

STATE OF MICHIGAN  
IN THE SUPREME COURT

COMPLAINT AGAINST:

Hon. Sylvia A. James  
22nd District Court  
27331 S. River Park Drive  
Inkster, Michigan 48141

Misc. Docket No. 143942  
Formal Complaint No. 88

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**BRIEF IN SUPPORT OF JUDGE SYLVIA A. JAMES' MOTION  
TO DISQUALIFY CHIEF JUSTICE ROBERT P. YOUNG, JR. AND ALL  
ASSOCIATE JUSTICES OF THE MICHIGAN SUPREME COURT AND REQUEST  
THAT THE MOTION BE CONSIDERED BY THE ENTIRE COURT**

PHILIP J. THOMAS (P31298)  
Attorney for Judge Sylvia A. James  
15450 E. Jefferson, Ste. 160  
Grosse Pointe Park, MI 48230  
(313) 821- 2600

PAUL J. FISCHER (P35454)  
Examiner, Judicial Tenure Commission  
3034 W. Grand Blvd., Ste. 8-450  
Detroit, Michigan 48202  
(313) 875-5110

SHARON MCPHAIL (P26922)  
Attorney for Judge Sylvia A. James  
Key Group, Inc.  
567 Fiske Dr.  
Detroit, Michigan 48214

TABLE OF CONTENTS

INDEX OF AUTHORITIES	iii
STATEMENT OF FACTS	1
ARGUMENT	9
ARGUMENT 1	
THE JUSTICES OF THE SUPREME COURT HAVE DEMONSTRATED BIAS AND PREJUDICE AGAINST JUDGE JAMES AND ARE DIS- QUALIFIED PURSUANT TO MCR 2.003(C)(1)(a)	9
ARGUMENT 2	
THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THIS COURT HAVE VIOLATED JUDGE JAMES' DUE PROCESS RIGHTS AND CREATED NOT ONLY AN APPEARANCE OF IMPROPRIETY, BUT, ACTUAL IMPROPRIETY	14
ARGUMENT 3	
THE CHIEF JUSTICES AND ALL ASSOCIATE JUSTICES HAVE PER- SONAL KNOWLEDGE OF FACTS IN DISPUTE AS SET FORTH IN THE ANSWER TO THE PETITION FOR INTERIM SUSPENSION AND THE ANSWER TO THE FORMAL COMPLAINT	16
ARGUMENT 4	
CHIEF JUSTICE ROBERT P. YOUNG WILL BE A WITNESS IN THIS MATTER AND MUST BE DISQUALIFIED	17
RELIEF REQUESTED	19

## INDEX OF AUTHORITIES

### CASES

<i>People v. Coone</i> , 216 Mich. App. 721, 550 NW 2d 600 (1996)	14
<i>Citizens Protecting Michigan's Constitution v. Sec'y of State</i> , 482 Mich. 949, 755 N.W. 2d 147 (2008)	15
<i>Tingley v. Wardrop</i> , 266 Mich. App. 233, <i>vacated on other grounds, remanded</i> 474 Mich. 1104, 711 N.W. 2d 382 (2006)	16
<i>Grievance Administrator v. Geoffrey Fieger</i> , 477 Mich. 1228, 729 N.W.2d 451 (2006)	18
<i>Anthony Pellegrino v. AMPCO Systems</i> , 485 Mich. 1134, 789 N.W. 2d 777 (2010)	18

### STATUTES

Michigan Constitution of 1963, art. 6, Sec. 30	3
Michigan Constitution of 1963, art. 6, Sec. 4	5

### RULES

Michigan Court Rule 9.207(D)	4
Michigan Court Rule 9.209	5
Michigan Court Rule 9.210	5
Michigan Court Rule 9.200 <i>et seq.</i>	5
Michigan Court Rule 9.219(2)	5
Michigan Court Rule 2.003(C)(1)(a)	9
Michigan Court Rule 2.003(C)(1)(b)	14
Michigan Court Rule 2.003(C)(1)(c)	16
Michigan Court Rule 2.003(C)(1)(g)(iv)	17

## STATEMENT OF FACTS

Respondent Judge Sylvia A. James is a hard-working, honest judge. She has established an unblemished record during her 23 years on the bench. As a result of the fact that the 22<sup>nd</sup> District Court is a “one judge” court, she also served as chief judge and carried out all necessary administrative duties aside from her duties relating to the court’s docket. It is critical to note that the 22<sup>nd</sup> District Court has the heaviest “per judge” caseload in the state (see Attachment 1). In fact, in approximately 2003, the Michigan Supreme Court determined that the 22<sup>nd</sup> District Court needed 1.85 judges to manage its caseload. The fact that the 22<sup>nd</sup> District Court needed a second judge was well known to this Court’s administrative staff (SCAO) and common knowledge in the community dating as far back as January, 1992. In an article which ran in the Inkster Ledger Star on January 30, 1992, former Councilwoman Sheila Green made the following statements in support of a second judgeship:

“Our civil case load is comparable to several communities that have two judges, namely, Westland, Romulus, and Plymouth. In fact, it’s greater than cities of Redford, Dearborn Heights, Allen Park, Lincoln Park, and Trenton where they have a two-judge system.”

Greene explained that the city “actually has as much as four to six times as many cases as some cities that have only one judge: River Rouge, Ecorse, Wyandotte, Riverview and neighboring Wayne.

“And that,” Greene stressed, “is just our civil caseload.”

In terms of criminal cases, Inkster has the second highest criminal case load in Wayne County outside of the city of Inkster, Greene says. She offered the following figures to support her claims: Westland with 4,857 criminal cases as compared to Inkster with 4,721.

“We have the third highest felony case load in the county outside Detroit – Taylor has 1185; Highland Park has 650 and Inkster has 605,” Greene continued.

Westland, Taylor, and Highland Park each have two district judges.

(see Attachment 2).

Nearly 16 years later, the 22<sup>nd</sup> District Court's disproportionately high caseload was also addressed in an article in the Garden City Observer newspaper, which discussed the possible merging of Garden City's 21<sup>st</sup> District Court with a neighboring court. The following statistics were noted in that article:

Based on 2004 figures – the most recent figures available through the State Court administrator – Judge Richard Hammer Jr. and the court handled 7,491 cases. By comparison, **Inkster's 22<sup>nd</sup> District Court Judge Sylvia James and a magistrate handled 56,540 cases.** Each of the cities has a population just over 30,000.

(see Attachment 3, emphasis).

The statistics available at that time showed that Judge James had a caseload approximately eight times higher than Judge Richard Hammer of the 21<sup>st</sup> District Court. In the Management Assistance Plan (MAP) prepared by SCAO in 2000, SCAO noted the 22<sup>nd</sup> District Court's "unusually large caseload for a single-judge court." At page 5 of that report, SCAO stated the following:

When conducting a management assistance project, the State Court Administrative Office selects courts with similar size caseloads in order to draw comparisons between the project court and other courts. Due to its **unusually large caseload for a single-judge court**, the 22<sup>nd</sup> District court was compared with three single-judge and three two-judge district courts in Region 1. The courts used for comparison purposes are D21 in Garden City, D28 in Southgate, and D29 in Wayne, all single-judge courts, and D18 in Westland, D20 in Dearborn Heights, and D23 in Taylor, all two-judge courts.

(see Attachment 4, emphasis added).

Although Judge James requested a second judgeship for the court, her request was denied (see Attachment 5). In support of her request for a second judgeship, Judge James prepared a Status Report for a meeting with the State Court Administrator and Region 1 Administrator in September of 2002. In that report, Judge James provided the following statistics:

- In 1997 and 1998, the 22<sup>nd</sup> District Court disposed of 13, 234 and 15, 419 cases respectively. In 1997, the statewide average number of dispositions per judge was 12, 617. The 22<sup>nd</sup> District Court exceeded that average by 1,067 cases in 1997 and 3,252 in 1998.
- In 2001, the 22<sup>nd</sup> District Court resolved 21, 542 cases, approximately 8,000 more than the state average per judge.
- In 2001, the 22<sup>nd</sup> District Court's new filings reached an unprecedented 20,803 as compared to the state average of 12,604 in 2000.

(see Attachment 6).

Judge James also provided a chart which set forth the trend for new filings and dispositions per judge. The following chart sets forth how the 22<sup>nd</sup> District Court compared to the statewide average in each category of filings:

<b>Filings Per Judge</b>	<b>Statewide</b>	<b>22<sup>nd</sup> District Court</b>
<b>Criminal Felony</b>	<b>276</b>	<b>337</b>
<b>Criminal Misdemeanors</b>	<b>1,208</b>	<b>2,399</b>
<b>Criminal Civil</b>	<b>68</b>	<b>0</b>
<b>Traffic Misdemeanor</b>	<b>1,757</b>	<b>1,325</b>
<b>Traffic Civil</b>	<b>7,246</b>	<b>5,263</b>
<b>Felony OUIL</b>	<b>24</b>	<b>13</b>
<b>Misdemeanor</b>	<b>222</b>	<b>244</b>
<b>General Civil</b>	<b>717</b>	<b>1,027</b>
<b>Small Claims</b>	<b>379</b>	<b>107</b>
<b>Summary</b>	<b>708</b>	<b>2,066</b>
<b>Total</b>	<b>12,604</b>	<b>12,781</b>

(see Attachment 7).

The above-referenced statistics clearly prove that Judge James was overseeing the busiest docket per judge of any district court in the state.

While Judge James was busy doing the work of two judges, people who considered Judge James as their political enemy were trying to destroy her. When her political enemies saw themselves as being thwarted in terms of their efforts to destroy Judge James, they enlisted the media and eventually this Court (and its staff) in their efforts. Judge James has had her rights trampled upon by this Court which has flagrantly disregarded Article 6, Sec. 30 of the Michigan

Constitution. That section of the Michigan Constitution (as adopted in 1963) created a separation of powers between the Court and the newly created Judicial Tenure Commission (JTC). The Constitution provides that the Supreme Court may only take disciplinary action to suspend/remove a judge upon recommendation from the JTC. This Court ignored our Michigan Constitution and allowed itself to be goaded/coerced into imposing what is essentially a disciplinary suspension, under the guise of an administrative leave (effective April 13, 2011) because of a few slanderous news stories published in 2010 and early 2011.

There was absolutely no justification for this Court's involvement in this matter, prior to the allegations being referred to the JTC for any action it deemed necessary. In fact, MCR 9.200 *et seq* provide mechanisms for a judge to be placed on interim suspension in situations where the JTC believes a judge should be suspended prior to even completing its own investigation. *See* specifically 9.219 (2)<sup>1</sup>. Instead of following the requirements of our Constitution, this Court took an unprecedented direct hands on approach and conducted its own investigation.

After adoption of the Michigan Constitution of 1963, this Court was charged with the responsibility of adopting rules which provide some measure of due process safeguards for judges being investigated by the JTC. One of the most important safeguards afforded a judge in protecting his/her rights is MCR 9.207(D) which provides:

**Before filing a complaint or taking action under subrule (B)(5), the commission must give written notice to the judge who is the subject of a request for investigation. The purpose of the notice is to afford the judge an opportunity to apprise the commission, in writing within 28 days, of such matters as a judge may choose, including information about the factual aspects of the allegations and other relevant issues. (emphasis added).**

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<sup>1</sup> MCR 9.219(2) provides that in "extraordinary" circumstances the JTC can seek the interim suspension of a respondent prior to even completing its investigation.

After the above notice has been provided, the JTC can initiate formal disciplinary proceedings against a judge pursuant to MCR 9.209. Upon the filing of a formal complaint, the JTC must provide a respondent judge with notice and public hearings pursuant to MCR 9.210. At the conclusion of the hearing phase, briefing is carried out before the JTC and both sides are afforded oral argument. It is only after all of these safeguards have been followed, that the JTC may present its recommendation to this Court concerning whether the respondent judge should be censured, suspended or removed. None of those rules were followed in regards to Judge James.

This Court does not have authority to remove/suspend a judge from his/her duties without receiving a “recommendation” from the JTC. This separation of powers is manifest in MCR 9.200 *et seq.* which were adopted and amended by this Court over the last century. Furthermore, Article 6, § 4 of the Michigan Constitution of 1963 as erroneously relied upon in this Court’s Order of April 13th, restrains this Court’s ability to remove a respondent judge and specifically states:

The supreme court shall have general superintending control over all courts; power to issue, hear and determine prerogative and remedial writs; and appellate jurisdiction as provided by rules of the supreme court. The supreme court **shall not** have the power to remove a judge (emphasis added).

Judge James has been denied the procedural safeguards afforded to a respondent judge under the Constitution of this state and applicable court rules. Judge James was essentially removed from her duties as judge under the guise of an administrative leave. If the Court’s superintending control authority can be used to suspend/remove Judge James, then this Court could arguably do the same to any judge serving on any bench throughout this state. The

deplorable constitutional rights violations that Judge James has been subjected to has not gone unnoticed by other members of the bench and the public.

The Association of Black Judges of Michigan (ABJM) have written to the Supreme Court to challenge the unconstitutionality of the mandated administrative leave. ABJM stated:

The Association of Black Judges of Michigan (ABJM) is aware that the attorneys representing Judge James have sent correspondence to the Court. In support of their efforts, this letter is meant to bring attention and protest to the Michigan Supreme Court's decision and treatment of Judge Sylvia A. James, 22<sup>nd</sup> District Court, Inkster, Michigan. The primary concern is that the action by the Court of placing Judge James on administrative leave is perceived by the ABJM as disciplinary in nature, premature and ill conceived. All available evidence indicates that the Court's decision was motivated by and based only on groundless accusation and actions instigated by unsubstantiated media hype and dissatisfied Inkster politicians.

ABJM envisions a Supreme Court and a system of justice that promotes a fair administration of justice and does not bend and bow to the whims of "politics". Yet, the administrative leave (which is tantamount to an interim suspension) of Judge James seems to be predicated upon reckless or intentional misstatements and misrepresentation of facts, and acted on without any structured preliminary investigation by the Supreme Court or the Judicial Tenure Commission (JTC). ABJM proffers that the administrative leave contravenes the procedural rules specifically designated to guide and govern the Supreme Court's decision. A barebones application of modest procedural due process cannot explain or justify the administrative leave.

(see Attachment 8).

ABJM received a response from State Court Administrator, Chad Schmucker, who stated:

. . . Your letter, however, is premised on the assumption that when the Court exercised its superintending control power to place Judge James on administrative leave, it failed to provide Judge James with any procedural due process. Please allow me to correct your mistaken assumption.

After serious problems were discovered in an audit, Judge James was given the opportunity to respond to our concerns. **The Supreme Court took into account the responses from Judge James, and only after carefully examining them and cautiously deliberating did the Court take action to place Judge James on administrative leave.** In addition, the State Court Administrative Office referred this matter to the Judicial Tenure Commission, and we are waiting for them to complete their investigation.

(see Attachment 9, emphasis added).

Mr. Schmucker's correspondence is conclusive proof of this Court's investigation and consideration/deliberation regarding the allegations made against Judge James as well as the evidence of the investigation and her response. This Court had no authority to take such action.

In addition to ABJM the Inkster Michigan Alliance wrote to the Court to express its own concerns. The Inkster Ministerial Alliance stated:

The Inkster Ministerial Alliance and Vicinity have voted unanimously to write this letter of protest concerning the Michigan Supreme Court's placement of Judge Sylvia A. James on administrative leave. The administrative leave that Judge James was placed on, according to our understanding, violated her due process rights and is an outrage to our group as well as the citizens we represent in our various congregations.

Article 6, section 30 of the Michigan constitution of 1963 specifically provides that the Supreme Court may only censure, suspend or remove a judge "on recommendation of the Judicial Tenure Commission..." The rules governing the Judicial Tenure Commission require that before it can make a recommendation to the Supreme Court, the following due process safeguards must be followed:

1. The Commission must conduct an investigation, which includes an opportunity for the judge to answer the allegations being made.
2. After the investigation is complete, if the commission finds that sufficient evidence exists to support the allegations, a public complaint must be filed and the judge has the right to file a public answer.
3. The Supreme Court appoints a "master" to take evidence on the complaint.
4. Public hearings are held before the master.
5. The judge has a right to appear with counsel and cross examine witnesses called against him/her.
6. The judge also has the right to subpoena witnesses he/she wants to call.
7. The master's decision is reviewable by the commission itself and eventually reviewable by the Supreme Court.

None of the procedural safeguards discussed above were afforded Judge James. Based upon our research, Judge James was treated as no Michigan Judge was ever treated in the past. Certain elected city officials of Inkster ran a smear campaign against Judge James in the media accusing her of literally

misappropriating/stealing court monies. **The news stories run by Channel 7 were horrible, but, we recognized them for what they were-falsehoods. Now that all of the monies moved from the accounts formerly managed by the city have been accounted for, Judge James”[sic] 23 years of unblemished service is being fly-specked in order to come up with something to justify the Supreme Court’s actions. The members of the Inkster Ministerial Alliance and Vicinity are outraged by these events. We feel that if this can be done to an honest person such as Judge Sylvia James our city administrators can do the same thing to anyone.**

We request an answer to the following question in the hopes that each of you will reflect on the facts discussed in the preceding paragraphs before answering. **Since the Supreme Court (which is charged with accepting a recommendation from the Commission) has already decided this matter, how can Judge James-and the citizens of Inkster expect a fair hearing on the allegations being made against her? Further, how can we expect a fair decision from the Commission when the Supreme Court has already usurped the Commission’s authority?**

We fear that the unprecedented action taken by the Court in this matter stems from the fact that the court was dealing with an African American judge from a city that is predominantly African American. What other conclusion can logically be drawn. We believe, as does the Association of Black Judges of Michigan, that Judge James must be restored to her duties. Any further investigation regarding Judge James must be carried out by independent counsel. Who can operate free from the prejudice and bias already exhibited towards Judge Sylvia James. The citizens of Inkster elected Judge James. They are entitled to have her serve as judge unless and until she is properly suspended or removed. We have had a visiting judge who is not from Inkster serving at the court since Judge James had her duties removed in April of this year. This is an untenable situation and several of our members are considering whether we should organize rallies to protest the Court’s actions. We do not intend to sit idly by while this atrocity continues.

(see Attachment 10, emphasis added).

Significantly even Channel 7 News which was the driving force behind the stories which influenced this Court’s decision as to Judge James has as recently as October 27, 2011 referred to Judge James as having been “suspended” – not as being on an administrative leave (see Attachment 11).

On October 20, 2011 Judge James' counsel received a petition for interim suspension, formal complaint and request for appointment of a master, all of which were filed by the JTC. Judge James files this motion to disqualify the Chief Justice and all Associate Justices based upon MCR 2.003 (C) 1(a), (b), (c), (g)(iv) and requests consideration of this motion by the entire Court pursuant to MCR 2.003(D)(C). Judge James' motion is supported by affidavits and physical evidence where applicable. Judge James also incorporates by reference her verified answer to the formal complaint which is being submitted contemporaneously with this motion.

### ARGUMENT

- 1) **The Justices of the Supreme Court have demonstrated bias and prejudice against Judge James and are disqualified pursuant to MCR 2.003(C)(1)(a).**

MCR 2.003(C)(1)(a) provides the following:

Disqualification of a judge is warranted for reasons that include, but are not limited to, the following:

- (a) The judge is biased or prejudiced for or against a party or attorney.

The allegations made against Judge James in late 2010 and early 2011 represent nothing more than a political vendetta that has been waged against her for years. Even SCAO (this Court's own staff) has recognized this fact. In an internal memorandum dated December 1, 2010 Regional Court Administrator Deborah Green stated:

**. . . I believe the issue is more political than substantive and believe it has a high likelihood of being resolved without further mediation or litigation.**

**Relationships between this Court and its funding unit have been contentious for some time. This conflict came to a head a year or so ago when the Mayor proposed a charter amendment that would have invested his office with a great deal more power than it currently holds. Judge James publicly opposed the charter amendment and it was soundly defeated by the voters. The Mayor is resentful that the Judge apparently has more indirect power in the city than he does and has, in essence, declared war on the Court.**

(see Attachment 12, emphasis added).

Also, attached is a statement provided by Milton Spokojny who served as the Inkster City attorney for nearly three decades. He states as follows:

. . . I proudly served as the City Attorney for 29 years. Prior to my involvement with the city of Inkster, I also served on the legal staff for the city of Southfield as an assistant city attorney. I have known Judge James for the entire 23 years of her judgeship. I have appeared before her countless times and have the utmost respect for her as a person and jurist. Judge James is knowledgeable, ethical, honest and has been an invaluable asset to the City and our bar. She is dedicated to the Court and most importantly to the citizens of the city of Inkster.

I believe that the events that led up to Judge James having her duties removed by the Michigan Supreme Court were politically motivated by the mayor and other members of city government. I base my belief on the history of Judge James interaction with city officials on various matters which include but are not limited to the following:

In 2005/2006 there was a proposal to amend the Inkster City Charter. This charter would have required an affirmative vote of the electorate of the City of Inkster in order to pass. The proposal was significant in many respects. One of the most significant aspects of the proposal was changes that would have dramatically increased the powers of the mayor. Essentially, the mayor would have gone from being a weak mayor to a strong mayor who could hire/fire top level city employees including the city manager, city clerk and city attorney, *i.e.*, my position. Judge James actively opposed the proposal and in fact, she sent out a letter opposing the proposal to all city residents. Judge James' input had an impact on the charter revision which was ultimately not approved by the voters. I even recall an incident where during jury selection in a criminal case that I was prosecuting, a prospective juror thanked Judge James for her letter and for speaking up and enlightening the public on the subject. **This current attack on Judge James is a political witch hunt – nothing more and nothing less.**

Judge James' more recent conflict concern the plans for a new police station versus a justice center which would house a new facility for the 22<sup>nd</sup> district court. The mayor and his colleagues do not feel a new court facility is necessary. She has made enemies including the mayor and some of the members of city council regarding this issue. She has fought long and hard for a new court facility to be included in a justice center. As a result of these issues, her political enemies have taken the opportunity in an attempt to destroy her. I find this situation extremely disturbing.

(see Attachment 13, emphasis added).

DeArtriss Richardson, who is a former Inkster City Council member, describes the mayor's efforts against Judge James as follows:

I believe that the events that have led to Judge James being placed on administrative leave were generated by Mayor Hampton. **It is his style. He comes up with false allegations and leaks them to the media.** His goal is to get individuals out of his way regardless of whether they have done anything wrong. It is the public airing of his allegations that leads to what he perceives as prevailing over someone he considers a political enemy.

Mayor Hampton does not want the Court being moved to a justice center with the police department station. I along with many other residents of Inkster believe the Mayor wants to consolidate the Inkster Court with a court in one of the neighboring cities like Garden City or Dearborn Heights. I feel that the residents of those cities are entitled to their own court and that Inkster and its residents are entitled to a court with a judge elected by us.

Mayor Hampton has brought the City of Inkster to the brink of financial ruin. The City is facing drastic layoffs as a result of a multi-million dollar deficit and the Mayor's political cronyism.

Mayor Hampton has engaged in numerous conflicts of interest which have included his private company performing security services for the City. Mayor Hampton, whose full time job is in management at Wayne County Sheriff's Office, also was instrumental in the Inkster Police Department's hiring of the Wayne County Sheriff's brother as Deputy Police Chief of the Inkster Police Department. The Sheriff's brother had no prior experience with the Inkster Police Department and his hiring created morale problems and will probably result in civil lawsuits from those within the Department.

I believe that Mayor Hampton wants Judge James out of his way so that he can continue to run the city as he sees fit – where he is the only true ruler and king of the City.

(see Attachment 14, emphasis added).

Current Inkster City Council member, Timothy Williams provided an affidavit describing the mayor's efforts against Judge James as follows:

Mayor Hilliard Hampton was elected to the position of mayor in 1999.

Prior to the time that I was elected to council in 2007, Mayor Hampton made his feelings towards Judge Sylvia James known to the public. He did not like her and would repeatedly comment on the fact that he thought Judge James had too much power and needed to be "put in her place."

In 2006, the mayor campaigned to revise the Inkster City charter which would have greatly increased his authority. Judge James openly opposed the revisions. In a letter sent to Inkster residents, she urged that they vote against the proposal in the November 2006 election. **Mayor Hampton held her involvement in this matter against her and began what I believe was a personal vendetta to destroy her.**

Tensions between Mayor Hampton and Judge James worsened in 2010 when Mayor Hampton and his supporters began questioning Judge James' operation of the court, specifically the court's finances. At that time, the former City Manager Ann Capela changed the court's longstanding practice of abiding by a bottom line budget to a line item budget.

A few council members, along with myself met with Judge James regarding the court's finances. I attended several meetings with Judge James and members of council at which time Judge James openly invited us to come back and look at the books anytime. Judge James was always cooperative and never exhibited any signs of someone who had anything to hide.

Despite Judge James' cooperation, such a meeting never took place because the City Manager suggested scheduling meetings during court hours, *i.e.* when Judge James was clearly unavailable.

Judge James' relationship with Mayor Hampton was further aggravated by Judge James' proactive stance on the development of a new hall of justice which would also house a new court as well as a police station. Mayor Hampton wanted free reign on issues related to the justice center and resented Judge James' involvement with the matter.

**During my service with the City of Inkster, I have found Mayor Hampton to be deceitful and vindictive. I also believe he is determined to ruin Judge James. I have always believed that Mayor Hampton was jealous of Judge James and the respect she earned from members of our community.**

**Mayor Hampton is and has always been the type of individual that may not do anything directly to hurt you, but, will instead direct others to do so. That is what he has done with Judge James.**

**Mayor Hampton specifically asked our former City Attorney Milton Spokojny to go after Judge James. When Mr. Spokojny informed the mayor and council of the fact that he did not believe that Judge James was doing anything improper with the court's finances, the mayor convinced a majority of council to retain the services of another law firm to conduct the investigation of the court's finances**

Mayor Hampton did not want Mr. Spokojny to conduct the investigation of Judge James because he wanted a "puppet" he could control and direct at all times. Significantly, Mr. Spokojny was fired from his employment as Inkster City Attorney, this summer.

I firmly believe that the decision to terminate Mr. Spokojny was made in retaliation for his refusal to go after Judge James. **On one occasion, when the mayor and I spoke to each other about matters related to Judge James and Mr. Spokojny, the mayor scolded me for not seeing things his way and accused me of being too busy with trying to protect Judge James and Mr. Spokojny.**

**I personally never believed that Judge James was doing anything dishonest or improper. I have always believed that the events which lead to Judge James being placed on administrative leave by the Supreme Court were the direct result of the obvious personality dispute between Judge James and the mayor.** There was never any evidence that Judge James took any money from the court.

(see Attachment 15, emphasis added).

With such overwhelming evidence concerning the political attacks against Judge James, there was simply no justification for the Court's unprecedented action against her. Respondent judges in past years have been indicted for taking bribes to fix cases and this Court awaited action by the JTC (in accordance with MCR 9.200 *et seq.*) before becoming involved in such matters.

No one ever comes out and states I am biased against this person, or I am prejudiced against that person. That is simply not how things work in our system of justice or in life in general. To determine whether one is biased or prejudiced against a party, you must look to conduct/actions.

This Court violated Judge James due process rights by denying her a full and fair investigation by the one and only entity authorized by the Michigan Constitution to take such action – *i.e.* – the JTC. An affidavit signed by Judge James is appended as attachment 16.

Now that the JTC has conducted its investigation, it comes to this Court and asks that Judge James be suspended pending the outcome of hearings on the Formal Complaint 88. The ludicrousness and ridiculousness of the role reversal here cannot be overemphasized. There is no way that this Court can now deny the JTC's request without the Court admitting that it has acted improperly.

This Court has already blatantly shown its predisposition by removing Judge James from her duties, when the JTC's own investigation was not commenced until months after Judge James had her duties removed. Therefore, the best evidence of this Court's bias and prejudice which precludes it from judging the petition for interim suspension fairly is that this very Court has already decided that Judge James should be removed on an interim basis.

Generally, actual personal prejudice must be shown before a judge will be disqualified under MCR 2.003(C)(1). However, an exception has been applied where the judge "might have prejudged the case because of prior participation as accuser, investigator, factfinder, or initial decisionmaker." *See People v. Coone*, 216 Mich. App. 721, 550 N.W.2d (1996). In this case the Justices of this Court have investigated, prosecuted, and acted as the initial decisionmaker. As such, all Justices of this Court who participated in these actions must be disqualified.

**2) The Chief Justices and Associate Justices of this Court have violated Judge James' due process rights and created not only an appearance of impropriety, but, actual impropriety.**

MCR 2.003(C)(1)(b) provides that a judge should be disqualified when:

The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, US ; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.

In the Sylvester Stallone cult classic "*Judge Dredd*," a system of justice was envisioned for American citizens that is nearly identical to that imposed by the Court in this matter. Judge Dredd roamed high crime areas arresting individuals and trying them on the spot. Judge Dredd did the investigation, charged and prosecuted and rendered his verdict in one "fell swoop." Although Judge Dredd was a fictional character, what has been done to Judge James is not fictional. In reality, even if one or more Justices of this Court did not recognize the political

nature of the allegations made against Judge James and believed that perhaps millions of dollars was missing from the court's budget, those same Justices had an obligation to uphold the Constitution of this state<sup>2</sup>. Had they done so, they would have eventually seen that those stories were all false. This Court has shown actual bias which has already impacted Judge James' due process rights and has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.

In 2008, this Court considered a case in which all of the justices would have been disqualified under MCR 2.003 from hearing the matter because each had a substantial economic interest in the case. However, the Court held that litigants' due process rights had to yield to the doctrine of "rule of necessity", *i.e.* if this Court did not hear the case, there would be no other forum available to preside over the litigants. *See Citizens Protecting Michigan's Constitution v. Sec'y of State*, 482 Mich. 949, 755 N.W.2d 147 (2008). No facts in this matter support the doctrine of the "rule of necessity." First and foremost, there was no necessity for this Court to investigate the politically motivated allegations made against Judge James. The allegations could have and should have been referred to the JTC which had the authority to take prompt action – even without a full investigation. Just as importantly, there is no rule of necessity justification for the Court's involvement at this juncture. All court bank accounts have been accounted for and the fabricated news stories have been disproved. What remains are roughly 11 categories of allegations that date back in some instances to 1989 when Judge James first took the bench. All Justices of this Court should be disqualified from this case and independent counsel should be appointed to investigate/evaluate the Court's violation of Judge James' due process rights.

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<sup>2</sup> One of the initial Channel 7 news stories showed pictures of the court with cartoon like dollars floating out of the windows.

**3) The Chief Justices and all Associate Justices have personal knowledge of facts in dispute as set forth in the Petition for Interim Suspension and Formal Complaint.**

MCR 2.003(C)(1)(c) provides for a judge's disqualification when:

The judge has personal knowledge of disputed evidentiary facts concerning the proceedings.

As set forth at page 9 of this brief, the highest ranking member of its administrative staff has stated in written correspondence to ABJM that the Court took evidence in this matter during its investigation, which included an audit, along with Judge James answer and "deliberated" as a group as to what action should be taken. What the Court did essentially was to sit as a grand jury regarding allegations made in the news stories. With that said, one needs to ask this question: Would one of the few Justices of this Court who have trial court experience be allowed to consider one of their own decisions as a trial court judge after becoming a Justice of the Supreme Court? The answer is clearly a resounding no.

Judge James has submitted conclusive proof showing this Court's inappropriate conduct. Even though State Court Administrator Chad Schmucker's letter to ABJM, was not in affidavit form, the undersigned have no reason to believe that his letter contains falsehoods.

Further, the facts at issue in this motion were not learned by the Justices during a judicial proceeding. The facts learned by this Court during its unconstitutional investigation and suspension of Judge James (under the guise of an administrative leave) were not part of the appellate review carried out by this Court when it receives a recommendation from the JTC. Therefore, the holdings in cases such as *Tingley v. Wardrop*, 266 Mich. App. 233, vacated on other grounds, remanded (2006) 474 Mich. 1104, 711 N.W. 2d 382; which carved out a personal knowledge exception to the disqualification rules where such knowledge comes to a judge during a court proceeding, has no application here.

4) **Chief Justice Robert P. Young will be a witness in this matter and must be disqualified.**

MCR 2.003(C)(1)(g)(iv) provides for a judge's disqualification when the judge:

is to the judge's knowledge likely to be a material witness in the proceeding.

On April 13, 2011, the date of this Court's issuance of the order suspending (placement on administrative leave) Judge James from her duties, she had communications directly with Chief Justice Robert P. Young. It is Judge James' recollection, that Chief Justice Young spoke to her in detail about the action being taken by the Court and Judge James' right to return to the court to obtain her personal records/belongings. The very next day, the locks at the court were changed in order to prevent Judge James from returning to the court. In the days that followed, Judge Valdemar Washington who this Court appointed to act as Judge James' replacement, denied her access to the court. Judge Washington and/or other 22<sup>nd</sup> District Court staff ransacked Judge James' records/belongings and even broke into her personal file cabinet which had a combination lock mechanism on the inside door. It was not until July 14, 2011 some three months after the unconstitutional suspension, that Judge James and her counsel were given access to her chambers for a one hour period, *i.e.*, 5:00 p.m. to 6:00 p.m. to obtain what they could during such a restricted period. When the undersigned counsel asked for a few extra minutes to pack Judge James records/belongings, they were told no, by Judge Washington. A police complaint was filed documenting the breaking and entering into Judge James' locked personal cabinet.

Even as of this writing, Judge James and her counsel are without the records they need in order to fully answer the allegations set forth in the formal complaint and petition for interim suspension. (Judge James incorporates by reference her answer to the petition for interim

suspension where these constitutional rights violations are discussed in more detail.) Judge James is prejudiced by her inability to obtain records and is asserting that inability as a defense in this matter. Chief Justice Young will be a critical witness in this regard and his testimony on this subject may lead to the need to call one or more of the other Justices.

This Court's historical handling of motions to disqualify its Justices has been of considerable discussion and debate among many members of the bar. In *Grievance Administrator v. Geoffrey Fieger*, 477 Mich. 1228, 729 N.W. 2d 451 (2006), the right of a litigant to move for disqualification of a Supreme Court Justice was discussed at length and more or less affirmed. The 2009 amendments of MCR 2.003 explicitly incorporated language making it clear that the rule applies to even Supreme Court Justices and established a time frame for filing such a motion. Most importantly, the 2009 amendment provided a party the right to have their motion to disqualify a Justice heard by the entire Court if the challenged Justice denies the motion in the first instance. One year later in *Anthony Pellegrino v. AMPCO Systems*, 485 Mich. 1134, 789 N.W. 2d 777 (2010) two of the Justices (Justice Corrigan and Justice Young) refused to participate in deciding the motion to disqualify as they believed that the 2009 amendments to MCR 2.003 were unconstitutional. Apparently they felt that inclusion of certain provisions in the amendment violated judges' due process rights. However, the majority of the Court upheld the disqualification rule as it currently exists and Judge James relies upon this Court's holding in *Pellegrino* and the 2009 amendments, for her motion.

### **Conclusion**

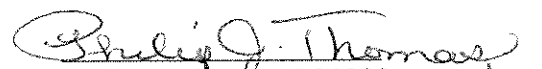

This motion presents unique issues. The issues are novel and a briefing schedule and oral argument should be established so that judges' groups, members of the bar and the public

may submit amicus briefs if they choose to do so. The issues presented in this motion are far reaching and could affect the future of Michigan's judicial disciplinary, as well as the attorney discipline system in years to come.

WHEREFORE Judge James requests the following:

- 1) That Chief Justice Robert P. Young and all Justices who took part in the Supreme Court's investigation, deliberations, and issuance of the April 13, 2011 order regarding Judge James be disqualified;
- 2) That this motion be heard by the entire Court as to any Justice that refuses to disqualify himself/herself;
- 3) That a briefing and oral argument schedule be established regarding this motion so that interested individuals/groups may submit amicus briefs;
- 4) That this Court obtain and/or appoint special counsel to answer this motion. While the JTC's Examiner is the undersigned's opposing counsel, Judge James' counsel will be disadvantaged in future proceedings if he is permitted to essentially defend the Chief Justice and Associate Justices' actions, as set forth in this motion. At most, the Examiner should be permitted to submit some form of amicus brief as to this motion; and,
- 5) That special counsel be appointed to investigate this Court's failure to follow the Michigan Constitution and MCR 9.200 *et seq.* in terms of this Court's involvement in this matter.

Respectfully Submitted By,

  
Philip J. Thomas, P31298 

  
Sharon McPhail, P26922

Dated: November 9, 2011