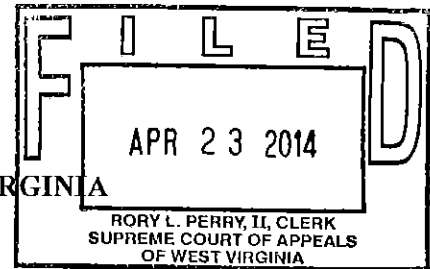


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



IN THE MATTER OF:
JAYMIE GODWIN WILFONG, JUDGE
20TH JUDICIAL CIRCUIT

COMPLAINT NOS. 142-2013;
143-2013; 144-2013; 145-2013;
and 155-2013
SUPREME COURT NO.: 14- 0379

FORMAL STATEMENT OF CHARGES

The West Virginia Judicial Investigation Commission, pursuant to Rules 2.7(a) and (d) and Rule 2.8 of the Rules of Judicial Disciplinary Procedure, has determined that probable cause does exist to formally charge Jaymie Godwin Wilfong with violations of the Code of Judicial Conduct and that formal discipline is appropriate based upon the following probable cause findings:

1. Judge Jaymie Godwin Wilfong is an elected Circuit Court Judge serving the 20th Judicial Circuit of Randolph County, West Virginia. Randolph County is the sole county in the 20th Judicial Circuit. She was sworn in on December 31, 2008, and took the position of Circuit Court Judge on January 1, 2009. Her current term of office ends on December 31, 2016. Prior to her election as Circuit Court Judge she served as the Family Court Judge from January 1, 2003, until December 31, 2008.
2. At the discretion of the Supreme Court of Appeals, Judge Wilfong serves as a non-voting Circuit Court Judge board member of the North Central Community Corrections program. That program gives Judge Wilfong the option of a community based alternative sentencing program for those offenders who require less than institutional custody. The North Central Community Corrections' role in

Community Restorative Justice is to provide offenders with the necessary structure and guidance to lead a productive and healthy lifestyle for those offenders to be released from incarceration, and to provide a smooth-transition into the community.

3. In her position as Circuit Court Judge, Judge Wilfong sets the participation fee amount and may require the payment of a participation fee to participate in community corrections programs, like North Central Community Corrections. All fees ordered by Judge Wilfong are to be paid to the North Central Community Corrections Board.
4. Judge Wilfong was appointed by the West Virginia Supreme Court of Appeals to the Judicial Hearing Board for a term commencing on January 1, 2012, and ending on December 31, 2014. The Judicial Hearing Board conducts hearings on formal complaints filed against judicial officers by the Judicial Investigation Commission and makes recommendations to the Supreme Court about the disposition of those complaints. Because Judge Wilfong is a member of the Judicial Hearing Board, pursuant to Rule 5 of the Rules of Judicial Disciplinary Procedure, Teresa A. Tarr, Counsel for the Judicial Investigation Commission, forwarded this matter to Chief Lawyer Disciplinary Counsel Rachael Fletcher Cipoletti to serve as Special Counsel.

Five Complaints concerning Judge Wilfong have been considered by the Commission. They are as follows:

I.D. No. 142-2013 - Self Report

5. On or about October 14, 2013, Judge Wilfong self-reported to the Judicial Investigation Commission that during the past two years she had been involved in a romantic and sexual relationship with William Travis Carter, the Director of the North Central Community Corrections program, until his negotiated resignation on or about December 5, 2013. Judge Wilfong stated in the October 14, 2013 self-report that the relationship with Carter was terminated.

I.D. No. 143-2013 - Complaint of Mary Catherine Wendekier, Judge Wilfong's law clerk

6. On or about October 16, 2013, Complainant Wendekier, Judge Wilfong's law clerk and a court employee, and member of the West Virginia State Bar, filed a judicial ethics complaint against Judge Wilfong. She reported that in or about January 2012, that Judge Wilfong confided to her that the Judge had been in an "inappropriate relationship" with Mr. Carter. Judge Wilfong apologized to Ms. Wendekier and told her that the relationship had ended. However, Complainant Wendekier afterward found out that the relationship between Judge Wilfong and Mr. Carter did not end but that it continued beyond January 2012. That caused Ms. Wendekier to believe that she should file a judicial ethics complaint because the relationship with Mr. Carter potentially affected criminal matters involving North Central Community Corrections that were pending before Judge Wilfong.

I.D. No. 144-2013 - Complaint of Michael W. Parker, Prosecuting Attorney for Randolph County

7. Complainant Parker is the Prosecuting Attorney for Randolph County and a member of the West Virginia State Bar. On or about October 16, 2013, he filed a judicial ethics

complaint based upon his information and belief that Judge Wilfong was at that time or had been involved in a romantic relationship with Carter.

8. His concern was that Judge Wilfong, as a board member on the board of directors for North Central Community Corrections and as the only Circuit Court Judge in Randolph County, West Virginia, would be the only judge deciding what defendants would be ordered to use the North Central Community Corrections programs. This was important to Prosecutor Parker because Mr. Carter and/or his employees appear before Judge Wilfong to give sworn testimony and make recommendations about whether defendants are suitable candidates for participation in the program and whether they should be restored to the program or terminated following a charge that they had violated any terms and conditions of the program.
9. Complainant Parker also stated that the wide-ranging community knowledge of the relationship between Judge Wilfong and Carter had a negative impact on the public's perception of the judicial process, and its integrity.

I.D. No. 145-2013 - Complaint of attorney Christopher W. Cooper

10. Complainant Cooper is a member of the West Virginia State Bar, who practices criminal law in Randolph County, West Virginia. On or about October 21, 2013, he filed a judicial ethics complaint against Judge Wilfong. Mr. Cooper believes that Judge Wilfong's "relationship [with Carter] has placed the entire Randolph County Criminal Bar at peril." Complainant Cooper addressed two criminal matters in which he was defendant's counsel and Mr. Carter would be the primary witness before Judge Wilfong. Mr. Cooper stated it was routine for Judge Wilfong to place accused persons on pre-conviction community corrections as a term and condition of bond, and a primary witness for that issue would

be Carter. Because of the relationship between the judge and Mr. Carter, Attorney Cooper felt that he had a duty to file the judicial ethics complaint and to file appropriate motions before the Court regarding disqualification and/or recusal.

I.D. No. 155-2013 - Complaint of attorneys R. Mike Mullens, Heather Weese, Raymond LaMora, and David Wilmoth

11. On or about October 22, 2013, Complainants Mullens, Weese, LaMora, and Wilmoth, all active members of the West Virginia State Bar and all board members on the Board of Directors for the North Central Community Corrections, filed judicial ethics complaints because they believe that Judge Wilfong's relationship with Mr. Carter possibly created a conflict of interest and may have violated provisions of the Code of Judicial Conduct.

After investigating and evaluating the five Complaints, the Judicial Investigation Commission finds that there is probable cause to make the following **CHARGES** and **FINDINGS**:

CHARGE NUMBER 1.

Judge Wilfong violated Canon 1 (integrity of judiciary), Canon 2A (public confidence in judiciary), Canon 2B (impression of improper influence) and (use of office to advance personal interest), Canon 3(B)(5) (bias and adjudicative responsibilities), Canon 3C(1)and(2) (diligent discharge of duties) and (require staff to observe standards of fidelity and diligence), Canon 3E(1) (required disqualification), and Canon 4A (conduct of extrajudicial activities) of the Code of Judicial Conduct as set forth in the Appendix, when she committed the following acts:

12. Commencing in or about late October 2011, while both individuals were married to another person, Judge Wilfong and William Travis Carter commenced what was at first a surreptitious sexual relationship.
13. During the course of the relationship with Carter, court personnel witnessed Carter entering and exiting Judge Wilfong's chambers from a non-public entrance.
14. There is evidence that during the course of the relationship with Carter, Judge Wilfong did in fact perform sexual acts with Carter in her judicial chambers between court proceedings
15. During the course of the relationship with Carter, Judge Wilfong sent sexually explicit e-mails, texts, instant messages and nude photos of herself to Carter on his county issued phone and computer.
16. Court personnel, members of the Bar, and members of the gallery in the court room witnessed Judge Wilfong crying or otherwise emotionally distraught while presiding over court proceedings.
17. During the course of the relationship with Carter, Judge Wilfong disclosed the nature of the relationship with Carter to Tamatha Snodgrass her long-time judicial secretary; Mary Catherine Wendekier, her law clerk; Lori A. Gray, Assistant Prosecutor, and Attorney Phillip S. Isner.
18. By her actions of carrying on the affair in her judicial chambers and during the course of the business day, the court employees were placed in a position to give reasons for the circumstances surrounding the appearance of Judge Wilfong's relationship with Carter.
19. During the course of the relationship with Carter, at times when Carter and Judge Wilfong were in her judicial chambers, it became necessary for court personnel to

interrupt Judge Wilfong and Carter in order to insist that Judge Wilfong continue with the daily court proceedings.

20. By her actions of carrying on the affair in her judicial chambers and during the course of the business day, Judge Wilfong acted in violation of her responsibilities as the immediate supervisor of her court employees and in contravention of the Court's personnel policies.
21. Judge Wilfong enlisted the assistance of Assistant Prosecuting Attorney Lori A. Gray, a licensed member of the Randolph County Bar, to further her relationship and her sexual contact with Carter by repeatedly requesting the use of and utilizing Gray's personal residence to meet with Carter.
22. Prior to becoming an assistant prosecutor for Randolph County, West Virginia, Gray practiced criminal and family law before Judge Wilfong. Over the course of the relationship, Assistant Prosecuting Attorney Gray, after she knew of and was aiding the Judge in the morally wrong affair, appeared in Judge Wilfong's court room and represented the State in criminal matters where Carter and his staff offered opinions and/or testimony about placement and/or revocation of placement in North Central Community Corrections.
23. After joining the prosecutor's office, Assistant Prosecuting Attorney Gray was assigned primarily to Magistrate Court in Randolph County, West Virginia. Assistant Prosecuting Attorney Gray often utilized Carter's North Central Community Corrections program as a form of alternative sentencing for defendants.
24. Judge Wilfong also enlisted the assistance of Attorney Phillip S. Isner, a licensed member of the Randolph County Bar, who practices criminal before Judge Wilfong, to further her

relationship and sexual contact with Carter by repeatedly requesting and obtaining the use of Isner's garage at his personal residence to meet with Carter.

25. Over the course of the relationship, Attorney Isner appeared in Judge Wilfong's court room and represented criminal defendants on several felony matters in which Carter and his staff were called upon to offer opinions and/or testimony about placement and/or revocation of placement in North Central Community Corrections.
26. From October 2011 until October 2013, Carter and/or his subordinate staff from North Central Community Corrections appeared before Judge Wilfong in approximately forty-six (46) criminal matters to offer sworn testimony and/or unsworn testimony to enable Judge Wilfong to evaluate possible alternative sentencing at North Central Community Corrections or to evaluate whether participants had violated terms of placement at North Central Community Corrections. Judge Wilfong did not disclose the relationship with Carter on the record to the parties in any of the above-referenced court proceedings.
27. In September 2012, the Supreme Court Administrator contacted Judge Wilfong and raised concerns about the ethical implications of the relationship with Carter and her judicial office.
28. During a subsequent call to the Administrator, Judge Wilfong informed the Supreme Court Administrator that the relationship with Mr. Carter terminated in or about September 2012, after the call from the Supreme Court Administrator.
29. However, in or about November 2012, Judge Wilfong and Mr. Carter renewed their relationship and determined to be more clandestine about it.
30. The evidence is that the inappropriate relationship between the two continued until Judge Wilfong self-reported it in October of 2013.

31. Until she self-reported her actions in October 2013, Judge Wilfong did not seek guidance from the Judicial Investigation Commission about the ethical implications of this clandestine relationship with Mr. Carter.¹

CHARGE NUMBER 2.

Judge Wilfong violated Canon 1 (integrity of judiciary), Canon 2A (public confidence in judiciary), Canon 2B (impression of improper influence), and (use of office to advance personal interest), and Canon 4A (conduct of extrajudicial activities) of the Code of Judicial Conduct as set forth in the appendix when she committed the following acts:

32. Until October 2013, Judge Wilfong regularly attended the North Central Community Corrections Board meetings and participated in discussions regarding Board issues, including, but not limited to: operational budgets for Carter's office and Carter's salary.
33. Judge Wilfong supported salary raises and equipment for Carter to the North Central Community Corrections Board and the Randolph County Commission without disclosing her relationship to Mr. Carter to either the Board or the Commission.
34. During the course of the relationship with Carter, Judge Wilfong assured Carter that she would advise Randolph County Commission President Michael Taylor that she would stop utilizing North Central Community Corrections if Carter was no longer its Executive Director.

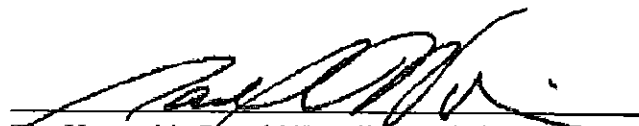
¹There were three occasions that Judge Wilfong contacted the Judicial Investigation Commission's counsel for informal ethics advice. Each of the calls involved questions of disqualification/recusal. The calls pertained to a staff member's son working at the prosecutor's office; a staff member dating a law enforcement officer/home confinement officer; and whether she could interview a family friend for a position in the court system. The calls occurred in or about January through March 2012. On each occasion, the informal advice given was that it appeared that the relationship at least needed to be disclosed. Judge Wilfong was also informed that an informal opinion carried no weight in any disciplinary proceeding and that she should seek a formal opinion from the Judicial Investigation Commission.

35. Judge Wilfong has not attended the board meetings of the North Central Community Corrections since her disclosure of the relationship with Carter in October 2013, but she has not resigned her *ex officio* position on the Board.

Judge Wilfong is advised that she has the right to file responsive pleadings to the charges made against her not more than 30 days after service of the formal charges upon her by the Clerk of the Supreme Court. Rule 2.10 of the Rules of Judicial Disciplinary Procedure provides:

The judge may file responsive pleadings as provided in the West Virginia Rules of Civil Procedure. Any such pleadings shall be filed by the judge with the Clerk of the Supreme Court of Appeals and the Office of Disciplinary Counsel not more than thirty (30) days after the date of the formal charges. For good cause shown, the Office of Disciplinary Counsel may extend the time for filing such pleadings.

STATEMENT OF CHARGES issued this 17th Day of April, 2014.


The Honorable Ronald E. Wilson, Chairperson
Judicial Investigation Commission

APPENDIX

CODE OF JUDICIAL CONDUCT

Canon 1

A judge shall uphold the integrity and independence of the judiciary.

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

Canon 2

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

- A. A judge shall respect and comply with the law, shall avoid impropriety and the appearance of impropriety in all of the judge's activities, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or knowingly permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

Canon 3.

A judge shall perform the duties of judicial office impartially and diligently.

- B. Adjudicative responsibilities.

...

- (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and

shall not permit staff, court officials and others subject to the judge's direction and control to do so.

...

C. Administrative responsibilities.

- (1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.
- (2) A judge shall require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

...

E. Disqualification.

- (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, ...

Canon 4

A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

- A. Extra-judicial activities in general. A judge shall conduct all of the judge's extra-judicial activities so that they do not:
- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
 - (2) demean the judicial office; or
 - (3) interfere with the proper performance of judicial duties.