

**BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA**

**IN THE MATTER OF  
THE HONORABLE MARYCLAIRE AKERS,  
JUDGE OF THE 8TH JUDICIAL CIRCUIT**

**COMPLAINT NO. 35-2025**

The matter is before the Judicial Investigation Commission (“JIC”) upon a complaint filed by Judicial Disciplinary Counsel setting forth certain allegations against the Honorable MaryClaire Akers, Judge of the 8th Judicial Circuit. After a review of the complaint, Respondent’s written reply, other evidence gathered and the pertinent Rules contained in the Code of Judicial Conduct, the JIC found probable cause on June 6, 2025, that Respondent violated Rules 1.1, 1.2, 2.10(A), 3.1(C) of the Code of Judicial Conduct. Furthermore, the JIC found that formal discipline was not necessary but that Respondent be publicly admonished pursuant to Rules of Judicial Disciplinary Procedure (“RJDP”) 1.11 and 2.7(c) as set forth in the following statement of facts and conclusions of law. Pursuant to the Supreme Court of Appeals of West Virginia, which is the final arbiter of judicial discipline in this State, 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.” *See* RJDP 4.12.

**STATEMENT OF FACTS**

Respondent was appointed to a vacant Circuit Judge position in January 2021. She officially took office on or about March 23, 2021. She has continuously served as a Circuit Judge since that time. She won the unexpired seat in the May 2022 election. She has also served on the Business Court since 2022. Respondent successfully ran for re-election in the May 2024 election. Her new eight-year term started on or around January 1, 2025. At all times relevant to the matters set forth below, Respondent was serving in her capacity as Judge. Respondent has never been disciplined as a lawyer or judge.

On or about March 24, 2025, JDC opened a complaint on Respondent. By letter dated that same day, JDC asked for a written response to the allegations contained in the complaint. She replied through her attorney by letter dated April 25, 2025, and by email dated May 13, 2025.

Judge Akers presided over an abuse and neglect case involving a minor. Three days after the fact, Respondent learned that the 12 year old attempted suicide after being placed in a hotel when his/her foster placement did not work. Subsequently, on February 24, 2025, Respondent entered an administrative order calling for the Secretary of the West Virginia Department of Human Services (“DoHS”) to come before her to discuss the situation and arrive at a solution. The hearing, which took place on Friday, February 28, 2025, was open to the public. While the Secretary appeared in person, there were approximately 150 other participants who were there either in person or via Microsoft Teams. Several members of the press were also in attendance. In fact, Respondent recognized the press by stating, “We have the media here, whose job it is to shine a light on all of us.” During that hearing, the judge appointed a monitor for DoHS and gave the Department a one-year period to improve the temporary placement of foster children in hotels and 4-H camps. The DoHS Secretary did not object to the improvement period stating, “Cindy [Largent-Hill, the monitor] and I and Keith Hoover [the Administrative Director of the State Supreme Court] have already had conversations about the exact issue and how we’re going to partner to fix that . . . .”

That evening, a WSAZ television story regarding the hearing occurred on the 6 and 11 newscasts. On at least one of the stories, Judge Akers was shown and heard commenting from the bench. Written articles also appeared on the WSAZ website and West Virginia MetroNews in which Judge Akers was quoted in the stories. On Monday morning March 3, 2025, Respondent personally appeared on MetroNews Talkline to discuss the matter. After some banter about misidentifying her first name, Judge Akers started the interview by saying:

Well, first off, there are lots of rules that govern what I can say publicly. So if you guys ask me questions that I’m not allowed to answer, I’ll tell you. That is because we have rules that apply to this judiciary. I’m happy to come on here, and some of them I may not be able to answer, but what I can tell you is what I said in my orders and what I said in open court.

Respondent then proceeded to discuss the events giving rise to the hearing and the hearing itself. Throughout the interview, Respondent made various references to the appropriateness of speaking about the hearing such as: “[W]hat the order says is – I want to make sure I stick to that,” “I can’t talk about what my decisions will be, um, I can’t even really talk about most of what my decisions are specific, in any

specific case, but I can say that that's what the order says . . . ,” and “[a]ctually, I can't answer that.”

Respondent did say:

- (1) I had a case with a 12 year old boy, who had attempted suicide . . . . My CPS worker in my courtroom didn't know about it. My guardian ad litem didn't know about it, and so they could not communicate it to me. That is what started that. The guardian ad litem told me later, um, maybe a day or two later when she learned about it which also led to her telling me about the hotels and 4H camps.
- (2) Well, you know, I was a prosecutor for a long time. I was a prosecutor for over twenty years. I started out as a juvenile prosecutor. I was a grant prosecutor hired by Bill Forbes, and what I did was dealt with juvenile defenders in the very beginning. That was back in, gosh 1999. And then I did felonies. Eventually I was just trying murder cases there and doing that for a long time. **But what I did see that abuse and neglect is the entry point into this system for a lot of people. The children are put into this system for a lot of people. The children are put into this system, they may or may not find permanent placement. Sooner or later they may have contact with the juvenile justice system, and then they wind up kind of turning in there and then they turn 18, and they may have an adult offense, and then they wind up in our adult courts. So I've seen this for a long time** (emphasis added).
- (3) [W]hat I was told is that sometimes child protective service workers are working there and supervising the children. Sometimes what they call SSP providers, which are contracted providers, are doing that. And that's another thing. I mean there are different facets to this system people don't understand. It's not all CPS. You know DOHS contracts with lots of outside agencies. They provide supervision, they provide transportation for people when they need to do stuff, they provide – but they have contracts with all of these people who provide services to help those in the DOHS system, so, um, do I know the ratio 100%? No I do not. And hopefully we'll get some answers when they're able to sit down and exchange some information.

With respect to Comments 1 and 3, there are references either in the order or during the hearing. Importantly, with respect to Comment 2, there was no such reference in the order or hearing. While the fact that Respondent was a former prosecutor was contained within her Court bio, it was not detailed to the extent it was in her statement to MetroNews and the bolded portion of the statement was not contained anywhere in the order or hearing. This was recognized by the Respondent in the attachments to her email response.

Respondent's defense to the media interview to Metro News is that she didn't say anything that wasn't in the order or said during the hearing. She also opined that Rule 2.10 is designed to allow judges to speak to the media as long as they say what is in an order or a media. When talking with her attorney on the

phone, he referenced the perceived differences between former Code of Judicial Conduct Canon 3(A)(9) as support for this argument. Former Canon 3(A)(9) states:

Except for statements made in the course of official duties or to explain court procedures, a judge shall not make any public or nonpublic comment about any pending or impending proceeding which might reasonably be expected to affect its outcome or impair its fairness. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control.

**Commentary.** – The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly.

## **CONCLUSIONS**

By a vote of 7-1,<sup>1</sup> the Commission found that probable cause exists in the matters set forth above to find that The Honorable MaryClaire Akers, Judge of the 8th Judicial Circuit, violated Rules 1.1, 1.2, 2.10(A) and 3.1(C) of the Code of Judicial Conduct as set forth below:

### **Rule 1.1 – Compliance with the Law**

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

### **Rule 1.2 – Confidence in the Judiciary**

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

### **Rule 2.10 -- Judicial Statements on Pending and Impending Cases**

(A) 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.

...

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures and may comment on any proceeding in which the judge is a litigant in a personal capacity.

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<sup>1</sup> The Commission consists of 9 members. One public member was absent and the Chair voted to dismiss with a warning and issue a separate advisory opinion.

### **Rule 3.1 – Extrajudicial Activities in General**

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

- (C) Participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity or impartiality.

The Commission further found that formal discipline was not essential as Respondent had a reputation for being a good judge, had cooperated in the investigation and had no prior discipline. However, the Commission found that the violations were serious enough to warrant a public admonishment.

The Preamble to the Code of Judicial Conduct provides:

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

It further 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.

Comment [1] to Rule 1.2 states that “[p]ublic confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.” Comment [2] provides that “[a] judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code.” Comment [3] notes that “[c]onduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.” Comment [4] states that “[j]udges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.” Comment [5] provides:

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

Comment [1] to Rule 2.10 states that “[t]his Rule’s restrictions on judicial speech are essential to the maintenance of the independence, integrity and impartiality of the judiciary.” Comment [2] notes that “[t]his Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity or represents a client as permitted by these Rules. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.” Furthermore, JIC Advisory Opinions 2023-23 and 2019-16 support that Respondent’s conduct was inappropriate. In fact, JIC Advisory Opinion 2019-16 is clearly on point. In that opinion, the Commission told a judge who issued a rule to show cause in a case that he could not comment to the media because the case was still pending.

Comment [2] to Rule 3.1 provides some insight in judicial leadership in abuse and neglect cases and states:

Off-the-bench judicial leadership is essential to effective resolution of local systemic problems that impede the progress of child abuse and neglect, delinquency, and status offense cases involving at-risk children and their families. Unlike most other types of cases in the court system, these cases deal with ongoing and changing circumstances, with federal and state legal mandates assigning to the judge a series of time-specific and complex decisions that shape the course of state intervention and determine the future of the child and family. For these reasons, judges are encouraged to regularly convene meetings of local professionals routinely involved in these cases for the purpose of addressing issues in the circuit relating to effective procedures and necessary services. These collaborative meetings may address systemic problems but shall not include discussion of individual cases.

The Commission is not unmindful that Respondent was trying to do something good for children who suffer as a result of abuse and/or neglect. However, as Herodotus once said, “Great deeds are usually wrought at great risk.” Whether it is former Canon 3(A)(9) or current Rule 2.10(A), the fact remains that Respondent cannot talk to the media about pending matters whether it be tied to the underlying case involving the 12 year old or the one year monitoring of DoHS. Respondent’s argument that 2.10(D) allows a judge to talk to the news media so long as he/she doesn’t stray from the contents of an order or what is said during a hearing is impractical and unworkable. Rule 2.10(D) is designed to allow Judges to speak

more freely only during a hearing or to explain a ruling in an order because he/or she is doing so as part of his/her official duties. However, even that exception is not without its limitations. Sometimes, judges can say something in an order or at a hearing that still violates the Code. Talking to the news media is not an official duty. Rule 2.10 when read *in pari materia* with Comment 2 to Rule 3.1 indicates that a judge cannot talk about individual pending/impending cases during extrajudicial activities such as talking to the media. Moreover, the Rules themselves do not permit judges giving media interviews about such matters as long as they limit the remarks to the contents of the order or what was said at a hearing. The Commission has likewise never adopted such a position as evidenced by JIC Advisory Opinions 2023-23 and 2019-16. Indeed, in the latter opinion the Commission told a judge who issued a rule to show cause in a case that he/she could not comment to the media because the case was still pending.

Even if Respondent's argument was correct, which it is not, she did stray outside what was in the order/hearing when she commented that "[t]he children are put into this system, they may or may not find permanent placement. Sooner or later they may have contact with the juvenile justice system, and then they wind up kind of turning in there and then they turn 18, and they may have an adult offense, and then they wind up in our adult courts." By making such a statement, Respondent created in the mind of the public, however wrong it may be, the perception that children in the abuse and neglect system wind up as juvenile delinquents and/or adult criminals which is contrary to the requirement that a judge must appear neutral and detached. As careful as Judge Akers tried to be, her defense is flawed. While we applaud the fact that Respondent tried to abide by what she believed was right, she violated the Code.

Thus, it is the decision of the Judicial Investigation Commission that the Honorable MaryClaire Akers, Judge of the 8th Judicial Circuit, be admonished. Accordingly, the Judicial Investigation Commission hereby publicly admonishes Judge Akers for her conduct as fully set forth in the matters asserted herein.

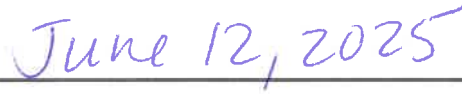
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Pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure, the Respondent has fourteen (14) days after receipt of the public admonishment to file a written objection to the contents thereof. If the

Respondent timely files an objection, the Judicial Investigation Commission shall, pursuant to the Rule, file formal charges with the Clerk of the Supreme Court of Appeals of West Virginia.



The Honorable Bridget Cohee, Vice Chairperson  
Judicial Investigation Commission



Date

BC/tat