STATE OF MICHIGAN

IN THE SUPREME COURT

COMPLAINT AGAINST:

HON. DAVID MARTIN BRADFIELD
36th District Court
421 Madison Avenue
Detroit, MI 48226

DOCKET NO. 128843
FORMAL COMPLAINT NO. 79

_____/

BRIEF IN SUPPORT OF THE COMMISSION'S DECISION AND RECOMMENDATION FOR ORDER OF DISCIPLINE

PROOF OF SERVICE

ORAL ARGUMENT REQUESTED

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TABLE OF CONTENTS

INDEX OF AUTHORITIES ii

STATEMENT OF JURISDICTION v

COUNTER-STATEMENT OF QUESTIONS INVOLVED vi

COUNTER-STATEMENT OF FACTS 1

STATEMENT OF PRIOR PROCEEDINGS 7

SUMMARY OF ARGUMENTS 9

ARGUMENT 12

Standard of Proof 12

I. RESPONDENT'S PHYSICAL ASSAULT AND VERBAL ATTACKS WERE PROVEN BY A PREPONDERANCE OF THE EVIDENCE 12

II. A ONE-YEAR UNPAID SUSPENSION OF RESPONDENT FOR HIS MISCONDUCT IS APPROPRIATE 20

A. Assessing Respondent's misconduct based on *Brown* and his own disciplinary record 20

B. Assessing Respondent's conduct based on proportionality 28

III. THE SUPREME COURT HAS THE AUTHORITY TO ORDER RESPONDENT TO UNDERGO PSYCHOLOGICAL TREATMENT 31

A. Authority 31

B. Reconsideration 34

IV. THE COMMISSION DID NOT ERR BY FAILING TO COMMENT IN ITS DECISION AND RECOMMENDATION ON RESPONDENT'S OBJECTIONS TO THE MASTER'S FINDINGS 35

CONCLUSION 43

RELIEF REQUESTED 44

INDEX OF AUTHORITIES

MICHIGAN CASES **PAGES**

Campbell v Sullins, 257 Mich App 179 (2003) 35

Chase v Sabin, 445 Mich 190 (1994) 42

In re Bennett, 403 Mich 178 (1978) 22

In re Bradfield, 448 Mich 1229 (1995) 21, 26

In re Bradfield, 465 Mich 1309 (2002) 21, 26, 31

In re Brown, 461 Mich 1291 (1991) 20, 25

In re Ferrara, 458 Mich 350 (1998) 12

In re Gilbert, 469 Mich 1225 (2003) 28

In re Halloran, 466 Mich 1219 (2002) 28, 31, 41

In re Huff, 352 Mich 402 (1958) 33

In re Jenkins, 437 Mich 1 (1991) 12, 41

In re Loyd, 424 Mich 514 (1986) 12, 41

In re Moore, 449 Mich 1204 (1995) 29

In re Moore, 464 Mich 98 (2001) 26, 29

In re Noecker, 472 Mich 1 (2005) 12

In re O'Brien, 441 Mich 1204 (1992) 29, 31

In re Probert, 411 Mich 210 (1981) 32, 33

In re Seitz, 441 Mich 590 (1993) 12

In re Trudel, 465 Mich 1314 (2002) 31

People v Bryant, 80 Mich App 428 (1978) 40

People v Terry, 217 Mich App 660 (1996) 40

Shields v Shell Oil Company, 237 Mich App 682 (1999) 42

Smith v Stolberg, 231 Mich App 256 (1998) 39

MICHIGAN STATUTES

MCL 750.81 40

MICHIGAN CONSTITUTIONAL PROVISIONS

Article 6, Sec. 4 of Michigan Constitution 32

Article 6, Sec. 30 of Michigan Constitution 31

MICHIGAN CODE OF JUDICIAL CONDUCT CANONS

Canon 1 ..... 7, 9, 43

Canon 2A 9, 43

Canon 2B 7, 8, 43

COURT AND EVIDENTIARY RULES

MCR 9.203(C) 33

MCR 9.205(B) 32

MCR 9.207(D) 32, 33

MCR 9.209(B) 41

MCR 9.216 39

MCR 9.225 34

MRE 405(b) 36, 37

OTHER JURISDICTION CASES

Inquiry into the Conduct of Ginsburg, 690 NW2d 539 (Minn 2004).....30

MISCELLANEOUS

Amendments of Michigan Court Rules of 1985, 474 Mich c (2005).....32

"How Judicial Conduct Commissions Work," American Judicature Society, 1999.....25

STATEMENT OF JURISDICTION

The Commission does not dispute Respondent's jurisdictional summary.

COUNTER-STATEMENT OF QUESTIONS INVOLVED

I. WHETHER RESPONDENT'S PHYSICAL ASSAULT AND VERBAL ATTACKS WERE PROVEN BY A PREPONDERANCE OF THE EVIDENCE?

The Commission answers "YES."

Respondent has not addressed this issue, but has admitted that his conduct violated Canons 1 and 2A of the Michigan Code of Judicial Conduct.

II. WHETHER A ONE-YEAR SUSPENSION OF RESPONDENT FOR HIS MISCONDUCT IS UNREASONABLY HARSH?

The Commission answers "NO."

Respondent answers "Yes."

III WHETHER THE SUPREME COURT HAS THE AUTHORITY TO ORDER RESPONDENT TO UNDERGO PSYCHOLOGICAL TREATMENT?

The Commission answers "YES."

Respondent answers "No."

IV. DID THE COMMISSION ERR BY FAILING TO COMMENT IN ITS DECISION AND RECOMMENDATION ON RESPONDENT'S OBJECTIONS TO THE MASTER'S FINDINGS?

The Commission answers "NO."

Respondent answers "Yes."

COUNTERSTATEMENT OF FACTS

Count I

Hon. David Martin Bradfield (Respondent) is a judge with the 36th District Court. [T, 253 (Respondent)][1] On April 6, 2005, Anthony Adams (Adams), who is Deputy Mayor of the City of Detroit, parked his car on Madison Avenue in Detroit, in front of the 36th District courthouse, to pick up his wife for lunch. [T, 26-27 (Adams)] His wife, Hon. Deborah Ross Adams (Judge Ross Adams), is a 36th District Court judge. [T, 77 (Judge Ross Adams)]

Adams was waiting in his car for his wife when Respondent, who had left the courthouse, returned. [T, 29 (Adams), 261 (Respondent)] While he was waiting, Adams noticed an individual whom he recognized to be Respondent, driving a Corvette, pull up next to his own car. [T, 30 (Adams)] The very first thing Respondent did or said was to tell Adams to "move his mother fuckin' car or he would have [Adams'] ass ticketed and towed." [T, 31 (Adams)] Adams did not reply or move his car. [T, 31 (Adams)] Respondent admits that he told Adams to move his "mother fuckin' car." [T, 266 (Respondent)]

After Adams did not move his car, Respondent backed up and sought assistance from Detroit Police Officer Sheila Gray (Gray), who was assigned to the door. [T, 31 (Adams), T, 267-268 (Respondent), T, 158-159 (Gray)] Although Adams had permission in general from the chief judge to park there [T, 188 (Judge Atkins)], and from Gray on this occasion [T, 156-157 (Gray)], Gray asked him to be the "bigger person" and move his car. [T, 159 (Gray)] She was trying to keep the situation calm, and asked Adams to move his car even though another space was available. [T, 159 (Gray)] Adams moved his car forward as there was space in front of his

[1] References are to the transcript of the formal hearing held before the master on August 24, 2005, located at Record No. 19.

car. [T, 32 (Adams)] Respondent again pulled his car alongside Adams' vehicle, and told Respondent to move his car or he would have his "ass ticketed and towed." [T, 32 (Adams)]

Adams again moved his car even further forward. [T, 33 (Adams)] Around that time, DiAnn Webb (Webb), who is Judge Ross Adams' clerk, approached Adams and advised him that the judge was not finished with her docket, and she wanted him to come to her courtroom. [T, 32 (Adams), T, 129 (Webb)] Webb and Adams then approached the judges' entrance to the court, which Adams is authorized to use. [T, 33 (Adams), T, 188 (Atkins)]

As Adams and Webb reached the door, Respondent approached them, grabbed Adams by his shoulder, and pulled him away from the door. [T, 33-34 (Adams)] Respondent began screaming or yelling at Adams that he could not use the judges' entrance, called Adams a "mother fucker," and struck him repeatedly. [T, 34 (Adams), T, 130 (Webb)] Respondent thumped Adams in the chest at least five times, claimed he was "street," and threatened to "kick [Adams'] ass." [T, 34 (Adams)] Gray described Respondent as using a "loud and aggressive voice," told Adams he could not use the judges' door, and in a threatening manner said he could go to the street. [T, 162 (Gray)] She also confirmed that Respondent struck Adams in the chest. [T, 162 (Gray)] Officer Gray intervened in the situation, told Respondent he "couldn't do that," and stood between the individuals. [T, 36 (Adams), T, 162 (Gray)]

Adams understood the phrase "I'm street" as a reference to being a "tough guy" who could "whip [Adams'] butt." [T, 34 (Adams)] He believed that Respondent was attempting to provoke a fight. [T, 36 (Adams)] Adams confirmed that the poking hurt, and that he was embarrassed as other people walking by saw the incident. [T, 34-35 (Adams)] However, Adams did not raise his voice, use profanity, or use any return physical force against Respondent. [T, 35 (Adams), T, 131 (Webb)] Officer Gray confirmed Adams did not say anything at that time. [T,

162 (Gray)] She ended the incident by directing Adams and Webb to use the entrance at the front of the courthouse, and for Respondent to use the elevator. [T, 163 (Gray)]

Adams and Webb proceeded to Judge Ross Adams' courtroom, where they told her about the incident. [T, 41 (Adams), T, 133 (Webb)] Adams, Webb, and Judge Ross Adams then returned to the judges' door, where they began discussing the matter with Officer Gray. [T, 41 (Adams), T, 133 (Webb), T, 78-79 (Judge Ross Adams)] Soon after they began the conversation, Respondent appeared. [T, 42 (Adams), T, 133 (Webb), T, 80 (Judge Ross Adams)] Respondent again began his "I'll-kick-his-ass-I'm-street tirade." [T, 42 (Adams)] Judge Ross Adams reported Respondent was yelling and screaming, and that he referred to her "mother fuckin' husband" and that he could go to the street with him [T, 80, 84 (Judge Ross Adams)] Judge Ross Adams understood Respondent's statement "go to the street" was an invitation to fight her husband. [T, 84 (Judge Ross Adams)] Officer Morris Syfax, who reported to the judges' door to relieve Officer Gray for lunch, heard Respondent say, "mother fucker, I can go street." [T, 240 (Syfax)] Respondent admitted that he called Adams a "mother fucker" in front of Judge Ross Adams. [T, 279 (Respondent)]

At the time, Respondent was shaking his hand in Judge Ross Adams' face, [T, 81 (Judge Ross Adams), T, 133 (Webb)] and even struck her on the nose. [T, 82 (Judge Ross Adams)] Respondent could not deny that his finger touched Judge Ross Adams' face. [T, 277 (Respondent)] In response, Judge Ross Adams asked Respondent to take his finger out of her face. [T, 82 (Judge Ross Adams), T, 133 (Webb)] After continuing the display for several minutes, the incident ended when Adams left to return to his office, and Respondent exited the area. [T, 45 (Adams), T, 85 (Judge Ross Adams), T, 134 (Webb)]

Judge Ross Adams then reported the incident to 36th District Court Chief Judge Marylin Atkins. (T, 85 (Judge Ross Adams)] Judge Atkins scheduled a meeting for all involved in the incident, including Adams (whom Judge Atkins called and asked to return to the court). [T, 189-190 (Judge Atkins)] The first individuals to appear were Judges Adams and Atkins, who were later joined by Respondent. [T, 86 Judge Ross Adams) When he joined the meeting, Respondent began yelling and screaming at Judge Ross Adams. [T, 86 (Judge Ross Adams)] His demeanor continued to be "just awful." [T, 135 (Webb)] Respondent admitted his actions, but asserted Adams had acted belligerently and he was responding in kind as he was "not going to take someone talking to him like that." [T, 192 (Judge Atkins)] Respondent asserted to Judge Atkins that "it's a man thing." [T, 192 (Judge Atkins)] Judge Atkins confirmed that during the meeting, although Respondent raised his voice and was very upset, Judge Ross Adams did not raise her voice even though she was emotional. [T, 202 (Judge Atkins)]

Adams later joined the meeting, and again parked on Madison Avenue and used the judges' door to gain access to Judge Atkins' chambers. [T, 46 (Adams)] During the meeting, Respondent described Adams as a "well-dressed thug," and "one of those arrogant attorneys who always tries [*sic*] to park in front of the 36th District Court." [T, 46-47 (Adams)] Respondent also admitted that he had called Adams a "mother fucker." [T, 141 (Webb)]

The next day, Respondent wrote letters of apology to Adams and Judge Ross Adams, where he admitted that his "actions were an embarrassment to myself and to the office that I hold," and that "we as judges are held to a higher standard." [Formal Hearing Exhibits 8 and 9] Respondent also admitted he had no authority to "do anything down there," meaning monitoring parking or the use of the judges' door. [T, 280-281 (Respondent)] The responsibility for enforcing security of the court is Chief Judge Atkins, and not that of Respondent. [T, 193-194

(Judge Atkins)] Adams and Webb each testified that Adams remained calm and maintained his professional dignity throughout the incident. [T, 47 (Adams), T, 131 (Webb)]

Count II

The 36th District Court leased a number of parking spaces from the Gem Theater Parking Structure in October 2002, and some spaces on the first level were specifically reserved for judges. [T, 207-208 (Lee)] The agreement was to take effect on October 7, 2002 (a Monday). [T, 224 (Davis)] On the preceding Wednesday, before the agreement had taken effect, Respondent pulled into the structure in a Corvette. [T, 208-209 (Lee)] When the parking attendant, Noah Lee, asked for the $5.00 parking fee, Respondent replied he was "Judge Bradfield" and he had reserved parking. [T, 209 (Lee)] When Lee replied that there was no parking available on the first level, Respondent began to "rant and rave" that he should be able to park on the first floor. [T, 209 (Lee)] He asserted that Respondent was not listening to what he was saying. [T, 210 (Lee)]

The attendant then displayed a document that reflected that the parking agreement had not started, and Respondent continued "blessing out" the attendant. [T, 210 (Lee)] Lee offered to allow Respondent to park in another space that was available, and showed Respondent the document that reflected the starting date for the parking agreement. [T, 210-211 (Lee)] Respondent's reaction was to take the document and fling it down without reading it. [T, 211 (Lee)] Respondent swung his car around, and "peeled rubber," meaning he squealed his car tires, when exiting the lot. [T, 211 (Lee)] Respondent could not deny that the incident involving Lee occurred. [T, 289-290 (Respondent)]

Lee later discussed the matter with 36th District Court Administrator Otis Davis. [T, 212 (Lee)] Lee's reason for reporting the incident was to insure that he was not held responsible if the court contract was lost because of the incident, as it was recently obtained. [T, 212 (Lee)] Davis confirmed that Lee had spoken to him regarding an incident with a judge, and that the judge was the Respondent. [T, 225-226 (Davis)]

STATEMENT OF PRIOR PROCEEDINGS

The Judicial Tenure Commission ("JTC") issued a formal complaint, request for appointment of master, and petition for interim suspension of Respondent on June 6, 2005. [Appendix Nos. 1-3] The Court appointed Hon. J. Richard Ernst, retired from the 23rd Circuit Court, as master on June 15, 2005. [Appendix No. 5] The Court denied the petition for interim suspension on July 6, 2005. [Appendix No. 9]

The formal hearing was held on August 24, 2005. In his findings of fact and conclusions of law, the master overwhelmingly sustained all material allegations in the formal complaint. [MR, 28-33][2] Moreover, the master specifically found portions of Respondent's testimony to be "not credible." [MR, 30] The JTC held the public hearing on November 21, 2005, required pursuant to MCR 9.216. It subsequently adopted the master's findings of fact and law, and issued its recommendation for discipline, in its Decision and Recommendation filed on December 28, 2005. [D&R, 2, 13][3]

The JTC determined that Respondent violated Canon 1 of the Michigan Code of Judicial Conduct ("MCJC"), in that he failed to "observe the high standards of conduct necessary to the preservation of integrity and independence of the judiciary." [D&R, 11, citing Canon 1] Respondent also failed to avoid impropriety and the appearance of impropriety, and that he acted irresponsibly or improperly to erode the public confidence in the judiciary, contrary to Canon MCJC 2A. [D&R, 11] Of significance is that each act of misconduct took place in full view of the public. Further, the JTC determined Respondent violated MCJC Canon 2B. He allowed his unreasonable and unmanageable anger to govern his conduct, committed an assault and batter

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[2] Reference to the master's report containing his findings of fact and conclusions of law, Appendix No. 19.
[3] Reference to the JTC's decision and recommendation, Appendix No. 27.

upon Deputy Mayor Adams, and challenged him to a physical altercation, which constituted the failure "to respect and observe the law and to conduct oneself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary." [D&R, 12, citing Canon 2B]

The JTC determined that Respondent violated MCR 9.104(A)(2), as his public actions, made while Respondent represented that he was acting in his official capacity as a 36th District Court judge, was "conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach." [D&R, 12, citing MCR 9.104(A)(2)] Finally, the JTC found that Respondent's public assault and battery of Deputy Mayor Adams violated MCR 9.104(A)(5), prohibiting conduct that violates a criminal law of the state of Michigan. [D&R, 12]

The JTC issued a recommendation for discipline that includes two components which are clearly dependent on each other. It recommended that the Supreme Court suspend Respondent from judicial office for one year, without pay, and that he complete intensive psychological treatment to control his anger. [D&R, 17]

SUMMARY OF ARGUMENTS

I. RESPONDENT'S PHYSICAL ASSAULT AND VERBAL ATTACKS WERE PROVEN BY A PREPONDERANCE OF THE EVIDENCE.

Both counts of Formal Complaint No. 79 were proven by a preponderance of the evidence. The master's findings of fact were adopted by the JTC and are supported by the evidence presented at the formal hearing. Respondent verbally attacked the deputy mayor of the City of Detroit, in coarse and foul language, physically assaulted him in both the civil and criminal sense, engaged in a shouting tirade directed toward the deputy mayor's wife (a fellow member of the 36th District Court bench), and admitted that he violated Canons 1 and 2A of the Michigan Code of Judicial Conduct.

II. A ONE-YEAR SUSPENSION OF RESPONDENT FOR HIS MISCONDUCT IS APPROPRIATE.

A one-year suspension, without pay, is an appropriate sanction for Respondent, based on three factors. First, under the *Brown* factors, the assault and battery and his irrational display of anger are part of a 10-year pattern of serious conduct by Respondent. Second, Respondent has a history of misconduct and prior discipline, which has not caused him to remedy his ways. Third, a proportionality analysis of other cases fails to reveal any other acts where the respondent judge was a three-time offender, with conduct in the present matter including a civil and criminal assault and battery. The length of the recommended suspension without pay (taken together with the psychological treatment, which is an integral part of the JTC's recommended discipline), is appropriate.

III. THE SUPREME COURT HAS AUTHORITY TO ORDER RESPONDENT TO UNDERGO PSYCHOLOGICAL TREATMENT.

The Court has the inherent responsibility to protect the public from errant judges and from those whose mental disposition leaves them more likely to wreak havoc in the judicial system. In light of that, the JTC has recommended that Respondent be suspended for one year, and that he undergo intensive psychological treatment for his inability to manage his anger in a socially acceptable manner, The court has inherent authority, under its power of superintending control, to direct Respondent to undergo psychological treatment.

In the alternative, if the Court determines that it lacks the authority to impose such a sanction, the proper remedy is to remand the matter to the JTC to reconsider its recommendation, as the one-year suspension without pay and the psychological treatment were recommended as "a package." The JTC clearly made its decision with the belief that psychological treatment is needed to enable Respondent to control his temper, and make him fit to serve in judicial office. If psychological treatment cannot be imposed, the JTC should have an opportunity to reconsider the remainder of the disciplinary recommendation. If the Court decides not to remand the matter to the JTC, then it should increase the discipline to a more appropriate length of suspension based on Respondent's conduct in this matter, his past disciplinary history, and the lack of therapeutic treatment to remedy the situation.

IV. THE JTC DID NOT ERR BY FAILING TO COMMENT IN ITS DECISION AND RECOMMENDATION ON RESPONDENT'S OBJECTIONS TO THE MASTER'S FINDINGS.

The JTC clearly rejected Respondent's objections to the master's findings of fact and law, as it specifically adopted those findings as its own. In any event, the objections are meritless. The master exercised his discretion in making his decisions when excluding e-mails

(which did not address either incident raised in the formal complaint), and the testimony of a court security guard (who was not a witness to either incident). The master's conclusion that Respondent committed criminal and civil assault and battery is supported by both the evidence presented at the formal hearing, and relevant case authority.

Respondent waived the argument that the charges in Count II were untimely, as he did not raise that affirmative defense in his answer to the formal complaint. In any event, there was sufficient testimony from two witnesses to provide Respondent with relevant information relating to the incident. Finally, the incident was not untimely, as it took place only 30 months prior to the first notice to Respondent of the incident, unlike the five- and thirty-year periods addressed in the case authority relied upon by Respondent.

ARGUMENT

Standard of Proof

The standard of proof in judicial discipline proceedings is by a preponderance of the evidence. *In re Noecker*, 472 Mich 1, 8 (2005); *In re Jenkins*, 437 Mich 1, 18 (1991); *In re Loyd*, 424 Mich 514, 521-522 (1986).

I. RESPONDENT'S PHYSICAL ASSAULT AND VERBAL ATTACKS WERE PROVEN BY A PREPONDERANCE OF THE EVIDENCE

Both the JTC and the Supreme Court should give proper deference to the master's ability to view the witnesses' demeanor and comment on their credibility, even in light of the power of *de novo* review. *In re Seitz,* 441 Mich 590, 594 n 4 (1993); *In re Jenkins,* 437 Mich 15, 22 (1991); *In re Loyd,* 424 Mich 514, 535 (1986). The JTC adopted the master's findings of fact [D&R, 2], as they were clearly established by the evidence presented at the formal hearing. [MR, 28-33]

In evaluating the Respondent's conduct, the Court has determined that the JTC must adopt an objective approach, rather than focus on subjective elements.

> [T]he proper administration of justice requires that the JTC view the Respondent's actions in an objective light. The focus is necessarily on the impact his statements might reasonably have upon knowledgeable observers. Although the Respondent's subjective intent as to the meaning of his comments, his newly exhibited remorsefulness and belated contrition all properly receive consideration, any such individual interests are here necessarily outweighed by the need to protect the public's perception of the integrity of the judiciary. *In re Ferrara*, 458 Mich 350, 362 (1998).

Findings of Fact

The JTC adopted and incorporated the master's findings of fact. [D&R, 2] The master emphasized that his findings of fact were drawn from all of the testimony of those persons who testified at the hearing, and particularly from those portions of testimony quoted in his opinion. The findings are listed verbatim below, and are followed by references to the supporting evidence from the formal hearing. In addition, the JTC provided additional findings of fact based on the record, which are addressed at the conclusion of each count.

Count I (Master's findings in bold)

1. **Judge Bradfield initiated the encounter with Mr. Adams while the latter was sitting in his vehicle waiting for his wife, Judge Ross Adams.** [MR, 28]

   Supporting evidence: [T, 26-27, 29 (Adams)]

2. **Judge Bradfield had no authority to supervise or enforce the parking restrictions on Monroe Street, and he was simply acting as an "officious intermeddler."** [MR, 28]

   Supporting evidence: [T, 280-281 (Respondent), T, 193-194 (Judge Atkins)]

3. **When ordering Mr. Adams to move his automobile, Judge Bradfield identified himself and implied that he was acting in his official capacity as a judge of the court.** [MR, 28]

   Supporting evidence: [T, 266 (Respondent)]

4. **Judge Bradfield's contention that Mr. Adams failure to identify himself as Deputy Mayor and Judge Ross Adams' husband contributed to the resulting acrimony is specious at best, and without merit.** [MR, 29]

Supporting evidence: [T, 291 (Respondent)]

5. **Judge Bradfield became incensed when Mr. Adams merely moved his car forward and remained standing in the judges' parking area.** [MR, 29]

Supporting evidence: [T, 33-34 (Adams), T, 269-270 (Respondent)]

6. **All witnesses who observed Mr. Adams noted his reserved demeanor and that he failed/refused to respond to Judge Bradfield's vituperations, which compels a finding that it is unlikely that Mr. Adams used the calumnious appellation alleged by Judge Bradfield. (Certainly, if Mr. Adams told Judge Bradfield to "take a pill," and even if he used the epithet as claimed by Judge Bradfield, this was insufficient provocation to justify Judge Bradfield's irrational behavior.)** [MR, 29]

Supporting evidence: [T, 47 (Adams), T, 131 (Webb), T, 162 (Gray)]

7. **Upon observing Mr. Adams exit his vehicle and approach the "judges' door," Judge Bradfield became further incensed and rushed to intercept Mr. Adams, physically grabbed Mr. Adams by the shoulder, poked him in the chest several times and offered to fight.** [MR, 29]

Supporting evidence: [T, 33, 34, 36 (Adams), T, 130 (Webb), T, 162 (Gray)]

8. **Officer Gray found it necessary to interpose herself between the two men to prevent further physical contact by Judge Bradfield.** [MR, 30]

Supporting evidence: [T, 162-163, Gray)]

9. **This incident took place in public on the sidewalk outside the district court.** [MR, 30]

Supporting evidence: [T, 38 (Adams), T, 129-130 (Webb), T, 161 (Gray)]

10. **A battery, or an assault and battery, is the willful touching of the person of another by the aggressor. *Tinkler v Richter*, 295 Mich 396,401; 295 NW 201, 203 (1940).** [MR, 30]

Supporting evidence: [Case authority referenced by master]

11. **"Except as otherwise provided in this section, a person who assaults or assaults and batters an individual, if no other punishment is prescribed by law, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both." MCL 750.81(1).** [MR, 30]

Supporting evidence: [Statute referenced by master]

12. **When Judge Bradfield angrily "poked" Mr. Adams in the chest several times, he committed both a criminal and a civil assault and battery upon the person of Mr. Adams.** [MR, 30]

Supporting evidence: [T, 34 (Adams), T, 130 (Webb), case and statute cited above]

13. **Judge Bradfield's claim that he believed Mr. Adams possibly to be "a well dressed thug," or possibly to be "a bomber," and that he was acting to protect the diminutive Officer Gray and Ms. Webb is simply not credible and is not believed.** [MR, 30]

Supporting evidence: [T, 271-272, 296 (Respondent)]

14. **A few minutes later, Judge Bradfield emerged from the elevator into the vestibule of the judges' entrance, and, unfortunately, encountered Judge Ross Adams, Mr. Adams and Ms. Webb.** [MR, 31]

Supporting evidence: [T, 42 (Adams), T, 133 (Webb), T, 80 (Judge Ross Adams)]

15. **Judge Ross Adams was discussing with Officer Gray the incident involving her husband.** [MR, 31]

Supporting evidence: [T, 41 (Adams), T, 133 (Webb), T, 78-79 (Judge Ross Adams)]

16. **Both Judge Bradfield and Judge Ross Adams became angry and their voices were raised; however, only Judge Bradfield was heard to use vulgar epithets and to challenge Mr. Adams.** [MR, 31]

Supporting evidence: [T, 42 (Adams), T, 80-81, 84 (Judge Ross Adams), T, 133-134 (Webb), T, 234-235, 240 (Syfax)]

17. **Mr. Adams said nothing.** [MR, 31]

Supporting evidence: [T, 73 (Adams)]

18. **This incident took place in the presence of Officer Gray, Officer Syfax and Ms. Webb.** [MR, 31]

Supporting evidence: [T, 132-133 (Webb), T, 174 (Gray), T, 233 (Syfax)]

19. **Officer Syfax defused the situation by inducing Judge Bradfield to leave the scene and accompany him into the elevator.** [MR, 31]

Supporting evidence: [T, 242 (Syfax)]

20. **Judge Bradfield's irrational anger continued when he was summoned to Judge Atkins' chambers and again encountered Judge Ross Adams and, later, Mr. Adams, further indicating the extent of his lack of self restraint.** [MR, 31]

Supporting evidence: [T, 86 (Judge Ross Adams), T, 135 (Webb), T, 190-192 (Judge Atkins)]

21. **Judge Bradfield persisted that, "I'm not going to take anyone talking to me like that," and, "it's a man thing," displaying a willful readiness to escalate a confrontational situation.** [MR, 32]

Supporting evidence: [T, 192 (Judge Atkins)]

22. **Judge Bradfield identically worded wrote letters of apology (Exhibits 8 and 9), to Judge Ross Adams and to Mr. Adams the next day, acknowledging that his "actions were an embarrassment to myself and to the office that I hold." Further, that "we as judges are held to a higher standard."** [MR, 32]

Supporting evidence: [Formal hearing exhibits 008 and 009]

In addition to adopting the master's findings of fact as listed above, the JTC concluded that there were parking spaces available in the judges' parking area when Respondent approached in his vehicle. [D&R, 4] Further, Mr. Adams twice moved his car to accommodate Respondent and allow him to park near the judges' entrance. [D&R, 5-6] When Respondent confronted Mr. Adams (who was with Ms Webb), all three were standing in the middle of a public sidewalk. [D&R, 6] Mr. Adams found the assault to be embarrassing and denigrating as

a number of people were walking by and witnessed the incident. [D&R, 6-7] The JTC also noted that Judge Ross Adams went to the judges' entrance to speak with Officer Gray (the door attendant) concerning what had occurred. [D&R, 7]

Count II (Master's findings in bold)

1. **Effective October 7, 2002, the Gem Theater Parking Structure commenced an agreement with the 36th District Court to provide parking spaces for judges of the court.** [MR, 32]

   Supporting evidence: [T, 224 (Davis)]

2. **On a date prior to the commencement of the agreement, Judge David Bradfield drove his vehicle into the structure, intending to park at that location, and identified himself as a judge of the 36th District Court.** [MR, 32]

   Supporting evidence: [T, 208 (Lee)]

3. **Judge Bradfield apparently believed that the agreement was in effect at that time.** [MR, 32]

   Supporting evidence: [T, 209 (Lee)]

4. **Judge Bradfield became infuriated when he was informed that there was no parking space available for judges on that date.** [MR, 33]

   Supporting evidence: [T, 209-210 (Lee)]

5. **Judge Bradfield refused to listen to the explanation offered by Mr. Lee, angrily threw to the ground the document proffered by Mr. Lee which stated the commencement date for judges to use the parking structure, refused or failed to consider an alternate parking space proposed by Mr. Lee; and recklessly sped out of the parking garage with squealing tires.** [MR, 33]

   Supporting evidence: [T, 210-211 (Lee)]

6. **Mr. Lee promptly reported the incident to 36th District Court Administrator, not because of anger toward Judge Bradfield but rather from a desire to protect his employer from any retaliatory action.** [MR, 33]

   Supporting evidence: [T, 212 (Lee)]

7. **Mr. Lee's testimony is corroborated by the testimony of 36th District Court Administrator, Mr. Otis J. Davis.** [MR, 33]

   Supporting evidence: [T, 225-226 (Davis)]

8. **Mr. Lee was not shown to harbor any personal animus against Judge Bradfield, and the testimony of Mr. Lee regarding the incident is deemed credible.** [MR, 33]

   Supporting evidence: [T, 216-217 (Lee)]

The JTC specifically referred to Mr. Lee's testimony that Respondent began to "rant and rave that he should have parking over there." [D&R, 10] The attendant attempted to allow Respondent to park in another space, and thought as he identified himself as a judge, there was

should be no problem. Respondent denied in his answer to the complaint that he was involved in the incident, but Mr. Lee identified him at the formal hearing. [D&R, 10]

Each count of the formal complaint was established by a preponderance of the evidence. Respondent committed the misconduct outlined above. Based upon those actions and his past disciplinary history, he should be prepared to accept the consequences.

II. A ONE-YEAR SUSPENSION OF RESPONDENT FOR HIS MISCONDUCT IS APPROPRIATE.

Respondent has admitted that his conduct is sanctionable. [D&R, 11; Public Hearing T, 22][4] He proposes a 90-day suspension as an appropriate sanction. There are several factors which the JTC took into account when assessing sanctions, and which the Court should consider, which will highlight the absurdity of Respondent's proposal. Respondent's misconduct in this matter [including the factors addressed by the Court in *In re Brown,* 461 Mich 1291, 1292-1293 (1999)], his past conduct, and proportionality analysis of other, similar cases, confirm that the JTC's recommendation for a one-year suspension, without pay, is appropriate.

A. Assessing Respondent's misconduct

1. *Brown* factors

The Court set forth the criteria for assessing proposed sanctions in *Brown.* The JTC addressed those facts in its Decision and Recommendation. [D&R, 13-17]

(A) Misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct

Respondent's actions in the present case, when considered with his prior acts of misconduct addressed below, establish a clear pattern of angry and belligerent acts that are

[4] Reference is to the transcript of the public hearing before the JTC on November 21, 2005, Record No. 30.

inconsistent with proper judicial demeanor and conduct. In 1995, Respondent was publicly censured for misconduct involving parking a car in a public lot. *In re Bradfield,* 448 Mich 1229 (1995). He was publicly censured and suspended without pay in 2002 for a number of things, including loss of temper. *In re Bradfield,* 465 Mich 1309 (2002). As part of the resolution of that matter, Respondent attended anger management therapy. Yet, later in that same year, Respondent was "ranting and raving" about parking spaces at the Gem Theatre structure. Respondent has established a clear and convincing inability to control his temper, which leads him to act in a manner contrary to the Code of Judicial Conduct. Respondent's tirades bring obloquy and ridicule not only to himself, but to the entire judiciary.

Respondent's argument that his acts in the present action are "unique," as they were "motivated by legitimate security concerns," is absurd. Respondent failed to explain how his conduct at the Gem Theater parking structure was based on a security concern. It was clearly another display of temper. His claim that he thought Adams was a terrorist or thug outside of the judges' entrance is wholly vitiated by his own conduct. He asserted he acted as he did because he did not know who Adams was. Yet, he continued his tantrum inside the judges' entrance even after his colleague, Judge Adams, was present and Mr. Adams' identity was no longer "in doubt" (if it ever was). Any "security threat" was over. Yet still Respondent referred to Adams as a "mother fucker" and challenged him to a fight by going out "to the street." If Respondent perceived a security threat, then knowledge of Adams' identity truly would have resolved the issue, and the second phase of the incident inside the judges' door would not have taken place.

Another of Respondent's assertions regarding court security is that he attempted to aid two diminutive women (referring to Webb and Officer Gray, who was in uniform) compared to a big guy going in the courthouse (Adams). Security photographs reflect Respondent approaching

the judges' entrance (excerpts from formal hearing Exhibit 010, included as Attachments 1 and 2 to the Examiner's reply to Respondent's objections to the master's report). The photographs reflects that Adams was already entering the door, with Webb and Gray (who is holding the door open) standing behind him. It is clear that Adams was not a threat, as the women were in no way in his control. Further, Respondent did not step between Adams and the women. He moved past those he was purportedly attempting to protect to confront Adams, and allowed Adams to remain in close proximity with them. Neither Webb nor Gray testified that Respondent made any inquiry as to whether they were in danger, or that he took any action to separate them from Adams. Respondent clearly did not perceive a security threat to the "diminutive women."

Finally, Chief Judge Atkins testified that at the meeting in her chambers immediately following the incident, he did not raise courthouse security. Judge Atkins testified:

> Judge Bradfield expressed that he didn't know who Mr. Adams was, and nobody was supposed to park in the judges' spot. It didn't have anything about somebody coming into the building or going up the elevator. It strictly had to do with who was parking in the judges' parking spot. [T, 203 (Judge Atkins)]

Respondent's "spin" that he was acting out of a concern for court security, obviously concocted in hindsight in an attempt to justify his outrageous conduct, is not believable.

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

Respondent's present actions occurred off the bench. However, inasmuch as the conduct in April 2005 involved a violation of a criminal statute, it is an extremely serious matter. In addition, as the JTC noted [D&R, 14], the Court concluded long before the *Brown* standards were established that a judge must act as if he is always on the bench. *In re Bennett,* 403 Mich 178, 199 (1978). Respondent's conduct in both incidents constituted serious breaches, regardless of the fact that he was not on the bench when it occurred.

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

The JTC found that Respondent's actions were not directly prejudicial to the administration of justice.

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

The JTC noted that Respondent admitted that his conduct implicated the appearance of impropriety. [D&R, 14] Respondent identified himself as a judge on each occasion and implied that he was acting in his official capacity. Contrary to Respondent's assertion, he was acting for his personal gain during each incident. At the Gem Theater parking structure, he was attempting to obtain preferred parking several days before a parking contract took effect. At the judges' entrance, he was attempting to park directly in front of the door, instead of using other available spaces on the same block. Respondent intended to make the judges' entrance more exclusive than ordered by the chief judge, and to act as a self-appointed guardian of the judges' parking and door. In general, as with Respondent's past conduct, he was attempting to write the rules and enforce them as he saw fit, with no regarding for others.

It is reasonable to conclude that a person who reacts with such violence and venom regarding something as inconsequential as a parking space – and who has done so for years despite even having undergone anger management therapy – will not look at the angry outbursts of another person the way a calm, detached, neutral magistrate should. As such, Respondent's personality, bent, temperament, or demeanor prevent him from comporting with the minimal

requirements of civility. Absent that basic level of self-control, Respondent's conduct clearly implicates the administration of justice and creates an appearance of impropriety.

(E) Misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated

The JTC concluded that Respondent's conduct was deliberate, and that in both incidents there were multiple points in time where he could have controlled his behavior. [D&R, 15] Respondent's repeated, angry acts reflect a predisposition toward belligerent and abusive conduct. During each incident, he charged on headstrong, furious, and uncontrollable. At the judges' entrance to the 36th District Court, he could have gone *first* to the police officer, rather than afterward. His self-appointed role as a parking attendant showed he was merely an "officious intermeddler" as concluded by the master. At the Gem Theater parking structure, he chose not to accept the parking attendant's more-than-reasonable offer of allowing free parking in the staff area for the day. Instead, he chose to "rant and rave," throw down a document in a rage, and speed out of the garage in a display of temper.

Although he may not have "premeditated" his actions in the sense of thinking about them leisurely the day before, he had opportunity after opportunity to cool off and walk away from each "problem" – problems that he alone created. His failure – or inability – to do so means that he either deliberately engaged in this reprehensible conduct, or, that he could not conform his conduct to the norms of a civilized society. Either way, Respondent has repeatedly demonstrated that a severe sanction is warranted.

(F) 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

The JTC did not address this factor, as it lacks applicability to the allegations against Respondent.

(G) 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.

The JTC did not address this factor, as it lacks applicability to the allegations against Respondent.

2. Respondent's disciplinary record

Respondent's past misconduct was briefly addressed above in assessing Respondent's pattern of misconduct under the *Brown* factors. However, the Court has stated that those factors were not exclusive and recognized the JTC's ability to consider other "appropriate standards." *Id*, at 1293. The JTC has accordingly also considered Respondent's discipline record, his reputation, and his years of experience, which are additional factors listed by the American Judicature Society.[5]

A more detailed review of Respondent's past misconduct is warranted, as he has had significant involvement with the disciplinary system. He is a long-serving district court judge. His extensive judicial experience is an aggravating factor in evaluating his misconduct as he is well aware of the conduct expected of one holding judicial office. As noted above, Respondent's attempt to distinguish his acts in the present case from his prior misconduct is clearly futile. Clearly, the similarity to the misconduct in the present case, particularly to the past assault

[5] "How Judicial Conduct Commissions Work," American Judicature Society, 1999, p 15-16.

involving a parking dispute, cannot be ignored. Past disciplinary complaints against a judge are a relevant consideration for the JTC when determining a recommendation for a sanction. *In re Moore,* 464 Mich 98, 129 (2001).

In *In re Bradfield,* 448 Mich 1229 (1995), concerning Formal Complaint No. 49, Respondent engaged in a dispute with another shopper over a parking spot at a local mall. Respondent then disregarded a security guard's instruction to both individuals to find another location to park, and he drove his vehicle into that space. Respondent's car struck the guard, causing injury for which the guard obtained medical attention. Although Respondent was never criminally charged, he accepted the master's finding of facts and conclusions of law and consented to a public censure, which the Court approved.[6]

In *In re Bradfield,* 465 Mich 1309 (2002), arising from Formal Complaint No. 66, Respondent stipulated that his actions in two cases constituted misconduct. He yelled at a defendant who was attempting to explain that an unpaid civil infraction that was 12 years old was not his responsibility, but instead were those of his nephew who had the same name. Respondent admitted he refused to hear evidence that would prove the claim, was rude, and yelled at the defendant without provocation (including a closing statement of: "You think I'm going to buy that, hell no.") Respondent admitted that his demeanor was wrong and improper.

In another case that was part of the same disciplinary proceeding, a defense attorney initiated a grievance against Respondent, whose comments were sought by the JTC (thus advising Respondent that the grievant had filed the complaint). When the grievant later appeared

[6] Respondent's representation at page 7 of his brief, that his past sanctioned conduct did not involve an assault, is curious in light of his admission in Formal Complaint No. 49 that during a dispute over a parking space, he struck a security guard with his car, after which the guard sought medical attention for his injuries.

before Respondent, the attorney filed a motion for disqualification, which the judge denied. Respondent refused to refer the matter to the chief judge for review, claiming the attorney did not have the right. Respondent's decision, which appeared to be a thinly-veiled act of revenge against the attorney for filing the grievance, directly contradicted disqualification procedure, which mandates referral to, and review by, the chief judge on request of the moving party.

The JTC recommended suspension without pay for 30 days based on Respondent's stipulation. The Court adopted the recommendation. Respondent also took anger management therapy, and notified the JTC that he had completed the class on March 23, 2002. [D&R, Attachment 3] Less than eight months later, however, Respondent again erupted in anger at the parking attendant in the Gem Theater parking structure as described in Count II. Respondent seems to snap at the slightest perceived affront, such as not getting "his" parking spot. Such conduct reflects poorly on him individually, on the judiciary as a whole, and on the judicial disciplinary system for its seeming inability to reign in this wayward judge.

Respondent has not learned from his past sanctions by the Supreme Court. Even a thirty-day suspension without pay did not impress upon him the importance of maintaining control of his anger whether on or off the bench. Respondent may contend that the passing of time between sanctions merits the other reprimands meaningless. One would expect that any other judge who had angrily committed an assault and battery by running his car into another person, and was publicly censured for that conduct after a formal hearing, would never engage in anger-based misconduct again. However, Respondent's repetitive misconduct confirms that an anger and belligerence are permanent facets of Respondent's personality. He is the only judge in Michigan to have had three formal complaints issued against him.

Respondent's disciplinary history, coupled with his misconduct in the present case, establish that he is prone to the tantrums of a two-year-old: he acts out how he wants, when he wants, and where he wants, regardless of the impact on other people. He has committed two acts of assault and battery and verbally abused a fellow judge. His repeated outbursts reveal that he is unable to control his temper. His public use of profanity is improper by an individual who holds judicial office. His invitation to fight another person reflects an immature character. The findings in the present case, when considered with the failure of past attempts at remedying Respondent's conduct, warrant a one-year suspension, as lesser sanctions have not been able to correct his misconduct or remove the taint he continues to bring to the judiciary.

B. Proportionality

In re Gilbert, 469 Mich 1225 (2003) and *In re Halloran,* 466 Mich 1219 (2002), each involved inappropriate public behavior by judges in off-the-bench activities. Judge Gilbert publicly smoked marijuana at a rock concert and several times before that and was publicly censured and suspended for six months without pay. Judge Halloran exposed himself in an airport restroom and was publicly censured and suspended for ninety days without pay. Neither judge was charged with a criminal act, but arguably could have been. The relatively light sanctions were in part imposed as each judge acknowledged the impropriety of their conduct, and had no other disciplinary record.

Respondent failed to address either of these quite relevant cases (based on subject matter and recent nature) in his brief. Besides having an extensive disciplinary history, Respondent has only grudgingly acknowledged that his conduct was improper. His original statement addressing sanctions at page 20 of his brief to the JTC supporting his objections to the master's report was

for a public reprimand. He orally modified the proposal at the public hearing, suggesting that a ninety day suspension without pay was a fitting sanction. Clearly, Respondent does not grasp the serious nature of his acts, and is not willing to accept the consequences.

Other cases, while more dated, are also relevant. While not specifically labeling the act an assault, the Court determined that grabbing a female airline employee's braided hair, and pulling her head back (accompanied by verbal abuse and insults), constituted misconduct. *In re O'Brien,* 441 Mich 1204, 1205 (1992). The respondent in that matter was not charged criminally, yet the Court held that his conduct violated several ethical canons, and Judge O'Brien was publicly censured. Judge O'Brien had not previously been sanctioned by the Court when he was censured, unlike Respondent's past two sanctions for belligerent conduct. In addition, *O'Brien* was decided seven years before the *Brown* factors were announced. *O'Brien*-type conduct today would warrant a more severe sanction.

Judicial conduct that is not an assault or battery, but nonetheless reflects a display of bad temper, anger, or an improper demeanor, is improper. The Court addressed a public display of anger and foul language by one judge against another in *In re Moore,* 449 Mich 1204 (1995). Judge Warfield Moore interrupted a court hearing being conducted by then-Chief Judge Dalton Roberson, and made two references to "a damn phone," referred to Judge Roberson as a "damn Heathen [*sic*]," and stated that Judge Roberson's position as Chief Judge "don't mean stinkin' shit, man." The JTC concluded that Judge Moore's profane language and abusive manner demonstrated a gross lack of judicial temperament, demeaned his judicial office and the judiciary in general, and disparaged his judicial colleague (which was widely reported in the media). The Supreme Court held that they constituted misconduct prejudicial to the administration of justice.

Judge Moore was publicly censured by the Supreme Court. At the time, Judge Moore had engaged in one act of misconduct, which was not a civil and criminal assault and battery.

A recent Minnesota case dealing with an assault and battery is *Inquiry into the Conduct of Ginsburg,* 690 NW2d 539 (Minn 2004). Respondent was charged with various acts of misconduct, which included an allegation that he assaulted a 14-year-old boy who hid the judge's son's bike in a dumpster. Respondent grabbed the boy off a bicycle, pushed him onto a bench, and slapped him in the face. Respondent ultimately admitted he engaged in the conduct. The Minnesota Supreme Court commented on Respondent's actions:

> Those who come before the courts cannot reasonably be expected to respect the law if those who preside on the bench are not perceived as respectful of the law. As we stated in *Winton:*
>
> > A judge has a position of power and prestige in a democratic society espousing justice for all persons under law. The role of the judge in the administration of justice requires adherence to the highest standard of personal and official conduct. Of those to whom much is committed, much is demanded. A judge, therefore, has the responsibility of conforming to a higher standard of conduct than is expected of lawyers or other persons in society. Willful violations of law or other misconduct by a judge, whether nor not directly related to judicial duties, brings the judicial office into disrepute and thereby prejudices the administration of justice. A judge's conduct in his or her personal life adversely affects the administration of justice when it diminished public respect for the judiciary. Our legal system can function only so long as the public, having confidence in the integrity of its judges, accepts and abides by judicial decisions. The essential attributes of a judge are not only intellectual competence but adherence to ethical standards of conduct. (Citations omitted.) *Id.* at 549-550.

The respondent judge was removed from judicial office base on his actions, as well as a disability he claimed that compelled him to engage in the improper conduct.

None of the other cases addressed by Respondent in assessing an appropriate sanction considers a disciplinary history as serious Respondent's, which includes multiple acts of

aggressive and belligerent behavior, and two incidents of assault and battery. None of Respondent's cases address conduct which constitutes a misdemeanor, with the exception of *O'Brien,* decided in 1992. Respondent's assessment that a ninety-day suspension is woefully and shamelessly inadequate. The JTC's recommended sanction of a one-year suspension without pay, including psychological treatment, is warranted.

III. THE SUPREME COURT HAS AUTHORITY TO ORDER RESPONDENT TO UNDERGO PSYCHOLOGICAL TREATMENT.

A. Authority

An integral component of the JTC's recommendation is that Respondent complete intensive psychological treatment to control his anger. Respondent asserts that the Court lacks authority to impose that on him. However, Respondent fails to address factors that allow the Court to act as recommended by the JTC.

Respondent asserts that psychological treatment can only imposed when the Respondent consented to the sanction, citing *In re Bradfield*, 465 Mich 1309 (2002) and *In re Trudel*, 465 Mich 1314 (2002). See too, *In re Halloran*, 466 Mich 1219 (2002). Respondent's argument misses the point: either the Court has the authority to order psychological treatment, or it does not. The fact that certain judges have agreed in the past to undergo the treatment is not the determinative factor of whether the Court has that authority in the first place.

The relevant portion of the Michigan Constitution states:

> (2) On recommendation of the judicial tenure commission, the supreme court may censure, suspend with our without salary, retire or remove a judge for conviction of a felony, physical or mental disability which prevents the performance of judicial duties, misconduct in office, persistent failure to perform his/her duties, habitual intemperance or conduct that is clearly prejudicial to the administration of justice. The supreme court shall make

> rules implementing this section and providing for confidentiality and privilege of proceedings. Const 1963, art 6 §30(2).

The Court has interpreted its authority consistent with this constitutional power to "make rules implementing this section . . . ." Thus, the Court modified MCR 9.205(B), effective January 1, 2006, to provide for costs to be paid in addition to any other sanction. Despite arguments that the constitution did not authorize the Court to order costs, the Court determined that its power to impose costs was inherent in the constitutional provision and well within its rule-making authority.

In a concurring opinion supporting the amendment to impose costs, Justice Corrigan relied on that same rule-making clause of the constitutional provision, reasoning that "the constitutionality of this Court's actions (regardless of whether an opinion discussed the point) could not turn on an individual judge's choice." Amendments of Michigan Court Rules of 1985, 474 Mich *c* (2005). Consequently, if the Court can impose fees based on a recommendation of the JTC, then it clearly may order Respondent to undergo psychological treatment. The Court does not acquire its authority through the acquiescence of the parties before it. Regardless of Respondent's willingness to accept therapeutic treatment, the Court has the authority to order. Should Respondent refuse to comply, the Court will have a panoply of remedies available, including referring the matter back to the JTC for consideration of further action.

Furthermore, the Court's inherent authority to promulgate rules regarding the censure, suspension, removal, or retirement of a judge for, *inter alia*, a "mental disability," presupposes the Court's authority to respond to and act upon that mental disability. Indeed, there has long been a court rule allowing the Commission to "request" a judge to submit to a physical or *mental* examination. MCR 9.207(D). Failure to comply with such a "request" may constitute judicial misconduct. *Id.* If the Commission has authority to make such a request, the Court *a fortiori* does too.

In addition, it is undisputed that the Court has superintending control over judges of all Michigan courts. Constitution Article 6, § 4 As noted in explained in *In re Probert,* 411 Mich

210 (1981), citing *In re Huff,* 352 Mich 402, 418 (1958), the superintending control power is separate from its original jurisdiction and appellate powers, with

> its purpose being 'to keep the courts themselves "within bounds" and to insure the harmonious working of our judicial system.'
>
> * * *
>
> The power of superintending control is an extraordinary power. It is hampered by no specific rules or means for its exercise, It is so general and comprehensive that its complete and full extent and use have practically hitherto not been fully and completely known and exemplified. It is unlimited, being bounded only by the exigencies which call for its exercise. As new instances of these occur, it will be found able to cope with them. Moreover, if required, the tribunals having authority to exercise it will, by virtue of it, possess the power to invent, frame, and formulate new and additional means, writs, and processes whereby it may be exerted. *Probert, 229-230.*

The Michigan Court Rules providing the procedures for JTC proceedings also recognize the applicability of superintending control to JTC proceedings. MCR 9.203(C) states: "Proceedings under these rules are subject to the direct and exclusive superintending control of the Supreme Court." Clearly, the Court has the authority to compel Respondent to undergo psychological treatment for his anger.

Respondent also contends that there are privacy and practicality concerns with psychological treatment. Those arguments are meritless. It is clear that one holding a judicial office must make some allowances for review of his or her fitness to hold office. As noted, MCR 9.207(D) requires a judge, in the course of an investigation, to submit to a mental examination at the request of the JTC. Under the court rule, failure to do so may constitute misconduct. Clearly, the requirement of a report regarding attendance at therapy sessions (significantly excluding more detail, such as the content or result of the sessions) is less intrusive than the examination allowed for under the court rules.

The "practical concerns" raised by Respondent also lack merit. The JTC clearly wants Respondent to take action to control his anger. His repeated conduct confirms he cannot do it alone. Approval of a treating psychologist and tracking attendance merely assists in the JTC's confidence that Respondent is serious in obtaining the treatment. His challenge of that portion of the discipline raises serious questions regarding his acknowledgement of his anger control issues.

B. Reconsideration

In the alternative, if the Court determines that it does not have the authority to compel Respondent to undergo treatment for his anger, the proper alternative is reconsideration of the entire disciplinary recommendation "package." The one-year suspension without pay and psychological treatment were two strands of a single, symbiotic, sanction that the JTC considered as suitable discipline: one does not stand independently of the other. If Respondent obtained treatment, with the hope that his anger issues could be resolved before returning to the bench, a one-year suspension was enough. If he did not have the required treatment, then the period of suspension must be re-evaluated.

If treatment is not imposed, there are two alternatives. The first is a remand of the matter to the JTC, to allow the Examiner and Respondent to address the issue of discipline without treatment, and for the JTC to reconsider its recommendation accordingly. The other option is for the Court to impose a fitting suspension, considering Respondent's conduct in this matter, his disciplinary history, and his steadfast refusal to acknowledge that he has an anger management problem, based on its authority to accept, reject, or modify the Commission's recommendation. MCR 9.225.

IV. THE JTC DID NOT ERR BY FAILING TO COMMENT IN ITS DECISION AND RECOMMENDATION ON RESPONDENT'S OBJECTIONS TO THE MASTER'S FINDINGS.

Respondent's objections to the master's report were meritless. The JTC clearly considered them when making its Decision and Recommendation, and implicitly rejected those objections by adopting the master's findings of fact and law. There was no need to address the objections individually. In any event, there is no basis to the objections, as addressed below.

A. The master's evidentiary decisions were proper

The decision to admit or exclude evidence is a matter of the trial judge's sound discretion. *Campbell v Sullins,* 257 Mich App 179, 196 (2003) The master used his discretion in properly excluding two e-mails (proposed Exhibits 006 and 007) between 36th District Court judges and magistrates which related to security concerns. [T, 285-286 (Master)] Respondent first attempted to introduce the e-mails during the testimony of Chief Judge Ross Adams [T, 95-96] The content of any of the e-mails is unrelated to the factual allegations raised in either count of the formal complaint. The Examiner's object was that they concern judicial murders in Atlanta and Chicago, and in no way justify Respondent's use of profane and threatening language or committing an assault and battery. The master sustained the Examiner's objection to the e-mails

> without prejudice to the Defendant – Respondent to offer them at the appropriate time after a foundation has been laid to relevance. . . . If – if it's shown through some testimony that Judge Bradfield was aware of the memo and based his conduct at all in part or in total on this memorandum, then they'd be admitted. [T, 95-96 (Master)]

The master further concluded that the relevance of the e-mails (which the master described as the "memorandum") is whether Respondent reviewed them, what his understanding was of them,

and perhaps his understanding of each judge's responsibility as directed by them. [T, 99-100 (Master)]

When Respondent moved to admit proposed Exhibits 006 and 007 during Respondent's testimony, and the Examiner again objected based on relevancy, the master concluded:

> Well, I understood Judge Bradfield to testify that he said he had no authority to regulate parking or admissions at the door. . . . Exhibit 006 and 007 are not received. [T, 285-286 (Master)]

Respondent's assertion that the e-mails relate should have been admitted as his actions were driven out of concern for court security is unconvincing. First, as noted by the master, Respondent admitted at the formal hearing that he has "no authority to do anything down there" (referring to the monitoring the parking and entrance on Madison Avenue). [T, 280-281 (Respondent)] Further, even if security was Respondent's motivation, that in no way justified his use of profane language, invitation to fight, threats, assault and battery, and in general, any of his conduct relating to the incident. It is noteworthy that the e-mails do not relate in any way to Count II of the formal complaint.

The master's exclusion of the testimony of Viola Coleman was also proper. There is no dispute that she had no personal knowledge of the allegations in the formal complaint. Although she was a Wackenhut security guard assigned to the judges' entrance for a number of years, that assignment ended before April 2005 as Detroit police officers began guarding the door. [T, 244 (Coleman), T, 166 (Gray)] Coleman's testimony was intended to reflect Respondent's character in the past, which was not at issue at the formal hearing, and was not addressed by Respondent in his findings of fact.

MRE 405(b), the relevant evidentiary rule addressing methods of proving character for specific instances of conduct, states:

> In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

In the present case, character or a trait of character is not an element of the allegations against Respondent. The claims in the formal complaint are that he committed an assault and battery on one occasion, surrounded by profane language, and again engaged in a tantrum at the Gem Theater parking structure.

Respondent's claim that the testimony was necessary to somehow offset testimony of other witnesses as to Respondent's character which influenced the master, including a propensity for Respondent to display anger or untoward conduct, is meritless. The master's response to Respondent's argument regarding that issue most succinctly addresses the claim and reveals that the master was not influenced by claims regarding Respondent's character:

> I have to acknowledge that similar things have been said, some without objection. Hearsay is hearsay, and so I'm going to be making a finding based on the testimony that that's offered here and not on statements such that you suggest here.
>
> What other people know, what everyone knows, whatever that may be, it's not relevant here. We're focusing on two specific instances. [T, 248-249 (Master)]

Therefore, the testimony of Coleman was properly excluded as it was not relevant under MRE 405(b).

Respondent also takes issue with the master's failure to consider the assertion that if Adams had identified himself, the incident would not have happened. The master did consider the contention, and found it specious and without merit. [MR, 29] In any event, that argument is irrelevant, as Respondent's profanity, belligerence, assault and battery, and general behavior are improper regardless of the identity of the person whom he belittled and assaulted.

In addition, the master did not display animus toward Respondent in his report. Contrary to Respondent's assertion in his objection, the master's reference to Respondent being an "officious intermeddler" was not an attack on the judge's character. The master used it in the context that Respondent had no authority to supervise or enforce parking restrictions, which Respondent admitted. The term "officious" is defined in Merriam-Webster's Collegiate Dictionary, Eleventh Edition, as: "Volunteering one's services where they are neither asked nor needed." "Intermeddle" is to meddle impertinently and officiously and usually so as to interfere. Therefore, except for the possible error of redundancy, the master's comment was merely a conclusion that Respondent interfered where his involvement was not permitted, particularly in light of Respondent's admissions.

The master's other findings of fact do not reflect any "malevolence" against Respondent, as alleged in the objections. As noted by the master, he relied heavily on *verbatim* testimony of witnesses to reach determine his findings. [MR, 28] The master reviewed the testimony of all witnesses, and made his findings based on them. He did not ignore testimony. He chose to believe certain versions of the events over others when there were conflicts in testimony. That does not reflect "malevolence" by the master. It merely reveals that he was doing his job.

Finally, Respondent makes several assertions that the Examiner's reference to other judicial disciplinary cases involving Respondent in his hearing memorandum was an attempt to improperly influence the master. In fact, hearing memorandums are frequently used in judicial disciplinary proceedings to educate a master on procedures, his duties, and relevant law. There are extremely few cases in Michigan, and for that matter across the country, where a judge has committed conduct similar to that alleged in the present case. That is particularly true as to the assertion that a judge has committed an assault and battery. Moreover, the prior cases involving

Respondent were all published decision of the Court, and, thus, matters of public record. The Examiner was merely providing legal guidelines for the master from past relevant judicial disciplinary cases.

In addition, there is no doubt that the master, who was a long-serving trial judge, can separate findings of fact in the present matter from the misconduct of Respondent in other judicial disciplinary cases. Judges often are aware of past conduct of parties (particularly criminal defendants) in cases, and have to separate that knowledge from the facts presented. The JTC must also undertake that task in every disciplinary formal proceeding, as this phase of the proceedings involves consideration of the master's findings of fact, and a determination of a sanction recommendation that necessarily involves past conduct. MCR 9.216 requires the submission of the parties' assessment of the master's findings, and a discussion of sanctions, at the same time. Finally, the Court also makes this dual consideration when the case is presented to it. The master clearly has the ability to make his findings of fact based solely on the totality of the relevant evidence presented to him at the formal hearing, and clearly did so in this proceeding. The JTC correctly adopted the findings of fact and law of the master.

B. Respondent committed both civil and criminal assault and battery

The JTC concluded that Respondent's conduct in April 2005 constituted both a criminal and civil assault and battery, regardless of the fact that no criminal charges were filed. A civil assault is defined as

> any intentional unlawful offer of corporal injury to another person by force, or force unlawfully directed toward the person of another, under circumstances which create a well-founded apprehension of imminent contact, coupled with the apparent present ability to accomplish the contact. *Smith v Stolberg,* 231 Mich App 256, 260 (1998)

Smith defined battery as "the willful and harmful or offensive touching of another person which results from an act intended to cause such contact." *Id.* In *Smith,* the plaintiff alleged that the defendant negligently touched or pushed the plaintiff, which was sufficient, if proved, to establish claims of assault and battery. Clearly, Respondent's conduct constituted a civil assault and battery.

Respondent's actions even constitute criminal assault and battery, which differs from the analogous civil law concept. A criminal assault is either an attempt to commit a battery, or an unlawful act that places another in reasonable apprehension of receiving an immediate battery. *People v Terry,* 217 Mich App 660, 662 (1996) A criminal "battery" is the willful touching of person of another by an aggressor, or by some substance put in motion by him, often referred to as the "consummation of an assault." *People v Bryant,* 80 Mich App 428, 433 (1978) Under Michigan law, a person who commits a criminal assault, or an assault and battery, is guilty of a misdemeanor. MCL 750.81.

In his objections to the master's report, and in his brief to the Court, Respondent ignores the fact that he committed an actual criminal battery by willfully touching the person of Adams as an aggressor. Respondent poked Adams at least five times, and it hurt Adams. [T, 34 (Adams)] Officer Gray confirmed it was an act of "poking" and that at the time Respondent was acting in a "loud and aggressive" manner. [T, 162 (Gray)] Webb confirmed that Respondent was talking in a threatening manner toward Adams. [T, 130 (Webb)] Taking into consideration the descriptions of Respondent's behavior during the incident, the poking of Adams was clearly an intentional act. In addition, Respondent's assertion that Adams never asserted he was worried about his safety or concerned that Respondent would hurt him is not relevant, as that test only

applies if a battery is not committed. The battery occurred due to Respondent's own volition. The master, after considering all relevant testimony, concluded that the act was intentional and a criminal assault and battery occurred.

Respondent has noted that criminal charges have not been filed against him. Adams admitted that after he filed a police report, he did not pursue the matter. However, the Court recently reaffirmed the fact that a judge's conduct can violate the Code of Judicial Conduct without regard to whether criminal charges were ever filed, or even in cases in which a judge has been acquitted from criminal proceedings. *In re Halloran,* 466 Mich 1219, 1220 (2002), citing *In re Loyd,* 424 Mich 514, 525-531 (1986); *In re Jenkins,* 437 Mich 15, 16-18, 20, 23-24 (1991).

C. Gem Theatre parking charges are timely

Respondent asserts that he should not have been forced to defend the charges regarding the Gem Theater parking structure, which were based on events that occurred in October 2002. There is no basis for that objection. The court rules plainly state that affirmative defenses – including laches – must be raised in the party's first pleading. Respondent's claim of delay between the time of the October 2002 incident and the issuance of the formal complaint is one of laches that should have been raised as an affirmative defense in his first pleading. His having failed to do so, however, waives this issue. MCR 9.209(B)

In any event, the allegations against Respondent are timely. There is no statute of limitations in Judicial Tenure JTC proceedings. There was sufficient testimony from Lee and Davis, other witnesses with knowledge regarding the matter, to confirm that the events occurred. Respondent's convenient inability to recollect the matter does not mean that it did not occur. In addition, there was no testimony or other evidence offered that any other individual witnessed

the incident, and therefore Respondent's ability to question any witnesses to the matter was not compromised. All witnesses to the incident testified at the hearing.

The cases cited by Respondent to support his assertion that untimely matters should not be litigated address time periods of 26 years [*Chase v Sabin,* 445 Mich 190 (1994)] and five years [*Shields v Shell Oil Company,* 237 Mich App 682 (1999)]. Thirty months is far shorter than either period. Further, the *Shields* case addressed the application of a specific statute of limitation or repose, which is not at issue present in this case. Both cases are irrelevant to the present proceedings, and the incident at the Gem Theater parking structure was properly alleged in the formal complaint, and considered by the master.

CONCLUSION

The record in this proceeding, based on a preponderance of the evidence, clearly supports the factual findings of the master as adopted by the JTC. Respondent is guilty of misconduct as alleged in the formal complaint, as his actions violate MCJC Canons 1, 2A, and 2B, as well as MCR 9.104(A)(2) and (5).

In April 2005, he physically assaulted and verbally abused Deputy Mayor Anthony Adams and his wife, 36th District Court Judge Deborah Ross Adams, at the judges' entrance to the 36th District Court. Respondent shouted, screamed profanities, attempted to engage in a fight, and thumped Deputy Mayor Adams in the chest, which constituted a civil and criminal assault and battery.

In October 2002, at the Gem Theatre Parking Garage, Respondent became angry when a parking space for him was not available, as the parking agreement between the structure and the court had not yet taken effect. Although the attendant offered Respondent a parking space for that day anyway, Respondent shouted and engaged in a tantrum before speeding away.

Based on Respondent's misconduct relating to the present allegations and his prior sanctions for quite similar misconduct, the Supreme Court should adopt the JTC's recommendation of discipline. The Court should suspend Respondent from judicial office, without pay, for a period of one year, and require him to undergo psychological treatment to control his anger, on a schedule determined by a therapist approved by the JTC, with quarterly reports on Respondent's attendance.

RELIEF REQUESTED

WHEREFORE, the Judicial Tenure JTC respectfully requests that the Supreme Court:

(1) **DENY** Respondent's Petition to Reject the Judicial Tenure JTC's Decision and Recommendation;

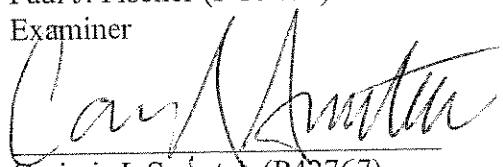
(2) **DETERMINE** that Respondent was guilty of misconduct, as decided by the JTC;

(2) **SUSPEND** Respondent from judicial office, without pay, for a period of one year, or for such other period as the Court deems appropriate; and

(3) **REQUIRE** Respondent to complete intensive psychological treatment to control his anger, by a health care professional chosen by Respondent but approved by the JTC, with the counseling to occur at intervals determined by the health care professional, with quarterly attendance reports to the JTC.

Respectfully submitted,

Paul J. Fischer (P 35454)
Examiner



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Dated: February 13, 2006

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