

IN THE MATTER OF

THE HONORABLE MARYCLAIRE
AKERS, JUDGE OF THE 8TH JUDICIAL
CIRCUIT

SUPREME COURT NO. 25-483
JIC COMPLAINT NO. 35-2025

RECOMMENDED DECISION¹

On March 19, 2026, the parties, by their counsel, came for a hearing in this matter before the Honorable Michael D. Lorensen, Chairperson, presiding. On April 13, 2026, Special Judicial Disciplinary Counsel filed Special Judicial Disciplinary Counsel’s Brief, recommending dismissal. On April 30, 2026, the Respondent filed a Motion to Dismiss, which was denied by order entered on May 4, 2026. Upon consideration of the evidence and argument of counsel, the Code of Judicial Conduct, the Rules of Judicial Disciplinary Procedure, and the decisions by the Supreme Court of Appeals interpreting the Code and the Rules, the Board hereby renders its Findings of Fact, Conclusions of Law, and Recommended Decision as follows:

I. FINDINGS OF FACT

- 1. The salient facts in this matter are not in dispute.

CHARGE

- 2. The single Charge in the Formal Statement of Charges alleges the Respondent violated Rules 1.1, 1.2, 2.2, 2.10(A), and 3.1(C) of the Code of Judicial Conduct, arising from an interview she gave on the MetroNews Talkline program on March 3, 2025.

- 3. The parties entered the following Stipulations of Fact:

I. STIPULATED FINDINGS OF FACT

Judge Akers

- 1. Judge Akers is a 1999 graduate from the West Virginia University College of Law and after successful passage of the Bar Exam was licensed to practice law in this State on or about September 2, 1999.
- 2. Judge Akers spent over twenty years engaged in the practice of law with most of her time working as an assistant prosecutor. In or about 1999, Judge Akers

¹ Magistrate Gary Sheff voluntarily disqualified himself in this matter.

began her career at the Kanawha County Prosecutor's Office prosecuting juvenile matters, including abuse and neglect matters, and ultimately became a felony prosecutor who later served as Senior Assistant Prosecutor and Chief of Staff to the Kanawha County Prosecutor. After leaving the office of the prosecutor in or about March of 2013, she served as General Counsel for the West Virginia Ethics Commission. In or about August of 2013, she served as a West Virginia Assistant Attorney General in the Consumer Protection Division.

3. As a member of the West Virginia State Bar, Judge Akers was not sanctioned by the Lawyer Disciplinary Board or the Supreme Court of Appeals of West Virginia.

4. Judge Akers was appointed to a vacated Circuit Judge position in January 2021. She officially took office on or about March 23, 2021. She has continuously served as a Circuit Judge since that time. She won the unexpired seat in the May 2022 election. Judge Akers successfully ran for re-election in the May 2024 election. Until she recently resigned from the same, she also served on the Business Court since 2022.

5. Until the issuance of the instant charges, Judge Akers has never been the subject of discipline by the Judicial Investigation Commission or the Supreme Court of Appeals.

6. At all times relevant to the matters set forth below, Judge Akers was serving in her capacity as a judicial officer.

Procedural Background

7. On or about March 24, 2025, Judicial Disciplinary Counsel opened a complaint against Judge Akers. [Joint Exhibit 1].

8. No private individual filed a complaint about the conduct giving rise to the Complaint.

9. On or about April 25, 2025, Judge Akers timely responded to the complaint [Joint Exhibit 2] and has fully cooperated throughout the investigation and prosecution of this judicial disciplinary matter.

10. On or about June 12, 2025, pursuant to its authority in the Rules of Judicial Disciplinary Procedure, the Judicial Investigation Commission found that Judge Akers violated Rules 1.1, 1.2, 2.10(A) and 3.1(C) of the Code of Judicial Conduct and voted to issue a public admonishment (the "Admonishment") to Judge Akers.

11. By mutual agreement as to the time to object to the Admonishment, Judge Akers filed her written objections to the Admonishment on or about July 3, 2025.

12. On or about July 23, 2025, pursuant to its authority in the Rules of Judicial Disciplinary Procedure, the Judicial Investigation Commission voted to issue a Statement of Charges (the “Statement of Charges”) against Judge Akers.

13. The Judicial Investigation Commission found probable cause and Judge Akers was charged with a violation of Rule 1.1 (compliance with the law), Rule 1.2 (confidence in the judiciary), Rule 2.2 (impartiality and fairness), Rule 2.10(A) (judicial statements on pending/impending cases), and 3.1(C) (extrajudicial activities in general) of the Code of Judicial Conduct as set forth in the attached Appendix A.

14. On prior occasions, Judge Akers when confronted with ethical concerns, sought informal advice from Judicial Disciplinary Counsel. [Joint Exhibits 3 – 18].

15. In addition, at the direction of Judicial Disciplinary Counsel, on or about September 29, 2023, Judge Akers made a request for an advisory opinion regarding an extrajudicial media appearance.² [Joint Exhibit 19]. On or about October 20, 2023, the Judicial Investigation Commission issued Advisory Opinion 2023-23. [Joint Exhibit 20].

The Administrative Proceedings³

16. On or about February 21, 2025, shortly after presiding over a placement review hearing regarding a child, Judge Akers learned that a child, who had been temporarily placed in a hotel by the Department of Human Services (“DoHS”), had attempted suicide. Judge Akers further became aware of multiple children being placed by DoHS in a facility maintained by a Kanawha County 4-H Foundation that resulted in multiple calls reporting children attacking staff, attacking each other, children in medical distress, and children being “restrained.”

17. Judge Akers contacted the Director of the Supreme Court’s Division of Children’s Services⁴ to seek guidance and inquired generally about the propriety of placement of children in hotels and other unlicensed facilities.

² There are no known facts to lend itself to conclude that the media appearances contemplated in the Advisory Opinion were arising out of her official judicial duties, but instead all appearances included in the Advisory Opinion were extrajudicial.

³ For reasons to be discussed, *infra*, the Board rejects the characterization of Respondent’s proceedings as “administrative.”

⁴ The Division of Children’s Services assists with the Court’s initiatives to improve the outcomes for children and families involved in abuse and neglect, child welfare, and juvenile justice systems.

18. On February 24, 2025, Judge Akers entered an Administrative Order requiring Alex Mayer, Cabinet Secretary of DoHS,⁵ and Mandy Pellegrin, Kanawha County Assistant Prosecuting Attorney, to appear before the Court to discuss the procedures in place for the placement of juveniles in custody of DoHS in unlicensed facilities such as hotels and 4-H camps. [Joint Exhibit 21].

19. Thereafter, Secretary Mayer advised that the DoHS was willing to appear, but requested that the hearing be rescheduled to February 28, 2025, to accommodate his schedule. Accordingly, on February 25, 2025, Judge Akers entered a second Administrative Order setting the matter for a hearing on February 28, 2025. [Joint Exhibit 22].

20. On February 28, 2025, Judge Akers presided over the public hearing held pursuant to the Administrative Order. Kanawha County Prosecuting Attorney Debra Rusnak and Assistant Prosecuting Attorney Mandy Pellegrin appeared on behalf of the Kanawha County Prosecutor's Office. Assistant Attorney General Michael Jackson appeared on behalf of DoHS along with Secretary Mayer and Lorie Bragg, Deputy Commissioner for Policy and Programs.⁶ Attorney Jennifer Victor, the guardian ad litem for the child, was also present, in person. This hearing was open to the public and approximately 150 people attended the hearing remotely by Microsoft Teams. The news media were also present in the courtroom. [Joint Exhibit 23].

21. Judge Akers heard sworn testimony from Secretary Mayer and Deputy Commissioner Bragg regarding the use of unlicensed placements such as hotels and 4-H camps. Judge Akers also inquired of Deputy Commissioner Bragg regarding the notification procedures utilized by CPS following a critical incident.

22. Judge Akers inquired as to whether DoHS would consent to the appointment of a monitor to oversee an improvement period, and following a brief recess, Secretary Mayer, after having time to consult with his counsel, informed the Court that DoHS was agreeable with this arrangement.

23. On February 28, 2025, Judge Akers entered an Agreed Order which established an improvement period for DoHS for the purpose of the reduction and eventual elimination of the use of unlicensed facilities for the placement of children in the physical custody of DoHS and designated Cindy Largent-Hill, Director,

⁵ The Board notes that after the parties' stipulations were filed, Mr. Mayer resigned from his position at the West Virginia Department of Human Services. See A. Knisely, *Alex Mayer resigns as head of the West Virginia Department of Human Services*, West Virginia Watch (March 14, 2026), <https://westvirginiawatch.com/2026/03/14/alex-mayer-resigns-as-head-of-the-west-virginia-department-of-human-services/>.

⁶ Ms. Bragg is no longer in this position but has since become the Commissioner of Social Services.

Division of Children's Services, Supreme Court of Appeals, as the monitor. [Joint Exhibit 24].

The Interview

24. Judge Akers made no public statements regarding the Administrative Proceedings prior to the February 28, 2025, hearing and entry of the Agreed Order.

25. Following the February 28, 2025, hearing and entry of the Agreed Order, on or about March 2, 2025, TJ Meadows of MetroNews Talkline contacted Judge Akers and asked her to appear and provide an interview to explain the February 28th hearing and the resultant Agreed Order.

26. On Monday morning March 3, 2025, Judge Akers appeared and provided an interview on MetroNews Talkline, a radio program hosted by Dave Wilson and TJ Meadows (the "Interview"). [Joint Exhibits 25 & 26].

27. The transcript of the Interview is as follows:

MR. WILSON: All right. With that, let me awkwardly transition to our first guest of the morning. Kanawha County Circuit Court Judge Mary Clay Akers joining us and a very, very serious subject we have talked about on multiple occasions, and it is the state's foster care system. Back on Friday, there was a hearing in Judge Akers' courtroom in Kanawha County over concerns of foster children living in hotels and a 4-H camp. The judge ordered a court-appointed monitor to investigate the ongoing issues of West Virginia children being placed in unlicensed facilities. Joining us from the studios in Charleston is Judge Mary Clay Akers. Judge Akers, good morning. Thanks for joining us.

JUDGE AKERS: Good morning. My first name is actually Maryclaire, but that's okay. That happens a lot.

MR. WILSON: What did I say?

JUDGE AKERS: You said Mary Clay.

MR. WILSON: Did I?

JUDGE AKERS: I have not ever been called Mary Clay before. That's a new one, and I like it.

MR. WILSON: I have it written down correctly. I don't know why I would do that.

JUDGE AKERS: My sister's name is Beth, and I've been Mary Beth my whole life as well.

MR. WILSON: Tell you what, we can just restart the show if you want, Judge.

JUDGE AKERS: Okay.

MR. WILSON: If you want to issue an order, we can just restart the show.

JUDGE AKERS: That's okay. I actually kind of like it. My name is -- is frustrating, believe me.

MR. MEADOWS: Put him in contempt. He needs to be in contempt. Put him there. Seriously, I'd pay to see that.

JUDGE AKERS: Mary Clay is a lot better than Maryclaire. You don't have to say as much. I mean it's Monday.

MR. WILSON: Well, I do apologize. I have done this job for, you know, more than a half an hour. I do apologize, Maryclaire.

JUDGE AKERS: That is perfectly okay. No problem.

MR. WILSON: I'm just going to go with Judge, if that's okay.

JUDGE AKERS: That's fine.

MR. WILSON: And, hopefully, I won't mess that up.

JUDGE AKERS: That's all right.

MR. WILSON: My apologies. Geez. What a day. All right, Judge Akers, it takes -- in my experience covering courts, it takes quite a bit to get a judge kind of irritated, like, you know, pronouncing their names incorrectly will get you, draw you some ire. But what ultimately compelled you to issue this order that there needed to be some more monitoring and some accountability of what's going on with foster care children?

JUDGE AKERS: Well, first off, there are lots of rules that govern what I can say publicly. So if you guys ask me questions that I'm not allowed to answer, I'll tell you. That is because we have rules that apply to the judiciary. I'm happy to come on here. And some of them I may not be able to answer. But what I can tell you is what I said in my orders and what I said in open court. And so the first administrative order was issued February 24th, and that was the order that called for the hearing in the first

place. And that order addressed an issue which came up in court. I had a case with a -- with a 12-year-old boy who had attempted suicide. And we had -- so just to back up a little bit, the abuse and neglect process, it's governed by statute. There are lots of rules. We have to have certain proceedings, and then 45 days later, we may have to have another proceeding. So what we were doing was a review of this case. And that's part of the proceedings. So this happened on, I think February 18th, and we had a scheduled review February 21st -- February 21st. And at that time, I was not notified of that. My CPS worker in my courtroom didn't know about it. My guardian ad litem didn't know about it. And so they could not communicate it to me. That is what started that. The guardian ad litem told me later, maybe a day or two later when she learned about it, which also led to her telling me about the hotels and 4-H camps. For anybody who's interested, and this is a little bit of a non-segue here, but there is a child abuse and neglect. It's on YouTube. It was put out by the Supreme Court. It's on the West Virginia Judiciary page on YouTube. I think it's on their website. It's called "Child Abuse and Neglect, Navigating the Process." It's brand new. They just put it out about three weeks ago. And it talks really in detail about the process. For anybody who's interested in what the process is and how it works, this is a really good video that they made and they put out for the public to watch.

MR. MEADOWS: How long have we been doing this? When I first heard that we were putting foster children into hotels, I was ignorant of that.

JUDGE AKERS: You know, what Mr. Mayer, Cabinet Secretary Mayer, said was that it's been ongoing for a while and that it happens in other states. And that was something he said in open court. And that was something that, you know, we have, as judges, anecdotally heard about. But I can say, and I said this in open court as well, I've never received a court summary or any other kind of official report which indicates that a child is being housed there. It is supposed to be temporary. It is born out of necessity and emergency. I think everyone agrees, even Mr. Mayer agrees, this is not ideal. But my job as a judge and what all the cases say, the child's best interest is the polar star. That's what's supposed to guide me in my decisions. And it is one of the findings that I have to make is that the placements where these kids are are safe and appropriate. So if I don't have the information, I can't do that.

MR. WILSON: Judge, is it the -- the lack of transparency then? Because it sounds like CPS is -- is stuck between a rock and a hard place. These kids need to be placed somewhere, at least temporarily. This may be the best of the worst options, to -- to put it bluntly. So is it then the lack of information, transparency, accountability that really drew this order?

JUDGE AKERS: Well, no. I mean I -- I can tell you that I -- I do not want to be negative towards anybody involved in the process. I said that in open court. I said that to Cabinet Secretary Mayer. It really was not my intent to place blame on anybody. I don't see where that would be helpful to fixing anything anyway. I could -- you know, I could yell at people all day, but if nothing good comes from that, then

what's the point? So what Cabinet Secretary Mayer agreed to is the agreed order, which came out of that, and I think that was issued February 28th. And they agreed to be monitored by Cindy Largent-Hill and exchange communications with her, exchange information with her, so that maybe they could take a look at it and see what they can do better. That's the intent anyway. It was not my intent to bring people in and yell and scream at anybody. That's not helpful.

MR. MEADOWS: What is monitoring? What does that entail?

JUDGE AKERS: Well, what the order says is -- and I want to make sure I stick to that --that "She will be provided all necessary information related to the use of DOHS's use of hotel rooms and other unlicensed facilities, but not limited -- included but not limited to the demographic information of the children who've been placed in unlicensed facilities in the past, present, and the future. She will collect data, review reports, meet with DOHS and other related stakeholders. They will decide who the stakeholders are, and then they will provide me with reports, and we will go from there." So, again, 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, but I can say that that's what the order says, and that's what we're planning to do.

MR. WILSON: Kanawha County Circuit Court Judge Mary Clay -- Claire Akers is joining us here on Metro News Talk Line this morning. Judge, you see a lot that comes into your court, criminal cases, obviously, some of the -- some things that most people -- most of us don't have to see. How difficult is it when you have to deal with these cases involving children, neglect and abuse cases where drugs are involved, where young children who for -- to no fault of their own are placed in these situations?

JUDGE AKERS: Well, you know, I was a prosecutor for a long time. I was a prosecutor for over 20 years. I started out as a juvenile prosecutor. I was a grant prosecutor hired by Bill Forbes. And what I did was dealt with juvenile offenders in the very beginning. That was back in, gosh, 1999. And then I did felonies. I eventually was just trying murder cases there and doing that for a long time. But what I did see is that abuse and neglect is the entry point into the system for a lot of people. The children are put into this system. They may or may not find permanent placement. Sooner or later, they may have contact with the juvenile justice system, and then they wind up kind of churning in there. And then they turn 18, and they may have an adult offense, and then they wind up in our adult courts. So I've seen this for a long time. Is it -- it's difficult. It's always been difficult. It's just been part of my professional life for a really long time. So I'm used to it, I guess.

MR. MEADOWS: In your opinion -- and I'll give you your out.

JUDGE AKERS: Okay.

MR. MEADOWS: You have your out.

JUDGE AKERS: Okay.

MR. MEADOWS: You can pull that card. We understand why. In your opinion, given the fact that, you know, we have three equal branches of government, you're in the judiciary branch, obviously. Has the Legislature and the Governor -- I mean are we dropping the ball here that this ends up in court, and we have to have court orders around this?

JUDGE AKERS: Actually, I can't answer that.

MR. MEADOWS: That's fine.

JUDGE AKERS: That, I am not allowed to answer.

MR. MEADOWS: That's fine. Let me -- let me go with this then because I want to circle back to the hotel to make sure there's a clear understanding. When children are placed into the hotels, there is supervision --

JUDGE AKERS: Yes.

MR. MEADOWS: -- within these facilities. Can you talk about that ratio, what that looks like?

JUDGE AKERS: I don't know the answer to that. That was one of the questions that we -- that I asked in the hearing. I don't think I got a clear answer. What I was told is that sometimes child protective service workers are working there and supervising the children. Sometimes what they call SSP providers, which are contracted providers, are doing that. And that's another thing -- I mean there's so many different facets to this system. People don't understand. It's not all CPS. You know, DOHS contracts with lots of outside agencies. They provide supervision. They provide transportation for people when they need to do stuff. They provide - - but they have contracts with all these people who provide services to help those in the DOH system. So do I know the ratio 100 percent? No, I do not. And that was -- you know, hopefully, we'll get some answers when they are able to sit down and exchange information.

MR. WILSON: Kanawha County Circuit Court Judge Maryclaire Akers. Judge, we appreciate you coming on, and I guess I'll pay my fine later for being in contempt of -- in contempt of interview this morning.

JUDGE AKERS: I'm going to make you say that five times out loud. Then you'll never mess it up again.

MR. WILSON: I can't guarantee that either, to be honest.

JUDGE AKERS: Really fast.

MR. WILSON: Judge, appreciate it. Thank you very much.

JUDGE AKERS: Thank you all very much.

28. Judge Akers' March 3, 2025, media appearance and Interview were in the course of or otherwise related to her "official duties"⁷ as a judicial officer.⁸

29. Judge Akers did not solicit the media interview but instead was contacted by a member of the media after the public hearing and after the entry of the February 28th Agreed Order.

30. At no time during the March 3, 2025, media interview did Judge Akers disparage the stakeholders of the February 28th hearing and subsequent Agreed Order.

31. At no time during the March 3, 2025, media interview did Judge Akers discuss the credibility of any party, discuss the legal positions articulated by any parties, or discuss the merits of any case.

32. Secretary Mayer of DoHS does not believe or otherwise assert that either Judge Akers' conduct in the February 28th hearing or her subsequent March 3, 2025, public comments created a bias or prejudice that has otherwise caused the DoHS to question her impartiality, integrity or independence as a judicial officer.

33. To his knowledge, no employee under the purview of Secretary Mayer at DoHS has asserted that Judge Akers' March 3, 2025, public comments created a bias or prejudice that has otherwise caused the employees of DoHS to question her impartiality, integrity or independence as a judicial officer or have otherwise interfered with compliance with the monitoring agreement.

⁷The Court in *Hey* set forth that "[u]nder Canon 3A(6) of the Judicial Code of Ethics [1976] judges' public statements shall be considered to be in the 'course of their official duties' when the statement is part of an official duty, or related to an official duty, or is sought from or given by the judge because of his or her official position." Syl. Pt. 2, *Matter of Hey*, 188 W. Va. 545, 425 S.E.2d 221 (1992). The Court reasoned that the Judge Hey's "comments were directly related to his official position and thus arose in the course of his official duties" because the only reason he was invited to appear on the television program and asked about the case was because he was the presiding judge. *Id.* at 225.

⁸The Code of Judicial Conduct governs both conduct in an official judicial capacity and extrajudicial behavior to ensure fairness, impartiality, and public confidence in the judiciary.

34. Beginning May 12, 2025, DoHS had eight (8) in-person sessions across the State as part of the West Virginia Child Welfare Listening Tour which was touted as an initiative designed to gather input from families, caregivers, providers, case workers, and legal professionals, including judges. Secretary Mayer attended all eight (8) in-person sessions, and no person expressed any concerns about Judge Akers March 3, 2025, public statements.

35. Effective March 15, 2026, Secretary Mayer resigned his position at DoHS. On behalf of the agency, Deputy Secretary and General Counsel Chanin Krivonyak, who was present at the deposition of Secretary Mayer, confirmed that the agency still agrees with Secretary Mayer's testimony.

36. There is no evidence that any party to or stakeholder identified in the February 28, 2025, Agreed Order sought recusal of Judge Akers after her March 3, 2025, public comments questioning her impartiality, neutrality, or independence.

37. There is no evidence that any party to or stakeholder identified in the February 28, 2025, Agreed Order believed that or has alleged that Judge Akers' March 3, 2025, public comments created a bias or prejudice that has otherwise caused the parties to question her impartiality, integrity or independence as a judicial officer.

38. To date, there is no evidence that any person or party on their behalf has asserted, alleged, or filed any motions to disqualify Judge Akers that alleged that they perceived that Judge Akers' March 3, 2025, public comments created a bias or prejudice or had otherwise caused the party to question her impartiality, integrity or independence as a judicial officer

4. Although the parties entered these Stipulations, the hearing produced a 180-page transcript, much of it duplicative of the Stipulations and unrelated to the media interview.

5. Respondent testified that she was formerly the Chief Judge of the Circuit Court of Kanawha County and explained the administrative functions of the role. Tr. at 36-37.

6. Respondent testified about her openness to the media coverage of her court proceedings, including allowing them to sit in the jury box or observe her proceedings remotely. Tr. at 45-46.

7. She chronicled her many interactions with the Office of Judicial Disciplinary Counsel seeking ethics advice, including relative to her multiple media appearances. Tr. at 46-55.

8. Although she testified that, "the actual civil matter ... in the case that brought us here ... had been terminated, the case had gone to the Supreme Court, it had been decided, a

mandate had been issued, so that case in my mind was over,” the matter was not over because, as she stated, “We do have the review hearings.” Tr. 57-58.

9. In other words, Respondent had continuing jurisdiction over the placement that resulted from the parental rights termination proceeding: “those continue until either 18 or permanency.” Tr. 58.

10. That continuing jurisdiction involves notices, hearings, and the entry of orders relative to placement. Tr. 58-61.

11. After a hearing on the subject placement had concluded, Respondent learned from the guardian ad litem a few days later that the child had attempted suicide and that Kanawha County children were being placed at a local 4-H camp. Tr. 61-62.

12. Respondent issued two orders, the second of which contained a reference to a Teams link for remote access because, according to Respondent, “it was a matter of importance to the state.” Tr. 70.

13. Ultimately, despite less than two days’ notice, a total of 153 people used the Teams link to remotely attend the hearing. Tr. 80.

14. Although Respondent referred to the orders as “administrative” in character, she directed her court reporter to appear at the “public hearing” ordered and, later, to prepare a transcript. Tr. 72-73.

15. Relative to the hearing being a continuation of Respondent’s jurisdiction over the child’s placement, she testified that “the guardian ad litem for the child” attended the hearing, which is inconsistent with Respondent’s claim that the hearing “was not to deal with the issues from the placement hearing ...” Tr. 77.⁹

16. Moreover, consistent with the judicial nature of the hearing, Respondent swore in witnesses and examined them under oath. Tr. 81.

17. She also viewed what came out of the hearing as “beneficial to both parties,” but as Respondent was the only person to examine the witness under oath, it appears that she perceived herself as one of those “parties.” Tr. 83.

⁹ In describing her order relative to her MetroNews interview, Respondent testified, “It’s about how I’m going to handle abuse and neglect in my case ...” Tr. 90-91.

18. She testified, “I felt that the parties has agreed,” and when asked about what would occur if the Department violated her order, Respondent testified, “in the order it delineates that Cindy Largent-Hill would send me reports ... I envisioned it ... as something that I could help with ... And I’ll be frank. Due to the ethics filing, I stepped back and just let them do what they were going to do.” Tr. 84-85.

19. The Board notes that the order was entered on February 28, 2025, with a one-year improvement period expiring on February 28, 2026. Tr. at 86.

20. On January 16, 2026, within that one-year period, it was reported that the number of foster children had not decreased.¹⁰

21. Indeed, it was noted:

“Unfortunately, we haven’t seen a real decrease in the number of hotel youth,” said Cindy Largent-Hill, director of the Division of Children’s Services in the West Virginia Supreme Court of Appeals. ... West Virginia Watch reported this week that the state Department of Human Services is also using short-term rental properties, like Airbnb, to house foster children. A child in foster care was recently injured while living in one of the rental properties and received medical care. Largent-Hill has served as a court-ordered monitor for the past year of the state’s use of hotels and short-term rental properties to house foster children after a 12-year-old boy involved in a case attempted suicide in a hotel last year.¹¹

22. It is unclear from the record whether Respondent did not act to enforce her order because of the pendency of disciplinary proceedings arising from her MetroNews interview, but her statement, “Due to the ethics filing, I stepped back and just let them do what they were going to do,” raises that inference as, presumably, her monitor reported that there had been no decrease in the number of children placed in hotels.

23. Respondent testified that she received multiple reports from the monitor. Tr. at 86.

¹⁰ Amelia Ferrell Knisely, *Number of West Virginia Foster Children Living in Hotels Hasn’t Decreased on Morrisey’s Watch*, West Virginia Watch (Jan. 16, 2026), <https://westvirginiawatch.com/2026/01/16/number-of-west-virginia-foster-children-living-in-hotels-hasnt-decreased-on-morriseys-watch/>

¹¹ *Id.*

24. Because she had interacted with Judicial Disciplinary Counsel in the past relative to her media interviews,¹² when she received a media interview request relative to this order, she testified, “I went through my mind is this violative of the rule, is it violative of any AO opinions, and in my mind I’m still thinking, ‘Well, it’s an administrative order. It’s about court procedures. It’s about how I’m going to handle abuse and neglect in my case ...’ So in my mind it was not violative of the AO opinion ...I had the AO opinion. I really felt I had a grasp on what I could do and could not do. It occurred over the weekend. I was asked to be on the show the first thing Monday morning. I felt that I was not violating any rules.” Tr. 90-91; *see also* Tr. 93.

25. She explained the rationale for appearing as follows:

I started to get calls from general public who I think had a misunderstanding that I was in some way a decider of everything that occurred with regard to abuse and neglect. I also felt that it was important to educate the public about what had occurred, that there had been an agreement between the Division of Children’s Services¹³ and the Department of Human Services. I mean, I don’t recall any of that now. I’m not sure that that’s what it was at the time, but there was an agreement for this monitoring. It was something to my knowledge that had not occurred before. I thought it was important that people understand. I also thought it was important that people understand that they should be talking to the Division of Children’s Services if they have an issue with placement, if you’re a provider, if you’re in the system, whatever, and not me. And I wanted to be clear that it was a cooperative effort and that there was not any animosity directed at either party.

Tr. 95-96.

26. Respondent testified that the Honorable Timothy L. Sweeney raised her MetroNews interview as a defense in his disciplinary proceeding. Tr. 102-103.

27. She testified that, unlike the other fifteen or sixteen occasions she had contacted Judicial Disciplinary Counsel for guidance, she felt it was unnecessary in this instance:

I did not feel that I needed to. I felt that I understood. I felt that the interview that I was asked to give was not violative of the what we’re calling AO23. I felt also that it

¹² She testified to making “multiple calls” to Judicial Disciplinary Counsel regarding multiple media appearances. Tr. 92-93. In all, Respondent contacted Judicial Disciplinary Counsel between fifteen and sixteen times prior to these proceedings regarding several ethics matters. Tr. 120.

¹³ “The Division of Children’s Services was created in early 2018 and encompasses child abuse and neglect, child welfare and juvenile justice systems ... This Division houses the Juvenile Justice Commission and the Court Improvement Program (CIP).” <https://www.courtsv.gov/public-resources/children-juvenile-services>.

was about court procedure. I felt also it was about public education. I did not feel at all that I had any issue.

Tr. 120.

28. Advisory Opinion 2023-23 stated:

In your request for a formal opinion, you want to know if it is permissible for you to appear on television to address such matters if you limit your remarks strictly to the procedural aspects of the case like you say you did for the September 2023 interview ...

Based upon the foregoing, the Commission is of the opinion that **a judge cannot go on television or other media and comment when the topic involves a pending or impending case before any Court.** A judge may appear to address Court procedures if the subject of the interview is about general court procedures and not tied to any specific pending or impending matters.¹⁴

29. It is unclear what “court procedure” was being explained in the interview, as Respondent testified that no matter subject to any procedural rules was pending:

Q. Pending matter ... It's your position that that was not a pending matter?

A. Yes.

Q. Why?

A. Because the matter had been – the matter that I was supposed to adjudicate had been adjudicated. Those were the parties named in that proceeding, had been adjudicated. It has been to the Supreme Court. It had been affirmed and a mandate had been issued ... And also, we recently had gotten the opinion from the JIC that said if a matter has been to the Supreme Court and has been decided and a mandate has been issued, then it is not a pending matter ...

I believe that it was an administrative order about court procedures, about how I would handle unlicensed placements in general, not specific to any case in my courtroom and creating a partnership between the Division of Children's Services and the DoHS for reporting purposes to each other to try to at least wrap their heads around the problem. I didn't view that as a matter.

Tr. 121-124.

¹⁴ Emphasis supplied. The Board notes that although this Advisory Opinion is consistent with the former *per se* prohibition against publicly commenting on pending or impending cases, Rule 2.10(A) is now narrower in scope.

II. CONCLUSIONS OF LAW

1. Although there is some agreement regarding the conclusions of law, there are also areas of disagreement.

2. The parties entered the following Stipulated Conclusions of Law:

39. “The purpose of judicial disciplinary proceedings is the preservation and enhancement of public confidence in the honor, integrity, dignity, and efficiency of the members of the judiciary and the system of justice.” Syl. Pt. 1, in part, *In re Cruickshanks*, 220 W. Va. 513, 648 S.E.2d 19 (2007).

40. Rule 3.11 of the Rules of Judicial Disciplinary Procedure provides, “The Board shall have the authority to ... conduct hearings on formal complaints filed by the Judicial Investigation Commission and make recommendations to the Supreme Court of Appeals regarding disposition of those complaints.”

41. Rule 4.5 of the Rules of Judicial Disciplinary Procedure provides that “[i]n order to recommend the imposition of discipline on any judge, the allegations of the formal charge must be proved by clear and convincing evidence.”

42. Rule 4.8 of the Rules of Judicial Disciplinary Procedure provides that “the Judicial Hearing Board shall file a written recommended decision with the Clerk of the Supreme Court of Appeals,” and such decision “shall contain findings of fact, conclusions of law, and a recommended disposition.”

43. Subject to the limitation in Rule 4.5 precluding the imposition of discipline when allegations are not proved by clear and convincing evidence, Rule 4.12 of the Rules of Judicial Disciplinary Procedure provides that “[t]he Judicial Hearing Board may recommend or the Supreme Court of Appeals may impose any one or more of the following sanctions for a violation of the Code of Judicial Conduct: (1) admonishment; (2) reprimand; (3) censure; (4) suspension without pay for up to one year; (5) a fine of up to \$5,000; or (6) involuntary retirement for a judge because of advancing years and attendant physical or mental incapacity and who is eligible to receive retirement benefits under the judges’ retirement system or public employees retirement system.”

44. Rule 4.12 further states that “[a]n admonishment constitutes advice or caution to a judge to refrain from engaging in similar conduct which is deemed to constitute a violation of the Code of Judicial Conduct. A reprimand constitutes a severe reproof to a judge who has engaged in conduct which violated the Code of Judicial Conduct. A censure constitutes formal condemnation of a judge who has engaged in conduct which violated the Code of Judicial Conduct. The extent to which the judge knew or should have reasonably known that the conduct involved

violated the Code of Judicial Conduct may be considered in determining the appropriate sanction.”

45. The Supreme Court has held, “[i]n determining what sanction or sanctions, if any, to impose under Rule 4.12 of the West Virginia Rules of Judicial Disciplinary Procedure [eff. 2019], this Court will consider various factors, including, but not limited to, (1) whether the charges of misconduct are directly related to the administration of justice or the public’s perception of the administration of justice, (2) whether the circumstances underlying the charges of misconduct are entirely personal in nature or whether they relate to the judicial officer’s public persona, (3) whether the charges of misconduct involve violence or a callous disregard for our system of justice, (4) whether the judicial officer has been criminally indicted, and (5) any mitigating or compounding factors which might exist.” Syl. Pt. 6, *Matter of Goldston*, 246 W. Va. 61, 866 S.E.2d 126 (2021).

46. Relative to these factors the parties submit that: (1) Judge Akers’ conduct was related to the administration of justice and the public’s perception of the administration of justice; (2) the charges relate more to Judge Akers’ public persona; (3) the charges do not involve violence or a callous disregard for our system of justice; and (4) there has been no criminal indictment, complaints, or other charges.

47. Relative to the issue of mitigation, Judge Akers has not been the subject of any other ethics complaints, she fully cooperated in the investigation and prosecution of this matter, and has evidence of good character and a good reputation as a lawyer and a judicial officer.

48. The only alleged factor in aggravation was the assertion that Judge Akers “knew or should have known” her conduct was in violation of the Code of Judicial Conduct because of Advisory Opinion 2023-23

3. The Board independently makes the following conclusions of law.

4. Respondent has referred to the Orders she entered on February 24 and 25, 2025, and the “Agreed Order” she entered on February 28, 2025, as “Administrative Orders,” but the Board concludes that they were not administrative orders but were judicial orders.

5. Article VIII of the West Virginia Constitution defines judicial powers. Section 6 of Article VIII defines a circuit court’s powers as follows:

Circuit courts shall have control of all proceedings before magistrate courts by mandamus, prohibition and certiorari.

Circuit courts shall have original and general jurisdiction of all civil cases at law where the value or amount in controversy, exclusive of interest and costs, exceeds one hundred dollars unless such value or amount is increased by the Legislature; of all civil cases in equity; of proceedings in habeas corpus, mandamus, quo warranto, prohibition and certiorari; and of all crimes and misdemeanors. ...

Circuit courts shall have appellate jurisdiction in all cases, civil and criminal, where an appeal, writ of error or supersedeas is allowed by law to the judgment or proceedings of any magistrate court, unless such jurisdiction is conferred by law exclusively upon an intermediate appellate court or the supreme court of appeals.

Circuit courts shall also have such other jurisdiction, authority or power, original or appellate or concurrent, as may be prescribed by law.

Subject to the approval of the supreme court of appeals, each circuit court shall have the authority and power to establish local rules to govern the court.

Subject to the supervisory control of the supreme court of appeals, each circuit court shall have general supervisory control over all magistrate courts in the circuit. Under the direction of the chief justice of the supreme court of appeals, the judge of the circuit court, or the chief judge thereof if there be more than one judge of the circuit court, shall be the administrative head of the circuit court and all magistrate courts in the circuit.

6. Accordingly, unless “prescribed by law,” the only “administrative” authority in the Circuit Court of Kanawha County lies with its Chief Judge, and the orders at issue in this case were not entered by Respondent in her capacity as Chief Judge.

7. A judicial order decides legal rights or obligations in a case, such as a scheduling order, discovery order, in limine order, dismissal order, or judgment, which are ordinarily subject to appellate review.

8. An administrative order entered by a court acting in its administrative or supervisory capacity over lawyers or litigants, not over parties, such as terms schedules, case assignments, internal directives concerning court functions like remote hearings, filing procedures during emergencies, and the like,¹⁵ which are not ordinarily subject to appellate review.

¹⁵ For example, Respondent testified regarding administrative orders addressing court procedures during the COVID pandemic. Tr. 132.

9. In *State ex rel. Skinner v. Dostert*, 166 W. Va. 743, 760-761, 278 S.E.2d 624, 635-636 (1981) (citations omitted), the Court struck down a circuit court's "administrative order" controlling the circumstances under which magistrates might dismiss criminal cases, explaining as follows:

The "Administrative Order" of the circuit court below purports to control a conclusion which can only be arrived at after a consideration of the facts and the law by the magistrate. It partakes of the circuit court's administrative powers to assert control over purely judicial proceedings, and denies the magistrate the exercise of the intellectual function essential to a ruling on a motion to dismiss, thereby invading the jurisdiction of the magistrate court. ... It requires the magistrate to act in a ministerial manner. It ignores the magistrate's judicial function to make an independent evaluation of the facts and the law in any particular case and to weigh and wed them so as to support a legal conclusion. ... It is nothing more than an attempt by the circuit court to control the judicial discretion of the magistrate by administrative fiat. A circuit court may not invade the jurisdiction or the judicial function of a magistrate court under the guise of the administrative powers granted by W. Va. Const. art. 8, § 6.

10. Conversely, in Syllabus Point 3 of *State ex rel. Lambert v. Stephens*, 200 W. Va. 802, 490 S.E.2d 891 (1997), the Court rejected a challenge to a "General Order" designating a parking area for magistrate personnel use, explaining that:

Courts have inherent authority to require necessary resources, such as sufficient funds for operating expenses, work space, parking space, supplies, and other material items. In order for a court to invoke use of its inherent power to require resources, the court must demonstrate that such resources are reasonably necessary for the performance of its responsibilities in the administration of justice. Although courts must be cautious not to reach beyond the power of the judicial branch, it is crucial for the judiciary to be able to invoke such power as is reasonably necessary to maintain itself as an independent and *equal* branch of our government.

11. In *Skinner*, as in the present case, the administrative order related to judicial proceedings, while in *Lambert*, it was wholly unrelated to any judicial proceedings but concerned adequate judicial resources.

12. More fundamentally, W. Va. Const. art. V, § 1 provides, "The legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the Legislature."

13. Here, a member of the Judicial Branch, Respondent, was exercising jurisdiction over an agency of the Executive Branch, the Department of Human Services.

14. Certainly, the Chief Judge of the Circuit Court of Kanawha County has jurisdiction to enter an administrative order regarding case assignments, scheduling, docket management, courthouse hours, courthouse weather policies, and other aspects of judicial administration over judicial officers and employees, including attorneys, who are officers of the court, but neither the Chief Judge nor any other Judge of the Circuit Court of Kanawha County has jurisdiction to enter an “administrative order” directing the other two branches of government in the performance of their separate powers.

15. The Legislative Branch cannot be directed by an administrative order to enact certain legislation, and the Executive Branch cannot be directed by an administrative order to execute the laws in a certain manner.

16. The Chief Judge and other Judges of the Circuit Court of Kanawha County do have the power, however, to enter judicial orders, which are case-specific, i.e., apply to the parties in a particular proceeding; which are based on the applicable law and the relevant evidence; which are enforceable by contempt; and which are typically subject to appellate review.

17. Conversely, administrative orders are system-wide or procedural, governing how the court operates; they are not case-specific but apply broadly to litigants, attorneys, and court staff; they implement policies or logistics, such as scheduling, assignments, or court procedures; and they are not appealable.

18. Recently, in *State ex rel. W. Va. Dep't of Human Servs. v. Redding*, 2026 W. Va. LEXIS 156 at *3-4, 2026 LX 297710, 2026 WL 1162606, the Court struck down orders in two separate abuse and neglect proceedings requiring DHS “to provide the following information to the circuit court within fourteen days of the order: 1) a comprehensive list of all outstanding referrals for which no action has been taken, the date the referrals were received, and the nature of the abuse or neglect reported; 2) a list of investigative workers for Berkeley County and the number of vacancies for those positions; and 3) a statement regarding whether the Berkeley County CPS unit is ‘receiving adequate support and resources from WVDHS on a local and state level.’”

19. In the Supreme Court, Judge Redding stated that “his objective in issuing the orders was to ‘investigate’ and ‘fashion[]’ a ‘remedy’ for the ‘chronic issue of inadequate [abuse and neglect] referral response times[.]’” *Id.* at *4.

20. Relative to the separation of powers issue previously discussed, the Court stated:

In the context of abuse and neglect proceedings specifically, this Court has historically invoked the separation of powers to restrain lower courts from improperly intruding into DHS operations. Nearly twenty years ago, the Court rejected, in part, a circuit court’s efforts to “supervise” local CPS operations in *In re Brandon H.S.*, 218 W. Va. 724, 629 S.E.2d 783 (2006) (per curiam). The circuit court in *In re Brandon H.S.* observed that the local CPS office was understaffed, prompting the respondent father and guardian ad litem to file a petition for contempt against DHS for failure to “properly staff this case and . . . the resulting delay in scheduling visitation, as well as in initiating drug-related services.” *Id.* at 727, 629 S.E.2d at 786. The circuit court found DHS in contempt of its obligations “in the present case[]” and ordered CPS to implement certain staffing directives, including geographic pay differentials, “to assure the “safety and guidance” of other children in its custody and in the Eastern Panhandle of West Virginia.” *Id.* at 727-28, 629 S.E.2d at 786-87.

Notwithstanding the circuit court’s laudable concerns about the impact of CPS staffing on child welfare, the Court found the direction to provide geographic pay differentials a violation of the separation of powers. *Id.* at 730, 629 S.E.2d at 789. The Court empathized with the circuit court’s plight of “regularly presiding over abuse and neglect cases during a period when [DHS] staff vacancies reached crisis proportions,” but found “the extreme nature of those facts does not justify an invasion of the executive branch’s province to set the salaries of its employees.” *Id.* at 731, 629 S.E.2d at 790.

More recently, this Court granted prohibition to restrain a circuit court from ordering DHS to continue to operate a juvenile facility. *See State ex rel. W. Va. Dep’t of Hum. Servs. v. Wilmoth*, No. 24-728, 2025 W. Va. LEXIS 114, 2025 WL 914419 (W. Va. Mar. 25, 2025) (memorandum decision). In *Wilmoth*, the circuit court unilaterally entered an administrative order in various pending abuse and neglect actions that ordered DHS to continue operating a juvenile facility it had planned to close, citing the court’s “authority regarding juvenile placements.” 2025 W. Va. LEXIS 114, [WL] at *3. Because the circuit court’s order constituted a “clear encroachment into executive function,” we found that the separation of powers required us grant a writ of prohibition to ensure proper division of “the distinct responsibilities of two branches of government as to juvenile facilities and services.” *Id.*

Respondent readily acknowledges that the ultimate objective in issuing the DHS orders was to “remedy” any deficiencies the responsive information revealed. He further acknowledges that “subsequent judicial action []based upon the compliance with these orders[]” is subject to separation of powers scrutiny but maintains that issue is not yet ripe because the DHS orders constitute simple information-gathering. We agree. The information production required by the DHS orders does not go so far as to exercise “powers properly belonging to” DHS, regardless of respondent’s intended use of that information. However, while the DHS orders present no separation of powers violation per se, the DHS’s alternative “case or controversy” argument strikes at a related—and valid—concern.

Id. at *7-9 (footnote omitted).

21. Here, Respondent’s order went beyond “simple information-gathering,” establishing a one-year “IMPROVEMENT PERIOD” for DHS to reduce and eliminate unlicensed placements.

22. The *Redding* Court’s discussion of the requirement of a “case or controversy” is also instructive:

Although respondent issued the DHS orders in individual abuse and neglect proceedings—which were obviously live, justiciable controversies—DHS argues that the orders bore no relevance to any issues in those cases, thereby stripping the circuit court of jurisdiction to issue or enforce them for lack of a “case or controversy.” Respondent, by counsel, concedes that the DHS orders were not intended to address a then-existing issue in the underlying abuse and neglect proceedings and identifies no actionable, pending controversy to which the DHS orders pertain.

Instead, respondent likens his issuance of the DHS orders to relief granted by circuit courts in institutional reform litigation. In fact, he contrasts the limited investigatory scope of the DHS orders with the more broad-sweeping directives aimed at rectifying “systemic failures of state agencies” that this Court has previously affirmed. Citing cases like *West Virginia Department of Health & Human Resources, Bureau for Behavioral Health & Health Facilities v. E.H.*, 236 W. Va. 194, 778 S.E.2d 643 (2015), respondent contends that the DHS orders “modest[ly]” reflect the same type of judicial supervision of “executive branch . . . reform efforts” affirmed in those cases.

However, these comparator cases underscore the absence of a justiciable controversy surrounding the DHS orders. Each of the cases cited by respondent was initiated by a party with standing, against an adverse party, and the relief awarded was within the scope of the legal issue successfully adjudicated in the action.

Id. at *11-13 (footnotes omitted).

23. Here, as noted, Respondent has insisted that her Administrative Order was untethered to any pending proceeding, but was purely administrative, which begs the question of its jurisdictional basis, as the judiciary has no administrative authority over the Executive or Legislative Branches.¹⁶

24. The *Redding* Court concluded:

As these cases demonstrate, directives issued to the executive branch must, at a minimum, arise from a case or controversy brought to the court, litigated by adverse parties, and be issued within the scope of the relief required by the litigants' successful adjudication of their claims. Here, there is no indication a party to these proceedings raised—much less sought adjudication of or relief arising from—local CPS investigatory delays. Nor does respondent even assert as much: he makes clear that the DHS orders were issued based upon personal observations in docketed cases prompting him to inquire into the staffing and efficiency of the local CPS office for the purpose of “remedy[ing]” any deficiencies, just as he claims to have accomplished with the 2019 show cause order. The DHS orders bear striking similarity to the “unilateral[]” administrative order that we prohibited in *Wilmoth* requiring DHS to continue operating a juvenile facility, in part, because “no person or entity requested judicial action[.]” 2025 W. Va. LEXIS 114, 2025 WL 914419, at *2. As such, we agree with DHS that the DHS orders do not derive of a justiciable controversy—threatening the circuit court’s jurisdiction to issue or enforce them

...

Without question, the abuse and neglect provisions of Chapter 49 charge circuit courts with ensuring the welfare of children over whom it exercises jurisdiction arising from proceedings instituted under those statutes. And while that charge may make circuit courts uniquely privy to recurrent, systemic inefficiencies or shortcomings of the agencies charged with child welfare, our Constitution does not permit courts to unilaterally investigate and rectify those issues. “[Courts] do not, or should not, sally forth each day looking for wrongs to right. We wait for cases to come to us, and when they do we normally decide only questions presented by the parties.” *Greenlaw v. United States*, 554 U. S. 237, 244, 128 S. Ct. 2559, 171 L. Ed. 2d 399 (2008) (quoting *United States v. Samuels*, 808 F.2d 1298, 1301 (8th Cir. 1987) (Arnold, J., concurring)). We commend respondent’s advocacy for the welfare of the children in his judicial circuit and his vigilance over DHS’s statutory obligations. As we have previously expressed, the Court shares this concern about investigatory delays that arise from inadequate CPS staffing. *See Bloom*, 247 W. Va. at 448, 880 S.E.2d at 914 (expressing the Court’s “deep concern regarding . . . allegations of

¹⁶ Likewise, that it is labeled an “Agreed Order” is of no consequence if Respondent was without jurisdiction to enter it.

systemic staffing issues in CPS offices statewide[]”). However, **the Constitution does not permit us to sanction such advocacy by way of judicial investigation into perceived shortfalls of State government in absence of an adversarial, justiciable controversy or statutory or constitutional authority to do so.**

Id. at *16-28 (emphasis supplied and footnotes omitted).

25. In *H. v. Matin*, 168 W. Va. 248, 284 S.E.2d 232 (1981), the petitioners, mental patients confined in the state hospital, sought mandamus relief requiring directors of the state department of health and the state hospital to provide them with the services to which they were statutorily entitled, and the Supreme Court transferred the case to the Circuit Court of Kanawha County.

26. Upon remand, the Circuit Court appointed a monitor, which ultimately culminated in an order enjoining the planned construction of a mental health facility, which the Executive Branch agencies appealed. *E.H. v. Matin*, 189 W. Va. 102, 428 S.E.2d 523 (1993), which the Supreme Court reversed under the Separation of Powers Clause. Later, however, relative to traditional court-monitorship arising from the exercise of its judicial powers, the Supreme Court extended the court-appointed monitor’s authority for an additional eighteen months. *E.H. v. Matin*, 189 W. Va. 445, 432 S.E.2d 207 (1993).

27. Ultimately, the Circuit Court’s supervision of the Executive Branch agencies extended well past that period, including three appeals of orders determining they had violated a consent decree, also entered as an “agreed order,” *E.H. v. Matin*, 2011 W. Va. LEXIS 290 (W. Va. S. Ct.) (memorandum), *W. Va. Dep’t of Health & Human Res. v. E.H.*, 236 W. Va. 194, 778 S.E.2d 643 (2015), and *W. Va. Dep’t of Health & Human Res. v. E.H.*, 2017 W. Va. LEXIS 472, 2017 WL 2492802 (memorandum), demonstrating how there could have been further proceedings arising from the “Agreed Order” in the current case.

28. Moreover, that one of the decisions of the Supreme Court of Appeals arising from the court-monitor proceedings, *W. Va. Dep’t of Health & Human Res. v. E.H.*, 236 W. Va. 279, 778 S.E.2d 728 (2015), resulted in a petition for writ of certiorari to the Supreme Court of the United States, *W. Va. Dep’t of Health & Human Res. v. E.H.*, 2016 U.S. LEXIS 6115, 580 U.S. 915, 137 S. Ct. 328, 196 L. Ed. 2d 212, 85 U.S.L.W. 3165, 2016 WL 5888349, underscores that the appointment

of a court-monitor over an Executive Branch agency is a judicial act, not an administrative one, irrespective of whether the agency initially “agrees” or “consents.”

29. Applying these principles to this case, it is clear that Respondent’s orders were judicial, not administrative: (1) they arose out of a specific case involving the attempted suicide by a child while placed in a hotel by Child Protective Services [“CPS”] over which Respondent was exercising jurisdiction; (2) they arose out of other specific cases involving children placed at a facility maintained by the Kanawha County 4-H Foundation over which either Respondent or other Kanawha County Circuit Judges were exercising jurisdiction; (3) the first “Administrative Order” did not implement a policy, practice, or procedure, but it was a show-cause order stating, “this Court **ORDERS** the Department of Human Services Cabinet Secretary ... to appear for a hearing ... to determine whether these placements are appropriate and safe ...”¹⁷ (4) the “Administrative Order” was entered in the Clerk’s Office, which was directed to provide a certified copy to DHS; (5) the second “Administrative Order” stated, inter alia, that (a) “[A] court speaks only through its Order;” (b) “a Court may only inquire of parties to civil and criminal actions in open court, with all parties present;” (c) “This is necessary as ... DoHS ... currently has approximately one hundred (100) pending matters before this Court;” and (d) “Each of those numbers represents a child, over whom this court has jurisdiction;” (5) this second “Administrative Order” was entered in the Clerk’s Office, which was directed to provide a certified copy to DHS;¹⁸ (6) the final “Agreed Order” again referenced the genesis for the proceedings as the child’s attempted suicide and children placed at the 4-H facility, the consideration of “testimony” at the “hearing,” and made findings of fact, conclusions of law, and ordered an “improvement period” supervised by a court-appointed “monitor,” who was a judicial employee, who would make written reports to Respondent “at an appropriate frequency, which will be determined by the Court and the designated monitor;” (7) significantly, the final “Agreed Order” further provided, “The Monitor has the authority to

¹⁷ Emphasis in original.

¹⁸ Notably, unlike the first “Administrative Order” entered a day earlier, this second “Administrative Order” also provided:

Further, this Court has directed a TEAMS link to the hearing be sent to any and all persons who wish to *observe*. Those wishing to attend and *observe* virtually may email Melinda.Martin@courtswv.gov and request the link to the hearing on Friday, February 28, 2025.

request future **ORDERS** by this Court ... after both parties have an opportunity to be heard by the Court,”¹⁹ which plainly contemplated (a) additional proceedings, (b) additional court orders, and (c) the due process components of notice and hearing attendant to judicial proceedings and orders, not administrative orders; and (8) because the Administrative Order went beyond “simple information-gathering,” establishing a one-year “IMPROVEMENT PERIOD” for DHS to reduce and eliminate unlicensed placements, and was not precipitated by a request of any party seeking the relief ordered, it violated the separation of powers and was entered without subject matter jurisdiction, as there was no case or controversy.

30. Finally, as will be discussed *infra*, although Respondent has emphasized its nature as an “Agreed Order,” there was a coercive element regarding its entry.

31. Although it is true that Respondent was not charged with entering an order without jurisdiction, the foregoing places into context the interview from which the charges sprang.

CHARGE

1. As noted, the single Charge in the Formal Statement of Charges alleges the Respondent violated Rules 1.1, 1.2, 2.2, 2.10(A), and 3.1(C) of the Code of Judicial Conduct, arising from an interview she gave on the MetroNews Talkline program on March 3, 2025.

2. The Board has analyzed these Rules and the evidence relative to the Charge, and applying the applicable clear and convincing standard concludes as follows:

Rule 1.1

3. Rule 1.1 of the Code of Judicial Conduct provides, “A judge shall comply with the law, including the West Virginia Code of Judicial Conduct.”

4. The Board concludes there is insufficient evidence to clearly and convincingly establish that Respondent failed to comply with the law, including the West Virginia Code of Judicial Conduct.

Rule 1.2

5. Rule 1.2 of the Code of Judicial Conduct provides, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”

¹⁹ Emphasis supplied.

6. The commentary to Rule 1.2 states, “A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.”

7. “Impartial,” “impartiality,” and “impartially” as defined in the Code of Judicial Conduct mean an “absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.”

8. “Impropriety” is defined as conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge’s independence, integrity, or impartiality.

9. The Board concludes there is insufficient evidence to clearly and convincingly establish that Respondent lacked independence, integrity, or impartiality, or acted with impropriety or created any appearance of impropriety, relative to the media interview, which is the sole basis for the Statement of Charges.

Rule 2.2

10. Rule 2.2 provides, “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.”

11. The commentary to Rule 2.2 states, “To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.”

12. The Board concludes there is insufficient evidence to clearly and convincingly establish that Respondent failed to uphold the law, apply the law, or perform the duties of her judicial office fairly and impartially, relative to the media interview, which is the sole basis for the Statement of Charges.

Rule 2.10(A)

13. Rule 2.10(A) provides, “A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court ...”²⁰

²⁰ “Before 2007, the rule prohibited all speech about an active case regardless of whether it was likely to impair fairness.” M. Schoepf, *Removing the Judicial Gag Rule: A Proposal for Changing Judicial Speech Regulations to Encourage Public Discussion of Active Cases*, 93 Minn. L. Rev. 341 (Nov. 2008) (footnote omitted).

14. The commentary to Rule 2.10(A) states, “This Rule’s restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.”

15. The commentary further states, “Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge’s conduct in a matter.”

16. Here, the court-appointed monitor and the guardian ad litem who participated in the hearing were available to provide public statements regarding Respondent’s order, and upon receiving a media inquiry, Respondent could have referred the matter to the monitor or guardian ad litem.

17. Rule 2.10(A) creates a two-part test that prohibits a judge’s public statements when they: (1) involve a pending or impending matter and (2) might reasonably be expected to affect the outcome or impair the fairness of the pending/impending matter.

18. A “Pending matter” is “a matter that has commenced. A matter continues to be pending through any appellate process until final disposition.”²¹

19. An “Impending matter” is “a matter that is imminent or expected to occur in the near future.”²²

20. Here, the “matter” was not any specific underlying abuse and neglect proceeding, as Respondent argues, but the court-appointed monitoring proceeding, which under the consent order would continue for another year, and as noted, might result in an appeal of any subsequent order.

21. In addition to the consent order itself, which provided that the Respondent could enter additional orders after notice and hearing, the Respondent’s comments during her interview indicated the judicial nature of the proceedings and its ongoing nature: (1) “the first administrative order ... addressed an issue which came up in court;” (2) “I had a case with ... a 12-year-old boy who had attempted suicide;” (3) “The guardian ad litem told me later ... about the hotels and 4-H camps;” (4) “Mr. Mayer ... said ... it’s been going on awhile and that it happens in other states.

²¹ Terminology section of Code of Judicial Conduct.

²² Terminology section of Code of Judicial Conduct.

And that was something he said in open court;” and (5) “I can’t talk about what my decisions will be.”

22. Accordingly, the Board concludes there is clear and convincing evidence that there were pending and impending matters at the time of the subject interview.

23. The second prong of the test is whether the public statement might reasonably be expected to affect the outcome or impair the fairness of the pending/impending matter.

24. Accordingly, the only remaining issue relative to the primary charge in this matter is whether the public statements made about the matter “might reasonably be expected to affect” its “outcome or impair” its “fairness.”

25. The Board notes the inherent ambiguity in the “might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court” test.

26. “Affect” is undefined in the Code of Judicial Conduct, but its plain meaning is “to produce an effect upon (someone or something); to act on and cause a change in (someone or something).”²³

27. “Outcome,” likewise, is undefined in the Code of Judicial Conduct, but its plain meaning is “something that follows as a result or consequence.”²⁴

28. “Impair” means “to diminish in function, ability, or quality; to weaken or make worse.”²⁵

29. “Fairness” means “lack of favoritism toward one side or another.”²⁶

30. Although the Board concludes that there was a “pending or impending matter,” i.e., the judicial supervision of a one-year improvement period, the Board concludes there is insufficient evidence to clearly and convincingly establish that the Respondent’s comments during the

²³ *Affect*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/affect> (last visited May 10, 2026).

²⁴ *Outcome*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/outcome> (last visited May 10, 2026).

²⁵ *Impair*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/impair> (last visited May 10, 2026).

²⁶ *Fairness*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/fairness> (last visited May 10, 2026).

MetroNews interview, standing alone, “might reasonably be expected to affect the outcome or impair [its] fairness.”

31. “One way to increase public understanding of the workings of courts would be to tweet about cases and trials currently pending in the court system. However, because this creates a strong danger of raising questions about the judges’ actual or apparent impartiality, the ethics rules permit only limited public comment, even about cases in other courts.” E. Thornburg, *Twitter & the So-Called Judge*, 71 SMU L. Rev. 249 (Winter 2018) (emphasis supplied).

32. The comments to the corollary rule applicable to federal judges note that “If the public comment involves a case from the judge’s own court, the judge should take particular care so that the comment does not denigrate public confidence in the judiciary’s integrity and impartiality.” Comment, CODE OF JUDICIAL CONDUCT FOR U.S. JUDGES, Canon 3A(6) (2014) (emphasis supplied).

33. It has been noted as follows:

Not every television appearance by a judge on commercial television will be improper, or will create the appearance of impropriety. For example, it might be permissible for a municipal court judge to make an isolated appearance on public television to comment on the role of municipal court judges in the judiciary. Similarly, a one-time appearance by a Superior Court judge on a commercial television program dealing with the benefits and disadvantages of televising civil trials might be permissible. However, a judge’s ... appearance on a television program, whether the program was commercial or non-commercial, to comment on recent court decisions in New Jersey clearly would be improper.

In re Broadbelt, 146 N.J. 501, 505, 683 A.2d 543 (1996), *cert. denied*, 520 U.S. 1118, 117 S. Ct. 1251, 137 L.Ed.2d 332 (1997); *see also Papa v. New Haven Fed’n of Tchrs.*, 186 Conn. 725, 444 A.2d 196 (1982) (judge’s interview with newspaper concerning proceeding pending before him involving teachers’ strike was a clear violation of Code of Judicial Conduct, and since interview and judge’s finding in response to it raised reasonable question about his ability to remain fair and impartial); *Matter of Hey*, 188 W. Va. 545, 425 S.E.2d 221 (1992) (a judge’s negative comments about a child and parent made during a televised program and pertaining to a case over which the judge was presiding are directly related to the judge’s official position and therefore arise in the course of the judge’s official duties, for purposes of the Canon requiring judges to abstain from public comment

about pending proceedings, notwithstanding the exception permitting public statements made in the course of official duties).

34. Our Supreme Court has held that public statements implying a judge's predisposition to rule in matters a certain way can violate Rule 2.10(A). *In re Williams*, 248 W. Va. 106, 887 S.E.2d 231 (2023).

35. The fact that the media contacts a judge about a pending matter is irrelevant to whether a judge violates Rule 2.10(A) by commenting on it. *Ohio St. Bar Ass'n v. Winkler*, 175 Ohio St. 3d 407, 2024-Ohio-3141, 244 N.E.3d 8 (2024) (imposing reprimand for violation of Rule 2.10(A)).

36. The Respondent notes that Rule 2.10(D) provides, "Notwithstanding the restrictions in paragraph (A), a judge ... may explain court procedures," but she was not explaining court procedures; instead, she discussed the substance of the matter and noted that she might need to make "decisions" in the future regarding its subject matter, and made the following comments:

Well, you know, I was a prosecutor for a long time. I was a prosecutor for over 20 years. I started out as a juvenile prosecutor. I was a grant prosecutor hired by Bill Forbes. What I did was deal with juvenile offenders in the very beginning. That was back in, gosh, 1999. I did felonies. I eventually was just trying murder cases there and doing that for a long time, but what I did see is that abuse and neglect is the entry point into the system for a lot of people. The children are put into this system. They may or may not find permanent placement. Sooner or later, they may have contact with the juvenile justice system, and then they wind up kind of churning in their period. They turn 18, and they may have an adult offense, and then they wind up in our adult courts.

I've seen this for a long time. Is it -- it's difficult. It's always been difficult. It's just been part of my professional life for a really long time, so I'm used to it, I guess.²⁷

²⁷ The Respondent also ventured well outside the consent order, explaining that: "What I was told is that sometimes child protective service workers are working there and supervising children. Sometimes what they call SPP providers, which are contracted providers, are doing that. And that's another thing - I mean, there's so many different facets to the system. People don't understand. It's not all CPS. You know, DOHS contracts with lots of outside agencies. They provide supervision. They provide transportation for people when they need to do stuff. They provide - but they have contracts with all these people who provide services to help those in the DOH system. Do I know the ratio 100%? No, I do not. And that was - you know, hopefully we'll get some answers when they're able to sit down and exchange information."

37. A reasonable person listening to or reading these remarks might conclude, in the context of the events that preceded them, that Respondent was predisposed to ruling against the Executive Branch agency should she perceive it not responding to her articulated concerns about the placement of children, and a criticism of the failure of the Executive and Legislative Branches to adequately fund child protective services.

38. Indeed, after the remarks above, the interviewer immediately asked, “In your opinion, we have three equal branches of government, you’re in the judicial branch, obviously. Has the Legislature and the Governor – I mean are we dropping the ball here that this ends up in court, and we have court orders around this?” to which Respondent replied, “Actually, I can’t answer that ... That, I’m not allowed to answer.”

39. But there are several reasons why the Board concludes the evidence is not clear and convincing.

40. *First*, the DHS Secretary testified that he perceived no bias or prejudice and, although the relative standard is objective and not subjective, there is no record evidence that anyone complained to the Judicial Investigation Commission or otherwise regarding the subject interview.

41. *Second*, after the hearing in this matter was concluded, the Special Judicial Disciplinary Counsel has taken the position that the evidence is insufficient to establish a violation of Rule 2.10(A) by clear and convincing evidence.

42. *Third*, Respondent declined answering questions during subject interview that she interpreted might be perceived as impairing the perceived fairness of any further proceedings.

43. *Finally*, the Judicial Investigation Commission’s standard is one of “probable cause,” R. Jud. Disc. P. 2.7, not the Judicial Hearing Board’s standard of “clear and convincing,” R. Jud. Dis. P. 4.5.

44. Regarding the constitutionality of Rule 2.10(A), it has been noted that (1) the government’s interest in maintaining the independence, integrity, and impartiality is compelling; (2) because the restriction is limited to pending or impending matters, judges are generally free to speak about anything else; and (3) pursuant to the Pickering-Connick test applicable to government employees, and judges are government employees, speech is protected under the First Amendment only if it is related to a matter of public concern, as opposed to a matter related to the public

employment, and then only if not outweighed by overriding government interests. K. Schaffzin, *The Great and Powerful Oz Revealed: The Ethics and Wisdom of the SCOTUS Leaks in National Federation of Independent Business v. Sebelius*, 7 Charleston L Rev. 317 (Winter 2012-2013) (footnotes omitted). “Rule 2.10—the ‘pending action rule’—is likewise well-defined, expressly requiring a causal effect between the extrajudicial speech and the feared outcome.” L. Rambo, *When Should the First Amendment Protect Judges from Their Unethical Speech?* 79 Ohio St. L.J. 279 (2018) (footnote omitted); see also M. Schoepf, *Removing the Judicial Gag Rule: A Proposal for Changing Judicial Speech Regulations to Encourage Public Discussion of Active Cases*, 93 Minn. L. Rev. 341 (Nov. 2008) (“[T]he Model Code remains much more respectful of First Amendment considerations ... *First*, it limits the over-inclusiveness of the rule to an acceptable level ... *Second*, the ABA’s model rule also eliminates the under-inclusiveness problem ... *Third*, subsection (E) of the ABA’s rule explicitly allows a judge to respond to criticism from the ‘media or elsewhere’ as long as she complies with the restrictions in subsection (A) ... the language of the Model Rules shows that the AB decided to allow more attorney speech than would be constitutionally required.”) (footnotes omitted).

45. Accordingly, although the Board has concluded that the evidence to establish Respondent’s violation of Rule 2.10(A) has not been sustained by clear and convincing evidence, the Board rejects the argument that Rule 2.10(A) either facially or as applied is an unconstitutional limitation on the exercise of Respondent’s First Amendment rights: (1) it serves the compelling state interests in maintaining the independence, integrity, and impartiality is compelling; (2) it is narrowly-tailored to those interests; and (3) Respondent’s comments were related to her judicial duties and, even if related to matters of public concern outside her judicial duties, her First Amendment right to make those comments are outweighed by the overriding governmental interests.

46. Finally, for reasons articulated in the Board’s order denying the same, it concludes that it is not compelled to dismiss the Statement of Charges based on the recommendation of Special Judicial Disciplinary Counsel that it do so, as the Supreme Court of Appeals is the “final arbiter” of judicial disciplinary matters.

Rule 3.1(C)

47. Rule 3.10(C) provides, “A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not ... participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.”

48. The Commentary to Rule 3.10(C) states, “To the extent that time permits, **and judicial independence and impartiality are not compromised**, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects.”²⁸

49. The Commentary further notes, “Off-the-bench judicial leadership is essential to effective resolution of local systemic problems that impede the progress of child abuse and neglect, delinquency, and status offense cases involving at-risk children and their families. Unlike most other types of cases in the court system, these cases deal with ongoing and changing circumstances, with federal and state legal mandates assigning to the judge a series of time-specific and complex decisions that shape the course of state intervention and determine the future of the child and family. For these reasons, judges are encouraged to regularly convene meetings of *local professionals* routinely involved in these cases for the purpose of addressing issues in the circuit relating to effective procedures and necessary services. These collaborative meetings may address systemic problems **but shall not include discussion of individual cases.**”

50. Although the Board concludes that there was a “pending or impending matter,” i.e., the judicial supervision of a one-year improvement period, the Board concludes there is insufficient evidence to clearly and convincingly establish that the Respondent’s comments during the MetroNews interview, standing alone, “might reasonably be expected to affect the outcome or impair [its] fairness” under Rule 2.10(A) and, for that reason, likewise concludes there is insufficient evidence to clearly and convincingly establish that Respondent’s “judicial independence and impartiality” were “compromised” by the MetroNews interview.

²⁸ Emphasis supplied.

III. RECOMMENDED DECISION

1. Upon consideration of all the facts and circumstances in this case, the Board makes the following recommendations:

- a. There is insufficient evidence to clearly and convincingly establish that Respondent violated Rules 1.1, 1.2, 2.2, 2.10(A), or 3.1(C).
- b. The Supreme Court of Appeals determines Respondent's entitlement to reasonable attorney fees per R. Jud. Disc. P. 4.13 relative to any fee schedule approved by the Administrative Director of Courts.

The Honorable Brittany Ranson Stonestreet concurs in the result and reserves the right to file a separate concurring opinion.

Counsel to the Judicial Hearing Board is hereby directed to file a copy of this RECOMMENDED DECISION with the Clerk of the Supreme Court of Appeals and to serve a copy on the members of the Judicial Hearing Board and counsel of record upon its entry.

Entered this 5 day of June 2026.



Hon. Michael D. Lorensen, Chairperson
Judicial Hearing Board