



COMMONWEALTH OF VIRGINIA

Judicial Inquiry and Review Commission

Humes J. Franklin, III, Esquire, Chair
Judge Kenneth R. Melvin, Vice-Chair
Terri N. Thompson
Kyung N. Dickerson, Esquire
Reverend Cozy E. Bailey, Sr.
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November 26, 2024

ANNUAL REPORT

In accordance with Section 17.1-905 of the Code of Virginia, the Judicial Inquiry and Review Commission makes the following report concerning its activities during the past twelve months:

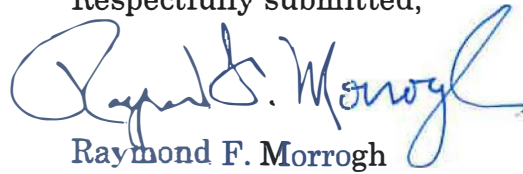
1. The Commission maintains statistical information on all incoming complaints, telephone calls and correspondence. Complaints and inquiries are separated into categories indicating the source, the nature of the complaint or inquiry, and the disposition of each complaint and inquiry, including whether the Commission reached a conclusion that the Canons of Judicial Conduct were breached. The statistics required by § 17.1-905 are set forth in the attachment to this report and are incorporated herein by this reference.

2. The Commission's legal staff provides confidential, informal ethics advice to Virginia judges on a daily basis.

3. The Commission presents educational programs concerning judicial ethics. During the past twelve months, Commission Counsel and Assistant Counsel delivered training addressing the application of the Canons of Judicial Conduct and judicial ethics at the Judicial Conference of Virginia, the Judicial Conference of Virginia for District Courts, the annual Pre-Bench Orientation for New Judges, the Conference for Virginia Substitute Judges, and the Conference for Virginia Special Justices.

4. Information concerning the Commission is available on the internet at the home page of the Supreme Court of Virginia. The Commission's Rules, the Canons of Judicial Conduct, and complaint forms are accessible on the website.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Raymond F. Morrogh". The signature is fluid and cursive, with a large initial "R" and "M".

Raymond F. Morrogh
Commission Counsel

ATTACHMENT to ANNUAL REPORT of
THE JUDICIAL INQUIRY AND REVIEW COMMISSION of VIRGINIA
November 26, 2024

- I. Persons subject to the jurisdiction of the Commission: 1,013
 - A. Judges, Substitute Judges, Special Justices: 806
 - B. State Corporation Commissioners: 3
 - C. Virginia Workers' Compensation Commissioners: 3
 - D. Retired Judges (subject to recall): 201

- II. Calls received from Judges for confidential ethics advice: 594

- III. Statistics required by Virginia Code § 17.1-905:
 - A. Number of complaints received: 564
 - 1. originating from attorneys: 22
 - 2. originating from judges: 11
 - 3. originating from court employees: 3
 - 4. originating from general public: 528

 - B. Number of complaints dismissed¹: 529
 - 1. failure to fall within the jurisdiction of the Commission: 428
 - 2. failure to state a violation of the Canons of Judicial Conduct: 247
 - 3. failure to conclude the Canons were breached: 42

 - C. Number of complaints for which the Commission concluded the Canons of Judicial Conduct were breached:
 - 1. breached and dismissed: 2
 - 2. breached and not dismissed: 2

 - D. Number of cases from which staff or any Commission member recused: 12

¹ | Complaints may be dismissed for more than one reason.

E. Code § 17.1-905 further specifies the inclusion of the below information in the Commission’s annual report:

“The report shall also include (a) the name of any judge who the Commission concluded breached the Canons of Judicial Conduct and took disciplinary action against as a result of such conclusion, if the date on which the Commission reached such conclusion was after the previous annual report was published; (b) the specific Canons of Judicial Conduct breached by such judge; and (c) the disciplinary action taken against such judge by the Commission.”

The Commission’s understanding of disciplinary action within the contemplation of this statute is in accordance with the principles articulated by 2023 Op. Va. Att’y. Gen. 123. This official opinion of the Attorney General of Virginia is attached hereto and incorporated herein by this reference.

In the 2024 reporting year the Commission concluded that the Canons had been breached and took disciplinary action as a result in four inquiries.

1. In Inquiry No. 2023-0816, the Commission determined that the conduct of Judge Onzlee Ware had breached the requirements of Canon 1 C and Canon 2 A of the Canons of Judicial Conduct. This determination was made on January 22, 2024. The Commission took disciplinary action against Judge Ware through the entry into a supervision agreement with the judge, effective January 22, 2024. The supervision agreement reached with Judge Ware is attached hereto and incorporated herein by this reference.

On February 13, 2024, subsequent to Judge Ware’s death, this inquiry was dismissed by the Commission.

2. In Inquiry No. 2024-0172, the Commission determined that the conduct of Judge Anthony W. Bailey had breached the requirements of Canon 3 B and Canon 2 A of the Canons of Judicial Conduct. This determination was made on May 2, 2024. The Commission took disciplinary action against Judge Bailey through the entry into a supervision agreement with the judge, effective May 2, 2024. The supervision agreement reached with Judge Bailey is attached hereto and incorporated herein by this reference.

This Inquiry remains ongoing before the Commission.

3. In Inquiry No. 2024-0414, the Commission determined that the conduct of Judge W. Reilly Marchant had breached the requirements of Canon 3 H and Canon 2 A of the Canons of Judicial Conduct. This determination was made on September 25, 2024. The Commission took disciplinary action against Judge Marchant through the entry into a supervision agreement with the judge, effective September 25, 2024. The supervision agreement reached with Judge Marchant is attached hereto and incorporated herein by this reference.

By Order of October 1, 2024, this inquiry was dismissed by the Commission.

4. In Inquiry No. 2024-0971, the Commission determined that the conduct of Judge Charles F. Koehler, Jr., had breached the requirements of Canon 2 A and Canon 2 V of the Canons of Judicial Conduct. This determination was made on November 26, 2024. The Commission took disciplinary action against Judge Koehler through the entry into a supervision agreement with the judge, effective November 26, 2024. The supervision agreement reached with Judge Koehler is attached hereto and incorporated herein by this reference.

This Inquiry remains ongoing before the Commission.



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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November 20, 2023

Humes J. Franklin, III, Esquire, Chairman
The Honorable Kenneth R. Melvin, Vice Chairman
Judicial Inquiry and Review Commission
Post Office Box 367
Richmond, Virginia 23218

Dear Mr. Franklin and Judge Melvin:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire regarding a recent amendment to the annual reporting requirements of the Judicial Inquiry and Review Commission (“JIRC” or “Commission”), as set forth in Virginia Code § 17.1-905. You more specifically ask under what circumstances the Commission must disclose the name of a judge who is the subject of a complaint filed with the Commission. Implicit in your inquiry is what constitutes “disciplinary action” for purposes of the statute.

Response

It is my opinion that the Commission must report the name of a subject judge when, and only when, both of two conditions are met: 1) the JIRC has concluded that the judge breached the Canons of Judicial Conduct *and* 2) it has taken disciplinary action against the judge based on its conclusion. It is further my opinion that the Commission takes “disciplinary action” as contemplated by amended Code § 17.1-905 when it does any of the following: files a formal complaint with the Supreme Court of Virginia, suspends a judge, or enters into a supervision agreement with a judge.

Applicable Law and Discussion

As required by the Constitution of Virginia, the General Assembly has created the Judicial Inquiry and Review Commission and vested it “with the power to investigate charges which would be the basis for

retirement, censure, or removal of a judge.”¹ Article VI, § 10 of the Constitution; Chapter 9 of Title 17.1 of the Code of Virginia²; and JIRC Rules³ govern JIRC procedures.

Charges alleging judicial misconduct can be reported to the JIRC for investigation by filing a prescribed complaint form with the Commission.⁴ Upon receipt of such a complaint, the JIRC has the duty “to investigate charges arising out of the present or any prior term of office which would be the basis for retirement, censure, or removal of a judge”⁵ In fulfilling its duty, JIRC is empowered “to conduct hearings and to subpoena witnesses and documents.”⁶ Once the JIRC completes its investigation, if it “finds the charges to be well-founded, it may file a formal complaint before the Supreme Court [of Virginia].”⁷

The Supreme Court is then directed to “conduct a hearing in open court”⁸ Should the Supreme Court find a “disability which is or is likely to be permanent and which seriously interferes with the performance by the judge of his duties, [the Court] shall retire the judge from office.”⁹ In addition, should the hearing reveal that “the judge has engaged in misconduct while in office, or that he has persistently failed to perform the duties of his office, or that he has engaged in conduct prejudicial to the proper administration of justice, [the Supreme Court] shall censure him or shall remove him from office.”¹⁰ The Supreme Court, in exercising its original jurisdiction in such cases, “considers the evidence and makes factual determinations *de novo*.”¹¹ Censure and removal are the only sanctions for misconduct the Court may impose, and neither is available without clear and convincing evidence supporting the charges alleged in the formal complaint.¹²

¹ VA. CONST. art. VI, § 10. VA. CODE ANN. §§ 17.1-901 (2020); 17.1-902 (2020).

² VA. CODE ANN. §§ 17.1-901 to -919 (2020 & Supp. 2023).

³ See § 17.1-902 (“The Commission shall have the authority to make rules, not in conflict with the provisions of this chapter or of general law, to govern investigations and hearings conducted by it.”). See VIRGINIA’S JUDICIAL SYSTEM, *Rules of the Judicial Inquiry and Review Commission*, <https://www.vacourts.gov/agencies/jirc/rules.html> (eff. Feb. 14, 2006).

⁴ Section 17.1-917 (Supp. 2023). The currently used complaint form is publicly available via the JIRC webpage at https://www.vacourts.gov/agencies/jirc/jirc_complaint_form.pdf.

⁵ Section 17.1-902.

⁶ VA. CONST. art. VI, § 10; see also VA. CODE ANN. §§ 17.1-902; 17.1-907 (2020); 17.1-910 (2020).

⁷ VA. CONST. art. VI, § 10; accord VA. CODE ANN. § 17.1-902. The filing of a formal complaint is discretionary. See *Jud. Inquiry & Rev. Comm’n of Va. v. Elliott*, 272 Va. 97, 118 (2006) (explaining that the JIRC’s authority to file a complaint is permissive, not mandatory).

⁸ VA. CONST. art. VI, § 10.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Jud. Inquiry & Rev. Comm’n of Va. v. Lewis*, 264 Va. 401, 405 (2002).

¹² *Jud. Inquiry & Rev. Comm’n of Va. v. Shull*, 274 Va. 657, 656 (2007); *Jud. Inquiry & Review Comm’n of Va. v. Peatross*, 269 Va. 428, 444 (2005).

Although the hearing before the Supreme Court is required to be public,¹³ the “[p]roceedings and documents before the Commission may be confidential as provided by the General Assembly in general law.”¹⁴ The General Assembly, in turn, has provided that

all papers filed with and proceedings before the Commission, . . . *including the identification of the subject judge* as well as all testimony and other evidence and any transcript thereof made by a reporter, *shall be confidential and shall not be divulged*, other than to the Commission, by any person who (i) either files a complaint with the Commission, or receives such complaint in an official capacity; (ii) investigates such complaint; (iii) is interviewed concerning such complaint by a member, employee or agent of the Commission; or (iv) participates in any proceeding of the Commission or in the official recording or transcription thereof[.]¹⁵

In addition, “[t]he filing of papers with and the giving of testimony before the Commission shall be privileged”¹⁶ Accordingly, as noted by the Supreme Court of Virginia, “[t]he General Assembly, as the policymaking branch of our government, has determined that[, generally, JIRC] records should be kept confidential.”¹⁷

Despite these confidentiality rules, the JIRC is subject to certain mandatory disclosure provisions.¹⁸ Pertinent to your inquiry, Code § 17.1-905 directs that “the Commission shall publish a report detailing the activities of the Commission for the prior year.”¹⁹ The statute expressly identifies information that the JIRC’s annual report must contain. Prior to a 2023 amendment, such information was limited, in pertinent part, to the following: 1) the total number of complaints filed with the Commission; 2) the respective number of complaints originating from attorneys, judges, court employees, and the general public; and 3) the number of complaints dismissed.²⁰ In reporting the number of dismissed complaints, the JIRC also is required to specify the number of dismissals that were “based on (i) failure to fall within the jurisdiction of the Commission, (ii) failure to state a violation of the Canons of Judicial Conduct, or (iii) failure of the Commission to reach a conclusion that the Canons were breached[.]”²¹ Also specifically required to be

¹³ VA. CONST. art. VI, § 10.

¹⁴ *Id.* Prior to a 1998 constitutional amendment, Article VI, § 10 provided that the proceedings “*shall be confidential.*” See *In re Bennett*, 301 Va. 68, 76 (2022) (Kelsey, J., dissenting) (discussing the 1998 amendment). Under the current Constitution, the degree of confidentiality afforded JIRC matters is a question of public policy determined by the General Assembly, as set forth in its statutory enactments. See *id.* at 72 (majority opinion recognizing that “[p]ublic policy questions concerning where to draw the line with respect to [statutorily protected and unprotected information] fall within the purview of the General Assembly” (alteration in original) (citing *Transparent GMU v. George Mason Univ.*, 298 Va. 222, 250 (2019))).

¹⁵ VA. CODE ANN. § 17.1-913 (Supp. 2023) (emphasis added). Once filed with the Supreme Court, however, the record of any JIRC proceeding “shall lose its confidential character.” *Id.*

¹⁶ Section 17.1-914 (2020).

¹⁷ *In re Bennett*, 301 Va. at 72.

¹⁸ See, e.g., § 17.1-918(B) (requiring the JIRC to transmit certain information to the General Assembly when a judge’s election will be subject to consideration at the legislature’s next session).

¹⁹ Section 17.1-905 (Supp. 2023) (requiring publication of the report “[o]n or before December 1 of each year”).

²⁰ *Id.*

²¹ *Id.*

contained in the report is “the number of complaints for which the Commission concluded that the Canons of Judicial Conduct were breached[.]”²²

The General Assembly amended Code § 17.1-905 in 2023 to require the reporting of additional information.²³ Per the amendment, the JIRC’s annual report also must include “the name of any judge who the Commission concluded breached the Canons of Judicial Conduct and took disciplinary action against as a result of such conclusion[.]”²⁴ For any such named judge, the JIRC is directed further to report “(b) the specific Canons of Judicial Conduct breached by such judge; and (c) the disciplinary action taken against such judge by the Commission.”²⁵ The amendment thus provides a clear exemption to the more general rule against divulging “the identification of [a] subject judge[.]”²⁶ Nevertheless, the name disclosure is required only to the extent the JIRC 1) has concluded that the judge breached the Canons of Judicial Conduct *and* 2) has taken disciplinary action against the judge based on its conclusion. If either element is missing, then the new reporting requirement does not apply.²⁷

Virginia law makes clear that “[t]he ultimate responsibility . . . for judicial discipline lies squarely with [the Supreme Court].”²⁸ Although it thus generally is recognized that “the Commission’s function is limited to determining whether ‘the charges [are] well-founded, and sufficient to constitute the basis for retirement, censure, or removal of a judge,’ thereby resulting in a complaint being filed in th[e Supreme] Court[.]”²⁹ the JIRC is authorized to take other actions with respect to matters coming before it that fall short of filing a formal complaint.

²² *Id.* The report also must include “the number of cases from which the staff or any member of the Commission recused himself due to an actual or possible conflict.” *Id. See, e.g.,* JUDICIAL INQUIRY & REVIEW COMMISSION, 2022 ANNUAL REPORT, Attachment at III(2) (reporting five complaints as the “[n]umber of complaints for which the Commission concluded the Canons of Judicial Conduct were breached”), available at <https://rga.lis.virginia.gov/Published/2022/RD753/PDF>.

²³ 2023 Va. Acts ch. 700. The new reporting requirement was not the only way in which the General Assembly modified confidentiality requirements in 2023. In addition to amending § 17.1-905, the General Assembly added a new provision to § 17.1-913, the general confidentiality statute. New subsection C directs the Commission to “notify a complainant of the final decision made or action taken in regards to his filed complaint within 30 days of such decision or action. Such notice shall include the decision made or action taken by the Commission. The confidentiality provisions of subsection A shall not apply to notifications made by the Commission under this subsection.” 2023 Va. Acts ch. 329.

²⁴ 2023 Va. Acts ch. 700. This information is to be provided “if the date on which the Commission reached such conclusion was after the previous annual report was published[.]” *Id.*; Section 17.1-905. The new reporting requirements apply, however, “only to disciplinary actions taken on or after July 1, 2023.” 2023 Va. Acts ch. 700 cl. 2.

²⁵ *Id.*

²⁶ VA. CODE ANN. § 17.1-913.

²⁷ The clause employs the word “and.” “[T]he ordinary meaning of the conjunctive ‘and’ suggests an additional requirement” Preferred Sys. Sols., Inc. v. GP Consulting, LLC, 284 Va. 382, 392 (2012). “The use of the term ‘and’ in [a statute] implies the conjunctive unless the words in the statute clearly express legislative intent otherwise.” 2003 Op. Va. Att’y Gen. 166, 168; *accord* 1989 Op. Va. Att’y Gen. 265, 266. “When, *and only when*, necessary to effectuate the obvious intention of the legislature, conjunctive words may be construed as disjunctive, and *vice versa*.” S. E. Pub. Serv. Corp. of Va. v. Commonwealth ex rel. State Corp. Comm’n, 165 Va. 116, 122 (1935) (emphasis added) (quoting 59 Corpus Juris, section 584, page 986). No contrary intent is evident here.

²⁸ Jud. Inquiry & Rev. Comm’n of Va. v. Pomrenke, 294 Va. 401, 415 (2017).

²⁹ *Shull*, 274 Va. at 670 (quoting § 17.1-902); *accord Peatross*, 269 Va. at 444.

For example, “the Commission may suspend a judge with pay if it finds that there is probable cause to believe that the continued performance of judicial duties by the judge constitutes both a substantial and immediate threat to the public interest in the administration of justice.”³⁰ In addition, “[w]henver the Commission has probable cause to believe a judge is unable to perform his duties . . . because of excessive use of alcohol or drugs or physical or mental illness, the Commission, . . . may direct that the judge submit to a mental or physical examination by a health care provider”³¹

Moreover, pursuant to JIRC Rule 15, the Commission, “[a]fter an investigation has been concluded, . . . may take any of [several] actions”³² that are in addition to dismissing the charges or filing a formal complaint.³³ A “third option, [Rule] 15(A)(3), permits the Commission to remove from its docket charges that it determines are well founded, but not by themselves serious enough to warrant disciplinary action Such a disposition provides a warning to a judge and the opportunity to avoid future misconduct.”³⁴ “[Rule] 15(A)(4)[] permits the Commission, when it finds the charges to be well founded and with the consent of the judge, to place the judge on a period of supervision under such terms and conditions as the Commission shall determine.”³⁵ This fourth option “affords the judge the benefit of a period of supervision to avoid future misconduct and also to avoid some of the consequences of his past misconduct, including censure or removal.”³⁶

With this backdrop, you ask under what circumstances the new requirement to report the name of the judge attaches. You express concern that the new statutory language may cause confusion given that “[t]he *ultimate* responsibility . . . for judicial discipline lies squarely” with the Supreme Court,³⁷ where the only sanctions available are censure and removal.

³⁰ VA. CODE ANN. § 17.1-911(A) (2020). The judge is entitled to “reasonable notice of such suspension[.]” and the Commission “if requested by the judge or his attorney, shall schedule a hearing during the first fifteen days of the suspension in order to determine whether justice would be served for the suspension to continue until the completion of the investigation or formal hearing.” Section 17.1-911(B).

³¹ Section 17.1-912(A) (2020) (granting the JIRC such authority “after preliminary investigation by informal conference”). The subject judge “shall be afforded reasonable notice and an opportunity for a hearing before such examination is conducted as to any matters regarding the examination and as to whether there is probable cause” supporting the order. Section 17.1-912(B).

³² Rule 15(A). Rule 3(B)(3) provides that “[d]isposition of charges shall be as provided in Rule 15 of the Rules of the Commission, or as may be provided by statute.” An “investigation” by the JIRC “may or may not include a formal hearing or informal conference.” Rule 2(H). The Commission may take any of the disposition actions after an informal conference with the judge, provided that the judge consents to such actions. Rule 15(B).

³³ Rule 15(A)(1) & (2).

³⁴ *Elliott*, 272 Va. at 117. The Rule provides as follows: “If the Commission finds the charges against the judge to be well founded but not of sufficient gravity to constitute the basis for retirement, censure or removal, it may summon the judge before the Commission or designated Commission members, and advise the judge of its findings. The charges shall then be removed from [the] Commission’s . . . docket but may, nevertheless, be considered with any other future charges against the judge.”

³⁵ *Elliott*, 272 Va. at 118. The Rule expressly provides: “If the Commission finds the charges against the judge to be well founded, the Commission may, with the consent of the judge, place the judge on a period of supervision under such terms and conditions as the Commission shall determine. Violation of such terms and conditions shall be grounds for a new charge of failure to cooperate with the Commission.”

³⁶ *Id.* “[T]he agreement may be likened to a form of immunity agreement offered by the Commonwealth to a citizen who is a potential defendant in a criminal investigation.” *Id.* at 119.

³⁷ *Pomrenke*, 294 Va. at 415.

I first note that “[s]tatutory amendments are presumed to *amend* statutes to change something that was there or to add something that was not there before.”³⁸ Therefore “we assume that the General Assembly’s amendments to a statute are purposeful, rather than unnecessary.”³⁹ In addition, “[w]hen new provisions are added to existing legislation by amendment, we presume that, in making such amendment, the legislature ‘acted with full knowledge of and in reference to the existing law upon the same subject and the construction placed upon it by the courts.’”⁴⁰ Accordingly, “in construing a statute that has been amended by the General Assembly, we presume that the legislature acted with full knowledge of the law as it affected the subject matter.”⁴¹ Constructions that render statutory amendments meaningless are to be avoided,⁴² and we construe “all statutes *in pari materia* in such a manner as to reconcile, if possible, any discordant feature which may exist, and make the body of the laws harmonious.”⁴³

The crux of your inquiry thus is what JIRC actions constitute “disciplinary action” for purposes of Code § 17.1-905. Clearly the term cannot refer to the punitive sanctions of censure or removal: the reporting requirement expressly relates only to actions taken by the Commission, but those sanctions are available exclusively to the Supreme Court. Accordingly, although judicial discipline ultimately is reserved to the Supreme Court, the General Assembly must consider some JIRC actions to be “disciplinary” in nature, otherwise the 2023 amendment would be meaningless.⁴⁴ The General Assembly, however, has not defined “disciplinary action” for purposes of the statute.

In the absence of a statutory definition, words are to be construed according to their ordinary meaning, given the context in which they are used.⁴⁵ A recent Opinion of this Office addressed the meaning of “disciplinary action” for purposes of Code § 23.1-808.⁴⁶ Relying on common definitions of “discipline,” the Opinion concluded that the term, standing alone, “is not limited only to action that is punitive in nature,” so that “a reasonable interpretation of ‘disciplinary action’ . . . includes remedial action that is intended to

³⁸ *Appalachian Power Co. v. State Corp. Comm’n*, 301 Va. 257, 281 (2022).

³⁹ *Kerns v. Wells Fargo Bank, N.A.*, 296 Va. 146, 157 (2018) (quoting *West Lewinsville Heights Citizens Ass’n v. Bd of Suprvrs.*, 270 Va. 259, 265 (2005)).

⁴⁰ *Burke v. Commonwealth*, 29 Va. App. 183, 188 (1999) (quoting *City of Richmond v. Sutherland*, 114 Va. 688, 693 (1913)).

⁴¹ *Commonwealth v. Bruhn*, 264 Va. 597, 602 (2002).

⁴² *See Britt Const., Inc. v. Magazzino Clean, LLC*, 271 Va. 58, 64 (2006); *accord Sussex Cmty. Servs. Ass’n v. Va. Soc’y for Mentally Retarded Children, Inc.*, 251 Va. 240, 245 (1996). “[W]e will assume that [] amendments to the law are purposeful and not unnecessary or vain[.]” *In re Watford*, 295 Va. 114, 121-22 (2018) (quoting *Cape Henry Towers, Inc. v. Nat’l Gypsum Co.*, 229 Va. 596, 600-01 (1985)).

⁴³ *REVI, LLC v. Chicago Title Ins. Co.*, 290 Va. 203, 211 (2015) (quoting *Lucy v. Cnty. of Albemarle*, 258 Va. 118, 129-30 (1999)).

⁴⁴ “Every part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary.” *City of Richmond v. Va. Elec. & Power Co.*, 292 Va. 70, 75 (2016) (quoting *Lynchburg Div. of Soc. Servs. v. Cook*, 276 Va. 465, 483 (2008)).

⁴⁵ 2022 Op. Va. Att’y Gen. 87, 88 (citing *Eley v. Commonwealth*, 70 Va. App. 158, 165 (2019); 2016 Op. Va. Att’y Gen. 293, 296). Absent an ambiguity, courts “must take the words [of a statute] as written and give them their plain meaning.” *Island Creek Coal Co. v. Honaker*, 9 Va. App. 336, 339 (1990) (internal quotation marks and citation omitted).

⁴⁶ VA. CODE ANN. § 23.1-808 prohibits institutions of higher education from taking “disciplinary action” against a student for the student’s drugs or alcohol use when the student admits to such use in the course of making a good faith report of an act of sexual violence.

correct or train”⁴⁷ The Opinion further noted the “broad view” some judicial decisions have adopted in applying “discipline” and “disciplinary action” in the employment context.⁴⁸ The Opinion highlighted one case decision that deemed an action that “was ‘designed to establish . . . prescribed conduct[,]’ ‘reaffirm[ed] a rule or system of rules governing conduct[,]’ and sought ‘to control . . . situations in the future’”⁴⁹ to be disciplinary in nature.

Given the exclusive ability of the Supreme Court to punitively sanction judges and the limited role the JIRC maintains, application of this accepted, broader understanding of “discipline” is appropriate here. I first reemphasize, however, that the new reporting requirement only applies to situations in which the JIRC first has concluded that a judge has breached the Canons of Judicial Conduct. The JIRC is obliged already to report the number of complaints resulting in such a conclusion, and it has done so.⁵⁰ As amended, Code § 17.1-905 now requires the JIRC to report the name of the judge associated with the conclusion when it also “took disciplinary action against [the judge] as a result of such conclusion[.]”⁵¹ Pursuing formal disciplinary proceedings by filing a formal complaint with the Supreme Court easily falls within the above-described rubric of “disciplinary action.” Suspensions and supervision agreements are clearly remedial measures designed to “correct or train” and to “reaffirm” a “system of rules governing conduct,” namely the Canons of Judicial Conduct. By taking such actions, the JIRC also seeks “to control . . . situations in the future.” I therefore conclude that suspensions and supervision agreements are forms of “informal discipline” the Commission undertakes,⁵² and as such, are acts that constitute “disciplinary actions” for purposes of Code § 17.1-905.⁵³

Conclusion

For the foregoing reasons, it is my opinion that the Commission must implement Code § 17.1-905’s new annual reporting requirements, including the naming of a subject judge, when and only when, both of two conditions are met: 1) the JIRC has concluded that the judge breached the Canons of Judicial Conduct *and* 2) it has taken disciplinary action against the judge based on its conclusion.⁵⁴ It is further my opinion

⁴⁷ 2023 Op. Va. Att’y Gen. No. 22-066, <https://www.oag.state.va.us/files/Opinions/2023/22-066-Helmer-issued.pdf>.

⁴⁸ *Id.*

⁴⁹ *Id.* (internal quotation marks omitted) (alterations in original) (quoting Gillispie v. Va. Dep’t of Env’tl. Quality, 67 Va. Cir. 580, 583 (City of Richmond Cir. Ct. Dec. 16, 2004)).

⁵⁰ Section 17.1-905; *see, e.g.*, JIRC 2022 Annual Report, *supra* note 22. A complaint can encompass allegations of misconduct “whether or not the alleged misconduct violates the Canons of Judicial Conduct.” Rule 2(I). Per the plain language of Code § 17.1-905, remedial actions, when taken by JIRC apart from concluding that a Canon has been breached, are thus not reportable.

⁵¹ 2023 Va. Acts ch. 700. The Canons of Judicial Conduct themselves recognize that “[n]ot every transgression should result in disciplinary action.” RULES OF THE SUPREME COURT OF VIRGINIA, Pt. 6, § III, Preamble.

⁵² The Supreme Court of Virginia has acknowledged that the JIRC engages in informal discipline. *See* Jud. Inquiry & Rev. Comm’n of Va. v. Taylor, 278 Va. 699, 724 (2009) (noting that, in that case, the Commission asked the Court to consider the judge’s “prior experience with the Commission as an indication of her lack of amenability to informal discipline”).

⁵³ To the extent the Commission chooses to order an examination under Code § 17.1-912 with a similar intent, such examination also would constitute “disciplinary action.”

⁵⁴ For purposes of the 2023 Annual Report, I conclude that the newly required information must be reported for those complaints that resulted in a conclusion by the Commission that a judge breached the Canons when both 1) the

Humes J. Franklin, III, Esquire, Chairman
Honorable Kenneth R. Melvin, Vice Chairman
November 20, 2023
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that the Commission takes “disciplinary action” as contemplated by the statute’s amendment when it files a formal complaint with the Supreme Court of Virginia, suspends a judge, or enters into a supervision agreement with a judge.

With kindest regards, I am,

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jason S. Miyares", with a large, stylized flourish at the end.

Jason S. Miyares
Attorney General

conclusion was reached after December 1, 2022 (the date of the last report) *and* 2) the disciplinary action the Commission took based on that conclusion, if any, was taken on or after July 1, 2023. *See supra* notes 24 & 27.



COMMONWEALTH OF VIRGINIA

Judicial Inquiry and Review Commission

P.O. Box 367
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AGREEMENT Inquiry No. 2023-0816

This agreement between the Honorable Onzlee Ware and the Judicial Inquiry and Review Commission addresses the above-styled pending inquiry. Pursuant to Virginia Code § 17.1-911(A), on September 12, 2023, the Commission entered an order suspending the Honorable Onzlee Ware, with pay, from the exercise of judicial powers, pending the resolution of this matter. The finding of probable cause supporting this determination was set forth in a document entitled, "Factual Basis for Suspension, Suspension Order, dated September 12, 2023, Inquiry No. 2023-0816." Both the suspension order and the factual basis in support thereof are incorporated into this document by this reference and attached hereto.

1. In furtherance of its investigation into these circumstances, the Commission has examined the allegations set forth in the factual basis for suspension. The Commission has received sworn testimony under oath from individuals with firsthand knowledge of these circumstances. In addition, the Commission's staff has interviewed an even greater number of individuals identified as possessing relevant information concerning the events described in the factual basis for suspension. Upon mature consideration of the evidence obtained thereby, the Commission concludes as follows:

- A. The evidence fails to corroborate any claim that Judge Ware intervened with the presiding court in the criminal case of Timothy Church. The evidence obtained by the Commission demonstrates that Judge Ware did not contact the trial judge in this matter as had been claimed in the declaration accompanying the habeas corpus petition filed in Timothy Church v. Director. (CL22001711-00).
- B. The evidence obtained by the Commission fails to corroborate the claim that Judge Ware played a role in the court's appointment of attorney Patrick Kenney to represent Timothy Church at sentencing in his criminal case. Again, the fulsome evidence obtained by the Commission in this regard demonstrates that Judge Ware was not involved in the process by which the court appointed Mr. Kenney to represent Timothy Church.
- C. Notwithstanding the assertion that Judge Ware called former Roanoke Sheriff Tim Allen in the presence of Timothy Church's mother, Grace Church, to inquire about the health and well-being of Mr. Church during his incarceration in the Roanoke jail, in light of its investigation into this matter, the Commission has determined that this allegation lacks credibility.
- D. The Commission's investigation failed to obtain credible evidence demonstrating that any sexual relationship between Judge Ware and Grace Church was entered into pursuant to a *quid pro quo* understanding, in exchange for the judge's assistance with Timothy Church's criminal case.
- E. Judge Ware acknowledges that he entered into a sexual relationship with Ms. Church, averring under oath that he did so on a mutual, voluntary basis.
- F. Judge Ware concedes that, during this relationship, he reviewed a psychological evaluation prepared as part of Timothy Church's case at Ms. Church's request.

and that he made explanatory notes for her benefit regarding the information conveyed therein.

G. Judge Ware concedes that, during this relationship, he reviewed remarks prepared by Ms. Church for her delivery at Timothy Church's sentencing in his criminal case. The judge acknowledged offering suggestions to Ms. Church concerning how she might edit these comments as part of an effort to make them more effective.

2. On the basis of the Commission's determination E, determination F, and determination G, the Commission concludes that Judge Ware's conduct breached Canon 1 C (regarding the improper use of judicial status to advance a private interest) and Canon 2 A (concerning the need for a judge to govern his or her public and private conduct to ensure the greatest public confidence in the judge's impartiality and integrity, as is relevant here).

3. Despite reaching this conclusion, the Commission is nevertheless willing to take this matter under advisement, for the time being, declining to proceed with a formal hearing at this juncture. It is the Commission's intention to remove the above-styled inquiry from its active docket for a period of twelve (12) months. During this period, the Commission's staff will continue to monitor the judge's conduct. It is the Commission's expectation that Judge Ware will fully comply with the Canons of Judicial Conduct for the Commonwealth at all times during this interval, governing his public and private behavior to ensure "the greatest public confidence in the judge's independence, impartiality, integrity, and competence." (Canon 2 A).

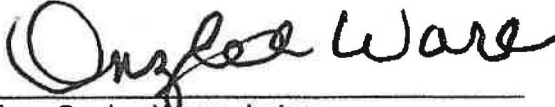
4. At the conclusion of this twelve (12) month period, on January 14, 2025, this Inquiry will again return to the Commission's active docket, for the Commission's consideration as to an appropriate disposition in this matter. The Commission explicitly

reserves the right to avail itself of all procedural steps enumerated in the Commission's rules in its review of this matter at that time.

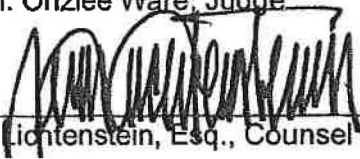
5. The parties agree that any notice to the Commission that Judge Ware has breached the Canons of Judicial Conduct shall provide a basis upon which the Commission may return Inquiry No. 2023-0816 to the Commission's Active Docket in advance of January 14, 2025. In such circumstances, the Commission explicitly reserves the right to avail itself of all procedural steps enumerated in the Commission's rules upon its consideration of the Inquiry at an advanced time, prior to January 14, 2025.

6. In exchange for Judge Ware's acceptance of this agreement, and his continued compliance with the Canons of Judicial Conduct, the Commission will, upon the agreement's execution, agree to rescind its Suspension Order of September 12, 2023, restoring Judge Ware's authority to exercise his judicial powers. An order will be entered by the Commission for this purpose and provided to the Judge.


By his signature, and that of his Counsel, Judge Ware consents to enter into this agreement and agrees to the above-described conditions and terms. This Agreement will not become effective unless signed by Judge Ware, his counsel, and counsel for the Commission.




The Hon. Onzlee Ware, Judge



John E. Lichtenstein, Esq., Counsel to Judge Ware



Date



Date



Anthony F. Anderson, Esq., Counsel to Judge Ware

1/19/2024

Date



Raymond F. Morrogh
Commission Counsel

1/22/2024

Date



COMMONWEALTH OF VIRGINIA

Judicial Inquiry and Review Commission

Humes J. Franklin, III, Esquire, Chairman
Judge Kenneth R. Melvin, Vice Chairman
Judge Shannon O. Hoehl
Terrie N. Thompson
Kyung N. Dickerson, Esquire
Reverend Cozy E. Bailey, Sr.
Judge Gino W. Williams

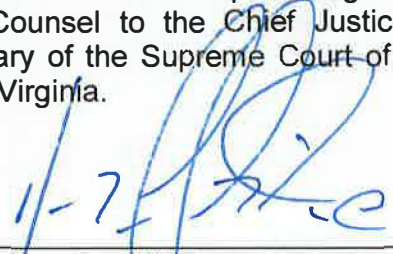
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ORDER OF SUSPENSION

Pursuant to Virginia Code § 17.1-911(A), the Commission hereby suspends the Honorable Onzlee Ware, with pay, from the exercise of judicial powers, pending the resolution of a matter now before the Commission. The Commission finds probable cause to believe that the continued performance of judicial duties by Judge Ware constitutes both a substantial and immediate threat to the public interest in the administration of justice. The suspension shall become effective immediately upon service of this order upon the judge.

Pursuant to § 17.1-911(C), once the suspension order is served upon him, Judge Ware shall not exercise judicial or supervisory powers, perform judicial duties of any kind, or be present at the courthouses during the suspension. The judge, however, shall continue to be bound by the Canons of Judicial Conduct.

A copy of this suspension order shall be served forthwith upon Judge Ware. A copy also shall be delivered by Commission Counsel to the Chief Justice of the Supreme Court of Virginia, the Executive Secretary of the Supreme Court of Virginia, and the Chief Judge of the 23rd Judicial Circuit of Virginia.



Humes J. Franklin, III, Esq., Chairman
Judicial Inquiry and Review Commission

9/12/23
Date



COMMONWEALTH OF VIRGINIA

Judicial Inquiry and Review Commission

Humes J. Franklin, III, Esquire, Chairman
Judge Kenneth R. Melvin, Vice Chairman
Judge Shannon O. Hoehl
Terrie N. Thompson
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Judge Gino W. Williams

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COMMISSION'S FACTUAL BASIS FOR SUSPENSION

Suspension Order dated September 12, 2023

Inquiry No. 2023-0816

1. On August 31, 2023, an amended petition for writ of habeas corpus was filed in the Circuit Court of the City of Roanoke, in the matter of Timothy Church v. Director. (CL22001711-00). That petition is adopted and incorporated herein by this reference.
2. In support of his claim of ineffective assistance of counsel, the petitioner avers that, subsequent to the initiation of criminal charges against him but prior to his trial, Judge Ware, then a judge of the Roanoke Juvenile and Domestic Relations District Court, solicited a sexual relationship from Grace Church, Timothy Church's mother, in exchange for his assistance with Timothy Church's case.
3. Judge Ware is alleged to have given both written and oral advice to Grace Church regarding Timothy Church's case. According to the petition, Judge Ware advised Grace Church to have her son waive his right to a jury trial, which she shared with Timothy Church, who did so. In addition, it is alleged that Judge Ware edited the remarks that Grace Church shared with the Court at the time of Timothy Church's sentencing.
4. Moreover, it is averred that Judge Ware asserted to Grace Church that he was "intervening in the case," with the trial judge, assuring her that Timothy Church would receive a sentence no greater than 7 years of imprisonment.
5. The petition further alleges that Judge Ware advised Grace Church to dismiss trial counsel Dirk Padgett and suggested the hiring of attorney Patrick Kenney to represent Timothy Church at sentencing in the matter. This, too, is alleged to have been done in response to Judge Ware's direction.

6. In support of the petition for writ of habeas corpus, Timothy Church has provided a sworn statement from his mother Grace Church, dated August 28, 2023. This document, too, is adopted and incorporated herein by this reference.
7. There, Grace Church articulates that she first met Judge Ware on or about September of 2019 at a charity event. She avers that the judge provided his business card to a relative of hers, with the intent that the relative share it with Church. She notes, however that she did not initially contact the judge in response.
8. Church further swears that, at a subsequent charity event, Judge Ware spoke with her, expressing that she had not contacted him and urging her to do so, providing his business card once again. Church articulates a detailed narrative of the circumstances in which she then met with the judge thereafter, riding in his vehicle, and identifying a contemporaneous witness with whom she spoke on the phone during the encounter described.
9. She relates that Judge Ware expressed a willingness to assist with the case of Church's son, in exchange for a sexual relationship with Church. Although she notes that she initially declined, she avers that she ultimately entered into such a relationship. It was in this context that Church swears that Judge Ware communicated that he had spoken to the trial judge, assuring Church that her son would receive a sentence no longer than 7 years of imprisonment.
10. Church avers that she and Judge Ware engaged in sexual relations at least ten times between June of 2019 and May of 2020, describing in detail features of Judge Ware's home, and offering to provide unique information about Judge Ware's anatomy, claiming to having seen his naked body.
11. Church relates that during this time she received text messages from Judge Ware. One such claimed message is appended to her declaration.
12. Church averred that, on one occasion, Judge Ware called Sheriff Tim Allen in her presence to inquire about the health and well-being of her son.
13. Church further swears that Judge Ware edited the 9 page draft statement she intended to deliver at her son's sentencing to a final document of 2 pages.
14. Church identifies four individuals whom she contemporaneously apprised of the circumstances of her sexual relationship with Judge Ware.
15. In support of her declaration, Church offered photographs of a hand-written note, purportedly drafted by Judge Ware, as well as a photograph of a text that appears to have been sent to her by the judge. In addition, Church has provided a photograph of herself in the company of Judge Ware.

16. On September 6, 2023, the Roanoke Times published an article entitled "Roanoke mother: Judge promised legal help in son's murder case in exchange for sex." This article widely disseminated to the public the substance of the allegations set forth in the petition for writ of habeas corpus and the accompanying declaration by Grace Church. This Roanoke Times article is likewise adopted and incorporated herein by this reference.

In light of these circumstances, the Commission finds probable cause to believe that the continued performance of judicial duties by the judge constitutes both a substantial and immediate threat to the public interest in the administration of justice. Virginia Code § 17.1-911.



COMMONWEALTH OF VIRGINIA

Judicial Inquiry and Review Commission

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AGREEMENT

Inquiry No. 2024-0172

This agreement between the Honorable Anthony W. Bailey, Judge of the Juvenile and Domestic Relations District Court for the 26th Judicial District of Virginia and the Judicial Inquiry and Review Commission addresses the above-styled pending matter. On April 9, 2024, Judge Bailey appeared before the Commission for an informal conference in accordance with Commission Rule 4.

1. The Commission solicited an opportunity to meet with Judge Bailey due to renewed concerns arising as a result of the recurrence of a persistent pattern of unreasonable delay in the judge's execution of final orders for the matters over which he has presided. In addition, it was the Commission's understanding that Judge Bailey had regularly conducted court proceedings until well after working hours concluded, with a concomitant impact upon the court's staff, the sheriff's deputies, and the litigants. In addition to the amount of time consumed by such an endeavor, the Commission possessed concerns regarding the undue financial burden placed upon the parties due to Judge Bailey's failure to expeditiously conduct trials, stemming from otherwise unnecessary hourly fees the parties may have owed to their counsel as a result.

2. Judge Bailey has previously appeared before the Commission for informal conferences addressing identical issues on two prior occasions. Judge Bailey first

appeared before the Commission on March 12, 2019, in Inquiry No. 2019-0126 for this purpose. He again came before the Commission on September 14, 2021, in Inquiry No. 2021-0658.

3. With respect to Inquiry No. 2019-0126, following Judge Bailey's appearance, the Commission declined to proceed to a formal hearing on the matter, providing the judge with an opportunity to correct his behavior. The Commission directed Judge Bailey to immediately provide orders resolving all outstanding matters and directed the judge to report his compliance to Commission Counsel by March 22, 2019. Furthermore, this inquiry remained open and under the Commission's consideration for one year, during which time Judge Bailey was required to make monthly reports to Counsel, identifying all undecided matters, due by the 1st of each month. The Commission directed Judge Bailey not to take cases under advisement, but under circumstances in which doing became unavoidable, the judge was directed to report to Counsel any matters taken under advisement, identifying how such matters were ultimately resolved. Finally, the judge was admonished that, if he failed to stay current with orders, the Commission would take further steps to advance this inquiry.

4. After the passage of one year, and in light of Judge Bailey's successful efforts, Inquiry No. 2019-0126 was dismissed from the Commission's active docket on March 10, 2020.

5. In Inquiry No. 2021-0658, subsequent to Judge Bailey's informal conference on September 14, 2021, Counsel enlisted the assistance of Judge H. Lee Chitwood, a fellow juvenile court judge and former Commission Chair. Judge Chitwood agreed to observe Judge Bailey in court, making recommendations to the Commission as to methods by which the judge might more efficiently conduct his work.

6. Over a series of occasions in October and November 2021, Judge Chitwood traveled to observe Judge Bailey preside over court. In addition, Judge Chitwood hosted Judge Bailey in his own court, offering the judge an opportunity to view the methods employed by Judge Chitwood to obtain maximum efficiency in conducting a juvenile court docket. In a report, dated November 9, 2021, Judge Chitwood noted that Judge Bailey had implemented the use of a shortened model custody order, allowing him to complete and distribute a final order to the parties upon the conclusion of a matter. The Commission continued to monitor Judge Bailey's progress, receiving monthly updates. This matter was ultimately the subject of a motion for dismissal in the Commission's meeting of June 14, 2022.

7. In light of Judge Bailey's renewed pattern of unreasonable delay in his execution of final orders for the matters over which he has presided, and in light of his failure to avail himself of the benefits and experience obtained through the prior resolution of Inquiries No. 2019-0126 and 2021-0658, the Commission is compelled to conclude that Judge Bailey's current conduct has breached Canon 3 B (regarding the necessity of prompt decision making by a judge), as well as Canon 2 A (concerning the need for a judge to govern his or her public and private conduct to ensure the greatest public confidence in the judge's competence, as is relevant here).

8. Despite reaching these conclusions, the Commission is nevertheless willing to take this matter under advisement, for the time being, declining to proceed with a formal hearing at this juncture. In accordance with Commission Rule 15A(1), it is the Commission's intention to remove the above-styled charges from its active docket for a period of twelve (12) months. During this period, the Commission's staff will continue to monitor the judge's conduct. It is the Commission's expectation that Judge Bailey will fully comply with the Canons of Judicial Conduct for the Commonwealth at all times

during this interval, governing his public and private behavior to ensure “the greatest public confidence in the judge’s independence, impartiality, integrity, and competence.” (Canon 2 A).

9. Moreover, as agreed previously, Judge Bailey will once again make monthly reports to the Commission’s Counsel, identifying all undecided matters, due by the 1st of each month. In addition, Judge Bailey will remain mindful to avoid conducting trials subsequent to regular business hours, maintaining a due regard for the impact upon the parties and courthouse staff when doing so.

10. At the conclusion of this twelve (12) month period, at the Commission’s regularly scheduled meeting in April, 2025, this matter will return to the Commission’s active docket, for the Commission’s consideration as to an appropriate disposition. The Commission explicitly reserves the right to avail itself of all procedural steps enumerated in the Commission’s rules in its review of this matter at that time.

11. The parties agree that any notice to the Commission that Judge Bailey has breached the Canons of Judicial Conduct shall provide a basis upon which the Commission may return Inquiry No. 2024-0172 to the Commission’s Active Docket in advance of April 2025. In such circumstances, the Commission explicitly reserves the right to avail itself of all procedural steps enumerated in the Commission’s rules upon its consideration of the Charge at an advanced time, prior to April of 2025.


12. Judge Bailey acknowledges notice of the amendment to Virginia Code § 17.1-905, which now provides as follows:

“On or before December 1 of each year, the Commission shall publish a report detailing the activities of the Commission for the prior year. The report shall include the number of complaints filed with the Commission; the number of complaints originating from attorneys, judges, court employees, or the general public; the number of complaints dismissed based on (i) failure to fall within the jurisdiction of the Commission, (ii) failure to state a violation of the Canons of Judicial Conduct, or (iii) failure of the Commission to reach a conclusion that the Canons were breached; the

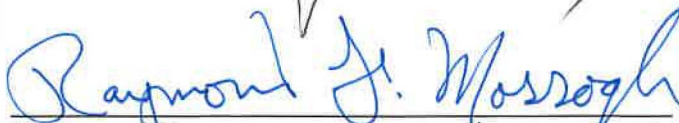
number of complaints for which the Commission concluded that the Canons of Judicial Conduct were breached; and the number of cases from which the staff or any member of the Commission recused himself due to an actual or possible conflict. The report shall also include (a) the name of any judge who the Commission concluded breached the Canons of Judicial Conduct and took disciplinary action against as a result of such conclusion, if the date on which the Commission reached such conclusion was after the previous annual report was published; (b) the specific Canons of Judicial Conduct breached by such judge; and (c) the disciplinary action taken against such judge by the Commission.”

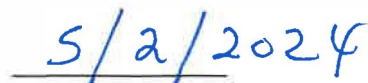
13. Judge Bailey further acknowledges that should this agreement conclude in April 2025, without the commencement of a formal hearing and without findings of misconduct made therein by the Commission pursuant to Commission Rule 15(A) (2), (3), or (4), the reporting provisions of Code § 17.1-918 (B) will not thereby be implicated.

By his signature, Judge Bailey consents to enter into this agreement made pursuant to Commission Rule 15(B), and further agrees to the above-described conditions and terms. This Agreement will not become effective unless signed by Judge Bailey and counsel for the Commission.


The Hon. Anthony W. Bailey, Judge


Date


Raymond F. Morrogh
Commission Counsel


Date



COMMONWEALTH OF VIRGINIA

Judicial Inquiry and Review Commission

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AGREEMENT

Inquiry No. 2024-0414

The Virginia Judicial Inquiry and Review Commission (“Commission”) and the Honorable W. Reilly Marchant, (“Judge Marchant”), pursuant to the provisions of Rule 15(B) of the Rules of the Commission, enter into this Agreement to remove Inquiry No. 2024-0414 from the Commission’s Active Docket under the terms and conditions set out below.

1. By letter of June 11, 2024, the Commission invited Judge Marchant to appear before it for the purpose of an informal conference in accordance with Rule 4 of the Rules of the Commission for the purpose of discussing the facts and circumstances underlying Inquiry No. 2024-0414. Therein the following allegations had been made regarding Judge Marchant’s conduct:

A. As it relates to witness #1, a female attorney who actively appeared before the judge, it was alleged that Judge Marchant had endeavored to establish a social relationship with this individual outside of the courtroom.

To this end, Judge Marchant engaged in a pattern of conduct as follows:

i. Judge Marchant invited this individual to join him for lunch on more than one occasion. Moreover, in multiple

instances Judge Marchant also invited this individual to join him for a drink after work.

ii. In July of 2023, Judge Marchant messaged this individual about ongoing litigation in which she was engaged in a court other than the judge's, wherein he invited witness #1 to "come up and talk to [him] about the case," offering to serve as "a sounding board or play devil's advocate." In so doing, the judge admonished witness #1 to "keep [his offer] between [themselves]."

iii. It was further alleged that during a shared lunch in the early part of July 2023, Judge Marchant commented on the physical appearance of witness #1, stating that if she wore a dress in his court, he would be too distracted to focus on the case.

iv. During a lunch with witness #1 in October of 2023, it has been alleged that Judge Marchant expressed to her, "You haven't complimented me on my sweater. It's your favorite color. I wore it just for you."

v. During the same lunch, it has been alleged that Judge Marchant referenced the efforts of witness #1 to minimize their contact, citing the instances in which she had previously declined lunch invitations, or had canceled a scheduled lunch outing at the last minute. Of this, Judge Marchant expressed that it seemed like witness #1 did not want to spend time with him.

vi. It has been alleged that Judge Marchant acknowledged the awkwardness of his comment, observing that it feels very high school to be saying something like that to a girl and that he felt stupid having to say it.

vii. On December 27, 2023, Judge Marchant messaged the individual, asserting a desire to come by her home “to say Merry Christmas and catch up.” In so doing, the judge inquired whether this request had been “too forward.”

viii. In requesting to come to the individual’s home on this occasion, the judge related that he was “bugging [witness #1] way too much not to kind of talk out our friendship” and “care[d] a lot” for her and expressed his willingness to “back up” if she desired, conceding that he was “not great at reading signals.”

ix. Later in the evening of the same date, Judge Marchant proposed to join witness #1 for a drink. In response, witness #1 indicated that she was sick with strep throat. Two days later, on December 29, 2023, Judge Marchant messaged the individual, expressing his desire to bring to her home some soup, Jello, or Gatorade. When the individual did not respond to the judge’s offer, he texted again, maintaining that he had

arrived at her home, and was proceeding up her sidewalk, about to ring her doorbell.

x. On the following day, December 30, 2023, Judge Marchant texted this individual to terminate the social relationship, acknowledging that “when looking at it from what [he] perceive[d] as [witness #1’s] perspective,” Judge Marchant’s “pursuit of a closer personal friendship” had put witness #1 in a “very difficult position,” and he “just didn’t realize the difficult spot [he] put [witness #1] in.” There, the judge characterized his “pushing for lunch and drinks after work” as part of an effort “to be closer to her.”

xi. It was further alleged that during this time period from the summer to the winter of 2023, the judge repeatedly sought to give witness #1 long embraces, which the individual found awkward, and that the judge would, on occasion during this same time, extend his hand to witness # 1, as if inviting a handshake, taking her hand and holding it for a very long time.

B. With respect to witness #2, who is likewise a female attorney that actively appeared before the judge, it was alleged that Judge Marchant had also endeavored to establish a social relationship with this individual outside of the courtroom. Regarding witness #2, it has been alleged that Judge Marchant engaged in a pattern of conduct as follows:

i. Witness #2 alleged past instances in which the judge solicited hugs from her. In other instances, following occasions in which they had met for lunch, Judge Marchant would text witness #2 and tell her that she looked great.

ii. On August 1, 2023, Judge Marchant invited witness #2 to lunch to celebrate a development in her career. During this meal, Judge Marchant expressed to witness #2 that he had something he wished to tell her. He then began to relate a story about his second-grade teacher, Ms. Honeycutt, sharing how much he and his classmates had loved her, so much so that they would often misbehave for the sole purpose of getting in trouble so that they could spend more time with her. According to Judge Marchant, when the teacher asked the students why they acted up, they shared that they did so because they loved her. Witness #2 maintained that, at the conclusion of this story, the judge then told her, that is how I feel about you. I love you.

iii. On the following day, Judge Marchant texted witness #2, sharing thoughts about various law firms at which she might consider seeking employment. After sharing his insights, Judge Marchant closed by exhorting witness #2 to "Carry on Ms. Honeycutt 2.0."

iv. On August 10, 2023, Judge Marchant exchanged a text with witness #2, noting that he was scheduled to undergo training to become a mediator, in anticipation of taking on such work following his retirement as a judge. There, Judge Marchant expressed that “once [witness #2 was] in civil litigation [he] can mediate [her] cases so she will make a big payoff.”

v. On November 14, 2023, Judge Marchant drove with witness #2 to have lunch together at a Richmond, Virginia restaurant, Tazza Kitchen. Witness #2 alleged that after lunch they returned to the judge’s car. Witness #2 maintained that, once inside, Judge Marchant said, “give me a hug,” and, as he leaned across the car’s center console, he sought to kiss witness #2 on her lips. She asserted that she turned her head in an effort to avoid his kiss, resulting in the judge kissing her cheek.

2. Judge Marchant accepted the Commission’s June 11, 2024, invitation to appear before it in an informal conference, appearing for this purpose accompanied by counsel on September 10, 2024. There, the judge offered sworn testimony, in which he acknowledged that his effort to obtain a social relationship with these individuals as a sitting judge who presided over their cases was improper. In addition, Judge Marchant specifically acknowledged that it was inappropriate to offer to serve as a “sounding board” to witness #1 in her preparation for litigation before another a judge in a different judicial circuit. Judge Marchant further conceded that, with the benefit of hindsight, he now recognized that there existed an unbalanced power dynamic between himself as a

judge and these individuals who appeared before him, such that they could not reasonably refuse his efforts to pursue a social relationship with them. Judge Marchant denied intentionally making either of the individuals uncomfortable, and he denied knowing that they were uncomfortable. Judge Marchant also denied intending to violate any of the Canons of Judicial Conduct. While Judge Marchant maintained that his relationships with both witnesses were platonic and denied harboring any romantic intentions toward either witness #1 or witness #2, he conceded that he understood why that might have perceived otherwise given the circumstances. Judge Marchant expressly denied soliciting hugs from these individuals and denied holding the hand of witness #1 for long periods of time as alleged. Judge Marchant expressly denied telling witness #1 that he would be too distracted if she wore a dress in court. Judge Marchant expressly denied telling witness #2 that he loved her. Judge Marchant also expressly denied having attempted to kiss witness #2 following their November 14, 2023, lunch at Tazza Kitchen. However, the judge admitted putting his arm around witness #2 upon returning to his car on that occasion, during which he maintained that their cheeks brushed. While unable to account for the perception of witness #2 that he had attempted to kiss her, he acknowledged the possibility that her belief in this regard was sincerely held.

3. On the basis of Judge Marchant's informal conference testimony, the Commission concludes that Judge Marchant's conduct breached Canon 2 A (concerning the need for a judge to govern his or her public and private conduct to ensure the greatest public confidence in the judge's impartiality and integrity) and Canon 3 H (regarding the need to refrain from speech, gestures, or other conduct that could reasonably be perceived as sexual harassment).

4. Given Judge Marchant's concessions before the Commission, the Commission need not resolve the factual disputes that remain between the allegations of witness #1, those offered by witness #2, and the responses to both provided by Judge Marchant. The Commission is satisfied in reaching a determination that Judge Marchant's conduct breached the dictates of Canon 3 H based upon the judge's admissions standing alone.

5. The Commission is nevertheless willing to decline to proceed with a formal hearing in exchange for Judge Marchant's voluntary acceptance of the agreement set forth herein. Upon mature consideration and reflection, and with the advice of Counsel, Judge Marchant has voluntarily agreed to undertake the following enumerated steps, in exchange for which the Commission has agreed to remove the above-styled inquiry from its active docket.

6. Judge Marchant agrees that he will submit a letter to the Chief Justice of the Supreme Court of Virginia, in which he requests to be excused from the provisions Code § 17.1-106, regarding service for temporary recall to the bench as a retired judge of the Circuit Court. Judge Marchant further agrees that at no time in the future will he seek, or consent to inclusion on the Chief Justice's recall list, nor will he accept appointment as a judge designate pursuant to Code § 17.1-107, nor stipulation as a judge *pro tempore*, in accordance with Code § 17.1-109. Judge Marchant further agrees to furnish to the Commission a copy of this correspondence with the Chief Justice. In exchange, upon receipt of this item, the Commission agrees to enter an order removing Inquiry No. 2024-0414 from the Commission's Active Docket.

7. Judge Marchant acknowledges notice of the amendment to Virginia Code § 17.1-905, which now provides as follows:

"On or before December 1 of each year, the Commission shall publish a report detailing the activities of the Commission for the prior year. The report shall include the number of complaints filed with the Commission; the number of complaints

originating from attorneys, judges, court employees, or the general public; the number of complaints dismissed based on (i) failure to fall within the jurisdiction of the Commission, (ii) failure to state a violation of the Canons of Judicial Conduct, or (iii) failure of the Commission to reach a conclusion that the Canons were breached; the number of complaints for which the Commission concluded that the Canons of Judicial Conduct were breached; and the number of cases from which the staff or any member of the Commission recused himself due to an actual or possible conflict. The report shall also include (a) the name of any judge who the Commission concluded breached the Canons of Judicial Conduct and took disciplinary action against as a result of such conclusion, if the date on which the Commission reached such conclusion was after the previous annual report was published; (b) the specific Canons of Judicial Conduct breached by such judge; and (c) the disciplinary action taken against such judge by the Commission."

8. Pursuant to this provision of law, Judge Marchant acknowledges his understanding that a copy of this agreement shall be reported to the General Assembly with the Commission's next annual report, conceding the Commission's statutory obligation to do so.

9. It is the Commission's expectation that Judge Marchant will adhere to the commitments he has made in paragraphs 6, 7, and 8 of this agreement, incorporated herein by this reference. The parties agree that any notice of Judge Marchant's breach of the commitments made in paragraphs 6, 7, and 8 shall provide a basis upon which the Commission may return Inquiry No. 2024-0414 to the Commission's Active Docket. In such circumstances, the Commission explicitly reserves the right to avail itself of all procedural steps enumerated in the Commission's rules. In the event the Commission receives, from any source, notice of a breach of the commitments of paragraph 6, 7, and 8 the Commission shall notify Judge Marchant promptly. Judge Marchant will be provided due process by the Commission in any proceeding that may thereby result.

10. By his signature, and that of his Counsel, Judge Marchant consents to enter into this agreement and agrees to the above-described conditions and terms. This Agreement will not become effective unless signed by Judge Marchant, his counsel, and counsel for the Commission.

W. Reilly Marchant
The Hon. W. Reilly Marchant, Judge

9-25-24
Date

David Harless
W. David Harless, Esq., Counsel to Judge Marchant
David B. Lacy, Esq., Counsel to Judge Marchant
James B. Thorsen, Esq., Counsel to Judge Marchant

9/25/24
Date

Raymond F. Morrogh
Raymond F. Morrogh
Commission Counsel

9/25/24
Date



COMMONWEALTH OF VIRGINIA

Judicial Inquiry and Review Commission

P.O. Box 367
Richmond, Virginia 23218-0367
(804) 786-6636

AGREEMENT

Inquiry No. 2024-0971

The Virginia Judicial Inquiry and Review Commission (“Commission”) and the Honorable Charles F. Koehler, Jr., Judge of the Juvenile and Domestic Relations District Court for the 20th Judicial District of Virginia (“Judge Koehler”), pursuant to the provisions of Rule 15(B) of the Rules of the Commission, enter into this Agreement to remove Inquiry No. 2024-0971 from the Commission’s active docket under the terms and conditions set out below.

1. By letter of October 8, 2024, the Commission invited Judge Koehler to appear before it for an informal conference in accordance with Rule 4 of the Rules of the Commission for the purpose of discussing the facts and circumstances underlying Inquiry No. 2024-0971, related to his August 31, 2024, arrest for public intoxication, in violation of Virginia Code § 18.2-388.
2. Published news reports of Judge Koehler’s arrest initially brought this matter to the Commission’s attention, and, on September 27, 2024, the judge made the Commission aware of his determination to prepay the fine associated with his violation, effectively admitting his guilt to the offense in GC24-4012-00. In the same communication, Judge Koehler conveyed his efforts to obtain a better understanding of

his risk for substance abuse, articulating the actions he had taken to mitigate against any future risk in this regard.

3. Judge Koehler accepted the Commission's October 8, 2024, invitation to appear. Accordingly, on November 12, 2024, the judge offered sworn testimony before the Commission in which he acknowledged that he had made an error in judgment in the events that led to his arrest. Further, Judge Koehler candidly acknowledged his efforts to take accountability for his actions, and to develop a deeper understanding of the potential impact that alcohol may have upon him.

4. On the basis of Judge Koehler's informal conference testimony, and in light of Judge Koehler's arrest and citation for public intoxication, as well as his acknowledgement of guilt associated with this offense, the Commission is compelled to conclude that Judge Koehler's conduct breached Canon 2 A (concerning the need for a judge to govern his or her public and private conduct to ensure the greatest public confidence in the judge's independence, impartiality, integrity, and competence), as well as Canon 2 V (compelling a judge to respect and comply with the law).

5. The Commission is nevertheless willing to decline to proceed with a formal hearing at this time, in exchange for Judge Koehler's acceptance of the agreement set forth herein. Upon mature consideration and reflection, Judge Koehler has determined to undertake the following enumerated steps, in exchange for which the Commission has agreed to remove the above-styled inquiry from its active docket.

6. Judge Koehler agrees to identify for the Commission the therapist with whom he has been working since the events of August 31, 2024, providing the Commission's Counsel with the therapist's *curriculum vitae*, affording the Commission an opportunity to assess the therapist's suitability for this purpose. In the event the Commission concludes that Judge Koehler's therapist is not well suited for this endeavor, Judge

Koehler pledges to work with the Commission to identify and receive treatment from a more appropriate therapist.

7. Moreover, Judge Koehler agrees to provide the Commission with the necessary release to obtain information from any treating therapist for this purpose, addressing all records and any other information concerning the judge's treatment.

8. Further, Judge Koehler will continue a course of counseling for an additional period of twelve months. At the conclusion of twelve months, Judge Koehler will direct his treating counselor to prepare a report of his progress, to be submitted directly from the counselor to the Commission on or before November 11, 2025.

9. In his informal conference testimony, Judge Koehler expressed that, in interacting with the arresting officers, he acknowledged to them that they may learn something about his employment, and that, notwithstanding anything they might ascertain in this regard, he insisted they execute their duties as they would under any other circumstances. While noting that Judge Koehler's intent was to avoid any misperception that might arise about the improper use of judicial status in a manner inconsistent with the dictates of Canon 1 C, the Commission nevertheless wishes to impress upon Judge Koehler the risks associated with the manner in which he chose to proceed in this instance. The Commission strongly suggests that the better, more prudent course would have been to avoid calling attention to his status in any respect. Consequently, the Commission believes that Judge Koehler would benefit from a course of additional ethics training.

10. Judge Koehler agrees to complete "Employee Ethical Decision-Making Skills," a course made available online through the Judicial Learning Center, maintained by the Department of Educational Services within the Office of the Executive Secretary of the Supreme Court of Virginia. The Judicial Learning Center may be accessed at the

following web address: <https://jlc.vacourts.gov/learn>. An effort to log in from outside the OES network, will require the use of OES network credentials. Any assistance that may be required can be obtained through emails sent to jlcsupport@vacourts.gov. Judge Koehler agrees to provide the Commission's Counsel with a copy of the certification of completion for this course by January 7, 2025.

11. Judge Koehler acknowledges notice of the amendment to Virginia Code § 17.1-905, which now provides as follows:

"On or before December 1 of each year, the Commission shall publish a report detailing the activities of the Commission for the prior year. The report shall include the number of complaints filed with the Commission; the number of complaints originating from attorneys, judges, court employees, or the general public; the number of complaints dismissed based on (i) failure to fall within the jurisdiction of the Commission, (ii) failure to state a violation of the Canons of Judicial Conduct, or (iii) failure of the Commission to reach a conclusion that the Canons were breached; the number of complaints for which the Commission concluded that the Canons of Judicial Conduct were breached; and the number of cases from which the staff or any member of the Commission recused himself due to an actual or possible conflict. The report shall also include (a) the name of any judge who the Commission concluded breached the Canons of Judicial Conduct and took disciplinary action against as a result of such conclusion, if the date on which the Commission reached such conclusion was after the previous annual report was published; (b) the specific Canons of Judicial Conduct breached by such judge; and (c) the disciplinary action taken against such judge by the Commission."

Pursuant to this provision of law, Judge Koehler acknowledges his understanding that a copy of this agreement shall be reported to the General Assembly with the Commission's next annual report, as the Commission is statutorily obligated to do.

12. It is the Commission's expectation that Judge Koehler will adhere to the commitments he has made in paragraphs 6, 7, 8, 10, and 11 of this agreement, incorporated herein by this reference. The parties agree that any notice of Judge Koehler's breach of the commitments made in the above identified paragraphs shall provide a basis upon which the Commission may return Inquiry No. 2024-0971 to the Commission's active docket. In such circumstances, the Commission explicitly reserves

the right to avail itself of all procedural steps enumerated in the Commission's rules. In the event the Commission receives, from any source, notice of a breach of the commitments made by Judge Koehler, the Commission shall notify the judge promptly. Judge Koehler will be provided due process by the Commission in any proceeding that may thereby result.

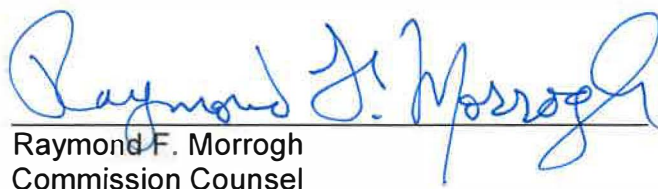
13. In the event that Judge Koehler successfully complies with the terms of this agreement, outlined above, this matter will return to the Commission's active docket at the time of its regularly scheduled meeting for December of 2025, for the Commission's consideration as to an appropriate disposition. The Commission explicitly reserves the right to avail itself of all procedural steps enumerated in the Commission's rules in its review of this matter at that time. Should this agreement conclude without the commencement of a formal hearing and without findings of misconduct made therein by the Commission pursuant to Commission Rule 15(A) (2), (3), or (4), the reporting provisions of Code § 17.1-918 (B) will not thereby be implicated.

14. By his signature, Judge Koehler consents to enter into this agreement and agrees to the above-described conditions and terms. This agreement will not become effective unless signed by Judge Koehler and counsel for the Commission.



The Hon. Charles F. Koehler, Jr., Judge

11-15-2024
Date



Raymond F. Morrogh
Commission Counsel

11-26-2024
Date