

STATE OF MICHIGAN  
BEFORE THE JUDICIAL TENURE COMMISSION

In re Hon. J. Cedric Simpson,  
Respondent.

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Formal Complaint #96

ANSWER TO FORMAL COMPLAINT

Now comes Hon. J. Cedric Simpson, Respondent herein, by and through his attorney, Kenneth M. Mogill, and in answer to the Formal Complaint filed in this matter states as follows:

1. Admits.

2. Admits.

3. Admits.

4. Admits and states further that Ms. Vargas was a student of Judge Simpson's in the pretrial skills course he was then teaching at Thomas M. Cooley Law School (now Western Michigan University Thomas M. Cooley Law School).

5. Admits.

6. Admits that Ms. Vargas' internship occurred at the same time as the internships of seven or eight other interns, who were scheduled to work in Judge Simpson's chambers at various days and times.

7. Admits that, based upon information and belief, Ms. Vargas was involved in a motor vehicle accident at about 4:22 a.m. on September 8, 2013, in Pittsfield Township, Michigan. While Judge Simpson now understands that Ms. Vargas had been drinking prior to the accident, he had no knowledge at the time that she had been drinking.

8. Admits.

COUNT I

9. Admits that Ms. Vargas called Judge Simpson after being involved in the accident; Judge Simpson has no personal knowledge as to how much time elapsed between the accident and Ms. Vargas' call to him. During that conversation, Judge Simpson told Ms. Vargas to call the police.

10. Neither admits nor denies, as Judge Simpson has no personal knowledge as to when the officer arrived at the scene.

11. Neither admits nor denies, as Judge Simpson has no personal knowledge as to what, if anything, the officer said to Ms. Vargas upon approaching her.

12. Neither admits nor denies, as Judge Simpson has no personal knowledge as to what time his conversation with Ms. Vargas ended.

13. Neither admits nor denies, as Judge Simpson has no personal knowledge as to what time the officer began administering field sobriety tests to Ms. Vargas.

14. Admits that he arrived at the scene at approximately 4:30 a.m. but neither admits nor denies the specific time, as Judge Simpson does not recall the specific time he arrived at the scene.

15. Admits that he parked his vehicle near to where Ms. Vargas was but neither admits nor denies the approximate distance between his vehicle and the scene, as he has no particular recollection of that distance.

16. Admits that at some point shortly after Judge Simpson's arrival at the scene, Ms. Vargas advised the officer that the person who had arrived was "Judge Simpson".

17. Neither admits nor denies, as Judge Simpson does not have a specific recollection as to whether the officer was administering sobriety tests to Ms. Vargas as he approached the scene; to the best of Judge Simpson's recollection, the officer was not conducting sobriety tests but was

speaking with Ms. Vargas when he arrived at the scene but had begun administering sobriety tests shortly thereafter.

18. Neither admits nor denies, as Judge Simpson does not recall the details of how he and the officer first came to speak with one another.

19. Denies that Judge Simpson “directed” the officer to discontinue conducting sobriety tests on Ms. Vargas for the reason that the allegation is untrue.

20. Neither admits nor denies; while Judge Simpson had a conversation with the officer, and the officer provided him with a brief summary of what the situation was, Judge Simpson does not have a specific recollection as to whether he asked the officer what had happened.

21. To the best of Judge Simpson’s recollection, the allegation of this paragraph is accurate.

22. When Judge Simpson approached Ms. Vargas, it was his understanding that he was doing so with the officer’s permission, and nothing that occurred later while he was at the scene led him to believe otherwise.

23. Neither admits nor denies for the reason that Judge Simpson has no personal knowledge as to why the officer permitted him to approach Ms. Vargas. Judge Simpson also notes that he did not, at any time, directly or indirectly, use or attempt to use his judicial position in order to do or become able to do anything in relation to this matter.

24. To the best of Judge Simpson’s recollection, the allegation of this paragraph is substantially accurate.

25. When Judge Simpson spoke with Ms. Vargas, he did so with the officer’s specific permission.

26. To the best of Judge Simpson’s recollection, the allegation of this paragraph is

substantially accurate, except that he recalls Ms. Vargas as having also been extremely upset and worried about her future.

27. When the officer wanted to resume his activities in relation to Ms. Vargas, either in the form of sobriety tests or questions, Judge Simpson ceased speaking with Ms. Vargas so that he would not be interfering with the officer, and he moved away from where he had been while speaking with Ms. Vargas.

28. Neither admits nor denies, as Judge Simpson has no personal knowledge of the results of the PBT.

29. Admits that, at some point, Ms. Vargas was arrested, handcuffed and placed in the back seat of the patrol car.

30. Admits.

31. Admits that, with the officer's permission, he had a conversation with Ms. Vargas in which he attempted to reassure her that she would get through this experience and that her career was not over, but Judge Simpson does not recall all of the specific language he or Ms. Vargas used at that time.

32. Admits that, at the suggestion or request of the arresting officer, Ms. Vargas gave her car keys and cell telephone to Judge Simpson, who reluctantly agreed to accept possession of them; admits further that he suggested to Ms. Vargas that she contact him or someone known to both of them when she was released, as she would have to do so in order to retrieve her keys and cell phone.

33. Neither admits nor denies, as Judge Simpson has no personal knowledge as to the allegations of this paragraph.

34. Neither admits nor denies, as Judge Simpson has no personal knowledge as to the

allegations of this paragraph.

35. Neither admits nor denies, as Judge Simpson has no personal knowledge as to the allegations of this paragraph.

36. Admits that, following her release, Ms. Vargas came to Judge Simpson's home and that he thereafter drove her to Sakstrup's Towing to retrieve her vehicle; states further that, until Ms. Vargas arrived at his home, Judge Simpson was not aware that she had been released or was coming to his home.

37. Admits that he used his own credit card to pay Ms. Vargas' towing fees after Ms. Vargas twice attempted to use her own credit or debit card, which attempts were declined. Notes further that Ms. Vargas repaid Judge Simpson in full within days.

## COUNT II

38. Admits.

39. Neither admits nor denies, as Judge Simpson has no personal knowledge as to the allegations of this paragraph.

40. Neither admits nor denies, as the allegation of this paragraph is misleading and taken out of context.

41. Admits that the conversation with Mr. Lillich covered a number of topics and that, with respect to the particulars of the conversation, Judge Simpson advised him that he had informed Ms. Vargas' law school about her arrest as required by the school's Honor Code, that he was concerned as to whether Ms. Vargas was being candid with him about her behavior prior to the accident and that Ms. Vargas seemed to him to be a good person; Judge Simpson also expressed his concern to

Mr. Lillich about an apparent discrepancy between what Ms. Vargas had told him about her BAC level and what he understood the test results showed. With respect to the remaining allegations of this paragraph, Judge Simpson does not have a specific recollection as to whether or not he made such statements.

42. Admits that the conversation with Mr. Lillich covered a number of topics, but, with respect to the alleged particulars of the conversation, Judge Simpson does not have a specific recollection as to whether or not he made such statements.

43. Admits that Judge Simpson requested a copy of the police report and denies that he requested copies of all warrant request documents for the reason that this portion of the allegation of this paragraph is untrue. Moreover, Judge Simpson had a legitimate interest in obtaining a copy of the police report in order to utilize it in determining whether or not to permit Ms. Vargas to continue working in his chambers.

44. Neither admits nor denies, as Judge Simpson has no personal knowledge as to the allegations of this paragraph.

45. Admits that on September 15, 2013, Judge Simpson received a copy of the police report from Mr. Lillich.

46. Neither admits nor denies for the reason that Judge Simpson has no personal knowledge as to why Mr. Lillich provided the requested material to him. Judge Simpson also notes that he did not, at any time, directly or indirectly, use or attempt to use his judicial position in order to gain access to the material.

47. Admits.

48. Admits that Judge Simpson called Mr. Lillich on September 17, 2013, to thank him for

forwarding him a copy of the police report and to discuss an unrelated matter with him; the unrelated matter involved alternative dispute resolution.

49. Admits that during that conversation, in response to a question from Mr. Lillich, Judge Simpson may have told Mr. Lillich that he had given Ms. Vargas the names of several attorneys she might consider hiring.

50. The allegation of this paragraph is misleading, as neither Judge Simpson nor Mr. Lillich “considered” which attorney or attorneys “could properly represent Vargas”. As noted in response to the allegation of paragraph 49, Judge Simpson may have told Mr. Lillich that he had given Ms. Vargas the names of several attorneys she might consider hiring, but the decisions as to whether to hire an attorney and which attorney to hire were entirely Ms. Vargas’ decisions.

51. Denies for the reason that the allegation of this paragraph is untrue. Judge Simpson did not request that Mr. Lillich “sit” on the matter, and Mr. Lillich did not offer or agree to “sit” on the matter.

52. While Judge Simpson is aware that Ms. Vargas retained John Shea to represent her, he has no personal knowledge as to the date she did so.

53. Neither admits nor denies, as Judge Simpson has no personal knowledge as to the allegations of this paragraph.

54. Neither admits nor denies, as Judge Simpson has no personal knowledge as to the allegations of this paragraph.

55. Neither admits nor denies, as Judge Simpson has no personal knowledge as to the allegations of this paragraph.

56. Neither admits nor denies, as Judge Simpson has no personal knowledge as to the

allegations of this paragraph and notes further that any claim that Judge Simpson had been interfering in the matter is untrue.

57. Neither admits nor denies, as Judge Simpson has no personal knowledge as to the allegations of this paragraph.

58. Neither admits nor denies, as Judge Simpson has no personal knowledge as to the allegations of this paragraph.

59. Neither admits nor denies, as Judge Simpson has no personal knowledge as to the allegations of this paragraph.

60. Neither admits nor denies, as Judge Simpson has no personal knowledge as to the allegations of this paragraph.

61. Neither admits nor denies, as Judge Simpson has no personal knowledge as to the allegations of this paragraph.

62. To the best of Judge Simpson's recollection, he saw Mr. Lillich at a December 2013 charity event and had a brief conversation with him at that time; the conversation was limited to discussing Mr. Lillich's law firm's loss of the Pittsfield Township contract; denies that Mr. Lillich apologized to Judge Simpson for not being able to "handle" Ms. Vargas' matter, for the reason that the allegation of this paragraph is untrue and/or significantly misleading.

63. Neither admits nor denies, as Judge Simpson has no personal knowledge as to the allegations of this paragraph.

### COUNT III

64. Admits.



65. Admits and states further that the vast bulk of the communications related to a complex, sensitive project Ms. Vargas was working on for Judge Simpson in the case of *People v Nader 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 *Nassif*. 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 between Ms. Vargas and Judge Simpson 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.

66. Admits.

67. Denies for the reason that the allegation of this paragraph is untrue.

68. Admits.

69. Denies for the reason that the allegations of this paragraph are untrue.

70. Denies for the reason that the allegation of this paragraph is untrue; Judge Simpson truthfully told the Commission that he had, in fact, spoken with Ms. Vargas and truthfully also told the Commission that he did so after asking the officer whether it would be okay to speak with her and the officer indicating that that would be okay.

71. Denies for the reason that the allegation of this paragraph is untrue.

72. Admits.

73. Denies for the reason that the allegation of this paragraph is untrue.

74. Admits.

75. Denies for the reason that the allegation of this paragraph is untrue.

76. Admits.

77. Denies for the reason that the allegation of this paragraph is untrue.

78. States that in his April 18, 2014, answer to the Request for Comments, Judge Simpson responded to the following question: “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.” In response to that question, Judge Simpson stated in full as follows: “After the events of September 8, 2013, Judge Simpson had what he would describe as snippets of conversations with Ms. Vargas on a number of occasions. He does not remember the date of any such conversation. He does recall, however, that he gave her the names but not the telephone numbers of attorneys she may wish to consider retaining, and he asked her to keep him apprised of her court dates. He asked her to let him know her court dates so that he could make sure not to be around any time her case was scheduled to be heard.” That answer was entirely truthful. Respondent states further that the allegation of paragraph 78 is misleading for the reason that, while the question posed in the Request for Comments was limited to asking about Judge Simpson’s post-arrest communications with Ms. Vargas about the events of September 8, and Judge Simpson’s answer was responsive to that question, the allegation of paragraph 78 erroneously suggests that Judge Simpson’s answer had been to a more broadly worded question.

79. Denies for the reason that the allegation of this paragraph is untrue.

80. Admits.

81. Denies for the reason that the allegation of this paragraph is untrue.

82. Admits.

83. Denies for the reason that the allegation of this paragraph is untrue.

84. Admits.

85. Denies for the reason that the allegation of this paragraph is untrue.

WHEREFORE, the Formal Complaint should be dismissed for the reasons that Judge Simpson has not engaged in judicial misconduct as alleged. In particular –

a. he has not engaged in misconduct in office and has not violated Const 1963, art 6, § 2;

b. he has not engaged in conduct clearly prejudicial to the administration of justice and has not violated Const 1963, art 6, § 10, or MCR 9.205;

c. he has not engaged in a failure to establish, maintain, enforce or personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved and has not violated the Code of Judicial Conduct, Canon 1;

d. he has not engaged in irresponsible or improper conduct which erodes public confidence in the judiciary and has not violated the Code of Judicial Conduct, Canon 2(A);

e. he has not engaged in conduct involving impropriety or the appearance of impropriety and has not violated the Code of Judicial Conduct, Canon 2(A);

f. he has not engaged in a failure to respect and observe the law or failed to conduct himself at all times in a manner which would promote the public's confidence in the integrity and impartiality of the judiciary and has not violated the Code of Judicial Conduct, Canon 2(B);

g. he has not engaged in a failure to prevent family, social or other relationships from influencing judicial conduct or judgment and has not violated the Code of Judicial Conduct, Canon 2(C);

h. he has not engaged in a failure to avoid using the prestige of his office to advance personal business interests or those of others and has not violated the Code of Judicial Conduct, Canon 2(C);

i. he has not engaged in conduct which is prejudicial to the proper administration of justice and has not violated MCR 9.104(1);

j. he has not engaged in conduct which exposes the legal profession or the courts to obloquy, contempt, censure or reproach and has not violated MCR 9.104(2);

k. he has not engaged in conduct which is contrary to justice, ethics, honesty or good morals and has not violated MCR 9.104(3);

l. he has not engaged in conduct that violates the standards or rules of professional conduct adopted by the Supreme Court and has not violated MCR 9.104(4);

m. he has not engaged in conduct that violates a criminal law of a state or of the United States and has not violated MCR 9.104(5);

n. he has not engaged in a lack of personal responsibility for his own behavior and for the proper conduct and administration of the court in which he presides and has not violated MCR 9.305(A);<sup>1</sup> and

o. he has not engaged in conduct which violates MCLA § 750.505.

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<sup>1</sup>There is no court rule MCR 9.305(A).

AFFIRMATIVE DEFENSES

1. The allegations of the Formal Complaint, individually and taken together, fail entirely to state any claim upon which relief may be granted.
2. With respect to particular allegations of the Formal Complaint, the allegations –
  - (a) fail to state a claim that “family, social, or other relationships” influenced Judge Simpson’s “judicial conduct or judgment”,
  - (b) fail to state a claim that Judge Simpson “use[d] the prestige of office to advance personal business interests or those of others”,
  - (c) fail to state a claim that “family, social, or other relationships” influenced Judge Simpson’s “judicial conduct or judgment”, and
  - (d) fail to state a claim that Judge Simpson engaged in “[c]onduct that violates a criminal law of a state or of the United States” or conduct that violates MCLA § 750.505.

WHEREFORE, Respondent prays that this Formal Complaint be dismissed with prejudice.

Respectfully submitted,

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Hon. J. Cedric Simpson

Dated: November 26, 2014