

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**IN THE MATTER OF
THE HONORABLE TIM SWEENEY,
JUDGE OF THE 3RD JUDICIAL CIRCUIT**

**SUPREME COURT NO. 25-475
JIC COMPLAINT NO. 13-2025**

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JUDICIAL DISCIPLINARY COUNSEL'S BRIEF

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JUDICIAL DISCIPLINARY COUNSEL’S BRIEF

I.

SUMMARY OF ARGUMENT

Respondent was appointed to a vacant Circuit Judge position in late 2010. He was first elected to the bench in 2012 and then won re-election in 2016 and 2024. He has served as a judge in his circuit continuously since 2010¹ (J. Ex. 18 at 1; Judicial Hearing Board (“JHB”) Tr. at 35, 40).

On or about February 10, 2025, Judicial Disciplinary Counsel (“JDC”) opened a complaint against Respondent (J. Ex. 1, BSP² 1-32; J. Ex. 18 at 1). On March 20, 2025, Respondent replied to the allegations contained in the complaint (J. Ex. 5, BSP 89-237; J. Ex. 18 at 1). The complaint, Respondent’s written response and sworn statement and all other evidence were submitted to the Judicial Investigation Commission (“JIC”) at its June 6, 2025 meeting (J. Ex. 18 at 2). By a vote of 7-1,³ the JIC decided to admonish Respondent pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure (“RJDP”) (J. Ex. 18 at 2). The written admonishment was issued on June 12, 2025 (J. Ex. 1, BSP 13-25; J. Ex. 18 at 2). Respondent timely filed his objection on July 3,

¹ Before he became a judge, Respondent served as a prosecutor for 25 years (JHB Tr. at 40).

² BSP refers to the Bates Stamp page numbers in the top right-hand corner of Joint Exhibits 1-17.

³ In the formal charges, Judge Moats clarified his lone dissenting vote. Judge Moats voted that Respondent violated the CJC as set forth in the Admonishment and formal charges but that pursuant to Paragraph 6 under scope of the Code of Judicial Conduct imposition of discipline was not necessary. Instead, he voted to dismiss the complaint with a private warning letter and to issue an advisory opinion to all judges (J. Ex. No. 1, BSP 10.)

2025 (J. Ex. 1, BSP 26-32; J. Ex. 18 at 2). On or about July 21, 2025, the JIC voted 8-1 to issue formal charges (J. Ex. 1, BSP 1-32; J. Ex. 18 at 2). The July 22, 2025 filing was consistent with RJDP 2.7(c) which states that if an objection is filed to an admonishment “the Commission shall file a formal charge. . . .” The first charge consisted of allegations that Respondent violated Rules 1.1, 1.2, 2.10(A), 3.1(C) and 3.7(A)(2) of the Code of Judicial Conduct (“CJC”) for various posts, reposts or shares from his Facebook account. The second charge alleged that Respondent violated CJC Rules 1.1, 1.2, 2.6(A) and 2.10(A) arising from an Administrative Order involving the Department of Human Services (“DHS”) and contacting a newspaper reporter, giving him a copy of the Order and sitting for an interview. Respondent timely filed his Answer denying any violations of the Code (J. Ex. 2, BSP 33-48); J. Ex. 18 at 2).

A hearing was held before the JHB on December 10, 2025 (JHB Tr.). At that time, JDC and Respondent introduced 17 joint exhibits. Joint Exhibits 1-9 and 12-17 were admitted into evidence without objection (JHB Tr. at 31). Although Respondent stipulated to the authenticity of Exhibits 10 and 11, he did raise objections (JHB Tr. at 31-32). With respect to Exhibit 10, which is a copy of JIC Advisory Opinion 2023-23 and an email showing that it had been transmitted to all judges on the day it was released, Respondent’s attorney stated:

I believe that under Rule of Judicial Disciplinary Procedure 2.13(d), it says 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.” I think that means, at least in this case, that it’s my understanding and absent a foundation that these opinions were requested by Judge Sweeney, that under the rule that those are not admissible against him.

(JHB Tr. at 31). JDC countered:

I believe Judge Sweeney will testify that he has a duty to remain current on the Code of Judicial Conduct and the ethics rules. The email shows that it was sent to all circuit judges, including Judge Sweeney. . . . [I]t was an advisory opinion that was directed to Judge Akers, but he received a copy of it, and under Rule 4.12 [of the Rules of Judicial Disciplinary Procedure], if he knew or should have known that

it was a perceived violation, that is a factor to be considered. And so, I would argue that he knew or should have known based on JIC Advisory Opinion 2023-23, and therefore, it is admissible because he did receive a copy of it.

(JHB Tr. at 32-33).

Concerning Exhibit 11, which are the comments appended to news articles about Respondent's conduct, his attorney stated:

[T]o the extent that they are being offered to show that folks had a bad opinion of DHS because of the interviews, there's no foundation for that. There may be bad comments in there where people say, "I don't like DHS," but to foundationally link one of those up to the other to the point where that can be made, I don't think that foundation has been laid. And I think that for that purpose to the extent that they are being offered to say, "Well, I really do have a problem against DHS," that they are classic hearsay. It doesn't fit into an exception.

(JHB Tr. at 32). JDC replied:

One thing we're forgetting is that there's an appearance issue, and a lot of the posts that are in there are pro-Judge Sweeney, and if they are pro-Judge Sweeney on this issue based on what he raised, then they've got to be anti-DOH because that's what happened here. And some of the comments are negative to DOH, and I think they're relevant because they follow this story. And it's not that we're saying that all we have to show is that there is an appearance issue – and there is an appearance issue – and I don't know any other way to show it unless we can get these documents in. Now, I would argue that appearance doesn't necessarily have to be shown. It's by the action itself that can create the appearance.

(JHB Tr. at 33-34). Partial stipulations were jointly admitted (J. Ex. No. 18; JHB Tr at 36-38).

Respondent testified that he entered into the stipulations of his own free will (JHB Tr. at 37).

Respondent was the sole witness to testify at hearing (JHB Tr. at 35 to 101). He acknowledged his sworn statement of May 22, 2025 (JHB Tr. at 71). Respondent testified that he answered the questions to the best of his ability (JHB Tr. at 71-72). He also acknowledged that he was truthful when answering (JHB Tr. at 72).

Both parties timely filed post hearing briefs. On February 19, 2026, the JHB declined to admit Exhibit Nos. 10 and 11 into evidence. However, it found that Respondent violated some but

not all of the alleged violations with respect to both Charges. The JHB also recommended that Respondent be admonished and pay costs. On March 18, 2026, JDC filed objections to the recommended decision and submitted costs in the amount of \$1,210.05. On March 19, 2026, Respondent filed his objections to the recommended decision.

II.

ASSIGNMENTS OF ERROR

JDC agrees with the Judicial Hearing Board, which found violations of the CJC with respect to Charges I and II. JDC disagrees with the recommended decision wherever the JHB found no violation with respect to charged misconduct. JDC also agrees with the recommended discipline of admonishment and the payment of costs in the amount of \$1,210.05.

As to specific assignments of error, JDC alleges the following with respect to Charge I: the JHB erred in not finding: (1) that all posts mentioning law enforcement and all posts involving criminal charges violated CJC Rule 1.2; (2) that all posts including those not liked but shared violated CJC Rule 2.10(A); that all posts mentioning law enforcement and all posts involving criminal charges violated CJC Rule 3.1(c); and that the solicitation reposts violated CJC Rule 3.7(A)(2). With respect to Charge II, the JHB erred in not: (1) admitting Joint Exhibit Nos. 10 and 11 at hearing; and (2) a violation of CJC Rule 2.6(A), particularly in light of its determination that a show cause order was preferable.

III.

STATEMENT REGARDING ORAL ARGUMENT

Although JDC would agree to submit this case on the briefs and record alone, the Court has indicated in its March 27, 2027 scheduling order that the matter “shall be set for oral argument under Rule 19 of the Rules of Appellate Procedure during the September 2026 Term of Court.”

IV.

STATEMENT OF THE CASE

A. CHARGE I:

Respondent has had a Facebook account for approximately 15 years (J. Ex. No. 7, BSP 250; J. Ex. No. 18 at 2). Respondent is the administrator of the account (J. Ex. No., BSP 250-251; J. Ex. No. 18 at 2). At all times related to the information set forth below, Respondent had a photo of himself in his judicial robe in a courtroom with the American flag behind him as his primary Facebook photo (J. Ex. No. 3, BSP 61; J. Ex. No. 7, BSP 259-260; J. Ex. No 18 at 2; JHB Tr. At 77). According to Respondent, it was from a picture taken after an adoption in his courtroom (J. Ex. No. 7, BSP 260). Respondent admitted he chose the picture (JHB Tr. at 64). Respondent also noted that he could see where the use of his robe “might have created the appearance that this was under some kind of authority that I had” (J. Ex. No. 7, BSP 261).

Respondent repeatedly posted or reposted items that constituted improper solicitations; created in the mind of the public, however wrong it may be, that he was biased in favor of law enforcement and prosecutors; and/or improperly commented on pending/impending court cases. The posts at issue fall into seven categories:

1. Fundraiser reposts:

- A 7/17/2024 repost stating St. Mary’s VFD Annual Ice Cream Social with a drawing for an ebike. 1 ticket for \$10. Underneath it 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.”
- A 7/3/2024 repost of a Jeremy Rhodes fundraiser at Calvary Baptist Church to help defray medical expenses. Mr. Rhodes is a member of the Pleasants County Sheriff’s Office. Respondent reposted the same fundraiser again on July 26, 2024.
- A July 25, 2024 repost of a Subway medical fundraiser for Jeremy Rhodes. Mr. Rhodes is a member of Pleasant’s County Sheriff’s Office.

(J. Ex. No. 3 at 70, 72, 74, 75; J. Ex. 18 at 2).

With respect to these posts, Respondent admitted placing all of them on his Facebook website and that he knew when doing so they would be seen by pretty much everybody (J. Ex. No. 7, BSP 251-252). He also knew at the time that Mr. Rhodes was a Pleasants County Sheriff's deputy (J. Ex. No. 7, BSP 252; JHB Tr. at 65). Respondent said he did not mean the posts to be solicitations as set forth in CJC Rule 3.7(A)(2) but that he viewed them as merely informational (J. Ex. No. 7, BSP at 254; JHB Tr. at 65-66, 71). Importantly, Respondent admitted the following:

Q. Would you agree that by reposting those, it does create the appearance, however wrong it may be, that you were soliciting on behalf of the entities that you're posting for?

A. Yeah. I would readily acknowledge the interpretation or understanding from someone who was in receipt of that.

(J. Ex. No. 7, BSP 254; JHB Tr. at 72-73). Importantly, Respondent also wanted the public to know that "I was spreading the word that this was going on, just so people could know I supported the deputy for whatever the event was" (J. Ex. No. 7, BSP at 254).

2. Law Enforcement/Prosecutor Posts:

Between March 4, 2024, and February 5, 2025, Respondent reposted several hiring posts for various law enforcement/prosecutor entities including the Tyler County Sheriff's Office, the Ritchie County Sheriff's Office, the Paden City Police Department, the City of St. Mary's Police Clerk, the State Police, the DNR Police and the Doddridge County Assistant Prosecutor.

(J. Ex. No. 3, BSP 68, 69, 71, 73, 78, 79, 86; J. Ex. 18 at 2-3; JHB Tr. at 74).

Respondent again asserted that the posts were informational only (J. Ex. No. 7, BSP 255; JHB Tr. at 66). Respondent testified:

Q. Do you understand why those posts could be construed by the public, however wrong it may be, that you are pro-prosecution and pro-law enforcement?

A. I understand that could be a conclusion drawn by somebody who read these posts. That is reasonable.

(J. Ex. No. 7, BSP 255).

3. An October 21, 2024 repost from the Pleasants County Sheriff's Post beginning with "Attention Drug Dealers:"

This was a tongue-in-cheek posting by the Pleasants County Sheriff's Department which said, "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!"

(J. Ex. No. 3, BPS 77; J. Ex. 18 at 3).

Respondent said he posted it because he thought "it was pretty funny." (J. Ex. 7, BSP 257; JHB Tr. at 67). Respondent also testified:

- Q. Can you see where adding that post to the posts you have about job opportunities within the police departments and the sheriff and the prosecutor's office, and where at least two of the fundraising posts involve a sheriff's department, do you see where that may create the appearance, however wrong it may be, that you are pro-prosecution, pro-law enforcement?
- A. I can see, yes, that contextually and cumulatively that would perhaps support that conclusion.

(J. Ex. No. 7, BSP 259; JHB Tr. at 74).

4. A July 2023 repost that Jody Alan Satterfield is wanted for Attempted Murder and Attempted Arson in Calhoun County—Considered Dangerous.

Underneath the re-post from the Pleasants County Sheriff's Office it further stated: "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."

(J. Ex. No. 3, BSP 62-64; J. Ex. No. 18 at 3).

Respondent acknowledged that the matter was pending at the time he made the post (JHB Tr. at 74). Respondent stated that the post was informational but also acknowledged it was not his job to let the public know that an alleged criminal was on the loose:

- Q. [Y]ou would agree that at the time that you posted it, he was wanted for a crime so the case could've been pending; is that correct? Or was it?

A. Yeah, I would've guessed it was a pending case because they were wanting him, and they had not brought it to court.

....

Q. Okay. Can you now see where that, coupled with all the other prosecutor, law enforcement things, may create the appearance, however wrong it may be, that you are pro-prosecution, pro-law enforcement?

A. Uh-huh. Maybe with the other ones. But I think there's probably less likelihood that somebody's going to look at that and think that I'm pro-prosecution versus I'm just kind of public safety and warning you. This is on there, and I'm passing it along that there might be somebody out there that's dangerous. But that conclusion would not be unreasonable.

Q. Isn't that the role of the prosecutor and law enforcement to let the public know, and not the judge?

A. Yeah. Maybe more so. Maybe more so. Maybe it's a matter of shifting gears from 25 years as a prosecutor, being in a community. So I can see that. Probably more so. I would agree.

(J. Ex. No. 7, BSP 265-267; JHB Tr. at 67-68, 74).

5. Human Trafficking Reposts:

- 1) The first involved an October 31, 2023 repost from WSAZ-TV which stated, "Pair arrested for alleged human trafficking. State Police say Pearson 'preys on vulnerable, drug addicted, homeless.'"
- 2) The second involved a November 1, 2023 repost from Newsbreak.com which stated, "West Virginia woman trafficked teen victim for just under \$14,000; sentenced to 40 years."

(J. Ex. No. 3, BSP 65-67; J Ex. No. 18 at 3).

Respondent acknowledged that both posts involved pending cases (J. Ex. No. 7, BSP 267, 269; JHB Tr. at 75). Respondent also acknowledged that it was inappropriate for him to post about pending matters (J. Ex. No. 7, BSP 269-270).

6. January 29, 2025 Repost from the Kanawha County WV Prosecuting Attorney on the Whitefeather/Lantz case:

Whitefeather/Lantz were a couple who adopted several African American children and were the subject of a high-profile criminal case in Kanawha County. In late January, a jury convicted the couple of multiple charges of abusing and trafficking the adopted children. They were later sentenced to long prison terms. Respondent reposted a story about the couple's conviction/sentence which generated multiple negative comments on his

Facebook page. Respondent liked three of the negative comments, including “So terrible!! Thankful these two have been convicted. . . .;” and “They don’t deserve three hots and a cot.”

(J. Ex. No. 3, BSP 80-85; J. Ex. 18 at 3; JHB Tr. at 76-79).

Respondent acknowledged making the post and liking three negative comments appended thereto (J. Ex. 7, BSP 272-275, JHB Tr. at 76-79). He also noted that the matters were still pending as they could be appealed to the State Supreme Court. Respondent also acknowledged that by liking the negative comments he was saying that he was thankful the two were convicted (J. Ex. No. 7, BSP 274-275). With respect to his actions, Respondent stated:

Q. Why do you agree that that post is not appropriate?

A. In 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.

(J. Ex. No. 7, BSP 275). Respondent stated in his sworn statement, “Well, you know, in retrospect, the whole package of my involvement in publicizing these matters . . . has the risk of impugning the impartiality of the judiciary.” At hearing, Respondent acknowledged that by wearing his robe, it gave the impression that he was speaking in his official capacity when he made the Facebook posts (JHB Tr. at 79).

7. An August 18, 2024 Repost from the Pleasants County Sheriff’s Office.

The post contained a photo of a Sheriff’s SUV and stated, “If any of your children were patients at Mindfulness in Saint Marys and had any issues regarding medication that was prescribed please reach out to us at 304-684-2285.”

(J. Ex. No. 3, BSP 76; J. Ex. No. 18 at 3). Since receiving the complaint, Respondent has taken down all offending posts, has changed his primary Facebook photo and set his account to private (J. Ex. No. 3, BSP 277; JHB Tr. at 64).

B. CHARGE II

In October 2024, Respondent held a Rule 39⁴ abuse and neglect hearing involving a minor. Respondent ordered the child to be placed in an out-of-state treatment facility (J. Ex. No. 7, BSP 278-280; J. Ex. No. 18 at 4; JHB Tr. at 50-51, 80-81). The local CPS workers were required to go through certain hoops and meet certain deadlines before the child could be sent to an out-of-state facility (J. Ex. No. 5, BSP 169-172; J. Ex. No. 18 at 4).

Respondent held another Rule 39 hearing on February 3, 2025, to find out why CPS had not yet sent the child to placement (J. Ex. No. 5, BSP 160-196; J. Ex. No. 7, BSP 282-283, 289; J. Ex. No. 18 at 4; JHB Tr. at 80-82). The only people in attendance were the prosecuting attorney, the child's attorney, the Guardian Ad Litem, two probation officers, and two local CPS workers (J. Ex. No. 5, BSP 160; J. Ex. No. 18 at 4; JHB Tr. at 84). Neither the DHS Secretary nor any of his immediate subordinates were in attendance (J. Ex. No. 5, BSP 160; J. Ex. No. 18 at 4; JHB Tr. at 84).

The local workers testified at hearing (J. Ex. No. 5, BSP 168-195; J. Ex. No. 18 at 4; JHB Tr. at 51, 84). They stated that the reason for the delay was that they were severely overworked and understaffed and had to prioritize cases based on who was safe and who wasn't by way of

⁴ Rule 39(b) of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings ("RPCANP") states:

At least once every three months until permanent placement is achieved as defined in Rule 6, the Court shall conduct a permanent placement review conference, requiring the multidisciplinary treatment team to attend and report as to progress and development in the case for the purpose of reviewing the progress in the permanent placement of the child.

J. Ex. No. 12, BSP 426; J. Ex. No. 18 at 4). Permanent placement occurs when the petition has been dismissed and the child has been returned home or to a relative with no custodial supervision by DHS; has been placed in the permanent custody of a non-abusive parent or a permanent out-of-home placement of the child has been achieved following entry of a final disposition order. A permanent-out of home placement has been achieved only when the child has been adopted, placed in a legal guardianship, placed in another planned permanent living arrangement or emancipated (J. Ex. No. 12, BSP 394; J. Ex. No. 18 at 4). RPCANP 6 states that "[e]ach child abuse and neglect proceeding shall be maintained on the circuit court's docket until permanent placement of the child has been achieved" (J. Ex. No. 12, BSP 398; J. Ex. No. 18 at 4).

threat assessment (J. Ex. No. 5, BSP 174-177, 183-184, 186-191; J. Ex. No. 18 at 4; JHB Tr. at 52, 84-85).

In addition to counties in the Circuit, the CPS workers were also required to cover Upshur and Lewis (J. Ex. No. 5, BSP 173-175; J. Ex. No. 7, BSP 285; J. Ex. No. 18 at 5). The workers testified that the individual assigned the child's case had one hundred families on her caseload whereas the average should be no more than ten (J. Ex. No. 5 at 183-184, 186; J. Ex. No. 18 at 5; JHB Tr. at 85). One of the workers also asked the judge to help obtain more staff (J. Ex. No. 5, BSP 173-177; J. Ex. No. 18 at 5). Both workers assured the judge that the child in question was safe (J. Ex. No. 5, BSP 175, 192-193; J. Ex. No. 18 at 5).

Respondent opined from the bench that he attempted to issue a rule to show cause in 2014, but DHS was untruthful (J. Ex. No. 5, BSP 165; J. Ex. No. 7, BSP 288; J. Ex. No. 18 at 5). Respondent noted that he "believe[d] that it is probably the department's job to look out for" the children but "in this case the department has failed grossly in that regard" (J. Ex. No. 5, BSP 163; J. Ex. No. 18 at 5). He also discussed the process of civil contempt. Respondent stated:

I think that it is unfortunate and I'm loathe to get into managing the department, what it does, its employees, and whether they do their job; however, I think it probably falls upon me to make sure that happens because probably the buck stops here.

(J. Ex. No. 5, BSP 164). Importantly, Respondent said:

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.

(J. Ex. No. 5, BSP 178-179) (emphasis added; J. Ex. No. 18 at 5; JHB Tr. at 85-87). Respondent testified that he did not avail himself of any alternatives except contacting the news media as the matter needed imminent resolution (JHB Tr. at 88-89). Yet, Respondent couldn't answer why he set a comeback date seventeen days later if it required imminent resolution (JHB Tr. at 88-89).

At the conclusion of the abuse and neglect hearing, Respondent ordered the parties to come back on February 20, 2025, at 9:00 a.m. (J. Ex. No. 5, BSP 196; J. Ex. No. 18 at 5). He indicated that he would "enter a placement order which speaks for itself to become part of the record in this proceeding to address the matters that have been discussed today" (Exhibit No. 5, BSP 196; J. Ex. No. 18 at 5). Respondent said absolutely nothing about ordering anyone from the state office to appear and serve as case workers, etc. In the February 3, 2025 placement order, Respondent made a finding that the "West Virginia Department of Human Services **HAS NOT** made reasonable efforts to find appropriate placement. . . ." (J. Ex. No. 6, BSP 238; J. Ex. No. 18 at 5; JHB Tr. at 90).

Respondent also entered another order on February 3, 2025, that contained the heading "In Re: Critical Understaffing of the Department of Human Services" and has been referred to by Respondent as an administrative order ("DHS Order") (J. Ex. No. 3, BSP 53). There was no case number associated with the Order. The Order required members of the State Office, including but not limited to, the Commissioner, the General Counsel and the Deputy Commissioner of Field Operations to appear in Court, "personally, under penalty of contempt" on February 20, 2025, at 9:00 a.m. "to receive their case assignments" as CPS workers, removal workers, case workers, court workers, etc. (J. Ex. No. 3, BSP 53; J. Ex. No. 18 at 6). At hearing, Respondent acknowledged that DHS is a separate branch of government (JHB Tr. at 91). He testified that it

was an executive branch agency (JHB Tr. at 91). He also testified that as an executive branch agency, DHS had authority over hiring and staffing (JHB Tr. at 91).

Respondent admitted contacting a reporter for the Parkersburg newspaper on February 4, 2025, providing him with a copy of the DHS Order and giving an interview on the subject (J. Ex. No. 7, BSP 295-296; J. Ex. No. 18 at 6; JHB Tr. at 60, 88). The article appeared in the newspaper the next morning⁵ (J. Ex. No. 3, BSP 54-60; J. Ex. No. 18 at 6). In the article, Respondent said the Order was meant to get the attention of DHS (J. Ex. No. 3, BSP 56; J. Ex. No. 18 at 6). He also said:

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.

(J. Ex. No. 3, BSP 56; J. Ex. No. 18 at 6).

On or about February 5, 2025, Respondent went on MetroNews to address the DHS Order (J. Ex. No. 8, BSP 330-340; J. Ex. No. 18 at 6). He started the interview by saying:

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.

(J. Ex. No. 8, BSP 332-333 [emphasis added]; J. Ex. No. 18 at 6). He again reiterated that “the buck stops with me” and that “somebody needs to take the role . . . as a leader to get something to happen on this” (J. Ex. No. 8, BSP 334; J. Ex. No. 18 at 7).

⁵ Based upon information and belief, this occurred before the DHS officials had received the Order.

Respondent also indicated that he was fully prepared to move forward on February 20, 2025, as “[w]e have **documented in the hearing that we had Monday**, the issues that 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**” (J. Ex. No. 8, BSP 335 [emphasis added]; J. Ex. No. 18 at 7). Importantly, he also noted that “we’ve got people that are in some cases tenfold in excess of the recommended caseload to get this done” (J. Ex. No. 8, BSP 336; J. Ex. No. 18 at 7). This information clearly came from the confidential hearing.

After the MetroNews interview, Respondent met with the DHS Secretary and worked out an agreement which resulted in some additional help in his jurisdiction. He then canceled the February 20, 2025 DHS hearing (J. Ex. No. 7, BSP 321; J. Ex. No. 18 at 7). Nonetheless, Respondent testified that he continued to monitor the staffing situation (JHB Tr. at 63, 97).

In his reply and sworn statement, Respondent denied any impropriety with respect to the media interviews. Respondent acknowledged that the purpose of the February 3, 2025 hearing was to “follow up on the Department to accomplish what had been directed in October with regard to the out of state placement.” Respondent admitted that he wanted to know why the placement “hadn’t been done.” He further admitted that the two CPS workers testified that the reason for the delay was because of understaffing in his Circuit:

- Q. So you did not realize the severity of the understaffing in February until these two people testified; is that correct?
- A. I think understaffing contributed to my previous issues. Yes, I was totally surprised of the few available positions or positions that were supposed to be there being filled, and the requirement of the supervisors to do the CPS worker’s job.

(J. Ex. No. 7, BSP 387).

Respondent did not give the State officials the requisite notice and opportunity to be heard before issuing the February 3, 2025 DHS Order (J. Ex. No. 7, BSP 299). Respondent agreed that

the two local CPS workers could not bind the State Office. Respondent stated, “From a legal point of view, I don’t think that level supervisor could tell them what to do in Charleston” (J. Ex. No. 7, BSP 298; JHB Tr. 91-93). When asked if he should have issued a rule to show cause against the State officials and brought them in to address the matter, he said he did not believe he had too (J. Ex. No. 7, BSP 299-300). Respondent admitted that he did not know the reasons for the understaffing in his area. He said, “I don’t know that I needed to know. I just know that there was” (J. Ex. No. 7, BSP 299).

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 that was not proper. Generally administrative orders are legal directives issued by circuit courts that most often involve procedural matters, case management or the implementation of rules and regulations. They generally address various aspects of court operations. Respondent has no authority from an administrative standpoint over DHS, as it is a separate executive branch agency.

Respondent acknowledged that abuse and neglect proceedings are confidential and that the judge is really the only one that can release information from such hearings⁶ (J. Ex. No. 7, BSP 289-290). Respondent testified that the entire February 3, 2025 hearing was confidential (JHB Tr. at 82-83). However, Respondent stated that he was not sure about making findings and conclusions

⁶ RPCANP 6(b) states that “[a]ll records and information maintained by the Courts in child abuse and neglect proceedings shall be kept confidential except as otherwise provided in W. Va. Code Chapter 49 and this Rule” (J. Ex. No. 12, BSP at 399). W. Va. Code 49-5-101(a) states that “all records and information concerning a child or juvenile that are maintained by . . . a child agency or facility, court or law enforcement agency are confidential and shall not be released or disclosed to anyone.” W. Va. Code 49-5-101(b) sets forth exceptions to the confidentiality rules and includes “pursuant to an order of a court of record: Provided that the court shall review the record or records for relevancy and materiality to the issues in the proceeding and safety and may issue an order to limit the examination and use of the records or any part thereof. W.Va. Code 49-5-101(c) allows for disclosure to a grand jury, circuit court or family court “upon a finding that information in the records is necessary for the determination of an issue before the grand jury, circuit court, or family court.” Importantly, Respondent did not make any such findings in the February 3, 2025 Order. Interestingly, although Respondent made no order with respect to the release of information before speaking to the news media, he issued an administrative order to provide the undersigned with a copy of the February 3, 2025 abuse and neglect hearing (J. Ex. No. 13).

pertaining to the release of any confidential information, but “I would say I didn’t release any information from an abuse and neglect case. I don’t believe I did” (J. Ex. No. 7, BSP 290). Instead, Respondent stated, “[T]he hearing precipitated the administrative order. And the administrative order was simply done as an administrative order to keep it separate from the abuse [and] neglect proceeding” (J. Ex. No. 7, BSP 291).

Respondent denied that the DHS Order was a result of the hearing held. Instead, he said:

I think Monday’s hearing precipitated [the order]. It was a catalyst. I think it was done based on the many things I enunciated in my comments from the bench, as are reflected in the transcript from the _____ hearings. And it was a culmination of the whole situation up to and including that particular case.

(J. Ex. No. 7, BSP 312). However, Respondent acknowledged that testimony elicited during the abuse hearing about understaffing surprised him:

- Q. So you did not realize the severity of the understaffing in February until these two people testified; is that correct?
- A. I think understaffing contributed to my previous issues. Yes, I was totally surprised of the few available positions or positions that were supposed to be there being filled, and the requirement of the supervisors to do the CPS worker’s job.

J. Ex. No. 7, BSP 287). Respondent also acknowledged that part of the DHS defense as to why the out-of-statement placement did not take place was that they were understaffed (J. Ex. No. 7, BSP at 289).

Respondent denied any violation of a party’s right to notice and an opportunity to be heard before ordering them to work. Respondent testified:

[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.

(J. Ex. No. 7, BSP at 300). Respondent also testified:

- Q. They [the State DHS officials] were not at the February 3rd hearing; is that correct?
- A. Correct.
- Q. Okay. Did you let them know before you entered the order that that was going to be part of the order?
- A. No. I did not let them know anything.
- Q. Did you speak with them prior to entering the order?
- A. No.
- Q. Did you have a hearing with them prior to entering the order?
- A. Not with them, personally.
- Q. Okay. Is it fair to say that the people that were in front of you could not bind the people at the state office?
- A. Yes.
-
- Q. So at the time you entered this, you, not having any contact with them [the State DHS officials], would not know of the possible reasons for the understaffing, would you?
- A. Nope.

(J. Ex. No. 7, BSP 297-298). Respondent also indicated it was the Department's responsibility to challenge the order and not for him to afford DHS any notice and an opportunity to be heard.

Respondent also did not dispute that both the abuse and neglect and the DHS staffing issue were pending since he set subsequent hearings for both. Respondent testified:

- Q. So if you have the _____ matter which is pending and you have this matter [the February 3 Order] why go to the news media?
- A. 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.
- Q. You would agree, though, that if you've got two pending matters and you're on MetroNews talking about it and you're talking to Parkersburg, and you're talking about pending or impending cases, you're violating Rule 2.10(a)?

....

- A. Well, I don't believe it was a violation of the _____ hearing because I never disclosed any details or information about that. I referred to it generally number one. Number two, the fact that it was an ongoing matter, it was an administrative proceeding. I didn't consider it a case. I considered it an action that the court was taking for purposes of addressing what I identified as a problem in the administrative order. And furthermore, [I] did not feel that there was really anything to be done or pending other than to try to formulate some kind of a consensus or solution as a result of the consensus to address the issues. So I really didn't see it that way. And I understand what you're saying. If you say the administrative order is a case, I understand. I understand your question, but I didn't perceive it that way and don't consider it to be that.

(J. Ex. No. 7, BSP 313-315).

It should be noted that the Secretary of DHS was new at the time, having started his position toward the end of January 2025 (J. Ex. No. 14, BSP 447). General Counsel Chanin Krivonyak had just started her position on January 13, 2025 (J. Ex. No. 14, BSP 447). Both were named in the February 3, 2025 Administrative Order. Ms. Krivonyak testified that in the short time they had been there and before Respondent's issuance of the order, they had already spoken with representatives from the State Supreme Court about making some changes:

- Q. And you indicate in there that "Prior to receiving your order, we have expressed how it is our desire to facilitate a cooperative working relationship with the judiciary prosecuting attorneys, and the Department of Human Services moving forward to foster a collaborative effort. We intend to be accessible.
- A. [W]e decided early on, even before the order from Judge Sweeney, that we needed to make an effort to improve relationships with the judiciary and prosecutors across the state so that we could all work together In the short time we've been here, we knew that that was something we were going to have to do if we were going to change things because you couldn't continue to fight with judges and prosecutors and expect to make any real difference in the system. So we knew that those were relationships, among others that we were going to have to repair.

(J. Ex. No. 14 at BSP 456-457). Ms. Krivonyak also expressed surprise at the February 3, 2025 Order, saying "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” (J. Ex. No. 14, BSP 475). When asked if she thought it was appropriate for judges to go to the news media and try to plead their case, Ms. Krivonyak answered:

- A. 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.
- Q. If I represented to you that in the hearing, Judge Sweeney indicated that he was going to the news media, do you find that troubling?
- A. I wish he wouldn’t. And I don’t know that any judges should.

(J. Ex. No. 14, BSP 478-479).

Judge Sweeney’s actions generated two types of responses from the public (J. Ex. No. 11, BSP 353-390). There were those who praised the judge for what he had done, making him the focus of the story and by inference, casting a shadow on DHS.⁷ The remainder of the comments were negative toward DHS, who is regularly a party in abuse and neglect cases before the Judge. This in turn created the appearance, however wrong it may be that Respondent was anti-DHS.

V.

ARGUMENT

A. THE EVIDENCE IS CLEAR AND CONVINCING THAT RESPONDENT VIOLATED THE CJC AS CHARGED IN COUNTS I AND II OF THE FORMAL CHARGES.

⁷ Interestingly, the following occurred in or around June 28, 2025, on social media in relation to an op-ed submitted by Former Supreme Court Justice Margaret Workman:

Justice Workman:	I submitted the following op-ed to the Charleston Gazette, but do not know if it will be printed. I do believe that I should speak out for judges who are sanctioned for . . . See more
Tim Sweeney:	Amen
Karen Holub:	Tim Sweeney Court Reporter Dwayne Price posted this. He worked for the Master of Delay in Kanawha County, Judge Casey, and then later free-lanced though retired now. He felt it important, and so do I. What fool came up with sanctioning judges in abuse and neglect cases.
Tim Sweeney:	Karen Holub Appreciate you sharing and agree completely.

(Jt. Ex. No. 11, BSP 367) (emphasis added). This exchange, which is considered an opposing party’s statement and not hearsay and which was made after the JIC’s issuance of an admonishment but before Respondent submitted his written objection thereto, demonstrates that Respondent has not learned his lesson with respect to posting on social media makes it appear to the public, however wrong it may be, that he believes former Kanawha Circuit Judge Casey was a master of delay which arguably among other Code provisions not charged, would violate CJC. Rule 1.2.

JDC has the burden of proof in judicial disciplinary proceedings. RJDP Rule 4.5 states that “[i]n order to recommend the imposition of discipline on any judge, the allegations of the formal charge must be proved by clear and convincing evidence.” See *Matter of Callaghan*, 238 W. Va. 495, 796 S.E.2d 604 (2017); *In re Wilfong*, 234 W. Va. 394, 765 S.E.2d 283 (2014); *In re Watkins*, 233 W. Va. 170, 757 S.E.2d 594 (2013); and *In re Toler* 218 W. Va. 653, 625 S.E.2d 731 (2005). Clear and convincing evidence is the middle standard of proof. It means something more than preponderance of the evidence or probable cause and something less than proof of guilt beyond a reasonable doubt. See generally *Judicial Inquiry Commission of Virginia v. Wymack*, 745 S.E.2d 527 (VA 2012).

It is the burden of proof utilized in judicial and lawyer discipline cases. West Virginia has not specifically defined “clear and convincing” evidence as it relates to judicial discipline. Pennsylvania judicial disciplinary cases define “clear and convincing” as “evidence ‘that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.’” *In re Eskin*, 150 A.3d 1042, 1046 (PA 2016) (citations omitted). North Dakota judicial disciplinary cases state that “the evidence must be such that the trier of fact is reasonably satisfied with the facts the evidence tends to prove as to be led to a firm belief or conviction.” *In re Disciplinary Action Against McGuire*, 685 N.W.2d 748, 759 (ND 2004). It means “evidence which leads to a firm belief or conviction that the allegations are true.” *Id.* It “does not require a showing by ‘100 per cent certainty’ or ‘absolute certainty.’” *Id.* The evidence presented also “need not be undisputed to be clear and convincing. A factfinder need not believe the greater number of witnesses” *Id.*

Based upon the evidence adduced at hearing, the JDC has proved by clear and convincing evidence all the CJC violations contained in the formal charges. With respect to Charge I, JDC

has proved all violations pertaining to all of the Facebook likes, posts and reposts, including but not limited to, those involving solicitation. With respect to Charge II, JDC has proved all violations including, but not limited to, CJC Rule 2.6.

1. Rule 1.1 – Compliance with the Law

The JHB correctly held that Respondent violated CJC Rule 1.1 with respect to Charges I and II. The Rule provides that “a judge shall comply with the law, including the West Virginia Code of Judicial Conduct.” Violations of any state or federal law or the CJC is a violation pursuant to Rule 1.1. The Clerk’s Notes on Rule 1.1, which was adopted by the Court on November 12, 2015, and became effective on December 1, 2015, states that the provision follows the 2007 Model Code. The Clerk’s Notes provide that “[i]n keeping with the primary objective of the 2007 Model Code revisions, the new rules are designed to be black-letter statements about what judges ‘must’ do” Importantly, CJC Preamble [6] states “the black letter of the Rules is binding and enforceable.”

In *Matter of Ferguson*, 242 W. Va. 692, 841 S.E.2d 887 (2020), the JHB did not recommend any violation of Rule 1.1, holding that it would be considered duplicative of a finding of a violation of another Code provision. The JIC challenged that ruling before the State Supreme Court. The Court ruled against the JHB stating that by violating another Code provision, a judge may also violate Rule 1.1. *Id.* In the *Matter of Williams*, 248 W. Va. 106, 887 S.E.2d 231 (2023), the JHB found no violations of Rule 8.4(a) of the Rules of Professional Conduct even though it found multiple violations of Rule 8.4(d) because they believe it would be duplicative. The State Supreme Court held otherwise determining that a violation of 8.4(d) of the Rules of Professional Conduct also amounted to a violation of Rule 8.4(a). *Id.*

It is evident that Respondent violated multiple other provisions of the Code of Judicial Conduct as set forth in the formal charges and in this brief below. A finding of even one violation of another provision of the CJC for either charge also constitutes a violation of Rule 1.1. Therefore, the Court must find that Respondent violated Rule 1.1. Respondent also violated Rule 1.1 by not following the confidentiality rules set forth for abuse and neglect cases. He willingly revealed confidential information from the February 3, 2025 abuse and neglect hearing without making findings as to the necessity to do so. Therefore, it is reasonable for the Court to find one or more violations of Rule 1.1 based on other violations it finds in relation to the charges.

2. Rule 1.2 – Confidence in the Judiciary

Rule 1.2 states:

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.

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.

The Code defines impropriety as conduct that violates the law, court rules or provisions of the CJC and conduct that undermines a judge's independence, integrity or impartiality. Independence means "a judge's freedom from influence or controls other than those established by law." Impartiality means 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." Integrity is defined as "probity, fairness, honesty, uprightness and soundness of character." A judge who appears partial to one side or the other also appears to lack fairness and independence.

In the *Matter of Neely*, 178 W. Va. 722, 364 S.E.2d 250 (1987), a Supreme Court justice was admonished for using his secretary to babysit his child holding that the conduct created an appearance of impropriety in violation of Rule 2A of the former Code of Judicial Ethics. Rule 2A is the equivalent of Rule 1.2 of the current Code. The Court stated:

[T]he drafters recognized that the public expects a judge to be a model of integrity and a paradigm of "proper" conduct. It is imperative to our system of justice that this model be untarnished by even the appearance of impropriety. A loss of confidence in the judiciary can only lead to diminished respect for the law. "If gold will rust, what will iron do?"

Id. at 726, 365 S.E.2d at 254.

West Virginia Rules of Evidence ("WVRE") Rule 801(a) defines statement as a "person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion." This Rule mirrors the corresponding Federal Rule of Evidence 801.

In *Bland v. Roberts*, 730 F.3d 368 (4th Cir. 2013) (a political firing case where at least one employee lost his job in part for liking an opponent's campaign page on Facebook), the United States Court of Appeals for the Fourth Circuit stated:

“Liking” on Facebook is a way for Facebook users to share information with each other. The “like” button which is represented by a thumbs-up icon, and the word “like” appear next to different types of Facebook content. Liking something on Facebook “is an easy way to let someone know that you enjoy it. . . .” In sum, liking a political candidate’s campaign page communicates the user’s approval of the candidate and supports the campaign by associating the user with it. In this way it is the Internet equivalent of displaying a political sign in one’s front yard, which the Supreme Court has held is substantive speech. . . . Just as placing an “Adams for Sheriff” sign in his front yard would have conveyed to those passing his home that he supported Adam’s campaign, [the] liking [of] Adam’s Campaign Page conveyed that message to those viewing his profile or the Campaign Page.”

Id. at 386 (citations omitted). In *People v. Trump*, 211 N.Y.S.3d 784, 84 Misc.3d 922 (2024), a Supreme Court found that “a repost, whether with or without commentary by the Defendant, is in fact a statement of the Defendant.” *Id.* at 789, 84 Misc.3d at 927.

In *In re Slaughter*, 480 S.W.3d 842 (TX 2015), a special court of review appointed by the Texas Supreme Court stated with respect to a judicial disciplinary case:

“Social media is having a transformative effect on society as it revolutionizes the way we share information and ourselves. . . .” “While the technology involved may be newer, at their core, social networking sites are simply platforms for communication and social interaction. Judges have had to contend with the ethical risks, such as the appearance of impropriety posed by other forms of social interaction for decades, if not centuries. . . .” “Existing rules of judicial conduct are more than sufficient to provide guidance when it comes to judges’ use of social media, once one recognizes that communications and interaction via social media are no different in their implications than more traditional forms of communication.” Thus, our analysis of allegations of misconduct should not change simply because the communication occurred online rather than offline. . . . Our analysis, therefore, should focus on the substance of the comments rather than the vehicle by which they were disseminated.

Id. at 850. In yet another judicial discipline case involving social media posts where the judge was suspended for the remainder of his term, the Supreme Court of Pennsylvania stated that [i]t was not just the topics of the posts but “their volume and their tone [that] undermine[d] the appearance of impartiality required of the judiciary.” *In re Cohen*, 349 A.3d 865, 888 (PA 2026).

Judges, just like everyone else, live and work in an environment where social media is pervasive:

More than 72% of adult Americans use social media to connect with one another, engage with news content, share information, and entertain themselves. Facebook remains the most popular platform with over 2.3 billion users worldwide. . . The amount of content generated or shared on social media platforms is staggering. Twitter, which boasts 192 million daily active users, processes more than one billion tweets every forty-eight hours. In 2020, there were 7,000 tweets each minute – just about TV or movies.

John Browning, *Judged by the (Digital) Company You Keep: Maintaining Judicial Ethics in an Age of Likes, Shares and Follows*, 12 St. Mary's J. on Legal Malpractice & Ethics 222, 224 (2022).

As Mr. Browning noted:

Looming even larger is Canon 1.2's admonition for judges to act at all times in a manner that "promotes public confidence in the . . . impartiality of the judiciary [and to avoid not only] impropriety [but also] the appearance of impropriety. This broad but vital standard encompasses a judge's "active" misconduct on social media, including such things as ex parte communications with counsel, inappropriate sexual overtures to parties, and discussing a case on social media. Understandably, this "active" misconduct attracts the lion's share of attention when judicial misuse of social media is discussed. However, the arguably more "benign" types of activities on social media – liking or sharing the posts or tweets of a party or someone associated with a party to a case pending before the judge, "following" a party or someone associated with a party, and so forth – can be no less concerning. In a way, it is more troubling because it is not as overt, as blatant, as more "active" misconduct on social media. If commenting on a case on Facebook or ex parte communications with a party is an ethical iceberg, the "benign" acts like a judge following one of the parties or counsel appearing before her and liking their tweets or posts is that portion of the iceberg unseen below the water; invisible, but no less dangerous for the unwary.

Id. at 237-238. As Mr. Browning stated, "'Likes' on social media have significance." *Id.*

In a recent undated article on the National Center for State Courts website entitled "*Ethics and Social Media: What Judges Need to Know*," the NCSC noted that ethics rules do apply to social media. The NCSC also stated that "[c]ourts across the country are strengthening policies to ensure judges do not misuse their status online" and cited the Connecticut Probate Assembly,

which advised judges in Rule 3.1 of its Code of Probate Judicial Conduct to use extreme caution on social media, noting that online activity is especially problematic due to its “accessibility and permanence.” It also cited the 2023 inclusion by the Supreme Court of Illinois of “social media in its judicial conduct rules, warning judges to avoid posts that may appear biased or compromise judicial integrity.” *Id.* Importantly, the article also discussed common pitfalls on social media including “posting about charitable donations [which] can be interpreted as soliciting contributions,” “sharing news articles or legal opinions [which] can raise concerns about impartiality,” and commenting on controversial issues [which] can create the appearance of bias, even if intended as a personal opinion.” With respect to fundraising, the article noted that “a California judge was admonished for sharing a charity donation link on Facebook” in *In the Matter Concerning Bertoli*, California Commission on Judicial Performance (10/30/2024) and attached a link to the decision.

With respect to Charge I, Respondent readily admitted that each and every Facebook like, post or repost created the appearance of impropriety. The JHB correctly determined that the sheer volume of law enforcement/prosecutor posts alone caused the public to assume, however wrong it may be, that Respondent was pro law enforcement/prosecution. However, those posts would also include the solicitation posts involving the sheriff’s deputy and the reposts/shares of all criminal cases before the Court and not just the Jody Satterfield or Whitefeather/Lantz matters. As set forth above each post standing alone can cause an appearance of impropriety. The test is an objective one as to what a reasonable member of the public thinks and not what the Judge states as to his/her motivation behind making the post. If the latter were the case, then no Judge would ever be charged for making an improper social media post. Therefore, Respondent violated Rule 1.2 with respect to all of the Facebook items contained in Charge I.

With respect to Charge II, the JHB correctly notes that Respondent violated Rule 1.2 because his media interviews could undermine public confidence in his impartiality. However, the JHB incorrectly determined that the media interview did not implicate public confidence in his independence or integrity. When a judge's impartiality is questioned it also implicates his perceived independence and integrity. The Court's very definitions of independence and integrity. If a judge is perceived as lacking impartiality then he is also perceived as lacking fairness and lacking freedom from influence. By his very actions, Respondent also created the appearance, however wrong it may be, that he was anti-DHS, a party who regularly appears in front of him in abuse and neglect cases. As such, Respondent clearly violated all the fundamental principles of Rule 1.2 with respect to Charge II.

3. Rule 2.6(A) – Ensuring the Right to be Heard.

Rule 2.6(A) states that “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.” Comment [1] to the Rule states “[t]he right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.”

Respondent violated this Rule with respect to Charge II. He failed to provide the DHS secretary with notice and an opportunity to be heard before ordering them to come to his jurisdiction and serve as caseworkers. Respondent admitted that the individuals who testified at the abuse and neglect hearing could not bind the officials at the statehouse. He also admitted he did not know what the reasoning behind the understaffing. He should have held a hearing with the State officials before ordering them to work as caseworkers. He didn't do this. By putting the cart

before the horse, he left the state officials without two fundamental rights – notice and an opportunity to be heard. As such, he clearly violated Rule 2.6 with respect to Charge II.

This Court recently decided a similar fact-based matter wherein it granted a petition for writ of prohibition brought by DHS against The Honorable Steven Redding, Judge of the Circuit Court of Berkeley County. *State ex rel. DHS v. Redding*, 2026 WL 1162606, slip op. no. 24-659 (WV 4/29/2026).⁸ The judge issued two orders requiring DHS to provide information regarding outstanding CPS abuse and neglect referrals, open local CPS investigative positions, and the “adequacy of DHS’s local support. *Id.* DHS challenged the issuance of the orders arguing that they violated the separation of powers by encroaching on the operation of the executive branch and were issued in excess of the circuit court’s legitimate powers. *Id.* The judge⁹ asserted that the orders were designed to unearth “structural” deficiencies causing delay in the investigation of CPS referrals and that it was empowered to compel the information pursuant to its obligation under West Virginia Code Chapter 49 and as part of his general charge to protect the welfare of children in his Circuit. *Id.*

In granting the writ, the Court stated in Syllabus Point 3 that “Article V, Section 1 of the Constitution of West Virginia which prohibits any one department of our state government from exercising the powers of the others, is not merely a suggestion; it is part of the fundamental law of our State and, as such, it must be strictly construed and closely followed.” The Court noted:

Although respondent [judge] issued the DHS orders in individual abuse and neglect proceedings – which were obviously live, justiciable controversies – DHS argues that the orders bore no relevance to any issues in those cases, thereby stripping the circuit court of jurisdiction to issue or enforcement them for lack of a “case in

⁸ As of the filing of the JDC brief with this Court, the mandate has yet to issue in *Redding* as the decision was just handed down on April 29, 2026.

⁹ The judge in this case is the same judge who requested an advisory opinion in 2019 concerning a rule to show cause he issued against DOH regarding a backlog in his jurisdiction and a crisis team being sent to the area. He wanted to know if he could speak to the media about the backlog and the show cause order. Citing CJC Rule 2.10(A), the JIC found that the Rule precluded him from “making any statement about the matter since the rule to show cause is pending in your Court.” JIC Advisory Opinion 2019-16.

controversy.” Respondent, by counsel concedes that the DHS orders were not intended to address a then-existing issue in the underlying abuse and neglect proceedings and identifies no actionable, pending controversy to which the DHS orders pertain. . . .

We observe that restraint from instigating and purporting to “cure” issues where there exists no justiciable controversy is required not only of lower courts but this Court as well. . . . [D]irectives issued to the executive branch must, at a minimum, arise from a case or controversy brought to the court, litigated by adverse parties, and be issued within the scope of the relief required by the litigants’ successful adjudication of their claims. Here there is no indication a party to these proceedings raised – much less sought adjudication of or relief arising from – local CPS investigatory delays. Nor does respondent even assert as much; he makes clear that the DHS orders were issued based upon personal observations in docketed cases prompting him to inquire into the staffing and efficiency of the local CPS office for the purpose of “remedying” any deficiencies.

Id. at 6-8; slip op. at 11-15.

The Court also stated that the State Constitution “gives no general investigatory or supervisory powers to circuit courts over executive departments or agencies; its only supervisory authority is over magistrate courts.” *Id.* at 9; slip op. at 17. The Court said:

Without question the abuse and neglect provision of Chapter 49 charge circuit courts with ensuring the welfare of children over whom it exercises jurisdiction arising from proceedings instituted under those statutes. And while that charge may make circuit courts uniquely privy to recurrent, systemic inefficacies or shortcomings of the agencies charged with child welfare, our Constitution does not permit courts to unilaterally investigate and rectify those issues. “[Courts] do not or could not, sally forth each day looking for wrongs to write. We wait for cases to come to use, and when they do we normally decide only questions presented by the parties.”

Id. at 11; slip op. at 24.

Based upon the foregoing, the JHB erred in finding that Respondent did not violate Rule 2.6 with respect to Charge II. The JHB acknowledges that in hindsight it may have been preferable for Respondent to issue a show cause order instead of an Administrative Order, “it essentially had the same effect” (JHB Recommended Decision at 24). The JHB also incorrectly found that the JDC failed to meet the burden of proof with respect to the Rule 2.6(A) violation. First, Respondent

was well aware of the rule to show cause option. Respondent opined from the bench during the original hearing that he tried the process of issuing a rule to show cause in 2014, but that DHS was untruthful. Respondent admitted as much in the joint stipulations and in his sworn statement.

Respondent testified:

- Q. You brought up that you had issued a rule to show cause before and that they weren't truthful with you?
- A. I believe that yes. . . .
- Q. And it would've been under a different regime, correct?
- A. That's a fair classification or characterization.
- Q. Okay. So it's fair to say that you don't know what would've happened had you issued a rule to show cause in this particular matter; is that correct? . . .
- A. Well, you know, I can't say for sure. My action was based on the testimony that I had before me that there had been a request made to address the issue without effect. My decision at the time was also based on what I felt to be an imminent situation, that was not amenable to some long procedural process to try to schedule a hearing and bring everybody in and see what they were going to say again. And, you know, they might've come in and just truthfully admitted it was understaffed. But even if they did . . . under the show cause, it didn't address the issue, and it had been a month or two down the road. I just didn't feel like it was an appropriate way to handle the situation, to be honest with you.

(J. Ex. 7, BSP 288-289).

The evidence thus demonstrates that Respondent purposely used a different method to subvert prolonging the outcome. He also clearly used the wrong process as evidenced by *Redding, supra*. Most importantly, he ordered the state DHS officials to serve as local workers without ever giving them an opportunity to first put on their side of the case. Thus, he made the final decision even though he knew that the local CPS workers could not bind the State. It's tantamount to sentencing a defendant in a criminal case to life before he's even been proven guilty of first-degree murder. As such, Respondent clearly violated CJC Rule 2.6.

4. Rule 2.10 -- Judicial Statements on Pending and Impending Cases

Rule 2.10(A) provides that “[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.” Comment [1] to Rule 2.10 states that “[t]his Rules restrictions on judicial speech are essential to the maintenance of the independence, integrity and impartiality of the judiciary.”

In *In the Matter of Hey*, 188 W. Va.545, 425 S.E.2d 221 (1992) (“Hey I”) the West Virginia Supreme Court of Appeals publicly censured a judge for violating former Code of Judicial Ethics Canon 3A(6)¹⁰ for going on a national television program and making comments about a case over which he presided that was still pending before the high court. The judge gave specifics of the case and made negative comments in a custody case about the child’s educational performance, the child’s church attendance and the mother’s fitness and character as a custodial parent. *Id.* The Judge argued that he only technically violated the Rule because the matter was no longer pending in his court. *Id.* The Court disagreed and said that because his comments involved a matter that was pending or impending in “any court” he violated the Code. *Id.*

The Court also took issue with the Judicial Hearing Board’s (“JHB”) recommended finding that the judge’s conduct occurred outside his official duties and that the comments “were

¹⁰ Canon 3A(6) states:

A judge shall abstain from public comment about a pending or impending proceeding in any court and should require similar abstention on the part of court personnel subject to his direction and control. The subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

not offered to explain for public information the procedures of the Court.” In Syllabus point 2, the Court stated that “a judge’s public statements shall be in ‘the course of their official duties’ when the statement is part of an official duty, or related to an official duty, or is sought from or given by the judge because of his or her official position.” *Id.* The Court found that the only reason the judge was invited to appear on the program was because he was the presiding judge. *Id.* The Court also stated that his “comments were directly related to his official position and thus arose in the course of his official duties.” *Id.* at 549, 425 S.E.2d at 225. Nonetheless, the Court still found that he violated the Canon and ordered him disciplined. Therefore, *Hey I* also stands for the proposition that a judge may meet the exceptions but still violate the Canon or rule.

The day after the judge was disciplined in *Hey I* he went on the radio and discussed his censure and the behavior of a member of the Judicial Hearing Board (“JHB”) who he said walked out while the first interview was playing and “[d]idn’t even view 15 minutes of it so I’m not done with her yet. I want her to understand that. I hope she or one of her friends are listening.” *Matter of Hey*, 192 W. Va. 221, 452 S.E.2d 24 (1994) (“*Hey II*”). Taking the judge’s comment as a threat, the JHB member filed a complaint and the JIC charged him, in part, with violating Canon 3A(6) of the Judicial Code of Ethics. *Id.* At the conclusion of the hearing, the JHB found insufficient evidence of any violation and recommended that the charges be dismissed. *Id.* The Supreme Court agreed, stating in its Syllabus points:

2. The State may accomplish its legitimate interests and restrain the public expression of its judges through narrowly tailored limitations where those interests outweigh the judges’ free speech interests.
3. The State’s interest in maintaining and enforcing the judicial canons against judge’s speech are sufficiently served by their specific prohibitions so that the general prohibitions in Canons 1, 2, and 3 of the Judicial code of Ethics (and now the Code of Judicial Conduct) may not be used to punish judges

for their public remarks that do not concern a pending or impending matter and that do not violate either a specific prohibition or some other law.

4. A judge may not be disciplined consistent with the First Amendment . . . for his remarks during a radio interview in which he discussed his own disciplinary proceeding, criticized a member of his investigative panel and stated his intention to take some reactive and lawful measures against the panel member.

Id. Thus, the judge was not disciplined because he was commenting on a proceeding in which he was a litigant in a personal capacity which is an exception to Rule 2.10.

In *Matter of Codispoti*, 190 W. Va. 369, 438 S.E.2d 549 (1993), the State Supreme Court declined to discipline a magistrate for violating Canon 3(A)(6) of the Judicial Code of Ethics. The magistrate's wife was running for circuit judge and her opponent was an assistant prosecutor in another county. *Id.* During the race, someone ran an ad against the assistant prosecutor in a local newspaper criticizing his decision not to prosecute a coal truck driver involved in a fatal crash. *Id.* The magistrate was heavily involved in his wife's campaign. *Id.* In dismissing the Canon 3(A)(6) charge against the magistrate, the Court stated:

However, because the [JHB] failed to prove, by clear and convincing evidence that [the Magistrate] caused the advertisement to be published, we cannot find a violation of Canon 3A(6). Moreover, the classification of the fatal accident as a "pending or impending proceeding" is at best dubious because by the 1992 primary, the charges in the fatal accident had been dismissed for almost two years. (The charges were dropped on June 27, 1990).

Id. at 373-374, 438 S.E.2d at 553-54. Accordingly, the Court clearly indicated another exception to the Rule where the matter is not pending or impending before any Court.

Court procedures are another exception, but it appears to be limited to judicial court activities. Charging a defendant in a criminal case is the function of the prosecutor and/or law enforcement and not a judicial function or court procedure. Therefore, commenting about charges implemented by a prosecutor outside of a pleading or hearing would not be proper for a judge.

In *In re Broadbelt*, 683 A.2d 543 (N.J. 1996), a New Jersey Supreme Court considered whether it was appropriate for a well-respected municipal judge to continue to appear on national television as a guest commentator on high profile cases. *Id.* At the time, the judge had made over 50 appearances on Court TV and CNBC and had commented on cases like the O.J. Simpson trial. *Id.* The New Jersey Supreme Court said the equivalent of our Rule 2.10 covered cases even in out of state jurisdictions since it said, “in any court.” The Court also stated that the judge should not have served as a television commentator. *Id.* The Court found that to do so violated the State’s equivalent of our Rule 1.3. *Id.* The Court noted that though the judge himself received no payment, his regular identification with certain programs lent them the prestige of his judicial office. *Id.*

The Court rejected the Judge’s First Amendment arguments. *Id.* The Court stated that the judge’s speech may be restricted if the Rule furthered a substantial governmental interest. *Id.* The Court found that the interest included preserving the integrity of the judiciary and the ability to maintain the public’s confidence in the same. *Id.* The leading treatise on judicial ethics stated with respect to *Broadbelt*:

The New Jersey Supreme Court did not spell out in detail how comments such as [the Judge’s] might erode public confidence. Although he spoke about the merits of pending cases, he did not address cases from within his own jurisdiction. Nonetheless, it seems clear that regularly acting as a television commentator can have a negative impact on the public perception of judges. The problem is not only that the judge’s statements concerning pending cases might influence outcomes in another state, although that possibility cannot be completely disregarded. The greater danger is that the judge’s own work will be influenced (or appear to be influenced) by a desire to maintain the status of a televised expert. Will the networks want a tough-as-nails judge, a flamboyant judge, an innovative judge, a weeping and compassionate judge, or perhaps even a poetic judge? What in-court persona might the judge adopt (or appear to adopt) in order to maintain media visibility? No matter: the very concept of judging is distorted once judges actually become performers (as opposed to speakers or educators) for outside audiences. That is the threat of the integrity of the judiciary.

Charles Gardner Geyh et al., *Judicial Conduct and Ethics* § 10.06[5] at 10-52 (5th ed. 2013).

In *United States v. Microsoft Corp.*, 253 F.3d.34 (D.C. Cir. 2001), a judge's comments to the press while the case was still pending required his disqualification from the case. The judge held secret interviews with certain reporters before the case concluded. The judge discussed the credibility of certain witnesses, whether certain legal theories were valid, the level of defendant's fault, and remedies. *Id.* The higher court found that the judge violated Canon 3(A)(6). Specifically, they found that the judge's comments were made with the knowledge that it "would eventually receive widespread dissemination." The Court said if the judge's intent was to educate the public he "could have held his tongue until all appeals were concluded." With respect to the appearance of impartiality, the Court held:

The public comments were not only improper, but also would lead a reasonable, informed observer to question the District Judge's impartiality. Public confidence in the integrity and impartiality of the judiciary is seriously jeopardized when judges secretly share their thoughts about the merits of pending cases with the press. Judges who covet publicity, or convey the appearance that they do, lead any objective observer to wonder whether their judgments are being influenced by the prospect of favorable coverage in the media. Discreet and limited public comments may not compromise a judge's apparent impartiality, but we have little doubt that the District Judge's conduct had that effect. Appearance may be all there is, but that is enough to invoke the Canons. . . . Judge Learned Hand spoke of 'this America of ours where the passion for publicity is a disease, and where swarms of foolish, tawdry moths dash with rapture into its consuming fire.' Judges are obligated to resist this passion. Indulging it compromises what Edmund Burke justly regard as the 'cold neutrality of an impartial judge.' Cold or not, . . . judges must maintain the appearance of impartiality. What was true two centuries ago is true today: 'Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges . . . Members of the public may reasonably question whether the District Judge's desire for press coverage influenced his judgments, indeed, whether a publicity seeking judge might consciously or subconsciously seek the publicity-maximizing outcome. We believe, therefore that the District Judge's interviews with reporters created an appearance that he was not acting impartially.

Id. at 115 (citations omitted). For these very reasons, the JIC stated in JIC Advisory Opinion 2023-23 that a judge cannot go on television or other media and comment when the topic involves a

pending or impending case before any court. Respondent was well aware of this opinion because it was sent to all judges on October 20, 2023 (Exhibit No. 10, BSP 341).

Judges can't comment on pending or impending cases like politicians or other members of the public. The practical aspect of judges commenting on such matters is that what they say is in effect a ruling. It requires the judge to prejudge the matter in order to craft what he or she will say and how it will be said. In other words, the mere speaking out about a pending/impending matter requires a judge to pass judgment on a case. This is exactly why Rule 2.10 prevents judges from speaking about such issues and why the JIC concluded that they cannot go on any form of media and talk about pending matters.

With respect to Charge I, Respondent violated the Rule by creating posts that talked about matters pending/impending before the Court as they related to an alleged criminal on the loose, about people being charged with sex/human trafficking matters and about the Kanawha County Couple convicted of child abuse. With respect to the latter, Respondent not only shared/re-shared the story but actually responded/liked some comments made by members of the public underneath the story. By his own admission, his liking the comments gave the public the impression that he was pleased with the outcome of the case. This was done after the conviction but before the appeal so the matter was still pending. Thus, Respondent violated Rule 2.10(A) with respect to each of the Facebook posts and his conscious decision to like three negative comments.

The JHB erred in not finding the human trafficking posts also violated Rule 2.10(A). The JHB ignored the "in any court" provision of the Rule and seemed to indicate that because those cases did not happen in his jurisdiction there would be no harm. However, "in any court" means what it says – anywhere in the United States. It also ignores the premise that the case was still pending. A case does not conclude until the appeal time has run or the mandate has issued. In one

post, the defendant had just been arrested; and in the second, the defendant had just been sentenced. Both were West Virginia cases. As such, the posts clearly violated Rule 2.10(A).

Concerning Charge II, Respondent admits that the abuse and neglect case was still pending as was the administrative matter at the time the comments were made. Both cases were pending in his own court. The comments created in the minds of members of the public, however wrong they may be, that he was anti-DHS. In order to make those comments, Respondent had to pre-judge the matter. He acknowledged that the parties who testified during the abuse and neglect hearing could not bind the state officials and he had no idea what the real cause of the understaffing was. All he knew was that he needed to act. If this doesn't signify pre-judgment, then nothing does. By seeking out the media and talking about such pending matters, Respondent clearly violated the Rule with respect to Charge II.

5. Rule 3.1 – Extrajudicial Activities in General

Rule 3.1(C) states that “[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, . . . “ Comment [6] to the Rule states that “[t]he same Rules of the Code of Judicial Conduct that govern a judicial officer’s ability to socialize and communicate in person, on paper, or over the telephone also apply to the internet and social networking sites like Facebook.”

In *Mississippi Commission on Judicial Performance v. Moore*, 400 So.3d 410 (MS 2025), a Mississippi municipal judge was removed from office for social media posts pertaining to a high-profile Wisconsin murder case that resulted in an acquittal and televised comments he made about the perceived lack of sensitivity other judges may have concerning African Americans. The Judge

was found to have violated, in part, our equivalent to CJC Rules 3.1.¹¹ On June 22, 2022, the judge was featured on the Kelly Clarkson Show as part of her “Rad Human” segment to discuss his DO Better ASAP alternative sentencing accountability program. *Id.* At the time, the judge stated:

You know, I always felt that if I got in a position of power I would try to make a difference. So many times African Americans get the sort end of the stick. There are many judges that don’t look like me and the people that appear before them. They cannot be empathetic because they don’t look like the people that go before them. But I preside over two jurisdictions where there are African Americans. 85 to 90% of people look like me, and I want to give them a second chance if they qualify.

Id. at 419. In finding that the Judge violated the extrajudicial rule in part the Supreme Court of Mississippi stated:

Discussions about racial disparity in the legal system or the desire for greater diversity in the judiciary and legal profession are certainly matters of public concern. However, blatantly attaching an entire race’s ability to exhibit a core, not just judicial but human, ability is not. Likewise intimating that you will right past racial injustices with future decisions based on race is contrary to the principles of racial equality in the judicial system.

Id. at 420. The Court also found that the comments are “prejudicial to the administration of justice which brings the office into disrepute.” *Id.*

On November 20, 2021, the judge posted the following content in relation to the Kyle Rittenhouse trial:

If anyone still believes justice is blind in America after the Kyle Rittenhouse acquittals yesterday, you just refuse to accept an ugly truth. I can almost guarantee you that if Kyle had been black and killed two white men in the same manner Kyle did, he most certainly would have been convicted. There has never been a greater need for black lawyers and judges in America to keep decrying the blatant inequities that exist in our criminal justice system and to keep pushing for a color blind and more equitable judicial system.

¹¹ Canon 4A of the Mississippi Code of Judicial Conduct mandates that “[a] judge shall conduct all of the judge’s extra-judicial activities so that they do not (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge; (2) demean the judicial officer; or (3) interfere with the proper performance of judicial duties.”

Id. at 421. The JDC argued generally that its CJC Rule 3.1 was violated because the judge's action demeaned his judicial office, cast doubt on his ability to act impartially and interfered with the proper performance of his judicial duties. *Id.* The judge countered that his post is no different from U.S. Supreme Court Justice Breyer's comments in *Making our Democracy Work: The Yale Lectures*, 120 Yale L.J 999 (2011) where the latter "expounded upon the Court's imperative to uphold public trust and proposed the interpretation of the Constitution in a manner that aligns with practicality." *Id.* at 422. In holding that the judge violated the Code, the Court stated:

[J]udges except restrictions on their conduct when acting as a judge that might be viewed as a burden to the ordinary citizen. A judicial calling is not without sacrifices, including some limitations on the exercise of constitutionally granted privileges. . . . [The judge] held himself out as a judge while making his comments on social media and the Kelly Clarkson Show. In this case, he did so on social media using an account named "Judge Carlos Moore." As with the comments on The Kelly Clarkson Show, [the judge] couched his comments under the pretense of discussing a matter of legitimate public concern, racial injustice and the need for more black lawyers and judges in this country. In the Rittenhouse comments, just as he did on the Kelly Clarkson Show, he then proceeded to make racially charged attacks based on race, this time state that he could "almost guarantee," if the racial circumstances had been different, "he most certainly would have been convicted."

Id. at 422-423.

In *In re Wilfong, supra*, this Court stated that its authority pertaining to extrajudicial conduct is confined to those situations for which there is an articulable nexus between the extrajudicial conduct and the judge's duties. In this case there is an articulable nexus between all of the Facebook posts and the judge's duties. His primary photo by which he made all offending posts showed him in his judicial robes standing in either his office or a courtroom. Respondent acknowledged in his sworn statement that it made it seem that the posts were done under the guise of his judgeship. He also acknowledged that it could create in the minds of members of the public, however wrong it may be, such things as that he was soliciting funds, pro-prosecution/law enforcement and/or that he was in favor the convictions of people charged with sex trafficking,

human trafficking or abuse and neglect. As a result, he clearly violated Rule 3.1(C) because these actions called into question the integrity, independence and impartiality of the Court.

6. Rule 3.7 – Participation in . . . Charitable . . . or Civic Organizations and Activities

Rule 3.7 provides in pertinent part:

- (A) 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: . . .
 - (2) 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;

In *Matter of Phalen*, 197 W. Va. 235, 475 S.E.2d 327 (1996), a family law master was publicly reprimanded for telephoning two litigants and then showing up at the home of the husband after learning that the husband’s income had been drastically reduced due to his illness but before the judge had informed the parties that he had reduced his child support obligation. The judge unsuccessfully attempted to get the husband to agree to selling Amway Products in a pyramid-type company from which the family law master would receive financial benefit. *Id.* This Court found several violations of the former Code of Judicial Conduct including Canon 1 (Upholding the Integrity and Independence of the Judiciary), Canon 2A (Avoiding the Appearance of Impropriety), 2B (Using the Prestige of Judicial Office to Advance Private Interests), and Canon 3B(7) (Ex Parte Communications Concerning Pending Impending Matters) and (11) (Engaging in Business Inconsistent with Impartial Performance of a Judicial Officer).

In finding the violations, this Court stated “[n]o greater assault on the integrity and independence of the judiciary can be found than to have litigants exposed to judges soliciting them for whatever “fancy” judges might have.” *Id.* at 239, 475 S.E.2d at 327. The Court further found:

The office of judge is one in which the general public has a deep and vital interest, and because that is true, the official conduct of judges, as well as their private conduct, is closely observed. When a judge either in his official capacity or as a private citizen, is guilty of such conduct as to cause others to question his character . . . , the people not only lose respect for him as a [person] but lose respect for the court over which he presides as well.

Id.

Concerning former Canon 2(A), the Court noted that “[i]t is the height of irresponsibility and impropriety for a judicial officer to solicit litigants to sell Amway products or any other product” and that “[t]he financial stake [the family law master] held in this matter overshadows any financial gain the litigants might have obtained from accepting his proposal.” *Id.* at 240, 475 S.E.2d at 333. The Court concluded that “it is improper for a judge to take advantage of his position to reap a personal benefit-or even to appear to do so.” *Id.*, quoting *Neeley, supra*, at 727, 364 S.E.2d at 255.

In *Matter of Tennant*, 205 W. Va. 92, 516 S.E.2d 496 (1999), a candidate for magistrate was admonished for personally soliciting campaign contributions in violation of the former Code of Judicial Conduct. The candidate, who was eventually elected to office, held a fundraiser. Following the event, he went to a local bar where he ran into two lawyers who had not gone to his fundraiser. *Id.* While there, Respondent asked the two lawyers why they hadn’t been to the fundraiser and why they had not contributed to his campaign. *Id.* According to one of the lawyers, the magistrate said the going rate was \$500.00, that they had just won a big case, and that failure to donate would result in adverse rulings. In defense of the formal statement of charges, the magistrate denied soliciting campaign funds and that he was only making off the cuff joking

comments. One of the attorneys agreed that he thought the judge was joking while the other attorney testified that the candidate did not know him well enough to be joking about such a serious matter. *Id.*

In holding that the candidate violated the former campaign solicitation rule contained in Canon 5C(2), the Court stated:

Assuming arguendo, that the Respondent's request for a campaign contribution was a joke, the Respondent's attempt either to lessen the significance of the violation or to negate the violation entirely by contending that the solicitation was a joke is disingenuous. For this Court to accept such an argument would essentially undermine the clear, unambiguous language of the canon. Nowhere in the plain language of the canon is there even an inference that a solicitation made in jest is permissible. . . . Further, just because the Respondent may have made the comment in jest, does not necessarily mean that the comment was received by the attorneys who hear it in jest. Quite to the contrary, from the testimony of [the attorney] his interpretation of the comment was that Respondent made a serious solicitation of a campaign contribution from him [E]ven if the solicitation was intended jokingly, that does not negate the fact that the receiver of the solicitation may feel pressure to contribute to the campaign.

Id. at 96, 516 S.E.2d at 500.

Respondent violated Rule 3.7(A)(2) by posting on Facebook the fundraisers set forth above. He acknowledged in his sworn statement that he could see where the public, however wrong it might be, could construe that he was soliciting on behalf of the individuals named in the posts. The solicitations were public in nature. And by his own statement, the solicitations regarding the deputy were not just information but because Respondent wanted the public to know that he supported the individual himself. As such, Respondent clearly violated Rule 3.7(A)(2).

B. THE JHB ERRED IN NOT ADMITTING JOINT EXHIBIT NOS. 10 AND 11.

- 1. Exhibit No. 10 is Relevant to Whether Respondent Knew or Should have known that he was Engaging in Violations of the Code per RJDP Rule 4.12.**

RJDP Rule 2.13(d) 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.” JDC was not trying to admit Exhibit No. 10 under that Rule. RJDP Rule 2.14 states 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.” Therefore, Joint Exhibit No. 10 is relevant to the proceedings and admissible for that purpose.

RJDP Rule 4.3 states that the provisions of the West Virginia Rules of Evidence (“WVRE”) “shall govern proceedings before the Judicial hearing Board.” WVRE 402 states that relevant evidence is admissible and irrelevant evidence is inadmissible. WVRE 401 provides that evidence is relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action.”

WVRE 403 states that the “court may exclude relevant evidence if its probative value is substantially outweighed by the danger or one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time or needlessly presenting cumulative evidence.”

WVRE Rules 401 and 402 “strongly encourage the admission of as much evidence as possible. . . .” Syl. pt. 9, *State v. Derr* 192 W. Va. 165, 451 S.E.2d 731 (1994); *State v. Lopez*, 197 W. Va. 556, 476 S.E.2d 227 (1996). However, Rule 403 restricts the policy by requiring a balancing of interests pursuant to Rule 403 in order to determine if logically relevant evidence is legally relevant evidence. *Derr supra*; *Lopez, supra*. Admissibility rulings are largely within the sound discretion of the trial court and will not be disturbed unless there has been an abuse of discretion. *State v. Farmer*, 185 W. Va. 232, 406 S.E.2d 458 (1991).

In applying the foregoing to the instant matter, the email showing that JIC Advisory Opinion 2023-23 was sent to Respondent in October 2023 and the advisory opinion itself is relevant to the issue of knowledge and therefore discipline. The probative value of the information is not substantially outweighed by unfair prejudice, confusion of the issues, misleading the jury, undue delay, wasting time or needlessly presenting cumulative evidence.” It is probative evidence that Respondent received JIC Advisory Opinion 2023-23 before he commented on the pending matters on Facebook and before he talked to the news media. Consequently, Respondent knew beforehand that the conduct he engaged in Counts I and II violated the Rules as contained in his formal statement of charges and were appropriately admissible into evidence.

2. Exhibit No. 11 is Admissible; Alternatively, JDC does not have to Establish through Actual Evidence that Public Statements are Reasonably Expected to Affect the Outcome or Impair the Fairness of a Matter Pending or Impending.

The State Supreme Court has consistently held that 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. See Syl. Pt. 1, *In re Cruickshanks*, 220 W. Va. 513, 648 S.E.2d 19 (2007). Public confidence in the judiciary was also addressed in *In re Watkins, supra*, when the Court issued a four-year term ending suspension for a family court judge’s intemperate behavior on the bench. The Court stated:

The overriding goal of judicial discipline is to preserve public confidence in the integrity and impartiality of the judiciary. “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.” Syllabus, *In the Matter of Gorby*, 176 W. Va. 16, 339 S.E.2d 702 (1985). Article VIII, section 8 of the *Constitution* authorizes this Court – both expressly and inherently – to adopt whatever rules of conduct and discipline are necessary to preserve public confidence in the judicial branch.

Watkins at 176, 757 S.E.2d at 600.

What better way to gauge public confidence in the judiciary after judicial misconduct than to hear from members of the public themselves so there is no mistake about how they feel. The Court recognized the importance of public expression through social media in *Matter of Goldston*, 246 W. Va. 61, 866 S.E.2d 126 (2021). In *Goldston*, a family court judge was publicly censured and fined for conducting a search of an unrepresented litigant's home without permission. A portion of the video confrontation between the judge and the litigant prior to entering the home was eventually uploaded to the YouTube site operated by the Civil Rights Lawyer, and it became the basis for the JIC investigation, Formal Statement of Charges and the ultimate decision reached by the State Supreme Court.

The Court held in *Goldston* that “though Cruickshanks speaks in terms of suspension, we believe that Cruickshanks provides an appropriate guide that may be applied whenever we contemplate imposing sanctions under Rule 4.12.” *Id.* at ___, 866 S.E.2d at 137. Importantly, the Court then stated its reliance, in part, on the comments posted to the YouTube video in sanctioning the judge:

Second, Judge Goldston's misconduct was carried out in her public persona and seriously undermined the public's perception of the administration of justice. Public comments show that many who viewed her conduct on the internet were justly and deeply offended. Without question, Judge Goldston's conduct cast doubt in the minds of the citizens who viewed the recording of the incident as to whether the parties were being treated with justice and fairness.

Id. (emphasis added). It should also be noted that the JHB admitted online comments made pertaining to a videotaped traffic stop that was placed on a website and that resulted in a six-month suspension without pay for a circuit judge. *In the Matter of Williams, supra*. Based upon the foregoing, the Exhibit No. 11 is admissible. The comments resulted from Respondent's actions.

They are an important indicator for many of the *Cruickshank* factors which the JHB must consider with respect to what, if any, sanctions it intends to recommend. They are also an important indicator as to whether Respondent's conduct has damaged the integrity of the Court as a whole.

In an effort to prevent the information from coming into evidence, Respondent raises the specter of inadmissible hearsay even though he is not objecting to its authenticity. Respondent's argument clearly lacks merit because the information falls under at least three exceptions to the rule:

Rule 803. Exceptions to the rule against hearsay.

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

- (1) *Present sense impression.* – A statement describing or explaining an event or condition made while or immediately after the client perceived it.
- (2) *Excited utterance.* – A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it cause.
- (3) *Then existing mental, emotional, or physical condition.* – A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory or physical condition (Such as mental feeling, pain or bodily health, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

The public statements were made while the individuals were viewing the articles or shortly thereafter. The comments remain on the website long after the viewer has left the site and based upon information and belief, are never removed. The comments describe how the viewer perceives the events at the time he or she is reading about them. Often, it also comes in the form of or alternatively as an excited utterance or an emotional response as to how the viewer feels about the events and what they mean to him or her.

Importantly, the State Supreme Court has stated that personal knowledge does not mean the declarant of the present sense impression must be a participant in the event described. *State v. Phillips*, 194 W. Va. 569, 461 S.E.2d 75 (1995), overruled on other grounds in *State v. Benny W.*, 242 W. Va. 618, 837 S.E.2d 679 (2019). A trial court is permitted to accept extrinsic evidence to satisfy the personal knowledge requirement. *Id.* The requirement is not meant to be a very difficult standard and may be satisfied if it is more likely than not that the evidence proves the percipency of the declarant. *Id.* In this case, the personal knowledge requirement is satisfied by each declarant's viewing of the article/post.

With respect to excited utterance, the Court has ruled such statements admissible under the idea that a person stimulated by the event will lack the reflective capacity essential for fabrication. *State v. Farmer*, 185 W. Va. 232, 406 S.E.2d 458 (1991). To be an excited utterance, the declarant must have experienced a startling event or condition, reacted while under the stress of excitement of that event and not from reflection or fabrication; and the statement must relate to the startling event or condition. In this case, the event triggering the conduct was an attempt by a 12-year-old to commit suicide while in DHS custody. The comments are reactions to the excitement of the event and the statements relating thereto. If the response does not qualify as an excited utterance then it would certainly be an emotional response to the conduct described therein.

Assuming arguendo and without waiving the hearsay exception argument, JDC does not have to establish through actual evidence that public statements are reasonably expected to affect the outcome or impair the fairness of a matter pending or impending. JDC has asserted that the media interview creates in the minds of the public, however wrong it may be, that Respondent is anti-DHS. Comment [5] to the appearance of impropriety standard in Rule 1.2 of the Code of Judicial Conduct states that “[t]he test 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." The test is an objective one much like the reasonable man standard in civil negligence cases. The reasonable man standard is a legal fiction meant to suggest a person of ordinary caution, care and consideration. Thus, a jury could find that a defendant hadn't acted reasonably even if the other party presented witnesses to say otherwise. Thus, all that is important is what a reasonable person should have known to do in that situation and what action the defendant actually took.

Ohio has recognized the objective standard when it comes to appearance of impropriety cases. In *Office of Disciplinary Counsel v. Medley*, 756 N.E.2d 104 (OH 2001), the Office of Disciplinary Counsel brought a complaint against a municipal trial judge after he talked to a newly arrested defendant on the telephone and then picked her up at the police station and drove her home. The defendant was charged with DUI. The judge knew the defendant because she had appeared in his courtroom on two prior occasions. The two did not discuss the facts or merits of the defendant's case. Ultimately, the defendant pled guilty to a reduced charge before Respondent. The JHB found that Respondent violated provisions of the Code of Judicial Conduct and recommended a public reprimand. The judge challenged the finding and recommended discipline before the Ohio Supreme Court. In upholding the recommended decision, the Supreme Court stated:

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. Under this objective standard, inappropriate actions include "conduct which would appear to an objective observer to be not only unjudicial but prejudicial to public esteem for the judicial office." . . . [I]n regard to Count II of the complaint, we find that violations of the Code did occur. . . . What distinguishes this situation from the others discussed above is that the judge's conduct here is much more egregious. Respondent not only talked to a newly arrested person over the telephone but also picked her up and drove her

home. Respondent has clearly violated Canon 2, which requires a judge to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary. The fact that respondent and [defendant] did not discuss the facts or merits of her case is immaterial. The sight or thought of a judge providing a ride home to a person who has just been detained for breaking the law surely gives the impression of bias on the judge's part when it comes time to hear the case. This act also gives an impression of impropriety, in violation of Canon 4, by making it appear that [defendant] would be subject to special treatment. Respondent also exercised flawed judgment when he did not rectify the situation by recusing himself from the case. . . . Undoubtedly it was reasonable for respondent to assume that his actions could throw doubt on his impartiality in the mind of an objective observer.

Id. at 106-107 (citations omitted). Based upon the foregoing, the appearance that Respondent, however wrong he may be is anti-DHS is an objective one and therefore does not require actual evidence that public statements are reasonably expected to affect the outcome or impair the fairness of a matter pending or impending.

3. Assuming Arguendo that this Court Denies the Admission of Exhibit No. 11 in its Entirety, Respondent's own Responses to Facebook posts on Page 367 are Admissible as they are not Hearsay.

The June 28, 2025 Facebook posts and Respondent's replies outlined in footnote 7 on page 19 of this brief are admissible as the replies are not hearsay and the posts are necessary to place his replies in context. WVRE 801(d) sets forth statements that are not hearsay and include an opposing party's statement. 801(d)(2) states that the statement has to be offered against the opposing party and: (A) was made by the party in an individual or representative capacity . . . In *State v. Burgess*, 198 W. Va. 518, 482 S.E.2d 135 (1996), this Court clearly said that a statement is not hearsay if it is offered against a party and it is his own statement in either his individual or representative capacity. *See also State v. Payne*, 225 W. Va. 602, 694 S.E.2d 935 (2010).

At a minimum the Facebook posts and Respondent's replies outlined in footnote 7 on page 19 of the brief are admissible as Respondent is a party to the proceedings and his name indicates that he made the statements in question. Moreover, the timing of the statements, which occurred

after the admonishment was issued but before Respondent objected thereto are relevant in that they demonstrate that Respondent has failed to learn any lesson with respect to posting on Facebook in relation to the CJC.

C. CRUICKSHANK FACTORS WARRANT AN ADMONISHMENT AND COSTS.

The Court has consistently held that 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. *See* Syl. Pt. 1, *In re Cruickshanks*, 220 W. Va. 513, 648 S.E.2d 19 (2007). The Court has set forth the following non-exhaustive list of factors to consider when determining whether it is appropriate to discipline a judicial officer:

- (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.

Both charges contained in the Formal Statement of Charges are directly related to the administration of justice or the public's perception thereof. With respect to Charge I, Respondent wore his judicial robe and the photo was taken in his courtroom. Thus, it is reasonable that the public assumed the posts were directly tied to the administration of justice. With respect to Charge II, the media interviews involved pending matters and derived from an abuse and neglect case. The circumstances behind both charges clearly relate to Respondent's public persona as his Facebook posts were made under the photo of him in judicial robes in a courtroom or his office and the media interview stemmed from him being a judge in an abuse and neglect case and from his "administrative" order. The charges do not involve violence but do involve a callous disregard

for our system of justice. It's wrong for judges to post or repost items on Facebook in their judicial robes and from a courtroom or their office that create the impression however wrong it may be such things as that they are pro-prosecution/law enforcement, that they are happy with the outcome of a criminal case where a conviction has occurred, or that people should donate money to worthy causes. Regarding Charge II, Respondent acknowledged his callous disregard when he says he was "desperate," knew "he had to do something bold" and knew he "needed to do more than merely issue the Administrative Order to get DHS' attention; he needed media attention."

Lastly, the compounding factors in this case clearly outweigh the mitigation. Rule 4.12 of the Rules of Judicial Disciplinary Procedure sets forth the permissible sanctions in judicial discipline cases. Importantly, the Rule also states that "[t]he extent in 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." Respondent knew or should have known that the conduct he exhibited in Charges I and II violated the Code of Judicial Conduct. Respondent has served as a judge for a long time. Respondent has a duty to keep current on the Code of Judicial Conduct and admitted in his sworn statement that he had read large portions of it even though he should have read the whole thing. Respondent has also failed to learn anything from this disciplinary action as evidenced by his June 28, 2025 social media post which appears to denigrate a former Kanawha County Circuit Court Judge.

With respect to Charges I and II, Respondent received a copy of JIC Advisory Opinion 2023-23 along with every other judge before he engaged in the violations pertaining thereto. The JHB must also consider the fact that there are two charges involving multiple violations of the Code. Thus, all these aggravating factors when weighed against Respondent's mitigating factors clearly warrants admonishment in this case and that Respondent pay the costs of the proceedings.

By way of analogy, in *Ohio State Bar Assoc. v. Winkler*, 244 N.E.3d 8 (OH 2024), a common pleas court probate judge was publicly reprimanded for making statements on social media that incorrectly asserted that a party to a guardianship case before the judge had neglected and abused a ward and for allowing a court employee to make similar misstatements to a reporter in violation of Rules 1.2, 2.8(B), 2.10(A) and 2.10(C) of the Ohio Code of Judicial Conduct. In reprimanding the judge, the Court found that he committed multiple rule violations and caused harm to vulnerable victims but that he had no prior violations, did not act with a dishonest or selfish motive, cooperated with disciplinary authorities and had an otherwise good character. *Id.*

VI.

CONCLUSION

WHEREFORE, the undersigned respectfully requests that the Court find that Respondent violated the Code of Judicial Conduct as charged in Counts I and II of the Formal Charges and that he be admonished for the same and pay costs in the amount of \$1,210.05.

Respectfully submitted,

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BEFORE THE JUDICIAL HEARING BOARD OF WEST VIRGINIA

**IN THE MATTER OF
THE HONORABLE TIM SWEENEY,
JUDGE OF THE 3RD JUDICIAL CIRCUIT**

**SUPREME COURT NO. 25-475
JIC COMPLAINT NO. 13-2025**

CERTIFICATE OF SERVICE

I, Teresa A. Tarr, Judicial Disciplinary Counsel, do hereby certify that I served JDC's Supreme Court Brief on Respondent by duly placing the same in the United States mail first-class postage pre-paid and addressed as follows: J.H. Mahaney, Esquire, Counsel, for Respondent, Dinsmore & Shohl LLP, 622 Third Avenue, Huntington, WV 25701, and by email to john.mahaney@dinsmore.com on this the 11th day of May 2026.

Respectfully submitted,



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