STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

**HON. M. T. THOMPSON, JR.**
Judge, 70th District Court
Saginaw, MI 48602
_____/

**FORMAL COMPLAINT NO. 72**

**DECISION AND RECOMMENDATION**
**FOR ORDER OF DISCIPLINE**

At a session of the Michigan Judicial Tenure Commission, held on May 10, 2004, at which the following Commissioners were

PRESENT: James Mick Middaugh, Chairperson
Hon. Barry Grant, Vice Chairperson
Richard Simonson, Secretary
Henry Baskin, Esq.
Carole Chiamp, Esq.
Hon. James C. Kingsley
Hon. Kathleen J. McCann
Hon. Jeanne Stempien
Hon. Michael J. Talbot

On August 22, 2003, the Michigan Supreme Court appointed Honorable Lawrence Glazer to preside as Master over the hearing in Formal Complaint No. 72. The Master heard the testimony of 14 witnesses and received 56 exhibits. On March 1, 2004, following the hearing, the Master issued a 45-page written report, in which he found the charges in Formal Complaint No. 72 (the Complaint) were established by a preponderance of the evidence, with two minor exceptions, and found Respondent Judge M.T. Thompson guilty of misconduct in office and conduct clearly prejudicial to the administration of justice. On April 19, 2004, the Commission

heard objections to the Master's Report by Respondent.[1] The Examiner responded to the objections and recommended that the Commission adopt the Master's report.

Having carefully considered the Master's report, evaluated the hearing transcripts and exhibits, reviewed the briefs filed by Respondent and the Examiner, and heard oral argument, the Commission, pursuant to MCR 9.220(B)(1), adopts the Master's findings of fact and conclusions of law in their entirety.[2] In addition, the Commission notes the following factual findings:

**I**

**Respondent Knowingly and Intentionally Made Numerous Personal Solicitations to Fund and Advance A Program He Was Developing**

1. At all relevant times, Respondent was a judge of the 70th District Court in Saginaw, Michigan, subject to all the duties and responsibilities imposed on him by the Michigan Supreme Court, and subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205.

2. Respondent admitted many of the allegations in the Complaint and acknowledges that he is in violation of Canon 5. In 1997-1998, Respondent developed a middle school crime prevention program called "Making Choices and Facing Consequences**."** (Answer, ¶ 1; Exhibit 65; Volume 5, a.m., 772, *Thompson*) Respondent later also created a stand-alone program called

[1] Commissioner Grant was not present for the public hearing. However, pursuant to MCR 9.220(A)(1), he may participate in this matter by considering the Master's report and briefs of the parties, and by reading the transcript of the public hearing.

[2] The Commission finds certain of the Master's evidentiary rulings during the hearing erroneous with respect to the Examiner's motion to amend the complaint, motion for reconsideration and denial of the Examiner's request to make a separate record pursuant to MCR 9.211(C), which provides: "A separate record must be made if the master or the commission declines to admit evidence." The Examiner allegedly had evidence Respondent's solicitations actually generated over $60,000 in contributions to his fund (approximately double the admitted amount), including solicitations he never revealed to State Court Region III Administrator Bruce Kilmer or the Commission. It is important that the Commission and the Supreme Court have a complete record on which to base its determinations. The proposed additional allegations and evidence were directly related to the allegations in Formal Complaint No. 72, were within the Respondent's personal knowledge, and would not have prejudiced him nor violated due process. The Commission does not specifically overrule the Master in this case, however, as his rulings did not overly prejudice the outcome, based on his factual findings and legal conclusions.

"Bully-proof," and conducted a campaign to introduce his programs to the educational community. (Answer, ¶ 4; Volume 5, 856, *Thompson*)

3. Respondent admitted that he established a fund by means of a letter written to the Saginaw Community Foundation (SCF) on official 70th District Court stationery. (Exhibit 1; Volume 5, p.m., 903-909, *Thompson*) Respondent had complete control and sole access to the fund. Respondent used the SCF fund to finance his projects and programs, including programs for which he holds a copyright. (Exhibit 1; Volume 5, p.m., 903-911, *Thompson*)

4. Respondent repeatedly used official 70th District Court stationery to personally solicit donations to produce and implement his programs and for business correspondence pertaining to the production of his materials, although State Court Region III Administrator Bruce Kilmer gave him a direct warning about solicitations by in 1999.[3] (Answer, ¶ 6; Master's Report "MR," p. 4)[4]

5. Respondent solicited contributions, through letters written on 70th District Court stationery, to finance events and activities involved in his Making Choices and Facing Consequences program, his Bully-proof campaign, and/or Law Day activities, from Citizen's Bank Trust Department, Dow Corning Corporation, Delphi Automotive Systems (G.M.), Braun Kendrick Finkbeiner P.L.C., and Horizons Conference Center. (Answer, ¶ ¶ 7-8, 11; Exhibits 17- 21, 23-27, 29, 31-34, 65; MR 4-5)

8. Respondent also wrote letters on 70th District Court stationery concerning donations to fund his projects to other individuals and companies, including, but not limited to, Lucy Allen, President and CEO of the Saginaw Community Foundation, Mary Princing of

[3] ". . . I warned him not to solicit money. That's why I said, don't ask. You cannot go to these people and ask for money." (Volume 2, 340, *Kilmer*; MR 8)

[4] Future references to the Master's report and page number will be, using this as an example, MR 4.

Princing & Ewend, and Paul Pecora and Lori Maxson of Bresnan Communications, and Dr. Larry Hazen of Anderson Eye Association. (Answer, ¶ 20; Exhibits 35A, 35B, 36, 65; MR 5)

9. Respondent's name and judicial status were prominently featured at the top of advertisements for a concert to benefit his projects: "Honorable M.T. Thompson, Jr., 70th District Court presents: The United States AIR FORCE STRINGS . . . Join Judge Thompson and the Strolling Strings as we celebrate America!" Respondent was also listed, with his court address and telephone number, as the contact person for further information about the benefit concert. (Answer, ¶ 18; Exhibit 55)

10. Respondent's admitted solicitations generated $33,500, which was deposited into Respondent's SCF fund, as well as a discount of over $2,500 by Horizons Conference Center for a 2002 Law Day Banquet. Respondent received $15,000 in 1999. (Answer, ¶ ¶ 6-9, 11-12, 15-20; Volume 1, 39-48, *Stipulations*; Volume 3, 411, *Mr. Thomas*; Volume 5, a.m., 793, *Thompson*)

11. Respondent used funds he solicited to publicize not only his programs, but also himself.[5] Respondent was up for re-election in 2002. In using the funds of others to publicize his programs, Respondent created favorable publicity for himself, at no expense to himself or a re-election committee. (MR 9)

[5] In Exhibit 54, a six-page brochure promoting the "Bullyproof" Law Day program, Respondent's image is in four of the seven photographs and his name appears in the caption of three of the seven; no one else's name is mentioned in any of the captions. Respondent's name appears six times, including references in large type on the cover and back page. Exhibit 55, the brochure promoting the United States Air Force Strings' concert, is headed by the statement" "Honorable M.T. Thompson, Jr., 70th District Court presents: The United States Air Force Strings."

## II

**Respondent Misrepresented In Solicitation Letters That The State Court Administrative Office, Michigan Judicial Institute And Michigan Department Of Education Had Agreed To Co-Sponsor Or Co-Endorse Respondent's Program When They Had Not So Agreed Nor Had They Authorized Him To Make A Public Declaration Of That Nature**

12. Respondent asserts that he did not misrepresent that the Michigan Department of Education, the Michigan Supreme Court acting through the State Court Administrative Office, and the Michigan Judicial Institute agreed to sponsor his program. (MR 13) The Master, "who heard the testimony and observed the witnesses, was in a better position to determine the credibility of the witnesses," and the Master "rejected Respondent's version of the facts." *In re Runco,* 463 Mich 517, 520-521; 620 NW2d 844 (2001). The record is replete with internal inconsistencies and contradictions that undercut Respondent's claim.

13. Michigan Judicial Institute Director Kevin Bowling, State Court Administrator John Ferry, Jr., and Michigan Department of Education Assistant Superintendent Donald Weatherspoon attended an April 20, 2001 meeting with Respondent; all three state officials indicated that they did not make any firm commitment for their respective agencies to sponsor, or even endorse, Respondent's program. (MR 21)

14. Respondent sent letters on August 27, 2001, to Mr. Bowling, and Mr. Ferry, in which he specifically queried: "Will the State Court Administrator's Office and the Michigan Judicial Institute issue a joint press release formally endorsing the program and announcing its plans to co-sponsor the program?" followed by "*Please advise*." (Exhibit G, emphasis supplied) Neither Mr. Bowling nor Mr. Ferry replied to the letter.

15. At about the same time, Respondent sent a similar letter to Dr. Weatherspoon, in which he asked, "At a minimum, can the Michigan Department of Education issue a joint press

release formally endorsing the program and announcing it's [sic] plans to co-sponsor the pilot program?" He also asked for information and listed four specific questions. Dr. Weatherspoon did not reply, and did not provide the requested information and answers.

16. Respondent's "mistake of fact" defense concerning his misrepresentations (*i.e.,* he believed what he was saying at the time) is belied by Respondent's letters to Mr. Ferry, Mr. Bowling, and Dr. Weatherspoon, in which he indicated that he did not know whether they were going to endorse or co-sponsor the program. Their silence further clarified that they would not issue a joint press release to formally endorse and co-sponsor Respondent's program.

17. Respondent himself testified that the program was "dying," and that he had no further contact with Mr. Ferry, Mr. Bowling, or Dr. Weatherspoon regarding this matter after he sent the letters on August 27, 2001. (Volume 5, p.m., 931-932, *Thompson;* Exhibits G and H) Mr. Ferry never agreed to endorse or sponsor Respondent's "Making Choices and Facing Consequences" program, or any other program of Respondent's. (Volume 1, 91-92, 99, 158, *Ferry*).

18. Mr. Bowling never agreed to sponsor, co-sponsor, endorse, fund or assist with funding "Making Choices" or any of Respondent's other programs. (Volume 3, 357, 381, 387-388, 421- 423, *Bowling*)

19. Dr. Weatherspoon never made any specific agreement and the Department of Education was not prepared to move forward without the involvement of the State Court Administrator's Office or the Judicial Institute. (Volume 4, 573-575, *Weatherspoon*) The Department of Education did not offer to make a joint public declaration regarding Respondent's programs or agree to do anything on behalf of the programs. (Volume 4, 584, Weatherspoon)

20. Mr. Kilmer never agreed to sponsor, co-sponsor, or endorse "Making Choices" or any program Respondent was engaged in, nor did he tell Respondent he would sponsor, co-

sponsor, or endorse "Making Choices" or any of Respondent's other programs. (Volume 2, 286, *Kilmer*)

21. Nonetheless, Respondent wrote letters on October 29, 2001 to Justice Elizabeth Weaver (Respondent's Exhibit hh) and Chief Justice Corrigan (Respondent's Exhibit ii), and on December 7, 2001 to Justice Marilyn Kelly (Respondent's Exhibit jj) and Justice Robert Young (Respondent's Exhibit kk), in which he stated that the Michigan Department of Education, the State Court Administrative Office, and the Michigan Judicial Institute had agreed to jointly sponsor "Making Choices and Facing Consequences" as a pilot program in ten to fifteen school districts throughout Michigan.[6] Respondent's alleged partners (State Court Administrative Office, Michigan Judicial Institute, and Michigan Department of Education) did not receive "cc" copies. As we have concluded that the alleged sponsorship agreement was non-existent, Respondent's representations to members of the Supreme Court were also false.

22. On January 7, 2002, Respondent sent a three-page solicitation letter to attorney John A. Decker. (Exhibit 27) On January 24, 2002, Respondent sent a three-page solicitation letter to Helen James of Citizens Bank. (Exhibit 22) In the solicitation letters, Respondent again asserted that the "Michigan Department of Education, the Michigan Supreme Court acting through the State Court Administrative Office, and the Michigan Judicial Institute have agreed to jointly sponsor 'Making Choices and Facing Consequences' as a pilot program in ten to fifteen school districts throughout Michigan." In light of the fact that none of the entities or their representatives agreed to sponsor, co-sponsor, or even endorse Respondent's program, and that his last contact was a letter he sent them on August 27, 2001, Respondent could not have reasonably believed he had obtained the sponsorship of the various entities at the time he wrote these letters. The Commission finds that his statement was purposely misleading and false.

23. The Commission also finds that Respondent demonstrated a lack of candor in these proceedings. Respondent claimed ignorance of the prohibition against a judge personally soliciting money, even while acknowledging he had read the Code of Judicial Conduct. (Volume 5, p.m., 893-894, *Thompson*) He testified that, in 1999, Delphi Corporation mailed a check to him at his home in the amount of $7,500, and that he "panicked" when he received it. (Volume 5, p.m., 897, Thompson)[7] Respondent said he "panicked" because he knew a judge is "not supposed to receive or handle money," so he "went to the Saginaw Community Foundation and got their agreement to handle all the money for the project and serve as a fiscal agent." (Volume 5, pm, 900, *Thompson*) We note that, on one occasion, Respondent also went to the bank to pick up a $10,000 contribution six days after he asked for it.

**III**

**Respondent Failed To Cooperate With the Commission's Preliminary Investigation**

24. On February 3, 2003, the Commission staff's made a written request for copies of Respondent's Making Choices and Facing Consequences" and "Bullyproof" program/materials. Respondent objected to the request on February 6, 2003, in a telephone call to the Commission Executive Director.

25. On February 20, 2003, Respondent sent a letter directed to the Executive Director in response to the staff's written request. Respondent provided some additional information but refused to provide the materials, asserting they were irrelevant to the allegations of misconduct.

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[6] Respondent introduced the letters into evidence.

[7] The Master denied the Examiner's request to have proposed Exhibit 12, the letter confirming the contribution, admitted into evidence. (Volume 5, p.m., 899) Respondent stipulated that Examiner's proposed Exhibit 12 consisted of a letter dated August 2, 1999, to which was appended a check in the amount of $7,500 dated July 22, 1999. (Volume 5, 901-902)

26. On March 20, 2003, Respondent was sent a subpoena requesting that he provide the previously requested materials by March 31, 2003. Respondent failed to comply until July 30, 2003, after he retained counsel. (Answer, ¶ 24; Volume 1, 50, *Stipulation*s)

27. The Judicial Tenure Commission's request for documents or materials was reasonable, and there was no evidence that Respondent was prevented from producing the requested materials.

## CONCLUSIONS OF LAW

The standard for finding misconduct in judicial disciplinary proceedings is a preponderance of the evidence. *In re Ferrara*, 458 Mich 350, 360; 582 NW2d 817 (1998); *In re Jenkins*, 437 Mich 15, 18; 465 NW2d 317 (1991), *In re Loyd*, 424 Mich 514, 522; 384 NW2d 9 (1986). The Commission finds that the appropriate standard was met in Formal Complaint No. 72. It is undisputed that Respondent made numerous direct and personal solicitations of funds to finance his Making Choices and Facing Consequences project and received thousands of dollars in donations. He admitted making the solicitations, on 70th District Court stationery, as alleged in Formal Complaint No. 72. (Answer, ¶ ¶ 1- 9, 11-12, 15-20; Volume 1, 34-52, *Stipulations*)

Direct, personal solicitation of contributions by a judge is improper no matter how laudable the purpose or beneficiary. Even well intentioned conduct that gives the appearance of using the powers of judicial office to solicit money is misconduct. *In re Merritt*, 431 Mich 1211; 432 NW2d 170 (1988). Michigan's Code of Judicial Conduct, Canon 5B(2), specifically proscribes the individual solicitation of funds by a judge:

> A judge **should not individually solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of the prestige of office for that purpose**, but may be listed as an officer, director, or trustee of such an organization. A judge may, however, join a

> general appeal on behalf of an educational, religious, charitable, or fraternal organization, or speak on behalf of such organization. (Emphasis added)

The reason for such a prohibition is clear:

> The purpose of the prohibition is to avoid the misuse of the judicial office. The rule addresses the dual fears that potential donors either may be intimidated into making contributions when solicited by a judge, or that they may expect future favors in return for their largesse. The possibility of corruption in fund-raising is remote, although not unknown. In either case, the dignity of the judiciary suffers, and, since most charitable organizations can raise funds perfectly well without the involvement of judges, a broad prohibition was deemed appropriate. [Jeffrey M. Shaman, Steven Lubet, James J. Alfini, *Judicial Conduct and Ethics*, 295 (3d ed. 2000).]

The concerns underlying Canon 5 were brought into question by Respondent's actions. Respondent made his requests to local entities within the jurisdiction of the 70th District Court where Respondent was a judge. Not one of the solicited parties refused him. Indeed, Respondent's request to Citizen's Bank for $10,000 was granted and turned over to him in just six days. (See Exhibit 22, Respondent's request for $10,000 dated January 24, 2002; Exhibit 23, Receipt for $10,000, signed by Respondent, dated January 30, 2002.)

## SOLICITATIONS

1. Respondent engaged in a pattern of misconduct that consisted of numerous willful, direct and improper personal solicitations to obtain funding for various educational projects he had engaged in. Respondent admitted that he had read the Code of Judicial Conduct and knew that judges were prohibited from soliciting money for campaigns or for personal use. (Volume 5, pm, 893-894, 951) Region III State Court Administrator Bruce Kilmer testified that he warned Respondent against soliciting money in 1999. (Volume 2, 283-285, 295-296, 313-315, 340, *Kilmer*) Although his solicitations were public knowledge and were eventually admitted by

Respondent, Respondent continues to present numerous excuses for why he should not be held responsible for his actions. (Objections, p. 46) Respondent's unwillingness, even at this late date, to take responsibility for his admitted actions is of great concern.

2. Respondent abused the prestige of his judicial office, including the use of official 70th District Court stationery, to personally solicit contributions to further his own programs, one of which was copyrighted. The Michigan Supreme Court has found appropriation of court services, facilities, equipment and other court materials to be judicial misconduct. *In re Cooley*, 454 Mich 1215; 562 NW2d 199 (1997); *In re Trudel*, 465 Mich 1314; 638 NW2d 405 (2003).

**MISREPRESENTATIONS**

3. Respondent misrepresented that his programs were being sponsored by the State Court Administrative Office, the Judicial Institute, and the Department of Education. False representations by a judge constitute misconduct. *In re Ferrara*, *supra,* 458 Mich 350; *In re Chrzanowski*, 465 Mich 468; 636 NW2d 758 (2001); *In re Binkowski*, 420 Mich 97; 359 NW2d 519 (1984); *In re Lawrence*, 417 Mich 248; 335 NW2d 456 (1983).

**FAILURE TO COOPERATE**

4. Respondent failed to cooperate with reasonable requests made by the commission during its investigation and was not always forthcoming during the hearing. Failure to cooperate by giving testimony "so unnecessarily vague as to hinder the proceedings" constitutes conduct that significantly interferes with the administration of justice. *In re Ferrara*, *supra,* 458 Mich 371.

**SUMMARY**

Respondent's admitted and proven acts of misconduct in this case include:

(a) Misconduct in office as defined by Michigan Constitution 1963, Article VI, §30 as amended, and MCR 9.205, as amended;

(b) Conduct clearly prejudicial to the administration of justice as defined by the Michigan Constitution 1963, Article VI, §30 as amended, MCR 9.205, as amended, and MRPC 8.4(c);

(c) Failure to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved as described in the Code of Judicial Conduct, Canon 1;

(d) Impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;

(e) Failure to conduct oneself at all times in a manner that promotes public confidence in the integrity of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B;

(f) Abuse of the prestige of office to advance personal business interests in violation of the Code of Judicial Conduct, Canon 3C;

(g) Participation in civic and charitable activities that detract from the dignity of office or interfere with performance of judicial duties, in violation of Canon 5B;

(h) Individual solicitation of funds, in violation of Canon 5B(2);

(i) Misuse of the prestige of judicial office including misuse of court resources such as official 70th District Court letterhead to solicit funds, and for personal advantage or gain, and for the advantage or gain of another, in violation of Canon 5B(2) and MCR 9.205(B)(1)(e);

(j) Engaging in financial and business dealings that tend to reflect adversely on the judge's impartiality or judicial office, in violation of Canon 5(C)(1);

(k) Failure to fully cooperate with an investigation by the Commission by refusing to provide requested materials and refusing to comply with a subpoena, in violation of MCR 9.205(B)(1)(f) and MCR 9.208(B);

(l) Conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, which reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of Rule 8.4 of the Rules of Professional Conduct; and

(m) Conduct that is prejudicial to the administration of justice, contrary to MCR 9.104(1); exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(2); is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3); and violates standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(4).

## SANCTION

The Commission has considered the criteria for assessing an appropriate sanction, as set forth in *In re Brown*, 461 Mich 1291, 1292-1293; 624 NW2d 744 (1999), as follows:

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

Respondent's conduct involved a pervasive pattern of numerous and continual breaches of the canons and appropriate, ethical behavior. His actions are thus far more serious than an isolated instance of misconduct.

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

Respondent's persuasive and extensive use of court stationery to make solicitations blur the line between Respondent's on- and off-bench conduct.. The Commission is cognizant that a "judge must behave as though he is always on the bench." *In re Bennett*, 403 Mich 178, 199; 267 NW2d 914 (1978).

(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 abused his judicial office, misused court stationery, made improper personal solicitations for money, and misrepresented the status of his program with respect to its alleged official sponsorship. Respondent's misconduct was clearly prejudicial to the actual administration of justice.

(4) Misconduct that does not implicate the actual administration of

> justice, or its appearance of impropriety, is less serious than misconduct that does.

Respondent's actions created an appearance of impropriety and violated the actual administration of justice.

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

Respondent's misconduct was premeditated and deliberate, part of a lengthy plan of action, and therefore more serious than conduct that occurs spontaneously.

> (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.

Respondent's less-than-candid testimony that he "did not know" he was prohibited from soliciting money to fund his project, "misunderstood" the scope of the prohibition, thought his individual, personal requests for contributions to his fund constituted a "general appeal," and his refusal to fully cooperate with the Commission investigation undermine confidence in the judiciary. His misconduct has had a serious negative impact on the judiciary and the judicial disciplinary system.

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

This factor does not appear to be relevant.

In determining an appropriate sanction in this matter, the Commission considered the above criteria, as well as the Supreme Court's desire for achieving proportionality, when possible, based on comparable conduct. Although it is difficult to compare the multiple and varied acts of misconduct here with previous cases, the Commission has considered the following cases.

In *In re Helen Brown*, 468 Mich 1228; 662 NW2d 749 (2003), the Supreme Court disciplined Judge Brown, *inter alia*, for her involvement in a nonprofit charitable organization. She was the founder and CEO of the Board of Trustees of the Coalition for Family Preservation. A law firm held a fundraiser for that organization; invitations sent out by the law firm listed Judge Brown's name and judicial status, and described her as the sponsor of the event. The Commission and the Court found that although Judge Brown did not authorize the use of her name, she did not take sufficient care to insure that it was not used improperly, and she failed to ensure that the personnel at the law firm holding the fundraiser made appropriate changes and corrections. The sanction, public censure, is distinguishable from that recommended in this case. Judge Brown was not directly responsible for the law firm's fundraiser, there was only a single incident of fund-raising, and she did not engage in dishonest conduct or fail at any time to cooperate with the Commission's investigation. Further, she fully admitted the wrongdoing, expressed deep regret, promised to refrain from all similar activity and consented to discipline.

In *In re Shannon*, 465 Mich 1304; 637 NW2d 503 (2002), 36th District Court Magistrate Thomas Shannon permitted a police officer to sit at a table in the courtroom with a bag of tickets from the Detroit Fire and Police Field Day. Magistrate Shannon dismissed numerous tickets and advised the defendants to purchase tickets. In some cases, he told them to purchase more tickets or "dig deeper." The average ticket purchase was approximately $50.00 per person. Magistrate Shannon consented to public censure and a 30-day suspension without pay. Unlike the conduct in *In re Shannon*, Respondent's conduct in this case did not occur in a courtroom. We believe, however, that Respondent's conduct was equally abusive of his judicial authority. In addition, Respondent engaged in a pattern of repeated acts of misconduct, while Magistrate Shannon's "charitable fundraising" was limited to one event and Magistrate Shannon readily admitted his misconduct, expressed regret, cooperated fully with the Commission and consented to discipline.

In *In re Cooley*, 454 Mich 1215; 563 NW2d 645 (1997), Judge Cooley, *inter alia*, participated in the solicitation of funds from Don Massey of Don Massey Cadillac, Inc., for the sponsorship of a radio program she produced and hosted. She also misused certain court resources, including, but not limited to, the court postage system and Xerox machine. Judge Cooley admitted misconduct and consented to public censure and the payment of $3,500 in costs to the Judicial Tenure Commission. The sanction in this case is distinguishable for several reasons. Judge Cooley's solicitations were directed to a single person, and totaled only $5,125, compared to the thousands of dollars solicited and received by Respondent. The Commission also notes that the criteria set forth in *Brown*, *supra*, for assessing discipline were not in effect when *In re Cooley* was decided, and may well have resulted in a different result.

In *In re Merritt*, 431 Mich 1211; 432 NW2d 170 (1988), Judge Merritt opened a "*HELP* fund" checking account to assist indigent drug and alcohol abusers who appeared in court. Some of the funds came from contributions by attorneys who were amerced for late filings, tardy appearances, or failures to appear on court dates. Judge Merritt was found to have given the appearance of using the powers of his judicial office to solicit monies from attorneys for the *HELP* fund. He consented to and was issued a public censure by the Supreme Court, and was required to make restitution of the amerced amounts. *In re Merritt* was resolved prior to the establishment of the *Brown* criteria, and, unlike the case here, did not involve direct solicitations.

In *In re Trudel,* 465 Mich 1314; 638 NW2d 405 (2003), Judge Trudel consented to public censure and a 90-day suspension for various charges of misconduct that included misuse of court time, personnel, facilities and other resources.

Judicial misconduct has also been found in a wide variety of cases where judges have engaged in dishonest conduct and misrepresentation as reflected in the following examples:

In *In re Binkowski*, *supra,* 420 Mich 97, Judge Binkowski made misrepresentations to other judges. Judge Binkowski received a letter of admonition from the Judicial Tenure Commission following an investigation and the judge's admission that his actions had been inappropriate. Judge Binkowski modified the letter by retaining the letterhead and superimposing it over the final paragraph which stated that no further action was required and that the grievances were admitted. He then gave the altered letter to two other judges of the 37th District Court. Judge Binkowski admitted the alteration and dissemination, but denied an intent to deceive. The Court held that his conduct was dishonest and clearly prejudicial to the administration of justice and misconduct in office. He was publicly censured for the single act of misrepresentation.

In *In re Ferrara*, *supra,* 458 Mich 350, Judge Ferrara was removed from judicial office for making public misrepresentations and for failure to meaningfully cooperate with the proceedings. The Supreme Court found that her conduct significantly interfered with the administration of justice and held that her misrepresentations clearly prejudiced the administration of justice and evidenced a fundamental lack of respect for the truth-seeking process, violating Canons 1, 2A, 2B and MCR 9.205 (C)(4).

In *In re Chrzanowski*, *supra,* 465 Mich 468, Judge Chrzanowski was suspended without pay for twelve months for her "improper appointments of counsel, her failure to disclose those appointments, and for her false statements to the interviewing officers. *Id*. at 490.

Other jurisdictions have also imposed discipline for conduct involving personal solicitations. In *In re Arrigan*, 678 A2d 446 (Rhode Island 1996), the Rhode Island Supreme Court held that the judge, in violation of the Code of Judicial Conduct, improperly solicited funds on behalf of certain charitable organizations from attorneys who practiced before him. The commission had recommended that the judge be suspended for a period of three months, but

the Court found that because the judge "admitted to, apologized for, and voluntarily ceased the improper fundraising activities, and because the solicitations did not result in personal gain to petitioner," the appropriate sanction was public censure. Respondent's conduct here is distinguishable in that he did not solicit funds on behalf of certain charitable organizations, but mainly to pay for the creation, development, and advertisement of his own program, for which he held a copyright.

In *In re Gallagher*, 326 Or. 267, 951 P2d 705 (OR 1998), the Court ordered a six-month suspension without salary for the judge's use of state-paid services, property, and equipment to further his campaign fundraising and his private interests, and for his use of his position as a judge to try to obtain financial advantages for himself and those close to him. The judge had signed invitations to a golf fundraiser for his campaign, and had his judicial assistant type several letters unrelated to his judicial duties on official court stationery. The Court observed that "taxpayers have a right to expect that the employees and the materials for which they pay will be used for public purposes. Obtaining substantial personal and political benefits directly from the use of those public employees and materials runs afoul of the requirement to "act * * * in a manner that promotes public confidence in the integrity * * * of the judiciary." *Id.* at 283. The Court also noted the judge repeatedly used the letterhead and title of his office in correspondence designed to obtain personal advantages, including financial advantages and concluded that the frequency suggested the practice was "far from inadvertent." *Id*. at 286. The same can be said of Respondent.

The Commission recognizes that in many of the cases summarized above, the sanction consisted of public censure and an order for costs, reimbursement, or a fine. Many of the cases, however, were decided before our Supreme Court issued the guidelines in *In re Brown*, *supra*, and offer little explanation or support for the recommended or imposed discipline. Some of the

readily apparent distinctions, however, include actions that were isolated, and involved true charities, sincere admissions of remorse, and consent to discipline, all of which were lacking in this case.

The Commission finds no basis for mitigation with respect to sanction, in light of Respondent's pervasive pattern of abuse of his judicial position and blatant violation of the Code of Judicial Conduct, Rules of Professional Conduct and basic ethical standards. The Commission finds that Respondent's alleged "self-reporting" was selective, and after the fact, and therefore warrants no mitigation.

Moreover, Respondent did not solicit money for an identifiable charitable entity as beneficiary. He solicited money for a personal, private enterprise. The fact that some schools may benefit from his program does not mitigate his actions. His middle school crime prevention program is not a charity. Respondent owns the copyright and controls the program's use and cost. The Commission acknowledges that a judge is not prohibited from writing a book, or creating a program, or obtaining a copyright for his creation, and is entitled to just compensation for his work. A judge may not, however, solicit contributions to finance that work.

## CONCLUSION

> A judge, at any level of the court system, presides at the focal point of the administration of justice. For that reason, a judge must be held to the highest standard of any public official. [*In re Binkowski*, *supra*, quoting *In re Callanan*, 419 Mich 376, 386; 355 NW2d 69 (1984).]

Respondent's conduct was more egregious and widespread than previous cases of a similar nature before the Commission. Respondent repeatedly violated the Code of Judicial Conduct, particularly Canons 1, 2 and 5, as well as ethical standards established by court rules, opinions and case law. Respondent took advantage of his judicial position to solicit donations.

He did so over a period of several years, engaged in repeated acts of personal solicitation and received approximately $60,000.00, which he used freely to develop and advertise his programs.[8] When soliciting funds for his programs he misrepresented that he had the official sponsorship of the Supreme Court, through the State Court Administrative Office, the Michigan Judicial Institute and the Michigan Department of Education. He admitted making certain solicitations after his conduct was uncovered, but did not reveal the extent of his actions and continues to this day to claim he did not know such conduct was prohibited. He established a fund within the Saginaw Community Foundation to receive the funds, but freely continued to make solicitations. He refused to provide materials requested by the Commission in its investigation.

The Commission finds that the Honorable M.T. Thompson has engaged in misconduct in office and conduct clearly prejudicial to the administration of justice within the purview of the Michigan Constitution 1963, Art. 6 § 30 and MCR 9.205. The Commission has considered the totality of Judge Thompson's conduct and concludes that a severe sanction is warranted.

***WHEREFORE***, upon resolution of the Michigan Judicial Tenure Commission, it is recommended that the Michigan Supreme Court enter an order finding judicial misconduct as set forth herein, including misconduct in office and conduct clearly prejudicial to the administration of justice, publicly censure the Honorable M. T. Thompson, suspend him from office without pay for a period of 90 days, order him to reimburse the Commission for the actual costs stemming from this case in the amount of $11,117.32, provide an accounting to the Supreme Court for all amounts raised, all money spent, and the current balance, if any, and cease and desist from any further solicitation.[9]

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[8] The $60,000.00 amount is the total obtained from the additional evidence the Examiner was prevented from introducing. Respondent's additional solicitations were considered in determining an appropriate sanction just as in a criminal case the sentencing judge may consider facts underlying uncharged offenses.

[9] At the public hearing pursuant to MCR 9.216, the Examiner offered the affidavit of Commission senior administrative assistant, Camella Thompson, to establish the amount of costs incurred in this matter. No objection

**STATE OF MICHIGAN**

**JUDICIAL TENURE COMMISSION**

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|---|---|
| /s/ | /s/ |
| James Mick Middaugh, Chairperson | Hon. Barry Grant, Vice Chairperson |
| /s/ | /s/ |
| Richard D. Simonson, Secretary | Henry Baskin, Esq. |
| | /s/ |
| Carole Chiamp, Esq. | Hon. James C. Kingsley |
| | |
| Hon. Kathleen J. McCann | Hon. Jeanne Stempien |
| /s/ | |
| Hon. Michael J. Talbot | |

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was offered to the affidavit, and it was received into evidence as Exhibit 1. The Examiner later moved to substitute a corrected affidavit supporting the amount of costs as $11,152.72 for the one already admitted (for $11,223.62). The Respondent objected, arguing that there is no basis for the assessment of any costs, and, further, the costs proffered were unreasonable.

The Commission first notes that even the proposed substitute affidavit is flawed, because, as Respondent correctly points out, it includes costs from two unrelated matters for a total of $35.40. Accordingly, the amount of total costs is no more than 11,117.32 (*i.e.*, $11,152.72 - $35.40). The Commission grants the motion to substitute affidavits, with the caveat that the amount of costs be capped at $11,117.32.

Respondent's contention that there is no basis for costs is more properly addressed by the Supreme Court. The Court has ordered costs in the past. *In re Trudel*, 468 Mich 1244 (2003). The Commission has incurred expenses in the amount of $11,117.32 solely as the result of having to prosecute this matter to conclusion before the master. Inasmuch as the master found that Respondent committed judicial misconduct, a finding with which the Commission agrees, and the Commission is making a recommendation of discipline to the Supreme Court, Respondent is the party who should bear the cost of prosecution.