lack of candor) on three occasions. The charges stemmed from her alleged involvement with and the investigation of the *Stotler* letter mentioned above. The JHB recommended that Respondent receive a public reprimand and pay costs of the proceeding. Both parties objected to the recommended decision. Oral argument in the *Rock* matter was heard by the State Supreme Court on January 23, 2024.

JIC ANNUAL STATISTICS COMPARISON

COMPLAINTS BY YEAR PER TYPE OF JUDGE

Year	Justices	CCJ	FCJ	Magistrate	Mental Hygiene Com	No Jurisdiction	Total
2023	1	83	50	38	4	15	191
2022	1	68	34	29	0	9	141
2021	5	66	24	33	2	8	138
2020	1	48	29	34	1	11	124
2019	3	82	35	45	2	7	174
2018	24	64	20	34	1	4	147
2017	10	50	45	38	0	6	149
2016	2	66	39	63	1	5	176
2015	1	57	35	29	1	8	131
2014	5	74	44	47	2	2	174
2013	8	78	43	46	0	9	184
2012	7	80	70	41	5	2	205
2011	1	82	41	50	4	8	186
2010	1	65	50	38	3	11	168
2009	0	65	38	50	4	2	159
TOTAL	70	1028	597	615	30	107	2447

DISCIPLINE BY YEAR PER TYPE OF JUDGE

Year	Total Complaints	Mag Formal Discipline	Mag Admon	FCJ Formal Discipline	FCJ Admon	CCJ Formal Discipline	CCJ Admon	SC Formal Discipline	SC Admon	Total Discipline
2023	191	0	5	1	1	1	0	0	0	8
2022	141	0	4	1	0	0	2	0	0	7
2021	138	1	6	1	1	0	0	0	0	9
2020	124	4	2	0	1	0	1	0	0	8
2019	174	3	4	0	0	0	0	1	0	8
2018	147	3	0	0	0	0	0	0	0	3
2017	149	0	5	0	0	1	1	0	0	7

2016	176	1	3	0	0	1	1	0	0	6
2015	131	0	3	0	1	0	0	0	0	4
2014	174	1	2	0	1	1	1	0	0	6
2013	184	1	1	0	1	1	0	0	0	4
2012	205	0	2	1	0	0	0	0	0	3
2011	186	0	3	0	0	0	1	0	0	4
2010	168	0	1	0	1	0	0	0	0	2
2009	159	1	0	0	0	0	0	0	0	1
TOTAL	2447	15	41	4	7	5	7	1	0	80

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

NCSC CENTER FOR JUDICIAL ETHICS STATISTICS

In 2023, there were approximately one hundred and twenty one (121) public dispositions in judicial disciplinary proceedings including: eighteen (18) in New York; thirteen (13) in Texas; eight (8) each in Arizona and West Virginia; seven (7) in Tennessee; six (6) in California; five (5) in Washington; four (4) each in Colorado, Indiana, Louisiana and New Jersey; three (3) each in Alabama, Kansas, Michigan, Nevada, New Mexico, Pennsylvania and Utah; two (2) each in Arkansas, Georgia, Kentucky, Ohio and Vermont; and one (1) each in Delaware, Florida, Idaho, Illinois, Maryland, Mississippi, Missouri, Montana and Nebraska. There were nineteen (19) jurisdictions with no (0) public discipline.

The NCSC Center for Judicial Ethics is a clearinghouse for information about judicial ethics and discipline. The CJE provides research support for the conduct commissions that investigate complaints of judicial misconduct, publishes educational materials for judges and tracks opinions issued by ethics advisory committees. Every two years, the CJE presents the National College on Judicial Conduct and Ethics. JIC Member Judge Rowe attended the 2023 College. For more information/resources, you may visit their current website at <https://www.ncsc.org/topics/judicial-officers/ethics/center-for-judicial-ethics>


CONCLUSION

Public confidence in the independence, integrity, and impartiality of judges, high standards that the members of the judiciary place upon themselves, and an autonomous disciplinary system that holds judicial officers answerable for their conduct are essential to the rule of law. The members of the West Virginia Judicial Investigation Commission are

certain that the Commission's work contributes to those goals, a heightened awareness of the appropriate ethical standards, and the fair and proper administration of justice.

Respectfully submitted,

JUDICIAL INVESTIGATION COMMISSION,

By: 
Alan D. Moats, Chairman

Date: January 25, 2024

ADM/tat