STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

In Re Hon. Kahlilia Y. Davis

36th District Court
Wayne County, MI

FC 101

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DISCIPLINARY COUNSEL'S RESPONSE TO RESPONDENT'S BRIEF IN SUPPORT OF AND OPPOSITION TO MASTER'S REPORT

Respondent's brief in support of and in opposition to the Master's report does not specify which of the findings she supports or opposes. Disciplinary counsel's response addresses only those of respondent's arguments that appear relevant, and that were not addressed in counsel's own objections and support.

Count I

The complaint alleged that respondent abused her power to find contempt of court in two landlord-tenant cases. The first was *Detroit Real Estate v Hayes,* in which respondent improperly

found Joy Eck, the manager of Detroit Real Estate, to be in contempt and ordered her to pay unlawful fines.

Respondent offers no facts or analysis in addition to those cited by the Master to support the Master's finding that respondent's handling of *Detroit Real Estate* was not misconduct. Respondent's brief merely reiterates the Master's incorrect statement that Ms. Eck's attorney, Diane Wyrock, admitted that she had previously admonished Ms. Eck for posting eviction notices prematurely. (Respondent's Brief at p 2) As we note in our objections at p 9, Ms. Wyrock acknowledged no such thing. (DC Ex 6, p 12) The Master was simply wrong. For the reasons stated in disciplinary counsel's objections at pp 5-14, respondent committed misconduct throughout her handling of Ms. Eck's case.

The second case in which respondent violated her contempt of court power was *Sanders v Thomas.* Respondent appears to agree with the Master's conclusion that respondent denied Mr. Johnson due process, which constituted a violation of MCR 9.202(B)(2) and Canon 3(A)(3); failed to be faithful to the law and to maintain professional competence in it, in violation of MCR 9.202(B)(1)(a) and Canon 3(A)(1); and engaged in conduct prejudicial to the administration of justice, in violation of MCR 9.104(1) and MCR 9.202(B). (Respondent's Brief at pp 2-3) Respondent does not address the Master's conclusion that respondent's treatment of the landlords also violated MCR 9.202(B)(2) and Canon 3(A)(12). For the reasons stated in disciplinary counsel's objections at pp 14-17, respondent committed misconduct with her handling of the *Sanders* contempt issue.

Count II

The Master found that respondent committed misconduct in her treatment of court officer Myran Bell and the cases in which he served process. Respondent does not address the Master's

findings, but mostly attacks Mr. Bell's credibility. (Respondent's Brief at pp 3-5) The problem is that Mr. Bell's credibility is not at issue. The only issue in Count Two is whether respondent acted ethically in her treatment of Mr. Bell and of the cases in which Mr. Bell had served process. The Master concluded that respondent's treatment violated multiple canons and court rules. (Report, pp 14-15)

Respondent concedes that the Master found respondent improperly dismissed and adjourned cases, found that she made allegations against Mr. Bell without record evidence, and found that she made presumptions leading to the dismissals and adjournments solely because Mr. Bell's name was on the proof of service. (Respondent's Brief at p 5) Respondent never challenges these findings. (Respondent's Brief at pp 3-6)

Respondent argues that she was not motivated by ill will in her treatment of Mr. Bell, but rather, acted as someone who believed that Mr. Bell could not be trusted to perform his duties honorably and reliably. (Respondent's Brief at pp 5-6) The record does not support, and the Master did not find, respondent's characterization of Mr. Bell. Mr. Bell clearly made mistakes with respect to one proof of service – to which he readily admitted – but there is no evidence that he ever knowingly put wrong information on any other proof of service.[1] (Tr 7/7/22, p 31/12-14)

As the Master concluded, respondent's subjective motives are irrelevant. What is relevant is the findings that respondent was biased against Mr. Bell, and that rather than recuse herself she acted on her bias over and over without according Mr. Bell, or the parties before her, even the bare minimum of due process or judicious treatment. From the outset, respondent *assumed* the process server she saw was Myran Bell. She made no effort to determine the true identity of the process

[1] Mr. Bell also admitted to filing 5 or 6 proofs of service that had actually been served by his employee. There is no evidence that any were incorrect, other than the one that triggered respondent's ire.

server, she sent an ex parte communication to the judge assigned to the matter at issue, she repeatedly announced from the bench that Mr. Bell was not believable, she prejudged cases by announcing she would dismiss any case in which Mr. Bell was the process server, and she proceeded to dismiss or adjourn cases solely based on the fact that Mr. Bell had been the process server. She then completely disrespected her chief judge's directive not to dismiss cases in which Mr. Bell was the process server and to reinstate cases dismissed on this basis, would not allow attorneys to make a record, and continued to adjourn cases under the disingenuous guise that no lease or deed was attached to the complaint.

For the reasons stated in disciplinary counsel's objections at pp 17-23, respondent committed misconduct with her treatment of Mr. Bell and the cases in which he served process.

Count III

Respondent maintains that most of her failure to discharge administrative duties was a result of health problems. (Respondent's Brief at p 7) She apparently does not notice that the allegations in the complaint, the evidence at the hearing, and the Master's findings, had nothing to do with any health problems.

Respondent's obstruction of the court's and SCAO's discharge of administrative responsibilities is more accurately summarized as:

- Intentionally refusing to follow her chief judge's September 25, 2017 order to stop dismissing cases based solely on the identity of the court officer or process server, and to reinstate any such dismissed cases. This had nothing to do with her health.

- Intentionally refusing to abide by her chief judge's directive to submit her arrival time each day to the chief judge's office to confirm she was reporting to work when she was prohibited from presiding over 36th District Court cases. This had nothing to do with her health.

- Using disrespectful Biblical emails to report her arrival times, in order to communicate her disrespect of the chief judge's office and to Judges Blount and Paruk. This had nothing to do with her health.

- Intentionally failing to report for work, obtain coverage, or notify administration that she would not work on December 26 and 28, 2018, when she was scheduled to work the felony arraignment docket on December 26, 27, and 28. Her failure to notify her administration of her absences had nothing to do with her health.

- Failing to appear for work for the first three weeks of January 2019 and failing to notify or explain her absence to court administration. Her failure to notify court administration of her absences had nothing to do with her health.

- Refusing to acknowledge receipt of the amendments to the Performance Improvement Plan and further refusing to comply with some terms of the PIP and amendments. This had nothing to do with her health.

Respondent contends that Judge Blount deprived her of the means of discharging any administrative responsibilities by prohibiting her from presiding over a docket for a period of time. (Respondent's Brief at p 10) This is absurd. None of the ways in which respondent obstructed the administration of the court had anything to do with her presiding over a docket. Whether respondent had a docket or not, she still had administrative responsibilities.

Moreover, several of respondent's failures to discharge administrative responsibilities occurred when she did have a docket. She had a docket when she disregarded Judge Blount's directive not to dismiss cases in which Mr. Bell served process, and she had a docket when she failed to obtain coverage for her absences on December 26 and December 28 of 2018. She had a docket when she irregularly reported her arrival and departure times,[2] and when she failed to communicate with Judges Blount and Paruk. (Report, p 18, ¶A)

[2] Judge Blount described how respondent would report her absences at the last minute, if she notified the court at all. (Tr 7/7/22, p 66/2) Judge Blount noted that the 36th District is a very busy court, and it was difficult to find someone to preside over respondent's docket at the last minute. When a substitute could not be found in time, lawyers and litigants would just wait in the courtroom because no one was available. (Tr 7/7/22, p 66/16-22)

The fact that respondent attributes her own administrative failures to Judge Blount demonstrates her inability or refusal to accept responsibility for her own conduct. For the reasons stated in disciplinary counsel's objections at pp 23-29, respondent committed misconduct by her obstruction of the administrative functions of her court, and by her disrespect of Judges Blount and Paruk.

Count IV

Count Four alleges that respondent disabled the official recording equipment in her courtroom and deliberately held proceedings knowing that there was no official record. Respondent's brief frames a narrower and immaterial issue – whether she made an official record of her cases. (Respondent's Brief at pp 11-19) Having framed the wrong question, her argument ignores the overwhelming evidence that she *disabled* the recording equipment.

With respect to whether she conducted proceedings with no official record, respondent again blames Judge Blount for failing to provide her with either a proper video operator or a court reporter. She states that Judge Blount and her administration simply refused to provide respondent with the necessities for a judge in her courtroom. With absolutely no evidence to support her claim, she goes so far as to state that "it is not implausible that what Judge Blount was seeking was to sabotage Respondent in her novice[3] role as a judge." (Respondent's Brief at p 19) Notably, this specious argument differs from the one respondent offered at the hearing, which was that she was not trained on the video recording equipment.

The emptiness of respondent's argument is shown by the fact that her decisions to disable the recording equipment, not to use the recording equipment, and to conduct hearings though she

[3] By January 2019, respondent had been a judge for two years and was hardly a "novice."

was not making a record, were all self-inflicted decisions. Judge Blount had nothing to do with them. (Disciplinary Counsel's Brief at pp 29-40)

Respondent misrepresents Judge Blount's testimony to support her fictitious claim she was not required to use the recording equipment. (Respondent's Brief at pp 11-14) Judge Blount testified that video recording equipment was installed in every courtroom in 2017 and 2018 after the courthouse was remodeled. (Tr 7/7/22, p 73/3-17) When respondent was assigned to the landlord-tenant docket in March 2017 (when she first took the bench), she had a court reporter. (Tr 7/7/22, p 91/23-24) Court reporters were used because the litigants in landlord-tenant cases tended to talk at the same time. (Tr 7/7/22, p 104/11-16)

Respondent was then assigned to the business license docket in January 2019, which is part of the traffic docket. (Tr 7/7/22, pp 96/21-23, 97/4-9) At that time, respondent did not have a court reporter assigned to her. If a judge did not have an assigned court reporter, the judge was to use the video equipment. (Tr 7/7/22, p 74/12-19) This was in accord with installing the video equipment in every courtroom and, as court reporters retired and were not likely to be replaced, the video equipment would eventually be used in all courtrooms. (Tr 7/7/22, pp 73/10-11, 74/9-10, 23-24)

In an effort to claim that Judge Blount testified that there was no "requirement" that judges use video equipment in their courtrooms, respondent quotes the following at page 13 of her brief:

> Q. [By Mr. Schwartz] Okay. And from what you said, or at least what I believe you said, to JTC counsel, those new people had to take use of the video equipment as part of being a judge; correct?
>
> A. No, there wasn't a requirement. And I hope –
>
> Q. Oh.
>
> A. There was not a requirement that they take video equipment. . . .

Respondent's ending the quote with four ellipses was a purposeful attempt to mislead by omitting the relevant portion of Chief Judge Blount's answer. The complete answer clarifies what respondent tries to obfuscate:

> A. There was not a requirement that they take video equipment. **What I said was if they had a court reporter assigned, then they continued to use the court reporter. If you notice on this exhibit –** [Tr 7/7/22, p 90/15-18; Emphasis added]

Respondent did not have a court reporter assigned to her in January 2019. Respondent was required to use the video equipment. Chief Judge Blount's testimony contradicts the picture respondent erroneously paints in her objections.

Respondent concludes by stating that she did not intentionally fail to make or record proceedings, that she could not make a record because of Judge Blount's nonexistent assistance, and that she had no recourse but to make a record on her cell phone. Respondent's defense is a false representation of, and completely divorced from, the evidence in the record. For the reasons stated in disciplinary counsel's objections at pp 29-40, respondent committed misconduct by her deliberate refusal to record proceedings over which she presided.

Counts V, VI, and VII

Respondent's brief does nothing more than summarize the Master's findings with regard to each of these counts, without stating whether respondent supports or opposes the Master's conclusions. Respondent also does not acknowledge the facts that support these counts in her discussion of sanctions. For the reasons stated in disciplinary counsel's objections at pp 40-60, respondent committed misconduct by recording proceedings on her cell phone and publishing them on Facebook, by parking illegally and engaging in her ancillary conduct, and by making about a dozen false statements.

Sanction

With respect to the appropriate sanction, respondent's brief focuses almost exclusively on her abuse of her contempt authority in *Sanders* that was charged in Count One. (Respondent's Brief at pp 24-26) She ignores all her other misconduct – both the other misconduct found by the Master (respondent's unethical vendetta against Mr. Bell, her failure to record proceedings, recording proceedings on her cell phone, misusing a Detroit Police placard and her abuse of her position to avoid a ticket) as well as the misconduct established by the evidence that the Master should have found but did not (respondent's many false statements, her disrespect of Judges Blount and Paruk, her disrespect for the law, her disrespect of the proceedings before Judge Krot, her publication of court proceedings on Facebook, and her abuse of her contempt of power with respect to Ms. Eck). Based on only a sliver of her misconduct, she argues that she should receive a sanction less than was levied in *In re Chrzanowski,* 465 Mich 468 (2001). (Respondent's Brief at p 31)

For all the reasons stated throughout disciplinary counsel's objections to the Master's report, respondent's misconduct is far more serious than that committed by Judge Chrzanowski. Respondent made multiple false statements, which – unlike Judge Chrzanowski – she has never corrected or acknowledged. Respondent tried to destroy a court officer – something Judge Chrzanowski never did. Respondent disrespected the parties who came before her, a judge before whom she appeared, and those responsible for administering the court – something Judge Chrzanowski never did. Respondent sabotaged the parties in her court by not creating a record of proceedings – something Judge Chrzanowski never did. Respondent intentionally violated the law, and abused her position and a placard to which she had no right to use – something Judge

Chrzanowski never did. Respondent abused her contempt of court powers on more than one occasion – something Judge Chrzanowski never did.

Respondent also cites *Chrzanowski* for the proposition that "some consideration should be given to the chastening effect of respondent's . . . interim suspension from judicial duties, although such suspension has been with pay." *Id.* at 489 (Respondent's Brief at pp 30, 32) Here, there is no evidence that respondent has been "chastened" by her interim suspension. To the contrary, she made several of her false statements *after* she was suspended, which strongly suggests that she has *not* been chastened by her suspension. In any event, because respondent's misconduct warrants removal from the bench, any credit for her interim suspension is moot.

CONCLUSION

Disciplinary counsel ask that the Commission reject respondent's support of, and challenges to, the Master's report, as without merit. Due to the extent, pervasiveness, and seriousness of respondent's misconduct, disciplinary counsel urge the Commission to recommend that the Supreme Court remove her from the bench.

Respectfully submitted,

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