

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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

**SCA EFiled: Jul 10 2026
09:01AM EDT
Transaction ID 79993385
SUPREME COURT NO. 25-475
JIC COMPLAINT NO. 13-2025**

JUDICIAL DISCIPLINARY COUNSEL'S REPLY BRIEF

Respectfully submitted,

Teresa A. Tarr, Counsel
WV Bar I.D. No. 5631
Judicial Investigation Commission
WV Judicial Tower, Suite 700A
4700 MacCorkle Avenue SE
Charleston, WV 25304
(304) 558-0169
(304) 558-0831

teresa.tarr@courtswv.gov

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. JDC’S RESPONSE TO RESPONDENT’S STATEMENT OF THE CASE	1
A. CHARGE I	2
B. CHARGE II	2
III. ARGUMENT	5
A. RESPONDENT’S RELIANCE ON CERTAIN CASE LAW IS MISPLACED WITH RESPECT TO CHARGE II	6
B. RESPONDENT’S ACTIONS WITH RESPECT TO CHARGE II AMOUNTED MORE THAN A LEGAL ERROR AND THE INTENT TO PREJUDICE THE RIGHTS OF A PARTY WERE PRESENT	8
C. JDC’S REFERENCE TO JUDGE SWEENEY’S JUNE 28, 2025 FACEBOOK POST IS PROPER.....	10
D. THE JHB’S DECISION IN AKERS DOES NOT MANDATE DISMISSAL OF THE CHARGES AGAINST RESPONDENT	12
IV. CONCLUSION.....	12

TABLE OF AUTHORITIES

	Page
Case Law:	
<i>In re Disciplinary Proceeding Against Turco</i> , 970 P.2d 731 (Wash. 1999).....	6, 7
<i>In re Roe</i> , 931 So.2d 1076 (LA 2006)	8-10
<i>Office of Disciplinary Counsel v. Souers</i> , 611 N.E.2d 305 (OH 1993).....	6
<i>Matter of Callaghan</i> , 238 W. Va. 495, 796 S.E.2d 604 (2017).....	11
<i>Matter of Gorby</i> , 176 W. Va. 16, 339 S.E.2d 702 (1985)	11

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**

JUDICIAL DISCIPLINARY COUNSEL'S REPLY BRIEF

I.

INTRODUCTION

Respondent's sole defense throughout his written response is that when the ends justify the means, the manner used to achieve the result should be ignored even if the methods cause violations of the Code of Judicial Conduct. Instead of an admonishment, Respondent wants applause, and he has shamelessly used the facts of a tragic abuse and neglect case to aid his argument and garner sympathy from the public. If this Court adopts his analysis, it will render the Code of Judicial Conduct, which it long ago adopted to preserve the integrity, independence and impartiality of the judiciary as a whole, meaningless.

II.

JDC RESPONSE TO RESPONDENT'S STATEMENT OF THE CASE

JDC realleges, reincorporates and makes a part hereof the entire Statement of the Case set for in its original brief filed on or about May 11, 2026. In reply to Respondent's brief submitted on June 25, 2026, JDC states as follows:

A. CHARGE I:

JDC takes exception to Respondent's statement on pages 29-30 where he writes:

Without question, the JDC curated the Facebook Posts to represent the worst of the worst of Judge Sweeney's page – the posts most likely to get Judge Sweeney disciplined. There is no evidence in the record of the remainder of Judge's Sweeney's Facebook page. Perhaps he circulated just as many "pro-defendant posts as he did "pro law enforcement posts. Perhaps Judge Sweeney's page was so flooded with cat videos and posts about his grandchildren such that his ten arguably "pro-law-enforcement posts were, in the "aggregate," immaterial.

Respondent should know better than to raise artificial arguments. Had Respondent submitted "pro-defendant" posts to his Facebook account he could, would and should have admitted them into evidence as support that he did not appear biased in favor of law enforcement. Indeed, he did not submit them because he knows they do not exist. In fact, in his sworn statement Respondent testified:

Q. Did you post any job openings for any of the public defender offices in your area?

A. I never saw any, but the answer would be no.

(Jt. Ex. 7 at 255).

B. CHARGE II:

Respondent's argument that judges have a duty to administer abuse and neglect cases promptly is insincere given his own actions with respect to the instant case. The hearing in which Respondent decided to put the child in placement at an out of state facility occurred on or about October 2024 (Jt. Ex. 7 at 278; Jt. Stipulations at 4). Yet, Respondent didn't enter the Order until on or about November 22, 2024, or almost one month after the hearing (Jt. Ex. 5f at 161; Jt. Ex. 7 at 305). He then waited until February 3, 2025, or almost 2 and a half months to find out why the placement had not yet occurred (Jt. Ex. 5f; Jt. Stipulations at 4).

At the February 3, 2025 hearing, a local DoHS worker testified that while overwork and understaffing caused a delay in the out of state placement, bureaucracy at the State level also played a role:

We submitted the ICPC on January 17th [2025] once we got every[thing] we needed to submit that plan including a tentative admission date because once the ICPC is approved it's only good for 30 days. The out-of-state process is lengthy for us to send a child out of state. I can put a child anywhere in state. You can tell me today that Pressley has a bed for this kid and we can place that kid. . . . But for us to send a kid out of state it has to go through certain processes which start with us having to exhaust all in-state options then reaching out to child welfare consultants saying, "hey, we've got an at-risk kid, and we need to have staffing regarding out of state." We have that staffing, which that staffing for _____ was done in October. At that point – different things can happen in that staffing. . . . We were told we could go ahead and proceed with [out of state] placement. . . . From that point we have to get a court order so that is where that November court order came in. We had started asking for that in October. Did not get it until November 22. Once we got that court order we could proceed with the next step, which is submitting the at-risk form and the out-of-state-face sheet to the placement division and the deputy commissioner, and it ends up having to be signed off on by the commissioner. That was done. Once we got that back we could proceed with the ICPC packet. We cannot submit the ICPC packet until we have a court order which we have to have a court order for the face sheet but until we have the signature of the commissioner to move forward from that face sheet. [T]he ICPC was eventually submitted on the 17th of January. Yes, it was a delay, but we also did not have a date until, I believe January 15th of a tentative admission date. . . . We have to have that admission date. We submitted on January 17th. Let's say, because I know residential ICPCs are usually approved within two to three days, five at most. Let's say we submitted it on January 1st and we got it back and it was approved on January 19th but Laurel Oaks was giving us a date of February 15th. That ICPC would be expired, and we'd have to start the whole process over again. We submitted it on the 17th. I'm thinking we have this tentative date at the end of the month. We will have it back. We'll be able to make it work. Never heard anything. Friday I reached out to ICPC . . . and I get, "well, we needed an updated out of state face sheet." That was never communicated to myself or to Ms. Bunch. They never came and said that to us. . . . Then I'm hearing from the director of [the] program that the [out of state facility] is now saying that they are not going to taker her. . . .

Jt. Ex. 5f at 169-172). When asked by the court, the date that the commissioner signed, the DoHS worker stated she wasn't sure she then stated that she "cannot convince you that it didn't lay around but I want to explain" that they were overworked and understaffed (Jt. Ex. 5f at 173).

Of the February 3, 2025 hearing, Respondent stated:

These proceedings as I indicated, are designed to be remedial, that is, to remedy and address and provide treatment of these children, particularly as represented by _____ and specifically in this proceeding and not just warehouse them for a period of time because they are vulnerable and they cannot really speak for themselves and there is really no one to look out for them. The Court believes that it is probably the department's job to look out for them but in this case the department has failed grossly in that regard. Likewise, the process of civil contempt is remedial. It is designed for the purpose of accomplishing something that the Court has ordered to be done which has not been done 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 with me.

(Jt. Ex. 5f at 163-164).

With respect to contempt and the 2014 rule to show cause, Respondent stated near the beginning of the February 3 hearing:

[T]he Court would also observe that the situation is not just a one-off. The Court has struggled with the department for about as long as I can remember since I have been on the bench trying to get the department to do what it is supposed to do in these cases even including but not limited to holding a contempt hearing or a hearing on a rule to show cause wherein the state armed with the department and their counsel came for, and as the Court was trying to do with that effort was to make a determination as to whether the problem was a local problem with people just not doing their jobs or an issue where the state really was not providing the local department with the resources they needed for purposes of doing their job. During that hearing the state made a showing without any evidence to the contrary that everybody in the department was fine, nobody was overloaded in their cases. They had the appropriate number of workers, et cetera, et cetera. The Court later on found the ratios they claimed were not accurate, the caseload was way in excess of what the state had prescribed and recommended and provided for; leaving the Court with the thought that in order to determine the caseload they must have divided the caseload by everybody in the office including the janitors in order to get to those numbers.

(Jt. Ex. 5f at 164-165). Thus Respondent raised the notion of the local DoHS being overworked and understaffed before anyone in the Department testified to the fact.

In his sworn statement, Respondent testified with respect to the rule to show cause:

- Q. You brought up that you had issued a rule to show cause before, and that they [DoHS] weren't truthful with you?
- A. I believe that, yes.
- Q. It's fair to say that that was in 2014, though, wasn't it?
- A. It might've been '14.
- Q. Well, you indicated in a hearing that it was 2014.
- A. Okay. Well, whenever it was. I don't remember now as I sit here. I just said five or six years. Obviously, it's been a lot longer than that, but 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, even if they did under the show cause, it didn't address the issue that 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.
- (Jt. Ex. 7 at 288-289).

III

ARGUMENT

JDC realleges, reincorporates and makes a part hereof by reference all arguments set forth in its original brief filed on or about May 11, 2026. In reply to Respondent's arguments submitted on June 25, 2026, JDC states as follows:

A. RESPONDENT'S RELIANCE ON CERTAIN CASE LAW IS MISPLACED WITH RESPECT TO CHARGE II.

On page 18 of his brief, Respondent cites *Office of Disciplinary Counsel v. Souers*, 611 N.E.2d 305 (OH 1993). *Souers* is a very brief per curiam opinion in which the Court dismissed charges against a judge pertaining to certain comments he made about a case that had been remanded back to him by a court of appeals. *Id.* Unlike Respondent who proactively first sought an interview with a reporter, the judge in the Ohio matter was approached by news media about the case. *Id.* In dismissing the charges, the Ohio Court specifically stated:

First, Canon 3(A)(6) permits public judicial comment to explain court procedure. Respondent's defense of his sentencing order, while less than judicious, was provided to publicly explain his procedure in the underlying criminal case. Thus, we cannot discipline respondent for conduct the canon expressly authorized. Second, neither respondent's attempt to defend his order nor his articulated reluctance to comply with the court of appeals' ruling is sufficiently pernicious to justify any disciplinary sanction. Respondent's disagreement with the court of appeals' disposition was already suggested from each court's judgement. Moreover, respondent ultimately did file a second sentencing order as the court of appeals instructed.

Id.

On page 24, Respondent cites a lone dissent in *In re Disciplinary Proceeding Against Turco*, 970 P.2d 731, 751 (Wash 1999) for the proposition that "judges are not to be found wanting for lack of impartiality upon mere nuance or arguable implication." Disciplinary charges were filed against a judge for allegedly pushing his wife to the ground at a public event. *Id.* Following a hearing the Commission on Judicial Conduct ordered censure and recommended removal from office. *Id.* The Washington Supreme Court agreed holding that (1) the judge failed to show the requisite prejudice necessary to merit dismissal of the charges based on a 20-month delay in their filing; and (2) extrajudicial conduct had sufficient nexus to judicial duties to warrant public

discipline. In making this determination, the Court stated in four short paragraphs of a 15-page majority decision:

Having concluded from our independent evaluation of the facts Judge Turco intentionally pushed his wife to the ground, we next must consider whether this act bore an articulable nexus to his duties as a judge we hold that it did.

The Tacoma Municipal Code (TMC) contains a chapter on domestic violence. . . . When a Tacoma police officer responds to a domestic violence call and has probable cause to believe a domestic violence crime has been committed, the officer *must* arrest the alleged perpetrator. . . . This results in a large volume of domestic violence cases appearing in Tacoma Municipal Court.

Judge Turco's act of pushing his wife to the ground raises substantial questions about his ability to sit in judgment of those accused of domestic violence. Fearful victims of domestic violence would certainly be justified in questioning whether a judge who has demonstrated so little control of his own emotions and so little restraint as to allow himself to assault his own wife, can rule impartially and wisely in the emotion-charged arena of domestic violence. This was particularly true when Judge Turco had been disciplined only a week before the incident in questions for remarks demonstrating insensitivity to victims of domestic violence.

We do not believe that judges in Washington are free under Canon 1 or 2(A) to behave in such a fashion, thereby undercutting the integrity of our high office and creating concern for impartiality. A judge engaging in what is arguably an act of domestic violence, an act made even more egregious by its commission in a public setting so shortly following discipline for insensitivity to victims of domestic violence, violates the directive of Canons I and 2(A).

Id. at 742.

Respondent's reliance on the *Turco* dissent quote belies his argument. The dissenter goes on to note that "there is no more inference arising from these facts that Judge Turco would be unfair to the prosecution of domestic abuse cases than he would be unfair to the defense if he himself had been the innocent victim of domestic abuse." *Id.* at 751. The dissenter then incorrectly notes that Judge Turco is in reality being disciplined "not because he caused physical harm to another human being in the way alleged but because of a subjective predisposition on the part of the judge authority to make a public statement about a social ill." *Id.*

B. RESPONDENT'S ACTIONS WITH RESPECT TO CHARGE II AMOUNTED TO MORE THAN A LEGAL ERROR AND THE INTENT TO PREJUDICE THE RIGHTS OF A PARTY WERE PRESENT.

Respondent's actions cannot be considered legal error with respect to Charge II when he knew that he had other legitimate options and purposely chose not to avail himself of them. This wasn't a mistake. His actions were knowing. In *In re Roe*, 931 So.2d 1076 (LA 2006), the Louisiana Supreme Court publicly censured a judge for giving two newspaper interviews about a matter pending/impending in his Court. In 1994, oyster fishermen banded together and sued the State of Louisiana and the Department of Natural Resources alleging that their oyster leases were destroyed or damaged as a result of the State's operation of a certain Freshwater Diversion Project. *Id.* The Judge presided over the case which resulted in a jury award for the fishermen of more than \$ 1 billion. While the appeal was pending with the high court, the Judge gave two newspaper interviews at the request of the reporters. *Id.*

In one article, the judge blamed the verdict on the state and the tactics of its lead attorney. The judge said he would have awarded much less money to the oystermen and that the state's biggest mistake was insisting on a jury trial. *Id.* The judge also said he repeatedly pressed the lead attorney and that he was concerned about the state's ability to get a fair trial in a parish known for its "negative attitude toward the state." *Id.* at 1077. The judge testified that he must have asked the lead attorney five times if he wanted a jury trial and that he thought "it was a major disadvantage to the state's case to have a jury trial." *Id.* The judge also said he didn't play favorites in court and that he thought "I was equally harsh to all sides." *Id.* Lastly, the judge said that even though the jury awarded too much money, he said that wasn't enough for him to overturn the award. *Id.* He said, "That's not the standard for reducing a jury's finding It's whether or not there's been sufficient evidence to support it. *Id.* The article was accompanied by a photo of the

judge posing on the water's edge with his judicial robe "billowing in the wind." *Id.* In the second article, that judge said, "Did I tease [the lead attorney]? Absolutely. . . . Did he deserve it? Absolutely." *Id.*

A judicial ethics complaint was filed against the judge, and he was asked to respond to the allegations. *Id.* The judge said he was contacted by a reporter who was writing a series of articles on coastal erosion and the effect that the case had on the State's efforts in that regard. *Id.* He also wanted to write about the last trial for lead attorney for the fishermen, who had just died and how he interacted with the state's lead attorney. *Id.* The judge said he agreed to meet the reporter but would not go into detail about any of his rulings or the judgment. *Id.* Judge Roe said that during the two-hour interview, the reporter and he discussed the political history of the parish, his legal career, his election to the bench, and the contrasting personalities of the two lead attorneys. *Id.* The reporter also asked the judge about the allegations made in the State's appellate brief about the judge's treatment of the lead attorney. *Id.*

The judge also explained that the quotes attributed to him concerning the size of the jury's verdict were taken verbatim from the transcript of the post-trial motion hearings. *Id.* He also referred the reporter to the transcript about the selection of the jury, but other such comments were made outside of the confines of the Court. *Id.*

The Commission filed formal charges alleging numerous violations of the Code including Canon 3A(8) (a judge shall not while a proceeding is pending in any Louisiana state court, make any public comment that might reasonably be expected to affect its outcome or impair fairness). *Id.* The Commission further alleged that the judge's conduct was willful. *Id.* The Judge answered the formal charges and admitted his misconduct but denied such was willful but was instead "based on extremely poor judgment and stupidity." *Id.* at 1079. Ultimately, the parties entered into

stipulations including a violation of Canon 3A(8), and the Commission found that the judge did not act in bad faith but agreed with him that his judgment was poor when he met with the press about the case.

In agreeing to publicly censure the judge, the high court, in a per curium opinion stated:

Judge Roe's decision to participate in a newspaper interview regarding a pending case led to a widely published article that potentially case the judiciary as a whole into disrepute. Likewise his public criticism of a lawyer in the . . . lawsuit calls the judiciary's impartiality into question, especially considering the politically charged nature of the litigation. An experienced jurist such as Judge Roe should be well aware of the need to maintain public respect and confidence in an impartial judiciary. Nonetheless, we find the record supports the Commission's determination that Judge Roe did not act in bad faith in this matter and that he displayed sincere remorse for his actions. Good faith is not an affirmative defense to a judicial disciplinary charge; however, it may be considered as a mitigating factor which militates in favor of a lesser sanction.

Id. at 1082.

In the instant case, Respondent has not admitted any misconduct. Instead, Respondent wants praise for his misdeeds. Respondent knowingly chose to take the actions he did. He purposefully failed to issue a rule to show cause because on one occasion some 14 years before he felt he was lied to by DoHS. From his statements at the February 3 hearing, it appears that he already knew of the staffing issues in his circuit before the hearing, he knew that there was a new DoHS Secretary and the sole incident he relied on not to hold a show cause hearing happened once fourteen years previously. All cases and not just abuse and neglect are unique based on their facts and circumstances. And all should be afforded the same opportunities to raise challenges in court. It is duty of the judge to afford the opportunities in each and every case.

**C. JDC'S REFERENCE TO JUDGE SWEENEY'S JUNE 28, 2025
FACEBOOK POST IS PROPER.**

Respondent is wrong. All judicial disciplinary cases have one thing in common and that is their purpose. As this Court has long held, “[t]he purpose of judicial disciplinary proceedings is the preservation and enhancement of public confidence is the honor, integrity, dignity and efficiency of the members of the judiciary and the system of justice.” *Matter of Callaghan*, 238 W. Va. 495, 507, 796 S.E.2d 604, 616 (2017) quoting Syl., *Matter of Gorby*, 176 W. Va. 16, 339 S.E.2d 702 (1985).

The post that Respondent complains about is contained within Exhibit No. 11 on page 367. Respondent does not deny making the post. He simply argues that it should not be admitted into evidence because it was not pleaded in the Formal Charges. Respondent has been well aware of its existence and JDC’s intent to use since he made the post and the undersigned turned it over in discovery. Indeed, he never disputed the authenticity of Exhibit No. 11. He only complains that it should not be admitted because it is hearsay. When the undersigned points out that not all of the posts are hearsay and that the one in question should therefore be admitted into evidence, Respondent has no choice but to raise a ludicrous argument and that the undersigned is only out to “denigrat[e] a Judge’s reputation solely for the purpose of doing so.” Nothing could be further from the truth. Respondent made the statement. The undersigned asked to have it admitted into evidence as it should be and it legitimately goes toward the sanction of admonishment.

Respondent accuses the undersigned of wanting to win at all costs. Again this is inaccurate. When a Respondent lacks a legitimate defense, they usually do one of two things, they admit their wrongdoing or they attack JDC. Respondent can’t or won’t admit any wrongdoing so he’s chosen to attack the messenger. Yet, it is the JIC who determined that there was probable cause to charge Respondent and the JHB who found violations of some but not all of the charges. All the undersigned is doing is asking this court to affirm the JHB’s findings and conclusions where

appropriate and to agree with the JIC in its determination on the remainder of the charges. Lastly, the undersigned has never strayed from the sanction request of an admonishment which was the original discipline imposed by the JIC and to provide support therefore – which in part is because he has failed to learn his lesson and in part because he knowing chose to engage in the conduct for which he was charged.

D. THE JHB'S DECISION IN AKERS DOES NOT MANDATE DISMISSAL OF THE CHARGES AGAINST RESPONDENT.

All JHB decisions are recommendations to the Court and nothing more. *Id.* While JHB decisions are to be given appropriate consideration, this Court is still free in Akers to adopt the recommendation in whole, in part or dismiss the charges altogether. The review by the court in judicial discipline cases is *de novo*. *Id.* Because the case has not yet concluded, the JHB decision in Akers cannot mandate anything.

Moreover, the only things that the two cases have in common are that they each arose out of an abuse and neglect case and they both talked to the news media. Outside of that, the facts and circumstances of each matter are different and based on the analyses of the JHB, require different outcomes. Indeed, Respondent is charged with a whole separate count that relates solely to Facebook posts and bears absolutely no nexus to the Akers matter.

IV.

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, that

he be admonished for the same and pay costs in the amount of \$1,210.05.

Respectfully submitted,

Judicial Disciplinary Counsel



Teresa A. Tarr, Esq.
WV Bar I.D. No. 5631
WV Judicial Tower, Suite 700A
4700 MacCorkle Avenue SE
Charleston, WV 25304
(304) 558-0169 (o)
(304) 558-0831 (f)
teresa.tarr@courtswv.gov

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**

CERTIFICATE OF SERVICE

I, Teresa A. Tarr, Judicial Disciplinary Counsel, do hereby certify that I served JDC's Reply 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 10th day of July 2026.

Respectfully submitted,



Teresa A. Tarr, Counsel
WV Bar I.D. No. 5631
Judicial Investigation Commission
WV Judicial Tower, Suite 700A
4700 MacCorkle Avenue SE
Charleston, WV 25304
(304) 558-0169
(304) 558-0831
teresa.tarr@courtswv.gov