

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF,
MARY ELLEN GRIFFITH,
FORMER JUDGE OF THE 12TH FAMILY COURT CIRCUIT**

COMPLAINT NO. 146-2023

**AMENDED PUBLIC ADMONISHMENT OF MARY ELLEN GRIFFITH
FORMER JUDGE OF THE 12TH FAMILY COURT CIRCUIT**

The matter is before the Judicial Investigation Commission (“JIC”) upon a complaint filed by a party to a petition to modify custody setting forth certain allegations against Mary Ellen Griffith, former Judge of the 12th Family Court Circuit (“Respondent”). An investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure (“RJDP”). After a review of the complaint, the Judge’s written response, the information and documents obtained from the investigation and the pertinent Rules contained in the Code of Judicial Conduct, the JIC unanimously found probable cause that Respondent violated Rules 1.1, 1.2, 1.3, 3.1(C), and 3.7(A)(2) of the Code of Judicial Conduct at a recent meeting and ordered that she be publicly admonished pursuant to RJDP 1.11 and 2.7(c) as set forth in the following statement of facts and conclusions found by the Commission.

STATEMENT OF FACTS

Respondent was appointed to the bench in Summer 2006 and served continuously as a family court judge until October 31, 2023, the effective date of her resignation. At all times relevant to the investigation, Respondent was serving as Judge of the 12th Family Court Circuit. Respondent has not been the subject of any prior judicial discipline. Prior to becoming Judge, Respondent had been a practicing attorney and established ChildLaw Services, the state’s only practice designed to exclusively represent children.

On October 17, 2023, Complainant filed a judicial ethics complaint against Respondent. Chief among the allegations made by the Complainant was that Respondent improperly appointed an attorney

from ChildLaw Services as the Guardian Ad Litem (“GAL”) for the children involved in the custody matter and incorrectly ordered her to pay him \$6,500.00 at the conclusion of the proceedings.

Importantly, Complainant provided an April 2022 Facebook Post from ChildLaw Services which re-posted something that used Respondent’s likeness to obtain donations for a charitable organization with the tag line “[j]oin Judge Griffith with a gift to the SUNSHINE Fund so that all WV kids can #SHINE! DONATE: <https://www.facebook.com/donate/>_____.” The donation request also used a quote attributed to Respondent which stated, “That’s why this work is so meaningful. You can be there at a critical time and truly make a positive impact for a child down the line.”

By letter dated December 21, 2023, Respondent stated that she “assisted the West Virginia Child Advocacy Network in their fundraising through the Sunshine Fund by allowing them to use my image and story. I acknowledge this is in violation of Rule 3.7(a)(2).” The West Virginia Child Advocacy Network is a forensic group which appears in court on a regular basis.

CONCLUSIONS

The Commission unanimously¹ found that probable cause exists in the matters set forth above to find that Mary Ellen Griffith, former Judge of the 12th Family Court Circuit, violated Rules 1.1, 1.2, 1.3, 3.1(C), and 3.7(A)(2) of the Code of Judicial Conduct as set forth below:

1.1 – Compliance With the Law

A judge shall comply with the law, including the West Virginia Code of Judicial Conduct.

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.

¹ The vote was 7-0 with the Honorable Mike Flanigan, Magistrate of Mercer County, recused and the Honorable Jason Wharton, Judge of the 4th Judicial Circuit, absent.

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.

3.1 – Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not: . . .

- (C) participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality;

3.7 – Participation in . . . Charitable . . . or Civic Organizations and Activities

- (A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system , or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations, not conducted for profit, including but not limited to the following activities: . . .
 - (2) soliciting contributions for such an organization or entity in the management and investment of the organization’s or entity’s funds;

The Commission further found that formal discipline was not essential as Respondent had no prior disciplinary actions and had resigned from the bench. Nonetheless, the Commission found that the violations were serious enough to warrant a public admonishment.

The Preamble to the Code of Judicial Conduct provides:

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to the American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law. . . . Good judgment and adherence to high moral and personal standards are also important.

Comment [1] to Rule 1.2 states that “[p]ublic confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.” Comment [2] provides that “[a] judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and

must accept the restrictions imposed by the Code.” Comment [3] notes that “[c]onduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.” Comment [5] provides:

Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

Comment [2] to Rule 3.7 states that “a judge should consider whether the membership and purposes of the organization, or the nature of the judge’s participation in or association with the organization, would conflict with the judge’s obligation to refrain from activities that reflect adversely upon a judge’s independence, integrity and impartiality.” Comment [3] notes that mere attendance at a fundraising event, ushering or preparing food is acceptable as “[s]uch activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.”

Respondent clearly violated the Code of Judicial Conduct by allowing the West Virginia Child Advocacy Network, an agency which regularly appears in court, to use her image and story to fundraise and by allowing ChildLaw Services to repost it. Respondent abused the prestige of judicial office by engaging in such conduct and therefore cast doubt on the integrity, independence and impartiality of the judiciary as a whole. Aggravating factors to the conduct include that the entity for which she engaged in fundraising routinely appeared in court and that she lacked the proper remorse. As noted painter and writer Erik Pevernagie said, “[R]emorse is a dialectic issue about what has been done, about what should have been done and about what should not have been done.” While too much remorse may be unattractive, little to no remorse is disagreeable in that it signifies a lack of awareness and a propensity to reoffend.

Ordinarily, the Commission could bring formal charges against Respondent. However, given that Respondent has no prior discipline and is no longer on the bench, the Commission has unanimously

voted to admonish her. By engaging in such conduct, Respondent violated Rules 1.1, 1.2, 1.3, 3.1(C) and 3.7(A)(2) of the Code of Judicial Conduct and is admonished for the same.

Therefore, it is the decision of the Judicial Investigation Commission that Mary Ellen Griffith, former Judge of the 12th Family Court Circuit, be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes Respondent for her conduct as fully set forth in the matters asserted herein.

Pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure, the Respondent has fourteen (14) days after receipt of the public admonishment to file a written objection to the contents thereof. If the Respondent timely files an objection, the Judicial Investigation Commission shall, pursuant to the Rule, file formal charges with the Clerk of the Supreme Court of Appeals of West Virginia.



The Honorable Alan D. Moats, Chairperson
Judicial Investigation Commission

March 5, 2024
Date

ADM/tat