

JUL 21 2021

STATE OF MARYLAND

on Judicial Disabilities

BEFORE THE COMMISSION ON JUDICIAL DISABILITIES

IN THE MATTER OF: *
* CJD 2020-025
*
JUDGE W. LOUIS HENNESSY

To: JUDGE W. LOUIS HENNESSY
DISTRICT COURT OF MARYLAND FOR CHARLES COUNTY
FOURTH JUDICIAL DISTRICT

CHARGES

TAKE NOTICE that the Commission on Judicial Disabilities (hereinafter “Commission”) has caused to be made and completed an investigation, through its Investigative Counsel, Tanya C. Bernstein, Esq., of Judge W. Louis Hennessy (hereinafter sometimes referred to as “Judge”), who was, at all pertinent times, a Judge of the District Court of Maryland for Charles County. The Commission notified Judge Hennessy of the nature of the investigation and afforded the judge an opportunity to present information bearing on the subject of the investigation.

The Commission has received and considered information from the investigation, including, but not limited to: complaint and attachment received; witness statements; recorded jail calls and related call logs; summaries of relevant cellular records; law enforcement body camera footage; affidavits; real property information; audio recordings of hearings; the judge’s response and all attachments and materials incorporated therein by reference; the recommendations of Investigative Counsel; and the Report of the Judicial Inquiry Board. In consideration of the foregoing and a finding by the Commission of probable cause to believe that Judge Hennessy has committed sanctionable conduct, the Commission directed that Investigative

Counsel initiate formal proceedings against Judge Hennessy pursuant to Rule 18-431(a). The Commission will conduct a public hearing on these charges pursuant to Rule 18-434.

The Commission states as follows in support of its probable cause determination:

1. Judge Hennessy has served as a Judge of the District Court of Maryland for Charles County since 2005.
2. Based upon a complaint received, the Commission's Investigative Counsel opened an investigation regarding Judge Hennessy's conduct.
3. The investigation revealed sanctionable conduct by Judge Hennessy. The nature of the sanctionable conduct that is the subject of these charges includes engaging in improper and inappropriate discussions with at least two criminal defendants; providing legal and other assistance to at least two criminal defendants; engaging in discussions with and providing legal assistance to at least two domestic violence victims; lending the prestige of judicial office and permitting others to convey the impression of judicial influence on behalf of at least two criminal defendants; demonstrating bias against women and victims of domestic violence; misusing judicial resources on behalf of at least two criminal defendants; failing to give precedence to the duties of judicial office; failing to uphold and apply the law and perform all the duties of judicial office impartially and fairly; refusing to make efforts consistent with the Maryland Rules, and other law, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard; failing to perform the duties of judicial office without bias or prejudice and neglecting to require others to refrain from similar conduct; engaging in, initiating, and responding to ex parte communications; making judicial statements

on pending and impending cases; encouraging court staff to act in a manner inconsistent with the judge's responsibilities under the Code of Judicial Conduct; failing to respond to attorney misconduct; engaging in extra-official activities; engaging in the practice of law; engaging in activities that could result in criminal consequences; failing to comply with the law; and otherwise engaging in misconduct unbecoming of an officer of the court and in direct contravention to a judge's responsibility to promote confidence in the Judiciary.

4. Judge Hennessy's conduct was in violation of Rules 18-101.1 (Compliance with the Law), 18-101.2 (Promoting Confidence in the Judiciary), 18-101.3 (Avoid Lending the Prestige of Judicial Office), 18-102.1 (Giving Precedence to the Duties of Judicial Office), 18-102.2 (Impartiality and Fairness), 18-102.3 (Bias, Prejudice, and Harassment), 18-102.4 (b) and (c) (External Influences on Judicial Conduct), 18-102.9 (Ex Parte Communications), 18-102.10 (Judicial Statements on Pending and Impending Cases), 18-102.12 (a) (Supervisory Duties), 18-102.15 (Responding to Judicial and Attorney Misconduct), 18-103.1 (c) and (e) (Extra-Official Activities in General), and 18-301.10 (Practice of Law).

The pertinent provisions of the Rules provide as follows:

RULE 18-101.1. COMPLIANCE WITH THE LAW.

A judge shall comply with the law, including this Code of Judicial Conduct.

RULE 18-101.2. PROMOTING CONFIDENCE IN THE JUDICIARY.

- (a) A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.
- (b) A judge shall avoid conduct that would create in reasonable minds a perception of impropriety.

RULE 18-101.3. AVOIDING LENDING THE PRESTIGE OF JUDICIAL OFFICE.

A judge shall not lend the prestige of judicial office to advance the personal or economic interest of the judge or others, or allow others to do so.

RULE 18-102.1. GIVING PRECEDENCE TO THE DUTIES OF JUDICIAL OFFICE.

The duties of judicial office, as prescribed by law, shall take precedence over a judge's personal and extrajudicial activities.

RULE 18-102.2. IMPARTIALITY AND FAIRNESS.

- (a) A judge shall uphold and apply the law and shall perform all duties of judicial office impartially and fairly.
- (b) A judge may make reasonable efforts, consistent with the Maryland Rules and other law, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.

RULE 18-102.3. BIAS, PREJUDICE, AND HARASSMENT.

- (a) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
- (b) In the performance of judicial duties, a judge shall not, by words or conduct, manifest bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation. A judge shall require attorneys in proceedings before the court, court staff, court officials, and others subject to the judge's direction and control to refrain from similar conduct.
- (c) The restrictions of section (b) of this Rule do not preclude judges or attorneys from making legitimate references to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

RULE 18-102.4 (b) and (c). EXTERNAL INFLUENCES ON JUDICIAL CONDUCT.

- (b) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.
- (c) A judge shall not convey or permit others to convey the impression that any person is in a position to influence the judge.

RULE 18-102.9. EX PARTE COMMUNICATIONS.

- (a) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge out of the presence of the parties or their attorneys, concerning a pending or impending matter, except as follows:

(1) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(2) When circumstances require, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(A) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(B) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(3) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding if the judge (A) makes provision promptly to notify all of the parties as to the expert consulted and the substance of the advice, and (B) affords the parties a reasonable opportunity to respond.

(4) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge does not decide a case based on adjudicative facts that are not made part of the record, and does not abrogate the responsibility personally to decide the matter.

RULE 18-102.10. JUDICIAL STATEMENTS ON PENDING AND IMPENDING CASES.

- (a) A judge shall abstain from public comment that relates to a proceeding pending or impending in any court and that might reasonably be expected to affect the outcome or impair the fairness of that proceeding and shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Rule does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court.
- (b) With respect to a case, controversy, or issue that is likely to come before the

court, a judge shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office.

- (c) Notwithstanding the restrictions in sections (a) and (b) of this Rule, a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a non-judicial capacity.

RULE 18-102.12 (a). SUPERVISORY DUTIES.

- (a) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

RULE 18-102.15. RESPONDING TO JUDICIAL AND ATTORNEY MISCONDUCT.

- (a) A judge shall take or initiate appropriate corrective measures with respect to the unprofessional conduct of another judge or an attorney.
- (b) If other corrective measures are not appropriate or, if attempted, were not successful, a judge shall inform the Commission on Judicial Disabilities of facts known to that judge that raise a substantial question as to another judge's fitness for office.
- (c) If other corrective measures are not appropriate or, if attempted, were not successful, a judge shall inform the Attorney Grievance Commission of facts known to the judge that raise a substantial question as to an attorney's honesty, trustworthiness, or fitness as an attorney in other respects.
- (d) Acts of a judge required or permitted by sections (a), (b), and (c) of this Rule shall be absolutely privileged.

RULE 18-103.1 (c) and (e). EXTRA-OFFICIAL ACTIVITIES IN GENERAL.

Except as prohibited by law or this Code, a judge may engage in extrajudicial activities.

When engaging in extrajudicial activities, a judge shall not:

- (c) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality; and
- (e) make inappropriate use of court premises, staff, stationery, equipment, or other resources.

RULE 18-103.10. PRACTICE OF LAW.

- (a) In General. Except as expressly allowed by this Rule, a judge shall not practice law.
- (b) Exceptions.
 - (1) A judge may act self-represented in a matter involving the judge or the judge's interest and, if without compensation, may give legal advice to and draft or review documents for a member of the judge's family.
 - (2) To the extent expressly allowed by law and subject to other applicable provisions of this Code, a part-time judge of an orphans' court who is an attorney may practice law, provided that:
 - (A) the judge shall not use the judge's judicial office to further the judge's success in the practice of law; and
 - (B) the judge shall not appear as an attorney in the court in which the judge serves.

5. The specific facts upon which the charges are based are as follows:

Judge Hennessy has been a judge of the District Court of Maryland for Charles County for over sixteen years. Charles County Maryland is in the 4th Judicial District, which also includes St. Mary's and Calvert Counties. During an almost nine (9) month period between May 2020 and early 2021, Judge Hennessy knowingly and willingly engaged in repeated misconduct related to at least two (2) criminal defendants.

(i) Criminal Defendant 1

On March 20, 2020, an individual (hereinafter referred to as "Defendant 1") was incarcerated at the St. Mary's County Detention and Rehabilitation Center after an arrest related to second degree assault charges and subsequent charges for violation of a protective order. Prior to March 2020, Defendant 1 had

a lengthy history of criminal charges filed in St. Mary's and Charles Counties and neighboring jurisdictions arising from various alleged behavior, including but not limited to multiple assaults, possession of controlled dangerous substances ("CDS"), driving while impaired, firearms possession, violations of protective and peace orders, and failures to appear for trial necessitating the issuance of bench warrants. Records of these charges are publicly available.

The victim of Defendant 1's alleged second-degree assault and violation of protective order charges (hereinafter referred to as "Victim 1") is the mother of Defendant 1's three youngest children. Defendant 1 and Victim 1 resided in a home solely owned by Defendant 1. Following Defendant 1's March 2020 arrest, Victim 1 was granted use and possession of the home, where she resided with their minor child, pursuant to protective order. Judge Hennessy and Defendant 1 had a personal relationship that preceded Defendant 1's March 2020 arrest, and Judge Hennessy knew the relationship and legal history of Defendant 1 and Victim 1. Judge Hennessy was also acquainted with Defendant 1's extended family.

Judge Hennessy repeatedly engaged in inappropriate communications with and on behalf of Defendant 1. On at least ten (10) occasions between May and August 2020, Judge Hennessy communicated with Defendant 1 by telephone while Defendant 1 was an inmate at the St. Mary's County Detention and Rehabilitation Center. All calls placed to and from the St. Mary's County Detention and Rehabilitation Center are recorded and subject to monitoring. All callers and recipients of these calls are advised of the same at the beginning of

each call. Many of the communications between Judge Hennessy and Defendant 1 occurred during the business hours of the District Court for Charles County.

During these communications, Judge Hennessy repeatedly provided legal advice to Defendant 1 to further Defendant 1's goal of circumventing the use and possession order to remove Victim 1 from the family home and to assist Defendant 1 in being released from confinement. These communications were consistent throughout Defendant 1's incarceration and included, but are not limited to, providing legal advice regarding Defendant 1's criminal defense; providing legal advice regarding a plea offer made to Defendant 1 that influenced Defendant 1's decision to plead guilty; answering Defendant 1's questions about his case, including, but not limited to, the timelines of motions and hearings and explanations of pleadings; and advising Defendant 1 of the steps necessary to obtain work release and/or home detention. Judge Hennessy also shared with Defendant 1 his belief that Defendant 1 was wrongly accused. Judge Hennessy's efforts to assist Defendant 1 also included misuse of court resources and personnel to review docket entries, obtain information, and locate documents on behalf of Defendant 1 and counseling Defendant 1 based on information received from those sources.

Judge Hennessy communicated with Victim 1 on at least two occasions for purposes of assisting in Defendant 1's defense and pursuing Defendant 1's release from incarceration. After one such communication with Victim 1, Judge Hennessy reported to Defendant 1 the content of the communication and made disparaging comments about Victim 1 and domestic violence victims in general,

responding to Defendant 1's claim that Victim 1 was misusing the police by stating, "She's not the first woman to do this, and she won't be the last." When Defendant 1 complained that Victim 1 was ungrateful, Judge Hennessy replied, "Women have short memories man, you know."

Judge Hennessy was aware of the impropriety of his communications with Defendant 1. After Defendant 1 asked Judge Hennessy to communicate with the judge possibly assigned to his case, Judge Hennessy responded, "I can't say anything to him. Let me tell you something, he is very, very strict about that shit, you know, and he would fire me up, I would get in big trouble if I said anything to him." Nonetheless, Judge Hennessy encouraged Defendant 1 to continue to call him to discuss his case.

Judge Hennessy also engaged in ongoing communications with others on Defendant 1's behalf, including, but not limited to, members of Defendant 1's family. For example, Judge Hennessy's cell phone records reflect approximately thirty-one (31) connections with Defendant 1's son between April and November 2020, and approximately thirty-nine (39) connections between Judge Hennessy and a telephone number used by both Defendant 1 and Victim 1 between March and February 2021, among others.

Judge Hennessy communicated with Defendant 1's son and invited the son to the judge's home on more than one occasion to discuss Defendant 1. These communications included, but were not limited to, engaging in general discussions about Defendant 1's criminal matter; advising about obtaining power of attorney over the family home for purposes of evicting Victim 1; advising of

the legal implications of the use and possession provision of the protective order granted to Victim 1; requesting a copy of the protective order granted to Victim 1; and counseling about Defendant 1's plan to grant power of attorney over the family home. Judge Hennessy also advised Defendant 1's son about the risk of Defendant 1 continuing to discuss evicting Victim 1 on recorded jail calls.

Judge Hennessy actively assisted Defendant 1 in obtaining legal counsel and repeatedly communicated with Defendant 1's counsel on Defendant 1's behalf. Judge Hennessy referred Defendant 1 to his first attorney (hereinafter referred to as "Lawyer A"), a friend whom Judge Hennessy had previously introduced to Defendant 1 in the judge's chambers. Thereafter, Judge Hennessy spoke to Lawyer A about Defendant 1's case and served as a liaison between Defendant 1 and Lawyer A. Judge Hennessy's cell phone records reflect at least forty-one (41) connections between Judge Hennessy and Lawyer A from March to December 2020. Judge Hennessy would routinely report to Defendant 1 the content of his communications with Lawyer A and advise Defendant 1 on how to proceed.

For example, Judge Hennessy told Defendant 1 that he had discussed Defendant 1's upcoming court hearing with Lawyer A and offered to follow up with Lawyer A after the hearing; he informed Defendant 1 about Lawyer A's communications with the Office of the State's Attorney; and he offered to speak to Lawyer A when Defendant 1 was dissatisfied with the speed and quality of Lawyer A's service. When Defendant 1 engaged the services of a new attorney (hereinafter referred to as "Lawyer B") in June of 2020, Judge Hennessy

communicated with Lawyer B on multiple occasions on behalf of Defendant 1 both by telephone and an in-person meeting at Lawyer B's office.

Judge Hennessy's relationship with Defendant 1 and involvement in his legal representation were made known to multiple individuals. Defendant 1 frequently used his relationship with Judge Hennessy and the advice he received to influence and intimidate those around him as well as to secure their cooperation. Defendant 1 portrayed Judge Hennessy as his friend and repeatedly told his friends, family, attorneys, and others about Judge Hennessy's willingness to assist Defendant 1 and provide legal advice and other services, including but not limited to telling his son, "Lou is like a lawyer and he's giving us free advice right now."

(ii) Criminal Defendant 2

On or about August 14, 2020, an individual (hereinafter referred to as "Defendant 2") was incarcerated at the St. Mary's Detention and Rehabilitation Center after an arrest following second-degree assault charges. The victim of Defendant 2's second-degree assault charges (hereinafter referred to as "Victim 2") is the mother of Defendant 2's minor child. Prior to his August 2020 arrest, Defendant 2 had a lengthy history of criminal charges for domestic violence (related to Victim 2 and others) and motor vehicle violations filed in St. Mary's County and surrounding jurisdictions. Records related to these charges are publicly available.

Judge Hennessy repeatedly engaged in inappropriate communications with and on behalf of Defendant 2. Judge Hennessy communicated with Defendant 2 by telephone on at least (5) five occasions between August and December 2020. The first known communication between Judge Hennessy and Defendant 2 during this time period occurred on or about August 14, 2020, while Defendant 2 was under arrest, handcuffed, and detained by law enforcement at the mobile home community where the alleged assault occurred. The conversation was partially recorded by law enforcement body camera(s). Judge Hennessy advised Defendant 2 that the conversation was not confidential and advised Defendant 2 to remain silent.

On or about August 16, 2020, Judge Hennessy traveled to the mobile home community and interviewed three (3) individuals (hereinafter referred to as "Affiants") about the events that led to Defendant 2's arrest. Judge Hennessy procured three (3) handwritten affidavits on behalf of Defendant 2, one from each Affiant. Judge Hennessy was accompanied to the mobile home community by a member of his immediate family who notarized the affidavits. Two (2) of the affidavits were written in the same handwriting and the Affiant associated with one of those affidavits stated that his affidavit was handwritten by Judge Hennessy.

Judge Hennessy provided these affidavits to Defendant 2's attorney (hereinafter referred to as "Assistant Public Defender") who filed the affidavits as exhibits in Defendant 2's case. During a hearing in Defendant 2's case, the Assistant Public Defender stated in open court as follows:

I spoke to Judge Louis Hennessy who is someone that employs [Defendant 2] on a regular basis. Judge Hennessy had good things to say about his punctuality and his trustworthiness and it's also important to note that Judge Hennessy and [Redacted] visited the trailer park over the weekend I believe and did secure some affidavits that are sworn and notarized that I submitted through MDEC for the court's consideration.

A private attorney later retained by Defendant 2 also referred to the affidavits in open court at a subsequent hearing and proffered that they were provided "to a very well respected, um, official."

The remaining communications between Judge Hennessy and Defendant 2 during the relevant time period occurred while Defendant 2 was an inmate at the St. Mary's County Detention and Rehabilitation Center. All calls placed to and from the St. Mary's County Detention and Rehabilitation Center are recorded and subject to monitoring. All callers and recipients of these calls are advised of the same at the beginning of each such call. Half of the communications between Judge Hennessy and Defendant 2 occurred during the business hours of the District Court for Charles County.

During these communications, Judge Hennessy provided Defendant 2 with legal advice and assisted Defendant 2 in securing his release from jail. To that end, Judge Hennessy agreed to communicate and did communicate with Victim 2 on Defendant 2's behalf and agreed to communicate and did communicate with Lawyer A for purposes of retaining his legal services on Defendant 2's behalf.

Judge Hennessy agreed to communicate with Victim 2 on more than one occasion on Defendant 2's behalf for purposes of obtaining an affidavit from Victim 2 recanting her assault allegations. In discussing the possibility of Victim 2 signing an affidavit, Defendant 2 asked Judge Hennessy, "What about the fact of [Victim 2] being mentally incapable?" Judge Hennessy responded, "She may be. Then it may be a defense at the trial, you know? But in the meantime, that doesn't help you because you're sitting in jail." Judge Hennessy thereafter communicated with Victim 2 notwithstanding a protective order prohibiting contact with Victim 2 on behalf of Defendant 2.

In his communications with Victim 2, Judge Hennessy advised her regarding the potential legal consequences of recanting her statements to law enforcement and sought information from Victim 2 for the benefit of Defendant 2. Victim 2 subsequently reported to Defendant 2 that she viewed the legal advice provided by Judge Hennessy as a threat. Judge Hennessy also reported to Defendant 2 the content of his communications with Victim 2 and used the information obtained from Victim 2 to advise Defendant 2 about his current legal situation.

7. Judge Hennessy's behavior provides evidence that Judge Hennessy engaged in conduct that was prejudicial to the proper administration of justice in Maryland Courts, pursuant to the Maryland Constitution, Article IV, Section 4B(b)(1).

These charges are issued by Investigative Counsel at the direction of the Commission on
Judicial Disabilities.

COMMISSION ON JUDICIAL DISABILITIES

Date: 7.21.2021

Tanya C. Bernstein
Director/Investigative Counsel

Date: 7/21/2021

~~Derek A. Bayne
Assistant Investigative Counsel~~

Date: 7.21.2021

Tamara S. Dowd
Assistant Investigative Counsel

NOTICE: YOU HAVE THE RIGHT, PURSUANT TO RULE 18-431(d) OF THE MARYLAND RULES, TO FILE A WRITTEN RESPONSE WITHIN THIRTY (30) DAYS AFTER SERVICE OF THESE CHARGES. YOU MUST FILE EITHER AN ORIGINAL AND ELEVEN (11) COPIES OF THE RESPONSE OR AN ELECTRONIC COPY PURSUANT TO RULE 18-404. THE RESPONSE SHOULD BE FILED WITH THE COMMISSION ON JUDICIAL DISABILITIES.