

JUDICIAL INVESTIGATION COMMISSION



ANNUAL REPORT - 2007

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Pursuant to Rule 1.11(3) of the Rules of Judicial Disciplinary Procedure, the Judicial Investigation Commission of West Virginia respectfully submits this Annual Report for its activities during the period of January 1, 2007, through December 31, 2007.

THE COMMISSION

The Supreme Court of Appeals of West Virginia is required by Article 8, Section 8 of the Constitution of West Virginia to use its inherent rule-making power to "from time-to-time, prescribe, adopt, promulgate, and amend rules prescribing a judicial code of ethics, and a code of regulations and standards of conduct and performances for justices, judges and magistrates, along with sanctions and penalties for any violation thereof." Under this constitutional authority the Court "is authorized to censure or temporarily suspend any justice, judge or magistrate having the judicial power of the State, including one of its own members, for any violation of any such code of ethics, code of regulations and standards, or to retire any such justice, judge or magistrate who is eligible for retirement under the West Virginia judges' retirement system (or any successor or substituted retirement system for justices, judges, and magistrates of this State) and who, because of advancing years and attendant physical or mental incapacity, should not, in the opinion of the supreme court of appeals, continue to serve as a justice, judge or magistrate."

The Constitution provides that "[n]o justice, judge or magistrate shall be censured, temporarily suspended or retired under the provisions of this section unless he shall have been afforded a right to have a hearing before the supreme court of appeals, nor unless he shall have received notice of the proceedings, with a statement of the cause or causes alleged for his censure, temporary suspension or retirement, at least 20 days before the day on which the proceeding is to commence." When rules authorized by this provision of the Constitution are "prescribed, adopted and promulgated, they shall supersede all laws and parts of laws in conflict therewith, and such laws shall be and become of no further force or effect to the extent of such conflict." Under the constitutional provision "[a] justice or judge may be removed only by impeachment in accordance with provisions of section nine, article four, of this Constitution. A magistrate may be removed from office in the manner provided by law for the removal of county officers."

By Order entered December 15, 1982, the Supreme Court of Appeals of West Virginia created the Judicial Investigation Commission to exist as of 12:01 A.M., December 16, 1982. At that time, the Judicial Inquiry Commission, created by Rule promulgated October 1, 1976, ceased to exist. The Chairman and the Executive Secretary of the Judicial Inquiry Commission provided to the Judicial Investigation Commission all of the records, files, and reports on cases of the Judicial Inquiry Commission. By Orders entered November 29, 1989, and December 20, 1989, effective January 1, 1990, and an Order entered November 29, 1990, effective January 1, 1991, and an Order entered March 24, 1993, effective July 1, 1993, the Supreme Court of Appeals of West Virginia further amended the Rules of Procedure for the Handling of Complaints Against Justices, Judges, and Magistrates which are now the Rules of Judicial Disciplinary Procedure. By

Order entered on May 25, 1993, effective July 1, 1994, the Rules of Judicial Disciplinary Procedure superseded the prior Rules of Judicial Disciplinary Procedure adopted December 15, 1982, and amended by Orders as stated hereinabove.

The West Virginia Rules of the Judicial Disciplinary Procedure, Rule 1, establishing the Judicial Investigation Commission, states "the ethical conduct of judges is of the highest importance to the people of the State of West Virginia and to the legal profession. Every judge shall observe the highest standards of judicial conduct. In furtherance of this goal, the Supreme Court of Appeals does hereby establish a Judicial Investigation [Commission] to determine whether probable cause exists to formally charge a judge with a violation of the Code of Judicial Conduct promulgated by the Supreme Court of Appeals to govern the ethical conduct of judges or that a judge, because of advancing years and attendant physical and mental incapacity, should not continue to serve."

The West Virginia Rules of Judicial Disciplinary Procedure, Rule 2, using the Code of Judicial Conduct definition, defines "judge" as "anyone whether or not a lawyer who is an officer of a judicial system and who performs judicial functions including but not limited to Justices of the Supreme Court of Appeals, Circuit Judges, Family Court Judges, Magistrates, Mental Hygiene Commissioners, Juvenile Referees, Special Commissioners, and Special Judges."

The Commission consists of nine members: three circuit judges; one magistrate; one family court judge; one retired circuit judge; and three members of the public. The Supreme Court of Appeals appoints all members of the Commission.

The Commission shall have the authority to: (1) determine whether probable cause exists to formally charge a judge with a violation of the Code of Judicial Conduct or that a judge, because of advancing years and attendant physical or mental incapacity should not continue to serve; (2) propose rules of procedure for judicial disciplinary proceedings for promulgation by the Supreme Court of Appeals; (3) file an annual report with the Supreme Court of Appeals on the operation of the Commission; (4) inform the public about the existence and operation of the judicial disciplinary system, the filing of formal charges, and the discipline imposed or recommended on formal charges; (5) delegate in its discretion, to the Chairperson or Vice-Chairperson, the authority to act for the Commission on administrative and procedural matters; (6) nominate, for selection by the Supreme Court of Appeals, candidates for the position of Judicial Disciplinary Counsel; and (7) engage in such other activities related to judicial discipline as it deems appropriate.

The Commission held five regular meetings during 2007 in the Judicial Investigation Commission Conference Room, 910 Quarrier Street, Charleston, West Virginia, on

February 2, April 20, July 20, October 12, and December 7. Copies of all pertinent documents are distributed to the members of the Commission prior to each meeting so that they may review the materials and be prepared to discuss them actively in the meeting. The Commission has a support staff of a full-time Executive Secretary, full-time Counsel, and four part-time Examiners, who conduct investigations of complaints.¹²

PROCEDURE FOR HANDLING COMPLAINTS

Complaints filed with the Commission are referred to counsel, who reviews each complaint and either refers it to an examiner for investigation, asks the respondent judge for a response, or sends it directly to the members of the Commission for study prior to consideration at the next meeting. Those complaints which are referred directly to the Commission for consideration at a meeting are either dismissed for lack of probable cause or referred to an examiner for investigation.

Prior to any finding of probable cause by the Commission, a respondent judge shall be notified in writing of the nature of the complaint. The judge shall have ten days after the date of the notice to file a written response to the complaint. All decisions on whether probable cause exists to refer the complaint to the Judicial Hearing Board are made by the Commission at meetings with a majority of the members in attendance. Likewise all decisions on dismissal of complaints are made by the Commission at meetings with a majority of the members in attendance. Parties are contacted about the action of the Commission after a decision has been made on a complaint.

¹While not a part of the work of the Commission, Counsel to the Judicial Investigation Commission pursuant to the Protocol for Fatality Review Teams, initially promulgated by the Supreme Court of Appeals in 1994 and amended in 1998 and 2000, is charged with initiating a confidential investigation and preparing a report for a designated Fatality Review Team. These reports are subsequently presented to a Fatality Review Team at a scheduled meeting. Commission staff is utilized in the investigation and preparation of these reports. During 2007 there were seven (7) new fatalities referred to the Commission for investigation. Six (6) reports from 2007 were completed along with three (3) 2006 reports. Three (3) investigations and reports remain pending at the end of 2007. Four (4) Fatality Review Team meetings were held in 2007.

Some complaints contain more than one allegation against a judge, and the Commission may dismiss part of a complaint and find probable cause on part of a complaint.

By Orders entered March 24, 1993, effective July 1, 1993, and May 25, 1993, effective July 1, 1994, the Rules of Judicial Disciplinary Procedure were amended to include a provision that all information provided, documents filed or testimony given with respect to any investigation or proceeding under the Rules of Judicial Disciplinary Procedure shall be privileged in any action for defamation. All members of the Commission, the Judicial Committee on Assistance and Intervention, the Office of Disciplinary Counsel, and their employees, shall be absolutely immune from civil suit in the same manner as members of the judiciary in this State for any conduct in the course of their official duties.

All proceedings of the Commission are confidential except that when a complaint has been filed or an investigation has been initiated, the Office of Disciplinary Counsel may release information confirming or denying the existence of a complaint or investigation, explaining the procedural aspects of the complaint or investigation, or defending the right of the judge to a fair hearing. Prior to the release of information confirming or denying the existence of a complaint or investigation, reasonable notice shall be provided to the judge.

EXTRAORDINARY PROCEEDINGS

The Rules of Judicial Disciplinary Procedure provide that when the Administrative Director of the Courts has received information that a judge:

- (1) has been convicted of a serious offense;
- (2) has been indicted or otherwise charged with a serious offense;
- (3) has engaged or is currently engaging in a serious violation of the Code of Judicial Conduct, or;
- (4) has become unable or unwilling to perform his or her official duties, the Administrative Director may file a complaint with Judicial Disciplinary Counsel.

Upon receipt of such complaint, Judicial Disciplinary Counsel shall conduct an immediate investigation and shall within ten days present to the Chief Justice of the Supreme Court a report indicating whether, in the opinion of Judicial Disciplinary Counsel, the integrity of the legal system has been placed into question by virtue of a judge's (1) having been convicted of a serious offense; (2) having been indicted or otherwise charged with a serious offense; (3) having engaged in or currently engaging in a serious violation of the Code of Judicial Conduct; or (4) inability or unwillingness to perform his or her official

duties. The Office of Disciplinary Counsel shall attempt to provide reasonable notice to the judge prior to the filing of this report.

Upon receipt of the report from the Chief Justice, the Supreme Court shall determine whether probable cause exists. A finding of probable cause hereunder shall be in lieu of a probable cause finding made pursuant to Rule 2.7(c). If it is determined that probable cause exists, the Court may:

- (1) direct the Disciplinary Counsel to file formal charges with the Clerk of the Supreme Court; and
- (2) provide notice to the judge of a right to a hearing on the issue of temporary suspension, said hearing to be in not less than 30 days; with the judge provided notice of the hearing in not less than 20 days before the proceeding; or
- (3) in the alternative, remand the complaint for proceedings pursuant to Rule 2.7(d) and Rule 4.

If the judge has been convicted of a serious offense or has been indicted or otherwise charged with a serious offense, the Chief Justice may order that the judge not hear any further civil or criminal matters or perform other judicial functions while the matter is pending, with or without pay.

If pursuant to the rule on extraordinary proceedings the Court finds probable cause to believe that a judge has engaged or is currently engaging in a serious violation of the Code of Judicial Conduct or has become unable or unwilling to perform his or her official duties, the Court may direct that the judge not hear any further civil or criminal matters or perform other judicial functions while the matter is pending, with or without pay.

After the hearing on the issue of suspension, the Court may temporarily suspend the judge with or without pay while the matter is pending before the Judicial Hearing Board and until the Court has disposed of the formal charges.

Both the details of the complaint filed by the Administrative Director of the Courts and the investigation conducted by the Office of Disciplinary Counsel under this rule shall be confidential, except that when a formal charge has been filed with the Clerk of the Supreme Court, all documents filed with the Clerk and the Judicial Hearing Board shall be made available to the public.

However, Disciplinary Counsel may release information confirming or denying the existence of a complaint or investigation, explaining the procedural aspects of the complaint or investigation, or defending the right of the judge to a fair hearing. Prior to the release of information confirming or denying the existence of a complaint or investigation, reasonable notice shall be provided to the judge.

During 2007 there was (1) proceeding under this section of the Rules of Judicial Disciplinary Procedure and a synopsis of this case is as follows:

In the Matter of: Magistrate Carolyn D. Cruickshanks, Magistrate for Braxton County (Complaint No. 31-2007; Supreme Court of Appeals No. 33336) – On March 13, 2007, the Administrative Director of the Courts filed a complaint against Magistrate Carolyn D. Cruickshanks, Magistrate for Braxton County alleging that she had engaged in a serious violation of the Code of Judicial Conduct. The complaint was filed pursuant to Rule 2.14 of the Rules of Judicial Disciplinary Procedure. The complaint alleged that on March 12, 2007, the respondent was arrested and charged with a violation of W.Va. Code §61-10-31, conspiracy to commit an offense against the State of West Virginia, to wit: the criminal offense of “retaliation against a witness” which is set out in W. Va. Code §61-5-27(c). It alleged the crime of conspiracy to commit a felony offense is punishable by imprisonment for not less than one nor more than five years or a fine of not more than \$10,000 or both. The criminal complaint was filed against the respondent on March 12, 2007, and a warrant for arrest was issued on that date. Pursuant to Rule 2.14 of the Rules of Judicial Disciplinary Procedure, Judicial Disciplinary Counsel filed a report with the Chief Justice of the Supreme Court of Appeals. On March 15, 2007, an order was entered by the Supreme Court of Appeals of West Virginia which stated among other things that the respondent be suspended without pay and prohibited from hearing any further civil or criminal matter or performing any other judicial function during the pendency of the matter. The order directed counsel to prepare and file formal charges against the respondent. The Court further ordered that once formal charges were filed they would be held in abeyance pending the outcome of the criminal charges pending against the respondent. In a pleading filed on March 22, 2007, the respondent requested a hearing in this matter and in an order entered on March 26, 2007, the Court set this matter down for a hearing on the Court’s argument docket May 9, 2007. In a holding filed June 6, 2007, the Court denied the respondent’s motion to be suspended with pay and affirmed its decision that the respondent be suspended without pay until the underlying judicial disciplinary proceeding was completed. The matter was pending at the end of 2007.

ADVISORY OPINIONS

A judge or the Administrative Director of the Courts may, by written request to the Commission, seek an advisory opinion as to whether certain specific actions contemplated may constitute a violation of the Code of Judicial Conduct. The Commission may render in writing such advisory opinion as it may deem appropriate. An advisory opinion is not binding upon the Judicial Hearing Board or the Supreme Court of Appeals, but shall be admissible in any subsequent disciplinary proceeding involving the judge who made the request. During 2007 there were twenty-eight (28) issues raised in advisory opinion requests, and a synopsis of the Commission’s opinion on each follows:

- A judge asked the Commission whether a campaign committee is necessary if a judicial candidate receives no contributions from any source but uses only the candidate’s personal money and/or assets to fund a judicial campaign. The

Commission reviewed Canon 5C(2) of the Code of Judicial Conduct and the opinion stated that no campaign committee would be necessary.

- A judge requested an advisory opinion concerning whether his secretary's son-in-law who practices law in another county could be put on an appointment list in his county. The Commission reviewed Canon 3A and Canon 3B(1)(2)(4) of the Code of Judicial Conduct. Based upon the language contained in these sections of Canon 3, the Commission felt he could appoint his secretary's son-in-law to cases in his court if he did so impartially and without favoritism shown to any of the appointees.
- A judge asked the Commission whether he could confer with his probation officers without holding a hearing or notifying the parties or the prosecuting attorney. The Commission's opinion after reviewing Canon 3B(7)(c) of the Code of Judicial Conduct was that the judge could confer with his probation officer without holding a hearing or notifying the parties or the prosecuting attorney.
- A family court judge asked the Commission whether she could use the term "Judge" if she decided to run for circuit judge. The Commission researched this matter by reviewing In Re: Emrich, 665 N.E.2d 1133 (Ohio 1996) which states that the court ordered a county court judge who was running for probate court to cease and desist from using materials, literature, signs and buttons that implied that he was an incumbent probate judge; Alabama Advisory Opinion 98-718 states that a judge may use the title "Judge" in a campaign for a different judicial office as long as the judge identifies his or her current judicial position or indicates that he or she is not the incumbent in the current race; and two New Mexico Advisory Opinions 92-3; 02-1 state that a candidate who is a judge in a different court may wear robes and use the title if it is clear what judicial position the candidate currently holds and a probate judge who is running for magistrate court should not be advertising himself/herself as a judge without identifying the court position that he or she currently holds. Based upon these matters, it is the opinion of the Commission that the family court judge could use the term "Judge" so long as she clearly identifies the position which she currently holds during the campaign for a different judicial office.
- A Mental Hygiene Commissioner asked the Commission; (1) whether he or his law partner could continue serving as Mental Hygiene Commissioner after he files candidacy papers for the Office of Prosecuting Attorney; (2) if the MHC becomes an Assistant Prosecuting Attorney during 2008 and before the election process was completed whether his law partner would be able to continue as a Mental Hygiene Commissioner; and (3) whether while he was still a private attorney and running for the Office of Prosecuting Attorney and not serving as an Assistant Prosecuting Attorney his law partner could serve as the treasurer for his campaign and whether both of them or either of them could continue to serve as Mental Hygiene Commissioners. The Commission reviewed Canon 5A(1)(a)(b)(c)(d)(e) and Canon 5A(2) of the Code of Judicial Conduct to answer the request. It was their opinion that the Mental Hygiene Commissioner would be required to resign his

position when he became a candidate for the non-judicial office of Prosecuting Attorney; his law partner as a Mental Hygiene Commissioner could continue to serve as a Mental Hygiene Commissioner even if he became a part-time Prosecutor and maintained a law practice with him; and his law partner is not required to comply with Canon 5A(1) which places certain restrictions on political involvement by judges and judicial candidates. The law partner could serve as treasurer of his campaign while continuing to serve as a Mental Hygiene Commissioner.

- A Mental Hygiene Commissioner asked whether he could appear as an attorney representing individuals in conservator/ guardianship proceeding before the local Circuit Court Judge because the Judge does all of the conservator/guardianship proceedings in that county. The Commission reviewed Canon 6C(2) and the relevant commentary to that Canon of the Code of Judicial Conduct for their opinion. Since the Circuit Judge only conducts the conservator/guardianship hearings in his county, the mental hygiene commissioner could represent individuals in those proceedings. However, in the event that an individual involved in the conservator/guardianship proceeding subsequently appeared before him as a Mental Hygiene Commissioner who has been involved in the proceeding representing an individual, he must recuse himself from the mental hygiene matter.
- A Family Court Judge for a multi-county circuit asked whether he should recuse himself from a divorce action in which his brother's attorney is counsel for one of the parties. The Family Court Judge's brother is involved in a divorce action in one of the counties the judge covers, however, that action is being heard by another Family Court Judge. The Commission reviewed Canon 3E(1) of the Code of Judicial Conduct. The opinion states that the Family Court Judge does not have to disqualify or recuse himself from the divorce action in which his brother's lawyer is counsel for one of the parties. However, he should disclose on the record the relationship this attorney currently has with his brother when this attorney appears before him representing one of the parties.
- A Family Court Judge asked whether he could be appointed to the West Virginia Archives and History Commission. The Commission reviewed the Constitution of West Virginia, Article VIII §7 which states in relevant part "No justice, judge or magistrate shall hold any other office, or accept any other appointment for public trust, under this or any other government; . . .
- A Magistrate asked the Commission whether a judicial candidate in a non-election year who has filed pre-candidacy (during the four years proceeding an election as required) and has a committee, could begin campaigning as if it were an election year. The Commission could find no provision in the Code of Judicial Conduct which would prohibit the activity addressed in the Magistrate's letter.
- A Magistrate requested the Commission's opinion as to whether she could join the Daughters of the American Revolution Organization. The Commission reviewed Canon 2C of the Code of Judicial Conduct and it is their belief that the Magistrate could join the DAR.

- A Magistrate asked whether there was any ethical problem with her assistant, who is married to a city police officer, occasionally riding in the police cruiser with her husband. The Commission reviewed Canon 3A, Canon 3E(1) and State ex rel. Brown v. Dietrick, 191 W.Va. 169, 444 S.E.2d 47 (1994) for their opinion that the Magistrate should recuse herself from the cases in which her assistant's husband is directly involved.
- A Mental Hygiene Commissioner asked whether if he runs for Circuit Court Judge, Family Court Judge or Prosecuting Attorney would he have to resign his position as Mental Hygiene Commissioner. The Commission reviewed Canon 5A(2) of the Code of Judicial Conduct and their opinion was that if he ran for Circuit Court Judge or Family Court Judge he would not have to resign his position as Mental Hygiene Commissioner. However, if he ran for Prosecuting Attorney he would need to resign his position as Mental Hygiene Commissioner.
- A Judge asked the Commission for an opinion on two issues; (1) is a judge disqualified from presiding in a case in which a lawyer is a party when the same lawyer regularly appears in the judge's court as counsel in other unrelated cases; and (2) if the judge is disqualified in presiding in the cases in which the lawyer is a party, is the judge also disqualified in the cases in which the same lawyer appears only as counsel. Canon 3B(1) and Canon 3E(1) of the Code of Judicial Conduct were reviewed for the Commission's opinion that each judge confronted with the situations that the judge described in his correspondence should take such action as that judge feels appropriate under the language and requirements set forth in the relevant sections of Canon 3. Ultimately, the Chief Justice of the Supreme Court of Appeals would determine if recusal is appropriate in those cases where the judge decides to recuse himself/herself from a given case.
- A Judge asked the Commission if his fiancé took a position as legal assistant with a local attorney would he have to recuse himself from any or all cases involving the attorney and his associate. The Commission reviewed Canon 3E(1) for the basis of their opinion the judge should recuse himself in any cases involving the attorney and his associate.
- A Mental Hygiene Commissioner asked the Commission whether she could hold the position as Mental Hygiene Commissioner and Municipal Court Judge for a City. The Commission reviewed the Constitution of West Virginia, Article 8 §7 which states in relevant part: "No justice, judge or magistrate shall hold any other office or accept any appointment or public trust, under this or any other government; nor shall he become a candidate for any elective public office or nomination thereto except a judicial office; . . ."
- A Family Court Judge asked whether he should recuse himself from a domestic violence case because almost ten years ago while serving in the position of Prosecuting Attorney, the respondent in the DV case was the subject of a criminal prosecution in that county. The Commission reviewed Canon 3E(1)(b) of the Code of Judicial Conduct for their opinion. Based upon the language contained in

Canon 3, it was their opinion the judge should disqualify himself in only those cases which were pending while he was Prosecuting Attorney. Any subsequent cases brought after he left the Prosecuting Attorney's Office he could preside over, even if the same individual who had a previous case pending while he was a Prosecuting Attorney may be involved in the subsequent case.

- A Judge asked whether he could participate in an American Bar Association Workshop dealing with various issues related to chemical product liability trials. The workshop sponsored by the American Bar Association would be open to the public and further be attended by plaintiff attorneys, defense attorneys and others. The Commission reviewed Canon 4B of the Code of Judicial Conduct for their answer. Based upon the language contained in Canon 4 and the information in the judge's letter, the judge could attend the workshop and participate as a panel member. He should not, however, discuss any specific pending or impending cases.
- A Mental Hygiene Commissioner asked the Commission whether he could serve as a Commissioner and also serve on the City Council. In addressing this question the Commission reviewed Article 8, §7 of the Constitution of West Virginia which states in relevant part that: "No Justice, judge, or magistrate shall hold any other office or accept any appointment or public trust under this or any other government; nor shall he become a candidate for any elective public office or nomination thereto except a judicial office; . . ."
- A Judge asked whether he could serve on the Board of Directors of the Red Cross. The Commission reviewed Canon 4C(3)(a)(b)(c) to address this opinion. Based upon the language contained in the relevant sections of Canon 4 it is the opinion of the Commission that you could serve on the Board of Directors of the Red Cross. The Commission would ask the judge to be particularly aware of the prohibitions against soliciting funds for the organization or using or permitting the use of the prestige of office for that purpose.
- A part-time Mental Hygiene Commissioner asked whether he could be appointed to criminal cases while serving in his position as Commissioner. The Commission reviewed Canon 6C(2) to address this question. Based on the language contained in the Canon and the commentary to the Canon, it was the opinion of the Commission that he could accept court appointed cases in which he represented criminal defendants. However, he could not represent any individual who had appeared before him in his capacity as Mental Hygiene Commissioner.
- A judge asked whether there would be any impropriety if his Court Bailiff's wife were employed as a secretary in the Prosecuting Attorney's Office. In addressing this matter, the Commission determined that there would be no impropriety in the Court Bailiff's wife working as a secretary in the Prosecuting Attorney's Office. However, the judge should be careful not to discuss any of the cases coming out of that office with his Court Bailiff while she is employed there.
- A Judge asked whether there were any potential ethical problems if his daughter were employed as a magistrate assistant or could any potential issues relating to her

employment status be managed by an administrative order which would prevent the judge from being involved in any issues related to her employment. The Commission reviewed Canon 3C(4) regarding this matter. Based upon the language contained in the Code of Judicial Conduct there does not appear to be a conflict on the judge's part if his daughter were to become a magistrate assistant. The judge should take care to observe those safeguards which he had set forth in his letter in the event that a situation involving his daughter arose while he was chief circuit judge and responsible for the administration of the magistrate court.

- A Magistrate asked the Commission if she could serve on a FEMA Board indicating that if she became a member she would review reports compiled by the North Central Office which would show where FEMA spends its monies and if they are following federal rules and regulations. The Commission reviewed Canon 4A(1)(2)(3) and Canon 4B(3) for their opinion. After reviewing the relevant sections of Canon 4 it was their opinion that the magistrate should not serve on the FEMA Board.
- A Magistrate asked the Commission if she could hire her son-in-law in the position of magistrate assistant when your present assistant retires. The Commission reviewed Canon 3C(4) for their opinion. The Commission stated that after reviewing the Canon and reviewing the definition of nepotism the magistrate should not employ her son-in-law as her magistrate assistant.
- A Magistrate asked the Commission if she could participate in an educational video sponsored by the local police department on underage drinking. The Commission addressed this request by reviewing Canon 4B. It was their opinion the magistrate could engage in the activities she described in her correspondence since it would be an effort on her part to educate the public about the legal system and the administration of justice.
- A Judge asked the Commission if he could write a letter of good character to a judge in another state who will be imposing sentence on a friend involving a traffic death as the result of an automobile collision. The Commission reviewed Canon 2B and the Canon's commentary and their opinion was that unless the judge has a formal request seeking the type of information that he mentioned in his letter, the Canon would prevent him from initiating the communication of this information to the sentencing judge.
- A Judge asked the Commission the following: (1) whether it is violation of the Canons for a judge or a member of the judge's staff to speak with an attorney in a case ex parte in order to provide the attorney with a date for a hearing (without discussing any merits of the motion other than how long the party would need for the hearing; (2) whether it is a violation for a judge or the judge's staff to contact an attorney or the attorney's staff member ex parte to advise them that a hearing has been cancelled or continued; and (3) whether it is a violation for a judge or a member of the judge's staff to make an ex parte inquiry with an attorney to a case as to whether mediation took place and whether the matter was resolved or not.

The Commission reviewed Canon 3B(7)(a)(i)(ii)(b)(c)(d) and (e). It was their opinion that the language contained in the Canon is specific in addressing the three issues which the judge had raised.

- A judge asked the Commission whether he could appear before or inform the Legislature of the importance of County Visitation Centers. The Centers provide safe places for parents to have monitored visitation with their children. The Commission reviewed Canon 4A(1)(2)(3), Canon 4C(1) and (3). It was their opinion that the judge could inform the Legislature about the nature and importance of the Centers but it would not be appropriate for the judge to solicit funding for the Centers purpose.

STATISTICS

On January 1, 2007, there were 32 complaints which remained pending before the Judicial Investigation Commission. During 2007, 196 new complaints were received for a total of 228 to be considered by the Commission. Of these 228 complaints considered, 33 required formal investigations. One hundred eight-seven 187 were dismissed when no probable cause was found; it was determined that the Commission had no jurisdiction in 7 complaints; and there were no admonishments. The Commission sent 1 complaint to the Judicial Hearing Board. A synopsis of the complaint sent to the Judicial Hearing Board is as follows:

Complaint No. 28-2007 – This complaint alleged that Magistrate Alvie Qualls, Magistrate for Cabell County violated Canon 1, Canon 2A, Canon 3A and Canon 3B(4)(5) of the code Judicial Conduct. The complaint alleged that the respondent made sexually harassing comments to his assistant. The respondent was accused of demonstrating by word and action a pattern and practice of making sexually harassing comments, offensive comments about female body parts, comments suggesting sexual activity and stories about his past sexual encounters. He was further accused of making these comments and actions to two of his former assistants and to other female employees within the courthouse. The matter was pending before the Judicial Hearing Board at the end of 2007.

On December 31, 2007, there were no pending reports from Judicial Committee on Assistance and Intervention; (1) complaint filed with the Judicial Hearing Board; (8) complaints were pending completion of ordered investigations; (14) complaints were pending waiting requested responses from the judicial officers; no complaints withdrawn; (10) complaints had been received too late for the last meeting in 2007 and one extraordinary proceeding was pending.

Respectfully submitted,
JUDICIAL INVESTIGATION COMMISSION

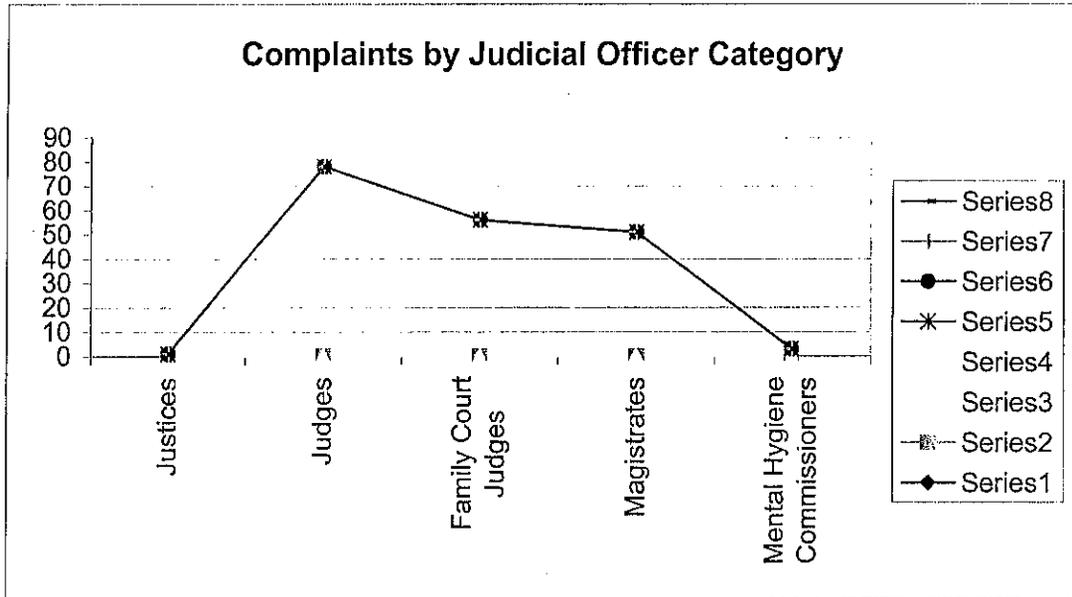
By:

A handwritten signature in black ink, appearing to read "Fred L. Fox, II". The signature is stylized with a large initial "F" and "L" and a distinct "II" at the end.

Judge Fred L. Fox, II, Chairperson

Complaints by Judicial Officer Category

Justices	1
Judges	78
Family Court Judges	56
Magistrates	51
Mental Hygiene Commissioners	3



Complaints Received in the Last Five Years

FY 2003	234
FY 2004	258
FY 2005	253
FY 2006	192
FY 2007	196

