

BEFORE THE JUDICIAL HEARING BOARD OF WEST VIRGINIA

**IN THE MATTER OF:
THE HONORABLE ALLEN H. LOUGHRY II,
JUSTICE OF THE SUPREME COURT OF
APPEALS OF WEST VIRGINIA**

**SUPREME COURT No. 18-0508
JIC COMPLAINT Nos. 14-2018,
17-2018 and 32-2018**

AGREEMENT

Allen H. Loughry II, former Justice of the Supreme Court of Appeals of West Virginia, (“Respondent”) by and through his Counsel, John A. Carr, Esquire, and Teresa A. Tarr and Brian J. Lanham, Judicial Disciplinary Counsel hereby enter into this Agreement consisting of the following terms:

1. On February 16, 2018, Judicial Disciplinary Counsel opened judicial ethics Complaint No. 14-2018 against Respondent.

2. On February 20, 2018, The Honorable Mary Ellen Griffith, Judge of the 12th Family Court Circuit, filed Complaint No. 17-2018, against Respondent.

3. On April 2, 2018, Mike Pushkin filed Complaint No. 32-2018 against Respondent.

4. Beginning on February 16, 2016, the Judicial Investigation Commission immediately began an investigation into the complaints. In June 2018, the Judicial Investigation Commission unanimously voted to issue a 32-count formal statement of charges against Respondent. The Formal Statement of Charges was filed on or about June 6, 2018 and alleged multiple violations of the Code of Judicial Conduct and the Rules of Professional Conduct. On that same day, Judicial Disciplinary Counsel filed a motion to suspend Respondent without pay pending the outcome of the disciplinary proceedings. On June 8, 2018, a State Supreme Court made up of five circuit judges, by a vote of 5-0, immediately ordered Respondent suspended without pay.

5. On or about June 19, 2018, a federal grand jury indicted Respondent on 22 felony counts in the United States District Court for the Southern District of West Virginia.¹

6. On July 2, 2018, the Judicial Hearing Board issued a stay of the disciplinary proceedings upon request of the Respondent pending his federal criminal trial. Judicial Disciplinary Counsel did not object to Respondent's stay request.

7. On or about October 2, 2018, Respondent went to trial on the federal indictment. Following a two week trial, Respondent was found guilty of eleven felony counts² by a federal jury in *United States v. Loughry*, Case No. 2:18-cr-00134.

8. On October 22, 2018, Judicial Disciplinary Counsel filed an Amended Formal Statement of Charges which added a new count that reflected that Respondent had been convicted of eleven felony counts in the United States District Court for the Southern District of West Virginia on October 12, 2018.

9. On November 12, 2018, Respondent resigned his position as Justice.

10. Respondent and Judicial Disciplinary Counsel understand, acknowledge, and agree to the following terms and conditions:

- a. "[A]greements made in open court by the parties in the trial of a case and acted upon are binding and a judgment founded thereon will not be reversed." Syllabus pt. 3, *In the Matter of Starcher*, 202 W. Va. 55, 501 S.E.2d 772 (1998);
- b. The burden of proof in judicial disciplinary cases is clear and convincing evidence.³ *Id.*

¹ Subsequently two superseding indictments were brought and Respondent faced a total of 25 felony counts. However, just prior to trial, the government dismissed three of the counts so Respondent went to trial on 22 of the 25 counts.

² In early January 2019, the federal judge entered a verdict of not guilty on one of the counts with which Respondent was convicted by the jury in an Order denying one of Respondent's two Motions for a new trial. However, the judge denied the Motion with respect to the remaining 10 counts.

- c. Respondent will admit to the statements contained in Paragraph Nos. 1 through 6 and 10 of the Amended Formal Statement of Charges;
- d. With respect to Charges I and III,⁴ Paragraph Nos. 8, the majority of 9 except for references to the former administrative director, and 11, Respondent will admit that Judicial Disciplinary Counsel has sufficient evidence to prove the allegations contained therein⁵ with respect to his lack of candor concerning the fact that he had “very little” input in the renovations and furnishings of his office and his lack of candor concerning whether he selected the couch and picked the fabric changes. Respondent will also admit with respect to those statements that the evidence is also sufficient for the Judicial Hearing Board and the State Supreme Court to conclude that he lacked candor with respect to those statements and that he violated Rules 1.1, 1.2 and 1.3 of the current Code of Judicial Conduct and Rules 8.4 (a) and (c) and of the Rules of Professional Conduct as a result thereof;
- e. With respect to Charge XVII, Paragraphs No. 47 through 50 of the Amended Formal Statement of Charges, Respondent will admit that Judicial Disciplinary Counsel has sufficient evidence to prove the

³ Clear and convincing evidence is more than probable cause or preponderance of the evidence but less than the burden in a criminal case which is proof of guilt beyond a reasonable doubt. The parties acknowledge that Respondent is not admitting that any of the conduct rises to the level of a criminal violation.

⁴ Charge II, which relates to references to the former Administrative Director contained in Paragraph No. 11 and touched upon in Paragraph 9, are being dismissed per the instant agreement.

⁵ Both parties understand, acknowledge and agree that Respondent is entering the equivalent of what amounts to a *Kennedy v. Frazier*, 178 W. Va. 10, 357 S.E.2d 43 (1987) admission for a *sui generis* disciplinary proceeding. Respondent is “voluntarily, knowingly and understandingly” consenting to the discipline even though he is not willing to admit wrongdoing, “since he intelligently concludes” that his interests require the action and the record and evidence obtained by Judicial Disciplinary Counsel “supports the conclusions” by clear and convincing evidence as to findings, conclusions and discipline imposed by the Judicial Hearing Board and the Court.

allegations contained therein and for the Judicial Hearing Board and the State Supreme Court to find the same and that he violated Canons 1, 2A and B, 3C(1), and 4A(2) and (3) of the former Code of Judicial Conduct; Rules 1.1, 1.2, 1.3, 2.4(A) and (B), 2.12(A) and (C), and 3.1(A), (C) and (E) of the current Code of Judicial Conduct; and Rules 8.4 (a) and (d) of the Rules of Professional Conduct as a result thereof;

f. With respect to Charges XX, XXIII, XXIV, and XXV, Paragraph Nos. 51 through 53, 53(c), 53(f), 53(g), 53(h), 54, and 55, Respondent will admit that Judicial Disciplinary Counsel has sufficient evidence to prove the allegations contained therein and for the Judicial Hearing Board and the State Supreme Court to find the same and that he violated Canons 1, 2A and B, 3C(1), and 4A(2) and (3) of the former Code of Judicial Conduct; and Rules 8.4(a) and (d) of the Rules of Professional Conduct as a result thereof;

g. With respect to Charge XXXI, Respondent will admit that he is the same Allen H. Loughry II, who was convicted on or about October 12, 2018, by a federal jury of ten felony counts in *United States v. Loughry*, United States District Court for the Southern District of West Virginia Case No. 2:18-cr-00134. Respondent will also admit that as a result thereof, the Judicial Hearing Board and the State Supreme Court has sufficient evidence to find that he has violated Rules 1.1, 1.2 and 1.3 of the Code of Judicial Conduct and Rules 8.4(a) and (b) of the Rules of Professional Conduct;

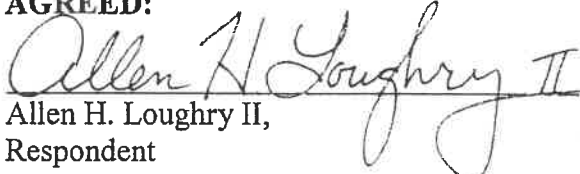
- h. Respondent agrees to never again seek public office by election or appointment in West Virginia;
- i. Respondent agrees that pursuant to Rule 4.12 of the Rules of Judicial Disciplinary Procedure disbarment is the appropriate recourse for his violations of the Code of Judicial Conduct and Rules of Professional Conduct;
- j. Respondent agrees to pay the total costs of the investigation/prosecution of the instant disciplinary charges which to date are \$5,871.12;
- k. Pursuant to 4.12 of the Rules of Judicial Disciplinary Procedure, Judicial Disciplinary Counsel also agrees to recommend to the Judicial Hearing Board that Respondent also be publicly censured/ reprimanded for each of the Code of Judicial Conduct/Rule of Professional Conduct violations set forth above. Judicial Disciplinary Counsel also agrees to recommend a total fine of \$3,000.00. Lastly, Judicial Disciplinary Counsel agrees to recommend dismissal of the remaining counts and Code/Rule violations in the Amended Formal Statement of Charges with prejudice; and
- l. Both parties understand, acknowledge and agree that the decision to accept the recommendation of disbarment, censure, fine and costs rests solely within the purview of the Judicial Hearing Board and the Supreme Court of Appeals of West Virginia. The parties understand, acknowledge, and agree that the Judicial Hearing Board and the Supreme Court of Appeals of West Virginia have the authority to recommend or give either a

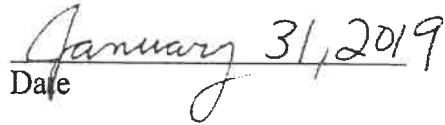
more or less severe sanction or sanctions outlined in Rule 4.12 of the West Virginia Rules of Judicial Disciplinary Procedure.

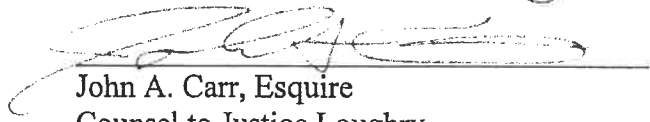
11. Respondent understands, acknowledges and agrees that he is entering into this agreement because it is in his best interest and that no other inducements have been promised other than what is contained within the four corners of this document.

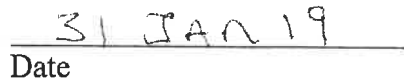
12. All parties agree to do everything necessary to ensure that the foregoing terms of this Agreement take effect. However, the parties understand, acknowledge and agree that this agreement is contingent upon Respondent's remaining Motion for a new trial in his federal criminal case being denied. Should Respondent's remaining Motion for a new trial be denied, the instant agreement will take effect immediately. Respondent also agrees to waive any appearance at his disciplinary hearing and that said hearing shall move forward without his presence if he becomes unavailable as a result of being sentenced to a term of incarceration by the federal judge in his criminal trial.

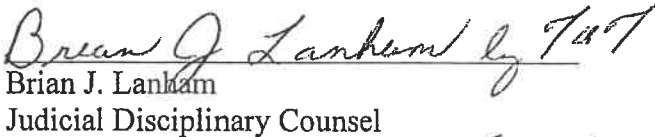
AGREED:


Allen H. Loughry II,
Respondent

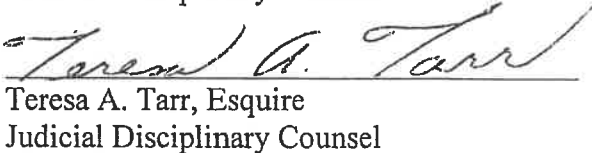

Date



John A. Carr, Esquire
Counsel to Justice Loughry


Date


Brian J. Lankam
Judicial Disciplinary Counsel


Date


Teresa A. Tarr, Esquire
Judicial Disciplinary Counsel


Date