BEFORE THE JUDICIAL HEARING BOARD OF WEST VIRGINIA

SCA EFiled: Jun 05 2026
12:05PM EDT
Transaction ID 79661985

IN THE MATTER OF	
THE HONORABLE MARYCLAIRE AKERS, JUDGE OF THE 8TH JUDICIAL CIRCUIT	**SUPREME COURT NO. 25-483** **JIC COMPLAINT NO. 35-2025**

CONCURRING AND WRITING SEPARATELY
Judge Brittany Ranson Stonestreet

I concur in the Board's ultimate conclusion that the evidence failed to establish by clear and convincing evidence that Judge Maryclaire Akers violated Rules 1.1, 1.2, 2.2, 2.10(A), or 3.1(C) of the Code of Judicial Conduct. I therefore agree that dismissal of the charge is the proper result.

I write separately, however, because several findings of fact and conclusions of law contained in the Recommended Decision either extend beyond the evidentiary record, misconstrue testimony, or rest on inferences that are not properly supported. Because I believe clarity to the record is essential for the guidance of the bench, I write separately to identify the principal areas of disagreement.

I. Reliance on West Virginia Watch Newspaper Article Not in Evidence

The majority's treatment of a January 2026 *West Virginia Watch* article materially mischaracterizes both the substance of the article and its relevance to Judge Akers's conduct. This article was never admitted into evidence, no witness authenticated its contents, nor was Judge Akers afforded an opportunity to respond to it. Nevertheless, the majority quotes the article as though it were an evidentiary submission and then uses its statements to draw conclusions about Judge Akers's motivations for "stepping back" from collaboration and monitoring. That reliance is improper.

Even if the article were properly before us, the majority's inference is unfounded. The article describes on-going, statewide child-welfare challenges including shortages of psychiatric placements, increased trauma levels or special needs of children entering care, and staffing deficits. The article attributes these challenges to systemic conditions, not to Judge Akers or any breakdown of the monitoring process.

The record contains a single, uncontradicted explanation for why Judge Akers "stepped back" as it relates to the agreed order for monitoring: the filing of this disciplinary complaint. Judge Akers testified without contradiction that the pending ethics charges--not the media interview, or any complaints from stakeholders (of which there were none)--chilled her ability to continue any collaborative work contemplated by the agreement.

Notably, both Judicial Disciplinary Counsel and this Board have determined that those very disciplinary allegations lack clear and convincing evidence of any ethical violation. It is therefore neither fair nor logically sustainable to treat her understandable caution in the face of an ultimately

unsupported disciplinary complaint as evidence of a failure to enforce the order or as the basis for drawing adverse inferences about an impact on outcomes.

Finally, the record reflects that no party sought any further judicial action from Judge Akers regarding the monitoring process. DoHS filed no motion. The monitor requested no relief. No stakeholder expressed concern. The majority's reliance on a media article outside the record and the conclusions drawn from it lack any evidentiary basis for disciplinary analysis. For all these reasons, the majority's reliance on the newspaper article to construct a cause-and-effect narrative is not grounded in the evidentiary record and unfairly distorts both the article's substance and Judge Akers's testimony.

II. The Characterization of the "Agreed Order" as Coercive

The majority's suggestion that the Agreed Order contained a "coercive element" finds no support in the record. Not a single witness testified to coercion or undue pressure. No party or stakeholder, including DoHS, local Guardians Ad Litem, the prosecuting attorney's office, nor the Supreme Court's Division of Children's Services, expressed the slightest concern that the agreement was anything other than voluntary.

To the contrary, the Statement of Charges expressly identifies the order as an "agreement" among DoHS, the Administrative Director of the Supreme Court, and the monitor. The parties fully stipulated that DoHS consented after consulting counsel and further stipulated that DoHS did not perceive any bias, prejudice, or impropriety in Judge Akers's handling of the February 28 hearing or her subsequent public comments.

The recent decisions in *State ex rel. W. Virginia Dep't of Hum. Servs. v. Wilmoth*, No. 24-728, 2025 WL 914419 (W. Va. Mar. 25, 2025) and *State ex rel. W. Virginia Dep't of Hum. Servs. v. Redding,* No. 24-658, 2026 WL 1162606 (W. Va. Apr. 29, 2026) further demonstrate that DoHS is fully capable of challenging judicial orders when it believes a circuit court has exceeded its lawful authority. That no such writ relief or appellate challenge was brought here further supports the uncontradicted conclusion that the agreement was voluntary and collaboratively structured. Therefore, the majority's "coercion" narrative is contrary to the evidence and unnecessary to the resolution of this matter.

III. Mischaracterization of the Media Interview

The majority's characterization of Judge Akers's March 3, 2025 media interview is contradicted by the plain text of the interview transcript.

First, the majority implies that Judge Akers improperly discussed making future "decisions" in the case. However, when directly asked by the interviewer about future outcomes, Judge Akers responded with an explicit refusal to preview or imply any future ruling, stating: "I can't talk about what my decisions will be. I can't even really talk about most of what my decisions are in any specific case." Her passing reference to the well-established "polar star" standard, wherein a

child's best interests guide decision making, was a restatement of a foundational principle of West Virginia jurisprudence, not a comment on the merits or future trajectory of the agreed order. This, together with the parties' stipulation that she made no remarks on credibility, merits, or legal positions, undermines any claim that the interview might reasonably affect outcome or impair fairness.

Second, the majority misinterprets her comments about the statistical correlation between abuse and neglect cases and subsequent juvenile or criminal matters. These remarks were offered in response to a broad, general question about the challenges of abuse and neglect work and reflected her professional experience. The comments were autobiographical, educational, and consistent with the parties' stipulation regarding the accuracy of the systemic data. No witness disputed the well-documented, tragic reality that children involved in abuse and neglect cases are statistically vulnerable to entering the juvenile justice or adult criminal systems later. Suggesting that a judge errs by neutrally acknowledging accurate and undisputed statistics is unfounded and contrary to the public confidence the judiciary is charged with maintaining. Her comments reflected systemic realities, not bias, prejudice, or impropriety.

Third, nothing in the interview addressed the merits of the monitoring process, the credibility of DoHS, or any litigant's legal position. Judge Akers maintained a neutral posture and did not indicate any predisposition to rule for or against any participant. In fact, when the interviewer attempted to draw her into criticism of the Legislature or Governor by asking whether the political branches were "dropping the ball," she immediately declined, stating, "Actually, I can't answer that. I'm not allowed to answer." Her refusal to engage in political commentary undermines any suggestion that her earlier statements amounted to improper criticism or structural prejudgment.

Finally, the majority's critique in Footnote 27 regarding her explanation of Child Protective Services (CPS) and SPP contracted providers is misplaced. This was a neutral, accurate description of the child-welfare systems operational structure designated to educate the public. It did not involve any disputed fact or legal issue in a pending or impending matter. It conveyed general information about how the system functions and the various providers involved.

To evaluate an appearance of impropriety, we must apply an objective standard: "[W]e ask how things appear to the well-informed, thoughtful and objective observer, rather than the hypersensitive, cynical, and suspicious person.'" *Tennant v. Marion Health Care Found., Inc.*, 194 W. Va. 97, 109, 459 S.E.2d 374, 386 (1995) (quoting *U.S. v. Jordan,* 49 F.3d 152, 156 (5th Cir.1995)). The Court further explained, "The objective standard requires a factual basis for questioning a judge's impartiality." *Id*.

While the majority spends time subtly speculating about how a hypothetical, cynical listener might perceive the interview, it ignores the actual perspective of the agency involved. DoHS Secretary Myers testified unequivocally that neither he nor any employee within the Department believed or asserted that Judge Akers's conduct or public comments created even an appearance of bias or caused them to question her independence. No party sought recusal because no objective observer would find a factual basis to do so.

In sum, the record demonstrates that Judge Akers's comments did not assign blame, express criticism of any agency or branch of government, or reveal any predisposition in a pending or impending matter. A reasonable listener would understand her remarks as contextual and explanatory. Under any fair reading, they fall well within the bounds of permissible judicial explanation and education.

Nonetheless, even after identifying its concerns, the Board correctly concluded that the evidence does not clearly and convincingly establish a violation of Rule 2.10(A) or any other provision of the Code of Judicial Conduct.

IV. The Critical Textual Distinction of Rule 2.10(A) and Advisory Opinion 2023-23

The majority unduly emphasizes Judicial Investigation Commission Advisory Opinion 2023-23, which risks promoting an incorrect and overly burdensome restriction on judicial speech that is inconsistent with the text of Rule 2.10(A). Advisory Opinion 2023-23 unconditionally (and incorrectly) states that a judge "cannot go on television or other media and comment when the topic involves a pending or impending case before any Court." As the Board recently recognized *In re Sweeney* (Sup. Ct. No. 25-483), the Advisory Opinion's blanket, categorical approach conflicts with the plain language of Rule 2.10(A) itself.

Rule 2.10(A) does not contain a flat ban, but instead, imposes a two-prong test requiring both: (1) a pending or impending matter, **and** (2) a public statement that might reasonably be expected to affect the outcome or impair the fairness of that matter. The second prong is a core element of the rule. By elevating Advisory Opinion 2023-23 to an absolute prohibition, the majority overlooks the second prong from Rule 2.10(A). This overbroad interpretation creates a restriction on judicial speech that is completely untethered from the text of the rule and risks chilling entirely permissible, educational public communication by the judiciary.

V. Irrelevance of the Procedural Title of the "Administrative Order"

The majority devotes substantial analysis to whether Judge Akers's February 2025 order was properly styled as "administrative," whether it implicated separation-of-powers principles, and whether she possessed authority to issue it. None of these questions are relevant to the ethical charge before the Board. The Statement of Charges does not allege that issuing or styling the order was misconduct, and even if the order contained legal error, a legal mistake, absent improper motive or intent to prejudice a party, does not constitute judicial misconduct. See *West Virginia Judicial Inquiry Commission v. Casto*, 163 W. Va. 661, 263 S.E.2d 79 (1979); *See also Matter of King*, 184 W. Va. 177, 180, 399 S.E.2d 888, 891 (1990).

The majority's reliance on *Redding* is similarly misplaced. In *Redding*, the Court held that certain orders directing DoHS were jurisdictionally defective because they did not arise from a justiciable controversy, yet the Court's remedy was extraordinary-writ review, not referral for judicial discipline. *Redding*, 2026 WL 1162606. The Court expressly commended the judge's advocacy

and recognized the structural difficulties inherent in addressing systemic child-welfare problems. *Id*. at *12. *Redding* therefore confirms that questions regarding the validity or classification of an order (absent improper motive or intent to prejudice) are legal issues for appellate review, not ethical issues for this Board.

Furthermore, the majority's determination that the title "Administrative Order" is strictly reserved for internal court housekeeping, docket management and scheduling is not entirely correct. Rule 3a(a) of the West Virginia Rules of Child Abuse and Neglect Proceedings explicitly commands:

> "Upon receiving a written referral from a family court… a circuit court shall forthwith cause to be entered and served an **administrative order** in the name of and regarding the affected child or children directing the Department to submit to the court an investigation report or appear before the court… to show cause…"

While Judge Akers's order did not arise under a pre-petition family court referral, Rule 3a demonstrates that our rules explicitly contemplate using the title "Administrative Order" to issue substantive, external directives regulating DoHS action in child-welfare matters. The Board's narrow definition of an "Administrative Order," limited to scheduling or internal court management, cannot be squared with the plain text and everyday use of administrative orders in child-welfare practice, and therefore should not guide the assessment of Judge Akers's conduct.

Moreover, the order here did not compel appearance under threat of contempt, did not unilaterally mandate executive spending, and was entered by agreement after a public hearing with the full participation of all core stakeholders. It functioned as a mechanism to convene local partners to address systemic failures that directly disrupted the court's daily dockets, which is an action explicitly supported by Comment [2] to Rule 3.1. Whether the underlying order was perfectly styled or entirely authorized is again, an appellate question, not an ethical one.

Ultimately, the validity or label of the February 2025 order has no bearing on the Rule 2.10(A) analysis. Rule 2.10(A) requires only two determinations: whether a matter was pending or impending, and whether public comments might reasonably be expected to affect its outcome or fairness. That standard does not depend on whether the underlying order was "administrative" or "judicial," properly styled, or susceptible to later challenge. In this case, the matter remained pending within the appeal period and the monitoring process was ongoing, rendering the classification of the order immaterial to the Board's correct determination that the matter was pending and/or impending.

Given the longstanding use of administrative orders in circuit courts to address child-welfare deficiencies, I understand the interest in clarifying their nature in an appropriate case. But this is not that case. Judge Akers was not charged with misusing an administrative order, and nothing in the record supports converting this disciplinary proceeding into a forum for resolving broader structural questions that were never alleged. Our analysis must remain confined to the issues properly before us.

VI. Transparency and the Promotion of Public Confidence in the Judiciary

I respectfully disagree with the majority's critical assessment of Judge Akers's efforts to promote transparency and open court proceedings. The record shows that she issued two orders scheduling a public hearing, one of which included a Teams link because she believed the matter was of significant public importance; that 153 individuals accessed the hearing remotely on short notice; and that she directed her court reporter to attend and prepare a transcript. These actions reflect a commendable effort to promote openness and accessibility, not a deviation from judicial norms or ethics. Providing remote access has become a routine, essential modern tool to ensure the judiciary remains visible and accessible to the public it serves.

Transparency is of paramount importance in the child welfare arena. Because individual abuse and neglect cases are strictly confidential and closed by statute, the public is often left entirely in the dark, only becoming aware of systemic failures when they culminate in a highly publicized tragedy. Permitting public attendance and maintaining a transparent record during a hearing dedicated exclusively to *systemic* operations allows the public to understand the institutional constraints facing both DoHS and the judiciary. Transparency of this nature strengthens accountability, improves public understanding, and enhances trust.

Judge Akers's decision to hold a public, collaborative hearing was consistent with the Code of Judicial Conduct. The hearing brought together leadership from DoHS, the prosecuting attorney's office, Guardians ad litem, and other stakeholders to address urgent safety concerns based on credible reports that children were being housed in unsafe, unlicensed placements. Retreating to a closed, informal meeting behind closed doors would have left the public with a feeling that these matters were not being addressed by the judiciary or could have easily fostered public cynicism or a perception of bureaucratic avoidance. By contrast, an open, on-the-record proceeding demonstrated that the court was addressing an urgent public crisis with seriousness, neutrality, and a productive commitment to inter-agency cooperation.

This approach perfectly aligns with Comment [2] to Rule 3.1, which expressly recognizes that the effective resolution of systemic child-welfare deficiencies requires judges to exercise leadership by convening the professionals who routinely interact with the system. While the Comment references "off-the-bench" judicial leadership, nothing within our ethical code suggests that judicial leadership must be concealed from public view or shielded from accountability.

A public hearing can be the most transparent and accountable method of convening stakeholders, particularly when the underlying concerns involve judicially ordered placements or circumstances already known to the public. Transparency is not an enemy of judicial integrity; it strengthens it. Rule 1.2 commands judges to act at all times in a manner that promotes public confidence in the independence and integrity of the judiciary. In a crisis involving vulnerable children, systemic placement shortages, and overlapping institutional failures, a collaborative public proceeding ensures that the judiciary remains a beacon of stable, impartial, and open justice. Far from diminishing public trust or undermining judicial integrity, Judge Akers's measured transparency is exactly what sustains it.

VII. Application of the Rule 2.10(A) Framework

I agree with the majority that the administrative monitoring process was technically "pending" or "impending" for purposes of Rule 2.10(A). But the second prong remains the crux of the issue in this case: whether Judge Akers's statements might reasonably be expected to affect the outcome or impair fairness.

I agree with the majority that there is no clear and convincing evidence that the second prong of the test in Rule 2.10(A) has been met.

1. Judge Akers' statements repeated information already made public in the hearing and order which reduces any effect.
2. The parties stipulated that she made no remarks about the credibility of any party, the merits of any case, or any legal positions, which negates any likely impact.
3. DoHS Secretary testified unequivocally, and the agency reaffirmed, that they perceived no bias, prejudice, or diminution of impartiality.
4. No stakeholder filed any motion for recusal or expressed concern about her impartiality.

These facts stand in absolute contrast to *Matter of Hey, 188 W. Va. 545, 547, 425 S.E.2d 221, 223 (1992)*, where a judge used the media to personally disparage mother and child parties in a pending case before him. It is equally distinguishable from *In re Sweeney*, where the Board found a judge explicitly used a media appearance to apply public pressure to influence the outcome of an active, disputed matter. Here, the substantive terms of the monitoring process had already been resolved via an agreed order. Judge Akers' interview could not, and did not, affect the outcome or impair the fairness of any matter.

VIII. Conclusion

For these reasons, while I fully concur in the Board's disposition dismissing the charges, I cannot join those portions of the Recommended Decision that rely on facts outside the record, draw unsupported conclusions, or adopt interpretations inconsistent with the uncontroverted stipulations, testimony, or governing legal standards.

I therefore respectfully concur in the result only.

Respectfully submitted,

Judge Brittany Ranson Stonestreet, Member
Judicial Hearing Board of West Virginia