

BEFORE THE JUDICIAL HEARING BOARD OF WEST VIRGINIA

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IN THE MATTER OF	
THE HONORABLE TIM SWEENEY, JUDGE OF THE THIRD JUDICIAL CIRCUIT	SUPREME COURT NO. 25-483 JIC COMPLAINT NO. 13-2-25

RECOMMENDED DECISION

On December 10, 2025, the parties, by their counsel, came for a hearing in this matter before the Honorable Michael D. Lorensen, Chairperson, sitting as Hearing Examiner for the Judicial Hearing Board. On January 14, 2026, came Judicial Disciplinary Counsel with its Brief. On January 15, 2026, Respondent came with his Brief. Upon consideration of the evidence and argument of counsel, the Code of Judicial Conduct, the 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:

I. FINDINGS OF FACT

1. On July 22, 2025, the Formal Statement of Charges was filed arising from the following circumstances.

CHARGE I

2. Charge I alleges Respondent violated Rules 1.1, 1.2, 2.10(A), 3.1(C), and 3.7(A)(2) of the Code of Judicial Conduct arising from posts, reposts¹ or “shares” from his Facebook account, which featured a photo of himself in his judicial robe in a courtroom with the American flag behind him as his primary Facebook profile photo.

3. Respondent’s Facebook “shares” at issue in this matter fall into several categories discussed below.

4. Charitable Event/Fundraising Reposts:

a. The fundraising-related posts shared by Respondent consist of the following:

- 1) St. Mary’s Volunteer Fire Department: On July 17, 2024, Respondent shared a post from St. Mary’s Volunteer Fire Department Annual Ice

¹ A Facebook “repost” or “share” is when a user republishes someone else’s post to their own Facebook audience. The shared post keeps the original author credited, and the user may choose to add their own commentary or share it without additional text.

Cream Social with a drawing for an electric bike. Respondent made no independent commentary on the post, but the original user's commentary that was shared stated: "Show your support for the fire department by purchasing a raffle ticket for a battery-powered bicycle. Contact any firefighter to get your chance in the drawing."

2) Jeremy Rhodes:

- a) On July 3, 2024, Respondent shared a flyer from Calvary Baptist Church regarding a fundraising event to help defray medical expenses for Jeremy Rhodes. Respondent shared the same flyer from Calvary Baptist Church again on July 26, 2024.
- b) On July 25, 2024, Respondent shared a separate fundraiser for Mr. Rhodes at Subway (i.e. eat lunch or dinner at Subway on July 25 and Subway will donate a portion of the proceeds to Mr. Rhodes's medical expenses).
- c) Mr. Rhodes is a member of the Pleasants County Sheriff's Office. The Calvary Baptist fundraiser reposts did not identify Mr. Rhodes' as law enforcement, but the Subway fundraiser identified that Mr. Rhodes was a member of the Pleasants County Sheriff's Office.

- b. Respondent testified that he did not intend the posts to be solicitations, but that he viewed them as informational for the community. On the other hand, Respondent acknowledged that his reposts could have been interpreted as support for these fundraisers.
- c. No evidence was presented at the hearing, however, that Respondent otherwise directly solicited contributions for these fundraisers or that he sought to determine whether any person who may have viewed his shared posts actually participated in the fundraisers. Respondent's "share" of the original fundraiser posts above contained no independent commentary or call to action of his own.

5. **Hiring/Employment Reposts:**

- a. Between March 4, 2024 and February 5, 2025 (11 months), Respondent shared seven (7) separate hiring or employment opportunity posts made by various law enforcement/prosecutor entities as follows:

- i. March 4, 2024 – W.Va. State Police (officer)
 - ii. May 2, 2024 – W.Va. Dept. of Natural Resources (DNR) Police (officer)
 - iii. July 10, 2024 – Doddridge Co. Prosecutor’s Office (Asst. Prosecutor)
 - iv. December 3, 2024 – Paden City Police Department (officer)
 - v. November 15, 2024 – Ritchie County Sheriff’s Office (officer)
 - vi. February 5, 2025 – City of St. Mary’s Police (clerk position)
 - vii. No date – Tyler County Sheriff’s Office (officer)
- b. Respondent again asserted that the posts were for informational purposes but acknowledged they could be wrongfully interpreted to indicate that he was “pro-prosecution” or “pro-law enforcement,” particularly in combination with all of the other posts and his prosecutorial background.²
- c. Respondent’s “share” of the hiring/employment opportunity posts contained no independent commentary of his own.

6. Miscellaneous Law Enforcement Posts

- a. “Attention Drug Dealers”
- i. On October 21, 2024, Respondent shared an image posted by the Pleasants County Sheriff’s Office. The image depicted a marijuana leaf and the heading “Attention Drug Dealers” and stated as follows:

Is your drug-dealing competition costing you money? Would you like to eliminate that problem? We can help. We can take your competition off the streets for free. Report your competition to us!
 - ii. Respondent testified that he shared the image “purely for amusement” and because he thought it was “somewhat entertaining.” Respondent acknowledged that a criminal defendant and/or defense counsel appearing before Respondent charged with a drug crime might not be amused.
- b. Community Meeting: On November 1, 2023, Respondent posted about a community forum on Human Trafficking to be held on November 7.

² Respondent “was the elected Prosecutor of Pleasants County from 1985 to 2010.” <https://www.courtswv.gov/public-resources/court-information-county/circuit-judges/timothySweeney>.

7. Mindfulness in St. Mary's:

- a. On August 18, 2024, Respondent shared a post from the Pleasants County Sheriff's Office arising from a pending criminal investigation, where Respondent presided over criminal cases, which consisted of a photo of a sheriff's SUV and stated, "If any of your children were patients at Mindfulness in Saint Mary's and had any issues regarding medication that was prescribed please reach out to us at 304-684-2285."
- b. Respondent testified he shared the information for the benefit of the public so that anyone with a child in the program would know who to contact.

8. Pending Criminal Matters & News Media-Related Posts

- a. Jody Satterfield "Wanted" (Calhoun County)
 - i. In July 2023, Respondent shared a post from the Pleasants County Sheriff's Office, captioned "WANTED: Jody Allen Satterfield is Wanted for Attempted Murder & Attempted Arson in Calhoun County, West Virginia," stating underneath: "This individual is considered armed and dangerous. He has potentially been seen in an adjoining county and may be in the area. DO NOT APPROACH. If you believe you have seen him contact 911 immediately."
 - ii. Respondent acknowledges that the matter was pending at the time he shared the post about Mr. Satterfield. However, Respondent testified that the person looked like a "pretty dangerous character" and he was "alerting the public to this individual and how dangerous he was." Respondent agreed that perhaps it was more the role of a prosecutor or law enforcement officer to let the public know about dangerous individuals.
- b. Pair Arrested in Mason County, WV: On October 31, 2023, Respondent shared a news article from WSAZ-TV which stated, "Pair arrested for alleged human trafficking. State Police trooper said Pearson 'preys on vulnerable, drug addicted, homeless...'" The criminal case in this matter originated out of Mason County, West Virginia.

- c. Federal Trafficking Conviction: On November 1, 2023, Respondent shared a news article from Newsbreak.com which stated, “West Virginia woman trafficked teen victim for just under \$14,000; sentenced to 40 years.” This article related to a federal prosecution of a woman from Martinsburg, West Virginia.
- d. Whitefeather/Lantz (Kanawha County):
 - i. On February 3, 2025, Respondent shared a media release post from the Kanawha County Prosecuting Attorney Office stating that two individuals (Whitefeather/Lantz) were convicted on January 29 on “Human Trafficking, Civil Rights and Child Abuse charges.” The post contained information about each defendants’ sentencing date and the maximum potential prison sentence.
 - ii. The parties stipulated that the Whitefeather/Lantz matter involved a high profile case out of Kanawha County, West Virginia and that the couple ultimately received long prison sentences.
 - iii. Respondent’s reposts of the news article or media release above contained no independent commentary of his own, except as it pertained to the “likes” on comments to his repost discussed below.
 - iv. Respondent’s Facebook repost of the Whitefeather/Lantz matter generated multiple comments or reactions from his audience. Notably, Respondent actively “liked”³ some of the negative comments to his post, including, but not limited to,
 - 1) “So terrible!! Thankful these two have been convicted ...”, and
 - 2) “They don’t deserve three hots and a cot.”
- e. Respondent conceded that all of the matters above were pending at the time he shared the posts or liked the comments.

³ “Liking” a Facebook post is a quick, one-click social engagement (using a thumbs-up icon) that allows users to express approval, enjoyment or acknowledgement of the content without leaving a comment. Anyone who can see the post can see that a user “liked” it or a comment. [What does it mean to “Like” something on Facebook? | Facebook Help Center](https://www.facebook.com/help/110920455663362) (https://www.facebook.com/help/110920455663362)

9. With regard to his posts, Respondent conceded that “[i]n retrospect, again, it fits into the whole narrative for potential for interpretation that there’s an inclination toward pro-law enforcement, and its contrary to the requirement of the judiciary to be fair and impartial.”

10. Since receiving the complaint, Respondent has taken down all these posts, changed his primary Facebook profile picture, and set his account to private.

11. Before JDC discovered Respondent’s Facebook page during their investigation into the February 3, 2025 Order discussed in Charge II below, no one complained about Respondent’s posts, reposts/shares, “likes,” or judicial independence, or used the Facebook shares or reposts to seek his disqualification in any matter.

CHARGE II

12. Charge II alleges Respondent violated Rules 1.1, 1.2, 2.6(A), and 2.10(A) arising from his entering an Administrative Order involving the Department of Human Services, contacting a newspaper reporter, providing the reporter with a copy of the Administrative Order, and giving an interview regarding the Administrative Order.

13. In the article, Respondent is quoted as saying:

I think the bus [sic] stops with me. . . . I think somebody needs to stand up for the public, particularly the most vulnerable members of our community – the children. From a legal point of view, abuse and neglect cases are of the highest priority, and they should be, in my opinion, for the department and the government in Charleston as well. This just needs to be addressed and I couldn’t think of any other way to do it other than to enter this order to try to get the attention of these folks to take a look at these issues.

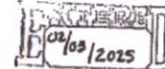
14. The following day, Respondent gave a radio/internet interview to MetroNews, where he began the interview as follows:

Well, it was pretty clear on the record in a proceeding we had this past Monday, February 3rd, the date of the order, that we had some pretty significant understaffing problems with the department in regard to CPS workers and their ability to handle referrals and do their jobs to protect, really, the most vulnerable segment of our population, abused and neglected children.

15. Respondent further stated, “We have documented in the hearing that we had Monday, the issues I have addressed and noted and made findings with regard to in the order. And that’s been documented on the record by sworn testimony ... we’ve got people that are in some cases tenfold in excess of the recommended caseload to get this done.”

16. Respondent's February 3, 2025 order required members of the Department of Human Services, including the Commissioner, General Counsel, and Deputy Commissioner of Field Operations to appear before Respondent on February 30, 2025, "personally, under penalty of contempt" to "receive their assignments" as CPS workers, removal workers, case workers, or "court workers:"

IN THE THIRD JUDICIAL CIRCUIT, WEST VIRGINIA



IN RE: CRITICAL UNDERSTAFFING OF THE DEPARTMENT OF HUMAN SERVICES

WHEREAS, it has come to the attention of the Court that the Department of Human Services, former Region 1, currently comprising the counties of Doddridge, Lewis, Pleasants, Ritchie, and Upshur is severely understaffed;

WHEREAS, said understaffing is an immediate and critical threat to at-risk children, the most vulnerable residents of this Circuit and State;

WHEREAS, cases involving juveniles are the highest priority for the judiciary in the State of West Virginia;

WHEREAS, the Court sua sponte hereby appoints Laurea Ellis, Deputy Commissioner of Field Operations; Kim Ricketts, Special Consultant to the Secretary; Alex Mayer, Secretary; Chanin Krivonyak, General Counsel; Lorrie Bragg, Deputy Commissioner of Policy and Programs as Child Protective Service Workers, Removal Workers, Case Workers, Court Workers, Intermediate Supervisors, or any other designation determined to alleviate the immediate critical staff shortage in Doddridge, Lewis, Pleasants, Ritchie and Upshur. Said individuals will be under the immediate supervision and direction of Jondrea Nicholson, Social Services Manager.

THEREFORE, the above-named individuals are hereby ORDERED appear personally, under penalty of contempt on 20th day of February, 2025, 9:00 a.m. at the Ritchie County Courthouse, in Harrisville, West Virginia before the Honorable Timothy L. Sweeney, to receive their case assignments.

Upon entry of this Order, the Clerk of the Court shall provide a copy thereof to all named individuals.

I hereby certify that the enclosed instrument is a true and correct copy of the original filed in my office.
TIMOTHY L. SWEENEY, Chief Judge
Third Judicial Circuit
Ritchie County of West Virginia
ENTERED ON 2/3/25
Circuit Clerk [Signature] Deputy [Signature]

17. After Respondent's media contacts in which he discussed the pending case and his order, he met with the DHS Commissioner, worked out an agreement to get some additional help in his jurisdiction, and cancelled the scheduled February 30, 2025 hearing by entering the following order:

IN THE THIRD JUDICIAL CIRCUIT, WEST VIRGINIA

IN RE: CRITICAL UNDERSTAFFING OF THE DEPARTMENT OF HUMAN SERVICES

WHEREAS, cases involving juveniles are the highest priority for the judiciary in the State of West Virginia;

WHEREAS, the Court previously Ordered certain employees and Administrators of the Department of Human Services (DoHS) to appear on the 20th day of February, 2025 to receive staffing assignments to help alleviate the critical staff shortages in Doddridge, Lewis, Pleasants, Ritchie and Upshur Counties;

WHEREAS, since the time the Court entered the Administrative Order on February 3, 2025, regarding the understaffing at the Department of Human Services, certain steps have been taken by the DoHS to promptly address the issues;

WHEREAS, the Court believes the DoHS is making a good faith effort to alleviate the burden on local child protective service workers;

THEREFORE, for reasons apparent to the Court, and in consideration of the good faith and demonstrable effort put forth by the Department of Human Services, the Court hereby CONTINUES the hearing generally to allow for the matter to more fully develop.

Upon entry of this Order, the Clerk of the Court shall provide a copy thereof to all named individuals.

 2/19/25
TIMOTHY L. SWEENEY, Chief Judge
Third Judicial Circuit

18. In addition to addressing Respondent's public comments regarding a pending matter, Charge II also raises concerns about the manner in which Respondent designated and entered what he labeled as an "Administrative Order" because (a) the controversy arose from a single

abuse and neglect case; (b) no rule to show cause was issued; and (c) DHS was afforded no notice or opportunity to be heard before the order was entered.

19. Procedurally, Respondent defended entry of the Administrative Order as follows:

“[I]t really didn’t involve any due process rights on their part. It was more directory and supervisory of the department in my capacity as a judge to comport with basically what the Supreme Court has enunciated pretty strongly in several cases, that these matters are of the utmost importance. Judges need to move heaven and earth to get these things done, and have been subject to criticism for not doing so. And I believed it was in the parameters of my administrative authority as a judge over the Department ... to require that to be done.”

20. Substantively, Respondent defended the order and his media contacts as follows:

To call attention to the issue, to try to raise it to the level that somebody would respond and pay attention to and hopefully address it. As I indicated this was pre-session [the West Virginia Legislature]. They went in late this year because we got a new Governor, of course, as you are aware ... I was desperate, and I thought extreme action needed to be taken. It was an imminent, ongoing problem that needed to be addressed promptly. And I was hoping it would basically sound an alarm of the issues, so the issues could be remediated promptly.

21. This was consistent with Respondent’s comments during a hearing which precipitated entry of the Administrative Order:

Maybe we need the commissioner’s name so that I can sign a civil contempt order today to require the commissioner to be incarcerated until this situation is rectified. Well, to do that I would have to get them here, which could be done. Then maybe that would bring it to the attention of the folks in Charleston; maybe if it gets in the Charleston Gazette and on MetroNews and in various news feeds the legislature might recognize something and realize this is a situation that needs to be addressed.

My concern is this: If I just sit around and these things are not happening and I don’t do anything, am I doing my job? Am I part of the solution or part of the problem? As I indicated earlier, the buck kind of stops here.

Emphasis added.

22. DHS General Counsel Chanin Krivonyak stated, “I know Judge Sweeney personally. This is not his style. Of all the judges in the State ... he’s probably one of the last ones I would think I would get it from. And I never really thought that he was trying to make us go out and be

CPS workers. I thought he was trying to get our attention ... I would prefer that any of the judges that have concerns with us, reach out to – if it’s not about a specific case, and it’s just general concerns, I would prefer that they reach out to us to have a conversation rather than raising it in some other way. That’s my preference.”

23. DHS general counsel’s statements reflect that the agency understood Respondent intended his use of the media to exert pressure on DHS and obtain prompt action regarding the staffing issues

24. Respondent correctly notes that circuit court judges have heightened responsibilities and involvement in abuse and neglect cases. Comment 2 to Rule 3.1 of the Code of Judicial Conduct acknowledges these responsibilities 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.

25. Conversely, what was entered was not “off-the-bench” and did not “convene [a] meeting[] of local professionals,” but was effectively a show-cause order.

26. Administrative orders are ordinarily not directed to individual people, nor do they require such individuals to appear personally before the issuing judge under penalty of contempt in order to receive their case assignments as child protective service workers or in other comparable roles. *See, e.g.,* Syl. pt. 3, *Cable v. Hatfield*, 202 W. Va. 638, 505 S.E.2d 701 (1998) (“A circuit judge or chief judge of a circuit with more than one judge, shall have the authority to enter an administrative order governing when separate filing fees are required and may require additional filing fees in multiple plaintiff cases until such time as a statewide rule governing filing fees in multiple plaintiff cases is promulgated.”); Syl. pt. 3, *State ex rel. Lambert v. Stephens*, 200 W. Va. 802, 490 S.E.2d 891 (1997) (“Courts have inherent authority to require necessary resources, such as sufficient funds for operating expenses, work space, parking space, supplies,

and other material items. In order for a court to invoke use of its inherent power to require resources, the court must demonstrate that such resources are reasonably necessary for the performance of its responsibilities in the administration of justice. Although courts must be cautious not to reach beyond the power of the judicial branch, it is crucial for the judiciary to be able to invoke such power as is reasonably necessary to maintain itself as an independent and equal branch of our government.”).

27. However, our Supreme Court recently criticized the use of administrative orders in circumstances similar to this matter:

Judge Wilmoth has identified no legal authority that would support this unusual use of an administrative order, and we find none. To begin, we note that the administrative order sounds in mandamus, as Judge Wilmoth directs DHS to keep the Children’s Home open to meet its statutory obligations regarding the care of juveniles. “Mandamus lies to require the discharge by a public officer of a nondiscretionary duty.” It “will issue where the undisputed facts show that petitioner has clear legal right to the performance of the act demanded, and a corresponding duty rests upon respondent to perform that duty; and that there is no other adequate remedy open to petitioner.” Setting aside the fact that no person or entity requested judicial action, and that Judge Wilmoth acted unilaterally, mandamus does not lie here because DHS has no nondiscretionary duty to keep the Children’s Home open. To be sure, DHS has statutory authority regarding the care and custody of juveniles. But in the absence of any abdication of this responsibility, which is not demonstrated by DHS’s decision to close the Children’s Home, mandamus “is never employed to prescribe in what manner [a governmental agency] shall act.” So to the extent the administrative order functions in the place of a writ of mandamus, it is not proper.

State ex rel. W. Va. Dep’t of Hum. Servs. v. Wilmoth, 2025 W. Va. LEXIS 114, *5-6, 2025 LX 377863, 2025 WL 914419 (footnotes omitted).

II. CONCLUSIONS 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 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.”

4. 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.”

CHARGE I

5. Charge I alleges Respondent violated Rules 1.1, 1.2, 2.10(A), 3.1(C), and 3.7(A)(2) of the Code of Judicial Conduct arising from the shared posts or liked comments from his Facebook account.

6. The Board has analyzed these Rules and the evidence relative to Charge I, and applying the applicable clear and convincing standard, concludes as follows:

Rule 1.1

7. 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.”

8. Although the Board concludes that Respondent violated no “law” relative to his Facebook shares, reposts, or likes, it concludes that he violated Rule 1.1 as he has been found to have violated other provisions of “the West Virginia Code of Judicial Conduct” as discussed herein.

Rule 1.2

9. 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.”

10. The commentary to Rule 1.2 states, “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.”

11. “Impartial,” “impartiality,” and “impartially” as defined in the Code of Judicial Conduct mean an “absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.”

12. “Impropriety” is defined as conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge’s independence, integrity, or impartiality.

13. Judicial use of Facebook has spawned vigorous debate regarding whether and to what extent judges ought to use Facebook, and the ethical issues Facebook poses for judges. See, e.g., Hon. Richard L. Gabriel & Nina Varsava, *Friending, Following, and Liking Social Media and the Courts*, Colo. Law., July 2019, at 9; Hon. M. Sue Kurita, *Electronic Social Media: Friend or Foe for Judges*, 7 St. Mary’s J. Legal Malpractice & Ethics 184 (2017); Shazia Singh, *Friend Request Denied: Judicial Ethics & Social Media*, 7 Case W. Reserve J.L. Tech. & Internet 153 (2016) (summarizing approaches and stating that: Florida, Oklahoma, and Massachusetts take a “strict approach”; California, Arizona, Utah, Texas, North Carolina, and Florida take a “moderate approach”; and Maryland, New York, Kentucky, Ohio, South Carolina, Georgia, Tennessee, and the American Bar Association take a “liberal approach”); John G. Browning, *Why Can’t We Be Friends? Judges’ Use of Social Media*, 68 U. Miami L. Rev. 487 (2014); Hon. Craig Estlinbaum, *Social Networking & Judicial Ethics*, 2 St. Mary’s J. Legal Malpractice & Ethics 2 (2012); Samuel Vincent Jones, *Judges, Friends, and Facebook: The Ethics of Prohibition*, 24 Geo. J. Legal Ethics 281 (2011); ABA Formal Op. 13-462 at 1 (“[a] judge may participate in electronic social networking, but as with all social relationships and contacts, a judge must ... avoid any conduct that would undermine the judge’s independence, integrity, or impartiality ...”).

14. Relative to a judge’s Facebook posts, the Pennsylvania Supreme Court recently noted as follows:

Although we respect Judge Cohen’s desire, as a private citizen, to engage in politics and express his opinion on matters of public concern, once Judge Cohen assumed the bench, he bound himself to comply with the Pennsylvania Constitution and the Code, including the Code’s restrictions on political activity.

To be clear, our holding does not mean judges will “be bound and gagged once they . . . go home” from work. Appellant’s Brief at 62. Nor are we saying judges “can never comment on any matter of importance without it being called political

speech[.]” *Id.* at 83. “Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice,” and are therefore encouraged to write or speak — even on social media — on “appropriate” matters of public concern. Pa. Code of Judicial Conduct, Canon 3, Rule 3.1, cmt. 1 Indeed, as the CJD noted, “[s]ocial media can be positive for a judge to use professionally.” *In re Cohen*, No. 1 J.D. 2023, 5/3/24, at 63. When employed mindfully,

[social media] can be used to share information on the role of judges and the judicial system. It can provide insight into court procedures and encourage pro bono activities. It can also be used to show a judge’s involvement in educational organizations along with civil and community activities. Judges can promote their activities and recognitions received.

Id. at 64. Social media can be used by judges for personal reasons as well. *See id.* (“Judges can post photos of themselves and their family at local restaurants, events or on vacations as long as such photos do not violate any judicial canons.”). Therefore, sitting judges, like many other citizens, must ensure their social media use comports with the rules of the position they have voluntarily attained or the organization they have voluntarily chosen to join. “A judge should weigh this before he [or she] accepts [] office.” *In re Troy*, 306 N.E.2d 203, 235 (Mass. 1973).

In re Cohen, 2026 Pa. LEXIS 87, *47-48, 2026 LX 73799

15. Standing alone, many of Respondent’s posts, such as sharing hiring notices or community meeting information on legal issues, should not be viewed as *per se* ethical violations. Judges serve the public and are members of their communities. Sharing neutral, community or hiring-related information is often a benign act. Had there been greater variety in the types of posts Respondent chose to share, such as employment opportunities or announcements from entities other than law enforcement, Respondent may have avoided any appearance of impropriety. The one-sided nature of the posts contributed to the concerns identified by the Board

16. Respondent is admittedly a former and longtime prosecuting attorney, who shared extensive prosecutor/law enforcement-related posts that were publicly visible to any Facebook user within the span of 11 months all while wearing his judicial robe in his Facebook profile picture.

17. The cumulative and one-sided nature and substance of the public posts demonstrate a pattern that would give a reasonable appearance of bias toward the prosecution in criminal matters and undermine the appearance of impartiality. While limited posts in isolation might not

cross the threshold, the aggregate effect of the Respondent's social media activity in combination with his profile picture in his judicial robe creates an impression that is incompatible with the neutrality required of a judicial officer.

18. While Respondent asserts that he shared the "Attention Drug Dealers" post solely for its humorous value, the relevant inquiry is how a reasonable observer would interpret the communication. Viewed objectively, the post could be understood as expressing approval of law-enforcement tactics, encouraging arrests, mocking would be defendants, or otherwise participating in a "team" mentality with law enforcement. This concern is heightened when the post is considered in conjunction with Respondent's other law-enforcement related, social media activity.

19. The Board finds that Respondent's decision to publicly "like" negative comments made in response to his share of the Whitefeather/Lantz conviction and sentencing also violates Rule 1.2.

20. *In re Slaughter*, 480 S.W.3d 842, 855 (Tex. Spec. Ct. Rev. 2015), the Texas Special Court of Review found a judge did not violate the Texas Canons of Judicial Conduct simply because an unsolicited comment was posted on her social media regarding a trial pending in her courtroom. In so holding, the Texas Court stated as follows:

the comment was unsolicited by the Respondent and was removed by the Respondent as soon as it was brought to her attention. Our review of the Canons does not indicate any express requirement for judges to patrol their social media websites to either delete or disavow any comments made by others. We are reluctant to impose a requirement of this type in the absence of an express requirement in the Canons. Furthermore, we find that a reasonable person would not believe that a comment of this type made by a third party would cause a judge to become biased or partial for or against one party or that a judge-host of the page is condoning the sentiments of any such unsolicited comment from the mere fact that it is posted on the judge's wall. However, judges should be cautious and exercise discretion to avoid posting factual statements regarding pending proceedings that may invite disparaging comments about the parties, the judiciary, or the administration of justice.

21. Unlike the judge in *Slaughter*, Respondent did not remove or disregard the negative comments posted in response to his shared post concerning the Whitefeather/Lantz criminal

matter. Instead, Respondent affirmatively “liked” at last two of the negative comments. One comment expressed gratitude that the defendants had been convicted, and the other, which related to sentencing that was still pending, stated that the defendants “didn’t deserve three hots and a cot.” By “liking” these comments, Respondent expressly and publicly signaled approval of the sentiments they conveyed. Such conduct could lead a reasonable person to question Respondent’s impartiality in criminal matters or regarding sentencing.

22. Although the Board determines that Respondent’s Facebook shares and reposts did not undermine public confidence in his independence or integrity, the Board nevertheless concludes that Respondent violated Rule 1.2 because the totality of his conduct would reasonably undermine the public’s confidence in his impartiality.

Rule 2.10(A)

23. 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.”

24. Comment 1 to Rule 2.10(A) provides that “[t]his Rule’s restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.”

25. The Respondent’s Facebook shares/reposts or comment “likes” regarding pending or impending matters were public statements.

26. Rule 2.10(A) creates a two-part test that prohibits a judge’s public statements when they: (1) involve a pending or impending matter and (2) might reasonably be expected to affect the outcome or impair the fairness of the pending/impending matter.

27. Pending and Impending Matters:

- a. A “Pending matter” is “a matter that has commenced. A matter continues to be pending through any appellate process until final disposition.” Terminology section of Code of Judicial Conduct.
- b. The Board finds and concludes that the following posts shared by Respondent pertained to pending matters: (1) Jody Satterfield “Wanted” Post; (2) Pair

Arrested in Mason County, WV; (3) Federal Trafficking Conviction; (4) Whitefeather/Lantz Matter.

- c. An “Impending matter” is “a matter that is imminent or expected to occur in the near future.” Terminology section of Code of Judicial Conduct.
- d. The Board finds and concludes that “Mindfulness at St. Mary’s” Post involves an impending matter. The original post was made by the Pleasants County Sheriff’s Office, and it can be reasonably construed that its reference to an investigation into medication mismanagement at Mindfulness concerns an impending matter within the meaning of the Code.

28. Reasonable Effect on Outcome or Impair Fairness:

- a. The second prong of the test is whether the public statement might reasonably be expected to affect the outcome or impair the fairness of the pending/impending matter.
- b. “Affect” is undefined in the Code of Judicial Conduct but its plain meaning is “to produce an effect upon (someone or something); to act on and cause a change in (someone or something).” *Affect, Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/affect> (last visited Feb. 11, 2026).
- c. There is no evidence that any of Respondent’s shared posts actually affected the outcome or impaired the fairness of any of the pending or impending matters identified above. Thus, the question is whether they could reasonably be expected to do so.
- d. *With the federal trafficking case involving the Martinsburg woman*, the shared article indicates that a conviction had already occurred and the defendant had been sentenced. Respondent’s post simply sharing the news article about the federal case and could not have reasonably changed the outcome or impaired the fairness of that matter.
- e. *With the Whitefeather and Lantz matter pending in Kanawha County*, the shared article reported that a conviction had already occurred and that the defendants were scheduled for sentencing. Respondent’s post merely relayed publicly available factual information and could not have reasonably changed the outcome

or impaired the fairness of that matter. Similarly, Respondent's "likes" on the negative comments to his shared post could not be reasonably expected to change the outcome or impair the fairness of the ultimate sentencing in another circuit far from his own.

- f. *With the arrest of the pair in Mason County*, the WSAZ news article shared by Respondent reported the arrest and generally relayed publicly available information contained in the criminal complaint and could not have reasonably changed the outcome or impaired the fairness of that matter.
- g. *With respect to the Jody Satterfield "Wanted" post*, the Board finds that Respondent's public statement could be reasonably expected to affect the outcome or impair the fairness of the pending matter. The post stated that Mr. Satterfield was wanted and believed to be located in Pleasants County—which includes Respondent's judicial circuit—or in an adjoining county. Respondent further acknowledged that he shared the post because he believed Mr. Satterfield to be armed and dangerous, based on the accusations described by law enforcement in the post. Had Mr. Satterfield been located within Respondent's circuit, arrested, and brought before Respondent's court, Respondent's public characterization of Mr. Satterfield as armed and dangerous could reasonably be expected to influence the fairness of the proceedings or otherwise impact the outcome.
- h. *With respect to the Mindfulness in St. Mary's Post*, which involved an impending matter (i.e. presumably on-going criminal investigation) within Respondent's judicial circuit, the Board finds that Respondent's public statement could be reasonably expected to affect the outcome or impair the fairness of any resulting proceedings which would be heard by Respondent. Respondent acknowledged that he shared the post to alert members of the community who may have been harmed by Mindfulness to contact law enforcement. In doing so, Respondent effectively, and albeit without malicious intent, engaged in investigative functions that could lead to the identification of potential victims. Had criminal charges been brought against individuals associated with Mindfulness, Respondent's public involvement in encouraging reports to law enforcement would have been

reasonably expected to impact the fairness or outcome of any subsequent proceedings before him.

29. Therefore, the Board finds and concludes that there is clear and convincing evidence that Respondent violated Rule 2.10(A) as it specifically relates to (1) the Jody Satterfield “Wanted” Post and (2) the Mindfulness in St. Mary’s Post.

Rule 3.1(C)

30. Rule 3.1(C) 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.”

31. The comment to Rule 3.1 states, “To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities.”

32. Incorporating the conclusions under Rule 1.2 and 2.10(A) above, as applicable, the Board concludes that the cumulative effect of Respondent’s Facebook reposts and shares, which were extrajudicial activities, would appear to a reasonable person to undermine Respondent’s impartiality.

Rule 3.7

33. Rule 3.7(A)(2) provides, “Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities ... soliciting contributions for such an organization or entity, but only from members of the judge’s family, or from judges over whom the judge does not exercise supervisory or appellate authority.”

34. Although Rule 3.7(A)(2) prohibits judges from “soliciting contributions,” the Code of Judicial Conduct defines “personally solicit” as a “direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication.”

35. Respondent's reposts did not contain any language from him that he actually "requested" or urged anyone to contribute to the two fundraisers about which he shared information. Respondent's refrain from adding any independent commentary encouraging or promoting the fundraisers further supports the conclusion that no independent or direct solicitation occurred. In sum, regardless of whether Respondent silently hoped his audience would support the causes shared, Respondent's Facebook "shares" constituted passive dissemination rather than a direct or active solicitation.

36. Moreover, the risk described in the Comment⁴ to Rule 3.1 is not implicated by Respondent's Facebook "shares" in this instance. For example, Respondent would lack knowledge of whether any user who viewed the shared post purchased a sandwich from Subway to support Mr. Rhodes, making it difficult to imagine why any viewer would feel compelled to participate in order to curry favor with Respondent.

37. Accordingly, the Board concludes that there is no clear and convincing evidence that Respondent solicited contributions as that term is used in Rule 3.7(A)(2).

CHARGE II

38. Charge II alleges Respondent violated Rules 1.1, 1.2, 2.6(A), and 2.1(A) of the Code of Judicial Conduct arising from entry of an Administrative Order and media interviews he gave regarding proceedings he conducted relative to the Department of Human Services.

39. The Board has analyzed these Rules and the evidence relative to Charge II, and applying the applicable clear and convincing standard, concludes as follows:

Rule 1.1

40. 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."

41. The JDC argues that Respondent violated "the law" when he entered the February 3, 2025 DHS Order without notice and opportunity to be heard. JDC argues Respondent should have issued a rule to show cause against the state officials and brought them in to address the matter.

⁴ The comment to Rule 3.1 states, "a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge."

42. The comment to Rule 3.1 provides,

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”⁵

43. Respondent’s conduct in issuing the Administrative Order must be evaluated through the lens of the unique and critical, front-line role that circuit court judges play in abuse and neglect proceedings.

44. As the Respondent’s Brief (emphasis omitted) notes:

On February 3, 2025, Judge Sweeney held a hearing to determine why DHS did not comply with his placement order. Transcript 50:24–16. The CPS worker assigned to L.S.’s case and DHS’s manager for the Third Judicial Circuit testified about the Staffing Crisis and their repeated attempts to resolve the Staffing Crisis internally at DHS: “I have begged Charleston for help, sent e-mail after e-mail to the deputy commissioner, who is my direct supervisor – ‘I need help. I need help. This is what I need. I need help.’” JA 0176:3–6. They begged for help from August 2024 through February 3025, but no help came. JA 0176:3–77:20. Having exhausted their internal remedies at DHS, they begged Judge Sweeney for help: “I’m asking and they don’t hear me. Maybe they will hear you in Charleston. I don’t know, but I need help.” JA 0177:23–24 ...

Judge Sweeney immediately recognized his responsibility: “My concern is this: If I just sit around and these things are happening and I don’t do anything, am I doing my job? Am I part of the solution or part of the problem? As I indicated earlier, the buck kind of stops here.” JA 0179:6–10; see JA 0056, 0315:15–17:13, 0334:16–18; Transcript 55:11–56:4; *cf. Jonathan R. v. Justice*, 41 F.4th 316, 321, 333 (4th Cir. 2022) (Appx. at 12) (“the buck does not stop with the Department”). Judge Sweeney could not delay; he needed to resolve those issues quickly.

⁵ As noted in Respondent’s post-hearing brief: “Judge Sweeney did not divulge information about any children in the Interviews; his comments were strictly about the Staffing Crisis.”

45. Per Syllabus Point 1 of *West Virginia Judicial Inquiry Commission v. Casto*, 163 W. Va. 661, 263 S.E.2d 79 (1979), “When a judge, with no intent to prejudice the rights of a party, makes a legal error, his act does not constitute a violation of Canon 2A or Canon 3 of the Judicial Code of Ethics.” *See also Matter of King*, 184 W. Va. 177, 180, 399 S.E.2d 888, 891 (1990)(“Absent evidence of deliberate, intentional failure to adhere to statutory guidelines, malicious intent to prejudice the rights of the party, or other improper motive, judicial discipline must not be imposed for failure to comply with statutory time limitations).

46. Even assuming *arguendo* that the Respondent’s February 3, 2025 administrative order constituted a legal error, there is no evidence that Respondent had any intent to prejudice the rights of a party or that he acted with improper motive.

47. To the contrary, the Board finds Respondent’s testimony credible that his fundamental goal was to address critical issues related to DHS staffing that were affecting children in abuse and neglect proceedings before him. In 2022, the West Virginia Supreme Court of Appeals recognized the importance of similar concerns regarding DHS understaffing, stating

[W]e would be remiss if we did not acknowledge our deep concern regarding the GALs’ allegations of systemic staffing issues in CPS offices statewide, as well as in the adoption foster care units, and the delays in the achievement of permanency for children involved in abuse and neglect cases caused by these deficiencies.

State ex rel. W. Va. Dep’t of Health & Hum. Res. v. Bloom, 247 W. Va. 433, 448, 880 S.E.2d 899, 914 (2022).

48. Additionally, in *In Re Brandon Lee H.S.*, 218 W. Va. 724, 733, 629 S.E.2d 783, 792 (2006), the Court rejected a due process challenge to a show-cause order issued to DHHR but not served on its individual agency officials as follows:

Critically, as the guardian ad litem notes, these officials were never subject to any sanctions in connection with the contempt finding. Moreover, there is no question that they were aware of the staff shortage situation at the Martinsburg office. The circuit court merely named these individuals in recognition of the fact that an organization such as DHHR can only act through its officials. We presume that the circuit court’s naming of these individuals in the contempt order was intended solely for the purpose of resolving the staff shortage in an expedited fashion. Rather than seeking to impose any form of individualized sanctions against these agency officials, the trial court was attempting to get the necessary players — those with hiring powers — on board immediately.

While the better practice is always to adhere to procedural requirements which necessarily include due process protections, in this case the lack of any sanctions against the agency heads combined with the fact that the agency itself was clearly a party to this proceeding who received full notice and an opportunity to be heard, suggest that the lack of individual service does not render the contempt order fatally defective.

49. Although, in hindsight, it may have been preferable for Respondent to issue a show cause order instead of the February 3, 2025 Administrative Order, the Board concludes that Respondent did not violate Rule 1.1 as it relates to entry of the February 3, 2025 Order.

50. However, because Respondent has been found to have violated other provisions of the Code of Judicial Conduct, as set forth herein, the Board concludes that there is clear and convincing evidence establishing a violation of Rule 1.1.

Rule 1.2

51. 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.”

52. The comment to Rule 1.2 states, “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.”

53. At the abuse and neglect hearing leading to entry of the February 3, 2025 order, Respondent heard concerning testimony regarding understaffing and other matters impacting children in abuse and neglect proceedings before him. Respondent opined from the bench that he had tried to issue a rule to show cause against DHS in the past but the department had been untruthful. Respondent stated it was DHS’s job to look out for the children but they had grossly failed. Respondent finally discussed various options to remedy the situation, including incarcerating the commissioner until the situation was resolved or getting the attention of the “folks in Charleston” through the Charleston Gazette or Metro News.

54. Respondent then proactively contacted a reporter for the Parkersburg newspaper to provide a copy of the DHS Order and give an interview. During the interview, Respondent indicated that “someone needs to stand up for the public, particularly the most vulnerable

members of our community-the children” implying that DHS was not living up to that responsibility.

55. Although the Board concludes that Respondent’s media interviews did not implicate public confidence in his independence or integrity, nor involve impropriety or the appearance of impropriety, Board concludes that he violated Rule 1.2 because his media interviews could undermine public confidence in his “impartiality.”

Rule 2.6(A)

56. Rule 2.6(A) of the Code of Judicial Conduct provides, “A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.”

57. Regarding Rule 2.6(A), Judicial Disciplinary Counsel argues that “Respondent used the wrong procedure for bringing the issue to the forefront. Respondent should have issued a rule to show cause either under the abuse and neglect case number or under a miscellaneous case number. Instead, he issued an administrative order which was not proper.”

58. Per Syllabus Point 1 of *West Virginia Judicial Inquiry Commission v. Casto*, 163 W. Va. 661, 263 S.E.2d 79 (1979), “When a judge, with no intent to prejudice the rights of a party, makes a legal error, his act does not constitute a violation of Canon 2A or Canon 3 of the Judicial Code of Ethics.” *See also Matter of King*, 184 W. Va. 177, 180, 399 S.E.2d 888, 891 (1990)(“Absent evidence of deliberate, intentional failure to adhere to statutory guidelines, malicious intent to prejudice the rights of the party, or other improper motive, judicial discipline must not be imposed for failure to comply with statutory time limitations).

59. While it may have been preferable, in hindsight, for Respondent to issue a show cause order instead of an Administrative Order, it essentially had the same effect, with a resolution of Respondent’s concerns successfully negotiated before the return date. There is insufficient evidence that Respondent had any intent to prejudice the rights of any party or that he had any other improper motive in the procedure he chose to use.

60. Accordingly, the Board concludes there is insufficient clear and convincing evidence that the procedure employed by Respondent clearly denied anyone’s “right to be heard according to law” or otherwise violated Rule 2.6(A).

Rule 2.10

61. 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.”

62. It has been noted as follows:

Not every television appearance by a judge on commercial television will be improper, or will create the appearance of impropriety. For example, it might be permissible for a municipal court judge to make an isolated appearance on public television to comment on the role of municipal court judges in the judiciary. Similarly, a one-time appearance by a Superior Court judge on a commercial television program dealing with the benefits and disadvantages of televising civil trials might be permissible. However, a judge’s ... appearance on a television program, whether the program was commercial or non-commercial, to comment on recent court decisions in New Jersey clearly would be improper.

In re Broadbelt, 146 N.J. 501, 505, 683 A.2d 543 (1996), cert. denied, 520 U.S. 1118, 117 S. Ct. 1251, 137 L.Ed.2d 332 (1997); *see also Papa v. New Haven Fed’n of Tchrs.*, 186 Conn. 725, 444 A.2d 196 (1982) (judge’s interview with newspaper concerning proceeding pending before him involving teachers’ strike was a clear violation of Code of Judicial Conduct, and since interview and judge’s finding in response to it raised reasonable question about his ability to remain fair and impartial); *Matter of Hey*, 188 W. Va. 545, 425 S.E.2d 221 (1992) (A judge’s negative comments about a child and parent made during a televised program and pertaining to a case over which the judge was presiding are directly related to the judge’s official position and therefore arise in the course of the judge’s official duties, for purposes of the Canon requiring judges to abstain from public comment about pending proceedings, notwithstanding the exception permitting public statements made in the course of official duties.)

63. As discussed above, Rule 2.10(A) creates a two-part test that prohibits a judge’s public statements when they: (1) involve a pending or impending matter and (2) might reasonably be expected to affect the outcome or impair the fairness of the pending/impending matter.

64. With respect to the first part of the test, Respondent's public statements to the media involved pending matters before him, primarily, the administrative proceeding to address the DHS understaffing, and generally to some extent, the underlying abuse and neglect proceeding though no confidential or identifying information appears to have been disclosed.

65. With respect to the second part of the test under Rule 2.10(A), the Board finds that Respondent's public statements could reasonably be expected to affect the outcome of the pending matter and, in fact, did influence the outcome. Respondent's statements to the media successfully created the impetus for DHS to promptly engage in efforts to address the understaffing concerns.

66. The Board has considered Respondent's argument that Rule 2.10(D) provides the following exceptions, "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."

67. However, Respondent's speech exceeded the scope of permissible explanation of court procedures. Respondent expressly acknowledged that he intended to use his public statements to the media to draw the attention of the Department of Human Services to his legitimate concerns regarding understaffing, and his statements achieved that purpose. Such intentional use of public statements to influence agency action and ultimately the outcome of his own proceeding falls far outside the narrow allowances of Rule 2.10(D).

68. Had Respondent relied solely on his Administrative Order—setting aside any procedural deficiencies—and had not contacted the media to, by his own admission, secure additional political leverage over public officials to do the right thing relative to DHS staffing, Rules 1.1, 1.2, and 2.10(A) would not be an issue.

69. Accordingly, the Board concludes that Respondent violated Rule 2.10(A) as his media interviews consisted of public statements that might reasonably be expected to affect the outcome or impair the fairness of the pending matter, including his admission that those public statements were motivated, in part, to bring about an outcome and unfair political pressure to bear on the Department of Human Services to achieve his legitimate goals.

III. SUMMARY OF VIOLATIONS FOUND

1. As to Charge I (Facebook Posts), the Board finds clear and convincing evidence that Respondent violated Rule 1.2, Rule 2.10(A), and Rule 3.1(C).

2. As to Charge I (Administrative Order & News Media), the Board finds clear and convincing evidence that Respondent violated Rule 1.2 and Rule 2.10(A).

3. Because violations to the Code of Judicial Conduct were found above, the Board found Respondent violated Rule 1.1.

IV. RECOMMENDED DECISION

1. 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.”

2. 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.”

3. 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.”

4. 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.”

5. “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).

6. “[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).

7. The West Virginia Supreme 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).

8. As to Charge I, the Board has found clear and convincing evidence that Respondent violated Rules 1.2, 2.10(A), and 3.1(C), of the Code of Judicial Conduct relative to his Facebook shares/reposts, but not clear and convincing evidence that Respondent violated 3.7(A)(2) relative to the same.

9. As to Charge II, the Board has found clear and convincing evidence that Respondent violated Rules 1.2 and 2.10(A) of the Code of Judicial Conduct arising from media interviews he gave regarding proceedings he conducted relative to the Department of Human Services, but not clear and convincing evidence that Respondent violated Rule 2.6(A) relative to the Administrative Order he issued.

10. Because violations to the Code of Judicial Conduct were found as to Charges I and Charges II, the Board found Respondent also violated Rule 1.1.

11. Relative to the five factors: (a) the Respondent’s conduct was related to the administration of justice and the public’s perception of the administration of justice; (b) the charges relate more to Respondent’s public persona; (c) the charges do not involve violence or a

callous disregard for our system of justice; (4) there has been no criminal indictment, complaints, or other charges; and (5) Respondent has not been the subject of any other ethics complaints, there was no existing West Virginia precedent regarding a judge's use of social media, no person complained about Respondent's use of social media nor relied on it to request his disqualification, Respondent removed the posts and reposts and changed his Facebook account to private, Respondent's concerns about severe understaffing by the Department of Human Services were legitimate and Respondent's actions resulted in correction by the Department before the return date on the Administrative Order, and other than the violations themselves, there are no other aggravating factors.

12. The Judicial Investigation Commission astutely noted, "The Commission is not unmindful that Respondent was trying to do something good for both the children and local DoHS workers when he initiated attempts to correct understaffing in his jurisdiction. As the old saying goes, 'A good deed is never lost.' Moreover, 'every time you do a good deed you shine the light a little farther into the dark' as was done in this case."

13. On the other hand, in hindsight, courts should speak through their orders, issued in accordance with the applicable rules. Publicly speaking regarding pending matters, particularly where the speech is clearly intended to influence the outcome or apply pressure to a party, is fraught with peril.

14. The Board notes there is a collateral aggravating factor issue arising from Joint Exhibit Nos. 10 and 11, which it addresses below:

- A. Joint Exhibit No. 10 relates to an October 20, 2023 Judicial Investigation Commission Advisory Opinion to a Circuit Judge (not the Respondent), distributed to all judicial officers and publicly available, concluded "a judge cannot go on television or other media and comment when the topic involves a pending or impending case before any court."
- B. Rule 2.13(d) of the Rules of Judicial Disciplinary Procedure states that "[a]n advisory opinion is not binding on the Judicial Hearing Board or the Court, but shall be admissible in any subsequent disciplinary proceeding involving the requesting judge."

- C. However, the JDC notes that “Rule 2.14 of the Rules of Judicial Disciplinary procedure state that ‘[t]he extent to which a 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.’”
- D. As Respondent was not the requesting judge for the Advisory Opinion and there is no clear and convincing evidence that Respondent personally “knew or should have reasonably known” about Joint Exhibit No. 10, the Board concludes that the advisory opinion issued in response to a request by another judge is not admissible and not an aggravating factor that can be used against Respondent in this matter.
- E. Furthermore, an advisory opinion is not binding upon the Judicial Hearing Board. To the extent that the *Advisory Opinion* pertains to Rule 2.10(A) and states that “a Judge cannot go on television or media to talk about any pending or impending case in any court” such a stringent limitation is inconsistent with the full text of Rule 2.10(A) which also requires a finding that the public statements must be “expected to affect the outcome or impair the fairness” of that matter.
- F. Joint Exhibit No. 11 consists of third-party comments on the Parkersburg News and Sentinel website either supportive of Respondent’s public comments or critical of DHS.
- G. With respect to Joint Exhibit No. 11, the Board concludes that no exception to the hearsay rule applies and that the exhibit constitutes inadmissible hearsay. Moreover, as the JDC correctly notes, whether a judge has violated the Code of Judicial Conduct is determined under an objective standard. Thus, regardless of whether there is evidence that a particular member of the public questioned a judge’s independence, integrity, or impartiality under Rule 1.2; or believed the judge abused the prestige of judicial office to advance personal or economic interests under Rule 1.3; or perceived that a person or organization was in a position to influence the judge under Rule 2.4(C); a judge may still be found to have violated these or other provisions of the Code when evaluated objectively. See, e.g., *Office of Disciplinary Counsel v. Medley*, 756 N.E.2d 104, 106 (Ohio 2001) (“In determining whether the relator in a disciplinary proceeding has proven

violations of the Code of Judicial Conduct involving the appearance of impropriety or partiality by clear and convincing evidence, an objective standard is to be applied to the conduct of the respondent.”); *In re Benoit*, 487 A.2d 1158, 1162 (Me. 1985) (“The appropriate way to evaluate the alleged violations of the Code of Judicial Conduct is to apply an objective standard. The inquiry is whether a reasonably prudent and competent judge would, in all the circumstances, have concluded that Judge Benoit’s actions were both obviously and seriously wrong.”); *In re Reddin*, 221 N.J. 221, 222 (2015) (“Applying the objective standard here, respondents violated Canons 1, 2A, and 5A(2). By socializing in public with a defendant awaiting trial in the very courthouse where one of the respondents served as a criminal judge, both judges reasonably called into question their impartiality and weakened public confidence in the judicial system.”); *Whittker v. State*, 2020 Kan. App. Unpub. LEXIS 247, at *7–8, 461 P.3d 862 (2020) (“Under either the statutory framework or the Kansas Code of Judicial Conduct, appellate review of claims of judicial bias or prejudice is based on an objective standard—’not in the mind of the court itself, or even necessarily in the mind of the litigant filing the motion, but rather in the mind of a reasonable person with knowledge of all the circumstances.’”); see also *State ex rel. Brown v. Dietrick*, 191 W. Va. 169, 174 n.9, 444 S.E.2d 47, 52 n.9 (1994) (“The question of disqualification focuses on whether an objective assessment of the judge’s conduct produces a reasonable question about impartiality, not on the judge’s subjective perception of the ability to act fairly.”).

15. Considering all of the above, the JDC recommends an admonishment for Respondent’s violations of the Code of Judicial Conduct.

16. 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. The Respondent be admonished for violations of Rules 1.1, 1.2, 2.10(A), and 3.1(C), of the Code of Judicial Conduct relative to his shared Facebook posts and likes, and Rules 1.1, 1.2, and 2.10(A) of the Code of

Judicial Conduct arising from media interviews he gave regarding proceedings he conducted relative to the Department of Human Services.

- b. The Respondent be ordered to pay the costs of the proceedings to the extent permitted by law.

Counsel to the Judicial Hearing Board is hereby directed to file a copy of this Recommended Decision with the Clerk of the Supreme Court of Appeals and to serve a copy on the members of the Judicial Hearing Board and counsel of record upon its entry.

Entered:

February 19, 2025



Hon. Michael D. Lorensen, Chairperson
Judicial Hearing Board