

JUDICIAL INVESTIGATION COMMISSION

ANNUAL REPORT - 2008



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, 2008, through December 31, 2008.

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 of 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 this 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 substitute 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 "no 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 that "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 [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 court 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 2008 in the Judicial Investigation Commission Conference Room, 910 Quarrier Street, Charleston, West Virginia, on February 1, March 14, May 30, September 5, and November 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.¹

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.

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 shall be privileged in any action for defamation. All members of the Commission, the Judicial

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 2008 there were fourteen (14) new fatalities referred to the Commission for investigation. Six (6) reports from 2007 were completed along with five (5) 2008 reports. Three (3) Fatality Review Team meetings were held in 2008.

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 is 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 2008 there was one (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 Alvie Qualls, Magistrate for Cabell County

(Complaint No. 27-2008, Supreme Court of Appeals No. 33897) – On March 17, 2008, the Administrative Director of the Courts filed a complaint against Magistrate Alvie Qualls, Magistrate for Cabell County alleging that he was unable to perform his official duties. The complaint had a memorandum in support of the complaint attached to it which stated in a letter dated February 22, 2008, that a physician described the condition of Magistrate Qualls. The doctor stated that he had severe congestive heart failure, had a stroke in the past and was scheduled to go a rehabilitation hospital. It stated that he had severe weakness and that there was a question concerning his mental capacity. After the complaint was filed an immediate investigation of the matters alleged was begun and a

report by Judicial Disciplinary Counsel was filed with the Chief Justice of the Supreme Court of Appeals of West Virginia. On March 24, 2008, the Court entered an order suspending the Respondent with pay and prohibiting him from hearing any further civil or criminal matters or performing any other judicial function during the pendency of the matter.

This matter was consolidated with Complaint No. 28-2007 (Supreme Court of Appeals No. 33515) for a hearing before the Judicial Hearing Board on February 25, 2008. During the hearing evidence was presented concerning the charges and certain exhibits were admitted into evidence. The Board filed its Recommended Findings of Fact, Conclusions of Law, and Proposed disposition with the Supreme Court of Appeals on March 10, 2008.

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, but shall be admissible in any subsequent disciplinary proceeding involving the judge who made the request. During 2008 there were fourteen (14) issues raised in advisory opinion requests, and a synopsis of the Commission's opinion on each follows.

- A family court judge who filed her candidacy for circuit court judge asked the Commission whether she should voluntarily recuse herself after disclosing that an attorney who frequently practice before her was now serving as her campaign manager or should the matter be referred to the Supreme Court of Appeals of West Virginia for a decision. The Commission reviewed Canon 3E(1) of the Code of Judicial Conduct which requires a judge to disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification even if the judge believes that no real basis for disqualification exists. The Commission felt that if one of the parties does object to the judge presiding over a case involving the campaign manager the procedure governing recusals in other cases pending in the family court should be followed. The Commission also referred Tennant v. Marion Health Care Foundation, Inc., 194 W.Va. 97, 459 S.E.2d 374 (1995); JIC Advisory Opinion 12/13/95 and JIC Advisory Opinion 4/1/03 to the judge for review.
- A magistrate judge asked for an advisory opinion on several issues concerning fundraising by a judicial officer or candidate for judicial office: (1) can a judicial officer be a part of a nonprofit organization or a member of a committee in a nonprofit organization that routinely holds fundraisers and be a part of the planning, scheduling, setting up of those fundraisers; (2) could he hold such

position if he had input about how the funds were to be spent; (3) could he serve meals at dinners or sell raffle tickets, be a master of ceremonies at a fundraising event, or if he could participate publicly, in any way, when an organization that he belonged to is conducting a fundraising event. The Commission reviewed Canon 4C(3)(a)(b) and Canon 5C(2) of the Code of Judicial Conduct. The relevant Canons would prohibit the judicial officer from serving in an organization that routinely holds fundraisers or be a part of the planning schedule and setting up or conducting fundraisers. They also prohibit the judicial officer from serving meals at dinners or selling raffle tickets which attempt to raise funds. The judicial officer may not be a master of ceremonies at fundraising events or be the speaker or guest of honor at such an event but he may attend the event.

- A judicial candidate for judge asked for an advisory opinion concerning retaining his interest in a limited liability corporation to own and manage residential and commercial real estate. The Commission reviewed Canon 4D(3)(a)(b) of the Code of Judicial Conduct. Based on the language contained in the relevant section of Canon 4 it was the opinion of the Commission that while the candidate could maintain his interest in the LLC it would not be appropriate or proper for him to maintain that interest if he were successful in the campaign and became a judge.
- A judge asked whether it is permissible for a judge to accept remuneration or an honorarium for officiating at weddings when those weddings take place on weekends or after work hours. Also he asked whether there was a limit on the amount or any guideline for the amount that a judge could accept for the service. The Commission reviewed Canon 4D(5)(a)-(h) of the Code of Judicial Conduct. The Commission stated that those sections of Canon 4 do not seem to provide a permissible way for a judge to accept a remuneration or honorarium for officiating at weddings, even those that take place on weekends or after work hours. Therefore, the Commission suggested that a judge should not accept remuneration for these services.
- A judge asked whether he could preside in The Associated Press v. Steven D. Canterbury, Administrator of the West Virginia Supreme Court of Appeals. The Commission reviewed Canon 3E of the Code of Judicial Conduct to address this request. It was the opinion of the Commission that the judge is not disqualified from sitting on this matter and could do so without violating any of the Canons of the Code of Judicial Conduct.
- A judge asked whether she should continue to disclose her friendship with her campaign manager who appears before her in her courtroom. Also, what was the appropriate length of time for the disclosure to last. The Commission reviewed Canon 3E(1) of the Code of Judicial Conduct for their opinion. The Commission felt that she should disclose the social relationship that the judge and her husband have with the attorney who practices in front of her. The disclosure should be ongoing. The attorneys and/or parties in the action would

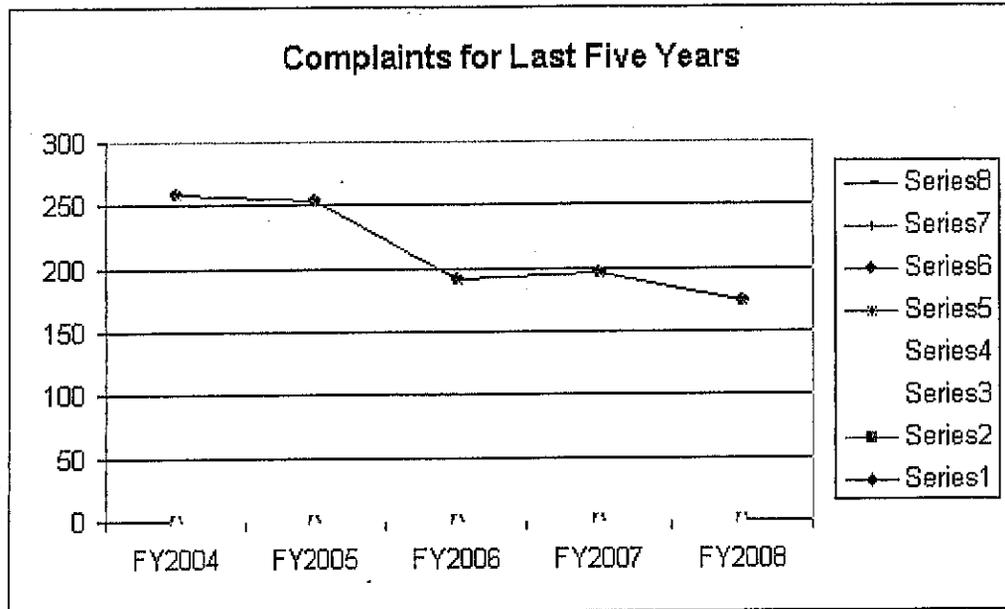
have an opportunity based upon the disclosure to move for the judge's recusal. The Commission further felt that any situation in which the judge would have a personal bias or prejudice because of the social relationship would require her recusal so that a special judge could be assigned to here that particular case.

- A judge asked whether his newly hired law clerk could continue her term as a member of the county school board. The Commission reviewed the request and referred the judge to the Supreme Court of Appeals Administrative Office regarding this matter.
- A mental hygiene commissioner asked the Commission whether he could continue being a Mental Hygiene Commissioner if he took a position of Probation Officer. The Commission reviewed the request and referred the Mental Hygiene Commissioner to the Supreme Court of Appeals Administrative Office to review this matter.
- A Mental Hygiene Commissioner asked the Commission for an advisory opinion regarding conflict with his private practice association of a part-time prosecutor and his duties as a Mental Hygiene Commissioner. The Commission reviewed Canon 3E(1)(b) concerning this matter. It was the opinion of the Commission that the Mental Hygiene Commissioner could not continue his association with the part-time Prosecuting Attorney. Either he or the part-time prosecutor could resign the positions and keep the legal association intact or they could continue in their positions as Mental Hygiene Commissioner and part-time Prosecuting Attorney and sever the legal association.
- A Magistrate Candidate asked the Commission whether he could volunteer at the local volunteer fire department monthly fundraiser breakfast doing odd jobs such as cleaning tables, serving coffee, washing dishes, etc. Also, he wanted to know if he could be a member of the local Chamber of Commerce. The Commission reviewed Canon 4C(3)(b) of the Code of Judicial Conduct for their opinion. The Commission concluded that the Magistrate Candidate could serve as a volunteer at the monthly breakfasts as long as he was not directly involved in any of the fundraising. However, the Commission felt that membership in the local Chamber of Commerce would not be permitted because it could be construed as a civic organization conducted for the economic or political advantage of its members.
- A judge asked the Commission if he could donate leftover campaign money he had received to the county or state Democratic Executive Committee. The Commission reviewed Canon 5C(2) of the Code of Judicial Conduct. It was their opinion that it would not be permissible to donate leftover campaign money to the county or state Democratic Executive Committee.
- A Magistrate appointed by the Chief Judge to fill an unexpired term asked the Commission if he could hire his niece as his magistrate assistant. The Commission reviewed Canon 3C(4) of the Code of Judicial Conduct. It was their opinion that he should not employ his niece as his assistant. Such

employment could constitute a violation of the prohibition against nepotism as set forth in the Canon and at a minimum create an appearance that favoritism was involved in the selection.

- A new Circuit Judge Elect asked whether he could remain in a federal case for the sole purpose of winding it down and transferring it to a new counsel after January 1, 2009. He also asked whether he could prepare a fee affidavit after January 2009 to document legal work and fees earned prior to December 31, 2008. The Commission reviewed Canon 4G of the Code of Judicial Conduct. It was their opinion the Judge Elect should line up other counsel and otherwise remove himself from the case entirely prior to January 1, 2009. It was the opinion of the Commission that he could prepare fee petitions and other affidavits to support the work he had done prior to December 31, 2008, so that he could be compensated for the work he engaged in prior to that date. The Judge Elect could prepare these petitions and other support documents after January 1, 2009.
- A Magistrate asked whether she could be a trustee at the local First Baptist Church overseeing such duties as making sure insurance coverage was current on the facility, overseeing the facilities, determining who could use the church, etc. The Commission reviewed Canon 4C(3)(a)(b)(c) of the Code of Judicial Conduct for their opinion. Based upon the language contained in Canon 4, the Commission advised the Magistrate that she could serve as trustee of her church. However, the Commission advised that she should not participate in any fundraising activities for the church.

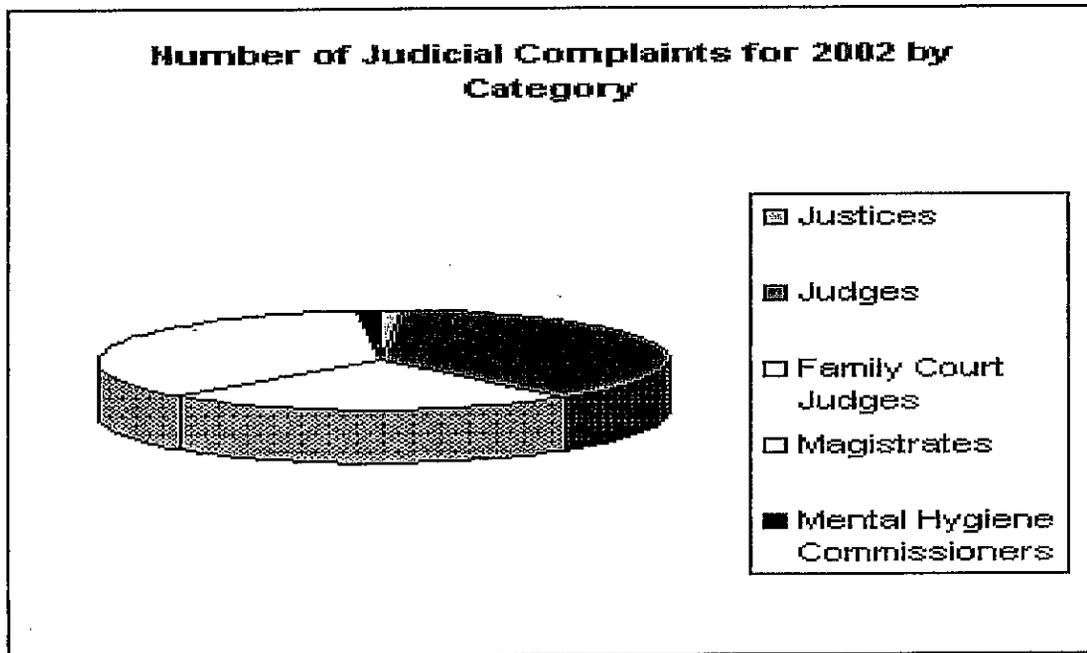
Complaints for Last Five Years



FY2004	258
FY2005	253
FY2006	192
FY2007	196
FY2008	174

Number of Judicial Complaints

Justices	4
Judges	75
Family Court Judges	49
Magistrates	44
Mental Hygiene Commissioners	2



STATISTICS

On January 1, 2008, there were 32 complaints which remained pending before the Judicial Investigation Commission. During 2008, 174 new complaints were received for a total of 206 to be considered by the Commission. Of these 206 complaints considered, thirty-one 31 required formal investigations. One hundred and thirty-two 132 were dismissed when no probable cause was found; it was determined that the Commission had no jurisdiction in seven 7 complaints; 0 complaints were withdrawn by the complainants with the approval of the Commission; and three 3 admonishments was issued. A synopsis of each of these admonishments follows:

In the Matter of: C. Darren Tallman, Family Court Judge: Complaint No. 166-2007

A judicial officer was admonished for violation of Canon 1, Canon 2A and Canon 3B of the Code of Judicial Conduct. Upon initiation of the complaint against the judicial officer the investigation revealed that during a hearing alleged to have been on June 5, 2007 by the complainant, the judicial officer made a comment that was not appropriate. The judicial officer stated to the complainant who was a party in the hearing that he was aware that the complainant had made a complaint against the guardian ad litem in the case and said words to the effect that "If anything comes of this complaint I will hold it against you." The complaint and the investigation were reviewed by the Judicial Investigation Commission on May 30, 2008, and it was determined that probable cause existed to believe that the judicial officer had violated Canon 1, Canon 2A, Canon 3B(4) of the Code of Judicial Conduct. It was further determined that formal discipline was not appropriate under the circumstances and that pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure a written admonishment would be given to the judicial officer.

In the Matter of Diane Thomas, Magistrate: Complaint No. 49-2008 - A judicial officer was admonished for a violation of Canon 1 and Canon 2B of the Code of Judicial Conduct. Upon initiation of the complaint against the judicial officer the investigation revealed that in a letter dated March 7, 2008 to the County Board Of Education the judicial officer related certain information relevant to her grandson's safety and well being at his school. The letter complained of certain specific instances involving a student at the school which the judicial officer felt upset her grandchild and other students at the facility. The letter further stated that "[i]n my court I and the other magistrates are required to act according to the West Virginia Code. A reading of your board's policy states that it is the responsibility of the county school system to provide a safe learning environment for all students. I ask that you fulfill this duty as it pertains to [name of grandchild] before someone's child or grandchild is seriously injured and the school system subjects itself to court action as a result." A review of the complaint and the investigation was made by the Judicial Investigation Commission on May 30, 2008, and it was determined that there was probable cause to believe that the judicial officer violated Canon 1 and Canon 2B of the Code of Judicial Conduct. It was further determined that formal discipline was not appropriate under the circumstances and that pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure a written admonishment was given to the judicial officer.

In the Matter of Janet Sheehan, Candidate for Magistrate: Complaint No. 58-2008

A judicial officer was admonished for violation of Canon 5C(2) of the Code of Judicial Conduct. Upon initiation of the complaint against the judicial candidate the investigation revealed that during a campaign for judicial office the candidate sent a letter dated April 28, 2008, in which the judicial officer personally solicited campaign contributions. The complaint was reviewed by the Judicial Investigation Commission on

May 30, 2008, and it was determined that there was probable cause to believe that the judicial candidate violated Canon 5C(2) of the Code of Judicial Conduct. The Commission further determined that formal discipline was not appropriate under the circumstances and issued a written admonishment to the judicial candidate.

The Commission sent two 2 complaints to the Judicial Hearing Board. A synopsis of the complaints sent to the Judicial Hearing Board is as follows:

In the Matter of Alvie Qualls, Magistrate for Cabell County (Supreme Court of Appeals of West Virginia Nos. 33515 & 33897) – A hearing was set before the Judicial Hearing Board on February 25, 2008, on two complaints filed against Magistrate Qualls. On August 14, 2007, the Judicial Investigation Commission filed formal charges against Magistrate Qualls alleging he violated Canon 1, Canon 2A and Canon 3A and 3B(4)(5) of the Code of Judicial Conduct. It was alleged that during a period of time in 2007 he made sexually harassing comments to his assistant. It was alleged that he had demonstrated by word and action a pattern and practice of making sexual harassing comments and offensive comments about female body parts. Comments suggesting sexual activity and stories about his past sexual encounters. It was alleged that he made these comments and actions to two of his former assistants and two other female employees within the courthouse. This complaint was consolidated with a complaint filed against Magistrate Qualls alleging that he was unable to perform his official duties because of attendant physical and/or mental incapacity. The Board filed its Recommended Findings of Fact, Conclusions of Law and Proposed Disposition with the Supreme Court on March 10, 2008. The Board found unanimously, among other things, that Magistrate Qualls deliberately made lewd, reprehensible and outrageous, grossly inappropriate sexually demeaning comments to the female witnesses presented at the hearing as witnesses for the Commission. The Board found that Mr. Qualls who was 78-years-old had attendant physical and mental capacity problems. The Board also found the Respondent eligible to receive retirement benefits. On March 25, 2008, Magistrate Qualls through his counsel filed a written objection to the Recommended Disposition made by the Judicial Hearing Board. The matter was set for briefs and argument before the Supreme Court of Appeals. Shortly after these cases were argued before the Court, Magistrate Qualls died. In an order entered on July 1, 2008, the Supreme Court dismissed these matters.

In the Matter of Janet Sheehan, Candidate for Magistrate: Complaint No. 58-2008 (Supreme Court of Appeals of West Virginia No. 34258) – On May 2, 2008, a complaint was filed against Janet Sheehan, Candidate for Magistrate of Ohio County alleging that she violated Canon 5C(2) of the Code of Judicial Conduct. She filed a response to the complaint in a letter dated May 15, 2008, which had attached to it two attachments. A review of the complaint was done by the Judicial Investigation Commission and on June 10, 2008, the Commission issued an admonishment to Ms. Sheehan. She filed a notice of objection to the admonishment and findings of the Commission in a pleading received on July 1, 2008. Pursuant to the Rules of Judicial Disciplinary Procedure formal charges were filed against her on July 17, 2008, alleging

that she violated Canon 5C(2) of the Code of Judicial Conduct. She filed an answer denying any violation of the Code and filed a motion for judgment on the pleadings. This matter was submitted to the Judicial Hearing Board upon the stipulations of facts and entered into by the parties and legal memoranda filed by them. The matter came before the Judicial Hearing Board on October 10, 2008, at which time the parties argued their respective positions. In an order dated October 27, 2008, the Judicial Hearing Board made recommended findings of fact, conclusions of law and a recommended disposition. The Hearing Board concluded among other things that the evidence was clear and convincing that Ms. Sheehan by the use of a solicitation letter during her campaign personally solicited money to finance her campaign for the Office of Magistrate in Ohio County in violation of Canon 5C(2) of the West Virginia Code of Judicial Conduct. The Judicial Hearing Board unanimously recommended that Ms. Sheehan be admonished. In an order entered on January 22, 2009, the Supreme Court of Appeals adopted the recommendation of the Judicial Hearing Board and ordered that Janet Sheehan be admonished for violating Canon 5C(2) of the West Virginia Code of Judicial Conduct.

Respectfully submitted,
JUDICIAL INVESTIGATION COMMISSION

By:



Judge Fred L. Fox, II, Chairperson