

144985

STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

Hon. Deborah Ross Adams
Wayne County Circuit Court
2 Woodward Ave, Room 1921
Detroit, Michigan 48226

Formal Complaint No. 89

DECISION AND RECOMMENDATION FOR ORDER OF DISCIPLINE

At a session of the Michigan Judicial Tenure Commission held on December 3, 2012, in
the City of Detroit

PRESENT:

Thomas J. Ryan, Esq;

Hon. Nanci J. Grant;

Hon. Pablo Cortes;

Nancy J. Diehl, Esq.

David T Fisher;

Hon. John D. Hamilton;

Mayor Brenda L. Lawrence;

Hon. David H. Sawyer;

Hon. Jeanne Stempien.



I. INTRODUCTION

The Judicial Tenure Commission of the State of Michigan ("JTC") respectfully files this recommendation for discipline against Hon. Deborah Ross Adams ("Respondent"), who at all material times was a judge of the 3rd Circuit Court for the County of Wayne, State of Michigan.

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

Respondent is accused of lying under oath regarding telephonic communications and of signing another attorney's name, without permission, to a motion, brief, praecipe, and notices of hearing. On October 9, 2012, the Special Master appointed by this Court, Donald G. Miller, submitted findings of fact and conclusions of law in this matter.

After reviewing the briefing by the parties, the transcript of the hearings, the exhibits, and considering oral argument of counsel, the Commission recommends that Respondent be suspended without pay for 180 days and ordered to pay costs.

II. RELEVANT FACTS

Respondent is, and at all material times has been, a Wayne County Circuit Court ("WCCC") judge. Respondent's husband filed for divorce in WCCC on September 18, 2009. His attorney was William M. Brukoff.

On February 19, 2010, the family court bench of the WCCC recused itself from Respondent's divorce proceedings. On March 1, 2010, the Supreme Court Administrative Office transferred the matter to the Oakland County Circuit Court ("OCCC"), where it was assigned to Judge Mary Ellen Brennan.¹ Judge Brennan issued a scheduling order setting March 10, 2011 as the mediation deadline, and March 21-22, 2011 as the trial date.²

In February 2011, Respondent's fourth attorney, Andra Dudley, began her representation of Respondent. Ms. Dudley's representation of Respondent was pursuant to an "Exparte (sic) Motion for Entry of Order for Substitution of Counsel."³ Respondent's former attorney, Janice L. Burns, testified that her name was signed to the Motion without her permission, although she

¹See SCAO Assignment, attached hereto as **Exhibit A**.

²See March 10, 2011 Scheduling Order, attached hereto as **Exhibit B**.

³See Respondent's Ex Parte Motion, attached hereto as **Exhibit C**.

was aware that Respondent was preparing a motion.⁴ Respondent did not provide Ms. Burns with a copy of that motion.⁵ The first time Ms. Burns learned that the Motion had been filed under her signature was when the instant proceedings began.⁶

On March 10, 2011, Respondent and her husband mediated their property settlement issues and reached a settlement in their divorce proceedings.⁷ Accordingly, Judge Brennan scheduled a pro-confesso hearing for March 16, 2011 to place the terms of the settlement on the record.

It is undisputed that, on March 15, 2011, Respondent telephoned Judge Brennan's office to request an adjournment of the March 16, 2011 pro-confesso hearing. Judge Brennan's staff was familiar with Respondent's voice, as she had called numerous times during the course of the divorce proceedings.⁸ Judge Brennan's clerk informed Respondent that "[s]he needed to contact her attorney" regarding the requested adjournment.⁹ It is Judge Brennan's "hard-and-fast rule" that represented parties may not contact her staff.¹⁰

On March 16, 2011, Judge Brennan held the pro-confesso hearing in Respondent's divorce proceeding. Respondent attended that hearing and attempted to engage with the Court, whereby she was admonished to "turn [her] voice down... You're speaking for [the Court] and that's not appropriate. You're represented as you should be and well, well represented."¹¹

Thereafter, "a heated exchange occurred between Judge Brennan and Respondent."¹² Judge Brennan requested that Respondent not contact her "chambers directly" when Respondent

⁴ See Hearing Before the Special Master Transcript, attached hereto as **Exhibit D** at pp 550: 18-20; 551: 4-6

⁵ **Exhibit D** at, p 553: 7-9.

⁶ **Exhibit D** at p 553: 21-24.

⁷ See Transcript of Settlement Reached at Mediation Hearing, attached hereto as **Exhibit E**

⁸ **Exhibit D** at pp 594: 18-20.; 737: 14-20; 755: 22

⁹ **Exhibit D** at, pp 738: 23.

¹⁰ **Exhibit D** at pp 635: 24-25; 636: 1-2; 757: 19-25; 758: 1-10.

¹¹ See Pro-Confesso Transcript at 9: 15-17 attached hereto as **Exhibit F**; See also, DVD of Pro-Confesso Hearing, attached hereto as **Exhibit T**.

¹² See Master's Report, attached hereto as **Exhibit G** at p 1.

had legal representation.¹³ Respondent repeatedly denied contacting Judge Brennan's staff, stating:

- "I didn't call your chambers directly;"
- "Judge, I did not call your staff directly;"
- "I did not call anyone direct—your chambers directly;"
- "Again, I did not call your staff;"
- "I did not call anyone;"
- "I did not have any conversation;"
- "The only time I've called your chambers was when I was unrepresented;"
- "I haven't admitted to speaking with anyone;"
- "My clerk called the Court to see if the time to be—could be changed."
- "...maybe someone from my court called but I did not call."
- "No. I did not call here."
- "I've never called your chambers directly."¹⁴

Respondent has since admitted that she did speak to a member of Judge Brennan's staff on March 15, 2011 to request an adjournment.¹⁵

At the March 16, 2011 pro-confesso hearing, Judge Brennan ordered that the parties appear for a status conference on April 11, 2011, unless a return of judgment had been presented and filed before that date.¹⁶

¹³Exhibit F at 9: 16: 20-25.

¹⁴Exhibit F at pp 16-20.

¹⁵See Respondent's Answer to Complaint, attached hereto as Exhibit H at ¶ 13.

¹⁶See March 16, 2011 Order Scheduling Date for Return of Judgment attached hereto as Exhibit I.

Judge Brennan thereafter contacted the JTC regarding Respondent's lack of candor to the Court regarding her telephone communications with Judge Brennan's staff.¹⁷ Judge Brennan ultimately elected not to file a formal complaint.¹⁸

On April 7, 2011, a facsimile was sent from a WCCC facsimile machine to Mr. Brukoff, purporting to be from Ms. Dudley, relative to the Adams's divorce settlement.¹⁹ It is undisputed that the facsimile was sent from Respondent, not Ms. Dudley.²⁰ Ms. Dudley testified that she did not give Respondent permission to make that transmission using her name.²¹ Respondent refused to sign the fourth version of the Settlement Agreement.

On April 11, 2011, Judge Brennan granted the Judgment of Divorce ("JOD") in Respondent's divorce proceedings. The JOD released Ms. Dudley from her representation of Respondent unless "specifically hereinafter retained."²² Respondent did not attend that hearing. On Mr. Adams's motion, Judge Brennan ordered Respondent to sign the Marital Settlement Agreement or appear before the Court on April 14, 2011 for a show cause hearing.²³

On April 26, 2011, Ms. Dudley informed Respondent that if she "wanted to preserve her appellate rights," she should file a motion."²⁴

On May 6, 2011, Respondent attended a meeting with the mediator, Mr. Adams, and Mr. Adams's counsel, without Ms. Dudley, to resolve issues over the couple's Property Settlement Agreement.²⁵

¹⁷ Exhibit G at P 666: 25; 667: 1-10.; 669:3-5

¹⁸ Transcript at pp 669: 3-5

¹⁹ See April 11 fax, attached hereto as Exhibit J.

²⁰ Exhibit H at ¶ 45.

²¹ Exhibit D at p 366: 16-19.

²² See Consent Judgment of Divorce, attached hereto as Exhibit K at p, 8.

²³ See April 11, 2011 Order re: Motion, attached hereto as Exhibit L.

²⁴ See April 26, 2011 email to Respondent, attached hereto as Exhibit Q.

²⁵ See May 5, 2011 email from Respondent to Ms. Dudley, attached hereto as Exhibit M.

On May 5, 2011, however, Respondent filed with the OCCC, and served on the mediator and Mr. Adams's counsel, a Motion to Set Aside or Modify the JOD, a Brief in Support of that Motion, a Praecipe, and a Notice of Hearing. Respondent signed Ms. Dudley's name to all of those documents.²⁶ Respondent did not add "with permission," or otherwise indicate that she was signing Ms. Dudley's name on Ms. Dudley's behalf, as is customary when signing another attorney's name. Respondent admits to doing same.²⁷ Respondent attempted to replicate Ms. Dudley's signature on those documents.²⁸ Respondent asserts that she believed she had permission.

Ms. Dudley testified that she did not give Respondent permission to sign her name to those documents, nor did Respondent provide her copies of the filed documents:

Q. Did you give authorization or permission to Judge Adams or anyone else to sign your name to any pleadings?

A. **Never.**²⁹

* * *

Q. Why do you say never?

A. **Because I didn't give her permission to sign my name.**

Q. Do you give any of your clients permission to sign your name?

A. **No. Well, once or twice I remember, but I didn't give Judge Adams permission.**³⁰

According to Ms. Dudley, she first learned that those documents had been filed and served under her signature when Mr. Burkoff called her to discuss the matter. Ms. Dudley emailed Respondent stating:

I did not receive any contact from you this week and hopefully you did not file any pleadings with my name without me first reviewing them and without my permission.³¹

²⁶ See Motion to Set Aside or Modify Judgment of Divorce, Brief, Praecipe, and Notice of Hearing, attached hereto collectively as **Exhibit N**.

²⁷ **Exhibit H** at ¶ 13.

²⁸ See comparisons of Respondent's and Ms. Dudley's signatures, attached hereto as **Exhibit O**.

²⁹ **Exhibit D** at p 384:22-25.

³⁰ **Exhibit D** at 385: 1-6

³¹ **Exhibit M**.

In her reply email, Respondent stated that she had tried to contact Ms. Dudley “to obtain permission to file a quick pleading on my behalf under your name.”³²

Ms. Dudley and Mr. Burkoff reported to the Judicial Tenure Commission (“JTC”) Respondent’s acts of signing, without permission, the Motion, Brief, Praecipe, and Notices of Hearing.

After investigation, the JTC filed Formal Complaint Number 89 against Respondent. The Complaint alleged that Respondent made material misrepresentations to the JTC during the investigation. The Complaint also charged Respondent with perjury, forgery, and uttering and publishing, which would, if proven in a criminal trial, constitute violations of MCL 750.423, 750.248, and 750.249. Respondent has not been charged with any crime.

The JTC held a hearing on December 3, 2012. Prior to the hearing, Respondent filed a Motion to Disqualify the Commission’s Vice-Chairperson, Judge Nanci J. Grant, on the basis that she is the Chief Judge of the OCCC. That Motion was denied because Judge Grant asserted that she could be fair and impartial in this matter, and there was no basis for disqualification.

The Examiner recommends that Respondent be removed from the bench. As discussed more fully below, the JTC does not endorse that recommendation.

III. MASTER’S REPORT

This Court appointed as Special Master Donald G. Miller, who conducted a five-day hearing between September 11, 2012 and September 17, 2012. On October 9, 2012, the Special Master issued findings of fact and conclusions of law.³³ The Special Master found that Respondent lied under oath in Judge Brennan’s court and made misrepresentations to the JTC

³² Exhibit M.

³³ See Master’ Report attached hereto as Exhibit G.

during the course of the investigation. The Master did not find that Respondent improperly signed and filed unauthorized pleadings under Ms. Dudley's name.

A. Respondent's False Statements Under Oath. The Master found that the Examiner established by a preponderance of the evidence that Respondent made "false statements under oath."³⁴

B. Misrepresentations to the Commission. The Special Master held that Respondent made the following misrepresentations regarding:

- The number of times she contacted Judge Brennan's staff;
- That she was informed by Judge Brennan's staff that it was improper for her to make calls to them when she had representation;
- That Respondent had Ms. Dudley's permission to sign her name to the Motion filed on May 5, 2011.³⁵

The Master gave limited weight to the testimony of Respondent and Ms. Dudley, and accordingly determined there was "insufficient evidence to meet the statutory minimum of a preponderance" of the evidence with regard to the following allegations of misrepresentations:³⁶

- That Respondent did not have Ms. Dudley's permission to file pleadings on Respondent's behalf;
- That Respondent did not supply a copy of the motion and attendant documents to Ms.

Dudley.³⁷

The Master's Report did not state a basis as to why the Master gave limited weight to the testimony of Respondent and Ms. Dudley.

³⁴ Exhibit G at 2.

³⁵ Exhibit G at pp 4-5.

³⁶ Exhibit G at p 5.

³⁷ *Id.*

C. Respondent's Unauthorized Signing of Ms. Dudley's Name. As discussed, the Master determined that the Examiner established by a preponderance of the evidence that Respondent made misrepresentations to the Commission regarding whether she had permission to sign Ms. Dudley's to the Motion filed on May 5, 2011.³⁸

The Master did not hold, however, that Respondent improperly signed Ms. Dudley's name to the documents Respondent filed with OCCC on May 5, 2011.³⁹ The Master held that "[i]n assessing the veracity" of Respondent and Ms. Dudley "in light of the totality of the circumstances," he believed "urgency, lack of flexibility, and difficulty of communication in the setting of a rigid docket call led to confusion, mistrust and eventual animosity between Respondent and Ms. Dudley."⁴⁰

D. The JTC's Objections to the Master's Findings. The Master analyzed the allegations in the Complaint under the standards and factors set forth in various criminal statutes, specifically MCL 750.423 (perjury); MCL 750.248 (forgery) and MCL 750.249 (uttering and publishing).⁴¹

As discussed, Respondent has not been criminally charged with violating any penal statutes, and the JTC does not have the authority to lodge such criminal charges or adjudicate their violation. The JTC's authority is strictly limited to assessing Respondent's actions in light of the Michigan Rules of Professional Conduct ("MRPC"), the Michigan Court Rules ("MCR"), and the Michigan Code of Judicial Conduct ("MCJC"), and making recommendations to this Court regarding same.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ **Exhibit G** at 3-4.

⁴¹ **Exhibit G** at pp 2-4.

For the reasons set forth more fully below, the JTC adopts the Master's findings, with the exception of the following:

- That Respondent did not file pleadings under Ms. Dudley's without authorization;
- That Respondent provided a copy of the May 5, 2011 motion and attendant documents to Ms. Dudley.⁴²

IV. STANDARDS OF REVIEW

The Michigan Constitution authorizes this Court to discipline judges upon recommendation by the JTC. Const 1963, art 6, § 30(2). This Court reviews the JTC's factual findings and disciplinary recommendations de novo. MCR 9.225; *In re Noecker*, 472 Mich 1, 8 (2005). Findings of judicial misconduct must be supported by a preponderance of the evidence. *Id.* Although the standard of review is de novo, this Court owes "considerable deference" to the JTC's recommendations when they are deemed adequately supported. *In re Brown*, 461 Mich 1291, 1293 (2000).

The JTC need not accept the Special Master's determinations. *In re Chrzanowski*, 465 Mich 468, 482 (2001).

V. LAW AND ANALYSIS

As an attorney and a judge, Respondent is bound by the Michigan Rules of Professional Conduct ("MRPC"), the Michigan Court Rules ("MCR"), the Michigan Code of Judicial Conduct ("MCJC"), and is subject to the standards of discipline set forth in MCR 9.104 and 9.205.

Specifically MRPC 3.3(a)(1) provides that a lawyer must not knowingly "make a false statement of material fact or law to a tribunal." MCR 9.104 provides, in pertinent part, that an attorney must not:

⁴² *Id.*

- engage in conduct that is “prejudicial to the proper administration of justice;”
- engage in “conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach;”
- engage in conduct “that violates the standards or rules of professional conduct” adopted by this Court;
- make a “knowing misrepresentation of any facts or circumstances surrounding a request for investigation or complaint.”

Canon 1 of the MCJC provides that “[a] judge should . . . personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.”

Canon 2(A) of the MCJC provides that “[a] judge must avoid all impropriety and appearance of impropriety.” Canon 2(B) mandates that “[a] judge should respect and observe the law.” Canon 2(C) provides that “[a] judge should not allow family, social, or other relationships to influence . . . [his or her] judgment.”

MCR 9.205(A) provides that “[a] judge is personally responsible for the judge’s own behavior.” MCR 9.205(B) provides, in pertinent part, that a judge is subject to discipline “for conduct that is clearly prejudicial to the administration of justice.”⁴³

In addition, “a judge may be ordered to pay the costs, fees, and expenses incurred by the commission in prosecuting the complaint” if the judge engaged in intentional misrepresentations. MCR 9.205(B).

A. Respondent’s Lack of Candor to the Tribunal. As discussed, it is undisputed that

~~Respondent spoke to Judge Brennan’s staff member on March 15, 2011 to request an adjournment of the March 16, 2011 pro-confesso hearing, while she was represented by Ms. Dudley.~~

⁴³ MCR 9.205(B) additionally provides for discipline of a judge “for conviction of a felony, physical or mental disability that prevents the performance of judicial duties, misconduct in office, persistent failure to perform judicial duties, [and] habitual intemperance.” These discipline standards are inapplicable in the instant matter.

Respondent argues that, at the pro-confesso hearing, she believed Judge Brennan was accusing her of improper ex parte communications. Respondent's argument is belied by her specific denials, while under oath, to having any conversation with Judge Brennan's staff the previous day:

The Court: That's not the question. I'm asking you if you had a conversation with somebody.

Ms. Adams: And I'm telling you that this is inappropriate. I did not have any conversation. I did not call your chambers directly.⁴⁴

* * *

The Court: Here; do not call my chambers. Don't call members of the staff, don't speak with clerks, don't speak with legal secretaries, don't speak with research attorneys, anybody who's a member of the staff; it's not appropriate.

Ms. Adams: The only time I've called your chambers was when I was unrepresented. The only issue that was called—there was a [sic] individual that called with respect—

The Court: Okay. I'm asking you a direct question, ma'am.⁴⁵

* * *

The Court: How did you get—how did you speak with somebody from my chambers yesterday?

Ms. Adams: I'm giving—I haven't admitted to speaking with anyone.⁴⁶

* * *

Ms. Adams: Excuse me; I just indicated that maybe someone from my court called but I did not call.⁴⁷

⁴⁴ Exhibit F at p 17: 20-24

⁴⁵ Exhibit F at p 18: 12-21.

⁴⁶ Exhibit F at p 18:23-25; 19: 1.

⁴⁷ Exhibit F at p 19: 23-24.

Respondent's repeated assertions, while under oath, that she "did not call [Judge Brennan's] staff"⁴⁸ were plainly false. The Special Master found that Respondent was untruthful in those proceedings, and the JTC agrees with that finding.⁴⁹

B. Respondent's Unauthorized Signing of Ms. Dudley's Name. It is undisputed that Respondent signed Ms. Dudley's name to a Motion, Brief, Praecipe, and Notices of Hearing. Respondent contends that she believed she had Ms. Dudley's permission. Respondent's contention is not credible for a variety of reasons.

First, Respondent was aware that Ms. Dudley no longer represented her in any post-judgment proceedings,⁵⁰ and Respondent specifically asserted to Ms. Dudley that she planned to "retain an appellate person to handle the [post judgment] matter" relative to the Adams's Settlement Agreement.⁵¹

Moreover, on April 25, 2011, Ms. Dudley informed Respondent, Mr. Brukoff, and the arbitrator that "with respect to [Ms. Dudley's] representation of Judge Adams, [she was] assisting Judge Adams in getting this matter scheduled" for arbitration, and she would advise them if Respondent "decides to retain my services to appear at the arbitration."⁵² Respondent voluntarily attended the May 6, 2011 meeting with the arbitrator without Ms. Dudley.

Second, it is apparent that Respondent could not possibly believe she had Ms. Dudley's permission to sign and file pleadings under Ms. Dudley's signature. Respondent's statement to Ms. Dudley that she "tried . . . to obtain permission to file a quick pleading on my behalf under your name," was made after Respondent had already done so.⁵³

⁴⁸ Exhibit F at p. 17:1.

⁴⁹ Exhibit G at 2.

⁵⁰ Exhibit K at 8.

⁵¹ Exhibit M.

⁵² See April 25, 2011 email from Ms. Dudley, attached hereto as Exhibit P.

⁵³ Exhibit M.

In addition, Respondent's attempts to mimic Ms. Dudley's signature on those documents strongly evidences that Respondent did not believe she had permission.⁵⁴ Respondent's failure to add "with permission" or include her own P-number—as is customary when one has the authority to sign another attorney's name to a legal document—is a further tell-tale indication that Respondent harbored no belief that she had Ms. Dudley's authorization to sign her name.

The Special Master found that "urgency, lack of flexibility, and difficulty of communication in the setting of a rigid docket call led to confusion, mistrust and eventual animosity between Respondent and Ms. Dudley."⁵⁵ The Special Master held that the preponderance of the evidence did not support a finding that Respondent signed Ms. Dudley's name without permission.⁵⁶ The Master's conclusion in this regard appears inconsistent with his finding that Respondent made misrepresentations to the JTC regarding having permission to sign Ms. Dudley's name (discussed below).⁵⁷

For all of these reasons, the JTC disagrees with that finding.⁵⁸

C. Respondent's Misrepresentations to the Commission. The Special Master found, and the JTC agrees, that Respondent made the following misrepresentations during the course of the investigation in the instant matter:

- The number of times Respondent contacted Judge Brennan's staff;
- That Respondent had not been advised not to contact Judge Brennan's staff while Respondent was represented by counsel;
- ~~That Respondent had permission to sign Ms. Dudley's name to the Motion Respondent filed on May 5, 2011.~~⁵⁹

⁵⁴ Exhibit O.

⁵⁵ Exhibit G at pp 3-4.

⁵⁶ Exhibit G at p 3-4

⁵⁷ Exhibit G at 5.

⁵⁸ *Id.*

⁵⁹ Exhibit G at 4-5.

The Special Master did not find that Respondent made misrepresentations to the JTC that she “had Andra Dudley’s permission to file pleadings on [Respondent’s] behalf.”⁶⁰ The Special Master’s finding appears at odds with the finding that Respondent made misrepresentations that she had “Andra Dudley’s permission to affix her (Dudley’s) signature to the Motion filed on May 5, 2011” (discussed above).⁶¹ Accordingly, the JTC disagrees with this finding by the Master.

As already discussed, Ms. Dudley’s representation of Respondent concluded on April 11, 2011, with entry of the JOD.⁶² Moreover, on May 5, 2011, Respondent acknowledged that she unsuccessfully “tried contacting” Ms. Dudley to “obtain permission to file a quick pleading on [her] behalf.”⁶³ The inescapable conclusion is that Respondent did not have Ms. Dudley’s permission to file pleadings on Respondent’s behalf.

The Master further found that there was insufficient evidence that Respondent failed to provide Ms. Dudley with a copy of the May 5, 2011 Motion and accompanying documents.⁶⁴ The JTC disagrees with this finding.

Respondent stated that she had the “motion pleadings hand-delivered to Ms. Dudley’s office on May 5, 2011.”⁶⁵ Respondent, however, disavowed knowledge of “the date and time Ms. Dudley became aware of the existence and filing of the motion.”⁶⁶ Further, Ms. Dudley’s May 6, 2011 email to Respondent that “hopefully you did not file any pleadings with my name without me first reviewing them and without my permission”⁶⁷ belies Respondent’s claim that she “doesn’t know the date and time Ms. Dudley became aware” of the Motion and the attendant

⁶⁰ Exhibit G at 5.

⁶¹ *Id.*

⁶² Exhibit K.

⁶³ Exhibit M.

⁶⁴ *Id.*

⁶⁵ Exhibit H at para 70

⁶⁶ Exhibit H at para 75.

⁶⁷ Exhibit M

documents.⁶⁸ Respondent has not provided this tribunal with any evidence, aside from self-serving statements, that she in fact had Ms. Dudley served with same, e.g., an affidavit from a process server or a copy of an email to Ms. Dudley with those documents attached.

Moreover, on May 9, 2011, Mr. Brukhoff sent—via email and first-class mail—a copy of the filed documents to Ms. Dudley.⁶⁹ It defies logic that Ms. Dudley would request Mr. Brukhoff provide her with documents that were allegedly hand-delivered to her four days previously.

D. JTC's Conclusion Regarding Respondent's Improper Actions. For the reasons set forth herein, the JTC finds that Respondent committed violations of the MCR, MRPC, and MCJC when she lied under oath, signed Ms. Dudley's name to pleadings without her permission, and made material misrepresentations to the JTC during the course of these proceedings.

VI. DISCIPLINARY ANALYSIS

As this Court stated in *In re Ferrara*, 458 Mich 350, 372 (1998):

Judicial disciplinary proceedings are unique and fundamentally distinct from all other criminal or civil legal proceedings. The purpose of such proceedings is to protect the people from corruption and abuse on the part of those who wield judicial power. Our primary concern in determining the appropriate sanction is to restore and maintain the dignity and impartiality of the judiciary and to protect the public. [Internal citation omitted].

A. The *Brown* Factors. In *In Re Brown*, 461 Mich 1292 (1999), this Court established the criteria for assessing sanctions for judicial misconduct. Specifically:

(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;

⁶⁸ *Exhibit H* at para 75

⁶⁹ See May 9, 2011 letter, attached hereto as *Exhibit R*.

(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.

[*Id.* at 1292-1293]

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

The JTC finds that Respondent's repeated denials that she had not contacted Judge Brennan's staff on March 15, 2011 were clearly false. The JTC finds that Respondent's assertion that she had Ms. Dudley's permission to sign Ms. Dudley's name to pleadings "on her behalf" was also clearly false. The JTC finds that Respondent's assertion that she served Ms. Dudley with copies of the filed documents was also false.

The JTC does not find that Respondent's actions were part of a pattern or practice of her judicial career. The JTC finds, however, that Respondent's acts of calling Judge Brennan's chambers while represented, after Respondent had been warned not to do so, and her repeated ~~unauthorized signing the names of her attorneys, Ms. Burns and Ms. Dudley, to various~~ documents during the course of Respondent's divorce constituted a pattern and practice of misconduct during that period.

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

~~There is no evidence that Respondent committed misconduct on the bench. The JTC finds, however, that during the course of her divorce proceedings, Respondent attempted to leverage her position as a WCCC judge in order to obtain special treatment not available to other non-judicial litigants.~~

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

Respondent's disregard of the MRPC and MCJD and her misrepresentations to this tribunal cannot be excused.

The JTC finds that Respondent's actions were more prejudicial to the administration of justice than 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.*

The JTC finds that Respondent's acts of lying under oath to Judge Brennan, signing Ms. Dudley's name to filed documents without permission, and her misrepresentations to the JTC reflects a lack of respect for the actual administration of justice.

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

~~Respondent's acts of lying under oath to Judge Brennan, impermissibly signing Ms. Dudley's name to written legal documents while attempting to replicate Ms. Dudley's signature, and her misrepresentations during the course of the instant proceedings constitute premeditated and deliberate misconduct.~~

- (6) Misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy... is more serious than misconduct that delays such discovery.

The JTC finds that Respondent's lack of candor to the court evidences an intent to prevent Judge Brennan from learning the truth about who called her staff on March 15, 2011 to request an adjournment of the pro-confesso hearing.

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

The JTC agrees with both the Examiner and the Special Master that this factor does not apply.

B. The JTC's Recommendation.

This Court has held that "[l]ying under oath is the antithesis of judicial integrity." *In re James*, 492 Mich 553, 582 (2012).

Accordingly, pursuant to MCR 9.220, the Commissioners are unanimous that Respondent be suspended without pay for a period of 180 days and ordered to pay costs in the amount of \$8,498.40.⁷⁰

VII. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

MCR 9.220(B)(1) provides that the JTC "must make written findings of fact and conclusions of law" in conjunction with its recommendation for action.

The JTC respectfully recommends this Court adopt the following Findings of Fact and Conclusions of Law:

A. Proposed Findings of Fact:

- (1) Respondent lied, while under oath, regarding whether and the number of times, she contacted Judge Brennan's staff while represented by counsel;

⁷⁰ See Affidavit of Camella Thompson, attached hereto as Exhibit S.

- (2) Respondent signed Ms. Dudley's name without permission to the Motion to Set Aside or Modify the Judgment of Divorce, the Brief in Support, and the Notice of Hearing,
- (3) Respondent made material misrepresentations to the JTC during the course of these proceedings regarding the foregoing.

B. Proposed Conclusions of Law:

Respondent violated the following MRPC, MCR and MCJC canons:

- (1) MRPC 3.3(a)(1), by knowingly making a false statement of material fact to a tribunal;
- (2) MCR 9.104(A) and MCR 9.208(B) by:
 - engaging in conduct "prejudicial to the proper administration of justice" as defined by the Michigan Constitution, as amended, Article VI, Section 30;
 - engaging in conduct "that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach;"
 - engaging in conduct violative of the MRPC;
 - making a "knowing misrepresentation of any facts or circumstances surrounding a request for investigation or complaint."
- (3) Canons 1 and 2 of the MCJC by:
 - not personally observing a high standard of conduct;
 - not avoiding all impropriety and appearance of impropriety;
 - not respecting and observing the law;
 - allowing family relationships to influence her judgment.

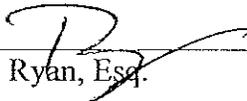
VIII. CONCLUSION

For the foregoing reasons, the JTC concludes that Respondent knowingly signed another attorney's name without permission, lied while under oath, and made misrepresentations during the course of these proceedings in contravention of the MRPC, MCR, and MCJC canons.

The JTC recommends that this Court order that Respondent be suspended without pay for 180 days and that she pay costs incurred by the JTC in prosecuting this matter.

Respectfully submitted,

Dated: 12/28/12



Thomas J. Ryan, Esq.

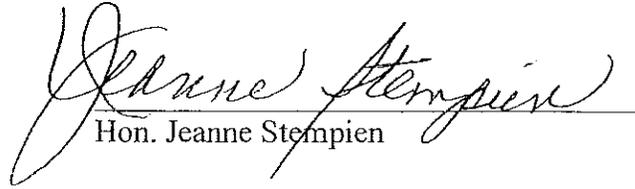
Respectfully submitted,

Dated: 12/28/12


Mayor Brenda L. Lawrence

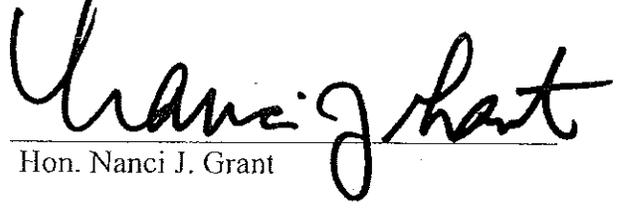
Respectfully submitted,

Dated: 12/21/12


Hon. Jeanne Stempien

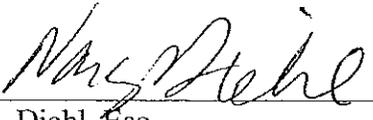
Dated: 12-21-12

Respectfully submitted,


Hon. Nanci J. Grant

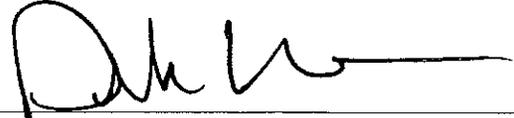
Respectfully submitted,

Dated: 12/21/12



Nancy J. Diehl, Esq.

Respectfully submitted,

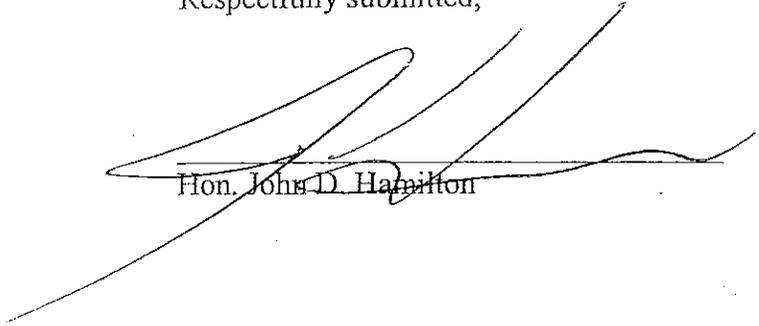


Hon. Pablo Cortes

Dated: 12/21/12

Respectfully submitted,

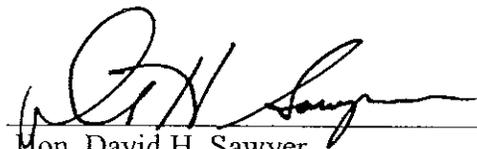
Dated: 12/23/12



Hon. John D. Hamilton

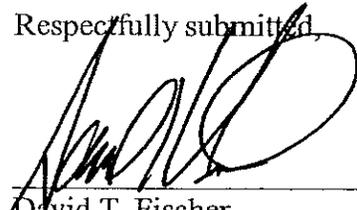
Respectfully submitted,

Dated: 12/21/12



Mon. David H. Sawyer

Respectfully submitted,



David T. Fischer

Dated

12/22/12

LIST OF EXHIBITS

A = SCAO Assignment

B = March 10, 2011 Scheduling Order

C = Respondent's Ex Parte Motion

D = Hearing Before the Special Master Transcript

E = Transcript of Settlement Reached at Mediation Hearing

F = Pro-Confesso Transcript

G = Master's Report

H = Respondent's Answer to Complaint

I = March 16, 2011 Order Scheduling Date for Return of Judgment

J = April 11 fax sent by Respondent under Ms. Dudley's name

K = Consent Judgment of Divorce

L = April 11, 2011 Order re: Motion by Mr. Brukoff for show cause

M = May 5, 2011 email correspondence between Respondent and Ms. Dudley regarding filings

N = Documents filed under Ms. Dudley's name

O = Comparison of Respondent's and Ms. Dudley's signatures

P = Email from Ms. Dudley to Mr. Brukoff, the mediator and Respondent re: notification if she was retained by Respondent

Q = April 26, 2011 email re: filing an appeal to preserve appellate rights.

R = Brukoff's letter to Ms. Dudley re: provision of filed documents.

S = Affidavit of Camella Thompson

T = DVD of Pro-Confesso Hearing