

STATE OF MARYLAND

BEFORE THE COMMISSION ON JUDICIAL DISABILITIES

In the Matter of the *
HONORABLE W. LOUIS HENNESSY * **CJD 2020-025**
Judge of the District Court of Maryland for *
Charles County, District 4 *

FINDINGS OF FACT, CONCLUSIONS OF LAW,
ORDER AND RECOMMENDATION

Pursuant to Charges filed by the Investigative Counsel in CJD 2020-025, the response filed by Judge W. Louis Hennessy (hereinafter “Respondent” or “Judge Hennessy”), and prior written notice of hearing to Respondent, a public hearing was conducted in the above-entitled matter (hereinafter “Hearing”), as authorized by Maryland Rules 18-431 and 18-434, on April 4, 2022 to April 8, 2022, 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 W. Louis Hennessy. Respondent was present at the Hearing and was represented by counsel, William J. Brennan, Jr., Esq.

The following Commission Members participated in the Hearing: The Honorable Michael W. Reed – Chair, the Honorable Robert B. Kershaw – Vice-Chair, the Honorable Lisa Hall Johnson, Chaz R. Ball, Esq., Virginia L. Fogle, Sophia Jones, David J. McManus, Esq., Andrea M. Fulton Rhodes, and Marisa A. Trasatti, Esq. Kimberly A. Howell and Sally McLane Young Ridgely did not participate as Commission Members at the Hearing. The nine (9) 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 and Respondent, through counsel, on April 19, 2022.

PROCEDURAL HISTORY

Charges in **CJD 2020-025** were initiated on July 21, 2021 by Investigative Counsel against Judge Hennessy as directed by the Commission pursuant to Maryland Rule 18-431(a). Judge Hennessy filed a Response to these Charges on August 23, 2021. The initial hearing dates of January 10, 11, 12 and February 2 and 3, 2022 were rescheduled until the current Hearing.

The Charges in **CJD 2020-025** alleged Judge Hennessy 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 18-102.1 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.

Maryland 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.

Maryland 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 politician 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.

Maryland 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.

Maryland Rule 18-102.9(a)(1)-(4) 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.

Maryland Rule 18-102.10 JUDICIAL STATEMENTS ON PENDING AND IMPENDING CASES

- (a) A judge shall abstain from the 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 the 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.

Maryland 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.

Maryland 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 that 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.

Maryland 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.

Maryland 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.

Maryland 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.

CHRONOLOGY:

February 1, 2005 – Judge W. Louis Hennessy was appointed to the District Court of Maryland for Charles County. Prior to his appointment, Judge Hennessy served as a member of House of Delegates from February 2003 to January 2005.

March 20, 2020 – Criminal Defendant 1 John I. Eberwein ("Mr. Eberwein") was arrested and charged with second degree assault of Victim 1 (name withheld), his then domestic partner, in the District Court of Maryland for St. Mary's County. He was released on bail on March 23, 2020. [IC2] Mr. Eberwein is an auto mechanic who has serviced Judge Hennessy's vehicles and tractor.

March 30, 2020 – Mr. Eberwein was arrested and charged with second degree assault of Victim 1 and violation of a Temporary Protective Order issued on behalf of Victim 1, in the District Court of Maryland for St. Mary's County. [IC1 and IC2] Victim 1 received use and possession of Mr. Eberwein's home in a Protective Order issued on this date.

April 22, 2020 – Judge Hennessy spoke with Kurt Eberwein, son of John Eberwein and Victim 1, who sought assistance from the Respondent on behalf of Mr. Eberwein.

April 26, 2020 – (a) John Eberwein called Judge Hennessy while incarcerated at the St. Mary's Detention and Rehabilitation Center. (b) Judge Hennessy sent a text to Robert R. Castro, Esq. with the name "Kurt" followed by the telephone number for Kurt Eberwein. [IC8]

April 27, 2020 – (a) Kurt Eberwein called Judge Hennessy, at his father’s request. (b) Kurt Eberwein spoke with his father and advised he had spoken to Mr. Castro who had already been contacted by Judge Hennessy on Mr. Eberwein’s behalf.

May 22, 2020 – Kurt Eberwein informed his father that Judge Hennessy invited Kurt over to discuss the power of attorney process. [IC4]

May 26, 2020 – (a) John Eberwein called Judge Hennessy while detained in St. Mary’s County Detention & Rehabilitation Center to discuss a plan of giving power of attorney to his son, Kurt Eberwein, so he could remove Victim 1 from Mr. Eberwein’s home. Judge Hennessy expressed his concern stating, “you know if you give him power of attorney, he can go out and sell that house.” [IC3 & IC5] Judge Hennessy calls out for a staff person to assist him in pulling up the Protective Order issued against John Eberwein. (b) Kurt Eberwein spoke with Judge Hennessy on the phone about making him power of attorney. [IC4] (c) John Eberwein asks for a favor from Judge Hennessy to call Mr. Castro, stating “do me another favor if you don’t mind . . . call the attorney . . . your buddy . . .” [IC3] Judge Hennessy confirmed he would text Mr. Castro.

June 28, 2020 – (a) Judge Hennessy and Mr. Eberwein (while incarcerated) spoke via telephone; Judge Hennessy explained the process of entering a plea and that it is the quickest way to be released. [IC3] (b) Judge Hennessy engaged in the following text thread with Mr. Castro:

Judge Hennessy: “Call me. Johnnie just called me from jail” (referring to Mr. Eberwein).

Mr. Castro: “Can I call you later?”

Judge Hennessy: “Yes” [IC8]

June 29, 2020 – Mr. Eberwein contacted Judge Hennessy, who tells Mr. Eberwein he has not heard from Mr. Castro and asked if he came to see Mr. Eberwein. Mr. Eberwein responds “No . . .” Judge Hennessy told Mr. Eberwein he would text him again. [IC3] Judge Hennessy sent a text to Mr. Castro stating “Call me”. [IC8]

June 30, 2020 – Judge Hennessy and Mr. Eberwein spoke via telephone; Judge Hennessy

told Mr. Eberwein Respondent contacted Mr. Castro and that he was to visit Mr. Eberwein the next day. [IC3] Judge Hennessy told Mr. Eberwein to get a lawyer to get Victim 1 out of the house. [Tr. 480, 11-12]

July 1, 2020 – Mr. Eberwein called Judge Hennessy to notify him that Mr. Castro advised Mr. Eberwein he would need to get in contact with Judge Hennessy or Kurt Eberwein. Mr. Eberwein also advised Respondent that Mr. Castro spoke with the prosecutor and her supervisor. [IC3]

July 20, 2020 – John Eberwein’s hearing date; he entered a plea but was not released due to COVID-19 restrictions. Judge Hennessy sent a text to Mr. Castro asking about Mr. Eberwein’s hearing. The text thread went as follows:

Judge Hennessy: “How did it go with Johnny?”

Mr. Castro: “He got 5 years. 18 months active starting March 28. Work release. All he kept asking me during sentencing is how to evict her.”

Judge Hennessy: “Figures. Good Job”. [IC8]

July 25, 2020 – Judge Hennessy engaged in the following text thread with Mr. Castro:

Judge Hennessy: “Johnnys [sic] girlfriend (Victim 1) has been calling me. She wants to get Johnny out now.”

Mr. Castro: “Oh great. After she told prosecutor he wanted to kill her. (Laughing emoji)”

Judge Hennessy: “(Hearts emoji) love” [IC8]

July 27, 2020 – (a) Judge Hennessy engaged in the following text thread with Mr. Castro:

Judge Hennessy: “Could you please call Johnnys [sic] people. They are burning up my phone.”

Mr. Castro: “Yeah. Mine too. They call me more than all my clients put together. I got him work release. Now he needs home detention. I filed for it.”

Judge Hennessy: “Thanks” [IC8]

(b) Mr. Eberwein contacted Judge Hennessy asking about the conversion of work release to home detention due to COVID-19. Judge Hennessy advised he spoke to Mr.

Castro, who filed a motion for reconsideration on emergency release. Judge Hennessy informed Mr. Eberwein that he can look up the case to check for the motion filed by Mr. Castro. Judge Hennessy also told Mr. Eberwein that Victim 1 had texted and called him numerous times; Judge Hennessy informed her about the motion filed by Mr. Castro. [IC3] **July 28, 2020** – (a) Mr. Eberwein called Kurt Eberwein twice, directing him to contact Judge Hennessy to ask about communicating with Mr. Castro regarding filing a motion to obtain home detention. [IC4] (b) Mr. Eberwein contacted Judge Hennessy, who explained to Mr. Eberwein what was on the docket entries via a Maryland Judiciary Case Search. Judge Hennessy mentioned speaking with Victim 1 earlier and provided his opinion on the resentencing of Mr. Eberwein. [IC3]

August 3, 2020 – Mr. Eberwein called Judge Hennessy and expressed he is going to send him money stating “. . . you answer my phone calls. *You’re my new lawyer*” [emphasis added] seemingly in jest. [IC3] (Tr. 506, 12-13) Judge Hennessy shared the name of the judge presiding over Mr. Eberwein’s case. Mr. Eberwein then asked Judge Hennessy to speak to the judge stating “. . . if you can work with him and tell him if there’s any way he can speed it up, I’d appreciate it”. Judge Hennessy responds stating “I can’t say anything to him . . . he is very swift about that sh*t . . . and he will fire me up.” [IC3] Judge Hennessy also checked the record for the status of Mr. Eberwein’s motion filed by Mr. Castro.

August 6, 2020 – Mr. Eberwein called Judge Hennessy who advised him of the procedural timing applicable to the motion filed by Mr. Castro. [IC3]

August 13, 2020 – Judge Hennessy exchanged text messages with Kurt Eberwein:

Kurt Eberwein: “Can you find out if my dads [sic] situation the lawyer can ask for an emergency hearing or not no one seams [sic] to know for sure and Robert is out of town until Monday so my dad wants to know if he can ask for a [sic] Emergency hearing or not the lawyer [sic] secretary said she wasn’t sure if you can do it in Saint Mary’s”.

Judge Hennessy: “There is nothing that can happen until Castro gets back. I looked on the computer. They are going to set it for a hearing according to notes on August

12.” [IC6]

August 14, 2020 – (a) Criminal Defendant 2 James Winters (“Mr. Winters”) was arrested for allegedly assaulting Victim 2 (name withheld); (b) James Ragan, who was at the scene, called Judge Hennessy, informing him James Winters needed to speak with him stating “Lou, Jimmy needs to talk to you.” (c) Judge Hennessy spoke with James Winters during his arrest, stating “don’t say anything”, “tell them you have another place to stay”, “save the pictures and give them to your attorney.” [IC14]

August 15, 2020 – Judge Hennessy is contacted by James Ragan to discuss Mr. Winters and what he could do to legally evict Victim 2 from the premises. [IC15]

August 16, 2020 – (a) Judge Hennessy and his wife, Loraine Hennessy, traveled to the mobile home community location in St. Mary’s County where Mr. Winters had been arrested. (b) Judge Hennessy met with three (3) witnesses from the arrest of James Winters (James Ragan, Justin MacRae and James Davis) and took handwritten affidavits from each witness. (c) Loraine Hennessy notarized the three (3) handwritten affidavits. [IC17(A-C)] (d) Judge Hennessy sent a text to a judge from the Circuit Court for Charles County requesting contact information for Kathryn Batey, Esq., the District Supervising Public Defender. [IC19; Tr. 285, 9-11] (e) Judge Hennessy sent a text to Kathryn Batey, Esq. and later spoke with her, advising he had affidavits to provide to Mr. Winters’ attorney prior to his bond review. [IC17(A-C) and IC19] Judge Hennessy provided the affidavits to the Office of the Public Defender for Mr. Winters.

August 17, 2020 – (a) Assistant Public Defender Johanna “Edie” Fortuna (“Ms. Fortuna”) represented James Winters at a bond review hearing where she advised the presiding judge of the affidavits secured by Judge Hennessy stating “I did speak with Judge Louis Hennessy who is someone who employs Mr. Winters on a regular basis . . . Judge Hennessy had good things to say . . . and it’s also important to note that Judge Hennessy and his wife visited the trailer park over the weekend . . . and did secure some affidavits that were sworn and notarized that I’ve submitted to MDEC . . .” [IC18, IC20] [Tr. 640, 8-16]

(b) Judge Hennessy engaged in the following text thread with Mr. Castro:

Mr. Castro: “John was granted work release. But jail only does home detention now. I filed an emergency hearing for John to get him on home detention. DENIED.”

Judge Hennessy: “Can he appeal to the circuit?”

Mr. Castro: “Yeah. If he wants to take a chance of a worst sentence [sic] He should be out in next 30 days.”

Judge Hennessy: “Do you know his release date?” [IC8]

August 19, 2020 – Judge Hennessy engaged in the following text thread with Mr. Castro:

Judge Hennessy: “Rob. I just checked eberwines [sic] release date is February 1, 2021.” at 10:59am.

Mr. Castro: “Yeah. I got victim to call state [sic]. She told State she’s good with home detention. Now i [sic] have to convince prosecutor. She’s on vacation until Monday.”

Judge Hennessy: “But if you want to appeal the 30 days is up today”

Mr. Castro: “He does not want to appeal. If he appeals. [sic] They will hold him until trial. That could be in May with this damn virus.” [IC8]

August 26, 2020 – (a) Judge Hennessy spoke with Mr. Eberwein. (b) Judge Hennessy sent a text to Robert Castro stating “Call me” at 8:32pm. [IC8]

August 27, 2020 – (a) Judge Hennessy sent a text to Mr. Castro asking, “What happened with eberwine [sic]?” at 12:03pm. [IC8] (b) Judge Hennessy accepted the first call from James Winters while he was detained at the St. Mary’s County Detention & Rehabilitation Center. Mr. Winters requested assistance securing an attorney and described the circumstances of his incarceration. Judge Hennessy stopped Mr. Winters stating “this phone call is being recorded. You don’t want to talk on the phone about your case.” Judge Hennessy suggested Mr. Winters reach out and talk to the public defender. [IC23]

(c) Judge Hennessy sent a text to Mr. Castro at 5:54pm stating “James winters” [sic]. [IC8]

August 28, 2020 – Judge Hennessy engaged in the following text thread with Mr. Castro:

Judge Hennessy: “Johnny get out?”

Mr. Castro: “Hearing Thursday to get him on home detention”. [IC8]

August 30, 2020 – (a) James Winters contacted Judge Hennessy from St. Mary’s County Detention & Rehabilitation Center requesting assistance in securing an affidavit from Victim 2 recanting her assault allegations against him. [IC23]. Judge Hennessy informed Mr. Winters that he will reach out to Mr. Castro on his behalf and stated “. . . I’m a judge. I can’t really get involved in that stuff . . . ya know.” Judge Hennessy tells Mr. Winters that Victim 2 can call him and he can get someone to get an affidavit from her, but continued to state “I just don’t want to be personally involved in it.” [Tr. 903, 3-6] (b) Judge Hennessy sent a text to Mr. Castro asking: “Did you speak with James winters [sic] at st [sic] Mary’s jail?” at 9:43pm. [IC8]

August 31, 2020 – (a) Judge Hennessy spoke with Victim 2, regarding recanting her statement against Mr. Winters. (b) Mr. Winters contacted Judge Hennessy stating that Respondent talked Victim 2 out of recanting her allegation by informing her what she was up against. [IC23]

September 1, 2020 – Mr. Winters contacted Judge Hennessy and is informed by Respondent that he has not heard from Mr. Castro, and discussed the charges Victim 2 could face if she recanted her statement. Judge Hennessy discussed getting an affidavit if Victim 2 chose to come forward. Judge Hennessy also stated Victim 2 could contact the Public Defender for representation. [IC23]

September 3, 2020 – Judge Hennessy engaged in the following text thread with Mr. Castro:

Judge Hennessy: “Did Johnny get out?” at 11:33am.

Mr. Castro: “1pm hearing”.

Judge Hennessy: “Did you ever see James winters [sic] at the jail?”

Mr. Castro: “K. He got home detention. He should be getting out. He wouldn’t shut up in court.” at 2:00pm.

Judge Hennessy: “Call me”. [IC8]

September 12, 2020 – Mr. Eberwein was released from incarceration.

October 7, 2020 – Rudolf Carrico Esq. met Mr. Eberwein in Mr. Carrico’s office. Mr.

Eberwein was arrested the same day in violation of the Protective Order regarding Victim 1.

October 8, 2020 – Rudolf Carrico, Esq. submitted an Entry of Appearance for John Eberwein. [Tr. 377, 4-10]

October, 2020 – Judge Hennessy spoke with Rudolf Carrico, Esq. about the status of John Eberwein. Judge Hennessy provided his opinion to Mr. Carrico that there was an extortion occurring by Victim 1. [Tr. 377, 11-19, Tr. 378, 16 - Tr. 379, 15]

October 15, 2020 – Rudolf Carrico, Esq. filed a Motion to Reconsider in a prior case on basis of the charges stemming from “an attempted extortion” by Victim 1. [Tr. 388, 5-21]

November 9, 2020 – (a) Mr. Eberwein appeared in court for a hearing. The Assistant State’s Attorney entered a nolle prosequi and consented to an immediate expungement. [Tr. 392, 12 - Tr. 393, 1] (b) Rudolf Carrico spoke with Judge Hennessy after Mr. Eberwein’s hearing informing him of the court’s decision stating “it was the first time that that ever happened like that.” [Tr. 393, 4-5]

November 12, 2020 – Mr. Eberwein was released from incarceration.

November 19, 2020 – Judge Hennessy requested to meet Rudolf Carrico, Esq. in-person at Mr. Carrico’s office. Upon arrival, Judge Hennessy requested the conversation be considered an attorney/client communication. Judge Hennessy also requested and received a copy of the Final Protective Order against John Eberwein. Judge Hennessy and Mr. Carrico held a discussion about helping Mr. Eberwein bring charges against Victim 1. Judge Hennessy explained using Victim 1’s immigration status would be relevant in achieving Mr. Eberwein’s objective.

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 received witness testimony, viewed the recording of the bodycam footage of the arrest of Criminal Defendant 2 (James Winters), reviewed exhibits, heard audio recordings, Admissions and deposition testimony that were read into evidence, and considered the allocution testimony of Judge Hennessy. Pursuant to an agreement entered into between counsel midway through the hearing, Judge Hennessy had no objection to the remaining exhibits and evidence submitted by Investigative Counsel. [Tr. 548] The Commission also heard arguments from Investigative Counsel and counsel for Judge Hennessy.

EXHIBITS

IC1 – Final Protective Order for Petitioner Victim 1 against John Eberwein, in the District Court of Maryland for St. Mary’s County.

IC2 (A-D)– District Court of Maryland Case Search information for John Eberwein.

IC3 – Audio recordings of calls between Judge Hennessy and John Eberwein while detained at St. Mary’s County Detention and Rehabilitation Center.

IC4 – Audio recordings of calls between Kurt Eberwein and John Eberwein while detained at St. Mary’s County Detention and Rehabilitation Center.

IC5 – Call records of John Eberwein from St. Mary’s County Detention and Rehabilitation Center between March and November of 2020.

IC6 – Text messages between Kurt Eberwein and Judge Hennessy beginning in April of 2020.

IC7 – Cellular phone records for Judge Hennessy between April and December of 2020.

IC8 – Text messages between Robert R. Castro, Esq. and Judge Hennessy between March of 2020 and February 2022.

IC9 (A-C)– St. Mary’s County District Court Criminal Trial Docket information regarding John Eberwein.

IC10 – Request for Emergency Hearing filed August 11, 2020 by Robert Castro, Esq., in the District Court for St. Mary’s County.

IC12 (A-B) – Cellular phone records for Judge Hennessy denoting communication with Robert R. Castro, Esq. between March of 2020 and December 2020.

IC13 – Rudolf Carrico, Esq.’s handwritten notes from a meeting with Judge Hennessy regarding John Eberwein.

IC14 – Bodycam Video Footage from the St. Mary’s County Sheriff’s Office.

IC15 – De Bene Esse Video Deposition of James Ragan.

IC16 – De Bene Esse Video Deposition of James (“Jim”) Davis.

IC17(A-C) – Handwritten affidavits from Justin MacRae, James Ragan, and Jim Davis obtained by Judge Hennessy and notarized by his wife, Loraine Davies Hennessy.

IC18 – Audio recordings of the court hearings for James Winters on August 17, August 20, and September 9, 2020 in the District Court for St. Mary’s County.

IC19 – Cellular phone record for Judge Hennessy’s August 16, 2020 phone call to Kathryn Batey, Esq., District Supervising Public Defender for District 4.

IC20 – Notice of Affidavits filed on August 17, 2020 by Assistant Public Defender Edie Fortuna, Esq. in the District Court of Maryland for St. Mary’s County on behalf of James Winters “for the court’s consideration on bond, sworn and notarized affidavits” for witnesses Jim Davis, Justin MacRae, and James Ragan.

IC21 – Edie Fortuna, Esq.’s handwritten notes regarding Mr. Winters and witnesses Justin MacRae, James Ragan, and Jim Davis.

IC22 – Cellular phone records for Judge Hennessy’s August 16, 2020 call to XXX-XXX-XXXX.

IC23 – Audio recordings of calls between Judge Hennessy and James Winters while detained at St. Mary’s County Detention & Rehabilitation Center between January and September 2020.

IC24 – Call records of James Winters from St. Mary’s County Detention & Rehabilitation Center.

IC25 – Cellular phone records for Judge Hennessy from May to December 2020.

IC26 – Cellular phone records for Judge Hennessy from March of 2020 to February 2021.

IC27 – Cellular phone records for Judge Hennessy from January to December 2020.

IC28 – Cellular phone records for Judge Hennessy regarding communication with Victim 2 from August 31 to September 1, 2020.

IC32 – Motion to Continue on behalf of by Charles Eugene Davies filed on March 18, 2021 by Robert R. Castro, Esq. in District Court of Maryland for Charles County.

IC33 – Case Information re: State of Maryland v. Charles Eugene Davies.

IC34 – Case Information re: State of Maryland v. Richard W. Sanders.

IC35 – Case Information re: State of Maryland v. Hank Thomas Ferrell.

IC36 – Case Information re: Mitchell v. Alto (civil docket).

IC 37 – Case Information re: State of Maryland v. Caitlin Baldwin.

IC 38 – Case Information re: State of Maryland v. Elizabeth Calvert Stone.

IC41(R) – Transcript of Loraine Davies Hennessy’s December 1, 2021 deposition.

IC42(R) – Permanent Protective Order for Victim 1 against Mr. Eberwein in District Court of Maryland for St. Mary’s County on April 5, 2021.

BODYCAM VIDEO FOOTAGE - ST. MARY’S COUNTY SHERIFF’S OFFICE

The Commission Members observed the video recording of the August 14, 2020 arrest of James Winters. [IC14] It is summarized as follows:

On August 14, 2020, St. Mary’s County officers were dispatched to the Christmas Tree Trailer Park located in Leonardtown, Maryland. James Winters was arrested for second degree assault against Victim 2. James Winters was handcuffed, placed in the front seat of the squad car, and was seen speaking to James Ragan, the property maintenance man. James Ragan was on the telephone with Judge Hennessy, who he refers to as “Lou”. Mr. Ragan told Judge Hennessy/Lou that Mr. Winters needed to speak with him, stating “Lou, Jimmy needs to talk to you”. Mr. Ragan allowed Mr. Winters to speak to Judge

Hennessey on his cell phone; Mr. Winters explained his situation, stating he already had a bond from a prior situation with Victim 2, and asked “is there any way you can talk to someone?” Judge Hennessey said, “I can’t talk to anyone, all I can tell you is don’t say anything . . .” Mr. Winters expressed his concerns about having jobs to complete to which Judge Hennessey responded, “I understand.” Judge Hennessey asked about living arrangements, which James Ragan stated, “he can come stay with me.” Judge Hennessey then advised “tell them you have a place to stay on Monday”. He told Mr. Winters “don’t say anything” and “there’s really nothing I can do.” Mr. Winters told Judge Hennessey this is the second time a situation like this has occurred; Judge Hennessey asked, “did you take pictures of it . . .?”. Mr. Winters expressed he did take photos, but law enforcement would not look at them. Judge Hennessey advised Mr. Winters “save the pictures . . . you need to give them to your lawyer.” Mr. Winters expressed he can’t afford a lawyer but thanked Judge Hennessey. Judge Hennessey tells him he’s “going to be alright . . . I’m telling you what you can do.” Judge Hennessey once again told Mr. Winters there was nothing he could do, and Mr. Winters thanked him again.

DEPOSITION TESTIMONY OF JUDGE W. LOUIS HENNESSY

The following excerpts from Judge Hennessey’s deposition testimony from March 11, 2022 were read into evidence:

Question: "Okay. And has Mr. Eberwein ever come to your chambers?"

Answer: "Yes. One. One time that I can remember."

Question: "Okay. And when was that?"

Answer: "It was many years ago, and what it was is he had talked to me about he had bought -- purchased some vehicles. He had a bill of sale for the vehicles but he did not have title for them, and he says I understand there is some way I can get a title -- go to the courts and get a title.' And I said, "Well, Johnny, if that's the case, I don't know." I said "But I'm playing golf Sunday with three circuit court judges. I'll ask them, you know," and sure enough I

did, and they said, "Yeah, you've got to get a Petition for Writ of Mandamus. We do it all the time." So I said, you know, so I knew how to do it, and within Sunday we played golf. By Wednesday someone had sent over a blank form for the Petition of Writ of Mandamus. I called Johnny and I told him "Look, you've got to get the Petition of Writ of Mandamus. I've got a sample one here for you. If you're up in the neighborhood or you want me to bring it by my house and hold it there, come get it, you know."

Question: "Okay. And who are the circuit court judges that you spoke to about it?"

Answer: "Judge West, Judge Simpson, and Judge Bell."

Question: "What is Judge Simpson's first name?"

Answer: "Johnny Simpson. He just died."

Question: "Okay."

Answer: "I mean, I'm talking about two weeks ago he died."

Question: "Okay. And in the course of that conversation what did you tell them about why you needed this information?"

Answer: "I just asked them. I said, you know, I understand there's a process you can go through to get a title. The court can order the MVA to issue title in a case. I said how do you go about doing that? They said, well, you've got to get a Petition for Writ of Mandamus. They said we do it all the time. I said okay."

Question: "And then who sent you the" –

Answer: "I don't know."

Question: "Sample for that?"

Answer: "I was just there. One of the guys did. One of those three must have because, you know, it wouldn't have just arrived on its own."

Question: "Okay."

Answer: "Obviously one of them sent it over."

Question: "Okay. And sent it to your chambers?"

Answer: "Yes. It was sitting on my desk when I came in one day."

Question: "Okay. And then Mr. Eberwein came to visit you in chambers?"

Answer: "Yes. Yeah."

Question: "To retrieve it?"

Answer: "He was there. He came by one day and Castro was in my office."

Question: "Okay. By Castro do you mean Robert Castro?"

Answer: "Yes."

Question: "Okay."

Answer: "Yeah. We were talking about our golf trip. We do a golf trip every year -- Castro and myself and a whole bunch of people I mean. And we're in there, you know, BS'ing about the golf trip, and Eberwein, they called me and said there's a Mr. Eberwein here to see you. I said, well, have him come in."

Question: "Okay."

Answer: "So when he came in I introduced him to Rob and gave him the paperwork and he was about -- he may have had somebody with him that day, John, but I don't remember. It just seems like he did."

Question: "Okay."

Answer: "I said, here's the -- you know, this is what I found out for you, you know."

Question: "Did you let him know what the circuit court judges had said?"

Answer: "Yes."

Question: "About how to use the form?"

Answer: "Well, no. The form was self -- you know, self-explanatory."

Question: "Okay."

Answer: "Just like district court, it's all form-driven, you know"

Question: "Okay."

Answer: "And this was a sample of one that I guess they had over there."

Question: "Okay. You gave it to Mr. Eberwein?"

Answer: "Yeah."

Question: "And did you recommend that he use it to take care of whatever issues he was having?"

Answer: "I just said, hey, you know, here's a copy of one."

Question: "Did you help him fill it out?"

Answer: "No, I don't think so."

Question: "Okay."

Answer: "I wouldn't -- I don't remember doing that."

Question: "And then did there come a time in May of 2020 where Mr. Eberwein called you from the St. Mary's County Detention Center?"

Answer: "Yes. May 26th if I remember correctly."

Question: "Okay. And did he have your cell phone? Your personal cell phone number?"

Answer: "Yes."

Question: "Okay. And had anyone ever called you from St. Mary's County Detention Center before?"

Answer: "Yeah."

Question: "Who else calls you from there?"

Answer: "Well, subsequent to that it was Jimmy Winters. Maybe not from St. Mary's County, but."

Question: "Okay."

Answer: "I know a lot of people call me from the D.C. jail. That's where I know a lot of people."

Question: "Okay. At the time of the call did you already know that Mr. Eberwein had been incarcerated?"

Answer: "Yes."

Question: "And how did you know that?"

Answer: "Kurt called me."

Question: "Okay. When did Kurt call you?"

Answer: "The first time I found out he was incarcerated was like on April 26th."

Question: "Did you meet with Kurt or did you have anything else -- or did you do anything else to assist him with his dad's issue?"

Answer: "Well, I met with Kurt. I think it was the evening of May the 26th. He brought me a copy of the protective order after I had a conversation with Johnny."

Question: "Okay. And then on May 26th, 2020, Mr. Eberwein calls you from the St. Mary's County?"

Answer: "Yes."

Question: "Detention Center?"

Answer: "That's what I -- that's to the best of my recollection. It was May 26th."

Question: "Okay. Did you talk to him about the case?"

Answer: "No. He started to talk about his case and I said don't talk about your case."

Question: "Okay. Did he talk to you about drafting a power of attorney that?"

Answer: "He asked me about a power of attorney."

Question: "Okay. And what did you tell him?"

Answer: "I told him I'd see what I could do. I think I could help him with it."

Question: "Okay. And what did you intend to do to help him with it?"

Answer: "I was going to go online, print out a form. You know, a power of attorney form and give it to him. But once I saw what Kurt had I may have even had one when I met with Kurt, but I wouldn't give it to him when I saw that there was a valid protective order in place because I told him it was a

crime. I think it would have been a crime for them to try and circumvent that protective order."

Question: "Did you talk to him about what power of attorney means?"

Answer: "Yeah. I think I explained to him that, you know, you're running a risk. You know, your son could go out and sell your house or something. I think -- yes, I did. Yeah."

Question: "Okay. And let me ask you about some of the information in that letter. It was indicated that you gave Mr. Eberwein informal advice about his case. Is that an accurate statement?"

Answer: "Well, I -- I don't know what you -- you know, what you're referring to. I mean, yes, I talked to him. Not about the pending charges but I did talk to Johnny, you know. Yes, I did."

Question: "Okay. And what do you consider informal advice?"

Answer: "I don't know. I mean, I wasn't -- nothing on the record. Nothing, you know, in a representative capacity. I just basically explained to him how the court system was working, that he wasn't going to get a trial in two weeks like he was anticipating. I explained to him that if he took a plea deal he'd probably get out, but if he didn't he's going to be sitting in jail for another six months. I basically explained to him how the court system is working at that particular time, which I do ten times a day. Lawyers are calling and saying what is going on with the court system at that time because it was right at the beginning of Covid."

Question: "Right. The letter also indicates that you cautioned Mr." -- and this is a word from the letter -- "that you cautioned Mr. Eberwein about the pros and cons of a power of attorney. Did you do that?"

Answer: "Yes."

Question: "Okay. What did you tell him about the pros and cons?"

Answer: "What happened was he wanted to get a power of attorney for his

son, and I told him, I said, Johnny, I said, if you get a power of attorney for your son he can do anything he wants and you can't stop him. And, you know, that's basically what I told him. I said, and his son, I think it must have been referring to Kurt, I said your son is only 23, 24 years old, you know. If he decides he wants to go to Acapulco tomorrow he can take your money and go. I mean, there's nothing you can do. You know, I didn't tell him precisely that but wanted him to understand, you know, he could do whatever he wants."

Question: "When you had discussions with Mr. Eberwein about the power of attorney, what was your understanding of why Mr. Eberwein was seeking a power of attorney?"

Answer: "My understanding was he was trying to get her out of the house."

Question: "Did it have anything to do with selling the house?"

Answer: "I don't remember that."

Question: "Judge Hennessy, just before you move on to kind of the next day with Mr. Winters's case, I just want to clarify a couple of things with regards to Mr. Eberwein's case before I forget. You had mentioned that Mr. Eberwein wanted to sell his house."

Answer: "He had something about -- he had said something about that to me, yes."

Question: "Okay. Do you know why he" –

Answer: "No."

Question: "Wanted to sell it?"

Answer: "I don't know."

Question: "And when you recommended the real estate lawyer to him and the lawyer he's asking you about did you know that his intention was to sell the house?"

Answer: "My understanding was that he wanted to sell the house, asked me for a real estate name, and I gave it to him."

Question: "Okay."

Answer: "I gave him David Martinez. Now whether he ever called David, I don't know."

Question: "Okay. The text messages that start on June 28th of 2020 at the bottom of the page, you'd asked Mr. Castro to call you and you said Johnny just called me from jail."

Answer: "Yeah. He was anticipating getting out on work release and,"

Question: "Okay."

Answer: "They didn't have work release and I didn't think Castro was aware of that and I just wanted to let him know."

Question: "The last part of that text he says all he kept asked me during sentencing is how to evict her."

Answer: "And I said figures."

Question: "Why would you say figures?"

Answer: "I don't know. Just Johnny, you know."

Question: "You were aware at that point he was trying to evict (Name of Victim 1) from the home?"

Answer: "You know, I don't know if I was or not, but I know that he wanted to get back in his garage. You know, that's where he makes his money."

Question: "Okay. On the next page is a text exchange dated September 7th, 2020. Can you tell me what Mr. Eberwein is talking to you about in that text message?"

Answer: "He's asking for a real estate lawyer."

Question: "Okay. And is this related to his intention to try and get (Name of Victim 1) out of the house?"

Answer: "To sell the house. My understanding was he wanted to sell the house."

Question: "Okay. And the attorney that you gave him was?"

Answer: "David Martinez."

Question: "Okay. How many times do you think you talked to Mr. Castro about Mr. Eberwein's case?"

Answer: "Well, I know I talked to him about the time when he was looking to retain him."

Question: "Okay."

Answer: "And then after -- excuse me -- after the plea when down he was authorized work release, but the State didn't tell him there's no work release. I mean, they entice him into taking a plea thinking he's going to be able to get out and go to work and then because that's the most important thing for Johnny. You know, he can sleep where the heck he wants. He's that kind of guy. But he is a tremendous provider. The guy can make money. And they didn't have work release, you know. So I talked -- you know, Johnny called me about that and I said, well, you know, somebody has to see the court, you know, for them to offer you -- the State to offer you work release and then tell you later there's no work release. You know, if somebody had done that in front of me, there would be some explaining to do. You know, you don't do that kind of nonsense. So I called Rob back and I said, Rob, this is malpractice. You need to get your ass down there -- excuse my language -- and get this straightened out, man. This is wrong."

Question: "Did you have any assistance with encouraging either Mr. Castro or Mr. Eberwein to seek the deal to begin with?"

Answer: "No. I know Johnny just wanted to get out the fastest way he could, and I think I told Johnny, you know, your case is going to trial in June. I said, Johnny, there ain't no trials in June. You know, there's not going to be trials until probably December so you can sit in jail for an extra seven months and maintain your innocence, or you could get out and start working and making money and take this plea."

Question: "Right. Did you give him any recommendations on what he should do?"

Answer: "I told him that if you want to sit in jail and maintain your innocence you're going to be there for a long time, or you can cut a deal and get out. I mean, it's a perverted concept and it's hard to believe that in 2022 the State of Maryland, that to maintain your innocence you've got to stay in jail. Whereas if you could go ahead and admit something, even if you didn't do it, you can get out, and it's just -- it's a hard concept to grasp and I went over that with him."

Question: "Did you have any discussions with Mr. Castro about filing an appeal in Mr. Eberwein's case at any point?"

Answer: "At one point in time I think I mentioned to him, well, if you're going to appeal it today is the last day you can appeal it."

Question: "How did you know that?"

Answer: "Because it had been 30 days since they -- you know, the deal had been cut."

Question: "Okay. Did you have any conversations with Mr. Eberwein about him trying to get (Name of Victim 1) out of the house?"

Answer: "Yeah. He told me he was trying to get her out of the house and I told him leave her alone. Once I found out there was a valid protective order I told him -- I said, Johnny, you're going to go to jail if you try to put this woman out of the house."

Question: "Did you recommend a real estate lawyer for him to try to do that?"

Answer: "He wanted to sell his house and he didn't know if he could do it with her in there."

Question: "Okay."

Answer: "And I said, look, let me give you a lawyer's name -- a real estate lawyer's name because I don't know. She may convey with the property, you know, I don't know. You know, I don't know how that works with a protective order."

Question: "Did you speak to anyone else other than Mr. Castro and his son, Kurt, about assisting Mr. Eberwein during this time?"

Answer: "Well, there came a point in time where I talked to Mr. Carrico."

Question: "Okay. During the November 2020 meeting with Mr. Carrico did you ask him to give you anything from Mr. Eberwein's file?"

Answer: "Yes."

Question: "What did you ask for?"

Answer: "The protective order."

Question: "Okay. Did he give it to you?"

Answer: "Yes. He gave me a copy of it. He didn't give me the original."

Question: "And that was the first time that you had seen it?"

Answer: "No. I saw it when Kurt brought me the thing on May 26th, but I didn't have a copy of it. I had just seen Johnny's copy."

Question: "During the context of discussing the case with Mr. Eberwein and his son, Kurt, did you ask your legal assistant to print out information from the Judiciary?"

Answer: "I do remember that. I called down -- see, what happens is, my office -- my office, there's two judge's offices and there's two on the other side, and in the middle is where the clerks work. The clerk that was working with me -- this is during Covid so we only had one judge there and one clerk."

Question: "Okay."

Answer: "The clerk that was working there was Stephanie at that time because I remember calling out to Stephanie. She doesn't sit out there. I thought she was sitting there. She is sitting downstairs. I did call out to her numerous times. I was going to ask her if she could help me get it up on the doggone screen because I don't know how to do it, but she never responded and I never -- and it was later that night that Kurt brought me the order so that I didn't need it after that. I mean, I had seen it and I explained to him it's a valid order."

Question: "All right. I'm going to kind to move towards the back of the text messages. If you could get -- and again, I'm sorry I don't have page numbers to give you -- to the text exchange that is dated in the middle, Thursday, August 12th."

Answer: "Okay. Got it."

Question: "Is that Mr. Ragan on Thursday, August 12th? And I assume that's 2021."

Answer: "Yes."

Question: "Okay. He says I am back behind the courthouse."

Answer: "Yeah."

Question: "Can you tell me what this text exchange is referring to?"

Answer: "He obviously needed cash or keys. I don't know which it was, but he needed something."

Question: "Okay. Keys to what?"

Answer: "To a house or a vehicle, I don't know. On the job, whatever they were doing they needed something."

Question: "Okay."

Answer: "I suspect it was probably -- it probably was money but I don't know."

Question: "Okay. And if you go farther down the text exchange you indicate on the right side of the page that my clerk is bringing it to you."

Answer: "Right."

Question: "Okay. By clerk, that's someone in the courthouse? One of the clerks?"

Answer: "Yeah. What happened is he's parked in the handicap drop-off area. That's the smoking area for the girls that work in the courthouse. One of the girls was going out to the smoking area. I was going to walk out there and give it to him but she volunteered to go out there and drop it off for me. But that's where they smoke. They're not allowed to smoke right up at the courthouse. They have to smoke over there by the handicap area and that's where he was parked."

Question: "Okay. And do the clerks often do these kinds of errands for you?"

Answer: "No."

Question: "Okay. And as a judge in the district court do you have a different access to case search than the public has? Do you have more information in your search?"

Answer: "I don't know how to do it. I know how to do the public one."

Question: "Okay."

Answer: "The girls know. You know, like Jessica or Stephanie or them. They know how to do all that kind of stuff. I don't know how to do that."

Question: "All right. During your testimony you referenced the girls. Are you referring to employees of the courthouse?"

Answer: "What do you -- I don't know what you're talking about."

Question: "You mentioned in certain circumstances that you ask the girls to look for things for you, either on case search or other ways."

Answer: "Yeah, because they know how to do it."

Question: "Okay. And who are the girls?"

Answer: "That's the three clerks."

Question: "Okay. And who are the three clerks?"

Answer: "Well, I don't know who they are now because Jessica has left."

Question: "Who were they at the time?"

Answer: "Jessica."

Question: "What's her last name?"

Answer: "Smallwood."

Question: "Okay."

Answer: "Joanna. I'm trying -- I can't remember her last name. She's married to a State trooper."

Question: "Okay."

Answer: "She's gone, too. And Stephanie Windsor."

Question: "Windsor?"

Answer: "Yes."

Question: "Okay. And when you ask them to look at cases on case search do you know how they're doing that?"

Answer: "Yeah. They come up to my office and they get it up for me."

Question: "Okay. Do you know whether that's a secure case search that's only accessible by those with authorization or whether it's public case search?"

Answer: "I don't know."

Question: "Okay."

Answer: "I don't know. See, I'm not very good with the computers. They are very -- the girls are outstanding with the computers. They can fix them. I mean, they can get anything out of them. I can't."

Question: "Then let's move on a little bit. Do you know James Winters?"

Answer: "Yes."

Question: "And when was the next time you talked to him after that?"

Answer: "I guess it was August 14th"

Question: "Okay. And what happened on August the 14th?"

Answer: "He called me, and I think he called me from James Ragan's phone."

Question: "Okay."

Answer: "I think. And he told me he'd been arrested. And he said she had fabricated an assault charge against him. And I said, 'Shut up right there.' I said, 'You stupid.' I mean, I was cussing him out. I said, 'I told you to stay away from the woman. How do you -- you know, how am I supposed to empathize with a dude who is that stupid?' You know, I mean, I was really ticked off at the guy, you know. And, you know, I don't know James Winters. I've met him three times in my life. And he obviously is not a real smart dude if he keeps putting himself in positions like that. So he has always texted and asked for more work. I won't. And, you know, I'm not -- not that I'm a general contractor, but older folks that go to our church will often come to me,

because they know I have rental properties, and say, 'Can you help me with this? Can you help me?' "I say, 'Yeah, I'll help him.' I mean, that's what I'm supposed to do, you know. And I'll get Jeffery and James Ragan, who is extremely talented. I mean, he's a plumber that can fix anything. "You know, I'll get those guys and supervise them while they're there. And I don't get anything for it. They pay them, or I'll pay them, and they pay me back. But that's how it works. You know, I mean, James Winters is the guy that I would never have on another job, because he's stupid, you know. I mean, he does good work, but I can't have that kind of nonsense in my life."

Question: "Did you understand at the time of that phone call that Mr. Winters had been arrested?"

Answer: "I don't know whether I really understood that he was under arrest. But he told me that, you know, he thinks he's getting arrested for her fabricating an assault charge against him."

Question: "Okay. And you are aware that Mr. Winters' arrest was captured on body-camera footage for the Maryland State Police?"

Answer: "Right. Well, my understanding is it was from St. Mary's County."

Question: "Either way?"

Answer: "Yeah."

Question: "It was caught on body camera?"

Answer: "Yes."

Question: "And that body-camera footage caught at least a portion of your interaction with Mr. Winters on the phone?"

Answer: "That's my understanding."

Question: "Okay, when you spoke to Mr. Winters at that time, did you tell him to do anything or not do anything as a result of his being arrested?"

Answer: "Not that I remember."

Question: "Did you tell him or ask him if he had a place to stay once he was

released?"

Answer: "I don't think so, but it's possible."

Question: "Okay. And did you at any point tell him not to say anything to the law-enforcement officers?"

Answer: "No. I told him to shut up. When he started complaining to me, I told him to shut up, shut up, you know. And I used some words that probably shouldn't use. But I told him to shut up, you know."

Question: "Okay. And based on the conversation that you had with Mr. Ragan, did you believe that (Name of Victim 2) -- that there was, you know, an imminent risk of harm to her?"

Answer: "There was no question."

Question: "Okay. Did you at any point consider contacting law enforcement?"

Answer: "Well, she wasn't there, so I felt pretty good. If she was there, I'd have gone down there."

Question: "Okay. And the next day being August 15th, 2020, okay, so tell me what happened the next day."

Answer: "Well, what happened was my wife and I were already planning on going down that way. Otherwise, I would have gone there myself. But we were planning on going to Point Lookout. And we went down there. When we got close, I texted him and told him to give me a call and, you know, make sure he's up and he's sober, you know. And I got down there, and I ran into -- you know, James was outside by the time I got there."

Question: "Got it. And then you said Mr. Davis was also there?"

Answer: "What happened was, I'm talking to James Ragan. And Justin MacRae, who I had never met before, comes up, introduces himself to me, tells me that they own the trailer park. I don't know if it's him or his parents or his grandparents, but his family owns that trailer park -- "

Question: "Okay."

Answer: "-- and that they don't want that woman on the property. And in fact he told me that, when they rented the place to Winters, she was excluded from being able to be in the property. They made a -- you know, this is what he told me. I don't know whether it's true or not, but -- "

Question: "And by her, just to be clear, are you referring to (Name of Victim 2)? "

Answer: "Yes."

Question: "Okay."

Answer: "So I'm talking to these two guys, and they're both livid, because she has torn the place up. And, you know, there's really no reason for it. But, you know, whatever, they were pissed."

"And while I'm sitting there talking to those two guys and trying, you know, to get them under control, big Jim comes out. And, I mean, this is a big dude. And, you know, he's coming at me. He's pointing his finger right at me. And he says, 'I saw.'"

"He's walking towards me. I saw it, too. And he says, 'I saw her do it before.' And he's pointing at me, walking directly to me."

"I think I said, 'What the heck?' So he starts explaining to me that he witnessed this woman fabricate this assault charge this day but that he had also seen her do it the prior time when James said she had fabricated it."

"Winters said she had fabricated it back in April. So I'm thinking to myself, man, you know, there might be some truth to, you know -- because I don't know whether this is true or not, you know. But I know these guys were ticked off, you know, that they are, you know, really agitated. And, you know, I start talking with them."

"And they said, 'Man.' I said, 'Are you guys telling the truth about this, you know, her beating her head against the wall?' I said, 'You know, this is hard to believe. You know, it really is.'"

"And they said, 'No, no, it's true.' "And they didn't -- you know, we

looked in the police report, and they all said, 'Yeah, she banged her -- you know, there's evidence she banged her head against the wall.' And they even showed me. They took me in the house and said, 'This is where she was banging her head up against the wall. And--'

Question: "They took you inside Mr. Winters' house?"

Answer: "Yes, yeah."

Question: "Okay."

Answer: "And that's where I saw she had defecated on the floor. And, you know, it was just disgusting. But be that as it may, I told the guys -- I said, 'Look,' I said. And they're all saying, 'I swear this is the truth,' because I'm questioning it."

"I don't -- you don't necessarily believe it, I swear. I said, 'Okay.' I said, 'If you guys are willing to swear and you promise me you won't go near this woman if she comes back, other than to serve her with a barring notice, I'll get the information to the court for you.'"

"And they were totally satisfied with that. They said, 'That's all we wanted.' They said, 'We told the police this stuff, and they just blew us off.' And they said this is exactly what happened."

"I said, 'Well, I'll do it for you.' I said, 'But you're going to have to swear to it.' And I told them, 'If you're lying, you guys could go to jail for this.'"

"And they said, 'We're not lying.' So but, you know, I don't know whose I took. But I know that Jim can't read very well, so I helped him. You know, he dictated. I wrote. And I can't remember whether -- whose Loraine wrote down for them. You know, I think she might have done Ragan. So I might have done two, and she did one. I just wrote down what they said."

Question: "Okay. And then you indicated that you would help take those statements in order to give it to the court --"

Answer: "Right."

Question: "-- to assist Mr. Winters?"

Answer: "Right."

Question: "And they all seemed satisfied with proceeding that way?"

Answer: "They felt comfortable with that."

Question: "Judge Hennessy, I'm going to show you what's been marked as Deposition Exhibit 1 and ask if you can identify that document, if you recognize it."

Answer: "This is Ragan's affidavit."

Question: "Okay. And could you identify the handwriting on this particular affidavit?"

Answer: "It's not mine."

Question: "It's not yours?"

Answer: "Yeah. Whether it's my wife's or James, I really don't know."

Question: "Okay. And tell me again what it is that you told the group about the purpose and significance of making sure we did these statements."

Answer: "Well, first of all, I impressed upon them that they were going to have to swear to it. They were swearing to me orally. I said, 'If you're willing to swear to it,' I said, 'and you promise me you won't go near this young lady,' I said, 'other than to have her barred from the property, you know, I'll get the information to the courts.'"

Question: "But did you give your wife any instruction that she was to notarize these statements?"

Answer: "Well, I told them I wanted it under oath. I mean, you know, they're swearing to it, going to swear to it."

Question: "Okay."

Answer: "You know, they're telling me they're swearing to it. And you want me to, you know, get this to the court. Let's swear to it."

Question: "Judge Hennessy, this has been marked as Exhibit Number 2. Does this

document -- do you recognize this document?"

Answer: "Yes. This is my handwriting."

Question: "Okay. And what is this document?"

Answer: "This is James Davis' affidavit."

Question: "Okay. And is it your handwriting on the first page?"

Answer: "Yes."

Question: "On the second page?"

Answer: "All three pages."

Question: "Okay. And so tell me how you draft it for him? What was the process that you went through to create this document?"

Answer: "I asked him to tell me what happened."

Question: "Okay."

Answer: "I wrote it, you know, wrote it down."

Question: "Okay. And did you write it as he was --"

Answer: "Yeah, contemporaneously with it."

Question: "Seeing it?"

Answer: "Yeah."

Question: "Okay. So the language in here, was this your summary of what he told you? Or was it the actual language that he used? "

Answer: "I may have paraphrased it, but I did read it back to him to make sure it was right. But I may have paraphrased some of it."

Question: "When you finished writing Mr. Davis' statement, you indicated you read it back to him."

Answer: "I'm sorry. Who?"

Question: "You read it back to him?"

Answer: "Mister who?"

Question: "Mr. Davis."

Answer: "Yeah, I did. I went over it carefully with him, because I know he

couldn't read. I didn't -- you know, I don't want to try to embarrass those guys, you know. And I may have brought MacRae in to be present when I read it back to him, because I --"

Question: "Okay. Did you read it back to him word for word?"

Answer: "Yes."

Question: "Okay. And did you ask him if he understood the statement?"

Answer: "Well, I asked him if it was true."

Question: "Okay. And what did he say?"

Answer: "He said yes."

Question: "Judge Hennessy, I'm showing you what's been marked as Exhibit Number 3. Do you recognize that document?"

Answer: "Yes."

Question: "Okay. And what is that document?"

Answer: "This is MacRae's, MacRae's affidavit."

Question: "Okay. This is Justin MacRae?"

Answer: "Yes."

Question: Okay. And whose handwriting is on the --"

Answer: "That's mine."

Question: "-- document? That's yours?"

Answer: "Yes."

Question: "Tell me about the process of creating Mr. MacRae's statement."

Answer: "The same as Davis. You know, he told me what happened, and I wrote it down. And, you know, I probably read it back to him, because I didn't know how well he reads or writes. A lot of those guys down there, believe it or not, can't read or write."

Question: "And in terms of the actual content of this statement, is it your recollection that he did take the statement to you, or was he paraphrasing what he was telling you?"

Answer: "I don't remember specifically, but he probably told me, and I wrote it down. So I may have paraphrased a little bit of it. But it's -- you know, I wanted to make sure it was what he was saying."

Question: "And once you had the statement complete, what, if anything, did you say to Mr. MacRae and Mr. Davis and Mr. Ragan on what was going to happen next?"

Answer: "I read them the riot act again. I said, 'You guys better be telling the truth, because these are sworn statements. Tell me now if there is anything that's not in here that's accurate.' And they swore to me that it's accurate."

Question: "Okay."

Answer: "And they swore to me that nobody would go near that girl."

Question: "Okay. And it was their understanding, based on what you told them, that you were going to get this to the proper people?"

Answer: "I'd get it to the court."

Question: "In the defense of Mr. Winters."

Answer: "Right."

Question: "Okay. And after that what was the next step that you took with regard to these statements in Mr. Winters' case?"

Answer: "I gave them -- well, I didn't know. I didn't have Kathy Batey's number, so I texted Jay West, Judge West."

Question: "And who is Kathy Batey?"

Answer: "She is the public defender for -- you know, public defender. But I would have -- if I had known that they had already told the police this, I would have called the state's attorney. But the state already knows this. So I figured, let me just give it to somebody that might be a little more concerned about it, you know, more, you know -- so I called Kathy Batey, and I told her about it."

"And she said she's not going to the St. Mary's County person, that Edith Fortuna was. And at some point in time I had a conversation with Edie

Fortuna about these."

Question: "Okay. And was it your understanding that Mr. Winters was set for bail review when?"

Answer: "Well, I didn't know. I suspected it would be Monday. So that's why I wanted to get it to them."

Question: "Based on the Friday?"

Answer: "Right."

Question: "Okay. When you contacted Ms. Batey, what did you say to her?"

Answer: "I said, 'I've got some, you know, information here that I think might be, you know, of help.'"

Question: "Okay. When you talked to Ms. Batey, did you make any arrangements to get the statements to her, to the public defendant's office through Ms. Batey?"

Answer: "You know, I don't remember that. But I did make arrangements at some point in time. They sent somebody by to pick them up."

Question: "And by they, do you mean someone in the office of the public defender?"

Answer: "Someone from the public defender's office came by and got them."

Question: "Okay. And did you give the other public defender the statements before or after you had talked to Ms. Fortuna?"

Answer: "After."

Question: "Okay. And when did you talk to Ms. Fortuna?"

Answer: "I don't know what time it was. It was either Sunday or Monday."

Question: "Okay. So what did you say to Ms. Fortuna?"

Answer: "I told her -- I said, 'You know, I've got this information, this exculpatory information that you might find valuable. Apparently they told the' -- you know, and I told her -- I said, 'I don't know if these guys are telling the truth, you know. But that's for the fact-finder to decide.' I said, 'These are swearing that this woman is fabricating this assault charge that this guy is being held on.'"

Question: "Okay. Did you tell Ms. Fortuna – did you give her your opinion on Mr. Winters during that conversation?"

Answer: "Well, it's funny that you ask that, because I saw what she put. She asked me, 'What is he like?'"

Question: "Okay."

Answer: "And I said the first thing -- words out of my mouth, 'He's an idiot.' I told him to stay away from this woman, and he didn't do it. And he got himself in the same situation before. And I said, 'But,' I said, 'he's punctual.' And I was, you know, explaining to her that, you know, he's a tradesman. He showed up on time, which is a shock. I told him about -- I told her that I found that he was trustworthy, because my wallet was sitting there for a good half hour while I went to the coffee shop. He could have easily stolen my money, but that, you know, I can't vouch to his -- you know, I can't be a character witness, because I don't know him. I'm just talking about particular instances."

"And the third thing I told them -- I said, 'He's a hard worker. That guy did a great job. And if he didn't bring that woman to the job site that day, I would have continued to use him on jobs.' But I can't have that, you know, stuff going on."

Question: "Okay. So after the statements, after you handed those over to the public defender's office, when was the next time you spoke to or saw Mr. Winters?"

Answer: "Well, I've never seen him again."

Question: "Okay."

Answer: "He called me from the jail."

Question: "Okay. And again did you expect his telephone call?"

Answer: "No."

Question: "And when he called you from the jail, how many times did he call you from the jail, about?"

Answer: "A couple of times, three times."

Question: "All right. And he called your --"

Answer: "Cell phone."

Question: "-- cell phone number? And what did you talk about?"

Answer: "He told me that --"

MR. BRENNAN: "Objection. The conversations speak for themselves. But you may answer the best you can."

THE WITNESS: "Okay. He was basically telling me that she wanted -- (Name of Victim 2) wanted to come forward and admit that she had lied. And, you know, I told him, you know, I'm not -- you know, basically telling him I don't want to get involved in this stuff. You know, I've already done more than I probably should have. You know, I really didn't want to get involved."

"But he said, 'Listen, she feels comfortable with you. She knows you a little bit. You know, those guys don't trust cops. You know, they really don't.'"

"And I said, 'Well,' I said, 'have her call me.' So she -- and she did. She called me, and she told me that she wanted to come forward and give a statement or an affidavit that she had lied in the Winters case, which I already knew she did, because everybody else -- you know, I mean, I already suspected that she did."

"And I told her -- I said, 'Listen,' I said, 'you know, what you are doing is confessing to a crime.' I said, 'You ought to talk to a lawyer. If you still want to give a statement to somebody, I'll get somebody to take your statement.' I wasn't going to do it. 'But you need to talk to a lawyer first.'"

Question: "And what did she say? "

Answer: "She said, 'Thank you.'"

Question: "What materials did you read over?"

Answer: "You know, the charging documents, things like that. I mean, you know, I mean, I know what happened. You know, I didn't really need to prepare a whole lot. I mean, my story has never changed. But, you know, that was about it."

"Mr. Brennan and I met yesterday, you know, discussed a few things. But, you know, that was not really much to prepare. I mean, you know, I did what I did. I didn't think I did anything wrong. If I did something wrong, I apologize. It certainly wasn't my intent to do anything wrong. I wouldn't have done something wrong and done it intentionally, knowing I'm being recorded. I mean, I'm not that stupid."

"I didn't think I did anything wrong. I thought I was well within the rules, based on what Judge Bell had told me, based on my reading of the rules, and based on what we've been learning at the, you know, judicial conferences for the last half decade."

Question: "Were you given any instructions on what to say or not say today?"

Answer: "No, just to be truthful. I tried to be truthful throughout this entire process. And if I've made a mistake, an honest mistake, you know, I don't have anything to hide. I'm not -- this is not a case where, you know, anything is in dispute, you know. I mean, I did what I did."

"And with regard to the Winters matter, you know, there's no way I could have stood by and let an innocent guy sit in jail any longer than he did. Obviously, I didn't do enough by just getting the affidavits, because he sat in jail for another month."

[Tr. 597, 17 – 621, 5; Tr. 865, 9 – 891, 19]

ADMISSIONS

Investigative Counsel read aloud multiple Admissions of Fact and Genuineness of Documents (“Admissions”) by Judge Hennessy into evidence in this matter. The

admissions were conclusively established pursuant to Rule 2-424(d).

The following Admissions were deemed admitted and read into evidence:

REQUEST NO. 1: You have served as a Judge of District Court of Charles County since February 1, 2005, and presently so serve.

REQUEST NO. 2: On or about April 26, 2020, you received a telephone call from Kurt Eberwein regarding his father, John Eberwein.

REQUEST NO. 3: On or about April 26, 2020, John Eberwein was incarcerated at the St. Mary's County Detention and Rehabilitation Center.

REQUEST NO. 6: Robert Castro, Esq., is an attorney handling criminal defense matters in St. Mary's County and has been since at least April of 2020.

REQUEST NO. 7: John Eberwein had met Robert Castro, Esq., prior to April 26, 2020, in your chambers at the District Court of Charles County.

REQUEST NO. 9: On or about April 26, 2020, you considered Robert Castro, Esq., a personal friend.

REQUEST NO. 22: Between April 25, 2020 and December 18, 2020, you told John Eberwein that he should contact a real estate lawyer.

REQUEST NO. 24: On or about July 26, 2020, you spoke with (Name of Victim 1).

REQUEST NO. 29: Between October 1, 2020 and the present, you spoke with Rudolf Carrico, Jr., Esq., regarding Mr. Carrico's representation of John Eberwein.

REQUEST NO. 35: Between November 9, 2020 and the present, you spoke and/or met with John Eberwein.

REQUEST NO. 36: You spoke with and/or met with John Eberwein after receiving notice of the investigation in this matter by letter from Investigative Counsel dated November 10, 2020.

REQUEST NO. 38: From April 22, 2020 to the present, you communicated with Kurt Eberwein via telephone as he utilized telephone number XXX-XXX-

XXXX.

REQUEST NO. 39: From March 8, 2020 to the present, you communicated with John Eberwein via telephone as he utilized telephone number XXX-XXX-XXXX.

REQUEST NO. 41: From March 8, 2020 to the present, you communicated with Robert Castro, Esq., via telephone as he utilized telephone number XXX-XXX-XXXX.

REQUEST NO. 42: On or about July 28, 2020, you called the office of Robert Castro, Esq., at telephone number XXX-XXX-XXXX.

REQUEST NO. 45: Your voice is heard speaking with John Eberwein on the telephone calls recorded by the St. Mary's County Detention and Rehabilitation Center identified as CSN12462114 and recorded on May 26, 2020; identified as CSN12614544 and CSN12615592 and recorded on June 28, 2020; identified as CSN12621000 and recorded on June 29, 2020; identified as CSN12622474 and recorded on June 30, 2020; identified as CSN12630328 and recorded on July 1, 2020; identified as 12760454 and recorded on July 27, 2020; identified as CSN12763944 and recorded on July 28, 2020; identified as CSN12793464 and recorded on August 3, 2020; and identified as CSN12809852 and recorded on August 6, 2020.

REQUEST NO. 46: You were aware that your voice was being recorded during the telephone calls recorded by the St. Mary's County Detention and Rehabilitation Center identified as CSN12462114 and recorded on May 26, 2020; identified as CSN12614544 and CSN12615592 and recorded on June 28, 2020; identified as CSN12621000 and recorded on June 29, 2020; identified as CSN12622474 and recorded on June 30, 2020; identified as CSN12630328 and recorded on July 1, 2020; identified as 12760454 and recorded on July 27, 2020; identified as CSN12763944 and recorded on July 28, 2020; identified as CSN12793464 and recorded on August 3, 2020; and identified as CSN12809852

and recorded on August 6, 2020.

REQUEST NO. 47: On or about August 14, 2020, you received a telephone call from James Ragan regarding James Winters.

REQUEST NO. 48: On or about August 14, 2020, you engaged in a telephone conversation with James Ragan regarding James Winters and agreed to speak with James Winters.

REQUEST NO. 53: On or about August 14, 2020, James Winters was arrested and held at the St. Mary's County Detention and Rehabilitation Center.

REQUEST NO. 54: On or about August 16, 2020, you and your wife, Loraine Hennessy, travelled to the location of James Winters's arrest on August 14, 2020.

REQUEST NO. 55: On or about August 16, 2020, you and your wife, Loraine Hennessy, travelled to the location of James Winters's arrest on August 14, 2020, and your wife brought with her a notary seal and/or stamp.

REQUEST NO. 58: Your wife, Loraine Hennessy, was a notary public on or about August 16, 2020.

REQUEST NO. 59: Your wife, Loraine Hennessy, is the Register of Wills of Charles County, Maryland, and has been since at least August of 2020.

REQUEST NO. 60: On or about August 16, 2020, you obtained handwritten affidavits from Justin MacRae, James Ragan, and Jim Davis (a/k/a Raymond James Duckett).

REQUEST NO. 61: On or about August 16, 2020, your wife Loraine Hennessy, notarized handwritten affidavits taken from Justin MacRae, James Ragan, and Jim Davis (a/k/a Raymond James Duckett).

REQUEST NO. 68: On or about August 16 or 17, 2020, you contacted Edie Fortuna, Esq., and spoke with her regarding James Winters.

REQUEST NO. 69: On or about August 16 or 17, 2020, Edie Fortuna, Esq., was a defense attorney with the Office of the Public Defender.

REQUEST NO. 70: Edie Fortuna, Esq., represented James Winters in the criminal matter arising out of James Winters's arrest on August 14, 2020.

REQUEST NO. 79: On or about August 16 or 17, 2020, you told Edie Fortuna, Esq., that James Winters was punctual and trustworthy.

REQUEST NO. 83: Your voice is heard speaking with James Ragan and James Winters via a cellular phone held by James Ragan in the body camera footage provided as Bates No. IC0027-IC0028 beginning approximately one hour and fourteen minutes into the body camera footage.

REQUEST NO. 84: Your voice is heard speaking with James Winters on the telephone calls recorded by the St. Mary's County Detention and Rehabilitation Center identified as CSN12925954 and recorded on August 27, 2020; identified as CSN12943032 and recorded on August 30, 2020; identified as CSN12950028 and recorded on August 31, 2020; and identified as CSN12953584 and recorded on September 1, 2020.

REQUEST NO. 85: You were aware that your voice was being recorded during the telephone calls recorded by the St. Mary's County Detention and Rehabilitation Center identified as CSN12925954 and recorded on August 27, 2020; identified as CSN12943032 and recorded on August 30, 2020; identified as CSN12950028 and recorded on September 1, 2020.

REQUEST NO. 87: From August 14, 2020 to the present, you communicated with James Ragan via telephone as he utilized telephone number XXX-XXX-XXXX.

REQUEST NO. 88: On or about August 31, 2020, you received telephone calls from telephone number XXX-XXX-XXXX.

REQUEST NO. 89: On or about August 31, 2020, you answered at least one telephone call from telephone number XXX-XXX-XXXX and spoke to Victim 2 (name withheld).

REQUEST NO. 90: On or about August 31, 2020, you communicated with

Victim 2 via telephone regarding James Winters.

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

FACT WITNESSES FOR INVESTIGATIVE COUNSEL

KURT EBERWEIN

Kurt Eberwein is the son of John Eberwein and Victim 1. He previously resided with both parents, but is currently living with his father. Kurt Eberwein testified he was present during the arrest of his father on March 20, 2020, but believed his mother, Victim 1, falsified information about Mr. Eberwein to obtain the Protective Order. John Eberwein was initially released from the detention but was arrested and charged days later for violation of the Protective Order. Kurt Eberwein was frequently contacted by his father during his incarceration and was concerned about the family's loss of income. Kurt Eberwein testified he would contact his father's attorney, Robert Castro, Esq., on his behalf, multiple times but only got in touch twice. [Tr. 80, 1-3] Kurt Eberwein stated his father requested he reach out to Mr. Castro "every day because he was unable to get in contact with him" and it was frustrating. [Tr. 81, 2-7] In one of the recorded calls between John and Kurt Eberwein, Kurt tells his father "I called Lou and told him the situation and stuff and then he contacted the lawyer for me and then the lawyer called." [Tr. 135, 12-14] At the behest of John Eberwein, Kurt Eberwein contacted Judge Hennessy to ask if he would accept Mr. Eberwein's calls from jail. [Tr. 85, 20 - Tr. 86, 1-6] Kurt Eberwein stated "the reason I would call Lou Hennessy and I called him for other --other times besides for my dad's thing, is to help me understand what legal documents and paperwork means because I don't know the big words that are used in stuff like that for legal things." [Tr. 123, 13-18]

KATHRYN BATEY, ESQ.

Ms. Batey is employed with the Maryland Office of the Public Defender, primarily in

Charles County, as the Deputy District Public Defender for District 4 (Charles, Calvert, and St. Mary's Counties) and works primarily in Charles County. Ms. Batey had appeared in front of Judge Hennessy in the Charles County District Court often since 2013. Ms. Batey had no personal or social relationship with Judge Hennessy. Ms. Batey testified that Judge Hennessy sent a text message to her cell phone. [Tr. 285, 6-14] Although Ms. Batey was unaware of how Judge Hennessy obtained her number, she called the Respondent in response to his text message. Ms. Batey recalled the discussion with Judge Hennessy referred to an individual who was likely to be on the St. Mary's County bond review list the following day. Judge Hennessy told Ms. Batey he had information related to that individual's accusations that he needed to pass along to the attorney. He mentioned he spoke to witnesses of the incident and needed to get statements he had taken to the attorney handling the bond review. Ms. Batey requested an attorney in her office who was assigned to appear in front of Judge Hennessy that day to pick up the documents and bring them back to the office. Once received, Ms. Batey forwarded the affidavits to Edie Fortuna, Esq., the Assistant Public Defender ("APD") assigned to represent Defendant 2 (Mr. Winters) in the bond review hearing. [Tr. 291, 9 - Tr. 293, 13] Judge Hennessy also shared information regarding James Winters work ethic, which Ms. Batey recalled "I think when I pressed Judge Hennessy, he said he did good work. He showed up when he was supposed to." [Tr. 323, 9-21]

JOHANNA "EDIE" FORTUNA, ESQ.

Ms. Fortuna is employed as an Assistant Public Defender in the Post-Conviction Unit. She was previously assigned to represent clients in Charles County and St. Mary's County from 2014 to 2020. Ms. Fortuna appeared in front of Judge Hennessy but they had no social relationship. Ms. Fortuna received communications from Judge Hennessy on her cell phone stating he had information on the bail review of James Winters, which would occur the next day. [Tr. 305, 20 - Tr. 306, 8] She stated "I was apprised that he had information, so I followed up on that. When asked who she received the information from, she stated "Ms.

Batey.” [Tr. 310, 5-9] Ms. Fortuna acknowledged Ms. Batey’s role as part of the management team in the Southern Maryland Public Defender’s Office. [Tr. 315, 11-14] During communications with Judge Hennessy, he gave Ms. Fortuna brief sketches about what the witnesses saw during the arrest of James Winters. Judge Hennessy provided Ms. Fortuna the affidavits of James Ragan, Jim Davis, and Justin MacRae, through Kathryn Batey, Esq. [IC17] At the August 17, 2020 bond review hearing for James Winters, Ms. Fortuna referenced her conversation with Judge Hennessy and stated “it’s also important to note that Judge Hennessy and his wife visited the trailer park over the weekend, I believe, and did secure some affidavits that are sworn and notarized . . . ” [Tr. 640, 10-14]

RUDOLF CARRICO, ESQ.

Mr. Carrico is a Maryland attorney, with a general practice, primarily in Charles, St. Mary’s, and Calvert Counties. Mr. Carrico has known Judge Hennessy for about twenty (20) years, mostly on a professional level, but occasionally communicated outside of professional duties. [Tr. 372, 6-16] Mr. Carrico has appeared before Judge Hennessy, as an attorney, at least one (1) to two (2) times a month in the last five (5) years, but not often in the last two (2) years. [Tr. 372, 17 - Tr. 373, 4] On October 7, 2020, Mr. Carrico initially met John Eberwein in-person at his office. Mr. Carrico testified John Eberwein was arrested the same day in violation of a Protective Order. [Tr. 375, 2-18] The following day, October 8, 2020, Rudolf Carrico, Esq., entered his appearance as counsel for John Eberwein. Mr. Carrico spoke with Judge Hennessy about John Eberwein in October of 2020, discussing the status and incarceration of John Eberwein due to the violation of the protective order. Judge Hennessy and Mr. Carrico had three (3) or four (4) conversations by phone while Mr. Eberwein was incarcerated. [Tr. 381, 4-7] Mr. Carrico testified that Judge Hennessy gave an opinion that extortion may have been occurring. [Tr. 379, 4-12] On November 19, 2020, Judge Hennessy called Mr. Carrico, initially requesting “a conversation of attorney/client privilege”, in which Mr. Carrico agreed to have “a conversation”. [Tr. 397, 15 - Tr. 398, 12] Judge Hennessy visited Mr. Carrico’s office to

converse regarding the case and requested a copy of the final Protective Order in the case. Mr. Carrico took notes of this conversation. [Tr. 399, 16- Tr. 400, 2] [IC13] Mr. Carrico stated although he did not need advice on handling Mr. Eberwein's criminal matter, he was willing to accept the information Judge Hennessy provided to him. [Tr. 432, 12 – Tr. 433, 15] Mr. Carrico terminated his representation of Mr. Eberwein in March of 2021 and had not spoken to Judge Hennessy about Mr. Eberwein after the termination.

DE BENE ESSE DEPOSITION TESTIMONY OF JAMES RAGAN

After receiving an Honorable Discharge from the United States Air Force, James Ragan returned to St. Mary's County, Maryland and became employed as a plumber. Mr. Ragan began working on Mike Mona's farm, where he met Judge Hennessy about fifteen (15) years ago. Mike Mona's farm is located along the same street of Judge Hennessy's property. Mr. Ragan and Judge Hennessy became friends over time, and Mr. Ragan would help with plumbing and other odd jobs on Respondent's properties. Mr. Ragan testified he worked for Judge Hennessy on and off, about one (1) to two (2) times a week. He charged Judge Hennessy a friendly rate stating "I just usually charge him like \$40 or \$50 bucks on stuff . . . I don't charge him like normal plumbers would charge him." Mr. Ragan received about Five-Thousand Dollars (\$5,000.00) per year from Judge Hennessy. [IC 15] [Tr. 812, 10-17] Mr. Ragan never received a 1099 tax form. [Tr. 815, 9-20]

As Mr. Ragan viewed Judge Hennessy as a father figure, Mr. Ragan informed Judge Hennessy of his drug problem and asked him for help, stating "because I was friends with Lou . . . I was able to talk to him." [Tr. 715, 11-12] Mr. Ragan affirmed Judge Hennessy did not hesitate lending help and made phone calls to the president of Veteran Affairs to confirm programs were available to Mr. Ragan. Mr. Ragan admitted to having problems with his temper, and would, at times, call Judge Hennessy to help calm him down, stating "he usually calms me down and tells me what to do." [Tr. 717, 2-15] James Ragan worked as a maintenance man at Christmas Tree Trailer Park, where James Winters was once a tenant, and stated he "got to know him a little bit, not very much. But talked to him a few

times”. [Tr. 720, 18-20] Mr. Ragan also stated he did not really know Victim 2/Mr. Winters girlfriend, saying “. . . I met her, like twice”, but he did observe the toxic relationship between Mr. Winters and Victim 2. [Tr. 722, 2-13] Mr. Ragan testified he was present the day Mr. Winters was arrested for the alleged second-degree assault against Victim 2. He admitted contacting Judge Hennessy during the arrest because he was angered that James Winters was unfairly arrested. [Tr. 727, 14 - 728, 2] Mr. Ragan was asked if Judge Hennessy had spoken to Mr. Winters the day of his arrest, he responded “He might have. I’m not sure. I don’t remember but he might have.” Mr. Ragan was also asked if he asked Judge Hennessy to speak to Mr. Winters and he responded, “I might have . . . ” and “I could have . . . I probably did. I’m not sure.” [Tr. 766, 3 - 767, 3] Mr. Ragan admitted to calling Judge Hennessy another time, the same day, and asked “what can I legally do?” to remove Victim 2 from the property. [Tr. 734, 7-17] Mr. Ragan stated he was not trying to get Judge Hennessy in trouble; Mr. Ragan was upset after the Winters’ arrest. [Tr. 762, 5-9] A day or two following the arrest, Mr. Ragan explained he saw Judge Hennessy and his wife, Loraine Hennessy, stating “. . . they came down and just took me and Mr. Duckett’s statements and Justin MacRae’s.” [Tr. 735, 21 – Tr. 736, 6] Mrs. Hennessy notarized and signed the statements. [IC17(A-C)] [Tr. 777, 3-6] Mr. Ragan explained he was not aware of why Judge Hennessy had introduced the idea of drafting a statement but stated “[h]e was going to turn them in. That way it would help Jimmy out.” [Tr. 788, 4-13] Mr. Ragan appeared in court two (2) times for Mr. Ragan, but had no further communications with Judge Hennessy about Mr. Winters matter, stating “[a]fter the statements, that was about it.” [Tr. 801, 4-10]

DE BENE ESSE DEPOSITION TESTIMONY OF JAMES “JIM” DAVIS

Jim Davis (a/k/a Jim Duckett) was a tenant in the Christmas Tree Trailer Park Community for four (4) years, residing next door to Mr. Ragan, and about three (3) doors down from James Winters. [Tr. 829, 8-12] Mr. Davis testified he was present the day of James Winters arrest in August of 2020 and says he was familiar with James Winters, stating “yeah, I

know him . . . I don't know him know him like buddy-buddy know him, but I know him.” Mr. Davis also acknowledged he has met Victim 2/Mr. Winters girlfriend. [Tr. 829, 18-19 & Tr. 830, 10-14] Mr. Davis testified he was present during the altercation between Mr. Winters and Victim 2, and when the police showed up. Mr. Davis stated the police arrested Mr. Winters saying “he didn't put up no fight or nothing. They arrested him, took him away.” [Tr. 834, 3-6] After Mr. Winters was arrested and placed in the cop car, Mr. Davis says Mr. Winters asked to speak to Mr. Ragan, pleading “Call somebody, man. She's lying on me . . .” Mr. Davis was not sure who may have been called that day. Mr. Davis shared that no further discussions between himself and others occurred after the incident, saying “I never heard nothing else about it from them.” However, he continued stating “I discussed it a little bit with Hennessy. I seen him down there talking to Ragan. But I know Mr. Hennessy. I've been in front of him a few times, plus I worked for Mike Mona.” [Tr. 839, 21 - Tr. 840, 11] Mr. Davis approached Judge Hennessy at Mr. Ragan's house and joined the discussion about the James Winters matter, explaining “Yeah I seen, you know -- and I told him what had happened and everything.” [Tr. 841, 7-14] He offered to give Judge Hennessy a statement stating, “If you write it, I'll read it, and I'll sign it” due to his trouble writing. [Tr. 844, 17 - Tr. 845, 4] Mr. Davis also stated he was familiar with Judge Hennessy's wife, Loraine Hennessy, “from the Charles County Courthouse” who was present with Judge Hennessy at the time. James Davis says he gave Mrs. Hennessy his ID and she notarized his statement, “. . . she did sign it, yeah . . .” and “. . . she notarized it. Mr. Hennessy gave her the statement and everything.” [Tr. 848, 8- Tr. 849, 1; Tr. 850, 13-19] Mr. Davis said he was surprised to see Judge Hennessy and his wife that day, as he had only seen the judge once before to pick up a resident, but had never seen his wife in the community. [Tr. 853, 21 - Tr. 854, 7] Mr. Davis stated he has not had any conversations about Mr. Winters' incident since the arrest and also shared “to tell you the truth, I haven't even seen Judge Hennessy since that day.” [Tr. 854, 16-21]

CHARACTER WITNESS TESTIMONY FOR JUDGE HENNESSY

JUDGE STEVEN G. CHAPELLE, RETIRED

Judge Steven G. Chapelle is a retired judge of the Circuit Court for Charles County, sworn-in in 1995 until fully retiring in 2021. Judge Chapelle met Judge Hennessy twenty-five (25) years ago as a practitioner in the Charles County Circuit Court in the late 1990's. Judge Chapelle stated "he got on the bench with me -- I would consider him a close friend." Judge Chapelle expressed his interactions with Judge Hennessy have been in professional and personal capacities. Judge Chapelle affirmed "Judge Hennessy has a very deeply held belief or conviction that we should help those that are disadvantaged or in need and be kind to those who need help." Judge Chappelle further testified "I would say that there's sort of a general result of that . . . everybody he meets every day is treated respectfully, kindly, encouraged, polite. That's sort of standard." Judge Chapelle shared stories about Judge Hennessy taking in young, troubled people, providing them a home and family, or reaching out to programs and resources, such as rehabilitation centers, to them help. [Tr. 931 - 940]

ROBERT L. DEAN, ESQ.

Robert L. Dean, Esq. is a Prosecutor and a Special Assistant State Attorney for Prince George's County in the Cold Case Homicide Unit. He is also a consultant on the Rule of Law Project Overseas. Mr. Dean testified he initially met Judge Hennessy when he was Detective Hennessy, and a second time at a trial for suspects of a serial home invasion crime, in which Judge Hennessy's mother was the victim. Mr. Dean testified "and from that day, we have maintained a friendship for well over 30 years." Mr. Dean discussed meeting Judge Hennessy for dinner with talks about law, prosecution, and family. Mr. Dean testified Judge Hennessy would talk about individuals Judge Hennessy would hire to maintain his properties, and stated "I don't know the name of these people. I just know that these people had troubled lives." He also stated Judge Hennessy would "engage with them and develop relationships with them and help them. That's what he has done and apparently still does . . ." Mr. Dean offered " . . . he becomes involved in other people's problems . . ."

. much more so than I would. He’s got a very open heart.” [Tr. 941 – 953]

DR. ANTHONY J. PINIZZOTTO

Dr. Anthony J. Pinizzotto is a Roman Catholic Priest in Arlington, Virginia, and practices part-time as a Clinical Forensic Psychologist; he also worked for the FBI for 20 years. Dr. Pinizzotto met Judge Hennessy when he was a rookie in the Metropolitan Police Department and the two had to communicate about a shooting crime. Over time, Dr. Pinizzotto and Judge Hennessy became professional and social friends. Dr. Pinizzotto acknowledged his relationship with Judge Hennessy’s family, stating “I’ve known Loraine since before they were married, and I attended their marriage. I baptized all of his children.” Prior to being geographically separated, Dr. Pinizzotto expressed he would see Judge Hennessy on a regular basis, stating “frequently I would get together with Judge Hennessy while he was a . . . captain on the police department and we would spend time on the street. And I would respond to calls with him . . . ” Dr. Pinizzotto says he was impressed with Judge Hennessy’s concern and compassion in the line of duty as a member of the Metropolitan Police Department. Dr. Pinizzotto testified Judge Hennessy would say “we . . . should be expected and I expect that we treat every victim as if it were a family member.” [Tr. 955- Tr. 967]

WINIFRED RYANS

Winifred Ryans is a retired Maryland State Trooper who worked as a bailiff in the District Court for Charles County for nine (9) years. As a bailiff, Ms. Ryans was assigned to Judge Hennessy’s courtroom two (2) to three (3) times per week. Ms. Ryans expressed she watched Judge Hennessy and listened to how he spoke with witnesses, victims, prosecutors, defense attorneys, females and males. She states “. . . I have never in all these years, heard him be disrespectful or – or bias in any way . . . ” She added that Judge is straightforward and “he speaks the truth at all times.” Ms. Ryans stated she had faith that her own family would get treated fairly, if they ever had to come before Judge Hennessy.

She points out that when people, such as defendants or witnesses or victims, ask how Judge Hennessy is, she responds “he’s fair.” [Tr. 1239 – 1245]

JESSICA SMALLWOOD

Prior to working for the Department of Defense, Jessica Smallwood was employed as a clerk in the District Court for Charles County for eleven (11) years. Ms. Smallwood interacted with judges daily and worked with Judge Hennessy as a full-time courtroom clerk for eight (8) years. Ms. Smallwood gave her opinion, based on personal knowledge of Judge Hennessy’s character stating, “I have never seen him biased against women or anyone for that matter” and that she was able efficiently do her job because based on the charge of a person and their record, “he does the same for everybody”. Ms. Smallwood expressed Judge Hennessy is “. . . very respectful. He treats everybody the same whether male, female, black, white. It doesn’t matter. He’s very friendly . . . very easy to get along with.” [Tr. 1246 – 1252]

RUBEN CASTANEDA

Ruben Castaneda is currently a journalist for U.S. News and World Report; he previously worked for the Washington Post for eleven (11) years. Mr. Castaneda initially met Judge Hennessy at a shooting crime scene when Respondent was a homicide detective and Mr. Castaneda was a Washington Post reporter. Mr. Castaneda communicated with Judge Hennessy many times while Judge Hennessy was leading the Homicide Unit of the D.C. police force stating, “. . . for periods of time we—it seemed that we probably talked an average of once a day and sometimes multiple times a day” Mr. Castaneda testified Judge Hennessy was “of the highest character anyone could ask for”, expressing he was extremely honest and reliable. He believed Respondent respected the law and would do anything he could to find justice for victims. [Tr. 1253 – 1257]

HEARING TESTIMONY OF JUDGE W. LOUIS HENNESSY

Judge Hennessy, pursuant to an agreement of the parties, provided an allocution statement to the Commission which included the following:

Judge Hennessy began his allocution statement acknowledging that the facts of the case are not in dispute, stating “I did everything that they said happened.” [Tr. 971, 9-10] Judge Hennessy spoke for over four (4) hours expressing his belief that a memoir of the background of his life would provide an understanding of the behaviors in this case. Judge Hennessy was born in Washington, D.C., raised by two (2) parents who worked for the Catholic Church. As he got older, he recognized his parents had substance abuse issues; he was compelled to move out at the age of fifteen (15). Judge Hennessy stated there were people who really looked out for him and made sure he had a decent place to stay. He expressed his thankfulness and stated “I always wanted to fulfill that role for somebody else.” [Tr. 974, 3-4]

Judge Hennessy became a father and a husband at a young age, resulting in his attempting to join the Marine Corps to receive health insurance for his family, but he was too young. Judge Hennessy became a part-time cadet with the D.C. Police Department, attending school in the morning and working in the evenings. He was also given the opportunity to work at the Police Boys Club as a coach in basketball and boxing; he developed great relationships with disadvantaged kids in the community. Judge Hennessy recalled how members of law enforcement would refer negatively to people in their trainings, labeling them as targets, subjects, or suspects, practically dehumanizing them. He did not join the police department to fight, but to try to help people. Judge Hennessy expressed there were numerous instances in his career that were difficult, from losing kids he developed close relationships with, to having to kill in the line of duty. Judge Hennessy explained a situation where he had to kill a person, whom he had a personal relationship with, who had a gun pulled on a woman. He stated “. . . when allegations were made that I’m biased against women, my God, I kill people trying to hurt women. How am I biased against women?” [Tr. 994, 14-16] He continued to share various experiences during his

time in law enforcement with the D.C. Police Department. The experiences not only introduced him to the justice system [Tr. 1005, 4], but molded him as a human being. Judge Hennessy testified he recognized life is not fair and our judicial system is not fair. [Tr. 1026, 8-10]

Judge Hennessy proclaimed if he knew becoming a judge would mean he would not be able to help people, he does not want to or need to be a judge. He stated “I was making more money as a lawyer. I don’t need to be a judge.” [Tr. 1033, 15-16] He continued saying “I’ve never in my career identified myself as a judge or introduced myself as a judge. Everybody knows me as Lou.” [Tr. 1033, 17-19] During his tenure as a sitting judge, Judge Hennessy had the privilege to develop a program speaking to residents at Reality House, a substance abuse treatment program. Judge Hennessy believed he never represented anyone in the matters at hand, and only offered guidance, just as he did at the Reality House. Judge Hennessy continued to express “I think I’m doing the right thing by trying to help people . . . if I’m doing the wrong thing by talking to somebody and evaluating their case that I know I’m not going to hear, I didn’t think I was doing anything wrong.” [Tr. 1075, 9-12] In addition, Judge Hennessy believed his employment offers to the troubled gentlemen he crossed paths with was the right thing to do, as he was “being part of the community and being part of . . . trying to help disadvantaged folks out.” [Tr. 1079, 10-15] He further stated, “I think me being a judge will do nothing but enhance the credibility of the court system in these people’s eyes.” [Tr. 1079, 13-15]

I. FINDINGS OF FACT.

A. Judge Hennessy was, at all times applicable to the allegations contained in the Charges, a Judge of the District Court of Maryland in Charles 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). In the midst of the Hearing, Judge Hennessy advised the Commission he submitted a letter of retirement to

Governor Hogan and the judiciary, effective on June 30, 2022. Although the retirement letter did not include language that Judge Hennessy would not seek to sit as a Senior Judge or seek judicial office in the future, Respondent confirmed he would not attempt to return to the bench in response to questions from the Commission. Judge Hennessy, nor Investigative Counsel, requested to postpone the matter and wanted the Hearing to proceed. Judge Hennessy, in particular, wanted the Commission to make findings in this case to assist other judges. As Judge Hennessy will be a member of the bench until at least June 30, 2022, the Commission's jurisdiction continues.

B. Upon thorough review of all of the evidence at the hearing (noted supra), evaluation of the exhibits, the video recording of the James Winters arrest on August 14, 2020, audio recordings, witness testimony, deposition testimony read into evidence, the evidence received and summarized in the Chronology above, and the Admissions read into evidence, the Commission found Respondent's conduct was sanctionable and violated the Maryland Code of Judicial Conduct.

C. As to CJD 2020-025, the Commission found that Judge Hennessy committed sanctionable conduct in violation of Maryland Rule 18-101.2 when:

Respondent exceeded his role as a Judge by interjecting himself into legal disputes where litigants were already represented by lawyers, giving a misrepresentation of the Judiciary and exhibiting a lack of integrity. Public confidence was eroded when Judge Hennessy provided legal advice to Criminal Defendant 1 John Eberwein and Criminal Defendant 2 James Winters. Respondent communicated with the victims and witnesses identified in the cases. These actions conflated and gave the impression that this is how Judges conduct themselves. Judge Hennessy's initial and continued acceptance of jail calls from detained individuals, and affirmative actions taken on behalf of the detained individuals gave the appearance of impropriety. Respondent knew what John Eberwein's call would involve because he previously met with Kurt Eberwein about the matter. He didn't want to speak to another judge about John Eberwein's case because he would "light me up" [IC3]; it was evident Respondent had an awareness that he was engaging in

misconduct. Judge Hennessy also made ill-advised statements regarding women by referring to his staff as “the girls” and when discussing with John Eberwein a lack of appreciation for what he previously did for Victim 1, Judge Hennessy remarked “[w]omen have short memories man, you know”. [IC3] [Tr. 496, 19 - 20]

Judge Hennessy stepped out of his duties as a judge when he took affidavits from witnesses in a criminal case, had his wife notarize the affidavits, and distributed them to the Office of the Public Defender. Conducting an investigation on his own conformed the judge into an active witness in an open investigation. The judge became Detective Hennessy again with the investigation, interviews, and affidavits. Prior to drafting the affidavits, Judge Hennessy provided legal advice to Mr. Winters while he was being arrested by law enforcement. He interfered with the investigation by telling James Winters not to speak and provided legal advice with comments such as: “Stop talking . . . get pictures,” “have a place to stay” (so the defendant could get out faster), “you need to give it to the lawyer,” and “I’m telling you what you need to do.”[IC14] Respondent’s actions give new meaning to “activist judge”. Respondent provided information and character evidence for Mr. Winters that was used by APD Fortuna at a court hearing. A party excluded demonstrates a lack of impartiality and unfairness of the part of the judiciary as perceived by a reasonable mind.

In addition, Respondent received a direct economic benefit by paying James Ragan below market rates (\$40-\$50) for plumbing services performed on the judge’s properties.

Judge Hennessy indicated he was following Christ instead of the law, stating “My commitment was to Christ to look after his people, not to the law. That’s secondary.” [Tr. 1033, 7-8] and “my default position is what would Christ do under the circumstances.” [Tr. 1223, 8-9] Although he should have been functioning solely as a judge, Respondent alternated between being a lawyer, social worker, and detective in advocating for John Eberwein and James Winters.

D. The Commission found that Judge Hennessy’s conduct violated Maryland Rule 18-101.3 when:

Respondent took affidavits from witnesses regarding a criminal matter involving James Winters, provided them to attorneys at the Office of the Public Defender, who used the affidavits at a court hearing; the affidavits from a “well respected individual . . . ” [Tr. 652, 1-5] could have combined to affect a better outcome for Mr. Winters. Judge Hennessy used his judicial influence to extend his economic interest by assisting and obtaining loyalty from troubled individuals, utilizing their services at low pay/reduced rates, providing legal advice, and ultimately breeding loyalty and continuous services. Judge Hennessy’s conduct of consistent referrals solely to Robert Castro, Esq., assisted the economic interest of Mr. Castro. Judges cannot and should not make referrals to a specific lawyer. Judge Hennessy also met with Rudolf Carrico, Esq. regarding Mr. Eberwein’s case, in which Judge Hennessy gave his opinions on the case. Judge Hennessy also requested to meet in-person and to see the Protective Order in the case; Mr. Carrico obliged. Mr. Carrico stated he was willing to accept any feedback Judge Hennessy would give him and took notes on their conversation. Mr. Carrico’s willingness to listen to Judge Hennessy’s opinions and oblige his requests can reasonably be perceived to be a result of Respondent’s senior stature in the power dynamic between an attorney and judge. It is also likely Victim 1 and Victim 2 were willing to speak to the Respondent about their legal situations due to his judicial position.

E. The Commission found there was insufficient evidence to conclude Judge Hennessy’s conduct violated Maryland Rule 18-102.1.

F. The Commission found that Judge Hennessy’s conduct violated Maryland Rule 18-102.2 when:

Respondent participated in independent conversations with multiple parties involved in matters pending before a court (even though the matters were not on Respondent’s docket), including securing affidavits on behalf of a criminal defendant before the court. Judicial duties include fairness in all he/she does; when a judge acts to advance the cause of any person, he/she acts in diminution of the opportunity for all litigants to be fairly heard. The accumulation of extensive ex parte communications

between Judge Hennessy and the parties did not and do not cure the unfairness and partiality. Judicial duties do not only apply when a judge is on the bench, but also in his/her chambers, and outside of the courthouse. Judge Hennessy attempted to direct staff to perform case research to further his advocacy and assistance for a party, while in chambers, and during judicial hours.

G. The Commission found there was insufficient evidence to conclude Judge Hennessy's conduct violated Maryland Rule 18-102.3.

H. The Commission found that Judge Hennessy's conduct violated Maryland Rule 18-102.4 (b) and (c) when:

Respondent intended to use MDEC to pull up a protective order due to his personal relationship with John Eberwein. Judge Hennessy sought assistance from a staff member to assist with gaining access to the protective order. Respondent proved to be easily accessible to persons, such as James Ragan, John Eberwein, and James Winters, inviting them to call on a regular basis with a willingness to access information, perform service, and assist with communications with Robert Castro, Esq. Respondent was also easily accessible and provided information to Robert Castro, Esq. Defendants were using him as a lawyer to get legal advice. Judge Hennessy talked to the accused (Mr. Winters) while he was being arrested, giving the impression that any person can influence the judge. Judge Hennessy obtained affidavits and delivered them to the Office of the Public Defender for an upcoming hearing. It was clearly established Judge Hennessy permitted family, social, and financial interest, or relationships to influence his conduct and judgement.

I. The Commission found that Judge Hennessy's conduct violated Maryland Rule 18-102.9 when:

Respondent made sole referrals to Robert Castro, Esq., spoke to litigants in pending and impending matters in the neighboring jurisdiction of St. Mary's County, and continuously had conversations with defendants and victims (with and without representation) correcting or guiding them within these conversations. Judges should not approach witnesses in cases, especially with no notification to their respective counsel.

Judge Hennessy gave a tactical advantage to both, John Eberwein and James Winters, when requesting they call him back, as well as his advocacy on their behalf with Robert Castro, Esq., Rudolf Carrico, Esq., and the Office of the Public Defender.

J. The Commission found that Judge Hennessy's conduct violated Maryland Rule 18-102.10 when:

Respondent notified Johanna Fortuna, Esq. that a criminal defendant, James Winters, was being railroaded by the judicial system; that information was utilized to impact the case. Judge Hennessy made statements to Robert Castro, Esq. about Victim 1 to affect his representation of Mr. Eberwein in the criminal proceeding. (IC8) Judge Hennessy accepted calls from inmates at the St. Mary's County Detention and Rehabilitation Center with full knowledge his statements would be recorded and could be monitored and listened to by jail personnel, and State's Attorneys. Judge Hennessy collected affidavits on Mr. Winters' behalf from witnesses, which were filed in his case before the court by his attorneys.

K. The Commission found that Judge Hennessy's conduct violated Maryland Rule 18-102.12 (a) when:

Respondent attempted to use court staff to perform research on the computer system on court time, for his own purposes and not official court business, regarding information on a pending case(s). Although he was unable to reach the staff member, he continued to call out her name "Stephanie!" [IC3 at 5:30] [Tr. 453, 17-19] to have her perform the task. In a recorded jail call between Judge Hennessy and Mr. Eberwein, Judge Hennessy informed Mr. Eberwein "I wish I had a copy of her protective order. Maybe I can get one of the girls to pull it up on the system", indicating he would attempt to check court records regarding the defendant's case. [Tr. 451, 17-19] Text messages between Judge Hennessy and Mr. Castro included communications of release dates and hearing dates. Respondent had a staff member drop off money to James Ragan on courthouse property. In addition, Respondent's wife, Loraine Davies Hennessy, who is also a court official, was present with Judge Hennessy to notarize the handwritten affidavits that were obtained from three (3)

witnesses present during James Winters' arrest.

L. The Commission found there was insufficient evidence to conclude Judge Hennessy's conduct violated Maryland Rule 18-102.15.

M. The Commission found that Judge Hennessy's conduct violated Maryland Rule 18-103.1 (c) and (e) when:

Respondent continuously proceeded with attempts to retrieve information for criminal defendants, John Eberwein and James Winters with use of court computers by himself or court staff for his advocacy efforts. Respondent performed many acts for his contractors, including calls, text messages, meetings, obtaining and sharing affidavits, and speaking to victims. In addition, the "[w]omen have short memory spans" and "illegal alien" comments regarding Victim 1 could be considered discriminatory and/or expressions of prejudice. [Tr. 496, 19-20 & Tr. 1178, 10-11] [Tr. 403, 12-14]

N. The Commission found that Judge Hennessy's conduct violated Maryland Rule 18-103.10 when he:

Respondent acted in a representative capacity by giving legal advice to John Eberwein, Kurt Eberwein, Victim 1, James Winters, Victim 2, Robert Castro, Esq., and Rudolf Carrico, Esq. Respondent took the initiative to draft and deliver affidavits to the Office of the Public Defender on behalf of James Winters for a pending court hearing. Judge Hennessy explained the considerations for a Power of Attorney and plea agreement with Mr. Eberwein and his son, Kurt Eberwein. Judge Hennessy, acting as an advocate, spoke with Victims 1 and 2 regarding their positions in criminal matters involving John Eberwein and James Winters. Judge Hennessy explained the risks to Victim 2 if she recanted the assault allegation against Mr. Winters. During James Winters initial arrest on August 14, 2020, Judge Hennessy gave advice to Mr. Winters while being arrested advising: "don't say anything" and "tell them you have a place to stay". [IC14] Respondent was actively involved in Mr. Castro and Mr. Carrico's decision-making and representation of John Eberwein. [IC 8]

II. CONCLUSIONS OF LAW.

A. The Commission has both subject matter jurisdiction over the above-entitled case and personal jurisdiction over Judge W. Louis Hennessy, 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 W. Louis Hennessy 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 in advancing the economic interest, by referring clients solely, to Robert Castro, Esq. (CJD pp. 6, 9, 56), [IC8] and providing a tactical advantage to the referred clients and Mr. Castro by engaging in substantive communications with the attorney throughout the periods of representation:

June 28, 2020 – (a) Judge Hennessy and Mr. Eberwein (while incarcerated) spoke via telephone, in which Judge Hennessy explained the process of entering a plea and that it is the quickest way to be released. (b) Judge Hennessy texted Mr. Castro to call him and that Mr. Eberwein just called him from jail.

July 20, 2020 – Judge Hennessy texted Mr. Castro asking about Mr. Eberwein's hearing.

July 27, 2020 – Mr. Eberwein contacted Judge Hennessy asking about the conversion of work release to home detention due to COVID-19. Judge Hennessy advised he spoke to Mr. Castro, who filed a motion for

reconsideration on emergency release and informed Mr. Eberwein that Judge Hennessy can look up the case to check the motion filed by Mr. Castro. Judge Hennessy also told Mr. Eberwein that Victim 1 has texted and called him numerous times and informed her about the motion filed by Mr. Castro. [IC3].

August 30, 2020 – James Winters contacted Judge Hennessy from St. Mary’s County Detention & Rehabilitation Center requesting assistance in securing an affidavit from Victim 2 recanting her assault allegations against him. Judge Hennessy informed Mr. Winters that he will reach out to Mr. Castro on his behalf.

Judge Hennessy’s Deposition Transcript Excerpts

Question: “Okay. The text messages that start on June 28th of 2020 at the bottom of the page, you’d asked Mr. Castro to call you and you said Johnny just called me from jail.”

Answer: “Yeah. He was anticipating getting out on work release and,”

Question: “Okay.”

Answer: “They didn’t have work release and I didn’t think Castro was aware of that and I just wanted to let him know.”

Question: “Did you have any discussions with Mr. Castro about filing an appeal in Mr. Eberwein’s case at any point?”

Answer: “At one point in time I think I mentioned to him, well, if you’re going to appeal it today is the last day you can appeal it.”

Question: “How did you know that?”

Answer: “Because it had been 30 days since they – you know, the deal had been cut.”

(CJD pp. 7, 20-21, 23) [Tr. 459-460]; those actions are proof of, and constitute, violations of the Maryland Code of Judicial Conduct, specifically Maryland Rules 18-101.1, 18-101.2 (CJD p. 55), 18-101.3 (CJD p. 56), 18-102.9 (CJD p. 58), 18-102.10 (CJD p. 58), and 18-103.1 (CJD p. 59). *See generally* (CJD pp. 41-42 (Admissions Request Nos. 6-9, 41-42), 56, 58, 59); [IC8 & IC12(A-B)].

2. The factual findings by the Commission as to the conduct of Respondent in attempting to direct District court staff to take actions to assist in rendering improper advice to John Eberwein and the use of court resources in providing that advice:

Judge Hennessy’s Deposition Transcript Excerpts

Question: “During the context of discussing the case with Mr. Eberwein and his son, Kurt, did you ask your legal assistant to print out information from the Judiciary?”

Answer: “I do remember that. I called down – see, what happens is, my office – my office, there’s two judge’s offices and there’s two on the other side, and in the middle is where the clerks work. The clerk that was working with me – this is during Covid so we only had one judge there and one clerk.”

Question: “Okay.”

Answer: “The clerk that was working there was Stephanie at that time because I remember calling out to Stephanie. She doesn’t sit out there. I thought she was sitting there. She is sitting downstairs. I did call out to her numerous times. I was going to ask her if she could help me get it up on the doggone screen because I don’t know how to do it, but she never responded and I never – and it was later that night that Kurt brought me the order so that I didn’t need it after that. I mean, I had seen it and I explained to him it’s a valid order.”

. . . Question: "Okay. And if you go farther down the text exchange you indicate on the right side of the page that my clerk is bringing it to you."

Answer: "Right."

Question: "Okay. By clerk, that's someone in the courthouse? One of the clerks?"

Answer: "Yeah. What happened is he's parked in the handicap drop-off area. That's the smoking area for the girls that work in the courthouse. One of the girls was going out to the smoking area. I was going to walk out there and give it to him but she volunteered to go out there and drop it off for me. But that's where they smoke. They're not allowed to smoke right up at the courthouse. They have to smoke over there by the handicap area and that's where he was parked."

Question: "Okay. And do the clerks often do these kinds of errands for you?"

Answer: "No."

. . . Question: "Okay. And as a judge in the district court do you have a different access to case search than the public has? Do you have more information in your search?"

Answer: "I don't know how to do it. I know how to do the public one."

Question: "Okay."

Answer: "The girls know. You know, like Jessica or Stephanie or them. They know how to do all that kind of stuff. I don't know how to do that."

. . . Question: "All right. During your testimony you referenced the girls. Are you referring to employees of the courthouse?"

Answer: "What do you – I don't know what you're talking about."

Question: "You mentioned in certain circumstances that you ask the girls to look for things for you, either on case search or other ways."

Answer: “Yeah, because they know how to do it.”

Question: “Okay. And who are the girls?”

Answer: “That’s the three clerks.”

Question: “Okay. And who are the three clerks?”

Answer: “Well, I don’t know who they are now because Jessica has left.”

Question: “Who were they at the time?”

Answer: “Jessica.”

Question: “What’s her last name?”

Answer: “Smallwood.”

Question: “Okay.”

Answer: “Joanna. I’m trying – I can’t remember her last name. She’s married to a State trooper.”

Question: “Okay.”

Answer: “She’s gone, too. And Stephanie Windsor.”

Question: 13 “Windsor?”

Answer: “Yes.”

Question: “Okay. And when you ask them to look at cases on case search do you know how they’re doing that?”

Answer: “Yeah. They come up to my office and they get it up for me.”

Question: “Okay. Do you know whether that’s a secure case search that’s only accessible by those with authorization or whether it’s public case search?”

Answer: “I don’t know.”

Question: “Okay.”

Answer: “I don’t know. See, I’m not very good with the computers. They are very – the girls are outstanding with the computers. They can fix them. I mean, they can get anything out of them. I can’t.”

[Tr. 616-621] (CJD pp. 24-27); *see also* [Tr. 451-452]. Judge Hennessy also obtained the personal cell phone number of Deputy Public Defender Kathryn Batey, Esq. on August 16, 2020 to further his objectives as to James Winters. (CJD pp. 8, 36-37, 46); [IC19]; [Tr. 285-286]. These actions are proof of, and constitute, violations of the Maryland Code of Judicial Conduct, specifically Maryland Rules 18-101.1, 18-101.2 (CJD p. 55), 18-102.12(a) (CJD p. 58), 18-103.1(c) (CJD p. 59), and 18-103.1(e) (CJD p. 59).

3. The factual findings by the Commission as to the conduct of Respondent in engaging in substantive conversations with Victim 1 and Victim 2 regarding pending criminal matters in which they were the alleged victims of John Eberwein and James Winters, respectively, including advising Victim 2 regarding possible recantation of her allegations [Tr. 907-908, 915-916]; *cf.* (CJD p. 12, 45); [IC28], are proof of, and constitute, violations of the Maryland Code of Judicial Conduct, specifically Maryland Rules 18-101.1, 18-101.2 (CJD p. 55), 18-101.3 (CJD p. 56), 18-102.2 (CJD p. 57), 18-102.9 (CJD p. 58), and 18-103.10 (CJD p. 59).

4. The factual findings by the Commission as to the conduct of Respondent in providing substantive legal advice to: (1) John Eberwein, including discussing the effects of Victim 1 recanting her Protective Order [Tr. 459-460], the viability of a plea deal [Tr. 461-465], and the meaning and effect of a power of attorney [Tr. 448-451, 604-608]; (2) Kurt Eberwein, including the meaning and effect of a power of attorney [Tr. 143-144, 225, 258], and the viability of eviction proceedings and possibly foreclosing on the mortgage with the goal of removing Victim 1 from their household [Tr. 225-226]; (3) James Winters, including not to answer any questions or say anything in the course of being arrested on August 14, 2020 [Tr. 624-625; 865-869] [IC14]; (*see generally* Tr. 727-728); (4) Victim 2, including advising Victim 2 regarding possible recantation of her allegations [Tr. 907-908, 915-916]; *cf.* (CJD p. 12, 45); [IC28]; (5) Robert Castro, Esq., including drafting and delivering affidavits on behalf of Mr. Castro's client, Mr. Winters (CJD p. 59) and advising Mr. Castro of the timeline of filing an appeal in Mr. Eberwein's case (CJD p. 23) These actions are proof of, and constitute, violations of the Maryland Code of Judicial Conduct,

specifically Maryland Rules 18-101.1, 18-101.2 (CJD p. 57), 18-102.4(b) (CJD pp. 57-58), 18-102.4(c) (CJD pp. 57-58), 18-102.9 (CJD p. 58), 18-102.10 (CJD p. 58), 18-103.1 (CJD p. 59), and 18-103.10 (CJD pp. 59-60).

5. The factual findings by the Commission as to the conduct of Respondent in securing notarized affidavits from James Ragan, Justin MacRae, and James Davis for use in a pending criminal matter that was not before the judge (CJD pp. 8-9; 32-39; 41; 57-59) [IC17 (A-C), IC20, IC21] are proof of, and constitute, a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rules 18-101.1, 18-101.2 (CJD p. 55), 18-101.3 (CJD p. 56), 18-102.2 (CJD p. 57), 18-102.4 (CJD p. 57-58), 18-102.9 (CJD p. 58), 18-102.10 (CJD p. 58), 18-103.1 (CJD p. 59), and 18-103.10 (CJD p. 59).

6. The factual findings by the Commission as to the conduct of Respondent in arranging and meeting with Rudolf A. Carrico, Esq., (CJD pp. 9-10; 47) attempting to invoke the attorney/client privilege with Mr. Carrico [Tr. 397-399] and contacting the Office of the Public Defender supervisors and assigned courtroom counsel (CJD pp. 8-9; 36-38; 55) [IC20, IC21], are proof of, and constitute, a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rules 18-101.1, 18-101.3 (CJD p. 56), and 18-102.9 (CJD p. 58)

7. The factual findings by the Commission as to the conduct of Respondent in making negative comments about women, and specifically Victim 1, when discussing the criminal matter facing John Eberwein. During a call with Mr. Eberwein on July 27, 2020, Mr. Eberwein expressed anger about Victim 1 and accused Victim 1 of lying to law enforcement. [Tr. 496]. Judge Hennessy said in response, “Let me put it this way. She’s not the first woman, nor will she be the last, to have done that you know?” [Tr. 496]. Mr. Eberwein then explained some past things Mr. Eberwein had done to help Victim 1. Judge Hennessy responded, “Women have short memories man, you know?” [Tr. 496]. These comments are proof of, and constitute, violations of the Maryland Code of Judicial Conduct, specifically Maryland Rules 18-101.1, 18-101.2 (CJD p. 55), and 18-103.1(CJD p. 55).

8. Although there may have been additional areas of concern, particularly with regard to some of the text messages in Exhibit IC8 between the Respondent and Mr. Castro concerning individuals that were not referred to in the Charges, the Commission did not address those areas as they were not specifically pled in the Charges and there were no amendments to the Charges for the Commission to consider.

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.

(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 W. Louis Hennessy did not meet those standards in his pattern of conduct related to John Eberwein and James Winters which began in April of 2020 and continued for many months thereafter. Upon consideration of the actions of Judge Hennessy, the violation of Maryland Rules 18-402(m), 18-101.1, 18-101.2, 18-101.3, 18-102.2, 18-102.4(b), 18-102.4(c), 18-102.9, 18-102.10, 18-102.12(a), 18-103.1(c), 18-103.1(e), and 18-103.10, the seriousness of the transgressions, including the inappropriate utilization of court resources, attempts to use courthouse staff for non-judicial/personal activities, taking an active role in assisting criminal defendants in domestic violence matters, obtaining the assistance of his wife (an elected official) in obtaining affidavits on behalf of criminal defendants, providing documents to counsel for a criminal defendant for use in his defense/hearing, providing legal advice, solely recommending the legal services of Robert Castro, Esq. advancing his economic interest, and statements rendered by Judge Hennessy in his allocution testimony regarding these transgressions, the Commission

found it was in the best interest of the public and judicial system for Judge Hennessy to be suspended for three (3) years without pay with all but nine (9) months suspended subject to Judge Hennessy completing the following during his nine (9) month suspension:

1. Register and complete a national ethics course(s), which should include training on domestic violence, avoidance of requests for favors from friends, the use of judicial resources and abusing the prestige of office; and
2. Participate in any and all Maryland judiciary trainings.

Upon completion of the ethics course(s), trainings, and reinstatement by the Court of Appeals, Judge Hennessy shall engage with a mentor to be selected by the Commission and/or the Maryland Court of Appeals for at least two (2) years. Judge Hennessy shall meet with the mentor monthly, cooperate and heed any and all reasonable advice from the mentor.

B. The Commission considered there was no prior discipline of the Respondent.

C. The Respondent's character witnesses provided testimony regarding Judge Hennessy's empathy toward others, lack of bias toward women in the courtroom as well as shedding light on the judge's past history, Christian values, and support for those less fortunate.

Subsequent to the Hearing, the Commission reviewed proposed Findings of Fact and Conclusions of Law submitted by Investigative Counsel and counsel for Judge Hennessy. Investigative Counsel recommended removal from office; Judge Hennessy requested the Commission conclude that "Judge Hennessy was a caring and concerned person who brought that empathy to all phases of his life; but that he did not 'knowingly and willingly' commit judicial conduct", with no recommendation as to a disposition.

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, by a vast majority, the imposition of a reprimand or censure is not commensurate with the serious violations of misconduct in office committed by Judge Hennessy and does not reassure the public, and the judiciary that Judge Hennessy is fit to

sit as a District Court judge. The Commission concludes that Judge Hennessy's conduct requires the imposition of a significant sanction.

In the present case, Judge Hennessy's behavior is certainly serious, as he attempted to use his judicial office to benefit his friends/acquaintances, to avoid appropriate investigation by a law enforcement officer(s), to influence criminal hearings, and making ill-advised comments regarding women. Clearly, Respondent engaged in behavior that could cause members of law enforcement and the public in general to question the independence, impartiality, and integrity of the Maryland judiciary. Judge Hennessy was clearly concerned more and consumed with advancing the interests of his friends and acquaintances than adhering to the standards established in the Code of Judicial Conduct. It should be stressed Judge Hennessy admitted to all of the conduct as alleged by Investigative Counsel confirmed with his statement, "I did everything they said." [Tr. 971, 9-10] The concern is that Judge Hennessy did not see the errors in his conduct.

The Commission considered mitigating factors from the evidence and character testimony at the Hearing in determining its recommendation as to the appropriate discipline. The Commission notes that the misconduct occurred during a period of time when the world, the United States and State of Maryland were in the throes of the COVID-19 epidemic and the Maryland Judiciary was operating at a significantly reduced capacity. Access to jails and courthouses was restricted to essential personnel and most nonemergency hearings were curtailed. Notwithstanding, the rules espoused in the Code of Judicial Conduct were not suspended, despite the pandemic, as judges are always obligated to engage in conduct that does not defy the Code.

After consideration of the Facts, Conclusions of Law, and the Considerations Regarding the Imposition of Discipline, the Commission concludes that its recommendation of suspension with conditions is justified given the nature of Judge Hennessy's conduct, the evidence presented, and disciplinary history. Judge Hennessy stated "if I thought that what I was doing was wrong by being a judge, I would never have become a judge. I didn't need to become a judge. My commitment was to Christ to look

after his people, not the law. That's secondary. If I had known that I couldn't help people . . . and they told me I can't do that because I'm a judge, then I don't want to be a judge. I don't need to be a judge." [Tr. 1033, 4-15]

Respondent also expressed he sometimes doesn't know "what's right or wrong" after seventeen (17) years on the bench. [Tr. 1259, 12-13] In consideration of all the evidence and testimony, Commission recommends Judge W. Louis Hennessy be suspended from the bench for three (3) years without pay with all but nine (9) months suspended pending Judge Hennessy's compliance with training during the nine (9) month period and subsequent engagement and cooperation with a mentor judge upon his return to the bench after his suspension. Although the Commission understands Judge Hennessy has submitted a letter of retirement effective on June 30, 2022, Respondent requested the Commission provide guidance to other judges, specifically stating as follows:

"You don't have to worry about this becoming an issue again because I'm gone. After Monday morning, I'm leaving. I will not be sitting on the bench anymore. I've already submitted my retirement papers. And I'm ready to move on. And the only reason I've waited until now to retire is because I wanted my statement. I wanted to be heard about what actually transpired. And I would love it, if nothing else come out of this – you can suspend me, or fine me, or whatever you might do, but if we could send a clear message to the other members of the judicial system, the judiciary and the judges, as to precisely what they are asking us to do. Clear up these ambiguities, these different messages. We're hearing from the judicial conference, go out and get involved and do stuff in the community. And then when you do it, you end up here in front of Judicial Disabilities explaining it all. I just – I'm not conflicted about what I did in these cases. I'm not ashamed of it. But I'm very, very conflicted about the information that we've been given." [Tr. 1269 -1270] In addition, counsel for Judge Hennessy argued what Respondent did not do, stating "[m]y client did not call a single law enforcement officer in St. Mary's County on behalf of Mr. Eberwein or Mr. Winters. Did not happen. My client did not call a prosecutor in St. Mary's County on behalf of John Eberwein or James Winters. Did not happen. Did

not happen.” [Tr. 27, 20 – Tr. 28, 8] The Commission’s focus and recommendations are based on what *did* happen. As such, the Commission issues these Findings of Fact and Conclusions of Law and refers this matter to the Court of Appeals for expedited consideration.

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 Commission Members shall be retained in the Commission file.

B. The Executive Counsel 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 Counsel is to, pursuant to Maryland Rule 18-404(b), promptly serve Judge Hennessy, 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, by unanimous vote, found by clear and convincing evidence that Judge Hennessy 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 majority vote¹, hereby refers the above-captioned matter to the Court of Appeals with its recommendation(s) as follows:

The suspension of Judge W. Louis Hennessy as a District Court Judge in Charles County Maryland for violations committed in CJD 2020-025 for three (3) years without pay with all but nine (9) months suspending pending Judge Hennessy's compliance with conditions during the nine (9) month period, as well as subsequent engagement and cooperation with a mentor judge upon his return to the bench after suspension.

Dated this 10th day of May 2022.

Maryland Commission on Judicial Disabilities

By: *Michael W. Reed*

The Honorable Michael W. Reed, Chair
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¹ Six (6) Commission Members were in favor of the recommendation; two (2) Commission Members were in favor of removal; and one (1) Commission Member was in favor of a reprimand