

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

**IN THE MATTER OF  
THE HONORABLE JAMES W. DOUGLAS,  
JUDGE OF THE 11<sup>TH</sup> FAMILY COURT CIRCUIT**

**COMPLAINT NO. 235-2024**

The matter is before the Judicial Investigation Commission (“JIC”) upon a complaint setting forth certain allegations against the Honorable James W. Douglas, Judge of the 11<sup>th</sup> Family Court 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, 2.9(A) and 2.10(A), 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 elected as a Family Court Judge in the May 2016 election and took office on January 1, 2017. Respondent was re-elected to the position in May 2024. At all times relevant to this investigation, Respondent was serving as a Family Court Judge. Respondent has no prior Judicial Discipline. On December 16, 2024, Joseph Armstrong, the former Administrative Director for the Supreme Court of Appeals of West Virginia, filed the instant complaint. Commission Counsel began an immediate investigation into the case. Respondent filed a written response on January 22, 2025, and supplemented it several times.

On February 28, 2024, Respondent issued a Final Order Regarding Modification in the case of *Megan H. v. Kevin R.*, Kanawha Civil Action No. 10-D-1694.<sup>1</sup> One party appealed the order to the

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<sup>1</sup> In the ICA, the case was styled *Kevin R. v. Megan H.*, 24-ICA-135.

Intermediate Court of Appeals (“ICA”). On October 28, 2024, the ICA vacated and remanded the case with directions to Respondent to pursue one of several options. Of the options, Respondent chose to issue a more thorough Final Order. Respondent filed his Supplemental Final Order on Remand on November 7, 2024, at 2:46 p.m.

Approximately two hours later, Respondent sent an email to all of the Family Court Judges in West Virginia, a senior status Family Court Judge and a retired Family Court Judge. The email concurrently also went to members of the Kanawha Bench Bar (“KBB”). The KBB is comprised of two sitting Family Court Judges, one retired Family Court Judge, one former Circuit Court Judge who is the current Chair of the national ABA Family Law Section and seven Family Law attorneys -- two of whom are employees of the West Virginia Supreme Court of Appeals. One of the lawyers represented one of the parties in the underlying case. The other lawyer involved in *Megan H.* was not a member of the KBB and did not initially receive the email which provided:

All; The above styled ICA Mem. Dec, which was my case was issued on 10/28/24. Therein, the ICA 3-0 vacated with directions, my ruling only as to the younger of the 2 children. . . .The underlying Petition to Modify was based SOLELY on the child’s reputed parental preference for modification. The said Mem Dec charged me basically with executing one of four (4) options on remand: . . . . Having attempted since 2022 to make allowances for, and to somewhat quietly resign myself to, the absence of family law scholarship and experience on the ICA, which limitations include the Judges’ law clerks, I determined to choose the 4<sup>th</sup> alternative. Not being based in notions of injured pride, but actually my motivations for doing so were three-fold; (1) what I perceived to be for the general good of Family Law, and (2) my ongoing and deep concern regarding the steady erosion of the hallowed Predictability Function of Law; and (3) bring attention to the implications of unanticipated affects portended for future modification actions predicated on “child preference.” In essence, in my opinion, said vacation directions should not go unchallenged academically and practically. Yes, it would have been easier and more nearly simple to acquiesce or to submit. I am, however, unacquainted with those reputably inaudible character traits. Therefore, please see my attached Supplemental Order filed this day. You may agree or you may disagree, or you may just “roll your eyes,” but I would welcome your legal opinions, good or bad. Otherwise, please disregard.

Based upon information and belief, the then General Counsel to the Administrative Director advised Respondent that he had failed to send the email to the other attorney in the underlying case. At 6:57 p.m., or almost two hours after the original email was sent, Respondent provided the other attorney with the missive.

The ICA issued the case mandate on or about December 2, 2024. Rule of Appellate Procedure (“RAP”) 26(a) provides:

Issuance of the mandate terminates jurisdiction in an action before the Intermediate Court or the Supreme Court, unless by order pursuant to Rule 25(a) a petition for rehearing may be filed after a mandate has issued. Unless otherwise provided, **an opinion or memorandum decision considering the merits of a case is not final until the mandate has been issued by the court.**

(emphasis added). RAP 25(a) states:

A petition for rehearing may be filed within thirty days of release of any memorandum decision or opinion of the Intermediate Court or the Supreme Court that passes upon the merits of an action unless the time for filing is shortened or enlarged by order. In those instances when the time period for issuance of the mandate is shortened and the Clerk is directed to issue the mandate in accordance with the time frame, the Intermediate Court or the Supreme Court shall set forth by order the deadlines for filing, if any.

On December 3, 2024, the other attorney filed a Motion to Disqualify Respondent based upon the email. The lawyer opined that “[t]he statements contained in the attached email demonstrate that Judge Douglas is committed to denying the parties minor daughters an opportunity to be heard and considered.” On or about December 9, 2024, Respondent filed a Brief in Response To Motion to Disqualify. Respondent denied the allegations contained in the Motion to Disqualify. Respondent also called the lawyer’s motion “belated” and a “tardy reflexive reaction” arguing that it was rendered “moot” by his November 7, 2024 Supplemental Final Order on Remand and the December 3, 2024 Amended Supplemental Final Order. Respondent also stated that “[a]ny comments made by the undersigned to other Family Court Judges or the domestic relations-oriented Kanawha Bench Bar, AFTER entry of the Supplemental **Final** Order on Remand were merely born of academic interest or made for legal scholarly purposes.” By Order entered December 11, 2024, the Chief Justice of the State Supreme Court granted the motion to disqualify and ordered the matter reassigned to another family court judge within the multi-judge circuit. The Order specifically stated that “to the extent that there is anything pending in Family Court now, or may be pending in the future, the Chief Justice has determined that Judge Douglas’ disqualification from this case is warranted to avoid the appearance of impropriety.”

## CONCLUSIONS

By a vote of 8-0,<sup>2</sup> the Commission unanimously found that probable cause exists in the matters set forth above to find that The Honorable James W. Douglas, Judge of the 11th Family Court Circuit, violated Rules 1.1, 1.2, 2.9(A) and 2.10(A) 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 2.9 – Ex Parte Communication**

- (A) A judge shall not initiate, permit or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter. . . .

### **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.

The Commission further found that formal discipline was not essential as Respondent had a reputation for being a knowledgeable judge in family law, had cooperated in the investigation and had no prior judicial 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

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<sup>2</sup> The Commission consists of 9 members. One public member was absent.

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 2.9 notes that “[t]o the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge. Comment [3] states that [t]he proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding except to the limited extent permitted by this Rule.” Comment [5] provides that “[a] judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter and with judges who have appellate jurisdiction over the matter.”

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.”

The Commission is aware that Respondent saw a need for education among the family court judges on new case law and without prompting took it upon himself to fill that void. With his vast experience in family law, Respondent was the logical choice to assist others. As a wise man once said, “The art of teaching is the art of assisting discovery.”

However, when educating judges on new case law, what can be said about a matter depends on the status of the case. RAP 26 is clear that a case does not conclude until the mandate has issued. If the case has not concluded a judge may relay the facts and conclusions but nothing more. When Respondent wrote his November 7, 2024 email, the mandate had not issued so the case was not over. Therefore Respondent should have limited his remarks to the facts of the matter and the conclusions of law without any amplification. He didn’t. Therefore, Respondent violated Rules 1.1, 1.2 and 2.10(A).

Respondent also violated Rule 2.9(A). He had a duty to send the email to both attorneys involved in the case at the same time as evidenced by Comment [1] to Rule 2.9. Respondent was not seeking the advice of judges because he had already decided on what option he would use and sent the order out before the email. Respondent also communicated with lawyers and other persons who were not participants in the proceeding. The only lawyer that was a participant was not a proper communicate because he failed to reasonably include the other lawyer in the same email.

Respondent violated Rules 1.1, and 1.2 in the negative comment he made about the ICA Judges and law clerks. The judge cited his First Amendment right to free speech as a defense to the comment. Nonetheless, for judges that right is not absolute as is made clear in Comment [1] to Rule 2.10. By making those statements, Respondent challenged the integrity of the ICA and damaged the public confidence in that Court and is admonished for the same.

Thus, it is the decision of the Judicial Investigation Commission that the Honorable James W. Douglas, Judge of the 11th Family Court Circuit, be admonished for violating Rules 1.1, 1.2, 2.9(A) and

2.10(A) of the Code of Judicial Conduct. Accordingly, the Judicial Investigation Commission hereby publicly admonishes Judge Douglas for his 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.



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The Honorable Alan D. Moats, Chairperson  
Judicial Investigation Commission

6/13/2025

Date

ADM/bjl