

STATE OF MICHIGAN
IN THE SUPREME COURT

IN RE HON. J. CEDRIC SIMPSON,

Sup Ct #150404
JTC Formal Complaint #96

Respondent.

RESPONDENT'S SUPPLEMENTAL
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 MATERIAL FACTS AND PROCEEDINGS

[Page references preceded by “RH” are to the pages of the remand hearing transcript; other page references are to the pages of the initial hearing transcript.]

Post-remand proceedings. As a result of this Court’s December 23, 2015, remand order and a subsequent January 11, 2016, order of the Judicial Tenure Commission, on February 29, 2016, an evidentiary hearing was held before the previously appointed Master. Six witnesses testified, and multiple exhibits were offered into evidence, including the materials from the Pittsfield Township Police Department that had been received by the Examiner on October 15, 2014, and should have been but were not disclosed to Respondent prior to the trial in this case.

On March 7, 2016, the Master filed his post-hearing report. That report failed to address or even to note the existence of substantial exculpatory testimony presented at the hearing, and Respondent moved in the Commission for leave to file objections to that report. On March 14, 2016, the Commission issued its Decision After Remand and denied Respondent’s motion for leave to file objections to the Master’s report. The Commission’s Decision does not at all discuss the substance of the evidence presented at the remand hearing.

Relevant facts. At the first hearing, Officer Robert Cole testified to his interactions with Judge Simpson at the scene of Ms. Vargas’ accident. 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 (277). Officer Cole exercises discretion at a scene (262), he asked Ms. Vargas the questions he felt were appropriate at the time, and nobody asked him not to ask any questions, change anything, hide anything or pretend anything did not exist (276-77). Moreover, contrary to the Examiner’s allegations, Officer Cole testified that when Judge

Simpson asked whether Ms. Vargas “just need[ed] a ride or something”, he did not think that Judge Simpson was asking whether Ms. Vargas was going to be released; he had heard this question before at both drinking and driving scenes and other scenes as well (253). In fact, Officer Cole did not know that he “really acknowledged the comment” (253).

The materials the Examiner obtained by request from the Pittsfield Township Police Department and failed to turn over to Respondent prior to trial included emails written by Officer Cole’s superiors which corroborated that Judge Simpson did not interfere with Officer Cole’s OWI investigation. On September 8, 2013, the night of Ms. Vargas’ accident, Sergeant Henry Fusik sent an email to Chief Matthew Harshberger informing him that Judge Simpson had been present at the scene of Ms. Vargas’ accident (Exhibit B, 0011). Chief Harshberger responded to Officer Fusik the same day and indicated that it sounded like Officer Cole “handled everything by the numbers” (Exhibit B, 0011). At the remand hearing, Chief Harshberger expanded on this statement, testifying that, after reviewing the reports and the video, it remained his opinion that “Officer Cole did everything by the numbers” and that if his opinion had changed, there would have been a record of it (RH 149-150).

Additionally, the day after Ms. Vargas’ accident, Lieutenant Sean McCormick sent an email to Deputy Chief Gordon Schick and Chief Harshberger confirming that the department “did everything right, found . . . [Ms. Vargas] at fault, [and] arrested her for OWI,” (Exhibit B, 0014). Lieutenant McCormick also noted that the owner of the tow truck company whose truck was involved in the accident was “happy everything was on the up and up since” Judge Simpson had appeared at the scene (Exhibit B, 0014).

At the remand hearing, Deputy Chief Schick testified that, from reviewing “the initial report

. . . the e-mails that were compiled” and the dashboard video, it was his opinion that “[f]rom start to finish, Officer Cole . . . conducted or performed a text book OWI investigation” (RH 70, 74-75). He also corroborated Officer Cole’s trial testimony that an officer responding to the scene of an accident has “some degree of discretion in determining how to respond and do their work properly” (RH 74) and “a lot of latitude with regard to allowing who can approach the scene, [and] who is to remain away from the scene” (RH 94). In Deputy Chief Schick’s opinion “as an administrator, reviewing the conduct of the officer at the scene, *the judge did not interfere whatsoever*” (RH 77; emphasis added). Deputy Chief Schick also agreed that if he had determined “that Officer Cole had done anything improper, either by commission or omission, at the scene when” he reviewed the records and video, he “would have taken action at the time and that there would be a record of that” (RH 101).

The materials the Examiner failed to turn over to Respondent prior to the trial also included emails that shed new light on why Officer Cole was asked to supplement his police report to include Judge Simpson’s name as a witness, despite the approval by his commanders of his initial and first supplemental reports (Exhibit B, 0095-97). On October 17, 2013, after receiving Officer Cole’s initial report, 14A District Judge Kirk Tabbey emailed Chief Harshberger stating that “[t]his bare bones report doesn’t include the witness to the sobriety tests and possibly the drinking by the suspect . . . A supplemental report on the arrival of the witness and the statements made should be considered . . . I think a full report would be cleaner for the PD” (Exhibit B, 0046-47). Judge Tabbey also asked Chief Harshberger to call him (Exhibit B, 0046-47). Subsequently, Office Cole wrote his first supplemental report, which did not list Judge Simpson as a witness and was approved by command (Exhibit B, 0095-97). On November 4, 2013, at Judge Tabbey’s request, Chief Harshberger

provided Judge Tabbey with “an electronic copy of the [Vargas] file”, which included Officer Cole’s first supplemental report (Exhibit B, 0085-86). One day later, on November 5, 2013, Judge Tabbey emailed Chief Harshberger and again asked where the report was that detailed Judge Simpson’s appearance at the scene and discussion with Officer Cole (Exhibit B, 0091-92).

At the remand hearing, Deputy Chief Schick testified that an “officer has a lot of discretion” with respect to the names that need to be included in a police report (RH 93). He testified that “[i]t’s not uncommon for, especially at 4:00 in the morning, somebody calls a family member or a friend that they need to pick up the car or pick up belongings from their car. Sometimes they’ll actually beat us to the scene and they’re there waiting before the officer gets there” (RH 93). “[T]he officer actually has a lot of discretion whether or not he can release some of those personal belongings” (RH 93). “Certainly we have procedures that they have to follow, but as a result of this crash, I believe that’s what Officer Cole was allowing . . . he allowed Cedric Simpson to stand by and have some last words before Ms. Vargas was transported to jail” (RH 93). He concluded that “[i]n reviewing hundreds and hundreds of OWI investigations . . . [he] did not find it unusual that Judge Simpson . . . wasn’t included in . . . [Officer Cole’s] initial report” (RH 98).

Moreover, Chief Harshberger testified that “the directive to Officer Schick to pass along to Officer Cole to” write a supplemental report would not have occurred but for Judge Tabbey’s communications with Chief Harshberger” (RH 154).

At the first hearing, Victor Lillich testified unequivocally that Judge Simpson did not do anything during any communication with him to attempt to interfere with his exercise of discretion; there was no “wink or a nod involved” (335). Mr. Lillich also 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” (332). He testified that the communications he had with Judge Simpson in September of 2013 did not “delay the processing of” Ms. Vargas’ case (336). At the remand hearing, Deputy Chief Schick corroborated Mr. Lillich’s testimony, testifying that he was “aware of the delay that had taken place as a result of some questions by the director of public safety.” Like Mr. Lillich, however, Deputy Chief Schick did not find the delay uncommon (RH 77-78).

Moreover, Chief Harshberger agreed that his “actions in contacting Victor Lillich about the status of the warrant request was a result of Judge Tabbey communicating with . . . [him] and asking about it” (RH 153). The materials that the Examiner failed to turn over to Respondent before trial showed that on October 17, 2013, two minutes before Chief Harshberger emailed Mr. Lillich about the status of Ms. Vargas’ case, Chief Harshberger sent an email to Judge Tabbey containing information about Ms. Vargas’ accident and stating “[a]pparently, the OWI is still at our local attorney’s office . . . I will check on the status and will let you know what I find out” (Exhibit B, 0046-0050). Chief Harshberger testified that but for Judge Tabbey contacting him, he would not have contacted Mr. Lillich at that time and possibly never would have contacted him (RH 153).

In response to Respondent’s motion to remand, Mr. Fischer and Ms. Rynier stated to this Court that, even though Ms. Rynier had, in fact, “received the emails in question as an attachment to an October 15, 2014, email from” Pittsfield Township Police Department attorney James Fink, Ms. Rynier “was unaware of these emails, however, until October of 2015. The non-production of them with discovery was unintentional, inadvertent, and unavoidable, given that the Co-Examiner did not know they existed” (Answer to Motion to Remand, p 3, n 1). Ms. Rynier also asserted, under oath, that “I was not aware of the existence of the *emails* in question prior to October of 2015” (Affidavit of Ms. Rynier, ¶ 10; emphasis added).

The evidence presented at the remand hearing established that on September 17, 2014, Ms. Rynier had sent Mr. Fink an email requesting production of “any and all documents including e-mails in possession of the police department” related to Ms. Vargas’ arrest (RH 104). On October 2, 2014, Ms. Rynier called Mr. Fink to ask where the requested records were, to which Mr. Fink responded that he would get them to her as soon as he could (RH 106). Mr. Fink followed up by emailing her the requested records on October 15, 2014. Ms. Rynier never reiterated her request for the records after that date (RH 106-07).

The day before the remand hearing, Mr. Fink forwarded to Ms. Rynier and the undersigned an October 22, 2014, email from Ms. Rynier to him responding to his October 15, 2014, email. Questioned at the remand hearing about the fact that her October 22, 2014, email was in response to Mr. Fink’s October 15, 2014, email and was in the same email thread as Mr. Fink’s October 15, 2014, email, Ms. Rynier conceded that she had, in fact, responded to Mr. Fink’s October 15, 2014, email on October 22, 2014 (RH 21-23, 50-51). In contrast with her affidavit and statement in the Answer to the Motion to Remand that she didn’t even know the email existed until a year later, Ms. Rynier testified that it was the fact of the attachment, not the fact that she had received the email, that she hadn’t noticed (RH 22-23).

Ms. Rynier also conceded that Mr. Fink’s October 15 email explicitly stated “*Rynier. PDF*” on the attachment line and that the first line of the email stated, “*Please see attached documents*” (RH 23, 50-51; emphasis added). She claimed not to have noticed either of those writings (RH 23, 50-51), but she agreed that she did not ask Mr. Fink for the previously requested materials after October 15, 2014 (RH 26-27) and that, even though she claimed not to know that she had already received the materials, she did not include a request for those materials in a January 7, 2015,

subpoena *duces tecum* addressed to the Pittsfield Township Police Department seeking other records (RH 29). Ms. Rynier also asserted that nothing in her preparation for trial reminded her that, according to her, her previous document request remained outstanding (RH 34). She also testified that she didn't bother to follow-up on her earlier request because she had received what she had requested from other sources (RH 25), even though she later conceded that she did not receive the emails in question from any other source (RH 30-31).¹

The materials that were not disclosed included not only the emails expressing Chief Harshberger's opinion that Officer Cole had "handled everything by the numbers" and Lt. McCormick's opinion that Officer Cole had done "everything right" but also the emails revealing Judge Tabbey's involvement with the department's handling of Ms. Vargas' arrest and prosecution.

¹Ms. Rynier also insisted that she had a telephone conversation with Mr. Fink on October 9, 2015, which he denied, as he was out of state for a family wedding on that date (RH 107, 167). Respondent's motion to re-open the proofs in order to offer Mr. Fink's cell telephone records for October 2015 into evidence was denied by the Master.

ARGUMENT

Standard of review

As noted in Respondent's initial brief, 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 face *de novo*. *In re Chrzanowski*, 465 Mich 468, 478-79 (2001).

THE EVIDENCE THAT THE EXAMINER FAILED TO DISCLOSE TO RESPONDENT PRIOR TO THE HEARING FURTHER ESTABLISHES THAT JUDGE SIMPSON DID NOT INTERFERE WITH A POLICE INVESTIGATION, INTERFERE WITH A CRIMINAL PROSECUTION OR MAKE ANY MISSTATEMENTS IN CONNECTION WITH THIS MATTER, AND THE COMMISSION ERRED IN FINDING THAT JUDGE SIMPSON ENGAGED IN ANY JUDICIAL MISCONDUCT.

_____ The expanded record in this case even more clearly 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 Ms. Vargas' arrest or 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 did not establish that Judge Simpson interfered or attempted to interfere with a police investigation.*

_____ Contrary to the Examiner's allegations, the testimony of Officer Cole and that of his superiors – Deputy Chief Schick and Chief Harshberger – now shows particularly conclusively that

Judge Simpson did not interfere or attempt to interfere with Office Cole's investigation of Ms. Vargas. When Judge Simpson came to the scene, he did so *not* to be present during the investigation of a possible drunk driving matter but because, to his knowledge, Ms. Vargas had been in an accident and he did not know that she had been drinking prior to the accident (219-21). At the scene of the accident, Judge Simpson never asked Officer Cole to do or refrain from doing anything (221, 276-77). It was Officer Cole's opinion that Judge Simpson never asked him to hide anything, and he was able to ask Ms. Vargas all the questions he felt were appropriate. Officer Cole conducted a thorough investigation and Ms. Vargas was placed under arrest. Judge Simpson did not in any way interfere or attempt to interfere at the scene. As Deputy Chief Schick testified, Officer Cole performed a "text book" investigation of Ms. Vargas (RH 70-74-75), and Judge Simpson did not in any way interfere whatsoever (RH 77). In addition, Deputy Chief Schick made it clear that it was in Officer Cole's discretion to allow Judge Simpson to approach the scene, release Ms. Vargas' personal items to him and allow him to have a few words with her. Chief Harshberger agreed that Officer Cole did everything by the numbers (Exhibit B, 0011).

It was also entirely appropriate and within Officer's Cole's discretion not to mention Judge Simpson's name in his report. In fact, Judge Simpson's name was only added as a witness on the second supplemental report after Judge Tabbey interfered with the investigation and requested that it be included, and Chief Harshberger acknowledged that Officer Cole would not have been directed to write a second supplemental report had Judge Tabbey not communicated with him. In stark contrast with Judge Simpson, who merely came to the scene of the accident and never asked Officer Cole to do or not do anything, Judge Tabbey interjected himself substantively into the investigation of Ms. Vargas. Judge Tabbey specifically asked that the report include Judge Simpson's name as

a witness, he complained about the contents of the police report of the incident, and he requested a further, more detailed report regarding the incident (Exhibit B, 0046-47).

For all of these reasons, the additional evidence presented at the remand hearing makes even more clear that 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 the communications Judge Simpson had with Mr. Lillich regarding Ms. Vargas, he never interfered or attempted to interfere with Mr. Lillich's decision to charge Ms. Vargas. It was Mr. Lillich's opinion that his communications with Judge Simpson did not delay the processing of Ms. Vargas' case. Importantly, at the remand hearing Deputy Chief Schick confirmed that any additional time it took for the case to be processed was not at all uncommon.

_____ Moreover, had it not been for Judge Tabbey's communications with Chief Harshberger, Chief Harshberger would not have contacted Mr. Lillich in order to ask about the status of Ms. Vargas' case on October 17, 2013, and possibly would not have ever contacted him. Chief Harshberger's communication with Mr. Lillich was not a result of any substantial delay in the case, but, rather, of Judge Tabbey's interference in the investigation.

When Chief Harshberger contacted Mr. Lillich on October 17, 2013, Mr. Lillich had already decided to authorize the issuance of a warrant for Ms. Vargas' arrest (Exhibit B, 0049-50), and it was, in fact, Judge Tabbey's involvement that arguably caused a delay in the processing of Ms. Vargas' case. Judge Tabbey first requested that Judge Simpson's name appear as a witness in an email to Chief Harshberger on October 17, 2013. As a result, Officer Cole was asked to go back and

write a supplemental report. Contrary to the Examiner's allegations, this request by Judge Tabbey was made prior to Ms. Vargas' being charged at the beginning of November and before Mr. Lillich disqualified himself from the case on October 21, 2013.

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 the Court.

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

The evidence presented at the trial did not establish either an improper relationship between Judge Simpson and Ms. Vargas or any misstatement as to the purposes of their text messages. As discussed in Respondent's initial brief, both Judge Simpson and Ms. Vargas specifically denied having a social relationship, and there was no testimony or other evidence presented to contradict that testimony. All of the evidence in the case also makes clear that Judge Simpson had no motive to misrepresent anything about his relationship or communications with Ms. Vargas. As discussed in Respondent's initial Brief, the context surrounding Judge Simpson's communications with Ms. Vargas clearly demonstrates the absence of either misrepresentation or an intent to mislead or misrepresent. Judge Simpson readily admitted having been in communication with Ms. Vargas on the night in question, and, not only would he have had no motive whatever to misrepresent his communications with her in answer to any particular question, doing so would be utterly inconsistent with his ready acknowledgment of the nature and extent of the communications, and of his relationship with Ms. Vargas, throughout the investigation and litigation of this matter.

In its initial Decision in this matter, the Commission rejected the Examiner's argument that Judge Simpson had made a misrepresentation regarding text messages exchanged between 4:20 a.m.

and 4:22 a.m. on September 8, 2013, but found that he had made a misrepresentation as to whether or not he had had contact with Ms. Vargas between midnight and 4:00 a.m. on that date (Decision at pp 8-9). Even though Judge Simpson was very careful to qualify his answer to the Examiner's question by twice noting his uncertainty as to whether he had had such contact – "*I don't believe* there were any text messages. *I don't believe* that there was any contact" (146-47; emphasis added) – the Commission found not only that Judge Simpson had made a misstatement but also that it was "intentional". Ignoring both Ms. Vargas' and Judge Simpson's testimony to the contrary, the absence of any evidence whatever as to the contents of the text messages, the evidence of Judge Simpson's long history of providing appropriate help to his students when they were having personal problems and other clearly exonerating circumstances detailed in Respondent's initial brief, the Commission also found that Judge Simpson made an intentional misrepresentation as to the nature of his relationship with Ms. Vargas based on the circumstantial evidence of the number of text messages the two of them exchanged (Decision at pp 9-11).

The Commission's findings are not only unsupported by the record of the initial trial – as detailed in Respondent's initial brief – they are further undermined by the stark contrast in the Master's and the Commission's treatment of Judge Simpson's testimony as to his relationship with Ms. Vargas with their treatment of the Examiner and Co-Examiner regarding the non-disclosure of the Pittsfield Township Police Department records. That is, the evidence presented at the remand hearing regarding the non-disclosure of the Pittsfield Township Police Department records highlights the inadequacy of the evidence presented against Judge Simpson as to his relationship with Ms. Vargas and statements regarding that relationship.

In the Examiner's Answer to the Motion to Remand, both Mr. Fisher and Ms. Rynier claimed

that the failure to produce the documents in question was unintentional, arguing that Ms. Rynier was “unaware of these *emails*” (emphasis added) until October 2015 despite the fact that she had, in fact, received an email from Mr. Fink with the attached documents on October 15, 2014. Ms. Rynier’s claim is not only highly questionable on its face, it is wholly undermined by the surrounding circumstances.

Mr. Fink’s October 15 email to Ms. Rynier provided her with documents she had specifically requested and was undoubtedly awaiting. In fact, Mr. Fink testified that Ms. Rynier had called him on October 2, 2014 asking where the documents were (RH 106). Mr. Fink’s October 15 email to Ms. Rynier not only responded to her request, it contained an attachment clearly entitled “*Rynier.PDF*”, and the very first line of the email read “*Please see attached documents*”. Moreover, Ms. Rynier conceded at the remand hearing that she never asked Mr. Fink for the requested documents after October 15, 2014 (RH 26-27).

Also tellingly, despite Ms. Rynier’s claim in the Answer to the Motion to Remand that she had been unaware of the October 15, 2014 email for an entire year, by the time of the remand hearing that claim had become untenable, and she changed it. The impetus for the changed claim was the fact that one day before the remand hearing Mr. Fink emailed both sides’ counsel an October 22, 2014, email to him from Ms. Rynier responding to his October 15 email. Since Ms. Rynier’s October 22 email to Mr. Fink made it impossible for her to continue claiming that she hadn’t known that she had received the October 15, 2014, email, Ms. Rynier admitted at the hearing that she had responded to that email (RH 23, 50-51), but – without in any way acknowledging the falsity of her affidavit in this Court – she changed her claim and asserted that when she had opened Mr. Fink’s October 15 email and clicked “reply”, she failed to notice its contents or the fact of the attachment.

She also incongruously testified that she hadn't bothered to follow-up on her earlier request to Mr. Fink because she had received what she had requested from other sources (RH 25-27), even though it would have been impossible to know that anything she received from another source was what she was missing if it was, in fact, missing, and, at least as importantly, she conceded that she did not, in fact, receive the emails in question from any other source (RH 30-31).²

It is virtually impossible that if Ms. Rynier believed she never received a response from Mr. Fink to her document request that she would not have contacted him again after October 15, 2014, regarding the request, especially since this was information that would have been relevant to the drafting of the Formal Complaint, which was, in fact, filed less than a month later on November 12, 2014. It is also virtually impossible that if she believed she hadn't received the requested documents she would have failed to include a request for them in her January 7, 2015, subpoena *duces tecum* to the police department for additional records, and it is also virtually impossible that if she believed she hadn't received the requested documents she wouldn't have been reminded of that fact in the course of her preparation for trial.

The contents of the non-disclosed materials make the Examiner's claim of inadvertence even more suspicious. The key non-disclosed documents were not just background information, and they

²Given the scope of the remand hearing and the resulting conflict between Mr. Fischer's and Ms. Rynier's interests as Examiner and Co-Examiner and their personal interests in defending themselves in the matter, prior to the remand hearing Respondent moved to disqualify them from further participation in this case. At the February 19, 2016, hearing on that motion, Ms. Rynier argued that she wasn't really in possession of the documents since the documents had been sent via email rather than regular mail: ". . . there is a distinction between possession and having someone transmit it by e-mail. . . It was an attachment to an e-mail sent roughly 30 days after the request. So possession, I would disagree. It wasn't in the possession of the Examiner" (MH 17). When asked by the Master why she would take that position since email is "a pretty standard business practice", Ms. Rynier stated that it was because "[t]he attachment was never opened." *Id.*

were certainly not cumulative; they were, rather, documents that go to the heart of the allegations against Judge Simpson and, for all the reasons noted above, significantly corroborate other exculpatory testimony previously found by the Commission to have been inadequate. Moreover, they are the only documents of which Respondent is aware that reveal Judge Tabbey's improper and clear intrusion into the police investigation and – since Judge Tabbey has not been disciplined for that conduct – the disparate treatment of Judge Tabbey and Judge Simpson.³ Given the fact that Judge Tabbey is white and Judge Simpson is African-American, the non-disclosure of these documents also raises a serious question as to the Examiner's motive for the non-disclosure, since the Examiner was, at the time of the non-disclosure and continues to be today, a defendant in *James v Hampton*, ED Mi #2:12-cv-10273, a pending federal lawsuit alleging, *inter alia*, racial discrimination in his prosecution of another African-American judge, and evidence of disparate treatment of Judges Tabbey and Simpson would be highly relevant to the parties' litigation in that case and potentially damaging to the Examiner's defense in that case.

In sum, for the reasons stated above, the evidence presented at the remand hearing was also relevant to this Court's consideration of the allegations that Judge Simpson made knowing and intentional misrepresentations. The stark contrast between the very strong evidence of knowing misrepresentations to this Court by the Examiner and Co-Examiner as to the non-disclosure of exculpatory documents and the absence of evidence of any knowing or intentional misrepresentation by Respondent underscores the inadequacy of the proofs against Respondent as to the allegation of

³The fact that Judge Tabbey has been the subject of a judicial discipline proceeding for other misconduct, *In re Tabbey*, 497 Mich 900 (2014), is irrelevant.

misrepresentations.⁴

For all of these reasons, this Court should also reject the Commission's conclusion as to alleged misrepresentations by Judge Simpson.

⁴The evidence regarding the reasons for the non-disclosure also raises very troubling questions as to the integrity of this entire prosecution and seriously undermines confidence in the objectivity and fairness of this prosecution.

RELIEF REQUESTED

For all the reasons stated above, and for all of the reasons previously noted in Respondent's initial Brief, this Court should reject or, in the alternative, modify the Judicial Tenure Commission's recommendations in this matter.

Respectfully submitted,

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