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STATE OF MICHIGAN
IN THE SUPREME COURT

IN RE HON. J. CEDRIC SIMPSON,

Sup Ct #150404
JTC Formal Complaint #96

Respondent.

PETITION TO REJECT OR, IN THE ALTERNATIVE, TO MODIFY RECOMMENDATION OF THE JUDICIAL TENURE COMMISSION

Now comes Hon. J. Cedric Simpson, Respondent in this matter, by and through his attorneys Kenneth M. Mogill and Erica N. Lemanski, and pursuant to the provisions of MCR 9.224(A), petitions this Court for an Order rejecting or, in the alternative, modifying the August 31, 2015, Decision and Recommendation for Discipline of the Judicial Tenure Commission in this matter for the following reasons:

1. On August 31, 2015, the Judicial Tenure Commission issued a Decision and Recommendation for Discipline in this matter recommending that Respondent be removed from office.

2. For the reasons detailed in the attached Brief, the Commission's Decision and Recommendation are unsupported by the record and should, therefore, be rejected by this Court. Specifically:

a. The evidence presented before the Master did not establish that Respondent (1) interfered with a police investigation, (2) interfered with a criminal prosecution or (3) made any misrepresentations in his communications with the Commission or in his testimony before the Master, and the Commission, therefore, erred in finding that Judge Simpson engaged in any judicial misconduct, particularly misconduct in office; and

b. Even if the evidence could arguably be viewed as warranting a finding that Judge

Simpson violated MCJC Canon 2(a), application of the standards set out in *In re Brown*, 461 Mich 1291 (2000), to the facts of this case, including consideration of the isolated nature of the conduct at issue, Judge Simpson's fine background and his appropriate attitude toward future conduct, does not warrant either removal from office or a substantial suspension.

WHEREFORE, Respondent prays this Court for an Order rejecting or, in the alternative, modifying the recommendation of the Judicial Tenure Commission in this matter as requested in the attached Brief.

Respectfully submitted,

/s/Kenneth M. Mogill

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/s/Hon. J. Cedric Simpson
Hon. J. Cedric Simpson

Dated: October 27, 2015

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CERTIFICATE OF OF SERVICE

Kenneth M. Mogill states that on the 27th day of October 2015, he served copies of the following:

Petition to Reject or, in the Alternative, to Modify Recommendation of the Judicial Tenure Commission

Brief in Support of Petition to Reject or, in the Alternative, to Modify Recommendation of the Judicial Tenure Commission

Appendix

upon Paul J. Fischer, Esq., at FischerP@courts.mi.gov and Margaret N. S. Rynier, Esq., at RynierM@courts.mi.gov.

/s/Kenneth M. Mogill
Kenneth M. Mogill

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STATE OF MICHIGAN
IN THE SUPREME COURT

IN RE HON. J. CEDRIC SIMPSON,

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Respondent.

_____

BRIEF IN SUPPORT OF
PETITION TO REJECT OR, IN THE ALTERNATIVE, TO MODIFY RECOMMENDATION
OF THE JUDICIAL TENURE COMMISSION

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STATEMENT OF QUESTIONS PRESENTED

I.

THE EVIDENCE PRESENTED DID NOT ESTABLISH THAT JUDGE SIMPSON INTERFERED WITH A POLICE INVESTIGATION, INTERFERED WITH A CRIMINAL PROSECUTION OR MADE ANY MISSTATEMENTS IN CONNECTION WITH THIS MATTER, AND THE COMMISSION ERRED IN FINDING THAT JUDGE SIMPSON ENGAGED IN ANY JUDICIAL MISCONDUCT, PARTICULARLY MISCONDUCT IN OFFICE.

Respondent says, "yes".
The Commission said, "no".

II.

EVEN IF THE EVIDENCE COULD ARGUABLY BE VIEWED AS WARRANTING A FINDING THAT JUDGE SIMPSON VIOLATED MCJC CANON 2(A), APPLICATION OF THE STANDARDS SET OUT IN *IN RE BROWN*, 461 MICH 1291 (2000), TO THE TOTALITY OF THE CIRCUMSTANCES OF THIS MATTER DOES NOT WARRANT EITHER REMOVAL FROM OFFICE OR A SUBSTANTIAL SUSPENSION.

Respondent says, "yes".
The Commission said, "no".

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STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

[Page references in parenthesis are to the pages of the transcript of the March 30-31 and April 1, 2015, trial in this matter. Page references preceded by "V" are to the pages of Crystal Vargas' deposition transcript.]

1. Summary of allegations and proceedings. Judge Simpson was charged in this matter with interfering with a police investigation (Count I), interfering with a criminal prosecution (Count II) and making misstatements to the Commission (Count III). Judge Simpson denied that he had engaged in the alleged misconduct, and the matter was heard before retired Ingham Circuit Judge Peter D. Houk on March 30 and 31 and April 1, 2015.

The charges all grow out of the September 8, 2013, arrest of then-law student Crystal Vargas, an intern in Judge Simpson's chambers at the time, following Ms. Vargas' involvement in a traffic accident and Judge Simpson's appearance at the accident scene during the course of the arresting officer's investigation. As detailed below, at the time of her arrest, Ms. Vargas was working for Judge Simpson on a very sensitive case that resulted in her reviewing hundreds of thousands of text messages as part of Judge Simpson's *in camera* review of those messages. Judge Simpson and Ms. Vargas communicated about the case and about the text messages frequently and at virtually all hours of the day and night. They also communicated about serious personal problems Ms. Vargas was having with her former boyfriend.

On April 28, 2015, the Master issued his Findings of Fact and Conclusions of Law. The Master concluded that Judge Simpson did not engage in misconduct in office, Const 1963, art VI, §30(2), but concluded that Judge Simpson engaged in conduct prejudicial to the administration of justice, Const 1963, art VI, §30(2), and MCR 9.205, by using his judicial office for the gain of another. The Master also concluded that Judge Simpson violated Canons 1 and 2 of the Code of

Judicial Conduct by failing to maintain and observe high standards of conduct by interfering at the arrest scene and contacting prosecuting authorities. The Master also concluded that Judge Simpson violated MCR 9.104(2) by making misleading statements to the Commission's investigators and to the Master in his testimony as to the nature of text messages and when he denied interfering with the police investigation and with Ms. Vargas' prosecution. Respondent timely objected to the Master's findings and conclusions that were adverse to him.

On August 31, 2015, the Commission issued its Decision and Recommendation for Discipline, finding that Judge Simpson had interfered with a police investigation and with a criminal prosecution and that he had made misstatements in connection with the matter. The Commission also concluded that Judge Simpson committed misconduct in office, in violation of Const 1963, art VI, §30(2), and MCR 9.205, among other misconduct. The Commission recommended that this Court remove Judge Simpson from his judicial office.

2. Judge Simpson's background and character. Judge Simpson has lived in Ann Arbor most of his life and has long been very active in the community. After earning his bachelor of arts degree *summa cum laude* from the University of Maryland in 1983 and his juris doctor degree from the University of Maryland Law School in 1986 and passing the Michigan Bar (184-85), Judge Simpson returned to Ann Arbor and entered private practice (185). He remained in private practice until being appointed to the 14th District Court bench in 1999 (185).

His many community activities, which he resumed promptly following his return to Michigan after law school, have included working with the Peace Neighborhood Center, the Community Action Network, the Corner Health Center in Ypsilanti and with Dawn Farms, a substance abuse treatment center (187). His work with the Peace Neighborhood Center, for example, included being

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president of the group's board of directors and helping with youth reading programs and substance abuse problems (187-88). His work with the Community Action Network, which also included membership on the board of directors, included work in the areas of low-income housing and programs designed to increase high school graduation rates (188). His work with the Corner Health Center, which also included board membership, included addressing issues of teen pregnancy and health care and social work services for teens (189).

Judge Simpson has also taught as an adjunct professor at Cooley Law School, Eastern Michigan University and Washtenaw County Community College (191). He has also been a faculty member at the Michigan Judicial Institute (191-92).

Among his Bar activities, Judge Simpson has served as a State Bar Commissioner, and he has been active in the Washtenaw County Bar Association, including being the only judge to serve as its president (189-90). He has also been very active with the Inns of Court (190-91).

As a result of his many community and bar activities, Judge Simpson has received many awards, including the 2000 Man of the Year Award from the Ypsilanti Community Junior Athletic Association, the 2002 Jurist of the Year Award from the Police Officers Association of Michigan, the 2004 Father Bernard J. O'Connor Award from the Washtenaw County Dispute Resolution Center, the 2007 Professionalism Award from the National Association of Negro Business and Professional Women's Clubs, the 2011 Integrity and the Community Award from Cooley Law School and the 2013 Cooley Student Bar Association Drill Sergeant Tough Love Award (193-95).

Judge Simpson's fine character and reputation for honesty were testified to by 14th District Court Judge Richard E. Conlin (366-71), Assistant Washtenaw County Public Defender Ronald Brown (372-77), Ann Arbor attorney Chad Engelhardt, who has taught at Cooley Law School with

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Judge Simpson (377-83) and Detroit attorney Margaret Philpot, who has also taught at Cooley with Judge Simpson (396-400).

Judge Simpson has also long made it his policy to be a mentor to his students. He gives out his cell phone number to all of his students in order to be accessible to them and available to help with law school or personal problems, no matter the time of day or night (200-02). Cooley Law School Associate Dean Joan Vestrand testified that she and Judge Simpson are

> kindred spirits in our philosophies with regard to mentoring young people. I know Judge Simpson to be very similar to me in that he won't turn any student away. He will mentor and support any student who asks for that relationship. . . I used to think about him as having a flock of my students every single semester, sometimes as many as a dozen, that he took his personal time to give a nice experience as interns in his office. But more than that, he truly mentored in favor of their success, helped a lot of our students so he was extremely well regarded by the student body.
>
> . . . [he] gave out his personal information and encouraged them to call him or contact him anytime they had a concern or question, even if it was unrelated to the internship, just a personal problem, which is very similar to my own philosophies.

(421-22). Dean Vestrand was also aware of incidents when students had called Judge Simpson late at night and he had willingly taken the calls (423). Former students Chrissy Curri and Tracy Hytower testified to having been among the students who availed themselves of Judge Simpson's accessibility as a mentor (386-90; 403-06).

As Ms. Curri, now an Assistant District Attorney in upstate New York (385), put it with respect to one late-night call she and other students made to Judge Simpson, she remembers "talking to him and he calmed us down. And I remember we were apologizing that we had called so late, but he didn't seem to care at all that we had called so late" (389). With respect to Judge Simpson's impact on her as a mentor, "I went to Michigan not knowing anyone. I just knew I needed someone to go to, and I knew I could turn to Judge. And I did and he was there for me" (389-90).

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ARGUMENT

Standard of review

The burden of proving the allegations in a case alleging judicial misconduct is on the Examiner, and the allegations must be proven by a preponderance of the evidence. *In re Ferrara*, 458 Mich 350, 360 (1998); MCR 9.211(A). This Court reviews the Judicial Tenure Commission's recommendations and findings of fact *de novo*. *In re Chrzanowski*, 465 Mich 468, 478-79 (2001).

I.

THE EVIDENCE PRESENTED DID NOT ESTABLISH THAT JUDGE SIMPSON INTERFERED WITH A POLICE INVESTIGATION, INTERFERED WITH A CRIMINAL PROSECUTION OR MADE ANY MISSTATEMENTS IN CONNECTION WITH THIS MATTER, AND THE COMMISSION ERRED IN FINDING THAT JUDGE SIMPSON ENGAGED IN ANY JUDICIAL MISCONDUCT, PARTICULARLY MISCONDUCT IN OFFICE.

A.

The evidence did not establish that Judge Simpson interfered with a police investigation, interfered with a criminal prosecution or made any misstatements in connection with this matter.

Contrary to the Commission's conclusions, the record in this case affirmatively establishes that Judge Simpson did not at any time use or attempt to use his judicial office for the gain of another, he did not interfere or attempt to interfere with the officer's investigation at the scene of Ms. Vargas' arrest, he did not interfere or attempt to interfere with Ms. Vargas' prosecution, and he did not in any way misrepresent his relationship with Ms. Vargas or his actions in relation to her arrest and prosecution. Because the evidence presented does not establish that Judge Simpson engaged in any misconduct, this Court should reject the Commission's conclusions to the contrary.

1. *The evidence presented did not establish that Judge Simpson interfered with the police investigation of Ms. Vargas.*

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In concluding that Judge Simpson interfered with the police investigation of his intern Crystal Vargas, the Commission erroneously relied on acts by Judge Simpson that are entirely benign and acts of others that were neither requested nor sought by Judge Simpson and which were, therefore, irrelevant to an assessment of Judge Simpson's conduct. The Commission also failed to take account of the multiple facts and circumstances that demonstrated Judge Simpson's innocence of this allegation. A fair review of the facts and circumstances – including, importantly, a review of the video of the officer's contact with Ms. Vargas before and during Judge Simpson's presence at the scene – demonstrated conclusively that Judge Simpson did not at any time interfere with the arresting officer's investigation and that his actions and words were at all times entirely respectful of the officer's role and responsibilities at the scene.

Importantly, the officer investigating Ms. Vargas, Pittsfield Township Officer Robert Cole, did not at any time testify to *any* act of interference by Judge Simpson. Officer Cole's testimony also made clear that he neither perceived Judge Simpson's actions at the scene to be intended to interfere with his investigation nor did he believe that Judge Simpson had in any way, in fact, interfered with his actions at the scene.

Specifically, Judge Simpson did not at any time, in any way, directly or indirectly, suggest to or ask Officer Cole to do anything or refrain from doing anything other than what he was supposed to do as a police officer (221). Judge Simpson, in fact, spent much of his time at the scene near his own vehicle, and except for when he introduced himself to the officer or spoke with Ms. Vargas, none of which interfered with the investigation, he consistently remained at respectful distances from the officer and Ms. Vargas (15-20 feet, 30-40 feet or 50-60 feet away) (112, 115, 118).

Judge Simpson's truthful introduction of himself as "Judge Simpson" was a simple statement

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of who he is and was in no way an interference or suggestion of an intent to interfere with the officer's investigation. Having been a judge since 1999 and being well-known in the Washtenaw County community, it would have been very odd if Judge Simpson had not introduced himself as he did.[1]

It was also significant that Officer Cole does not hesitate to say "no" to someone at the scene of an investigation if he thinks that is in the best interest of what he is doing (275). If for any reason Officer Cole had felt it was appropriate to say "no" when Judge Simpson was near the back of the tow truck, for example, he agreed that he would have done so regardless of the fact that he was dealing with a judge (275-76). Judge Simpson also noted that Officer Cole would have spoken up if he did not want the judge to approach Ms. Vargas, or take any other action, while he was at the scene (106). The situation at the scene was "not a tense situation by any stretch of the imagination", which is something Officer Cole takes into account in deciding when to say "yes" and when to say "no" (276).

Officer Cole asked Ms. Vargas the questions he felt were appropriate at the time, and nobody asked him not to ask any questions (276-77). Nobody asked him to change anything or hide anything or pretend anything did not exist (277). He was there to do his job as a police officer, and he did it without anyone telling him or even hinting to him not to do his job (277).

Judge Simpson did ask Officer Cole if Ms. Vargas "just need[ed] a ride or something" when the officer informed him that he wanted to make sure that Ms. Vargas was "okay to drive" (252-53). However, contrary to the suggestion that this question meant that Judge Simpson sought to influence

---

[1]Ms. Vargas had already identified Judge Simpson as "Judge Simpson" to the officer before Judge Simpson and Officer Cole spoke (248), and Officer Cole has appeared before Judge Simpson and recognized him as he approached (250).

Officer Cole, the officer made clear that he did not draw such an inference. When asked what he thought the judge's question meant, Officer Cole responded that he did not know whether Judge Simpson "necessarily knew [he] was talking about the drinking and driving" when he told Judge Simpson that he wanted to make sure that Ms. Vargas was okay to drive, and, as a result, he did not know what Judge Simpson's question meant (253). When questioned further about Judge Simpson's inquiry, Officer Cole testified that he did not think that Judge Simpson was asking if Ms. Vargas was going to be released and stated that he had heard this question asked before at both drinking and driving scenes and other scenes as well (253). In fact, Officer Cole testified that he did not know that he "really acknowledged the comment" (253). The record is clear that, at the time he arrived at the scene, Judge Simpson did not know that Ms. Vargas had been drinking.

Judge Simpson's decision to remain at the scene after learning that Ms. Vargas had not been injured was also benign. Not only was his mere presence no evidence at all of interference with the officer's investigation, he did not know whether Ms. Vargas' car, which had been in an accident, could be driven, so remaining at the scene until he found out whether she would need a ride was entirely understandable in the circumstances (221).

Officer Cole at times exercises discretion at a scene, particularly when an arrested person has been cooperative, and it was Officer Cole who suggested that Ms. Vargas give her keys and cell phone to Judge Simpson (262, 278). He agreed that giving Ms. Vargas' keys and cell phone to Judge Simpson would necessarily involve locating those items, speaking with Judge Simpson, "making sure that Ms. Vargas knew what was going on and coordinating, all of that" (278). Officer Cole exercised his discretion at the scene based on facts relevant to doing police work, *not* the fact that the person who had come to the scene was a judge and *not* based on any interference by Judge

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Simpson.

Further, Officer Cole not only gave Judge Simpson permission to speak with Ms. Vargas while she was in the police car (221-22), he would not have hesitated to say "no" to the judge if the judge had wanted to speak with Ms. Vargas at any other point when it had not been okay with the officer (279).[2]

Any inference of interference is also incompatible with the facts that, when Ms. Vargas called Judge Simpson after being in the accident, Judge Simpson explicitly encouraged her to call the police (92), that, in his capacity as a Cooley Law School faculty member, he fulfilled his obligation promptly to report her arrest, doing so first thing on the Monday morning following the accident (224), and that he also promptly reported her arrest to Judge Richard E. Conlin, the court's Chief Judge *pro tem* (Exhibit 4, Response to 28-day letter, p 3).

For all of these reasons, the evidence in this matter not only failed to establish that Judge Simpson interfered with Officer Cole's investigation of Ms. Vargas, it also contrasts starkly with the evidence in a case that did establish such interference. In *In re Brown*, 464 Mich 135, 137 (2001), Judge Brown had been involved in an automobile accident, and when officers arrived at the scene, including one the judge knew, the judge attempted to use his judicial office to direct the officers' activities, directing them to run the other driver's name through the LEIN system and issue her a ticket.

Despite the complete absence of evidence of interference in fact at the scene by Judge

---

[2]Despite having no information as to where Ms. Vargas had been before he saw her at the scene (276), Officer Cole chose not to ask Ms. Vargas the standard question, "Where are you coming from?" (257) because he "had a guess of where . . . [he] thought she was coming from", and he was permitted, over objection, to state that he thought Ms. Vargas was coming from Judge Simpson's home (259).

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Simpson, the Examiner argued to the Master that the judge's mere appearance at the scene was "clearly improper" (436-437). The Examiner cited no authority for such a sweeping proposition, and there is none. While a judge should "freely and willingly" "accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen", MCJC, Canon 2(A), and while Judge Simpson does so, identifying where that line is is often unclear, and there is nothing about the mere appearance at an accident scene by a person who happens to be a judge that is "clearly improper" or that gives rise to even an appearance of impropriety.

In contrast, a private citizen who appears at an accident scene to assist a friend would be free to try to persuade the investigating officer to do or not do something the officer would otherwise be inclined to do, but it makes sense that if a judge were to attempt to do so, such conduct could reasonably be understood as attempting to use the judicial office to influence the officer's conduct. Drawing the line at such conduct would be fully consistent with the Code and would be sound public policy. A judge's mere appearance at an accident scene is qualitatively different, however. Where, as here, a judge who comes to an accident scene is careful to avoid taking any action that could fairly be interpreted as using the judicial office to gain a benefit for the person being investigated – and where, also as here, a video of the incident and the officer's testimony confirm that the judge did not in any way attempt to influence the officer's investigation – the line has not been crossed, and there has been no misconduct.

Finally, Judge Simpson also understands that while a judge's mere presence at a scene is not misconduct, it can raise questions, as his presence at the scene of Ms. Vargas' arrest obviously has done. For this reason – even though questions are not the same as misconduct – if a situation like this were to arise again, he would not personally go to the scene. He would avoid appearing at the

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scene not because he misused or attempted to misuse his office on this occasion but in order to avoid even a question as to the propriety of his conduct (230-33).

For all of these reasons, the Commission incorrectly concluded that Judge Simpson interfered with the officer's investigation, and this Court should reject that finding and conclusion.

2. *The evidence presented did not establish that Judge Simpson interfered with Ms. Vargas' prosecution.*

In concluding that Judge Simpson had interfered with the prosecution of Ms. Vargas, the Commission accurately noted that Mr. Lillich had offered in a telephone conversation with Judge Simpson to wait until he heard from Ms. Vargas' retained counsel before deciding whether to authorize a warrant request. To the Commission, this was evidence of Judge Simpson's interference with Ms. Vargas' prosecution. However, Judge Simpson had neither directly nor inferentially asked Mr. Lillich to defer taking action on the file. Moreover, waiting to hear from defense counsel was an entirely normal practice for Mr. Lillich, and doing so did not result in delay in Ms. Vargas' prosecution.

Mr. Lillich testified that in the normal course of business there is a wide variation in how long it takes for different cases to be processed; "it's all over the board" (331-32). He has known Judge Simpson for 25 years, but that does not make any difference in terms of what he does or does not do in a given case (333). He has a specific way of doing things, and he sticks to that process (333-34). Specifically with respect to the two telephone conversations he had with Judge Simpson regarding Ms. Vargas' arrest, Mr. Lillich testified unequivocally that Judge Simpson did not do anything to attempt to interfere with his exercise of discretion and that his communications with Judge Simpson did not delay the processing of Ms. Vargas' matter:

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> Q: . . . in neither of the conversations or in any communication Judge Simpson had with you, with respect to Ms. Vargas, it's correct, is it not, that he did not attempt to use his status as a judge to get you to do or not do anything that you were otherwise going to do?
>
> A: No, I don't think he did anything like that.
>
> Q: Was there a wink and a nod involved?
>
> A: No. No, there wasn't a wink or a nod involved.

(335).

> Q: With respect to the different communications that you had with Judge Simpson in September of 2013, did either one of these delay the processing of the case?
>
> A: No. I wouldn't call that period of time a delay, really.

(336).

Nor was there anything inappropriate about Judge Simpson mentioning who Ms. Vargas was and a small amount of information about her background (301-02). Far from suggesting that Judge Simpson was seeking special treatment for Ms. Vargas, these snippets were nothing more than simple conversation; as noted above, "there wasn't a wink or a nod involved" (335).

Importantly, as Mr. Lillich testified, when an arrested person has retained an attorney, it is not at all unusual for him to give the attorney an opportunity to speak with him before deciding whether to proceed with the prosecution. He did that in this case in waiting for Ms. Vargas' attorney, John Shea, to contact him (336-37). He waited for Mr. Shea to contact him *not* because of anything Judge Simpson did or said but because doing so was part of his normal process. Even if there had been some delay in the processing of the case as a result of Mr. Lillich waiting to speak with Mr. Shea, the delay was the result of Mr. Shea and Mr. Lillich trading messages several times before finally speaking with each other in early October, not because of anything Judge Simpson did or said

(357-58).[3] Judge Simpson had nothing whatever to do the communications between Mr. Lillich and Mr. Shea.[4]

The record also well-established that Judge Simpson, in fact, had a legitimate reason to contact Mr. Lillich. It is entirely reasonable that he wanted to determine what Ms. Vargas had done and whether or not she had been truthful with him and that he would raise this subject with Mr. Lillich (142, 144-145, 335-36). Knowing the facts of what Ms. Vargas had done and whether she had been truthful with him were both relevant to deciding whether to retain her as an intern, and, even if he decided to retain her, whether to take other action in relation to her conduct. Based on Judge Simpson's experience with drunk driving cases, he questioned whether Ms. Vargas was being truthful with him about her PBT and DataMaster results because of the discrepancy between the two (137-41). The record is also clear that he contacted Mr. Lillich for that legitimate purpose, that his concerns about the test results were reasonably related to his interest in determining whether Ms. Vargas had been candid with him, and, as noted above, that he did not ask or imply that Mr. Lillich do or decline to do anything he would not otherwise do or decline to do. He also informed Ms. Vargas that he had checked with Mr. Lillich "to confirm . . . [her] story" (V-60).

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[3]Mr. Shea wanted to speak with Mr. Lillich before Mr. Lillich made his decision about authorizing a warrant request because of an apparent anomaly in the testing device used in Ms. Vargas' matter; the anomaly "caused me to question whether one or more of those instruments were reliable and what impact that might have on proofs. So that was really what was driving my need to speak with Vic" (360-61).

[4]Judge Simpson had given Ms. Vargas the names of several attorneys she might wish to consider retaining (158-59). Prior to Ms. Vargas retaining Mr. Shea, Mr. Shea had one telephone conversation with Judge Simpson in which the judge asked whether Mr. Shea would be willing to consider being retained by Ms. Vargas. Judge Simpson did not ask Mr. Shea to treat Ms. Vargas differently in any way from any other client, and there were no further communications between Mr. Shea and Judge Simpson after that conversation (355-57).

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Finally, the fact that Mr. Lillich disqualified his office from handling Ms. Vargas' prosecution is no evidence of misconduct by Judge Simpson. To the contrary, Mr. Lillich's disqualification statement of October 21, 2013, makes clear that the decision to disqualify was made as a prophylactic measure *not* because of any interference by Judge Simpson but as a result of a question having been raised and Mr. Lillich choosing to avoid even a question as to the propriety of his office's continued involvement. It was reasonable for Mr. Lillich to choose to disqualify his office in the matter, but it would also have been reasonable for him not to disqualify his office.[5]

For all of these reasons, the record does not support a finding that Judge Simpson interfered with the prosecution of Ms. Vargas, and this conclusion, too, should be rejected by this Court.

3. *The evidence presented did not establish that Respondent made any misrepresentations in the course of the investigation or trial of this matter.*

The Commission's conclusions regarding Judge Simpson's communications with Ms. Vargas and his statements regarding those communications are not just unsupported by the record, they are entirely incompatible with the record.

In alleging that Judge Simpson engaged in misconduct by misrepresenting his relationship with Ms. Vargas, it was the Examiner's burden to establish that there was, in fact, an inappropriate relationship. The Examiner failed entirely to meet that threshold burden. While the Commission did not rely directly on that allegation in its Decision, it did so inferentially and unfairly.

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[5]While Judge Simpson's communication with Mr. Lillich did not interfere with the prosecution of Ms. Vargas, Judge Simpson realizes that the communication could potentially raise questions (231). For this reason, if, in the future, another intern should be arrested and Judge Simpson should need to verify the facts surrounding the arrest, he would "find other mechanisms by which to make . . . [an] initial factual determination" (231). He would avoid contacting the prosecutor handling the matter not because he misused or attempted to misuse his office regarding Ms. Vargas but in order to avoid even a question as to the propriety of his conduct (231-32).

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As noted above, Ms. Vargas was a student of Judge Simpson's and an intern in his chambers. The evidence demonstrated that Ms. Vargas was experiencing personal problems with her ex-boyfriend in the summer of 2013 and that she spoke with Judge Simpson repeatedly about those problems and what she should do in response.[6] Both Judge Simpson and Ms. Vargas were entirely candid about these communications.

Judge Simpson's availability to Ms. Vargas was also entirely consistent with his availability to other students experiencing either school-related or personal problems, including Ms. Curri and others noted by Judge Simpson and by Dean Vestrand (201-06; 389-90; 421-24). Far from being judicial misconduct or even suspicious behavior, his availability to Ms. Vargas – just like his availability to other students – was conduct for which he should be commended.

The evidence also demonstrated that Judge Simpson assigned Ms. Vargas to work on a particular case – the *Nassif* case – that involved both preliminary research – including before the case was formally assigned to Judge Simpson – and review of an extremely large volume of text messages from and to Mr. Nassif. Judge Simpson and Ms. Vargas understandably communicated a great deal about that research and that review. Even before Judge Simpson had been assigned the *Nassif* case or had received any text messages related to that case, he knew from his familiarity with the court's assignment process that the case was going to be assigned to him (75). In anticipation of the case assignment and in order to be proactive, Judge Simpson asked Ms. Vargas to conduct preliminary research on a motion to maintain the *status quo* (61, 75). After the case was assigned to Judge Simpson, Ms. Vargas was given the task of reviewing hundreds of thousands of text messages (64).

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[6]Ms. Vargas' ex-boyfriend was also a law student. Ms. Vargas felt that Judge Simpson was the only person she could trust with information about her ex-boyfriend other than Dean Vestrand, with whom she also discussed these problems (V-31-32).

This was extremely time-consuming work that necessarily entailed a great deal of back-and-forth communication between Ms. Vargas and Judge Simpson and guidance of Ms. Vargas by Judge Simpson in order to be completed competently.

Contrary to the Commission's conclusion, the evidence simply did not establish either an improper relationship between Judge Simpson and Ms. Vargas or any misstatement as to the purposes of their many text messages. The Examiner repeatedly insinuated a social relationship, but both Judge Simpson and Ms. Vargas affirmatively denied any such relationship (V-34-35, V-84; Answer to Formal Complaint, ¶¶65-67), and there was no testimony or other evidence to the contrary. Throughout the investigation and litigation of this matter, Judge Simpson has been completely open and candid about the extent and nature of his communications with Ms. Vargas, as has Ms. Vargas. Incongruously, however, the Commission concluded that "the sheer number of text messages and telephone calls exchanged" "belies" Judge Simpson's answer to the Formal Complaint (¶65) that "the vast majority of the communications" between them were related to Ms. Vargas' work. Decision, pp 9-11.

The Commission's conclusion is unsupportable for multiple reasons. First, the evidence does not include *any* information whatever as to the contents of *any* of the text messages between Judge Simpson and Ms. Vargas, and the Commission's conclusion as to the contents of messages is, therefore, necessarily based on rank speculation. The Commission simply cannot identify the subject matter of *any* message, let alone quantify which messages were for which purpose or purposes. The Commission's conclusion is not only unsupported by the evidence, it also turns the burden of proof on its head.

The Commission also misunderstood the record with respect to how and where Ms. Vargas

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did her work for Judge Simpson. Ms. Vargas was never asked about any telephone calls or text messages exchanged with Judge Simpson about the *Nassif* case (V-34), and the Examiner chose not to call Ms. Vargas as a witness before the Master. In addition, Ms. Vargas was not asked whether she also did work for Judge Simpson after business hours when she was not at the courthouse, and the record is clear that she did do so. Moreover, although, as indicated by the Commission, Ms. Vargas testified that as part of her intern duties she "observed more than anything", she also testified that she conducted "*a lot*" of research for Judge Simpson (V-9; emphasis added).

In addition, any suggestion that the times of day and night of many of the telephone and text communications is evidence of a non-work purpose is utterly incompatible with the realities of modern life let alone fundamental notions of fairness. It is simply of no consequence whatever that many text messages were sent outside of what would be considered traditional business hours. Many people, especially students, work late into the night and early in the morning and communicate with colleagues about work during those hours, especially when engaged in a large, complex, time-sensitive project.

In addition, Judge Simpson's schedule virtually necessitated off-hours communication with Ms. Vargas on the *Nassif* case. He had his judicial duties on the bench during the day, but he was also going through a divorce, teaching at Cooley Law School and involved in multiple community organizations. He led a very full, hectic life, and it is not at all unusual or in any way suspicious that, as a result, he ended up working on projects at home late at night after he had taken care of other responsibilities (218).

In fact, far from being evidence of a misstatement by Judge Simpson or in any way suspicious, the number of text messages exchanged between Judge Simpson and Ms. Vargas, both

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before and after she began her review of confidential records in the *Nassif* case, is well within the range of what one would reasonably expect from a conscientious intern and a conscientious judge in the circumstances given the nature and extent of the work Ms. Vargas was performing for the judge on that case.

Finally as to this issue, a comparison of the number of text messages between Judge Simpson and Ms. Vargas with the individual, anecdotal experience of one Sprint representative is of no evidentiary value whatever. The Sprint representative, Mr. Clark, testified as to his personal experiences only; he was not testifying as an expert witness, and there is nothing in the record to suggest that his personal experiences reflect even the experiences of other text message provider representatives let alone the texting patterns of busy individuals legitimately juggling multiple substantial responsibilities. Moreover, the time period to which Mr. Clark testified began on June 20, 2013 (18), and the Formal Complaint did not allege misconduct regarding communications between Judge Simpson and Ms. Vargas prior to August 1, 2013. If the Formal Complaint had alleged misconduct regarding the judge's communications with Ms. Vargas in June or July 2013, Respondent would have had reason further to detail and would, in fact, have further detailed Judge's Simpson's communications with Ms. Vargas regarding her problems with her ex-boyfriend and the preliminary research she began performing regarding *Nassif* before Judge Simpson received the text messages to be reviewed.

The Commission's conclusion that Judge Simpson made misrepresentations as to text messages from or to Ms. Vargas between midnight and 4:00 a.m., *Id.*, pp 8-9, is also unsupported by the record. The Commission ignored the facts that Judge Simpson was consistently careful to be as clear and accurate as possible in responding to the multiple questions regarding his

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communications with Ms. Vargas during the night of September 7-8 and that when he was uncertain as to whether there had been any communication – including between midnight and 4:00 a.m. – he specifically qualified his answer by noting that uncertainty so that he would not misstate the truth or mislead: "*I don't believe that there were any text messages. I don't believe that there was any contact*" (146-47; emphasis added).

If Judge Simpson had stated that there were no text messages, that would have been an assertion of fact which, if untrue, would have been a misstatement. However, where, as here, he carefully qualified his answer by noting his uncertainty as to the correct answer to a particular question – "*I don't believe . . . I don't believe*" there were any text messages or contact during that particular time period – the answer was not a misrepresentation at all.

The surrounding context also demonstrates the absence of either a misrepresentation or an intent to mislead or misrepresent. Judge Simpson readily admitted having been in communication with Ms. Vargas that night. Not only would he have had no motive whatever to misrepresent his answer to any particular question, doing so would be utterly inconsistent with his ready acknowledgment of the nature and extent of the communications throughout the investigation and litigation of this matter.

A review of the questions posed to Judge Simpson and his answers demonstrates Judge Simpson's honesty, including his careful noting of when he was and was not sure as to what had occurred and when:

> Q: Okay. When is the last text message that you recall in regard to that memo on Saturday or early Sunday morning?
>
> A: *I couldn't tell you, ma'am, without looking at the record.*

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Q: Do you recall what time you went to bed?

A: When?

Q: Saturday night into Sunday morning.

A: I went upstairs with Garrison about 1:00. 1:30.[7]

Q: A.M.; correct?

A: A.M.

. . .

Q: And did you fall asleep?

A: I dozed in and out. He was having a very difficult time, because we had just switched from the summer schedule to the school schedule. And so he was having problems sleeping, but I dozed off at points, yes.

Q: At some point in time, did you receive a phone call from Ms. Vargas?

A: I did.

Q: And do you recall what time it was?

A: It was near 4:25, I think. I know at some point I looked up and saw the clock in my room, which I keep 20 minutes fast, and they were all fours. I do remember that.

(88-89; emphasis added).

Q: Did you have any contact with Mrs. Vargas between midnight and 3:30 that morning?

A: Which morning?

Q: I'm sorry. On the day that she was – on the morning she was arrested, did you have any contact with her *between midnight and 3:30 or 4:00 that morning*?

A: No.

Q: And when you say no, that's not by text message or anything else; correct?

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[7]Garrison is Judge Simpson's son.

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> A: *I don't believe that there were any text messages. I don't believe that there was any contact.*

(146-47; emphasis added).

For these reasons, the Commission's determination that Judge Simpson misrepresented anything in relation to his communications with Ms. Vargas during the night of September 7-8 also does not withstand scrutiny, and it, too, should be rejected by this Court.

For all of these reasons, the record is devoid of evidence establishing that Judge Simpson misrepresented either his relationship with Ms. Vargas or the purpose or purposes of text messages and telephone calls between them or whether there were or were not communications at any particular point in time during the night of September 7-8. The Court should, therefore, reject the Commission's conclusions as to these allegations, too.

B.

The Commission erred in finding that Judge Simpson engaged in any judicial misconduct, particularly misconduct in office.

For all the reasons articulated above, Judge Simpson did not interfere with a police investigation or a criminal prosecution, and he did not make any misstatements in the course of the Commission's investigation or at trial in this matter. As such, he did not engage in any judicial misconduct. In particular, contrary to the Commission's conclusion, he did not engage in misconduct in office.

The Formal Complaint charged Judge Simpson with engaging in "[m]isconduct in office, as defined by the Michigan Constitution of 1963, Article VI, Section (2)." Formal Complaint, ¶85(a).[8] Section 30(2) does not define "misconduct in office", and no court rule defining the term existed at

[8]The Constitutional provision at issue is Article VI, Section 30(2), not "Section (2)".

the time the Constitutional provision was adopted. As such, in determining whether this charge had been established, the Master appropriately looked to case law interpreting the common law offense of misconduct in office, including this Court's decisions in *People v Perkins*, 468 Mich 448 (2003), and *People v Coutu*, 459 Mich 348 (1999), and the Court of Appeals' decision in *People v Waterstone*, 296 Mich App 121 (2012). Based on the holdings of these cases, the Master correctly concluded that

> The requisite "intent" for purposes of misconduct in office under MCL 750.505 is the intent to engage in corruption or corrupt behavior; a corrupt intent needs to be proven. . . corrupt intent "can be shown where there is intentional or purposeful behavior or wrongful conduct pertaining to the requirements and duties of office by an officer." . . . "'It is *corrupt* for an officer purposely to violate the duties of his office.'"

Id. at 141-42 (cites omitted; emphasis in original).

Applying the holdings of *Waterstone* and its antecedents, the Master also correctly concluded that "[w]hen Respondent appeared at the scene of the accident/arrest, he was not acting under color of office." Findings of Fact and Conclusions of Law, pp 13-14. The Master also concluded that misconduct in office had not been established as to either Respondent's communications with Mr. Lillich or with respect to the text message communications. *Id.* In reaching this conclusion, the Master necessarily found an absence of proof as to culpable intent.

In rejecting the Master's conclusion and finding that Respondent engaged in misconduct in office, the Commission did not discuss at all the Master's conclusion or the reasoning supporting that conclusion. Rather, the Commission merely stated its conclusion that Respondent engaged in "[m]isconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.205". Decision, pp 11-12. The Commission's conclusion incongruously

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includes a determination that Judge Simpson engaged in misconduct in office ". . . *as defined by* . . . *MCR 9.205*" (emphasis added), is significant. While other charges in the Formal Complaint asserted a violation of MCR 9.205, the allegation of misconduct in office did not.[9] It is, of course, axiomatic that one may not be found liable for violating a standard he or she was not charged with violating, and the Commission manifestly erred in relying on the court rule in finding that Judge Simpson engaged in misconduct in office.

In addition, it is impossible to determine from the Commission's Decision its basis for disagreeing with the Master's conclusion – including whether it disagreed with the Master's determination that specific intent is a required element of misconduct in office or with his determination that specific intent had not been established on the record before him – or the extent to which its conclusion relied on its interpretation of the term as a matter of common law or as used in the court rule. Even if MCR 9.205 could be considered in determining whether Judge Simpson engaged in misconduct in office, MCR 9.205(B) identifies *acts* that constitute misconduct in office and does not address the *state of mind* with which those acts must be committed in order to constitute a violation. As such, for this reason, too, the Master correctly looked to the common law as to the requisite state of mind, and the Commission erred in relying, even in part, on the court rule.[10]

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[9]The Examiner's reliance below on MCR 9.205(B) in arguing against the Master's conclusion as to this issue, Petition and Brief, p 13, is, for this reason, entirely misplaced.

[10]Given the clear case law that specific intent is an element of misconduct in office, the Examiner's argument to the Commission that it should rely on MCR 9.205(B) to find that Judge Simpson had committed misconduct in office is necessarily an assertion that the court rule is broader than the common law. It is, however, highly unlikely that this Court would intend the same offense to have one meaning in a court rule and another as a matter of common law.

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While the Master recommended, *inter alia*, that Judge Simpson be found to have engaged in conduct that violated MCJC Canons 1 and 2 for "fail[ure] to maintain and observe high standards of conduct" and MCR 9.205(B), Findings and Conclusions, pp 14-15, the record does not support even a finding that Judge Simpson violated the appearance of impropriety standard of Canon 2(A). Rather, as in *In re Hultgren*, [unpublished] (2008) (Docket #136880), slip op at 6, the facts detailed above demonstrate at worst "poor judgment", not judicial misconduct.

In *Hultgren*, in stark contrast with the facts at bar, the respondent judge had met with three individuals, one of whom he knew casually, about the claim of one of them, Hussein Dabaja, that he had been a victim of mistaken identity. The judge then used his staff resources to determine that there was a closed case in the court's files regarding the matter, that Mr. Dabaja had been the defendant in the case and that the case had been assigned to another judge in the district. The judge thereafter personally contacted the attorney for the plaintiff in the closed case, noting that Mr. Dabaja "*is being pursued for collection purposes*", and he used his judicial letterhead to transmit documents to the plaintiff's attorney, *Id*., slip op, Young, J., concurring and dissenting, p 3 (emphasis in original). As then-Justice, now Chief Justice Young noted, Judge Hultgren "*unquestionably* used the prestige of his office to advance the interests of Hussein Dabaja. Respondent contacted, both by telephone and in writing, the attorney executing a collection judgment against Hussein Dabaja, each time identify himself as a judge of the 19th District Court." *Id*., slip op, Young, J. concurring and dissenting opinion, p 1 (emphasis in original).

While Judge Hultgren unquestionably used "poor judgment" in his conduct in relation to the matter, if, as this Court concluded, his conduct did not also constitute judicial misconduct, neither may Judge Simpson properly be found to have committed judicial misconduct. Judge Simpson did

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not attempt to influence either the police investigation or the criminal prosecution of Ms. Vargas; indeed, Mr. Lillich was explicit in stating that Judge Simpson was not asking him directly or indirectly to do or not do anything he would not otherwise have done in relation to the matter (335). The record is also otherwise clear that Judge Simpson did not at any time or in any way use judicial resources to attempt to further Ms. Vargas' personal interests.

For all of these reasons, the Commission erred in concluding that Judge Simpson committed misconduct in office or any other misconduct, and this Court should reject those conclusions.

II.

EVEN IF THE EVIDENCE COULD ARGUABLY BE VIEWED AS WARRANTING A FINDING THAT JUDGE SIMPSON VIOLATED MCJC CANON 2(A), APPLICATION OF THE STANDARDS SET OUT IN *IN RE BROWN*, 461 MICH 1291 (2000), TO THE TOTALITY OF THE CIRCUMSTANCES OF THIS MATTER DOES NOT WARRANT EITHER REMOVAL FROM OFFICE OR A SUBSTANTIAL SUSPENSION.

Even if this Court determines that the facts established that Judge Simpson engaged in some misconduct in this matter, in particular a violation of MCJC Canon 2(A), application of the standards set out in *In re Brown*, 461 Mich 1291 (2000), does not support either removal from office or a substantial suspension, and the Commission's recommendation should be modified even if not completely rejected.

In determining the level of sanction to impose, the Commission agreed that "[t]here was no evidence . . . that Respondent repeated similar misconduct in other cases" and "there was no evidence that there was a pattern of dishonesty outside of these proceedings". Decision and Recommendation, p 13. The Commission also agreed that Judge Simpson did not engage in misconduct on the bench. *Id.*, p 14. The Commission also rejected the Examiner's argument that

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Judge Simpson testified falsely when he testified that he had gone to bed at 1:30 a.m. and had not awakened until he received Ms. Vargas' telephone call at about 4:25 a.m. *Id.*, pp 7-8.

A sanction imposing a suspension of any length in this matter would be inconsistent with the decisions in *Brown* itself, *In re Morrow*, 496 Mich 291 (2014), *In re Logan*, 486 Mich 1050 (2010), *In re Servaas*, 484 Mich 634 (2009), and *Hultgren*, *supra*.

In *Brown*, unlike in the instant case, the respondent had been the subject of four prior admonishments for acts of misconduct, and he clearly attempted to direct the officer's investigation of the accident he had been involved in. The Commission had also overreached in concluding that a statement by Judge Brown that this Court deemed to be merely a "speculation" was a false statement. This Court concluded that Judge Brown had used the prestige of his office to gain a personal advantage and suspended him for fifteen days.

In *Morrow*, the respondent judge was found to have engaged in a lengthy list of acts of misconduct that had occurred on the bench, including, *inter alia*, failing to separate his personal convictions from his responsibilities as a judge, failing to comply with the order of a superior court, personally subpoenaing a defendant's medical records without the parties' knowledge or consent at a time when the case could later have been tried before him without a jury, and coming down from the bench at the start of a trial to shake hands with a defendant and deliver papers to defense counsel. To this Court, the totality of Judge Morrow's conduct constituted "a series of legal errors for which there can be no good-faith excuse", and it imposed a 60-day suspension. 496 Mich at 307.

In *Logan*, the respondent district judge had intervened in an apparent domestic violence matter to set a bond for an individual who was a local County Commissioner. At the time, Judge Logan was not handling the setting of bonds in his court, yet he engaged in multiple *ex parte*

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communications with a friend of the defendant, he had his court staff obtain a copy of the police report by accessing the police department's computer system, and he set a bond in the case without contacting the arresting agency. This Court accepted the parties' stipulation for a public censure.

In *Servaas*, after rejecting the Commission's arguments that Judge Servaas had vacated his judicial office and had lied under oath and that he should, therefore, be removed from office, this Court issued a public censure for the judge's admitted acts of sexual harassment on two occasions.

Applying the *Brown* factors to the facts at bar, it is clear that:

1. Judge Simpson's conduct was not part of a pattern or practice. If there was any misconduct at all, it was limited to his teaching, mentoring and supervisory responsibilities with Ms. Vargas alone and would properly be considered as isolated. There was neither an allegation nor evidence of any inappropriate conduct in relation to any other person or events;[11]

2. Judge Simpson's conduct did not occur on the bench. The Examiner's contorted attempt below to equate it with such conduct simply fails to hold water;

3./4. Since Judge Simpson did not interfere or attempt to interfere either with the officer's investigation of Ms. Vargas at the scene or with Mr. Lillich's decision-making as to prosecution or with Ms. Vargas' prosecution after it was transferred to the Washtenaw County Prosecutor's office, there was no conduct that was, in fact, prejudicial to the administration of justice;

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[11]In arguing below that there was a pattern of misconduct, the Examiner repeatedly misstated the record, incorrectly asserting, for example, that Judge Simpson "interrupted sobriety tests, engaged in conversations with Vargas without the officer's permission, and offered to short circuit the investigation", that he attempted to "avert[] Vargas' arrest". Brief at 37. As noted above, the record belies all of these claims. There was also no basis for asserting that Judge Simpson's conduct "caused the disqualification of the entire 14-A District Court bench from the Vargas matter". *Id.* at 37-38. Since Ms. Vargas was a court intern at the time of her arrest, disqualification followed from that fact, not from anything Judge Simpson did or allegedly did.

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5. Responding to a call from an intern in the middle of the night is the epitome of a spontaneous, unpremeditated act; Judge Simpson's decision to go to the scene can only reasonably be considered to have been spontaneous. Contacting Mr. Lillich in order to determine whether Ms. Vargas had been truthful with him, while not a spontaneous act, was also not "premeditated or deliberated" misconduct, since Judge Simpson had a legitimate interest in determining whether Ms. Vargas had been truthful with him, and especially given Mr. Lillich's confirmation that Judge Simpson did not ask him to do or refrain from doing anything he otherwise would;

6. Nothing Judge Simpson did in relation to Ms. Vargas' arrest or prosecution or in his statements to the Commission or at the trial in this case in any way undermined or attempted to undermine the ability of the justice system to discover the truth of what occurred or to reach a just result; and

7. This case does not involve a claim of unequal application of justice on the basis of race, ethnicity, gender, religion or other prohibited consideration.

Any arguable misconduct in this matter is further mitigated by the facts that –

1. Judge Simpson has been a lawyer since 1986 and a judge since 1999 and has no history whatever of professional or judicial misconduct;

2. Judge Simpson has a well-deserved stellar reputation in the community for honesty, and he has long been deeply involved in multiple professional, educational and other appropriate community activities that have justifiably earned him multiple awards for his service to the community;

3. Judge Simpson has been fully cooperative with the investigation in this matter and forthright in his responses to all inquiries;

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4. The conduct at issue does not in any way involve the quality or manner of his discharge of his judicial responsibilities; and

5. Judge Simpson has an appropriate attitude toward and commitment to his obligations as a judicial officer. He recognizes that it would have been more prudent not to appear at the scene and not to call Mr. Lillich, a point he made in both his answer to the request for comments and his testimony (230-32). As he stated in his answer to the request for comments, if such a situation were to arise again,

> the circumstances of the underlying matter could be viewed by some as raising questions as to the propriety of his involvement in the matter. He also understands and accepts that prudence and proper respect for the appearance of impropriety aspirational standard dictate that he refrain from future conduct that could even raise a question as to the propriety of his conduct.

(Exhibit 2, April 18, 2014, Answer to Request for Comments).

In sum, the totality of the circumstances in this case make it clear that, at worst, this is a case of a fine, community-oriented judge and law professor engaging in well-meaning conduct that might be considered to have created an appearance of impropriety but did not prejudice the administration of justice or the integrity of the legal system. In candidly acknowledging what he has learned from this experience – if such a situation were to arise again, he would neither go to the scene nor contact the prosecutor – he has also demonstrated commendable self-reflection and personal accountability. Considering his exemplary background, his history of outstanding service to the community on and off the bench, the lack of any improper intent and his openness to learning from this experience, and in comparing the facts of the instant case with those of the other cases noted above, this Court should either censure Judge Simpson or impose a brief suspension.

For all of these reasons, even if there were some misconduct in this matter, the sanction to

be recommended should not be one that involves suspending Judge Simpson from carrying out of his judicial responsibilities for any substantial length of time.

RELIEF REQUESTED

For all the reasons stated above, this Court should reject or, in the alternative, modify the Judicial Tenure Commission's recommendations as requested herein.

Respectfully submitted,

/s/Kenneth M. Mogill

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Dated: October 27, 2015

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