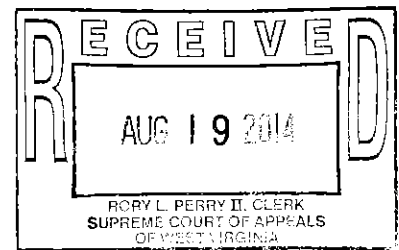


BEFORE THE JUDICIAL HEARING BOARD



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

**COMPLAINT NO. 142-2013; 143-2013; 144-2013;
145-2013; and 155-2013**

SUPREME COURT NO.: 14-0379

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At all times during the matters asserted herein, Jaymie Godwin Wilfong (hereinafter “Judge Wilfong”) was a duly elected Circuit Court Judge serving the 20th Judicial Circuit of Randolph County, West Virginia. Judge Wilfong is the only Circuit Court Judge in Randolph County, West Virginia, and Randolph County is the sole county in the 20th Judicial Circuit. Prior to her position on the Circuit Court bench, Judge Wilfong served as the Family Court Judge from January 1, 2003, until December 31, 2008. Judge Wilfong was sworn in on December 31, 2008, and publicly took the position of Circuit Court Judge on January 1, 2009. Her current term of office ends in 2016. [August 5, 2014 Stipulation].

By Order entered November 22, 2011 and pursuant to the Rules of Judicial Disciplinary Procedure, Judge Wilfong was appointed by the West Virginia Supreme Court of Appeals (hereinafter referred to as “Supreme Court”) to the Judicial Hearing Board (hereinafter referred to as “JHB”). Judge Wilfong’s appointment on the JHB commenced January 1, 2012, and concluded upon her voluntary resignation on April 23, 2014. [August 5, 2014 Stipulation].

At all times during the matters asserted herein, William Travis Carter (hereinafter “Carter”) was the Director of the North Central Community Corrections program (hereinafter referred to as “NCCC”) until his negotiated resignation on or about December 5, 2013. [August 5, 2014 Stipulation].

FINDINGS OF FACT AND VIOLATIONS OF THE CODE OF JUDICIAL CONDUCT

Commencing in or about late October 2011, while both individuals were married to other persons, Judge Wilfong and William Travis Carter began what was at first a surreptitious sexual relationship. Until she self-reported her actions in October 2013, Judge Wilfong did not seek guidance from the JIC about the ethical implications of this relationship with Carter. There were three occasions that Judge Wilfong contacted the JIC’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 JIC. [August 5, 2014 Stipulation]. Thus, Judge Wilfong was clearly advised by JIC that situations involving a more tenuous relationship than that which she had with Carter *required* disclosure.

On or about April 11, 2013, the Supreme Court Administrator contacted Judge Wilfong and raised concerns about the ethical implications of the relationship with Carter and her judicial office. During a subsequent call to the Administrator, Judge Wilfong later advised the Supreme Court Administrator that the relationship with Carter terminated in or about April 2013, but it was after the call from the Supreme Court Administrator. [August 5, 2014 Stipulation]

Additionally, Steve Jory, a senior and distinguished member of the Randolph County Bar for forty-four years, had both a professional relationship with Judge Wilfong and considered her a friend, and in that same light, he had a discussion with Judge Wilfong in April of 2013 in her judicial chambers. He discussed with her that he heard rumors that she was having an extramarital relationship with Travis Carter. Attorney Jory told Judge Wilfong that he believed this relationship was improper. Judge Wilfong agreed and said she would either report the affair or stop the affair. Judge Wilfong also advised Attorney Jory that Steve Canterbury also contacted her about the same and indicated that Judge Wilfong would have to self-report this relationship if it continued. [Jory Stipulation] After that conversation, she indicated that she would discuss the same with Travis

Carter and any relationship they had would cease. [Jory Stipulation]. In fact, on April 22, 2013, they had a communication wherein Judge Wilfong indicated to Steve Jory that things were getting back on track, which Mr. Jory believed meant that she had broken off the relationship with Travis Carter. [Jory Stipulation]. However, unbeknownst to Attorney Jory, Judge Wilfong and Carter again commenced their relationship in or about May 2013. [August 5, 2014 Stipulation].

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

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

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

The following morning, October 11, 2013, Judge Wilfong advised Tarr by text message that she intended to “self- report” her actions to the JIC and that she would do so on Tuesday, October 15, 2013. Tarr contacted her Board to advise of Judge Wilfong’s intent to self-report her misconduct. The Board requested Tarr to advise Judge Wilfong that she should take some time to consider her actions and act in a prudent, rational manner. Tarr telephoned Judge Wilfong on October 11, 2013, and conveyed the message of the JIC to Wilfong. [Tarr Stipulation].

On Saturday, October 12, 2013, Judge Moats received a telephone call from Judge Wilfong asking to meet that evening. Judge Moats suggested they meet in the Taylor County Courthouse in his Chambers. Thereafter, Judge Wilfong appeared in Judge Moats’ Chambers. [Moats Stipulation]. Judge Moats was Judge Wilfong’s mentor Judge when she came on the bench and it was not unusual for them to have conversations about various matters, both professional and personal. [Moats Stipulation]. Judge Wilfong explained to Judge Moats that she was having an affair with Travis Carter and indicated that she intended to self-report these actions to JIC. Judge Wilfong testified in her February 13, 2014 sworn statement that Judge Moats said he was not sure she needed to self-report, however, the stipulation makes clear that Judge Moats did not (during this conversation) tell Judge Wilfong that Judge Wilfong should not self-report this issue. [SJC Exhibit 32 Bates No. 1172-1173 and Moats Stipulation]. Judge Moats told Judge Wilfong that she should take her time and be as accurate and succinct as she possibly could in self-reporting to the JIC. [Moats Stipulation]. During this conversation, Judge Wilfong had stated that there was a complaint about her texting while she was on the bench and Judge Moats told her that he also texted while on the bench to his law clerk or his secretary to obtain either files or case cites. Judge Moats had no further conversations after the October 12, 2013 meeting regarding this matter. [Moats Stipulation].

By letter dated October 14, 2013, Judge Wilfong self-reported to the Judicial Investigation Commission (hereinafter referred to as "JIC") stating that during the past two years, she had been involved in a romantic and sexual relationship with Carter. The relationship was intermittent and Judge Wilfong did not engage in any sexual acts for the last 14 months of the relationship. Judge Wilfong stated in the October 14, 2013 self-report that the relationship with Carter was terminated. [August 5, 2014 Stipulation]. When the Office re-opened for business after the holiday, on October 15, 2013, the JIC received a faxed copy of a self-report dated October 14, 2013; a request for an informal opinion regarding the misconduct; and a faxed copy of the complaint of Michael Parker (ID Number 144-13). [Tarr Stipulation]. Thereafter, on Tuesday, October 15, 2013, Judge Wilfong indicated to Mr. Jory that she self-reported on October 14, 2013 by facsimile. [Jory Stipulation].

On or about October 16, 2013, Complainant Mary Wendekier (**I.D. No. 143-2013**) who is Judge Wilfong's law clerk, a court employee, and a member of the West Virginia State Bar, filed a judicial ethics complaint and stated that in or about January 2012, Judge Wilfong confided to her that she had been in an "inappropriate relationship" with Carter. [SJC Exhibit at 9]. Judge Wilfong apologized to Complainant Wendekier and advised her that the relationship had ended and was not ongoing. Complainant Wendekier filed the judicial ethics complaint when it came to her attention that the relationship between Judge Wilfong and Carter continued beyond January 2012, and she stated in her complaint she was duty bound to file the ethics complaint as she believed that the relationship potentially affected criminal matters pending before Judge Wilfong that involve NCCC. [August 5, 2014 Stipulation].

After faxing his October 15, 2013 complaint, on or about October 16, 2013, the JIC docketed the complaint of Complainant Michael Parker (**I.D. No. 144-2013**), the Prosecuting Attorney for Randolph County and member of the West Virginia State Bar. [SJC Exhibit 5 at 19].

The same was stated upon information and belief, that Judge Wilfong is or had been involved in a romantic relationship with Carter. Complainant Parker stated that Judge Wilfong serves on the board of directors for NCCC. Complainant Parker further stated Judge Wilfong sentences criminal defendants to NCCC. Complainant Parker stated that Carter and/or his employees appear before Judge Wilfong to give sworn testimony and to make recommendations to Judge Wilfong whether defendants are suitable candidates for participation in the program and whether defendants should be restored to the program or terminated following a violation of terms and conditions of the program. Complainant Parker stated that he believed the recent revelation and widespread community knowledge of the relationship between Judge Wilfong and Carter has had a negative impact on the public's perception of the judicial process, and its integrity. [August 5, 2014 Stipulation].

After the filing of the formal statement of charges, on or about May 1, 2014, Complainant Parker filed a petition to disqualify Judge Wilfong from presiding over any and all cases handled by the Randolph County Prosecuting Attorney's Office and requested the appointment of a special judge. [SJC Exhibit 41 at 1628-1635]. Judge Wilfong denied Complainant Parker's petition and by letter dated May 1, 2014, Judge Wilfong advised the Chief Justice of her decision to deny the petition and set forth her reasoning for the same, including that Judge Wilfong had presided over cases involving the Prosecuting Attorney for the previous 7 months without objection. [SJC Exhibit 41 at 1636-1639]. By Order entered May 1, 2014, in accordance with Trial Court Rule 17.01(c), the Chief Justice determined that the matters set forth in the petition to disqualify were sufficient to warrant disqualification to avoid even the appearance of impropriety. [SJC Exhibit 41 at 1640]. The Chief Justice appointed two senior status judges to hear the cases as outlined in

the petition. [August 5, 2014 Stipulation]. The current *per diem* rate for senior status judges is Four Hundred and Thirty-Five Dollars.

On or about October 21, 2013, Complainant Christopher Cooper (**I.D. No. 145-2013**), a member of the West Virginia State Bar, who practices criminal law in Randolph County, West Virginia, filed a judicial ethics complaint. [SJC Exhibit 9 at 32-38]. Complainant Cooper referenced two specific criminal matters wherein he was the counsel for the defense and that Carter would be the primary witness before Judge Wilfong. Complainant felt duty bound to file the judicial ethics complaint and to file appropriate motions before the Court regarding disqualification and/or recusal. [August 5, 2014 Stipulation].

Complainant Cooper, whose practice is 90% court appointed from Randolph, Tucker and Grant counties, 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. Complainant Cooper stated that he believed that Judge Wilfong's "relationship [with Carter] has placed the entire Randolph County Criminal Bar at peril." [August 5, 2014 Stipulation]. Complainant Cooper testified how difficult the decision to file against Judge Wilfong, whom at one point, he considered to be a close personal friend and that because he was forced into the situation he was now viewed as the "judicial rat". [Cooper testimony].

On or about October 22, 2013, Complainants Mike Mullens, Esquire, Heather Weese, Esquire, Raymond LaMora, Esquire, and David Wilmoth, Esquire (**I.D. No. 155-2013**), all active members of the West Virginia State Bar who serve on the Board of Directors for the NCCC, filed judicial ethics complaints because Complainants believed that Judge Wilfong's relationship with Carter possibly created a conflict of interest and may have violated provisions of the Code of Judicial Conduct. [SJC Exhibit 11 at 40-50 and August 5, 2014 Stipulation]. After October 15,

2013, when they read in the Inter-Mountain Newspaper of the affair between Judge Wilfong and Travis Carter and as Board Members of North Central Community Corrections Board, they decided they needed to report this activity to the JIC. The four individuals believed it was necessary to file a Complaint against Judge Wilfong. Prior to this time, Complainants did not have first-hand knowledge that a relationship, other than a professional one, had been maintained between Mr. Carter and Judge Wilfong. [Stipulation from Mullens, Weese, LaMora, and Wilmoth].

After the filing of the formal statement of charges, on or about May 1, 2014, Complainant Weese filed a petition to disqualify Judge Wilfong on her pending cases. [SJC Exhibit 42 at 1641-1648]. Complainant Mullins and Complainant LaMora filed similar petitions to disqualify Judge Wilfong on May 2, 2014. [SJC Exhibit 42 at 1649-1658 and August 5, 2014 Stipulation].

Attorney Bader Giggenbach and Attorney Isner also filed petitions to disqualify Judge Wilfong on May 5, 2014. Judge Wilfong granted the additional petitions to disqualify by Orders entered May 5, 2014. [SJC Exhibit 1659-1678 and August 5, 2014 Stipulation].

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.

A. Judge Wilfong's Admissions and Stipulations

Three days before trial in this matter, Judge Wilfong finally admitted that her pattern of

misconduct is in violation of Canon 1; Canon 2A; and Canon 2B and she has already admitted that the integrity of the judicial system was harmed by Judge Wilfong's actions. [August 5, 2014 Stipulation and Pretrial Brief of Respondent]. This is in direct opposition of her testimony at the February 13, 2014, sworn statement wherein she was asked if "any of her actions" in "any way violates the judicial canons" to which she replied in pertinent part "I honestly don't." [SJC Exhibit 32 Bates No. 1195]. She recently admitted that her relationship with Carter and the revelations about it have caused harm to the judiciary, in general, because Carter's position as the Director of the NCCC program and Judge Wilfong's position as the Circuit Court Judge. [August 5, 2014 Stipulation]. Special Counsel submits that these admissions satisfy the clear and convincing standard of evidence and support a finding that her actions as outlined in Charge1 below are in violation of Canon 1 (integrity of the judiciary); Canon 2A (public confidence of the judiciary); and Canon 2B (impression of improper influence) and (use of office to advance personal interest).

B. Judge Wilfong's pursuit of the extramarital affair affected the integrity and operations of the Randolph County Circuit Court and the NCCC

In or about 2010, Carter approached Judge Wilfong about concerns he had regarding his belief that his wife was having an extramarital affair and how a divorce may affect his relationship with his young child. Judge Wilfong stated that she encouraged Carter to reconcile with his wife. Judge Wilfong stated over the course of the next year, a close personal relationship developed between Judge Wilfong and Carter. A romantic and ultimately sexual relationship with Carter began in or about late October 2011. [August 5, 2014 Stipulation].

During the course of the relationship with Carter, Judge Wilfong disclosed the nature of the relationship with Carter to certain individuals, such as: her long-time judicial secretary and court employee, Tamatha Snodgrass; her law clerk and court employee Mary Catherine

Wendekier, Assistant Prosecutor Lori A. Gray; and Attorney Phillip S. Isner. At some point prior to the end of the relationship, Judge Wilfong also disclosed the same to her chief probation officer Heidi Hawkins. [Hawkins Stipulation].

During the course of the relationship with Carter, Judge Wilfong performed sexual acts upon Carter in her judicial chambers between court proceedings. There were no sexual acts after September of 2012. [August 5, 2014 Stipulation]. However, the constant presence of Carter and demands that Carter come to her chambers continued through the filing of the complaints in October of 2013. 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. By her actions of carrying on the affair in her judicial chambers and during the course of the business day, the court employees were placed in a position to explain the circumstances surrounding the appearance of Judge Wilfong's relationship with Carter.

During the course of the relationship with Carter, court personnel witnessed Carter entering and exiting Judge Wilfong's chambers from a non-public entrance. 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. During the course of the relationship with Carter, Judge Wilfong sent sexually explicit e-mails, texts, instant messages and nude photos of herself from her personal cell phone to Carter on his county issued phone and computer. As the relationship with Carter was intermittent, on one occasion court personnel, members of the Bar, and members of the gallery in the courtroom witnessed Judge Wilfong crying or otherwise emotionally distraught while presiding over a court proceeding. [August 5, 2014 Stipulation].

Moreover, Judge Wilfong also interfered with and impaired the daily operations of NCCC as she would call Carter at NCCC and demand that he come over to her judicial chambers on a daily basis. [Carter testimony]. Carter's absence from his office at the direction of Judge Wilfong impacted NCCC's daily operations and placed an additional burden on the remaining staff at NCCC. Additionally, if Carter did not immediately respond her text messages or calls to his cell phone, Judge Wilfong would begin calling NCCC's main number and demand to know the whereabouts of Carter from his staff. [Golden testimony].

Special Counsel submits that these facts satisfy the clear and convincing standard of evidence and support a finding that her actions are in violation of Canon 2B (impression of improper influence) and (use of office to advance personal interest), Canon 3(B)(5) (bias and adjudicative responsibilities), and Canon 3C(1)and(2) (diligent discharge of duties) and (require staff to observe standards of fidelity and diligence).

C. Judge Wilfong's involvement and utilization of members of the State Bar of Randolph County, West Virginia

In addition, to her own staff Judge Wilfong also involved members of the state bar who regularly appeared before her. It is noted that both of these attorneys were relatively young lawyers at the time of the Wilfong-Carter affair: Attorney Lori Gray had been licensed since May of 2009 and Attorney Philip Isner since October of 2003. She took advantage of the closeness of her friendships with particular bar members. Judge Wilfong and Attorney Gray's friendship pre-dated Attorney Gray's memberships to the West Virginia State Bar and Judge Wilfong's election to the bench. Judge Wilfong and Attorney Gray had worked at another law firm in Elkins, West Virginia. Judge Wilfong enlisted the assistance of Assistant Prosecuting Attorney ("APA") Lori A. Gray, now Haynes, a licensed member of the Randolph County Bar, to further her relationship and her

sexual contact with Carter by repeatedly requesting the use of and utilizing Gray's personal residence to meet with Carter. 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, Attorney Gray appeared in Judge Wilfong's courtroom and represented criminal defendants on felony matters wherein Carter and his staff were called upon to offer opinions about placement and/or revocation of placement in NCCC. After joining the prosecutor's office, APA Gray was assigned primarily to Magistrate Court in Randolph County, West Virginia. APA Gray utilized Carter's NCCC program as a form of alternative sentencing for defendants. [August 5, 2014 Stipulation]. The relationship with Carter or Judge Wilfong's use of Gray's personal residence for sexual rendezvous was never disclosed to the parties utilizing the NCCC program. Judge Wilfong did not disqualify herself from any cases that Attorney Gray was the named attorney until after the Chief Justice granted the Prosecuting Attorney's motion to disqualify Judge Wilfong from all cases involving the office.

Special Counsel submits that these facts satisfy the clear and convincing standard of evidence and support a finding that her actions are in violation of Canon 2B (impression of improper influence) and (use of office to advance personal interest), Canon 3(B)(5) (bias and adjudicative responsibilities), Canon 3E(1) (required disqualification), and Canon 4A (conduct of extrajudicial activities) of the Code of Judicial Conduct.

Judge Wilfong also enlisted the assistance of Attorney Phillip S. Isner, a licensed member of the Randolph County Bar, who practices law before Judge Wilfong, to further her relationship and sexual contact with Carter by requesting the use of and utilizing Isner's garage at his personal residence to meet with Carter on two occasions. [August 5, 2014 Stipulation]. Judge Wilfong and Attorney Isner's relationship began shortly after Attorney Isner returned to Elkins, West Virginia

to practice law. Judge Wilfong routinely texted Attorney Isner and Isner believed that by the frequency and the nature of the texts that he was her close confidant. The text messages were frequently of a personal nature, and while at times, Judge Wilfong's texts to Isner were flirtatious or suggestive in nature, no physical or romantic relationship ever occurred between the two. [Isner Testimony]. Judge Wilfong advised Attorney Isner of the relationship with Carter and Isner immediately responded that he believed she needed to disclose the same, but Judge Wilfong disagreed. [Isner testimony]. Over the course of the relationship, Attorney Isner appeared in Judge Wilfong's court room and represented criminal defendants on several felony matters wherein Carter and his staff were called upon to offer opinions about placement and/or revocation of placement in NCCC. [August 5, 2014 Stipulation]. The relationship with Carter or Judge Wilfong's use of Isner's personal residence for sexual rendezvous was never disclosed to the parties utilizing the NCCC program. Judge Wilfong did not disqualify herself from any cases that Attorney Isner was the named attorney until after his office was retained to represent her in the instant disciplinary matter.

Special Counsel submits that these facts satisfy the clear and convincing standard of evidence and support a finding that her actions are in violation of Canon 2B (impression of improper influence) and (use of office to advance personal interest), Canon 3(B)(5) (bias and adjudicative responsibilities), Canon 3E(1) (required disqualification), and Canon 4A (conduct of extrajudicial activities) of the Code of Judicial Conduct.

D. NCCC involvement in Court proceedings and Judge Wilfong's impact on NCCC's participation numbers.

Pursuant to W.Va. Code § 62-11C-7(a), Judge Wilfong is able to set the participation fee amount and may require the payment of a participation fee to participate in community corrections

programs, like NCCC. Pursuant to W.Va. Code § 62-11C-7(b) all fees are to be paid to the NCCC Board. [August 5, 2014 Stipulation]. The fees paid are \$100.00 per person, per month and \$10.00 per urinalysis screen. Judge Wilfong has not altered the participation fee. [August 5, 2014 Stipulation]. Programs like NCCC require participation by defendants and the support of the judiciary to continue in their operations. It is noted that since 2012—during the relationship with Carter-- pursuant to Judge Wilfong's direction, pre-trial defendants are required to utilize the NCCC as a condition of bond. The fees paid by these individuals are \$25.00 per person, per month and a \$10.00 per urinalysis screen. This change has increased the number of participants in NCCC. [Golden Testimony].

From October 2011 until October 2013, Carter and/or his subordinate staff from NCCC appeared before Judge Wilfong in approximately forty-six (46) criminal matters to offer sworn testimony and/or unsworn testimony to Judge Wilfong to enable her to evaluate possible alternative sentencing at NCCC or to evaluate whether participants have violated terms of placement at NCCC. There were two occasions between August 1, 2011, through the self-report on October 14, 2013, that members of Carter's NCCC staff gave sworn testimony before Judge Wilfong. Judge Wilfong did not disclose the relationship with Carter on the record to the parties in any of the above-referenced court proceedings. [August 5, 2014 Stipulation]. Judge Wilfong did not disqualify herself from any proceedings that involved Carter or his staff members. On at least one documented instance, Judge Wilfong requested that Carter contact Prosecutor Parker and request that Erin Golden testify in lieu of him testifying before her. [SJC Exhibit 31 at Bates 737].

Special Counsel submits that these facts satisfy the clear and convincing standard of evidence and support a finding that her actions are in violation of Canon 1; (integrity of the judiciary), Canon 2B (impression of improper influence) and (use of office to advance personal

interest), Canon 3(B)(5) (bias and adjudicative responsibilities), Canon 3E(1) (required disqualification), and Canon 4A (conduct of extrajudicial activities) of the Code of Judicial Conduct.).

CHARGE NUMBER 2.

Judge Wilfong violated Canon 1 (integrity of judiciary), Canon 2A (public confidence in the 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.

Judge Wilfong's Admissions and Stipulations

Three days before trial, Judge Wilfong finally admitted that her pattern of misconduct is in violation of Canon 1; Canon 2A; and Canon 2B and she has admitted that the integrity of the judicial system was harmed by Judge Wilfong's actions. [August 5, 2014 Stipulation and Pretrial Brief of Respondent]. This is in direct opposition of her testimony at the February 13, 2014, sworn statement wherein she was asked if "any of her actions" in "any way violates the judicial canons" to which she replied in pertinent part "I honestly don't." [SJC Exhibit 32 Bates No. 1195]. She has recently admitted that her relationship with Carter and the revelations about it have caused harm to the judiciary, in general, because Carter's position as the Director of the NCCC program and Judge Wilfong's position as the Circuit Court Judge. [August 5, 2014 Stipulation]. Special Counsel submits that these admissions satisfy the clear and convincing standard of evidence and support a finding that her actions as outlined in Charge 2 below are in violation of Canon 1 (integrity of the judiciary); Canon 2A (public confidence of the judiciary); and Canon 2B (impression of improper influence) and (use of office to advance personal interest).

A. Judge Wilfong's Failure to Disclose to NCCC

Pursuant to W.Va. Code § 62-11C-6(e)(1), Judge Wilfong serves as a non-voting Circuit Court Judge member of the NCCC Board. Until October 2013, Judge Wilfong regularly attended the NCCC Board meetings and participated in discussions regarding Board issues, including, but not limited to: operational budgets for Carter's office and Carter's salary. [August 5, 2014 Stipulation]. At no time, did Judge Wilfong disclose the relationship with Carter to the NCCC Board.

At times, Carter and County Commissioner President Michael Taylor would be "at odds" and Taylor was quite vocal that he believed that Carter was overpaid as a county employee. Taylor commissioned a study to be performed to compare the salaries of all employees to Carter's and the study revealed at the time that Carter's salary was the highest. [Taylor testimony]. Carter believed that Taylor did not want him to continue to occupy the position of Executive Director of NCCC and shared this concern with Judge Wilfong. During the course of the relationship with Carter, Judge Wilfong assured Carter that she would advise County Commissioner President Michael Taylor that she would stop utilizing NCCC if Carter was no longer its Executive Director. Although there were never any actual discussions between Taylor and Judge Wilfong wherein Judge Wilfong expressed this sentiment to Taylor, [August 5, 2014 Stipulation] Taylor testified that Judge Wilfong lobbied him personally for additional resources for Carter to be allocated through the NCCC, including, but not limited to a new vehicle that Carter received in September of 2012 and new computer equipment. [Taylor testimony]. Taylor testified that it was his recollection that the denial for the request for computer equipment caused Judge Wilfong to convene a meeting with the necessary representatives to determine who had ultimate spending authority for Carter's program expenditures. Taylor was required to seek a legal opinion from an

outside law firm that supported his position that the Randolph County Commission had the authority. [Taylor Testimony]. He testified that the attorney fees and expenditures associated with the Carter investigation regarding his affair with Judge Wilfong cost Randolph County approximately Fifty Thousand Dollars. [Taylor testimony]. Finally, Taylor testified that he it was his opinion as a duly elected representative of Randolph County, West Virginia that people's faith in the judicial system had been affected by Judge Wilfong's actions. [Taylor testimony].

Despite not attending the board meetings since her disclosure of the relationship with Carter in October 2013, Judge Wilfong has not resigned her *ex officio* position on the NCCC Board. However, after the Statement of Charges was filed Judge Wilfong has attended one board meeting of the NCCC on May 8, 2014. [August 5, 2014 Stipulation]. At this meeting, after quorum was established and the meeting began, Judge Wilfong asked for the floor and gave an apology speech to the members of the NCCC.

Special Counsel submits that these facts satisfy the clear and convincing standard of evidence and support a finding that her actions as outlined in Charge 2 are in violation of 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.

AGGRAVATING FACTORS

The following factors amount to aggravating factors in this case: 1. Judge Wilfong's behavior exhibits a pattern and practice of a failure to maintain the honorable, high standards of conduct and integrity that the Canons require of her; 2. Judge Wilfong's behavior exhibits a pattern and practice of a failure to act in a manner that promotes public confidence in the integrity of the judiciary as the Canons require of her; 3. Judge Wilfong's behavior indicated a loss of control over her emotions and conduct; 4. Judge Wilfong was made aware of the ethical implications of this

relationship on by both Steve Jory and Steve Canterbury and despite her assurances the relationship was over, she commenced the same within weeks of the discussions; 5. Judge Wilfong's behavior is indicative of a lack of self-awareness; 6. Displayed a selfish motive by pursuing her own sexual and romantic interests without regard for her oath and duties to the legal system; and 7. Until the Statement of Charges was filed against her, Judge Wilfong repeatedly refused to acknowledge any wrongfulness of her misconduct.

MITIGATING FACTORS

Presumably in offer of mitigation, Judge Wilfong solicited general letters of support from the community in Randolph County, West Virginia, and submitted posts from a Facebook page entitled "Support Jayme [sic] Godwin Wilfong". [Wilfong cross examination testimony]. Despite being hearsay, more importantly, the Court has routinely held that "general statements and letters from attorneys, friends, and community leaders on behalf of a petitioner are of little evidentiary value." Lawyer Disciplinary Board v. Vieweg, 194 W.Va. 554, 560, 461 S.E.2d 60 (1995). As such, the Judicial Hearing Board should not afford these letters any mitigation value.

However, Judge Wilfong has not been the subject of any prior disciplinary action as either a member of the West Virginia State Bar or a member of the judiciary and that is proper mitigation evidence.

THE JUDICIAL HEARING BOARD SHOULD REJECT RESPONDENT'S REQUEST FOR A PUBLIC REPRIMAND

Judge Wilfong has suggested that for her gross pattern of misconduct involving multiple violations of the judicial canons, that she be publicly reprimanded. This lenient sanction should be rejected as it fails to assure the public that the system is protecting the administration of justice through its disciplinary proceedings. Most of the cases cited by Judge Wilfong involve an isolated

incident of misconduct by a judicial officer, not a continuing pattern of knowing multiple violations of the canons. See Matter of Harshbarger, 173 W.Va. 206, 314 S.E.2d 79 (1984) [magistrate publicly censured for single instance of failing to remain at his post for night court citing neglect of duty]; Matter of King, 184 W.Va. 177, 399 S.E.2d 888 (1990) [family law master publicly censured for misrepresenting the status of a single decision to a litigant and a court official in violation of Canon 2A]; Matter of Boese, 186 W.Va. 46, 410 S.E.2d 292 (1991) [magistrate publicly reprimanded for leaving a threatening message on her ex-husband's answering machine in violation of 2A and 2B]; Matter of Kaufman, 187 W.Va. 166, 416 S.E.2d 480 (1992) [judge admonished for single instance of ex parte communication with party represented by counsel]; Matter of Codispoti, 190 W.Va. 369, 438 S.E.2d 549 (1993) [magistrate judge's public campaign activities for his wife's circuit court judge bid was in violation of Canon 2 and 7B(1) and warranted public censure and costs]; Matter of Harshbarger, 192 W.Va. 78, 450 S.E.2d 667 (1994) [magistrate admonished for entering two polling places on the day of a municipal election in violation of state law that restricts the presence of non-voters at polling places in violation of Canon 2A]; Matter of Hey, 192 W.Va. 221, 452 S.E.2d 24 (1994) [complaint dismissed against circuit court judge for comments made about his own disciplinary matter]; Matter of Starcher, 193 W.Va. 470, 457 S.E.2d 147 (1995) [a single instance of *ex parte* communication initiated by the judge to a prosecutor about closing argument in an ongoing criminal trial warranted reprimand, rather than lesser sanction of admonishment]; Matter of Phalen, 197 W.Va. 235, 475 S.E.2d 327 (1996) [family law master publicly reprimanded and assessed costs for violation of Canon 1, 2A, 2B, 3B(7) and 3 B(11) involving *ex parte* communications and an attempt to recruit a husband and wife in his court room to sell Amway products to further his own financial interests]; Matter of Rice, 200 W.Va. 401, 489 S.E.2d 783 (1997) [magistrate admonished for contacting arresting

officer and prosecutor on his son-in-law's case without disclosing the relationship in violation of Canon 2A and 2B]; and Matter of Reese, 201 W.Va. 177, 495 S.E.2d 548 (1997) [magistrate admonished for violations of 2A and 2B and 3B(7) involving his *ex parte* contact with individuals in a criminal case].

Additionally, Judge Wilfong cites to the Crislip case, however it is noted that the magistrate in that case also claimed that no substantive harm was done to a single litigant as a result of his misconduct. However, Magistrate Crislip was suspended for one month for a pattern of misconduct of ignoring statutory requirements and administrative rules in his handling of seven cases in violation of Canon 3(A)1, 3(A)(4) and 3(A)(5). [A year before the charges that resulted in the suspension, the Chief Circuit Court Judge brought issues involving his deficiencies to his attention.] Matter of Crislip, 182 W.Va. 637, 391 S.E.2d 84 (1990). Judge Wilfong cites to this case in support of a public reprimand, but Crislip makes clear that a judicial officer's actions in seven matters need not result in harm to a litigant to warrant a severe sanction of suspension. Judge Wilfong also relies upon Matter of Eplin, 186 W.Va. 37, 410 S.E.2d 273 (1991) [magistrate's signing of blank forms and use of the same was in violation of Canons 3A(1), and 3(B)(1) and (2) and warranted a public reprimand]. However, the Court again noted that the magistrate's conduct had "the potential for grave harm" and did not require proof of actual harm. Matter of Eplin, 186 W.Va. 37 at 39, 410 S.E.2d 273 at 275 (1991).

Judge Wilfong also cites to Neely wherein the Court found Neely's conduct of using a private secretary to baby sit his child to be in violation of Canon 2A and warranted an admonishment. Aside from the clear distinction that again Neely involved one single canon violation and Judge Wilfong has already acknowledged 6 violations of the canons, Justice Workman's dissent makes clear the relationship of insufficiently sanctioning a judicial officer and

the public's perception of the courts. Justice Workman reasoned that an admonishment was insufficient and opined that "[r]espect for the court system in West Virginia is in need of revitalization. A public perception that the official response to this conduct on the part of one of our brethren is nothing more than a gentle reproof will not bolster public confidence in the courts." In the Matter of Neely, 178 W.Va. 722 at 257, 364 S.E.2d 250 (1987). Judge Wilfong's request for a public reprimand again demonstrates a failure to grasp the breadth of her misconduct.

RECOMMENDED SANCTION BY SPECIAL JUDICIAL COUNSEL AND AUTHORITY TO SUPPORT RECOMMENDED SANCTION

In relevant part, Rule 4.12 of the Rules of Judicial Disciplinary Procedure indicated that that for each violation of the code she may be 1. Admonished; 2. Reprimanded; 3. Censured; 4. Suspended without pay for up to one year; or 5. Fined up to \$5,000.00. "[I]t is clearly within this Court's power and discretion to impose multiple sanctions against any justice, judge or magistrate for separate and distinct violations of the Code of Judicial Conduct and to order that such sanctions be imposed consecutively." Syllabus Point 5, In re Toler, 218 W.Va. 653, 625 S.E. 2d 731 (2005).

Based upon multiple violations of the Code of Judicial Conduct, Special Disciplinary Counsel recommends that Judge Wilfong be:

1. Suspended *without pay* for a period of 4 years;
2. Censured on each of the 25 violations of the Code of Judicial Conduct; and
3. Judge Wilfong should pay the costs associated with the investigation and prosecution of these proceedings.

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." In the Matter of Gorby, 176 W.Va. 16, 339 S.E.2d 702 (1985). The

only means of satisfying the purpose of these proceedings is by severely sanctioning Judge Wilfong for her continued course of wilful misconduct.

In determining whether a judicial officer should be suspended, under Cruikshanks, there are at least 5 factors that should be considered: (1) whether the charges of misconduct are directly related to the administration of justice or the public's perception of the administration of justice, (2) whether the circumstances underlying the charges of misconduct are entirely personal in nature or whether they relate to the judicial officer's public persona, (3) whether the charges of misconduct involve violence or a callous disregard for our system of justice, (4) whether the judicial officer has been criminally indicted, and (5) any mitigating or compounding factors which might exist.” Syl. pt. 3, In the Matter of Cruickshanks, 220 W. Va. 513, 648 S.E.2d 19 (2007). Leaving aside the fourth factor, an analysis of the facts and violations under the enumerated factors in Cruikshanks supports the recommendation that Judge Wilfong be suspended.

Judge Wilfong wrongfully contends that this involves a personal, moral failing on her part and that she should not be disciplined for conduct. The Iowa Court in 2001, also rejected a similar argument and stated while it is “loathe to interfere in such personal matters” the “private aspects of the affair are secondary to the public problems it has created.” In the Matter of Gerard, 631 N.W.2d 271 at 277 (2001). Moreover, being a judge is not an avocation. Judge Wilfong knowingly “accept[ed] restrictions on [her] conduct ‘that might be viewed as burdensome by the ordinary citizen’” In re Eads, 362 N.W.2d 541 (1985). *See In Matter of Gorby*, 176 W. Va. 11, 339 S.E.2d 697 (1985) [a magistrate engaged in injudicious behavior at a high school football game unrelated to his duties and was suspended for six months].

Judge Wilfong’s involvement of her court staff, her use of her judicial chambers and her use of her judicial power to further her sexual relationship with Carter forms an unbreakable nexus

to the court system. Similar to this case, the Iowa Gerard Court also focused upon the sexual conduct that occurred in the court house and held that because the sexual misconduct occurred in the court house has “compounded the harm to the public confidence” and “was a serious misuse of the judge’s privilege to work and server there as a servant of the citizens”. In the Matter of Gerard, 631 N.W.2d at 277 (2001).

Canon 2A demands that judicial officers “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary”. Judge Wilfong’s refusal to recuse herself from the cases that involved Carter, the NCCC, and certain members of the Bar was improper and directly relates to the administration and the perception of the administration of justice. Her refusal to-- at a minimum -- disclose the same to parties in her court room to afford the affected parties an opportunity to seek her disqualification was also patently wrong and directly relates to the administration and the perception of justice in Randolph County. *See* Syl. Pt. 2 and Syl. Pt. 3 State ex rel Brown v. Dietrick, 191 W.Va. 169, 444 S.E.2d 47 (1994). The Dietrick Court has a brief examination of criminal cases that were adversely affected by a judge’s failure to properly disqualify and recuse. State ex rel Brown v. Dietrick, 191 W.Va. at 174, 444 S.E.2d 47 (1994). “Judges must do all that is reasonably necessary to minimize the appearance of impropriety. They must remain cognizant of the fact that even in situations where they personally believe that their judgment would not be colored, public perception may differ.” In re Frank, 753 So.2d 1228, 1240 (2000). Judge Wilfong’s decision to implicate the attorneys in the bar before her to further her sexual relationship with Carter was egregious and warranted her disqualification involving those attorneys. In the Matter of Means, 192 W.Va. 380, 452 S.E.2d 696 (1994)¹ [former family law master publicly reprimanded for hearing cases from lawyers who have continuing

¹ Judge Wilfong cites to this case in support of her request for a public reprimand.

financial and business dealings with the judge]. Quite simply, it was not Judge Wilfong's right to make the sole decision that an affected party could not reasonably question her impartiality. Judge Wilfong was under an affirmative duty to disclose or recuse herself in cases that involved the lawyers she entangled and the cases that involved NCCC.

Judge Wilfong relies heavily upon the position that there is no evidence presented to prove that the affair and her actions caused her to be partial or rule incorrectly. However, the Gerard court also addresses this contention and rejected the same as mitigation and stated "it was immaterial that the judge's association may not have had a detrimental impacts on defendants appearing before him" because "once the public learned of the judge's relationship with the State's attorney who appeared before him daily, the appearance of bias was very real." In the Matter of Gerard, 631 N.W.2d at 278 (2001). The Court relied upon their Commission's analysis:

This behavior undermines the integrity of the judicial system. What is the public to think when they learn the assistant county attorney was having a sexual relationship with a judge before whom she appeared? What is the public to think when they learn the sexual conduct was taking place in the courthouse? More importantly, what is a criminal defendant to think when the judge sentences that defendant or overrules that defendant's motion to suppress, when the assistant county attorney with whom he is having a sexual relationship is arguing the case on behalf of the State?

In the Matter of Gerard, 631 N.W.2d 271 at 278 (2001).

The Reese Court discussed the commentary of 2A and stated "[t]he test for the appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibility with integrity, impartiality, and competence is impaired." In the Matter of Reese, 201 W.Va. 177, 495 S.E.2d 548 (1997)². The Reese Court reiterated the Court's reasoning in Gorby and stated "[a] judge whether on or off the bench, is

² Judge Wilfong also cites to this case in support of her request for a public reprimand.

bound to strive toward creating and preserving the image of the justice system as an independent, impartial source of reasoned actions and decisions. Achievement of this goal demands that a judge, in a sense, behave as though he is always on the bench.” In the Matter of Reese, 201 W.Va. 177, 495 S.E.2d 548 (1997). As evidenced by the filing of the ethics complaints by six members of the Bar and Cooper’s motions to disqualify her in certain matters, reasonable minds had the perception that the relationship with Carter impaired her integrity, her impartiality, and her competence.

Judge Wilfong repeatedly stresses that Carter and the staff at NCCC very rarely offered sworn testimony in her court room, and most times, offered unsworn testimony and opinions to the Court. Despite the fact that Carter’s staff did offer sworn testimony in Judge Wilfong’s court during the time of the affair, this distinction is irrelevant and should not mitigate for Wilfong. Carter and his staff are officers of the Court, and as such it is customary that officers of the court are not sworn in by the Court when their opinions and positions as to sentencing, whether a violation occurred, or whether a candidate is a suitable for a program are given to the Court. The need for sworn testimony arises when there is a genuine dispute that would require the officer of the court to take the stand, such as the validity of a urinalysis screen. Judge Wilfong’s reliance upon the distinction stresses that Judge Wilfong was and always has been aware of the ethical impropriety of Carter’s involvement in her court room. Moreover, Judge Wilfong was made aware by members of the Bar she considered to be close and trusted friends and the Supreme Court Administrator that the relationship with Carter was likely in violation of the judicial canons.

In re Watkins, 233 W.Va. 170, 757 S.E.2d 594 (2013) is the Court’s most recent case involving the term-ending suspension of a Family Court Judge for 24 admitted violations of Canon 1A; Canon 2A; Canon 2B; Canon 3(B)(1); Canon 3(B)(3); Canon 3(B)(4); Canon 3(B)(5); Canon 3(B)(8) and Canon 3(C)(1) (Watkins was suspended through the end of his term of office, censured

and ordered to pay the costs of the proceedings.) The Watkins Court also discussed the need for a judge to pay particular attention to their actions and how appearances of impropriety can dramatically impact our system. The Court cited to a quote from a Clarksburg lawyer (who rose to be counsel for the IRS) who stated:

A judge is a leader whether he wants to be or not. He cannot escape responsibility in his jurisdiction, for setting the level of the administration of justice and the practice of law.

The Watkins Court continued:

Citizens judge the law by what they see and hear in courts, and by the character and manners of judges and lawyers. "The law should provide an exemplar of correct behavior. When the judge presides in court, he personifies the law, he represents the sovereign administering justice and his conduct must be worthy of the majesty and honor of that position." Matter of Ross, 428 A.2d 858, 866 (Me.1981). Hence, a judge must be more than independent and honest; equally important, a judge must be perceived by the public to be independent and honest. Not only must justice be done, it also must appear to be done.

In re Watkins, 233 W.Va. 170, 757 S.E.2d 594 at 606 (2013) [internal citations omitted].

In further support of the recommended sanction, Special Judicial Counsel relies upon: Inquiry Concerning a Judge, No. 76-13 (J. Cail Lee) 336 So.2d 1175 (1976) [judge, while under the influence of alcohol, was publicly reprimanded for openly engaging in extramarital sexual activities in a parked car in a public parking lot]; In the matter of Gelfand, 70 N.Y.2d 211, 512 N.E.2d 533, 518 N.Y.S.2d 950 (1987); [judge was removed from office misuse of office to prolong a sexual affair with law assistant and later to exact vengeance on law assistant when relationship concluded and judge was not candid in investigation of the same]; In the matter of Mendenhall, 316 S.C. 196, 447 S.E.2d 858 (1994) [court publicly reprimanded and disbarred a retired family court judge for engaging in a sexual relationship with a party and continuing that relationship for a period of years while the party had cases before him; engaging in ex parte communication with another party; and misleading the commission]; In re Flanagan, 240 Conn. 157, 690 A.2d 865

(1997) [former judge, term expired during disciplinary proceedings, was censured for engaging in a consensual sexual relationship with the married court reporter assigned to his court room]; In the matter of Fournier, 325 S.C. 194, 480 S.E.2d 738 (1997) [judge resigned during proceedings and was publicly reprimanded for engaging in sexual acts in his car in his mistress's parking lot]; In re Harris, 713 So.2d 1138, 98-0570 (La. 7/8/98) [judge suspended for 60 days for having an extramarital affair with a felon on parole from a prison sentence she had imposed—court noted the sentence would have been more severe if judge had control over the felon during the parole process]; In the Matter of the Inquiry Concerning Gerard, 631 N.W.2d 271 (2001) [judge suspended for 60 days without pay for dilatory rulings and a 2 month long extramarital affair with assistant prosecutor without disclosure or recusal]; In re Chrzanowski, 465 Mich. 468, 636 N.W.2d 758 (2001) [judge suspended for 1 year without pay who appointed an attorney she was having an affair with to 56 indigent cases and failed to disclose the same to the parties]; In re Ford, 674 N.W.2d 147 (2004) [judge resigned and was publicly censured for unwelcomed touching of court employees, sexually suggestive comments to court employees; use of court equipment to access pornographic web sites; use of court employees to cover up accessing pornographic website; and ultimately a plea to aggravated assault]; Inquiry Concerning a Judge, No 05-05, re Adams, 932 So. 1025 (2006); [judge publicly reprimanded for relationship with attorney who appeared before him and thereby created an appearance of impropriety] In re Miller, 949 So.2d 379, 2006-2361 (La. 1/26/07)[judge was removed for having an adulterous affair and sexual intercourse at the courthouse with his secretary; contacting the secretary in violation of a federal court order; making inappropriate comments to media about his own case; failing to comply with court policies on travel; and drafting a letter of recommendation on court stationary for the secretary]; People v. Biddle, 180 P.3d 461 (2007); [attorney, while serving as a magistrate was suspended for 3 years,

rather than disbarred, for having a sexual affair with a district attorney who practiced in his court room]; In the matter of Harrelson, 376 S.C. 488, 657 S.E.2d 754 (2008)[unmarried judge was publicly reprimanded for 6 month affair with married administrative assistant that took place outside of work hours and away from work location]; In the Matter of Abrams, 227 Ariz. 248, 257 P.3d 167 (2011) [judge resigned and court censured judge, suspended his law license for 2 years and permanently enjoining him from holding judicial office for hearing cases involving an attorney he was having an intimate relationship with; making unwanted sexual advances toward another attorney and then retaliating against her; and sending emails of a sexual nature to another attorney]; Florida v. Gardiner, 2014 WL 2516419 (Fla.) [judge disbarred for failure to disclose her personal and emotional relationship with prosecutor in a capital murder case, evidenced by 949 cell phone calls and 471 text messages over a five month period, and her subsequent failure to acknowledge the same during the proceedings]; and In re McCree, 495 Mich. 51, 845 N.W.2d 458 (2014) [judge removed from office, and suspended the judge for an additional 6 years if he was reelected to office, for having a sexual relationship with complaining witness in a case before him without recusal or disclosure; engaging in ex parte communication with her about her case and other cases; violating court policies for mistress; when the relationship went sour, he used his position to gain leverage against her; and he lied in the judicial proceedings].

CONCLUSION

Judge Wilfong, Circuit Court Judge, is the highest ranking judicial officer in Randolph County, West Virginia and for 2 years she had an extramarital affair with the Executive Director of the North Central Community Corrections Program. She was a member of the North Central Community Corrections Board and failed to disclose the same to the other board members. Judge Wilfong utilized her position of power and influence to gain resources for Carter by lobbying the

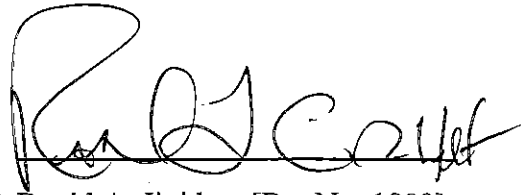
President of the Randolph County Commission. Judge Wilfong wilfully failed to disclose or otherwise disqualify herself in cases that involved Carter and his staff at NCCC. She involved other members of the Bar to further her relationship with Carter and failed to disqualify herself from cases that involved those lawyers. Judge Wilfong utilized her judicial chamber in the peoples' court house to perform sexual acts upon Carter and relied upon her staff to explain Carter's constant presence in her office to the public. Judge Wilfong's constant pursuit of Carter impaired the people court's ability to function as well as the daily operations of NCCC. Finally, even after being advised by the Court Administrator and a senior member of the Bar of the ethical implications of the relationship, despite assuring the two that the relationship was over, she immediately rekindled the same.

Judge Wilfong's misconduct calls into question her judgment and brings the Randolph County system of justice into disrepute. Public confidence in the judiciary is a fragile thing-- Judge Wilfong should be suspended from office "not to punish the judge for [her] extensive wrongdoing, but to relieve from the bench a person whose further service will be detrimental to the judicial branch of government." In re Watkins, 233 W.Va. 170, 757 S.E.2d 594 at 602 (2013).

Respectfully submitted,

The Lawyer Disciplinary Board

By Counsel

A handwritten signature in black ink, appearing to read 'David A. Jividen', written over a horizontal line.

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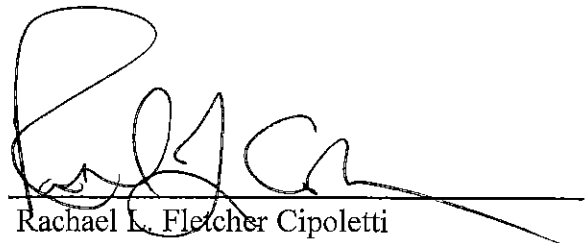
(304) 558-4015 - *facsimile*

CERTIFICATE OF SERVICE

This is to certify that I, Rachael L. Fletcher Cipoletti Special Judicial Disciplinary Counsel for the Judicial Investigation Commission, have this day, the 18th day of August, 2014, served a true copy of the foregoing "**Post Hearing Brief of Special Judicial Disciplinary Counsel**" upon David A. Sims, Esquire, and Harry G. Deitzler, Esquire counsel for Judge Wilfong, by mailing the same via United States Mail with sufficient postage, to the following address:

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