

BEFORE THE JUDICIAL HEARING BOARD OF WEST VIRGINIA

IN THE MATTER OF:

**THE HONORABLE C. CARTER WILLIAMS, SUPREME COURT NO. 21-0878
JUDGE OF THE 22ND JUDICIAL CIRCUIT COMPLAINT NOS. 78-2021, 81-2021,
and 12-2022**

RECOMMENDED DECISION

On June 14, 2022, this matter came on for hearing before the Honorable Michael D. Lorensen, sitting as Hearing Examiner by designation for the Judicial Hearing Board.

Thereafter, on August 31, 2022, the parties submitted proposed Findings of Fact and Conclusions of Law.

Finally, on September 19, 2022, the Board conducted a telephonic meeting and upon consideration of the evidence and argument of counsel; the Code of Judicial Conduct and Rules of Judicial Disciplinary Procedure; and the decisions by the Supreme Court of Appeals interpreting the Code and the Rules, the Board hereby renders its Findings of Fact, Conclusions of Law, and Recommended Decision as follows:

FINDINGS OF FACT

1. On October 25, 2011, the Formal Statement of Charges was filed in this matter.
2. In Charge I, the Respondent was accused of violating Rules 1.1, 1.2, 1.3, 2.2, 2.3(A), 2.3(B), 2.10(A), 2.16(B), 3.1(A), 3.1(B), 3.1(C), and 3.1(D) of the Code of Judicial Conduct and Rules 8.4(a) and 8.4(d) of the Rules of Professional Conduct based on the following:
 - (a) The Respondent's identifying himself as "Judge Williams" upon being stopped for a traffic offense;
 - (b) The Respondent's initially refusing to produce identification to the traffic officer;

- (c) The Respondent's confronting the traffic officer alleging that his fellow officers commonly committed similar traffic violations regarding the use of cell phones while driving;
- (d) The Respondent's complaining that he had been stopped "for no reason;"
- (e) The Respondent's driving on an expired driver's license;
- (f) The Respondent's contacting the traffic officer's supervisor during the stop to complain about being stopped;
- (g) The supervisor's interpreting the Respondent's call as one requesting the non-issuance of a ticket;
- (h) The Respondent's referring to the traffic officer, who is African-American, using the term "boy" during his conversation with the supervisor;
- (i) The Respondent's threatening to contact the State Police if he ever saw a member of the traffic officer's department using a cell phone while driving; and
- (j) The Respondent's grabbing his driver's license from the traffic officer's hand after being advised that it had expired and driving away.

3. Other than the dispute over interpretation of the cell phone statute, referring to the traffic officer as a "boy," and grabbing his driver's license from the traffic officer's hand, the Board finds that Charge I against the Respondent was sustained by clear and convincing evidence.

4. In Charge II, the Respondent was accused of violating Rules 1.1, 1.2, 1.3, 2.3(A), 2.8(B), and 3.1(C) of the Code of Judicial Conduct and Rules 8.4(a) and 8.4(d) of the Rules of Professional Conduct based on the following:

- (a) The Respondent's calling the police chief of the traffic officer's department during the same evening as the stop indicating that he would contact the State Police if he observed any of the department's officers using cell phones while driving;
- (b) The Respondent's rejecting the chief's response that his officers were exempt from the statutory prohibition against cell phone use; and

(c) The Respondent's complaining to the chief that he felt disrespected by department officers and then hanging up on the chief when the chief responded that it was the Respondent who was being disrespectful.

5. Other than the dispute over the interpretation of the cell phone statute and hanging up on the chief, the Board finds that Charge II against the Respondent was sustained by clear and convincing evidence.

6. In Charge III, the Respondent was accused of violating Rules 1.1, 1.2, 2.2, 2.3(A), 2.3(B), 2.10(A), and 3.1(C) of the Code of Judicial Conduct and Rules 8.4(a) and 8.4(d) of the Rules of Professional Conduct based on the following:

- (a) The Respondent's contacting the former Moorefield police chief on the evening of the traffic stop;
- (b) The Respondent's criticizing the traffic officer and police department to the former police chief;
- (c) The Respondent referring to cases brought before him by the police department as "sketchy" and the new police chief and police officers as "boys;" and
- (d) The Respondent saying that he "let some of the" department's cases "go through even though he probably shouldn't have and that he may change his position in future cases."

7. The Board finds that Charge III against the Respondent was sustained by clear and convincing evidence.

8. In Charge IV, the Respondent was accused of violating Rules 1.1, 1.2, 1.3, 2.2, 2.3(A), 2.3(B), 2.8(B), 2.10(A), 3.1(A), 3.1(B), 3.1(C), and 3.1(D) of the Code of Judicial Conduct and Rules 8.4(a) and 8.4(d) of the Rules of Professional Conduct based on the following:

- (a) The Respondent placing a second call to the traffic officer's supervisor threatening to contact the State Police if he observed any police department officer using his or her cell phone while operating their vehicles;

- (b) The Respondent's complaining that the traffic officer would not take his word for not using his cellphone while driving;
- (c) The Respondent's opining that the traffic officer's conduct caused him to believe that members of the department were "a bunch of thugs, harassing innocent, hard-working people;"
- (d) The Respondent's intimating that the traffic officer should not have been reinstated to the force following his administrative suspension arising from a previous criminal charge against him in another county that was ultimately dismissed and referencing the traffic officer's possible drug use; and
- (e) The Respondent's criticizing the department's officers who had appeared before him as "sloppy" and "piss-poor."

9. The Board finds that Charge IV against the Respondent was sustained by clear and convincing evidence.

10. In Charge V, the Respondent was accused of violating Rules 1.1, 1.2, 1.3, 2.2, 2.3(A), 2.3(B), 2.8(B), 2.10(A), 3.1(A), 3.1(B), 3.1(C), and 3.1(D) of the Code of Judicial Conduct and Rules 8.4(a) and 8.4(d) of the Rules of Professional Conduct based on the following:

- (a) The Respondent visiting and informing the Mayor of the city on the evening of the traffic stop that he wanted to file a complaint against the traffic officer for her review;
- (b) The Respondent complaining to the Mayor about the police department and its officers, including their use of cellphones while operating their vehicles;
- (c) The Respondent threatening to call the State Police whenever he observed members of the police department using their cellphones while driving;
- (d) The Respondent complaining that he had been targeted by the police department, including two stops by the traffic officer, once for running a stop sign and the next for using his cellphone while driving;
- (e) The Respondent raising the issue of the prior criminal charges against the traffic officer and opining that the traffic officer should have been fired and the matter could be resurrected;

- (f) The Respondent complaining about how the police chief had responded to his complaints earlier that day;
- (g) The Respondent complaining that the police department “brings some of the worst cases to his court and that the officers are unprepared for hearings.”

11. The Board finds that Charge V against the Respondent was sustained by clear and convincing evidence.

12. In Charge VI, the Respondent was accused of violating Rules 1.1, 1.2, 1.3, 2.2, 2.3(A), 2.3(B), 2.8(B), 2.10(A), 2.16(A), 3.1(A), 3.1(B), 3.1(C), and 3.1(D) of the Code of Judicial Conduct and Rules 8.4(a) and 8.4(d) of the Rules of Professional Conduct based on the following:

- (a) The Respondent opining to the prosecuting attorney that the traffic officer should not be on the police force;
- (b) The Respondent acknowledging that he was self-reporting to the JDC because the prosecuting attorney had advised him that the prosecuting attorney was obligated to notify the JDC;
- (c) The Respondent failing to disclose that he had discussed the possibility of reinstating criminal charges against the traffic officer;
- (d) The Respondent’s denial that he had tried to get the traffic officer fired; and
- (e) The Respondent’s charges of improper use of a cell phone and driving without a valid license and entering a guilty plea to the later.

13. The Board finds that Charge VI was sustained by clear and convincing evidence.¹

¹ W. Va. Code § 17C-14-15(b)(8) defines “Using a cell phone or other electronic communication device” as “holding in a person’s hand or hands an electronic communication device while: (A) Viewing or transmitting images or data; (B) Playing games; (C) Composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving e-mail, text messages or other electronic data; or (D) Engaging in a call.” Accordingly, to the extent that the Respondent was not viewing or transmitting images or data, playing games, composing, sending, reading, viewing, accessing, browsing, transmitting, saving, or retrieving e-mail, text messages or other electronic data, or engaging in a call, but was merely holding a cellphone in his hand while driving, he would not be violating the statute. Unfortunately, instead of presenting this defense in court upon the issuance of any ticket, he engaged in the conduct which resulted in these disciplinary proceedings.

14. In Charge VII, the Respondent was accused of violating Rules 1.1, 1.2, 1.3, 2.2, and 3.1(C) of the Code of Judicial Conduct and Rules 8.4(a) and 8.4(d) of the Rules of Professional Conduct based on the following:

- (a) The Respondent violated a traffic statute for running a stop sign but after identifying himself as a Judge was not issued a ticket even though he admitted to running the stop sign.

15. The Board finds that Charge VII was sustained by clear and convincing evidence.

16. In Charge VIII, the Respondent was accused of violating Rules 1.1, 1.2, 1.3, 2.2, and 3.1(C) of the Code of Judicial Conduct and Rules 8.4(a) and 8.4(d) of the Rules of Professional Conduct based on the following:

- (a) The Respondent violated a statute for an expired inspection sticker on his vehicle, but he was not issued a ticket.

17. The Board finds that Charge VIII was sustained by clear and convincing evidence.

18. In Charge IX, the Respondent was accused of violating Rules 1.1, 1.2, 1.3, 2.2, and 3.1(C) of the Code of Judicial Conduct and Rules 8.4(a) and 8.4(d) of the Rules of Professional Conduct based on the following:

- (a) The Respondent violated the seat-belt statute but after identifying himself as a Judge was not issued a ticket even though he admitted the violation.

19. The Board finds that Charge IX was sustained by clear and convincing evidence.

20. In Charge X, the Respondent was accused of engaging in a pattern and practice of using his public office for private gain and violating traffic laws.

21. The Board finds that Charge X was sustained by clear and convincing evidence regarding the Respondent's using his public office for attempted private gain, but not as to a pattern

of violating traffic laws constituting a violation of the Code of Judicial Conduct or Rules of Professional Conduct.

22. On February 14, 2022, a second Statement of Charges was filed that was consolidate with the first Statement of Charges.

23. In what the Board is treating as Charge XI, the Respondent was accused of violating Rules 1.1, 1.2, 1.3, 2.16(A), and 3.1(C) of the Code of Judicial Conduct and Rules 8.4(a), 8.4(c), and 8.4(d) of the Rules of Professional Conduct based on the following:

- (a) The Respondent failed to disclose during his sworn statement on October 6, 2021, an alleged shoplifting incident on August 18, 2021, despite a discussion regarding a similar shoplifting incident on July 21, 2020, during his sworn statement;
- (b) The Respondent never disclosed the second alleged shoplifting incident during his interview at Vanderbilt University; and
- (c) The Respondent never disclosed the second alleged shoplifting incident to the Judges and Lawyers Assistance Program.

24. The Board finds that Charge XI was not sustained by clear and convincing evidence.

CONCLUSION OF LAW

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

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

3. Rule 3.12 of the Rules of Judicial Disciplinary Procedure provides, “The Judicial Hearing Board may recommend, or the Supreme Court of Appeals may consider the discipline of a judge for conduct that constitutes a violation of the Rules of Professional Conduct.”

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

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

6. Rule 1.1 of the Code of Judicial Conduct provides, “A judge shall comply with the law, including the West Virginia Code of Judicial Conduct.”

7. There is clear and convincing evidence that the Respondent was driving on an expired license at the time of the subject traffic stop and had on other occasions failed to comply with the law relative to the operation of motor vehicles.

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

9. There is clear and convincing evidence that the Respondent failed to act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and improperly made threats to use his power as a judge to retaliate for a traffic stop.

10. Rule 1.3 of the Code of Judicial Conduct provides, “A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others or allow others to do so.”

11. There is clear and convincing evidence that the Respondent used or attempted to use the prestige of his office to advance his personal interests relative to traffic stops.

12. Rule 2.2 of the Code of Judicial Conduct provides, “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.”

13. There is no clear and convincing evidence that the Respondent failed to uphold and apply the law as a judge or failed to perform the duties of his judicial office fairly and impartially, but only intimated that he would, in the future, fail to perform the duties of his judicial office fairly and impartially arising from the traffic stop.

14. Rule 2.3(A) of the Code of Judicial Conduct provides, “A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.”

15. There is no clear and convincing evidence that the Respondent exhibited bias or prejudice in the performance of his judicial duties, but only intimated that he would, in the future, fail to perform the duties of his judicial office without bias or prejudice arising from the traffic stop.

16. Rule 2.3(B) of the Code of Judicial Conduct provides, “A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge’s direction and control to do so.”

17. There is no clear and convincing evidence that the Respondent, in the performance of his judicial duties, manifested bias or prejudice, including clear and convincing evidence that any of the Respondent's actions were racially motivated.

18. Rule 2.8(B) of the Code of Judicial Conduct provides, "A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control."

19. There is clear and convincing evidence that the Respondent invoked his judicial office in a manner that was less than patient, dignified, and courteous with the traffic officer, the officer's supervisor, the police chief, the former police chief, and the mayor.

20. Rule 2.10(A) of the Code of Judicial Conduct provides, "A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court or make any nonpublic statement that might substantially interfere with a fair trial or hearing."

21. There is clear and convincing evidence that the Respondent implied that he might make rulings in cases involving the police agency employing the traffic officer that would be influenced by his grievances with being pulled over.

22. Rule 2.16(A) of the Code of Judicial Conduct provides, "A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies."

23. There is an absence of clear and convincing evidence that the Respondent was less than candid during the disciplinary investigation when he failed to report a second incident

involving the failure to pay for merchandise at Wal-Mart as neither he nor Wal-Mart considered the incident to be material.

24. Rule 3.1(A) of the Code of Judicial Conduct provides, “A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not ... participate in activities that will interfere with the proper performance of the judge’s judicial duties.”

25. There is clear and convincing evidence that by implying his rulings in cases involving the police agency employing the traffic officer that would be influenced by his grievances with being pulled over interfered with the proper performance of the Respondent’s judicial duties, including his subsequent disqualification in criminal matters as a result.

26. Rule 3.1(B) of the Code of Judicial Conduct provides, “A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not ... participate in activities that will lead to frequent disqualification of the judge.”

27. There is clear and convincing evidence that by implying his rulings in cases involving the police agency employing the traffic officer that would be influenced by his grievances with being pulled over resulted in the Respondent’s disqualification in those cases.

28. Rule 3.1(C) of the Code of Judicial Conduct provides, “A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not ... participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality ... ”

29. There is clear and convincing evidence that by implying that his rulings in cases involving the police agency employing the traffic officer would be influenced by his grievances with being pulled over would appear to a reasonable person to undermine the Respondent's independence, integrity, or impartiality.

30. Rule 3.1(D) of the Code of Judicial Conduct provides, "A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not ... engage in conduct that would appear to a reasonable person to be coercive."

31. There is clear and convincing evidence that contacting the traffic officer's supervisor, police chief, former police chief, and mayor would appear to a reasonable person to be coercive and, indeed, the traffic officer's supervisor interpreted the contact during the stop as a request by the Respondent not to be issued a ticket.

32. Rule 8.4(a) of the Rules of Professional Conduct provides, "It is professional misconduct for a lawyer to ... 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."

33. There is no clear and convincing evidence that the Respondent violated or assisted or induced another person to violate the Rules of Professional Conduct.

34. Rule 8.4(c) of the Rules of Professional Conduct provides, "It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

35. There is no clear and convincing evidence that the Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.

36. Rule 8.4(d) of the Rules of Professional Conduct provides, “It is professional misconduct for a lawyer to ... engage in conduct that is prejudicial to the administration of justice.”

37. There is clear and convincing evidence that the Respondent engaged in conduct that was prejudicial to the administration of justice by being unnecessarily belligerent to the traffic officer, by contacting the traffic officer’s supervisor in a manner suggesting he wanted special treatment and punishment for the traffic officer, by contacting the police chief, former police chief, and mayor in a manner suggesting he wanted special treatment, punishment for the traffic officer, and that his rulings in future cases might be influenced by his traffic stop and the action or inaction taken by police officials in response to his complaints against the officer, and by contacting the prosecuting regarding this same subject matter.

RECOMMENDED DISCIPLINE

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

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

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

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

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

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

44. Our Court has held, “In determining what sanction or sanctions, if any, to impose under Rule 4.12 of the West Virginia Rules of Judicial Disciplinary Procedure [eff. 2019], this Court will consider various factors, including, but not limited to, (1) whether the charges of misconduct are directly related to the administration of justice or the public’s perception of the administration of justice, (2) whether the circumstances underlying the charges of misconduct are entirely personal in nature or whether they relate to the judicial officer’s public persona, (3) whether the

charges of misconduct involve violence or a callous disregard for our system of justice, (4) whether the judicial officer has been criminally indicted, and (5) any mitigating or compounding factors which might exist.” Syl. pt. 6, *Matter of Goldston*, 246 W. Va. 61, 866 S.E.2d 126 (2021).

45. *First*, the Respondent’s misconduct was directly related to the administration of justice or the public’s perception of the administration of justice.

46. *Second*, the circumstances presented relate to the Respondent’s public persona.

47. *Third*, although the conduct does not involve violence, the Respondent demonstrated a disregard for the integrity of the judicial system.

48. *Finally*, there are relatively few aggravating factors related to the Respondent’s misconduct: (a) it was not confined to the length of the traffic stop, but continued for hours later when the Respondent had time for reflection² and (b) “To hold a violator of the Code of Judicial Conduct who has committed only one offense to the same exact standard and subject that offender to the same sanctions as a violator who has committed four, five, or fifty separate acts of misconduct would suggest unreasonable disparate treatment;”³ but relative to mitigation (a) there

² See, e.g., *In re Watkins*, 233 W. Va. 170, 179, 757 S.E.2d 594, 603 (2013) (“He also demonstrated intemperance in the case of correspondence where he had time for more careful reflection.”).

³ *In re Toler*, 218 W.Va. 653, 661, 625 S.E.2d 731, 739 (2005). Judicial Disciplinary Counsel also cites certain news articles and social media posts as aggravating factors, but the Preamble to the Code of Judicial Conduct states, “Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.” The application of this standard in individual cases is not substantially assisted by evidence regarding the public’s reaction to the circumstances giving rise to judicial disciplinary proceedings. The Judicial Hearing Board and the Supreme Court will have the benefit of a fully-developed evidentiary record, an understanding of the applicable ethical standards, and the context within which the relevant circumstances occurred – not all of which inform news articles, opinion columns, or social media posts. In some respects, this case is an excellent example of the pitfalls of relying on news articles, opinion columns, or social media posts – none of which were privy to some factors that may have contributed to the behavior exhibited on the traffic stop video.

have been no previous or subsequent disciplinary complaints against the Respondent; (b) the Respondent presented mitigating evidence regarding some medical and other issues he was suffering at the time of the conduct in this matter; (c) the Respondent has addressed those issues through the Judges and Lawyers Assistance Program (JLAP) referenced in *Matter of Wilfong*, No. 19-0170, 2019 WL 2337520 (W. Va. June 3, 2019); and (d) the Respondent has expressed some remorse for his actions.

49. The present case bears some resemblance to *Matter of Ferguson*, 242 W. Va. 691, 841 S.E.2d 887 (2020), in which the Court reprimanded, suspended for ninety days without pay, imposed a \$2,000 fine, and imposed costs on a magistrate who violated state fishing regulation, engaged in inappropriate and disrespectful conduct during investigation and issuance of citations by officers of the Department of Natural Resources, displayed his Supreme Court identification card to allude to his judicial status and imply that he should receive special treatment, and improperly denied during ethics investigation that he had acted in disrespectful and coercive manner.

50. In its opinion in that case, the Court observed:

This case is about much more than catching extra fish. Certainly, we want judicial officers to obey all laws, including state fishing regulations. However, if the respondent had behaved in a professional manner when receiving the fishing citation, this matter never would have resulted in a formal disciplinary proceeding. Instead, the respondent acted in a completely inappropriate, belligerent, and coercive manner toward the DNR officers while they were engaged in law enforcement activities. He threw down his Supreme Court photo identification card in an obvious attempt to obtain special treatment based upon his status as a judicial officer. He loudly asserted that the charges “ain’t going nowhere.” He became enraged when Corporal Harvey directed him to remove his hands from his pockets. He angrily paced, waved his arms, screamed, and argued with Corporal Harvey about the citation. He suggested that he would contact the officers’ supervisors. All of this was in an effort to intimidate these officers into not doing their jobs. Finally, he lied to the JDC during his sworn statement when he denied acting in this

disrespectful and coercive manner. Such behavior by a judicial official is wholly unacceptable, especially when it occurs in the context of a law enforcement matter. We conclude that the respondent's actions were directly related to the administration of justice and demonstrated a selfish and callous disregard for our system of justice. See *id.* The respondent's behavior when receiving the citation and lying to the JDC cast a pallor on the "honor, integrity, dignity, and efficiency of the judiciary and the justice system[.]" See *id.*

51. Similarly, the instant case is much more than a traffic stop for cell phone usage and if the Respondent had behaved in a professional manner during the stop, this matter never would have resulted in a formal disciplinary proceeding.

52. Instead, as in *Ferguson*, the Respondent was inappropriate, belligerent, and coercive in the way he interacted with the traffic officer, the supervisor, the police chief, the former police chief, the mayor, the prosecuting attorney, and beyond what was present in *Ferguson*, intimated that he would retaliate against the police agency in future cases.

53. On the one hand, "Matters of suspension due to accusations of judicial misconduct are reviewed and decided based on the unique facts and circumstances of each case." *In re Fouty*, 229 W.Va. 256, 260, 728 S.E.2d 140, 144 (2012) (citation omitted).

54. On the other hand, the discipline imposed in *Ferguson* is instructive.

55. The Board is mindful that, "Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. The prohibition against behaving with

impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge.”⁴

56. 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.”

57. On the other hand, setting aside the Respondent’s poor compliance with traffic laws and regulations, his unethical conduct was limited in this case, based on the clear and convincing evidence, to Sunday, July 11, 2021, when he egregiously overreacted to a simple traffic stop over the use of a cellphone which motorists generally do not carry in their hand to make themselves better drivers because the traffic officer rejected his excuse for having a cellphone in his hand, and on Wednesday, July 14, 2021, when he had a conversation with the prosecuting attorney in which he continued to air his grievances against the traffic officer, to whom the Respondent apologized in conjunction with the hearing.

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

- (a) That the Respondent be suspended for a period of one year for multiple violations of the Code of Judicial Conduct and the Rules of Professional Conduct;
- (b) That three months of this one-year suspension be served without pay;

⁴ Commentary, Canon 2, Code of Judicial Conduct.

- (c) That the remainder of the one-year suspension be stayed pending the Respondent's supervised probation under the terms of his contract with JLAP;
- (d) That a period of nine-months suspension without pay be imposed immediately if the terms of his contract with JLAP are violated upon a petition to the Supreme Court of Appeals by the Judicial Investigation Commission after a probable cause determination of such violation and entry of an order of suspension by the Supreme Court of Appeals;
- (e) That the Respondent be fined \$5,000 for multiple violations of the Code of Judicial Conduct and the Rules of Professional Conduct;
- (f) That the Respondent be censured for multiple violations of the Code of Judicial Conduct and the Rules of Professional Conduct; and
- (g) That the Respondent pay the costs of these proceedings in the amount of \$11,129.06, and such additional costs incurred and awarded by the Supreme Court of Appeals as it may deem appropriate.

The Honorable Glen Stotler disqualified himself and did not participate in this matter, and this Recommended Decision was unanimously approved by the Judicial Hearing Board.

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

Entered this 22 day of September 2022.



Hon. Michael D. Lorensen, Judge
Chairperson, Judicial Hearing Board