
BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SCA EFiled: Jun 25 2026
02:14PM EDT
Case ID 79874674

IN THE MATTER OF

**THE HONORABLE TIM SWEENEY,
JUDGE OF THE THIRD JUDICIAL
CIRCUIT**

SUPREME COURT NO. 25-475

JIC COMPLAINT NO. 13-2025

**THE HONORABLE TIMOTHY L. SWEENEY'S
RESPONSE BRIEF**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
I. Summary of Argument.....	1
II. Assignments of Error.....	3
III. Statement Regarding Oral Argument.....	3
IV. Statement of the Case	3
A. Judges Have the Duty to Administer Abuse and Neglect Cases Promptly.....	4
B. The Staffing Crisis made administering abuse and neglect cases nearly impossible.	6
C. Judge Sweeney Acted to get DHS’s Attention and Resolve the Staffing Crisis.	8
D. Judge Sweeney Collaborated with DHS to Improve the Staffing Crisis.	12
E. The Facebook Charges.....	14
V. Argument.....	16
A. Judge Sweeney’s Child Advocacy Did Not Violate the CJC.....	16
1. The Interviews did not violate Rule 2.10(A).....	17
a. Judge Sweeney did not affect the outcome or impair the fairness of any matter.	17
b. The Interviews fall under the exception in CJC Rule 2.10(D).....	21
c. The Interviews were permissible under CJC Rule 3.1.	22
2. The Interviews did not violate Rule 1.2.	23
B. Judge Sweeney did not Violate CJC Rule 2.6(A).....	25
C. Judge Sweeney’s Social Media Posts Did Not Violate the CJC.....	28
1. The Facebook Posts did not violate Rule 1.2 or 3.1(C).....	28
a. Social media posts cannot be “aggregated” to create a violation of Rule 1.2 or 3.1(C).	29
b. The JDC did not adduce a sufficient record to support it.....	29
c. None of the Facebook Posts substantively violated Rule 1.2 or were “egregious.”	30
d. The JHB Correctly Rejected the Standard Advanced by the JDC	35
2. The Facebook Posts did not violate Rule 2.10(A).	36
a. The Satterfield Post did not violate Rule 2.10(A).....	36
b. The Mindfulness Post did not violate Rule 2.10(A).....	39
c. The remaining posts do not violate Rule 2.10(A)	40
D. Judge Sweeney did not violate CJC Rule 3.7	41
E. The JHB’s Evidentiary Rulings Were Correct.....	42
F. JDC’s Reference to Judge Sweeney’s June 28, 2025, Facebook Posts is Knowingly Improper	44
G. The JHB’s Decision in Akers Mandates Dismissal of the Charges.....	46

H.	The Interests of Justice are Not Furthered by Punishing Judge Sweeney	49
VI.	Conclusion	52

TABLE OF AUTHORITIES

Cases

<i>Commonwealth v. Kearney</i> , 92 A.3d 51 (Pa. Super. Ct. 2014).....	29
<i>Corn v. Rolan</i> , 964 A.2d 398 (Pa. Super. Ct. 2008)	29
<i>In re Benoit</i> , 523 A.2d 1381 (Me. 1987).....	17, 38
<i>In re Brandon Lee H.S.</i> , 629 S.E.2d 783 (W.Va. 2006).....	26
<i>In re Cruickshanks</i> , 648 S.E. 2d 19 (W. Va. 2007)	51
<i>In re Dehen.</i> , 26 N.W.3d 1 (Minn. 2025).....	26
<i>In re Disc. of Stoker</i> , 118 Wn.2d 782 (1992).....	24
<i>In re Disc. Pro. Against Keenan</i> , 199 Wash.2d 87 (2022).....	23, 31
<i>In re Disciplinary Proceeding Against Turco</i> , 137 Wash.2d 227 (Wash. 1999)	23, 24
<i>In re Eplin</i> , 186 W. Va. 207 (1991)	24
<i>In re Four Pa. Skill Amusement Devices</i> , 2022 Pa. Dist. & Cnty. Dec. LEXIS 2953 (Jul. 11, 2022)	29
<i>In re Greene</i> , 173 W. Va. 406 (1984)	26
<i>In re Hey</i> , 192 W. Va. 221 (1994)	23, 36, 46
<i>In re McCutcheon</i> , 846 A.2d 801 (Pa. Ct. Jud. Disc. 2004)	39
<i>In re Reddin</i> , 221 N.J. 221 (2015).....	23, 31
<i>In re Slaughter</i> , 480 S.W.3d 842 (Tex. 2015).....	passim
<i>Jonathan R. v. Justice</i> , 41 F.4th 316 (4th Cir. 2022)	5, 8
<i>Office of Disciplinary Counsel v. Souers</i> , 611 N.E.2d 305 (Ohio 1993)	18, 21
<i>State ex rel. W. Virginia Dep't of Hum. Servs. v. Redding</i> , No. 24-658, 2026 WL 1162606 (W. Va. Apr. 29, 2026)	27
<i>State ex rel. W. Virginia Dep't of Hum. Servs. v. Wilmoth</i> , No. 24-728, 2025 W.Va. LEXIS 114 (W. Va. Mar. 25, 2025).....	26
<i>State v. Phillips</i> , 194 W. Va. 569 (1995)	44
<i>State v. Sutphin</i> , 195 W. Va. 551 (1995).....	44
<i>United States v. Garwood</i> , 16 M.J. 863 (Navy-Marine Ct. of Military Review 1983).....	22
<i>United States v. Sierra Pacific Industries, Inc.</i> , 862 F.3d 1157 (9 th Cir. 2017)	33, 37, 38
<i>W. Va. Dep't of Health & Human Res. v. E.H.</i> , 236 W. Va. 194 (2015)	9

Statutes

W. Va. Code § 49-1-102	6
W. Va. Code § 49-1-105	4
W. Va. Code § 49-1-208	4
W. Va. Code § 49-4-601	6
W.Va. Code § 49-5-101	42

Other Authorities

<i>In re: Sally G. Jackson</i> , JIC No. 07-2021	45
Utah Ethics Adv. Op. 12-01 (Aug. 31, 2012)	33, 35
Wash. Ethics Adv. Comm. Op. 92-05 (1992).....	22

Rules

2016 Model Code of Jud. Conduct Rule 3.1.....	22
Code of Jud. Conduct R. 3.1	28
Code of Jud. Conduct R. 1.2	23, 36
Code of Jud. Conduct R. 2.10	17, 22, 38
Code of Jud. Conduct R. 1.1	42
Code of Jud. Conduct R. 3.7	41
Code of Jud. Conduct, Terminology.....	24, 39

Treatises and Journals

J. Clark Kelso, <i>The Sound of the Gavel: Perspectives on Judicial Speech</i> , 28 Loy. L.A. L. Rev. 851, (Apr. 1995)	21
Mark I. Harrison & Keith Swisher, <i>Tradeoffs of Candor: Does Judicial Transparency Erode Legitimacy?</i> , 64 N.Y.U. Ann. Surv. Am. L. 559, 600, 612 & n.161 (2009)	17
<i>What's in a Like?</i> , CSCW '16 PROCEEDINGS OF THE 19 TH ACM CONFERENCE ON COMPUTER-SUPPORTED COOPERATIVE WORK & COMPUTING (Feb. 27, 2016).....	33, 44

I. Summary of Argument

Judicial decisions made in good faith to support the well-being of abused and neglected children deserve the unqualified respect and support of this Court. Even if this Court disagrees with substance of the decisions or the procedures employed to make them, a judge should never be punished for having the courage to do so. Without this Court's unwavering support in such circumstances, circuit judges will be forced to do their job with only one eye on the case before them and the other looking over their back. If this happens, the public will rightfully lose confidence in the judiciary. More importantly, children deserving of the best the judiciary has to give will be harmed.

On February 3, 2025, Judge Sweeney held a hearing to find out why a child in the state's custody had not received placement services that he had ordered and that she desperately needed. The answer was one that is sadly familiar to every West Virginia circuit judge: there weren't enough workers to get the job done. When the CPS worker assigned to her case begged Judge Sweeney for additional manpower to help the children in his circuit, he did not turn his back and ignore the problem. He did what every West Virginia circuit judge should do: he tried to find a way to help. He entered an order requiring West Virginia Department of Human Services ("**DHS**") workers to staff unstaffed positions and took steps to increase the public's awareness of the problem. In response to Judge Sweeney's Order (and not the media coverage of it), the DHS took immediate action to address the problems that Judge Sweeney identified. Within days of his Order, DHS representatives meet with Judge Sweeney and implemented a revised staffing plan for Judge Sweeney's circuit. Within weeks of his Order, the DHS had taken steps to increase staffing throughout the State of West Virginia. As a result, abused and neglected children received critical services in a more timely manner, or in some instances that they would not have received at all.

At least to some degree, workload burdens on CPS workers in Judge Sweeney’s circuit and throughout their state were decreased, allowing them to better perform their jobs to support West Virginia’s families and children. The result was a “win-win” for everyone involved.

Everyone, that is, except Judge Sweeney. While Judge Sweeney was still working with DHS to improve child abuse and neglect staffing, Judicial Disciplinary Counsel (“**JDC**”) filed a complaint against him alleging that his February 3, 2025 order unethically exceeded the bounds of his authority and that his interviews with the media violated Rule 2.10A of the Code of Judicial Conduct (“**CJC**”)(the “**Child Advocacy Charges**”). (J. Ex. 1, BSP¹ 1-32; J. Ex. 18 at 1). As discussed herein, although no one ever complained about any Judge Sweeney’s Facebook posts as being improper, and JDC had never previously raised the issue with him, JDC also alleged that certain of his Facebooks reposting law enforcement job positions, community fundraisers and items about human trafficking cases violated the CJC. (the “**Facebook Charges**”). *Id*

As set out below, this Court cannot endorse the JHB’s recommendation and punish Judge Sweeney for his actions. Judge Sweeney did not violate the CJC in any way. His public comments played no role in the DHS’ decision to work with him to resolve the Staffing Crisis (as defined below), and did not violate CJC Rules 2.10(A) or 1.2. His February 3, 2025 Order clearly did not violate Rule 2.6 by depriving DHS of any rights of any kind, and his Facebook posts were proper under CJC 1.2, 2.10(A), 3.1(C) and 3.7.

But even if this Court finds that Judge Sweeney violated the CJC, his violations did not harm the judiciary or the public’s perception of it anyway. His Child Advocacy actions were intended to help abused and neglected children and undisputedly did so. There is no systemic fairness or moral justification for punishing him for doing so. His Facebook posts promoted his community.

¹ Respondent’s Brief incorporates the same record citation format utilized by the JDC in its Brief-in-Chief (“JDB Br.”).

From open law enforcement jobs to fundraisers for those in need, to posts raising awareness about human trafficking, each was intended to make his community a better place in which to live. There is no standard, under the CJC or otherwise, that justifies punishment here. If the Court does so, the public's respect for the judiciary will be diminished. More importantly, West Virginia's judges will rightfully believe that this Court does not support them when they make tough decisions to address difficult problems. Judicial actions will be chilled, and the system as a whole will suffer.

II. Assignments of Error

With respect to the Child Advocacy Charges, the Judicial Hearing Board (“JHB”) erred in making the findings reflected in RD 24, ¶ 55, RD 26, § 65, and RD 26, ¶ 69, and in concluding that Judge Sweeney should be admonished in RD 28, ¶ 9; RD 31-31 ¶¶ 16-16. With respect to the Facebook Charges, the JHB erred in making the findings reflected in RD 14, ¶ 15, RD 14-15, ¶ 19, RD 15, ¶ 18, RD 16, ¶ 21, RD 18, ¶ 28(g), and RD 18-19, ¶ 28(h), and in concluding that he should be admonished in RD 28, ¶ 8; RD 29 ¶¶ 15-16.

III. Statement Regarding Oral Argument

Judge Sweeney believes that oral argument is both necessary and desirable in this case. Pursuant to its March 27, 2026 scheduling order, this Court indicated that oral argument will be set under W.Va. R. App. P. 19 during the September 2026 Term of Court. Because many of the issues raised herein are issues of first impression for this Court, including a judge's use of social media and the application of CJC 2.10(A), Judge Sweeney suggests that argument under W.Va. R. App. P. 20 is more appropriate.

IV. Statement of the Case

After a hearing on December 10, 2025 (JHB Tr.), on February 19, 2026 the JHB issued its Recommended Decision admonishing Judge Sweeney with respect to both the Child Advocacy

Charges and the Facebook posts. With respect to the Child Advocacy Charges, the JHB concluded he violated CJC 1.2 because his media interviews “could undermine public confidence in his “impartiality.” Recommended Decision (“RD”) 24, ¶ 55. Despite finding that Judge Sweeney’s goals were legitimate, the JHB ruled that because Sweeney’s media statement created an impetus for DHS to take action to address the understaffing concerns, he also violated CJC 2.10(A). RD 26, ¶¶ 65-69. With respect to the Facebook Charges, the JHB found that his posts, standing alone, were not *per se* ethical violations. RD 4, ¶ 15. When aggregated, however, the JHB concluded that they gave the appearance of impropriety. RD 14-15, ¶ 17. As such, the Board concluded that his Job Posts, Attention Drug Dealers Post and one of his Human Trafficking Posts violated CJC 1.2, RD 14-16 ¶¶ 17-22, and that two of his Human Trafficking Posts violate CJC 2.10(A). RD 18, ¶ 28(g) and (f). Even though Judge Sweeney had no prior disciplinary issues, (J. Ex. 18 at 7), the JHB recommended that he be admonished as to both sets of charges. RD 31-32, ¶¶ 15-16.

A. Judges Have the Duty to Administer Abuse and Neglect Cases Promptly.

West Virginia’s abuse and neglect system is of critical importance to the state of West Virginia and its judiciary both practically and morally. From a practical perspective, West Virginia has assumed the responsibility to care for abused and neglected children and has assigned that responsibility to the DHS. W. Va. Code §§ 49-1-105, -208. Tens of thousands of children pass through West Virginia’s abuse and neglect system every year, and at any given time, there are more than 5,000 open child abuse and neglect cases pending in West Virginia’s courts, making up over 20% of all active cases. (J. Ex. 5, BSR 0114, 0128–30).

Morally, it is tragic when even one child is abused or neglected. These tragedies play out every week before West Virginia’s circuit judges when children who have been physically, emotionally, or sexually abused by their families come before them in abuse and neglect proceedings. Unfortunately, these tragedies are compounded when the state neglects the children

in its care. It is all too common for children to languish in state custody. DHS has frequently put children in the wrong placements, including hotels or 4-H camps. *Id.*, 0201–02. In one facility, police were called nearly every day of the week, responding to “reports of children attacking staff, attacking each other, children in medical distress such as: seizure, losing consciousness, suicidal and homicidal thoughts, and possible mold in the facility.” *Id.* 0202. Because of this type of improper placement, children neglected by DHS often end up in juvenile detention, which amounts to “kiddie prison, orange uniform, leg shackles, hands, cuffs [sic], etcetera” (J. Ex. 7, BSR 0304:6–7; JHB Tr. 50:24–51:15). Regretfully, this is not hyperbole. Additional instances of child abuse and neglect of children in state custody are detailed in *Jonathan R. v. Justice*, 41 F.4th 316, 322–23 (4th Cir. 2022) (“These stories are shocking and yet ... shockingly common among West Virginia's foster children.”)

As a result of these practical and moral challenges, this Court has mandated that the judiciary handle abuse and neglect cases differently from the average civil or criminal case. In the abuse and neglect system, circuit judges have wide-ranging administrative duties directed toward protecting abused and neglected children. RD 10, ¶ 24 (“Respondent correctly notes that circuit court judges have heightened responsibilities and involvement in abuse and neglect cases”). But even though the judiciary is assigned these duties, it cannot discharge them unless DHS briefs the court about the child at scheduled hearings and complies with court orders. (JHB Tr. at 49:10–50:3; J. Ex. 5, BSR 0165:24–167:6). DHS also has a variety of other obligations to the court, such as monitoring and responding to child abuse allegations, filing child abuse petitions on behalf of the state, providing services to those children upon the filing of any abuse and neglect petition, searching for their relatives, investigating and producing evidence substantiating the alleged abuse, enacting case plans for the children, and taking care of the children in DHS custody, among many

other things. W. Va. Code § 49-4-601. To do so, DHS has a statutory duty to allocate CPS workers based on population, referrals, and average caseload. W. Va. Code § 49-1-102.

B. The Staffing Crisis made administering abuse and neglect cases nearly impossible.

Unfortunately, in recent years, DHS has not allocated the manpower necessary to comply with these duties to the court and to West Virginia’s children (the “**Staffing Crisis**”). DHS publicly admitted on its Child Welfare Dashboard that as of January 2025, it had filled only 33% of its CPS worker positions in Ritchie County and had filled none of the outstanding supervisor positions. (J. Ex. 5, BSR 0199). As bleak as these statistics seem, the reality was far worse. As a CPS worker testified during the February 3, 2025 hearing before Judge Sweeney, only 25% of the outstanding CPS worker positions in the Third Judicial Circuit were filled in February 2025. (*Id.*, 0174:11–13). The recommended caseload for a CPS worker is **ten children**, but one CPS worker had **one hundred families** assigned to her. Each of those families, in turn, “could have one to six to twelve kids.” (*Id.*, 0184:8–22, 0186:8–14). CPS workers in the Judge Sweeney’s circuit worked until “eight, nine, ten o’clock at night working every single night,” every two weeks with up to “30, 40, 50 hours of overtime.” (*Id.*, 0175:19–24). They were “exhausted.” (*Id.*, 0175:13).

This created real-world impacts on children languishing in state custody. (JHB Tr. 46:18–47:21). During the February 3 hearing, DHS’s manager for the Third Judicial Circuit testified, “My numbers are horrible. My face to face with getting plans done, that number is low. My initial contact, meaning the time frames of referrals, is low because I just don’t have the staff.” (J. Ex. 5, BSR 0176:13–16). The need for CPS workers was so dire—and children were being so harmed as a result—that the manager had to stop performing her managerial and organizational duties. Instead, she had to act as a CPS worker herself, causing the local DHS office to fall into disarray. (*Id.*, JA 0183:1–10). Because of the Staffing Crisis, these DHS employees had to prioritize the

greatest threat to children first, leaving children in need but with less imminent threats to their safety to wait on available staffing for needed services. Although children languishing in state custody frequently leads to the child's incarceration, injury, and even death, these children are considered "safe" compared to other children out on referrals. *Id.* 0175:15–18, 0193:5–13, 194:12–18). According to that worker, "***the system ... had broken down.***" (JHB Tr. 54:2; J. Ex. 5, BSR 0494).

One child—L.S.—was regularly physically and sexually abused by her grandfather and stepfather, and nobody in her family intervened to stop the abuse. (J. Ex. 5, BSR 0163:2–9). Judge Sweeney was assigned her case. After receiving various diagnostics and evaluations, all the parties agreed to place her in an out-of-state facility because "it's pretty well laid out what her issues are" and that facility was in the best position to help her. (JHB Tr. 50:24–51:16; J. Ex. 5, BSR 0304:9–12). To accomplish this, Judge Sweeney ordered her placement. (J. Ex. 5, BSR 0161:8–14). Because of the Staffing Crisis, DHS had to prioritize the children in their system. It simply did not have time to provide L.S. the services that she needed and that Judge Sweeney had ordered. (*Id.*, 0190:3–9). Because of the Staffing Crisis, L.S. "languish[ed] in the custody of the department" and, like so many other children, was funneled into a juvenile detention facility. (*Id.*, 162:10–17, 0168:8–16, 0186:3–7). Because of the delay caused by the Staffing Crisis, it became unlikely that she could receive the placement that she needed. (*Id.*, 0162:17–18).

On February 3, 2025, Judge Sweeney held a hearing to determine why DHS did not comply with his placement order. (JHB Tr. 50:24–16). The CPS worker assigned to L.S.'s case and DHS's manager for the Third Judicial Circuit testified about the Staffing Crisis and their repeated attempts to resolve the Staffing Crisis internally at DHS. As the DHS manager testified, "I have begged Charleston for help, sent e-mail after e-mail to the deputy commissioner, who is my direct

supervisor – ***‘I need help. I need help. This is what I need. I need help.’*** (Id., 0176:3–6). They begged for help from August 2024 through February 2025, but no help came. (Id., 0176:3–77:20).

As a result, children were being imminently harmed in Judge Sweeney’s circuit:

Between all of that I was seeing kids, doing referrals. Unfortunately we don't have enough workers. We have to prioritize certain things over others. I hate saying that because all kids matter. ***But with one situation over the other, I have a kid getting hurt right now in a house and I can't justify sitting here, filling out paperwork instead of going out and seeing those kids.***

(Id., 0190:2-9)(emphasis added). Having exhausted their internal remedies at DHS, the manager begged Judge Sweeney for help: ***“I’m asking and they don’t hear me. Maybe they will hear you in Charleston. I don’t know, but I need help.”*** (Id., 0177:23–24). Neither Judge Sweeney, nor any other West Virginia circuit judge worthy of their judicial robes, could ignore these pleas.

C. Judge Sweeney Acted to get DHS’s Attention and Resolve the Staffing Crisis.

Judge Sweeney had an ethical and moral duty to respond to the Staffing Crisis and the local DHS manager’s desperate request for help. Obviously he had a moral duty to protect children under his care who were being harmed by the Staffing Crisis, but he also had a legal and ethical duty as a member of the judiciary to manage the abuse and neglect system to best protect those children. The Staffing Crisis caused serious delays in the resolution of abuse and neglect cases—delays that this Court has repeatedly demanded that circuit court judges eliminate. (JHB Tr. 53:21–54:2). Judge Sweeney immediately recognized that it was his responsibility to act: ***“My concern is this: If I just sit around and these things are happening and I don’t do anything, am I doing my job? Am I part of the solution or part of the problem? As I indicated earlier, the buck kind of stops here.”*** (Id., 0179:6–10); see also J. Ex. 3 BSR 0056; J. Ex. 7, BSR 0315:15–17:13, 0334:16–18; JHB Tr. 55:11–56:4; cf. *Jonathan R.*, 41 F.4th at 321, 333 (Appx. at 12) (***“the buck does not stop with the Department”***). Given the urgency of the situation before him, Judge

Sweeney could not delay; he needed to resolve those issues quickly.

This was not the first time Judge Sweeney had tried to resolve the Staffing Crisis. He had been trying to do so throughout his fifteen years on the bench. (J. Ex. 5, BSR 0164:21–1). He had repeatedly offered to help DHS—through court order or otherwise—to help them accomplish what they needed to do. (JHB Tr. 47:21–48:3). He had previously ordered a show cause hearing to address the Staffing Crisis and required DHS to prepare two formal remediation plans. (JHB Tr. 48:10–23).

None of these worked. (J. Ex. 5, 0165:21–67:6, J. Ex. 7, 0286:11–87:12). DHS misrepresented its caseload statistics and failed to comply with either of the remediation plans. (J. Ex. 5, 0164:21–67:8). As this Court has noted, attempts at dialogue between DHS and the judiciary “have failed at times because of an unwillingness in [DHS] leadership to acknowledge the realities [judges] face every day on the bench or to accept responsibility for things that are outside a court’s control.” JA 0494; see *W. Va. Dep’t of Health & Human Res. v. E.H.*, 236 W. Va. 194, 210 (2015) (citations omitted) (DHS’s “follow-through efforts are abysmal”). Internal attempts at reform in the executive branch—both top-down from Governor Justice and bottom-up from local workers and managers—all failed. (*Id.*, JA 0176:3–77:24; JHB Tr. 59:6–9). As DHS’s general counsel testified, unfortunately the “experience of ... everybody that has dealt with the department ... has been that unless you go scorched earth with the department, you don’t get anybody’s attention.” (J. Ex. 14, BSR 0476:8–15).

There is a wise and familiar saying: Insanity is doing the same thing over and over again and expecting different results. Judge Sweeney is not “insane,” and did not believe that the things he had tried in the past would work in February of 2025. He needed to do something different and do it very quickly.

So on February 3, 2025, Judge Sweeney *sua sponte* issued an administrative order titled “In re: Critical Understaffing of the Department of Human Services” (the “**Administrative Order**”). (J. Ex. 3, BSR 0053). The Administrative Order disclosed nothing about any particular child, or any information that would violate West Virginia Code § 49-5-101(a) governing the confidentiality of juvenile records. Rather, it simply stated that the Staffing Crisis posed “an immediate and critical threat to at-risk children, the most vulnerable residents of this Circuit and State,” and noted that “cases involving juveniles are the highest priority for the judiciary in the State of West Virginia.” *Id.* It then ordered that various persons at DHS (“**DHS Leadership**”), including its secretary Alex Mayer and its general counsel Chanin Krivonyak, be appointed “as Child Protective Service Workers, Removal Workers, Case Workers, Court Workers, Intermediate Supervisors, or any other designation determined to alleviate the immediate critical staff shortage” in the Third Judicial Circuit. (*Id.*, 0053). DHS Leadership’s work was to be supervised by DHS’s manager for the Third Judicial Circuit. *Id.* DHS Leadership was then ordered to appear at the Ritchie County Courthouse on February 20, 2025, to confirm their case assignments. *Id.* Although time was of the essence in resolving the Staffing Crisis, Judge Sweeney wanted to give DHS enough time to reach out to him, develop a remediation plan, and implement the plan if possible before the February 20 hearing. (JHB Tr. 89:4–17).

Judge Sweeney’s primary goal was to get DHS’s attention so that he could coordinate with it to ameliorate the Staffing Crisis. (*Id.*, 56:5–57:10, 59:4–60:4). DHS knew from the moment it received the Administrative Order that this was Judge Sweeney’s motivation. (J. Ex. 14, 0450:17–51:5, 0473:23–74:3, 0475:10–18). After all, Judge Sweeney has a reputation as a good and fair judge, and both the Judicial Investigation Commission (“**JIC**”) and DHS knew it. (J. Ex. 1, BSR 0022; J. Ex. 14, BSR 0450:17–51:5). Of equal importance, and in light of DHS’s long history of

resisting attempts to resolve the Staffing Crisis, Judge Sweeney also wanted to “get the attention of the public, of anybody that would listen that could be in a position to help address this issue in some fashion I was just desperate to try and sound the alarm ... with regard to this situation in the hopes ... that somebody would listen, somebody would take it up and do something to address the matter.” (JHB Tr. 59:16–60:4)

To accomplish this second goal, Judge Sweeney could not simply use hope as a strategy. If he were to do nothing, then either (i) the public would never learn about the Staffing Crisis, and no help would come; (ii) the public would slowly learn about the Staffing Crisis and countless children would languish or be harmed in state custody before any help came; or (iii) the public would eventually learn about the Staffing Crisis through after-the-fact recounts of children being harmed, attacking each other or committing suicide while in state custody. Because Judge Sweeney knew that he (like all of West Virginia’s circuit judges) had a duty to prevent harm to children and prevent delays in the abuse and neglect system, these were not acceptable methods. So Judge Sweeney turned to the news media and interviewed about the Staffing Crisis—one with the Parkersburg News on the afternoon of February 4 and one with MetroNews on February 5 (the “**Interviews**”). (J. Ex. 1, BSR 0054–57; J. Ex. 8, BSR 0330–40). This Court should carefully review both in its consideration of this case. Judge Sweeney did not divulge information about any children in the Interviews; his comments were strictly about the Staffing Crisis. *See id.*; JHB Tr. 99:22–100:4). He also said nothing inflammatory; when the interviewers asked whether he would hold DHS Leadership in contempt, Judge Sweeney simply emphasized his desire to work out a solution with DHS Leadership and provide the resources needed to the local DHS office. (J. Ex. 8, BSR 0335:10–36:7).

Both the JIC and the JHB recognized that these were Judge Sweeney’s sole motivations:

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

(J. Ex. 1, BSR 0024; RD 29, ¶ 12). As the JHB further found, “there is no evidence that [Judge Sweeney] had any intent to prejudice the rights of the party or that he acted with improper motive,” RD at 22 ¶ 46, and his “concerns about severe understaffing by the Department of Human Services were legitimate and [his] actions resulted in correction by the Department before the return date on the Administrative Order.” RD at 29 ¶ 11

D. Judge Sweeney Collaborated with DHS to Improve the Staffing Crisis.

DHS Leadership received the Administrative Order on the morning of February 4. (J. Ex. 14, BSR 451). When DHS received the Order, it knew that the named employees would not be compelled to work as case workers, and that Judge Sweeney was simply trying to get their attention. (*Id.*, 0450-451). DHS became aware of the Parkersburg News article about the Order at some point on February 4, 2025 but it does not know when it did so in relation to other events that took place that day. (*Id.*, 454). There is no evidence that DHR ever knew about or saw Judge Sweeney’s interview with Metro News during its discussions or interactions with Judge Sweeney. (*Id.*, 478). After reviewing the Administrative Order, DHS reached out to Judge Sweeney at 4:10 p.m. on February 4 to discuss the matter with him to try and reach a resolution:

I am writing to you in response to your February 3, 2025, sua sponte Order that The Department of Human Services, Office of Cabinet Secretary received today.

* * *

After receiving your Order earlier today, we would like to schedule a meeting with your Honor at your earliest convenience, either in-person or virtually, to discuss your concerns and frustrations, and to discuss our immediate plans to take immediate corrective action as necessary. If you believe a meeting would be beneficial, I respectfully request that your administrative assistant contact us to schedule a mutually convenient time.

(*Id.*, 454-457; 487-88). In response, Judge Sweeney maintained open lines of communication with

DHS Leadership and emphasized his gratefulness for their competence and willingness to work with him. (*Id.*, 0507–22; see also 0491–522) DHS Leadership had only kind words to say about Judge Sweeney’s flexibility and willingness to collaborate with them to resolve the issue. (*Id.*, 0472:3, 0491, 0507, 0517–20).

Judge Sweeney met with DHS Secretary Alex Mayer on February 10. (*Id.*, 0463:2–12, 0491; JHB Tr. at 60:9–15). On that date, he sat down with Judge Sweeney and a small group of DHS workers and prosecutors to work on a solution to the Staffing Crisis. (J. Ex. 14, BSR 0504, 0507; JHB Tr. 60:15–20). Shortly after that meeting, DHS prepared written proposals to increase staffing levels in Judge Sweeney’s circuit and submitted them to him to review. DHS began implementing those proposals immediately. (JHB Tr. 60:20–61:12; J. Ex. 14, BSR 0473:7–74:14, 0510–13. In light of DHS’s good-faith efforts, Judge Sweeney issued an order continuing the February 20 hearing indefinitely. (J. Ex. 14, BSR 0517; JHB Tr. 61:7–12).

The solutions developed in that meeting helped lead to substantial improvement in CPS staffing in Judge Sweeney’s circuit and throughout the State. Between February 10 and February 19, DHS Leadership achieved “a substantial improvement in the vacancy rate” in the Third Judicial Circuit, among other positive developments. (J. Ex. 14, BSR 0473:7–74:14). By June of 2025, the plan developed with Judge Sweeney had reduced vacancies in the Third Judicial Circuit by 68%, while reducing the statewide vacancy rate by 30% and statewide turnover rates by 33%, ***the lowest levels in five years.*** (J. Ex. 14, BSR 0549); *see also* (JHB Tr. 63:19–64:6).

Judge Sweeney’s actions played a part in the implementation of a “win-win” outcome for all involved in child abuse and neglect cases. DHS’ leadership identified a significant problem in their agency, bounced solutions off locals intimately familiar with the problem, solved the problem in conjunction with those locals, improved their relationships with the court and local officials,

and got to advertise their remarkable achievement throughout the state. Local CPS workers have more staff to help with their caseloads. Public belief in the integrity of the judiciary has been improved. And most importantly, vulnerable children are now better protected while languishing in state custody.

E. The Facebook Charges

Prior to the subject investigation, nobody had questioned Judge Sweeney’s independence, integrity, or impartiality. Nobody complained to JIC about any of Judge Sweeney’s actions described in JIC’s February 10 complaint—not DHS Leadership, not members of the public, not Facebook friends, not litigants, not judges, and not any children or representatives of children. (JHB Tr. 100:5–17; J. Ex. 1, BSR 0014; J. Ex. 3, BSR 0049; J. Ex. 17, BSRC 0550–53). Indeed, Judge Sweeney has never been subject to discipline before in his 15 years on the bench, or before that during his practice of law. (J. Ex. 18 at 7).

JDC began its investigation into Judge Sweeney soon after the Administrative Order was issued. JDC began scouring Judge Sweeney’s Facebook account, including as far back as October of 2023. (J. Ex. 17, BSR 0553 ¶ 6). JDC identified a selection of Facebook posts (the “**Facebook Posts**”) that it deemed to be objectionable and claimed that they violated the CJC. (J. Ex. 1, BSR 0002). The Facebook Posts fall into five categories: (1) Event Reposts, (2) Job Reposts, (3) Public Safety Reposts, (4) Human Trafficking Reposts, and (5) Miscellaneous Activity.

First, the **Event Reposts** featured reposts of various events occurring in and around St. Marys that Judge Sweeney wanted to raise awareness about, in order to support his community. (JHB Tr. 65:23–66:2). These included reposts about meals benefitting a young member of the sheriff’s department diagnosed with cancer who was in hospice to be held at Calvary Baptist Church and Subway St. Marys (J. Ex. 3, BS 0070, 0075; JHB Tr. 65:4–66:2) and about an

upcoming ice cream social and raffle held by the local VFD. (J. Ex. 3, BSR 0072).

Second, the **Job Reposts** featured reposts spreading awareness that various law enforcement agencies and a prosecutor's office had job openings. (JHB Tr. 66:3–19; J. Ex. 3, BSR 0068–69, 0071, 0073, 0078–79, 0086).

Third, the **Public Safety Reposts** consisted of two reposts that addressed issues of public safety for the small-town community of St. Marys. One repost was that a person was wanted for attempted murder 30 miles away in Calhoun County, was seen in nearby counties, and was considered armed and dangerous. (J. Ex. 3, BSR 0062–63). Another was a repost stating that persons whose children had issues regarding medication could call a phone number. (J. Ex. 3, BSR 0076). Judge Sweeney reposted these for informational purposes only, without comment, and to help keep his small town community safe. (JHB Tr. 67:15–68:11).

Fourth, the **Human Trafficking Reposts** consisted of reposts raising awareness about human trafficking. Judge Sweeney, in conjunction with this Court, were involved with forums addressing human trafficking issues in Pleasants and Doddridge Counties and worked together to advertise those forums in conjunction with other state and local agencies. (J. Ex. 7, BSR 0268:10–69:11). Judge Sweeney advertised one human trafficking forum by reposting news stories about human trafficking. (J. Ex. 3, BSR 0067; J. Ex. 7, BSR 0268:10–69:11; *see also* J. Ex. 3, BSR 0065–66, 0080). Judge Sweeney “liked” comments on one repost from his personal friends from church and childhood discussing the harm those children suffered, expressing anger at the persons who allegedly trafficked those children, and praying for the children harmed by the situation. (J. Ex. 3, BSR 0081–85). Judge Sweeney's sole purpose for those reposts was to raise awareness about human trafficking in connection with the human trafficking forums. (JHB Tr. 68:19–70:3).

Fifth, the **Miscellaneous Activity**, which consists of activity that does not fit into the other

categories. One was Judge Sweeney's profile picture, a close-cropped picture of him on or around April 22, 2019 in a robe with the American flag behind him at an adoption. (J. Ex. 3, BSR 0061). Another was a repost of a tongue-in-cheek post from local law enforcement. (*Id.*, 0077). The post was a picture of a form that drug dealers could fill out to report their competition to local law enforcement. *Id.* The post was obviously satirical in opposing drug dealing, which was why Judge Sweeney shared it. (JHB Tr. 66:20–67:14; J. Ex. 7, BSR 0257:5–20).

V. Argument

A. Judge Sweeney's Child Advocacy Did Not Violate the CJC

Without question, a judge's ability to publicly comment on matters that relate to pending matters is limited. Because of the risk that the Judge's statement could unfairly change the outcome of a case or impact a litigant's ability to get a fair trial or hearing of their case, judges can make public comments about such matters only in limited, extraordinary circumstances. Given the dire nature of the circumstances before him, however, this was one of those circumstances. After hearing testimony that children were being imminently harmed because of the Staffing Crisis, Judge Sweeney did two things: he entered the February 3 Order, and he contacted and spoke to the media about the Staffing Crisis. When DHS received his February 3 Order, it immediately made the decision to work with Judge Sweeney to try and fix the Staffing Crisis. Contrary to the JHB's finding, RD 10, ¶ 23, there is no evidence that his media interviews played any role in DHS' decision making. While they were necessary to raise public awareness about the Staffing Crisis, they had no impact on DHS' response to Judge Sweeney's February 3 Order whatsoever. DHS recognized the problem and took immediate steps to to remedy it.

Judge Sweeney's actions did not violate any section of the CJC. There was no evidence that his public statements affected the outcome or impaired the fairness of any pending or

impending matter. Because judicial speech is often necessary and desirable to address public or systemic problems, any finding that Judge Sweeney’s actions here violated Rule 2.10(A) will unnecessarily quell free speech by judges in circumstances – like this one – where it is needed. Likewise, the JHB was flat wrong in concluding that Judge Sweeney’s statements undermined the public’s confidence in his impartiality in violation of Rule 1.2. His statements in support of children and against the Staffing Crisis in no way indicated bias or prejudice against DHS, or were an indication that Judge Sweeney lacked impartiality in matters involving them. DHS admitted that Judge Sweeney was fair and reasonable to work with in addressing the Staffing Crisis after the February 3 Order. (J. Ex. 14, BSR 0507–22; see also 0491–522) Judge Sweeney’s actions did not diminish public confidence in his independence, integrity, and impartiality. It increased it.

1. The Interviews did not violate Rule 2.10(A)

a. Judge Sweeney did not affect the outcome or impair the fairness of any matter.

CJC Rule 2.10(A) states, “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” (emphasis added). To “affect the outcome or impair the fairness” of a matter is **to rule on an issue that has not yet been adjudicated**. 2016 Model Code of Judicial Conduct 2.10 (Memorandum at Ex. Q) (quoting *In re Benoit*, 523 A.2d 1381 (Me. 1987)). As a result, it is difficult to establish that the outcome or fairness of a matter has been affected.

[R]arely will it be apparent that a judge’s comment ‘might reasonably be expected to affect [a case’s] outcome or impact its fairness ***[A]bsent unusually blatant bold extrajudicial comments, it would be seemingly impossible to prove the effect or interference that the comments had on the proceeding*** Something in the order of a juror’s statement (acknowledging the comments affected her or another juror) might be required.

Mark I. Harrison & Keith Swisher, *Tradeoffs of Candor: Does Judicial Transparency Erode Legitimacy?*, 64 N.Y.U. Ann. Surv. Am. L. 559, 600, 612 & n.161 (2009) (emphasis added) (citing

Letter from Andrew Kaufman, Professor of Law, Harvard Law Sch., to Eileen Gallagher, Esq., Am. Bar Ass'n (June 9, 2004)). The JHB reached a similar conclusion in *Akers*. *Akers* Recommended Decision (“*Akers* RD”) RD 29, ¶ 25, transaction ID 79661985, Case No. 25-483; JIC Complaint No. 35-2025 (recognizing the inherent ambiguity in the “might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court test.”).

In *Office of Disciplinary Counsel v. Souers*, a judge gave a newspaper and radio interview regarding one of his orders reversed by the Ohio Court of Appeals and remanded back to his court. 611 N.E.2d 305 (Ohio 1993). In those interviews, the judge called the Court of Appeals’ decision “ludicrous,” repeatedly complained that the Court of Appeals would not “get to the merits of the case,” and refused to correct the errors identified by the Court of Appeals. *Id.* at 305–06. The Ohio Office of Disciplinary Counsel sought discipline against the judge for violating Ohio’s version of Rule 2.10(A). *Id.* at 305. However, the Ohio Supreme Court held that the judge’s comments were not “sufficiently pernicious to justify any disciplinary sanction.” *Id.* at 306.

In this case, the record does not support the Board’s findings for two reasons: (1) there is no evidence that Judge Sweeney’s statements played any role in the DHS’ decision making in responding to the February 3 Order; and (2) he did not affect the outcome or impair the fairness of either the child abuse and neglect matter or the February 20 Hearing.

When DHS Leadership received the February 3 Order on the morning of February 4, it knew that the named employees would not be compelled to work as case workers, and that Judge Sweeney was trying to get their attention. (J. Ex. 14, BSR 0450-51). By that afternoon, DHS Leadership had made the decision to meet with Judge Sweeney and to “take immediate corrective action as necessary.” (*Id.*, 454-457; 487-88). Although DHS Leadership saw the Parkersburg News story at some point on February 4, there is no evidence that it did so before making the

decisions reflected in its February 4 letter to Judge Sweeney, or that it played any role whatsoever in that decision. (*Id.*, 454). There is no evidence that DHR ever knew about or saw Judge Sweeney’s interview with Metro News at any time relevant to this case. (*Id.*, 478). It is clear that DHS responded to Judge Sweeney’s February 3 Order, not his public statements, and the JHB was wrong in concluding otherwise.

The JHB’s finding that the standard imposed by Rule 2.10(A) is an objective one does not mean that evidence as to compliance with that standard is irrelevant. In common law negligence cases, evidentiary proof of reasonable care (or the lack thereof) is foundational to any decision by the trier of fact. While the standard remains objective, case-specific facts are always relevant in determining whether it has been satisfied. Here, any question as to whether the Interviews could have affected the outcome or impaired the fairness of a proceeding is purely academic because the facts prove that it did not. There is no point to punishing a judge for something that didn’t happen.

For the same reason, his statements could not have affected the outcome or impaired the fairness of any pending or impending matter. From the outset, DHS made the decision to work with Judge Sweeney, not to litigate his February 3 Order. After this decision was made, Judge Sweeney could not have affected the outcome—i.e. “rule[d] on an issue that has not yet been adjudicated”—because there was nothing to adjudicate. *See* 2016 Model Code of Jud. Conduct 2.10. DHS Leadership was simply ordered to appear and confirm that they had received their cases. JA 53. Moreover, the JHB’s decision improperly conflates Judge Sweeney’s desire to bring about systemic change in the abuse and neglect system in his circuit with the matters to be decided at the February 20, 2025, hearing. Without question, Judge Sweeney intended to increase CPS staffing in his circuit, and was successful in doing so. His February 3 Order was the factual impetus for such change. However, there were no litigated or contested matters to be decided at the

February 20 hearing. His only instruction was that certain DHS employees attend and discharge CPS services in his circuit. But once DHS made the decision to work with Judge Sweeney to address the Staffing Crisis separate and apart from any public statements, those statements could not affect any pending proceeding, if they ever could in the first place.

The JHB's finding that Judge Sweeney's Interviews might reasonably be expected to affect the outcome or impair the fairness of a pending matter was conclusory and unexplained. It made no finding as to **how** the Interviews did so because there was no proximal nexus to support it. In that respect, it was no different than its conclusion on this issue in the *Akers* case. See Section F *infra*. To be clear and convincing, the negative impairment on a proceeding must be obvious. Here, it was clearly not. The JHB could not articulate it because it did not exist.

The JHB also found that the L.S. case was "generally to some extent" affected by the Interviews, RD 26 ¶ 64, but there was likewise no evidence to support it. Judge Sweeney's placement order in that case was issued *before* Judge Sweeney gave the Interviews. Compare JA 238 (Placement Order filed February 3, 2025, 1:30PM) with JA 54–57, 330–40 (first of the Interviews held on February 4, 2025). Since the outcome of that case was determined before the Interviews, neither its outcome or fairness could have been affected by the Interviews.

Lastly, the JHB's decision may have been more sweeping: Judge Sweeney affected the outcome or impaired the fairness of *all* child abuse and neglect cases throughout the state because the Interviews helped to resolve the Staffing Crisis. RD 26 ¶ 64-65. There was clearly no evidence of such sweeping impact. Because the Staffing Crisis was resolved, DHS workers can now better manage their caseloads and give vulnerable children more of the care that they desperately need, thus affecting the outcomes of all child abuse and neglect cases. Of course, this would not result in judges "rul[ing] on an issue that has not yet been adjudicated," so he could not have violated

Rule 2.10(A) by doing so. But more fundamentally, such a rule would discourage judges from making *any* contribution to the legal system. “On the whole, judges are the cream of the legal profession, and it would be a great waste to limit their contribution to the development of law and society unless such limitations served overwhelmingly important interests.” J. Clark Kelso, *The Sound of the Gavel: Perspectives on Judicial Speech*, 28 Loy. L.A. L. Rev. 851, 854 (Apr. 1995) (Memorandum at Ex. P). No such interests can be articulated to justify silencing judges who are just trying to protect abused and neglected children. Because Judge Sweeney’s public statements addressed systemic problems, and not the resolution or outcome of specific cases, it did not violate Rule 2.10(A). Such speech is not only societally desirable, but also protected by the First Amendment to the United States Constitution. See Brief of *Amicus Curiae* American Center for Law and Justice, *Akers*, Case No. 25-483, Transaction ID 77834714.

b. The Interviews fall under the exception in CJC Rule 2.10(D).

The Interviews also did not violate CJC Rule 2.10(A) because they fell within the exception in Rule 2.10(D): “Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties [or] may explain court procedures.” In *Office of Disciplinary Counsel v. Souers*, the Ohio Supreme Court held that, while the judge’s interview was “less than judicious,” it “was provided to publicly explain his procedure in the underlying criminal case. Thus, we cannot discipline respondent for conduct [Rule 2.10(D)] expressly authorizes.” 611 N.E.2d at 306.

Judge Sweeney’s Interviews are even more clearly permissible under Rule 2.10(D) than the interviews in the *Souers* case. As in *Souers*, Judge Sweeney testified about court procedures in connection with an order—i.e. the impact of the Staffing Crisis on abuse and neglect proceedings and how his Administrative Order related to that crisis. But unlike *Souers*, Judge

Sweeney’s comments were not inflammatory and had no impact on the outcome or impair the fairness of any hearing. So, the Interviews were authorized under CJC Rule 2.10(D).

The JHB asserted that because Judge Sweeney “**intended** to use his public statements to the media to draw the attention of the Department of Human Services to his legitimate concerns regarding understaffing,” the Interviews were “far outside the narrow allowances of Rule 2.10(D).” RD 26 ¶ 67 (emphasis added). However, intent is never mentioned in Rule 2.10(D), and courts have determined that intent is irrelevant to a Rule 2.10(D) analysis. *See, e.g., United States v. Garwood*, 16 M.J. 863, 869 (Navy-Marine Ct. of Military Review 1983). The test is not what Judge Sweeney *intended*; the test is what Judge Sweeney *objectively said*. The Board did not identify any objective statement by Judge Sweeney that went beyond the scope of Rule 2.10(D). Indeed, Judge Sweeney’s speech was focused on one topic: the impact of the Staffing Crisis on abuse and neglect proceedings and how the Administrative Order related to that crisis. The Interviews “explained court procedures” and thus were permissible under Rule 2.10(D).

c. The Interviews were permissible under CJC Rule 3.1.

The comments to CJC Rule 3.1 also authorized the Interviews, so Judge Sweeney cannot and should not be disciplined for those Interviews. CJC Rule 3.1, cmts. [1]–[2] (emphasis added). JIC and other bodies allow judges to appear on talk radio to discuss, and advocate for, legal issues. JIC Adv. Op. 1997-28; Wash. Ethics Adv. Comm. Op. 92-05 (1992). Judge Sweeney’s Interviews are the sorts of activities which judges are encouraged to participate in. Indeed, as this Court is aware, his statements were in line with those made by other judicial officials who have spoken at legal seminars, public events and legislative bodies, often while the media is present. Judge Sweeney has been on the bench for 15 years, and he has intimate knowledge of the abuse and neglect crisis gripping West Virginia, the Staffing Crisis facing DHS, and the real-world impact that has on children’s lives. His experience and input were important to resolving these crises in

the Third Judicial Circuit. To do so, he held meetings with local reporters who cover the abuse and neglect crisis and shared how he plans to address these systemic issues. His statements in the public meeting with Secretary Mayer on February 10 were not different than those in the Interviews, yet no one alleges that they were improper. Yet they were both “public statements” for purposes of Rule 2.10(A). Such meetings and statements are specifically encouraged by the CJC, so Judge Sweeney should not be disciplined for arranging and participating in these meetings.

2. The Interviews did not violate Rule 1.2.

CJC 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.” The test is whether public confidence **“would”—not just “could”—**be damaged by the judge’s actions. *In re Disc. Pro. Against Keenan*, 199 Wash.2d 87, 96 (2022) (emphasis added) (citing *In re Reddin*, 221 N.J. 221, 231 (2015)). The test is therefore not whether some hypothetical person’s confidence *could* be damaged; it is whether the general public’s confidence is *actually* damaged. *Id.* (“**our focus is on the perception of the general public** to the conduct at issue.”). But even if public perception is harmed by an action, there must be an “articulable nexus” between the judge’s action and the judge’s “ability to judge impartially” before discipline is warranted. *In re Disciplinary Proceeding Against Turco*, 137 Wash.2d 227, 244–45 (Wash. 1999). This Court has only disciplined judges under CJC Rule 1.2 “where the evidence was clear and convincing and the conduct complained of was **egregious**.” *In re Hey*, 192 W. Va. 221, 225 & n.4 (1994) (citations omitted) (emphasis added) (examples included “substantial” evidence of **lying, harassing, foul language, and physical force**).

The only issue is whether Judge Sweeney’s Interviews undermined public confidence in his impartiality.² RD at II(55). There is no dispute that the Interviews “did not implicate public confidence in [Judge Sweeney’s] independence or integrity, nor involve impropriety or the appearance of impropriety ...” *Id.* Moreover, his *actual* impartiality is not in question; Judge Sweeney has no history of discipline, he has a stellar reputation, and even JIC has admitted that “we have no reason to doubt that Respondent is a fair judge” (J. Ex. 1, BSR 0025). Therefore, the only concern is whether the Interviews “undermined public confidence in his impartiality.” RD at II(55). “[I]mpartiality ... mean[s] 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” CJC Terminology.

The JHB relied on only one passage from the Interviews as the basis for its conclusion that Rule 1.2 was violated: “During the interview, Respondent indicated that ‘someone needs to stand up for the public, particularly the most vulnerable members of our community—the children’ **implying** that DHS was not living up to that responsibility.” RD 23-24, ¶ 54. But that conclusion was unsupported by the evidence for three reasons.

First, “judges are not to be found wanting for lack of impartiality upon mere nuance or arguable implication.” *In re Disciplinary Proceeding Against Turco*, 137 Wn.2d 227, 266 (1999) (Sanders, J. dissenting) (citing, *inter alia*, *In re Disc. of Stoker*, 118 Wn.2d 782, 799 (1992)). The effect on public opinion must be proven by “clear and convincing evidence,” not implication and speculation. Syl. Pt. 2, *In re Eplin*, 186 W. Va. 207 (1991) (citation omitted). Here, it was not.

² The Board noted in passing various statements made by Judge Sweeney in the February 3 Hearing. However, those statements did not form the basis for the Recommended Decision, and the Board found such comments to be irrelevant to its conclusion. RD 23, ¶ 55; 26, ¶ 68. Moreover, they were spoken in a closed, sealed, and confidential hearing not open to the public and so could not affect public confidence in his impartiality. (J. Ex. 13, BSR 439–42). The facts articulated therein were never disputed, and Judge Sweeney gave the litigants the opportunity to dispute or clarify those facts. (J. Ex. 5, BSR 167:7–14). Therefore, those statements did not violate Rule 1.2 and do not warrant discipline.

Second, the context of the Interviews contradicts the Board’s conclusion; on the contrary, the Interviews stated that DHS Leadership was working hard to fix the Staffing Crisis. One Interview mentioned, “DoHS recently touted improved CPS vacancy numbers, reducing the CPS vacancy rate from 31% in January 2023 to 16% as of the end of December, with the Youth Services vacancy rate from 31% in January 2023 to 6% in December.” (J. Ex. 3, BSR 057). Judge Sweeney himself even complimented Secretary Mayer’s efforts: “You know, I’m encouraged that [sic] our new Secretary Mayer, who is well-qualified and has agreed that the focus needs to be upon our most vulnerable population, the abused and neglected children.” (J. Ex. 8, BSR 335:24–36:3). The context of the Interviews does not support the JHB’s finding that Judge Sweeney was biased against DHS Leadership by clear and convincing evidence. In fact, it shows the opposite.

Third, even supposing *arguendo* that Judge Sweeney explicitly said “DHS was not living up to its responsibility”—precisely the “implication” relied upon by the JHB, Judge Sweeney would still not be subject to discipline. This is because his statement does not *ipso facto* show bias against DHS. If a person points out a systemic problem within an organization, it does not follow that the person is biased against that organization. None of Judge Sweeney’s public statements are critical of DHS or evidence bias or impartiality against DHS. There is no dispute, based on DHS’ admissions and statements, that the CPS workers were critically understaffed. By stating that he was “stand[ing] up for the public, particularly the most vulnerable members of our community – the children,” he was publicly expressing his belief that the Staffing Crisis needed to be address and the system fixed. DHS agreed and worked with him to do so.

B. Judge Sweeney did not Violate CJC Rule 2.6(A)

This Court does not, and should not, punish judges if it disagrees with the judge’s opinions or decisions. If that were the law, every reversal on appeal or writ issued by this Court would be accompanied by an admonishment or worse. JDC argues that Judge Sweeney’s February 3, 2025

Order violated the DHS's due process rights such that he should be punished for issuing it. JDC Br. at 27-30. Incredibly, it advances this argument even though DHS never objected to the Judge's Order or sought any form of relief from it in any way. The JHB flatly rejected this argument, finding that "[t]here is insufficient evidence that Respondent had any intent to prejudice the rights of any party or that he had any other improper motive in the procedure he chose to use." RD 24 at ¶ 59. The JHB's decision was clearly correct and should be adopted by this Court.

This Court has also made clear that a judge is not liable for a violation of the CJC "**when a judge, with no intent to prejudice the rights of a party, makes a legal error, his act does not constitute a violation** of the Judicial Code of Ethics." *In re Greene*, 173 W. Va. 406, 408 (1984) (quotation omitted); *see also In re Dehen.*, 26 N.W.3d 1, 44 (Minn. 2025). In this case, the JDC offers no argument whatsoever that Judge Sweeney intended to violate the DHS' rights, or evidence from which this Court could make such a finding. Without question, evidence that a Judge acted with intent to prejudice the rights of a party is an incredibly high standard. To prove such a violation by clear and convincing evidence is even higher. Given the record in this case, such a finding is simply not possible.

In this case, JDC cites no authority for the proposition that Judge Sweeney was required to give notice to the DHS before he issued his February 3 Order. Indeed, there is no controlling authority stating that an order like the Administrative Order requires a court to hold a hearing before its issuance. *In re Brandon Lee H.S.*, 629 S.E.2d 783 (W. Va. 2006). Judge Sweeney's Order in no way denied DHS' leadership an opportunity to contest the Administrative Order, either at the February 20 hearing or beforehand, and nothing prevented DHS Leadership from filing objections or even a writ of prohibition. As this Court's recent decisions in *State ex rel. W. Virginia Dep't of Hum. Servs. v. Wilmoth*, No. 24-728, 2025 W.Va. LEXIS 114 (W. Va. Mar. 25, 2025) and

State ex rel. W. Virginia Dep't of Hum. Servs. v. Redding, No. 24-658, 2026 WL 1162606 (W. Va. Apr. 29, 2026) demonstrate, DHS is fully capable of challenging judicial orders when it believes a circuit court has exceeded its lawful authority. That it chose to work with Judge Sweeney to resolve the staffing problem rather than object to proves only that the problem existed and was deserving Judge Sweeney and DHS's immediate attention.

JDC's reliance on *Redding* is misplaced. While it is true that this Court significantly limited the judiciary's ability to investigate the DHS' staffing of CPS matter and to hold it generally accountable in child abuse and neglect cases, Judge Sweeney did not have the benefit of this Court's guidance when he made his decision. More importantly, although this Court issued a writ of prohibition with respect to certain of Judge Redding's orders, it did not ethically punish Judge Redding or recommend that a judicial ethics investigation be conducted.

This case is the "poster child" for the difficulty that judges face in dealing with problems in the child abuse and neglect system. Judges necessarily have a wide variety of tools at their disposal and rarely is there only one way to accomplish a judge's task. During the February 3, 2025 hearing in the *L.S.* matter, the CPS worker in charge testified that she could not provide children in Judge Sweeney's circuit with the services they needed because of the level of staffing provided by DoHS. The worker literally begged Judge Sweeney for help. JA 0176:3–6 Aspirationally, this Court should hope that, when presented with such a dire circumstance, every circuit judge in West Virginia would have the strength of character and will to reach into their toolbox and try to find a way to help. With the benefit of hindsight, Monday morning quarterbacks may criticize Judge Sweeney's decision as imprudent, but even if issuing a show cause order or some other procedure would have been more prudent, that does not mean that Judge Sweeney's decision was so egregiously contrary to clear and determined law that Judge Sweeney should be

disciplined. In this case, it means just the opposite. Judge Sweeney's actions were unquestionably motivated by his desire to help children in need who could not help themselves. There are no set of circumstances under which he should be punished for doing so.

C. Judge Sweeney's Social Media Posts Did Not Violate the CJC

1. The Facebook Posts did not violate Rule 1.2 or 3.1(C).

CJC Rule 3.1(C) is very similar to Rule 1.2; it permits judges to “engage in extrajudicial activities, except as prohibited by law* or this Code” and prohibits “participat[ion] in activities that would appear to a reasonable person to undermine the judge's independence*, integrity*, or impartiality” The test under both is the same. *See* section IV(A)(2) *supra*.

The JBH conceded that none of Judge Sweeney's Facebook Posts constituted a violation of Rule 1.2 or 3.1(C) when viewed individually; rather, the JHB concluded that “the aggregate effect of the Respondent's social media activity in combination with his profile picture in his judicial robe creates an impression that is incompatible with the neutrality required of a judicial officer.” RD at II(15), (17). According to the JHB, “[h]ad there been greater variety in the types of posts Respondent chose to share, such as employment opportunities or announcements from entities other than law enforcement, Respondent may have avoided any appearance of impropriety.” RD at II(15). The JHB found that the Job Posts, the Attention Drug Dealers Post, and the comments that Judge Sweeney “reacted” to were posts that cumulatively, not individually, creates an appearance of bias. RD 14-15, ¶¶ 17-19.

The JHB's position was incorrect and should be rejected by this Court for three reasons. First, the Board cannot “aggregate” the Facebook Posts to create a violation, and since none of the Facebook Posts individually amount to a Rule 1.2/3.1 violation, the Board cannot conclude that Judge Sweeney violated Rule 1.2/3.1. Second, the evidence was clearly insufficient to support

any conclusion that Judge Sweeney’s Facebook Posts were so one-sided as to create an appearance of bias. And third, none of the Facebook Posts were “egregious” in any way.

a. Social media posts cannot be “aggregated” to create a violation of Rule 1.2 or 3.1(C).

If the Facebook Posts individually do not violate the CJC, they cannot be “aggregated” to create a violation. Neither the JHB nor JIC has presented any authority justifying the JHB’s aggregation of the Facebook Posts into a violation. On the contrary, “it is well-settled that a movant cannot bootstrap a series of meritless claims [of CJC Rule 1.2 or 3.1(C) violations] into a cumulative claim,” and “no number of failed claims may collectively attain merit if they could not do so individually.” *In re Four Pa. Skill Amusement Devices*, 2022 Pa. Dist. & Cnty. Dec. LEXIS 2953, **18–20, 31 (Jul. 11, 2022) (quoting *Corn v. Rolan*, 964 A.2d 398, 411 (Pa. Super. Ct. 2008) (quoting *Corn v. Williams*, 532 Pa. 265, 278 (1992)); citing *Commonwealth v. Kearney*, 92 A.3d 51, 62 (Pa. Super. Ct. 2014)). If none of the posts individually violated Rule 1.2, then it stands to reason that no amount of permissible, non-violative posts can create a violation.

b. The JDC did not adduce a sufficient record to support it.

Even if such a conclusion was permissible, the JDC did not adduce a sufficient record to support it. Key to the JHB’s decision was its assumption that Judge Sweeney’s Facebook presence ***viewed in its entirety*** consisted primarily of reposts from law enforcement. The Board explained that had there been a greater variety of posts on his page, Judge Sweeney would not have violated Rule 1.2. RD at II(5). But the JHB’s decision was based exclusively on only a small portion of Judge Sweeney’s social media posts hand-picked by the JDC and submitted to the JHB as evidence. In total, the posts at issue constituted only 27 of Judge Sweeney’s Facebook posts from a nearly 6-year period between April 2019 and February 2025. (J. Ex. 2, BSR 61–86). 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. (J. Ex. 17, BSR 553). There is no evidence in the record of the remainder of Judge 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.

To find a violation of the CJC based on a lack of variety between his Job Posts and the totality of his social media presence, all of his social media posts had to be submitted as record evidence. Without them, no comparative conclusions could be drawn to any degree of probability, and certainly not by clear and convincing evidence. There is no evidence before this Court from which it can conclude by the required standard that any lack of variety in Judge Sweeney’s social media presence between the Job Posts and his social media comments in general demonstrates any bias whatsoever towards the prosecution in criminal matters. In fact, no conclusion of any kind can be drawn because the JHB did not view the entirety of his posts.

c. None of the Facebook Posts substantively violated Rule 1.2 or were “egregious.”

Substantively, the JHB concludes that ten of Judge Sweeney’s Facebook posts violated Rule 1.2/3.1. These ten posts fall into four categories: the 7 Job Posts, the 1 Attention Drug Dealers Post, the 1 Whitefeather Post, and the 1 profile picture. None of these, individually or collectively, amount to a violation of Rule 1.2/3.1.

First, 70% of the subject posts are just job posts. RD 2-3. ¶ 5; 14, ¶¶15-16. **Job posts**. No suggestion to apply. No glowing reviews. Nothing that would imply that working as law enforcement officer was preferable to other jobs. They were simply reposts of open job positions. Nothing about them indicated that Judge Sweeney would impermissibly favor law enforcement in criminal cases or prejudice cases before him in favor of law enforcement. If no litigant has ever

challenged such posts or suggested that they required Judge Sweeney’s recusal in an actual criminal case, why should this Court draw such a conclusion? The answer is obvious: It should not. Judge Sweeney has never been accused of partiality or favoritism in this context, and this Court should not give its imprimatur to such a conclusion now.

Second was Judge Sweeney’s “Attention Drug Dealers Post,” where he reposted an obviously satirical meme that stated, “Attention Drug Dealers: 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!”³ JA 77. The Board concluded, “the post **could** be understood as expressing approval of law-enforcement tactics, encouraging arrests, mocking would-be defendants, or otherwise participating in a ‘team’ mentality with law enforcement.” JA II(18) (emphasis added). But the test not whether someone reading the post uncharitably “could” see it that way, but whether public confidence “**would**” be damaged by the post. *In re Disc. Pro. Against Keenan*, 199 Wash.2d 87, 96 (2022) (emphasis added) (citing *In re Reddin*, 221 N.J. 221, 231 (2015)).

Drug dealing is illegal in West Virginia. It is a societal scourge that has permanently scarred the West Virginia communities. It is not hyperbole to say that any member of West Virginia’s judiciary who believes otherwise is not deserving of office. There is absolutely nothing wrong with a judge stating, publicly or otherwise, that they are against drug dealing or drug dealers. It is simply another way of saying “I support the law.” The post was simply a satirical way of Judge Sweeney saying that drug dealing is against the law and should be stopped. While the post clearly supports enforcement of existing law, it in no way calls into question his independence, integrity or partiality, or indicate that he will side with the prosecution specifically or generally.

³ The post was cut off in the record, preventing the reader from seeing the full context of the post.

Any holding to the contrary sets dangerous precedent for West Virginia’s judges. Any holding in this case is not limited to social media but extends to any public statements by judges in any context. Judges routinely speak to community and civil groups about legal and societal issues. If this Court rules that statements that support the content or enforcement of existing criminal law violate CJC 1.2/3.1, any statement about the law could be deemed to be a violation of Rule 1.2/3.1. Public confidence in the independence, integrity and impartiality of the judiciary is enhanced by judges who publicly support the law and significantly eroded through discipline imposed for the expression of support for it. The “drug dealers” post did not violate Rule 1.2 or 3.1 and certainly is not deserving of discipline for making it.

Third was the “Whitefeather Post,” where Judge Sweeney posted about a couple convicted of child abuse charges; this couple locked their adopted children in a shed to sit in their own excrement, only occasionally letting them outside to perform subhuman labor like digging ditches with their bare hands. (J. Ex. 3, BSR 80; J. Ex. 5, BSR 156–59). The Board objected to Judge Sweeney “reacting” to two so-called “negative” comments to this post: his “care” emoji to, “So terrible!! Thankful these two have been convicted. **Prayers for those poor children!!!**” and his “like” to “They don’t deserve 3 hots and a cot.” RD at 5, ¶8(d)(iv); 15, ¶ 19; J. Ex. 3, BSR 81–84) (emphasis added). The Board concluded that these reactions “**could** lead a reasonable person to question Respondent’s impartiality in criminal matters or regarding sentencing.” RD 15-16, ¶ 21. The Board’s position fails for four reasons.

To begin, the test is not whether someone reading the post uncharitably “**could**” see it that way, but whether public confidence “**would**” be damaged by the post. *Keenan*, 199 Wash.2d at 96 (emphasis added) (citing *Reddin*, 221 N.J. at 231). The Board did not contend, and the record

does not reflect, that the public’s confidence in Judge Sweeney’s impartiality was harmed; after all, his reputation for independence, integrity, and impartiality among the public is unquestioned.

Next, judges are not subject to discipline for interacting with so-called “negative” social media posts. In cases like *United States v. Sierra Pacific Industries, Inc.* and *In re Slaughter*, judges reposted news articles that either asserted the guilt of the defendant or described events performed by the defendant that amounted to a statement of guilt. 862 F.3d 1157, 1166, 1175 (9th Cir. 2017); 480 S.W.3d 842, 854 (Tex. 2015). In both cases, the Ninth Circuit and Texas Supreme Court held that the repost of the news articles did not violate Rule 1.2 because the judge did not provide any commentary on those posts. Like those cases, Judge Sweeney interacted with social media posts that allegedly asserted the guilt of the defendants, but provided no commentary. Therefore, his interactions do not violate Rule 1.2.

Furthermore, “reacting” to a third party’s comment is not the sort of unequivocal affirmation that JDC would have this Court believe. Social media has been around for decades, and practically all members of the public—including the justices of this Court—know from personal experience just how nebulous a “reaction” is. One study determined that “likes” had a variety of meanings, including showing interest and expressing support or empathy; it is far from a foregone conclusion that a “like” expresses unequivocal affirmation. Scissors et al., *What’s in a Like?*, CSCW ’16 PROCEEDINGS OF THE 19TH ACM CONFERENCE ON COMPUTER-SUPPORTED COOPERATIVE WORK & COMPUTING 1501, 1504 (Feb. 27, 2016). Ethics boards throughout the country agree: “The term ‘like’ is created by the website and the term itself does not import much about the judge’s thoughts ‘Liking’ something does not constitute a detailed statement about the judge’s thoughts on a particular entity or subject.” Utah Ethics Adv. Op. 12-01 at ¶ 6 (Aug. 31, 2012). Personal experience, scientific research, and ethics opinions all agree: Judge Sweeney’s

“like” alone does not amount to “clear and convincing evidence” of an unequivocal approval of those comments.

Lastly, even supposing *arguendo* that “liking” those comments is equivalent to writing and posting the comments himself, Judge Sweeney still has not violated the CJC. Indeed, in *In re Slaughter*, the judge was very active on social media regarding cases pending before her, and she even posted commentary on cases pending before her:

“We have a jury deliberating on punishment for two counts of possession of child pornography. It is probably one of the most difficult types of cases for jurors (and the judge and anyone else) to sit through because of the evidence they have to see. Bless the jury for their service and especially **bless the poor child victims.**”

...

“We finished up sentencing today with **a very challenging defendant.**”

480 S.W.3d at 847–48. But even then, the Texas Supreme Court did not find any violation of the CJC. “[W]e find **such comments, at most, showed what amounted to an error in judgment** by posting facts from a pending case in her court,” and “the credible evidence **overwhelmingly preponderates in favor of a finding that the Respondent did not violate [CJC Rules 2.10(A) or 3.1.]**” *Id.* at 851–52. The Facebook Posts did not rise to the level of the posts in *Slaughter*, since Judge Sweeney never posted his own comments on cases, and none of the cases were pending in his court. Even in the few places where he “reacted” to various comments on his Facebook page, those posts were like Judge Slaughter’s posts, characterizing the defendant and praying for the injured children. Like in *Slaughter*, Judge Sweeney’s reactions “at most, showed what amounted to an error in judgment,” and therefore, the evidence “overwhelmingly preponderates in favor of a finding that Respondent did not violate [CJC Rules 2.10(A) or 3.1].” *Id.*

Fourth, the JHB criticized Judge Sweeney’s profile picture, an image of him in his robes at an adoption in front of a flag. JA at 61. However, “[a] judge may post a photograph of the judge in his or her robes provided that the photograph was taken at an appropriate setting where

wearing the robe would otherwise be appropriate, such as in the judge’s chambers.” Utah Ethics Adv. Op. 12-01 at ¶ 4 (Aug. 31, 2012). Indeed, in *In re Slaughter*, the judge’s Facebook page displayed a photograph of the judge in her robe, showed a photograph of the courthouse, and described the judge as a “public figure” and as “Judge of the 405th Judicial District Court.” 480 S.W.3d at 855. But even though the judge frequently posted about matters pending before her while this profile picture was prominently visible, the Texas Supreme Court held that her posts did not violate the CJC, and the evidence “overwhelmingly preponderates” against discipline. *Id.* at 851–52. Here, Judge Sweeney did exactly what the Utah ethics board and the Texas Supreme Court permitted, and he should not be disciplined for doing what he is explicitly permitted to do.

d. The JHB Correctly Rejected the Standard Advanced by the JDC

JDC contends that this Court should find that all of Judge Sweeney’s posts violate CJC 1.2 and 3 because he admitted that the “created the appearance of impropriety.” JDC. Br. at 26. As the JHB did, this Court should flatly reject that contention as inconsistent with applicable law.

It is beyond cavil that any statement either for or against something can be interpreted uncharitably. For example, a statement extolling the virtues of soy milk could be unjustifiably interpreted as a condemnation of dairy farmers. If taken in the least favorable light by a hypothetical person, any post or statement could create *some* appearance of bias; Judge Sweeney has admitted that possibility. (JHB Tr. 74:12–18). The JDC contends that this is proof of Judge Sweeney’s guilt, but in so doing, it overlooks the standard by which Judge Sweeney’s actions are judged. Transcript 12:16–20. The standard is not whether a judge’s statement gives the appearance of impropriety when it is read in an unfavorable light. The standard is whether the Facebook Posts were “egregious” and whether—in reality and not hypothetically—the confidence of “the general public” in the independence, integrity, and impartiality of the judiciary were so

badly damaged that Judge Sweeney should be punished. CJC Rule 1.2; *Hey*, 192 W. Va. at 225 & n.4; *Chmiel*, 08-CC-1, 5.

As discussed above, the JHB incorrectly concluded that the Job Posts, Attention Drug Dealers post and the Whitefeather/Lantz posts violated Rule 1.2 and 3.1(C). As to the remaining posts, there is no evidence of any impropriety whatsoever beyond JDC's unsupported contentions.

2. The Facebook Posts did not violate Rule 2.10(A).

a. The Satterfield Post did not violate Rule 2.10(A)

The "Satterfield Post" was a repost—with no commentary—stating, "Jody Alan Satterfield is wanted for attempted murder & attempted arson in Calhoun County, West Virginia This individual is considered armed and dangerous. He has potentially been seen in an adjoining county and may be in the area." (J. Ex. 3, BSR 62–63). According to the JHB, "[h]ad Mr. Satterfield been located within Respondent's circuit, arrested, and brought before Respondent's court, Respondent's public characterization of Mr. Satterfield as armed and dangerous could reasonably been expected to influence the fairness of the proceedings or otherwise impact the outcome." RD 18, ¶ 28(g). That conclusion must be rejected for four reasons.

First, the JHB's factual predicate for its finding was clearly wrong. According to the JHB, Satterfield was "believed to be located in Pleasants County...or in an adjoining county." RD at II(27)(g). In actuality, the post merely stated that Mr. Satterfield may have been seen in a county neighboring Calhoun County. Pleasants County does not border Calhoun County. While a small portion of one of the counties in Judge Sweeney's circuit does border Calhoun County, five other counties (Roane, Clay, Braxton, Gilmer and Wirt) constituting a large section of north central West Virginia also border Calhoun. Despite Judge Sweeney's understandable concern for safety of

the citizens in his home and circuit, the chances of Mr. Satterfield being found in his circuit or brought before him were slim.

Second, even if Mr. Satterfield had been arrested in a county in Judge Sweeney's circuit, Satterfield could not have been tried there. In West Virginia, criminals must be prosecuted in the county in which the offense was committed. W. Va. R. Cr. P. 18. The alleged crimes occurred in Calhoun County, outside of Judge Sweeney's circuit. Judge Sweeney had no jurisdiction over the alleged crimes and would have been obliged by law to transfer the case to Calhoun County for prosecution had Satterfield been found and arrested in his circuit. There is simply no way that the outcome of the case or the fairness of the proceedings could have been affected by the post.

Third, the JHB's conclusion is contrary to applicable case law. In *United States v. Sierra Pacific Industries, Inc.*, news articles with titles like "Sierra Pacific still liable for Moonlight Fire damages" were posted without any further commentary by the presiding judge in the Moonlight Fire litigation. 862 F.3d 1157, 1166, 1175 (9th Cir. 2017) (Appx. at 18). The Ninth Circuit held that the post created no appearance of bias because it "consisted only of the title and a link to a publicly available news article about the case in a local newspaper, without any further commentary." *Id.* at 1175. Similarly, in *In re Slaughter*, the judge posted a link, without commentary, to a news article about a child abuse case pending before her, where the news article stated that a child's parents stripped him of his clothes, wrote "liar" and "thief" on his body, photographed the naked boy, locked him in a "tiny" 8'x6' particle board box, and threatened to post the pictures to social media if he did not behave. 480 S.W.3d 842, 847 (Tex. 2015); Amanda Orr, "Texas father on trial for putting son in box as punishment," REUTERS (Apr. 29, 2024 5:58 PM), <https://www.reuters.com/article/world/us/texas-father-on-trial-for-putting-son-in-box-as-punishment-idUSBREA3S182/>. Despite contentions to the contrary from the defendant, the Texas

Supreme Court held that there was no evidence that the posts prejudiced the proceedings in any way, and cast no doubt on the judge's independence, integrity, or impartiality. *Id.* at 854.

Under the *Sierra Pacific* and *Slaughter* cases, the Satterfield Post does not violate Rule 2.10(A) or warrant discipline. Like in *Sierra Pacific* and *Slaughter*, Judge Sweeney reposted, without commentary, a post on social media that shared information about an impending matter. There is no evidence that this post had any impact whatsoever on any case ultimately brought against Mr. Satterfield. Standing alone, under *Sierra Pacific* and *Slaughter*, this alone compels resolution in Judge Sweeney's favor. See *Sierra Pacific*, 862 F.3d at 1175; *Slaughter*, 480 S.W.3d at 854. Indeed, the facts are even more favorable to Judge Sweeney than to the judges in *Sierra Pacific* and *Slaughter*, for two reasons. First, unlike *Sierra Pacific* and *Slaughter*, the Satterfield Post did not assert the guilt of Mr. Satterfield. It simply stated truthful factual information: that he was wanted for (not guilty of) certain crimes, that he might be in the area around Calhoun County, and he was considered by law enforcement to be armed and dangerous. Second, unlike *Sierra Pacific* and *Slaughter*, the Satterfield case was merely impending and could not have been prosecuted in Judge Sweeney's court. The risk of the Satterfield Post affecting the outcome or impairing the fairness of the Satterfield proceedings is far lower than in *Sierra Pacific* and *Slaughter* to the point of being non-existent.

Fourth, it ignores the real-world reality of being a judge, particularly in a small town in West Virginia. The Satterfield Post was obviously not "rul[ing] on an issue that has not yet been adjudicated." 2016 Model Code of Jud. Conduct 2.10 (quoting *In re Benoit*, 523 A.2d 1381 (Me. 1987)). It was an informational post about an issue of public safety in small, rural communities. Judges do not stop being members of their communities when they become judges and continue to share the same concern for their friends and community members as they did before they went

on the bench. There was no risk of harm to Mr. Satterfield or the judicial system in Judge Sweeney's repost. At the same time, given his position in the community, it had societal benefit to the residents of small towns like St. Marys, Harrisville and West Union where Judge Sweeney's friends lived. By reposting the Satterfield Post, Judge Sweeney did not criticize Mr. Satterfield or praise law enforcement. He was simply doing his small part to keep his community safe. It defies fairness and common sense to punish him in any way for doing so.

b. The Mindfulness Post did not violate Rule 2.10(A).

The "Mindfulness Post" was another repost stating, "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." JA 76. The Board claimed that the Mindfulness Post "involved an impending matter (i.e. presumably on-going criminal investigation)" and therefore it "could be reasonably expected to affect the outcome or impair the fairness of any resulting proceedings which would be heard by Respondent." RD at II(27)(h).

However, by its terms, the JHB's decision rests upon a "presumption" and not fact because there was no proof by "clear and convincing evidence" that there was any impending matter. The CJC defines an "impending matter" as a matter that is "imminent or expected to occur in the near future." CJC Terminology. In *In re McCutcheon*, a judge's grandson and the grandson's friend were stopped by local police and called the judge for advice during the investigation. 846 A.2d 801, 810 (Pa. Ct. Jud. Disc. 2004). The judge guided the grandson and his friend in what to do and how best to cooperate with the police. *Id.* at 804. Five days later, a DUI citation was issued to the friend. *Id.* at 805. The issue was whether the judge's phone call violated Rule 2.10(A). *Id.* at 810. The Pennsylvania Court of Judicial Discipline held, "[o]bviously the case was not 'impending'...Are courts supposed to consider a case 'impending' because some policeman is thinking about making some charge?" *Id.* at 811.

In this case, there is not “clear and convincing evidence” that the Mindfulness Post was about a pending or impending matter. The only evidence in the record is that the Pleasants County Sheriff’s Office posted a phone number for people to call who had “issues regarding medication.” There is no evidence of any “on-going criminal investigation”; the Board had to simply “presume” that such an investigation existed. But even assuming *arguendo* that such an investigation was being considered, the matter could not be considered impending under *McCutcheon* (“thinking about making some charge” “obviously” does not make a matter “impending”).

Moreover, the JHB’s conclusion that the post could affect the outcome of any subsequent proceeding or impact its fairness is not supported by the record. Like the Satterfield post, it was simply informational. It expressed no opinion on a matter to be adjudicated and passed no judgment on Mindfulness’ activities. There was no risk of harm to Mindfulness or the judicial system in Judge Sweeney’s repost. There is no clear and convincing evidence that the repost violated the CJC and no basis in fairness or common sense to punish the Judge for making it.

c. The remaining posts do not violate Rule 2.10(A)

The JHB correctly held that there was no evidence in the record that any of Judge Sweeney’s posts “actually affected the outcome or impaired the fairness of any of the pending or impending matters” identified in the Statement of Charges. RD at 17 ¶ 28(c). As Judge Sweeney testified at the December 10, 2025 hearing, Judge Sweeney has been an advocate for initiatives to raise public awareness about human trafficking. (JHB Tr. 68-70.) These initiatives include presentations at local high schools in conjunction with the West Virginia Secretary of State and this Court. *Id.* As part of those initiatives, Judge Sweeney posted each of the human trafficking posts at issue in this case, including the Pair Arrested in Mason County, the Federal Trafficking Conviction and the Whitefeather Matter. The JHB correctly held that, because the posts merely

relayed publicly available information about the matters RD at 17 ¶¶ 28(d), (e) and (f), and because the Federal Trafficking and Whitefeather cases had already concluded, Judge Sweeney's posts could not have changed the outcome or impacted the fairness of these cases. These conclusions were clearly correct in light of the record, and the JHB's only mistake was in not applying them equally to the Satterfield and Mindfulness posts.

D. Judge Sweeney did not violate CJC Rule 3.7

JDC also contends that this Court should punish Judge Sweeney because he (1) shared a fundraising post from the St. Marys Volunteer Fire Department for a drawing conducted as part of its annual Ice Cream Social, RD 1 at ¶ 4(a)(1); and (2) shared two posts that involved fundraisers for Jeremy Rhodes, a local Pleasants County Sheriff's Department deputy who was dying of cancer. The JHB concluded because Judge Sweeney did not request or urge anyone to contribute to the fundraisers or add any independent commentary to the reposts encouraging or promoting them, they were merely a "passive dissemination" of community information and not a direct or active solicitation that violated CJC Rule 3.7(A)(2). RD 20 at ¶¶ 34-37. Likening these reposts to the pedaling of Amway products, JDC contends that this conclusion was wrong and should be rejected. JDC Br. at 41-42. That contention is surprisingly tone-deaf to the world in which judges live and work, and thankfully unsupported by the CJC.

JDC's reliance on Judge Sweeney's statement is misplaced. Rule 3.7 (A)(2) does not say that it is violated if someone *believes* Judge Sweeney is soliciting contributions; it is only violated if the judge is *actually* soliciting contributions. But Judge Sweeney never admitted that he was *actually* soliciting contributions; in fact, he denied that these posts were solicitations. (J. Ex. 7, BSR 0254:4-8). He testified that he was simply trying to provide information about upcoming events to members of his community. *Id.*; (JHB Tr. 65:12-66:2). Moreover, the Events Reposts

are not solicitations, as defined in the CJC. Judge Sweeney simply shared information about these events with no commentary. They were not directed to anyone. Judge Sweeney never requested financial support or encouraged anyone to attend or give.

Rule 3.7(A)(2) was not adopted to stop judges from posting about upcoming events, and certainly not about community events that have clear societal benefit. Rather, the rule is to keep judges from pressuring litigants to donate to the judge's pet projects, most importantly, his campaign. The Events Posts did none of those things. The cases relied upon by the JDC in its brief are obviously distinguishable and inapposite. This Court should not interpret or apply the CJC in a manner that ignores the role that judges play in their community. As the JHB noted, there is no risk that anyone would feel compelled to contribute to either of the fundraisers at the peril of angering Judge Sweeney. RD 20 at ¶ 36. Absent such risk, there is no basis to extend its reach to actions such as those involved here that enhance, not detract from the public's respect for the integrity of the judiciary and its members.⁴

E. The JHB's Evidentiary Rulings Were Correct

The JHB correctly excluded Joint Exhibits 10 and 11. Exhibit 10 contains JIC advisory opinions that were not issued to Judge Sweeney. Under Rule 2.13(d) of the Rules of Judicial Disciplinary Procedure, "[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." The corollary to this rule is that such an opinion is inadmissible against a non-requesting judge. According to JDC, Exhibit 10 was offered to prove that Judge Sweeney knew that his

⁴ The JHB also found that Judge Sweeney violated CJC Rule 1.1, but that finding was derivative of its other conclusions. RD 27, ¶ 3. For the reasons set forth herein, Judge Sweeney did not violate Rule 1.1. JDC also asserts that Judge Sweeney violated Rule 1.1 by revealing confidential information from the Feb. 3, 2025 hearing, but offers no record or legal citation to support its contention. If JDC's contention is based on W.Va. Code 49-5-101(a), it must be rejected because not information "concerning a child or juvenile" was disclosed.

actions were wrong. But there is no exception to Rule 2.13(d) that would allow its admission for such purpose. In fact, the opposite is true. If it is not being offered against the requesting Judge, this Court (not the JIC) makes the applicable legal determinations. Because they are in admissible and an incorrect statement of law issued to other judges under facts completely dissimilar to this case, the JHB correctly ruled that the opinions were inadmissible under Rule 2.13(d), and as inconsistent with Rule 2.13(d). RD 30, ¶¶ (C)-(E).

Exhibit 11 is a collection Facebook posts responding to Judge Sweeney's admonishment. The vast majority are positive, and support Judge Sweeney. "Tim Sweeney is a great man and Judge He should be commended not admonished." (J. Ex. 11, BSR 0361). "I will always support Judge Tim Sweeney. I think if a judge can't speak up for children, who then???? Thank You Tim for stepping up and trying to help these children." (*Id.*, 0375). "Judge Timothy Sweeney ... is one of the few honest judges West Virginia has." (*Id.*, 0384). But a few vented their frustrations with DHS in a variety of ways. It is these comments that JDC seeks to admit to establish that he commenters developed negative attitudes to DHS **because of Judge Sweeney's actions**. The purpose for which the evidence was offered is what makes it inadmissible.

The JHB correctly ruled that Exhibit 11 is clearly inadmissible hearsay. They are clearly out-of-court statements offered to prove the truth of their assertions: that the commenter did not like DHS. As such, they were in admissible. As the proponent of the Facebook comments, JDC must prove all facts necessary to establish their admissibility. But here, JDC simply offers Facebook comments *en masse* without any foundation as to how they show that Judge Sweeney's actions or comments caused or resulted in the negative comments. Contrary to JDC's assertions, each alleged negative statement must be analyzed separately to determine its admissibility. No court or adjudicative panel can simply admit out-of-court statements *en masse* without making an

individualized determination of their admissibility. Foundationally, there is no evidence that any negative comment was due to Judge Sweeney's actions rather than the commenter's individual experience with DHS or the commenter's pre-existing prejudices regarding DHS. Without such foundation, they were not admissible. *Matter of Goldston*, 866 S.E.2d 126 (W.Va. 2021) is clearly distinguishable because no hearsay objection to the admission to the comments was asserted, and an appropriate foundation for their admission was laid. Moreover, there is no record evidence that any exception to any hearsay rule has been satisfied as to any specific comment. See, e.g., *State v. Phillips*, 194 W. Va. 569, 576–79 (1995) (setting forth the requirements for admitting a statement under the present sense impression exception); *State v. Sutphin*, 195 W. Va. 551, 563–65 (1995) (setting for the requirements for admitting a statement under the excited utterance exception). Absent evidence that each comment satisfies an exception, they were not admissible.

F. JDC's Reference to Judge Sweeney's June 28, 2025, Facebook Posts is Knowingly Improper

From the outset, this case has never been about the administration of justice or maintaining the public's confidence in West Virginia's judiciary. If that were so, this case would never have been brought or pursued. As uncomfortable as it is to concede, this case is about denigrating a Judge's reputation solely for the purpose of doing so. In other words, it is about winning for winning's sake regardless of the consequences. Although the JHB concluded that Judge Sweeney committed technical violations of the JDC, it found that "there is no evidence that [he] had any intent to prejudice the rights of the party or that he acted with improper motive," RD at 22 ¶ 46, that his "concerns about severe understaffing by the Department of Human Services were legitimate and [his] actions resulted in correction by the Department," RD at 29 ¶ 11, and that he was "trying to do something good for both children and local DHS workers when he initiated attempts to correct understaffing in his jurisdiction." RD at 29 ¶ 12. Nonetheless, JDC claims

that Judge Sweeney should be punished by this Court because these actions constituted “a callous disregard for our system of justice.” JDC Br. At 50-51. JDC’s contentions are irreconcilable with the JHB’s findings and the clear facts of this case but underscore the “win at all costs” approach that JDC has taken.⁵

Underscoring this approach is JDC’s reference to Judge Sweeney’s June 28, 2025 Facebook post. JDC asks this Court to consider this post as evidence that “failed to learn anything from this disciplinary action” even though it was never part of the Statement of Charges against him or submitted as evidence to the JHB. Substantively and procedurally, the post has no bearing on this case and should have never been included in the JDC’s brief. All of Judge Sweeney’s conduct in this case, whether related to his February 3, 2025 Order or his Facebook posts, were done to advance the greater good of the community in which he lived. Whether related to the February 3, 2025 Order or Facebook posts about open law enforcement positions, drug dealers, human trafficking or a sheriff’s deputy dying of cancer, his action promoted the betterment and lives of others. Rather than conceding these facts or lauding Judge Sweeney’s efforts, JDC simply seeks to “win” this case by denigrating Judge Sweeney to this Court regardless of the societal cost.

The post cannot, and should not, be considered for three reasons. First, it was never contained in the Statement of Charges or submitted as evidence to the JHB. Any allegation regarding it has therefore been waived. Second, as this Court has unequivocally held, “a judge may not be disciplined consistent with the First Amendment to the United States Constitution or with Section 7 of Article III of the West Virginia Constitution for his remarks during a radio

⁵ This is underscored by JDC’s disparate treatment of other judges with respect to social media posts. In *In re: Sally G. Jackson*, JIC No. 07-2021, a family court judge posted stories about pending criminal matters in other jurisdictions. JDC contacted the judge, informed her that they were not consistent with the CJC, and asked her to take them down. Only after repeated additional social media offenses was the judge charged and admonished. While there is no requirement that JDC “warn” a judge before bringing charges, that JDC did so in other cases but not here underscores the true nature of its crusade against Judge Sweeney. Moreover, giving Judge Sweeney the same punishment as a judge who received, and then blatantly ignored, such warnings is, at best, unjust.

interview in which he discussed his own disciplinary proceeding....” *Hey*, 452 S.E.2d at 27. Judge Sweeney’s comment was clearly made in response to the JDC’s initial admonishment of him and is absolutely protected. JDC’s blatant disregard of *Hey* is patently improper. Third, the statement is obviously not a criticism of another judge as JDC contends. To the contrary, it lauds a repost of a commentary by former Supreme Court Justice Margaret Workmen that decried the JDC’s (and by extension the JHB’s) efforts to discipline Judge Sweeney for his actions. While the post has no evidentiary value in this case, Judge Workman’s commentary reflects an experienced wisdom that this Court should heed in deciding this case:

Neither Judges Akers nor Sweeney revealed the names of any children or otherwise violated their right to confidentiality. Instead, they sought to cast the sunshine of public light on these issues. In so doing, they were not abandoning judicial neutrality — they were fulfilling their deepest obligation to protect children. Children do not have lobbyists to seek a fair allocation of state assets for their protection, so judicial officers publicly identifying these systemic failures is one of the few ways any pressure can be applied to state authorities who continue to short-change children.

The disciplinary sanctions in these cases actually undermine judicial independence by making judges afraid to speak out about the crisis the state abuse and neglect/juvenile justice system is in and creates a perverse situation where the institutions most in need of reform are protected from criticism by the very people best positioned to identify needed changes. By sanctioning judges who spoke publicly about child welfare failures, disciplinary bodies have sent a chilling message to the entire judiciary: keep quiet about systemic problems, even when children are suffering and even dying as a result. This enforced silence serves no legitimate interest in judicial independence or impartiality. Instead, it protects failing institutions from accountability while leaving the most vulnerable children voiceless and in danger.

(J. Ex. 15, BSR 0532)

G. The JHB’s Decision in *Akers* Mandates Dismissal of the Charges.

No discussion of the discipline, if any, to be meted out by this Court in this case is complete, appropriate or fair without consideration of the companion complaint brought against Kanawha County Circuit Court Judge Maryclaire Akers for substantially the same conduct and alleged

violations of the CJC. In that matter, Judge Akers is accused of violating the CJC in connection with a MetroNews interview she gave on March 2, 2025. Akers RD at 5-9. The interviews involved deficiencies in the DHS’ child abuse and neglect system in general, and Judge Akers’ monitoring program of children in DHS custody specifically. *Id.* After the JIC recommended admonishment, and protracted discovery proceedings occurred that resulted in the disqualification of JDC’s counsel in this case, on April 13, 2026, Special Judiciary Disciplinary Counsel (“SJDC”) recommended that the matter be dismissed because the charges could not be proven by the applicable “clear and convincing evidence” standard. Transaction ID 79037767.

On June 5, 2026, the JHB issued its Recommended Decision accepting SJDC’s recommendation. Although the JHB determined that it was not bound by that recommendation, Akers RD 33, ¶ 46, it correspondingly concluded that insufficient evidence existed to support the charges. Despite finding that Judge Akers’ comments were made about a “pending or impending matter” for purposes of CJC 2.10(A), the JHB concluded without explanation that “there is insufficient evidence to clearly and convincingly establish that Respondent’s comments during the MetroNews interview, standing alone, “might reasonably be expected to affect the outcome or impair its fairness.” Akers RD, 29-30, ¶ 30.⁶ Moreover, despite concluding that a reasonable person, hearing Judge Akers’ remarks, might conclude that she was predisposed to rule against DHS should she perceive it not responding to her articulated concerns about the placement of children, it refused to make that finding by and convincing evidence. *Id.*, 32, ¶ 37.

⁶ In so holding, the JHB took a substantially different position as to Rule 2.10(A) than that applied in this case. In *Akers*, the JHB relied on the ambiguity in Rule 2.10(A) in finding that the applicable burden of proof was not met. RD 29, ¶ 25. Here, it noted no such ambiguity, concluding that Judge Sweeney’s actions prompted the DHS to act without analyzing whether it was February 3 Order, as opposed to his public statements, that prompted such action and the relationship such action had to any pending proceeding.

The JHB based its conclusion on four specific findings. First, the JHB noted that the DHS Secretary Mayer “testified that he perceived no bias or prejudice” by Judge Akers’ actions, and that there was “no record evidence that anyone complained to the Judicial Investigation Commission (“JIC”) or otherwise regarding the subject interview.” *Id.*, ¶ 40. But the same is true here. Although the DHS’ general counsel was examined by JDC at length in this matter, there is no evidence that she believed that Judge Sweeney was biased or prejudiced against DHS. (J. Ex. 14). In fact, the opposite is true. (J. Ex. 14, BSR 474-475). And like Akers, there is no evidence in the record that anyone complained to the JIC about Judge Sweeney’s interviews or believed themselves to be prejudiced by it.

JHB also noted that Judge Akers declined to answer questions during the Metro News interviews that she interpreted as impairing the fairness of further proceedings. *Id.*, ¶ 42. Of course, that finding simply pertains to questions that she did not answer, not those that she did. As the interview records in this case bear out, Judge Sweeney was not asked any questions that would impair the fairness of any decision he might have to make (because no such decisions or disputed issues were pending), so he had no such choice to make. Moreover, the JHB noted that the JIC’s prior decision to admonish Judge Akers did not compel the same decision by the JHB because of different standards of proof. *Id.*, ¶ 43. But again, the same is true in this case. To the JHB, these factors were curiously non-factors in deciding Judge Sweeney’s case.

In terms of the justifications given by the JHB for its conclusion that the evidence was not clear and convincing, this case differs from the Akers case in only one material respect: that JDC in that case took the position that the evidence did not meet the required standard, and JDC in this case did not. But before her disqualification in the Akers matter, JDC took the same position there as it takes in this case. In terms of articulable justification, the only difference in the JHB’s

decisions is the position taken by JDC for whatever reasons. But if that factor is outcome determinative, it renders both decisions arbitrary and capricious.

To be clear, Judge Sweeney is not suggesting that the JHB should have concluded that Judge Akers violated the CJC. In fact, the exact opposite is true. Like Judge Sweeney, Judge Akers' experience in handling child abuse and neglect cases confirmed to her that the system was broken and in critical need of repair. When it became apparent that children were being harmed, she sought to raise public awareness through permissible means and work with DHS to improve the system. She should not be punished for her actions. But when the JHB's justifications offered in her case are compared to Judge Sweeney's, its action appears arbitrary at best.

As a matter of fundamental fairness, this Court cannot reach a different decision in this case than it reaches with respect to Judge Akers. The optics will denigrate the public's confidence in the judiciary and the judiciary's confidence in our system of judicial discipline. Even a technical, comparative parsing of their words to try and distinguish their actions is an equitable flagrant foul when applied in these cases. This Court would have to apply the same CJC standards to both but then explain to judges seeking guidance from the decision why discipline was warranted in one case but not the other. Both acted solely to help children, and because of their efforts, West Virginia's abused and neglected children are safer and are receiving services they would not have received had they declined to act. Discipling one judge but not the other under the circumstances of this case will simply raise more questions than it can ever hope to answer. Discipling neither is clearly the correct outcome.

H. The Interests of Justice are Not Furthered by Punishing Judge Sweeney

This Court's role in cases of alleged judicial misconduct is to maintain the public's confidence in the judiciary. By investigating alleged misconduct, and issuing discipline to judges

where warranted, this Court maintains the public's confidence and respect for the judiciary through self-policing. Any professional body that is not willing to enforce its professional standards against its members cannot long maintain the confidence of those that the profession serves. Failing to impose discipline in cases where it is warranted clearly erodes that confidence and undermines the conduct of those members of the profession who abide by its standards.

Critically, the converse is true as well. Imposing discipline in cases where it is not warranted does equal or greater damage to the public's respect and confidence for the judiciary, particularly when it cannot be reasonably reconciled with an opposite outcome in the *Akers* case. In our system and our society, judges are respected not simply because of the positions that they hold, but more so because of the difficult decisions they are expected to make and actions they must take. While all judicial decisions must be made considering the positive and negative impacts the decision will have, decisions involving children are arguably the most difficult and important. The public rightfully expects that judges will not shy away from boldly making tough decisions or taking tough actions where the interests of children are implicated, particularly in situations where doing so could impact the judge's personal interests or security. It is a show of respect for a judge's obligation to make such deeply challenging decisions that those present at the bar rise from their seats when the judge enters the courtroom.

Judge Sweeney made just such a difficult decision in this case. As a practical matter, he was faced with a situation in which there were no safe options. Doing nothing, pursuing options with a proven record of failure, or permitting unjustified delay, jeopardized the safety of children. Choosing a bolder option like the one that he chose jeopardized his professional safety by potentially subjecting him to the very proceedings he now faces. Judge Sweeney chose the latter, placing the interests of children above his own. As JHB found, the actions that he took were

undertaken “to do something good” for at risk children and the CPS workers who are tasked with the difficult and often unenviable jobs of trying to help children in the worst of situations.

It is unjust that Judge Sweeney must now fight the JDC to preserve his good name and avoid discipline for his good deeds. At its core, the judiciary is tasked with upholding the rights of individuals who are least able to uphold those rights for themselves. The Code of Judicial Conduct was enacted to ensure that judges do so in a manner that reflects honorably on the judiciary as an institution so that members of the public have confidence in judicial actions. Judge Sweeney made a decision and took action on the front lines of the fight to protect children. The evidence is undisputed that he did so for all of the right reasons (to help needy children and overburdened workers) and none of the wrong ones (personal gain or professional safety). While JDC challenges whether his actions were consistent with letter of the CJC, it is beyond any dispute that his actions did justice to the spirit and purpose for which the CJC was enacted.

The JDC’s allegations about Judge Sweeney’s social media are equally unjust. The only reason that the content of his social media posts are now subject to scrutiny is because he took action to help children. With respect to the content of the posts that are now at issue, the record is clear that: (1) none were made to personally benefit Judge Sweeney; (2) they were each an attempt to benefit the community in which Judge Sweeney lived; and (3) no one was harmed in any way because they were made. Viewed in light of the purposes of the CJC, these actions were also consistent with the spirit and purpose for which it was enacted.

Regardless of how this panel may view and rule on the legal issues in this case, it would be wrong to discipline Judge Sweeney in any way for his actions. *In re Cruickshanks*, 648 S.E. 2d 19 (W.Va. 2007). None of Judge Sweeney’s actions have harmed the judiciary or the public’s confidence in it. In fact, the opposite is clearly true: Judge Sweeney’s actions have enhanced the

public's confidence in the judiciary. Just as the failure to discipline when required does harm to the system, imposing discipline where it is not warranted does equal or greater harm. Viewed in any reasonable context, disciplining Judge Sweeney under the circumstances of this case will be viewed by the public and other judges as unfair—as discipline imposed because Judge Sweeney was willing to stand up for children and his community. Any discipline will undermine public confidence in the judiciary and have a chilling effect on judges faced with similarly difficult situations in the future. The interests of justice that this Court is constituted to serve are not furthered by disciplining Judge Sweeney. They are eroded.

VI. Conclusion

For these reasons, Judge Sweeney respectfully requests that charges against him in the Statement of Charges be dismissed with prejudice as unproved and without merit.

THE HONORABLE TIMOTHY SWEENEY

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BEFORE THE JUDICIAL HEARING BOARD OF WEST VIRGINIA

IN THE MATTER OF	
THE HONORABLE TIM SWEENEY, JUDGE OF THE THIRD JUDICIAL CIRCUIT	SUPREME COURT NO. 25-475 JIC COMPLAINT NO. 13-2-25

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of “*The Honorable Tim Sweeney’s Response Brief*” have been served via email on the 25th day of June, 2026 to:

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