

**IN THE SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA**

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**IN THE MATTER OF
THE HONORABLE DEANNA R. ROCK
FAMILY COURT JUDGE of the
TWENTY-THIRD FAMILY COURT CIRCUIT**

No. 22-862

REPLY BRIEF OF THE SPECIAL JUDICIAL DISCIPLINARY COUNSEL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
I. REPLY TO RESPONDENT'S BRIEF.....	1
II. CONCLUSION.....	5

TABLE OF AUTHORITIES

Cases:

<u>Banker v. Banker</u> 196 W.Va. 535, 474 S.E.2d 465 (1996).....	1
<u>In the Matter of Callaghan</u> 238 W.Va. 495, 796 S.E.2d 604 (2017).....	5
<u>In the Matter of Ferguson</u> 242 W.Va. 691, 841 S.E.2d 887 (2020).....	4
<u>In the Matter of Gorby</u> 176 W.Va. 16, 339 S.E.2d 702 (1985).....	4
<u>In the Matter of Wilfong</u> 234 W.Va. 394, 765 S.W.2d 283 (2014)	5
<u>State v. Sheffield</u> 247 W.Va. 183, 875 S.E.2d 321 (2022).....	1

West Virginia Rules and Statutes:

Code of Judicial Conduct Rule 1.1	4
Code of Judicial Conduct Rule 1.2	5
Code of Judicial Conduct Rule 1.3	5
Code of Judicial Conduct Rule 2.11	1
Code of Judicial Conduct Rule 2.13	1
Code of Judicial Conduct Rule 2.15	1
Code of Judicial Conduct Rule 2.16	1
Code of Judicial Conduct Rule 2.16(a).....	1,2,4,5
Code of Judicial Conduct Rule 2.16(b).....	1

Code of Judicial Conduct Rule 3.6 1

Code of Judicial Conduct Rule 4.1 1

Other:

Merriam-Webster.com , Merriam Webster,
<https://www.merriam-webster.com/dictionary/candid> 1,2

Merriam-Webster.com , Merriam Webster,
<https://www.merriamwebster.com/dictionary/cooperate> 1

Merriam-Webster.com, Merriam Webster,
<https://www.merriam-webster.com/dictionary/honest>
 2

I. REPLY TO RESPONDENT’S BRIEF

Much of Respondent’s brief is a regurgitation of the same recitation of facts and failed arguments she has made throughout the proceedings, but chief among the arguments is the request for the Court to abandon accepted rules of interpretation of its Rules. “Court rules are interpreted using the same principles and canons of construction that govern the interpretation of statutes.” Syl. Pt. 2, State v. Sheffield, 247 W. Va. 183, 875 S.E.2d 321 (2022). “Where the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation.” Syl. Pt. 3, State v. Sheffield, 247 W. Va. 183, 875 S.E.2d 321 (2022). Under the canons of construction, “[i]t is not for this Court arbitrarily to read into [the rule], that which it does not say.” State v. Sheffield, 247 W. Va. 183, 189–90, 875 S.E.2d 321, 327–28 (2022) *citing* Banker v. Banker, 196 W. Va. 535, 546-47, 474 S.E.2d 465, 476-77 (1996).

Inexplicably, Respondent while acknowledging that the black letter rule does not include the words “knowingly” or “intentionally” [*See* Respondent Brief at 21]– or **indeed any mention of a judicial officer’s intent**-- asks this Court to essentially ignore longstanding principles of construction and interpretation and instead create a new self-serving version of Rule 2.16(a) of the Code of Judicial Conduct. None of the Rules that Respondent has violated include the term “knowingly” but there are explicit Rules of the Code of Judicial Conduct that utilize this defined term, including Rule 2.16(b) of the Code of Judicial Conduct. *See* Rules 2.11, 2.13, 2.15, 2.16, 3.6, and 4.1. [*See* Terminology of the Code of Judicial Conduct.] Instead, the plain language of the Rule requires a judge to “cooperate” to be “candid” and to be “honest” with disciplinary authorities. Cooperate is defined¹ as “1. to act or work with another or others: act together or in

¹ Merriam-Webster.com, Merriam-Webster, <https://www.merriam-webster.com/dictionary/cooperate>.

compliance; 2. to associate with another or others for mutual benefit.” Candid is defined² as “1. a. marked by honest sincere expression; b. disposed to criticize severely; c. indicting or suggesting sincere honesty and absence of deception; 2. Free from bias, prejudice, or malice; 3. relating to or being photography of subjects acting naturally or spontaneously without being posed; 4. White³. Finally, honest is defined⁴ as “1. a. free from fraud or deception: legitimate, truthful; b. genuine, real; c. humble, plain; 2. a. reputable, respectable; b. chiefly British: good, worthy; 3. worthy of praise; 4. a. marked by integrity; b. marked by free, forthright, and sincere expression: frank; c. direct and uncomplicated: innocent; simple.” The words used to define a judicial officer’s affirmative obligations when speaking to disciplinary authorities are commensurate with the clear intent of the Rule which is referenced in the footnote to the Rule and states “[c]ooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges’ commitment to the integrity of the judicial system and the protection of the public.” See Footnote 1, Rule 2.16(a) of the Code of Judicial Conduct.

The evidence established that Respondent acted in a concerted effort with FCJ Stotler to protect their perceived powers as family court judges and used the power of the family court bench to bully and berate two life-long public servants whose primary function is to protect the public and preserve the integrity of the judiciary—and, then she lied about it. On or about January 31, 2022, Respondent appeared, both personally, and by and through counsel, and gave a sworn statement to Special Judicial Counsel during the confidential investigation of the judicial ethics complaint filed against FCJ Stotler. [Joint Exhibit 1 at 8 and Joint Exhibit 31 at 255-405] After

² Merriam-Webster.com, Merriam-Webster, <https://www.merriam-webster.com/dictionary/candid>

³ The word comes from the French *candide*, which is from the Latin *candidus* (“bright, white”).

⁴ Merriam-Webster.com Dictionary, Merriam Webster, <https://www.merriam-webster.com/dictionary/honest>

receiving a copy of the confidential investigative subpoena, Respondent was aware of the subject matter of the investigation at the time of her January 31, 2022, statement. [Transcript at 51 and Joint Exhibit 29 at 237-240]. Indeed, unlike many witnesses in a confidential judicial ethics investigation, Respondent received and reviewed FCJ's Stotler's judicial ethics complaint prior to her January 31, 2022, sworn statement. [Transcript at 51]. Additionally, unlike most witnesses in a confidential judicial ethics investigation, Respondent received and reviewed FCJ Stotler's answer to the judicial ethics complaint that and was therefore fully aware of his admissions and denials, including that anyone aided him in any manner in the preparation of the "Stotler letter". [Joint Exhibit 31 at 385].

It was Respondent, not FCJ Stotler who spoke to both FCJ Goldston and FCJ Shuck about the allegations that were ultimately published in the "Stotler letter". [Joint Exhibit 1 at 3] Indeed, Respondent received, reviewed, and offered comments and corrections on the "Stotler letter" before it was ultimately made public. [Joint Exhibit 1 at 5] Having been involved with the "Stotler Letter" since its genesis, at the time of the January 31, 2022 sworn statement, Respondent was still in possession of her court-issued computer that possessed all of the Teams messages, emails, and the original draft of the "Stotler letter." [Transcript at 53]. At the time of the January 31, 2022, sworn statement, Respondent was also fully aware of the possibility that any judicial officer that was involved in the drafting or submission of the "Stotler letter" could be subject to investigation by the Judicial Investigation Commission. [Joint Exhibit 24 at 87]

To be clear, Respondent didn't have a lapse in memory, Respondent simply was not aware of the forensic trail of breadcrumbs that led directly back to her involvement. Now, to escape being held accountable, Respondent contends not that her statements under oath were not false, uncooperative, lacking in candor, and untruthful, but that she somehow lacked the intent to

repeatedly make these statements to Special Judicial Counsel. The “purpose of judicial disciplinary proceedings is the preservation and enhancement of public confidence in the honor, integrity, dignity, and efficiency of the members of the judiciary and the system of justice.” In the Matter of Gorby, 176 W.Va. 16, 339 S.E.2d 702 (1985). Respondent requests this Court simply ignore the law and asks this Court to undermine the purpose of the disciplinary system—which is to preserve the integrity of the judiciary and protect the public.

The charged misconduct, of repeatedly lying to Judicial Disciplinary Counsel in the investigation of judicial officer is directly related to the administration of justice. The Ferguson Court determined “...lying to the JDC cast a pallor on the “honor, integrity, dignity, and efficiency of the judiciary and the justice system[.]” Matter of Ferguson, 242 W. Va. 691, 700, 841 S.E.2d 887, 896 (2020). Although the evidence establishes that Respondent’s statements at her January 31, 2022, sworn statement were not truthful, the duty of candor encompasses far more than refraining from knowing untruths. Candor demands that judges not only avoid deliberate falsehoods, but also make forthright disclosures.

The Judicial Hearing Board properly found that the evidence was clear and convincing that Respondent violated Rule 1.1 of the Code of Judicial Conduct. The Judicial Hearing Board further found that because she was involved in the drafting of the “Stotler letter” yet denied involvement with the “Stotler letter” during her sworn statement, she violated Rule 2.16(a) of the Code of Judicial Conduct. The Judicial Hearing also found that Respondent was not candid in her correspondence to the Chairperson of the Judicial Investigation Commission by denying any “association” with the “Stotler letter” even though she had reviewed, proofread, and pronounced that the letter “looks good” before it was sent that she again violated Rule 2.16(a) of the Code of Judicial Conduct. Special Judicial Counsel prays that this Honorable Court will find consistent

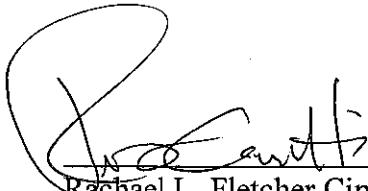
with the evidence that Respondent committed the additional charged violations of Rule 1.2; 1.3 and the remaining Rule 2.16(a) violations of the Code of Judicial Conduct.

CONCLUSION

“[T]he bedrock of the public's submission to the judiciary's authority is the public's faith in its integrity, impartiality, and fairness.” Matter of Callaghan, 238 W. Va. 495, 511, 796 S.E.2d 604, 620 (2017). The stated objective of all judicial disciplinary proceedings is to “preserve public confidence in the integrity and impartiality of the judiciary.” In re Wilfong, 234 W.Va. 394, 407, 765 S.E.2d 283, 296 (2014). Respectfully, the Judicial Hearing Board’s recommendation of discipline is not consistent with prior decisions of this Court, and it woefully fails to assure the public that our Court will act to protect and preserve the integrity of the judiciary when one of our own commits such an unrepentant assault against honesty. Moreover, any discipline other than removal from the bench will surely encourage other judges to develop convenient memory losses when faced with investigation into their conduct or others. Judges have an obligation under the Code of Judicial Conduct to “cooperate” and “be candid” and “honest” and anything short of a term ending suspension will ultimately undermine the entire judicial discipline process by diminishing the obligation of judges to be truthful in the face of an investigation. Based upon the multiple violations of the Code of Judicial Conduct, to uphold the duty to protect the integrity of the Court and preserve the public’s confidence in our judiciary, Respondent should be suspended from the bench without pay for the remainder of her term of elected office; Respondent should be censured; she should be fined in the amount of Five Thousand Dollars (\$5,000.00); and Respondent should be ordered to pay the costs associated with the investigation and prosecution of these proceedings.

Respectfully submitted,

By counsel



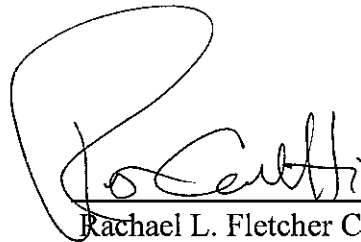
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CERTIFICATE OF SERVICE

This is to certify that I, Rachael L. Fletcher Cipoletti, Special Judicial Disciplinary Counsel, have this day, the 20th day of September, 2023, served a true copy of the foregoing “REPLY BRIEF OF SPECIAL JUDICIAL DISCIPLINARY COUNSEL” upon Lonnie C. Simmons, counsel for Respondent The Honorable Deanna R. Rock, and to Ancil G. Ramey, Clerk to the Judicial Hearing Board, electronically through File and Serve Xpress to the following addresses:

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