

STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

In re:

HON. R. DARRYL MAZUR
Judge, 12th District Court
312 S. Jackson Street
Jackson, MI 49201

RFI No. 2015-21540

**DECISION AND RECOMMENDATION
FOR ORDER OF DISCIPLINE**

At a session of the Michigan Judicial Tenure Commission, held on October 12, 2015, in Detroit, Michigan at which the following Commissioners were

PRESENT:

Hon. David H. Sawyer, Chairperson
Hon. Pablo Cortes, Vice-Chairperson
Nancy J. Diehl, Esq., Secretary
Thomas J. Ryan, Esq.
Hon. Nanci J. Grant
Hon. Monte Burmeister
Hon. Michael M. Hathaway
David T. Fischer¹
Melissa B. Spickler

I. INTRODUCTION

The Hon. R. Darryl Mazur (“Respondent”) is a district court judge of the 12th District Court in Jackson County. Respondent is representing himself in these proceedings. For the reasons set forth more fully within, the Michigan Judicial Tenure Commission (“Commission”) recommends that the Supreme Court (“Court”) publicly censure Respondent and suspend him, without pay, for a period of 30 days.

¹ Commissioner Fischer is not related to the Commission’s executive director, Paul Fischer.

II. PROCEDURAL BACKGROUND

The Commission received a Request for Investigation regarding the Respondent, and assigned it Grievance No. 2015-21540. The Commission obtained Respondent's comments, and the Commission's executive director (acting as the functional equivalent of the Examiner²) then entered into a Settlement Agreement with the Respondent, a copy of which is appended to this Decision and Recommendation as Attachment A.

III. STANDARD OF PROOF

The standard of proof in a judicial discipline proceeding is a preponderance of the evidence. *In re Morrow*, 496 Mich 291, 298 (2014).

IV. FINDINGS OF FACT

The Commission accepts the facts stipulated to by the parties and adopts them, setting them out in full below:

A. PEOPLE V LAURIE FOSTER

1. The case of *People v Laurie Foster*, Jackson District Court Case No. 14-0466 SM was assigned to Respondent.

2. Ms Foster was charged with domestic violence (MCL 750.81[2]), and she was arraigned on June 9, 2014. On August 7, 2014, Ms Foster pled guilty. With the prosecutor's consent, pursuant to MCL 769.4a, Ms Foster was placed on probation for 12 months, and she was assessed fines and costs.

² Although no formal complaint was issued, the Judicial Tenure Commission's executive director assumes the role of "examiner" for purposes of this proceeding, as he and the Respondent are in adversarial positions, and call upon the Commission in its adjudicatory role. See MCR 9.201(B)(F).

3. In December of 2014, after seeing Ms Foster in the hallway at the courthouse, Respondent received a Christmas card from her, wishing him a merry Christmas and thanking him for being "an extremely firm yet fair judge."

4. Respondent wrote back to Ms Foster, on court stationery, indicating that he was also pleased to have run into her in the hall at the courthouse. In that same handwritten note, he said,

"You continue to sound well. No need to thank me. Well, maybe you can.

"I am not sure of your marital status. But if you are not, would you be interested in seeing me? Being on probation is a complication. I am interested if you are."

5. Respondent and Ms Foster continued to e-mail each other through the month of January 2015.

B. PEOPLE V JORDEN GRIFFIN

6. The case of *People v Jordan Griffin*, Jackson District Court Case No. 14-1326 SM was assigned to Respondent's colleague, Judge Klaeren.

7. Ms Griffin was a former neighbor of Respondent's, and Respondent remained friends with her father, Paul Griffin.

8. Mr. Griffin called Respondent to tell him that his daughter Jordan had been arrested by the Jackson Police Department.

9. Respondent advised Mr. Griffin about pre-trial procedures, that the city attorney would likely negotiate a plea agreement, and that he, Respondent, would speak to the assigned judge about the case.

10. Respondent did, in fact, contact Judge Klaeren and discussed the matter with him. He also told Judge Klaeren that he (Respondent) wanted to discuss the matter further with him (Klaeren) and the city attorney.

11. Respondent also sent Judge Klaeren an e-mail asking him to "PR [release on a personal recognizance bond] her [Defendant, Jordan Griffin] and set a pre-trial and then direct her down to see [Respondent.]"

12. Judge Klaeren was disturbed by all of this and discussed his discomfort with Respondent.

13. Respondent is extremely remorseful over these matters; he has co-operated throughout the investigation, and he is desirous of resolving this grievance.

V. CONCLUSIONS OF LAW

The parties have stipulated, and this Commission agrees and separately finds as well that Respondent's conduct violates the Code of Judicial Conduct and the standards of discipline for judges. The Commission further finds that Respondent's conduct constitutes:

(a) Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30 and MCR 9.205;

(b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.205;

(c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Code of Judicial Conduct, Canon 1;

(d) Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of the Code of Judicial Conduct, Canon 2A;

(e) Conduct involving impropriety and the appearance of impropriety, in violation of the Code of Judicial Conduct, Canon 2A;

(f) Failure to respect and observe the law and to conduct himself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B;

(g) Engaged in *ex parte* communications with a party and with a judge, contrary to Canon 3(A)(4);

(h) Conduct which exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2);

(i) Lack of personal responsibility for his own behavior and for the proper conduct and administration of the court in which he presides, contrary to MCR 9.205(A); and

(j) Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(4).

The Commission commends Respondent for his co-operation with the investigation and his frank and candid recognition of his ethical violations, but the public should expect no less from its public servants. However, Respondent's efforts to start a romantic relationship with a woman on probation to him, and his *ex parte* efforts on behalf Jordan Griffen are so serious, considered individually and together, that a public censure and a 30-day suspension without pay are the proper response from the judicial disciplinary system.

VLSANCTION ANALYSIS

The Commission has considered the criteria for assessing proposed sanctions set forth in *In re Brown*, 461 Mich 1291, 1292-1293; 625 NW2d 744 (2000). A discussion of each relevant factor follows.

- (a) **misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct.**

Although there are two separate incidents, there is no reason to believe, and no other evidence that, there is a pattern of any kind.

- (b) **misconduct on the bench is usually more serious than the same misconduct off the bench**

Respondent's misconduct, although off the bench, was nonetheless very serious.

- (c) **misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety**

The *ex parte* contacts on behalf of an old friend are prejudicial to the administration of justice. Even the judicial officer receiving those contacts was taken aback. The public would be no less so appalled.

- (d) **misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does**

It does not appear that Respondent's conduct actually had an effect on the administration of justice.

(c) **misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated**

Respondent's actions are likely to have been more premeditated than spontaneous.

Respondent is, unfortunately, not the first judge to have engaged in such behavior. Former Oakland County Circuit Judge Robert Templin began dating a woman whose breaking and entering case was pending on his docket. *In re Templin*, 432 Mich 1220 (1989). Judge Templin's misconduct pre-dated the *Brown* factors, so the public censure he agreed to should not be seen as the standard for this type of behavior. The Commission recommends a 30-day suspension for this conduct, irrespective of its recommendation for a 30-day suspension in the *ex parte* portion of the misconduct. The Commission is not stating that a 30-day suspension should be "standard" for trying to date a litigant, but in this matter, Respondent has recognized the wrongfulness of his conduct and has shown true remorse.

The Commission notes, too, that no actual relationship – dating or otherwise – developed between Respondent and the probationer. It seems fair to characterize the dealings between them as the prelude to a relationship, but one that never came to fruition. It further appears that there was never a sexual relationship between them, and there is no intimation of a *quid pro quo* for sex. Unlike other scenarios the Commission has been presented with in the past, the dealings between the Respondent and the probationer never amounted to more than inquiries.

Furthermore, Respondent's conduct in no way even approaches that of former Judge Wade McCree, who engaged in a torrid affair with a litigant/witness with a case on his docket. *In re McCree*, 495 Mich 51 (2014). In *McCree*, the judge's conduct went far beyond inquiring whether a litigant was available for a romantic relationship, and then, when that relationship soured, the mutual repercussions and retaliations were decidedly unbecoming a judicial officer, including his intentional misrepresentations and lies under oath. Here, Respondent has been

candid and frank about his behavior, and the Commission is convinced of his sincerity. Accordingly, the Commission recommends a public censure and a 30-day suspension, without pay, for this aspect of the misconduct.

Respondent's *ex parte* contacts with his colleague – the trial judge presiding over a family friend's criminal case – are also not without precedent. In *In re Justin*, 490 Mich 394 (2012), then-Judge Justin had lobbied his colleague – Judge Klaeren (coincidentally the same judge that Respondent here approached) – for 30-45 minutes, attempting to persuade him to halt an eviction. A number of other issues led the Supreme Court to remove Justin from office, but it was clear that the *ex parte* contacts were misconduct.

Here, too, Respondent's efforts on behalf of a family friend constituted impermissible *ex parte* contacts. However, Respondent's misconduct was nowhere as extensive as former Judge Justin's, so there is no way to estimate from the case what an appropriate sanction should be. Based on the seriousness of the act – and tempered by Respondent's sincere contrition – the Commission concludes that a public censure and a 30-day suspension without pay are warranted for this aspect of the admitted misconduct.

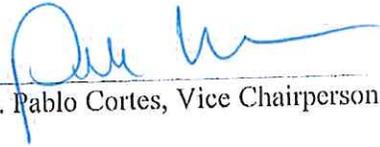
VII. CONCLUSION

Respondent's conduct harmed the public's perception of the judiciary, and Respondent recognizes that his actions in this matter were improper. The Commission hopes that that public confidence in the integrity of the judiciary can be restored by the faithful workings of the judicial disciplinary system. Accordingly, the Judicial Tenure Commission recommends that the Supreme Court publicly censure Respondent and suspend him, without pay, for a period of 30 days.

STATE OF MICHIGAN
JUDICIAL TENURE COMMISSION



Hon. David H. Sawyer, Chairperson



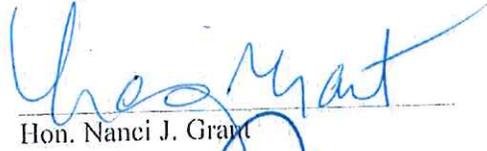
Hon. Pablo Cortes, Vice Chairperson



Nancy J. Dichl, Esq., Secretary



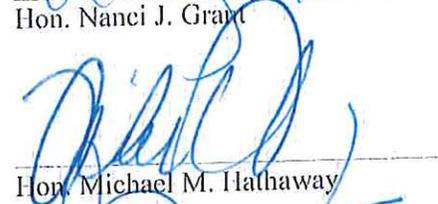
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Hon. Nanci J. Grant



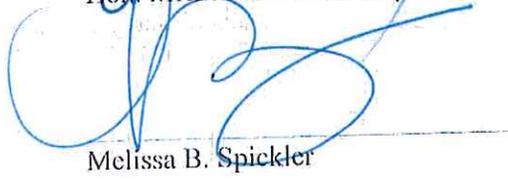
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Paul J. Fischer (P35454)
Executive Director and General Counsel,
Judicial Tenure Commission
3034 W. Grand Blvd., Ste. 8-450
Detroit, Michigan 48202
(313) 875-5110

Hon. Darryl Mazur (P23327)
Respondent
In pro per
312 S. Jackson Street
Jackson, MI 49201
(517) 788-4011

SETTLEMENT AGREEMENT

Hon. R. Darryl Mazur (“Respondent”) and the Examiner,¹ Paul J. Fischer, (collectively, “the parties”) stipulate as follows.

A. BACKGROUND

1. Respondent is, and at all material times was, a judge of the 12th District Court in Jackson, Michigan.
2. As a judge, he is subject to all the duties and responsibilities imposed on judges by the Michigan Supreme Court, and he is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205.
3. Request for Investigation No. 2015-21540 (“the Grievance”) is currently pending before the Michigan Tenure Commission (“the Commission”) regarding the Respondent.

¹ Although no formal complaint has been issued, the Judicial Tenure Commission’s executive director assumes the role of “examiner” for purposes of this proceeding, as he and the Respondent are in adversarial positions, and call upon the Commission in its adjudicatory role. See MCR 9.201(B)(F).

4. Respondent has agreed to admit the factual basis of the allegations, as set forth in more detail below. The parties stipulate that the Commission may review Respondent's admissions, his answer to the Commission's request for his comments, and any attachments or materials he submitted with that answer.

5. The Commission may make findings of fact based on the stipulated facts in this Settlement Agreement, as well as draw inferences from those stipulated facts. The Commission may also make conclusions of law and recommend a sanction regarding the judicial misconduct, if any, which may have occurred.

6. The parties further stipulate that the Commission's recommended sanction, if any, shall be a public censure and a 30-day suspension without pay.

7. If the Commission approves this Settlement Agreement, the Commission shall issue a Decision and Recommendation and may append a copy of this Settlement Agreement to that decision. The Commission shall file its Decision and Recommendation with the Supreme Court as a public document, pursuant to MCR 9.220.

8. If the Commission rejects the proposed settlement, this Settlement Agreement is null and void.

9. Respondent acknowledges that this Settlement Agreement covers only this Grievance, and nothing in this Settlement Agreement precludes the Commission from investigating or pursuing other grievances that may be filed after this Settlement Agreement has been signed, which are unrelated to this Grievance.

10. Respondent acknowledges that he is entering this Settlement Agreement freely and voluntarily and that it is his own choice to do so. He further acknowledges that although he is representing himself, he has the right to seek legal counsel and have counsel appear on his behalf, and he is voluntarily and freely choosing not to exercise that right.

B. ADMISSIONS OF FACT

1. PEOPLE V LAURIE FOSTER

11. The case of *People v Laurie Foster*, Jackson District Court Case No. 14-0466 SM was assigned to Respondent.

12. Ms Foster was charged with domestic violence (MCL 750.81[2]), and she was arraigned on June 9, 2014. On August 7, 2014, Ms Foster pled guilty. With the prosecutor's consent, pursuant to MCL 769.4a, Ms Foster was placed on probation for 12 months, and she was assessed fines and costs.

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14. Respondent wrote back to Ms Foster, on court stationery, indicating that he was also pleased to have run into her in the hall at the courthouse. In that same handwritten note, he said,

"You continue to sound well. No need to thank me. Well, maybe you can.

"I am not sure of your marital status. But if you are not, would you be interested in seeing me? Being on probation is a complication. I am interested if you are."

15. Respondent and Ms Foster continued to e-mail each other through the month of January 2015.

2. PEOPLE V JORDEN GRIFFIN

16. The case of *People v Jordan Griffin*, Jackson District Court Case No. 14-1326 SM was assigned to Respondent's colleague, Judge Klaeren.

17. Ms Griffin was a former neighbor of Respondent's, and Respondent remained friends with her father, Paul Griffin.

18. Mr. Griffin called Respondent to tell him that his daughter Jordan had been arrested by the Jackson Police Department.

19. Respondent advised Mr. Griffin about pre-trial procedures, that the city attorney would likely negotiate a plea agreement, and that he, Respondent, would speak to the assigned judge about the case.

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21. Respondent also sent Judge Klaeren an e-mail asking him to "PR [release on a personal recognizance bond] her [Defendant, Jordan Griffin] and set a pre-trial and then direct her down to see [Respondent.]"

22. Judge Klaeren was disturbed by all of this and discussed his discomfort with Respondent.

23. Respondent is extremely remorseful over these matters, he has co-operated throughout the investigation, and he is desirous of resolving this grievance.

24. Respondent acknowledges that the conduct described above constitutes misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205 with regard to his:

2. Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30 and MCR 9.205;

3. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.205;
4. Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Code of Judicial Conduct, Canon 1;
5. Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of the Code of Judicial Conduct, Canon 2A;
6. Conduct involving impropriety and the appearance of impropriety, in violation of the Code of Judicial Conduct, Canon 2A;
7. Failure to respect and observe the law and to conduct himself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B;
8. Engaged in *ex parte* communications with a party and with a judge, contrary to Canon 3(A)(4);
9. Conduct which exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2);
10. Lack of personal responsibility for his own behavior and for the proper conduct and administration of the court in which he presides, contrary to MCR 9.205(A); and
11. Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(4).

Respectfully submitted,



Paul J. Fischer (P35454)
Executive Director and General Counsel,
Judicial Tenure Commission
3034 W. Grand Blvd., Ste. 8-450
Detroit, Michigan 48202
(313) 875-5110

DATED: 8/24/2015

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Hon. Darryl Mazur (P23327)
Respondent
In pro per
312 S. Jackson Street
Jackson, MI 49201
(517) 788-4011

DATED: 8/13/15



KATHLEEN C. ELLIS
NOTARY PUBLIC, Jackson County, MI
My Commission Expires Apr. 30, 2021