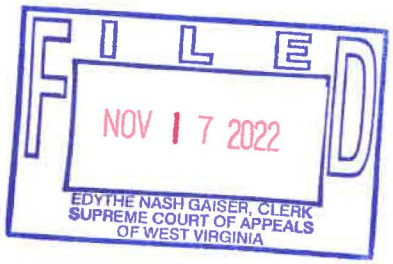
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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
& 81-2021



JUDICIAL DISCIPLINARY COUNSEL'S BRIEF

REDACTED

Respectfully submitted,

by

Teresa A. Tarr [5631]
Brian J. Lanham [7736]
Judicial Disciplinary Counsel
WV Judicial Tower, Suite 700A
4700 MacCorkle Avenue SE
Charleston, WV 25304
(304) 558-0169 (o)
(304) 558-0831 (f)

teresa.tarr@courtswv.gov
brian.lanham@courtswv.gov

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BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

IN THE MATTER OF:	**SUPREME COURT NO. 21-0608**
THE HONORABLE C. CARTER WILLIAMS,	**COMPLAINT NOS. 78-2021**
JUDGE OF THE 22ND JUDICIAL CIRCUIT	**81-2021**
	& 12-2022

JUDICIAL DISCIPLINARY COUNSEL'S BRIEF

I.

INTRODUCTION

"I just decided I was going to defend myself and die on that hill like General Custer" (Joint Exhibit No. ["Jt. Ex. No."] 70 at 5; Jt. Ex. No. 71 at 5; 6/15/2022 Tr. at 58). That's the excuse Respondent gave for his misconduct on July 11, 2021. On that day, Respondent to the detriment of Officer Johnson, the Moorefield Police Department and the integrity of the Court system as a whole was going to prove himself right no matter what even though he wasn't charged with anything at the time and clearly violated the law by driving on an expired license. Respondent wasn't satisfied winning the battle. He wants to win the war. As former professional Hockey Coach Terry Crisp once said after a significant loss to a competitor, "The only difference between this and Custer's last stand was that Custer didn't have to look at the tape afterward."

Respondent repeatedly denigrated Moorefield Police Officer Deavonta Johnson by calling him "boy" or "son" and bringing up the Mineral County charges to Hardy County Prosecutor Lucas See, Moorefield Mayor Carol Zuber, Moorefield Police Chief Stephen Riggleman, Moorefield Police Lieutenant Melody Burrows and former Moorefield Police Detective Steven Reckart even though they had been dismissed. Respondent quite simply tried to get Officer Johnson fired even though he denied the same to the JDC. He made negative comments about the Moorefield Police Department calling their cases "piss poor," "sloppy" and "sketchy." He said their cases were the worst he had

seen. He also threatened to call the state police if he saw them on the phone. He was angry and irate for almost three hours over an incident that in the end resulted in a legitimate charge to which he ultimately pleaded no contest. He repeatedly attempted to retaliate against the officer and the department. He initially received preferential treatment by virtue of his status when Lt. Burrows stopped the issuance of a ticket after he called her during the stop to complain. He also created the appearance of preferential treatment by virtue of his status during the second Walmart incident by using Prosecutor See as his bag man and engaging in the sin of omission by failing to report the incident to JDC, and .

Let's face it – if that conduct doesn't violate the Code of Judicial Conduct as charged in both Formal Statement of Charges then what does? As the Judicial Hearing Board ["JHB") correctly noted:

> This case is a textbook example of a judge's violation of the Code of Judicial Conduct as the Comment to R. Jud. Cond. 1.3 clearly states, '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. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials."

(JHB Recommended Decision at 18). His conduct also clearly epitomizes other Code violations as set forth in the Formal Charges, the JHB Recommended Decision and below.

The acceptance of responsibility for one's actions and remorse are benchmarks of judicial discipline. On numerous occasions Respondent said he was going to accept responsibility. On the initial call with JIC he said "I'm here to say it was my fault. I had no excuse. I'll take whatever is coming to me." He also said "whatever is coming to me, I deserve it. I'm not going to sit around and say different." Yet, he has repeatedly denied any Code violations save for Rule 1.1 in his sworn statement, in his Answers to the Formal Charges, at hearing and now before this Court. In fact, he took a plea deal to the driving violation in which he pleaded no contest instead of guilty. Respondent has never truly accepted responsibility for his actions, and lack of responsibility equals by its very

nature lack of remorse. In this case, it's almost as if Respondent isn't sorry for his actions but that he got caught.

Another hallmark of judicial discipline is the effect of the judge's conduct on judicial integrity. In this case, one need only look to the thousands of comments appended to the YouTube videos to see the level of harm Respondent has caused the West Virginia Judiciary as a whole:

> It's scary to think a judge has this kind of temper and is deciding someone's fate in the courtroom. - John Gorsky
>
> Its amazing how many cops and judges act when they get pulled over. They genuinely think they are above the law that they enforce. – SSDD Life
>
> So let's put this in perspective. This JUDGE went through all this, called everyone but the Governor, abused his authority, made threats to subvert justice in his courtroom and stated the officer should be fired, ALL over a Cell Phone ticket! Just imagine what he is like when there are no cameras. He should be REMOVED form [sic] the bench and FIRED and Charged with other crimes now. - wxmyjnsn
>
> The law applies to EVERYONE regardless of who you are. Those in law enforcement, especially judges, MUST hold themselves to a higher standard. If they can't, then they need to be punished more harshly. – Travelor
>
> Wow, this guy has no business being a judge. He can't even control himself when confronted by police. He is an absolute disgrace to our justice system. – WI User

(Exhibit No. 40 at https://youtu.be/48B9TPeVeqo).

Because of his conduct, his refusal to accept responsibility and the harm he has caused to the integrity of the judicial system, Respondent deserves severe sanctions pursuant to Rule 4.12 of the West Virginia Rules of Judicial Disciplinary Procedure ("RJDP"). The JDC respectfully requests this Court suspend Respondent for two years without pay. At a minimum, Respondent should serve one year without pay and the remainder should be held in abeyance pending the successful completion of his five-year monitoring agreement with . Respondent should also receive a public censure for each violation of the Code of Judicial Conduct and the Rules of Professional Conduct, a $5,000.00 fine and costs in the amount of $11,129.06.

II.

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Respondent became licensed to practice law in West Virginia in 1991. In 2016, Respondent ran for Circuit Judge of the 22nd Judicial Circuit consisting of Hardy, Hampshire and Pendleton Counties (Jt. Ex. No. 15 at 8). In a video campaign interview with a local newspaper which exists on YouTube to this day, Respondent recognized the importance of judicial temperament and the impact it has on the integrity of the Court system:

> A judge sets the tone for the court system, really. A judge's demeanor, their temperament, the way they conduct themselves can create a healthy and productive environment and efficient climate for a court system. I want to make people understand that the court is not there to yell at them, not to be cross or cranky but to be respectful. The court by its own judicial conduct rules is to be civil and respect people that have standing to be before the court. Biggest thing would be to conduct it in a respectful way.

(Jt. Ex. No.16 at 8:18[1]). Respondent also wanted his court to be known as:

> A real professional tradition among the legal profession here. I would want Hampshire County and the court system to be known as one that grants full and fair access to the parties, that's respectful to the litigants and attorneys that come before it, a place where people feel like they're going to be here and its going to be a place where they're respected.

(Jt. Ex. No.16 at 12:15).

Respondent was elected to the bench in May 2016. Respondent received and read the Supreme Court Employee Handbook on or about December 5, 2016 (Joint Exhibit Nos. 17 and 18). On pages 2 and 35, the Court stated that it has "no tolerance" for adverse treatment, discrimination or other behaviors which threaten to compromise [it's] principle's, especially where behaviors are based upon race, color, sex, age disability, religion, sexual orientation, national origin or an individual's status in any class protected by applicable state and federal law (Jt. Ex. No. 18). The Court also stated:

[1] All video start and end times are approximate.

> The Court has a zero tolerance policy when it comes to behaviors that oppress, intimidate, discriminate, bully, harass, verbally or physically abuse, or otherwise mistreat in any way another individual. . . These standards apply regardless of what form the behavior takes. Individuals engaging in these forms of inappropriate and unacceptable behaviors subject themselves to the Court's zero tolerance policy and resulting consequences, which may be the loss of employment.

(Jt. Ex. No.18 at 36). The Court further stated that persons serving in judicial roles "are responsible for ensuring that the high principles for fair, equal, respectful, and appropriate treatment set by the Court are maintained and enforced – every day everywhere, and at all times . . . " (Jt. Ex. No.18 at 37). On pages 26 and 27, the Court also requires judges and employees to read and familiarize themselves with the Code of Judicial Conduct (Jt. Ex. No.18).

Respondent officially took office on January 1, 2017. At all times during the matters asserted herein Respondent was a duly elected circuit judge serving the 22nd Judicial Circuit. Respondent has served continuously as a circuit judge for about six years. On July 15, 2021, JDC filed a judicial ethics complaint against Respondent. The complaint was given Complaint No. 78-2021 (Jt. Ex. No. 9). Later that same day, Respondent called JDC to verbally report his misconduct (Jt. Ex. No. 11). The verbal report occurred after Respondent was advised by the Honorable Charles C. Carl, III, Judge of the 22nd Judicial Circuit and/or Hardy County Prosecutor Lucas See that Prosecutor See had a duty to report him pursuant to the West Virginia Rules of Professional Conduct (Jt. Ex. No. 11 at 13). On or about July 16, 2021, Respondent reported his misconduct in writing (Jt. Ex. No. 12). Respondent's report was given Complaint No. 81-2021 (Jt. Ex. No. 12). In the letter, Respondent denied ever asking for any officer "to be disciplined or jailed" (Jt. Ex. No. 12 at 3).

On July 30, 2021, the JIC filed a report under Rule 2.14(b) of the Rules of Judicial Disciplinary Procedure with the State Supreme Court seeking Respondent's suspension without pay pending the outcome of the disciplinary matter. By Order entered August 3, 2021, the Court deferred ruling on the suspension without pay (Jt. Ex. No. 37). Importantly, the Order stated:

> The JIC report states that the respondent has agreed to no longer preside over criminal cases in Hardy County. It is ordered that the Court adopts the agreement, and the

> respondent is prohibited from hearing any matter involving the Moorefield Police Department and/or its officers during the pendency of these proceedings.

(Jt. Ex. No. 37 at 2).

In late September 2021, the Court again considered the matter. By Order entered September 30, 2021, the Court found "that there is probable cause to believe that the respondent has engaged in a violation of the Code of Judicial Conduct" (Jt. Ex. No. 38 at 1). The Court ordered the matter remanded to the JIC (Jt. Ex. No. 38). The Court also continued to prohibit "the respondent from hearing any matter involving the Moorefield Police Department and/or its officers during the pendency of the judicial disciplinary proceedings" (Jt. Ex. No.38 at 2).

On October 6, 2021, JDC took a lengthy sworn statement from Respondent (Jt. Ex. No. 15). Respondent admitted most of the facts ultimately outlined in the first ten counts of the first Formal Statement of Charges (Jt. Ex. No. 15). Respondent denied any impropriety with respect to race or age (Jt. Ex. No. 15).

On October 25, 2021, the JIC filed an eleven-count Formal Statement of Charges (Jt. Ex. No. 1). In his answer to the first Formal Statement of Charges, Respondent generally admitted to most of the facts including referring to Officer Johnson as "boy" but denied that it was racially motivated. (Jt. Ex. No. 3). He denied engaging in a pattern and practice of misconduct as it relates to the traffic violations set forth therein (Jt. Ex. No. 3). Respondent also denied the alleged violations of the Code of Judicial Conduct (Jt. Ex. No. 3)

During the discovery phase, Respondent admitted to violating Rule 1.1 of the Code of Judicial Conduct in his response to the JDC Request for Admissions concerning Williams I:

> Admit that by driving without a valid operator's license, running a stop sign, operating a vehicle without evidence of valid registration and not wearing a seat belt

while operating a motor vehicle a judge violates state laws and therefore violates Rule 1.1 of the Code of Judicial Conduct. . . .

ADMIT: __X__ **DENY:** ____

By way of further answer, Respondent has admitted, since July 11, 2021, that he was in possession of a West Virginia driver's license which had expired in April 2021; that he made [a] slow-speed, rolling stop through the intersection of Main and Washington Streets in Moorefield and admitted same to Officer Johnson and apologized for his conduct and was not cited; that he was stopped at a routine "check point" conducted by law enforcement and was not wearing a seatbelt in the rental car he was driving at that time and was not cited and was stopped on a separate occasion for not wearing a seatbelt; that it was brought to his attention that the annual license plate registration sticker on his personal pickup struck had expired and was not cited; and Respondent did correct his error, in a short period of time, by renewing his pickup truck license plate registration and his driver's license online and now wears his seatbelt at all times without exception.

(Jt. Ex. No. 5 at 3; 6/15/22 Tr. at 35-36). The only Code provision that Respondent has admitted violating is Rule 1.1 (6/15/22 Tr. at 36). Respondent said he didn't know if he was properly charged (6/15/22 Tr. at 38). Respondent also testified that it wasn't up to him to decide the charges (6/15/22 Tr. at 38).

Respondent also admitted during discovery that after being warned that his driver's license had expired, he drove away from Officer Johnson:

Admit that after being warned by Officer Johnson that your driver's license was no longer valid, you continued to drive your vehicle until such time as you renewed your license.

ADMIT: __X__ **DENY:** ____

By way of further answer, after Respondent was informed by Officer Johnson that his driver's license had expired in April 2021, he continued to drive his vehicle only the short distance to his home and parked there. Respondent was alone in his vehicle and it did not appear to him to be safe or appropriate to leave his vehicle parked along Jefferson Street, unattended, as his wife had proceeded home before him to be with their teenage daughters and friends. Respondent proceeded to renew his expired driver's license through the DMV's online portal. . . .

(Jt. Ex. No. 5 at 4).

On or about January 25, 2022, Respondent filed a Motion to Continue the evidentiary hearing. JDC objected to the Motion. The JHB declined to continue the matter. Thereafter,

Respondent filed a Motion in Limine asking, in part, for entry of an Order barring JDC from introducing any unidentified "other act" evidence at hearing. In its reply to this portion of the Motion, JDC stated:

> Respondent asks the JHB to limit the JDC from presenting "other act" evidence but he fails to identify what that evidence is. In its 2.14 report to the Court the undersigned set forth instances where Respondent was: purportedly pulled over for a traffic violation in Maryland; left Walmart without paying for certain items he took with him, and required a trooper to stand in his courtroom because he did not want their gun belts to mar benches. Despite repeated efforts, the undersigned could not substantiate the Maryland traffic stop, did not include the information in its formal statement of charges and does not plan to introduce any evidence pertaining thereto at hearing. In follow up with Walmart, the JDC learned that Respondent's failure to pay for items he left the store with was an oversight. As a result the information was not contained in the Formal Statement of Charges and JDC does not plan to introduce it at hearing. Lastly, the JDC did not include any testimony about the gun belt issue in its Formal Statement of Charges and does not plan to introduce any evidence pertaining thereto at hearing. Therefore, Respondent's request to limit any such testimony is moot.

At the time, JDC was unaware of the August 18, 2021 Walmart incident and Respondent never disclosed the same. Respondent also never disclosed the incident to .

JDC first became aware of the August 18, 2021 incident on February 10, 2022, when Chief Riggleman mentioned it for the very first time. JDC immediately opened Complaint No. 12-2022, and at a regularly scheduled February 11, 2022 meeting presented the matter to the JIC (Jt. Ex. No. 10). By a vote of 7-0, the JIC decided to issue a second one-count Formal Statement of Charges against Respondent (Jt. Ex. No. 2).

The second set of formal charges, along with Motions to Continue and to Consolidate were filed at the same time on February 14, 2022. The Motions were subsequently granted by the JHB. Respondent generally admitted most of the facts set forth in the second Formal Statement of Charges but denied any violations of the Code of Judicial Conduct. Respondent also denied deceiving JDC by failing to disclose the incident to them, to and (Jt. Ex. No.4).

A hearing was held on June 14-16, 2022, in Martinsburg, West Virginia. Eighty exhibits were jointly admitted into evidence at the very beginning of the hearing. Respondent moved to admit

an additional four exhibits and JDC moved to admit an additional one exhibit into evidence. Without objection, the five exhibits were admitted. JDC called twelve witnesses, including Respondent, during its case-in-chief. Respondent generally admitted most facts at hearing. However, Respondent denied trying to get Officer Johnson fired (6/15/22 Tr. at 57-58). Respondent testified:

> Q. Well, then why did you feel it prudent to bring up the fact that he had been charged [in Mineral County] when he wasn't guilty of anything?
>
> A. I brought that up – I was – I was in absolute fired up mode. I said it in my statement. I think I said maybe to] , for whatever reason. And I have thought about this hundreds of times since. For whatever reason on that day, I was going to defend myself, advocate for myself. Like Custer on his hill. And get – die there. And that's what it felt like. And that was the mode apparently I was in. So looking back, yeah, probably wasn't fair. And to him, he did what he had to do to get his job back. He – Chief testified to that yesterday. So did he. Good for him. So it was wrong to attack him. . . .
>
> In the mode I was in, I mean. He did what he did. I did what I did. I certainly didn't shoot through a seat and hit a friend of mine while I'm in a car. He did that all on his off – while he was off duty in another county. He got a second chance, as he should have, and made good. That's what I have tried to do from July 11th on.

(6/15/22 Tr. at 58-59).

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 by email on 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. 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 believes

Respondent lacks any real remorse and because of his repeated failure to accept that the conduct complained of violates multiple provisions of the Code of Judicial Conduct. As such, the JIC is of the opinion that Respondent's discipline should be increased to what the JDC is recommending below.

B. JIC COMPLAINT NOS. 78-2021 AND 81-2021

1. Charge I

During the evening hours of Sunday, July 11, 2021, Respondent, his wife and daughter went to a new ice cream parlor to get some ice cream and inquire about a job for the daughter[2] (6/14/22 Tr. at 27, 29; Jt. Ex. No. 12 at 1). According to Owner Scott Carlson, Respondent did not act out of the ordinary and "seemed fine" while he was there (6/14/22 Tr. at 27). After they finished, Respondent left in his car while his family left in separate vehicles (Jt. Ex. No. 12 at 1).

At some point, Respondent could not locate his cell phone and went back to the ice cream shop by himself (6/14/22 Tr. at 28; Jt. Ex. No. 12 at 1). Mr. Carlson said that Respondent's demeanor did not change during the time he was in the shop a second time:

Q. When he came back the second time, what was his demeanor like?
A. Just looking for his phone. Nothing out of the ordinary.
Q. Was it similar to what he was like when he was first in there?
A. Yeah, he was just looking for his phone.

(6/14/22 Tr. at 28). When the two men could not find the phone at the shop, Respondent left and got in his vehicle (Jt. Ex. No. 12 at 1). While driving along a city street, Respondent heard a rattle underneath his seat (Jt. Ex. No. 12 at 1). He reached down, retrieved his phone, transferred it from his left to right hand and held it near the top of the steering wheeling (Jt. Ex. No. 12 at 1).

Meanwhile, on or about 7:25 p.m., Officer Johnson, who is African American, was conducting a road patrol in the city limits of Moorefield when he observed Respondent holding a cell phone while driving in the opposite direction[3] (6/14/22 Tr. at 34-35; Jt. Ex. No. 12 at 1-2). Officer Johnson conducted a traffic stop (6/14/22 Tr. at 35; Jt. Ex. No. 12 at 2). He wore a body cam that he activated

[2] At some point after that evening, Respondent's daughter became an employee of the shop (6/14/2022 Tr. at 29).
[3] Both men were driving about 25 mph (6/14/22 Tr. at 35-36).

before he walked up to Respondent's vehicle (6/14/22 Tr. at 36). Officer Johnson did not recognize Respondent (6/14/22 Tr. at 55). Respondent immediately and without prompting identified himself as "Judge Williams" (Jt. Ex. No. 22 at 00:23). From the outset, Respondent acted in an intemperate manner unbecoming a judicial officer. In fact, in his July 16, 2021 letter to JDC, Respondent characterized his demeanor, tone and words to Officer Johnson as "unprofessional, accusatory, disrespectful, and made from unmerited anger and frustration. To be very transparent, I frankly exploded at the Officer in [an] unacceptable attempt to plead my case" (Jt. Ex. No. 12 at 2).

Judge Williams asked in an angry tone why he had been stopped (Jt. Ex. No. 22 at 0:24). Officer Johnson explained it was because Respondent had a cell phone in his hand (Jt. Ex. No. 22 at 0:25). Judge Williams stated that he lost his cell phone and had just pulled it up from under the seat when he was stopped. He also demonstrated how he held his phone in his right hand near the top of the steering wheel (Jt. Ex. No. 22 at 0:26-0:35). At that point, Officer Johnson asked Respondent why he was "screaming" (Jt. Ex. No. 22 at 0:36). Officer Johnson then twice asked to see the Respondent's license, registration and insurance. Respondent said he did nothing wrong. The officer again asked for Judge Williams' license, registration and insurance. Judge Williams harshly replied, "I'm not going to give you my license and registration"[4] (Jt. Ex. No. 22 at 0:27-0:44).

Respondent then continued to argue about the basis for the stop although he acknowledged during his sworn statement and at hearing that the patrolman had reasonable suspicion to pull him over (Jt. Ex. No. 22 at 0:45-0:59). At some point Respondent said in an angry tone, "And you all aren't ever on yours [cell phone]? You're never on yours? I drive by a lot of times and you all are on yours. You're never on yours, right?" (Jt. Ex. No. 22 at 1:00 to 1:06). The officer, who remained polite throughout the discourse again asked Respondent why he was yelling. Respondent denied yelling but again asked in a harsh tone, "You're never on yours?" (Jt. Ex. No. 22 at 1:07 to 1:10).

[4] A licensed driver who cannot or will not display a license to a requesting officer can be convicted of a misdemeanor and faces a maximum $500.00 fine. However, the driver cannot be convicted if he or she presents a then-valid license to the court or at the police station before the court date. *See* W.Va. Code § 17B-2-9.

Respondent then stated, "Let me tell you something, you all are on yours." The officer tried to explain that law enforcement can use a cell phone for official business. Respondent then said, "No, not official business" as he finally handed the officer his license, registration and insurance (Jt. Ex. No. 22 at 1:14).

Officer Johnson next asked Respondent why he was so uptight (Jt. Ex. No. 22 at 1:34). Respondent said it was because he was "irritated" that he was pulled over for "no reason" (Jt. Ex. No. 22 at 1:44 to 1:47). Respondent continued to argue about whether he could have a cell phone in his hand while driving. Officer Johnson continued to remain calm (Jt. Ex. No. 22 at 1:48 to 2:03). At some point Respondent told Officer Johnson to give him a ticket and he would take it to municipal court and go to trial (Jt. Ex. No. 22 at 2:04 to 2:13). Respondent then said, "It's ridiculous what you're doing. It's ridiculous" (Jt. Ex. No. 22 at 2:17 to 2:20).

When the officer asked Respondent why it was ridiculous, he replied:

> Cause you all have yours in your hands. I've seen it many times. You all have yours and you don't get pulled over. Don't tell me it's on official business. I hear your cases every day in court. . . . Give me a ticket. I am really irritated about this whole . . . give me a ticket."

(Jt. Ex. No. 22 at 2:22 to 22:40). When the officer again asked him why he was mad, Respondent stated, "You just pulled me over for no reason. Pulled me over for no reason. Give me a ticket" (Jt. Ex. No. 22 at 2:44 to 2:49). Officer Johnson then went back to his patrol car to run the license and write a ticket (Jt. Ex. No. 22 at 2:53). The officer learned that Respondent's license had also expired upon his 55th birthday, which occurred on April 17, 2021 (Jt. Ex. No. 22 at 4:24 to 4:29; 6/14/22 Tr. at 40).

While the officer was in his patrol car, Respondent contacted Lt. Burrows, who is second in command at the Department (6/14/22 Tr. at 64-65, 67). She worked earlier in the day but was off duty at the time of the call (6/14/22 Tr. at 66). When she answered the phone, Respondent immediately said in an enraged tone, "Your boy pulled me over for being on my cell phone and I wasn't on my cell

phone!" (6/14/22 Tr. at 67; Jt. Ex. No. 27, Burrows Aff. at 1). According to Lt. Burrows, Respondent never referred to Officer Johnson by his name during any of their calls that night (6/14/22 Tr. at 67). Instead, Lt. Burrows testified that Respondent repeatedly referred to Officer Johnson during all her calls with him that evening as "your boy" (6/14/22 Tr. at 67, 88-89; Jt. Ex. No. 27, Burrows Aff. at 1).

Respondent told her his version of what happened with the lost cell phone (6/14/22 Tr. at 67-68; Jt. Ex. No. 27, Burrows Aff. at 1). According to Lt. Burrows, Respondent was extremely irate (6/14/22 Tr. at 67, 69; Jt. Ex. No. 27, Burrows Aff. at 1). Lt. Burrows told Respondent to calm down and that she would contact Officer Johnson and tell him not to issue the ticket (6/14/22 Tr. at 68; Jt. Ex. No. 27, Burrows Aff. at 1). Lt. Burrows testified that she believed the purpose of Respondent's call was to stop the issuance of the ticket (Jt. Ex. No. 45 at 12; 6/14/22 Tr. at 89-90). Lt. Burrows then immediately called Officer Johnson who happened to still be in his patrol car and told him not to issue the ticket[5] (Jt. Ex. No.22 at 7:07 to 8:32; 6/14/22 at 38, 40, 68-69; Jt. Ex. No. 27, Burrows Aff. at 1). Lt. Burrows also told Officer Johnson that Respondent was yelling so loud on the phone that her boyfriend could hear him in the next room (Jt. Ex. No. 44 at 20; 6/14/22 Tr. at 40, 69-70).

As Officer Johnson walked up to Respondent's vehicle, Lt. Burrows called Respondent back and told him that Officer Johnson would not be giving him a ticket (6/14/22 Tr. at 40-41, 70; Jt. Ex. No. 22 at 8:44 to 8:54; Jt. Ex. No. 27, Burrows Aff. at 2). Lt. Burrows testified that she believed she may have still been on the phone with Respondent when he drove off (6/14/22 Tr. at 70-71). Respondent had a hands-free device in his vehicle. At some point either before Officer Johnson got to the vehicle or after leaving the scene, Respondent told Lt. Burrows that he "was tired of Moorefield doing whatever they wanted and that he sees our officers on their phones all the time" (Jt. Ex. No. 45 at 14; Jt. Ex. No. 27, Burrows Aff. at 2). At hearing, Lt. Burrows testified that she

[5] Lt. Burrows said she told Officer Johnson not to give the ticket to "diffuse" the situation (6/14/22 Tr. at 90). However, Respondent testified that this was the only time in her 21 years as a police officer that she ever told an officer not to give a ticket in order to "diffuse" a situation (6/14/22 Tr. at 75).

watched all or part of the stop video. She agreed that Respondent's actions during the stop were unbecoming a judge (6/14/22 Tr. at 93).

While still at the scene, Respondent turned his attention back to Officer Johnson and told him:

> You can write me a ticket or not. I don't care. I'll take it up to town and we'll go to trial, buddy. That's fine with me and I'll tell you what. The next time I see any of you on the phone I am stopping right there and calling the State Police. Any of you.

(Jt. Ex. No. 22 at 8:54 to 9:05). Officer Johnson again asked Respondent why he was being argumentative (Jt. Ex. No. 22 at 9:17). Respondent replied that it was "because I've seen this crap enough and I'm tired of it" (Jt. Ex. No. 22 at 9:18-9:22). The officer started to hand Respondent back his registration and insurance. Respondent then attempted to grab them out of the officer's hand saying, "Give it to me" (Jt. Ex. No. 22 at 9:22-9:24). Respondent then demanded his license "now" (Jt. Ex. No.22 at 9:25-9:27). As Respondent grabbed the license out of the Officer's hand, Officer Johnson told him it was expired (Jt. Ex. No. 22 at 9:27 to 9:30).

Respondent drove off without waiting for the Officer to release him (Jt. Ex. No. 22 at 9:33). Respondent could be heard saying as he drove off, "Next time I see you. . . ."[6] (Jt. Ex. No. 22 at 9:33). In his police report, affidavit and sworn statement, Officer Johnson said Respondent stated, "Next time I see you son" (Jt. Ex. No. 24; Jt. Ex. No. 27, Johnson Aff. at 3; Jt. Ex. No. 44 at 12). At hearing, Officer Johnson testified that Respondent stated, "Next time I see you boy" (6/14/22 Tr. at 41). Officer Johnson never gave Respondent permission to leave the scene (Jt. Ex. No. 22 at 9:33; 6/14/22 Tr. at 41). Officer Johnson further testified:

> Q. What is your normal process when somebody – when you pull somebody over and find out they do not have a driver's license?
> A. They get a ticket and their vehicle would be towed.
> Q. Okay. So they wouldn't be able to drive their own vehicle home?
> A. No.
> Q. Okay. Would you let them call somebody to come and get them, or come and get the vehicle? Or do you just usually tow it?
> A. If they can get there in a reasonable time. If they are in city limits, most of the time I'll let somebody come and pick it up. But if not, I have it towed.

[6] Respondent renewed his license online later that evening. The effective date of the renewal was July 12, 2021.

Q. Is it fair to say that when he drove off, he drove off without a valid driver's license?
A. That's correct.

(6/14/22 Tr. at 41-42).

W. Va. Code § 17B-2-1(a)(1) provides:

> No person, except those hereinafter expressly exempted, may drive a motor vehicle upon a street or highway in this state or upon a subdivision street used by the public generally unless the person has a valid driver's license issued pursuant to this code for the type or class of vehicle being driven.

A violation of this provision constitutes a misdemeanor and upon conviction a person may be fined not more than $500.00. A second or subsequent conviction is punishable by a fine of not more than $500.00 and/or confinement in jail for not more than six months. *See* W. Va. Code § 17B-2-1(i). Violators may also receive two points on their driver's license.

W. Va. Code § 17B-2-12 states that "[e]very driver's license issued to a person who has attained his or her twenty-first birthday expires on the licensee's birthday" on a five-year renewal cycle for any birth age ending in 5 or 0. W. Va. Code § 17B-2-12a(a) requires the Commissioner of the West Virginia Department of Motor Vehicles ("WVDMV") to "notify each person who holds a valid driver's license of the expiration date of the license by first class mail or by electronic means to the last address known to the division." The notice is mailed at least ninety days prior to the expiration date of the license and shall include a renewal application form and instructions for renewal. *Id.* The WVDMV sent Respondent a notice in late January or early February 2021 that his driver's license would expire on April 17, 2021 (Jt. Ex. No. 20 at 5). The expiration date is also stated on the driver's license (Jt. Ex. No. 20 at 1; Jt. Ex. No. 23).

Officer Johnson was "upset" by the encounter because "he's [a] judge. I feel like he thought he was above the law" (6/14/22 Tr. at 42). Officer Johnson was also worried by comments

Respondent subsequently made about an incident[7] that he was involved in while off duty in Mineral County the previous year (6/14/22 Tr. at 45-46). Officer Johnson called Respondent "one of the worst people I had to deal with" and that "he acted worse than the people that I've taken to jail") (Jt. Ex. No. 44 at 13, 27). Officer Johnson learned that Respondent had been discussing the Mineral County incident with others (6/14/22 Tr. at 45-46). Officer Johnson said he was "worried" about the comments because "he's a judge. He has a lot of power. I didn't know what he would do" (6/14/22 Tr. at 46). Officer Johnson also stated:

> A. [W]hen I got back to the office, I was just like I really don't know if I want to do this job anymore being that I mean the Circuit Judge just acts like that. I mean, and then I was just like well, I'm probably going to get fired anyways because he's probably going to use his power to get me fired and I was like I'm probably going to get in trouble because he's probably going to use his power to get me in trouble and I was just downing on myself just telling myself it was all my fault and that if I knew it was a circuit judge, I should've just let it go and stuff like that.
> Q. He never threatened to try and get you fired, did he?
> A. Not to me, however, I believe he told the Mayor and the Chief and everybody that I needed to be fired and I should have been fired and he told the mayor that she needs to know that my case can get brought up again and things of that nature. . . . I spoke to the Prosecutors about the whole incident, like what if he does do stuff like that, and they explained to me well if he does do that, then that can get counted as retaliation and that if the Prosecutors in Mineral County refile it, then they can get in trouble and things like that.

(Jt. Ex. No. 44 at 33-34).

Officer Johnson was also told that Respondent referred to him as "boy" while talking to others. Officer Johnson testified at hearing:

> Q. How did you feel about that?
> A. I mean, I don't know what he meant by it. He could have meant anything by it. I get called a lot of names, so it's –
> Q. Were you okay with it?
> A. I mean, like I said, I get called a lot of names. So it happens.

[7] In May 2020, Officer Johnson was charged with the felony offense of wanton endangerment in Mineral County Magistrate Court over an incident that occurred while he was off duty. The charge was dismissed without prejudice in June 2020. Officer Johnson was placed on probation with Moorefield Police Department for six months after the incident and successfully completed the probationary period (6/14/22 Tr. at 43-44; Jt. Ex. No. 36; Jt. Ex. No. 44 at 28-29, 32-33). Chief Riggleman calls Officer Johnson one of his best officers. Respondent's brother-in-law is Judge of the 21st Judicial Circuit, which consists of Mineral, Grant and Tucker Counties.

Q. Were you – have you ever been called that by a judge?
A. No.
Q. Okay. Did you think there were racial undertones related to that?
A. I don't know what he meant by it. I'm not going to pull the race card. I don't do that.
Q. Do you think that he meant it in an age related way?
A. He could have. Like I said, I don't know what he meant by it.

(6/14/22 Tr. at 46-47).

At hearing, Respondent said he made references to saying "your boy" or "one of your boys" when talking about Officer Johnson in his conversation with Lt. Burrows (6/15/22 Tr. at 40). He also admitted to referring to the Moorefield Police Officers as "boys" and "kids" to others he spoke with that night (6/15/22 Tr. at 40-41). Respondent called "boy" a term of speech referencing younger men (6/15/22 Tr. at 40). Respondent said it was "never meant to be anything racial at all. I'm a lot of things, ma'am. I'm not a racist. I'm certainly not a thief" (6/15/22 Tr. at 40). Respondent denied that calling an African American police officer "boy" created an appearance that he was biased against African Americans (6/15/22 Tr. at 40, 41-42).

Q. Would it surprise you to know that in his 1963 Letter [from] a Birmingham Jail, [Martin Luther King, Jr.] addressed the term boy as being inappropriate to address an adult African [American] male . . . ?
A. I'm not familiar with it, but I have no reason to suggest that you're not saying it correctly. I don't know.
Q. Knowing that, does it change your opinion any about whether calling an African American police officer who pulled you over, who you were angry with, referring to him as boy repeatedly, creates an appearance that you are biased against African Americans?
A. No, I do not agree with that. I had no intention whatsoever of that. I'm not at all racially motivated. . . .

(6/15/22 Tr. at 42). Respondent did however admit that the use of the word was probably not "the best choice of terms" and that "in retrospect, that's probably not the best way to say it." (6/15/22 Tr. at 41). Respondent also denied that the use of the term "boys" or "kids" when referring to Moorefield police officers created an appearance that he was biased against a younger person simply because of his/her age (6/15/22 Tr. at 44). Nonetheless, Respondent again admitted that it was "probably not the best choice of terms under the circumstances" (6/15/22 Tr. at 44).

2. Charge II

At approximately 7:39 p.m. that same evening, Respondent called Chief Riggleman on his cell phone (6/14/22 Tr. at 96; Jt. Ex. No. 27, Riggleman Aff. at 1; Jt. Ex. No. 46 at 5-6). The chief was off duty (6/14/22 Tr. at 96; Jt. Ex. No. 46 at 6). Chief Riggleman did not recognize the caller's telephone number (6/14/22 Tr. at 96; Jt. Ex. No. 27, Riggleman Aff. at 1; Jt. Ex. No. 46 at 7). When he answered the phone, the person on the other end identified himself as Judge Williams (6/14/22 Tr. at 96; Jt. Ex. No. 27, Riggleman Aff. at 1; Jt. Ex. No. 46 at 7). Respondent proceeded to tell the Chief that he "just had words with one of your boys" (6/14/22 Tr. at 97; Jt. Ex. No. 27, Riggleman Aff. at 1; Jt. Ex. No. 46 at 7). Respondent told Chief Riggleman his version of events leading up to the stop and his encounter with Officer Johnson (6/14/22 Tr. at 97; Jt. Ex. No. 27, Riggleman Aff. at 1; Jt. Ex. No. 46 at 7-8). According to Chief Riggleman, Respondent was very agitated (6/14/22 Tr. at 98; Jt. Ex. No. 27, Riggleman Aff. at 1; Jt. Ex. No. 46 at 8, 13). Chief Riggleman stated that the more they spoke the more agitated Respondent became (6/14/22 Tr. at 99; Jt. Ex. No. 27, Riggleman Aff. at 2; Jt. Ex. No. 46 at 10, 13).

Respondent told the Chief that he often observed Moorefield Police Officers on their phones and that in the future he was going to start calling the State Police and have them charge the officers whenever he saw them (6/14/22 Tr. at 98; Jt. Ex. No. 27, Riggleman Aff. at 2; Jt. Ex. No. 46 at 8). When the Chief explained that the officers were exempt from the cell phone prohibition, Respondent said that was ridiculous and that it only covered official business (Jt. Ex. No. 27, Riggleman Aff. at 2; Jt. Ex. No. 46 at 8). Chief Riggleman agreed stating that neither he nor Respondent had any way of determining whether the officers were on their phone for official business (Jt. Ex. No. 27, Riggleman Aff. at 2; Jt. Ex. No. 46 at 8-9).

Respondent told Chief Riggleman he was tired of being disrespected (6/14/22 Tr. at 97; Jt. Ex. No. 27, Riggleman Aff. at 2; Jt. Ex. No. 46 at 9). Chief Riggleman told Respondent that if anyone was being disrespectful it was him (Jt. Ex. No. 27, Riggleman Aff. at 2; Jt. Ex. No. 46 at 9).

Chief Riggleman brought up several instances where the Judge had been pulled over for various traffic violations since taking office (6/14/22 Tr. at 97-98; Jt. Ex. No. 46 at 9). Chief Riggleman also questioned why the Judge had called him out of the blue when he had never bothered to speak to him before (Jt. Ex. No. 27, Riggleman Aff. at 2; Jt. Ex. No. 46 at 9). The Chief also mentioned that it was his day off and he was spending it with his family (6/14/22 Tr. at 98; Jt. Ex. No. 27, Riggleman Aff. at 2; Jt. Ex. No. 46 at 10). Respondent indicated that there was nothing wrong with the Judge calling the Chief (Jt. Ex. No. 46 at 10). He also asked the Chief, whether he was Chief of Police even when he wasn't working. Respondent then told the Chief that he was a public servant and the Judge would call him whenever he wanted. (6/14/22 Tr. at 98; Jt. Ex. No. 27, Riggleman Aff. at 2-3). The Chief told Respondent not to call when he was home with his family (Jt. Ex. No. 27, Riggleman Aff. at 2-3). Respondent replied by hanging up on Chief Riggleman (6/14/22 Tr. at 99; Jt. Ex. No. 27, Riggleman Aff. at 3).

At hearing, Chief Riggleman testified that he watched the stop video and that Respondent's conduct was inappropriate for a judge (6/14/22 Tr. at 100-101). Chief Riggleman said, "In [Respondent's] position, you know, refusing to provide documentation, his driver's license and what not, I don't think that was very professional, no" (6/14/22 Tr. at 116). Chief Riggleman testified that in his ten years as a police officer he never had a traffic pullover that went so poorly (6/14/22 Tr. at 101). Chief Riggleman also testified that he felt that Respondent's use of the term "boy" or "boys" was not racist but was disrespectful as to the age of the officer(s) (6/14/22 Tr. at 115).

3. Charge III

Respondent called Detective Reckart, a former Moorefield Police Chief, at home that same evening (6/14/22 Tr. at 124-125; Jt. Ex. No. 27, Reckart Aff. at 1). The former chief retired from Moorefield with the rank of Detective at the end of June 2021[8] (Jt. Ex. No. 27, Reckart Aff. at 1).

[8] Since approximately May 1, 2022, Detective Reckart has been serving as the Municipal Judge for the cities of Moorefield and Romney (6/14/22 Tr. at 121). Before going to the City of Moorefield, Respondent retired from the

Detective Reckart said Respondent was very "agitated" during the call (6/14/22 Tr. at 126; Jt. Ex. No. 27, Reckart Aff. at 1). Respondent asked Detective Reckart if he was still with Moorefield PD (Jt. Ex. No. 27, Reckart Aff. at 1). When Detective Reckart advised that he had retired, Respondent told him that he needed to talk to someone and could he talk to him (Jt. Ex. No. 27, Reckart Aff. at 1). Detective Reckart thought this was odd because they were mere acquaintances and he was retired (6/14/22 Tr. at 129; Jt. Ex. No. 47 at 7).

Respondent told Detective Reckart his version of the stop (6/14/22 Tr. at 125; Jt. Ex. No. 27, Reckart Aff. at 1). During the call, Respondent made negative comments about Officer Johnson and Moorefield PD. Respondent called Officer Johnson a poor police officer (Jt. Ex. No. 27, Reckart Aff. at 1). Respondent told Detective Reckart that Officer Johnson did a very poor job (Jt. Ex. No.27, Reckart Aff. at 1). He also complained that Officer Johnson should not even be a police officer and brought up the Mineral County incident (6/14/22 Tr. at 125-126; Jt. Ex. No. 27, Reckart Aff. at 1). In his affidavit, Detective Reckart stated:

> Overall, [Judge] Williams was dissatisfied with the conduct of Patrolman Johnson, he was upset and distraught with the fact that he had been stopped and identified himself, and Patrolman Johnson was not acting in accordance with the way he believed Patrolman Johnson should. Based upon the wording he used and these statements, my belief is [he] may be somewhat biased against the Moorefield Police Department.

(Jt. Ex. No. 27, Reckart Aff. at 2).

Respondent called cases from Moorefield PD that were brought in his courtroom "sketchy" (Jt. Ex. No. 27, Reckart Aff. at 1; Jt. Ex. No. 47[9] at 9). He said Moorefield PD was made up of a bunch of "boys" and that it was run by a "boy" (Jt. Ex. No. 27, Reckart Aff. at 1). Respondent said he let some Moorefield PD cases go through even though he probably shouldn't have and that he may change his position in future cases (6/14/22 Tr. at 126-128; Jt. Ex. No. 27, Reckart Aff. at 1).

West Virginia State Police as a First Lieutenant (6/14/22 Tr. at 121-122). In his last four years there, he served in the Professional Standards Office (6/14/22 Tr. at 122).

[9] Apparently, a portion of Detective Reckart's sworn statement was accidently not recorded or the recorder malfunctioned (Jt. Ex. No. 47 at 4).

Detective Reckart kept asking him what he wanted and Respondent replied that he just wanted to vent (6/14/22 Tr. at 126, 129; Jt. Ex. No. 27, Reckart Aff. at 2).

At hearing, Detective Reckart testified that he viewed the stop video (6/14/22 Tr. at 132). Based on his experience in the WVSP Professional Standards Unit, he believed Officer Johnson was professional and respectful during the stop (6/14/22 Tr. at 132; Jt. Ex. No. 46 at 15) He testified that he believed Respondent's conduct was inappropriate (6/14/22 Tr. at 132; Jt. Ex. No. 47 at 16).

4. Charge IV

Respondent called Lt. Burrows again at approximately 8:15 p.m.[10] Respondent was still "irate" and "agitated" (Jt. Ex. No. 45 at 16; 6/14/22 Tr. at 71). He again mentioned how he always sees Moorefield officers on their cell phones and that he was going to contact the State Police from now on (Jt. Ex. No. 45 at 16; Jt. Ex. No. 27, Burrows Aff. at 2). Respondent told Lt. Burrows that he had never been treated so badly and that he couldn't believe "my boy" wouldn't take his word for it since he was a judge (Jt. Ex. No. 45 at 16; Jt. Ex. No. 27, Burrows Aff. at 2-3). Respondent also mentioned being recently pulled over by the State Police for not wearing a seatbelt and that the officer let him go (Jt. Ex. No. 45 at 16).

Respondent told Lt. Burrows that his treatment from Officer Johnson makes him question the Moorefield PD cases that he has seen and "maybe reevaluate" (Jt. Ex. No. 45 at 16-17; 6/14/22 Tr. at 71; Jt. Ex. No. 27, Burrows Aff. at 3). He said he was "sick and tired of Moorefield PD running around like a bunch of thugs, harassing innocent, hard-working people" (Jt. Ex. No. 45 at 17; 6/14/22 Tr. at 71; Jt. Ex. No. 27, Burrows Aff. at 3). Respondent then questioned whether "my boy" should have his job considering the former Mineral County charge against him (Jt. Ex. No. 45 at 17; 6/14/22

[10] Prior to calling Lt. Burrows, Respondent called the Honorable Charles Carl, Judge of the 22nd Judicial Circuit at approximately 8:00 p.m. The call lasted about eight minutes. Respondent told Judge Carl about the stop. According to Judge Carl, Respondent was agitated and upset. Respondent told Judge Carl that he was frustrated because the officer would not take his word that he was not using his cell phone. According to Judge Carl, Respondent was intent on proving himself right. Judge Carl stated that Respondent also mentioned Officer Johnson's Mineral County charges and that it was the same officer who had just pulled him over. Judge Williams also discussed seeing Moorefield Officers on their cell phones.

Tr. at 72-74). According to Lt. Burrows, Respondent stated "my boy shouldn't even have his job, that he couldn't believe that we hired him back and brought him back . . . and that he also mentioned something to the effect of drugs" (Jt. Ex. No. 45 at 17; Jt. Ex. No. 27, Burrows Aff. at 3). Lt. Burrows said Respondent's statements made "me sick' and "numb" (Jt. Ex. No. 45 at 17, 19).

When Lt. Burrows advised Respondent that Officer Johnson had been cleared of the gun charge following an independent investigation and that she had never heard about drugs in relation to him, Judge Williams countered by again mentioning the shooting and drugs (Jt. Ex. No. 45 at 17-18; Jt. Ex. No. 27, Burrows Aff. at 3). Respondent then told Lt. Burrows that Moorefield PD cases were "sloppy" and that the officers do a "piss-poor" job (Jt. Ex. No. 45 at 18; Jt. Ex. No. 27, Burrows Aff. at 4). According to Lt. Burrows, the call lasted approximately sixteen minutes.[11] Lt. Burrows said:

> I was with some friends and once I disconnected my phone call with him, I laid my phone on the counter on the table and said, 'Well, our case is over. We're screwed or fucked' or whatever I said. I probably said that last word, but yeah, I was certain that our cases were through.

(Jt. Ex. No. 45 at 19; Jt. Ex. No. 27, Burrows Aff. at 4).

Although Lt. Burrows testified at trial that she did not think the terms "boy" or "thugs" were racial, she did recognize that it was inconsistent with her earlier testimony:

> Q. You told Terri that when the Judge referred to Patrolman Johnson as boy, you did not initially consider that as racially charged; is that correct?
> A. That's correct.
> Q. Did you feel the same way when he called your officers thugs? Did you feel any racially charged comment from that?
> A. Well, after that comment, yeah, its – I was bothered by that.
> Q. What about when he kept mixing drugs in with Patrolman Johnson did you find that racially charged as well?
> A. I mean now looking back, I guess that yeah, you could probably take it that way.

(Jt. Ex. No. 45 at 23-24; 6/14/22 Tr. at 91-93).

[11] Respondent also called Lt. Burrows again at around midnight. She did not answer the call. When she texted the next day and apologized for not picking up, Respondent indicated that the call was accidental (6/14/22 Tr. at 74; Jt. Ex. No. 45 at 22-23).

5. Charge V

At approximately 9:33 p.m. that same evening, Respondent drove to Mayor Zuber's house (6/14/22 Tr. at 141, 153; Jt. Ex. No. 27, Zuber Aff. at 1; Jt. Ex. No. 49 at 6). Respondent telephoned her from outside the house, asked her if she was up even though all the lights were off in the house except for a television, and asked her if he could talk to her about the stop (6/14/22 Tr. at 141, 153; Jt. Ex. No. 49 at 7-8). Knowing he was outside the house, Mayor Zuber said, "yes" and met him at her door (6/14/22 Tr. at 141; Jt. Ex. No. 27, Zuber Aff. at 1; Jt. Ex. No. 49 at 8). The conversation lasted approximately 45 minutes (6/14/22 Tr. at 141; Jt. Ex. No. 49 at 12). She said the judge was upset and angry (6/14/22 Tr. at 142-143; Jt. Ex. No. 49 at 9, 14). She also said Respondent told her she was going to have to do something about "your police officers" (6/14/22 Tr. at 142, 159; Jt. Ex. No. 49 at 9).

The Judge told the Mayor about the stop (6/14/22 Tr. at 142; Jt. Ex. No. 27, Zuber Aff. at 1; Jt. Ex. No. 49 at 9, 14-15). He made negative comments about Officer Johnson and the Moorefield PD in general (Jt. Ex. No. 27, Zuber Aff. at 1). He told her he wanted to file a complaint against Officer Johnson and that he wanted her to look at it (Jt. Ex. No.27, Zuber Aff. at 1). He brought up the Mineral County incident with Officer Johnson and "that there should have maybe been more done with that than what was done" and that "he had gotten off the hook" (6/14/22 Tr. at 143-144). She also testified:

> Okay. The question was asked 'Did he make any negative comments about Officer Johnson?' My answer was, 'He did. He said, you know, . . . he should have been tried for what he did in Mineral County. He shouldn't have been able to walk away from that.' And I said, 'Carter, you know, it is kind of water under the bridge. I said Johnson actually was careless that he – at that time.' And I said he – 'he was careless and he shouldn't have done what he did, but I'm not sure he deserved to be charged with anything.' And he said 'Well, I do.' And he said, 'And, you know it could be reopened and he could be tried again.' And I said, 'Oh, Carter don't be like that.'

(6/14/22 Tr. at 146; Jt. Ex. No. 49 at 16-17; Jt. Ex. No. 27, Zuber Aff. at 1).

He complained that the Moorefield PD was made up of "young boys" and "young kids" (Jt. Ex. No. 27, Zuber Aff. at 1; Jt. Ex. No. 49 at 9, 18). He also referred to the officers as "thugs" (Jt. Ex. No. 49 at 19). He complained that he observed Moorefield officers on their cell phones while not on official business (Jt. Ex. No. 27, Zuber Aff. at 1). He indicated that he was going to start calling the State Police whenever he saw them on their phones in future (Jt. Ex. No. 27, Zuber Aff. at 1). Mayor Zuber said that Respondent never mentioned whether he received a ticket from Officer Johnson and she assumed that they let him go not because he was a judge but because he was someone that didn't cause trouble (Jt. Ex. No. 27, Zuber Aff. at 1; Jt. Ex. No. 49 at 16).

She said the Judge complained that Moorefield PD was picking on him (Jt. Ex. No. 27, Zuber Aff. at 1; Jt. Ex. No. 49 at 8-9). When asked how many times he had been pulled over by the agency, Respondent indicated twice in the last eighteen months (Jt. Ex. No. 49 at 10). He told her about another time Officer Johnson pulled him over for running a stop sign but did not issue a ticket (Jt. Ex. No. 27, Zuber Aff. at 1; Jt. Ex. No. 49 at 16).

Respondent complained about Chief Riggleman and the phone call that occurred between the two men (Jt. Ex. No. 27, Zuber Aff. at 1-2; Jt. Ex. No. 49 at 20-21). Respondent also told the Mayor that Moorefield PD brings some of the worst cases to his court and that the officers are unprepared for hearings (Jt. Ex. No. 27, Zuber Aff. at 1; Jt. Ex. No. 49 at 18-19). When Mayor Zuber mentioned that she would look at the body cam video in the morning, Respondent hung his head and for the first time disclosed that he had been an "asshole" during the stop (6/14/22 Tr. at 147; Jt. Ex. No. 49 at 11).

6. Charge VI

Prosecutor See became involved in the matter when Chief Riggleman contacted him about filing a Motion to Disqualify Respondent from Moorefield police cases (6/14/22 Tr. at 170-171; Jt. Ex. No. 50 at 5-6). Prosecutor See viewed the stop video on Monday, July 12, 2021, and thought Respondent "acted a little bit out of line, and I thought he was a little abrasive, and he was combative

with the officer" (6/14/22 Tr. at 171; Jt. Ex. No. 50 at 6). Chief Riggleman asked Prosecutor See "to get Judge Williams removed from the criminal docket of – in Hardy County" (6/14/22 Tr. at 171).

Prosecutor See did not know what to do and contacted former Circuit Judge Donald Cookman (6/14/22 Tr. at 172, 209-210; Jt. Ex. No. 50 at 7). Judge Cookman is retired after having served 20 years in office and subsequently serving as a senior status judge (6/14/22 Tr. at 208). While in office, Judge Cookman also served for a time as Chair of the Judicial Investigation Commission (6/14/22 Tr. at 209). Judge Cookman told Prosecutor See to gather all the information and take it to Judge Carl and to contact the Office of Disciplinary Counsel and report it (6/14/22 Tr. at 178, 209-210; Jt. Ex. No. 50 at 7).

Judge Cookman testified at hearing that he viewed the stop video:

> Q. What did you think about the stop?
> A. I was shocked. I was shocked. I have known Judge Williams for a number of years and known him as an attorney. I haven't actually, thank goodness, been before him as a judge. But he was before me on numerous occasions as an attorney, and he was always very respectful. And I was surprised and shocked at what I saw on the film.
> Q. As a former member of the Judicial Investigation Commission, did you—did you think that it may have violated some of the [C]odes [of Judicial Conduct]?
> A. I thought it may. I didn't want to make that decision, and still don't think it is my responsibility or position to do that. But I was concerned that it may be a violation of judicial ethics.
> Q. But you thought it was serious enough that it warranted reporting –
> A. Yes.

(6/14/22 Tr. at 211).

Prosecutor See called the Office of Lawyer Disciplinary Counsel on Wednesday, July 14, 2021 (6/14/22 Tr. at 172; Jt. Ex. No. 50 at 13). Prior to sending any information to Disciplinary Counsel, Prosecutor See informed Judge Carl of the incident and the need to report (6/14/22 Tr. at 172; Jt. Ex. No. 50 at 8). Judge Carl told Prosecutor See he needed to advise Judge Williams that he was going to report him (Jt. Ex. No. 50 at 8). Judge Carl offered to call Judge Williams and tell him

what was going on (Jt. Ex. No. 50 at 9). Prosecutor See was not present when Judge Carl made the call (Jt. Ex. No. 50 at 9).

When Prosecutor See was on his way back to Romney, Judge Williams called him (6/14/22 Tr. at 172; Jt. Ex. No. 50 at 9). The two then met in Judge Williams' office (6/14/22 Tr. at 172-73; Jt. Ex. No. 50 at 9). After Prosecutor See told Judge Williams of his plan, Judge Williams advised that he wanted to report as well (6/14/22 Tr. at 173; Jt. Ex. No. 50 at 9-10). Prosecutor See testified at hearing that Respondent never mentioned reporting until after Prosecutor See told him he was going to report (6/14/22 Tr. at 173). According to Prosecutor See, the two then talked about Respondent getting a citation and paying it (6/14/22 Tr. at 174; Jt. Ex. No. 50 at 10). Prosecutor See said the two spent time talking about what Respondent did wrong on July 11:

> We basically just talked about his conduct and what I saw was wrong with it. And he asked me what was wrong with it. And I recall telling him that when I read the Code of Judicial Conduct, the first thing you weren't supposed to do is say that you were a judge on a traffic stop. And I think his response – one time he said, 'Well, what should happen?' I said, 'You should have been given a ticket.' But I don't recall all the substance of the conversation.

(6/14/22 Tr. at 177). Prosecutor See testified that Respondent also mentioned that Officer Johnson should not be on the force (6/14/22 Tr. at 176; Jt. Ex. No. 50 at 24). Prosecutor See stated that he was aware of a total of three stops involving Respondent (6/14/22 Tr. at 178). He also said that he learned at some point that Respondent had referred to Officer Johnson as "boy" and that he did not realize the inappropriateness of it at the time but agreed that it was "inappropriate" although he does not believe Respondent is a "racist" (Jt. Ex. No. 50 at 16).

Respondent contacted Judicial Disciplinary Counsel on Thursday, July 15, 2021. JDC told Judge Williams that it had opened a complaint on him that morning but that the Judge could still report. Judge Williams acknowledged that his report was motivated by Prosecutor See's obligation to report. Respondent advised JDC of his version of the stop.

Respondent acknowledged that he was "very upset" and "extremely upset" during the stop. Respondent also admitted to being "very angry" with Officer Johnson. Respondent admitted identifying himself to Officer Johnson as "the Judge." Respondent admitted to calling Lt. Burrows to "basically say I didn't do this." Respondent admitted asking Lt. Burrows to "talk to" Officer Johnson or "to call him" or "could you do something." Respondent denied ever threatening Officer Johnson with jail. However, he failed to mention that he talked to others about the possibility that Officer Johnson's Mineral County charge could be reinstated. Respondent also denied trying to have Officer Johnson fired. Yet, he failed to mention the comments he made to others, including Officer Johnson's supervisors, about his belief that Officer Johnson shouldn't be a police officer.

By letter dated July 16, 2021, Respondent reported his misconduct (Jt. Ex. No. 12). On page 4, Respondent stated:

> I have also conferred with Judge Carl, who is currently Chief Judge of our circuit, and we have determined that I will now switch criminal dockets with him, such that I am not presiding in any of MPD cases or that of the local prosecutor's office.

According to Prosecutor See, Judge Carl, except on one limited prior occasion, had never presided over the criminal docket in Hardy County, and the change was as a result of Respondent's comments about the Moorefield PD on July 11, 2021. (6/14/22 Tr. at 170).

Around the same time, Chief Riggleman, not Officer Johnson,[12] prepared a ticket charging Respondent with improper use of a cell phone in violation of W. Va. Code § 17C-4-15 and driving without a valid license in violation of W. Va. Code § 17B-2-12 (Jt. Ex. No 30). Based upon information and belief, the ticket was served on Respondent sometime during the week of July 26, 2021, when he returned from vacation.

[12] W. Va. Code § 62-1-5a states that a police officer may issue a citation in lieu of an arrest for any misdemeanor, not involving injury to the person, that is committed in an officer's presence.

Respondent negotiated a plea deal with Prosecutor See's Office where he would plead no contest[13] to driving without a valid license and in exchange the cell phone charge would be dismissed without prejudice (Jt. Ex. No. 31). Hardy County Magistrate Craig Hose accepted the plea and ordered Respondent to pay a $30.00 fine and court costs (Jt. Ex. No. 31; 6/15/22 Tr. at 117-126).

Magistrate Hose testified that he has known Respondent since they were children and they are friends (6/15 2022 Tr. at 117). Magistrate Hose also testified that Respondent has been in his chain of command since he became circuit judge in 2017 (6/15/2022 Tr. at 117). Magistrate Hose said that Prosecutor See initially came to him and told him that Respondent was going to be charged with a cell phone violation and expired operator's license (6/15/2022 Tr. at 118). Magistrate Hose testified that he asked Prosecutor See if there was going to be a problem with him handling the plea and the reply was no because they had reached a plea agreement and "there was nothing in dispute" (6/15/22 Tr. at 119-120). Magistrate Hose said he would not have handled the matter if Respondent had pled "not guilty" (6/15/22 Tr. at 124). Interestingly, Respondent, through his attorney, elicited opinion testimony from Magistrate Hose concerning the instant judicial ethics charges even though he knew or should have known that it would be a violation of Rule 2.10 of the Code of Judicial Conduct for Magistrate Hose to comment (6/15/22 Tr. at 116-129).

7. Charge VII

W. Va. Code § 17C-3-4(a) states:

> The driver of any vehicle and the operator of any streetcar shall obey the instructions of any official traffic control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.

[13] Magistrate Hose testified that a no contest plea means the defendant is not saying that he committed the crime but he is also not contesting the charges (6/15/22 Tr. at 128). The online version of Black's Law Dictionary, 2nd edition, defines a no contest plea as "[t]he accused will not contest the facts on which the charge is based as a criminal case plea. It is not an admission of guilt."

A violation of this provision is a misdemeanor and upon conviction, a person shall be fined not more than $100.00. Upon a second conviction within one year thereafter, the person shall be fined not more than $200. Upon conviction for a third offense, the person shall be fined not more than $500.00 *See* W. Va. Code § 17C-3-4(b). Those who run a stop sign may also receive three points on their driver's license.

On or about January 26, 2020, Officer Johnson pulled Respondent over for running a stop sign (6/14/22 Tr. at 44). Officer Johnson said that Respondent immediately identified himself as Judge Williams when he was asked to provide his license and registration (6/14/22 Tr. at 44-45). Officer Johnson did not recognize Respondent and did not ask him to identify himself (6/14/22 Tr. at 44, 55). He testified that Respondent simply volunteered the information (6/14/22 Tr. at 44). Officer Johnson said that Respondent was polite during the stop and that he did not give him a ticket (6/14/22 Tr. at 45).

8. Charge VIII

W. Va. Code § 17A-9-2 governs operation of a vehicle without evidence of registration and states:

> (a) No person shall operate, nor shall an owner knowingly permit to be operated upon any highway any vehicle required to be registered under this article unless there shall be attached to and displayed thereon or shall be in possession of the operated when and as required by this chapter a valid registration card and registration plate or plates issued therefor by the department for the current registration, except as otherwise expressly permitted in this chapter.
>
> . . .
>
> (c) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500; and upon a second or subsequent conviction thereof shall be fined not more than $500, or confined in the county or regional jail not more than six months or both.

On or about September 29, 2020, the WVDMV notified Respondent in writing that his registration on his red Nissan truck would expire on November 1, 2020 (Jt. Ex. No. 20 at 4). Respondent failed to renew his registration in a timely manner.

In November 2020, West Virginia State Police ("WVSP") Corporal Eric Vaubel was at the Courthouse and observed a red Nissan truck in the parking lot with an expired sticker on the license plate (6/14/22 Tr. at 162-163; Jt. Ex. No. 51 at 6-7). The expired sticker was scratched up and looked like it was current (Jt. Ex. No. 51 at 8-9; Jt. Ex. No.51 at 5-10). Corporal Vaubel found out that the truck belonged to Respondent and did not report it to anyone (Jt. Ex. No. 51 at 5-9).

On or about April 8, 2021, Corporal Vaubel was on a grant funded overtime detail when he noticed the red Nissan truck coming through (6/14/22 at 162-163; Jt. Ex. No. 51 at 5-9). Corporal Vaubel stopped the truck (6/14/22 at 162-163; Jt. Ex. No. 51 at 5-9). He recognized Respondent, who was driving the vehicle and told him that his sticker had expired. He said Respondent was courteous during the stop (6/14/22 at 165; Jt. Ex. No. 51 at 5-9).

Corporal Vaubel told Respondent that he had first noticed the dead sticker in the courthouse parking lot in November (6/14/22 at 165-167). Judge Williams asked him why he didn't come find him then (6/14/22 at 165-167). Corporal Vaubel explained that he didn't have access because the Judge was behind locked doors and had a lot going on (6/14/22 at 165-167). Corporal Vaubel did not give Respondent a ticket but did issue a warning since he was on a specific grant funded detail and needed to demonstrate that he was working at that time (Jt. Ex. No. 21).

9. Charge IX

W. Va. Code § 17C-15-49(a) states:

> A person may not operate a passenger vehicle on a public street or highway of this state unless the person, any passenger in the back seat under 18 years of age, and any passenger in the front seat of the passenger vehicle is restrained by a safety belt meeting applicable federal motor vehicle safety standards.

Violators of this provision can be fined $25.00 and no points may be entered on any driver's record maintained by WVDMV. *See* W. Va. Code §§ 17C-15-49(c) and (d).

In Summer 2019 or 2020, Corporal Vaubel stopped Respondent. Corporal Vaubel was on a special detail when he pulled Respondent over. Respondent stated that he did not recognize Judge

Williams but that Respondent immediately identified himself as "Judge Williams." Corporal Vaubel did not give him a ticket. He testified that the Judge's demeanor was "fine" during the stop (6/14/22 at 163-164; Exhibit No. 50 at 13-15). Corporal Vaubel stated:

> At that time, I didn't even actually recognize him until I believe he pulled up. I was the one to approach his vehicle. I was like 'Hello, I'm Corporal Vaubel with the State Police. We're doing a DUI checkpoint.' And he expressed who he was then. I was like 'Okay. Sir, have a nice day.' . . . [H]e told me he was Judge Williams, but I didn't recognize him. It must have been an off day. He was kind of scruffy at the time.

(Jt. Ex. No. 51 at 14). Corporal Vaubel then sent him on his way. At hearing, Respondent couldn't recall whether he stopped Respondent for a seatbelt violation.

During his sworn statement and at hearing, Respondent admitted to not wearing a seat belt at times (Jt. Ex. No. 15 at 112). At hearing, Respondent again admitted to not wearing his seat belt on occasion and indicated that one of those times could have been when he was pulled over by Trooper Vaubel (6/15/22 Tr. at 100-101).

10. Charge X

In April or May 2021, WVSP Trooper Benjamin Thorn was working a "Click It or Ticket" when he stopped Respondent for a seatbelt violation (Jt. Ex. No. 52 at 4-7). Respondent was driving his red Nissan truck. At first, Trooper Thorn did not recognize him, and Respondent did not tell him he was Judge Williams (Jt. Ex. No. 52 at 5). Trooper Thorn asked to see Respondent's license (Jt. Ex. No. 52 at 5). As soon as he looked at the name, he realized he had stopped a judge (Jt. Ex. No. 52 at 5). Trooper Thorn then handed back Respondent's license without looking to see whether it had expired (Jt. Ex. No.52 at 5). Trooper Thorn decided not to write Respondent a ticket or a warning:

> Q. [On Click It or Ticket Patrol], do you usually issue – are they required like I think DUI patrol was to provide somewhat proof through either citation, a copy of the citation or a copy of the warning ticket for some of these stops?
> A. Yeah. We're pretty much expected to write – if we're on a seatbelt patrol, we are expected to write seatbelt tickets. So since I wasn't going to write him a ticket, I was like, 'Go ahead.' That way I could get after another violator who I was going to write.
> Q. Gotcha.

A. Because I mean just professional courtesy. He was fine with me. I've never had any issues with him at all. He always treated me fine, so— ·

Q. Gotcha. And I'm sure it's a little bit uncomfortable when you pull over the Circuit Court Judge at the same place that you're working?

A. Absolutely. Now, if there would've been a violation that I felt necessary to address . . . I'll do my job because it is what it is. . . But a minor traffic violation I didn't really see the need to stir up the hornet's nest for such a minor violation. . . .

(Jt. Ex. No. 52 at 6-7). Trooper Thorn also explained that he wasn't going to write Respondent for a minor violation "because I have felony cases in front of him in Circuit Court that he rules on. And, ultimately, I care about those felonies more" (Jt. Ex. No.52 at 9). According to Trooper Thorn, Respondent was "fine, cordial and polite" (Jt. Ex. No.52 at 9). At hearing, Respondent generally admitted to the facts.

11. Charge XI

Respondent engaged in a pattern and practice of using his public office for private gain as set forth in Formal Charges I, II, IV-VII, and IX. Respondent also engaged in a pattern and practice of violating state traffic laws as set forth in Charges I and VII through X. Even though Respondent admitted the traffic violations, he denied that the three violations occurring in April, May and July 2021 constituted a pattern of misconduct (6/15/22 Tr. at 44-47). He testified, "I don't agree that creates a pattern. It creates a situation where you lapsed and let things slip" (6/15/22 Tr. at 47).

12. JIC Complaint No. 12-2022[14]

On or about Wednesday, August 18, 2021, at approximately 12:31 p.m., Respondent left the Moorefield Walmart without paying for ten or so items in his shopping cart (Jt. Ex. No. 33). Store video shows Respondent scanning items at the self-checkout and placing them in a shopping cart while talking to another individual (Jt. Ex. No. 33). The video also shows Respondent immediately turning away from the self-checkout after the last item was scanned, placing it in his buggy and walking away without making any attempt to pay (Jt. Ex. No. 33; 6/15/22 Tr. at 14). He never

[14] In the JHB Recommended decision, the Board referred to this matter as Charge 11. However, in Williams I, Charge XI was the Pattern and Practice Charge.

removed his wallet from his pants pocket (Jt. Ex. No. 33; 6/15/22 Tr. at 14)). He never took money or a credit/debit card out and placed it in the machine, and he never retrieved change, a card or a receipt from the machine and placed them in a wallet or pocket before leaving (Jt. Ex. No. 33). He simply turned around after scanning the last item and placing it in his buggy and left the store without paying (Jt. Ex. No. 33; 6/15/22 Tr. at 14-15).

For approximately ten years, Christine Crites has served as a loss prevention officer for Walmart (6/15/22 Tr, at 8). Ms. Crites informed Chief Riggleman of the second Walmart incident in September 2021 (6/15/22 Tr. at 14). In an incident report, Chief Riggleman detailed the following about the incident:

> On Monday, September 13, 2021, at approximately 0923, this officer responded to the Moorefield Walmart concerning a suspicious vehicle. Upon completion of this investigation, this officer met with Walmart Asset Protection Associate Christine Crites to review video footage concerning this investigation. While interacting with Crites, she advised this officer of an unrelated incident which needed investigated. Crites provided this officer with a training receipt and still photograph of an individual known to me as Charles "Carter" Williams. This officer then watched video surveillance footage of Williams utilizing a self-checkout register where he was observed scanning, bagging and placing the bagged merchandise into his shopping cart.
>
> Williams is then observed pushing his shopping cart out of the store without making any attempts to pay for the items. This officer contacted Hardy County Prosecutor Lucas See concerning the reported incident. It should be noted that there is currently a Supreme Court of Appeals Judicial Investigation concerning an unrelated incident involving Williams and the Moorefield Police Department. Due to this investigation, it was determined that the best course of action would be to contact Williams and direct him to pay for the merchandise. It should also be noted that approximately one year ago a similar incident occurred with Williams at the Moorefield Walmart where he and his wife had pushed out a substantial amount of merchandise without paying. It was determined that neither party realized that the other had not paid for the items.
>
> On Tuesday, September 14, 2021, this officer was contacted by See and advised that he had received a call from Williams advising that he wished to pay for the items, and it was a mistake and that he had no intent to take merchandise from Walmart. This officer contacted Crites and advised her of the same. Crites advised they would accept the payment in lieu of charges being filed. This report has been generated for informational purposes.

The following text messages by and between Prosecutor See and Respondent further detail the incident:

(a) Monday, September 13, 2021:

Prosecutor: Are you going to be in your office tomorrow?
Respondent: _____ has Covid so I can't go anywhere. I'm not feeling great but don't know that I have it or not.
Prosecutor: Ok. Let me know when you are going to be around. I need to discuss something with you. No hurry and not a big deal. Thanks.
Respondent: Ok. I can try to call you tomorrow.
Prosecutor: That works. Thanks!!

(b) Thursday and Friday, September 16 and 17, 2021:

Respondent: If you could get that amount from Ms. Crites tomorrow, I'd really appreciate it. Thanks so much. (11:00 p.m.)
Prosecutor: Gotcha!! She was supposed to call me yesterday but I guess she forgot. I'll take care of it first thing this morning. (5:03 a.m.)
Prosecutor $42.21. Do you want me to stop by your house and get a check? (10:50 a.m.)
Respondent: I have Covid so I'll put a check in an envelope on my wall there at my driveway. I'm in a hearing so I probably won't have it there until around 12:30. If you could take it up there I'd really appreciate it.
Prosecutor: I can do that.
Respondent: Ok. It may be in a zip lock bag. I'll hand sanitize good before I handle any of that. Thanks a lot Lucas.
Prosecutor: No problem!!

(c) Approximately Saturday, September 18, 2021:

Respondent: Really appreciate your help.
Respondent: Christine Crites is the lady at Walmart, right? Thanks!
Prosecutor: Yes, that's her name. She's on vacation this week until next Thursday though. Very nice lady. She insists that this isn't a big deal and doesn't want you to be mad at Walmart about it. I told her that you weren't. It could and does happen all the time. I think they just didn't know how to handle it because you are the judge. It's all smoothed over!!

(Jt. Ex. No. 34a-c).

At the time of the incident detailed above, Respondent was under investigation by the JIC for Complaint Nos. 78-2021 and 81-2021. Among the allegations investigated was a July 21, 2020

incident where Respondent left Walmart without paying for items contained in his buggy. Chief Riggleman provided a note that he made concerning the event which stated:

7-21-20

Riggleman notes

Shoplifting

> No report generated given who it was on. Contacted Carter concerning the matter. Asset protection associate admitted that upon reviewing the incident, Walmart determined it to be accidental and no charges were filed.

(Jt. Ex. No. 28, last page).

Respondent was asked about the 7/21/2020 Walmart incident at his sworn statement which occurred on October 6, 2021, or just three weeks after he became aware of the August 18, 2021 Walmart incident:

> Q. There was an incident at Walmart where you and your _____ supposedly left and didn't pay or forgot to pay.
> A. That's been a couple years ago. My _____ wasn't there.
> Q. What happened.
> A. I don't know what I was shopping for. I think I was at the – there's a little square, self-checkout. There was a lady there that worked at Walmart that I knew. I was right on the end. I was talking to her. I'm pretty sure I put my debit card in. There was a receipt there. I remember on the screen, it was exactly $52. We laugh about it. The lady, she still works there. I grabbed the receipt, grabbed my stuff, went out the door. My wife wasn't with me. The next day, I got a call from Walmart and they said that I hadn't paid. So I thought, "Oh my God," [and] I rode back up and paid. I certainly didn't – the lady was there. I was talking to her. There was a receipt there. I just didn't check it. I grabbed it and out the door.
> Q. Did you look at the receipt later to see if it matched the $52?
> A. I honestly don't know. I don't know that I even had it the next day, but I – but I remember that because I even said something to her at the time. It's exactly $52, but I don't know if it was a receipt of someone before me. I don't know. I don't know that.
> Q. And you were never charged with anything from Walmart?
> A. No, I wasn't. No. And I certainly didn't intend to take off from Walmart.

(Jt. Ex. No. 15 at 118-119).

At no time during the investigation into JIC Complaint Nos. 78-2021 or 81-2021 did Respondent ever disclose the August 18, 2021 Walmart incident to the JIC. Prosecutor See never

disclosed the August 18, 2021 incident to JIC despite having been the initial reporter on Complaint No. 78-2021. The first time that Chief Riggleman disclosed the August 18, 2021 incident to the JIC occurred on Thursday, February 10, 2022.

Ms. Crites testified at hearing that Respondent was involved in two Walmart incidents (6/15/22 Tr. at 9, 12). Concerning the first incident,[15] Ms. Crites stated:

> He had come in and done some shopping, was going through self-checkout. The customer before him was one of the associates who had only purchased a soda and did not take their receipt. Judge Williams came up and was scanning his merchandise and putting it in bags. One of our associates who is close to him come over and was talking to him. And they were laughing and joking as he was scanning his merchandise. And when he got done scanning, he picked up the receipt that was left behind and he walked out.

(6/15/22 Tr. at 9-10). The total amount of the merchandise was approximately $50.00 (6/15/22 Tr. at 10). Ms. Crites contacted Judge Williams at his office about the incident (6/15/22 Tr. at 12). She testified that Respondent "came straight to the store within the hour" and paid for the merchandise (6/15/22 Tr. at 12).

Meanwhile, a text exchange by and between Respondent and Ms. Crites dated August 1, 2019 at 10:30 a.m. provides in pertinent part:

Respondent:	Thank you very much for letting me know about my payment issue from yesterday. I just paid it. My sincere apologies for the inconvenience to you all at Walmart. I had absolutely no idea I did that. Thank you again. Carter Williams.
Ms. Crites:	No worries . . . it happens more often than you would think.
Respondent:	It's called, having too much clutter in one's brain!!

(Jt. Ex. No. 34d). An email notation written by Respondent just above the text message exchange states "See text. I thought 2020 sounded too recent. It happened in 2019" (Jt. Ex. No. 34d). Ms. Crites testified that it was uncommon for her not to charge on a second incident. Her rationale in this case was it's "the first time that I have had one that I thought was unintentional that it happened twice" (6/15/22 at 15; Jt. Ex. No. 54 at 8). Ms. Crites also testified that the publicity surrounding the

[15] Ms. Crites testified that any store video of the first Walmart incident was no longer available (6/15/22 Tr. at 11).

second incident was "putting a bad light on me, my job and Walmart" (6/15/22 Tr. at 18; Jt. Ex. No. 55 at 4-5). Ms. Crites testified:

> A. It was making it appear that we had given special consideration to Judge Williams and we were treating him different and that was not the case.
> Q. Is it fair to say that you told Officer Hudson that, '[t]hey were putting you in a bad situation. What am I going to do the next time I charge somebody for doing a deliberate walk-off.
> A. Yes.

(6/15/22 Tr. at 19; Jt. Ex. No. 55 at 4-5).

About a week after Ms. Crites informed Chief Riggleman of the second Walmart incident, she received payment for the items from Prosecutor See (6/15/22 Tr. at 15-18). Chief Riggleman contacted Prosecutor See about the second Walmart incident (6/14/22 Tr. at 181). According to Prosecutor See, Ms. Crites contacted Chief Riggleman instead of Respondent because "they didn't want him to be angry with them and didn't want him to stop doing business there" (Jt. Ex. No. 59 at 4).

Prosecutor See was already aware of the first Walmart incident (6/14/22 Tr. at 180). Prosecutor See contacted Respondent about the second Walmart incident by text message (6/14/22 Tr. at 182). The two discussed Prosecutor See making payment for Respondent (Jt. Ex. No. 34a-c; Jt. Ex. No. 59 at 5). Prosecutor See testified that Respondent gave him the money to pay Walmart and he personally took the payment to Ms. Crites:

> A. I believe I got the amount from Christine Crites and I told Judge Williams what it was. And I think he wrote a check. And he either pulled in front of the courthouse – he had COVID. And he pulled in front of the courthouse. But after I thought about it more, I think I went to his dad's house and picked up the check.
> Q. Well, the text messages – would you have any reason to dispute the text messages if they say you went to his house?
> A. No.
> Q. And is that customary for the elected Prosecutor to pay money on behalf of the Judge to Walmart.
> A. No, it is not customary for me to – but it is not customary for me to collect money from a judge. But if my office collects restitution on a regular basis for victims.

Q. But do you drive to their house and pick it up, or do they bring it to your office?
A. They usually bring it to my office –
Q. Okay but you don't handle that yourself, do you? Somebody else handles that, is that correct?
A. That's correct.

(6/14/22 Tr. at 183-184).

Prosecutor See did not charge Respondent for the second incident because he believed it was inadvertent. However, he told Respondent if he left Walmart without paying a third time he would be charged (6/14/22 Tr. at 184; Jt. Ex. No. 59 at 12). He reasoned:

A. I believe Walmart has – it is like a three-strike policy. Or like if you swipe 13 items, you don't pay for one, that they'll disregard it. And I also thought if he did it again, it showed a pattern of behavior.
Q. So if you do it twice, it is not a pattern of behavior? But if you do it three times, it becomes a pattern of behavior?
A. Yes.

(6/14/22 Tr. at 184-185).

Respondent also never disclosed the August 18, 2021 Walmart incident to . In an email dated February 10, 2022, Respondent, through his attorney, didn't deny that he failed to disclose the information to . Instead, he stated that his time at occurred prior to his being advised of the August 18, 2021 matter. However, the report did not come out until after Respondent was aware of the August 18, 2021 incident.

Respondent also failed to disclose the second Walmart Incident to . The Honorable Michael Aloi, Magistrate of the United States District Court for the Northern District of West Virginia and a former state circuit court judge serves as program since October 2021 and has weekly contact with him (6/16/22 Tr. at 42-43, 46, 54-55). Judge Aloi testified that he was only ever aware of one Walmart incident:

Q. Between the time you started . . . meeting with Judge Williams, and February 14 of 2022 when the . . . second statement of charges were filed, did Judge Williams ever disclose to you that there was a second Walmart incident?
A. . . . . I don't recall talking about two episodes . . .
Q. So you talked only about one Walmart episode; is that correct?

A. We talked about Walmart and I'm recalling it as one episode.

(6/16/22 Tr. at 56). Concerning the July 11, 2021 traffic incident, Judge Aloi agreed that Respondent's conduct was unbecoming a judicial officer (6/16/22 Tr. at 54-55).

13. Aggravating Factors

After being warned that his driver's license had expired, Respondent continued to drive his vehicle. Incredibly, Respondent denied that this was an aggravating factor (6/15/22 Tr. at 48). He said it just didn't register at the time (6/15/22 Tr. at 48). Between April and July 2021, Respondent was pulled over for three different traffic violations in and around Hardy County.

Respondent's demeanor at hearing was defiant and at times victim playing. Respondent testified that "[m]y family has had to deal with me being called a thief and a racist, publicly. Publicly. Which is absolutely totally made up and untrue. That's what they have had to suffer" (6/15/22 Tr. at 64). Respondent also stated:

> But regardless of that, and far beyond that, Ms. Tarr, I have had to withstand this and be called a racist in this culture, and a thief and a liar. That's just as bad as you can be called. And I am none of those ma'am. I have never been. I'm a lot of things. I'm not those.

(6/25/22 Tr. at 64). Thus, Respondent's conduct can only be described as an apparent failure to take meaningful responsibility for his misconduct.

The large level of negative publicity surrounding the stop and the Walmart incident harmed the integrity, independence and impartiality of the West Virginia judiciary in Respondent's local community, across the state, and in the United States as a whole. There were 22 newspaper articles or editorials about the two incidents in West Virginia newspapers and the ABA Journal. All were negative toward Respondent and cast the judiciary in a bad light because of his conduct. Indeed, the traffic stop made the top five news articles for the year in the Hampshire Review – overall coming in

at Number 4 for 2021. The March 29, 2022, WV Record editorial called for Respondent to "resign in disgrace" (Jt. Ex. No.39). The stop video and news about the Walmart incident were placed on YouTube multiple times (Jt. Ex. No.40). Each of those videos was accompanied by negative commentary from an administrator of the sight (Jt. Ex. No.40). The sights contained hundreds of thousands of views from people all over the world which in turn generated thousands of comments. Most of the comments were negative toward the Judge or the West Virginia judiciary (Jt. Ex. No.40). David Maher, Respondent's own social media witness, could only discount about 44% of all the comments (6/15/22 Tr. at 242-243). As Mr. Maher testified:

Q. And 56% of those [comments] are not bots, correct?
A. Correct.
Q. Okay, so I would assume from that, that there are people making comments?
A. There are people making comments, yeah.
Q. And people looking at the video?
A. Correct.

(6/15/22 Tr. at 243). This means there are still thousands of negative comments about Respondent and the West Virginia judiciary.

14. Mitigating Factors

Respondent has not been the subject of any prior discipline while serving as a lawyer or a judge. Respondent was somewhat cooperative with the JIC investigation prior to the filing of Williams I.

15. Factors

III.

SUMMARY OF ARGUMENT

JDC generally agrees with the majority of the recommended decision issued by the JHB as it relates to the Findings of Facts and Conclusions of Law. Contrary to the JHB assertion, there is clear and convincing evidence that Respondent repeatedly referred to Officer Johnson as "boy" which creates the appearance in the mind of the public, however wrong that it may be that Respondent was biased against African Americans. Contrary to the JHB recommendation, the JDC has never maintained that Respondent's actions were "racially motivated." However, it does create the appearance that Respondent is biased against African Americans which is and of itself a violation of the Code of Judicial Conduct.

The JDC also proved by clear and convincing evidence that Respondent repeatedly referred to the Moorefield Police Officers as "boys" and their chief as a "boy" which creates the appearance in the mind of the public, however wrong that it may be that Respondent was biased against the Department because of its collective youth. The JDC also proved by clear and convincing evidence that Respondent grabbed the license and registration from Officer Johnson's hand and hung up on the chief in a rude and disrespectful manner. JDC also proved by clear and convincing evidence a pattern and practice of misconduct as it relates to the three traffic offenses that Respondent engaged in in 2021.

JDC believes the JHB erred when it recommended dismissal of the Code and Rule of Professional Conduct violations pertaining to the second Walmart incident. While it is true Respondent was never charged with a criminal violation pertaining thereto, he created the perception in the mind of the public, however wrong it may be, that he engaged in wrongdoing and received preferential treatment from the Walmart loss prevention officer and the prosecutor by virtue of his status as judge.

The JHB found Respondent lacked candor when he said he did not try to get Officer Johnson fired or disciplined but improperly did not make any corresponding finding with respect to RPC Rule 8.4(c). However, the JHB incorrectly held that the JDC failed to prove a lack of candor as it relates to Respondent's failure to inform the JDC, of the second Walmart incident. The JHB incorrectly found no violations of RPC Rule 8.4(a) even though it found multiple violations of Rule 8.4(d). A finding of Rule 8.4(d) violations by necessity means violations of Rule 8.4(a). This was the same thing that the JHB attempted to do in *In the Matter of Ferguson,* 242 W. Va. 691, 841 S.E.2d 887 (2020). They denied any violation of CJC Rule 1.1 as being duplicative of a finding of a violation of another Code provision, and this Court held otherwise stating that by violating another Code provision, a judge may also violate Rule 1.1. *Id.* The JHB also incorrectly found Rule of Professional Conduct violations with respect to the second Walmart incident.

Lastly, the JDC objects to the recommended discipline as being too lenient considering the severity and number of violations of the Code of Judicial Conduct and Rules of Professional Conduct and the aggravating factors. In giving a one-year suspension without pay with 90 days served, the JHB likened the case to *Ferguson,* which sets the minimum penalty for such conduct. *Id.* However, the Respondent's conduct is more egregious than what occurred in *Ferguson* and therefore warrants a harsher sanction.

IV.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

In an October 5, 2022 Order, the State Supreme Court set the matter for Rule 19 oral argument on Wednesday, February 8, 2023.

V.

ARGUMENT

A. THE JIC AGREES WITH THE MAJORITY OF THE FINDINGS OF FACT AND CONCLUSIONS OF LAW RENDERED BY THE JHB.

This Court is the final arbiter of judicial ethics in West Virginia. *Id.* The longstanding rule is that the Court will make an independent evaluation of the record and recommendations of the JHB. *Id.* The review is *de novo*. *Id. See also Judicial Inquiry Commission v. Dostert,* 165 W. Va. 233, 271 S.E.2d 427 (1980). Included "within this independent evaluation is the right to accept or reject the disciplinary sanction recommended by the Board." *In the Matter of Crislip,* 182 W.Va. 637, 638, 391 S.E.2d 84, 85 (1990).

The Court will generally defer to the factual findings of the JHB unless there is some apparent irregularity in the proceedings, or the charged misconduct is especially serious. *In the Matter of Baughman*, 182 W. Va. 55, 386 S.E.2d 910 (1989). In in the *Matter of Browning*, 192 W.Va. 231, 234, n. 4, 452 S.E.2d 34, 37, n. 4 (1996), the Court stated "that substantial consideration should be given to the Hearing Board's findings of fact. This consideration does not mean that this Court is foreclosed from making an independent assessment of the record, but it does mean that absent a showing of some mistake or arbitrary assessment, findings of fact are to be given substantial weight." Thus, it only stands to reason that the Court often defers to the JHB on its conclusions of law, recommended mitigation and recommended discipline unless they are irregular, in error or contain arbitrary assessments.

JDC agrees with all JHB findings and conclusions where not specifically objected to by Disciplinary Counsel and asks the Court to defer to the JHB on those provisions in its final opinion since they are correct. Where JDC objects to the JHB findings, conclusions, mitigation and recommended discipline, we respectfully ask the Court to find that the JHB was in error and to instead adopt our provisions as set forth in this brief and incorporate them into its final opinion.

B. THE JHB ERRED IN FINDING THAT THE JDC PRESENTED INSUFFICIENT EVIDENCE TO PROVE THE REMAINING FINDINGS OF FACT AND CONCLUSIONS OF LAW SET FORTH BELOW.

The JDC has the burden of proof in judicial disciplinary proceedings. RJDP Rule 4.5 states that "[i]n order to recommend the imposition of discipline on any judge, the allegations of the formal charge must be proved by clear and convincing evidence." *See In re Wilfong,* 234 W. Va. 394, 765 S.E.2d 283 (2014); *In re Watkins,* 233 W. Va. 170, 757 S.E.2d 594 (2013); and *In re Toler* 218 W. Va. 653, 625 S.E.2d 731 (2005). Clear and convincing evidence is the middle standard of proof. It means something more than preponderance of the evidence or probable cause and something less than proof of guilt beyond a reasonable doubt. *See generally Judicial Inquiry Commission of Virginia v. Wymack*, 745 S.E.2d 527 (VA 2012).

It is the burden of proof utilized in judicial and lawyer discipline cases. West Virginia has not specifically defined "clear and convincing" evidence as it relates to judicial discipline. Pennsylvania judicial disciplinary cases define "clear and convincing" as "evidence 'that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.'" *In re Eskin*, 150 A.3d 1042, 1046 (PA 2016) (citations omitted). North Dakota judicial disciplinary cases state that "the evidence must be such that the trier of fact is reasonably satisfied with the facts the evidence tends to prove as to be led to a firm belief or conviction." *In re Disciplinary Action Against McGuire*, 685 N.W.2d 748, 759 (ND 2004). It means "evidence which leads to a firm belief or conviction that the allegations are true." *Id.* It "does not require a showing by '100 per cent certainty' or 'absolute certainty.'" *Id.* The evidence presented also "need not be undisputed to be clear and convincing. A factfinder need not believe the greater number of witnesses." *Id.*

Based upon the evidence adduced at hearing, the JDC has proved by clear and convincing evidence all the charges levied against Respondent. Accordingly, the JDC respectfully requests that this Court find that Respondent has violated the charged Code of Judicial Conduct and Rules of Professional Conduct violations charged pertaining thereto.

1. Respondent Repeatedly Referred to Officer Johnson as "Boy" and the Moorefield Officers as "Boys" Which Demonstrates the Appearance, However Wrong it may be that he is Biased Against African Americans and/or Against Young People Simply Because of their Age.

Respondent admits that he referred to Officer Johnson as "boy" but denies any impropriety resulting therefrom. Respondent also admits repeatedly referring to the Moorefield Officers and Chief Riggleman as "boys" but again denies any impropriety resulting therefrom. Respondent maintains that he is not racist or ageist. Judicial Disciplinary Counsel has never called Respondent a racist or ageist. However, JDC has consistently maintained that Respondent's use of the words "boy" and "boys" creates the appearance, however wrong it may be that Respondent is biased against African Americans and young people. The West Virginia judiciary has a strong appearance of impropriety standard in its Code of Judicial Conduct. Creating an appearance of impropriety, however wrong it may be, is and of itself a violation of the Code. This is what the Respondent has been charged with by the JIC and what the JDC has proven by clear and convincing evidence.

In *In the Matter of Cullins*, 481 P.3rd 774 (Kan. 2021), a Kansas Judge was disciplined, in part,[16] for creating the appearance that he was biased against African Americans by asking a college aged athlete during a hearing whether he was a "Kansas boy." He again referred to another African American college-aged athlete in another hearing that day as a "Kansas boy." At hearing, the judge testified that he did not intend the term "boy" to have any racial connotation but merely as a term of geographic origin. The Hearing Panel focused on the appearance his statement created:

> "Despite the Panel's finding that Respondent did not intend any racial derision in his use of the term 'boy,' however, there is clear and convincing evidence that the prosecutor in these criminal cases **was concerned that Respondent's use of the term could be interpreted as a term of bias**. The prosecutor felt it appropriate to

[16] In *Cullins*, which also involved multiple acts of judicial intemperance, the judge received a one year suspension. *Id.* The Court said it would consider a shorter suspension if he formulates a plan that addresses appropriate counseling and training. *Id.* If the Court approves his plan, a suspension beyond sixty days will be stayed during successful completion. *Id.* In *Ferguson, infra*, this Court has already set the minimum suspension without pay period at 90-days for less egregious conduct than what occurred in *Cullins* or this case and thereby recognized the importance in this State of civility, neutrality and the important leadership position of a judge in our court system.

> (and did) apologize for Respondent's conduct to the father of one of the defendants. "The Panel believes that the Supreme Court's *sua sponte* analysis of [its bias, prejudice and harassment provision contained in Rule 2.3 of its Code of Judicial Conduct] *State v. Smith*, 308 Kan. 778, 423 P.3d 530 (2018) compels a finding that Respondent violated Rule 2.3 in his use of the term 'boy' on these facts. The *Smith* case explains that the focus of the Rule 2.3 inquiry **must be on the "appearance of bias . . . to an informed objective observer," even if that bias does not exist.** . . The Panel concludes that Respondent's use of the term "boy" on these facts may reasonably have been perceived as biased. . . ."

Id. at 779 (citations omitted) (emphasis added).

The Kansas Supreme Court agreed with Hearing Panel in finding that the judge violated Rule 2.3:

> The [judge's] words are not at issue. . . . Regardless of inflection, tone, or local custom, this court has little trouble finding there was clear and convincing evidence to support the panel's conclusion that the statements made by [the judge] . . . **created a *reasonable perception* of racial bias in violation of Canon 2, Rule 2.3.** Specifically, two adult Black men appeared before the judge during a bond hearing, both presumed innocent of their criminal charges. **A reasonable individual might perceive that the following *may* have shown racial bias: Something about the defendants' appearance caused the judge to believe they were athletes; Something about their appearance caused the judge to assume they were not from the area; Something about their appearance caused the judge to question – even disbelieve – one defendant's assertion that he had no felony record.**
>
> **When taken altogether and in context, a reasonable perception of bias cannot be denied.** . . . [O]ur judicial system requires that every person be allowed to present his case with assurance that the arbiter is not predisposed to find against him. **"That assurance is absent – and judicial conduct improper – whenever a judge appears biased, even if [h]e actually is not biased. . . .**
>
> **"An insistence on the appearance of neutrality is not some artificial attempt to mask imperfection in the judicial process, but rather an essential means of ensuring the reality of a fair adjudication. Both the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself."**

Id. at 788-89 (citations omitted) (emphasis added).

In *In the Matter of Fuller*, 798 N.W.2d 408 (2011), the South Dakota Supreme Court disciplined[17] a judge, in part, for making a flippant reference from the bench that law enforcement

[17] The Court ordered involuntary retirement but agreed to stay it if he agreed to certain conditions including indefinite probation and a six-month suspension without pay. *Id.* In reducing the discipline that Court noted:

officers were a "bunch of racists" absent any evidence for such reference. During the same hearing, the judge told a female intern during a break that the legal profession was better off before woman joined the profession. The intern testified that she thought the judge was joking but she found the comments offensive. The judge also had artwork in the courtroom. In order to accommodate audio-visual equipment, he would often remove three pieces depicting Native Americans. When doing so, the judge admits "saying again in a smart aleck deal, this is where I hang my Indians." *Id.* at 415.

In finding that the Judge violated the Code of Judicial Conduct for this and other conduct, the Court stated:

> South Dakota's judicial system cannot function properly unless judge maintain the highest standards . . . To strive for judicial integrity is the work of a lifetime. That should not dissuade the profession. The difficulty of the undertaking does not mean we should refrain from the attempt. . . . [The Judge] has not only damaged his judicial office but those of every judge in this state. Each judge's decisions, judgments, and decrees are not enforced by armies or by force. They are chiefly enforced by the voluntary compliance of our citizens through their respect for the rule of law. [The Judge's] misconduct makes it more difficult for every judge in this state to maintain that respect for our courts and our ability to effectively resolve society's legal disputes.

Id. at 418-420.

In applying the foregoing to the instant matter Respondent by clear and convincing evidence created the appearance that he is biased against African Americans. Officer Johnson is the only African American at the Moorefield Police Department. He is an adult male. Respondent was repeatedly rude to Officer Johnson during the stop. Respondent repeatedly referred to Officer Johnson as "boy" to others. Each time, he made the reference, Respondent said "boy" in an angry tone which in and of itself negates the claim that it was meant as a geographic colloquialism. Respondent admitted at hearing that in retrospect his use of the word "boy" was not "the best choice

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"During oral argument, [the judge] candidly admitted his wrongdoing. This implies he is capable of rehabilitation and overcoming his personality traits that got him into this trouble in the first place." *Id.* at 420. Unlike the judge in Fuller, Respondent has not candidly admitted his wrongdoing. He has not admitted any violations of the Code of Judicial Conduct except Rule 1.1. Therefore, the implication is that he is less capable or incapable of rehabilitation.

of terms." Although there was absolutely no evidence of such, Respondent twice implied Officer Johnson used "drugs" in connection with the Mineral County incident. Respondent referred to all of the officers, including Officer Johnson as "thugs." When asked about the compilation of evidence, Lt. Burrows stated that looking back on his statements it could be taken as racially charged. Respondent even unwittingly bolstered this argument by playing the victim at hearing and complaining how people were calling him a racist to his face and to his family. Many of the newspaper articles and the majority of the YouTube videos highlighting the stop and its aftermath pay particular attention to the fact that Respondent repeatedly referred to Officer Johnson who is "black" as "your boy" (Jr. Ex. Nos. 39 and 40). All of this is clear and convincing proof that Respondent violated the Code provisions charged with respect to the appearance, however wrong it may be, that Respondent was biased against African Americans.

Moreover, Respondent also created the appearance, however wrong it may be that he was biased against the Moorefield Police Department because of the age of the officers in general. Respondent called the officers "boys" and that they were run by the Chief who was a "boy." Each time he made the comments, Respondent did so in an angry tone which forecloses any argument that he meant it as a geographic colloquialism. He made negative comments about their job performance and he called them thugs. Respondent's comments about the officers caused him to be disqualified from any of their cases. Again, all of this evidence is dispositive proof that Respondent appears biased against the Moorefield Police Department. Therefore, this Court should find violations of the Code of Judicial Conduct and Rules of Professional Conduct as charged with respect to age bias involving the Moorefield Police Department as a whole.

2. Respondent Created the Appearance, However Wrong it may be, that he Engaged in Wrongdoing at Walmart and Received Preferential Treatment as a Result.

Cullens and *Fuller* are also instructive on this issue and the appearance of impropriety it created in the mind of the public. JDC proved by clear and convincing evidence that Respondent

created the appearance, however, wrong it may be that he engaged in wrongdoing at Walmart and received preferential treatment as a result. Respondent twice left Walmart without paying. Respondent admits all the facts but denies any impropriety.

Respondent was questioned about the first incident by JDC and denied any wrongdoing. Knowing that there was a question of impropriety on the table, Respondent failed to disclose the second Walmart incident which he became aware of just three weeks before he was questioned. He also never disclosed to In fact, Respondent admits not disclosing to JDC, . His reasoning was he didn't think it was a problem. If it really wasn't a problem why not disclose? It was because he knew that it created an appearance, however wrong it may be, that he engaged in wrongdoing.

The Walmart Video shows evidence that after Respondent scanned his last item at the self-checkout, he failed to take out his wallet, put money or a card in the machine to pay, retrieve any change or his card and a receipt. Instead, he immediately turned around and left the store. Ms. Crites stated that it made "it appear that we had given special consideration to the Judge and we were treating him different. . . ." She also wondered "[w]hat am I going to do the next time I charge somebody for doing a deliberate walk-off." He then had the Prosecutor take his payment to Walmart after he became aware of the problem. Importantly, the Prosecutor said if Respondent walked off again he would be charged.

The comments from the public appended to the YouTube videos about the Walmart incident also support that Respondent created the appearance, however wrong it may be, that he engaged in wrongdoing at Walmart and received special treatment:

> That judge thinks he is above the law and he is proving it. – Tim Costello
>
> That's some sweet handling for the judge by the prosecutor and Walmart. It would have been sweeter had Walmart and police treated that poor lady that has dementia for forgetting to pay for 13 dollars' worth of merchandise with kid gloves and not popped her shoulder out and leaving her in the cell suffering for hours. Not so sweet

that they viewed the videos and laughed about the pop sound it made with she was within ears shot. – Willie Zar

Unbelievable. This guy needs to face some real consequences. – Persephone Szeliga

Sounds like a judge with serious moral and ethical issues should concern everyone! --William Barnes

Is this the Judge Privilege we keep hearing about? If I "forgot" to pay for something I would be in handcuffs and banned from every store worldwide. – Lewis One Studios.

Never Assume Malice when Stupidity could be the Culprit !!! Wow it's scary to think he's a Judge! – Kimberly Noland

(Jt. Ex. No. 40 at https:youtu.be/ufbDvGypTuU). This evidence is requisite proof that Respondent created the appearance, however wrong it may be that he engaged in wrongdoing at Walmart and received special treatment. Therefore, this Court should find violations of the Code of Judicial Conduct and Rules of Professional Conduct as charged with respect the second Walmart incident.

The Court should also find that Respondent lacked candor by failing to disclose the second Walmart incident to JDC, . A sin of omission can also demonstrate a lack of candor as it did in this case. Author Robert Heinlein noted, "The slickest way in the world to lie is to tell the right amount of truth at the right time-and then shut up." The worst way to lie is to remain silent when questioned and later try to justify one's actions. Thus, this Court should find that Respondent lacked candor in violation of the Code of Judicial Conduct when he failed to disclose the second Walmart incident to JDC, To do so would send a message to the Respondent that he alone is responsible for disclosing possible wrongdoing to and must do so in a timely and proper manner. When in doubt, he must disclose. Accordingly, this Court should find Code and Rule of Professional Conduct violations for Respondent's failure to disclose the second Walmart incident.

3. The Evidence is Sufficient to Prove that Respondent Grabbed Items from Officer Johnson During the Stop, that he Hung Up on Chief Riggleman and that he Engaged in a Pattern and Practice

of Misconduct by Engaging in Three Traffic Violations in Four Months.

The JHB incorrectly found that the JDC failed to meet its burden of proof on the above-captioned matters. In truth, the undersigned proved each and every allegation by clear and convincing evidence. The stop video clearing shows that Respondent grabbed the license, registration and or insurance out of the Officer's hand. Moreover, Respondent admitted to the conduct. Therefore, the JDC submitted clear and convincing evidence that Respondent grabbed documents from Officer Johnson's hand during the stop.

The JHB also incorrectly found that the JDC failed to meet the burden of proof with respect to hanging up on Chief Riggleman. The Chief testified that Respondent hung up on him following a heated exchange. Respondent admitted to hanging up on Chief Riggleman. Lastly, Respondent complained about the telephone call to Mayor Zuber. Therefore, the evidence clearly demonstrated that Respondent lacked judicial temperament when he hung up on Chief Riggleman.

JDC also proved by clear and convincing evidence that Respondent engaged in a pattern and practice of misconduct by engaging in three traffic violations in four months during 2021. JDC elicited testimony and/or admitted sworn statements into evidence from the officers involved in the stops. Respondent admitted to each of the incidents but denied that they constituted a pattern and practice of misconduct.

"Pattern" is defined as "[a] reliable sample of traits, acts or other observable features characterizing an individual" Black's Law Dictionary (6th Ed. 1990) at 1127. "Practice" means "repeated or customary action; habitual performance; a succession of acts of a similar kind; custom; usage. Id. at 1172.

In *Committee on Legal Ethics v. Keenan*, 189 W. Va. 37, 427 S.E.2d 471 (1993), this Court found that a lawyer had engaged in a pattern and practice of neglect by failing to communicate with three different clients, act with reasonable diligence in representation of the three clients, keep them

reasonably informed about the status of the matter or return timely an unearned fee. As a result, the lawyer was suspended indefinitely pending other action on the part of the attorney. *Id.* Although this Court did not expound on "pattern and practice" in the *per curium* opinion, it did recognize that same or similar misconduct in three complaints is enough to satisfy the charge. *Id.*

In applying the foregoing to the instant case, the JDC presented clear and convincing evidence that Respondent engaged in a pattern and practice of misconduct as it relates to the three traffic violations which occurred within a four-month period in 2021. One of the three offenses resulted in a warning and another triggered the instant proceeding and culminated in a conviction for the misdemeanor offense of driving without a current license. Therefore, the JDC respectfully requests that this Court find that Respondent engaged in a pattern and practice of misconduct as it relates to the three traffic offenses occurring in 2021.

C. THE JHB ERRED IN FINDING THAT RESPONDENT DID NOT VIOLATE RULE 8.4(A) OF THE RULES OF PROFESSIONAL CONDUCT WITH RESPECT TO EACH COUNT OF WILLIAMS I, RULE 8.4(C) WITH RESPECT TO COUNT VI OF WILLIAMS I OR ANY 8.4 VIOLATION WITH RESPECT TO WILLIAMS II.

In Williams I, Respondent was charged, among other things, with violating Rules 8.4(a) and 8.4(d) of the Rules of Professional Conduct for each of the Counts I through X. Respondent was also charged in Count VI with violating Rule 8.4(c) of the Rules of Professional Conduct. In Williams II, Respondent was charged, among other things, with violating Rules 8.4(a), (c) and (d) for the sole count. The JHB found that Respondent violated Rule 8.4(d) of the Rules of Professional Conduct in connection with all the counts set forth in Williams I. The JHB dismissed all Rule 8.4(a) charges and the lone 8.4(c) charge in Williams I. The JHB also dismissed all charges pertaining to Williams II.

Rule 8.4 of the Rules of Professional Conduct provides in pertinent part:

> It is professional misconduct for a lawyer to:
>
> (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

. . .

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct prejudicial to the administration of justice.

The JHB gave no reason for its decision not to find that Respondent violated Rule 8.4(a) except to incorrectly state "[t]here is no clear and convincing evidence that the Respondent violated or assisted or induced another person to violate the Rules of Professional Conduct (JHB Recommended Decision at 12, paragraph 33). The JHB also erred when it found no violation of Rule 8.4(c) when it stated that "there is no clear and convincing evidence that the Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation (JHB Recommended Decision at 12, paragraph 35). Yet, the JHB found 10 violations of Rule 8.4(a) and that Respondent lacked candor in violation of CJC Rule 2.16(a) by falsely denying that he tried to get the traffic officer fired and by failing to disclose that he had discussed the possibility of reinstating criminal charges against Officer Johnson (JHB Recommended Decision at 5, paragraphs 12 and 13).

These errors are almost identical to the one made by the JHB in *In the Matter of Ferguson*, 242 W. Va, 691, 841 S.E.2d 887 (2020), where it rejected the argument that the judge could violate CJC Rule 1.1 and another violation at the same time for the same conduct. CJC Rule 1.1 provides that "[a] judge shall comply with the law, including the West Virginia Code of Judicial Conduct." In *Ferguson*, Respondent was charged with two counts. With respect to the second count, Respondent was charged with violating CJC Rules 1.1, 1.2, and 2.16(A) for falsely stating that he would never treat an officer with disrespect and for making false statements during his sworn statement. The JHB found that there was clear and convincing evidence that the judge violated Rules 1.2 and 2.16(A) but declined to find any violation of Rule 1.1 stating that there is insufficient evidence . . . that any misstatement during the [judge's] sworn statement constituted any violation of any law.

On appeal, the JDC successfully argued that any violation of an CJC provision would by its very nature constituted a violation of Rule 1.1. The JDC asserted that when the JHB concluded that

the judge violated CJC Rule 2.16(A) for his misstatements during the sworn statement logic dictated that the Hearing Board should also have found a violation of CJC Rule 1.1.

The Clerk's Notes on Rule 1.1 which was adopted by the Court on November 12, 2015, and became effective December 1, 2015, states that the Rule follows the 2007 Model Code. The Clerk's Notes provide that "[i]n keeping with the primary objective of the 2007 Model Code revisions, the new rules are designed to be black-letter statements about what judges 'must' do . . . ." Importantly, WVCJC Preamble [6] states that "the black letter of the Rules is binding and enforceable."

In agreeing with JDC and finding a Rule 1.1 violation, this Court stated:

> [T]he Board's reading of Rule 1.1 is too narrow. Not only does the Rule require judicial officers to comply with statutory and regulatory law, it also requires them to comply with the Code of Judicial conduct. Accordingly, we conclude that by providing false information to the JDC during his sworn statement, the [judge] also violated Rule 1.1.

Id. at 699, 841 S.E.2d at 889.

As in *Ferguson*, the JHB's reading of RPC Rule 8.4(a) in Williams is too narrow. Any violation of the Rules of Professional Conduct is also a violation of RPC Rule 8.4(a). Since the JHB found 10 violations of RPC Rule 8.4(d) for each of the counts in Williams I, logic dictates that it should also have found 10 violations of Rule 8.4(a). Comment [1] to RPC Rule 8.4(a) makes clear that "[l]awyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct." Comment [5] provides that 'lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney." Therefore, JDC respectfully requests that this Court find that Respondent has violated Rule 8.4(a) for each count of Williams I and that if it finds that he violated RPC Rule 8.4(c) and/or (d) with respect to Williams II that you likewise find a violation of Rule 8.4(a) with respect to Williams II.

With respect to Count VI of Williams I, the JHB found that Respondent violated CJC Rule 2.16(A) for his false denial that he tried to get the traffic officer fired and for failing to disclose that

he had discussed the possibility of reinstating criminal charges against Officer Johnson. CJC Rule 2.16(A) provides that "a judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agency. Since the JHB found that Respondent was not honest in this regard, it should also have found that Respondent violated Rule 8.4(c) since he falsely claimed that he did not try to get the officer fired and since he lied by omission concerning the possibility of reinstating criminal charges.

The RPC and CJC are documents like the Declaration of Independence, the United States Constitution or the West Virginia Constitution. They should be revered and followed by judges in whole to preserve the integrity, independence and impartiality of the judiciary and the legal profession. Therefore, this Court should find that Respondent also violated RPC 8.4(a) in each of the ten counts in Williams I, 8.4(c) with respect to Count VI of Williams I. Furthermore, this Court should find that Respondent violated Rule 8.4(a) of Williams II if it finds violations of RPC Rule 8.4(c) and/or 8.4(d).

D. THE RECOMMENDED DISCIPLINE BY THE JHB IS NOT APPROPRIATE GIVEN THE SERIOUSNESS OF THE MISCONDUCT, THE FAILURE TO ADMIT TO ANY CJC/RPC VIOLATIONS FOR ANY FLAGRANT MISCONDUCT, A LACK OF ANY REAL REMORSE AND THE HARM THAT HAS BEFALLEN THE JUDICIARY AS A WHOLE.

JDC respectfully requests that Respondent receive a total suspension of two years without pay for each violation of the Code of Judicial Conduct pursuant to Rule 4.12 of the Rules of Judicial Disciplinary Procedure. JDC respectfully recommends that at a minimum Respondent should serve one year of the suspension without pay and the remainder should be held in abeyance pending the . JDC further requests that Respondent receive a public censure for each violation of the CJC and the RPC, that he be fined a total of $5,000.00 and pay costs in the amount of $11,129.06.

RJDP 4.12 sets forth the permissible sanctions and provides in pertinent part:

> The Judicial Hearing Board may recommend or the Supreme Court of Appeals may impose any one or more of the following sanctions for a violation of the Code of Judicial Conduct: (1) admonishment; (2) reprimand; (3) censure; (4) suspension without pay for up to one year; (5) a fine of up to $5,000; or (6) involuntary retirement for a judge because of advancing years and attendant physical or mental incapacity and who is eligible to receive retirement benefits under the judges' retirement system or public employees retirement system. . . .
>
> In addition, the Judicial Hearing Board may recommend or the Supreme Court of Appeals may impose any one or more of the following sanctions for a judge's violation of the Rules of Professional Conduct: (1) probation; (2) restitution; (3) limitation on the nature or extent of future practice; (4) supervised practice; (5) community service; (6) admonishment; (7) reprimand; (8) suspension; or (9) annulment.

The Rule also provides that "the extent to which the judge knew or should have reasonably known that the conduct involved violated the Code of Judicial Conduct may be considered in determining the appropriate sanction." *Id.* The Court may impose one sanction per violation of the Code of Judicial Conduct or multiple sanctions for each violation. *See Callaghan, supra.* The Court may run the sanctions concurrently or consecutively, and it may impose a suspension without pay which is greater than the judge's term of office. *See In the Matter of Toler,* 218 W. Va. 653, 625 S.E.2d 731 (2005).

An admonishment is the lightest form of discipline that can be imposed and "constitutes advice or caution to a judge to refrain from engaging in similar conduct which is deemed to constitute a violation of the Code of Judicial Conduct." *See* RJDP 4.12. A reprimand, which is the intermediate written sanction, "constitutes a severe reproof to a judge who has engaged in conduct which violated the Code of Judicial Conduct." *Id.* A censure, which is the most serious of the written reprimands, "constitutes formal condemnation of a judge who has engaged in conduct which violated the Code of Judicial Conduct." *Id.* The severity of a public censure was addressed in *In re Binkoski,* 204 W. Va. 664, 515 S.E.2d 828 (1999).

In *Binkoski*, a magistrate was charged with violating Rules 1 and 2A of the former Code of Judicial Conduct after having been charged with the misdemeanor offenses of driving under the

influence of alcohol and simple possession of marijuana and attempting to encourage a witness to be less than candid about the magistrate's behavior on the night he was arrested. *Id.* The magistrate did not contest the charges and entered into an agreement with the JDC which called for a one-year suspension without pay and drug testing/treatment. *Id.* After the JHB issued its recommended decision adopting the agreement, Respondent resigned his position. *Id.* Instead of suspending the Magistrate without pay, the Court censured him. *Id.* The Court stated that "the conduct admitted to by [the magistrate] was addressed by the proposed agreement. However, [his] resignation renders the issues of suspension, drug testing and treatment moot. The only remaining reasonable sanction open to this Court is public censure." *Id.* at 667, 515 S.E.2d at 831.

Suspension without pay is the most serious form of discipline when an individual has not resigned his/her judicial office prior to the conclusion of a disciplinary proceeding. Two cases which are like the instant matter are instructive as to sanctions in this case. *Ferguson, supra,* sets the minimum penalty for conduct akin to Respondent. In *Ferguson*, a magistrate was suspended for 90 days without pay, reprimanded and fined $2,000.00 for violating a misdemeanor state fishing regulation, engaging in inappropriate and disrespectful conduct during the investigation and issuance of DNR citations, displaying his Supreme Court identification card to allude to his judicial status, implying that he would receive special treatment, and denying during the ethics investigation that he had engaged in improper conduct. *Id.*

Importantly, Respondent's misconduct was substantially more egregious and therefore warrants considerably more than the minimum 90 days suspension without pay. At the time of the incident the magistrate, who was not a lawyer, had only been on the bench for about four months. *Id.* In Respondent's case, he is a longtime lawyer, and at the time of his incident, had been a circuit judge for over four and a half years. In *Ferguson*, the magistrate used his Court ID only once in an effort to get out of a ticket. *Id.* Respondent invoked his status as judge on three separate occasions during three stops to get out of tickets.

While the Magistrate in *Ferguson* intimated that he would contact the DNR officers' supervisor about the incident, he never actually followed through with the threat. *Id.* On the other hand, Respondent contacted Lt. Burrows in the middle of the stop and successfully prevented himself from receiving a ticket. He then contacted called Chief Riggleman, Lt. Burrows again, Detective Reckart and Mayor Zuber over the course of three hours and repeatedly attempted to get Officer Johnson fired. Respondent's effort continued several days later when he spoke with Prosecutor See and after he was informed that a report to disciplinary counsel was forthcoming. Indeed, the level of retaliation attributable to Respondent has not been heretofore seen in any prior judicial discipline case in West Virginia. Therefore, in Respondent's case, the Code violations warrant more than the minimum 90-day suspension without pay.

In the Matter of Watkins, 233 W. Va. 170, 757 S.E.2d 594 (2013), sets a more severe penalty for judicial intemperance. In *Watkins*, a family court judge received a four-year suspension without pay for repeated acts of judicial intemperance in court, failing to timely issue orders or hold hearings even when ordered to do so by the circuit court, and for disregarding his statutory duty to promptly post orders to the DV Registry. *Id.* Originally, the parties had agreed to the findings of fact and the Code of Judicial Conduct violations and had jointly recommended a 90-day suspension without pay. *Id.* However, the JHB significantly increased the recommended sanction to essentially a term ending suspension because of the nature of the acts and another demonstration of the judge of judicial intemperance during his ethics hearing. *Id.* The JHB called it an "apparent failure to take meaningful responsibility for his misconduct." *Id.* at 174, 757 S.E.2d at 598. The JHB also noted in its recommended decision that the Judge had committed 24 separate violations of nine separate Canons of the Code of Judicial Conduct. *Id.* The Supreme Court ultimately adopted the JHB decision. *Id.* In Respondent's case, he admitted to most of the facts but denied any Code violations other than the CJC Rule 1.1 violations for the various traffic stops. In fact, he has committed 81 judicial and 22 lawyer Code violations in twelve counts for a total of 103 ethics violations. His demeanor while

testifying at hearing was defiant. He also at times attempted to portray himself as a victim by complaining about being branded as a "racist," a "liar" and a "thief" when he was the architect of his own misfortune. Therefore, his conduct can only be described as an apparent failure to take any meaningful responsibility.

In Syl. pt. 6 *In the Matter of Goldston,* 246 W. Va. 61, 866 S.E.2d 126 (2016), the State Supreme Court said:

> In determining what sanction or sanctions, if any, to impose, . . . this Court will consider various factors, including, but not limited to, (1) whether the charges of misconduct are directly related to the administration of justice or the public's perception of the administration of justice, (2) whether the circumstances underlying the charges of misconduct are entirely personal in nature or whether they relate to the judicial officer's public persona, (3) whether the charges of misconduct involve violence or a callous disregard for our system of justice, (4) whether the judicial officer has been criminally indicted, and (5) any mitigating or compounding factors which might exist.

In applying the foregoing factors to the matter at hand, it is evident that serious sanctions are warranted. The conduct engaged in by Respondent is both directly related to the administration of justice and the public's perception of the administration of justice. Respondent engaged in several traffic violations only one of which was charged, and the public perception is that he received special treatment for those offenses and for the Walmart incident by virtue of his status as a judge. The charges also relate to his public persona. In three of the traffic violations, he invoked his status as judge. When he contacted Lt. Burrows, Chief Riggleman, Detective Reckart and Mayor Zuber, he did so as judge and invoked his judicial status into each conversation.

The misconduct also involves a callous disregard for our system of justice. Again, it left the public with the perception, however wrong it may be that he was biased against African Americans and young people. He said the terms in anger. When words are said in anger the tone belies any claim that it was meant collegially. Respondent's level of retaliation was such that it sent the message that the judge believes himself above the law. Given that, how can Respondent remain an effective beacon of judicial integrity? He can't. The only way to restore judicial integrity is through the

discipline necessary to mitigate the harm already done.

Respondent also caused his own disqualification in any case involving the Moorefield Police Department. At the time, Respondent made the negative comments about the Department to Lt. Burrows, Chief Riggleman, Detective Reckart and Mayor Zuber he knew or should have known that such comments would cause his disqualification. If he didn't know then, he certainly knew by the time he made negative comments to Prosecutor See several days later. Thus, his disqualification is absolute proof of a callous disregard for our system of justice.

The aggravating factors in this case more than outweigh the mitigating factors. Of note are the newspaper and social media accounts of the incidents and the comments appended thereto. In *Goldston*, the Court recognized the value of comments appended to You Tube sites showing videos of a West Virginia Family Court Judge abusing her authority by threatening a litigant with jail if he refused to let her in his house to search for items pertaining to a contempt proceeding. *Id.* The Court also recognized the significance of any negative comments and the negative impact they may have on the integrity of the judiciary. *Id.* In this case the negative comments in newspapers and on YouTube are bolstered by Respondent's own testimony pertaining to individuals within the community who have unfairly called him a racist, a liar and a thief. Therefore, the JDC has demonstrated significant harm to the integrity of the judiciary.

The judicial disciplinary system is neither civil nor criminal in nature, but *sui generis* – designed to protect the citizenry by ensuring the integrity of the judicial system. *See generally, In re Conduct of Pendleton,* 870 N.W.2d 367 (MN 2015). West Virginia has already recognized the same with respect to attorney disciplinary cases:

> Proceedings before the Lawyer Disciplinary Board are ***sui generis,*** unique, and are neither civil nor criminal in character. As one court noted, disbarment and suspension proceedings are neither civil nor criminal in nature but are special proceedings, ***sui generis,*** and result from the inherent power of courts over their officers. Such proceedings are not lawsuits between parties litigant but rather are in the nature of an inquest or inquiry as to the conduct of the respondent. They are not for the purpose of punishment, but rather seek to determine the fitness of an officer of the court to

> continue in that capacity and to protect the courts and the public from the official ministration of persons unfit to practice. Thus, the real question at issue in a disbarment proceeding is the public interest and an attorney's right to continue to practice a profession imbued with public trust. . . . We have likewise found that "Attorney disciplinary proceedings are not designed solely to punish the attorney, but rather to protect the public, to reassure it as to the reliability and integrity of attorneys and to safeguard its interest in the administration of justice."

Lawyer Disciplinary Board v. Stanton, 233 W. Va. 639, 649, 760 S.E.2d 453, 463 (2014) (citations omitted). Moreover, the Court has stated that in determining what discipline is warranted, each case must be decided on its own particular facts. *See Committee on Legal Ethics of the West Virginia Bar v. McCorkle,* 192 W. Va. 286, 452 S.E.2d 377 (1994).

CJC Preamble [6] cautions a "reasonable and reasoned application" in determination whether discipline should be imposed. Factors to be considered include but are not limited to "the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others." *Id.* The facts of this case are egregious.

As this Court noted in *In re Watkins,* 233 W. Va. at 182, 757 S.E.2d at 606 (2013):

> A Clarksburg lawyer (who rose to be chief counsel for the IRS) once wrote, "A judge is a leader whether he wants to be or not. He cannot escape responsibility in his jurisdiction, for setting the level of the administration of justice and of the practice of law." Citizens judge the law by what they see and hear in courts, and by the character and manners of judges and lawyers. "The law should provide an exemplar of correct behavior. When the judge presides in court, he personifies the law, he represents the sovereign administering justice and his conduct must be worthy of the majesty and honor of that position." Hence, a judge must be more than independent and honest; equally important, a judge must be perceived by the public to be independent and honest. Not only must justice be done, it also must appear to be done.

In applying the foregoing to the instant case, the only correct form of discipline is a significant suspension without pay. Anything less and Respondent can proudly claim he won the war. Actions speak a whole lot louder than words. While Respondent's words speak contrition, they ring hollow. Respondent's actions demonstrate a man who lacks judicial temperament and candor, is

bent on revenge, and has no remorse. Again, it appears that he is sorry that he got caught. He does not care about the harm he caused to the integrity of the judiciary. As such he deserves significantly more than the minimum 90-day suspension without pay given in *Ferguson, supra*.

VI.

CONCLUSION

WHEREFORE, the JDC respectfully requests that this Court impose the following sanctions:

a Respondent receive a suspension for two years without pay. At a minimum he should serve one year of suspension without pay and the remaining one year of suspension without pay

b. Respondent receive a public censure for all violations of the Code of Judicial Conduct and the Rules of Professional Conduct pursuant to Rule 4.12 of the Rules of Judicial Disciplinary Procedure;

c. Respondent be fined a total amount of $5,000.00 for all violations of the Code of Judicial Conduct and Rules of Professional Conduct;

d.

f. Respondent be ordered to pay the costs of the investigation and prosecution of the disciplinary matter in the amount of $11,129.06.

Respectfully submitted,

by



Teresa A Tarr [5631]
Brian J. Lanham [7736]
Judicial Disciplinary Counsel
WV Judicial Tower, Suite 700 A
4700 MacCorkle Avenue, SE
Charleston, WV 25302
(304) 558-0169 (o)
(304) 558-0831 (f)

teresa.tarr@courtswv.gov
brian.lanham@courtswv.gov

BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

IN THE MATTER OF:	**SUPREME COURT NO. 21-0608**
THE HONORABLE C. CARTER WILLIAMS,	**JIC COMPLAINT NOS. 78-2021**
JUDGE OF THE 22ND JUDICIAL CIRCUIT	**81-2021**
	& 12-2022

CERTIFICATE OF SERVICE

I, Teresa A. Tarr, JDC Counsel, do hereby certify that on the 17th day of November 2022, I served a true and accurate copy of the JDC Brief as well as a redacted copy by placing the same in the United States mail, first-class postage prepaid, to Respondent and addressed to J. Michael Benninger, Counsel for Respondent, Benninger Law, PLLC, 10 Cheat Landing, Suite 100, Morgantown, WV 26507 and by email to: mike@benningerlaw.com

Respectfully submitted,

Teresa A. Tarr

Teresa A. Tarr [5631]
Judicial Disciplinary Counsel
WV Judicial Tower, Suite 700A
4700 MacCorkle Avenue SE
Charleston, WV 25304
(304) 558-0169 (o)
(304) 558-0831 (f)

teresa.tarr@courtswv.gov