

**STATE OF MICHIGAN**

**BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION**

**COMPLAINT AGAINST**

Hon. J. Cedric Simpson  
14-A District Court  
415 W. Michigan Avenue  
Ypsilanti, Michigan 48202

**Formal Complaint No. 96**

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**INTRODUCTION**

The charges in this matter arise out of an alleged social relationship between the Respondent and his intern, Ms. Crystal Vargas ("Ms. Vargas"). The Respondent and Ms. Vargas allegedly exchanged over 10,000 text and phone messages in a four month period of time. Ms. Vargas was involved in an automobile accident at 4:30 AM on Sunday, September 8, 2013, at a location near Respondent's home. She called Respondent, and he arrived at the accident scene within a short period of time. It is alleged that when Respondent appeared at the scene, he interfered with the police officer's investigation. It is further alleged that Respondent interfered with the prosecution of Ms. Vargas for operating while intoxicated. Finally, it is alleged that

Respondent lied about the nature of the text and phone messages and interfering with the police investigation and prosecution.

## **FINDINGS OF FACT**

### **COUNT I INTERFERING WITH POLICE INVESTIGATION**

Paragraphs 17-23 of the Formal Complaint generally allege that Respondent approached Officer Cole while he was conducting sobriety tests upon Ms. Vargas and interfered with the conduct of the investigation. Respondent pleads that he does not have a recollection of whether the officer was conducting sobriety tests at the time. Ms. Vargas testified that several tests had been completed when the Respondent arrived, and she was performing the heel-to-toe walking test when Respondent approached. Vargas TR 41. A review of Exhibit 7 confirms this. Officer Cole testified that when Respondent appeared on the scene, he inquired of Ms. Vargas who the person was, and she replied, "Judge Simpson." Officer Cole explained that under similar circumstances, he would have instructed the individual to return to his vehicle, but that he did not because he was a judge. As Officer Cole approached, Respondent identified himself as "Judge Simpson." He then, after inquiry by Respondent, advised him that Ms. Vargas was okay. Without further inquiry or permission, the Respondent walked with Officer Cole up to Ms. Vargas, and she advised him that she was okay. Officer Cole then told Ms. Vargas that he was going to continue the sobriety tests. TR. 255. While he continued the tests, he also was keeping an eye on the Judge. He further testified that one of the questions that he would normally ask is where the suspect had been drinking, but he did not because he assumed that it was at the Judge's home

because of the proximity of the crash site to Respondent's home. When Officer Cole was trying to determine the drivability of Ms. Vargas' car, the Respondent, without permission, approached Officer Cole's patrol vehicle where Ms. Vargas, who was cuffed, was seated. TR 264. Each of these actions constituted a distraction from the officer's duties and an interference with the officer's performance of his duty. While Respondent's appearance at the scene might be justified out of concern for Ms. Vargas' wellbeing after the accident, once it was established by Officer Cole that she was okay, further interjection by the Judge was not justified.

The Director of Public Safety wrote the Township Attorney more than a month after the arrest; "I do not think it is appropriate for Judge Simpson to be interfering with this case, especially before it is even authorized and before court proceedings. I want the case to be authorized immediately and a supplemental report will be filed documenting his involvement." EX 42. In response, the Township Attorney replied, "But out of respect and deference to Judge Simpson, I have been sitting on it." This is strong evidence of the effect of the Respondent's actions on the Department of Public Safety.

Respondent's appearance at the accident scene, his self-introduction as a judge, his involvement beyond assuring himself of Ms. Vargas' safety and his subsequent offer to give her a ride prove beyond a preponderance that Respondent interfered with the police investigation.

COUNT II  
INTERFERING WITH THE PROSECUTION

Mr. Lillich, the Township Attorney, testified at the hearing, consistent with the email to the Director of Public Safety, that he sat on the matter out of deference to Judge Simpson. He recalled that he was contacted by and talked to the Respondent on September 10, 2013, two days after the arrest, and before he received the police report. The Respondent told him about the accident and that “she was a good kid, and she was from Texas and in a bad relationship,” and then brought up discrepancies in the Breathalyzer. TR 301-302. He also recalled talking to the Respondent on September 17, 2013, discussing potential defense attorneys, and Lillich said, “ I would be glad to just sit on this or hold this thing until the attorney gets involved and then talk to the attorney about the –about the problems with the case if there are problems with the case.” TR. 312. He continued that the problems were “Probably the Breathalyzer, discrepancies in the Breathalyzer or if there was something else he (the attorney) thought there was a reason I shouldn’t authorize the case. I didn’t see it.” Mr. Lillich’s version of these events is credible; he constructed a timeline of the events from his phone messages, and they are consistent with contemporaneous emails and with his statement during the investigation a year prior to his appearance at the hearing.

Mr. Lillich disqualified his office from handling the matter on October 21, 2013, because:

“Judge Simpson contacted my office regarding this matter, Crystal Vargas. His intern Crystal Vargas. An issue has been raised regarding the propriety of that contact. To avoid any appearance of impropriety, this matter should be reviewed and authorized under state law.” Exhibit 11.

On cross examination, counsel for Respondent raised the issue of whether Respondent had requested the police report to assess “whether to keep this young woman as an intern.” This is the reason that Respondent has advanced for his communications with Mr. Lillich. Yet, on September 13, 2013, Mr. Lillich had provided Respondent a copy of the report and a note that he was going to authorize. This was before the conversation on September 17, 2013, where he said he discussed potential attorneys and said, “I would be glad to just sit on this or hold this thing until the attorney gets involved and then talk to the attorney about the --about the problems with the case if there are problems with the case.”

Respondent's explanations are not credible. A concern about an intern's integrity would not be prefaced with her being a "good kid from Texas and in a bad relationship," followed with a call about potential defense attorneys. The examiner's allegations regarding interfering with the prosecution have been proven by a preponderance of the evidence.

### COUNT III MISREPRESENTATIONS

Paragraphs 64–67 allege that Judge Simpson misrepresented the nature of his relationship with Crystal Marie Vargas, his court intern, and a student in the class he was teaching at Cooley Law School.

Paragraph 65 of the Complaint alleges that:

Between August 1, 2013, and November 30, 2013, Respondent and Ms. Vargas exchanged approximately 10,000 phone calls and text messages. Those phone calls and text messages included seven phone calls (including one for 26 minutes) on the afternoon and evening of Saturday, September 7, 2013, (the last of which was at 9:36PM), seven hours before Ms. Vargas was arrested for drunk driving. In addition many of the text messages and phone calls between Respondent and Ms.

Vargas took place well after the Court's business hours and as early as 5:30 AM.

Respondent's formal Answer admits the factual allegations in this allegation, but further states:

That the vast majority of the communications related to a complex, sensitive project Ms. Vargas was working on for Judge Simpson in the case of *People v. Nadere Nassif*, #CRW 13-1244-FH. Judge Simpson had assigned Ms. Vargas the task of reviewing an extremely large volume of text message records that were then the subject of litigation in *Nasiff*. Ms. Vargas' review of these records and her need to report to Judge Simpson what she was finding as she was going along led to an extremely large number of text messages and telephone calls during that period of time, including at times other than normal business hours. Other communications during this period involved one or more other matters Judge Simpson had assigned her to work on. Neither the number nor the nature of the communications was in any way improper, nor were the communications in any way an indication of an inappropriate relationship. If the contents of the text messages could be retrieved, the contents would confirm that the communications were appropriate, business-related communications.

Several facts belie this Answer. First, the sheer volume of text messages and phone calls. Norman Ray Clark, the custodian of records for Sprint, who has testified in over four hundred trials, says that the largest number of messages (phone and text) that he has seen in a month is 5,000 in a drug trafficking case. (Tr. 3.30.15 PP 31-33) The number here rivals that.

Second, as can be seen from the Answer at paragraph 65, the purported reason was work primarily on the *Nasiff* case. However, on April 18, 2014, and September 11, 2014, in response to inquiries from the Judicial Tenure Commission, Respondent's explanation for the phone calls and text messages was, "As a result of personal problems she was having with an ex-boyfriend, she communicated with Judge Simpson about those problems, and he gave her advice as to what steps to take to protect

herself.” (EX 2 P2) Similarly on September 11, 2014, Respondent stated that, “... Judge Simpson was aware of problems Ms. Vargas was having with a former boyfriend who had apparently been violent toward her and was apparently stalking her; he was concerned for Ms. Vargas’ safety, and he communicated with her as to the availability of resources to help her in the event she needed help.” (EX4 P2) Nowhere in either document does the issue of the *Nasiff* case appear. Third, Ms. Vargas appeared by *de benne esse* deposition and testified regarding her work:

Q. Did you work exclusively in his court?

A. I worked in his chambers.

Q. And what did you do?

A. I was an intern. **So what I did is I observed, more than anything,** civil hearings, motions, and landlord-tenant hearings.

Q. Did you do any research?

A. A lot.

Q. What did you research?

A. Any questions regarding cases he would assign me., and I was also – I also wrote about two opinions.

Q. Any other interns there?

A. At the time with me, yes, there was a lot.

Q. When you say “a lot,” please define that.

A. A rough estimate of perhaps eight.

Q. Was everyone working in the same area you were, or were they kind of scattered?

A. They were in the same area.

Q. They were all working out of the Judge's chambers?

A. Yeah. We have a long table, and that's where we work at.

*(Emphasis added)* Vargas TR. Pg. 9 Ex. 27.

Notably absent from this exchange is any mention of the *Nasiff* case or working after hours, or at a location other than the court that would account for the unusual number of texts. Upon further questioning, Ms. Vargas does mention working on a criminal case that she states was under seal, which she cannot talk about, and which she saw the Judge outside of court about. But, she does not mention anything regarding texts or an unusual amount of work. Vargas TR. Pp 32-34.

Moreover, Judge Simpson testified at the hearing that the text messages in the *Nasiff* case arrived on September 12, 2013, after the accident, TR. P. 64. A purported review of those texts simply does not support the thousands of messages exchanged before the accident.

Similarly, the issue of Judge Simpson's concern for Ms. Vargas' personal safety as a reason for the extraordinary number of contacts is not supported by the record. First and foremost, Ms. Vargas testified that she was never physically assaulted. Vargas Tr. Pp 27-29. This is consistent with the police report that was filed in January of 2013. Ms. Vargas began working for the Judge on July 10, 2013. EX 24. Exhibit 31A, the record of phone and text messages, reveals that in the time period between July 23 and July 31, 2013, Judge Simpson and Ms. Vargas exchanged more than 1,100 messages; mostly texts. Yet, Ms. Vargas reports that the first time the issue of domestic abuse came up was in early August. These texts were mutual exchanges and many, if not most, occurred in the late evening hours up to midnight.



The proffered explanations are simply not credible. A judge supervising an intern has a responsibility to teach that person about acceptable professional business practices. Transmitting legal findings and observations by the thousands in the late evening by text, when they are not and cannot be preserved, simply does not meet that professional standard and is not a believable explanation. Similarly, while the record does not support a great fear by Ms. Vargas for her personal safety, if Respondent's concerns were real, other positive steps should have been taken by him that would have assured appropriate boundaries such as involving the police or a professional counselor. The allegations regarding misrepresenting text and telephone messages have been proven by a preponderance of the evidence.

Paragraphs 68-69 of the Formal Complaint allege that the Respondent lied about his reason for appearing at the arrest scene. Respondent stated in his Answer to the 28-day letter that he appeared at the arrest scene because he "was worried that the incident that night might be related to her ex-boyfriend" and that he went to see if she was okay. He repeated that assertion at the hearing. TR. 220-221. Ms. Vargas testified that she was upset on September 7, 2013, the day before the accident, because her ex-boyfriend had been texting her regarding property issues, she drank three beers and was driving to clear her mind. Interestingly, she testified that she does not recall talking or texting to anyone while driving around that night. Vargas TR. 26. The Respondent testified that he went to bed at approximately 1:30 AM on the morning of September 8, 2013, and was awakened by Ms. Vargas' call about 4:25 AM. Neither the Respondent nor Ms. Vargas testified to the mutual exchange of text messages commencing at 4:20 AM and ending at 4:23 AM between the Respondent and Ms. Vargas. (See EX 31A P.

67 of 139, lines 10,170-10,177 and the testimony of Mr. Norman Ray Clark that text messages are timed stamped in Central Time so that a text sent from Michigan would be time stamped one hour earlier. TR. Pp 26-27.) When Respondent appeared at the scene, he did not inquire about the ex-boyfriend (TR p 251). If the ex-boyfriend had been the topic of the texts and earlier conversations, and if they were the motivating reason for his appearance, logic dictates that the Respondent would have inquired about the ex-boyfriend. This assertion is like the phantom car in a personal injury case; easy to allege and impossible to disprove. The texts belie the truth of the reported reason for the Respondent's appearance. The evidence suggests he was there to inject himself into the investigation in support of Ms. Vargas who was clearly more than a mere employee. The allegation regarding misrepresenting the reason for Respondent's appearance at the accident scene has been proven by a preponderance of the evidence.

Paragraphs 72-75 of the Formal Complaint concern whether Respondent answered truthfully in his September 14, 2014, letter to the Commission that he did not, in any way, interfere with Officer Cole's investigation or "suggest or imply that in any way that he wanted special treatment for Ms. Vargas." The conduct and answer here cannot be separated from both the Respondent's office and his experience, before assuming office, as a prosecutor that handled drunk driving cases. Viewed in the context of the scene, the acknowledgment that Ms. Vargas was okay and Respondent's professional experience, Officer Cole's comment that, "he wants to make sure she's okay to drive" can only be interpreted as an expression that he was about to assess her sobriety. At this point, Respondent asks, "Well does she just need a ride or something?" Tr. 250-253. Respondent's question clearly implies that he is available to

short circuit the process. He was given special treatment by being allowed to talk to Ms. Vargas and assure himself that she was okay and then sought to further involve himself in the process and he was willing and hoping to do so. If his concern was to insure that she was okay, that was accomplished with his first conversation with Officer Cole. Further assurance was provided when he spoke directly to her. Being so assured he could and should have returned to his vehicle. However he continued to inquire about providing a ride. Respondent was not truthful when he answered that he did not, in any way, interfere with Officer Cole's investigation or "suggest or imply that in any way that he wanted special treatment for Ms. Vargas." Further, as noted in Count I, Respondent approached Officer Cole while he was conducting sobriety tests. All of the actions prove that Respondent did, in fact, intrude on the investigation and was seeking special treatment for Ms. Vargas.

Paragraph 76 of the Formal Complaint alleges that Respondent was untruthful when he stated that Ms. Vargas appeared unexpectedly at his home on the morning of September 8, 2013. Insufficient evidence exists to support this assertion.

Paragraph 78 of the Formal Complaint alleges that, in his April 14, 2014, answers to the Request for Comments, Respondent stated that after September 8, 2013, he had only "Snippets" of conversations with Vargas." Paragraph 79 asserts this was untrue. For a more complete understanding of this exchange, the response must be viewed in the context of the original question posed on February 24, 2014. "Since her arrest, did you have any discussions with Ms. Vargas about the events of September 8, 2013? If so, please provide the dates and details of those discussions." Viewed in this limited context, the only evidence to the contrary, is the 72 pages of telephone and text

message records exchanged between Ms. Vargas and Respondent, after the event. While one can conclude that such communications were not appropriate, business-related communications in their entirety, it is speculation as to what the actual contents of the conversations were. This allegation has not been proven by preponderance.

Paragraphs 80-85 deal with Respondents' truthfulness regarding his contacts with the Pittsfield Township Attorney. For the reasons expressed in the findings on Count II of this Complaint, I find Respondent was not truthful in his answers.

#### MATTERS OF CHARACTER

Counsel for respondent urged the Master to "look at who the person is, not taking out of context this snippet or that snippet and trying to cast a light on it that will not withstand scrutiny when one looks at the bigger picture and how that fits, but to try to see what the bigger picture is and how that conduct, that is at issue fits within that picture." Tr. 454. Respondent presented several professional colleagues who testified that in their opinion, Respondent was a very honest man. And, to be sure, his *curricula vitae*, EX. A. and the professional colleagues who testified on his behalf, present the portrait of a respected member of the bench and the community. However, that picture was indelibly scarred by the Respondent's own presentation at the hearing.

Respondent testified at the hearing that Ms. Vargas called him at about 4:25 AM on September 8, 2014, and was talking loudly on the phone in Spanish, and he was having trouble understanding her. TR. Pp. 90-91. Mr. Clark, the driver of the tow truck that struck Ms. Vargas' vehicle, went up to her window, saw her on the phone and testified that she appeared calm, was not speaking in Spanish and did not in any way seem upset. TR. Pp. 179-182. When Officer Cole arrived, Ms. Vargas was still on the

phone, and he directed her to hang up. He testified that she did not seem hysterical, was not crying or speaking in a foreign language. These independent witnesses contradict Respondent. Even more telling in this regard is EX. 7, the police video taken when Officer Cole arrives. The best description of Ms. Vargas would be giddy.

As noted above, Respondent's explanation for more than 10,000 phone and text messages in less than five months is simply not credible. His other explanations are not credible either as previously discussed. These untruths heavily influence the findings on matters involving interfering with the conduct of the investigation and the prosecution. However, each of those stand independently corroborated.

### CONCLUSIONS OF LAW

The Examiner urges the Master to find the Respondent responsible for misconduct in office as defined in Michigan Constitution of 1963, Article VI, Section 2 (sic). That section is inapposite and is presumably a reference to Michigan Constitution of 1963, Article VI, Section 30 (2). That section provides:

(2) On recommendation of the judicial tenure commission, the supreme court may censure, suspend with or 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 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. (*Emphasis added*)

However, the facts presented lack the requisite intent to sustain a charge of misconduct in office.

The Michigan Court of Appeal recently ruled that:

The requisite “intent” for purposes of misconduct in office under MCL 750.505 is the intent to engage in corruption or corrupt behavior; a corrupt intent needs to be proven. *Perkins*, 468 Mich. at 456, 662 N.W.2d 727; *Hardrick*, 258 Mich.App. at 244, 246–247, 671 N.W.2d 548; *Milton*, 257 Mich.App. at 471–472, 668 N.W.2d 387; *People v. Carlin (On Remand)*, 239 Mich.App. 49, 64, 607 N.W.2d 733 (1999); *Coutu*, 235 Mich.App. at 706, 599 N.W.2d 556 (misconduct in office requires “a showing of corrupt intent”). As indicated earlier, corrupt intent “can be shown where there is intentional or purposeful misbehavior or wrongful conduct pertaining to the requirements and duties of office by an officer.” *Id.* “ ‘It is *corrupt* for an officer purposely to violate the duties of his office.’ ” *Id.* at 706–707, 599 N.W.2d 556 (citation omitted). *People v. Waterstone*, 296 Mich. App. 121, 141–42, 818 N.W.2d 432, 442–43 (2012).

Other decisions have found that common-law “misconduct in office” is corrupt behavior by an officer in the exercise of the duties of his office or while acting under color of his office. *People v. Coutu* (1999) 589 N.W.2d 458, 459 Mich. 348, on remand 599 N.W.2d 556, 235 Mich.App. 695, on remand 607 N.W.2d 733, 239 Mich.App. 49.

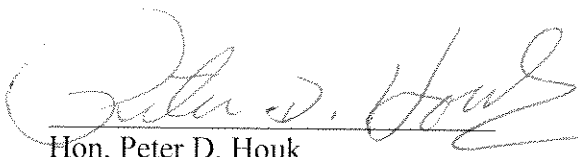
When Respondent appeared at the scene of the accident/arrest, he was not acting under color of his office. Similarly, it cannot be concluded that when he was sending and receiving texts that he was acting under color of his office. While he asserts that many of the texts were associated with a case, if true, that does not invoke the misconduct of office charge. If the texts were all of a personal nature and going to his personal phone, the charge is not established. While arguably the calls to Mr. Lillich could be viewed in this nature, a more suitable and sustainable charge follows. In sum, there is no violation of Michigan Constitution of 1963, Article VI, Section 30 (2).

The Examiner further alleges that Respondent’s conduct is clearly prejudicial to the administration of justice, as defined by Michigan Constitution of 1963, Article VI, Section 30 (2) and MCR 9.205. Pursuant to MCR 9.205, misconduct in office includes but is not limited to; (e) misuse of judicial office for personal advantage or gain, or for

the advantage or gain of another; and (f) failure to cooperate with the reasonable request made by the Commission in its investigation of a judge. Clearly as defined in MCR 9.205, Respondent used his office for the gain of another when he interceded with Mr. Lillich. The results of that interference may have only been a delay in prosecution, but even the eventual disqualification was prompted by the police department stepping in.

Respondent's conduct also violated Canons I and II of the Michigan Code of Judicial Conduct when he failed to maintain and observe high standards of conduct by interfering at the arrest scene and contacting prosecuting authorities. Officer Cole's testimony and the Director of Public Safety's memo clearly show that Respondent's conduct appeared inappropriate to them and eroded their confidence in the integrity of the judicial system and its impartiality.

MCR 9.205(B) provides that a judge may be disciplined if the judge, "made misleading statements to the Commission, the Commission's investigators, the master, or the Supreme Court." Respondent made misleading statements to the Commission's investigators and to the Master when he testified to the nature of the text messages and denied interfering with the police investigation and the prosecution of Ms. Vargas. These actions expose the courts and profession to "obloquy, contempt, censure, and reproach in violation of MCR 9.104(2). "

  
Hon. Peter D. Houk  
Master

Dated: 4.28., 2015