

**STATE OF MARYLAND**

**BEFORE THE COMMISSION ON JUDICIAL DISABILITIES**

<b>In the Matter of the</b>	*	
<b>HONORABLE DEVY PATTERSON RUSSELL</b>	*	<b>CJD 2018-009</b>
<b>Judge of the District Court of Maryland for</b>	*	
<b>Baltimore City, District One,</b>	*	
<b>Respondent</b>	*	

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,**  
**ORDER AND RECOMMENDATION**

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 former Maryland Rule 18-407 (a), (b), (c), (d) and (i), and current Maryland Rule 18-431(a) through (e), on June 24 and August 5, 2019, 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 Michael W. Reed, Chair, Virginia L. Fogle, Andrea M. Fulton Rhodes, Vernon Hawkins, Jr., Arielle F. Hinton, Esq., Richard M. Karceski, Esq., the Honorable Robert B. Kershaw, Sally McLane Young Ridgely, and Marisa A. Trasatti, Esq. The Honorable Susan H. Hazlett was recused from the proceeding. Kimberly A. Howell did not participate as a Commission Member at the Hearing. The nine (9) Commission Members present at the Hearing constituted a quorum, pursuant to former Maryland Rule 18-402(e) and current Maryland Rule 18-411(f).

The Charges alleged Judge Russell 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 18-102.5(b) COMPETENCE, DILIGENCE, AND COOPERATION

- (b) A judge shall cooperate with other judges and court officials in the administration of court business.

During the Hearing, the Commission received the following evidence:

Twelve (12) exhibits were entered by Investigative Counsel and no exhibits were entered by Respondent. (Exhibits IC1–IC 8, IC10–IC12, and IC13A)

Investigative Counsel called four (4) witnesses, Baltimore City District Court Administrative Judge Barbara Waxman, Judge Joan Bossman Gordon, Supervising Bailiff Nella Altadonna, and Retired Bailiff Gerard Pleines. Judge Russell called no witnesses and did not testify.

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: Materials Identified in Investigative Counsel’s Prehearing Statement (IC1-IC8, IC18-IC29, and IC40-IC104); Respondent’s September 17, 2018 deposition; the Transcript of Testimony of Respondent at the hearing in CJD 2016-189 on November 5, 2018; the Amended Findings of Fact, Conclusions of Law, Order and Recommendations issued by the Commission on December 4, 2018; and Selected Exhibits admitted into evidence at the hearing in 2016-189 (IC1–IC8, IC11, IC 26, IC32A-IC35, IC45-IC56, IC58-IC61, RESP1-RESP5, RESP7-RESP9, and RESP14-RESP18).

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 witnesses at the Hearing, and the Proposed Findings of Fact and Conclusions of Law submitted by Investigative Counsel on August 13, 2019 and Counsel for Respondent on August 19, 2019.

### **CHRONOLOGY:**

(This chronology offers facts that were considered by the Commission in making its decision.)

**January 16, 2015-** Judge Catherine O'Malley conducted a Criminal Domestic Violence hearing in the Eastside District Court for Baltimore City, Courtroom 5, with victim/disruptive litigant, Ms. Fonzin, who cursed several times after the sentencing of the defendant. Judge O'Malley asked Ms. Fonzin if she made a statement "Are you F----- serious?" in the course of addressing one of the curse words used by Ms. Fonzin in the courtroom. (Exhibit IC11)

**January 16, 2015-** Judge O'Malley's bailiff, Gerard Pleines, wrote a report to protect the judge if the victim/disruptive litigant filed a complaint. (Exhibit IC2)

**Between January 19-24, 2015-** Judge Devy Patterson Russell reported to Administrative Judge Barbara Waxman that Judge O'Malley used the "F bomb" in court on January 16, 2015. (Exhibit IC8) Judge Russell reported this information pursuant to Judge Waxman's prior instructions to all Baltimore City District Court judges that "if anything unusual happens in their courtroom -- outbursts, cases with public persons, anything unusual, a fight that may have resulted in an arrest, anything that I would need to know about, or if I needed to tell the people in charge of our communications department, a controversial case or a case that had a lot of public newsworthy – any case like that, they should tell me." (Tr. 39-40)

**1<sup>st</sup> week of February 2015-** Judge Waxman reviewed the audio recording of Judge

O'Malley's January 16, 2015 hearing. (Exhibit IC11) Judge Waxman found no inappropriate conduct by Judge O'Malley and that she was protecting the record as noted in her Chronology of events. (Exhibit IC8) After the review, Judge Waxman closed her file. (Tr. 43)

**February 27, 2015-** An email exchange occurred between Judges Russell and Waxman regarding the "April Duty Schedule" and "Civil Assignment." Judge Russell aired concerns that she had "not had my chambers assigned to Wabash for a year as of February, 2015", "have served five year (sic) out of my nine years as a District Court judge at Civil. I believe I have paid my dues and wish to continue to have my chambers assigned at the Wabash courthouse. There are several other veteran judges who do not have permanent chambers or are judges-in-charge that have not had their chambers assigned to Civil for years and rarely sit at Civil." (Exhibit IC13A)

**March 2, 2015-** Email from Judge Waxman to the judges of the District Court for Baltimore City regarding the "Permanent Chambers list March 2015". The email lists the top nine (9) judges are Sweeney, Hueston, Holt-stone (sic), Lesser, Lipman, Murphy, Braverman, Hutchins, and O'Malley. Judge Waxman noted "This does not mean you have to pick a place permanently, but you may if you wish." (Exhibit IC13A)

**March 10, 2015-** Judge Russell went to see Supervising Bailiff Nella Altadonna regarding the retirement party for the bailiff's predecessor, Larry Johnston. After discussing the party, Judge Russell brought up the January 16, 2015 incident with Judge O'Malley and asked to see the bailiff's report. After reviewing the report, Judge Russell asked why the profanity was not included in the report. Supervising Bailiff Altadonna summoned Bailiff Pleines to the meeting and at the time believed he recalled Judge O'Malley stating 'what is your f----- problem?' Bailiff Pleines amended his report in his supervisor's office with Judge Russell present. Altadonna noted "The judge asked for something. We complied." (Tr. 152; Exhibit IC7)

**March 11, 2015-** Judge Russell, while assigned at the Wabash Courthouse (Exhibit

IC1), waved the amended report by Bailiff Pleines as she walked into judges' offices and showed them the report. (Exhibit IC8) While at a meeting at the Circuit Court for Baltimore City, Judge Waxman received a call. The caller was upset and excited that "Judge Russell was going in the hallway and in and out of judges' offices saying, 'Ha, ha, ha. Katie<sup>1</sup> used the F' bomb and I have proof,' and waving a report, a bailiff incident report." The caller described the event to Judge Waxman as it was happening. (Tr. 100-101) Judge Waxman left her meeting to go the Wabash District Court to address the matter. (Tr. 46)

**March 12, 2015-** Judge Waxman went to see Supervising Bailiff Altadonna and Bailiff Pleines at the Eastside Courthouse. She played the audio recording of the January 16, 2015 hearing and Bailiff Pleines "realizes he was mistaken about the quote. He is very upset." (Tr. 56; Exhibit IC8) Bailiff Pleines prepared an "Addendum To The Report of 01-16-15". (Exhibit IC6) While preparing the report, Judge Waxman asked Bailiff Pleines "After listening to the CD, did it refresh your memory?", (Tr. 68) but did not "put words in my mouth" according to Bailiff Pleines. (Tr. 352) Judge Waxman received the March 12 report from Bailiff Pleines and had a copy placed on Judge Russell's desk. (Tr. 69)

**March 13, 2015-** Supervising Bailiff Nella Altadonna wrote a report regarding the incident entitled "Judge Devy Russell" summarizing the March 10 meeting with Judge Russell and her request to add profanity to the bailiff's report. Ms. Altadonna noted "When a judge asks for something, we, as bailiffs, interpret it as an order and feel obligated to comply." (Exhibit IC7)

**March 16, 2015-** Judge Waxman received the March 13 report from Supervising Bailiff Altadonna. (Exhibit IC8)

**May 2, 2016-** Judge Russell sent correspondence to Retired Judge Joseph F. Murphy, Jr. in furtherance of a mediation process. In this correspondence, Judge Russell stated "In late January, 2015, I met with Lead Bailiff, Nella Altadonna, "('Nella') in her office at Eastside to discuss an upcoming retirement party. During our conversation,

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<sup>1</sup> "Katie" is the nickname for Judge Catherine O'Malley.

another bailiff who happened to be in the same room, mentioned an incident involving Judge O'Malley and a domestic violence victim that occurred on January 16<sup>th</sup>. Apparently, the victim was very disruptive in her courtroom and used profanity. According to the bailiff, the victim asked Judge O'Malley, 'Are you Governor O'Malley's wife?' Then, at some point during the heated exchange, Judge O'Malley said to the victim: 'What is your F-ing problem?' It is my understanding that on the day of the incident...many courthouse bailiffs and clerks heard about and talked about the incident and what she said on the record. I was also told that the bailiff assigned to Judge O'Malley's courtroom memorialized the incident in a report in the event the victim later made a formal complaint." In this same package of material, Judge Russell goes on to state on March 10, 2015, "Pleines freely agreed and proceeded to write the addition to his report. Nella made a copy of the incident report for my records (I am glad now that Nella gave me a copy.)" (Exhibit IC12)

**August 22, 2016-** Judge Russell sent an email to Chief Judge Mary Ellen Barbera, Chief Judge John Morrissey, and Judge Waxman sharing her concerns regarding Judge O'Malley receiving permanent chambers and the January 16, 2015 incident. Judge Russell noted her belief that Judge Waxman was "angry that I would expose her covering up alleged judicial misconduct by Judge O'Malley... It should be noted that the second report DOES NOT DISPUTE that Judge O'Malley used profanity on the record, it only now changes the context in which it was used. I have in my possession both incident reports." (Exhibit IC10)

**February 21, 2017-** Judge Russell provided a letter to the Judicial Nominations Commission for Baltimore City Members regarding "Reapplication Supplement for Appointment to the Circuit Court for Baltimore City Question #38" where Judge Russell references the "March 2<sup>nd</sup> email to the bench from Judge Waxman wherein she suddenly, out of rotation, offers permanent chambers to, most notably Judge O'Malley and another judge (the two most tenured judges). All of the other seven tenured judges eligible on the

list already had permanent chambers for several years.” (Exhibit IC13A) This letter was addressed to the Nominations Commission in support of Judge Russell’s application to be elevated to the Circuit Court for Baltimore City.

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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 former Maryland Rule 18-407(j) and (k):

### **SUMMARY OF EVIDENCE**

The Commission heard testimony from Judge Barbara Waxman, Judge Joan Bossman Gordon, Supervising Bailiff Nella Altadonna and Retired Bailiff Pleines, listened to the audio recording of the January 16, 2015 hearing, as well as Admissions that were read into evidence. The Commission found the following testimony significant:

### **TESTIMONY OF JUDGE BARBARA WAXMAN**

Judge Barbara Waxman has been the Administrative Judge of the District Court for Baltimore City since 2013. Judge Waxman previously “instructed all judges that if anything unusual happens in their courtroom -- outbursts, cases with public persons, anything unusual, a fight that may have resulted in an arrest, anything that I would need to know about, or if I needed to tell the people in charge of our communications department, a controversial case or a case that had a lot of public newsworthy – any case like that, they should tell me.” (Tr. 39-40)

In late January 2015, Judge Russell reported to Judge Waxman that Judge O’Malley used the ‘F’ word in court. Judge Waxman thanked Judge Russell and advised she would investigate the matter.

After listening to the audio recording of Judge O’Malley’s January 16, 2015 hearing, Judge Waxman discerned that:

“there was a very disruptive litigant in the judge's courtroom. This litigant had an outburst and had used the ‘F’ word directed at the judge, used the ‘F’ word again. The judge tried to calm the situation down by asking the litigant to leave the courtroom. At that time the litigant called the judge a dumb ‘A’ and said the word. The judge called the litigant back in and had a discussion with the litigant. In the discussion, asked the litigant, using the exact same question that the litigant had used to her, ‘Did you say that’ and used the word. And the litigant then said, ‘Yes.’ That was the only time the judge used that word. I made a determination that the judge was protecting the record in case the judge was going to take this farther and have a contempt hearing. And I determined that the judge did not do anything improper.” (Tr. 41-42)

The matter was considered closed at the end of January or early February. (Tr. 43)

On March 11, 2015, Judge Waxman received a phone call from someone who was agitated and upset about the behavior of Judge Russell at the Wabash courthouse. (Tr. 43-46) The caller advised Judge Waxman that “Judge Russell was going in the hallway and in and out of judges’ offices saying, “Ha, ha, ha. Katie used the F’ bomb and I have proof,’ and waving a report, a bailiff incident report.” The caller described the event to Judge Waxman as it was happening. (Tr. 100-101) Judge Waxman left a meeting in the Circuit Court for Baltimore City, returned to the Wabash courthouse and retrieved the January 2015 file. She contacted and met with Supervising Bailiff Nella Altadonna. (Tr. 46-47)

Bailiff Gerard Pleines, the courtroom bailiff for Judge O’Malley’s hearing on January 16, 2015, wrote an incident report on that date (without consultation with any judge). (Tr. 301, 304-305; Exhibit IC2) Bailiff Pleines amended his report on March 10, 2015 after meeting with Judge Russell in Ms. Altadonna’s office. (Tr. 316; Exhibit IC3, 5) On March 12, 2015, Judge Waxman met with Bailiff Gerard Pleines and Lead Bailiff Altadonna. After hearing the CD of the January 16, 2015 hearing, Bailiff Pleines was very upset, apologetic, shocked and remorseful; he issued a third report on March 12. (Tr. 56-57) Judge Waxman requested Bailiff Pleines make a new report to correct the error of the March 10, 2015 report. (Tr. 67; Exhibit IC6) The March 12, 2015 report was placed on Judge Russell’s desk by Dee Brush, Judge Waxman’s executive assistant. (Tr. 69)



Nella Altadonna memorialized the March 10, 2015 incident via a writing that was emailed to Judge Waxman on March 16, 2015. (Tr. 74; Exhibit IC7) Judge Waxman created a report to memorialize the incident. (Tr. 74-75; Exhibit IC8- redacted) No discipline was imposed on Judge Russell. (Tr. 77)

Judge Russell doesn't like Judge O'Malley. It was very common knowledge to anyone who would listen. Judge Russell has stated disdain against Judge O'Malley since approximately 2011 to Judge Waxman. (Tr. 97-98)

It was the administrative practice of the District Court that the top nine (9) judges would be able to get permanent chambers based on seniority. Seniority was based on the date judges were sworn in to the District Court bench. Judge O'Malley was offered the ability to select permanent chambers in March 2015; the members of the District Court bench were advised via an email from Judge Waxman on March 2, 2015. (Tr. 78-80; Exhibit IC9) Judge Russell did not raise complaints or concerns to Judge Waxman in March of 2015. (Tr. 81)

Before the summer of 2016, Judge Waxman made an administrative decision to discontinue the practice of allowing permanent chambers and advised the District Court bench. Judge Russell emailed Judge Waxman on August 22, 2016 complaining she was not given permanent chambers, along with other issues. (Tr. 81-84; Exhibit IC10- redacted)

### **TESTIMONY OF JUDGE JOAN BOSSMAN GORDON**

Judge Joan Bossman Gordon was appointed to the District Court bench in January of 2005. (Tr. 219) She has one (1) year more seniority than Judge Russell (Tr. 226) and four (4) years less seniority than Judge O'Malley. Judge Gordon has never received permanent chambers.

Judge Gordon testified the Respondent "did not like Judge O'Malley at all. They had had some negative instances and, as late as the last part of February, beginning of March 2015, Judge Russell sent Judge Gordon a text message or an email saying that Judge

Waxman was 'Katie's puppet.'" (Tr. 224)

A memo had gone out naming several additional judges as having the right to pick permanent chambers. Judge Gordon testified as follows:

Q. Do you remember who was assigned permanent chambers?

A. I know Judge O'Malley was...

Q. Do you remember if Judge Russell complained specifically about Judge O'Malley being assigned permanent chambers?

THE WITNESS: Yes.

Q. What, if anything, did she say?

A. The same old thing about Judge Waxman being her puppet.

Q. I'm going to show you what has been previously marked as Investigative Counsel's Exhibit Nine and ask if you can identify that?

A. Yes. That is the email. Judge Waxman had sent it out. I had not yet seen it and Devy contacted me to complain about it and I told her I hadn't -- or responded back that I hadn't seen it, so she forwarded it to me.

Q. And what is the date on the email, if you don't mind?

A. March 2nd, 2015. And it was what are called the top nine judges, and the bottom one, new appointment being Judge O'Malley. (Tr. 227-229)

Judge Gordon discussed receiving a flurry of emails and/or texts from Judge Russell complaining that they were not given that same status. Respondent continued to express her dissatisfaction with Judge O'Malley receiving permanent chambers in a conversation with Judge Gordon on March 9, 2019, who testified as follows:

Q. Do you remember the conversation on March 9th that led to you to no longer talk? Not the incident, just the conversation?

THE WITNESS: I was in my chambers. Judge Waxman was next door in her chambers. Our doors are about -- the hinges on the doors were about six inches apart. So Judge Russell came to my doorway to talk with me and in a loud voice was complaining about the memo about permanent chambers. And I asked her to come into my chambers and have a seat. And I told her that if she was there to talk to me, great, have a seat and we'll talk, but I felt that she was using my proximity to Judge Waxman's chambers to just stand there and talk loud enough that Judge Waxman could hear her complaining. And I told her if that's what she was going to do, then I didn't want to have a conversation and she wasn't welcome there anymore. (Tr. 239-240)

As to the bailiff report incident, Judge Gordon recalled Judge Russell approaching her in a hallway stating "Guess who is going to get in trouble. Someone used the F' word or F' bomb in court." Judge Gordon asked Respondent what was she talking about, and she stated Judge O'Malley told someone in the courtroom, 'What's your f----- problem?' Respondent stated she said that she had talked with the bailiff who was in the courtroom and either had seen or was told that there was a written report about the matter. When asked about Judge Russell's demeanor while discussing Judge O'Malley and the bailiff report, Judge Gordon stated the following:

Q. What was her demeanor during this conversation?

THE WITNESS: Well, she said it in a sing-songy way, like "Guess who's going to get in trouble." And so, she was happy or glad that someone might get in trouble. (Tr. 219-220)

Judge Gordon also heard Respondent talking with someone in the hallway of their chambers. "But in a very loud voice she was telling someone or some people that Judge O'Malley was going to get in trouble because she had told someone, 'What's your f----- problem?'"

Q. What was her demeanor during that conversation?

A. Laughing.

Q. Do you remember when that conversation was?

A. That would have been probably the first week or two of March. (Tr. 230)

### **TESTIMONY OF GERARD PLEINES:**

Retired Bailiff Gerard Pleines was assigned to Courtroom 5 when Judge O'Malley conducted the Criminal Domestic Violence docket on January 16, 2015. He recalled the lady in the courtroom became belligerent. He wrote a report in case there was a complaint filed by the lady who cursed in Judge O'Malley's courtroom. (Tr. 304-306) At the time of the incident, Bailiff Pleines had previously served as a Maryland Transit Administration ("MTA") Police Officer and had been a District Court Bailiff for seven (7) years; in both positions, he had written many reports. (Tr. 299)

The bailiff's January 16, 2015 report was brought to his attention in March of 2015. Ms. Altadonna called him over the radio to come to her office; someone came to relieve him, so he left the courtroom to enter the bailiff's office. Judge Russell was sitting at the bailiff's desk, in the Lead bailiff's office, and Supervising Bailiff Nella Altadonna was standing at her desk with his January 2015 report on her desk. (Tr. 306-308) Bailiff Pleines was asked to recall what happened on January 16, 2015 and advised to amend his initial report to include language that Judge O'Malley used profanity which he recalled as "Are you f----- serious?" at the time of the meeting. (Tr. 344; Exhibit IC4) He later met with Supervising Bailiff Altadonna and Judge Waxman where he listened to the audio recording of the January 16 hearing, which refreshed his memory, to issue a new report reflecting the actual language used by Judge O'Malley. (Tr. 352; Exhibit IC6)

### **TESTIMONY OF NELLA ALTADONNA**

Nella Altadonna is the Supervising Bailiff for the District Court for Baltimore City.

She was hired in July of 2000 as a courtroom bailiff and appointed supervising bailiff in 2015. Lead bailiffs are under her command. Bailiffs oversee the activities of the court house to make sure everything runs properly and take steps to address any issues that come up. (Tr. 133-135)

Although Ms. Altadonna's memory was admittedly "hazy" over some things, she clearly recalled the following:

She met with Judge Russell in Ms. Altadonna's office in March of 2015 as Respondent wanted to talk about planning a retirement party for Altadonna's predecessor. Respondent then asked her about an incident in the courtroom involving Judge O'Malley using profanity with a member of the public. (Tr. 141-143) Ms. Altadonna felt Judge Russell used the retirement of her predecessor as an excuse to come to her office to pursue the question about Judge O'Malley. Judge Russell asked which bailiff was assigned to the courtroom on that day and asked Ms. Altadonna to summon Bailiff Gerard Pleines, which she did. (Tr. 143-144) Judge Russell and Pleines spoke about the incident in the courtroom; she asked what happened and he told her.

Judge Russell asked to see the report and Ms. Altadonna provided a copy. "She asked me for a copy of the report and I gave it to her. I didn't – I mean, I wasn't real comfortable about it, but a judge asked me for something." (Tr. 155) Ms. Altadonna recalled Russell saying, 'Why is the profanity not included in the report?' (Tr. 148) Judge Russell wanted the profanity included in the report and Bailiff Pleines amended his report. "The judge asked for something. We complied." (Tr. 151-152)

Prior to the meeting with Judge Russell, Ms. Altadonna had no intent to take any action or follow up with Mr. Pleines regarding his original report regarding the incident. (Tr. 155-156)

The Commission Members listened to the audio recording of the January 16, 2015 hearing. (Exhibit IC11, beginning at 11:04:46am) In addition, the following Admissions by Judge Russell were read into the record:

**REQUEST NO. 1:** In or about January 2, 2015, you became aware of an incident occurring on January 16th, 2015 in Judge Catherine O'Malley's courtroom.

**RESPONSE:** Admit.

**REQUEST NO. 2:** In or about January 7, 2015, you reported the incident occurring on January 16, 2015 in Judge Catherine O'Malley's courtroom to Judge Barbara Waxman, including in your report that Judge Catherine O'Malley had used the F bomb' in court?"

**RESPONSE:** "Admit; but probably used profanity not the phrase the F bomb." (Tr. 268)

**REQUEST NO. 4:** On or about March 10, 2015, you discussed with Supervising Bailiff Nella Altadonna the incident occurring on January 16th, 2015 in Judge Catherine O'Malley's courtroom.

**RESPONSE:** Admit.

**REQUEST NO. 7:** On or about March 10, 2015, you received a copy of the East Side District Court bailiff's report prepared and submitted by Bailiff Gerald (sic) Pleines related to the incident occurring on January 16, 2015 in Judge Catherine O'Malley's courtroom.

**RESPONSE:** Admit.

**REQUEST NO. 15:** You were present when Bailiff Gerald (sic) Pleines amended, altered, or added to the District Court bailiff's report related to the incident occurring on January 16, 2015 in Judge Catherine O'Malley's courtroom."

**RESPONSE:** Admit.

**REQUEST NO. 18:** You requested a copy of the amended, altered or added to East Side District Court bailiff's report prepared by Bailiff Gerald (sic) Pleines dated March 10th, 2015 regarding the incident occurring on January 16, 2015 in Judge Catherine O'Malley's courtroom."

**RESPONSE:** Admit.

**REQUEST NO. 19:** You received a copy of the East Side District Court bailiff's report prepared by Bailiff Gerald (sic) Pleines dated March 10, 2015 regarding the incident occurring on January 16, 2015 in Judge Catherine O'Malley's courtroom.

**RESPONSE:** Admit.

**REQUEST NO. 21:** You did not show or provide a copy of the amended, altered, or added to East Side District Court Bailiff's report prepared by Bailiff Gerald (sic) Pleines, dated March 10th, 2015 regarding the incident occurring on January 16, 2015 in Judge Catherine O'Malley's courtroom to Judge Barbara Waxman.

**RESPONSE:** Admit.

**REQUEST NO. 22:** You did not show or provide a copy of the amended, altered, or added to East Side District Court bailiff's report prepared by Bailiff Gerald (sic) Pleines, dated March 10, 2015 regarding the incident occurring on January 16, 2015 in Judge Catherine O'Malley's courtroom to anyone with supervisory authority over Judge Catherine O'Malley.

**RESPONSE:** Admit.

**REQUEST NO. 24:** You did not discuss the amended, altered, or added to East Side District Court bailiff's report prepared by Bailiff Gerald (sic) Pleines, dated March 10, 2015 regarding an incident occurring on January 16, 2015 in Judge Catherine O'Malley's courtroom with Judge Barbara Waxman.

**RESPONSE:** Admit.

**REQUEST NO. 25:** You did not discuss the amended, altered or added to East Side District Court bailiff's report prepared by Bailiff Gerald (sic) Pleines, dated March 10, 2015 regarding the incident occurring on January 16, 2015 in Judge Catherine O'Malley's courtroom with anyone with supervisory authority over Judge Catherine O'Malley.

**RESPONSE:** Admit.

**REQUEST NO. 28:** On or about March 12, 2015, you were informed by a court house employee that Judge Barbara Waxman was meeting with Supervising Bailiff Nella Altadonna and Bailiff Gerald (sic) Pleines.

**RESPONSE:** Admit.

**REQUEST NO. 29:** You did not listen to or otherwise review the recordings of the proceedings in the courtroom of Judge Catherine O'Malley occurring on January 16, 2015.

**RESPONSE:** Admit.

**REQUEST NO. 30:** The statement in the amended, altered, or added to East Side District Court bailiff's report, prepared by Bailiff Gerald (sic) Pleines, dated March 10, 2015, that "The judge than (sic) says to Ms. Fonzin, what is your f----- problem," is actually inaccurate.

**RESPONSE:** Was deemed admitted by the Commission's order. (Tr. 267 – 273)

## **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, currently sitting in Anne Arundel and Baltimore Counties. Therefore, Respondent was and still is a judicial officer whose conduct was and is subject to the provisions of the Maryland Code of Judicial Conduct, (Maryland Rules Title 18, Chapter 100) and Maryland Rules on Judicial Discipline (Title 18, Chapter 400).

B. Upon thorough review of the testimony of all witnesses, evaluation of the exhibits, the audio recording of the January 16, 2015 hearing, and the Admissions, the Commission found Respondent's conduct was sanctionable and violated the Maryland Code of Judicial Conduct.

C. As to CJD 2018-009, the Commission found that Judge Russell's conduct



violated Maryland Rules 18-101.1 and 18-101.3 when she caused Supervising Bailiff Nella Altadonna to summon Bailiff Pleines out of courtroom duty to meet with Judge Russell on March 10, 2015; this was an unnecessary disruption to the court's operations. Judge Russell's conduct improperly influenced Supervising Bailiff Nella Altadonna to direct Bailiff Gerard Pleines to change his January 16, 2015 report on March 10, 2015. If Judge Russell had not misused the prestige of her office, there would have been no change to the January 16, 2015 report. The Commission is also troubled that the Respondent sat in a meeting between a bailiff and his supervising bailiff. She had no administrative or supervisory authority to participate in such a meeting. Judge Russell engaged in the aforesaid conduct in an attempt to damage the reputation of Judge O'Malley due to Judge Russell's well-known personal animus toward Judge O'Malley.

D. As to CJD 2018-009, the Commission found that Judge Russell's conduct violated Maryland Rules 18-101.1 and 18-101.2(b) when she manipulated Supervising Bailiff Altadonna into discussing and having the January 16, 2015 report of Bailiff Pleines amended to include profanity. Through the influence of Judge Russell, Bailiff Pleines was also manipulated into changing his report on March 10, 2015. Bailiff Pleines had many years of experience writing reports for the MTA and the District Court. He was in no need of guidance in writing his report. All of the reports after January 16, 2015 magnify and reflect the influence of and the interaction with Judge Russell. The Commission also found that Judge Russell tried to undermine Administrative Judge Waxman when Respondent conducted her own investigation by meeting with Supervising Bailiff Altadonna and having the original bailiff report amended on March 10, 2015. Judge Russell's conduct created the appearance of impropriety.

E. As to CJD 2018-009, the Commission found that Judge Russell's conduct violated Maryland Rules 18-101.1 and 18-101.2(a) when she waved the amended report around the Wabash District Court hallway and judges' offices on March 11, 2015 with comments ridiculing Judge Catherine O'Malley and referencing potential discipline. The

Commission found it troubling that Respondent would pass along use of the “F” word without the full context of the January 16, 2015 incident. Even after receiving the corrected report on or about March 12, 2015, Judge Russell knowingly continued to perpetuate the erroneous quote of Judge O’Malley in her May 2016 correspondence to Retired Judge Murphy. Respondent also continued to denigrate Judge Waxman for providing permanent chambers to Judge O’Malley in her February 2017 letter to the Judicial Nominations Commission for Baltimore City. Judge Russell’s conduct failed to promote the integrity of the judiciary. In fact, she worked to tear down and damage the reputations of fellow judges.

F. As to CJD 2018-009, the Commission found that Judge Russell’s conduct violated Maryland Rules 18-101.1 and 18-102.5(b) when she conducted a separate investigation of the January 16, 2015 incident without the knowledge and consent of Administrative Judge Waxman by meeting with Supervising Bailiff Altadonna and Bailiff Pleines on March 10, 2015. Respondent’s investigation placed Bailiff Pleines in an uncomfortable situation with his supervisor, Respondent, and Administrative Judge Waxman. Respondent’s conduct caused Bailiff Pleines to change his report on March 10, 2015. Judge Russell should not have proceeded with an investigation after Administrative Judge Waxman indicated she would handle the situation. Respondent’s counsel argued that the Respondent was only trying to help the judge, but her actions subsequent to the initial notice to Judge Waxman indicate otherwise. Respondent’s interpersonal skills are troubling and her actions with court personnel and colleagues show questionable judgment that has led to a pattern of unnecessary disruption in the courthouse at issue. She should have consulted with Judge Waxman before meeting with Supervising Bailiff Altadonna and Bailiff Pleines as opposed to disregarding the process established by her superior. It is believed Judge Russell cannot separate personal from professional and that her personal animus toward certain colleagues motivated her. If Respondent would have cooperated with other judges and court officials, many of the disruptions discussed in these findings, would not have occurred.

## **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, §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 former Maryland Rule 18-407(j) and current 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 Devy Patterson Russell has committed sanctionable conduct, as defined by former Maryland Rule 18-401(k) and current Maryland Rule 18-402(m), 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 meeting with Supervising Bailiff Altadonna and Bailiff Gerard Pleines on March 10, 2015 and lending the prestige of judicial office to advance the personal interest of Respondent are proof of, and constitute, a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1 and Maryland Rule 18-101.3.

2. The factual findings by the Commission as to the conduct exhibited by Respondent in waving or publicly displaying a bailiff report around a courthouse along with ridiculing comments about another judge, are proof of, and constitute, a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-101.2 (a) and Maryland Rule 18-102.5 (b).

3. The factual findings by the Commission as to the conduct exhibited by Respondent in manipulating Supervising Bailiff Altadonna into discussing the January 16, 2015 report of Bailiff Pleines and having it amended to include profanity, are proof of, and constitute, a violation of the Maryland Code of Judicial Conduct, specifically Maryland

Rule 18-101.1, Maryland Rule 18-101.2 (b) and Maryland Rule 18-102.5 (b).

4. The factual findings by the Commission as to the conduct of Respondent in conducting a separate investigation of the January 16, 2015 incident with court officials without the knowledge and consent of the Administrative Judge, are proof of, and constitute, a violation of the Maryland Code of Judicial Conduct, specifically Maryland Rule 18-101.1, Maryland Rule 18-101.2(a) and Maryland Rule 18-102.5 (b).

This case is more than one judge having and voicing a negative opinion of another judge. This matter involved Judge Russell making concerted efforts, outside of normal operations, to embarrass an individual, who happens to be a member of the judiciary, due to personal dislike. 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**. (*emphasis added*) Maryland Rule 18-100.4(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.

The Commission found it significant that long after the matter was resolved on or around March 12, 2015 with Judge Russell receiving a copy of the corrected Incident Report, that she continued to paint Judge O'Malley in a negative light to The Honorable Joseph Murphy, Retired (in May of 2016) (Exhibit IC12); Chief Judge Barbera and Chief

Judge Morrissey (in August of 2016) (Exhibit IC10); and members of the Judicial Nominations Commission for Baltimore City (in February 2017) (Exhibit IC13A). Respondent's relentless determination to continue to defame Judge O'Malley strongly indicated to the Commission that her motives for meeting with Supervising Bailiff Altadonna and Bailiff Pleines in March of 2015 were to seize on an opportunity to bring down or harm a person she dislikes. Due to Judge Russell's personal vendetta against Judge O'Malley, undue influence was exerted over Supervising Bailiff Altadonna and ultimately Bailiff Pleines to amend the initial report to ensure it included profanity used by Judge O'Malley. The exercise of the vendetta, or the activities of the Respondent, also caused unnecessary stress to Administrative Judge Waxman, Ms. Altadonna, Mr. Pleines, and others subject to the ridiculing remarks by Respondent that Judge O'Malley was going to get in trouble while waving the amended report. Judge Russell also made disparaging remarks to another judge by referring to her as "Katie's puppet".

B. The Respondent presented no witnesses or testimony to counter the evidence presented by Investigative Counsel. Respondent did not testify on her own behalf and had no character witnesses.

C. The Commission considered the prior disciplinary history of the Respondent wherein she is currently serving a suspension without pay as a judge of the District Court of Maryland for a period of no less than six (6) consecutive months. Judge Russell is also ordered to comply with the conditions of reinstatement as stated in the Opinion of the Court of Appeals. In the Matter of the Honorable Devy Patterson Russell, Judge of the District Court of Maryland for Baltimore City, District One J.D. No. 1, September Term, 2018.

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.

The Commission hereby refers this matter to the Court of Appeals with a recommendation to impose the discipline set forth in Paragraph IV, F, infra. In the Commission's view, the imposition of a public reprimand or censure is not commensurate with the serious violation of misconduct in office committed by Judge Russell and does not reassure the public, her colleagues and court officials that Judge Russell will be deterred from engaging in similar behavior in the future. The Commission concludes that Judge Russell's conduct requires the imposition of a sanction.

The Commission considered mitigating factors from the evidence and testimony at the Hearing in determining its recommendation as to the appropriate discipline. Initially, Judge Russell made Judge Waxman aware of the January 16, 2015 incident in an effort to comply with Judge Waxman's prior request that she be made aware of any incidents that may be newsworthy in the courthouse.

After consideration of the Facts, Conclusions of Law, and the Considerations Regarding the Imposition of Discipline, the Commission concludes that its recommendation of a consecutive three (3) month suspension without pay is justified given the nature of Judge Russell's conduct, her prior disciplinary history, and the extent to which it continues to disrupt and denigrate the judiciary, and the public's confidence in its integrity and dignity.

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

**IT IS HEREBY ORDERED** that:

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

B. The Executive Secretary of the Commission is to take all necessary steps to file with the Court of Appeals the entire hearing record, which shall be certified by the

Chair of the Commission and shall include the transcript of the proceedings, all exhibits and other papers filed or marked for identification in the proceeding, as required by former Maryland Rule 18-407(k)(4) and current Maryland Rule 18-435(e)(4). The entire hearing record shall be provided to the judge through her attorney.

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

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

E. The Commission found by clear and convincing evidence that Judge Russell has committed sanctionable conduct, as defined by former Maryland Rule 18-401(k) and current Maryland Rule 18-402(m), by violating the Canons of the Maryland Code of Judicial Conduct, as set forth in Section II. B above.

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

The consecutive suspension of Judge Devy Patterson Russell as Associate Judge in the District Court of Maryland for Baltimore City for a period of three (3) months without pay, in addition to the current six (6) month suspension being served.

Dated this 3rd day of September 2019.

Maryland Commission on Judicial Disabilities

By: \_\_\_\_\_/s/\_\_\_\_\_  
The Honorable Michael W. Reed, Chair

