STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST	Formal Complaint No. 101
Hon. KAHLILIA Y. DAVIS 36th District Court	Hon. CYNTHIA DIANE STEPHENS Master

/

RESPONDENT'S BRIEF IN SUPPORT AND OPPOSITION

OF REPORT OF MASTER

Under the provisions of MCR 9.240, Respondent has the option to file with the Judicial Tenure Commission ["JTC"] a brief of not more than 50 pages in support of and/or opposition to all or part of the Master's Report. Furthermore, in addition to such other discourse as may be undertaken, briefs are required to include a discussion of possible sanctions.

The Master in this case, the Hon. Cynthia Diane Stephens, who has extensive experience in her 40 years as a judge of the 36th District Court, the Wayne County Circuit Court and the Michigan Court of Appeals, conducted the hearings in the Matter of Judge Kahlilia Y. Davis in a superlative manner.

Petitioner, in the Second Amended Complaint, alleged judicial misconduct that was delineated in seven (7) counts. Support and objections to the Report of the Master shall be set forth herein as to each of the counts of the Second Amended Complaint.

COUNT I

The JTC disciplinary counsel claimed that Respondent engaged in the abuse of contempt power involving two landlord-tenant cases, to wit: *Detroit Real Estate Inc v Hayes*, 36th District Case No. 17-307300-LT and *Sanders v Thomas*, 36th District Case No. 17-321869-LT.

A. The *Hayes* Matter

As to the *Hayes* case, the Master concluded that Respondent did not abuse her contempt power as to Joy Eck, an office manager of Detroit Real Estate, Inc, the latter of whom was the plaintiff in the *Hayes* case. See Master's Report, page 7, ¶¶1-3. Eck had an attorney with her and it was admitted by Eck's attorney that Eck, who placed a notice on Hayes' residence improperly stating that "the Court has ordered the Bailiff and they will be out to evict you," was wrong in what she did and that Eck had been admonished by her attorney for such conduct.

The Master concluded that Petitioner failed to establish, by a preponderance of the evidence, the Eck portion of Count I.

B. The *Johnson* Matter

Jerry Johnson was a process server for Celestine Sanders, for whom Johnson purportedly served a summons and complaint against Nicole Thomas, who was subject to being evicted from her residence. On October 11, 2017, Respondent held Johnson in contempt for having submitted a false return of service concerning Thomas, who

denied that she had been served with process by Johnson. Additionally, Johnson was held in contempt for having stated in open court that he had performed the service.

The Master concluded that Johnson had been denied due process of law, that Respondent had engaged in a violation of MCR 9.202(B)(2), MCJC 3(A)(3), MCJC 3(A)(12), MCR 9.104(1) and MCR 9.202(B), MCR 9.202(B)(1)(a) and MCJC 3(A)(1). The Master found that all other claims in Count I were not proven.

It should be noted that although the Master concluded that Johnson was held in contempt, and was in jail for one day, such was vacated by Judge Joseph Baltimore the next day.

COUNT II

Myran Bell is a court officer of the 36th District Court who purports to be a process server. In a case before Respondent, Bell signed a proof of service alleging that he served a summons and complaint at 430 Frederick in the City of Detroit, claiming that he did so on August 26, 2017.

In fact, Bell never served the summons and complaint at all. He did not even know who had served the process. Yet, he falsely stated that he had served the process and admitted the same at the disciplinary hearing on July 7, 2022. Moreover, at that disciplinary hearing, he admitted to having signed 5 or 6 proofs of service in other cases in which he asserted that he had served the summonses even though, in reality, he did not actually serve process in those matters.

Respondent observed a process server who had served a summons and complaint at 430 Frederick on August 29, 2017. Inasmuch as she was living at that address at the time, and she was at the house during days prior to August 29, 2017 and a number of days that would have included August 26, 2017, it was clear that she knew that no one had served a summons on August 26, 2017, at 430 Frederick. Thus, she was able to discern that Bell did not serve process on August 26, 2017. In fact, Judge Davis saw the person who delivered the summons to the door at 430 Frederick on August 29, 2017, at which time she took a picture of the individual. Some litigants had been using Bell as a process server. Respondent, having realized that Bell was falsifying proofs of service, indicated that he was not to be used for process serving and that if Bell was employed for service of process for a case in her courtroom, she would dismiss the case without prejudice.

The Master concluded that Bell was not credible in his testimony when he claimed that he had no record of memory of the name of the person hired to serve the process and that he believed that the date of the service was August 26, 2017—the date that Bell placed in the bogus proof of service—rather than August 29, 2017.

The Master found that Respondent was credible that she observed someone placing a paper on the door of 430 Frederick without knocking on the door or otherwise attempt to notify the person in the residence of his presence.

The Master concluded that Respondent dismissed cases, adjourned cases and made allegations on the part of Bell without record evidence. The Master also concluded that Respondent made presumptions that led to the dismissal and adjournments solely on Bell's name being on the proof of service.

While the Master had some basis to come to such conclusions, it became clear not only that Bell was not credible in his testimony in the disciplinary hearing, but Bell, on cross-examination, admitted that he had a number of cases in which he had signed his name to proofs of service in which he never performed the services. In fact, given his fraudulent, illicit, dishonest conduct in filing such proofs of service with the Court, it was incredible that Bell remained as a court officer at the 36th District Court and apparently that he remains in said status to this day.

The Master also concluded that Respondent disregarded directives from the Chief Judge Nancy Blount regarding adjournments as to Bell's participation in process serving.

As to sanctions to be imposed on Respondent, there are considerations that militate against significant discipline. In light of Bell's status as a court officer and process server who acts with deceit, misrepresentation, and mendacity, it is no wonder that Respondent had reason to believe that someone in his position should not be working as adjunct of the judicial system, or at least in her courtroom. Respondent's

motivation was not that of ill will, but rather as one who believed that Bell could not be trusted to perform his duties honorably and reliably.

COUNT III

Petitioner claims that Respondent failed to diligently discharge administrative responsibilities and to facilitate the performance of administrative responsibilities for other judges and court officials. However, the Master correctly noted that Respondent "had no significant administrative or other duties during her first removal from adjudication and appeared to have fulfilled the shadowing and other training requirements from her PIP [Performance Improvement Plan]." *Master's Report*, p 18. As to Count III, the Master concluded that "Petitioner had met its burden of proof that Respondent violated MCR 9.202(B)(2) and MCJC 3(B)(1), for failing to discharge administrative responsibilities and to facilitate the performance of administrative responsibilities of other judges and court officials." *Id.*

However, the Master stated as follows

> The respondent had worsening and persistent physical health problem throughout her tenure. She was using an assistive device to ambulate daily by the time she was relieved of adjudicative duties in 2019. She was frequently on Schedule 3 pain medication. A substantial portion of her absences were due to her on-going medical issues. By way of example, the December 26-28 failure to report claim arose from a medical issue which resulted in a leave through January 11, 2019. The chief judge denied the leave request for a planned medical visit on December 26, 2019 [sic], unless the respondent found coverage. The administration's denial of leave was sent in late November

> 2018. Respondent went to her medical appointment and, apparently, did not obtain coverage. The medical issue resulted in an extended medical absence.

Id.

In fact, Respondent had a number of surgeries and numerous orders by physicians that she recover at home for periods of time.

Furthermore, although of the 28 judges at the 36th District Court, 25 had court reporters in their courtrooms, including the two judges newly elected in 2016 other than Judge Davis, the 36th District Court administration consistently denied Judge Davis court reporters or training as to the video equipment for which she had no experience.

Moreover, the 36th District Court administration put Judge Davis's chambers at one end of the court building with her courtroom on the other end of the building. Such conduct by the administration was done with the knowledge that Judge Davis needed assistance in ambulating and that the long distance between the courtroom and the chambers caused the judge to become exhausted in walking from chambers to courtroom and vice-versa, exacerbating her health problems.

The Master concluded that the rest of Count III, including claims concerning Bible verses, did not meet the burden of proof for that which Petitioner was required to satisfy.

Most of what constitutes failing to discharge administrative duties was a result of medical health problems.

As to any sanctions, the Master concluded that Respondent had a failure to diligently discharge administrative responsibilities. This was during a period from the end of 2017 to the beginning of 2019, at which Respondent had been limited to being an auxiliary judge, in which Judge Blount gave her no adjudicative duties and virtually no actual responsibilities.

Respondent testified as follows:

Q. When did you start doing that in Room 340?

A. I was given a docket again of my own in January of 2019.

Q. So in 2019 you got, you said, a docket of your own?

A. Correct.

Q. What did you have before that?

A. From October 2017 through December 2018, I had nothing. And then I was an auxiliary judge, which is, I'd kind of describe it as being like an in-house sub, like it's --

Q. An in-house sub meaning what?

A. Well, I didn't have a docket that was assigned to me. So from October 2017 until I believe it was February or March 2018, I was just to come to work and do nothing. And then I believe it was February or March 2018, I received an email from Paul Paruk that I would be able to begin training that the other judges at 36 had had.

Q. When you say other training that other judges had, what do you mean by that?

A. Typically at 36 there's four to six weeks of shadowing when a new judge begins, and I had never had opportunity to shadow. I came in to work on March 6, 2017, and was put straight on the bench of my own landlord-tenant docket with no training whatsoever.

Q. Okay. All right. Then what happened after that? You had the --

A. So after I got the training, then I was assigned to be an auxiliary judge, which was a position that was created, my understanding is, specifically for me and had never been utilized at any other court in the state of Michigan before that time.

Q. And specifically what was your responsibility as an auxiliary judge?

A. I was to come in and do nothing unless I was called and asked to fill in for someone.

Q. And how long were you in the position or the status of an auxiliary judge?

A. I believe it was sometime in the spring of 2018 until December 2018.

Q. Okay. And during that period of time between the spring of 2018 and the end of 2018, on how many occasions were you called to act as an auxiliary judge or as what you said was a substitute?

A. I would say less than 15 times.

Q. Okay. Now, at some point you said that you had recorded hearings on a cell phone; correct?

A. Yes.

Q. Why did you do that?

A. Because they would not send a court reporter.

Q. When you say "they," who is "they"?

A. Administration.

[T, 7/15/22, pp 407-408.]

Thus, for an extended period of time, Judge Blount placed Respondent in a status wherein she had virtually no adjudicatory role and no administrative responsibilities.

The Master correctly concluded that the majority of Count III did not result in Petitioner's meeting the burden of proof.

There is a question as to whether Respondent actually failed to diligently discharge administrative responsibilities and facilitate performance of the administrative responsibilities of other judges or court officials. Judge Blount's conduct in depriving Respondent of the means of discharging any administrative responsibilities prevented Respondent from such tasks.

Under such circumstances, it is most doubtful that Respondent intentionally or even negligently failed to discharge administrative responsibilities.

The Master indicated that Petitioner failed to meet the burden of proof for the rest of Count III.

COUNT IV

Petitioner stated that Respondent did not make an official record of her cases in Courtroom 340. The Master indicated that Respondent did not use video-graphic equipment in Courtroom 340. What the Master did not note was that of the 28 judges in the 36th District Court, 25 of the judges did not use video-graphic equipment, even though each of their courtrooms contained such equipment.

Former Chief Judge Nancy Blount testified as follows:

> Q. Okay. Now, with respect to the training that -- well, let me just get back. You said that somebody was training Judge Davis on the use of operating equipment for video?
>
> A. She should have been trained, yes.
>
> Q. I don't know whether she should have been trained. I just want to know whether or not she was trained?
>
> A. My understanding is she was trained.
>
> Q. All right. Now, was she trained -- do you know whether or not she was trained on whether or not she understood logging procedures?
>
> A. I have no idea. I wasn't there when she was trained.

[T, 7/7/22, p 85.]

> Q. Do you know whether or not there was training **as to operation** and maintenance of the equipment?
>
> A. No. [Emphasis supplied.]

[T, 7/7/22/ p 86.]

Q. With respect to people who had been judges before 2017, every one of them, including them, including Judge Davis, including the other two judges I mentioned, they were all people who had in their courtrooms video equipment; correct?

A. Correct.

Q. Now, I think you also said that those who had been judges prior to 2017, they didn't necessarily have to use video equipment; is that correct?

A. That's correct.

Q. But people who did have the situation where they became judges first in 2017, they would have to use the video equipment; correct?

A. So --

Q. I just remember you saying that to JTC counsel.

A. There were judges -- okay. So Judge Robinson wanted video.

Q. But he was from before.

A. He was from before.

Q. I'm not talking about those people. I'm talking about there were two others that I know of here, Austin William Garrett, Kenyetta Stanford Jones, they first became judges of the 36th District Court in 2017; correct?

A. Correct.

Q. Same time as Judge Davis; correct?

A. Correct.

Q. 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**.... [Emphasis suppled.]

[T, 7/7/22, pp 89-90.]

Q. So you would have been the chief judge at the time that this document that you're looking at right now, which is Exhibit F, you were the chief judge during that period of time; correct?

A. Correct.

Q. And for that entire time you had it and you had Judge Davis saying I need a court reporter -- you remember her requesting court reporters?

A. She didn't make that request to me. I was aware of the request she made to the person in charge of court reporters and aware of the response that she received.

Q. You were aware of it because were you the supervisor of the entire court; correct?

A. You could call -- you could say that.

Q. Okay. And because you were the supervisor, when things happened it got brought to your attention; right?

A. Yes.

Q. Okay. And so when Judge Davis, either through herself or through her clerk, because she sometimes needed to have a clerk or somebody else talk specifically to people in the court administration, you'd be aware of that; right?

A. **Sometimes I was and sometimes I wasn't. But, yes, with regard to the court reporter request, eventually I was made aware.**

Q. Let's put it this way. Who was in charge of the 36th District Court administration?

A. I had a court administrator.

Q. And who was the administrator -- to whom did the sub – the court administrator report?

A. To me.

Q. Anybody else?

A. No. [Emphasis supplied.]

[T, 7/7/22, pp 92-93.]

Accordingly, Judge Blount made it clear that (1) there was no requirement that judges use video equipment in their courtrooms and (2) Judge Blount was made aware of Respondent's court reporter request. Based upon Judge Blount's testimony, it is clear that (1) Respondent requested a court reporter; (2) Respondent was not required to use the video equipment; and (3) inasmuch as Respondent, like any other judge, was not required to use a video recording equipment, there was no reason why Respondent would need to request training on such equipment. The issue as to video recording

equipment and court reporting was not Respondent's administrative responsibility—that administrative responsibility was that of Judge Blount and her administration.

It is also stated by Petitioner, and the Master, that SCAO Michigan Trial Court Standards for Courtroom Technology [hereinafter referred to as "MTCSCT"] are designed for persons other than a judge. However, why is it that clerks or non-judges are not the ones who should be operating the video equipment instead of judges? Or, why is it that Respondent was the only judge who was compelled to operate video recording equipment.[1]

> **Trial courts** that use audio or video recording equipment, whether digital or analog, **must** adhere to the audio and **video recording operating standards published by the State Court Administrative Office.** [Emphasis supplied.]

MCR 8.109(B).

Obviously, inasmuch as the Michigan Supreme Court ordered the provisions of MCR 8.109(B), in which trial courts must fulfill the SCAO's video recording operating

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[1] There were only two judges, out of the 28 judges of the 36th District Court, who voluntarily utilized the video equipment. 25 of the 28 of the judges were not compelled to utilize the video equipment. Respondent—and only Respondent—was singled out to utilize the video equipment, and she was not even given proper training. That Respondent was discriminated in this manner may provide an explanation as to why Respondent was subject to claims that she did not have official recordings of courtroom proceedings, that she did not diligently discharge administrative responsibilities, and that she did not facilitate the performance of administrative responsibilities of other judges and court officials, among other accusations.

standards, it is not for others than the Supreme Court to rule whether judges must operate video equipment in trial courts in disregard of SCAO standards.

> Only reporters, recorders, voice writers, or operators certified pursuant to MCR 8.108(G)(1) may operate a court's audio recording system. **A person operating a court's digital video court recording system** need not be certified pursuant to MCR 8.108, but **must comply with these standards.** [Emphasis supplied.]

MTCSCT §1, Chap 1(B).

> 2. Digital Video Equipment Operator
>
> a. Authority, Conduct, and Qualifications
>
> **Any person operating a court's digital video court recording system must comply with these standards.** The operator need not be certified pursuant to MCR 8.108. Operating and monitoring procedures for digital video equipment are outlined in this chapter.
>
> **The video operator shall comply with all statutes and court rules and is subject to the court's code of conduct for court employees.**
>
> In general, the video operator should possess a broad understanding of court procedures and principles, familiarity with legal terminology, specific knowledge related to the digital audio recording equipment, and awareness of courtroom decorum. [Emphasis supplied.]

MTCSCT §1, Chap 3(B)(2)(a).

As stated, Petitioner and the Master allege that MTCSCT was designed for persons other than a judge. However, it appears that there is nothing either in the Michigan Court Rules or the SCAO's MTCSCT that indicates that such was so

designed. What is clear is that **any person**, whether that person is a judge or anyone else, is required to comply with the MTCSCT in the use of video recording equipment. Also, MCR 8.109(B), promulgated by the Michigan Supreme Court, requires that trial court use of video recording equipment **must adhere** to SCAO video recording operating standards.

Thus, the 36th District Court, being a trial court, was obliged to comply with SCAO's MTCSCT operating standards. Such includes anyone who would operate video recording equipment. There is no exception to adhering to the SCAO operating standards. MTCSCT §1, Chap 3(B)(2)(a).

Accordingly, authority from the Michigan Supreme Court and SCAO, possessing a mandate as to video recording equipment and its operation, Petitioner's claim that MTCSCT was designed for people other than judges is either flat out wrong, or it makes clear that judges are not to operate the video equipment. In any event, Petitioner's claim that judges are exempt from the MTCSCT standards are contrary to the Supreme Court's authority that supersedes that of all lower courts.

If the Supreme Court decided to provide another Rule that would allow judges to operate video recording equipment outside of that published by SCAO, such would have been proclaimed by the Supreme Court.

Thus, Judge Blount, as the head of the 36th District Court, a trial court, had no basis to require Respondent to have operated video recording equipment outside of

SCAO standards. Judge Blount failed to provide Respondent with either a proper video operator or else a court reporter. There is no reason why a courtroom clerk, or someone else who is properly trained pursuant to MTCSCT, could not operate the equipment. What was not allowed was for Judge Blount to violate the Rules of the Michigan Supreme Court and its arm, SCAO in connection with the operation of video recording equipment.

In essence, Judge Blount and her administration simply refused to provide Respondent with the necessities for a judge in her courtroom. Respondent was subjected to an unusual circumstance wherein she was essentially discriminated against, not only as to deprivation of court reporters, but also by removing her from adjudicatory status to that of a pariah.

As to Respondent's lack of an official record, she was put into a Hobson's choice. She wanted to have an official record of hearings. She was not given training for the video equipment, for which never should have been required. At the same time, even though almost every judge the 36th District Court had court reporters at their disposal, Respondent was denied the same when she was put into Courtroom 340. The 36th District Court administration refused to give her the same accommodations as were provided to other judges.

Thus, since Judge Blount was aware of Respondent's request for a court reporter for her courtroom, and Judge Blount did not provide Respondent with a video recording

person who satisfied SCAO standards, the following question is put forth: why did Judge Blount refuse to provide Respondent with a proper staff person to ensure the production of an official record for Respondent's cases?

Judge Blount had a duty to assist other judges (i. e. Respondent) in the performance of their responsibilities. See MCR 8.110(C)(2)(f). It is difficult to understand how depriving Respondent of a court reporter or a video recording person is compatible with assisting Respondent in the performance of her responsibilities. It certainly did not provide Respondent with the means of assisting other judges or other court officials in their administrative responsibilities.

Respondent did not intentionally fail to make a record of official proceedings. Given the foregoing, Respondent could not achieve making such a record due to Judge Blount's nonexistent assistance to Respondent in the performance of producing a record of official proceedings. Thus, Respondent had no resources to have a record other than what she did, to wit: to place a record on her cell phone.

To put it bluntly, it is not implausible that what Judge Blount was seeking was to sabotage Respondent in her novice role as a judge.

The Master correctly concluded that Respondent did not disable or destroy video-graphic equipment and Petitioner's claim to the contrary was not proven by a preponderance of the evidence.

COUNT V

Petitioner alleged that Respondent engaged in unauthorized recording and publication of court proceedings.

The Master found that Respondent admitted that in numerous proceedings, she used her cell phone to make a record of the proceedings. In fact, Respondent sent a copy of those recordings to the JTC in an effort to cooperate with the JTC and members of its staff.[2]

The Master made two findings, to wit: (1) that Shannon Walker stated that she uncovered a broadcast on Facebook in which she alleged that she heard the voice of Respondent 3 years ago, presumably in a courtroom proceeding and (2) that Walker, who was the only witness on this issue, was not credible due to the accuracy of her memory. *Master's Report,* p 23.

The Master concluded that Respondent recorded court proceedings in a manner inconsistent with the applicable pre-covid rule for recording courtroom proceeding, which the Master stated was a violation of Canon 3(A)(11), which states as follows:

> A judge should prohibit broadcasting, televising, recording, or taking of photographs in or out of the courtroom during sessions of court or recesses between sessions except as authorized by the Supreme Court.

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[2] The Master also indicated that Respondent gave the JTC mp3 and other media. Other recordings show Respondent in her chambers.

The Master concluded that the Petitioner did not prove publishing. *Id.*

COUNT VI

Petitioner claimed that Respondent engaged in a civil infraction for a parking violation. Petitioner claimed that Respondent made a vulgar statement to a person at the parking area; that she presented a badge to a police officer who gave her a parking ticket; made a misleading statement to Judge Alexis Krot during a hearing in the Hamtramck district court; and displaying a Detroit Police Department placard on her driver's side window.

Cassandra Starkey, who claimed that Respondent made vulgar and threatening statements, was found by the Master to be not proven. *Master's Report*, p 25. Starkey's testimony was found by the Master not to be credible. *Id.*

The Master also concluded that Respondent did not make any false statements to Judge Krot. The transcript of the official record of the proceedings contained no misleading statements. The transcript and an audio recording failed to establish any shouting, inappropriate language or inappropriate action by Respondent. The Master further concluded that the record does not reveal anything that constituted that Respondent engaged in any distractive conduct. The Master further concluded that Respondent was slow in paying her fine, but that she did pay it. *Master's Report*, p 26.

The Master concluded that Petitioner failed to prove that Respondent violated respect to the judge in violation of MCR 9.202(B)(2). *Id.*

The Master concluded that Petitioner proved by a preponderance of the evidence that Respondent violated MCR 9.103(1) and MCR 9.202(B) in conduct prejudicial to the proper administration of justice ; MCR 9.104(3) by engaging in conduct contrary to justice, ethics, honesty or good morals and Canon 1 for placing a placard on her windshield and displaying her badge. *Id.*

As to the rest of Count VI, the Master concluded that Petitioner failed to prove by a preponderance of the evidence all other aspects of Count VI.

COUNT VII

Finally, the Master, having reviewed each and every claim by Petitioner in Count VII, made findings on Pages 28 and 29 of her Report, in which she concluded that Petitioner failed to prove all of the allegations of misrepresentation by Respondent.

Thus, the Master concluded that Petitioner failed to prove any judicial; misconduct in Count VII. *Master's Report*, p 29.

* * * *

SANCTIONS TO BE IMPOSED, IF APPROPRIATE

In considering the discipline to be imposed, the Michigan Supreme Court has come to some general concepts, as follows:

> Everything else being equal:
>
> (1) misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct;

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

(3) misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety;

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

(5) misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated;

(6) misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery;

(7) misconduct that involves the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship.

In re Brown, 461 Mich 1291, 1292–1293, 625 NW2d 744, 745 (2000).

In addition to the foregoing, the opinion in *Brown* reasoned whether or not there should be a rigid view in considering cases that are similar as to disciplinary sanctions.

> To the extent that the JTC has, in the past, relied on this Court's opinion in *State Bar Grievance Administrator v. Del Rio*, 407 Mich. 336, 285 N.W.2d 277 (1979), to conclude that comparison of unrelated cases is improper, the JTC's reliance is misplaced. In *Del Rio*, this Court said

> that "we find dubious the notion that judicial or attorney misconduct cases are comparable beyond a limited and superficial extent." *Id.* at 350, 285 N.W.2d 277. This merely states the obvious proposition that such comparisons are inevitably limited, not that they have no value, and that when discipline in disparate cases falls within an **appropriate range, the dissimilarities outweigh the similarities. In a similar vein, in the attorney discipline matter of *In re Grimes*, 414 Mich. 483, 490, 326 N.W.2d 380 (1982), this Court noted that while "analogies are not of great value" in reviewing the discipline imposed in a given case, "we are mindful of the sanctions meted out in similar cases."** [Emphasis supplied.]

Id, 461 Mich at 1294, 625 NW2d at 746.

The question as to disciplinary sanction is to be considered in connection with other cases that were decided by the Michigan Supreme Court. In *In re Post*, 493 Mich 974, 830 NW2d 365 (2013), Judge Kenneth D. Post had ordered an attorney, Scott Millard, to require his client to provide information that would violate the client's Fifth Amendment rights. Millard told the judge that he could not require his client to do so because Millard would be violating his ethical duties and responsibilities that would be in violation of his oath as an attorney. Judge Post entered an order of contempt and the Ottawa County Sheriff's Department took Millard into custody, handcuffing his hands behind his back, and transporting him to, and booking him in, the Ottawa County Jail. Later in the morning of December 2, 2011, when he was transported to the 20th Circuit Court before Judge Edward Post (no relation to Respondent) on a motion for emergency stay, Mr. Millard was handcuffed and placed in leg shackles, both of which [were] then

attached to a "belly chain" around his waist. Judge Edward Post reversed Mr. Millard's contempt of court conviction.

The Michigan Supreme Court ordered that Judge Kenneth Post be publicly censured and suspended from judicial office without pay for 30 days. *Post, supra* 493 Mich at 977, 830 NW2d at 368. It is suggested that the public censure and suspension should be appropriate.[3]

In another case, a judge engaged in abuse of contempt powers as well as a group of improper conduct, as is set forth as follows:

> Judge Hague's disobedience of superior court orders, refusal to follow settled and binding case precedent, abuse of the contempt powers and unjustified exclusion of attorneys from the courtroom is a mosaic of willful misconduct designed solely to frustrate enforcement of laws he was oath-bound to uphold. It was repeated and defiant and, because of the widespread publicity given it within the courtroom and in the community at large, can only have seriously damaged public esteem for the judiciary in general, engendered disrespect for the law, exposed the courts to obloquy, contempt, censure and reproach and brought ridicule upon Judge Hague as a judicial officer.
>
> We conclude that in all four types of misconduct detailed hereinbefore, the respondent failed to uphold his oath to faithfully discharge the duties of his office, Const.1963,

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[3] Inasmuch as Judge Davis has been suspended on an interim basis in this case since June 17, 2020, such must be taken into account. It is further observed that inasmuch as the JTC has subjected Judge Davis to "investigation" in this matter for five (5) years prior to commencement of hearings, such must also be considered as to any sanction that is contemplated.

> art. 11, s 1; undermined the "integrity and independence of the judiciary", Code of Judicial Conduct, Canon 1; created "impropriety and the appearance of impropriety", Id., Canon 2; failed to maintain the integrity of the legal profession, Code of Professional Responsibility and Canons, Canon 1; engaged in conduct prejudicial to the proper administration of justice, Code of Professional Responsibility and Canons, DR 1-102(A)(5), GCR 1963, 953(1) and 932.4(b)(iv); exposed the courts to "obloquy, contempt, censure and reproach", GCR 1963, 953(2); and therefore failed to conform his behavior to the applicable standards of conduct, GCR 1963, 952.1 and 953(4).

Matter of Hague, 412 Mich 532, 563, 315 NW2d 524, 536–537 (1982).

As a result of the foregoing conclusion by the Supreme Court, Judge Hague was suspended for a period of 60 days.

In another case, the Supreme Court stated as follows:

> We adopt the Commission's conclusion that these facts demonstrate that the respondent breached the standards of judicial conduct in the following ways:
>
> 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) Engagement] 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).

After review of the Judicial Tenure Commission's recommendation, the settlement agreement, the standards set forth in Brown, and the above findings and conclusions, we ORDER that the Honorable R. Darryl

> Mazur be publicly censured and suspended without pay for 30 days, effective 21 days from the date of this order. This order further stands as our public censure.

In re Mazur, 498 Mich 923, 925–926, 871 NW2d 526, 528–529 (2015).

A review of the matters in which Respondent was found by the Master to have engaged in judicial misconduct reveals that Respondent does not enact in dishonest behavior. While Respondent made mistakes, she did not act in a manner that indicates moral turpitude. While the elements that *Brown* state are important factors, the one component that is not present is a key issue—honesty, or lack thereof.

There are cases in which a judge warrants discipline that removes him or her from remaining on the bench. This case is not one of them. Here, the Master properly concluded that all of Count VII, consisting of alleged misrepresentation by Respondent, was not proven by a preponderance of the evidence. In fact, most of the Petitioner's claims in the other six counts were found by the Master not to have been proven by a preponderance of the evidence.

The Michigan Supreme Court reviewed a matter involving a District Court judge and an attorney who was active in her courtroom.

> The bases for the JTC's complaint concern two aspects of respondent's conduct between April 1998 and August 1999. First, on a substantial number of occasions, respondent appointed then-attorney Michael Fletcher to represent indigent defendants, and presided over such cases, as well as presided over a criminal case in which Fletcher was retained counsel, without disclosing that she was engaged at the time in an intimate relationship with

> Fletcher. Second, respondent made false statements to police officers investigating the August 16, 1999, murder of Leann Fletcher, Michael Fletcher's wife.

In re Chrzanowski, 465 Mich 468, 469–470, 636 NW2d 758, 760–761 (2001).

In determining sanctions, the Supreme Court published this opinion concerning a judge who had been subject to an interim suspension and then was subject to additional sanctions, as follows:

> The JTC has recommended that respondent be suspended for one year without pay. Respondent argues that, in light of previous JTC recommendations, this sanction is disproportionate. Respondent cites several opinions written before *Brown I* and *Brown II* in which various sanctions were meted out for incidents of judicial misconduct. However, as *Brown I* indicated, review by this Court of previous judicial disciplinary proceedings has sometimes been "hampered because the standards by which the JTC [produced] its recommendations [were not always] apparent." *Brown I, supra* at 1292, 625 N.W.2d 744. Rather than analyze each of the cases raised by respondent in her argument challenging the proportionality of the recommended sanction, we have chosen instead to examine the proportionality of her sanction in light of the JTC's application of the *Brown* factors. Here, as outlined in part III, the JTC set forth its analysis in the context of these factors. We find this analysis to be reasonably done and therefore accord the recommendations of the JTC considerable deference.
>
> This Court assesses the proportionality of the JTC's recommendations of discipline, with the goal of "maintain[ing] the honor and the integrity of the judiciary, deter[ring] similar conduct, and further[ing] the administration of justice." *In re Hocking*, 451 Mich. 1, 24, 546 N.W.2d 234 (1996). "[T]he purpose of judicial discipline is not to punish but to maintain the integrity of

the judicial process." *In re Moore, supra* at 118, 626 N.W.2d 374. We conclude that the JTC's recommendation of a one-year suspension of respondent without pay was a clearly reasonable one.

However, the JTC could not have known, and thus did not consider, the overall length of respondent's interim suspension, which has continued until the issuance of this opinion. **We believe that some consideration should be given to the chastening effect of respondent's seventeen-month interim suspension from judicial duties, although such suspension has been with pay.** In a democratically elected judicial system, such as we have in Michigan, suspension of a judge from judicial activities is itself a sanction with considerable consequences, and we believe that respondent has incurred many of those consequences. We conclude that in this unique case it is reasonable to accord respondent credit for six months of her seventeen-month interim suspension. Accordingly, pursuant to MCR 9.225, we modify the recommendation of the JTC only to accord respondent credit for six months of the seventeen-month interim suspension that she has already served. Therefore, we direct the following disciplinary action in this case:

This cause having been brought to this Court by the recommendation of the Judicial Tenure Commission and having been briefed and argued by counsel, it is ordered that Respondent Hon. Susan R. Chrzanowski shall be suspended from the discharge of all judicial and administrative duties, without pay, for a period of twelve months. However, respondent shall receive credit for six months served during the period of her interim suspension. Respondent shall serve the remainder of her twelve-month suspension, six months without pay, to begin January 1, 2002. After June 30, 2002, respondent may return to the bench of the 37th District Court to serve the remainder of her term.

> Respondent's conduct on the bench was unbecoming of the office that she holds. Her actions undermined public confidence in the integrity and impartiality of the judiciary, and were prejudicial to the administration of justice. Const. 1963, art. 6, § 30. "As the cornerstone of our tripartite system of government, the judiciary has a public trust to both uphold and represent the rule of law." *Hocking, supra* at 6, 546 N.W.2d 234. "[J]udges ... are bound to conduct themselves with honor and dignity." *Id.* [Emphasis supplied.]

Id, 465 Mich at 487–490, 636 NW2d at 769–771.

Thus, in *Chrzanowski*, while the JTC recommended to the Supreme Court that the respondent should have been suspended for one year without pay, the Supreme Court gave the respondent a 6 month credit from the 17 months that she had been subject to an interim suspension with pay, and the ultimate suspension was for 6 months without pay, instead of the JTC's recommendation of one year's suspension.

Respondent has wrongdoing that is far less serious than that of Chrzanowski. Master Stephens realized that most of Petitioner's claims did not establish that they were proven by a preponderance of the evidence. Thus, claims that were lodged against Respondent Davis were not found to have been sustained.

Additionally, the most serious of the claims of which Petitioner accused Respondent, such as misrepresentation and damaging or disabling video recording equipment, were not proven by a preponderance of the evidence. The accusations involving failing to diligently discharging administrative responsibilities are highly

questionable, given the circumstances of Judge Blount's refusal to supply Respondent with the requisites for her courtroom proceedings.

Therefore, any sanctions should be a less than that which was levied on Chrzanowski, with credit for the interim suspension.

Dated : August 15, 2022

SCHWARTZ, PLLC

By:

/s/ Michael Alan Schwartz

MICHAEL ALAN SCHWARTZ, P-30938
Attorney for Judge Kahlilia Davis
30300 Northwestern Highway, Suite 113
Farmington Hills, Michigan 48334-3217
(248) 932-0100
phrog@schwartzlawyer.com