

STATE OF MARYLAND
BEFORE THE COMMISSION ON JUDICIAL DISABILITIES

In the Matter of the	*	
HONORABLE DEVY RUSSELL,	*	CJD 2016-189
Judge of the District Court of	*	
Maryland for Baltimore City,	*	
District One,	*	
Respondent	*	

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW,
ORDER AND RECOMMENDATIONS

Pursuant to Charges filed by the Investigative Counsel, the response filed by Judge Devy Patterson Russell (hereinafter “Respondent” or “Judge Russell”), and prior written notice of hearing to Respondent, a public hearing was conducted in the above-entitled matter in Annapolis (hereinafter “Hearing”), as authorized by Maryland Rule 18-407 (a), (b), (c), (d) and (i), on October 15, 16, 17, 18, 19, and November 5, 2018, before the Maryland Commission on Judicial Disabilities (hereinafter “Commission”). Tanya C. Bernstein, Esq., Investigative Counsel, and Derek A. Bayne, Esq., Assistant Investigative Counsel, prosecuted the case against Respondent, Judge Devy Patterson Russell. Respondent was present at the Hearing and represented by William C. Brennan, Jr., Esq.

The following Commission Members participated in the hearing: the Honorable Susan H. Hazlett, Vice Chair, Vernon Hawkins, Jr., Arielle F. Hinton, Esq., Kimberly Howell, Susan J. Matlick, Sally McLane Young Ridgley, and Marisa A. Trasatti, Esq. The Honorable Michael W. Reed, the Honorable Robert B. Kershaw and Richard Karceski, Esq., were recused from the proceedings. Virginia Fogle did not participate as

a Commission Member at the hearing. The seven (7) Commission Members present at the Hearing constituted a quorum, pursuant to Maryland Rule 18-403(e).

During the Hearing, the Commission received the following evidence:

Fifty (50) exhibits were entered by Investigative Counsel and Seventeen (17) exhibits were entered by Respondent.

Investigative Counsel called twenty one (21) witnesses; fifteen (15) were judges, including District Court Chief Judge John Morrissey and Baltimore City District Court Administrative Judge Barbara Waxman. Judge Russell called fourteen (14) witnesses; seven (7) were judges, including United States District Judge George Russell, III. Respondent also called one character witness, retired Chief Judge Joseph F. Murphy.

Additionally, materials were held by the Executive Secretary, and not provided to the Commission until the Commission had decided that sanctionable conduct occurred. These materials included Respondent's prior record with the Commission and more than four (4) dozen letters in support of Respondent's application for higher judicial office.

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 in excess of twelve (12) hours, the Commission considered all of the exhibits admitted into evidence, the sworn testimony and demeanor of all witnesses at the Hearing, and the Proposed Findings of Fact and Conclusions of Law submitted by Investigative Counsel and Counsel for Respondent on November 20, 2018.

The Commission hereby issues the following Findings of Fact, Conclusions of

Law, Order and Recommendations to the Court of Appeals as to the imposition of discipline, pursuant to Maryland Rule 18-407(j) and (k):

I. FINDINGS OF FACT.

A. Judge Russell was, at all times applicable to the allegations contained in the Charges, an Associate Judge of the District Court of Maryland in Baltimore City, District One. Therefore, Respondent was and still is a judicial officer whose conduct was and is subject to the provisions of the Maryland Code of Judicial Conduct, (Maryland Rules Title 18, Chapter 100) and Maryland Rules on Judicial Discipline (Title 18, Chapter 400).

B. Upon thorough and exhaustive review of the testimony of all witnesses, as well as a comprehensive evaluation of the exhibits, there were numerous comments and behaviors of Respondent that the Commission found to be significant.

C. As to CJD 2016-0189, the Commission found that in 2017 Respondent commented to several subordinate court employees including clerks and bailiffs, that “Judge Waxman is a complete and utter incompetent vicious coward.” (Transcript pp. 464 and 712). This comment was made in the hallway, heard and noted by Judge William Dunn as he left his courtroom and was heading to chambers. The Commission found that such violated the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, and Maryland Rule 18-102.8 (b).

D. As to CJD 2016-0189, the Commission found that in June 2017 Respondent interrupted Judge Katie O’Hara’s ongoing court proceedings by entering the courtroom through the public entrance and asking two (2) of the attorneys at the trial

table to get their calendars out to schedule a specially set case. There were numerous litigants present, including a bus driver, a technician, and several witnesses; this took place while the trial was underway and on the record. Judge Russell's conduct, in approaching the attorneys, was contrary to the process set forth for scheduling specially set cases (IC Exhibit 1). (Transcript pp.1023-1026).

The Commission found that such conduct violated the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b) and Maryland Rule 18-102.5 (c).

E. As to CJD 2016 - 0189, the Commission found that after a policy change was implemented by Administrative Judge Waxman directing District Court judges not to review and sign warrants while sitting at the Civil Courthouse except under exigent circumstances, Respondent continued to review and sign search warrants while at the Civil Courthouse. Respondent admitted that she continued to sign search warrants after the directive/policy change, and two of Respondent's witnesses, Det. Steven Matchett and Sgt. Jason Giordano, also confirmed this conduct. Additionally, Respondent violated an existing policy which allowed a judge to sign a search warrant return for another judge only if the two judges were assigned to the same court location. This longstanding policy is in place to ensure the confidential and secure handling of warrant returns, which contain highly sensitive information and are, in fact, evidence. In November 2017, respondent signed a search warrant for Judge Joan Bossman Gordon while Judge Gordon was assigned to a different court location. The return was transmitted to Judge Gordon through interoffice mail, also violating the policy.

The Commission found that such conduct violated the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b) and Maryland Rule 18-102.5 (c).

F. As to CJD 2016-0189, the Commission found that Respondent did not process search warrants in a timely manner, did not match them up and transmit them to the clerk promptly, and did not keep confidential and secure the warrants in her possession that were awaiting possible return and processing. This conduct occurred over several years. The testimony indicated that at least one hundred thirty-five (135) warrants that were discovered in Respondent's boxes were "processable" but had not been matched up and transmitted to the clerk. By the Commission's own count, however, there were more warrants that were either processable or potentially processable. The following table indicates the Commission's count of processable and potentially processable warrants retained by Respondent:

YEAR	# OF PROCESSABLE WARRANTS
2007	1
2008	4
2009	6
2010	19
2011	0
2012	1
2013	59
2014	43

2015	25
TOTAL	158

Respondent argues that there is a violation of Maryland Rule 4-601, in that the “processable” warrants in these exhibits are not in possession of the Clerk of the Court, as required. The Commission is unpersuaded by this argument. These unprocessed, unmatched and unsecured warrants were not filed with the clerk, but were in various boxes and drawers, and largely abandoned by Respondent. Respondent cannot then argue that her failure to comply with the Rule is imputed to her supervising judges, or to Investigative Counsel once this failure is discovered and subsequently documented. Additionally, while there is no specified time requirement for transmitting warrants to the clerk, the Commission found that these warrants were not processed timely, given that in many cases, years had passed.

The Commission found that such conduct violated Maryland Criminal Procedure Article 1-203, Maryland Rule 4-601(g), and violated the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, and Maryland Rule 18-102.5 (a).

G. As to CJD 2016-0189, the Commission found that Respondent, accompanied by a bailiff and court clerk, entered Judge Mark Scurti’s (Judge in Charge of the Civil Courthouse) closed office unannounced and uninvited, and proceeded to yell and scream at Judge Scurti. Judge David Aldouby observed and was present when this conduct occurred, but both judges were unable to remember what Respondent was upset about on this specific occasion. The Commission found that such conduct violated

the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b) and Maryland Rule 18-102.8 (b).

H. As to CJD 2016-0189, the Commission found that in 2012, Respondent summoned Division Chief Kim Brown and supervising clerk Faye Walker to her courtroom, the Early Resolution court at the Eastside Courthouse, before the docket began, concerning a scheduling issue. Respondent took Ms. Brown and Ms. Walker to a hallway outside of the courtroom and began to yell at them. Respondent was yelling loudly enough that the litigants and lawyers present in the courtroom could hear the interaction, and the entire courtroom became silent as the incident continued. The Commission found that such conduct violated the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-101.2 (a) and Maryland Rule 18-102.8 (b).

I. As to CJD 2016-0189, the Commission found that in 2012, Respondent required Faye Walker to come to her courtroom concerning a petitioner in a Domestic violence (“DV”) case. The petitioner’s file was missing despite the petitioner being present in the courtroom awaiting a hearing. Respondent instructed Ms. Walker to escort the petitioner to the clerk’s office to have a “lineup” in an effort to determine which clerk had assisted the litigant and made the error regarding the missing file. The interaction with Ms. Walker was loud, in open court, and included Respondent saying:

“So did you do it? Are you going to own up to it? No one is owning up to it? Somebody . . . did it. People aren’t telling the truth.” (Transcript p. 654). This occurred in front of the litigant and other members of the public. The Commission found that such

conduct violated the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, and Maryland Rule 18-102.8 (b).

J. As to CJD 2016-0189, Respondent was present in Judge Avery's chambers in 2013 with Kim Brown and Faye Walker addressing clerical errors described in paragraph I, supra, as well as additional issues. At the time, Judge Avery was the Judge in Charge of Eastside Courthouse. Respondent was angry and all three (3) raised their voices. Respondent said to both Ms. Brown and Ms. Walker "Your protection is gone. Lonnie (Ferguson, a previous administrative clerk) and Judge Hargrove aren't here anymore." (Transcript p. 656). Respondent acknowledges making this statement. (Transcript p 1709). The Commission found that such conduct violated the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, and Maryland Rule 18-102.8 (b).

K. As to CJD 2016-0189, the Commission found that in 2013, Respondent intentionally pushed Kim Brown while Ms. Brown was standing at the mail table at the Eastside District Court location. The Commission found that such conduct violated the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1 and Maryland Rule 18-102.8 (b).

L. As to CJD 2016-0189, the Commission found that in 2014 Respondent made the following comment: "You can't tell me what to do" (Transcript p. 389) after Judge Waxman directed Respondent (via Judge Weinstein) not to call clerks to her courtroom to conduct lineups. (There had been an additional occasion when a litigant was instructed by Respondent to return downstairs to the clerk's office, accompanied by a

clerk, to identify the clerk who had given the litigant incorrect instructions; the Commission did not find this incident to be sanctionable but mentions it only as it apparently helped to inform Judge Waxman's directive to Respondent). The Commission found that such conduct by Respondent violated the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b), and Maryland Rule 18-102.5 (c).

M. As to CJD 2016- 0189, the Commission found that Respondent made the following comments in 2016 while assigned to train Judge Katie O'Hara, a newly appointed judge, during their lunch together:

"(Judge Scurti) is not in charge of anything. Don't listen to him" (Transcript p. 1013); and

"Judge Waxman (the Administrative Judge) is not your boss. You don't need to listen to her. You don't need to listen to Judge Morrissey (Chief Judge of the District Court)." (Transcript pp. 1012-13).

The Commission found that such conduct violated the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b), and Maryland Rule 18-102.8 (b).

N. As to CJD 2016-0189, the Commission found that Respondent failed to comply with an instruction to her in 2015 from Chief Judge Morrissey that she was to stop copying Chief Judge Barbera on emails concerning ongoing docket, chambers, duty and leave assignments in her court. As Judge Morrissey explained, "It was inappropriate for her to cc Chief Judge Barbera, because constitutionally and statutorily, I am the administrative head of my court". (Transcript p. 956).

The Commission found that such conduct violated the Maryland Code of Judicial

Conduct, specifically Maryland Rule 18-101.1, Maryland Rule Maryland Rule 18-102.5 (b) and Maryland Rule 18-102.5 (c).

O. As to CJD 2016-0189, the Commission found that Respondent publicly chastised Judge William Dunn one day in 2017 when he was designated as the duty judge and left briefly to get lunch in anticipation of a noon meeting involving court business. As Judge Dunn was returning to the courthouse after retrieving his lunch, Respondent was waiting for Judge Dunn as he came through the front door of the courthouse. She raised her voice, yelling and screaming at him in front of lawyers, bailiffs, and other judges about his departure from the courthouse as duty judge. The Commission found that such conduct violated the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b) and Maryland Rule 18-102.8 (b).

P. As to CJD 2016-0189, the Commission found that Respondent engaged in an interaction with Judge Halee Weinstein, Judge in Charge of the Eastside Courthouse, concerning the remainder of Respondent's docket. The interaction included Respondent yelling at Judge Weinstein in front of court staff, as well as Judge Aldouby, who was present in Judge Weinstein's chambers discussing a legal issue. The Commission found that such conduct violated the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b) and Maryland Rule 18-102.8 (b).

Q. As to CJD 2016-0189, the Commission found that in 2016 Respondent said to law clerk Ama Asare "Just get rid of them", referring to the search warrants the

clerk had been tasked by Respondent with matching up. (Transcript p. 72). The Commission found that such conduct violated the Code of Judicial Conduct, specifically Maryland Rule 18-101.1 and Maryland Rule 18-102.12 (a).

R. As to CJD 2016-0189, the Commission found that in April 2015 Respondent attended a meeting with Chief Judge Morrissey. The meeting was at the request of Chief Judge Morrissey, and the purpose was to ask Respondent to get along with her colleagues. Shortly after the meeting started, Respondent stood up and yelled “You threatened me” to several employees, and her husband, who were waiting outside the Chief Judge’s office. (Transcript p. 951). The Commission found there was no threat to Judge Russell and that such conduct violated the code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b), and 18-102.8 (b).

II. CONCLUSIONS OF LAW.

A. The Commission has both subject matter jurisdiction over the above-entitled case and personal jurisdiction over Judge Devy Patterson Russell, all pursuant to Md. Const., Art. 4, Section 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. Maryland Rule 18-407(j). 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, the Commission, supra, finds by clear and convincing evidence that Judge Devy Patterson Russell has committed sanctionable conduct, as defined by Maryland Rule 18-401 (k), by violating the following Canons of the Maryland Code of Judicial Conduct:

1. The factual findings by the Commission of the conduct of Respondent as to the statements made by her to several subordinate court employees and witnessed by Judge Dunn are proof of, and constitute, a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, and Maryland Rule 18-102.8.

2. The factual findings by the Commission of the conduct of Respondent as to the conduct exhibited in interrupting an ongoing trial with Judge O'Hara to schedule a specially set case, are proof of, and constitute, a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b) and Maryland Rule 18-102.5 (c).

3. The factual findings by the Commission of the conduct of Respondent as to her continued review and signing of search warrants while at the Civil Courthouse, despite a policy change implemented by Administrative Judge Waxman. Respondent admitted this conduct. Respondent also signed a return and inventory for Judge Gordon who was not in the same court location, and returned it to her through interoffice mail, a violation of the longstanding warrant return policy in Baltimore City, which is proof of, and constitutes, a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b) and Maryland Rule 18-102.5 (c).

4. The factual findings by the Commission as to the conduct of Respondent in that she did not process search warrants in a timely manner, did not match them up and transmit them to the clerk promptly, and did not keep confidential and secure the warrants in her possession that were awaiting possible return and processing. This conduct occurred over several years. The Commission finds that at least one hundred

thirty-five (135) warrants that were discovered in Respondent's boxes were "processable" but had not been matched up and transmitted to the clerk and twenty-three (23) others were potentially processable.

The Commission found that such conduct is proof of and constitutes, a violation of Maryland Criminal Procedure Article 1-203 , Maryland Rule 4-601(g), and violated the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, and Maryland Rule 18-102.5 (a).

5. The factual findings by the Commission as to the conduct of Respondent that she entered Judge Scurti's closed office unannounced and uninvited, yelling and screaming at Judge Scurti in the presence of a court clerk, a bailiff and Judge Aldouby. The Commission found that such conduct is proof of, and constitutes a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b) and Maryland Rule 18-102.8 (b).

6. The factual findings by the Commission as to the conduct of Respondent that she intentionally pushed Kim Brown while Ms. Brown was standing at the mail table at the Eastside District Court location. The Commission found that such conduct is proof of, and constitutes a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1 and Maryland Rule 18-102.8 (b).

7. The factual findings by the Commission as to the conduct of Respondent in requiring Kim Brown and Faye Walker to respond to the Early Resolution courtroom at the Eastside court location and yelling at them in the hallway outside the courtroom so loudly that the litigants and lawyers present in the courtroom could hear the interaction,

and caused the entire courtroom to become silent. The Commission finds that this interaction is proof of, and constitutes, a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-101.2 (a) and Maryland Rule 18-102.8 (b).

8. The factual findings by the Commission as to the conduct of Respondent requiring Faye Walker to come to the courtroom concerning a petitioner in a DV case. The petitioner's file was missing despite the petitioner being present in the courtroom awaiting a hearing. Respondent instructed Ms. Walker to escort the petitioner to the clerk's office to have a "lineup" in an effort determine which clerk had assisted the litigant and made the error regarding the missing file. The interaction with Ms. Walker was loud, in open court, and included Respondent saying:

"So did you do it? Are you going to own up to it? No one is owning up to it? Somebody . . . did it. People aren't telling the truth." (Transcript p. 654). This occurred in front of the litigant and other members of the public. The Commission found that such conduct is proof of, and constitutes, a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, and Maryland Rule 18-102.8 (b).

9. The factual findings by the Commission as to the conduct of Respondent during an interaction in Judge Avery's chambers in 2013 with Kim Brown and Faye Walker addressing clerical errors described in paragraph eight (8), supra, and additional issues. Judge Avery was the Judge in Charge of Eastside at the time. Respondent was angry and all three (3) raised their voices. Respondent said to both Ms. Brown and Ms. Walker "Your protection is gone. Lonnie (Ferguson, a previous administrative clerk) and

Judge Hargrove aren't here anymore." (Transcript p. 656). Respondent acknowledges making this statement. (Transcript p. 1709) The Commission found that such conduct is proof of, and constitutes a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, and Maryland Rule 18-102.8 (b).

10. The factual findings by the Commission as to the conduct of Respondent making the comment "You can't tell me what to do" (Transcript p. 389) after Judge Waxman instructed Respondent, via Judge Weinstein, not to call clerks to her courtroom to conduct lineups. The Commission found that such conduct is proof of, and constitutes a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b) and Maryland Rule 18-102.5 (c).

11. The factual findings by the Commission as to the conduct of Respondent in making comments in 2016 while training Judge O'Hara, who was newly appointed, during their lunch together:

"(Judge Scurti) is not in charge of anything. Don't listen to him" (Transcript p. 1013); and

"Judge Waxman (the Administrative Judge) is not your boss. You don't need to listen to her. You don't need to listen to Judge Morrissey (Chief Judge of the District Court)." (Transcript pp. 1012-13).

The Commission found that such conduct is proof of, and constitutes a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b), and Maryland Rule 18-102.8 (b).

12. The factual findings by the Commission as to the conduct of Respondent failing to comply with an instruction to her from Chief Judge Morrissey that she was to stop copying Chief Judge Barbera on emails concerning ongoing docket, chambers,

duty and leave assignments in her court. As Judge Morrissey explained, “It was inappropriate for her to cc Chief Judge Barbera, because constitutionally and statutorily, I am the administrative head of my court”. (Transcript p. 956). The Commission found that such conduct is proof of, and constitutes violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b) and Maryland Rule 18-102.5 (c).

13. The factual findings by the Commission as to the conduct of Respondent publicly chastising Judge Dunn as he was returning to the courthouse after retrieving his lunch. Respondent was waiting for Judge Dunn as he came through the front door of the courthouse. She raised her voice, yelling and screaming at him in front of lawyers, bailiffs, and other judges. The Commission found that such conduct is proof of, and constitutes a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b) and Maryland Rule 18-102.8 (b).

14. The factual findings by the Commission that Respondent engaged in an interaction with Judge Weinstein concerning Respondent’s docket, which included Respondent yelling at Judge Weinstein in front of court staff, as well as Judge Aldouby, who was present in Judge Weinstein’s chambers discussing a legal issue. The Commission found that such conduct is proof of, and constitutes a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b) and Maryland Rule 18-102.8 (b).

15. The factual findings by the Commission that Respondent said to law clerk Ama Asare “Just get rid of them” (Transcript p. 72), referring to the search warrants the

clerk had been tasked by Judge Russell with matching up. The Commission found that such conduct is proof of, and constitutes a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1 and Maryland Rule 18-102.12 (a).

16. The factual findings by the Commission that in April 2015 Respondent attended a meeting with Chief Judge Morrissey. Shortly after the meeting started, Respondent stood up and yelled “You threatened me” to several employees, and her husband, who were waiting outside the Chief’s office. (Transcript p. 951) The Commission found that Chief Judge Morrissey did not threaten Respondent. The Commission found that such conduct violated the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-102.5 (b) and Maryland Rule 18-102.8 (b).

III. CONSIDERATIONS REGARDING THE IMPOSITION OF DISCIPLINE.

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.

Additionally, the Commission finds significant the following behaviors and comments which, while not sanctionable conduct by the clear and convincing standard,

helped inform the Commission's recommendation as to the appropriate sanction.

- A. Interrupting Judge Waxman during a social event while Judge Waxman was talking with a colleague as Respondent "put her arm in between us, and she literally pushed me back two steps in order to interrupt a conversation I was having with a colleague, almost knocked me [Judge Waxman] over" (Transcript pp. 464-65);
- B. Continually arriving late to court without informing anyone that she will not be on time;
- C. Respondent saying "Which broom closet is she putting me in today?" (Transcript p. 464), "Where am I today? In a closet? In the lockup?" to various judicial assistants upon arrival at different court locations for her daily assignments (Transcript p. 744);
- D. Saying "I didn't know you were such a good writer", to Judge Rachel Skolnik, after learning that Judge Skolnik authored a response signed by fourteen colleagues to Respondent's "open letter" to the District Court bench (Transcript p. 697);
- E. "You better be careful because warrants might end up getting shredded or put in the trash", Respondent, to a police officer, in the presence of Judge Skolnik (Transcript p. 699);
- F. Advising Judge Waxman that she would not comply with the deadline to request annual leave;
- G. "I drive past the other judge's house at 11 o'clock at night to look and see whose vehicle is in the driveway", stated by Respondent to Judge Gordon, in detailing a rumor concerning a colleague's alleged infidelity (Transcript p. 822);
- H. "I'm shredding, I'm shredding. Look, I'm shredding", Respondent's comments to court staff after the charges in the current matter became public (Transcript p. 464);
- I. Respondent, while in her vehicle, hit Judge Gordon's car in March 2015, causing damage, minutes after a conversation in which Judge Gordon asked Respondent to stop some of her behaviors. Respondent provided insurance claim information to Judge Gordon and indicated the impact was not intentional;
- J. "Are you going to get dressed up (in a Halloween costume)?" to Judge Scurti during a bench meeting in October 2018, after the first week of this proceeding had taken place (Transcript p. 1236);
- K. Judge Weinstein sitting in the clerk's office at Eastside Courthouse to prevent any confrontation between clerks and Respondent;
- L. Judges hastily moving their cars to accommodate Respondent when she is expected at a court location.

The Commission took note of the atmosphere described by nearly every judge -

even Respondent's own witnesses – in each court location that exists when Respondent is assigned to sit at said location.

Those comments include:

Judge Aldouby: "If I were blindfolded and brought to a building, I could tell you . . . whether Judge Russell was assigned to that courthouse that day. There is a certain chill that is there." (Transcript pp. 764-65) "It's gotten worse in recent years . . . it's walking on eggshells and you're just praying that it's a good day and that there is no conflict (with Respondent)" (Transcript p. 765); "There's situations where it has just been openly hostile (Respondent's conduct), like what I saw in Judge Scurti's Chambers" (Transcript p. 778);

Judge Scurti: "Judge Russell has created such a division and divide among our bench" (Transcript p. 163); "Everybody is walking on eggshells, from bailiffs to clerks to other judges. And it is just not a pleasant situation." (Transcript p. 163);

Judge Waxman: "I would describe (Respondent) as seeming to enjoy hurting other people on the bench, openly hostile at times, rude, intimidating, taking joy when other judges would have negative things said about them in the press, disrespectful." (Transcript p. 467);

Judge Skolnik: "I shut my door 90% of the time (when Respondent is in that courthouse) . . . I don't want to hear the comments, and I don't want to respond." (Transcript p. 701); She is "mean spirited, argumentative, and unprofessional"; (Transcript p.702);

Judge Avery: "I repeatedly asked Judge Waxman to essentially take Judge Russell off of the dockets at Eastside District Court." (Transcript p. 723);

Judge Weinstein: "Judge Russell creates a hostile work environment." (Transcript p. 743); and "She yells at me in front of staff" (Transcript p. 743);

Judge Kevin Wilson: "Uncomfortable, the comments that she makes under her breath . . . it just makes it for a very intense, uncomfortable situation", in describing bench meetings with Respondent present (Transcript p. 794);

Judge Jennifer Etheridge: "(She goes from) zero to sixty immediately" (Transcript p.889);

Judge Kathleen Sweeney: "People are always concerned about what she might

do next . . . She was constantly egging people on. She was trying to get reactions out of people” (Transcript p. 812);

Judge Gordon: “The interactions are never pleasant between the two of them (Respondent and Judge Scurti). The unpleasantness is always one-sided, and it just makes everyone tense. She will frequently sit directly across from him at bench meetings and just stare at him” (Transcript p. 843); and “People tend to just walk away (from Respondent) and stop congregating or talking to each other and go into their rooms. Some judges have started to keep their doors closed because they just don’t want to hear the acrimony” (Transcript p. 844); and “She turns petty things into major things, and private issues into court issues”;

Judge James Green: “(Judge Russell’s conduct) has created an atmosphere that is nothing short of dysfunctional . . . It has created open hostility, open challenge of authority, open challenge of rules, and it is very difficult conduct to deal with. I look at the calendar every day . . . to see where my colleague Judge Russell is assigned, because I have to prepare my day” (Transcript pp. 931-32); and in describing why he wrote a letter to Chief Judge Morrissey concerning Judge Russell’s conduct: “I have an obligation under the rule, as a judge, to report what . . . I perceive to be misconduct if it has gotten to a point where it potentially doesn’t show a fitness . . . my letter was drawn from that” (Transcript p. 931);

Judge O’Hara: “On days that Judge Russell is at the Eastside Courthouse, there is kind of a cloud of concern or cloud of angst . . . Several of my colleagues and particularly the staff, administrative staff, are concerned about the day” (Transcript pp. 1026-27);

Chief Judge Morrissey: “I was concerned that someone would write an open letter actively antagonizing the entire rest of her court, and I thought maybe something was mentally wrong” (Transcript p. 1008);

Comments of significance from clerical witnesses include:

Kim Brown: “(Respondent) had continued to do little things that I just chalked it up as her just being very immature and unprofessional. The whole time everything was unprofessional” (Transcript p. 612); “I had had enough of Judge Russell . . . She was out of control” (Transcript p. 613); “I felt very stressed” (Transcript p. 617);

Faye Walker: “I have to avoid walking down a hall just in case (Respondent) is coming through with the bailiffs to go to her courtroom . . . she would have this strange laughter when she encounters me” (Transcript p. 662); “I just avoided her

when she was in the building . . . we did not want to be singled out in a courtroom and embarrassed in front of the citizens or our coworkers”; “Never (had similar interactions with any other judge of the bench)” (Transcript pp. 662-65);

Tracey Whye: “I can tell you that there are individuals who may not come through chambers when they know (Respondent) is on the roster for the day.” (Transcript p. 230).

And Respondent’s own witnesses:

Judge Cooper: “With some staff . . . she has a good reputation. With other staff, it’s not so good” (Transcript pp. 1046-47);

Judge Boles: “People watch what they do and say.” (Transcript p. 1238); and “It made it very unpleasant” describing a comment made by Respondent to Judge Scurti, during a bench meeting in October 2018 (Transcript p. 1236);

Judge Baylor Thompson; “There was one letter [open letter to all her colleagues, IC Exhibit 11] that was written to all of the judges, and I thought it was a little insulting to one of my colleagues” (Transcript p. 1256);

Judge Dorsey: “The atmosphere is tense (when Respondent is present) . . . Colleagues tend to keep to themselves . . . they tend to close their doors” (Transcript p. 1267);

Judge Jack Lesser: “I am always thinking is this the day something is going to happen” (Transcript not available as Judge Lesser testified via a video deposition).

The Commission has no doubt that this difficult, uncomfortable, tense and unprofessional work environment is created by Respondent and her behavior. The Commission finds it significant that these above behaviors have resulted in the loss of very close friendships between Respondent and Judge Avery, Judge Gordon and Judge Weinstein, respectively, and ended the “warm, cordial friendship” Respondent had previously enjoyed with Judge Waxman.

The Commission also finds informative the comments expressed by Chief Judge

Morrissey in that he is “concerned for Judge Russell’s mental well-being” and that he is “out of options” in describing his ability to address the situation in Baltimore City.

The Commission is also not able to determine whether Respondent is unable or merely unwilling to change her behavior, but has no doubt that her behavior greatly impacts the daily court operations in Baltimore City.

The Commission has found that the comments and behaviors of Judge Russell were undignified, uncooperative, discourteous, demeaning, and clearly demonstrate a pattern of serious violations of the Maryland Code of Judicial Conduct that strike at the very heart of the integrity of the judiciary and the public’s confidence in such integrity.

B. The Commission considered the testimony of Chief Judge Joseph F. Murphy, Retired, the character witness offered by Judge Russell, who described the Respondent as “an excellent appellate lawyer, both as a member of the Public Defender’s office and the Attorney General’s office”.

Judge Murphy seemed unfamiliar with some of the behavior of Respondent as described by her colleagues during the hearing. When questioned, Judge Murphy suggested that some of the information, if true, would give him pause, and perhaps change his opinion. “Yes (my opinion of Respondent’s character would be changed if I knew she intentionally damaged another judge’s car).” (Transcript p. 1292); (See also Transcript pp. 1290-94).

C. The Commission carefully considered the evidence, witnesses and testimony of Respondent, which included her explanations for the numerous incidents detailed before the Commission by her colleagues, subordinates and superiors, and her stated

belief that the issues of concern in the Baltimore City District Court began in 2015. Respondent was unable to identify anything she would change or do differently concerning nearly every one of the incidents described herein. Respondent acknowledged engaging in various of these behaviors, but expressed no regret. (Transcript pp. 1661-1684) She fails to see herself as the common denominator in these incidents; she blames others and takes no responsibility for her actions. The Commission has no doubt that Respondent is volatile, unpredictable, and responsible for the enormously difficult work environment in the Baltimore City District Court.

Additionally, the Commission reviewed letters of support written on behalf of Judge Russell from her 2016 quest for higher judicial office, and Judge Russell's prior contacts with the Commission on Judicial Disabilities once the Commission determined sanctionable conduct occurred.

Subsequent to the Hearing, the Commission reviewed proposed Findings of Fact and Conclusions of Law submitted by Judge Russell and Investigative Counsel. Judge Russell has made no recommendation of a sanction, in that she denies committing sanctionable conduct. Investigative Counsel also makes no specific recommendation as to an appropriate sanction, deferring to the Commission.

The Commission hereby refers this matter to the Court of Appeals with a recommendation to impose the discipline set forth in Paragraph IV, B.2, infra. In the Commission's view, the imposition of a public reprimand is not commensurate with the serious violation of misconduct in office committed by Judge Russell and does not reassure the public, her colleagues and co-workers that Judge Russell will be deterred

from engaging in similar behavior in the future. The Commission concludes that the gravity of the Code violations require the imposition of a significant sanction.

The Commission did, however, consider several mitigating factors presented by Judge Russell, through counsel, at the Hearing in determining its recommendation as to the appropriate discipline. The Commission found it persuasive that Respondent has changed the way she processes, handles and stores warrants. (Transcript p. 1680) The Commission also notes that Respondent has become more helpful to her colleagues in terms of “pulling cases”, even if such helpfulness is self-serving. The Commission concludes that its recommendation of a lengthy suspension is commensurate with the gravity and pervasive nature of Judge Russell’s misconduct and the extent to which it jeopardizes the integrity and dignity of the judiciary and the public’s confidence in such integrity and dignity. The Commission strongly considered recommending various courses of instruction or remediation for Respondent during this period of suspension, but will not make such recommendation given this Court’s opinion in Matter of Reese for Howard Cty., Tenth Judicial Circuit, 461 Md. 421 (2018), reconsideration denied (Oct. 15, 2018).

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

IT IS HEREBY **ORDERED** that:

1. The Charges that Respondent violated Maryland Rule 18-102.1, Maryland Rule 18-102.3, and Maryland Rule 18-102.16 are hereby dismissed for lack of proof.
2. The Vice-Chair is authorized by all the Commission Members to sign this

decision for all those Commission Members present at the Hearing. The signature pages for the other Commission members shall be retained in the Commission file.

3. The Executive Secretary of the Commission is to take all necessary steps to file with the Court of Appeals the entire Hearing record which shall be certified by the Vice-Chair of the Commission and include all documents required by Maryland Rule 18-407(k)(4).

4. The Executive Secretary is to promptly mail to Judge Russell and her counsel notice of the filing of the record and a copy of this Findings of Fact, Conclusions of Law, Order and Recommendations in this matter.

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

IT IS HEREBY FURTHER **ORDERED** that, pursuant to Maryland Rule 18-407(j):

1. The Commission, by unanimous vote, found by clear and convincing evidence that Judge Russell has committed sanctionable conduct, as defined by Maryland Rule 18-407(j), by violating the Canons of the Maryland Code of Judicial Conduct, as set forth in Section II. B above.

2. The Commission, by unanimous vote, hereby refers this above-captioned matter to the Court of Appeals with its recommendations as follows:

- a. The immediate suspension of Judge Devy Patterson Russell as Associate Judge in the District Court of Maryland for Baltimore City, Maryland; for a period of six (6) months; and
- b. Judge Russell undertake such remedial measures as this Court

recommends to assist her, and the District Court of Maryland for Baltimore City,
as Judge Russell returns to her duties.

Dated this ____ day of December, 2018.

Maryland Commission on Judicial Disabilities

By: _____
The Honorable Susan H. Hazlett, Vice-Chair