

STATE OF MARYLAND

BEFORE THE COMMISSION ON JUDICIAL DISABILITIES

In the Matter of the

HONORABLE AMY LEIGH NICKERSON

Judge of the Orphans' Court of Maryland for

Kent County

CJD 2018-033 &

CJD 2019-013

FINDINGS OF FACT, CONCLUSIONS OF LAW,
ORDER AND RECOMMENDATION

Pursuant to Charges filed by the Investigative Counsel in CJD 2018-033 and CJD 2019-013, the response filed by Judge Amy Leigh Nickerson (hereinafter “Respondent” or “Judge Nickerson”) in CJD 2018-033, and prior written notice of hearings to Respondent, a consolidated public hearing was conducted in the above-entitled matters via webinar (hereinafter “Hearing”), as authorized by Maryland Rules 18-431 and 18-434, on December 8, 2020, before the Maryland Commission on Judicial Disabilities (hereinafter “Commission”). Tanya C. Bernstein, Esq., Investigative Counsel, Derek A. Bayne, Esq., Assistant Investigative Counsel, and Tamara S. Dowd, Esq., Assistant Investigative Counsel prosecuted the case against Respondent, Judge Amy Leigh Nickerson. Respondent was present at the Hearing and was not represented by counsel as she waived her right to representation in these matters.

The following Commission Members participated in the Hearing: The Honorable Michael W. Reed- Chair, the Honorable Susan H. Hazlett- Vice-Chair, Chaz R. Ball, Esq., Virginia L. Fogle, Andrea M. Fulton Rhodes, Vernon Hawkins, Jr., Kimberly A. Howell, David J. McManus, Esq., Sally McLane Young Ridgely, and Marisa A. Trasatti, Esq. The Honorable Robert B. Kershaw did not participate as a Commission Member at the Hearing. The ten (10) Commission Members present at the Hearing constituted a quorum, pursuant to Maryland Rule 18-411(f).

After being fully advised of its obligations and duties, the Commission specifically

finds that the Hearing was conducted according to the rules, statutes, and procedures required by law. Upon private deliberations, the Commission considered all of the exhibits admitted into evidence, the sworn testimony and demeanor of all parties at the Hearing, and the Proposed Findings of Fact and Conclusions of Law submitted by Investigative Counsel on December 11, 2020. Respondent did not submit Proposed Findings of Fact and Conclusions of Law.

PROCEDURAL HISTORY

Charges in **CJD 2018-033** were initiated on October 25, 2018 when Investigative Counsel filed against Judge Nickerson as directed by the Commission. Judge Nickerson filed a Response to these Charges on December 13, 2018. The Commission stayed this matter by order dated March 11, 2019. On September 25, 2019, the stay was lifted when the Commission rescheduled the Hearing until December 5, 2019. Judge Nickerson and the Commission then entered into an agreement for corrective or remedial action on November 20, 2019, effectively staying these proceedings a second time. The agreement for corrective or remedial action was revoked on April 30, 2020 by the Commission, who directed Investigative Counsel to proceed with the original Charges in this matter and to file an additional charge against Judge Nickerson. Amended Charges were filed by Investigative Counsel on June 8, 2020. Judge Nickerson did not file a Response to the Amended Charges.

As to **CJD 2019-013**, the Commission issued a Reprimand which was mailed to Respondent on November 4, 2019 subject to conditions that required Judge Nickerson to take specific actions and provide certain information to the Commission with a specified deadline. When the deadline(s) was not met, on August 8, 2020 Investigative Counsel filed Charges against Judge Nickerson as directed by the Commission. Judge Nickerson did not file a Response to these Charges.

The Charges in **CJD 2018-033** alleged Judge Nickerson violated the following:

Maryland Rule 18-101.1 COMPLIANCE WITH THE LAW

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

Maryland 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.

Maryland 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.

Maryland Rule 18-103.1. 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:

- (a) participate in activities that will interfere with the proper performance of the judge's judicial duties;

- (c) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;
[or]
- (d) engage in conduct that would appear to a reasonable person to be coercive[.]

Former Maryland Rule 18-401(j)(1); current Rule 18-402(m)(1)

- (1) "Sanctionable conduct means misconduct while in office, the persistent failure by a judge to perform the duties of the judge's office, or conduct prejudicial to the proper administration of justice. A judge's violation of any of the provisions of the Maryland Code of Judicial Conduct promulgated by Title 18, Chapter 100 may constitute sanctionable conduct."

The Amended Charges in **CJD 2018-033** alleged an additional violation of the following:

Maryland Rule 18-102.16(a) COOPERATION WITH DISCIPLINARY AUTHORITIES

- (a) A judge shall cooperate and be candid and honest with judicial and attorney disciplinary agencies.

The Charges in **CJD 2019-013** alleged Judge Nickerson violated the following:

Maryland Rule 18-102.16(a) COOPERATION WITH DISCIPLINARY AUTHORITIES

- (a) A judge shall cooperate and be candid and honest with judicial and attorney disciplinary agencies.

CHRONOLOGY:

CJD 2018-033

December 1, 2014- Judge Amy Leigh Nickerson began her term after being elected to the Orphans' Court for Kent County, Maryland. Prior to her election, Judge Nickerson served as the Deputy Clerk, Office of Kent County Circuit Court from 1989 to 2013.

March 9, 2018- Judge Nickerson was subject to a traffic stop by Sgt. Harry Kettner of the Kent County Sheriff's Office. Judge Nickerson was arrested and charged with Citation Nos. 3ZR0AG6 (exceeding posted maximum speed limit: 43 in a posted 30 mph zone), 3ZS0AG6 (exceeding posted maximum speed limit: 31 in a posted 25 mph zone), 3ZT0AG6 (driving vehicle while under the influence of alcohol), 3ZV0AG6 (driving vehicle while impaired by alcohol), 3ZW0AG6 (negligent driving), 3ZY0AG6 (throwing, dumping, discharge, deposit any refuse on highway). [IC4 and IC7]

July 18, 2018- Judge Nickerson's criminal hearing before the Honorable Melvin J. Jews of the District Court of Maryland for Kent County resulted in guilty findings of exceeding posted maximum speed limit: 43 in a posted 30 mph zone, exceeding posted maximum speed limit: 31 in a posted 25 mph zone, negligent driving, reckless driving, throwing, dumping, discharge, deposit any refuse on highway and driving while impaired by alcohol; she received probation before judgment. Judge Nickerson received a judgment of acquittal on driving while under the influence of alcohol. [IC11 and IC13 - IC22]

October 25, 2018- Charges were filed by Investigative Counsel against Judge Nickerson regarding her extrajudicial conduct associated with the March 9, 2018 traffic violations and arrest. [IC72A]

December 13, 2018- Judge Nickerson filed a Response where she admitted all of the allegations in the Charges and requested a reprimand. [IC72B]

April 12, 2019- The original hearing date on the Charges; this hearing was postponed due to the granting of a stay by the Commission, and subsequently rescheduled on December 5, 2019.

November 20, 2019- The Commission and Judge Nickerson entered into a Conditional Diversion Agreement (hereinafter “CDA”) which included the following conditions:

-“Judge Nickerson shall submit to Investigative Counsel within sixty (60) days from the date of this agreement verification of her successful completion of the terms of the probation imposed by the District Court for Kent County... Such verification shall be obtained by Judge Nickerson from either the District Court for Kent County, the Division of Parole and Probation, or another source approved by the Commission.”

-“Judge Nickerson shall submit to Investigative Counsel verification of her compliance with and active participation in all recommendations for the treatment and management of her diabetes as directed by her treating physician(s). Such verification shall be obtained by Judge Nickerson from her treating physician(s) and submitted to Investigative Counsel on a quarterly basis with the first verification to be submitted within three (3) months of the date of this Agreement and continuing every three (3) months thereafter until the expiration of the Agreement.”

-“Judge Nickerson shall attend and complete an ethics course, at her expense, before the expiration of this Agreement as selected and approved by the Commission... Judge Nickerson shall submit to Investigative Counsel within five (5) days of completion of the course verification of said completion...” [IC42]

As a result of the agreement, the Commission cancelled the December 5, 2019 hearing.

December 9, 2019- Investigative Counsel sent correspondence to Judge Nickerson reminding her of the January 20 and February 20, 2020 deadlines in the Conditional Diversion Agreement. [IC43]

December 12, 2019- Commission Chair sent correspondence to Judge Nickerson

providing the approved ethics course and requesting the judge “advise the Commission once you have purchased the download and completed the course.” [IC44]

January 20, 2020- Original deadline for Judge Nickerson to produce the verification of her successful completion of the terms of her probation. Judge Nickerson did not meet this deadline or communicate to request an extension.

January 28, 2020- Investigative Counsel sent correspondence to Judge Nickerson requesting the verification of successful completion of her probation by January 31, 2020. [IC45]

February 4, 2020- Investigative Counsel sent correspondence to Judge Nickerson advising the verification of probation had not been submitted by January 20 or 31, written notice of “your alleged failure to comply with a condition of the Agreement”, and provided the opportunity to respond by February 19, 2020. [IC46]

February 19, 2020- Judge Nickerson did not meet this deadline or communicate to request an extension.

February 20, 2020- Original deadline for Judge Nickerson to produce the verification of her compliance with treatment and management of diabetes. Judge Nickerson did not meet this deadline or communicate to request an extension.

February 21, 2020- Investigative Counsel sent correspondence to Judge Nickerson advising the verification of “compliance with and active participation in all recommendations for the treatment and management of your diabetes as directed by your treating physician(s)” was not submitted by February 20, written notice of “your alleged failure to comply with a condition of the Agreement”, and provided the opportunity to respond by March 9, 2020. [IC47]

February 25, 2020- Email from Judge Nickerson to Investigative Counsel providing “paperwork that I was given 2/17 which is a lab sheet for fasting bloodwork that I need to have prior to my next appointment with the endocrinologist which is scheduled for 4/27/20 and the ‘my portfolio’ instructions.” [IC48]

February 26, 2020- Correspondence from Judge Nickerson to Investigative Counsel date-

stamped February 27, 2020 with a “letter from my former probation officer verifying my successful completion of supervised probation”; her probation was completed on July 18, 2019. Also enclosed were copies of documents sent via Judge Nickerson’s February 25, 2020 email. [IC49]

March 2, 2020- Investigative Counsel’s Memorandum to the Commission, providing the verification of completion of probation received on February 27, and advising of the failure of Judge Nickerson to meet January 20, 31 and February 19, 2020 deadlines. [IC50]

March 3, 2020- Investigative Counsel sent correspondence to Judge Nickerson advising the attachments to her February 26, 2020 letter did not satisfy the CDA regarding diabetes treatment and management, that she did not submit verification by the February 20, 2020 deadline, and invited a response on or before March 9, 2020. [IC51]

March 9, 2020- Judge Nickerson did not provide additional medical documentation to satisfy the condition of the CDA or communicate to request an extension.

March 10, 2020- Memorandum from Investigative Counsel to the Commission advising of missed deadlines, and attaching the verification of completion of probation documentation as well as the medical information which did not comply with the condition of the CDA. [IC52]

March 25, 2020- Commission Executive Secretary sent correspondence to Judge Nickerson advising she failed to comply with two (2) conditions of the CDA. The Commission required the judge to provide verification from her treating physician documenting compliance and active participation in all recommendations for the treatment and management of diabetes on or before April 23, 2020. The Commission advised further failure to cooperate and comply with the CDA may result in revocation of the agreement and/or further disciplinary action. [IC53]

April 23, 2020- Judge Nickerson did not meet this deadline or communicate to request an extension from the Commission.

April 27, 2020- Commission Executive Secretary sent an email to Judge Nickerson advising a response was not received on April 23, 2020 and allowed the judge to submit a

response on April 27 before 5pm. Judge Nickerson did not respond or submit a response to the Commission. [IC54]

April 30, 2020- Commission Chair sent correspondence to Judge Nickerson advising the Commission revoked the CDA, directed Investigative Counsel to proceed with Charges previously filed, and to file Charges based on a potential violation of MD Rule 18-102.16. [IC55]

May 4, 2020- Judge Nickerson emailed the Executive Secretary providing an April 28, 2020 letter from Dr. Medha Satyarengga, an After-Visit Summary, medication list and an envelope from University of Maryland Shore Medical Group. [IC56]

May 22, 2020- Commission Chair sent correspondence to Judge Nickerson advising the Commission's position hasn't changed after receipt of the May 4, 2020 documents. [IC58]

June 8, 2020- Amended Charges were filed by Investigative Counsel. [IC72C]

December 8, 2020- Hearing on Charges before the Commission.

CJD 2019-013

March 4, 2019- Judge Nickerson sent correspondence to Investigative Counsel attaching her response regarding an investigation relating to a State of Maryland income tax judgment and lien. "Following the filing of my 2018 returns, my new CPA will review all prior years tax returns for errors and file any amended returns as needed. This judgment is not a result of my neglecting to pay taxes but a bookkeeping nightmare that is not my specialty." [IC59]

April 29, 2019- Investigative Counsel sent correspondence to Judge Nickerson requesting completion of MD Form 129-Request for Copy of Tax Return, documents and other information related to the judge's tax lien, "including but not limited to resolution and/or payment of said lien, correspondence between you and the Comptroller of Maryland, State Department of Assessments and the name and business information of the 'small retail business' that generated the taxes at issue, including the name and contact information for any partners and investors, the name and contact information for the resident agent, and

copies of any articles of incorporation and operating agreements.” [IC62]

May 17, 2019- Investigative Counsel sent correspondence to Judge Nickerson noting “several unsuccessful attempts to contact you to follow up on our April 29, 2019 letter. You indicated via email dated May 15, 2019 that you would contact our office the following day but we have not heard from you.” Investigative Counsel requested the documents and information again. [IC63]

May 30, 2019- Investigative Counsel’s Legal Assistant sent an email to Judge Nickerson attaching a Motion for Order to Require Appearance and Motion to Seal or Otherwise Limit Inspection of a Case Record, which was filed in the Circuit Court for Anne Arundel County to compel records from the Custodian of Records of the Comptroller of Maryland regarding Judge Nickerson. [IC60]

June 6, 2019- Correspondence and documents from the Custodian of Records with the Comptroller of Maryland, Revenue Administration regarding the Anne Arundel County Circuit Court Order Authorizing the Production of Tax Records, advising Judge Nickerson “filed an extension for the 2013 Maryland income tax return; however, no return was filed to date. She was assessed as a non-filer for 2013 by a Compliance program. Ms. Nickerson initiated a payment plan, upon which she later defaulted. To date, the lien still exists.” [IC65]

June 25, 2019- Judge Nickerson sent correspondence to Investigative Counsel attaching “the Release of Maryland Tax Lien that I received in the mail 6/24/19 from the Comptroller of Maryland.” [IC61]

September 23, 2019- Judge Nickerson attended a meeting with Commission.

September 25, 2019- Investigative Counsel sent correspondence to Judge Nickerson notifying of the Commission’s recommendation of a reprimand, and advising “the reprimand would be contingent upon the receipt of proof that you have filed federal and state tax returns for tax years 2013 through 2018, including proof of payment of any tax obligations owed, including applicable penalties and interest.” [IC66]

October 7, 2019- Investigative Counsel sent correspondence to Judge Nickerson

confirming her verbal consent to the reprimand advising “[i]t is my understanding that you consent to the issuance of a private reprimand in this matter. To move forward with this disposition, you must: (1) respond in writing within 30 days from receipt of my September 25, 2019 letter indicating that you will not oppose the issuance of the reprimand, and (2) provide copies of all federal and state tax returns for tax years 2013 through and including 2018, including proof of payment of any tax obligations owed. If you fail to provide the requested tax returns within six (6) months of the date of your consent to the reprimand, the Commission on Judicial Disabilities (‘Commission’) has directed me to open a new investigation into compliance with your federal and state tax obligations for all eligible tax years.” [IC67]

October 15, 2019- Judge Nickerson sent an email to Investigative Counsel and stated “I am responding to the letter dated 9/25/19 outlining the Commissions (sic) recommendation in CJD 2019-013. I agree with their recommendation and will be mailing a formal, written response this week.” [IC68]

November 4, 2019- Commission Chair sent correspondence to Judge Nickerson issuing the November 1, 2019 Reprimand. The Reprimand stated “[t]his Reprimand is subject to the condition that Judge Nickerson provide proof of filing of income tax returns for the years 2013 through 2018, and that she has satisfied and paid in full any and all tax obligations owed to the Internal Revenue Service or State of Maryland Comptroller’s office. Said proof of filing and satisfaction shall be provided to the Commission within six (6) months of this Reprimand. Failure to satisfy this condition could result in an investigation by Investigative Counsel and the filing of Charges.” [IC69]

July 1, 2020- Commission Executive Secretary sent correspondence to Judge Nickerson advising the six (6) month deadline had passed for receipt of tax returns for the years 2013 through 2018 or documentation of satisfaction of tax obligations to the Internal Revenue Service or State of Maryland Comptroller’s office, and requested the information on or before July 8, 2020. [IC71]

July 8, 2020- Judge Nickerson did not meet this deadline or communicate to request an

extension from the Commission.

July 9, 2020- Executive Secretary sent correspondence to Judge Nickerson advising the documents were not received on July 8 and the matter would be referred to the Commission. [IC70]

July 27, 2020- The Commission found probable cause to believe Judge Nickerson committed sanctionable conduct and directed Investigative Counsel to initiate formal proceedings.

August 5, 2020- Charges were filed by Investigative Counsel. [IC74]

December 8, 2020- Hearing on Charges before the Commission.

The Commission hereby issues the following Findings of Fact, Conclusions of Law, Order and Recommendation to the Court of Appeals as to the imposition of discipline, pursuant to Maryland Rule 18-435(e):

SUMMARY OF EVIDENCE

The Commission viewed the recording of the March 9, 2018 traffic stop and arrest of Judge Amy Leigh Nickerson, reviewed exhibits (IC1 - IC76), heard the Admissions that were read into evidence and asked questions of the parties. Judge Nickerson had no objection to the exhibits and evidence submitted by Investigative Counsel. [Transcript Page (hereinafter “Tr.”) 24] The Commission also heard arguments from Investigative Counsel and Judge Nickerson.

VIDEO FROM KENT COUNTY SHERIFF’S OFFICE

The Commission Members observed the video recording of the March 9, 2018 traffic stop. [IC39] It is summarized as follows:

On March 9, 2018, Sgt. Harry A. Kettner of the Kent County Sheriff’s Office (“Sgt. Kettner”) stopped Judge Nickerson on Rt. 320 in Rock Hall, Maryland after determining

she was speeding using his in-car radar unit. [IC39 at 22:15]¹ Sgt. Kettner also observed Judge Nickerson hit a cone when turning the corner. [Tr. 74, 81] Sgt. Kettner approached Judge Nickerson's vehicle and observed that her eyes were glassy and blood shot and her actions were slow and delayed. [IC4]² Sgt. Kettner smelled alcohol emanating from Judge Nickerson's vehicle and observed a clear cup with a clear liquid and a straw in the center console. [IC4] Sgt. Kettner asked, "Is there anything in that cup in the center console?" Judge Nickerson's response was "No. I mean, it's club soda." [Tr. 74] Sgt. Kettner later asked the judge "I mean, you- - and there's nothing in that club soda?" Judge Nickerson again replied "No." [Tr. 91] Sgt. Kettner tested the substance in the cup and determined it had alcohol in it. [Tr. 92-93] Judge Nickerson later confirmed that there was a straw in the cup and that the cup contained vodka. [IC39 at 00:06 to 00:08]

As Sgt. Kettner approached Judge Nickerson's vehicle, she stated she had just left work (a second job as a hostess at Osprey's restaurant). [IC39 at 22:16, Tr. 73, 79] Sgt. Kettner then asked Judge Nickerson to exit her vehicle. [IC39 at 22:16] She complied after completing a phone call and upon a second request by the officer. [IC39 at 22:17] Judge Nickerson stated to him, "Can I tell you something else? I'm a judge of the Orphans' Court. So please. I'm serious." [IC39 at 22:19, Tr. 75] Judge Nickerson also advised Sgt. Kettner that she used her cell phone while at the scene to call an individual whom she referred to as "Kirby." [IC39 at 22:19] Judge Nickerson advised Sgt. Kettner that she told Kirby that she was pulled over by Sgt. Kettner. [IC39 at 22:19]

Sgt. Kettner asked Judge Nickerson to rate her level of intoxication on a scale of one to ten, with ten being the highest; Judge Nickerson stated she was a "five." [IC39 at 22:20] Judge Nickerson stated she had a couple of drinks before leaving work. [IC39 at 22:17, Tr. 73] At different points during the traffic stop, Judge Nickerson stated that she

1 IC39 is an audiovisual recording of the March 9, 2018, traffic stop spread across three DVDR discs. The timestamps as indicated on the top right of the recordings are broken down as follows: DVDR 1 of 3 contains time stamps 22:14 to 23:04; DVDR 2 of 3 contains time stamps 23:04:39 to 23:54:56; and DVDR 3 of 3 contains time stamps 23:54 to 00:22.

2 IC4, Sgt. Kettner's Police Report from March 9, 2018, is also admitted into evidence as IC30.

consumed three (3) drinks [Tr. 112] and other times four (4) drinks since 7:30 or 8:00 p.m.; specifically, “two Deep Eddy Lemon Vodkas and diet ginger beer, and then another Tito’s with diet root beer.” [Tr. 107, 112]

Sgt. Kettner administered multiple field sobriety tests on Judge Nickerson. She performed poorly on each. Judge Nickerson then raised, for the first time, a medical condition that she claimed to be the reason for her poor performance. [IC39 at 22:21] Sgt. Kettner allowed Judge Nickerson to take measures to alleviate the effects of the medical condition including drinking a beverage that was in her vehicle [IC39 at 22:24] and contacting a family member to bring her another beverage. [IC39 at 22:26] During this period, Judge Nickerson cited several different benchmarks for alleviation of the effects of her condition at which she felt she would be able to properly complete the tests. [IC39 at 22:25, 22:33, and 22:37; Tr. 78, 88 & 90] Before completing the field sobriety tests, Judge Nickerson advised Sgt. Kettner that she lived a short distance away and asked if he would permit her to continue driving home while the officer followed her. [IC39 at 22:25] Judge Nickerson mentioned for a second time that she was a judge and the officer responded, “Okay... shouldn’t you know better then?” [IC39 at 22:37; Tr. 90]

Once her medical symptoms were abated to what Judge Nickerson described as an appropriate level, Sgt. Kettner asked her to step out of her vehicle to perform the field sobriety tests again. [IC39 at 22:41] When asked to recite the alphabet from the letter “D” to the letter “R”, Judge Nickerson did not remember to stop reciting the alphabet with the letter “R” as instructed. [IC39 at 22:45] Judge Nickerson also failed to stop at the correct number when asked to count backwards to “21”. [IC39 at 22:45] Sgt. Kettner noted that Judge Nickerson had poor results on these tests as well and advised Judge Nickerson that she was being placed under arrest. [IC39 at 22:46] Judge Nickerson was uncooperative during the arrest and ignored several directives from Sgt. Kettner.

After placing Judge Nickerson under arrest, Sgt. Kettner transported her to a second location a short distance from the scene of the arrest. Judge Nickerson advised the officer during this trip, “I’m serious, I’ll show you where I live” and asked to retake the field

sobriety test. [IC39 at 23:12-23:13] Sgt. Kettner explained to Judge Nickerson that she was already placed under arrest, and Judge Nickerson said that this was going to ruin her whole life and that she was “losing my whole f---ing life.” [IC39 at 23:16 to 23:17; Tr. 102-103] Judge Nickerson mentioned her upcoming election and asked for advice stating that she had “a lot hinging on . . .” [IC39 at 23:17-23:20; Tr. 103]

Sgt. Kettner asked Judge Nickerson thirteen (13) times whether she planned to go to Centerville and submit to a blood alcohol test, and Judge Nickerson was recalcitrant and repeatedly refused to answer this question. [IC39 at 22:46; 23:13; 23:15; 23:17; 23:18; 23:23; 23:29; 23:33; 23:42; 23:43; 23:45; 23:48; and 23:51] Judge Nickerson repeatedly asked Sgt. Kettner what he would do given her upcoming election, and generally for advice, notwithstanding his repeated demurrals. [IC39 at 23:18; 23:19; 23:23; 23:26; and 23:42] It should be noted Sgt. Kettner was professional, calm and patient throughout the encounter with Judge Nickerson.

On one occasion, Judge Nickerson responded to the question of whether she would submit to the blood alcohol test by asking to call “Lieutenant Kirby.” [IC39 at 23:23-23:26] Sgt. Kettner advised Judge Nickerson that she could not call Lieutenant Kirby and reminded her that their conversation was being recorded. [IC39 at 23:24] She asked Sgt. Kettner if she could call her lawyer, and they discussed calling Lt. Kirby again. [IC39 at 23:25] Judge Nickerson attempted to call someone who did not answer the phone, and Sgt. Kettner told her that she could call another individual. [IC39 at 23:25 to 23:27]. Judge Nickerson asked Sgt. Kettner what she should do and repeated that her life is gone. [IC39 at 23:27] Sgt. Kettner invited her to call someone else and read the law regarding the breathalyzer test. [IC39 at 23:30] Judge Nickerson proceeded to speak with an unidentified male; after the call ended, Sgt. Kettner asked her if she wanted to speak with anyone else. [IC39 at 23:31-23:33] Judge Nickerson sought to attenuate the traffic stop by asking Sgt. Kettner to repeat the various consequences for specific blood alcohol concentrations. [IC39 at 23:34]

Judge Nickerson created further delay in responding to the officer’s request by

calling the unidentified male again. [IC39 23:36] Sgt. Kettner spoke with this individual, discussed Judge Nickerson's blood sugar and whether the officer would need to drive her home. [IC39 23:38] During this call, Sgt. Kettner advised Judge Nickerson's phone contact twice that she needed to decide whether she was going to take the blood alcohol concentration test because enough time had passed that her failure to make a decision would be considered a refusal. [IC39 at 23:36-23:40]

After the call ended Judge Nickerson asked for Sgt. Kettner's opinion "off the record." [IC39 at 23:42] Sgt. Kettner advised Judge Nickerson that there is no off the record and Judge Nickerson responded, "Isn't that some s--t." [IC39 at 23:42]

Judge Nickerson told Sgt. Kettner "[b]ecause if I lose my job with the courts, I'll lose my health insurance." [Tr. 110] She again referenced her upcoming election and possibly having to withdraw. [IC39 at 23:43; Tr. 110]

Sgt. Kettner asked Judge Nickerson two (2) more times whether she planned to submit to the blood alcohol concentration test and did not receive a response other than "I don't know." [IC39 at 23:48; 23:51] Sgt. Kettner ultimately advised Judge Nickerson that due to the passage of time that he would have to mark her as a "refusal", and Judge Nickerson responded, "Okay." [IC39 at 23:52]

Sgt. Kettner issued charges against Judge Nickerson under Citation Nos. 3ZR0AG6 (exceeding posted maximum speed limit: 43 in a posted 30 mph zone), 3ZS0AG6 (exceeding posted maximum speed limit: 31 in a posted 25 mph zone), 3ZT0AG6 (driving vehicle while under the influence of alcohol), 3ZV0AG6 (driving vehicle while impaired by alcohol), 3ZW0AG6 (negligent driving), 3ZX0AG6 (reckless driving), and 3ZY0AG6 (throwing, dumping, discharge, deposit any refuse on highway).

ADMISSIONS

Prior to the Hearing, Investigative Counsel propounded multiple Requests for Admissions of Fact and Genuineness of Documents ("Requests") on Judge Nickerson pursuant to Rules 18-433(a) and 2-424 in both CJD 2018-033 and CJD 2019-013. Judge Nickerson failed to respond to these Requests, and the substance of all the requested

admissions contained in the Requests were deemed admitted as required by Rule 2-424(b) and accepted by the Commission as substantive evidence at the Hearing as follows: the Requests in CJD 2018-013 were entered into evidence in that matter as Exhibits IC73A and IC73B; the Requests in CJD 2019-013 were entered into evidence in that matter as Exhibit IC75; and the admissions in both matters were read aloud into evidence by Investigative Counsel. The admissions were conclusively established pursuant to Rule 2-424(d).

CJD 2018-033

The following Admissions were deemed admitted and read into evidence.

REQUEST NO. 1: You have served as a Judge of Orphans' Court of Kent County since December 1, 2014 and presently so serve.

REQUEST NO. 2: On March 9, 2018, Sgt. Harry A. Kettner ("Sgt. Kettner") stopped you for speeding.

REQUEST NO. 3: On March 9, 2018, Sgt. Kettner determined there to be probable cause you were driving under the influence of alcohol. You were subsequently arrested, charged, and released on signature.

REQUEST NO. 4: On March 9, 2018, Sgt. Kettner stopped you on Rt. 320 in Rock Hall, Maryland after determining that you were speeding using his in-car radar unit.

REQUEST NO. 5: On March 9, 2018, Sgt. Kettner approached your vehicle and observed that your eyes were glassy and blood shot and your actions were slow and delayed.

REQUEST NO. 6: On March 9, 2018, Sgt. Kettner smelled alcohol emanating from your vehicle and observed a clear cup with a clear liquid in the center console of your vehicle.

REQUEST NO. 7: When Sgt. Kettner approached your vehicle on March 9, 2018, you stated that you had just left work.

REQUEST NO. 8: On March 9, 2018, Sgt. Kettner asked you to exit the vehicle. Almost immediately after being asked to exit your vehicle, you stated, “Can I tell you something else? I’m a judge of the Orphan’s Court.”

REQUEST NO. 9: On March 9, 2018, Sgt. Kettner asked you if you had consumed any alcoholic beverages that evening; you responded that you had a couple of drinks before you left work.

REQUEST NO. 10: At different points during the traffic stop on March 9, 2018, you also stated that you consumed three (3) drinks and, in a conversation on the phone with an unknown individual, four (4) drinks.

REQUEST NO. 11: When asked by Sgt. Kettner what was in the cup in the center console on March 9, 2018, you stated it was club soda. A subsequent test performed on the contents of this cup by Sgt. Kettner showed that it contained alcohol. You later confirmed that the cup contained vodka.

REQUEST NO. 12: On March 9, 2018, you performed poorly on multiple field sobriety tests administered by Sgt. Kettner.

REQUEST NO. 13: On March 9, 2018, you stated that your low blood sugar levels were the reason for your poor performance on multiple field sobriety tests.

REQUEST NO. 14: On March 9, 2018, Sgt. Kettner allowed you to take measures to raise your blood sugar before performing the field sobriety tests a second time.

REQUEST NO. 15: During this period on March 9, 2018, that Sgt. Kettner allowed you to take measures to raise your blood sugar, you cited several different blood sugar levels at which you would be able to properly complete the tests.

REQUEST NO. 16: Once your blood sugar level was at what you described as an appropriate level on March 9, 2018, Sgt. Kettner asked you to step out of the vehicle to perform the field sobriety tests again. Sgt. Kettner noted you had poor results on these tests as well, and you were placed under arrest.

REQUEST NO. 17: After your arrest on March 9, 2018, you refused a blood

alcohol concentration test.

REQUEST NO. 18: Sgt. Kettner issued charges against you under Citation Nos. 3ZR0AG6 (exceeding posted maximum speed limit: 43 in a posted 30 mph zone), 3ZS0AG6 (exceeding posted maximum speed limit: 31 in a posted 25 mph zone), 3ZT0AG6 (driving vehicle while under the influence of alcohol), 3ZV0AG6 (driving vehicle while impaired by alcohol), 3ZW0AG6 (negligent driving), 3ZX0AG6 (reckless driving), and 3ZY0AG6 (throwing, dumping, discharge, deposit any refuse on highway).

REQUEST NO. 19: After a trial on the merits in the District Court for Kent County before Judge Melvin J. Jews, you received probation before judgment on Citation Nos. 3ZR0AG6 (exceeding posted maximum speed limit: 43 in a posted 30 mph zone), 3ZS0AG6 (exceeding posted maximum speed limit: 31 in a posted 25 mph zone), 3ZV0AG6 (driving vehicle while impaired by alcohol), 3ZW0AG6 (negligent driving), 3ZX0AG6 (reckless driving), and 3ZY0AG6 (throwing, dumping, discharge, deposit any refuse on highway); and received a judgment of acquittal on Citation No. 3ZT0AG6 (driving vehicle while under the influence of alcohol).

REQUEST NO. 20: Your behavior on March 9, 2018, provides evidence that you 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).

REQUEST NO. 21: Your conduct on March 9, 2018, was in violation of Rules 18-100.4, Preamble; 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; and 18-103.1, Extra-Official Activities in General. In addition, your conduct constituted misconduct and was prejudicial to the proper administration of justice pursuant to Rule 18-401(j).

REQUEST NO. 22: You sincerely apologized to the citizens of Kent County and the State of Maryland for your conduct and are extremely remorseful for your actions, including for the negative and unflattering attention brought to yourself personally and as a member of the Maryland Judiciary. You have remained apologetic, remorseful, and have been in total compliance with the terms and conditions of your probation as ordered by The Honorable Melvin J. Jews of the District Court of Maryland for Kent County on July 18, 2018. This matter is the first time you have faced charges for driving under the influence in your 31 years of being a licensed driver in the State of Maryland.

REQUEST NO. 23: The documents and materials marked as Bates Nos. IC001 through IC094 and previously provided to you by Investigative Counsel by letter dated January 23, 2019, are authentic, genuine, and admissible at the hearing in this matter.

REQUEST NO. 24: On November 20, 2019, you entered into the Conditional Diversion Agreement with the Commission.

REQUEST NO. 25: The Conditional Diversion Agreement required you to submit to Investigative Counsel verification of your successful completion of the terms of the probation imposed on you by Judge Melvin J. Jews of the District Court of Maryland for Kent County following the court's finding of guilt on Citation Nos. 3ZR0AG6 (exceeding posted maximum speed limit: 43 in a posted 30 mph zone), 3ZS0AG6 (exceeding posted maximum speed limit: 31 in a posted 25 mph zone), 3ZV0AG6 (driving vehicle while impaired by alcohol), 3ZW0AG6 (negligent driving), 3ZX0AG6 (reckless driving), and 3ZY0AG6 (throwing, dumping, discharge, deposit any refuse on highway) on or before January 20, 2020. This verification was to be obtained by you from either the District Court for Kent County, the Division of Parole and Probation, or another source approved by the Commission.

REQUEST NO. 26: You failed to submit to Investigative Counsel verification of your successful completion of the terms of the probation imposed on you by Judge Melvin J. Jews of the District Court of Maryland for Kent County following the court's finding of guilt on Citation Nos. 3ZR0AG6 (exceeding posted maximum speed limit: 43 in a posted 30 mph zone), 3ZS0AG6 (exceeding posted maximum speed limit: 31 in a posted 25 mph zone), 3ZV0AG6 (driving vehicle while impaired by alcohol), 3ZW0AG6 (negligent driving), 3ZX0AG6 (reckless driving), and 3ZY0AG6 (throwing, dumping, discharge, deposit any refuse on highway) on or before January 20, 2020.

REQUEST NO. 27: Your failure to submit to Investigative Counsel verification of your successful completion of the terms of the probation imposed on you by Judge Melvin J. Jews of the District Court of Maryland for Kent County following the court's finding of guilt on Citation Nos. 3ZR0AG6 (exceeding posted maximum speed limit: 43 in a posted 30 mph zone), 3ZS0AG6 (exceeding posted maximum speed limit: 31 in a posted 25 mph zone), 3ZV0AG6 (driving vehicle while impaired by alcohol), 3ZW0AG6 (negligent driving), 3ZX0AG6 (reckless driving), and 3ZY0AG6 (throwing, dumping, discharge, deposit any refuse on highway) on or before January 20, 2020 was a violation of the Conditional Diversion Agreement.

REQUEST NO. 28: By letter dated January 28, 2000, Investigative Counsel extended the deadline for you to submit verification of your successful completion of the terms of the probation imposed on you by Judge Melvin J. Jews of the District Court of Maryland for Kent County following the court's finding of guilt on Citation Nos. 3ZR0AG6 (exceeding posted maximum speed limit: 43 in a posted 30 mph zone), 3ZS0AG6 (exceeding posted maximum speed limit: 31 in a posted 25 mph zone), 3ZV0AG6 (driving vehicle while impaired by alcohol), 3ZW0AG6 (negligent driving), 3ZX0AG6 (reckless driving), and 3ZY0AG6 (throwing, dumping, discharge, deposit any refuse on highway) until on or before January 31,

2020.

REQUEST NO. 29: You failed to submit to Investigative Counsel verification of your successful completion of the terms of the probation imposed on you by Judge Melvin J. Jews of the District Court of Maryland for Kent County following the court's finding of guilt on Citation Nos. 3ZR0AG6 (exceeding posted maximum speed limit: 43 in a posted 30 mph zone), 3ZS0AG6 (exceeding posted maximum speed limit: 31 in a posted 25 mph zone), 3ZV0AG6 (driving vehicle while impaired by alcohol), 3ZW0AG6 (negligent driving), 3ZX0AG6 (reckless driving), and 3ZY0AG6 (throwing, dumping, discharge, deposit any refuse on highway) on or before January 31, 2020.

REQUEST NO. 30: Your failure to submit to Investigative Counsel verification of your successful completion of the probation imposed on you by Judge Melvin J. Jews of the District Court of Maryland for Kent County following the court's finding of guilt on Citation Nos. 3ZR0AG6 (exceeding posted maximum speed limit: 43 in a posted 30 mph zone), 3ZS0AG6 (exceeding posted maximum speed limit: 31 in a posted 25 mph zone), 3ZV0AG6 (driving vehicle while impaired by alcohol), 3ZW0AG6 (negligent driving), 3ZX0AG6 (reckless driving), and 3ZY0AG6 (throwing, dumping, discharge, deposit any refuse on highway) on or before January 31, 2020 was a violation of the Conditional Diversion Agreement.

REQUEST NO. 31: The Conditional Diversion Agreement required you to submit to Investigative Counsel verification of your compliance with and active participation in all recommendations for the treatment and management of your diabetes as directed by your treating physician(s). This verification was to be obtained by you from your treating physician(s) and submitted to Investigative Counsel on a quarterly basis with the first verification to be submitted on or before February 20, 2020 and continuing every three (3) months thereafter until the expiration of the Conditional Diversion Agreement.

REQUEST NO. 32: You failed to submit to Investigative Counsel verification of your compliance with and active participation in all recommendations for the treatment and management of your diabetes as directed by your treating physician(s) on or before February 20, 2020.

REQUEST NO. 33: On February 25 and 27, 2020, you provided documentation to Investigative Counsel that purported to be verification of your compliance with and active participation in all recommendations for the treatment and management of your diabetes as directed by your treating physician(s). This submission was untimely and substantively did not satisfy the requirements of the Conditional Diversion Agreement.

REQUEST NO. 34: Your failure to submit to Investigative Counsel verification of your compliance with and active participation in all recommendations for the treatment and management of your diabetes as directed by your treating physician(s) on or before February 20, 2020 was a violation of the Conditional Diversion Agreement.

REQUEST NO. 35: The Conditional Diversion Agreement required you to obey all laws and comply with the Maryland Code of Judicial Conduct as set forth in Rules 18-100.1 through 18-104.6.

REQUEST NO. 36: Your violation of the terms of the Conditional Diversion Agreement and the reasonable deadlines and directives of Investigative Counsel acting as monitor on behalf of the Commission under the Agreement constitute a failure to cooperate with judicial disciplinary agencies in violation of Rule 18-102.16 (Cooperation with Disciplinary Authorities). In addition, your conduct constituted misconduct and was prejudicial to the proper administration of justice pursuant to Rule 18-401(j).

REQUEST NO. 37: By violating Rule 18-102.16, you have failed to obey all laws and comply with the Maryland Code of Judicial Conduct as set forth in Rules 18-100.1 through 18-104.6 in violation of the Conditional Diversion

Agreement.

REQUEST NO. 38: Your violation of the terms of the Conditional Diversion Agreement provides clear and convincing evidence that you 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).

REQUEST NO. 39: The documents and materials marked as Bates Nos. IC095 through IC296 provided under separate cover are authentic, genuine, and admissible at the hearing in this matter.

CJD 2019-013

The following Admissions were deemed admitted and read into evidence.

REQUEST NO. 1: You have served as a Judge of Orphan's (sic) Court of Kent County since December 1, 2014 and presently so serve.

REQUEST NO. 2: On November 13, 2019, the Commission issued a Reprimand to you pursuant to Rule 18-427.

REQUEST NO. 3: You did not oppose the issuance of the Reprimand.

REQUEST NO. 4: The Reprimand was subject to certain conditions that required you to take specific actions and provide certain information to the Commission by the deadline specified in the Reprimand.

REQUEST NO. 5: The Reprimand required you to provide proof of filing of income tax returns for the years 2013 through 2018 and that you have satisfied and paid in full any and all tax obligations owed to the Internal Revenue Service or State of Maryland Comptroller's Office by May 13, 2019.

REQUEST NO. 6: You did not oppose the requirement in the reprimand that you provide proof of filing of income tax returns for the years 2013 through 2018 and that you had satisfied and paid in full any and all tax obligations owed to the Internal Revenue Service or State of Maryland Comptroller's Office by May 13, 2019.

REQUEST NO. 7: You affirmatively consented to the issuance of the Reprimand.

REQUEST NO. 8: You affirmatively consented to the requirement in the reprimand that you provide proof of filing of income tax returns for the years 2013 through 2018 and that you had satisfied and paid in full any and all tax obligations owed to the Internal Revenue Service or State of Maryland Comptroller's Office by May 13, 2019.

REQUEST NO. 9: You failed to provide proof of filing of income tax returns for the years 2013 through 2018 and that you had satisfied and paid in full any and all tax obligations owed to the Internal Revenue Service or State of Maryland Comptroller's Office by May 13, 2019.

REQUEST NO. 10: The Commission, by and through its Executive Secretary, extended the deadline for you to provide proof of filing of income tax returns for the years 2013 through 2018 and that you had satisfied and paid in full any and all tax obligations owed to the Internal Revenue Service or State of Maryland Comptroller's Office by letter dated July 1, 2020.

REQUEST NO. 11: You failed to meet the deadline for you to provide proof of filing of income tax returns for the years 2013 through 2018 and that you had satisfied and paid in full any and all tax obligations owed to the Internal Revenue Service or State of Maryland Comptroller's Office as extended by the Commission by letter dated July 1, 2020.

REQUEST NO. 12: The Commission, by and through its Executive Secretary, notified you that your failure to provide proof of filing of income tax returns for the years 2013 through 2018 and that you had satisfied and paid in full any and all tax obligations owed to the Internal Revenue Service or State of Maryland Comptroller's Office would be referred to the full Commission for its consideration.

REQUEST NO. 13: You committed sanctionable conduct by failing to provide proof of filing of income tax returns for the years 2013 through 2018 and that you had satisfied and paid in full any and all tax obligations owed to the Internal Revenue Service or State of Maryland Comptroller's Office.

REQUEST NO. 14: Your failure to provide proof of filing of income tax returns for the years 2013 through 2018 and that you had satisfied and paid in full any and all tax obligations owed to the Internal Revenue Service or State of Maryland Comptroller's Office constitutes a failure to comply with the Reprimand.

REQUEST NO. 15: Your failure to comply with the Reprimand was conduct prejudicial to the proper administration of justice in Maryland Courts, pursuant to the Maryland Constitution, Article IV, Section 4B(b)(1).

REQUEST NO. 16: Your failure to comply with the Reprimand was a violation of Rule 18-102.16 (Cooperation with Disciplinary Authorities). In addition, your conduct constituted misconduct and was prejudicial to the proper administration of justice pursuant to Rule 18-401(j).

REQUEST NO. 17: The documents and materials marked as Bates Nos. IC19001 through IC19495 provided under separate cover are authentic, genuine, and admissible at the hearing in this matter.

The aforementioned Admissions were all deemed admitted and entered into evidence; there was no objection from Judge Nickerson.

I. FINDINGS OF FACT.

A. Judge Nickerson was, at all times applicable to the allegations contained in the Charges, a Judge of the Orphans' Court of Maryland in Kent County. Therefore, Respondent was and still is a judicial officer whose conduct was and is subject to the provisions of the Maryland Code of Judicial Conduct, (Maryland Rules Title 18, Chapter 100) and Maryland Rules on Judicial Discipline (Title 18, Chapter 400).

B. Upon thorough review of all of the evidence at the hearing (noted *supra*), evaluation of the exhibits, the video recording of the March 9, 2018 traffic stop, and the Admissions, the Commission found Respondent's conduct was sanctionable and violated the Maryland Code of Judicial Conduct.

C. As to CJD 2018-033, the Commission found that Judge Nickerson committed sanctionable conduct in violation of Maryland Rule 18-101.2 when she: drove while impaired by alcohol; drove forty-three (43) miles per hour in a thirty (30) mile per hour zone; discarded trash outside of her car while driving; was not truthful about the cup which she initially said contained club soda, but later admitted contained vodka; consumed alcohol before driving a vehicle; and injected her position as a judge as soon as she was stopped by the officer, and then later, two (2) additional times. Judge Nickerson was not candid when she initially said she consumed a "couple" of drinks. The Commission found it significant that the judge had trouble controlling her vehicle after drinking alcohol, hit a cone, and that her consumption was at a level that the officer could smell alcohol emanating from the vehicle. Judge Nickerson was not very cooperative in taking the tests. While interacting with Sgt. Kettner, the judge was not truthful; she also mentioned Lt. Kirby (Sgt. Kettner's superior) in an effort to influence the officer not to charge her, or to consult with his supervisor before continuing the investigation or charging her. Moreover, Judge Nickerson mentioned that she would lose her job with the court in another ostensible effort to dissuade Sgt. Kettner from charging her or continuing with his investigation. Further, Judge Nickerson was un-cooperative with the investigation by refusing to answer Sgt. Kettner's repeated questions, after being asked thirteen (13) times, about taking the blood alcohol concentration test. Judge Nickerson's refusal to cooperate indicates an effort to intentionally delay the blood alcohol testing and obfuscate the level of her intoxication. Ultimately, Judge Nickerson received a probation before judgment for exceeding posted maximum speed limit (43 in a posted 30 mph zone), exceeding posted maximum speed limit (31 in a posted 25 mph zone), driving vehicle while impaired by alcohol, negligent driving, reckless driving and throwing, dumping, discharge, deposit any refuse on the highway. As Judge Nickerson was acquitted of driving under the influence of alcohol, the

Commission did not consider this charge in its findings.

On October 25, 2018, Investigative Counsel filed Charges against Judge Nickerson as directed by the Commission. Judge Nickerson filed a response to the Charges on December 13, 2018 admitting to all of the allegations in the Charges. Judge Nickerson subsequently entered into a Conditional Diversion Agreement (“CDA”) with the Commission on November 20, 2019. The CDA required Judge Nickerson to submit to Investigative Counsel verification of her successful completion of the terms of probation, imposed on her by Judge Melvin J. Jews of the District Court of Maryland for Kent County, on or before or before January 20, 2020. This verification was to be obtained by Judge Nickerson from either the District Court for Kent County, the Division of Parole and Probation, or another source approved by the Commission.

Investigative Counsel sent Judge Nickerson a letter on December 9, 2019, advising her the time schedule for submitting the information required by the CDA. Judge Nickerson failed to submit the required verification to Investigative Counsel on or before January 20, 2020. This failure was a violation of the CDA. Investigative Counsel extended the deadline for Judge Nickerson to submit this verification by letter dated January 28, 2020. This extended deadline required Judge Nickerson to submit the required verification to Investigative Counsel on or before January 31, 2020. Judge Nickerson failed to do so. This failure constituted another violation of the CDA. Investigative Counsel sent Judge Nickerson a letter dated February 4, 2020, asking for her response on or before February 19, 2020, and asking her to explain why she failed to submit the required verification. Judge Nickerson did not respond on or before the requested response date.

On February 27, 2020, Judge Nickerson provided documentation to Investigative Counsel that was purported to be verification of her completion of probation as required by the CDA. This submission was untimely.

The CDA also required Judge Nickerson to submit to Investigative Counsel verification of her compliance with, and active participation in, all recommendations for the treatment and management of her health condition as directed by her treating

physicians. This verification was to be obtained by Judge Nickerson from her treating physician(s) and submitted to Investigative Counsel on a quarterly basis; with the first verification to be submitted on or before February 20, 2020 and continuing every three (3) months thereafter until the expiration of the CDA. Judge Nickerson failed to submit the required verification on or before February 20, 2020 which constituted another violation of the CDA. Thereafter, Investigative Counsel provided Judge Nickerson notice of this failure by letter dated February 21, 2020.

On February 25 and 27, 2020, Judge Nickerson provided documentation to Investigative Counsel that was purported to be verification of her compliance with an active participation in all recommendations of her treating physician as required by the CDA. This submission was untimely, did not satisfy the requirements of the CDA, and finally resulted in revocation of the CDA by the Commission. After the revocation, Judge Nickerson submitted additional information to the Commission on May 4, 2020. The Commission maintained its decision to revoke the CDA due to the judge's history of non-compliance, untimely submissions and lack of cooperation.

D. As to CJD 2018-33, the Commission found that Judge Nickerson's conduct violated Maryland Rule 18-101.3 when she invoked her office to advance her interest as a judge to Sgt. Kettner as well as invoking his superior, Lt. Kirby. It should be noted at the hearing on December 8, 2020, Judge Nickerson stated "I was not trying to use my position to influence the officer in any way. I just was telling him who I was in case he had seen me around or in the courthouse, because, you know, he could have run into me in the hallway or seen me, or recognized me and thought that I was there for District Court. Who knows?" [Tr. 165-166] It is troubling that Judge Nickerson still refuses to take responsibility for her behavior, almost three (3) years later.

E. As to CJD 2018-033, the Commission found that Judge Nickerson's conduct violated Maryland Rule 18-103.1 when she engaged in irresponsible behavior, including but not limited to, requesting the assistance of her daughter during the traffic stop, who arrived at the scene inadequately dressed in a hurried attempt to help her mother. Judge

Nickerson conceded that her conduct violated this section. Her primary concern was not the judiciary or public trust. She was concerned only with what she would lose if she were not on the bench. Judge Nickerson attempted to use her office and relationships to coerce the officer to let her go. "My life is ruined, losing everything, losing health insurance." Numerous comments throughout the traffic stop were offensive and constituted violations of the Maryland Code of Judicial Conduct. "You're doing this to me" was the attitude of the judge toward Sgt. Kettner in 2018 and this attitude continues toward the Commission even today as evidenced by her remarks during the Hearing. [Tr. 171-173, 176] She tried to blame the Covid-19 pandemic for her failure to provide medical treatment information, notwithstanding that her first deadline was February 20, 2020, well before the mandated shutdown in mid-March of 2020.

F. As to CJD 2018-033, the Commission found that Judge Nickerson's conduct violated Maryland Rule 18-101.1 when she drove while impaired by alcohol, engaged in negligent driving, reckless driving, speeding and discarded trash out of her car. All of the aforementioned violations of the Code of Judicial Conduct cited in I. A. through I. E. also constitute Judge Nickerson's failure to comply with the law.

G. As to CJD 2018-033, the Commission found that Judge Nickerson's conduct violated Maryland Rules 18-102.16 and 18-101.1 based on the Admissions read into evidence; her violation of the CDA by not meeting the conditions she agreed to by the deadlines; her providing only partial information which was untimely; her failure to request extensions; and her failure to properly communicate and cooperate with Investigative Counsel and the Commission. It should also be noted Judge Nickerson never provided documentation of completion of the ethics course, a third condition from the CDA. Although she claimed at the hearing that she completed the course, the information was never provided to the Commission after multiple opportunities to provide same, even as late as the Pre-Hearing Conference just weeks before the hearing.

Judge Nickerson was given multiple opportunities to comply with the CDA and failed to do so. Judge Nickerson referenced Covid-19 as a deterrent to her providing

requested medical information, but the first deadline was on February 20, 2020, before any state mandated restrictions on medical institutions which *may* have delayed her receipt of medical information. Orphans' Court judges oversee complex transactions with many required deadlines. Judge Nickerson did not meet deadlines and did not cooperate with the Commission. The judge did not even extend the courtesy of advising the Commission she could not meet the deadlines or request extensions. She had no regard for the Commission and her obligations to it, the judiciary and the public. She did not and does not set a good example for the litigants who appear before her.

H. As to CJD 2019-013, the Commission found that Judge Nickerson's conduct violated Maryland Rules 18-102.16 and 18-101.1 as a result of the documents admitted and the Admissions read into evidence. Due to the judge's prior history of having a judgment/tax lien from the Maryland Comptroller, the Commission rightfully requested documentation that the judge filed tax returns for the years 2013-2018, which she also failed to provide timely. To date, the Commission has not been provided documentation that Judge Nickerson has filed her tax returns, as required by law. At the Pre-hearing Conference on November 10, 2020, Judge Nickerson indicated she had documentation of her filed tax returns. Over the objection of Investigative Counsel, the Commission Chair allowed Judge Nickerson the opportunity to provide the tax returns. She again failed to provide the documents to the Commission. It should also be noted that she failed to cooperate with Investigative Counsel during the investigation when she did not provide the documents requested, causing Investigative Counsel to obtain them from the Comptroller of Maryland pursuant to a court filing.

Judge Nickerson exhibited an inability to assist in the proper administration of justice. She testified that “[I] didn’t turn in anything else after what I tried to submit wasn’t accepted.” [Tr. 176]. At the hearing on December 8, Judge Nickerson provided additional testimony lacking credibility regarding her failure to submit information, stating that she failed to do so “[b]ecause it was my belief... I couldn’t submit anything else.” [Tr. 172-173] After the notification of Charges in CJD 2018-033, Judge Nickerson was given the

opportunity on July 1, 2020 to provide the tax information on or before July 8. Had Judge Nickerson communicated with the Commission and complied by providing the documentation, she may have avoided Charges in this case. Instead, she again chose to contumaciously ignore the Commission and the effort to work with her.

II. CONCLUSIONS OF LAW.

A. The Commission has both subject matter jurisdiction over the above-entitled case and personal jurisdiction over Judge Amy Leigh Nickerson, all pursuant to Md. Const., Art. 4, §4A and §4B and Maryland Rules 18-101.1 et seq.

B. The Commission is guided by the clear and convincing evidence standard in determining whether a judge has committed sanctionable conduct per Maryland Rule 18-406. Based upon the Commission's findings as to the specific facts and violations of the Canons of the Maryland Code of Judicial Conduct, as set forth in the Findings of Fact, supra, the Commission finds by clear and convincing evidence that Judge Amy Leigh Nickerson has committed sanctionable conduct, as defined by Maryland Rule 18-402(m)(1), specifically misconduct in office and conduct prejudicial to the proper administration of justice, by violating the following Canons of the Maryland Code of Judicial Conduct:

1. The factual findings by the Commission as to the conduct of Respondent on March 9, 2018 which resulted in an arrest and convictions for exceeding the posted maximum speed limit, driving vehicle while impaired by alcohol, negligent driving, reckless driving, and throwing, dumping, discharge, deposit any refuse on highway are proof of, and constitute, violations of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1 and Maryland Rule 18-101.2.

2. The factual findings by the Commission as to the conduct exhibited by Respondent in trying to influence Sgt. Harry Kettner by using her judicial office, attempting to use his superior Lt. Kirby to sway Sgt. Kettner, and the failure to cooperate during the traffic stop on March 9, 2018 constitute, a violation of the Maryland Code of

Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-101.2, Maryland Rule 18-101.3, and Maryland Rule 18-103.1.

3. The factual findings by the Commission as to the conduct of Respondent in failing to meet the conditions designated in the Conditional Diversion Agreement and failure to cooperate with the Commission in CJD 2018-033 are proof of, and constitute, a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, and Maryland Rule 18-102.16(a).

4. The factual findings by the Commission as to the conduct of Respondent in failing to meet the condition designated in the Reprimand and failure to cooperate with the Commission in CJD 2019-013 are proof of, and constitute, a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, and Maryland Rule 18-102.16(a).

III. CONSIDERATIONS REGARDING THE IMPOSITION OF DISCIPLINE.

The Preamble to the Maryland Rules governing judicial discipline provides as follows:

Rule 18-100.4. PREAMBLE.

(a) Importance of Independent, Fair, Competent, Impartial Judiciary. An independent, fair, competent, and impartial judiciary composed of men and women of **integrity** who will interpret and apply the law that governs our society is indispensable to our system of justice. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system. [emphasis added]

(b) Dignity of Judicial Office. Judges should **maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives.** They should aspire at all

times to conduct that ensures the greatest possible public confidence in their independence, impartiality, *integrity*, and competence. [emphasis added]

(c) Function of Code of Judicial Conduct. This Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by this Code. This Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

A. As to the appropriate discipline in a judicial conduct case, the Commission is guided by the General Provisions of the Maryland Code of Judicial Conduct, Maryland Rule 18-100.1 (b)(1)(B), which provides:

Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules and should depend upon factors such as the seriousness of the transgression, the facts and circumstances at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

We bestow the highest level of respect to our judges; in turn, we expect our judges to hold themselves to high standards, personally and professionally at all times. Unfortunately, Judge Amy Leigh Nickerson did not meet those standards in March of 2018 and she continues to fall short today. The Commission did not conclude that the traffic violations alone justified removal; instead, the violations, coupled with Judge Nickerson's conduct, and her subsequent failure to cooperate justify removal. Respecting and honoring the legal system does not include trying to use a judicial position to avoid the consequences of our legal system, failing to pay taxes, or willfully and consistently deciding not to

cooperate in the judicial discipline process. The public's confidence is maintained by judges taking responsibility for their mistakes, being accountable, honoring agreements and cooperating with disciplinary authorities. Upon consideration of the actions of Judge Nickerson, the violation of Maryland Rules 18-402(m), 18-101.1, 18-101.2, 18-101.3, 18-103.1 and 18-102.16, the seriousness of the transgressions, the failure to make amends for the transgressions, as well as the patterns of lack of transparency, accountability, and cooperation, the Commission found it was in the best interest of the public and judicial system for Judge Nickerson to be removed from the Orphans' Court for Kent County.

B. The Respondent was barred from presenting fact witnesses or testimony due to her failure to respond to written discovery propounded by Investigative Counsel. Respondent did not put forward any character witnesses.

C. The Commission considered the prior disciplinary history of the Respondent wherein she previously entered into a Conditional Diversion Agreement which was revoked due to lack of cooperation. Respondent also previously received a Reprimand and was subject to a condition with which Respondent did not comply.

Subsequent to the Hearing, the Commission reviewed proposed Findings of Fact and Conclusions of Law submitted by Investigative Counsel. Judge Nickerson did not submit proposed Findings of Fact and Conclusions of Law. Investigative Counsel made no specific recommendation as to an appropriate sanction.

The Commission hereby refers this matter to the Court of Appeals with a recommendation to impose the discipline set forth in Paragraph IV, F, infra. In the Commission's view, the imposition of a reprimand or censure is not commensurate with the serious violations of misconduct in office committed by Judge Nickerson and does not reassure the public, and the judiciary that Judge Nickerson is fit to sit as an Orphans' Court judge. The Commission concludes that Judge Nickerson's conduct requires the imposition of a sanction. While Judge Nickerson is not an attorney, the Court of Appeals cases related to attorney discipline where there has been a lack of cooperation with disciplinary authorities are helpful in providing guidance to the potential disposition in this case. It is

clear that in cases from the Court of Appeals that the court has determined that where a respondent is served with the petition, interrogatories, and a request for admissions and genuineness of documents and the respondent fails to answer, and demonstrates insensitivity to the seriousness of the charges that disbarment is appropriate. See *Attorney Grievance Commission of Maryland v. Wallace*, 363 Md. 277, 282 and 292. The purpose is not to punish the attorney but to demonstrate to members of the legal profession that type of conduct that will not be tolerated. *Id.* at 289. It is clear that a number of factors together that constitute a pattern that “only the most severe sanction of disbarment will provide the protection to the public that this procedure is supposed to provide”. *Id.* at 293.

In the present case, Judge Nickerson’s behavior is certainly serious, as she attempted to use her judicial office for her benefit to avoid appropriate investigation by a law enforcement officer doing his duty in trying to prevent behavior that could hurt the public directly by the Respondent driving under the influence. Clearly, Respondent engaged in behavior that could cause the law enforcement officer – and anyone present at the public trial court proceeding- to question her integrity. Judge Nickerson exhibited a lack of dignity of judicial office on March 9, 2018, and was clearly concerned more with maintaining her office rather than adhering to the standards established in the Code of Judicial Conduct. Her lack of candor with the officer is not behavior that is expected or desired of a judicial officer of Maryland.

The Commission considered mitigating factors from the evidence and testimony at the Hearing in determining its recommendation as to the appropriate discipline. Judge Nickerson admitted to all of the conduct and violations of the Maryland Code of Judicial conduct as alleged by Investigative Counsel. Judge Nickerson successfully completed the probation imposed by the District Court for Kent County.

After consideration of the Facts, Conclusions of Law, and the Considerations Regarding the Imposition of Discipline, the Commission concludes that its recommendation of immediate removal is justified given the nature of Judge Nickerson’s conduct during the traffic stop (being untruthful regarding alcohol in her cup, attempting

to use her position as a judge to influence the officer, and attempting to use the name of the officer's superior to influence the officer), her disciplinary history, prior tax lien/judgment, failure to comply with the terms of a Conditional Diversion Agreement with the Commission, failure to confirm she filed tax returns between 2013-2018 as required in the Reprimand, her failure to cooperate with the Investigative Counsel and the Commission, her failure to meet deadlines agreed to by the judge and the Commission, and her refusal to respond to discovery provided in these cases from Investigative Counsel. Judge Nickerson's conduct is a personal and professional embarrassment to herself as well as the judiciary, and thus, the Commission recommends she be removed from the bench with no opportunity to return. She has repeatedly failed to demonstrate the integrity and dignity that the public and the office deserve.

The Maryland Judiciary's website provides the following description of the Orphans' Court:

The Orphans' Court is Maryland's probate court and presides over the administration of estates. In simpler terms, the main job of the Orphans' Court is to supervise the management of estates of people who have died – with or without a Will – while owning property in their sole name. It has authority to direct the conduct of personal representatives, has jurisdiction over the guardianship of the property of minors and in some counties, appoints guardians of minors...

Orphans' Court Judges

Orphans' Court judges are responsible for approving administration accounts, making sure that only appropriate payments are made from estate assets and that distributions are made to the proper beneficiaries or heirs. Generally, payment of attorney's fees or personal representative's commissions made from estate assets must be approved by the Orphans' Court...

Examples of reasons for formal hearings include when the Orphans' Court has to determine: the validity of a particular Will or Codicil (which is an amendment to the original Will); proper beneficiaries or heirs and/or amounts to be distributed to them; who should be appointed personal representative; whether to remove a personal representative who has not properly carried out his or her duties; or what claims (and amounts) may be paid from the estate. Sometimes there are disputes concerning payments to be made to the personal representative or estate attorney.

In formal hearings, the Orphans' Court judges – like any other trial court judges – must consider the evidence submitted (including testimony) and apply the appropriate Maryland laws in order to resolve the dispute.

As an Orphan's Court judge, Judge Nickerson has the duty to supervise the management of estates, direct the conduct of individuals with authority over property and money, and to remove personal representatives who do not carry out properly their duties. Judge Nickerson's conduct in these cases demonstrates that she has not carried out properly her judicial duties, should not be vested with authority over such important litigation, and should accordingly be removed from the bench.

IV. ORDER, RECOMMENDATION, AND REFERRAL TO THE COURT OF APPEALS.

IT IS HEREBY ORDERED that:

A. The Chair is authorized by all the Commission Members to sign this decision for all those Commission Members present at the Hearing. The signature pages for the other Commission Members shall be retained in the Commission file.

B. The Executive Secretary of the Commission is to take all necessary steps to file with the Court of Appeals the entire hearing record, which shall be certified by the Chair of the Commission and shall include the transcript of the proceedings, all exhibits, and other papers filed or marked for identification in the proceeding, as required by Maryland Rule 18-435(e)(4). The entire hearing record shall be provided to the judge.

C. The Executive Secretary is to, pursuant to Maryland Rule 18-404, promptly serve Judge Nickerson, via electronic mail, the notice of the filing of the record and a copy of the Findings of Fact, Conclusions of Law, Order and Recommendation by the Commission in this matter.

D. This document, all exhibits introduced into evidence, and the transcript are hereby entered into the record in the name of the Commission.

E. The Commission found by clear and convincing evidence that Judge

Nickerson has committed sanctionable conduct, as defined by current Maryland Rule 18-402(m), by violating the Canons of the Maryland Code of Judicial Conduct, as set forth in Section II. B above.

F. The Commission, by unanimous vote, hereby refers these above-captioned matters to the Court of Appeals with its recommendation as follows:

The immediate removal of Judge Amy Leigh Nickerson as an Orphans' Court Judge in Kent County Maryland for violations committed in CJD 2018-033 and CJD 2019-013, individually and collectively.

Dated this 29th day of January 2021.

Maryland Commission on Judicial Disabilities

By: *Michael W. Reed*

The Honorable Michael W. Reed, Chair
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