

STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. J. CEDRICK SIMPSON
Judge, 14-A District Court
415 W. Michigan Avenue
Ypsilanti, Michigan 48202

Formal Complaint No. 96

DECISION AND RECOMMENDATION FOR DISCIPLINE

At a session of the Michigan Judicial
Tenure Commission held on August
31, 2015, in the City of Detroit

PRESENT:

Hon. David H. Sawyer, Chairperson
Hon. Pablo Cortes, Vice-Chairperson
Nancy J. Diehl, Esq., Secretary
Hon. Monte J. Burmeister
David T. Fischer
Hon. Nanci J. Grant
Hon. Michael M. Hathaway
Thomas J. Ryan, Esq.
Melissa B. Spickler

I. Introduction

The Judicial Tenure Commission of the State of Michigan (“Commission”) files this recommendation for discipline against Hon. J. Cedrick Simpson (“Respondent”), who at all material times was a judge of the 14-A District Court (“the Court”) in the City of Ypsilanti, State of Michigan. This action is taken

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

On or about April 28, 2015, the Commission received findings of fact and conclusions of law from the Master appointed by the Supreme Court to hear evidence in this matter. Having reviewed relevant portions of the hearing transcript, the exhibits, and the Master's report, and having considered the oral arguments of counsel, the Commission concludes, as did the Master, that the Examiner has established by a preponderance of the evidence that Respondent interfered, or attempted to interfere, with a police investigation and prosecution of a drunk driving charge against Crystal Vargas, an intern in his judicial office. The Commission further concludes that Respondent made intentional misrepresentations or misleading statements in his answer to the formal complaint and during his testimony at the public hearing.

For the reasons set forth herein, the Commission recommends that the Supreme Court remove Respondent from the office of judge of the 14-A District Court on the basis of his judicial misconduct. In addition, the Commission recommends that the Supreme Court order Respondent to pay costs, fees, and expenses in the amount of \$7,565.54, pursuant to MCR 9.205(B), based on his intentional misrepresentations or misleading statements made to the Commission in his answer to the formal complaint and during the public hearing.

II. Procedural Background

On November 12, 2014, the Commission filed a Formal Complaint against Respondent, alleging (1) that Respondent interfered with a police investigation, (2) that Respondent interfered with a criminal prosecution, and (3) that Respondent made misrepresentations to the Commission.

On December 17, 2014, the Michigan Supreme Court appointed Hon. Peter D. Houk as Master, to conduct a public hearing on the allegations in the Formal Complaint. The Master held a public hearing on March 30, March 31, and April 1, 2015. In the Master's Findings of Fact and Conclusions of Law, issued on April 28, 2015, the Master concluded by a preponderance of the evidence that Respondent committed misconduct in office, under MCR 9.205(e), by interfering in the investigation and prosecution of the criminal case against Ms. Vargas. The Commission heard objections to the Master's report at a hearing held on June 8, 2015.

III. Standard of Proof

The standard of proof applicable in judicial disciplinary matters is the preponderance of the evidence standard. *In re Ferrara*, 458 Mich 350, 360; 582 NW2d 817 (1998). The Examiner bears the burden of proving the allegations in the Complaint. MCR 9.211(A). The Commission reviews the Master's findings de novo. *In re Chrzanowski*, 465 Mich 468, 480-481; 636 NW2d 758 (2001).

Although the Commission is not required to accept to the Master's findings of fact, it may appropriately recognize and defer to the Master's superior ability to observe the witnesses' demeanor and comment on their credibility. Cf. *In re Lloyd*, 424 Mich 514, 535; 384 NW2d 9 (1986).

IV. Findings of Fact

Count I – Interference with a Police Investigation

Crystal Vargas, a law student and an intern in Respondent's judicial office, was involved in an automobile accident on September 8, 2013, at approximately 4:22 a.m., near Respondent's home in Pittsfield Township. Immediately after the accident, Ms. Vargas called Respondent, who arrived at the scene within a short period of time. When Respondent arrived at the scene, Pittsfield Township Police Officer Robert Cole was administering sobriety tests to Ms. Vargas. As Respondent exited his car and approached, Officer Cole inquired of Ms. Vargas who the approaching person was, and she replied, "Judge Simpson." Officer Cole testified that he normally would have instructed the approaching person to return to his vehicle, but that he did not do so because Respondent was a judge. After Officer Cole approached Respondent, Respondent identified himself as "Judge Simpson." Upon inquiry by Respondent, Officer Cole advised Respondent that Ms. Vargas was alright. Officer Cole then told Respondent that he wanted "to make sure that [Ms. Vargas was] okay to drive." In response, Respondent asked,

“Does she just need a ride or something?” Officer Cole did not acknowledge the question, but continued the sobriety tests while “keeping an eye” on Respondent. Officer Cole testified that, while he normally would have asked Ms. Vargas where she had been drinking, he did not do so because he assumed she had been drinking at Respondent’s home due to the proximity of the crash site to Respondent’s home. While Officer Cole was trying to determine the drivability of Ms. Vargas’ car, Respondent approached Officer Cole’s patrol vehicle and, without permission from Officer Cole, spoke to Ms. Vargas while she was seated, handcuffed, in the back of the patrol vehicle.

On the basis of the evidence that Respondent appeared at the scene, introduced himself as a judge, and inquired whether Ms. Vargas “just need[ed] a ride,” the Commission concurs with the Master’s finding that a preponderance of the evidence showed that Respondent used his judicial office to interfere, or to attempt to interfere, with the police investigation.

Count II – Interference with a Criminal Prosecution

On September 10, 2013, two days after Ms. Vargas’ arrest, Respondent called Victor Lillich, the township attorney, who had not yet received the police report regarding the accident. Respondent told Mr. Lillich about the accident, informed Mr. Lillich that Ms. Vargas was his intern, and stated that she was “a good kid,” but had been in a bad relationship. Respondent then commented on

discrepancies between the preliminary breath test given at the scene and the DataMaster test given at the police station.

Respondent called Mr. Lillich again, on September 17, 2013, but Mr. Lillich was not available to take the call. When Mr. Lillich returned Respondent's call, he and Respondent discussed potential defense attorneys for Ms. Vargas. Mr. Lillich told Respondent that he "would be glad to just sit on this or hold this thing until an attorney gets involved and then talk to the attorney about the – about the problems with the case if there are problems with the case."

On October 17, 2013, Matthew Harshberger, the Director of Public Safety/Chief of Police, contacted Mr. Lillich to inquire as to the status of the charges against Ms. Vargas, noting that the complaint had been pending for approximately one month. In response, Mr. Lillich noted that the case was ready for authorization, but that Respondent had "contacted me a couple of times regarding this case and I have been holding it in part to discuss issues raised by him regarding the difference between the PBT result and the Datamaster Test" Mr. Lillich noted that he had been "sitting on" the case "out of respect and defference [sic] to Judge Simpson." On October 19, 2013, Chief Harshberger wrote in an e-mail to Mr. Lillich that he "[did] not think it is appropriate for Judge Simpson to be interfering with this case, especially before it is even authorized and before the court for proceedings."

On October 21, 2013, Mr. Lillich disqualified his office from handling the matter, noting that Respondent had contacted him regarding the case and “[a]n issue has been raised regarding the propriety of that contact.” Ms. Vargas eventually was charged by the Washtenaw County Prosecutor’s Office with operating while intoxicated, to which she pleaded guilty.

On the basis of the evidence that Respondent called the township attorney to discuss the case on at least two occasions, leading to the disqualification of the township attorney and the transfer of the case to a different prosecuting authority, the Commission concurs with the Master’s finding that a preponderance of the evidence showed that Respondent interfered, or attempted to interfere, with the prosecution of the criminal case against Ms. Vargas.

Count III - Misrepresentations

In addition to the conduct noted above, the evidence showed that Respondent made intentional misrepresentations or misleading statements during these proceedings.

The Examiner argued to the Commission that the telephone records showing that Respondent and Ms. Vargas exchanged five texts between 4:20- 4:22 a.m. on September 8, 2013, conflicted with Respondent’s testimony that he went to bed at 1:30 a.m. and did not wake up until he received Ms. Vargas’ telephone call at about 4:25 a.m., advising him of the accident. The Commission declines to adopt

this argument because a close review of the record indicates that Respondent never testified that he “did not wake up” until the telephone call advising him of the accident. Rather, Respondent testified that he went to bed at approximately 1:00 or 1:30 a.m., that he “dozed in and out,” and that Ms. Vargas called him at about 4:25 a.m. Furthermore, Respondent never denied texting Ms. Vargas after 4:00 a.m. The Examiner asked Respondent whether he had any contact with Ms. Vargas between midnight and 4:00 a.m. on September 8, 2013, but never asked whether he had contact with her after 4:00 a.m. Therefore, the five texts between 4:20-4:22 a.m. do not show a misrepresentation.

While the record does not support the Examiner’s argument that Respondent made a misrepresentation regarding the 4:20-4:22 a.m. texts, the record does support a finding that Respondent made an intentional misrepresentation or misleading statement regarding other early morning texts.

Respondent testified at the public hearing that he did not have any contact with Ms. Vargas, by text message or otherwise, between midnight and 4:00 a.m. on September 8, 2013. Specifically, Respondent testified as follows:

EXAMINER: Did you have any contact with Ms. Vargas between midnight and 3:30 that morning?

RESPONDENT: Which morning?

EXAMINER: I’m sorry. On the day that she was – on the morning she was arrested, did you have any contact

with her between midnight and 3:30 or 4:00 that morning?

RESPONDENT: No.

EXAMINER: And when you say no, that's not by text messages or anything else; correct?

RESPONDENT: I don't believe there were any text messages. I don't believe that there was any contact.

The Sprint telephone records showed that Respondent and Ms. Vargas exchanged six text messages between 1:25 a.m. and 2:29 a.m. on September 8, 2013.¹ On the basis of the telephone records, the Commission finds that Respondent made an intentional misrepresentation or misleading statement when he testified under oath at the public hearing that he had no contact with Ms. Vargas between midnight and 4:00 a.m. on September 8, 2013.

In addition, Respondent made an intentional misrepresentation or a misleading statement regarding the purpose for the thousands of texts messages he exchanged with Ms. Vargas between August 1, 2013, and November 30, 2013. In his answer to the formal complaint, Respondent stated that "the vast majority of the communications" were related to Ms. Vargas' work, as part of her internship, reviewing records in *People v Nader Nassif*, a case on Respondent's docket. The Commission finds, as did the Master, that the sheer number of text messages and

¹ Specifically, the Sprint records showed five text messages between 1:25 a.m. and 1:27 a.m., and one text message at 2:29 a.m. on September 8, 2013.

telephone calls exchanged between Respondent and Ms. Vargas, as well as the times the texts and calls were exchanged, belies this answer.

Norman Ray Clark, the custodian of records for Sprint, testified that Respondent and Vargas exchanged approximately 14,000 communications, by text message or telephone call, in a four month period between June 20, 2103, and November 30, 2013, which broke down to approximately 3,600 texts and telephone calls per month. Many of the communications occurred after business hours, late at night, or in the very early morning hours. The number of text messages and telephone calls, and the hours of the messages and calls, are not consistent with Respondent's explanation that the vast majority of the communications were related to Ms. Vargas' work on the *Nassif* case. Furthermore, Respondent testified that his office received the first set of text messages in the *Nassif* case on September 12, 2013. He confirmed that his office did not have possession of any text messages in the *Nassif* case before September 12, 2013. Thus, the *Nassif* case does not explain the thousands of text messages exchanged before Ms. Vargas' work on the *Nassif* case began.

In addition, Ms. Vargas' deposition testimony regarding her judicial intern duties casts doubt on Respondent's explanation for the thousands of text messages he exchanged with Ms. Vargas. When asked about her judicial intern duties, Ms. Vargas testified that she conducted research, wrote two opinions, and "observed,

more than anything.” She also noted that she was assigned to the *Nassif* case and that she saw Respondent outside of the courthouse to exchange materials related to the case. Notably absent from Ms. Vargas’ testimony was any indication that she worked outside of normal business hours on the case or that she engaged in an unusual amount of text messaging regarding the case.

Having heard all of the evidence in this case and having had the opportunity to observe the demeanor of the witnesses who testified at trial, the Master concluded that Respondent made a misrepresentation when he stated, under oath, that the “vast majority” of the text messages and telephone calls with Ms. Vargas related to the *Nassif* case. On the basis of the number of communications between Respondent and Ms. Vargas, the times of day many of the communications were exchanged, and Ms. Vargas’ deposition testimony regarding her judicial intern duties, the Commission concurs with the Master’s finding that Respondent made an intentional misrepresentation or a misleading statement when he stated in his answer to the formal complaint that the “vast majority” of his communications with Ms. Vargas between August 1, 2013, and November 30, 2013, were related to the *Nassif* case.

V. Conclusions of Law

Respondent’s conduct breached the standards of judicial conduct, and he is responsible for the following:

- a. Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.205;
- b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.205;
- c. Failure to establish, maintain, enforce, and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to MCJC, Canon 1;
- d. Irresponsible or improper conduct that erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;
- e. Conduct involving impropriety and appearance of impropriety, contrary to MCJC, Canon 2A;
- f. 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 contrary to the Code of Judicial Conduct, Canon 2B;
- g. Conduct that is contrary to justice, ethics, honesty or good morals, contrary to MCR 9.104(3);
- h. Conduct that violates the standards or rules of professional conduct adopted by the Supreme Court, contrary to MCR 9.104(4);
- i. Conduct that is prejudicial to the proper administration of justice, in violation of MCR 9.104(1);
- j. Conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2);

VI. Disciplinary Analysis

On the basis of the Commission's conclusion that Respondent committed judicial misconduct by interfering with a police investigation and prosecution involving his intern, and by making intentional misrepresentations or misleading statements in his answer to the formal complaint and in his testimony at the public hearing, the Commission recommends that Respondent be removed from judicial office. This recommendation is based on the following evaluation of the factors set forth in *In re Brown*, 461 Mich 1291, 1292-1293; 625 NW2d 744 (1999).

A. The *Brown* Factors

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

The evidence showed that Respondent repeatedly attempted to use his judicial office to influence the investigation and prosecution of Ms. Vargas' case by his conduct at the scene of the arrest and by contacting the township attorney about the case on at least two occasions. There was no evidence, however, that Respondent repeated similar misconduct in other cases. Similarly, while the evidence showed that Respondent made false or misleading statements in his answer to the formal complaint and in his testimony at the public hearing, there was no evidence that there was a pattern of dishonesty outside of these proceedings. Therefore, this factor most likely does not weigh in favor of a more serious sanction.

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

The evidence did not show that Respondent engaged in misconduct on the bench. The misconduct did, however, involve Respondent using his position as a sitting judge to attempt to influence a criminal investigation and prosecution of his intern.

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

Respondent's misconduct was prejudicial to the actual administration of justice. Respondent argues that he did not intentionally interfere in the criminal investigation, but only acted out of concern for Ms. Vargas' welfare. Contrary to Respondent's argument, the record reveals an intent to interfere with the administration of justice. Respondent's actions at the scene of Ms. Vargas' arrest, while subtle, were nonetheless improper. Respondent's inquiry whether Ms. Vargas just needed a ride home appeared to be a subtle suggestion that Officer Cole let Ms. Vargas go home without further investigation into her sobriety. A person holding judicial office would know that such a suggestion was improper. Respondent engaged in other, more overt, conduct at the scene when he went to the squad car to speak to Ms. Vargas, who was a suspect in an ongoing criminal investigation. Respondent's improper influence can be seen in Officer Cole's testimony that, out of deference to Respondent, he altered his investigative

procedure by allowing Respondent to approach and to speak to Ms. Vargas during the investigation at the accident scene rather than directing him to return to his car.

Any credibility in Respondent's argument that he did not intend to interfere with the investigation, but acted only out of concern for Ms. Vargas' welfare, was further eroded by his deliberate involvement with the township attorney. Respondent very clearly acted as a legal advocate for Ms. Vargas when he interacted with the township attorney in a manner normally reserved for defense attorneys. Respondent's conduct prejudiced the administration of justice by causing the township attorney to delay a decision on whether to authorize the criminal complaint against Ms. Vargas, and by leading the township attorney to disqualify his office from the case.

In addition, Respondent made intentional misrepresentations or misleading statements to the Commission and to the Master regarding his text messaging history with Ms. Vargas. Respondent's chain of conduct – interfering at the scene of the arrest, then contacting the township attorney regarding the case, then making misrepresentations regarding his text messages with Ms. Vargas - eroded any credibility in his argument that he acted out of concern for Ms. Vargas' welfare, rather than with an intent to interfere with the administration of justice. This factor weighs in favor of a more serious sanction.

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

As discussed above, Respondent's misconduct implicated the actual administration of justice and, therefore, weighs in favor of a more serious sanction.

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

The considerations discussed with respect to factor (3), above, also demonstrate that Respondent engaged in premeditated and deliberate misconduct. Respondent appeared at the scene of an accident involving his intern, introduced himself as a judge, and asked whether Ms. Vargas "just need[ed] a ride or something." Two days later, after having had time to consider the situation, Respondent contacted the township attorney to discuss the case. A week later, Respondent contacted the township attorney again, discussing possible attorneys to represent Ms. Vargas. In addition, Respondent deliberately made false statements in his answer to the formal complaint and in his testimony at the public hearing. This factor weighs in favor of a more serious sanction.

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

The evidence showed that, while Respondent's interference in the investigation and prosecution of Ms. Vargas' case delayed the criminal process,

Ms. Vargas was eventually charged with operating while intoxicated, to which she pleaded guilty. Respondent's intentional misrepresentations or misleading statements at the public hearing, however, clearly undermined the discovery of the truth in these proceedings. Therefore, this factor weighs in favor of a more severe sanction.

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

The evidence does not show that Respondent's actions caused the unequal application of justice on the basis of a class of citizenship. Accordingly, this factor does not weigh in favor of a more severe sanction.

In sum, our consideration of the totality of all seven *Brown* factors weighs in support of the imposition of a more severe sanction.

In addition to the *Brown* factors, the Michigan Supreme Court has consistently concluded that "dishonest or selfish conduct warrants greater discipline than conduct lacking such characteristics." *In re Morrow*, 496 Mich 291, 302-303; 854 NW2d 89 (2014). This principle further supports our conclusion that Respondent's dishonest conduct warrants a more severe sanction.

B. The Basis for the Level of Discipline and Proportionality

In determining an appropriate sanction in this matter, the Commission is mindful of the Michigan Supreme Court's call for "proportionality" based on comparable conduct. Based on the facts, the Commission believes that removal from office is an appropriate and proportional sanction for Respondent's misconduct.

The primary concern in determining an appropriate sanction is to "restore and maintain the dignity and impartiality of the judiciary and protect the public." *In re Ferrara*, 458 Mich 350, 372, 582 NW2d 817 (1998). Respondent intentionally used his status as a judge in an attempt to influence the investigation and prosecution of criminal case for the benefit of his intern. This type of conduct erodes the public's confidence in the judicial system and is "deleterious to the integrity and honor of the judiciary." *In re Justin*, 490 Mich 394, 415; 809 NW2d 126 (2012). Respondent also made intentional misrepresentations or misleading statements, under oath, at the public hearing and in his answer to the formal complaint. Dishonesty in these circumstances erodes the public's confidence in the judiciary. See *In re Noecker*, 472 Mich 1, 13; 691 NW2d 440 (2005)("Central to our decision to remove respondent is our conclusion that respondent misled the police, the public, and the JTC about his drinking on March 12, 2003.") Therefore,

the Commission concludes that Respondent's misconduct warrants removal from judicial office.

VII. Assessment of Costs, Fees, and Expenses

As noted, the Commission finds that Respondent made intentional misrepresentations or misleading statements to the Commission in his answer to the formal complaint, and during his testimony at the public hearing. Accordingly, the Commission requests that Respondent be ordered to pay the costs, fees, and expenses incurred by the Commission in prosecuting the complaint. See MCR 9.205(B). The Examiner has submitted an affidavit showing costs, fees, and expenses incurred by the Commission in the amount of \$7,565.54. Therefore, the Commission requests an assessment of costs, fees, and expenses in the total amount of \$7,565.54.

VIII. Conclusion and Recommendation

The Commission concludes that Respondent committed misconduct in office when he intentionally interfered, or attempted to interfere, with the police investigation at the scene of Ms. Vargas' arrest and when he intentionally interfered, or attempted to interfere, with the subsequent criminal prosecution by contacting the city attorney to advocate on Ms. Vargas' behalf. In addition, Respondent committed judicial misconduct by making intentional misrepresentations or misleading statements in his answer to the formal complaint

and in his testimony at the public hearing. On the basis of his judicial misconduct, the Commission recommends that Respondent be removed from office. In addition, on the basis of the Commission's findings that Respondent made intentional misrepresentations or misleading statements to the Commission and to the Master, the Commission recommends that Respondent be ordered to pay an assessment of costs, fees, and expenses in the total amount \$7,565.54.

JUDICIAL TENURE COMMISSION



HON. DAVID H. SAWYER
Chairperson



HON. PABLO CORTES
Vice-Chairperson



NANCY J. DIEHL, ESQ.
Secretary



HON. MONTE J. BURMEISTER



DAVID T. FISCHER



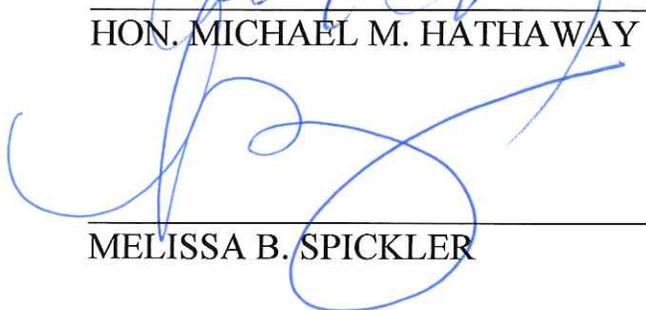
HON. NANCI J. GRANT



HON. MICHAEL M. HATHAWAY



THOMAS J. RYAN, ESQ.



MELISSA B. SPICKLER