

# Order

Michigan Supreme Court  
Lansing, Michigan

November 25, 2014

Robert P. Young, Jr.,  
Chief Justice

150405

Michael F. Cavanagh  
Stephen J. Markman  
Mary Beth Kelly  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano,  
Justices

In re:

HON. KIRK W. TABBEY,  
14-A DISTRICT COURT

SC: 150405  
RFI No. 2014-021277

BEFORE THE JUDICIAL TENURE COMMISSION

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The Judicial Tenure Commission has issued a Decision and Recommendation, to which the respondent, Hon. Kirk W. Tabbey, 14-A District Court Judge, consents. It is accompanied by a settlement agreement, in which the respondent waived his rights and consented to a sanction no greater than a public censure and a 90-day suspension without pay.

In resolving this matter, we are mindful of the standards set forth in *In re Brown*, 461 Mich 1293 (2000):

Everything else being equal:

- (1) misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct;
- (2) misconduct on the bench is usually more serious than the same misconduct off the bench;
- (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;
- (4) misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does;
- (5) misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated;
- (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;
- (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.

In the present case, those standards are being applied in the context of the following stipulated findings of fact of the Judicial Tenure Commission, which, following our de novo review, we adopt as our own:

1. The respondent is, and at all material times was, a judge of the 14-A District Court in Ypsilanti, Michigan.
2. As a judge, he is subject to all the duties and responsibilities imposed on judges by this Court, and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205.
3. On September 17, 2014, the respondent operated a motor vehicle by towing a boat and trailer out of the water at a public launch and parking on the shoulder of a public road in Antrim County, Michigan, while having an alcohol content of 0.17 grams or more per 210 liters of breath.
4. On October 1, 2014, a criminal complaint was issued against the respondent, charging him with operating a motor vehicle with a high blood alcohol content, contrary to MCL 257.625(1)(c).
5. On October 16, 2014, the respondent pleaded guilty to a reduced charge of operating a motor vehicle under the influence of alcohol, contrary to MCL 257.625(1)(a), in 86th District Court case no. 2014-9791-SD, before the Hon. Michael Haley.
6. On the same date, Judge Haley sentenced the respondent to pay a fine, and the case was closed.

The standards set forth in *Brown* are also being applied to the Judicial Tenure Commission legal conclusions to which respondent stipulated and which we adopt as our own:

- A. The respondent has pled guilty to the commission of a misdemeanor designed to promote public safety.
- B. The commission of a crime by a judge erodes public confidence in the judiciary, which is prejudicial to the administration of justice.

The Commission also concludes, and we agree, that the respondent's conduct constitutes:

- A. Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, in violation of Canon 1 of the Michigan Code of Judicial Conduct (MCJC);
- B. Irresponsible or improper conduct that erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;
- C. Conduct involving the appearance of impropriety, in violation of MCJC, Canon 2A;
- D. Failure to conduct oneself at all times in a manner that would enhance the public's confidence in the integrity of the judiciary, contrary to MCJC, Canon 2B; and
- E. Conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(A)(2).

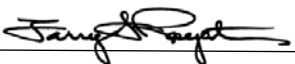
After review of the Judicial Tenure Commission's decision and recommendation, the settlement agreement, the standards set forth in *Brown*, and the above findings and conclusions, we ORDER that the Honorable Kirk W. Tabbey be publicly censured and suspended without pay for 90 days. This order stands as our public censure. The respondent's unpaid 90-day suspension shall be concurrent to his scheduled sick leave.



s1124

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 25, 2014

  
Clerk