

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

WEST VIRGINIA ETHICS COMMISSION,

Complainant,

v.

CIC No. 2017-02

CHERYLE M. HALL,

**Former Clerk, Court of Claims,
Respondent.**

STATEMENT OF CHARGES AND NOTICE OF HEARING

The Probable Cause Review Board of the West Virginia Ethics Commission entered an Order on July 6, 2017, finding that there is probable cause to believe that Cheryle M. Hall, the Respondent in the above-referenced Complaint, violated the provisions of W. Va. Code § 6B-2-5(b)(1), which state, in relevant part:

(b) Use of office for private gain – (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

The Probable Cause Review Board found that during the period from December 16, 2014, through June 30, 2016, Respondent Hall knowingly and intentionally used her public employment position for the private gain of another in violation of W. Va. Code § 6B-2-5(b)(1) by knowingly and intentionally failing to require an employee to utilize sick or annual leave time or to take time off without pay for multiple days on which the employee did not work but was paid salary and accrued associated employment benefits.

The Probable Cause Review Board found that during the period from March 25, 2013, through August 20, 2015, Respondent Hall knowingly and intentionally used her public employment position for the private gain of another in violation of W. Va. Code § 6B-2-5(b)(1) by knowingly and intentionally failing to require a second employee to utilize sick or annual leave time or to take time off without pay for multiple days on which the employee did not work but was paid salary and accrued associated employment benefits.

The Order directed that this Statement of Charges be prepared and that the matter be scheduled for a public hearing to determine the truth or falsity of the charges.

STATEMENT OF CHARGES

Jurisdiction

1. At all times relevant herein, Respondent Cheryle M. Hall ("Respondent") was employed by the West Virginia Court of Claims as its Clerk.
2. Respondent was therefore a "public employee" as defined in W. Va. Code § 6B-2-5(b)(1) at all times relevant herein.
3. The Ethics Commission has jurisdiction over alleged violations of the West Virginia Governmental Ethics Act ("Ethics Act") committed by West Virginia public employees, including Respondent Hall.

Facts

4. The Court of Claims adjudicates claims against the state for money damages, and investigates and rules upon claims made by victims of criminally injurious conduct and awards victims compensation from the Crime Victims Compensation Fund.

5. Pursuant to W. Va. Code § 14-2-5 (1998¹), the Court may appoint a clerk, chief deputy clerk and deputy clerks. The Joint Committee on Government and Finance (“Joint Committee”) is authorized to hire other employees whose services are necessary for the orderly transaction of business of the Court of Claims. The Clerk of the Court of Claims has administrative responsibility for the Court of Claims staff and the Crime Victims Compensation Fund staff.

6. The Joint Committee has authority over the personnel and services of joint legislative agencies, including the Court of Claims, which was established by W. Va. Code § 14-2-4, and the Crime Victims Compensation Fund, which was established by W. Va. Code § 14-2A-4.

7. As a division of the Joint Committee, the Court of Claims is required to follow the Joint Committee’s Employee Policies and Procedures Handbook.

8. The Clerk of the Court of Claims bears ultimate responsibility for ensuring that employee attendance records are accurately and consistently maintained and that employees are properly compensated.

9. When an employee has sick or annual leave time available and requests leave from work, the employee’s timely completion of a form triggers the necessary deduction from his or her total accrued sick or annual leave time. The employee then receives paid leave time. When an employee has exhausted all annual and sick leave, his or her timely completion of a form triggers a change of status to “leave without pay.” He or she then receives no pay or benefits for the days he or she did not work.

¹ Amendments to W. Va. Code § 14-2-5 which go into effect on July 9, 2017, change the title of the Court of Claims and make other changes not relevant to this proceeding.

10. Respondent Hall knowingly and intentionally failed to enforce the requirement that staff members under her supervision maintain accurate and timely records of their work hours.

11. Respondent knowingly and intentionally failed to require employees to either work a full workweek consisting of 35 hours, to properly take accrued annual leave or sick leave, or to request leave without pay if annual or sick leave had been exhausted.

12. The failure to require an employee to either work a full 35-hour workweek or use paid leave before receiving his or her full wages is a violation of W. Va. Code § 12-3-13.

13. Respondent Hall delegated responsibility for reviewing all leave taken by staff to the office Business Manager, who was instructed to report any leave concerns or discrepancies to Respondent. Respondent knowingly and intentionally failed to enforce this reviewing and reporting practice.

14. A Court of Claims employee failed to report to work on multiple occasions during her employment with the Court of Claims without taking accrued annual or sick leave or requesting time off work without pay.

15. The employee discussed in paragraph 14 was paid for a total of 32 days, or 224 hours, that she did not work between December 16, 2014, and June 30, 2016. The employee was paid \$2,707 in wages and approximately \$812 in benefits for the 224 hours. She therefore received a total of approximately \$3,520 for hours that she did not work.

16. Respondent Hall knew that the employee did not have sufficient accrued sick or annual leave time to be absent on the days in question, but nonetheless allowed

her to receive salary and benefits for those days and did not require her to take time off without pay.

17. Rather than requiring the employee to request time off without pay for the days she had already taken off, the Respondent entered into a verbal agreement with the employee to allow the employee to “make up” for the time she had not worked by working extra hours during the workweek and on weekends.

18. During June of 2016, Respondent Hall learned that the employee was not working the extra hours.

19. Respondent made a second verbal agreement with the employee in which the employee agreed to take three days’ leave without pay during each of the next three two-week pay periods to “make up” for a total of nine days of missed work. The agreement purportedly was intended to “make up” for the days on which the employee had not worked and had not taken leave, but the employee “owed” the State more than nine days when the agreement was made.

20. On July 18, 2016, Respondent Hall approved the necessary form to deduct three days’ pay from the employee’s next pay period and submitted the form to Legislative Manager Aaron Allred. The three days were days which the employee had already failed to work during May and June of 2016.

21. In addition to the issues surrounding the first employee discussed herein, Respondent Cheryle Hall intentionally allowed a second employee to miss work without taking annual or sick leave or requesting leave without pay.

22. The second employee was paid for a total of 24.89 days, or 174.25 hours, between March 25, 2013, and August 20, 2015. This employee was paid \$3,112 in wages and approximately \$934 in benefits for a total of \$4,046 for these hours.

23. The second employee also received \$1,514 for 82.75 hours of unused annual leave when she resigned. She therefore received a total of \$5,560 for hours that she did not work and for unused annual leave.

Count One

24. The allegations set forth in paragraphs 1 through 23 are re-alleged and incorporated herein by reference.

25. During the period from December 16, 2014, through June 30, 2016, Respondent Cheryle M. Hall knowingly and intentionally used her public employment position for the private gain of another in violation of W. Va. Code § 6B-2-5(b)(1) by knowingly and intentionally failing to require an employee to utilize sick or annual leave time or to take time off without pay for multiple days on which the employee did not work but was paid salary and accrued associated employment benefits.

Count Two

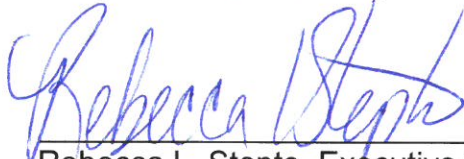
26. The allegations set forth in paragraphs 1 through 25 are re-alleged and incorporated herein by reference.

27. During the period from March 25, 2013, through August 20, 2015, Respondent Cheryle M. Hall knowingly and intentionally used her public employment position for the private gain of another in violation of W. Va. Code § 6B-2-5(b)(1) by

knowingly and intentionally failing to require a second employee to utilize sick or annual leave time or to take time off without pay for multiple days on which the employee did not work but was paid salary and accrued associated employment benefits.

NOTICE OF HEARING

Notice is hereby given that a PUBLIC HEARING will be held on September 28-29, 2017, at the offices of the West Virginia Ethics Commission, 210 Brooks Street, Third Floor Conference Room, Charleston, West Virginia, beginning at 10:00 a.m. before Jennifer Narog Taylor, an independent hearing examiner, to determine the truth or falsity of the charges herein. The hearing will be continued until completed.



Rebecca L. Stepto, Executive Director
West Virginia Ethics Commission
210 Brooks Street, Suite 300
Charleston, WV 25301
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CERTIFICATE OF SERVICE

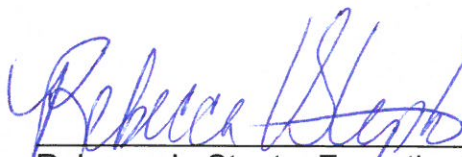
I, Rebecca L. Stepto, Executive Director of the West Virginia Ethics Commission,
hereby certify that I mailed a true and complete copy of the foregoing **STATEMENT OF
CHARGES AND NOTICE OF HEARING** on July 6, 2017, to:

Via U.S. Mail and Certified Mail, Return Receipt Requested:

Cheryle M. Hall
2008 Parkwood Road
Charleston, WV 25314
Respondent

Via U.S. Mail and email:
James M. Cagle, Esquire
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1018 Kanawha Boulevard, East
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