# "Judicial Ethics and the Impact on Judicial Branch Employees"

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CLE – NC Judicial Branch September 26, 2019

Course Overview and Course Materials: Page:

IN THE SUPREME COURT OF NORTH CAROLINA

No. 419A18

Filed 10 May 2019

IN RE INQUIRY CONCERNING A JUDGE, NO. 17-143
APRIL M. SMITH, Respondent

This matter is before the Court pursuant to N.C.G.S. §§ 7A-376 and -377 upon a recommendation by the Judicial Standards Commission entered 7 November 2018 that Respondent April M. Smith, a Judge of the General Court of Justice, District Court Division, Judicial District Twelve, be publicly reprimanded for conduct in violation of Canons 1, 2A, 3A(3), and 3B(1) of the North Carolina Code of Judicial Conduct, and for conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of N.C.G.S. § 7A-376. This matter was calendared for argument in the Supreme Court on 4 March 2019, but determined on the record without briefs or oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure and Rule 3 of the Rules for Supreme Court Review of Recommendations of the Judicial Standards Commission.

*No counsel for Judicial Standards Commission or Respondent.*

ORDER

The issue before the Court is whether District Court Judge April M. Smith, Respondent, should be publicly reprimanded for violations of Canons 1, 2A, 3A(3), and 3B(1) of the North Carolina Code of Judicial Conduct amounting to conduct

prejudicial to the administration of justice that brings the judicial office into disrepute in violation of N.C.G.S. § 7A-376(b). Respondent has not challenged the findings of fact made by the Judicial Standards Commission (the Commission) or opposed the Commission's recommendation that she be publicly reprimanded by this Court.

On 20 February 2018, Commission Counsel filed a Statement of Charges against Respondent alleging that she had engaged in conduct inappropriate to her office by demonstrating a lack of respect for the judicial office and for the Chief District Judge; by failing to facilitate the administrative duties of the Chief Judge and court staff; by repeatedly and regularly making disparaging comments about the Chief Judge to other judges, judicial staff, clerical staff, and members of the local bar; and by failing to diligently discharge her duties, bringing the judicial office into disrepute. Respondent fully cooperated with the Commission's inquiry into this matter. In the Statement of Charges, Commission Counsel asserted that Respondent's actions constituted conduct inappropriate to her judicial office and prejudicial to the administration of justice that brings the judicial office into disrepute or otherwise constituted grounds for disciplinary proceedings under Chapter 7A, Article 30 of the North Carolina General Statutes.

Respondent filed her answer on 9 April 2018. On 20 August 2018, Commission Counsel and Respondent entered into a Stipulation and Agreement for Stated Disposition (the Stipulation) containing joint evidentiary, factual, and disciplinary

stipulations as permitted by Commission Rule 22 that tended to support a decision to publicly reprimand Respondent. The Stipulation was filed with the Commission on 22 August 2018. The Commission heard this matter on 5 October and entered its recommendation on 7 November 2018, which contains the following stipulated findings of fact:

> 1. Respondent is one (1) of ten (10) judges of the General Court of Justice, District Court Division, Judicial District 12 (Cumberland County). She was elected in November 2014 at thirty-five (35) years old along with two (2) other district court judges. In 2017, another district court judge was elected for a total of ten (10) judges. There are eight (8) courtrooms available for district court proceedings in the Cumberland County Courthouse.
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> 2. The current Chief District Court Judge was elected more than twenty (20) years ago and was appointed Chief Judge commencing January 1, 2015 upon the retirement of the previous Chief District Court Judge. After Respondent's election, the Chief Judge assigned Respondent primarily to serve as one of the court's family court judges and to hear domestic violence matters, although she was also assigned to hear various criminal cases.
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> 3. At the start of 2015, when Respondent began her service as a judge, she believed her relationship with the Chief Judge to be pleasant and collegial. By the end of 2015, however, Respondent became frustrated with the Chief Judge based on scheduling and communication differences.
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> 4. Beginning in 2016, Respondent also began experiencing serious health issues that required Respondent to attend frequent medical appointments. Over a period of time, Respondent's health deteriorated as her physicians attempted to determine what medical condition she was dealing with. In 2017, Respondent was diagnosed with two (2) chronic autoimmune diseases—Systemic Lupus Erythematosus and Mixed Connective Tissue Disorder. These two conditions have required

Respondent to receive various medical treatments including chemotherapy and she is subject to experiencing "flares." As a result of these health issues, Respondent has taken multiple leaves of absence. The Chief Judge has accommodated all of Respondent's requests for medical leaves of absence pursuant to physician orders.

5. Thereafter, Respondent's relationship with the Chief Judge deteriorated further because she believed that the Chief Judge was subjecting her to unfair treatment in court assignments. Among other things:

a. Respondent perceived that the Chief Judge assigned her more often to Courtroom 3A than other judges. Courtroom 3A is considered a difficult courtroom because judges who preside there must hear not only their regularly scheduled calendar, but also accept walk-in domestic violence, temporary custody and other cases. This makes presiding in Courtroom 3A a long and often times stressful day.

b. Respondent also believed that she was being assigned disproportionately to Courtroom 3A on Fridays after concluding family court trials and hearings earlier in the week, when other family law judges were not.

c. Respondent believed that the Chief Judge provided other judges with more unassigned days than were provided to her.

d. Respondent believed that the Chief Judge unfairly assigned her to cover other courtrooms when her special sessions concluded while not requiring the same of other judges.

e. Respondent believed the Chief Judge failed to accommodate her requests for unassigned days or time off, either to attend medical appointments, preside over swearing-in ceremonies, attend educational programs for judges, or take vacation time.

6. As a result of the perceptions noted above, Respondent began complaining about her court assignments, unassigned days, and her opinion that the Chief Judge treated her unfairly, to other judges in her



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district, retired judges, court staff, and local attorneys, all of whom she considered to be her friends. Respondent also suggested to her case manager and a courtroom clerk that the Chief Judge's decisions regarding her schedule were based in part on racial prejudice.

7. Respondent's frustration about her schedule and her resentment towards the Chief Judge became known throughout the courthouse, notwithstanding the fact that Respondent believed these were private conversations among friends.

8. Respondent at various times sought guidance and advice from the former Chief Judge about how to deal with her relationship with the Chief Judge. In early 2017, in an attempt to seek guidance on how to address what she perceived to be unfair treatment by the Chief Judge, Respondent contacted the North Carolina Administrative Office of the Courts and the Judicial Standards Commission regarding her concerns and frustration about her court schedule and perceived treatment by the Chief Judge. At or around the same time, the Chief Judge independently reached out to the Commission seeking guidance to resolve the situation.

9. In early March 2017, with the consent of both Respondent and the Chief Judge, the Commission referred the matter to the Chief Justice's Commission on Professionalism (CJCP) to assist with resolving the professional differences between the two judges. Shortly thereafter, the Executive Director of the CJCP notified the Commission that his effort to meet with Respondent had failed because Respondent had to unexpectedly cancel their initial meeting due to her deteriorating health condition and necessity of going on medical leave for 30 days. Respondent was advised to contact the CJCP Executive Director to reschedule the meeting, but had not done so by the time the Executive Director retired in the summer of 2017.

10. Notwithstanding Respondent's complaints of an unfair schedule, court statistics and records demonstrate that Respondent was scheduled for and actually presided over fewer court sessions than most of her colleagues in 2016 and 2017. These same statistics and records further show that Respondent had more days off the bench (either as unassigned or personal days off) than



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any other judge in the district in 2015 and 2017, and had the second most days off the bench in 2016 (the most days off was for a colleague undergoing cancer treatment).

11. With respect to Courtroom 3A, court records show that Respondent was scheduled for the most court sessions in Courtroom 3A in 2015. That schedule, however, was set in part by the former Chief Judge who left office at the end of 2014, and not the current Chief Judge about whom Respondent repeatedly complains. In addition, the higher number of assignments to Courtroom 3A in 2015 was a reflection not of the Chief Judge's bias, but reflected a pattern of assigning judges based on existing experience, the role of certain judges in presiding over specialized courts, and the necessity of minimizing potential conflicts of interests given Respondent's status as [a] new judge with connections to former clients and certain attorneys. In 2016 and 2017, when the current Chief Judge prepared the entire schedule, Respondent was scheduled, and actually presided, in Courtroom 3A fewer times than several of her colleagues.

12. The Chief Judge similarly accommodated, and continues to accommodate, Respondent's physician ordered medical leaves of absence due to her illness and prepares the court schedules accordingly.

13. The Commission's investigation found that Respondent also engaged in conduct that created a perception that her judicial duties did not take precedence over her personal commitments and work schedule preferences. While Respondent contends that she works diligently to resolve cases and that this periodically results in her concluding the court's business early, the Commission's investigation identified examples of conduct to include the following:

> a. Certain attorneys that frequently appeared before Respondent reported to the Commission that Respondent regularly rushed to conclude cases to avoid working the full afternoon or the next day. This caused some attorneys to have concerns about a full and fair opportunity to be heard, and it placed administrative burdens on court staff.

b. Respondent admits that she often did not take breaks at any specific interval and instead preferred to finish her cases. Respondent encouraged court staff to leave their duty stations to take breaks while court was still in session provided that the electronic recording equipment remained on.

c. Several attorneys reported to the Commission that in open court, Respondent would announce that she was adjourning court early for personal appointments, such as for hair and nail salon visits or to spend time with her child.

d. Respondent's courtroom statements and conduct, coupled with her repeated complaints about her schedule and the Chief Judge, resulted in an unfavorable cartoon about Respondent circulating amongst the bar.

14. Because of these concerns, several members of the domestic bar requested that the Chief Judge remove Respondent from domestic cases. In addition, several judicial and court colleagues brought to the Chief Judge's attention concerns regarding Respondent's work habits and courtroom conduct, especially the frequency of concluding court sessions early and the perceived unwillingness of Respondent to assist other family court judges.

15. After these concerns were brought to his attention, the Chief Judge used his administrative and scheduling authority to reassign Respondent to cover other courtrooms if she concluded her calendars early and had time available that was not otherwise scheduled for time off or unassigned days. The Chief Judge did not take this approach with other domestic judges because he found that they routinely offered to help in other courtrooms or checked in with him when they finished early without prompting.

16. Respondent now acknowledges that her frequent complaints to other judges, court personnel, and members of the local bar regarding her perception that the Chief Judge was being unfair and biased towards her created unintended consequences, including harm to

> collegial relations. Respondent further recognizes that even if intended to be private conversations, the cumulative impact of voicing her internal grievance with a colleague to so many people within the courthouse was harmful to public confidence in the administration of the court.
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> 17. Respondent also recognizes that her conduct and statements in the courtroom between 2015 and 2017 were perceived by some attorneys and court staff as indicating a desire to avoid her judicial duties to accommodate her own scheduling preferences and personal circumstances.

(Citations to pages of the Stipulation omitted.)

Based on these findings of fact, the Commission concluded as a matter of law that:

> 1. Canon 1 of the Code of Judicial Conduct sets forth the broad principle that "[a] judge should uphold the integrity and independence of the judiciary." To do so, Canon 1 requires that a "judge should participate in establishing, maintaining, and enforcing, and should personally observe, appropriate standards of conduct to ensure that the integrity and independence of the judiciary shall be preserved."
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> 2. Canon 2 of the Code of Judicial Conduct generally mandates that "[a] judge should avoid impropriety in all the judge's activities." Canon 2A specifies that "[a] judge should respect and comply with the law and should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."
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> 3. In addition, Canon 3A(3) requires a judge to "be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge's official capacity."
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> 4. In accepting this Stipulation and making a recommendation of public reprimand, the Commission distinguishes the Supreme Court's decision in *In re Belk,* 364 N.C. 114, 690 S.E.2d 685 (2012), which found that a single, isolated confrontation between a district court judge

and his or her chief judge, after which the relationship returned to normal, did not support a finding of a violation of Canons 1, 2A, 3A(3) or N.C.G.S. § 7A-376. *See id.* at 126, 690 S.E.2d at 693 ("[w]hile a district court judge must respect the Chief District Court Judge's duties and authority, the nature of the relationship between coworkers may at times produce episodes of contention, disagreement, and frustration . . . [and] discipline is not normally imposed for a single incident of improper behavior exhibited towards a coworker.").

5. Unlike *Belk,* Respondent's personal conduct in this case went far beyond a single confrontation with her Chief Judge about her court assignments. The Commission's findings of fact, as supported by the Stipulation, show that Respondent's conduct involved a pattern of pervasive complaints attacking the personal integrity and fairness of the Chief Judge to anyone who would listen, including other active and retired judges, court staff, local attorneys, the Administrative Office of the Courts and the Judicial Standards Commission. She also suggested to court personnel working with the Chief Judge that his scheduling decisions towards her were racially motivated. At the same time, the Commission's findings of fact as agreed to by Respondent show no evidence of racial bias or that Respondent's schedule was unfair or burdensome as compared to other judges. On the contrary, the findings of fact establish that the Chief Judge used accepted and reasonable practices in scheduling judges and that the Chief Judge did not assign Respondent to preside in Courtroom 3A more often than her colleagues. Even when she did preside, she admittedly rushed through court sessions to the detriment of the parties and even courtroom staff, whom she would direct to leave their duty stations in the courtroom during ongoing court proceedings if they needed or were entitled to a break. Moreover, Respondent's conduct resulted in requests from the local bar to remove her from domestic courtrooms and the circulation of a cartoon mocking her poor work habits. Respondent now acknowledges that the cumulative impact of her continued conduct in complaining that the Chief Judge was biased and unfair was harmful to public confidence in the administration of the court.

6. Based on the facts contained in the Stipulation and accepted as the findings of fact herein, the Commission thus concludes as a matter of law that Respondent failed to personally observe appropriate standards of conduct necessary to ensure that the integrity of the judiciary is preserved, in violation of Canon 1 of the North Carolina Code of Judicial Conduct; failed to conduct herself in a manner that promotes public confidence in the integrity of the judiciary, in violation of Canon 2A of the North Carolina Code of Judicial Conduct; and failed to be "patient, dignified and courteous" to her colleagues, the Chief Judge, and those who appeared before her in violation of Canon 3A(3) of the North Carolina Code of Judicial Conduct.

7. In addition to the conclusions of law as to Canons 1, 2A and 3A(3), the Commission also concludes as a matter of law that Respondent violated Canon 3B(1) of the North Carolina Code of Judicial Conduct, which requires a judge to "diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials." This conclusion is based upon (1) Respondent's conduct in consistently complaining about having to preside in court too often, and then when she did preside, at times directing court staff to leave their duty stations while court was still in session in order to take necessary break[s]; and (2) unfairly impugning the Chief Judge's reputation and interfering with the Chief Judge's duties in making court assignments through unjustified attacks on his impartiality and integrity, and disrupting the professionalism, cooperation and collegiality that are the hallmarks of judicial service.

8. The Commission further finds that Respondent's inexperience and status as a new judge does not excuse her from strict adherence to the ethical standards embodied in the North Carolina Code of Judicial Conduct. As the North Carolina Supreme Court stated in *In re Badgett,* 362 N.C. 482, 666 S.E.2d 743 (2008), "[a] trial judge cannot rely on his [or her] inexperience or lack of training to excuse acts which tend to bring the judicial office into disrepute." *Id.* at 489, 666 S.E.2d at 747-48 (internal quotations omitted). As indicated to Respondent

> during the hearing of this matter, in assuming the duties of a judge of the State of North Carolina, Respondent is subject to restrictions on her personal and professional conduct that a private citizen would find burdensome and must accept those burdens gladly and willingly given the enormous power and responsibilities of the judicial office.
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> 9. Based on the foregoing, the Commission further concludes that Respondent's violations of the Code of Judicial Conduct amount to conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of N.C. Gen. Stat. § 7A-376(b). *See also* Code of Judicial Conduct, Preamble ("[a] violation of this Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office into disrepute"). In reflecting on her conduct, Respondent also agrees that based on the totality of the circumstances, she violated the foregoing provisions of the North Carolina Code of Judicial Conduct and N.C. Gen. Stat. § 7A-376.

(Brackets in original) (Citations to pages of the Stipulation omitted).

Based on these Findings of Fact and Conclusions of Law, the Commission recommended that this Court publicly reprimand Respondent. The Commission based this recommendation on its earlier findings and conclusions and the following additional dispositional determinations:

> 1. The Commission finds that as a mitigating factor, Respondent has agreed to seek the assistance of the Chief Justice's Commission on Professionalism (CJCP) to assist her in developing a more professional and cooperative working relationship with the Chief Judge and her judicial and court colleagues. The Commission notes that its first effort to resolve the Respondent's concerns about her schedule and working with the Chief Judge were referred to the CJCP. Regrettably, Respondent did not follow through in that process for months after she returned from her medical leave of absence, at which time she continued her pattern of complaining about her work schedule and the Chief Judge. It is the Commission's hope



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that this time, Respondent will fully engage in the opportunity to improve her professionalism and understanding of the serious implications of her conduct on public confidence in the administration of justice.

2. The Commission finds as an additional mitigating factor that Respondent has expressed regret over the negative impact that these matters have had on her reputation as a judge, the reputation of the Chief Judge, and the court in which she serves, and that she has a strong commitment to and leadership in support of the community she serves.

3. In making a recommendation of public reprimand, the Commission finds that this sanction is consistent with N.C. Gen. Stat. § 7A-374.2(7), which provides that a public reprimand is appropriate where "a judge has violated the Code of Judicial Conduct and has engaged in conduct prejudicial to the administration of justice, but that misconduct is minor." Although the Commission has some concern that the misconduct at issue is more than "minor," a more severe sanction would require evidence that Respondent willfully engaged in misconduct prejudicial to the administration of justice. *See* N.C. Gen. Stat. § 7A-374.2(1) (definition of censure); *see also In re Nowell*, 293 N.C. 235, 248, 237 S.E.2d 246, 255 (1977) ("*Wilful misconduct in office* is the improper or wrongful use of the power of his office by a judge acting intentionally, or with gross unconcern for his conduct, and generally in bad faith . . . .") (internal citations omitted). Given the agreed upon facts contained in the Stipulation, the Commission concludes that a public reprimand is the most appropriate sanction.

4. The Commission and Respondent acknowledge the ultimate jurisdiction for the discipline of judges is vested in the North Carolina Supreme Court pursuant to Chapter 7A, Article 30 of the North Carolina General Statutes, which may either accept, reject or modify any disciplinary recommendation from the Commission.

5. The Commission and Respondent also acknowledge and agree that although the Respondent has raised her medical issues as a mitigating factor, this disciplinary action is based on misconduct alone as set forth herein and does not bar or limit any future action by the Commission to institute proceedings against



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> Respondent pursuant to N.C. Gen. Stat. § 7A-376(c) if it appears that Respondent suffers from a physical or mental incapacity interfering with the performance of her judicial duties.
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> 6. Pursuant to N.C. Gen. Stat. § 7A-377(a5), which requires that at least five members of the Commission concur in a recommendation of public discipline to the Supreme Court, all six Commission members present at the hearing of this matter concur in this recommendation to **publicly reprimand Respondent.**

(Citations to pages of the Stipulation omitted.)

"The Supreme Court 'acts as a court of original jurisdiction, rather than in its typical capacity as an appellate court' when reviewing a recommendation from the Commission." *In re Hartsfield*, 365 N.C. 418, 428, 722 S.E.2d 496, 503 (2012) (order) (quoting *In re Badgett*, 362 N.C. 202, 207, 657 S.E.2d 346, 349 (2008) (order)). Neither the Commission's findings of fact nor its conclusions of law are binding, but they may be adopted by this Court. *Id.* at 428, 722 S.E.2d at 503 (citing *In re Badgett*, 362 N.C. at 206, 657 S.E.2d at 349). If the Commission's findings are adequately supported by clear and convincing evidence, the Court must determine whether those findings support the Commission's conclusions of law. *Id.* at 429, 722 S.E.2d at 503 (citing *In re Badgett*, 362 N.C. at 207, 657 S.E.2d at 349).

The Commission found the stipulated facts to be supported by "clear, cogent and convincing evidence." In executing the Stipulation, Respondent agreed that those facts and information would serve as the evidentiary and factual basis for the Commission's recommendation, and Respondent does not contest the findings or conclusions made by the Commission. We agree that the Commission's findings are



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supported by clear, cogent, and convincing evidence, and we now adopt them as our own. Furthermore, we agree with the Commission's conclusions that Respondent's conduct violates Canons 1, 2A, 3A(3), and 3B(1) of the North Carolina Code of Judicial Conduct, and is prejudicial to the administration of justice, thus bringing the judicial office into disrepute in violation of N.C.G.S. § 7A-376.

This Court is not bound by the recommendations of the Commission. *Id.* at 428-29, 722 S.E.2d at 503. Rather, we may exercise our own judgment in arriving at a disciplinary decision in light of Respondent's violations of several canons of the North Carolina Code of Judicial Conduct. *Id.* at 429, 722 S.E.2d at 503. Accordingly, "[w]e may adopt the Commission's recommendation, or we may impose a lesser or more severe sanction." *Id.* at 429, 722 S.E.2d at 503. The Commission recommended that Respondent be publicly reprimanded. Respondent does not contest the Commission's findings of fact or conclusions of law and voluntarily entered into the Stipulation with the understanding that the Commission's recommendation would be a public reprimand.

We appreciate Respondent's cooperation and candor with the Commission throughout these proceedings. Furthermore, we recognize Respondent's expressions of remorse and her willingness to seek assistance from the CJCP to improve her professional reputation and repair her relationship with the Chief Judge. Weighing the severity of Respondent's misconduct against her candor and cooperation, we conclude that the Commission's recommended public reprimand is appropriate.

Therefore, the Supreme Court of North Carolina orders that Respondent April M. Smith be PUBLICLY REPRIMANDED for conduct in violation of Canons 1, 2A, 3A(3), and 3B(1) of the North Carolina Code of Judicial Conduct, and for conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of N.C.G.S. § 7A-376.

By order of the Court in Conference, this the 10th day of May, 2019.

s/Earls, J.
For the Court

Justice DAVIS did not participate in the consideration or decision of this case.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 10th day of May, 2019.

AMY L. FUNDERBURK
Clerk of the Supreme Court

s/M.C. Hackney
Assistant Clerk

# EXECUTIVE SUMMARY
# OF
# THE REPORT OF THE FEDERAL JUDICIARY WORKPLACE CONDUCT WORKING GROUP
# TO
# THE JUDICIAL CONFERENCE OF THE UNITED STATES
# JUNE 1, 2018

On December 20, 2017, Chief Justice John G. Roberts, Jr., asked the Director of the Administrative Office of the United States Courts to establish a working group to examine the sufficiency of the safeguards currently in place within the Judiciary to protect court employees from inappropriate conduct in the workplace. The goal of this undertaking is to "ensure an exemplary workplace for every judge and every court employee." On January 12, 2018, the Director announced formation of the Federal Judiciary Workplace Conduct Working Group (Working Group), consisting of eight experienced judges and court administrators from diverse units within the Judiciary. The Working Group consulted with Administrative Office staff to collect information and formulate recommendations, meeting collectively on four occasions and collaborating continuously through telephonic and electronic means.

The Working Group proceeded from the premise that the Judiciary shares many common features with other public and private workplaces. Accordingly, studies conducted in those environments—most notably, a Select Task Force of the U.S. Equal Employment Opportunity Commission Study of Harassment in the Workplace in 2016 (EEOC Study)—provide pertinent guidance. But the Working Group also recognized that the judicial workplace is different in significant respects that can affect—both positively and negatively—the potential for inappropriate conduct. The Working Group accordingly embraced the guidance contained in the EEOC Study, but additionally focused on those distinguishing factors in evaluating the Judiciary's current workplace standards, its procedures for addressing inappropriate behavior,

and its educational and training programs. In the course of its review, the Working Group received input from current and former law clerks, court employees, Judicial Branch advisory councils, and individual circuits. It received that input through face-to-face meetings, anonymous and attributable comments from an electronic mailbox, and court surveys.

This Report sets out the findings and the recommendations of the Working Group. Some of the recommendations require action by the Judicial Conference of the United States, which is the national policy-making body for the federal courts. Other recommendations can be instituted by the Administrative Office, which administers judicial policies, or the Federal Judicial Center (FJC), which conducts judicial education. The Report sets out 24 specific recommendations to the Judicial Conference of the United States and its relevant committees for further action. Those recommendations are in addition to numerous actions that have already been initiated by the Administrative Office or the FJC.

## I. *Findings*

The Judiciary employs 30,000 individuals in a broad range of occupations, ranging from life-tenured judges to temporary interns. The Working Group sought to assess the quality of the workplace environment across that broad spectrum. Based on the input from the electronic mailbox, the advisory groups, individual interviews, and court surveys, the Working Group believes that inappropriate conduct, although not pervasive within the Judiciary, is not limited to a few isolated instances. Of the inappropriate behavior that does occur, incivility, disrespect, or crude behavior are more common than sexual harassment.

The Working Group assessed the strengths and weaknesses of the Judiciary's current workplace practices through five considerations that the EEOC Study identified as key elements

in preventing inappropriate conduct: leadership; accountability; policies; procedures; and training. In summary, the Working Group found:

- The Judiciary has demonstrated committed leadership in addressing inappropriate conduct, but that leadership is not uniform throughout all court units and supervisory levels. The Judiciary should encourage leadership on workplace conduct and civility throughout the branch through educational programs, performance reviews, and other mechanisms for motivating positive change.
- The Judiciary has also shown a commitment to accountability in its formal processes for receiving and resolving complaints. There is room for improvement in terms of both accessibility and transparency, but the most significant challenge to accountability lies in the understandable reluctance of victims, especially law clerks and other temporary employees, to report misconduct. The Judiciary should reduce barriers to reporting and provide alternative avenues for seeking advice, counseling, and assistance for all employees. Judges have a special responsibility to promote appropriate behavior and report instances of misconduct by others, including other judges.
- The Judiciary has long had in place policies, expressed through codes of judicial and employee conduct, to maintain high standards of behavior while preserving the independence and integrity of the Judicial Branch. Those policies, however, were not developed with the aim of addressing the particular issues of workplace harassment or incivility. The codes should more clearly communicate the rights and responsibilities of employees, including the scope of confidentiality and the availability of remedial procedures.

- The Judiciary has two formal mechanisms for reporting misconduct—the Judicial Conduct and Disability Act (JC&D Act), which sets out statutory procedures for complaints against judges, and the Employment Dispute Resolution Plans (EDR Plans), which are judicially created mechanisms in each of the circuits for making claims against judges and other judicial employees. They are effective when invoked, but they should not be the exclusive avenue for employee recourse. Employees should have other options, apart from filing a formal complaint, for guidance, counseling, assistance, and relief. Those options, calibrated to the nature of the conduct, should exist at the local, regional, and national levels.
- The FJC, as well as the Administrative Office and individual courts, have a broad range of publications, on-line resources, and in-person training programs to promote fair employment practices and workplace civility. These vigorous training programs can be improved through refinements placing more focus on workplace civility, integrating civility principles into other training programs, emphasizing proactive measures to prevent bad conduct, and encouraging "bystanders" who witness misconduct to take action through channels for reporting and response. Educational programs should be continuously evaluated to determine their effectiveness.

## II. *Recommendations*

Based on its findings, the Working Group offers recommendations in three discrete areas for achieving the goal of an exemplary workplace. First, the Judiciary should revise its codes and other published guidance in key respects to state clear and consistent standards, delineate responsibilities, and promote appropriate workplace behavior. Second, the Judiciary should improve its procedures for identifying and correcting misconduct, strengthening, streamlining,

and making more uniform existing processes, as well as adding less formal mechanisms for employees to seek advice and register complaints. Third, the Judiciary should supplement its educational and training programs to raise awareness of conduct issues, prevent discrimination and harassment, and promote civility throughout the Judicial Branch.

*A. Codes of Conduct and Guidance Documents*

The Judicial Conference has adopted codes of conduct for judges and judicial employees that indicate, either expressly or by clear implication, that judges and judicial employees have a duty to refrain from and prevent harassment and other inappropriate workplace conduct. Those codes—and public confidence in the Judiciary—would be strengthened if the Judicial Conference made clear, through express language in the canons or the associated commentary, that judges have an obligation to promote civility and maintain a workplace that is free from harassment. The Working Group recommends that the Committee on Codes of Conduct formulate more precise language in the Code of Conduct for United States Judges to make clear that:

- A judge has an affirmative duty to promote civility, not only in the courtroom, but throughout the courthouse. The admonitions that judges show patience, dignity, respect, and courtesy to litigants, jurors, witnesses, lawyers, and the public also apply to judicial employees.
- A judge should neither engage in nor tolerate inappropriate workplace conduct, including comments or statements that could reasonably be interpreted as harassment, abusive behavior, or retaliation for reporting misconduct.
- A judge has a responsibility to curtail inappropriate conduct by others, including other judges. The judicial virtues of mutual respect, independence, and collegiality should not

prevent a judge from intervening when necessary to protect an employee (including a fellow judge's chambers employee) from inappropriate conduct.

The Working Group recommends that the Committee also revise the Code of Conduct for Judicial Employees to formulate more precise language to make clear that:

- Judicial employees, including supervisors, have a duty to promote workplace civility, avoid harassment, and take action when they observe misconduct by others.
- Confidentiality obligations do not prevent any employee—including law clerks—from revealing abuse or reporting misconduct by any person.
- Retaliation against a person who reports misconduct is itself serious misconduct.

The Judiciary has a wide range of guidance documents, policy statements, and instructions issued by the Administrative Office, individual courts, and other Judiciary entities that all need to be revised in parallel fashion to ensure that the Judiciary's substantive standards of workplace conduct are set out and explained in a consistent and cohesive manner. The Working Group recommends that the Administrative Office and the FJC take on the challenge of reviewing all of their guidance respecting workplace conduct and civility to ensure that they provide a consistent, accessible message that the Judiciary will not tolerate harassment or other inappropriate conduct. Many of those efforts are already underway.

### *B. Procedures for Identifying and Correcting Misconduct*

The Judiciary enforces its standards of conduct through two procedural mechanisms. Judges are subject to discipline through the statutory procedures set out in the JC&D Act, which the Judicial Conference has implemented through its Rules for Judicial Conduct and Judicial Disability Proceedings (the Conduct Rules). In addition, both judges and employees are subject

to EDR Plans already in place in each regional circuit. The Working Group suggests some changes to each of those procedures.

In the case of the JC&D Act, the Working Group recommends that the Judicial Conference's Committee on Judicial Conduct and Disability revise the Conduct Rules or associated commentary to make clear that:

- Traditional judicial rules respecting "standing"—viz., the requirement that the complainant himself or herself must claim redressable injury from the alleged misconduct—do not apply to the JC&D Act complaint process. Complainants should clearly understand that they need not themselves be the subject of the alleged misconduct. That clarification should encourage and facilitate early reporting and action on potential misconduct.
- Workplace harassment is within the definition of misconduct. The Committee on Judicial Conduct and Disability should adopt language and examples in its procedural rules that are congruent with any changes that the Committee on Codes of Conduct makes to the Code of Conduct for United States Judges.
- Confidentiality obligations should never be an obstacle to reporting judicial misconduct or disability. Complainants should understand that the obligations of confidentiality that judicial employees must observe in the conduct of judicial business do not shield a judge from a complaint under the JC&D Act.
- A judge has an obligation to report or disclose misconduct and to safeguard complainants from retaliation. The Committee on Codes of Conduct should state these principles in the Code of Conduct for United States Judges, but they warrant repetition in the Conduct Rules.

In addition, the Working Group recommends that the Judiciary as a whole consider possible mechanisms for improving the transparency of the JC&D Act process. Public confidence in the JC&D Act will benefit by efforts, already agreed upon by the Administrative Office, to identify harassment complaints in its statistical reports. Individual circuits also should investigate making decisions on complaints filed in their courts more readily accessible to the public through searchable electronic indices.

In the case of EDR Plans, the Working Group recommends that the Judicial Conference's Committee on Judicial Resources consider revisions to the Judiciary's Model EDR Plan, which provides the template for the EDR Plans in each of the federal Judiciary's regional circuits. The Working Group recommends the Committee consider revisions to accomplish several discrete goals:

- The Model EDR Plan should be rendered more "user-friendly" through simplified language and more succinct direction on the steps to be followed in the dispute resolution process.
- The Model EDR Plan should ensure a uniform scope of coverage throughout the Judiciary. Some circuits have excluded certain classes of individuals from access to their EDR Plans. The Committee should consider mandatory coverage for all persons working in the court system, including interns, externs, and chambers employees.
- The Model EDR Plan's reference to sex discrimination should be examined to ensure it is consistent with established legal definitions and to make clear that harassment, without regard to motivation, is wrongful conduct.
- The Model EDR Plan should make clear that, when a chief district judge or chief bankruptcy judge receives a report of wrongful conduct that could constitute reasonable

grounds for inquiry into whether a judge has engaged in misconduct under the JC&D Act, the chief judge should inform the chief circuit judge of the report and any actions taken in response.

- The Model EDR Plan's time limit for initiating a claim should be extended from 30 days to 180 days from the date of the alleged violation or when the complainant became aware of the violation. That time limit will better accommodate the time employees may reasonably need to ascertain and assess their options under the EDR Plan.
- The Committee should consider steps to improve the training and qualifications of EDR Coordinators, who play a critical role in providing information and training to employees regarding their rights under the EDR Plan and assist employees in accessing the claims procedures.

The JC&D Act and the EDR Plans provide useful formal mechanisms for responding to serious cases of harassment and workplace misconduct, but the Working Group found that they are not well suited to address the myriad of situations that call for less formal measures. Accordingly, the Working Group recommends the establishment of offices at both the national and circuit level to provide employees with advice and assistance with their concerns about workplace misconduct apart from the JC&D Act and EDR Plans. The assistance should range from a discussion of options to address their concerns, to intervention on their behalf with appropriate court personnel and related support.

- At the national level, the Working Group recommends that the Administrative Office establish an internal Office of Judicial Integrity that would provide counseling and assistance regarding workplace conduct to all judiciary employees through telephone and email service. This office should provide advice on a confidential basis to the

extent possible. The newly created office could be combined with existing offices that already exist to ensure the integrity of the Judiciary, including offices that provide and coordinate independent financial auditing and management analysis services to the courts to prevent and expose waste, fraud, and abuse.

- At the circuit level, the Ninth Circuit Judicial Council recently announced the creation of a new office for a Director of Workplace Relations to oversee workplace issues and discrimination and sexual harassment training in that circuit. The Working Group recommends that the Judicial Conference encourage and approve funding through its budgeting process for all other circuits to provide similar services for their employees.
- In addition to these national and circuit-level resources, every court should clearly identify for its employees local sources to which they can turn for advice or assistance about workplace conduct issues. Courts should include contingency plans and funding to provide for a transfer or alternative work arrangements for an employee, including a law clerk, when egregious conduct by a judge or supervisor makes it untenable for the employee to continue to work for that judge or supervisor.

*C. Education and Training Programs*

The Judiciary already has in place vibrant educational and training programs for judges, supervisors, and other employees. Those programs, managed by the FJC, the Administrative Office, and individual courts, include a wide array of publications, on-line resources, and in-person training programs to promote fair employment practices and workplace civility. Nevertheless, there are several areas related to education and training in the Judiciary that would benefit from further direction and refinement:

x

- The Judiciary should ensure that all new judges and new employees receive basic workplace standards training as part of their initial orientation program, with "refresher" training conducted at regular intervals. The FJC has developed high quality educational programs, but they are not reaching all employees—in significant part, because the programs are not consistently offered throughout the Judicial Branch.
- The FJC should develop advanced training programs specifically aimed at developing a culture of workplace civility. The FJC is already considering opportunities to integrate civility training into existing programs on judicial management, court administration, and courtroom practices to make civility an essential component in all aspects of court operations. Those efforts should include training on "bystander intervention," which would encourage judges, supervisors, and other employees who witness misconduct to take action through channels for reporting and response.
- The FJC, the Administrative Office, and individual courts should continuously evaluate their educational programs to assess their effectiveness, paying close attention to new learning techniques, and developments in the field. Those components should consider new or revised offerings on specific topics of special relevance to the judicial workplace. Where feasible, the FJC should tailor its advanced programs to specific groups. For example, programs for judges, court executives, and supervisors should emphasize leadership, accountability, and risk identification, while programs for court employees, including law clerks, should emphasize standards and procedures, and highlight where and how to get advice and help.

In conclusion, the Judiciary should aspire to be an exemplary workplace, taking strong affirmative measures to promote civility, minimize the possibility of inappropriate behavior,

remove barriers to reporting misconduct, and provide prompt corrective action when it occurs. The Working Group remains committed to assisting with that effort and offers its continued service in whatever capacity the Chief Justice and the Judicial Conference direct.

IN THE SUPREME COURT OF NORTH CAROLINA

No. 197A18

Filed 26 October 2018

IN RE INQUIRY CONCERNING A JUDGE, NO. 17-262
RONALD L. CHAPMAN, Respondent

This matter is before the Court pursuant to N.C.G.S. §§ 7A-376 and -377 upon a recommendation by the Judicial Standards Commission entered 14 June 2018 that Respondent Ronald L. Chapman, a Judge of the General Court of Justice, District Court Division Twenty-six, be suspended for thirty days without pay for conduct in violation of Canons 1, 2A, 3A(5), and 3B(1) of the North Carolina Code of Judicial Conduct, and for conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of N.C.G.S. § 7A-376. This matter was calendared for argument in the Supreme Court on 30 August 2018, but determined on the record without briefs or oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure and Rule 3 of the Rules for Supreme Court Review of Recommendations of the Judicial Standards Commission.

*No counsel for Judicial Standards Commission or Respondent.*

ORDER

The issue before this Court is whether District Court Judge Ronald L. Chapman should be suspended without compensation for violations of Canons 1, 2A, 3A(5), and 3B(1) of the North Carolina Code of Judicial Conduct amounting to conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of N.C.G.S. § 7A-376(b). Respondent has not challenged the findings of fact made by the Judicial Standards Commission (the Commission) or opposed the Commission's recommendation that he be suspended without compensation by this Court.

On 8 January 2018, the Commission Counsel filed a Statement of Charges against Respondent alleging he had engaged in conduct inappropriate to his office by failing to issue a ruling for more than five years on a motion for permanent child support. Respondent fully cooperated with the Commission's inquiry into this matter. In the Statement of Charges, Commission Counsel asserted that Respondent's actions constituted conduct inappropriate to his judicial office and prejudicial to the administration of justice constituting grounds for disciplinary proceedings under Chapter 7A, Article 30 of the North Carolina General Statutes.

Respondent filed his answer on 21 February 2018. On 5 April, Commission Counsel and Respondent entered into a Stipulation and Agreement for Stated Disposition (the Stipulation) containing joint evidentiary, factual, and disciplinary stipulations as permitted by Commission Rule 22 that tended to support a decision to suspend Respondent without compensation. The Stipulation was filed with the

Commission on 9 April. The Commission heard this matter on 11 May and entered its recommendation on 14 June 2018, which contains the following stipulated findings of fact:

> 1. On or about November 30, 2012, Respondent concluded presiding over a multi-day hearing in *Ives v. Ives*, Mecklenburg County File No. 10CVD15357, to determine plaintiff Laura Ives' claims for permanent child support and attorney's fees. Ms. Ives was represented by attorney Jonathan Feit and the defendant Mr. Ives was represented by attorney Dorian Gunter. At that time, the parties were subject to an October 25, 2010 order for temporary child support wherein Mr. Ives paid Mrs. Ives support in the amount of $1,725.00 per month for the four (4) Ives children. Based on Mr. Ives' income, Mrs. Ives argued at the November 30, 2012 hearing that she was entitled to $5,087.50 per month in child support and $17,490.50 in attorney's fees. Respondent reserved his ruling and took the matter under advisement.
>
> 2. On December 5, 2012, Respondent indicated to Mr. Feit that he would make his ruling a priority over the upcoming holidays. Respondent did not issue a ruling over the December 2012 holidays.
>
> 3. On January 22, 2013, Mr. Feit emailed Respondent inquiring as to the status of his ruling. The following day, Respondent replied that he was "shooting for [tomorrow] afternoon. Friday [January 25, 2013] noon at the latest." No ruling was made by Respondent that week. On January 28, 2013, Respondent emailed the attorneys that he had been in court the previous Friday, but would "continue to work on [this] order."
>
> 4. On February 27, 2013, Mr. Feit emailed Respondent, again seeking an update on the status of the ruling/order. Respondent did not respond to Mr. Feit's email.
>
> 5. On June 14, 2013, Mr. Feit emailed Respondent again to inquire as to the status of the ruling/order. Later that day, the attorneys received a response from Respondent's judicial assistant, stating that Respondent was working to resolve all of his pending domestic cases,

including the *Ives* matter.

6. On October 16, 2013, Mr. Feit emailed Respondent and his judicial assistant requesting an update and expressing the need to have the matter addressed quickly because his client was receiving insufficient child support. On October 25, 2013, Respondent replied that he would be working on the *Ives* case that coming weekend, but acknowledged there were issues they needed to discuss "due to the delay getting this to you." Several days later, Respondent followed up with another email wherein he again committed to quickly complete the ruling.

7. After another two (2) months, Mr. Feit emailed Respondent again on January 3, 2014 and stressed that the order was required to resolve ongoing financial issues. Respondent, over a month later, informed Mr. Feit on or about February 12, 2014 that he would be "taking it home with him" because the courts were closing due to inclement weather.

8. On March 10, 2014, Mr. Feit emailed Respondent again asking for a ruling. Respondent did not reply.

9. After several more months went by without a ruling from Respondent, Mr. Feit emailed Respondent on June 9, 2014 imploring him to "please let us hear from you." Respondent again did not reply.

10. On July 7, 2014, Mr. Feit emailed Respondent once again to inquire into the status of Respondent's ruling. Respondent replied two (2) days later that, barring late assignments, he was not assigned in court the following week and he would "commit to scheduling time to wrap [this] up."

11. On July 21, 2014, after the unassigned court week, Respondent informed the attorneys that he "had more court than expected" but would "give [them] a decision or update by later [this] week." No decision or update came from Respondent that week. Several weeks later, on August 19, 2014, Mr. Feit asked for an update and, again, Respondent did not reply.

12. With more than two years since the hearing on permanent child support, and in an effort to secure some action from Respondent, on December 5, 2014, Mr. Feit provided Respondent with a proposed order even though Respondent had not requested one. Upon objection from

opposing counsel as to the content of the proposed order, Mr. Feit offered to make any changes Respondent suggested. Respondent took no action on the proposed order.

13. Two (2) months later, on February 12, 2015, Mr. Feit followed up with Respondent with another email asking him to "please either sign the order as presented or let us hear from you one way or the other so we can move this matter forward." Respondent replied the following day that "you will hear from me no later than 10 days from now." Eleven (11) days later, on February 24, 2015, Respondent emailed the attorneys that because of other court assignments, he had not worked on the *Ives* matter. However, Respondent told the attorneys "[he would] work on *Ives* over the[ ] next two weekends" and during his vacation week in March. No ruling followed Respondent's vacation.

14. In an email to Respondent on April 17, 2015, Mr. Feit continued to stress the need to "move this matter along." Later that day, Respondent acknowledged in an email that he had not "held up my end of things" and "sincerely hope to get up with you soon."

15. On May 19, 2015, Mr. Feit again asked for Respondent to "please let us have your order." Respondent did not reply.

16. On July 14, 2015, Mr. Feit emailed Respondent asking to be informed whether Respondent planned to sign the proposed order. On July 23, 2015, Respondent replied that he had been out of the office, but would "communicate a substantive response about when I will have something for you by Monday." On July 27, 2015, Respondent followed up with the attorneys, notifying them that he expected to have an order to them "by a week from tomorrow."

17. A month later, Mr. Feit emailed Respondent on August 26, 2015 asking for the status of the order. Respondent did not reply.

18. On December 3, 2015, more than three years after the hearing on permanent child support, Mr. Feit emailed Respondent asking for Respondent to communicate with the attorneys as to the status of the ruling. Respondent did not reply.

> 19. On April 18, 2016, Mr. Feit emailed Respondent a final time requesting the order. Respondent immediately replied that "there is not a day, and seldom a night, that goes by that this case has not been on my mind. I understand your clients [sic] needs." Despite this assertion, Respondent again failed to make any ruling.
>
> 20. After the last effort to secure a ruling in April 2016 (three and a half years after the hearing), and out of concern that further contact was futile and could harm his client's interests, Mr. Feit ceased contacting Respondent regarding the ruling.
>
> 21. Over a year after this last effort by Mr. Feit, and almost five years after the November 2012 hearing, on October 16, 2017, the Domestic Unit Supervisor in the Mecklenburg County Clerk's Office emailed the attorneys in the *Ives* matter asking if Respondent had ever made a decision on permanent child support and notifying them that the court file was missing. Mr. Feit confirmed that no order had been entered because Respondent never made a ruling.
>
> 22. To date, the official *Ives* court file remains missing after being checked out by a deputy clerk on November 30, 2012 for the final day of the permanent child support hearing. Respondent acknowledges that he had in his possession an exhibit folder from the November 2012 hearing, but had been unable to locate the remainder of the file.
>
> 23. On his own motion, Respondent entered an order of recusal from the *Ives* matter filed on November 21, 2017.
>
> 24. No ruling on permanent child support has issued since the matter was concluded in late November 2012.

(brackets in original) (citations to pages of the Stipulation omitted).

Based upon these findings of fact, the Commission concluded as a matter of law that:

> 1. Canon 1 of the Code of Judicial Conduct sets forth the broad principle that "[a] judge should uphold the integrity and independence of the judiciary." To do so, Canon 1 requires that a "judge should participate in

establishing, maintaining, and enforcing, and should personally observe, appropriate standards of conduct to ensure that the integrity and independence of the judiciary shall be preserved."

2. Canon 2 of the Code of Judicial Conduct generally mandates that "[a] judge should avoid impropriety in all the judge's activities." Canon 2A specifies that "[a] judge should respect and comply with the law and should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

3. Canon 3 of the Code of Judicial Conduct governs a judge's discharge of his or her official duties. Canon 3A(5) requires a judge to "dispose promptly of the business of the court." Furthermore, Canon 3B(1) requires a judge to "diligently discharge the judge's administrative responsibilities" and "maintain professional competence in judicial administration."

4. The Commission's findings of fact, as supported by the Stipulation, show that since the *Ives* matter was concluded on November 30, 2012, no ruling has yet to be issued and Respondent has offered no justification for the delay. These facts, coupled with the fact that the file remains missing, continues [sic] to harm the interests of the litigants in the *Ives* matter.

5. Upon the Commission's independent review of the stipulated facts concerning Respondent's unreasonable and unjustified delay in issuing the ruling, the Commission concludes that Respondent:

a. failed to personally observe appropriate standards of conduct necessary to ensure that the integrity of the judiciary is preserved, in violation of Canon 1 of the North Carolina Code of Judicial Conduct;
b. failed to conduct himself in a manner that promotes public confidence in the integrity of the judiciary, in violation of Canon 2A of the North Carolina Code of Judicial Conduct;
c. failed to dispose promptly of the business of the court, in violation of Canon 3A(5) of the North Carolina Code of Judicial Conduct;
d. and failed to diligently discharge his

> administrative responsibilities and maintain professional competence in judicial administration in violation of Canon 3B(1) of the North Carolina Code of Judicial Conduct.
>
> 6. The Commission also notes that Respondent agreed in the Stipulation that he violated the foregoing provisions of the North Carolina Code of Judicial Conduct by (1) failing to issue a ruling for more than five (5) years on the motion for permanent child support without justification, (2) failing to respond to legitimate requests from counsel as to the status of the order, (3) representing to counsel that he was diligently working on the ruling when he was not; and (4) recusing himself from the case instead of entering an order thereby causing further delay.
>
> 7. The Commission further concludes that Respondent's violations of the Code of Judicial Conduct amount to conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of N.C. Gen. Stat. § 7A-376(b). *See also* Code of Judicial Conduct, Preamble ("[a] violation of this Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office into disrepute.").

(brackets in original) (citations to pages of the Stipulation omitted)

Based on these Findings of Fact and Conclusions of Law, the Commission recommended that this Court suspend Respondent without pay for a period of thirty days. The Commission based this recommendation on its earlier findings and conclusions and the following additional dispositional determinations:

> 1. As a mitigating factor, Respondent has in the past enjoyed the high regard of the legal community. As set forth in the Stipulation, Respondent ranked first in overall performance among twelve district judges in District Court Division 26 in the 2012 North Carolina Bar Association survey, and fourth among eleven district judges in the 2015 survey. An additional mitigating factor is his volunteer work on behalf of the justice system. He currently is in his

ninth year of volunteering to attend Truancy Court one morning a week at low performing schools. He also was a participant in the first Domestic Violence Fatality Review team in North Carolina, serving on panels in Mecklenburg County for several years that reviewed instances of death related to apparent domestic violence. Respondent also offered at the hearing of this matter a letter of support from Attorney George V. Laughrun, II of the firm Goodman, Carr, Laughrun, Levine & Greene, PLLC in Charlotte, North Carolina.

2. As an additional mitigating factor, Respondent agreed to enter into the Stipulation to bring closure to this matter and because of his concern for protecting the integrity of the court system. Respondent also understands the negative impact his actions have had on the integrity and impartiality of the judiciary. Respondent was cooperative with the Commission's investigation, voluntarily providing information about the incident and fully and openly admitting error and remorse.

3. Nevertheless, the misconduct set out in this Recommendation is aggravated by the fact that Respondent received a private letter of caution from the Commission on March 11, 2013 after Respondent unreasonably delayed entering an adjudicative order in a different domestic action for thirteen (13) months. Respondent was warned that recurrence of such conduct may result in further proceedings before the Commission. Respondent received this letter of caution while the *Ives* matter (the subject of this proceeding) was under advisement. Notwithstanding the Commission's warning about unreasonable delay, Respondent engaged in the egregious delay in the present case.

4. The Commission also finds that Respondent fails to appreciate the magnitude of the harm caused by his misconduct. At the hearing of this matter, and notwithstanding his agreement to accept a stated disposition of suspension without pay for 30 days, Respondent through Counsel asserted to the Commission that a lesser sanction would be more appropriate. The Commission rejects that assertion, and but for the Stipulation and Agreement for Stated Disposition, which obviated the need for a lengthy and expensive contested

> hearing, would have recommended a higher sanction to the Supreme Court.
>
> 5. The Commission and Respondent acknowledge the ultimate jurisdiction for the discipline of judges is vested in the North Carolina Supreme Court pursuant to Chapter 7A, Article 30 of the North Carolina General Statutes, which may either accept, reject, or modify any disciplinary recommendation from the Commission.
>
> 6. Pursuant to N.C. Gen. Stat. § 7A-377(a5), which requires that at least five members of the Commission concur in a recommendation of public discipline to the Supreme Court, all seven Commission members present at the hearing of this matter concur in this recommendation to **suspend Respondent without pay for a period of 30 days.**

(emphasis in original) (citations to pages of the Stipulation omitted)

In resolving this matter, we observe that "[t]he Supreme Court 'acts as a court of original jurisdiction, rather than in its typical capacity as an appellate court' when reviewing a recommendation from the Commission." *In re Hartsfield*, 365 N.C. 418, 428, 722 S.E.2d 496, 503 (2012) (order) (quoting *In re Badgett*, 362 N.C. 202, 207, 657 S.E.2d 346, 349 (2008) (order)). Neither the Commission's findings of fact nor its conclusions of law are binding on this Court, but may be adopted by the Court if they are supported by clear and convincing evidence. *Id.* If the Commission's findings are adequately supported by clear and convincing evidence, the Court must determine whether those findings support the Commission's conclusions of law. *Id.* at 429, 722 S.E.2d at 503.

The Commission found the stipulated facts to be supported by "clear, cogent and convincing evidence." Respondent executed the Stipulation and agreed that

those facts and information would serve as the evidentiary and factual basis for the Commission's recommendation. Respondent does not contest any of the findings or conclusions made by the Commission. After careful review, we agree that the Commission's findings are supported by clear, cogent, and convincing evidence, and we now adopt them as our own. Furthermore, we agree with the Commission's conclusions that Respondent's conduct violates Canons 1, 2A, 3A(5) and 3B(1) of the North Carolina Code of Judicial Conduct, and is prejudicial to the administration of justice, thus bringing the judicial office into disrepute in violation of N.C.G.S. § 7A-376.

This Court is free to exercise its own judgment in arriving at a disciplinary decision in light of Respondent's violations of several canons of the North Carolina Code of Judicial Conduct and is not bound by the recommendations of the Commission. *Id.* Accordingly, "[w]e may adopt the Commission's recommendation, or we may impose a lesser or more severe sanction." *Id.* The Commission recommended that Respondent be suspended without compensation from the performance of his judicial duties for a period of thirty days. Respondent does not contest the Commission's findings of fact or conclusions of law and voluntarily entered into the Stipulation with the understanding that the Commission's recommendation would be suspension from his judicial duties for a period of thirty days without compensation.

We are mindful of Respondent's high regard in the legal community and of his

volunteer activities within the judicial system. We also appreciate Respondent's cooperation with the Commission's investigation, including his voluntary provision of information when requested, his admission of error and expression of remorse, and his willingness to enter into the Stipulation to bring this matter to a close. Respondent has demonstrated an understanding of the negative effect of his actions on the integrity and impartiality of the judiciary. Nevertheless, the misconduct set out in the facts of this case is aggravated by the finding that Respondent received a private letter of caution from the Commission on 11 March 2013, while he had the *Ives* matter under advisement, after he had unreasonably delayed entering an order in a different domestic action for thirteen months. He was warned at that time that recurrence of such conduct could result in further proceedings before the Commission. Notwithstanding his receipt of the Commission's warning about unreasonable delay, he engaged in the egregious delay in the present case. Weighing the severity of his conduct against his candor and cooperation, we conclude that the Commission's recommended thirty-day suspension without compensation is appropriate. At the conclusion of his suspension, Respondent may resume the duties of his office.

Therefore, the Supreme Court of North Carolina orders that Respondent Ronald L. Chapman be, and is hereby, SUSPENDED WITHOUT COMPENSATION from office as a Judge of the General Court of Justice, District Court Division Twenty-six, for THIRTY days from the entry of this order for conduct in violation of Canons 1, 2A, 3A(5), and 3B(1) of the North Carolina Code of Judicial Conduct, and for

conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of N.C.G.S. § 7A-376.

By order of the Court in Conference, this the 26th day of October, 2018.

s/Morgan, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 26th day of October, 2018.

AMY L. FUNDERBURK
Clerk of the Supreme Court

s/M.C. Hackney
Assistant Clerk

# JUDICIAL STANDARDS COMMISSION
# STATE OF NORTH CAROLINA

## FORMAL ADVISORY OPINION: 2017-02

September 13, 2017

**QUESTION:**

Under what circumstances can delay in convening court sessions rise to the level of a violation of the Code of Judicial Conduct?

**CONCLUSION:**

A judge has an ethical obligation under Canon 3A(4) to "dispose promptly of the business of the court." This obligation requires not only promptness in issuing decisions and orders, but punctuality in convening court. In addition, judges have ethical obligations under Canon 1 and Canon 2 to observe personal standards of conduct that ensure public confidence in the integrity, impartiality and independence of the judiciary. Canon 3A(3) further requires a judge to be "courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge's official capacity." Finally, Canon 3B(1) provides that a judge should diligently discharge the judge's administrative responsibilities and maintain professional competence in judicial administration. Repeated or unjustified tardiness of a judge in opening court sessions runs afoul of these ethical rules and can lead to the imposition of judicial discipline. If a recess is required to attend to other official business that must be considered before the court session may proceed, the judge should as a best practice open court on time and communicate either personally or through court staff to those present in the courtroom when court will be reconvened and the reasons for the recess.

**DISCUSSION:**

Delay is one of the most common complaints of judicial misconduct, whether it arises from excessive grants of continuances, delays in rendering decisions under advisement, lengthy periods of time in issuing written orders, or the judge's regular tardiness in appearing at scheduled court times. These delays raise the costs of litigation, increase frustration with the judicial system and diminish public confidence in the courts. This concern was recently emphasized in the Final Report of the Public Trust and Confidence Committee of the North Carolina Commission on the

Administration of Law and Justice, which noted as follows: "As stewards of public resources and individual citizens' time, Judicial Branch officials must strive to operate a court system that facilitates the just, timely, and economical scheduling and disposition of cases." Final Report, North Carolina Commission of the Administration of Law and Justice, March 2017, at 69.

In the specific context of convening court sessions, a judge's ethical duty under Canon 3A(5) to "dispose promptly of the business of the court" includes the duty to be punctual and open court sessions as scheduled. Tardiness in convening court also calls into question whether a judge is meeting his or her obligation under Canon 3B(1) to "diligently discharge the judge's administrative duties and maintain professional competence in judicial administration. In addition, Canon 1 and Canon 2A of the Code of Judicial Conduct require judges to observe personal standards of conduct that ensure public confidence in the integrity, impartiality and independence of the judiciary. Canon 3A(3) further requires a judge to be "courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge's official capacity." Repeated or unjustified delays in convening court sessions threaten public confidence in the judiciary and display a lack of courtesy towards litigants, lawyers, victims, law enforcement, court personnel and all those who are required to be punctual in arriving to court. A judge's tardiness also exacerbates wait times associated with calendar calls and increases the costs of litigation for represented litigants. Poor communication about when the judge will arrive and the reasons for the delay heightens frustration among individuals present in the courtroom, many of whom have taken time away from work or traveled long distances to appear at the required time under threat of sanction if late. In these circumstances, when a judge repeatedly or unjustifiably fails to open court on time, the attending frustration impairs public confidence in the courts.

Accordingly, a violation of the Code of Judicial Conduct occurs where a judge engages in repeated or unjustified tardiness in convening court. A judge should open court on time, and if a recess is required to attend to other official business that must be considered before the court session continues, the judge should as a best practice open court on time and communicate either personally or through court staff to those present in the courtroom when court will be reconvened and the reasons for the recess.

**References:**
Canons 1, 2, 3A and 3B of the North Carolina Code of Judicial Conduct
Final Report, North Carolina Commission of the Administration of Law and Justice (March 2017)

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

IN THE MATTER OF HANK E. MIDDLEMAS
FORMER MAGISTRATE OF MARION COUNTY

COMPLAINT NO. 88-2018

PUBLIC ADMONISHMENT OF FORMER MAGISTRATE HANK E. MIDDLEMAS

The matter is before the Judicial Investigation Commission upon a complaint filed by Marion County Magistrate Mark Hayes setting forth certain allegations against Hank E. Middlemas, former Magistrate of Marion County (hereinafter "Respondent"). Upon receipt of the complaint, an investigation was conducted pursuant to the Rules of Judicial Disciplinary Procedure. After a review of the complaint, the former Magistrate's written responses, the information and documents obtained from the investigation, the February 11, 2018 agreement between Judicial Disciplinary Counsel and Respondent, his resignation letter, and the pertinent Rules contained in the Code of Judicial Conduct, the West Virginia Judicial Investigation Commission (hereinafter "JIC" or "Commission") found probable cause that former Magistrate Hank E. Middlemas, violated Rules 1.1, 1.2, 2.1, 2.5(A) and (B), and 2.16(A) of the Code of Judicial Conduct at its March 22, 2019 meeting and ordered that he be publicly admonished pursuant to Rules 1.11 and Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure ("RJDP"), as set forth in the following statement of facts and conclusions found by the Commission.

## STATEMENT OF FACTS

Respondent worked continuously as a Marion County Magistrate from January 1, 2001 through February 14, 2019. At all times relevant to the instant complaint, Respondent was serving in his capacity as Magistrate. Respondent's duties included but were not limited to serving from time to time as the on-call magistrate. The Administrative Rule for Magistrate Court (hereinafter "ARMC") 1(b) provides:

> One magistrate in each county, on a rotating basis, shall be on call at all times other than regular office hours. On-call duties shall extend, in criminal cases, to initial appearances; to taking bond for someone who is in jail; and to receiving and acting upon emergency search warrants, domestic violence matters, and juvenile abuse and neglect matters.
>
> (1) Initial appearances and taking bond in criminal cases. – Within the time periods provided for below, the on-call magistrate shall contact the county or regional jail, whichever applies, and the juvenile detention facility that serves the county, and

> shall inquire whether any person has been arrested in the county since the close of regular business hours or since the last contact with the jail, or whether anyone confined to the jail is able to post bond. If an arrest has been made or if a prisoner is able to post bond, the magistrate shall proceed immediately to the magistrate court offices to conduct an initial appearance and to set bail for such person, or to accept bond for someone already in jail.
>
> It shall be sufficient to comply with this rule if the on-call magistrate contacts the jail and juvenile detention facility:
>
> (A) Between 10:00 p.m. and 11:00 p.m. Monday through Friday;
> (B) Between 10:00 a.m. and 11:00 a.m. and between 10:00 p.m. and 11:00 p.m. on Saturdays and holidays; and
> (C) Between 12:00 p.m. and 1:00 p.m. and between 10:00 p.m. and 11:00 p.m. on Sundays.

In addition to the Rule set forth above and in place of the weekday proviso contained in ARMC 1(b)(1)(B), the Circuit Judges instituted a local rule by Order entered January 5, 2017, that required the following:

> The on-call magistrate will conduct magisterial business from 12:30 p.m. until 4:30 p.m., Monday through Wednesday of his/her on-call week. The on-call magistrate will conduct magisterial business from 4:00 p.m. until 7:00 p.m. on Thursday of his/her on-call week. The on-call magistrate is not required to maintain office hours on Friday of his/her on-call week.

On August 27, 2018, Complainant filed an ethics complaint alleging that Respondent refused to perform his duties pursuant to ARMC Rule 1(b) while serving as the on-call Magistrate in Marion County during the night of July 30, 2018. Complainant asserted that Respondent failed to contact the jail as required and consequently did not arraign six people booked into the facility earlier in the evening between 6:15 p.m. and 9:00 p.m.[1] Magistrate Hayes also referred to a similar incident where Respondent failed to contact the jail and arraign two individuals who were incarcerated during the early evening hours of June 23, 2018. Magistrate Hayes also asserted that Respondent was chronically tardy for work. According to Magistrate Hayes, Respondent would routinely show up for the weekday on-call shift, which began at 12:30 p.m.,

[1] Magistrate Hayes attached signed statements from two Magistrate Assistants. Respondent told the assistants that he called the Sheriff's Office on July 30, 2018, at around 9:30 p.m., and was advised that only two people had been booked into the jail. Respondent showed one of the assistants his cell phone to prove he had called the Sheriff's Office. When asked why he did not come out and arraign the "two individuals," Respondent told the assistants that "I didn't want to, I just wanted to let them sit."

anywhere from fifteen (15) to forty-five (45) minutes late. Lastly, Magistrate Hayes asserted that Respondent routinely gave personal recognizance bonds to defendants in exchange for a waiver of their constitutional right to an attorney.

By letter dated August 30, 2018, Respondent replied to the allegations concerning the July 30, 2018 incident by attaching a copy of a statement he made to the Chief Circuit Judge in which he stated:

> It is true that I did not call [the] Regional Jail. I did however call Marion County Dispatch at 9:26 p.m. [on July 30]. I was told, we had two (2) people in jail. After talking to the dispatcher, it was decided to leave them for arraignment the following morning. In hindsight, I realize now I should have checked with the jail opposed to dispatch. Which is how I've been doing it for years, due to [the] fact they are supposed to know what is going on. They should know who and how many are in jail, and if anyone wishes to bond out . . . . information the jail doesn't possess. To let you know, since July 31st and after being verbally reprimanded by Magistrate Hayes, I have been calling North Central Regional Jail so you [we] won't have any more problems on this issue.

On December 10, 2018, Judicial Disciplinary Counsel took a sworn statement from Respondent. Respondent acknowledged failing to arraign three individuals on June 23, 2018, during the 12:30 to 4:30 p.m. on-call shift. Respondent admitted that he did not conduct the arraignments because he was not provided with a Criminal Dispute Resolution (hereinafter "CDR") form, which is not needed in order to complete the task. The Chief Magistrate instructed Respondent to complete the arraignments, but he refused. On June 25, 2018, Respondent conducted the arraignments in question after being contacted by the Chief Circuit Judge. As a result, the Chief Circuit Judge had a meeting with all of the magistrates including Respondent and went over their duties and obligations as a judicial officer.

Respondent also acknowledged failing to arraign those incarcerated on the evening of July 30, 2018. Respondent admitted that he did not call the jail in violation of ARMC 1(b). Instead, Respondent called 911/dispatch and said he was only informed that two people had been incarcerated that evening. Respondent also admitted purposefully abrogating his responsibility to go to the Courthouse and conduct the required arraignments:

> I was playing in a golf tournament. I tried to get somebody to cover for me, which we do on occasion. You have something going on, I'll take your shift or whatever. I couldn't get anybody to cover for me, so I went ahead and played in a golf tournament with my buddy and did the on-call duties, along with that. I was pretty fortunate it wasn't a busy, busy weekend. . . . I called the sheriff's department and they had two people under arrest that

> they had taken to jail. And in talking to the dispatcher what they were charged with and all that, I knew they weren't going to make bond anyway, so I left two people in there, to my knowledge, for Magistrate Hayes to do the next morning.

(12/10/2018 Sworn Statement at 41). Respondent also stated that he did not conduct the arraignments that night because he was "tired" from playing golf all day (Tr. at 46-47). Respondent acknowledged that in "hindsight I don't have a good excuse" for not conducting the arraignments and admitted that he was only guessing when he thought that the individuals would not be able to make bond (12/10/2018 Sworn Statement at 42).

Respondent was also untruthful during the sworn statement when he told Judicial Disciplinary Counsel that they would not find any failure to arraign incidents since July 30, 2018:

> Q. Since this end of July incident, have there ever been any more incidents where you have not arraigned people that are in jail?
>
> A. No, sir.
>
> Q. So if we have paperwork that shows from September to as late as October where you did not arraign someone in jail, that would be incorrect?
>
> A. I believe so, yes.

(12/10/218 Sworn Statement at 49). In fact, Respondent failed to arraign people who were incarcerated in the regional jail while on-call on August 2, September 21, September 22, September 26, October 19, October 20, October 22, and December 15, 2018. Subsequent to the sworn statement, Respondent also had a conversation with the Honorable Todd Rundle, Magistrate of Marion County, in which he improperly advised the newest judicial officer there that the on-call magistrate did not have to come out during the evening hours to arraign defendants who were incarcerated in jail.

Respondent admitted to routinely being late for the 12:30 p.m. to 4:30 p.m. on-call shift. Respondent averaged that he was late at least three times a week during the times when he was required to do the shift. During his sworn statement, Respondent blamed his tardiness on playing golf and acknowledged that he was often as much as thirty (30) minutes late. Respondent denied ever exchanging personal recognizance bonds in exchange for attorney waivers. However, Magistrate Hayes and the Honorable Melissa Pride Linger, Magistrate of Marion County, informed Judicial Disciplinary Counsel that

Respondent consistently engaged in such practice, which left them having to do the paperwork at a subsequent hearing to see if the defendant could obtain court-appointed counsel.

## CONCLUSIONS

The Commission unanimously found that probable cause does exist in the matters set forth above to find that Hank E. Middlemas, former Magistrate of Marion County, violated Rules 1.1, 1.2, 2.1, 2.5(A) and (B), and 2.16(A) of the Code of Judicial Conduct as set forth below:

**Rule 1.1 – Compliance with the Law**

A judge shall comply with the law, including the West Virginia Code of Judicial Conduct.

**Rule 1.2 -- Confidence in the Judiciary**

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

**Rule 2.1 – Giving Precedence to the Duties of Judicial Office**

The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities

**Rule 2.5 – Competence, Diligence and Cooperation**

(A) A judge shall perform judicial and administrative duties, competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

**Rule 2.16 – Cooperation with Disciplinary Authorities**

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

The Commission further found that formal disciplinary action was not essential since Respondent had agreed to resign his position as Magistrate and never again seek judicial office in West Virginia. However, the Commission found that the violations were serious enough to warrant a public admonishment.

The Preamble to the Code of Judicial Conduct provides:

> Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to the American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law. . . . Good judgment and adherence to high moral and personal standards are also important.

The Comments to Rule 1.2 make clear that the Code of Judicial Conduct regulates both a judge's professional and personal conduct. The Comment notes that a judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Importantly, the Comment states that "[a]ctual improprieties include violations of law, court rules or provisions of this Code."

The Comments to Rule 2.5 are also instructive:

> [1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.
>
> [2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.
>
> [3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.
>
> [4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Respondent's actions demonstrate repeated and flagrant disregard for the Code of Judicial Conduct and a cavalier attitude toward the judiciary as a whole. He repeatedly placed his golf game over the integrity of the Court, abrogated his judicial responsibilities, was a slacker with respect to duty, was chronically responsible for avoidable delays in court matters, and proved untruthful when it came to his wrongdoing. Accordingly, Respondent has no right to hold the title of judge and must be disciplined for his conduct.

Therefore, it is the decision of the Judicial Investigation Commission that Hank E. Middlemas, former Magistrate of Marion County, be disciplined by this Admonishment. Accordingly, the Judicial Investigation Commission hereby publicly admonishes former Magistrate Middlemas for his conduct as fully set forth in the matters asserted herein.

*****

Pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure, the Respondent has fourteen (14) days after receipt of the public admonishment to file a written objection to the contents thereof. If the Respondent timely files an objection, the Judicial Investigation Commission shall, pursuant to the Rule, file formal charges with the Clerk of the Supreme Court of Appeals of West Virginia.

Alan D. Moats

The Honorable Alan D. Moats, Chairperson
Judicial Investigation Commission

3/22/2019 Date

REW/tat

JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

**MEMORANDUM**

TO: Members of the North Carolina Judiciary

FROM: Judge Wanda G. Bryant, Chair of the Judicial Standards Commission

DATE: 29 March 2018

RE: Political Conduct and the Code of Judicial Conduct

With the new filing period for judicial candidates still months away, the Commission has already begun to receive many questions from judges and judicial candidates as they must nevertheless prepare for election this fall. To assist you with compliance with the Code of Judicial Conduct, this memorandum addresses the specific prohibitions in the Code, as well as provides guidance on the most common questions. For specific questions, a judge or judicial candidate should contact the Commission for an informal advisory opinion by calling (919) 831-3630 or emailing Carolyn Dubay, cad@coa.nccourts.org or Jameson Marks, jmm@coa.nccourts.org.

This memorandum addresses the following issues:

1. Overview of the Code of Judicial Conduct as it Relates to Political Conduct
2. Soliciting Funds for Your Campaign or a Joint Judicial Campaign
3. Other Do's and Don'ts for Your Campaign
4. Assisting Other Candidates or Political Organizations
5. Disqualification Issues Relating to Campaign Conduct
6. Resign to Run Requirement
7. Campaign Misconduct By Candidates Who Are Not Judges

## 1. OVERVIEW OF THE CODE OF JUDICIAL CONDUCT AS IT RELATES TO POLITICAL CONDUCT

Canon 7 of the Code of Judicial Conduct governs political conduct and applies to judges and judicial candidates. The term "judge" also includes emergency judges and retired judges subject to recall, as well as commissioners and deputy commissioners of the North Carolina Industrial Commission. Family members are not bound by the restrictions in Canon 7 and may engage in personal political activities.

While each of these topics is treated in more detail in this memorandum, generally speaking, judges and judicial candidates **MAY NOT:**

- ***Contribute*** to any individual candidate or campaign committee;
- ***Solicit*** campaign funds or contributions for any candidate or political party/organization;
- ***Endorse*** any candidates for elected office (unless the judge is also a candidate);
- ***Misrepresent*** the judge's identity or qualifications for office.

On the other hand, judges and judicial candidates **MAY:**

- ***Identify*** with a political party;
- ***Contribute*** to a political party/organization;
- ***Attend and speak*** at political events and campaign fundraisers for other candidates;
- ***Be listed in publicity*** for a political event or fundraiser (but not as a host or sponsor);
- ***Personally solicit*** contributions to his or her campaign or a joint judicial campaign.

Beyond Canon 7, campaign and political conduct of judges also implicates the following provisions of the Code: Canon 1 (duty to maintain the integrity and independence of the judiciary); Canon 2 (duty to avoid impropriety in all activities); Canon 3A (duty to remain "unswayed by partisan interests" and prohibition on comments about pending cases); Canon 3C (disqualification rules). As always, a judge's core duties are to consistently ensure the integrity, impartiality and independence of the judiciary.

## 2. SOLICITING FUNDS FOR YOUR CAMPAIGN OR A JOINT JUDICIAL CAMPAIGN

Under Canon 7B(4), a judge may ***personally solicit*** campaign funds and request public support for his or her own campaign. A judge may also manage and serve as treasurer of his or her own campaign, or form a campaign committee to solicit and manage the expenditure of campaign funds (see below on use of court staff as campaign volunteers). Judges should also contact the North Carolina State Board of Elections for advice on reporting requirements and carefully review applicable campaign finance and election regulations.

Although a judge may personally solicit campaign contributions, past advice from the Commission has identified some specific limitations on campaign solicitations based on the broader requirements of Canons 1, 2 and 3. As such, a judge **MAY NOT:**

- personally solicit campaign contributions and public support directly from specific parties and attorneys presently appearing before the judge;

- solicit any contributions, personally or otherwise, within the courthouse or while discharging official duties;
- use state resources for campaign purposes (this includes state computers, copiers, telephones, official email, official letterhead, or other state property).

Personally soliciting campaign contributions from parties while appearing before the judge is especially egregious because such conduct creates a public appearance tantamount to *quid pro quo* corruption and misuses state property for personal reasons, all in violation of Canons 1, 2A and 3A(1). The term "presently appearing before the judge" is to be read to clearly include those litigants and attorneys appearing before a judge in a courtroom. It is not to be read so broadly as to include attorneys or parties who may have a matter pending within the jurisdiction of the judge's court but who currently have no hearings or appearances scheduled before that judge. Even when litigants or attorneys are not presently appearing before a judge, however, it is still improper to solicit them within the courthouse or during any functions associated with the judge's official job duties.

Canon 7B(3) specifically allows a judge who is a candidate to conduct a "joint judicial campaign" with another judicial candidate. The term "joint judicial campaign" is not defined in the Code of Judicial Conduct. Past informal advisory opinions make it clear, however, that this rule is a narrow exception to the general rule that a judge may not contribute to other candidates for elected office. The exception for joint judicial campaigns is intended to allow joint campaign activity, such as joint events, shared campaign mailings, and the sharing of incidental judicial campaign costs, such as travel. The Commission advises that in order to participate in a joint judicial campaign, all participants must be active candidates for judicial office and currently engaged in campaign activity. Any shared expenses must be for the mutual benefit of all participants within the joint judicial campaign. Again, candidates should be mindful of any applicable reporting requirements under state election law and ensure that any joint judicial campaign activity is appropriately reported to the State Board of Elections.

## 3. OTHER DO'S AND DON'TS FOR YOUR CAMPAIGN

***Court Personnel as Campaign Staff:*** Under Canons 1, 2 and 3B(2), a judge has a duty to ensure public confidence in the independence of the judiciary and that judicial decision-making is "unswayed by partisan interests." For this reason, a judge must maintain a strict separation of any campaign activities from his or her official duties. In that regard, a judge **MAY NOT:**

- require his or her staff or other court employees to work on campaign related activities (although court personnel may volunteer to help after work or on personal time);
- request, encourage or allow public officials/employees subject to the judge's direction or control to engage in campaign activity while at their public employment.

Towards these ends, Senior Resident Superior Court Judges and Chief District Court Judges are encouraged to remind other public officials who work in our courthouses, including Magistrates, Clerks of Superior Court and other court personnel, that they may not engage in any political conduct in the courthouse environs, and particularly during court sessions. This includes wearing

or displaying campaign paraphernalia. Such political activity in the courthouse diminishes the dignity and appearance of impartiality of the administration of justice. Consistent guidance is provided by the AOC General Counsel's office to Clerks of Court and Assistant and Deputy Clerks. See http://juno.nccourts.org/sites/default/files/Legal%20Memos/memo_election_activity_20180213.pdf.

***Appropriate Campaign Ads and Materials:*** The Commission has received numerous inquiries and some complaints regarding the content of judicial campaign material. While judges and judicial candidates have broad latitude in the content of their campaign advertising, judges continue to be bound by Canons 1, 2 and 3 and 7C, which together require that all campaign materials are dignified, not intentionally misleading, and do not diminish public confidence in the integrity, impartiality and independence of the judiciary. Types of assertions or statements in campaign materials that can violate these rules include the following:

- Campaign materials that suggest a judge's bias or predisposition for or against certain litigants, or that would create a reasonable suggestion that a judge would show favor toward a particular side in a legal dispute;
- An intentional and knowingly false representation about an opponent;
- Posting or distributing campaign signs and literature in the courthouse or any other place where the judge is holding court or conducting official business;
- Language or images in campaign ads that are undignified, profane or offensive;
- Language suggesting the judge has previously been elected when he or she was appointed; e.g., do not use the language "re-elect" if you have never been elected; you may use the word "keep" or "elect" where appropriate;
- Language using the title "Judge" before the candidate's name if the candidate is not a sitting judge.

***Use of Photos of the Judge Robed and in the Courtroom:*** Campaign photographs/videos may be taken of a judge in his or her courtroom and wearing his or her robe. However, such photographs/videos should only be taken when the courtroom is otherwise not in use and should not be taken while the judge is presiding in court. The Commission also advises against using any photographs or video from an actual session of court for political purposes. Any use of photographs of a judge in a robe or in a courtroom should be appropriate and tasteful in order to promote continued respect for the decorum of the judicial office and the courthouse. Courtrooms and courthouses must also be available for such use by all judicial candidates and cannot be limited solely to incumbent judges, although non-judges may not appear in robes.

***Use of State Seal on Campaign Literature:*** The use of the state seal, or any court seal, is not expressly prohibited under the Code of Judicial Conduct and may be appropriate to use in certain circumstances. However, in order to prevent confusion and to avoid the appearance of misuse of state property, any such materials bearing a seal or indicia of your office should include a clear and visible statement that the materials are not printed or mailed at government expense. The perception that government resources are being used for campaign purposes undermines public

faith and confidence in the integrity and impartiality of the judiciary. It is the responsibility of the judge to take reasonable steps to prevent such confusion.

***Use of Official Email and State Computers for Campaign Conduct:*** A judge should not use any court resources, equipment or supplies for campaign conduct. This prohibition includes use of a state email account or state computer for campaign purposes. Just as a judge should not use state resources for his or her own political purposes, a judge should facilitate the compliance of other judges and court officials with this standard. Where possible a judge should not send campaign emails to other judicial officials at their state email addresses. However, the Commission acknowledges that sometimes campaigns rely on mass email communications sent to large distribution lists, such as the list of all licensed attorneys sold by the State Bar, or membership lists of certain bar groups. Where a judge has listed his or her state email address as a contact address for that group's purposes, a judicial candidate may inadvertently send materials to that address. Such incidents would not be viewed as misconduct, however candidates should be cautioned that political mail sent to a state email address may not be well-received by the recipient.

***Social Media Use in Campaigns:*** Campaign communications disseminated through social media are subject to the same standards as other written communications. In other words, the statements should be truthful, dignified and professional and not undermine public confidence in the integrity, impartiality and independence of the courts. As a best practice, judges and judicial candidates should also monitor comments on social media by followers and connections and remove offensive or profane comments on the judge's public campaign page. Although the Commission has never concluded that a connection to a person on social media alone is sufficient to justify disqualification, public and open communications and discussions on social media with followers/connections could later result in a motion for disqualification if that follower/connection appears before you and thus should be avoided.

***Answering Questions in Surveys/Debates/Media Interviews:*** Judicial candidates are often asked to respond to surveys from special interest groups and to participate in media interviews and judicial debates. Generally, a judge should not respond to any question in a manner that undermines public confidence in the integrity, independence and impartiality of the judiciary or conveys the impression that the judge favors a particular group. The judge should also refrain from discussing the merits of any pending federal or state cases if the case implicates North Carolina law or the case or controversy arose in North Carolina (Canon 3A(6)).

Although the United States Supreme Court ruled in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), that judicial candidates cannot be absolutely restricted from expressing their views on disputed issues of law or policy, any such comments should continue to be made in a professional and civil manner and with due regard to ensuring public confidence in the impartiality and fairness of our courts. For example, a judge or judicial candidate should not state or forecast how he or she would rule in a particular case that is currently pending as such statements suggest pre-determination of issues to be presented in court and would undermine the appearance of fairness and impartiality.

***Positions on Pending Legislation v. Pending Cases:*** Canon 3A(6) prohibits judges from publicly commenting on the merits of pending state and federal cases arising under North Carolina law or

dealing with a case or controversy arising in North Carolina. As such, judges in all campaign statements should avoid such comments. On the other hand, Canon 4B allows judges to appear before public bodies to comment on issues affecting the administration of justice or the legal, economic, educational, or governmental system. The Commission has interpreted this provision as allowing judges to make comments on the impact of pending legislation on the administration of justice. As in any public statements, however, such comments should be dignified and professional, and should not suggest bias or lack of impartiality of the judge in cases that would normally come before him or her.

## 4. ASSISTING OTHER CANDIDATES OR POLITICAL ORGANIZATIONS

Canon 7 sets forth the parameters of the permissible political activity of judges in order to maintain public confidence in the impartiality and independence of the judiciary. Canon 7 respects the First Amendment rights of judges who are required to engage in the political process as candidates for judicial office. At the same time, Canon 7 more strictly limits the political conduct of judges when they are trying to assist other candidates or political organizations. The primary restrictions in Canon 7 as to other candidates and political parties relate to endorsements, contributions, and assistance with fundraising.

***Identifying with a Political Party:*** Regardless of whether judicial elections are partisan or non-partisan, and regardless of whether a judge is currently a candidate for judicial office, a judge may identify with and join a political party. See Canon 7B(3).

***Attending and Speaking at Political Events:*** A judge may "attend, preside over, and speak at any political party gathering, meeting or other convocation," including fundraisers for other candidates and political parties, and may also be listed or noted as a speaker within any publicity relating to such an event. See Canon 7B(1). Because attendance at a candidate's campaign event or fundraiser is explicitly permitted and may be noted in the event publicity, mere attendance and the notation of it in the event publicity will not be construed as an endorsement of that candidate. If the event is a fundraiser, however, the event publicity should not list a judge as a host or sponsor (see below on solicitations and fundraising). In addition, if a judge is a speaker at the event, he or she should be careful not to (1) solicit contributions/financial support from the audience for the organization or a candidate or (2) endorse a candidate **unless** the judge is eligible to endorse candidates. More information on soliciting and endorsing is provided below. Finally, if the event is ticketed, the judge must be careful to ensure that the ticket proceeds are not considered prohibited "campaign contributions" (see below on contributions).

***Endorsing Other Candidates:*** Judges are generally prohibited from endorsing other candidates for elected office unless the judge is also a candidate for judicial office. Canon 7B(2), 7C(2). A judge who is entitled to endorse may do so regardless of whether he/she has any election opposition. Because emergency judges and retired judges subject to recall are not elected, they may not endorse other candidates. Special superior court judges, who are appointed, also may not endorse unless they become a candidate for an elected judicial office. A judge can become a "candidate" for judicial office in one of four ways: (1) making a public declaration of candidacy; (2) declaring or filing as a candidate with the appropriate election authority; (3) authorizing solicitation or acceptance of contributions or public support; or (4) sending a letter of intent to the

Chair of the Judicial Standards Commission. Canon 7A(1). As a best practice, the Commission would prefer a judge who intends to become a candidate to send a letter of intent to the office of the Judicial Standards Commission indicating the year in which the judge will be facing election and the office for which the judge will be campaigning. Please do not email letters of intent – we prefer that they be mailed to the Commission's office.

The definition of "endorse" is "to knowingly and expressly request, orally or in writing, whether in person or through the press, radio, television, telephone, Internet, billboard of distribution and circulation of printed materials, that other persons should support a specific individual in that person's efforts to be elected to public office." Canon 7A(3). The Commission has not treated recommendations to the Governor for judicial appointments as "endorsements." On the other hand, in past informal advice, the Commission has found that if a judge personally and publicly invites people to a reception for a candidate, the invitation constitutes a public endorsement and request for public support of that candidate.

***Soliciting Funds for Candidates or Political Parties/Organizations:*** Judges and judicial candidates may not solicit funds for a "political party, organization, or an individual (other than himself/herself) seeking election to office, by specifically asking for such contributions in person, by telephone, by electronic media, or by signing a letter . . . ." Canon 7C(1). Judges who are candidates may of course raise money for their own campaigns and for joint judicial campaigns as permitted in Canon 7B(2). The word "solicit" in the Code is defined very broadly to mean "to directly, knowingly and intentionally make a request, appeal or announcement, public or private, oral or written . . . that expressly requests other persons to contribute, give, loan or pledge any money, goods, labor, services or real property interest to a specific individual's efforts to be elected to public office." Canon 7A(2). Solicitation can occur whether done personally "or through the press, radio, television, telephone, Internet, billboard, or distribution and circulation of printed materials . . . ."

Judges should beware of common scenarios that could be considered active assistance in fundraising for other candidates or political parties:

- Avoid being listed as a "host" or "sponsor" of a fundraising event for a political party or candidate. See Formal Advisory Opinion 2010-07.
- Do not sell tickets or ask people to buy tickets to a fundraiser for a candidate, political party or political organization.

***Contributing to Political Organizations or Other Campaigns:*** A judge may make contributions to a political party or organization, but may not "personally make financial contributions or loans to any individual seeking election to any office . . ." Canon 7B(3). This prohibition includes contributions and loans to candidates who are family members of the judge. Please note that while a judge is permitted to make contributions to a "political party or organization" under Canon 7B(3), this does not mean that a judge can bypass the restriction on contributing to candidates by giving the contribution to the candidate's campaign committee. The North Carolina Supreme Court in *In re Wright*, 313 N.C. 495 (1985) held that a candidate's campaign committee is not a "political organization" but is the "alter ego of the candidate."

Judges should be aware of the following common scenarios that can get judges into trouble for improper contributions to candidates:

- *Contributions from a Spouse Made from a Joint Checking Account:* A judge's spouse and other family members are permitted to engage in political activity under Canon 7D. However, if a judge's family member would like to make a financial contribution to an individual's campaign, the judge should make sure the family member does so in a way that makes clear that the contribution comes from the family member and not the judge. If the judge and family member share a joint checking account, the family member should cross out the judge's name on the check to avoid any confusion. The family member may want to confer with the candidate's campaign treasurer as well to make sure the contribution is appropriately attributed to the family member and not the judge.
- *Buying Tickets to Campaign Fundraisers:* If paying to attend a ticketed political fundraiser for a specific candidate or group of candidates, beware that a judge should only contribute the reasonable cost of any food and beverage provided. Paying more than the cost of the food and beverage could be considered a contribution to the campaign and is prohibited. Some judges attend such events and reimburse the host/hostess for the cost of the meal. The Commission advises that the best practice for a judge reimbursing a host for the costs of attending a campaign fundraiser is to make payment directly to the host or caterer of the event, rather than to the candidate's campaign committee. Too often such reimbursements may be inadvertently reported by the committee as "contributions" and therefore appear as violations of the Code, even though they are otherwise allowable expenses. If the event is free to attend and not ticketed, and food is offered as part of the hospitality, a judge is not expected to pay for the cost of the food.
- *Buying Tickets to Other Political Events:* If a judge wishes to attend a ticketed event for a fundraiser for a political party or organization, the restrictions are more relaxed so long as the proceeds of the tickets are not being directed towards a specific candidate. A judge may attend such an event and may purchase tickets to such an event. A judge may also purchase tickets and give them to others. There is no Code provision prohibiting such an expense, especially if the judge is himself/herself a candidate and the tickets are part of the judge's campaign expenses. There is no limitation against a judge receiving extra tickets or other benefits (such as an advertisement in a program) in exchange for a contribution of a certain size. Again, this is limited to political events that are not fundraisers for specific candidates.

## 5. DISQUALIFICATION ISSUES RELATING TO CAMPAIGN CONDUCT

Canon 3C and 3D govern disqualification and remittal. Generally, a judge should disqualify himself/herself in any proceeding in which the judge's impartiality may be reasonably questioned. If the conflict is immaterial or insubstantial, it may be remitted (or waived) by written consent of the parties entered into the record. Campaigning for judicial office creates four common scenarios involving disqualification. As all disqualification issues are very fact specific, if there are unique circumstances in the judge's case, he or she is welcome to contact Commission staff for an informal advisory opinion on the issue. For all of the scenarios below, the Commission recommends a disqualification period to continue for an additional six months after the election, although a longer period may be recommended depending on the circumstances.

***Judge's Own Campaign Staff***: A judge who is a candidate should disqualify himself/herself from hearing matters involving his or her campaign manager, treasurer and others who play a significant role in the judge's own campaign regardless of whether a motion is made for disqualification. An alternative would be to strictly follow the remittal of disqualification procedures set forth in Canon 3D. With respect to employers of campaign staff, the Commission generally does not consider conflicts with campaign staff to be imputed to other colleagues or supervisors. Nevertheless, disqualification issues are very fact specific, and disqualification could be required depending on the size of the law office, the involvement of colleagues in the campaign and other factors. Judges and candidates are encouraged to contact the Commission if a disqualification issue arises.

***Campaign Opponent & Opponent's Campaign Staff:*** A judge who is a candidate should disqualify himself/herself from hearing matters involving the judge's campaign opponent regardless of whether a motion is made for disqualification. When an opponent works as an assistant district attorney or assistant public defender, a judge should work with the scheduling judge and elected District Attorney or appointed Public Defender to mitigate possible calendar conflicts that could be created by such disqualification. A judge is not obligated to disqualify himself/herself from hearing matters involving other members of the opponent's law firm (or other public defenders or assistant district attorneys, if the opponent works for one of those institutions) should such a motion be made. There is no presumption of conflict. However, if the judge questions his or her own impartiality toward the individual, or believes that there could be a reasonable perception of bias based on the campaign, the judge may opt to disqualify himself or herself in such a situation.

A judge who is a candidate should also disqualify himself/herself from hearing matters involving his or her opponent's campaign manager, treasurer and others who play a significant role in the opponents campaign regardless of whether a motion is made for disqualification. An alternative would be to strictly follow the remittal of disqualification procedures set forth in Canon 3D.

***Campaign Contributors, Endorsers and Supporters:*** An endorsement or standard campaign contribution standing alone does not create a presumed conflict that would require a judge to disqualify himself or herself from hearing a matter involving the endorser or contributor. If an otherwise unremarkable campaign contribution or public support for a judicial candidate was presumed to create a conflict of interest justifying recusal, the potential for abuse and "judge shopping" – in which attorneys or litigants send token contributions to certain judges or simply publicly endorse the candidate - would impair the effective administration of justice. On the other hand, in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), the United States Supreme Court held that there are circumstances when it becomes a due process violation for a judge to preside over a case involving a campaign contributor. The Court adopted an objective standard focusing on the risk of actual bias even if the judge subjectively believes he or she can be fair and impartial in the case.

In response to *Caperton,* the Commission has not adopted a specific contribution amount that would require disqualification if the contributor appears before the judge. Even so, where the size and timing of financial support to a judge creates a reasonable presumption of influence, a judge should disqualify from matters involving that contributor. In determining whether it is reasonable

to presume a conflict of interest from the contribution, a judge should weigh the amount of the contribution relative to other contributors, the range of allowable contributions and the candidate's total budget, the timing of the contribution as it regards proximity in time to any past or pending legal action, and whether an individual is responsible for raising funds above and beyond those personally given to the judge, such as when someone organizes and hosts a fundraiser for the judge, especially if those efforts result in a significant amount of the judge's total campaign contributions.

***Disqualification Based on Campaign Statements***: Judges should be mindful that whenever they make public statements, whether in the campaign context or otherwise, there is a potential that those statements can be used as a basis for a disqualification motion if the statements show a bias in a particular case or towards a particular class of litigants. In all campaign statements, therefore, judges should use the same caution and professionalism as they would in other contexts to ensure continued public confidence in the impartiality, integrity and independence of the courts, and to avoid reasonable questions as to the judge's impartiality in the cases over which he or she presides.

## 6. Resign to Run Requirement

Although Canon 7B(5) permits judges to become a candidate in a primary or a general election for a judicial office, a judge is required to resign his or her position to run for election to a "non-judicial office." The Code does not define "non-judicial office" but the Commission has issued two formal advisory opinions on the issue.

- *Clerk of Court:* See Formal Advisory Opinion 2009-05 (a judge is not required to resign his or her position as a judge prior to becoming a candidate for Clerk of Court).
- *District Attorney:* See Formal Advisory Opinion 2017-01 (a judge must resign his or her position prior to becoming a candidate for District Attorney).

## 7. Campaign Misconduct By Candidates Who Are Not Judges

The Commission frequently receives inquiries concerning alleged misconduct by judicial candidates who are not judges. While all judicial candidates are required to comply with Canon 7 of the North Carolina Code of Judicial Conduct, the Judicial Standards Commission has no authority or jurisdiction over the conduct of attorneys who are not currently judges. Instead, attorneys who are judicial candidates, but not yet judges, are under the jurisdiction of the North Carolina State Bar. Rule of Professional Conduct 8.2(b) requires that a lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct. Therefore, any violations of Canon 7 by judicial candidates who are not judges should be reported to the North Carolina State Bar for appropriate review. A judge has the authority to take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct which the judge may become aware, although this authority should be exercised cautiously if attempting to discipline a campaign opponent. Canon 3B(3). The Commission recommends as a best practice that the judge contact the State Bar for guidance on attorney misconduct issues during a judicial campaign.

## CONCLUSION

I hope this information will be of assistance to you. Given the breadth and depth of these rules, and as in any ethics questions, it is always best to get advice based on the specific facts of your situation. The Commission staff is available to assist you with any questions and provide you with informal advisory opinions on your particular questions. For further assistance, please contact the Commission's Executive Director, Carolyn Dubay, cad@coa.nccourts.org or the Commission Counsel Jameson Marks, jmm@coa.nccourts.org. You may also call the Commission at (919) 831-3630. Good luck in your campaigns.

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

JUN 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY _____
CHIEF DEPUTY CLERK

In the Matter of

THE HONORABLE DAVID HUMKE, District Court Judge, Second Judicial District Court, Washoe County, State of Nevada,

Respondent.

CASE NO. 76047

**CERTIFIED COPY OF STIPULATION AND ORDER OF CONSENT TO DISCIPLINE**

Pursuant to Commission Procedural Rule 29, I hereby certify that the document attached hereto is a true and correct copy of the STIPULATION AND ORDER OF CONSENT TO DISCIPLINE filed with the Nevada Commission on Judicial Discipline on June 8, 2018.

DATED this 11th day of June, 2018.

NEVADA COMMISSION
ON JUDICIAL DISCIPLINE
P.O. Box 48
Carson City, NV 89702
(775) 687-4017

By: _____
PAUL C. DEYHLE
General Counsel and Executive Director
Nevada Bar No. 6954

RECEIVED
JUN 11 2018
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

**BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE**

**STATE OF NEVADA**

| | |
|---|---|
| In the Matter of<br><br>THE HONORABLE DAVID HUMKE, District Court Judge, Second Judicial District Court, County of Washoe, State of Nevada,<br><br>Respondent. | CASE NO. 2016-150-P |

**STIPULATION AND ORDER OF CONSENT TO DISCIPLINE**

To resolve the Formal Statement of Charges filed on January 8, 2018, pending before the Nevada Commission on Judicial Discipline (the "Commission"), David Humke, District Court Judge, Second Judicial District Court, Family Division, Washoe County, State of Nevada ("Respondent" or "Judge Humke") and the Commission stipulate to the following pursuant to Commission Procedural Rule 29 ("Rule 29"):

1. Respondent admits he violated the Revised Nevada Code of Judicial Conduct ("the Code"), including, Canon 1 of the Code, Rule 1.1, requiring the Respondent to comply with the law, including the Code; and Rule 1.2, requiring him to promote confidence in the independence, integrity and impartiality of the judiciary, avoiding impropriety and the appearance of impropriety; and Canon 2, Rule 2.5(A), requiring that he perform judicial and administrative duties competently and diligently; Rule 2.5 (B), requiring him to cooperate with other judges and court officials in the administration of court business; Rule 2.12 (A), requiring him to ensure court staff act consistent with his obligations under the Code; and Rule 2.16, requiring jurists to cooperate with disciplinary authorities, or any single rule or combination of those rules, in his official capacity as a District Court judge, in and for the Second Judicial District Court, Washoe County, Nevada, by knowingly, willfully and deliberately engaging in any or all, or any combination of, the acts listed below:

A. In or about January of 2015, the Respondent hired Mitchell Wright as his judicial assistant ("Mr. Wright" or "JA"), over the objections of then Chief Judge David A. Hardy. Mr. Wright had been publicly reprimanded by the State Bar for bringing a

concealed handgun into the Family Court in a Temporary Protective Order proceeding in which he was a party and for failing to cooperate with the State Bar's investigation of the incident. Mr. Wright also failed the District Court's background check. The Respondent met Mr. Wright in 2007 while practicing in tribal courts in which Mitchell Wright served as a prosecutor.

B. Over the course of the next two (2) years, the Respondent failed to carry out his administrative duties regarding the lack of supervision over Mr. Wright in his JA position, and interfered with the Human Resources investigations pertaining to his JA. Specifically, despite repeated requests from the child support enforcement business unit and the fact that he was repeatedly trained in the execution of the task, Mr. Wright failed to process 172 "no show" orders for delinquent parents who failed to present themselves for incarceration pursuant to a contempt order. Fellow Family Court Judge Bridget Robb processed this paperwork for the first two (2) months of Judge Humke's tenure to allow time for his staff to receive training. Over a year later, she learned the documents were still not being processed in the Respondent's department and she was required to obtain an Administrative Order from the Chief Judge to return the no show orders to her, as the Presiding Family Court Judge, for processing.

C. Furthermore, Judge Humke's department administratively processed only 62 cases as of the end of November 2016, while most other departments administratively processed over 700. Also, the Respondent's department did not timely file case disposition reports, which show the number of cases closed by each department on a monthly basis. The necessity for these filings was discussed in an August 2, 2016, judges' meeting, which Judge Humke did not attend. Judge Robb had a subsequent private conversation with the Respondent to stress the importance of this reporting. The Respondent subsequently attended two (2) judges' meetings and said he was taking care of the matter. However, the Respondent's department disposed of only four (4) cases in September 2016 and no cases in October and November of that year. Judge Humke's Department also neglected to process large volumes of child support hearing master

recommendations, as well as court orders for, among other issues, child support enforcement, and failed to act on other matters within the deadlines.

D. On one occasion, litigants came to the Respondent's department for an emergency hearing; but neither Mr. Wright nor Judge Humke was there, so Judge Robb heard the matter. Litigants also found it extremely difficult to obtain help from the Respondent's department, because they would get a recorded voicemail when they called and no one returned their calls. When these litigants complained to other offices, and staff checked the Respondent's chambers, no one was there.

E. The Respondent was elected in the Fall of 2014 and consistently failed to follow established Court practice and procedure, and cooperate with other judges and Court staff. It started with his insistence upon hiring Mr. Wright as his JA, despite Mr. Wright's public reprimand by the Nevada State Bar, failure to pass the Court's background check, as well as over the objections of then Chief Judge Hardy. The Respondent then failed to provide adequate oversight of the JA to ensure timely completion of the official and legal duties of his department, including the processing of requests, recommendations and orders as detailed above.

F. Judge Humke also failed to perform his own administrative duties. He did not timely complete an evaluation of a hearing master, despite repeated notifications to do so. When the evaluation still had not been completed nine (9) months after the deadline, the Court Administrator sought input on the hearing master's performance from other family judges so the employee, who was eligible for a pay increase, would not be further penalized by the Respondent's failure to perform his duty. Judge Humke also failed to answer his phone when "on call", thereby causing fellow Judge Robb to answer these calls when Judge Humke would not do so.

G. The Respondent failed to timely respond to phone calls from the Commission's Investigator over the course of five (5) separate days in June of 2017. The Investigator followed up with an e-mail to the Respondent after the fifth call. The Judge did not respond until almost a week later and then only through his new JA, who only provided

the information that he was obtaining counsel. The Respondent later alleged in his interview that he did not know who was calling; however, the Investigator noted the JA asked him when the Complaint was filed with the Commission, so the department was aware that the calls came from a representative of the Commission.

H. On December 4, 2015, Court Administrator Jackie Bryant issued Mr. Wright a written warning for inappropriate comments, gestures and interpersonal relations, and for retaliation. On August 2, 2016, Administrator Bryant issued another written warning finding Mr. Wright: (1) inappropriately blew a kiss to a female employee; (2) acted as, or held himself out as, a tribal judge, a position he had been told to withdraw from upon being hired at the District Court; and (3) failed to correctly record work hours. The Respondent failed to take corrective action on any of the foregoing matters. On December 2, 2016, Administrator Bryant put Mr. Wright on administrative leave. Chief Judge Patrick Flanagan terminated Mitchell Wright on January 11, 2017, citing to his "...disruptive behavior" and "failure to carry out your duties..., including following specific directives given to you...." Judge Flanagan also stated in the termination letter that Mr. Wright's poor performance had interfered with the operation of Judge Humke's department, the management of information in the Court in general, and the Chief Judge's ability to carry out "administrative and judicial functions." Judge Humke had not disciplined his JA or taken any corrective action during the two (2) year period covered by the Chief Judge's termination letter.

I. In his response to Interrogatories, the Respondent admitted his defense of the JA was due to "...misguided loyalty...." *See* September 27, 2017 Response to Interrogatory 27, p. 16, ll. 21-5. The Respondent added, despite the fact that he hired Mr. Wright, Respondent learned that like any other employee, Mr. Wright was covered under personnel policies, including the Employee Handbook. He stated he learned this as a result of a December 30, 2015, meeting with Chief Judge Hardy and the Court Administrator. The Respondent stated this meeting, along with the Court putting Mr. Wright on administrative leave in early December of 2016, finally convinced him Mr.

Wright's "...conduct and behavior were a reflection upon me and I was responsible for him. I made a mistake in trusting his representations, not listening to others and accept full responsibility for my errors." *See* Response to Interrogatory 9, p. 8, l. 26-p. 9, l. 1. In summary, Judge Humke admits that for two (2) years, he took the word of his JA that the work was being done over the expressions of concern from other judges and the Court Administrator.

2. The Respondent admits to all the allegations brought against him in Counts One (1) through Four (4) of the Formal Statement of Charges, filed on January 8, 2018, and in Paragraphs (1) (A) through (I), as set forth above.

3. Respondent agrees to waive his right to present his case before the Commission, contesting the allegations in the information set forth above, in a formal hearing, pursuant to Commission Procedural Rule 18. The Respondent also agrees that this Stipulation and Order of Consent to Discipline ("Order") takes effect immediately, pursuant to Rule 29. The Commission accepts the Respondent's waiver of said right and acknowledges and agrees to the immediate effect of this Order. Respondent further agrees to appear before the Commission in a public proceeding, if required by the Commission, to discuss this Order in more detail and answer any questions from the Commissioners.

4. The Respondent agrees and acknowledges that this Order will be published on the Commission's website and filed with the Clerk of the Nevada Supreme Court pursuant to Rule 29.

5. Respondent and the Commission hereby stipulate to the Respondent's consent to discipline pursuant to Rule 29: public censure; a three (3) month suspension without pay; Respondent's agreement to complete, at Respondent's own expense, a National Judicial College course entitled Effective Caseflow Management in June 2018, or similar such course as may be available with approval by the Commission's Executive Director; and payment of a $1,000 fine to an appropriate law-related charity as approved by the Commission's Executive Director, pursuant to the Nevada Constitution, Article 6 Section 21 (1) and (5)(a) and (b) ("Section 21"), NRS 1.4653(1) and (2); NRS 1.4677(1)(a),(b),(c) and (d)(2). The Respondent stipulates to the following substantive provisions:

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A. Respondent stipulates to discipline by the Commission for violations of the Code, including Canon 1, Rules 1.1 and 1.2; and Canon 2, Rules 2.5 (A) and (B); 2.12 (A); and 2.16 as set forth above.

B. Respondent agrees that the discipline of public censure, suspension without pay, educational training, and fine is authorized by the Nevada Constitution, Article 6, Section 21(1) and (5)(a) and (b); NRS 1.4653(1) and (2); NRS 1.4677(1)(a),(b),(c) and (d)(2); and Rule 29.

C. Respondent agrees to a three (3) month suspension without pay, beginning on July 1, 2018 and ending on October 1, 2018.

D. Respondent agrees to complete, at Respondent's own expense, a National Judicial College course entitled Effective Caseflow Management in June 2018; or such similar course as may be available with approval by the Commission's Executive Director within one (1) year from the filing date of this Order.

E. Respondent agrees to pay a fine of one thousand dollars ($1,000.00) to an appropriate law-related charity as approved by the Commission's Executive Director within six (6) months of the filing date of this Order.

F. Respondent agrees the evidence available to the Commission would establish by clear and convincing proof that he violated the Code, including Canon 1, Rules 1.1 and 1.2; and Canon 2, Rules 2.5 (A) and (B); 2.12 (A); and 2.16 as set forth above.

G. Respondent stipulates and agrees that failure to comply with the requirements of this Order shall result in Respondent being permanently removed from the bench and forever barred from serving as a judicial officer in the future pursuant to NRS 1.4677(1)(e).

6. Respondent understands and agrees that by accepting the terms of this Order, he waives his right to appeal to the Nevada Supreme Court pursuant to Rule 3D of the Nevada Rules of Appellate Procedure.

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**ORDER**

IT IS HEREBY ORDERED that Respondent be and hereby is disciplined pursuant to Rule 29 for violating the Code, including Canon 1, Rules 1.1 and 1.2; and Canon 2, Rules 2.5 (A) and (B); 2.12 (A), and 2.16 as set forth above.

IT IS FURTHER ORDERED that the Respondent is hereby suspended without pay for a period of three (3) months, effective from July 1, 2018 through October 1, 2018.

IT IS FURTHER ORDERED that the Respondent shall complete, at Respondent's own expense, a National Judicial College course entitled Effective Caseflow Management in June 2018; or such similar course as may be available with approval by the Commission's Executive Director within one (1) year from the filing date of this Order.

IT IS FURTHER ORDERED that the Respondent shall pay a fine of one thousand dollars ($1,000.00) to an appropriate law-related charity as approved by the Commission's Executive Director within six (6) months of the filing date of this Order.

IT IS FURTHER ORDERED that failure to comply with the requirements of this Order shall result in Respondent being permanently removed from the bench and forever barred from serving as a judicial officer in the future pursuant to NRS 1.4677(1)(e).

IT IS FURTHER ORDERED that the Commission's Executive Director take the necessary steps to file this document in the appropriate records, on the website of the Commission and with the Clerk of the Nevada Supreme Court.

The Honorable David Humke
Respondent
Dated this 23 day of May, 2018

John L. Arrascada, Esq.
Attorney for Respondent
Dated this 23 day of May, 2018

NEVADA COMMISSION ON
JUDICIAL DISCIPLINE
P.O. Box 48,
Carson City, Nevada 89702

By: Kathleen M. Paustian
Kathleen M. Paustian, Esq.
Prosecuting Officer
Dated this 24 day of May, 2018

The Commissioners listed below accept the terms of this Stipulation and Order of Consent to Discipline between Judge Humke and the Commission. They further authorize the Chairman, if requested, to sign on behalf of the Commission, as a whole, this document containing the Stipulation and Order of Consent to Discipline of the Respondent.

NEVADA COMMISSION ON JUDICIAL DISCIPLINE:

**Signed by:** **Dated:** 6/8/18

GARY VAUSE, CHAIRMAN

HON. MARK DENTON

BRUCE HAHN, ESQ.

STEFANIE HUMPHREY

LAURENCE IRWIN, ESQ.

HON. THOMAS STOCKARD

**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the Nevada Commission on Judicial Discipline and that on the 11th day of June, 2018, I served a copy of the **CERTIFIED COPY OF STIPULATION AND ORDER OF CONSENT TO DISCIPLINE**, filed with the Nevada Supreme Court, by United States Mail, postage paid, addressed to the following:

John L. Arrascada, Esq.
Arrascada & Aramini, Ltd.
145 Ryland Street
Reno, NV 89501
jla@arrascadalaw.com
Counsel for Respondent

Kathleen Paustian, Esq.
Law Offices of Kathleen M. Paustian
1912 Madagascar Lane
Las Vegas,NV 89117
kathleenpaustian@cox.net
Prosecuting Officer

Valerie Carter

Valerie Carter, Commission Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

MAY 18 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY _____
DEPUTY CLERK

In the Matter of

THE HONORABLE JAY T. GUNTER,
Justice of the Peace, Hawthorne Township
Justice Court, County of Mineral,
State of Nevada,

Respondent.

CASE NO. 75868

**CERTIFIED COPY OF STIPULATION AND ORDER OF CONSENT TO A PUBLIC CENSURE AND AGREEMENT TO COMPLETE A NATIONAL JUDICIAL COLLEGE COURSE**

Pursuant to Commission Procedural Rule 29, I hereby certify that the document attached hereto is a true and correct copy of the STIPULATION AND ORDER OF CONSENT TO A PUBLIC CENSURE AND AGREEMENT TO COMPLETE A NATIONAL JUDICIAL COLLEGE COURSE filed with the Nevada Commission on Judicial Discipline on May 18, 2018.

DATED this 18th day of May, 2018.

NEVADA COMMISSION ON
JUDICIAL DISCIPLINE
P.O. Box 48
Carson City, NV 89702
(775) 687-4017

By: _____
PAUL C. DEYHLE
General Counsel and Executive Director
Nevada Bar No. 6954

RECEIVED
MAY 18 2018
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

THOMAS C. BRADLEY, ESQ.
Bar No. 1621
*Sinai, Schroeder, Mooney, Boetsch, Bradley and Pace*
448 Hill Street
Reno, Nevada 89501
Telephone (775) 323-5178
Tom@TomBradleyLaw.com
Prosecuting Officer for the Nevada Commission on Judicial Discipline



**BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE**

| | |
|---|---|
| IN THE MATTER OF THE HONORABLE JAY T. GUNTER, Justice of the Peace, Hawthorne Township Justice Court, County of Mineral, State of Nevada,<br><br>Respondent. | CASE NO. 2017-053-P |

**STIPULATION AND ORDER OF CONSENT TO A PUBLIC CENSURE AND AGREEMENT TO COMPLETE A NATIONAL JUDICIAL COLLEGE COURSE**

In order to resolve the Formal Statement of Charges filed January 24, 2018, pending before the Nevada Commission on Judicial Discipline (the "Commission"), the Respondent and Commission stipulate to the following pursuant to Commission Procedural Rule ("Rule") 29:

1. Respondent admits that he committed violations of the Revised Nevada Code of Judicial Conduct (the "Code"), including Judicial Canon 1, Rule 1.1 (compliance with the law, including the Code); Canon 2, Rule 2.5(A) (perform administrative duties competently and diligently); and Rule 2.12(A) (properly discharge supervisory duties), or any single rule or combination of those rules, and in his official capacity as a Justice of the Peace, in and for the Hawthorne Justice Court in Mineral County, State of Nevada, by knowingly engaging in an act, a combination of acts, or all of the following acts that occurred relevant to these charges:

A. Respondent was elected to the position of Justice of the Peace of Hawthorne Township in 2006. The Hawthorne Justice Court is the sole justice court in Mineral County after the closing of the justice courts in Schurz and Mina. Additionally, Mineral County has a contract to handle all citations from Walker River Tribal Police through the Hawthorne Justice Court. The Hawthorne Justice Court receives its funding primarily from Mineral County. The Mineral County Commission determines the amount of money granted to the Hawthorne Justice Court to enable the Justice Court to carry out its powers and duties in the administration of justice.

In 2006, the Hawthorne Justice Court handled 547 cases. From 2006 to 2016, the Hawthorne Justice Court caseload grew exponentially. In 2016, the Hawthorne Justice Court caseload totaled 7,159 cases.

While the caseload handled by the Hawthorne Justice Court increased substantially, the budget to carry out its powers and duties in the administration of justice did not substantially increase. Respondent, who is responsible for the administration of the Hawthorne Justice Court, maintained the same staffing level from 2006 until the present. As a result of the increasing caseload with no increase in staffing, a systemic backlog ensued. In fact, in 2017, there was a $447,779.34 backlog in uncollected traffic citations. This backlog is due in part to the caseload, but also due to a lack of efficiency, proper management, and supervision of staff as well as the failure to act proactively to avoid the inevitable backlog.

Respondent's inattention to his duties as the administrator of the Court, his failure to properly manage and supervise his staff, and his failure to oversee the daily operations of the Court resulted in inordinate delays and confusion in the processing of Hawthorne Justice Court cases. Respondent failed to address administrative issues including ensuring that the Court's telephone and facsimile machine were operational and that telephone calls were timely answered and/or returned. In short, Respondent failed to carry out his administrative duties as the Hawthorne Justice of Peace.

Respondent failed to timely seek the assistance of the Nevada Administrative Office of the Courts ("AOC") when the systemic backlog began to accumulate and failed to take action despite being previously made aware of these issues. Respondent only accepted the support of the AOC in April 2017, after the AOC and the Commission received numerous complaints about the Hawthorne Justice Court and the AOC reached out to Respondent to offer its support. The AOC was able to suggest numerous ways to improve efficiency at no additional expense to the Hawthorne Justice Court.

**B.** Respondent failed to utilize the inherent powers of the Court over its budget to seek sufficient funds to reasonably and necessarily carry out the Hawthorne Justice Court's powers and duties in the administration of justice to obtain adequate staffing levels. Respondent was not proactive in addressing the administrative and budget issues and has only taken action upon the commencement of the investigation of the matter by the AOC and the Commission. Respondent's failure to timely address the administrative problems and manage Court staff has led to the public not having adequate access to the Court.

**2.** Respondent admits to all the allegations brought against him in the Formal Statement of Charges, and, more specifically, in paragraphs (1) (A) and (B) as set forth above.

**3.** Respondent agrees to waive his right to present his case and contest the allegations set forth above in a formal hearing pursuant to Rule 18. Respondent also agrees that this Stipulation and Order of Consent to Public Censure and Agreement to Complete a National Judicial College Course ("Order") takes effect immediately pursuant to Rule 29. The Commission accepts Respondent's waiver of said rights and acknowledges and agrees to the immediate effect of this Order. Respondent further agrees to appear before the Commission in a public proceeding, if required by the Commission, to discuss this Order in more detail and answer any questions from the Commissioners related to this case.

4. Respondent agrees and acknowledges that this Order will be published on the Commission's website and filed with the Clerk of the Nevada Supreme Court.

5. Respondent and the Commission hereby stipulate to Respondent's consent to public censure pursuant to Rule 29 and Respondent's agreement to complete, at Respondent's expense, a National Judicial College course entitled Effective Caseflow Management in June 2018, or such similar class as may be available with approval by the Commission's Executive Director, pursuant to the Nevada Constitution, Article 6, Section 21, 1 and 5(a) and (b) ("Section 21"); NRS 1.4653(1) and (2); NRS 1.4677(1)(a) and (d)(2); and Rule 28. Respondent stipulates to the following substantive provisions:

   (a) Respondent agrees the evidence available to the Commission would establish by clear and convincing proof that he violated the Code, including Judicial Canon 1, Rule 1.1; Canon 2, Rule 2.5(A); and Rule 2.12(A).

   (b) Respondent agrees the discipline of public censure and his agreement to complete, at Respondent's expense, a National Judicial College course entitled Effective Caseflow Management in June 2018; or such similar class as may be available with approval by the Commission's Executive Director, is authorized by Rule 29; Section 21; NRS 1.4653(1) and (2); NRS 1.4677(1)(a) and (d)(2); and Rule 28.

   (c) Respondent unilaterally decided not to seek re-election and to leave office after his current term is completed.

   (d) Respondent stipulates to a public censure and agrees to complete a National Judicial College course for violations of the Rules as set forth in paragraph 1(A) through (B).

   (e) Respondent stipulates and agrees that failure to comply with the educational requirement before the expiration of his term shall result in Respondent being forever barred from serving as a judicial officer in the future pursuant to NRS 1.4677(1)(e).

6. The Respondent understands and agrees that by accepting the terms of this Order, he waives his right to appeal to the Nevada Supreme Court, pursuant to Rule 3D of the Nevada Rules of Appellate Procedure.

## ORDER

IT IS HEREBY ORDERED that the Respondent is hereby publicly censured pursuant to Rule 29 for violating the Code, including Judicial Canon 1, Rule 1.1; Canon 2, Rule 2.5(A); and Rule 2.12(A).

IT IS FURTHER ORDERED that the Respondent shall complete, at Respondent's expense, a National Judicial College course entitled Effective Caseflow Management in June 2018; or such similar class as may be available with approval by the Commission's Executive Director.

IT IS FURTHER ORDERED that failure to comply with the educational requirement before the expiration of his term shall result in Respondent being forever barred from serving as a judicial officer in the future pursuant to NRS 1.4677(1)(e). Accordingly, the Commission retains jurisdiction over this matter for the required period of time for Respondent to comply with this Order.

IT IS FURTHER ORDERED that the Executive Director of the Commission take the necessary steps to file this document in the appropriate records and on the website of the Commission and with the Clerk of the Nevada Supreme Court.

By: _____
Jay T. Gunter
Respondent

Dated this 16 day of April, 2018.

NEVADA COMMISSION ON
JUDICIAL DISCIPLINE
P.O. Box 48,
Carson City, Nevada 89702

By: _____
Thomas C. Bradley, Esq., SBN 1621
Prosecuting Officer for the NCJD

Dated this 17 day of April, 2018.

NEVADA COMMISSION ON JUDICIAL DISCIPLINE:

The Commissioners listed below accept the terms of this Stipulation and Order of Consent to a Public Censure and Agreement to Complete a National Judicial College Course between the Respondent and the Commission. They further authorize the Chairman, if requested, to sign on behalf of the Commission, as a whole, this document containing the Stipulation and Order of Consent to Public Censure and Agreement to Complete a National Judicial College Course.

**Signed by:** **Dated:** 5/18/18

GARY VAUSE, CHAIRMAN

KARL ARMSTRONG

HON. MARK DENTON

BRUCE HAHN

STEFANIE HUMPHREY

JOHN KRMPOTIC

HON. JEROME POLAHA

**CERTIFICATE OF MAILING**

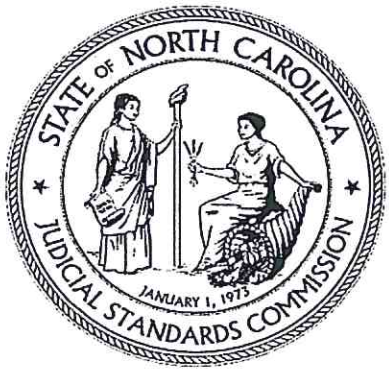
I hereby certify that I am an employee of the Nevada Commission on Judicial Discipline and that on the 18th day of May, 2018, I served a copy of the **CERTIFIED COPY OF STIPULATION AND ORDER OF CONSENT TO A PUBLIC CENSURE AND AGREEMENT TO COMPLETE A NATIONAL JUDICIAL COLLEGE COURSE,** filed with the Nevada Supreme Court, by United States Mail, postage paid, addressed to the following:

Lyn E. Beggs, Esq.
Law Offices of Lyn E. Beggs, PLLC
328 California Ave. Suite 3
Reno, NV 89503
lyn@lbeggslaw.com
Counsel for Respondent

Thomas C. Bradley, Esq.
Sinai, Schroder, Mooney, Boetsch, Bradley & Pace
448 Hill Street
Reno,NV 89501
Tom@TomBradleyLaw.com
Prosecuting Officer

Valerie Carter

Valerie Carter, Commission Clerk




FOR JSC OFFICIAL USE ONLY:

Complaint No.:_____

Judicial Officer:_____

Panel: A B

Meeting Date:_____

# NORTH CAROLINA JUDICIAL STANDARDS COMMISSION

## COMPLAINT FORM

I. READ BEFORE COMPLETING THIS FORM:

1. **Only Some Judges and Judicial Officials are Subject to the Commission's Jurisdiction:** The North Carolina Judicial Standards Commission investigates complaints of judicial misconduct against judges and justices of the North Carolina General Court of Justice (District Courts, Superior Courts, Court of Appeals and Supreme Court) and commissioners and deputy commissioners of the North Carolina Industrial Commission. The Commission has no jurisdiction to hear complaints about magistrates, clerks of court or other court staff, administrative law judges, attorneys or federal judges.

2. **A Complaint is Not a Substitute for Appealing a Judge's Order:** Your complaint is not an appeal of a judge's decision and the Commission has no authority to change or alter a court order. **Appealing a decision is subject to strict procedures and time limits.** You should consult with an attorney if you seek legal relief from a court order.

3. **The Commission Cannot Remove a Judge From Your Case.** The Commission has no authority to order a new judge to be assigned to your case. In addition, please be advised that filing this confidential complaint does not mean that the judge is automatically required to recuse himself/herself from hearing your case.

4. **Your Complaint and All Commission Proceedings are Confidential.** North Carolina law and Commission rules require that the investigation of complaints of judicial misconduct, as well as the proceedings that occur before the Commission, remain confidential. If the Supreme Court accepts the Commission's recommendation and imposes discipline upon a judge, the pleadings, the recommendation and the record are no longer confidential. Anyone who discloses confidential information of the Commission may be subject to punishment for contempt.

## II. PROCEDURES FOR SUBMITTING A COMPLAINT:

1. Complaints can be submitted either by mailing a printed form to the Commission or submitting it electronically on the Commission's website. Printed Complaint Forms must be either typed or written in clear and legible handwriting and mailed to the Commission as follows:

   North Carolina Judicial Standards Commission
   P.O. Box 1122
   Raleigh, North Carolina 27602

2. Do not mail any original documents to the Commission, and keep a copy of your complaint and any attachments you send us for your files. The Commission does not return documents once filed.

## III. COMPLAINANT INFORMATION:

1. Your name: _____
2. Mailing Address:_____
3. Phone Number:_____
4. Email:_____

## IV. INFORMATION ABOUT THE JUDGE:

1. Name of judge (if you have a complaint about more than one judge, fill out one complaint form for each judge):_____

2. Court: (radio / select)

   ☐District Court ☐Superior Court ☐North Carolina Court of Appeals
   ☐Supreme Court of North Carolina ☐NC Industrial Commission
   ☐I don't know

## V. DESCRIPTION OF THE ALLEGED MISCONDUCT

1. Does your complaint relate to a court case? ☐ YES ☐NO
   If yes, please answer the questions below to the best of your ability. If this complaint does not relate to a case, please proceed to question 2.

   **Case Information:**
   - Case Name:_____
   - Case Number:_____

- What kind of case is it? ☐Criminal ☐Domestic/Family ☐Other Civil ☐Small Claims ☐Other: _____

- For litigants, did you have a lawyer in this case? ☐ YES ☐ NO

  If yes, please provide the name(s) and contact information if (you may attach additional pages if necessary): _____

2. Please describe the alleged misconduct. **BE SURE TO INCLUDE THE DATES** on which such misconduct occurred. You may attach additional pages if necessary.

   _____

3. **ATTACHMENTS/DOCUMENTATION:** In the space provided or on a separate page, list any documents or other items (such as audio or video recordings) you are including with this complaint. DO NOT ATTACH ORIGINALS – documents and recordings will NOT be returned to you. Only attach documents that support your contentions – do not attach the entire court file unless it is relevant.

## VI. CERTIFICATION

I declare, under the penalties of perjury, that, to the best of my knowledge and belief, the statements made above and on any attached pages are true and correct.

PRINTED NAME: _____

SIGNATURE: _____

DATE: _____

## VII. ADDITIONAL INFORMATION:

1. How did you hear about us? ☐ Internet search ☐ North Carolina State Bar ☐ Clerk's Office ☐ Friend ☐ Attorney ☐ Other: _____