

STATE OF MICHIGAN
JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

Hon. Steven R. Servaas
63rd District Court
105 Maple Street
Rockford, Michigan 49341

Formal Complaint No. 84

REPORT OF MASTER

BRIEF STATEMENT OF PROCEEDINGS

On February 14, 2008, the Michigan Judicial Tenure Commission filed a three-count Complaint against Hon. Steven R. Servaas, Judge of the 63rd District Court, 1st Division, Rockford, Kent County, Michigan. Count I alleges that Judge Servaas violated the Michigan Constitution and statutes when he moved his residence out of the 1st Division into the 2nd Division of the 63rd District Court.

Count II alleges that Judge Servaas ignored the Michigan statutes that require a person who has moved to change his or her voter registration and immediately notify the Secretary of State of the change of address.

Count III alleges that Judge Servaas humiliated a court employee in front of her peers. Further, that he gave a drawing of female breasts and a male penis to female court employees.

After Judge Servaas filed an Answer to the Complaint, the Michigan Supreme Court appointed a special master to conduct a public hearing. A four-day public hearing took place at the Kent County Courthouse in Grand Rapids.

FINDINGS OF FACT

The 63rd District Court, Kent County, has two divisions. The 1st Division of the 63rd District Court consists of the cities of Cedar Springs and Rockford, and the townships of Tyron, Solon, Nelson, Spencer, Sparta, Algoma, Courtland, Oakfield, Alpine, Cannon, Plainfield, Grattan, Casnovia Village, and Lake and Kent City, and has one judge. MCL 600.8130(4)(a).

The 2nd Division of the 63rd District Court consists of the township of Ada, as well as the cities of E. Grand Rapids and Lowell, and the townships of Grand Rapids,

Cascade, Vergennes, Lowell, Byron, Gaines, Caledonia and Bowne, and has one judge.
MCL 600.8130(4)(b).

The Hon. Steven R. Servaas has been the elected judge of the 1st Division of the 63rd District Court since January 1, 1973. He has served for 35 years.

The Hon. Sara J. Smolenski has been the elected judge of the 2nd Division of the 63rd District Court since January 1, 1991. She has served as Chief Judge of both divisions of the 63rd District Court since 1996.

Judge Servaas resided at 8631 Belding Road in Cannon Township in the 1st Division until August 2005, when he moved his residence to 201 Honey Creek Avenue, N.E., in Ada Township in the 2nd Division. Transcript, page 104.

The definition of "residence" is:

"... permanence, of a place to which one returns, a place where one intends to remain, a haven or domicile. ... One cannot be permanently located in more than 1 place; one cannot be domiciled in more than 1 place; one cannot intend to remain for an extended period of time in more than 1 place."
In re Scheyer's Estate, 336 Mich 645, 651-2 (1953).

In the State of Michigan the words "domicile" and "residence" are treated as synonymous terms. Reaume & Silloway, Inc v Tetzlaff, 315 Mich 95, 99 (1946).

The Judicial Tenure Commission's Complaint, Count I, alleges that Judge Servaas' change of residence from his elected division to a residence outside his elected division violated Article VI, Section 20 of the Michigan Constitution of 1963:

"Whenever a justice or judge removes his domicile beyond the limits of the territory from which he was elected or appointed, he shall have vacated his office."

Judge Servaas defends his move to the 2nd Division, Ada Township, by interpreting "territory" to mean the entire 63rd District Court.

Fortunately, we have the official Convention comment to Article VI, Section 20 of the 1963 Constitution:

"This is a revision of Sec. 19, Article VII of the present (1908) Constitution clarifying the previous language. The word 'territory' has been substituted for 'jurisdiction' inasmuch as the section refers to physical moving."

It is undisputed that Judge Servaas "physically removed" his domicile or residence to a location or territory outside the limits of the division that elected him.

A Michigan statute, MCL 600.8201, also speaks to the election division in which a district judge holds office:

"A candidate for and a judge of the district court shall be licensed to practice law in this state and shall be a registered elector of the district and election division in which he seeks and holds office. Except in any district or election division in which there is a vacancy and in which a registered elector qualified to practice law in this state has not filed nominating petitions by the filing deadline for the primary election, a registered elector of an adjoining district or election division within the district who is qualified to practice law in this state shall be eligible for the office of district judge by filing nominating petitions signed by the required number of qualified electors of the district or election division in which he seeks election within 5 days after such deadline."

The statute requires Judge Servaas to be a registered elector of the district and election division in which he holds office, the 1st Division. But to be a registered elector, you must be a resident of the township, city or village 30 days before the next regular or special election. MCL 168.492.

Judge Servaas would not be a registered elector of the 1st Division after the middle of 2005 when he moved to the 2nd Division. When Judge Servaas voted in Cannon Township in 2007, he no longer resided in Cannon Township. He had to reside in Cannon

Township 30 days before the election. To summarize, Judge Servaas lost his status as a "registered elector" in the 1st Division when he moved to the 2nd Division in 2005.

The Judicial Tenure Commission's Complaint, Count II, alleges that Judge Servaas failed to comply with statutory notification requirements. Paragraph 18 of the Complaint alleges a failure to immediately notify the Driver's License Bureau of the Secretary of State after Judge Servaas moved to 201 Honey Creek Avenue in Ada Township. Judge Servaas admits this failure to notify in his Answer. This is a civil infraction. MCL 257.315(3).

Paragraph 19 of the Complaint alleges that Judge Servaas failed to change his voter's registration from Cannon Township to Ada Township, pursuant to MCL 168.507(1). This statute applies to a registered elector who has moved from one election precinct of a township to another election precinct of the same township (*emphasis added*). This statute does not apply to Judge Servaas who moved to an election precinct in another township.

The Judicial Tenure Commission's Complaint, Count III, alleges that Judge Servaas engaged in sexually inappropriate comments and conduct toward female court employees.

The first instance relates to a large-breasted female who appeared in court in skimpy attire. When she walked into the courtroom, a female court clerk sent Judge Servaas a note commenting on the revealing dress. Judge Servaas sent the court file back to the clerk with a drawing of female breasts on a note attached to the file. Judge Servaas admitted this incident in paragraph 33 of his Answer. Yet on cross examination at the public hearing, Judge Servaas testified evasively, as follows:

"Q You admit, though, that you did make a doodle of breasts on a bench note; is that correct?"

A No. I haven't seen that. You know, what I said was -- you know, I've been there 35 years, and if you show me, I can tell you. That's what I said.

Q Do you deny ever making a doodle of breasts on a note that you --

A No, I don't deny it. I didn't see them. I can't even comment on it.

Q You don't deny that you never did? Is that what you're saying?

A 'I don't know' is my answer.

* * *

Q Okay. So then my question is have you ever made a doodle of a woman's breasts on a note at court?

A Not that I know of."

Transcript, pages 155-156.

Another incident occurred on August 22, 2007 when Judge Servaas was on the bench. Carrie Flowers, a 1st Division court clerk, placed a file with her attached sticky note, "See 2nd file," on the bench. When Carrie Flowers retrieved the files after Judge Servaas concluded his docket, the sticky note now had a doodle of a male penis with a string around it. Exhibit 6. None of the clerks or court recorder drew the penis on the note. Lynn Martorell, a courtroom clerk and court recorder for Judge Servaas, testified on direct examination:

"Q As you've been sitting in the courtroom on a daily basis, have you ever observed the judge doodle?

A I haven't observed him doodle. I know him to doodle.
(emphasis added)

Q Have you ever known him to doodle anything sexual in nature?

A No, I do not. I've never witnessed that." Tr. p. 351

We have Judge Servaas' admission in paragraph 33 of his Answer that he sent back a court file to a court clerk with a note with a doodle of breasts on it.

Judge Servaas authored the penis doodle, even though he denied it.

The third incident was an encounter between Judge Servaas and Rebecca Andrus, a dedicated court clerk with the 63rd District Court, on Friday, November 30,

2007. The occasion was a retirement party for Bonnie Ulanich at the Cascade court in the 2nd Division. It was about noon and court was in recess.

Rebecca Andrus was working in a cubicle at a criminal division work station in the courthouse. There were three other cubicles in the work station. Seated in these cubicles were Kelli Alflen, Chris Banhagel and Nancy Dodgson, all court clerks from the 2nd Division. Carrie Flowers from the 1st Division was also present. Ms. Flowers was talking to Rebecca Andrus when Judge Servaas walked into the work station. The retirement party was next door to the work station. Carrie Flowers asked Judge Servaas if the Rockford court could have "casual Fridays" like the Cascade court. The Cascade clerks were all in casual dress since it was Friday. Judge Servaas replied that the Rockford staff already dressed "like slobs" so what difference would it make. Transcript, pages 172 and 205.

Rebecca Andrus, surprised at the remark, looked up at Judge Servaas. She had worked with Judge Servaas at the Rockford court and had helped train his staff, including the new bookkeeper. However, Judge Servaas had disciplined and banished Mrs. Andrus from the Rockford court. Mrs. Andrus "... honored his request to not come back to his courthouse." Transcript, page 61. Rebecca Andrus wore a sweatshirt with the word "Michigan" written across the front. She replied, "Go Blue." Mrs. Andrus testified Judge Servaas made the following comment:

"'Well,' he chuckled and he said, 'that's an awfully small chest for that.' He said, 'You should wear -- you should have gone to a smaller school like Alma. It would have fit on your small chest better and you could read it.'" Transcript, page 31.

The comment stunned Mrs. Andrus. She felt humiliated. She is a 62-year-old petite woman. Mrs. Andrus testified:

"I was stunned. I mean he's a man and he was a judge, and I'm a 62-year-old woman. I'm not someone that has ever been

talked to like that from any man, and I felt humiliated. I don't think he --" Transcript, pages 31-2.

Mrs. Andrus realized that everyone was staring at her. She felt shaken and had tears in her eyes. Judge Servaas looked at her and said that he better move on before he "got into trouble" or "got sued." Paragraph 28 of Answer to Complaint.

Judge Servaas acknowledged his wrongful conduct in his Answer. Yet he justified it as a joke made at a social function. It was not a joke. It was a hurtful, degrading remark made at the clerk's work station, not at the party. It was a cutting comment made to a long-serving employee of the 63rd District Court.

Regrettably, Judge Servaas has made similar statements to his Rockford female clerks. Roberta Thelen testified on cross examination to a conversation with Judge Servaas after the Rebecca Andrus incident. According to Ms. Thelen, Judge Servaas said words to the effect, "I say that kind of stuff to you (*referring to the Rockford clerks*) and no one ever complains about it." Transcript, page 346. Judge Servaas was less than truthful when he denied saying anything like that on cross examination. Transcript, pages 154-5.

CONCLUSIONS OF LAW

COUNT I

Judge Servaas violated Article VI, Section 20 of the Michigan Constitution of 1963. The judge "removed his domicile beyond the limits of the territory from which he was elected." Judge Servaas vacated the office of district judge of the 63rd Judicial District, 1st Division, in 2005. The office remains vacant today. There is no authority to support Judge Servaas' contention that his return to the 1st Division in February 2008 reinstates his judgeship.

Judge Servaas also violated Michigan statute 600.8201 that requires a district judge to be a registered elector in the election division in which he holds office. The Judge lost his status as a registered elector in the 1st Division when he moved his residence from Cannon Township to Ada Township in the 2nd Division.

Therefore, Judge Servaas failed to comply with constitutional and statutory requirements to hold a judicial seat in violation of Canon 2.B. of the Code of Judicial Conduct.

COUNT II

I recommend to the Commission that Count II be dismissed.

The Complaint cites the wrong statute in alleging that Judge Servaas failed to change his voter registration when he moved from Cannon Township to Ada Township.

Judge Servaas admits that he failed to immediately notify the Secretary of State when he moved from Belding Road to Honey Creek Avenue. This civil infraction does not rise to the level of judicial or professional misconduct.

COUNT III

Judge Servaas' sexual doodles and sexual communication compromised the integrity of the 63rd District Court. The doodles demeaned his female staff. His clerks laughed because he was the judge. But it was sick humor. They also laughed because they did not want to incur his displeasure. They knew what happened to Rebecca Andrus. They also knew what happened to Dona Gillson, the able Court Administrator of the 63rd District Court. She suffered the same fate as Rebecca Andrus.

Judge Servaas' lack of personal responsibility for his behavior and lack of respect for his female staff violated MCR 9.205(A).

Judge Servaas failed to establish, maintain and observe high standards of conduct to preserve the integrity of the judicial system, in violation of Canon 1 of the Michigan Code of Judicial Conduct.

Judge Servaas failed to treat every person with courtesy and respect without regard to gender, in violation of Canon 2.B.

Judge Servaas engaged in conduct contrary to justice, ethics, honesty or good morals in the treatment of his female staff, in violation of MCR 9.104(A)(3).


The conduct of Judge Servaas toward Rebecca Andrus contained the five elements for a possible cause of action for sexual harassment pursuant to the Elliott-Larsen Civil Rights Act, MCL 37.2101, and following:

1. Rebecca Andrus, a female employee, belonged to a protected group.
2. Judge Servaas made the remark based on her chest size. It would not apply to a male.
3. Rebecca Andrus was subjected to an unwelcome sexual communication.
4. The unwelcome sexual communication created an intimidating, hostile, or offensive work environment. Nancy Dodgson testified on cross examination that there was a lot of turmoil in Cascade caused by this incident. Transcript, page 191.
5. Judge Servaas was a superior of Rebecca Andrus. He controlled her work environment.

Radtke v Everett, 442 Mich 368, 382-3 (1993).

This concludes my Report pursuant to MCR 9.214.

Respectfully submitted,


Casper O. Grathwohl, Master

Dated: May 12, 2008