IN THE WEST VIRGINIA SENATE

IN THE MATTER OF IMPEACHMENT PROCEEDINGS AGAINST RESPONDENT CHIEF JUSTICE MARGARET WORKMAN

Honorable Paul T. Farrell
Acting Justice of the
Supreme Court of Appeals of West Virginia
Presiding Officer

CHIEF JUSTICE WORKMAN'S MOTION FOR MORE DEFINITE STATEMENT

Respondent Chief Justice Margaret Workman, by counsel, respectfully moves the Presiding Officer in accordance with Rule 12(e) of the West Virginia Rules of Civil Procedure for a ruling that Article XIV, as presented to the Senate, is so vague that Respondent cannot "reasonably be required to frame a respons[e]"or prepare an adequate defense unless and until the Board of Managers submits a more definite statement explaining the charges. W. Va. R. Civ. P. 12(e); *see Chapman v. Kane Transfer Co., Inc.*, 160 W. Va. 530, 535, 236 S.E.2d 207, 210 (1977) ("If a complaint is vague or ambiguous, the defendant may move for a more definite statement of factual allegations.").

Although the word nowhere appears within its text, Article XIV appears to charge Respondent — together with three other justices — with "maladministration," an impeachment ground listed, but not defined, in the State Constitution. *See* W. VA. CONST. Art. 4, § 9. The article alleges generally that the four justices "waste[d] state funds" in remodeling offices, coopting State-owned vehicles for personal use, installing "unneeded" computers in their residences, purchasing working lunches, and framing personal items. The article asserts that some of those expenditures could have been avoided had the Court timely adopted travel policies, individual tax-reporting directives, and home computer policies. Funds spent in those and other categories could have been reduced, according to the article, by more exacting oversight of State purchasing cards and

property inventories, by keeping better records of State vehicles, and by curtailing individual discretion with respect to purchases made by change order. The article charges that the alleged shortcomings in policy and administration constituted a failure by all the justices, "individually and collectively."

Respondent, however, is not on trial together with the other three justices impeached by the House of Delegates. If Respondent is declared guilty of Article XIV at the conclusion of her individual proceeding before the Senate, she alone will be subject to removal. Assuming, strictly *arguendo*, that Article XIV recites the essential elements of "maladministration," Respondent is yet entitled to know in advance of trial the specific acts or omissions the Board of Managers intends to prove, and the corresponding portions of the charge to which those acts or omissions are intended to relate. *See McHenry v. Renne*, 84 F.3d 1172, 1179–80 (9th Cir. 1996) (holding that Fed. R. Civ. P. 12(e) relief is warranted where legal claims do not correspond clearly to individual defendants).

It is likewise necessary for Respondent to be informed of the relevant timeframe underlying the charges and, depending on that temporal breadth, the theory of culpability. That is, does the Board of Managers seek to hold Respondent constitutionally responsible for administrative acts and omissions occurring when she was but a single voting justice of the Court, or is her potential exposure confined to the Court's alleged acts and omissions during her tenure as Chief Justice in 2015? If the latter, then is it the Board of Managers' position that Respondent's title and office of Chief Justice render her vicariously liable for actions taken by majority vote, regardless of how she voted? Those questions suggest distinctively different means of preparing Respondent's defense to Article XIV at trial, but trial is much too late for the answers to finally be revealed.

The risk of surprise and resultant prejudice is particularly palpable here. Importantly, "[p]rompt resort to discovery" in this case does not provide "adequate means for ascertaining the facts without delay in maturing the case for trial." *Hodgson v. Va. Baptist Hospital, Inc.*, 482 F.2d 821, 824 (4th Cir. 1973). Respondent has already produced over 35,000 pages of documents in response to Article XIV's inartfully drawn allegations and has yet to be informed of her assigned misconduct. Such a large production also reflects Respondent's need to be overinclusive. A more definite statement will allow the parties to limit their discovery and speedily proceed to trial.

Without a particularized description of the charges and theories against her, Respondent will have an inordinately short time to prepare to defend herself against a multiplicity of allegations many of which, confusingly, were refuted on their face by the evidence before the House. For example, it is undisputed that Respondent "requested to develop written policies for P-card usage" while she was Chief Justice, though those efforts were frustrated by the Administrative Director. *See* Transcript of House Judiciary Committee Proceeding Regarding the Impeachment of West Virginia Supreme Court Justices ("Tr.") at 1691-92, 1772-75. Similarly, Respondent as Chief Justice asked that an organizational chart be developed for the Court, *see id.* at 1764, repeatedly and forcefully requested the Administrative Director to pinpoint the source of the Court's "spend-down" of its reappropriated funds, *see id.* 348-49, 1227-28, and questioned the spending on renovations to the Court's leased space at City Center East, *see id.* 377-78. Respondent was exonerated of any wrongdoing with respect to the use of State vehicles, *see id.* 64, and the House expressly declined to impeach her for "unnecessary and lavish spending in the renovation and remodeling of her personal office." *Id.* 1953.

Plainly, many of the allegations set forth in Article XIV do not apply to Respondent. But if she is nonetheless constrained to expend valuable time and resources to defend against those

dubious accusations of wrongdoing, her defense to the remainder of Article XIV — and, indeed, to both articles of which she stands accused — will inevitably and irretrievably be prejudiced. The Board of Managers, of course, is keenly aware of the state of the evidence, and it would pose no undue burden for it to supply a more definite statement to remedy the real possibility of unfair prejudice accruing to Respondent if she is compelled to prepare her defense in consideration of the myriad and vague allegations currently comprising Article XIV.

WHEREFORE, Respondent respectfully requests that the Presiding Officer grant this motion and rule that the Board of Managers must file a more definite statement with respect to Article XIV that identifies: (i) the specific allegations on which it will rely in proceeding against Respondent; (ii) the timeframe during which Respondent allegedly committed an act or omission justifying her removal from office; and (iii) whether the Board of Managers will pursue any theory of joint or vicarious culpability to prove its case.

CHIEF JUSTICE MARGARET WORKMAN

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2018, a true and correct copy of the foregoing **CHIEF JUSTICE WORKMAN'S MOTION FOR MORE DEFINITE STATEMENT** was served by electronic mail and by depositing a true copy thereof in the United States mail, first class, postage prepaid, in envelopes upon the following:

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