

STATE OF MICHIGAN
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

Hon. Elizabeth Biolette Church

Probate District Judge
Chippewa County, City-County Building
325 Court Street
Sault Ste. Marie, MI 49783

RFI Nos. 2014-21034 and 2014-21209

DECISION AND RECOMMENDATION
FOR ORDER OF DISCIPLINE

At a session of the Michigan Judicial
Tenure Commission, held on December
14, 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. Elizabeth Biolette Church (“Respondent”) is a probate district court judge in Chippewa County. Respondent is represented in these proceedings by Brian Einhorn. There are currently two grievances pending against the Respondent before the Michigan Judicial Tenure Commission (“Commission”). The Commission’s “examiner,”² the Respondent, and her

¹ Commissioner Fischer is not related to the examiner.

² Although no formal complaint has been issued, the 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).

attorney have entered into a Settlement Agreement to resolve those grievances. For the reasons set forth more fully within, the Commission accepts the terms of the Settlement Agreement, a copy of which is appended to this Decision and Recommendation as Attachment A. The Commission recommends that the Supreme Court ("Court") publicly censure Respondent and suspend her, without pay, for a period of 120 days.

II. 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).

III. FINDINGS OF FACT

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

1. Respondent is, and at all material times was, a judge of the Chippewa County Probate and District Court, Sault Ste. Marie, Michigan.
2. As a judge, she is subject to all the duties and responsibilities imposed on judges by the Michigan Supreme Court, and she is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205.
3. Over the course of the last several years, Respondent reduced charges, dismissed charges outright, or modified sentences in at least 20 criminal cases, without holding a hearing and where she had no explicit authority from the prosecutor to do so. Those cases are:

(a) People v Cory Teneyck, 91st District Court Case No. 13-55757-ST

(b) People v Ronald Stebleton, 91st District Court Case No. 13-7804-SI

- (c) People v Chad Debolt, 91st District Court Case No. 13-8954-ST*
- (d) People v Kayla Reiswitz, 91st District Court Case No. 13-8812-SI*
- (e) People v John Hough, 91st District Court Case No. 13-56209-SM*
- (f) People v Ethan Swiger, 91st District Court Case No. 13-7402-SI*
- (g) People v Andrea Payment, 91st District Court Case No. 14-10642-OI*
- (h) People v Scott Brand, 91st District Court Case No. 13-9214-SI*
- (i) People v Thomas Parr, 91st District Court Case No. 13-6874-SI*
- (j) People v Janis Wiezbenski, 91st District Court Case No. 13-7024-SI*
- (k) People v Hunter Captain, 91st District Court Case No. 12-6474-SI*
- (l) People v Cynthia Gagnon, 91st District Court Case No. 11-53224-SM*
- (m) People v Diana Gunckel, 91st District Court Case No. 14-57103-SM*
- (n) People v Jordan Morningstar, 91st District Court Case No. 14-11943-SM*
- (o) People v Terri Keesler, 91st District Court Case No. 14-57118-ST*
- (p) People v Maria Mellea, 91st District Court Case No. 14-57254-SM*
- (q) People v Sheri Manos, 91st District Court Case No. 14-11974-SI*
- (r) People v Janet Hatfield, 91st District Court Case No. 14-12032-SI*
- (s) People v Donald Dicks, 91st District Court Case No. 14-12080-SI*

(t) *People v Joshua Homminga*, 91st District Court Case No. 14-57515-SD

4. Over the course of the last several years, Respondent dismissed at least 32 ticket cases, without holding a hearing and where she had no explicit authority from the prosecuting to do so. Those cases are:

(a) *People v Smith Family Sanitation*, 91st District Court Case No. 12-4859-SI

(b) *People v Patrick Beland*, 91st District Court Case No. 12-4891-SI

(c) *People v Jon Huyck*, 91st District Court Case No. 12-4889-ST

(d) *People v Jeffrey Greene*, 91st District Court Case No. 12-4978-SI

(e) *People v Kirsi Heikkinen*, 91st District Court Case Nos. 12-4916-OI, 12-4917-OI, and 12-4918-OI

(f) *People v Erwin Mitchell*, 91st District Court Case No. 12-5089-OI.

(g) *People v Ahmet Karakas*, 91st District Court Case No. 12-5104-SI

(h) *People v Mohmed Bagwan*, 91st District Court Case No. 12-5452-SI

(i) *People v Dean Eggart II*, 91st District Court Case No. 12-5651-SI, and *People v Dean Eggart II*, 91st District Court Case No. 12-5652-SI

(j) *People v Kory Rogers*, 91st District Court Case No. 12-5690-SI

(k) *People v Fox Excavating*, 91st District Court Case No. 12-5714-SI

- (l) *People v Lindsay McLeod*, 91st District Court Case No. 12-5786-SI
- (m) *People v Erin Reynoso*, 91st District Court Case No. 12-5795-SI
- (n) *People v Randall Nietling*, 91st District Court Case No. 12-5800-SI
- (o) *People v Heather Goudge*, 91st District Court Case No. 12-5855-SI
- (p) *People v Justin Bertram*, 91st District Court Case No. 12-5914-SI
- (q) *People v Patrick Schuster*, 91st District Court Case No. 12-5919-SI
- (r) *People v Matthew Hiatt*, 91st District Court Case No. 12-5926-SI
- (s) *People v Clifford Mongene*, 91st District Court Case No. 12-6015-SI
- (t) *People v Kevin Akers*, 91st District Court Case No. 12-6090-SI
- (u) *People v Thomas Parr*, 91st District Court Case No. 12-6117-SI
- (v) *People v Megan Cardiff*, 91st District Court Case No. 12-6221-OI
- (w) *People v Jason McEwen*, 91st District Court Case No. 12-6250-SI
- (x) *People v Brandt Miller*, 91st District Court Case No. 12-6349-SI
- (y) *People v Gary Johnston*, 91st District Court Case No. 12-6411-SI
- (z) *People v Wallace Bosley*, 91st District Court Case No. 12-6439-SI
- (aa) *People v Karuna Saluja*, 91st District Court Case No. 12-6443-OI
- (bb) *People v Jocelyn Morley*, 91st District Court Case No. 12-6446-OI

(cc) *People v Brian Schwiderson*, 91st District Court Case No. 12-6492-SI

(dd) *People v Britny Poth*, 91st District Court Case No. 12-6653-OI

(ee) *People v Tiffany Dumback*, 91st District Court Case No. 12-6597-SI

(ff) *People v Johnny Shuman*, 91st District Court Case No. 13-7084-SM

5. In the matters referred to above, Respondent engaged in *ex parte* communications by considering substantive matters relevant to the merits of the pending proceedings, without the knowledge or consent of the prosecuting attorney.

6. Respondent also engaged in *ex parte* contacts as follows:

(a) *People v Dale Betlam*, 50th Circuit Court Case No. 13-001221-FC

- i. This matter was before Respondent on January 16, 2014 for a bench trial.
- ii. Before the trial started, Respondent, accompanied by defense counsel Jennifer France, went to the holding cell where Mr. Betlam was being held by the Chippewa County Sheriff's Department.
- iii. Respondent met there with Mr. Betlam, in the presence of Ms France, but without the knowledge of the prosecuting attorney.
- iv. Respondent never told the prosecutor of her *ex parte* meeting with the defendant, Mr. Betlam, nor did she ever make a record of the event.

(b) *People v Cameron David Ferraro*

- i. Respondent was assigned to preside over *People v Cameron David Ferraro*, 91st District Court Case Nos.:

(1) 15-58203-SM (filed on or around April 27, 2015, charging the defendant with domestic violence, contrary to MCL 750.812) and

(2) 15-58285-SM (filed on or around May 28, 2015, charging defendant with domestic violence, 2nd offense, contrary to MCL 750.812, and 4th degree child abuse, contrary to MCL 750.136b[7]).

ii. On April 28, 2015, Respondent disqualified herself on her own motion in Case No. 15-58203-SM, and on June 3, 2105 she did so in Case No. 15-58285-SM, indicating in both matters that she believed that her continued assignment would create an appearance of impropriety.

iii. Respondent added the following on the disqualification order in Case No. 15-58203-SM: "DEFENDANT IS THE SON OF BLDG MAINTENANCE MAN WHO IS PART OF ONGOING JTC INVESTIGATION." [sic]

iv. The State Court Administrative Office ("SCAO") assigned Judge Beth Gibson of the 92nd District Court to preside over Case No. 15-58203-SM on May 1, 2015 and in Case No. 15-58285-SM on June 8, 2015.

v. On June 12, 2015, Mr. Ferraro pled guilty to one charge of domestic violence (Case No. 15-58203-SM) and one charge of domestic violence-second offense (Case No. 15-58285-SM); the child abuse charge was dismissed without prejudice.

- vi. In Case No. 15-58203-SM, Judge Gibson sentenced Mr. Ferraro to 93 days in jail, with 17 days credit and the remaining 76 days suspended. Judge Gibson also imposed \$500 in fines and costs and placed Mr. Ferraro on 12 months of probation.
- vii. In Case No. 15-58285-SM, Judge Gibson placed Mr. Ferraro on 24 months of probation and imposed \$750 in fines and costs.
- viii. In both cases, Judge Gibson continued a no-contact order against Mr. Ferraro regarding the victim.
- ix. On July 8, 2015, charges were filed against the same Mr. Ferraro in Case No. 15-58414-FY, alleging that he had used a computer to commit a crime, contrary to MCL 752.796 and 752.797(3)(d), as well as aggravated stalking, contrary to MCL 750.411i, and malicious use of telecommunications services, contrary to MCL 750.540e.
- x. The charges against Mr. Ferraro in Case No. 15-58414-FY were filed while he was still on probation in Case Nos. 15-58203-SM and 15-58285-SM.
- xi. Respondent disqualified herself on her own motion from Case No. 15-58414-FY on July 8, 2015, indicating that she believed that her continued assignment would create an appearance of impropriety.
- xii. Respondent added the following on the disqualification order in Case No. 15-58414-FY: "Defendant has had two very recent cases that Judge Church has recused on as well." [sic] The two cases referred to were Case Nos. 15-58203-SM and 15-58285-SM.

xiii. SCAO assigned Judge Beth Gibson of the 92nd District Court to preside over Case No. 15-58414-FY on July 9, 2015.

xiv. Respondent sent two texts to Judge Gibson regarding Case No. 15-58414-FY.

xv. On July 7, 2015, at 5:15 p.m., Respondent texted Judge Gibson:

“I am group texting both Judge Gibson in [*sic*] John Feroni I have been contacted by MSP regarding Carmen Ferraro they will be submitting report to the Circuit C [*sic*]ourt [*sic*] to the prosecutor and to you John for probation violation. Acid [*sic*] a report be sent all three and I told him that Judge Gibson will hear the matter

“It was trooper Bitnar”

xvi. On July 16, 2015, at 4:52 p.m., Respondent texted Judge Gibson:

“I could really use that boy on community service so hurry and send the Ferraro kid”

7. In *People to Victor Martinez*, 91st District Court Case No. 14-57336-EX, Respondent declined to appoint a translator for the defendant when she should have.

IV. 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(B);

- (c) Conduct involving impropriety and the appearance of impropriety, in violation of the Code of Judicial Conduct, Canon 2A;
- (d) Failure to be faithful to the law and maintain professional competence in it, contrary to Code of Judicial Conduct Canon 3A(1);
- (e) Participation in *ex parte* communications, and consideration of them outside the presence of all parties concerning pending or impending proceedings, in violation of Code of Judicial Conduct Canon 3A(4); and
- (f) A failure to adopt the usual and accepted methods of doing justice, in violation of Code of Judicial Conduct Canon 3A(9).

V. SANCTION 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). Although the Commission considers a negotiated resolution to be of a different character than one following a contested hearing, it nonetheless desires to recommend proportionate and equivalent sanctions to the extent possible. Accordingly, 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.**

The cases listed here cover a span of several years. Respondent has shown a pattern of engaging in the improper reduction of charges, or their outright dismissal. This factor weighs in favor of a more severe sanction. The Commission is satisfied that under the facts of these cases, and with the parties' consent, the negotiated sanction recommendation of a public censure and a 120-day suspension without pay is appropriate.

Moreover, while this matter was pending, Respondent continued to engage in these *ex parte* practices, as seen in the *Ferraro* matter (Finding of Fact 6[b]). Respondent attempted to influence the presiding judge in the matter by “texting” the presiding judge after she (Respondent) had recused herself. Although judicial disciplinary matters are quasi-civil proceedings and not criminal cases, it is well established that a person who commits a crime while charges are pending in another matter faces potentially a more significant sanction. This is also true in judicial disciplinary matters (*see, e.g., In re McCree*, 495 Mich 51 [2014], where Respondent was awaiting the Michigan Supreme Court’s decision in the matter of his “sexting” a digital image of himself to a court employee [*In re McCree*, 493 Mich 873 (2012)])

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

Respondent’s misconduct in all of these matters was “on the bench.” Reduction of charges, or outright dismissal of them with no legal basis or authority to do so disparages the authority of the court to the public and is deleterious to the integrity of the judicial system. In addition, the negative effects when a judge refuses to appoint a translator to assist a criminal defendant navigate his or her way through the complexities of the judicial system cannot be underestimated. The Commission is satisfied that under the facts of these cases, and with the parties’ consent, the negotiated sanction recommendation of a public censure and a 120-day suspension without pay is appropriate.

(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

Reduction of charges, or outright dismissal of them with no legal basis or authority to do so is directly prejudicial to the actual administration of justice. In addition, Respondent met *ex*

parte with a criminal defendant and that defendant's attorney, outside the presence of the prosecutor, and without ever advising the prosecutor of the meeting. That clandestine encounter took place in a holding cell of the local jail. Such a flagrant violation of the seemingly intuitive principle that a judge should not speak to one side of the case without the consent (and certainly the knowledge) of the other weighs heavily in the Commission's decision.

In addition, the negative effects when a judge refuses to appoint a translator to assist a criminal defendant navigate his or her way through the complexities of the judicial system cannot be underestimated. The Commission is satisfied that under the facts of these cases, and with the parties' consent, the negotiated sanction recommendation of a public censure and a 120-day suspension without pay is appropriate.

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

As noted above, Respondent's misconduct *does* implicate the actual administration of justice.

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

The Commission concludes that Respondent, as a lawyer and a judge, knows or should have known, that as a judge she could not reduce charges or dismiss charges absent a motion from the prosecuting authority or following a hearing challenging the charge in some appropriate legal fashion. Furthermore, the Respondent knew or should have known of the proscription on a judge consulting with one party on an *ex parte* basis and certainly knew or should have known that that principle applies *a fortiori* to a personal meeting in the holding cell. The Commission assumes that Respondent was well aware of the concept of due process. Accordingly, the

Commission concludes that Respondent's actions were premeditated and deliberate, not spontaneous or accidental.

Respondent has agreed to a public censure and a 120-day suspension without pay. Under the facts and circumstances of these cases, the Commission finds that that sanction is appropriate, and that is what the Commission recommends to the Court. The Commission notes that in *In re Justin*, 490 Mich 394 (2012), the judge engaged in a variety of misconduct, including dismissing his own tickets (which *alone*, the Court noted, was enough to warrant his removal) and lying at the hearing (again, grounds for removal). He also engaged in conduct similar to that here: he dismissed charges without hearings and engaged in *ex parte* communications to do so.


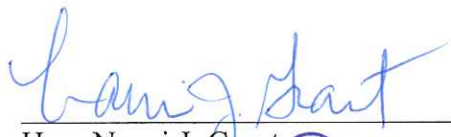
The Court noted that the essence of judging was the exercise of power to hear and determine controversies between adverse parties. *Justin*, at 416. “[Justin’s] method of dismissing cases after having a discussion with only one side of a controversy is not a valid exercise of the judicial power; rather, it is a *perversion* of judicial power.” *Id.*, 490 Mich 416 (emphasis in original). Here, Respondent engaged in the same type of behavior, although because the parties are stipulating to the facts, the Commission cannot determine if Respondent’s conduct was as extensive as Justin’s. Based on the cases Respondent *does* admit to, and with her consent to a public censure and a 120-day suspension without pay, the Commission is satisfied in making that sanction recommendation to the Supreme Court. The Commission is further heartened by Respondent’s decision to accept responsibility for her misconduct and her commitment to further her judicial education in an effort to better herself in the future. Given those constraints, the Commission accepts the Settlement Agreement and the proposed sanction negotiated between the parties, and the Commission recommends that the Court adopt it as the discipline in this matter.

VI. CONCLUSION AND RECOMMENDATION

Respondent has also agreed that, if suspended, she will not enter any courthouse in Chippewa County or initiate communication with the staff of any courthouse in Chippewa County during that period of suspension, unless she has a personal matter pending in any of those courts and then only to the extent that any other member of the public would have access to the court or the court staff. Accordingly, the Commission recommends that the Court incorporate that agreement into its decision. The Commission does not intend for this provision to prevent Respondent from answering questions posed to her by court staff.

Respondent's conduct harmed the public's perception of the judiciary, and Respondent recognizes that her actions were improper. The proposed sanction is designed to restore public confidence in the integrity of the judiciary by the faithful workings of the judicial disciplinary system. Accordingly, the Judicial Tenure Commission recommends that the Supreme Court publicly censure Respondent and suspend her, without pay, for a period of 120 days.

STATE OF MICHIGAN JUDICIAL TENURE COMMISSION


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