

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**IN THE MATTER OF:**

**JAYMIE GODWIN WILFONG,  
JUDGE, 20<sup>TH</sup> JUDICIAL CIRCUIT**

**COMPLAINT NOS. 142-2013, 143-2013;  
144-2013, 145-2013, and 155-2013**

**SUPREME COURT NO. 14-0379**

**ORDER**

This matter came on for hearing on August 11, 2014, before the Judicial Hearing Board.<sup>1</sup>

At the hearing, the parties submitted Stipulations which they jointly presented for the Board's consideration; the parties were allowed to present whatever evidence and/or argument they desired in support of the Stipulations and otherwise; the Judicial Disciplinary Counsel presented evidence and argument in support of the Statement of Charges; the Respondent presented evidence and argument through her attorneys in opposition to the Statement of Charges.

Thereafter, the Board met and deliberated, and upon consideration of the Stipulations; the evidence and argument of counsel; the Code of Judicial Conduct and Code of Judicial Disciplinary Procedure; the decisions by the Supreme Court of Appeals interpreting the Code and the Rules, makes the following findings of fact and conclusions of law:

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<sup>1</sup> The Honorable Alan D. Moats, Judge of the Nineteenth Judicial Circuit, disqualified himself and did not participate. All of the other members of the Board fully participated and attended the hearing.

### **Findings of Fact**

1. This matter involves five separate complaints against Judge Wilfong.
2. *First*, on or about October 14, 2013, Judge Wilfong self-reported to the Judicial Investigation Commission that during the immediate past two years she had been involved in a romantic and sexual relationship with William Travis Carter, the Director of the North Central Community Corrections Program, until his negotiated resignation on or about December 5, 2013, stating in her self-report, designated ID No. 142-2013, that her relationship with Mr. Carter had terminated.
3. *Second*, on or about October 15, 2013, Mary Catherine Wendekier, Judge Wilfong's law clerk and an employee of the Supreme Court of Appeals, filed a complaint, designated ID No. 143-2013, in which she reported that (a) Judge Wilfong had confided to Ms. Wendekier in January 2012 that Judge Wilfong had been in an "inappropriate" relationship with Mr. Carter, but that the relationship had terminated; (b) Mr. Wendekier later discovered, contrary to Judge Wilfong's representations, that the relationship between Judge Wilfong and Mr. Carter had continued beyond January 2012; and (c) Ms. Wendekier believed she was obligated to file a complaint as the relationship between Judge Wilfong and Mr. Carter potentially implicated criminal proceedings in which Judge Wilfong was pending.
4. *Third*, on or about October 16, 2013, Michael W. Parker, Prosecuting Attorney for Randolph County, filed a complaint, designated ID No. 144-2013, based upon his information and belief that Judge Wilfong had or was still in a romantic relationship with Mr. Carter that (a) created a potential conflict regarding sentencing offenders to the North Central Community Corrections Program, for which Mr. Carter served as Director and as a witness in hearings before

Judge Wilfong; (b) created a potential conflict regarding the adjudication of compliance by offenders sentenced to the Program with its terms and conditions where Mr. Carter served as Director and as a witness in hearings before Judge Wilfong; and (c) created problems with respect to the public's perception of the integrity of the judicial process as the inappropriate relationship between Judge Wilfong and Mr. Carter had become known.

5. *Fourth*, on or about October 21, 2013, Christopher W. Cooper, a member of the West Virginia State Bar who practices criminal law in Randolph County, filed a complaint, designated ID No. 145-2013, (a) stating his belief that Judge Wilfong's relationship with Mr. Carter "has placed the entire Randolph County Criminal Bar at peril;" (b) specifically addressing two criminal matters in which he served as defense counsel and Mr. Carter was a primary witness in hearings conducted by Judge Wilfong; and (c) explaining that because of the relationship between Judge Wilfong and Mr. Carter, he believed he had an obligation to file a complaint.

6. *Finally*, on or about October 22, 2013, R. Michael Mullins, Heather Weese, Raymond LaMora, and David Wilmoth, members of the West Virginia State Bar in Randolph County and of the Board of the North Central Community Corrections Program filed a complaint, designated ID No. 155-2013, stating that the relationship between Judge Wilfong and Mr. Carter possibly created a conflict of interest and may have violated the Code of Judicial Conduct.

7. After investigating the five complaints, the Judicial Investigation Commission filed a Statement of Charges with the Supreme Court of Appeals on April 23, 2014, charging Judge Wilfong with two Counts of violating Canon 1 (Integrity of the Judiciary); Canon 2A

(Public Confidence in the Judiciary); Canon 2B (Improper Influence); Canon 3B(5) (Bias and Adjudicative Responsibilities); Canon 3C(1) and (2) (Diligent Discharge of Duties); Canon 3E(1) (Disqualification); and Canon 4A (Extrajudicial Activities) of the Code of Judicial Conduct.

8. On April 28, 2014, Judge Wilfong filed her Response with the Supreme Court of Appeals, admitting many of the factual allegations of the Statement of Charges, but denying any violation of the Code of Judicial Conduct.

9. At the hearing, the parties filed general factual stipulations, which were admitted into evidence as Joint Exhibit No. 1, as follows:

1. At all times during the matters asserted herein, Jaymie Godwin Wilfong (hereinafter "Respondent") was a duly elected Circuit Court Judge serving the 20<sup>th</sup> Judicial Circuit of Randolph County, West Virginia. Respondent is the only Circuit Court Judge in Randolph County, West Virginia, and Randolph County is the sole county in the 20<sup>th</sup> Judicial Circuit.
2. Prior to her position on the Circuit Court bench, Respondent served as the Family Court Judge from January 1, 2003, until December 31, 2008.
3. Respondent was sworn in on December 31, 2008, and publicly took the position of Circuit Court Judge on January 1, 2009. Her current term of office ends in 2016.
4. By Order entered November 22, 2011, pursuant to the Rules of Judicial Disciplinary Procedure, Respondent was appointed by the West Virginia Supreme Court of Appeals (hereinafter referred to as "Supreme Court") to the Judicial Hearing Board (hereinafter referred to as "JHB"). Respondent's appointment on the JUB commenced January 1, 2012, and concluded upon her voluntary resignation on April 23, 2014.
5. At all times during the matters asserted herein, William Travis Carter (hereinafter "Carter") was the Director of the North Central Community Corrections program (hereinafter referred to as "NCCC") until his negotiated resignation on or about December 5, 2013.

6. On or about October 14, 2013, Respondent self-reported to the Judicial Investigation Commission (hereinafter referred to as "JIC") stating that during the past two years, she had been involved in a romantic and sexual relationship with Carter. The relationship was intermittent and Respondent did not engage in any sexual acts for the last 14 months of the relationship. Respondent stated in the October 14, 2013 self-report that the relationship with Carter was terminated.
7. On or about October 16, 2013, Complainant Mary Wendekier (I.D. No. 143-2013) who is Respondent's law clerk, a court employee, and a member of the West Virginia State Bar, filed a judicial ethics complaint and stated that in or about January 2012, Respondent confided to her that she had been in an "inappropriate relationship" with Carter.
8. Respondent apologized to Complainant Wendekier and advised her that the relationship had ended and was not ongoing.
9. Complainant Wendekier filed the judicial ethics complaint when it came to her attention that the relationship between Respondent and Carter continued beyond January 2012, and she stated in her complaint she was duty bound to file the ethics complaint as she believed that the relationship potentially affected criminal matters pending before Respondent that involve NCCC.
10. On or about October 16, 2013, Complainant Michael Parker (I.D. No. 144-2013), the Prosecuting Attorney for Randolph County and member of the West Virginia State Bar, filed a judicial ethics complaint and stated upon information and belief, that Respondent is or had been involved in a romantic relationship with Carter.
11. Complainant Parker stated that Respondent serves on the board of directors for NCCC. Complainant Parker further stated Respondent sentences criminal defendants to NCCC.
12. Complainant Parker stated that Carter and/or his employees appear before Respondent to give sworn testimony and to make recommendations to Respondent whether defendants are suitable candidates for participation in the program and whether defendants should be restored to the program or terminated following a violation of terms and conditions of the program.

13. Complainant Parker stated that he believed the recent revelation and widespread community knowledge of the relationship between Respondent and Carter has had a negative impact on the public's perception of the judicial process, and its integrity.
14. After the filing of the formal statement of charges, on or about May 1, 2014, Complainant Parker filed a petition to disqualify Respondent from presiding over any and all cases handled by the Randolph County Prosecuting Attorney's Office and requested the appointment of a special judge.
15. Respondent denied Complainant Parker's petition and by letter dated May 1, 2014, Respondent advised the Chief Justice of her decision to deny the petition and set forth her reasoning for the same, including that Respondent had presided over cases involving the Prosecuting Attorney for the previous 7 months without objection.
16. By Order entered May 1, 2014, in accordance with Trial Court Rule 17.01(c), the Chief Justice determined that the matters set forth in the petition to disqualify were sufficient to warrant disqualification to avoid even the appearance of impropriety. The Chief Justice appointed two senior status judges to hear the cases as outlined in the petition.<sup>2</sup>
17. On or about October 21, 2013, Complainant Christopher Cooper (J.D. No.145-2013), a member of the West Virginia State Bar, who practices criminal law in Randolph County, West Virginia, filed a judicial ethics complaint.
18. Complainant Cooper referenced two specific criminal matters wherein he was the counsel for the defense and that Carter would be the primary witness before Respondent. Complainant felt duty bound to file the judicial ethics complaint and to file appropriate motions before the Court regarding disqualification and/or recusal.
19. Complainant Cooper stated it was routine for Judge Wilfong to place accused persons on pre-conviction community corrections as

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<sup>2</sup> The Board notes that Chief Justice's order states, "the Honorable Thomas W. Steptoe, Jr. and the Honorable Thomas H. Keadle, Senior Status Judges, be, and they hereby are, recalled . . . for the purpose of presiding over any and all cases prosecuted or otherwise handled by the Randolph County Prosecuting Attorney's Office, with said assignment to continue until the Chief Justice deems the assignment is no longer needed."

a term and condition of bond, and a primary witness for that issue would be Carter.

20. Complainant Cooper stated that he believed that Respondent's "relationship [with Carter] has placed the entire Randolph County Criminal Bar at peril."
21. On or about October 22, 2013, Complainants Mike Mullens, Esquire, Heather Weese, Esquire, Raymond LaMora, Esquire, and David Wilmoth, Esquire (I.D. No. 155- 2013), all active members of the West Virginia State Bar who serve on the Board of Directors for the NCCC, filed judicial ethics complaints because Complainants believed that Respondent's relationship with Carter possibly created a conflict of interest and may have violated provisions of the Code of Judicial Conduct.
22. After the filing of the formal statement of charges, on or about May 1, 2014, Complainant Weese filed a petition to disqualify Respondent on her pending cases. Complainant Mullins and Complainant LaMora filed similar petitions to disqualify Respondent on May 2, 2014.
23. Attorney Bader Giggenbach and Attorney Isner also filed petitions to disqualify Respondent on May 5, 2014.
24. Respondent granted the additional petitions to disqualify by Orders entered May 5, 2014.
25. Pursuant to W. Va. Code § 62-11C-6(e)(1), Respondent serves as a non-voting Circuit Court Judge member of the NCCC Board. Pursuant to W. Va. Code § 62-11C-7(a), Respondent is able to set the participation fee amount and may require the payment of a participation fee to participate in community corrections programs, like NCCC. Pursuant to W.Va. Code § 62-11C-7(b) all fees are to be paid to the NCCC Board. Respondent has not altered the participation fee.
26. In or about 2010, Carter approached Respondent about concerns he had regarding his belief that his wife was having an extramarital affair and how a divorce may affect his relationship with his young child. Respondent stated that she encouraged Carter to reconcile with his wife. Respondent stated over the course of the next year, a close personal relationship developed between Respondent and Carter.

27. A romantic and ultimately sexual relationship with Carter began in or about late October 2011.
28. On or about April 11, 2013, the Supreme Court Administrator contacted Respondent and raised concerns about the ethical implications of the relationship with Carter and her judicial office.
29. During a subsequent call to the Administrator, Respondent later advised the Supreme Court Administrator the relationship with Carter terminated in or about April 2013, but it was after the call from the Supreme Court Administrator.
30. Respondent and Carter again commenced their relationship in or about May 2013.
31. The intermittent relationship with Carter continued until the time of her self-report in October 2013.
32. Until she self-reported her actions in October 2013, Respondent did not seek guidance from the JIC about the ethical implications of this relationship with Carter.<sup>3</sup>
33. Until October 2013, Respondent regularly attended the NCCC Board meetings and participated in discussions regarding Board issues, including, but not limited to: operational budgets for Carter's office and Carter's salary.
34. Despite not attending the board meetings since her disclosure of the relationship with Carter in October 2013, Respondent has not resigned her *ex officio* position on the NCCC Board.
35. However, after the Statement of Charges was filed Respondent has attended one board meeting of the NCCC on May 8, 2014.

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<sup>3</sup> There were three occasions that Respondent contacted the JIC counsel for informal ethics advice. Each of the calls involved questions of disqualification/recusal. The calls pertained to a staff member's son working at the prosecutor's office; a staff member dating a law enforcement officer/home confinement officer; and whether she could interview a family friend for a position in the court system. The calls occurred in or about January through March 2012. On each occasion, the informal advice given was that it appeared that the relationship at least needed to be disclosed. Respondent was also informed that an informal opinion carried no weight in any disciplinary proceeding and that she should seek a formal opinion from the JIC.

36. From October 2011 until October 2013, Carter and/or his subordinate staff from NCCC appeared before Respondent in approximately forty-six (46) criminal matters to offer sworn testimony and/or unsworn testimony to Respondent to enable her to evaluate possible alternative sentencing at NCCC or to evaluate whether participants have violated terms of placement at NCCC. There were two occasions between August 1, 2011, through the self report on October 14, 2013, that members of Carter's NCCC staff gave sworn testimony before Respondent.
37. Respondent did not disclose the relationship with Carter on the record to the parties in any of the above-referenced court proceedings.
38. Respondent has been a long time supporter of the Community Corrections Program. She has used the NCCC program before her relationship with Carter, during the relationship with Carter, during the break ups of her relationship with Carter, and after Carter's resignation from the agency.
39. During the course of the relationship with Carter, Respondent disclosed the nature of the relationship with Carter to certain individuals, such as: her long-time judicial secretary and court employee, Tamatha Snodgrass; her law clerk and court employee Mary Catherine Wendekier, Assistant Prosecutor Lori A. Gray; and Attorney Phillip S. Isner.
40. By her actions of carrying on the affair in her judicial chambers and during the course of the business day, Respondent acted in violation of her responsibilities as the immediate supervisor.
41. By her actions of carrying on the affair in her judicial chambers and during the course of the business day, the court employees were placed in a position to explain the circumstances surrounding the appearance of Respondent's relationship with Carter.
42. Respondent enlisted the assistance of Assistant Prosecuting Attorney ("APA") Lori A. Gray, *now Haynes*, a licensed member of the Randolph County Bar, to further her relationship and her sexual contact with Carter by repeatedly requesting the use of and utilizing Gray's personal residence to meet with Carter.
43. Respondent and Attorney Gray's friendship pre-dated Attorney Gray's memberships to the West Virginia State Bar and

Respondent's election to the bench. Respondent and Attorney Gray had worked at another law firm in Elkins, West Virginia.

44. Prior to becoming an assistant prosecutor for Randolph County, West Virginia, Gray practiced criminal and family law before Respondent. Over the course of the relationship, Attorney Gray appeared in Respondent's courtroom and represented criminal defendants on felony matters wherein Carter and his staff were called upon to offer opinions about placement and/or revocation of placement in NCCC.
45. After joining the prosecutor's office, APA Gray was assigned primarily to Magistrate Court in Randolph County, West Virginia. APA Gray utilized Carter's NCCC program as a form of alternative sentencing for defendants.
46. Respondent also enlisted the assistance of Attorney Phillip S. Isner, a licensed member of the Randolph County Bar, who practices law before Respondent, to further her relationship and sexual contact with Carter by requesting the use of and utilizing Isner's garage at his personal residence to meet with Carter on two occasions.
47. Over the course of the relationship, Attorney Isner appeared in Respondent's court room and represented criminal defendants on several felony matters wherein Carter and his staff were called upon to offer opinions about placement and/or revocation of placement in NCCC.
48. During the course of the relationship with Carter, court personnel witnessed Carter entering and exiting Respondent's chambers from a non-public entrance.
49. During the course of the relationship with Carter, at times when Carter and Respondent were in her judicial chambers, it became necessary for court personnel to interrupt Respondent and Carter in order to insist that Respondent continue with the daily court proceedings.
50. Respondent stated that prior to her relationship with Carter and after its termination that her staff impress upon her the need to keep her daily hearing schedule moving forward so as to keep them from falling behind.

51. During the course of the relationship with Carter, Respondent performed sexual acts upon Carter in her judicial chambers between court proceedings. There were no sexual acts after September of 2012.
52. During the course of the relationship with Carter, Respondent assured Carter that she would advise County Commissioner President Michael Taylor that she would stop utilizing NCCC if Carter was no longer its Executive Director. However, there were never any actual discussions between Taylor and Respondent wherein Respondent expressed this sentiment to Taylor.
53. As the relationship with Carter was intermittent, on one occasion court personnel, members of the Bar, and members of the gallery in the courtroom witnessed Respondent crying or otherwise emotionally distraught while presiding over a court proceeding.
54. During the course of the relationship with Carter, Respondent sent sexually explicit e-mails, texts, instant messages and nude photos of herself from her personal cell phone to Carter on his county issued phone and computer.
55. For the last 14 months of the relationship between Carter and Respondent, there were no sexual acts and it was an emotional relationship.
56. The integrity of the judicial system was harmed by Respondent's actions and she acknowledges the same.
57. Respondent's relationship with Carter and the revelations about it have caused harm to the judiciary, in general, because Carter's position as the Director of the NCCC program and Respondent's position as the Circuit Court Judge.

10. In addition to these general factual stipulations, the parties also stipulated as to the testimony of several witnesses, all of which were admitted into evidence as Joint Exhibit No. 2.

11. *First*, the parties stipulated to the following testimony of the Honorable Alan D. Moats, Judge of the Nineteenth Judicial Circuit:

On Saturday, October 12, 2013, Judge Moats received a telephone call from Judge Jamie Wilfong asking to meet that evening. Judge Moats suggested they meet in the Taylor County Courthouse in his Chambers. Thereafter, Judge Wilfong appeared in Judge Moats' Chambers. Judge Moats was Judge Wilfong's Mentor Judge when she came on the bench and it was not unusual for them to have conversations about various matters, both professional and personal.

Judge Wilfong explained to Judge Moats that she was having an affair with Travis Carter and indicated that she intended to self-report these actions to JIC. Judge Moats did not (during this conversation) tell Judge Wilfong that Judge Wilfong should not self-report this issue. Judge Moats did tell Judge Wilfong that she should take her time and be as accurate and succinct as she possibly could in self-reporting to the JIC.

During this conversation, Judge Wilfong had stated that there was a Complaint about her texting while she was on the bench and Judge Moats told her that he also texted while on the bench to his law clerk or his secretary to obtain either files or case cites.

Judge Moats had no further conversations after the October 12, 2013 meeting regarding this matter.

12. *Second*, the parties stipulated to the following testimony of Teresa Tarr, Chief

Disciplinary Counsel for the Judicial Investigation Commission:

Teresa A. Tarr has been a licensed West Virginia attorney for nearly twenty-four (24) years and has been the Chief Judicial Disciplinary Counsel for the Judicial Investigation Commission since November 16, 2011.

On October 10, 2013, Teresa Tarr, Chief Counsel for the Judicial Investigation Commission, was made aware that there were rumors and allegations that Judge Wilfong was having an affair with the Executive Director of NCCC. She contacted the Chair of her Board to inquire if the Board wanted her to initiate an investigation into these allegations. The Board believed that Tarr had no actual knowledge and that because no complaint had been filed that Tarr could not initiate a complaint on her own accord, but the Board directed Tarr to contact Judge Wilfong to advise if such

information were true that she must disclose the same in proceedings involving the NCCC.

On the same date, Tarr contacted Judge Wilfong's office and was advised that Judge Wilfong was not in the office and was at the judicial conference in Charleston, West Virginia. Tarr left a message with Tamatha Snodgrass that requested that Wilfong call her back on Tuesday, October 15, 2013, because Tarr was leaving for a previously planned vacation over the Columbus Day weekend. Tarr then left the office.

Judge Wilfong texted Tarr several times and requested that Tarr call her immediately. Tarr called Judge Wilfong and advised her that the JIC had been made aware of the allegations of the affair with Carter and that if the same were true, she needed to disclose the same in court matters involving the NCCC.

The following morning, October 11, 2013, Judge Wilfong advised Tarr by text message that she intended to "self-report" her actions to the JIC and that she would do so on Tuesday, October 15, 2013. After being advised by text that Wilfong intended to self-report and she had questions about the same, Tarr then conferred with Judge Wilson. Tarr then advised Wilfong that the decision to self-report was up to her, but suggested that she should take some time to consider her actions and act in a prudent, rational manner.

On October 15, 2013, the JIC received a faxed copy of a self-report dated October 14, 2013; a request for an informal opinion regarding the misconduct; and a faxed copy of the complaint of Michael Parker (ID Number 144-13).

13. *Third*, the parties stipulated to the following testimony of R. Mike Mullens; David Wilmoth; Heather Weese; and Raymond LaMora, III, all Randolph County attorneys, as follows:

Each of these Complainants in Complaint No. 155-13 would testify that after October 15, 2013, when they read in the Inter-Mountain Newspaper of the affair between Judge Wilfong and Travis Carter and as Board Members of North Central Community Corrections Board, they decided they needed to report this activity to the JIC. The four individuals believed it was necessary to file a Complaint against Judge Wilfong. Prior to this time, the undersigned's did not have first-hand knowledge that a relationship, other than a

professional one, had been maintained between Mr. Carter and Judge Wilfong.

14. *Fourth*, the parties stipulated to the following testimony of Heidi Hawkins, Randolph County Probation Officer, as follows:

Heidi Hawkins is a Probation Officer, who has been working as a Probation Officer in Randolph County since 2003. At the end of 2011 Judge Wilfong told her that she was having a physical affair with Travis Carter. Judge Wilfong indicated that they were in love and that it was a serious relationship.

Sometime later, at which time is unknown to Heidi Hawkins, but after the conversation she had with Judge Wilfong, Judge Wilfong texted to her that she and Travis Carter were breaking up.

Heidi Hawkins sits on the Board of the NCCC. She has no knowledge that the procedure for the use of the NCCC changed before, during or after the relationship with Travis Carter. Heidi Hawkins has no knowledge that any case was affected by the relationship with Travis Carter.

15. *Fifth*, the parties stipulated to the following testimony of Michael Parker, an Assistant Prosecuting Attorney in Randolph County, as follows:

Michael W. Parker has been a lawyer admitted to practice in the State of West Virginia since 2004. He was a law clerk for Judge Henning for nine (9) months then an Assistant Prosecutor for two (2) years and nine (9) months. Thereafter, he worked for McNeer, Highland, McMunn & Varner for four (4) years. In January of 2012, he was appointed to the position of Prosecuting Attorney of Randolph County. As the Prosecuting Attorney, he is a member of the NCCC Board of Directors. Since January of 2012, he has attended the meetings of the NCCC.

He is personally aware that approximately 40% of the defendants who are indicted on a felony charge in Randolph County, and are given Pretrial Bond Release, are ordered to use the North Central Community Corrections program and are required to report to NCCC on a daily basis, as well as submit to urinalysis. The urinalysis is done on at least a one (1) time a week basis and on

some cases multiple times per week at the discretion of the NCCC. Mr. Parker believes that this practice has been in place before he became the Prosecuting Attorney and has continued since that time. It has not changed during his term as the Prosecuting Attorney.

He is a supporter of the NCCC program because it provides supervision to offenders while on bond and after sentencing it provides services to offenders that they can use to better themselves. He is aware that the defendant must pay Twenty Five Dollars (\$25.00) per month and Ten Dollars (\$10.00) per each urinalysis that is given, and that the money received from the supervision and tests goes directly to the NCCC. He also believes that random drug screening provides for more accountability for offenders who are participating in the NCCC program and, as such, promotes their continued sobriety.

Employees of the NCCC would regularly appear in the courtroom to make recommendations of who would be a suitable candidate for NCCC on a pretrial bond. NCCC employees would also prepare and provide a letter to Mr. Parker upon belief that a participant in the program had violated the supervision requirements. If a revocation was filed and the hearing was contested, the NCCC employee would testify about the violation. If the hearing was uncontested, the NCCC employee would provide an opinion as to whether they would accept the participant back in the program. NCCC employees also would make recommendations of who would benefit from the NCCC after either a guilty plea or final adjudication. This practice has been in place before Judge Wilfong took the bench. Judge Henning, the previous Circuit Court Judge, utilized the same procedure. Mr. Parker is not aware of any case that Travis Carter appeared and testified under oath before Judge Wilfong during his term of office.

Mr. Parker is aware that if a referral was made to the NCCC post-conviction, the defendant was required to pay One Hundred Dollars (\$100.00) per month and Ten Dollars (\$10.00) for each urinalysis that was given, and believes that that has been the fee since the inception of the program. Mr. Parker is aware that the fee that is charged is customary of other programs around the state and is not in any way exorbitant or unreasonable. Mr. Parker does not believe that Judge Wilfong sentenced people to the program in order to facilitate a source of funding for Travis Carter's job. Most

of the money for the program comes from grant funding, not from the payment of these fees.

Mr. Parker does not recall Judge Wilfong ever advocating for a raise for Travis Carter during any meeting of the NCCC, nor does he believe that to be true. As a non-voting member, Judge Wilfong did not control the actions of the Board members who were in fact entitled to vote, but she would participate in the discussions prior to taking a vote.

Mr. Parker is of the opinion that the relationship between Judge Wilfong and Travis Carter did not impact the outcome of any case. However, Mr. Parker does believe that the revelation of the relationship has had a negative impact on the public's perception on the judicial process and its integrity.

In approximately July of 2013, Mr. Parker was involved in a bond hearing with defendant, Cody Harris, where Mr. Carter was to be called as a witness. Prior to giving his testimony, Mr. Carter had asked that he be replaced by his subordinate, Erin Golden, to prevent testimony before Judge Wilfong. Based partly on Erin Golden's testimony, Mr. Harris's bond was violated. Mr. Harris bond should have been violated and Mr. Parker was responsible for asking the Court to revoke the bond because that was his job as the Prosecuting Attorney. The bond revocation was not initiated by Judge Wilfong.

Mr. Parker was handling two (2) cases involving Marc Courtney and Jeremy Scott Davis and both defendants were represented by Attorney Christopher W. Cooper. Parker and Cooper met to discuss the revocation of bond and both agreed that Mr. Carter would not be able to testify because of his relationship with Judge Wilfong. They then agreed to file Complaints against Judge Wilfong. Whereafter, Mr. Parker approached Judge Wilfong and gave her a copy of his Complaint. She then recused herself from the Courtney and Davis case, which he believed was proper.

Mr. Parker filed a Complaint, number 143-13, by facsimile on October 15, 2013, and the same was docketed on October 16, 2013, which Complaint speaks for itself.

16. *Finally*, the parties stipulated to the following testimony of Stephen G. Jory, a Randolph County attorney, as follows:

Steve Jory is a West Virginia licensed attorney for forty-four (44) years. Primarily practicing with the United States Justice Department and thereafter engaged in private practice in Elkins, West Virginia.

In that capacity, he has known Judge Wilfong since she came to Elkins to practice law and when she joined the Judiciary. During the course of this relationship, he has on occasions discussed matters with Judge Wilfong regarding varied subjects and he would consider her a friend.

In that same light, he had a discussion with Judge Wilfong in April of 2013 wherein he discussed with her that he heard rumors that she was having an extramarital relationship with Travis Carter. Mr. Jory would testify that Judge Wilfong told Mr. Jory that Steve Canterbury called and told Judge Wilfong she had to self-report this relationship if it was going to continue. Mr. Jory would testify she agreed and said she had decided to end the affair.

In fact, on April 22, 2013, they had a communication wherein Judge Wilfong indicated to Steve Jory that things were getting back on track, which Mr. Jory believed meant that she had broken off the relationship with Travis Carter. Later, on October 10, 2013, while on a vacation trip to Florida, Mr. Jory had communications with Judge Wilfong wherein Judge Wilfong was asking for Terry Tarr's cell phone number so she could have a discussion with the counsel for JIC. Mr. Jory had communications with her and indicated that there were lawyers in town that said they felt they were obligated to file an ethics complaint against her and he thought that it would be better if she self-reported. She asked Mr. Jory to let them know that she was going to self-report immediately.

During that communication, Judge Wilfong also indicated to Mr. Jory that the affair had continued after April of 2013 and she realized she needed to self-report and that she understood the seriousness of this matter.

Thereafter, on Tuesday, October 15, 2013, Judge Wilfong indicated to Mr. Jory that she self-reported on October 14, 2013 by facsimile.

17. At the hearing, witnesses were permitted to give non-duplicative testimony relevant to (a) whether Respondent violated the provisions of the Code of Judicial Conduct other

than Canons 1 and 2 which Respondent first conceded as to their violation in her Brief on Appropriate Sanctions submitted on August 7, 2014, four days prior to the hearing, and (b) the appropriate discipline to be imposed for violations of the Code of Judicial Conduct, including any aggravating or mitigating circumstances.

18. Erin Golden, who succeeded Travis Carter as Director of the Program, testified regarding the history of the Program; its number of employees; Respondent's involvement in the Program, including approving the payment of bills; Respondent's contacting Ms. Golden demanding to speak with Mr. Carter; and how the participation and drug screening fees were used to supplement grants received to finance the Program.

19. W. Travis Carter, former Director of the Program, testified regarding how his intimate relationship with Respondent arose from his confiding problems in his marriage to Respondent as a former Family Court Judge; the intermittent nature of their sexual relationship; the continuing nature of their emotional relationship; their discussions of a possible life together as husband and wife; the intervention of the Mr. Canterbury and its temporary impact on their relationship; his warnings to Respondent during their relationship about the potential impact on her office and career; the eventual termination of the relationship in October 2013; Respondent's appearance at a Magistrate Court proceeding to support his mother who had been involved in an incident involving her motor vehicle with another driver; and the circumstances of his resignation as Director, which he attributed to the erosion of respect with those with whom he worked after the public disclosure of their relationship and the attendant press coverage.

20. Christopher Cooper, a Randolph County attorney and one of the complainants, testified regarding his acquaintance with Respondent since his admission to the bar in 2000; his

work on Respondent's campaign for Family Court Judge; the complaints of two of his clients, Mark Courtney and Jeremy Davis, who were scheduled for a hearing to revoke their participating in the Program, regarding Mr. Carter's participation in that hearing as the two clients had heard that Respondent and Mr. Carter were having an affair; his meeting with the Prosecuting Attorney to discuss his clients' complaints about having a hearing with Respondent presiding and Mr. Carter participating in light of their relationship; his filing of disqualification motions, one of which was granted by Respondent and one of which was denied by Respondent; the ultimate ruling by the Supreme Court disqualifying Respondent; the negative impact of Respondent's relationship with Mr. Carter on the legal community and the general public; the relentless press attention to the controversy; the loss of trust in the legal system; the possible perception of him as a "judicial rat" for filing a complaint with the Judicial Investigation Commission; and the discomfort that he has felt in appearing before Respondent, particularly as she mentions his filing of the complaint against her at the commencement of proceedings to discern whether her disqualification is requested.

21. Philip Isner, a Randolph County attorney, testified regarding his acquaintance with Respondent since both were small children; his return to Randolph County from Kanawha County to practice law in 2005; their eventual exchange of cell phone numbers likely in conjunction with scheduling a matter; their subsequent texting to one another that gradually progressed until it was conducted on a nearly daily basis; the evolution of their texting to the point that it became flirtatious in nature; the discomfort that the texting eventually caused him to the point of bringing it to Respondent's attention; Respondent's private disclosure to him of her relationship with Mr. Carter; his advice to Respondent about disclosure of the relationship

because of the potential ethical issues presented; his lending his garage door opener to Respondent which she used to meet with Mr. Carter on two occasions; his absence of communications with Respondent since October 2013; and his trepidation about testifying at the hearing and future potential retribution.

22. Michael Taylor, a Randolph County Commissioner, testified regarding his relationship with Respondent; her appearance before the Commission on budgetary matters; her advocacy of the Program vis-à-vis the Commission, including in budgetary matters; Respondent's intervention on Mr. Carter's behalf regarding the purchase of a new vehicle for Mr. Carter; Respondent's intervention on Mr. Carter's behalf regarding a dispute between the Program and the Commission over spending authority; the approximately \$50,000 expended by the County in the investigation and resolution of Mr. Carter's employment with the Program after disclosure of his relationship with Respondent; and the impact on the county's perception of the judiciary and elected officials in general.

23. Respondent testified regarding her election as a Family Court Judge in 2002; her election as a Circuit Judge in 2008; her involvement in the Program; her continuation of the procedures established by the former Circuit Judge regarding the Program; the routine nature of the Program invoices which were submitted to her for approval; the placement of participating fees and drug screening fees in the Program's rainy-day fund; her non-involvement in preparation of the Program's budget; her belief in the benefits of the Program; her efforts regarding Drug Courts and People's Law School programs; the initiation of her relationship with Mr. Carter, which began in July or August 2011; her eventual belief that she was in love with Mr. Carter and that they would live together as husband and wife; her confiding problems to Mr.

Carter; her agreement that her emotional bond with Mr. Carter between 2011 and 2013 was stronger than their sexual relationship, which was of shorter duration and more intermittent over this same period; her advising Mr. Carter that she “had his back” about things related to his employment of which even he was unaware; her intervention on Mr. Carter’s behalf vis-à-vis the Commission regarding the purchase of a new vehicle for Mr. Carter, which occurred in 2012; her stating to the Commission that she would not utilize the Program without Mr. Carter as the Director; her present belief that she feels the same way about Ms. Golden, the current Director of the Program; the discretionary nature of the proceedings she conducted in which Mr. Carter and/or his employees appeared in conjunction with the Program; her awareness there was a conflict and her texting Mr. Carter to have Prosecuting Attorney’s office have someone other than Mr. Carter testify at a revocation hearing; her acknowledgment that presiding over cases in which Mr. Carter and/or his employees appeared from 2011 through 2013, when she was involved in an intimate relationship with Mr. Carter, was improper; her acknowledgment that she never advised criminal defendants or their counsel of her intimate relationship with Mr. Carter in the proceedings conducted between 2011 and 2013; her otherwise unblemished ethical record as a judge; her resignation as a member of the Judicial Hearing Board; the circumstances surrounding her self-report in October 2013; the support of her husband, family members, and the community; her absence of knowledge regarding complaints by any litigant that they had been treated unfairly; her acknowledgement of inappropriate conduct; her acknowledgement of the negative impact on Mr. Cooper, Mr. Isner, and Mr. Parker; her concession that some Randolph County attorneys feel they cannot communicate with her outside the performance of her judicial duties; and her acknowledgement that she never sought an advisory opinion from the Judicial

Investigation Commission even though Mr. Canterbury and several attorneys discussed with her the ethical implications of her relationship with Mr. Carter between 2012 and 2013.

24. Jennifer Lloyd, an office manager at Mr. Isner's law firm, testified as a rebuttal witness about an interaction with Respondent's husband at Wal-Mart in which Respondent's husband allegedly said with respect to Ms. Lloyd's perceived lack of public support for Respondent that it was not a good idea to be throwing stones; that the "last laugh" would be on those not supporting Respondent; and how Ms. Lloyd perceived these comments as a veiled threat.

25. Respondent testified thereafter, refuting Ms. Lloyd's testimony about the alleged Wal-Mart incident.<sup>4</sup>

26. At the hearing, the parties each submitted exhibits, without objection, and the exhibits were admitted into evidence as Commission's Exhibit Nos. 1 through 43 and Respondent's Exhibit Nos. 1 through 106.

27. Finally, following the hearing, the parties each submitted their post-hearing briefs on August 18, 2014.

### **Conclusions of Law**

1. "The purpose of judicial disciplinary proceedings is the preservation and enhancement of public confidence in the honor, integrity, dignity, and efficiency of the members of the judiciary and the system of justice." Syl., In the Matter of Gorby, 176 W. Va. 16, 339 S.E.2d 702 (1985).

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<sup>4</sup> The Board did not consider Ms. Lloyd's testimony material to its decision.

2. “In a disciplinary proceeding against a judge, in which the burden of proof is by clear and convincing evidence, where the parties enter into stipulations of fact, the facts so stipulated will be considered to have been proven as if the party bearing the burden of proof has produced clear and convincing evidence to prove the facts so stipulated.” Syl. pt. 4, Matter of Starcher, 202 W. Va. 55, 501 S.E.2d 772 (1998).

3. “Always mindful of the primary consideration of protecting the honor, integrity, dignity, and efficiency of the judiciary and the justice system, this Court, in determining whether to suspend a judicial officer with or without pay, should consider various factors, including, but not limited to, (1) whether the charges of misconduct are directly related to the administration of justice or the public’s perception of the administration of justice, (2) whether the circumstances underlying the charges of misconduct are entirely personal in nature or whether they relate to the judicial officer’s public persona, (3) whether the charges of misconduct involve violence or a callous disregard for our system of justice, (4) whether the judicial officer has been criminally indicted, and (5) any mitigating or compounding factors which might exist.” Syl. pt. 3, In the Matter of Cruickshanks, 220 W. Va. 513, 648 S.E.2d 19 (2007).

4. With respect to the Cruickshanks factors, the Board concludes (a) Judge Wilfong’s misconduct was directly related to the administration of justice and the public’s perception of the administration of justice; (b) although Judge Wilfong’s misconduct arose from a private sexual relationship, because of the manner in which she elected to conduct that relationship, it became related to the performance of her official duties and the public’s perception of the judiciary; (c) Judge Wilfong’s misconduct did not involve violence and although it did involve an insensitivity to her subordinates and others involved in the judicial

process, it did not rise to the level of callousness; (d) Judge Wilfong's misconduct implicates no criminal violations; and (e) there are both aggravating and mitigating factors to be considered in the determination of the appropriate discipline.

Count I – Judicial Conduct – Inappropriate Relationship

5. Count I of the Statement of Charges, related to the circumstances surrounding Respondent's relationship with Mr. Carter, charges her with violations of Canon 1, Canon 2A, Canon 2B, Canon 3B(5), Canon 3C(1), Canon 3C(2), Canon 3E(1), and Canon 4A.

6. With respect to Canon 1, which provides, "An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective," Respondent has recently admitted and the Board concludes that the clear and convincing evidence presented establishes its violation as she failed to maintain the "high standards of conduct" expected of judges when she elected to conduct her illicit sexual relationship in the courthouse during court hours; placed others in an untenable position when she disclosed and/or used them to facilitate her illicit sexual relationship; represented to others that the relationship has or was ending, but then continued or resumed the relationship because of the ethical problems the relationship presented; and failed to disqualify herself in matters where her impartiality might reasonably be questioned based upon her relationship with Mr. Carter.

7. With respect to Canon 2A, which provides, "A judge . . . avoid impropriety and the appearance of impropriety in all of the judge's activities, and shall act at all times in a manner

that promotes public confidence in the integrity and impartiality of the judiciary,” Respondent has recently admitted and the Board concludes that the clear and convincing evidence establishes its violation as her actions referenced above were improper, appeared improper, and did not promote but undermined public confidence in the integrity and impartiality of the judiciary.

8. With respect to Canon 2B, which provides, “A judge shall not allow family, social, political, or other relationships to influence the judge’s judicial conduct or judgment,” Respondent has recently admitted and the Board concludes that the clear and convincing evidence establishes its violation as she permit her relationship with Mr. Carter to adversely affect the performance of her judicial duties and judgment.

9. With respect to Canon 3B(5), which provides, “A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials and others subject to the judge’s direction and control to do so,” the Board concludes that the clear and convincing evidence does not establish its violation as Respondent’s alleged misconduct was not based upon any protected classification and there is no evidence that Respondent exhibited actual bias or prejudice regarding any litigant or permitted those under her direction and control to do so.

10. With respect to Canon 3C(1), which provides, “A judge shall diligently discharge the judge’s administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business,” the Board concludes that the clear and convincing

evidence establishes its violation as Respondent permitted her relationship with Mr. Carter to negatively impact the performance of her official duties, including having sexual relations with Mr. Carter in her chambers during court hours; representing to court officials that her relationship with Mr. Carter had or would be ending, then continuing or resuming the relationship; and confiding in her secretary and law clerk the existence of the relationship which placed them in a difficult position with respect to the performance of their official duties.

11. With respect to Canon 3C(2), which provides, “A judge shall require staff, court officials, and others subject to the judge’s direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties,” the Board concludes that the clear and convincing evidence establishes its violation as Judge Wilfong involved her secretary, her law clerk, an assistant prosecutor, local attorneys, and others in a manner that compromised their ability to faithfully perform their official duties, including by repeatedly misrepresenting to them that she understood the ethical ramifications of her relationship with Mr. Carter and, because of those ramifications, that she would terminate the relationship and/or otherwise disclose its existence to avoid the appearance of any conflict of interest.

12. With respect to Canon 3E(1), which provides, “A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where . . . ,” the Board concludes that the clear and convincing evidence establishes its violation as Judge Wilfong should have disqualified herself in any matter involving the North Central Community Corrections Program while she was involved in a relationship with Mr. Carter; in any matter involving Ms. Gray after she had disclosed her

relationship to Ms. Gray and either expressly or impliedly expected Ms. Gray to keep the relationship confidential; in any matter involving Mr. Isner after she had disclosed her relationship to Mr. Isner and either expressly or impliedly expected Mr. Isner to keep the relationship confidential; and in any matter involving any other attorney or party after she had disclosed her relationship to such other attorney or party and either expressly or implied expected the attorney or party to keep the relationship confidential.

13. With respect to Canon 4A, which provides, “A judge shall conduct all of the judge’s extra-judicial activities so that they do not: (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge; (2) demean the judicial office; or (3) interfere with the proper performance of judicial duties,” the Board concludes that the clear and convincing evidence establishes its violation as Respondent’s conduct (a) cast reasonable doubt on her capacity to act impartially as a judge; (b) demeaned her office; and (c) interfered with the proper performance of her judicial duties.

Count II – Judicial and Extra-Judicial Conduct – North Central Community Corrections

14. Count II of the Statement of Charges, related to the circumstances surrounding Respondent’s relationship with Mr. Carter, charges her with violations of Canon 1, Canon 2A, Canon 2B, and Canon 4A.

15. With respect to Canon 1, which provides, “An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective,” Respondent

has recently admitted and the Board concludes that the clear and convincing evidence presented establishes its violation as she failed to maintain the “high standards of conduct” expected of judges when she engaged in an undisclosed relationship with Mr. Carter from 2011 to 2013 when she was also serving as an *ex officio* member of the Program at which he served as its Director, including reviewing and approving the payment of Program bills; advocating on Mr. Carter’s and the Program’s behalf, including regarding the purchase of a new vehicle for Mr. Carter; and presiding over matters involving the Program in which she exercised discretionary judicial authority.

16. With respect to Canon 2A, which provides, “A judge . . . avoid impropriety and the appearance of impropriety in all of the judge’s activities, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary,” Respondent has recently admitted and the Board concludes that the clear and convincing evidence establishes its violation as her actions referenced above were improper, appeared improper, and did not promote but undermined public confidence in the integrity and impartiality of the judiciary.

17. With respect to Canon 2B, which provides, “A judge shall not allow family, social, political, or other relationships to influence the judge’s judicial conduct or judgment,” Respondent has recently admitted and the Board concludes that the clear and convincing evidence establishes its violation as she permit her relationship with Mr. Carter to adversely affect the performance of her judicial duties and judgment, including with respect to her service as an *ex officio* member of the Program.

18. With respect to Canon 4A, which provides, “A judge shall conduct all of the judge’s extra-judicial activities so that they do not: (1) cast reasonable doubt on the judge’s

capacity to act impartially as a judge; (2) demean the judicial office; or (3) interfere with the proper performance of judicial duties,” the Board concludes that the clear and convincing evidence establishes its violation as Respondent’s sexual relationship with Mr. Carter (a) cast reasonable doubt on her capacity to act impartially as a judge; (b) demeaned her office; and (c) interfered with the proper performance of her judicial duties, including her service as an *ex officio* member of the Program.

19. Rule 4.12 of the Rules of Judicial Disciplinary Procedure provides:

The Judicial Hearing Board may recommend or the Supreme Court of Appeals may impose any one or more of the following sanctions for a violation of the Code of Judicial Conduct: (1) admonishment; (2) reprimand; (3) censure; (4) suspension without pay for up to one year; (5) a fine of up to \$5,000; or (6) involuntary retirement for a judge because of advancing years and attendant physical or mental incapacity and who is eligible to receive retirement benefits under the judges’ retirement system or public employees retirement system. Any period of suspension without pay shall not interfere with the accumulation of a judge’s retirement credit and the State shall continue to pay into the appropriate retirement fund the regular payments as if the judge were not under suspension without pay. An admonishment constitutes advice or caution to a judge to refrain from engaging in similar conduct which is deemed to constitute a violation of the Code of Judicial Conduct. A reprimand constitutes a severe reproof to a judge who has engaged in conduct which violated the Code of Judicial Conduct. A censure constitutes formal condemnation of a judge who has engaged in conduct which violated the Code of Judicial Conduct. The extent to which the judge knew or should have reasonably known that the conduct involved violated the Code of Judicial Conduct may be considered in determining the appropriate sanction.

20. “Pursuant to Article VIII, Sections 3 and 8 of the West Virginia Constitution and Rule 4.12 of the Rules of Judicial Disciplinary Procedure, it is clearly within this Court’s power and discretion to impose multiple sanctions against any justice, judge or magistrate for separate

and distinct violations of the Code of Judicial Conduct and to order that such sanctions be imposed consecutively.” Syl. pt. 5, In re Toler, 218 W. Va. 653, 625 S.E.2d 731 (2005).

21. In In re Watkins, 233 W. Va. 170, 757 S.E.2d 594 (2013), for example, our Court recently imposed a four-year suspension on a Family Court Judge, through the end of the term of his office, whose intemperance and failure to conform to multiple requirements of the Code of Judicial Conduct demonstrated a profound threat to the integrity of the judiciary.

22. Here, Respondent was charged with twelve separate violations: eight Canons of the Code of Judicial Conduct pursuant to Count I and four Canons of the Code of Judicial Conduct pursuant to Count II.

23. The Board has concluded, based both upon Respondent’s admission and other clear and convincing evidence, that Respondent violated eleven separate Canons of the Code of Judicial Conduct.

24. Based upon the eleven violations, the Board is limited to (a) the imposition of an admonishment, reprimand, or censure for each of the eleven violations; (b) a suspension without pay for up to one year for each of the eleven counts or a total suspension of eleven years; and (c) a fine of up to \$5,000 for each of the eleven counts or a total fine of \$55,000.

25. With respect to the ability to punish extra-judicial conduct, the Supreme Court of Appeals has done so where that extra-judicial conduct constituted a violation of the Code of Judicial Conduct. See, e.g., Matter of Gorby, 176 W. Va. 11, 339 S.E.2d 697 (1985)(magistrate who engaged in injudicious behavior at a high school football game unrelated to his duties was suspended for six months); West Virginia Judicial Inquiry Commission v. Dostert, 165 W. Va. 233, 271 S.E.2d 427 (1980)(judge who assumed a partisan role in assisting and directing law

enforcement officials in making arrests while failing to comply with mandatory provisions of weapons laws while carrying a gun while engaging in those activities was censured, suspended for six months, and ordered to pay costs).

26. With respect to sexual misconduct, the Supreme Court of Appeals has held that it may constitute a violation of the Code of Judicial Conduct. See, e.g., In re Toler, 218 W. Va. 653, 625 S.E.2d 731 (2005)(magistrate charged with sexual misconduct involving four complainants was suspended for four years, censured, fined \$20,000, and ordered to pay costs); Matter of Hey, 193 W. Va. 572, 457 S.E.2d 509 (1995)(judge who was charged with being intoxicated while performing judicial duties and sexually harassing court employees was suspended from the practice of law, censured, fined \$10,000, and ordered to pay costs); see also West Virginia Judicial Inquiry Commission v. Casto, 163 W. Va. 661, 665, 263 S.E.2d 79, 82 (1979)(“‘A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.’ Other jurisdictions have interpreted this Canon as prohibiting a variety of judicial, including the sexual conduct of a judge in his private life.”)(Citation omitted).

27. In In re Lee, 336 So.2d 1175 (Fla. 1976), for example, a case cited with approval by our Court in Casto, a judge was reprimanded for engaging in sexual activities in an automobile on a public parking lot with a woman who was not his wife. See also Matter of Fournier, 325 S.C. 194, 480 S.E.2d 738 (1997)(court imposed maximum available sanction of reprimand after judge resigned following charges of regularly engaging in sexual activity in his car in a business’ parking lot).

28. In In re Snyder, 336 N.W.2d 533 (Minn. 1983), a judge was censured and ordered to pay cost where he had engaged in an adulterous relationship for over year; continued the relationship after receiving notice of a disciplinary investigation; and prepared a false notice of a secretarial course for the wife to show her husband so that she could accompany the judge to a judges' meeting. See also Matter of Agerter, 353 N.W.2d 908, 912-913 (Minn. 1984)(“The Board contends that Judge Agerter’s [sexual] liaison may have brought the judicial office into disrepute, in violation of Rule 4(a)(3), or have been an impropriety eroding public confidence in the integrity of the judiciary in violation of Canon 2 of the Code of Judicial Conduct. We cannot say that the Board was without authority in this instance to investigate the sexual misconduct allegation.”).

29. Courts have also imposed various forms of discipline on judges whose sexual relationships were carried on during court hours, on court premises, involved court employees; and/or involved others who appeared before the judge in the exercise of his or her official duties.

30. In In re Miller, 949 So.2d 379, 394 (La. 2007), for example, the court ordered a judge’s removal from office where he engaged in a ten-year adulterous relationship with is secretary; where the couple engaged in sexual activity on court property; where he fathered his secretary’s child during that relationship; where he made payments to his secretary in lieu of formal child support; where the judge thereafter presiding over his secretary’s divorce proceedings; and where the judge violated a federal court order enjoining the judge from further contact with his then former secretary after she terminated the relationship, stating with respect to the adulterous relationship, “We agree with the Commission that an adulterous affair is not a per se violation of the Code of Judicial Conduct, but the Judge’s rather open and notorious sexual

conduct with his secretary at the courthouse, coupled with the other factors involved in the relationship, clearly brought the judicial office into disrepute.”

31. In In re Hammond, 224 Kan. 745, 745, 585 P.2d 1066, 1066 (1978), the court censured a judge and ordered him to pay costs based upon the following: “that respondent, while serving as a district judge, had sexual relations in his chambers with one of his female employees; that he made demands for sexual relations with another; that sexual relations with the respondent were made a condition of the continued employment of each of the two female employees; and that one was terminated for refusing to continue a physical relationship with respondent, and the other for refusing to have such a relationship.”

32. In In re Gerard, 631 N.W.2d 271, 277 (Iowa 2001), the court suspended a judge for 60 days without pay who had engaged in an adulterous relationship for a period of two months with an assistant county attorney, including engage in sexual acts in the courthouse, and who did not disqualify himself in cases in which the attorney appeared before him during the relationship, noting “We recognize that this was intended to be a private relationship between consenting adults. Although both were married to other people, we normally would be loath to interfere in such personal matters. In this case, however, the private aspects of the affair are secondary to the public problems it has created.”

33. In In re Adams, 932 So.2d 1025 (Fla. 2006), the court reprimanded judge who had engaged in a romantic relationship over a period of two months with an attorney who appeared before him in matters during the course of that relationship without the judge’s disqualification.

34. In In re Kivett, 309 N.C. 635, 309 S.E.2d 442 (1983), for example, a judge was removed from office based, *inter alia*, upon his improper relationship with a bail bondman where

the bondsman procured women for the judge; the two men socialized together, hunting for female companionship and visiting a topless bar; the bondsman made his lake house and his bonding office apartment available free of charge to the judge, who had illicit sexual relations with women there; the bondsman testified that he guarded the judge's door while the judge engaged in sexual relations with a female juror in chambers; and the judge allowed the bondsman to communicate with him concerning pending criminal cases in which the bondsman had an interest, or over which the judge presided, or both.

35. In In the Matter of Harrelson, 376 S.C. 488, 657 S.E.2d 754 (2008), the court reprimanded a judge who admitted to engaging in sexual encounters with two different married administrative assistants employed by the central traffic court in which the judge presided.

36. In In re Flanagan, 240 Conn. 157, 190, 690 A.2d 865, 881 (1997), the court censured a judge who had engaged in a consensual affair with a married court reporter regularly assigned to his courtroom for over three years stating, "A judge's conduct is held to a higher standard than that of the average citizen, and must be beyond reproach, at least when that conduct is directly connected to his professional office and functions."

37. In In the Matter of Gelfand, 70 N.Y.2d 211, 518 N.Y.S.2d 950, 512 N.E.2d 533 (1987), a judge was removed from office after engaging in an extramarital sexual relationship with a law assistant and then misusing his position in an attempt to prolong the relationship after it was terminated by the assistant.

38. In Matter of Edwards, 694 N.E.2d 701 (Ind. 1998), the court removed a judge from office, enjoined him from seeking future judicial office, disbarred him, and fined him \$100,000 for, *inter alia*, presiding over a domestic relations matter during a period in which he

was having a sexual relationship with the wife in that domestic relations matter, and previously presenting a client, while an attorney, with a false judicial decree of divorce, lying to judges about his representation of the client, and performing legal services for the client in exchange for sexual favors. See also Matter of Mendenhall, 316 S.C. 196, 447 S.E.2d 858 (1994)(disbarring and reprimanding retired family court judge for engaging in sexual relations with party for a period of years during which party had contested matters before judge); In re Harris, 713 So.2d 1138 (La. 1998)(court suspended judge for 60 days without pay for engaging in extramarital affair with parolee who was released from prison on parole pursuant to sentence imposed by judge even though relationship did not start until parolee was released from prison).

39. In In re Chrzanowski, 465 Mich. 468, 490, 636 N.W.2d 758, 771 (2001), a judge was suspended for one-year without pay for, *inter alia*, appointing an attorney with whom she was having an affair to 56 criminal cases, stating that, “Respondent’s conduct on the bench was unbecoming of the office that she holds. Her actions undermined public confidence in the integrity and impartiality of the judiciary, and were prejudicial to the administration of justice.”

40. In In re Abrams, 227 Ariz. 248, 257 P.3d 167 (2011), the court suspended the law license of a judge for two years after he resigned when judicial disciplinary proceedings were initiated in conjunction with, *inter alia*, an affair with a criminal defense attorney who frequently appeared before him without disclosure or disqualification.<sup>5</sup>

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<sup>5</sup> See also The Florida Bar v. Gardiner, 2014 WL 2516419 (Fla.)(disbarring attorney who formerly as a judge commenced and developed a significant personal and emotional relationship with the prosecuting attorney in a capital murder case over which she presided, as evinced by 949 cellular telephone calls and 471 text messages over a five-month period prior to imposing death sentence, without disclosing the relationship to the defense); Florida Bar v. Corbin, 540 So.2d 105, 106-07 (Fla. 1989) (suspending attorney for three years after he resigned from the bench, based on his criminal conviction of attempted sexual activity with a minor while serving as a judge); In re Brooks, 264 Ga. 583, 449 S.E.2d 87, 88 (1994) (suspending attorney for three years after he left the bench, based on multiple misdemeanor

41. Finally, in In re McCree, 495 Mich. 51, 86, 845 N.W.2d 458, 476 (2014), the Michigan Supreme Court recently suspended a judge for six years without pay who had an affair with a child support obligee appearing before him; who had numerous ex parte communications with witness about the case; who extended special treatment to the obligee in the case; and who when the relationship soured, sought to employ the prosecutor's office as leverage against her by concocting charges of stalking and extortion, stating that, "We agree with the JTC that a removal, without more, would be an insufficient sanction in this case. If we were to remove respondent and he was reelected in 2014, that would amount to a less than one-year suspension (less than two years including his interim suspension), which we believe is clearly insufficient given the seriousness of his misconduct. This Court has a duty to preserve the integrity of the judiciary. Allowing respondent to serve as a judge after only a one-year suspension will not, in our judgment, adequately preserve the integrity of our state's judiciary."

42. As the foregoing cases indicate, a judge is held to a higher standard of personal and professional conduct and illicit sexual relationships involving judges are inconsistent with the "high standards of conduct" required of judges, particularly where those relationships involve persons who appear before a judge; sexual relations are conducted on courthouse property and/or during court hours; others with whom a judge worked and/or over whom a judge had power were placed in a compromising situation, including members of the local bar, by a judge's privately disclosing the existence of the relationship while implicitly and/or expressly requesting that they keep the judge's secret; and the judge participates in the administration of a program in

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convictions of sexual battery while serving as a judge); In re Higgins, 79 A.D.2d 145, 436 N.Y.S.2d 71, 71-72 (1981) (suspending attorney for two years after he resigned from the bench, based on his soliciting and agreeing to accept sexual favors from a woman whom he suggested would receive in return favored treatment in his family court).

which the person with whom the judge is engaging in an illicit relationship serves as the program's director, in such a manner as to (a) undermine public confidence in the judiciary; (b) create the appearance that a judge's social relationship improperly influenced a judge's conduct or judgment; (c) prevent a judge from diligently discharging the judge's administrative duties; (d) present sufficient grounds for a judge to disqualify himself or herself in any matters involving a person with whom the judge is conducting an illicit relationship; (e) cast reasonable doubt on the judge's impartiality in matters involving either the person with whom the judge is carrying on the illicit sexual relationship or those persons who have personal knowledge of the illicit sexual relationship; (f) demean the office of the judge who conducted the illicit sexual relationship under such circumstances; and (g) interfere with the proper performance of the judge's official duties.

43. It can be argued that an illicit sexual relationship conducted by a judge with someone wholly unrelated to the judge's official duties and not on the courthouse premises or during court hours of which no one with whom the judge works has any knowledge implicates none of the Code of Judicial Conduct, but that same relationship carried on in the manner in which it was conducted in this case implicates many of the Canons of the Code of Judicial Conduct.

44. As the commentary to Canon 2 of the Code of Judicial Conduct states:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. 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.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge.

45. This concept is an ancient one. See Sarisohn v. Appellate Division, Second Dept., Supreme Court of State of N.Y., 265 F. Supp. 455, 458 n.2 (E.D. N.Y. 1967)(“’For unto whomsoever much is given, of him much shall be required: and to whom men have committed much, of him they will ask the more.’ Luke 12:48.”).

46. Respondent correctly observed during her testimony the solemn trust placed in her when she was elected to the office of Circuit Judge and in exchange for the public’s respect, confidence, and honor in her and in the judicial system in which she played a vital role, she repeatedly and knowingly violated that trust.

47. As noted in the commentary to Canon 1 of the Code of Judicial Conduct:

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. . . . Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

48. In this case, Respondent eventually agreed not to contest violations of Canons 1 and 2 of the Code of Judicial Conduct, because it was not credible to do so, that her multiple transgressions have undermined public confidence in the judiciary in Randolph County.

### **Recommended Discipline**

1. In determining the appropriate discipline to recommend based upon its determination that Respondent committed eleven violations, the Board considered the following mitigating and aggravating circumstances:

#### Mitigating Circumstances

2. The five complaints before the Board are the first disciplinary complaints filed against Respondent since her judicial service began in 2003.

3. Respondent has otherwise performed her judicial duties in a satisfactory manner and was appointed as a member of the Judicial Hearing Board on which she served prior to her resignation.

4. During her service as Circuit Judge, Respondent has been involved in a number of initiatives to improve the judicial system.

5. No litigant filed a complaint and has otherwise, at least to this point, complained that Respondent's relationship improperly influenced her discretionary rulings in any particular matter.

6. Respondent has some support from the community and her family, including her husband.

7. Eventually, after a period of two years, Respondent did self-report.

#### Aggravating Circumstances

8. Respondent was well-aware of the ethical implications of her relationship with Mr. Carter for two years before she self-reported.

9. Respondent repeatedly represented to court officials and attorneys, genuinely concerned about her and the ethical implications of her continued relationship with Mr. Carter, that she had ended or was ending the relationship, then either continued or resumed the relationship thereafter without advising those court officials and attorneys that she had done so.

10. Respondent compromised others with whom she worked and/or over whom she had power as the only Circuit Judge in Randolph County, including members of the local bar, by privately disclosing the existence of the relationship while implicitly and/or expressly requesting that they keep her secret, which patently involved obvious and multiple conflicts of interest.

11. Respondent used her power as a Circuit Judge to further her improper relationship with Mr. Carter and to advance the interests of Mr. Carter and the Program.

12. Respondent demonstrated, over a two-year period, a fundamental lack of candor, judgment, integrity, and fairness.

13. Respondent only self-reported after being contacted by Counsel for the Judicial Investigation Commission about its investigation of her relationship with Mr. Carter, which precipitated the termination of Mr. Carter's employment; the expenditure of about \$50,000 by the County Commission; the imposition of administrative and financial burdens on the West Virginia judiciary as a result of her disqualification from all cases handled or otherwise prosecuted by the Randolph County Prosecutor, including the recall of two Senior Status Judges, from May 1, 2014, to the present and to continue indefinitely; and the potentially irreversible damage to her relationships with the local bar, county officials, and members of the public.

14. Although in her Response, she admitted factual allegations essentially constituting multiple violations of the Code of Judicial Conduct, Respondent persisted in her denial of any violations until only a few days before the hearing.

WHEREFORE, the Judicial Hearing Board unanimously recommends that the following discipline be imposed in this matter:

1. With respect to Respondent's violations of Canon 1, Canon 2A, Canon 2B, Canon 3C(1), and Canon 3C(2) pursuant to Count I of the Statement of Charges, that Respondent be:

- a. Censured;
- b. Suspended for a period of one-year without pay;
- c. Fined the sum of \$5,000; and
- d. Ordered to pay the costs of the proceeding.

2. With respect to Respondent's violations of Canon 3E(1) and Canon 4A pursuant to Count I of the Statement of Charges, that Respondent be:

- a. Censured;
- b. Suspended for a period of one-year without pay;
- c. Fined the sum of \$10,000; and
- d. Ordered to pay the costs of the proceeding.

3. With respect to Respondent's violations of Canon 1, Canon 2A, Canon 2B, and Canon 4A pursuant to Count II of the Statement of Charges, that Respondent be:

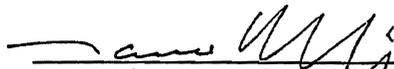
- a. Censured;
- b. Suspended for a period of one-year without pay;
- c. Fined the sum of \$5,000; and

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d. Ordered to pay the costs of the proceeding.

4. In summary, the Board recommends that Respondent be censured; suspended for a total period of three years without pay; fined a total of \$20,000; and ordered to pay the costs of the proceeding for eleven (11) violations of the Code of Judicial Conduct arising from the allegations in Count I and Count II of the Statement of Charges which have been admitted by Respondent and/or determined by the Board to have been established by clear and convincing evidence.

The foregoing Order having been considered and unanimously approved by the Judicial Hearing Board, it is hereby entered on the 22 day of August, 2014, by its Chairman as follows:

  
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Hon. Lawrance Miller, Judge  
Chairperson, Judicial Hearing Board