

STATE OF MICHIGAN
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

Hon. Bruce Morrow

Formal Complaint No. 102

Third Circuit Court

Hon. Betty R. Widgeon, Ret'd

Detroit, Michigan

THE MASTER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION ALLEGATIONS

Judge Morrow ("Respondent") has been a judge at the Wayne County Circuit Court since his election in 1998. Before that, he served as a judge at the Recorder's Court. Respondent is subject to all the duties and responsibilities imposed on judges by the Michigan Supreme Court and is subject to the Michigan Code of Judicial Conduct.

II. PROCEDURAL HISTORY

The Judicial Tenure Commission ("the Commission") authorized Formal Complaint 102 as to Respondent and petitioned the Michigan Supreme Court for the appointment of a Master on August 11, 2020. Respondent filed an Answer to the Complaint on August 25, 2020. The Michigan Supreme Court appointed Hon. Betty R. Widgeon, retired (14A District Court), as the Master in Formal Complaint No. 102 against Hon. Bruce U. Morrow on September 17, 2020.

The Master issued a Scheduling Order on September 28, 2020, for the hearing to be held via the ZOOM virtual platform with live streaming on YouTube on November 13, November 23, November 24, December 7, and December 15. Disciplinary Counsel (“the Examiner”) filed an Amended Complaint on October 21, 2020.

The parties gave closing arguments at the close of proofs on December 15, 2020. On December 22, 2020, the Commission issued an Order Granting the Master’s Request for an Extension to file her report on or before February 9, 2021. The parties filed Proposed Findings of Fact and Conclusions of Law and responses by January 15, 2021.

III. STANDARD OF PROOF

The standard of proof in a Judicial Tenure Commission hearing is by a preponderance of the evidence. *In re Haley*, 476 Mich 180, 189; 720 NW2d 246 (2006).

IV. BACKGROUND

Respondent presided over the June 2019 homicide trial of James Edward Matthews (“the defendant”). The case, *People v. Matthews*, lasted from June 10, 2019, to June 13, 2019. The defendant was accused of the 2003 murder of Camille Robinson. He was not charged with any crimes relating to sexual activity, but he acknowledged to the police in 2003 that he had a sexual encounter with the victim before her death. The Assistant Prosecuting Attorneys (“APAs”) in the Matthews case were Ashley Ciaffone (“Ciaffone”) and Anna Bickerstaff (“Bickerstaff”). Ciaffone had tried a case before Respondent as an intern and had one other case pending before him. Bickerstaff had never met Respondent until her involvement in the Matthews case.

During *voir dire*, Respondent used the example of his height to illustrate bias for the jury. He said, “I’m gonna say: The man was tall. I can almost guarantee everybody has a different height for tall. Because mine is 6’7”. And why is it 6’7”? Because I’m 6’4”. And our definitions

are always personal. Nobody knows. But if I say that man was 6'7", now you have the information. Now you can make your own conclusion."

As a part of his effort to enhance the quality of advocacy in his courtroom, Respondent often offers advice and criticism to attorneys. Near the end of Ciaffone's *voir dire*, Respondent encouraged her to be more direct in her questions, asking, "What one thing do you really want to know?" Ciaffone asked a more direct question as a response to Respondent's feedback.

Ciaffone asked Respondent for feedback early in the trial, to which he responded by expressing doubt about her ability to accept feedback. At one point, Respondent intervened to explain that Ciaffone was not refreshing the witness's recollection properly. Ciaffone had repeated problems with leading questions, even after Respondent corrected her. Bickerstaff began many of her questions with the word "and"; Respondent told her that she should "keep an eye on" that. The events that form the basis for the Complaint occurred during the remainder of the trial.

V. COUNT 1: INAPPROPRIATE USE OF SEXUALLY GRAPHIC LANGUAGE

Findings of Fact

The Master finds by a preponderance of the evidence that Respondent did inappropriately use graphic sexual language in his June 11, 2019, conversation with Bickerstaff based upon the following evidence:

A. At one point on June 11, 2019, during a break, Bickerstaff asked Respondent for feedback about her direct examination of the medical examiner. She said words to the effect of "was that line of questioning any better?" Respondent said Bickerstaff's examination was better, but he had another critique for her. He left the bench saying that he would talk to Bickerstaff at the Counsel's table because giving the critique from the bench might make her blush.

B. Respondent sat next to Bickerstaff who sat in the middle of the three chairs at the Prosecutor's table. The seats were close together, and the arms of the chairs were touching. Respondent then illustrated the problem with Bickerstaff's direct examination by using the development of an intimate relationship as an analogy. He said words to the effect of "when a man and a woman start to get close, what does that lead to?"

C. Bickerstaff said she didn't understand. After Respondent repeated his question, Bickerstaff said, "Do you mean sex?" Respondent said that foreplay leads to sex and asked Bickerstaff, "Would you want foreplay before or after sex?" Bickerstaff did not respond.

D. When Respondent asked the question again, Bickerstaff answered, "Before." Respondent stated that the climax of the medical examiner's testimony is stating the cause and manner of death.

E. Respondent said words to the effect that "you start with all the information from the report, all the testimony crescendos to the cause and manner of death, which is the sex of the testimony." Respondent stated that a lawyer should "tease the jury with the details of the examination."

Discussion of Findings

The record paints a picture of a Judge who initially freely offered correction and criticism of Bickerstaff and Ciaffone's techniques from the bench but then decided to approach and sit next to Bickerstaff and engage her in unnecessary and inappropriate sexual dialogue. The fact that sex might otherwise have been mentioned in a courtroom or in Bickerstaff's presence does not make a Judge asking her about her own sexual experiences and desires appropriate – even if it is asked as a hypothetical. This exchange happened in the courtroom, during a trial, while Bickerstaff was working. Her reaction or response to the conversation is not the standard by

which the appropriateness of the exchange is evaluated. Nevertheless, the Master notes that it would be unreasonable to expect that, under such circumstances, Bickerstaff was, or would have considered herself to be, free to disengage from the conversation or complain about the inappropriate nature of the conversation.

Nothing about Bickerstaff's question regarding her examination technique – or Respondent's general impression that she had much to learn in multiple areas – serves to create an environment in which sitting directly next to her and asking about her sexual preferences was appropriate. The fact that Respondent followed up these questions with a metaphor for eliciting witness testimony does not make his use of sexual language in the above cited dialogue and context necessary or appropriate. Respondent's Answer to Count I paragraph 6 of the Complaint– that he went to sit next to Bickerstaff because he did not want to cause her to blush in embarrassment over being corrected– is undermined by the fact that Respondent had already repeatedly corrected Bickerstaff from the bench throughout the trial. Instead, his comments about making Bickerstaff blush suggest an acknowledgment that the personal and intimate nature of what he intended to say was what would embarrass her, not the underlying suggestion that her litigation technique needed improvement.

Respondent takes the position that Bickerstaff is “a liar” and that, therefore, her testimony should be discounted accordingly. This assertion is based on the facts that (1) Chief James Bivens's report of her interview to Detective JoAnn Kinney states that Bickerstaff believed that Respondent was hitting on her, (2) Bickerstaff testified that she did not believe that Respondent was hitting on her, (3) Bickerstaff told some of her coworkers about the incorrect statement, and (4) Bickerstaff did not tell Chief Bivens about the incorrect statement. While the Master agrees that the appropriate course of action would have been for Bickerstaff to have told

Chief Bivens of the error, she does not find that Bickerstaff's failure to do so automatically destroys the credibility she otherwise had, especially given her candor in admitting to her failure to correct that mistake.

Conclusions of Law

Based upon these factual findings, the Master concludes that the Examiner has met its burden of proving the allegations contained in Count 1, and Respondent is responsible for the following as a matter of law:

- A. Conduct in violation of the Michigan Code of Judicial Conduct Canon 2(B), which contains the following requirements:

A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Without regard to a person's race, gender, or other protected characteristic, a judge should treat every person with respect;

- B. Conduct in violation of the Michigan Code of Judicial Conduct Canon 3(A)(14), which contains the following requirements:

Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect. To the extent possible, a judge should require staff, court officials, and others who are subject to the judge's discretion and control to provide such fair, courteous, and respectful treatments to persons who have contact with the court; and

- C. Conduct in violation of the Michigan Code of Judicial Conduct Canon 3(A)(3), which includes the following requirements:

A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and other staff, court officials, and others subject to the judge's direction and control.

VII. COUNT 2: INAPPROPRIATE USE OF SEXUALLY GRAPHIC LANGUAGE

Findings of Fact

The Master finds by a preponderance of the evidence that Respondent did inappropriately use graphic sexual language in his June 12, 2019, conversation with Ciaffone based upon the following evidence:

A. When the jury was deliberating on June 12, 2019, Respondent invited counsel – Ciaffone, Bickerstaff, and Defense Attorney Noakes (“Noakes”) – into his chambers. By that time, Noakes had made a motion for directed verdict, and that motion remained pending during the conversation that followed. Respondent believed that Ciaffone had cited the wrong standard when responding to Noakes’s motion.

B. Respondent asked Ciaffone about her decision during the trial to seek admission of evidence showing the defendant’s DNA was on the victim’s vaginal swab. Ciaffone responded that she felt the evidence was relevant “because it showed that they had close, recent contact near in time to the homicide.” Respondent disagreed and said words to the effect of “all that shows is that they fucked. Like that’s all it shows, that they fucked.”

C. During this discussion, Ciaffone said the defendant had stated that he had had “non-traditional sex” or “not normal sex” with the victim. That led to a conversation about what non-traditional sex” meant. Ciaffone said that “non-traditional sex” meant something other than intercourse. Ciaffone thought that defendant’s statement was inconsistent with the DNA evidence; however, in Respondent’s view, defendant meant that the two had engaged in what Respondent called “doggy style” intercourse. Respondent stated that Ciaffone’s view was the product of her own bias and inexperience.

D. Ciaffone stated that Respondent’s view was incorrect because defendant had claimed that he “couldn’t penetrate [the victim] because she could have a miscarriage.”

Respondent laughed and stated words to the effect of “oh, so like what — like he [is] saying that, like, what he’s working with ... was so big that it would cause a miscarriage[?]”

E. During the in-chambers conversation, Respondent again criticized Ciaffone’s voir dire as being too indirect and said words to the effect of, “If I want to have sex with someone on the first date, what do I ask them?”

F. When no one responded, Respondent said, “I would ask them, ‘Have you ever had sex on a first date?’ What’s the next question I would ask them?” Again, no one answered.

G. Respondent said words to the effect of, “I’d ask, ‘Would you have sex with me on a first date?’ You don’t ask questions like, ‘Do you want to get married?’ or ‘Do you want to have kids?’ Like, those things would come later. Right? So just ask the question you want to know.”

H. Respondent was also critical of Noakes during this conference, but he did not use sexual examples in his comments to Noakes.

Discussion of Findings

The totality of the evidence supports a finding that the conversation that took place between Respondent and Ciaffone in chambers on June 12, 2019 constituted an inappropriate use of sexually graphic language. The fact that the topic of sex was broached does not, in and of itself, constitute inappropriate conversation *per se*. In this case, Ciaffone made the question of the defendant’s sexual contact with the victim an issue. She did not, however, make her own sexual experience or the size of the defendant’s genitalia topics of discussion in the case or in chambers. Respondent unnecessarily and improperly introduced both subjects as well as analogizing voir dire to asking for sex on a first date. Respondant does not deny that he used some variation of the word “fuck” in regards to the defendant’s sexual interactions with the

victim. Respondent's counsel argues that the word “fuck” is not inappropriate if it is used to describe sexual intercourse and that, because Respondent used it in this context, it could not have been inappropriate.

The Master is persuaded otherwise. The inappropriate nature of the progression of this conversation is thrown into relief by the fact that Respondent commented early in the conversation about what he presumed to be Ciaffone’s lack of sexual experience. To deduce that she was sexually inexperienced and then follow up that observation with coarse sexual joking and unnecessary sexual analogies demonstrates an unprofessional discourtesy toward Ciaffone. Arguably, the conversation would have been inappropriate under any circumstances, but if Respondent thought that Ciaffone was, in fact, sexually inexperienced, he could not have reasonably imagined that the conversational path he was pursuing would have made her feel anything less than uncomfortable. Furthermore, Respondent offered critiques to Noakes without making use of sexual examples or assessments, thus undercutting the argument that sex was the best or only teaching tool at his disposal for offering criticism and critique.

Conclusions of Law

Based upon these factual findings, the Master concludes that the Examiner has met its burden of proving the allegations contained in Count 1, and Respondent is responsible for the following as a matter of law:

- A. Conduct in violation of the Michigan Code of Judicial Conduct Canon 2(B), which contains the following requirements:

A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Without regard to a person’s race, gender, or other protected characteristic, a judge should treat every person with respect;

- B. Conduct in violation of the Michigan Code of Judicial Conduct Canon 3(A)(14), which contains the following requirements:

Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect. To the extent possible, a judge should require staff, court officials, and others who are subject to the judge's discretion and control to provide such fair, courteous, and respectful treatments to persons who have contact with the court; and

- C. Conduct in violation of the Michigan Code of Judicial Conduct Canon 3(A)(3), which includes the following requirements:

A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and other staff, court officials, and others subject to the judge's direction and control.

VII. COUNT 3: VIOLATION OF CANONS 2(A), 2(B), 3(A)(3), 3(A)(14)

Findings of Fact

The Master finds by a preponderance of the evidence that Respondent did violate Canons 3(A)(3) and 3(A)(14) based upon the following evidence:

A. After the June 12, 2019, conversation in chambers, Ciaffone and Bickerstaff walked to Counsel's table to pack their things. While they were there, Respondent spoke to them. He asked Ciaffone how tall she was: "What are you, like five-one or five-two?" Ciaffone said words to the effect of, "No, but I accept that, Judge." Bickerstaff volunteered, "Judge, I'm five-three for context." Respondent then estimated Ciaffone's height as four feet, ten inches. Ciaffone said that she is "four-eleven and a half."

B. Respondent then asked if Ciaffone weighed around 105 pounds. Ciaffone said words to the effect of "Judge, you're not supposed to ask a girl her weight." Then Respondent asked Bickerstaff if she was 117 pounds. Bickerstaff said, "That's very generous, but no, Judge."

C. Respondent responded, "Well, I haven't assessed you for muscle mass yet." During this conversation, Respondent looked Ciaffone up and down once and then looked Bickerstaff up and down once.

Discussion of Findings

Respondent's Counsel attempts to explain the personal questions by stating that Respondent was interested in knowing Ciafonne and Bickerstaff's heights because he used height-related illustrations to demonstrate bias to the jury. However, Respondent did not claim that was his reason for asking the questions at the time that he asked them. Furthermore, there was no professional reason offered – at the time or after – for Respondent to inquire as to Ciaffone and Bickerstaff's weights. The comment about not having “yet” assessed Bickerstaff's muscle mass further moves the interaction to a place well outside the bounds of professional, respectful, and dignified conversation.

Conclusions of Law

Based upon these factual findings, the Master concludes that the Examiner has met its burden of proving the allegations contained in Count 1, and Respondent is responsible for the following as a matter of law:

- A. Conduct in violation of the Michigan Code of Judicial Conduct Canon 3(A)(14), which contains the following requirements:

Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect. To the extent possible, a judge should require staff, court officials, and others who are subject to the judge's discretion and control to provide such fair, courteous, and respectful treatments to persons who have contact with the court; and

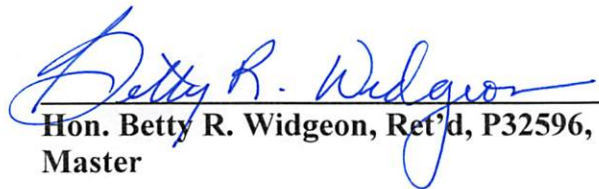
- B. Conduct in violation of the Michigan Code of Judicial Conduct Canon 3(A)(3), which includes the following requirements:

A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and other staff, court officials, and others subject to the judge's direction and control.

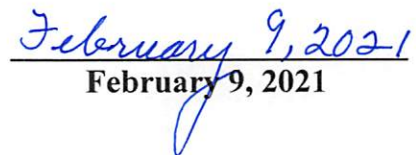
VII. CONCLUSION

The Master concludes that the Examiner has demonstrated by a preponderance of the evidence that Respondent violated the Michigan Code of Judicial Conduct as set forth in Counts 1, 2, and 3 of the Examiner's Amended Complaint. Respondent asserts that the behavior underlying the first two counts was simply a well-intentioned attempt on his part to help Ciaffone and Bickerstaff improve their litigation skills by use of sexual analogies. However, while the APAs might have sought and received professional assistance from Respondent during the trial, his pointed, direct, sexual commentary and analogies exceeded the bounds of appropriate professional interactions and crossed into inappropriate, undignified, discourteous, and disrespectful communication. When judges treat officers of the court without courtesy or civility, it subverts the public's confidence in the integrity of and respect for the judiciary.

With regard Count 3, the personal, intrusive, and unprofessional comments were attached to no explanation that would render them appropriate or respectful. Unwelcome questions and guesses about a female's weight and references to "assessing" her muscle mass while looking her up and down is similarly beyond the scope of respectful and courteous conduct as required by the applicable canons.



**Hon. Betty R. Widgeon, Ref'd, P32596,
Master**



February 9, 2021