

**STATE OF MICHIGAN**  
**BEFORE THE JUDICIAL TENURE COMMISSION**

*In re:*

**HON. BENJAMIN H. LOGAN, II**  
**61<sup>st</sup> District Court**  
**Kent County Courthouse**  
**180 Ottawa Ave., NW**  
**Grand Rapids, MI 49503**

**Formal Complaint No. 85**

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**DECISION AND RECOMMENDATION**

At a session of the Michigan Judicial  
Tenure Commission held on December  
14, 2009, in the City of Detroit

PRESENT:

Hon. Kathleen J. McCann, Chairperson  
Thomas J. Ryan, Esq., Vice-Chairperson  
Hon. Nanci J. Grant, Secretary  
Hon. Jeanne Stempien  
Hon. Michael J. Talbot  
Nancy J. Diehl, Esq.  
Marja M. Winters  
Hon. Eugene Arthur Moore  
Richard W. Long

**I. Introduction**

The Judicial Tenure Commission of the State of Michigan (“Commission”) files this recommendation for action against Hon. Benjamin H. Logan, II (“Respondent”), who at all material times was a judge of the 61<sup>st</sup> District Court.

This decision is made pursuant to the authority of the Commission under Article 6, § 30 of the Michigan Constitution of 1963, as amended, and MCR 9.203.

On August 24, 2009, the Commission issued Formal Complaint No. 85 against Respondent. On September 8, 2009, Respondent filed his answer to the formal complaint. In lieu of proceeding with the formal hearing, the Examiner and Respondent entered into a Settlement Agreement, a copy of which is appended to this Decision and Recommendation as Attachment 1. Based on Respondent's stipulation to certain facts and his consent to this recommendation, the Commission concludes that Respondent engaged in misconduct contrary to the Michigan Code of Judicial Conduct. The Commission recommends that the Supreme Court publicly censure Respondent.

## **II. Standard of Proof**

The standard of proof applicable in judicial disciplinary matters is the preponderance of the evidence standard. *In re Ferrara*, 458 Mich 350, 360; 582 NW2d 817 (1998). The standard of proof is not of critical importance in this matter because the party's stipulation has conclusively established the factual basis for this decision and recommendation.

### **III. Findings of Fact**

The Commission adopts the Admissions of Fact contained in the Settlement Agreement and incorporates them here:

1. Respondent is, and was on June 17, 2008, the Chief Judge of the 61<sup>st</sup> District Court in the City of Grand Rapids, Kent County, Michigan.

2. On June 17, 2008, an altercation took place at the Grand Rapids home of [Kent County Commissioner] Mr. James Vaughn, which involved Mr. Vaughn, Cassandra Mitchell and Ida Cross. As a result of the incident, Ms. Cross required medical treatment.

3. That same day, Mr. Vaughn was arrested by officers of the Grand Rapids Police Department (GRPD) on a probable cause charge of aggravated domestic assault and taken to the Kent County Correctional Facility (KCCF). He was booked at approximately 9:26 a.m.

4. A few hours later, [Kent County Commissioner] Mr. Paul Mayhue visited Mr. Vaughn at KCCF.

5. Respondent is an elected official in the City of Grand Rapids (Kent County), and James Vaughn is an elected member of the Kent County Board of Commissioners. Paul Mayhue served on that Board with Mr. Vaughn until Mr. Mayhue's defeat in the August, 2008 primary.

6. Respondent and Mr. Mayhue engaged in a series of telephone calls on June 17, 2008, most of which while Mr. Vaughn was incarcerated. The identity of the callers and times are as follows:

- (a) Mr. Mayhue to Respondent at approximately 12:22 p.m.;

- (b) Respondent to Mr. Mayhue to Respondent at approximately 1:41 p.m.;
- (c) Respondent to Mr. Mayhue to Respondent at approximately 1:48 p.m.;
- (d) Respondent to Mr. Mayhue to Respondent at approximately 2:03 p.m.;
- (e) Mr. Mayhue to Respondent at approximately 2:08 p.m.;
- (f) Respondent to Mr. Mayhue to Respondent at approximately 9:15 p.m.
- (g) Mr. Mayhue to Respondent at approximately 9:40 p.m.

7. Telephone company records reflect that:

- (a) Most of the calls lasted a minute or less, and resulted in voice mail messages being left or in no contact at all; and that
- (b) The phone call from Mr. Mayhue to Respondent at 2:08 p.m. lasted approximately 15 minutes.

8. Respondent was not handling arraignments at the 61<sup>st</sup> District Court on June 17, 2008, when a person in Mr. Vaughn's situation could expect to be arraigned.

9. While Mr. Vaughn was incarcerated, Respondent directed his staff to obtain a copy of the initial police report, which was obtained by accessing the GRPD's computer system at the 61<sup>st</sup> District Court.

10. At approximately 2:30 p.m., Respondent directed that a fax be sent to the KCCF reporting that he had set a personal recognizance bond for Mr. Vaughn in the amount of \$5,000 with conditions, among others, that he have no contact with either Cassandra Mitchell or Ida Cross. The fax was sent as directed.

11. Respondent did not contact the GRPD for additional information, but relied on the initial investigation report in determining to authorize the bond.

12. At 2:50 p.m. Mr. Vaughn was released from the KCCF upon agreeing to the terms of the bond set by Respondent.

13. Shortly after Mr. Vaughn's release on bond, the GRPD telephoned the KCCF to authorize his release pending further investigation. The detective in charge of the investigation was unaware that Mr. Vaughn had been released on bond.

14. Respondent did not direct that the GRPD be informed of the bond he had set for Mr. Vaughn, but it is the practice of the 61<sup>st</sup> District Court to fax to the Department all special bond conditions like those which were set by Respondent for Mr. Vaughn, which was done at the same time the KCCF was informed of the bond. The fax was sent, as is common practice, to the GRPD Warrant Office, not to the investigating detective.

15. Mr. Vaughn was subsequently charged in July, 2008, with and was convicted in March, 2009, of aggravated assault and domestic violence by a jury. Ms. Mitchell was convicted of assault and battery. On April 17, 2009, Mr. Vaughn was sentenced to a term of incarceration in the Kent County Jail.

In short, Respondent has admitted to conduct giving rise to a reasonable inference that he allowed a social or other relationship with Mr. Mayhue or Mr. Vaughn influence his actions with respect to the release of a prisoner on bond.

#### **IV. Conclusions of Law**

Canon 1 of the Michigan Code of Judicial Conduct ("MJCF") states that "[a]n independent and honorable judiciary is indispensable to justice in our society"

and thus mandates that a judge always uphold the integrity and independence of the judiciary. “A judge should always be aware that the judicial system is for the benefit of the litigant and the public, not the judiciary.” MJCJ, Canon 1. Likewise, Canon 2 of the MJCJ mandates that a judge should avoid the appearance of impropriety in all activities. By allowing social or other relationships to interfere with the performance of judicial activities a judge violates these standards of judicial conduct and undermines public confidence in the judiciary.

The facts established by the parties’ stipulation in this matter show by a preponderance of the evidence that Respondent breached the standards of judicial conduct in the manner set forth in Paragraph 16 of the Settlement Agreement:

16. The conduct described above created the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A, and, as such, constitutes:

- (a) Misconduct in office as defined by the Michigan Constitution 1963, as amended, Article VI, § 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 VI, § 30 and MCR 9.205;
- (c) A 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 Michigan Code of Judicial Conduct (“MCJC”), Canon 1;

- (d) A failure 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 MJCJ, Canon 2B; and
- (e) Conduct that exposes the court to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(A)(2).

## V. Disciplinary Analysis

Pursuant to MCR 9.220(C), as set forth in the attached Settlement Agreement, Respondent and the Commission have agreed that the Commission's recommended sanction shall be no greater than a public censure. In due consideration of the parties' stipulation, the *Brown* factors, and the requirement of proportionality, the Commission agrees that a public censure is warranted.

### A. The *Brown* Factors

The Michigan Supreme Court set forth the criteria for assessing proposed discipline in *In re Brown*, 461 Mich 1291, 1292-1293; 625 NW2d 744 (1999). A discussion of the relevant factors follows.

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

Respondent's actions do not reveal a pattern or practice of allowing social or other relationships to influence his judicial behavior. This appears to have been an isolated instance of such misconduct.

- (2) *Misconduct on the bench is usually more serious than the same misconduct off the bench.*

Respondent's action of setting a bond for Mr. Vaughn constituted misconduct on 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.*

There is no evidence that Respondent's conduct was prejudicial to the actual administration of justice.

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

While there is no evidence that Respondent's conduct actually prejudiced the administration of justice, his actions taken on behalf of Mr. Mayhue or Mr. Vaughn created, at a minimum, an appearance of impropriety with respect to the administration of justice.

- (5) *Misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated.*

The formal nature of Respondent's action in setting a bond for Mr. Vaughn reveals conduct that necessarily was premeditated and deliberate.

- (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.*

There is no evidence that Respondent's misconduct undermined the ability of the justice system to discover the truth of what occurred in a legal controversy.

- (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.*

There is no evidence of conduct by Respondent involving the unequal application of justice on the basis of a class of citizenship.

In sum, three of the seven *Brown* factors, numbers (2), (4) and (5), would support the imposition of a more severe sanction. It must be noted, however, that we do not apply the *Brown* factors mechanically. Instead, we must consider the unique facts of each matter before us. Here, Respondent's act of setting a bond for Mr. Vaughn does not rise to a level of misconduct that would require us to recommend a suspension from office.

B. Proportionality

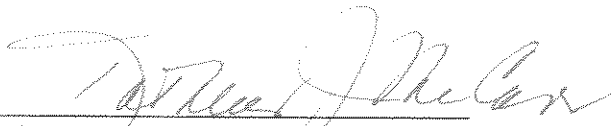
In determining an appropriate discipline in this matter, the Commission is mindful of the Michigan Supreme Court's call for "proportionality" with respect to comparable conduct. Based on the Admissions of Fact, the Commission, in its collective judgment, believes that a public censure would be an appropriate and

proportionate sanction for Respondent's judicial misconduct. In reaching this conclusion we are mindful of the fact that the parties have reached an express agreement as to the propriety of the sanction. Considering other sanctions imposed by the Michigan Supreme Court, the sanction of public censure in this case does not offend the requirement of proportionality.

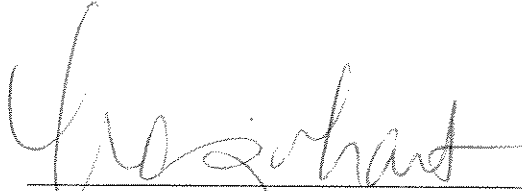
#### **VI. Recommendation**

The Commission concludes that Respondent committed judicial misconduct. Based on the nature of the misconduct, the Commission recommends that the Michigan Supreme Court publicly censure Respondent for his misconduct.

**JUDICIAL TENURE COMMISSION**

  
HON. KATHLEEN J. McCANN  
Chairperson

  
THOMAS J. RYAN, ESQ.  
Vice Chairperson

  
HON. NANCI J. GRANT  
Secretary

  
HON. JEANNE STEMPIEN

  
HON. MICHAEL J. TALBOT

  
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HON. EUGENE ARTHUR MOORE

  
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Formal Complaint No. 85

**SETTLEMENT AGREEMENT**

Hon. Benjamin H. Logan, II (“Respondent”), through his attorney, Dennis C. Kolenda, and the Examiner, Paul J. Fischer, (collectively, “the parties”) stipulate as follows.

**A. BACKGROUND**

1. Respondent is a judge of the 61<sup>st</sup> District Court in Grand Rapids, Michigan.
2. As a judge, Respondent is subject to all the duties and responsibilities imposed on judges by the Michigan Supreme Court and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205.
3. Formal Complaint No. 85 (“Formal Complaint”) is currently pending before the Michigan Tenure Commission (“the Commission”).
4. To resolve this matter, Respondent agrees to admit the facts set forth below in Section B as the factual basis, along with any reasonable inferences therefrom, for the Commission to make findings of fact and conclusions of law and to recommend to the Supreme Court a sanction regarding judicial misconduct in lieu of a hearing before the Commission or before a master.

5. The parties stipulate that, if the Commission recommends a sanction, that sanction shall be a public censure.

6. 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.

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

8. Respondent acknowledges that this Settlement Agreement covers only the Formal Complaint. 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 the matters, cases or issues contained in the Formal Complaint.

9. The parties hereby knowingly, intentionally, and voluntarily waive their right to:

- (a) A hearing before a master on the issues raised in this matter, as provided for in MCR 9.211;
- (b) A master's report setting forth findings of fact and/or conclusions of law with respect to the issues raised, as provided for in MCR 9.214; and
- (c) An appearance before the Commission, as provided in MCR 9.216.

10. Respondent specifically acknowledges that he is entering this Settlement Agreement because he engaged in the conduct set out in the Stipulated Facts. He further acknowledges that he is entering this Settlement Agreement freely and voluntarily, that it is his own choice to do so, and that he is doing so in consultation with counsel.

11. Respondent agrees that the Commission may consider his disciplinary history, if any.

12. The parties agree that the Stipulated Facts are conclusive as to the matters stipulated.

13. The parties further agree that this Settlement Agreement is a public document that may be filed with the Commission.

## **B. ADMISSIONS OF FACT**

1. Respondent is, and was on June 17, 2008, the Chief Judge of the 61<sup>st</sup> District Court in the City of Grand Rapids, Kent County, Michigan.

2. On June 17, 2008, an altercation took place at the Grand Rapids home of Mr. James Vaughn, which involved Mr. Vaughn, Cassandra Mitchell and Ida Cross. As a result of the incident, Ms. Cross required medical treatment.

3. That same day, Mr. Vaughn was arrested by officers of Grand Rapids Police Department (GRPD) on a probable cause charge of aggravated domestic assault and taken to the Kent County Correctional Facility (KCCF). He was booked at approximately 9:26 a.m.

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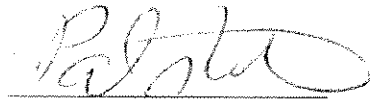
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- (a) Misconduct in office as defined by the Michigan Constitution 1963, as amended, Article VI, §30 and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30; MCR 9.104(A)(1); and MCR 9.205;
- (c) A 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 Michigan Code of Judicial Conduct ("MCJC"), Canon 1;

- (d) A failure 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 MCJC, Canon 2B; and
- (e) Conduct that exposes the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(A)(2); and

Respectfully submitted,



Paul J. Fischer (P35454)  
Executive Director and General Counsel,  
Judicial Tenure Commission  
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DATED: 10/23/2009



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(616) 458-1300

DATED: 10/24/09



Benjamin H. Logan, II  
61<sup>st</sup> District Court Judge

DATED: 10/20/09