

STATE OF MICHIGAN
IN THE SUPREME COURT

In re Hon. J. Cedric Simpson,
Respondent

Sup Ct #150404

JTC Formal Complaint #96

**VANZETTI HAMILTON BAR ASSOCIATION'S *AMICUS CURIAE* BRIEF
SUPPORTING JUDGE J. CEDRIC SIMPSON'S PETITION TO REJECT AND/OR
MODIFY THE JUDICIAL TENURE COMMISSION'S RECOMMENDATIONS**

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STATEMENT OF QUESTIONS PRESENTED

- I. WHERE JUDGE SIMPSON HAS AN HONORABLE AND DISTINGUISHED RECORD OF SERVICE ON THE BENCH, AS WELL AS HIS REPUTATION FOR TRUTHFULNESS AND INTERGRITY, DOES IT MAKE THE RECOMMENDATION THAT HE BE REMOVED FROM HIS OFFICE WHOLLY INAPPROPRIATE?**

- II. WHERE REVIEW OF THIS COURT'S DECISIONS IN JUDICIAL MISCONDUCT CASES SINCE 2005 SHOWS THAT THE MJTC'S RECOMMENDATION IN THIS CASE IS OUT OF LINE WITH PAST PRECEDENT, SHOULD ANY DISCIPLINE IMPOSED BE LIMITED TO A REPRIMAND?**

- III. WHERE THE ALLEGED MISCONDUCT COMPLAINED ABOUT WITH RESPECT TO JUDGE J. CEDRIC SIMPSON DOES NOT ARISE TO THE LEVEL OF A SANCTION OF PERMANENT REMOVAL, SHOULD A PRECEDENT OF SUSPENSION ONLY BE FOLLOWED?**

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The Vanzetti M. Hamilton Bar Association (VHBA), by its undersigned representative, hereby files this amicus curiae brief in support of the Petition of the Honorable J. Cedric Simpson.

Introduction

The VHBA incorporates herein by reference the "Grounds for Amicus Filing" which is contained in the attached Motion for Leave to File *Amicus Curiae* Brief as its statement of interest and introduction.

STATEMENT OF FACTS AND PROCEEDINGS

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

1. Summary of allegations and proceedings.

Judge Simpson, an African-American Judge in Washtenaw County, 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 in this matter arise from the September 8, 2013, arrest of then-law student Crystal Vargas. Ms. Vargas was an intern in Judge Simpson's chambers at the time. She was arrested after she was involved in a traffic accident and Judge Simpson appeared at the accident scene during the course of the arresting officer's investigation. Subsequently, he made some telephone calls regarding the matter.

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, and 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 Farm, a substance abuse treatment center (187). His work with the Peace Neighborhood Center, for example, included being president of the group's board of directors and helping with youth reading programs and substance abuse problems (188). 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 (192).

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 (189-190). He has also been very active with the Inns of Court (190-191).

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 Hon. Richard E. Conlin, Chief Judge of the 14th District Court (366-71), Assistant Washtenaw County Public Defender Ronald Brown (372-77), Ann Arbor attorney Chad Engelhardt, who has taught at Cooley Law School with 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 Hightower 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). Crystal Vargas' and Judge Simpson's testimony make clear that his relationship with Ms. Vargas, far from being in any way improper, was similarly, wholly appropriate.

ARGUMENT

I. WHERE JUDGE SIMPSON HAS AN HONORABLE AND DISTINGUISHED RECORD OF SERVICE ON THE BENCH, AS WELL AS HIS REPUTATION FOR TRUTHFULNESS AND INTEGRITY, IT MAKES THE RECOMMENDATION THAT HE BE REMOVED FROM HIS OFFICE WHOLLY INAPPROPRIATE.

By any standards governing the disposition of this matter, the Judicial Tenure Commission's recommendation that Judge Simpson be dismissed from office is wholly inappropriate.

The JTC analyzed this matter using the standards set forth in In re Brown, 461 Mich 1291 (2000).¹ An effort will not be made here to undertake a separate, detailed analysis of the *Brown* factors as they relate to Judge Simpson (or the merits of the underlying findings), but note will be taken of the fact that when considered as a whole, the factors reflect this Court's awareness of the fact that misconduct occurs at various points along a continuum of severity. Ultimately, the *Brown* factors reflect an understanding not only of the fact that punishment should be proportionate to the offense, but also that the sanctions for a single misstep may be different from those penalties imposed for the latest in a series of improper acts. Perhaps the most severe penalty the JTC can recommend is permanent removal of a judge from his/her office. Thus, the question presented in this case is whether Judge Simpson deserves the harshest punishment.

¹ The *Brown* standards are:

1. Misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct.
2. Misconduct on the bench is usually more serious than the same misconduct off the bench.
3. Misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety.
4. Misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does.
5. Misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated.
6. Misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery.
7. Misconduct that involves the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship.

Judge Simpson has no history of misconduct, and he must certainly be distinguished from those judges who have not only repeatedly found themselves under JTC scrutiny, but who also have been determined to be culpable and deserving of punishment on multiple occasions. If Judge Simpson receives the harshest punishment, then he will be undeservedly placed in the same category as repeat offenders. While VHBA does not know whether the *Brown* factor that calls for consideration of a judge's history of misconduct was deliberately listed first as a reflection of the importance attached to it by this Court, for various reasons it deserves the most attention in evaluating the JTC's recommendation. Foremost among those reasons is that a judge's history can be a predictor of future conduct.

If Judge Simpson's record is any indication of what he might do in the future it shows a jurist who has organic, consistent, positive connections with the community he serves. He has worked extensively with the Peace Neighborhood Center in Ann Arbor, which, among many other things provides to low-income families a variety of youth programs and substance abuse services for adults. He has also worked with the Community Action Network and the Corner Health Center. His work has not gone unnoticed or unrecognized. He has received multiple awards for his community involvement. Judge Simpson's service to the Bar has been equally committed and distinguished. He has held positions of leadership with the Washtenaw County Bar Association and the State Bar of Michigan.

Even more significant is the fact that his service on the bench has been respected, admired and acknowledged by his peers and by the citizens he has served. Although the JTC has insisted over vigorous denials that Judge Simpson lied during hearings, colleagues who know him well testified without reservation as to his honesty and integrity. These witnesses included: Judge Richard Conlin; an attorney with the Washtenaw County Public Defender's Office, and

attorneys who have taught at Cooley Law School where Judge Simpson has also taught as an adjunct professor.

The significance of Judge Simpson's history is that even if one assumes *arguendo* that the allegations against him are true, there is nothing that suggests in any way that he is irredeemable, incorrigible, or in some way lacking the capacity to reform his conduct and resume otherwise exemplary service. Removing Judge Simpson from the bench would be a tragic loss to the community.

II. WHERE REVIEW OF THIS COURT'S DECISIONS IN JUDICIAL MISCONDUCT CASES SINCE 2005 SHOWS THAT THE MJTC'S RECOMMENDATION IN THIS CASE IS OUT OF LINE WITH PAST PRECEDENT, ANY DISCIPLINE IMPOSED SHOULD BE LIMITED TO A REPRIMAND.

In the case of In re: Catherine Steenland, 482 Mich 1202, N.W.2d 254 (2008) (Docket No. 137511, Dec. 8, 2008), this Court approved public censure and a 90-day suspension as the punishment for a judge *convicted of* driving while intoxicated. Here, the MJTC recommends a discipline for Judge Simpson that is the harshest possible, although it agreed that it was appropriate for a judge who clearly and obviously put the general public at serious risk through her negligent behavior to only be censured.

In the case of In re: Norene Redmond, 480 Mich 1227, 758 NW2d 254 (Docket No. 134481, February 6, 2008), this Court upheld a sanction of ONLY public censure for judicial misconduct in three separate cases, all involving setting bonds which were excessive and clearly punitive, *and incarcerating defendants who ought not to have been incarcerated*. In one case, the Judge publicly and on the record humiliated a defendant in a noise case, calling the defendant

and her friends “punks”, describing the defendant’s home as a flophouse, and said she would be “livid” if a resident in *her* neighborhood held loud parties—the judge then set bail in a clearly excessive amount, thereby clearly demonstrating her bias against the defendant.

In another case, the judge flagrantly abused her judicial authority by retaliating against a defendant when she learned that the defendant’s 16-year-old son (who was the complainant in the case) had used a slur against the Judge (out of her presence) by raising the defendant’s bail without notice from \$5,000 to \$25,000.

Finally, in a case that was sure to (and indeed did) end in a plea agreement with probation, she set bail for one defendant at \$750,000 and the other at one million dollars, putting release out of reach. Judge Redmond’s misuse of her authority to set bail showed a clear pattern of bias and abuse of her judicial office which is not even present in Judge Simpson case.

Other recent cases in which this Court approved a sanction of simple public censure, without a suspension, involved the following types of misconduct: (1) judges who, without good reason, adjourned multiple cases multiple times. In re Marion Moore, 472 Mich 1207, 692 NW2d 834 (2005); In re Barglind, 482 Mich 1202, ___ NW2d ___ (No 136881, September 17, 2008); In re Halloran, 486 Mich 1054, 783 NW2d 709 (2010). (2) wrote a letter in support of a friend’s candidacy for judge with extreme accusations against her opponent. In re Fortinberry, 474 Mich 1203 (2006); moved out of the district and made pornographic doodles on notes to court staff. In re Serras, 484 Mich 634, 774 NW2d 46 (2009). And made false statements concerning his assignment of a personal recognizance bond for a friend. In re Logan, 486 Mich 1050, 783 NW2d 705 (2010).

The misconduct of the judges in the above cited cases was more serious and more detrimental to the administration of justice than anything Judge Simpson is accused of doing. Even if this Court should find Judge Simpson responsible for misconduct based on the accusations at issue here, he should not be disciplined more severely than the judges in the above cases or other judges with similar conduct as cited above.

III. THE ALLEGED MISCONDUCT COMPLAINED ABOUT WITH RESPECT TO JUDGE J. CEDRIC SIMPSON DOES NOT ARISE TO THE LEVEL OF A SANCTION OF PERMANENT REMOVAL AND A SIMILAR PRECEDENT HAS BEEN SET FOR SUSPENSION ONLY WITH ALLEGATIONS SIMILAR TO THIS.

The VHBA ask this Honorable Court to contrast the case at bar with a previous case in which much more egregious allegations of misconduct were made against a Judge and the sanction was only a suspension. In re Chrzanowski, 636 N.W.2d 758 (Michigan 2001), a white female Judge, Susan R. Chrzanowski was investigated and disciplined for 1. appointing an attorney, Michael Fletcher, with whom the judge had an intimate relationship to represent indigent defendants, 2; presiding over cases involving the same attorney without disclosing that she was in an intimate relationship with that attorney, and 3. later making false statements to police officers investigating the August 16, 1999 murder of the attorney's wife, Leann Fletcher. The JTC recommended a 12 month suspension. However, this Court pursuant to MCR 9.225, modified the recommendation of the JTC to only require a six-month suspension without pay, beginning January 1, 2002, in order to accord respondent partial credit for the seventeen-month interim suspension with pay that she has already served. Therefore, this Judge received only a 12-month suspension and was given credit for six months already completed. Thus, only six months of the suspension was without pay.

Clearly, the allegations against Judge J. Cedric Simpson are not nearly as egregious. However, pursuant to the recommendation of the JTC Judge Simpson would be removed from the bench. Removal is clearly unjust, unfair and disproportionate. Judge Simpson should receive, under a worse case scenario, a similar punishment as has been set by this precedent which is a six month suspension without pay. In fact this Honorable Court even addressed in footnote #20 that Respondent Chrzanowski should not be removed. It wrote:

“We concur with the JTC that respondent should not be permanently removed from the bench. We believe that evidence of respondent’s reputation and her past conduct on the court, apart from that at issue in the present case, suggest that she possesses the ability to serve honorably upon the bench, and to fully live up to the Code of Judicial Conduct.”

This community and this Organization asks that the Court grant J. Cedric Simpson the same treatment.

RELIEF REQUESTED

For the reasons set forth above, *Amicus Curiae*, the Vanzetti M. Hamilton Bar Association respectfully urges this Honorable Court to impose discipline no more severe than a reprimand; or impose such other relief as justice requires based on prior precedent.

Respectfully submitted,
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