

STATE OF MICHIGAN
IN THE SUPREME COURT

1 DEC 2013

146826 JTC

COMPLAINT AGAINST

HON. WADE H. MCCREE

3rd Circuit Court

Frank Murphy Hall of Justice

1441 St. Antoine

Detroit, Michigan 48202

DOCKET NO: 146826

FORMAL COMPLAINT NO. 93

BRIEF IN SUPPORT OF THE COMMISSION'S DECISION AND
RECOMMENDATION FOR ORDER OF DISCIPLINE

PROOF OF SERVICE

ORAL ARGUMENT REQUESTED

JUDICIAL TENURE COMMISSION
OF THE STATE OF MICHIGAN

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October 28, 2013



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JURISDICTION

Judge Wade H. McCree (“Respondent”) is, and at all material times was, a judge of the 3rd Circuit Court in Wayne County, Michigan. As a judge, Respondent is subject to all the duties and responsibilities imposed on him by the Michigan Supreme Court, and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205. The Court has authority to act upon the recommendation of the Judicial Tenure Commission. Const. 1963, Art 6, §30. Michigan Court Rules 9.224 and 9.225 provide the method for this review.

STANDARD OF PROOF

The standard of proof in judicial disciplinary proceedings is by a preponderance of the evidence. *In re Ferrara*, 458 Mich 350 (1998); *In re Haley*, 476 Mich 180 (2006); MCR 9.211(A).

STANDARD OF REVIEW

The Supreme Court reviews the Commission’s findings of fact on a *de novo* basis. *In re Jenkins*, 437 Mich 15 (1991). The Court also reviews the recommendation of the Commission *de novo*. *In re Hathaway*, 464 Mich 672 (2001).

COUNTER-STATEMENT OF PROCEEDINGS

In December of 2012, the Judicial Tenure Commission (“JTC” or “Commission”) opened an investigation into the print and electronic media’s allegations that Respondent was involved in a sexual relationship with a litigant whose case was pending before him. Based on the results of an investigation and grave concerns about Respondent’s lack of fitness as a judicial officer, on January

7, 2013, the Commission filed with the Supreme Court a Petition to Suspend Respondent Without Pay, from his position on the bench of the 3rd Circuit Court and a Motion for Immediate Consideration. On January 18, 2013, Respondent filed his Answer to the Petition for Interim Suspension Without Pay and a Brief in Support. Respondent also filed a Motion for Immediate Consideration and a Motion to Seal the File. On February 8, 2013, the Court granted the Commission's Motion for Immediate Consideration as well as the Petition for Interim Suspension Without Pay. In order to preserve the confidentiality required by MCR 9.219(A)(2) and MCR 9.221(A), the Court granted Respondent's Motion to Seal the Supreme Court File.

On March 12, 2013, the Commission issued a five-count formal complaint against Respondent, and filed with the Court a Request for Appointment of a Master. On March 15, 2013, the Court appointed the Hon. Charles A. Nelson as a master to hear Formal Complaint No. 93 (FC 93). Respondent filed his Answer to FC 93 on March 26, 2013 and on March 29, 2013, the master conducted a pre-trial conference setting forth deadline dates for the exchange of witness lists, exhibit lists, proposed exhibits and witness statements. The master's order also provided deadline dates for the filing of motions and responses to motions. On April 1, 2013 the Examiner filed a Motion to Amend FC 93 with the Commission and served a copy thereof on Respondent on the same day. On April 8, 2013, the Commission granted the Examiner's motion to amend FC 93. On April 8, 2013, Respondent filed his Opposition to the Examiner's Motion to Amend the Formal Complaint, a Motion to Strike Count IV of the Formal Complaint, and a Motion in Limine to Preclude the Admission of text messages. The Examiner filed responses to Respondent's motions on April 15, 2013.

On April 25, 2013, at the Washtenaw County Circuit Court, the master conducted a hearing on all motions, including Respondent's oral motion to seal the text messages and e-mails which were the subject of Count IV of the Amended Complaint. On May 2, 2013, the master denied Respondent's Motion to Strike Count IV of the Formal Complaint and the Motion in Limine to

Preclude Admission of Text Messages. Although the master granted Respondent's Motion to Seal the text messages, he limited his order to the messages and e-mails which were not made public by the Formal Complaint or the Answer to FC 93.

On May 20, 2013, at the Washtenaw County Circuit Court in Ann Arbor, Michigan, the public hearing on FC 93 began and continued through May 28th, 2013. At the close of the proofs, oral arguments were heard on May 28, 2013. Transcripts of the hearing were filed on June 5, 2013. On June 23, 2013, the master filed his findings of fact and conclusions of law. On July 26 2013, the Examiner and Respondent filed their objections to the master's proposed findings of fact and conclusions of law. Oral arguments were held before the JTC on August 5, 2013 regarding the master's report.

The JTC issued its decision and Recommendation for Discipline on September 9, 2013. The JTC determined that Respondent had committed misconduct by engaging in a sexual affair with a litigant whose case was pending before him and by failing to recuse himself from the case. The JTC also found that during his relationship with Mott, Respondent used his chambers to engage in sexual intercourse with his mistress, permitted her to enter the courthouse through an employee entrance without going through security, allowed her to remain alone in his chambers while he was on the bench, arranged for her to park her vehicle in an area reserved for judges and brought her cell phone into the courthouse for her in violation of the court's security policy, so that she could communicate with him while he was on the bench. The JTC also found that Respondent regularly engaged in numerous ex parte discussions with his mistress regarding her own case as well another case on Respondent's docket in which her relative was a defendant. Finally, the Commission found that since the instant proceedings were initiated, Respondent has made material misrepresentations, under oath, regarding his misconduct. The JTC recommended that the Supreme Court issue an order removing Respondent from office and that the Court conditionally suspend Respondent for an additional, six-year period, beginning on January 1, 2015. The JTC also recommended, per MCR

9.205(B), that the Court order Respondent to pay the cost, fees, and expenses incurred by the Commission in prosecuting FC 93, in the amount of \$11, 945.17.

Respondent filed his petition to reject the JTC's recommendations on October 7, 2013. The Examiner filed his response on October 28, 2013.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

WHETHER RESPONDENT'S ACTS OF MISCONDUCT WARRANT THE COMMISSION'S RECOMMENDATION FOR HIS REMOVAL FROM OFFICE FOLLOWED BY A CONDITIONAL SUSPENSION, WITHOUT PAY, FOR A PERIOD OF SIX YEARS AND FOR COSTS

The Commission answers "YES."

Respondent answers "NO."

COUNTERSTATEMENT OF FACTS

Although Respondent sets forth a statement of facts, its accuracy and completeness is woefully inadequate. Through a series of carefully selected facts which he then spins in his favor, Respondent argues that he has done nothing wrong other than engaging in an extra marital affair with a litigant in a case pending before him and disqualifying himself from that case later than he should have. Respondent then presents his mistress as a femme fatale who continued to pursue him even after he terminated the relationship and who contacted the media when he refused to continue their affair. Despite Respondent's best efforts to alter, ignore, or minimize them, the complete and accurate account of the facts, which overwhelmingly supports the Commission's Decision and Recommendation (D&R), is as follows:

Respondent is a judge at the Third Circuit Court for the County of Wayne. (R's Ans., par. 1; TX, Vol. 2, p. 379) As part of his judicial responsibilities, Respondent handles felony non-support matters from arraignment until final disposition. (TX, Vol. 2, p. 383) In March of 2012, a felony warrant was issued against Robert King ("King") for failing to pay child support.¹ (E's Exh. 4; R's Ans., par. 3; TX, Vol. 2, p. 385)² The complaining witness/custodial parent in *People v King* was Geniene Mott ("Mott"). (TX, Vol. 1, p. 52-53; Vol. 2, p. 387; R's Ans., par. 4) Following a March 21, 2012 appearance at 36th District Court (E's Exh., 4), the case was transferred to Respondent's docket under Circuit Court Case No. 12-003141-01-FH (E's Exh. 4). On March 28, 2012 Respondent conducted an arraignment and accepted defendant's waiver of preliminary examination (TX, Vol. 2, p. 386; R's Ans., par. 8). Thereafter, the case was adjourned to May 21, 2012 for a pre-trial conference. (E's Exh. 4; R's Ans., par. 8)

¹ MCL 750.161

² TX-Transcript of Formal Hearing; Vol. – Volume; par. – paragraph; E's Exh. – Examiner's Exhibit; R's Ans to FC 93 – Respondent's Answer to Formal Complaint No. 93; MR – Master's Report; txt – text; R's Exh. – Respondent's Exhibit; R's Brief – Respondent's brief to the Court; D&R – Commission's Decision and Recommendation.

On May 21, 2012, King appeared before Respondent and pled guilty as charged. (R's Ans., par. 9; E's Exh. 4) The sentencing/review hearing was scheduled for April 19, 2013. (TX, p. 391; R's Ans., par. 13) The plea was made pursuant to MCL 771.1(1), which permits sentencing to be delayed and charges dismissed if a defendant fully and timely complies with all court ordered conditions during his/her probation. (TX, Vol. 1, p. 216; Vol. 2, p. 390-391; R's Ans., par. 12) Under the terms of his plea agreement, King was ordered to pay \$280.50 per month in child support and \$50.00 per month in arrearages. (R's Ans., par. 11; E's Exh. 4) In addition, he was to make a \$400.00 payment at the time of the plea and a \$1,000.00 payment when the case was scheduled for a final review/sentencing on April 19, 2013. (E's Exh. 4; R's Ans. par. 12) Failure to comply with all conditions could result in a revocation of the agreement and acceptance of the plea as well as the imposition of any sentence up to and including a prison term. (TX, Vol. 2, p. 388-390) In order to ensure King's on-going compliance with the plea agreement, Respondent scheduled August 16, 2012 and November 15, 2012 as additional review hearing dates. (E's Exh. 4; TX, Vol. 2, p. 392; R's Ans., par. 13)

During the May 21, 2012 hearing, Mott was present in court and was seated in the area generally reserved for court personnel. (TX, Vol. 2, p. 520) Mott knew the deputies assigned to Respondent's courtroom and had visited them before *People v King* appeared on Respondent's docket. (TX, Vol. 1, p. 56; Vol. 2, p. 394) At the end of the May 21, 2012 docket call, as Mott was engaged in a conversation with the court officers (TX, Vol. 1, p. 57; Vol. 2, p. 394), Respondent came around the judicial bench, provided Mott with his 3rd Circuit Court business card and asked her to give him a call. (TX, Vol. 1, p. 57) Having addressed and questioned her during the hearing, Respondent was well aware of Mott's status as the complaining witness in *People v King*. (E's Exh. 26, p. 5; p. 18-22) Respondent admitted at the formal hearing before the master that Mott was attractive and had "caught his eye." (TX, Vol. 2, p. 395)

As Respondent had requested, Mott called the court on the following day (TX, Vol. 2, p. 396; R's Ans., par. 16) and left a message for Respondent to return her call. (TX, Vol. 2, p. 396) Within a day or so, Respondent contacted Mott and made plans to meet her for lunch. (TX Vol. 1, p. 59; Vol. 2, p. 396; R's Ans., par. 17) On May 30, 2012, Respondent accompanied Mott to lunch at the Eastern Market. (TX, Vol. 1, p. 59; Vol. 2, p. 396; R's Ans., par. 18) Thereafter, Respondent and Mott exchanged cell phone numbers and made plans to meet again. (E's Exh. 22, txt. 5/30/2012 @4:17:35 PM; TX, Vol. 1, p. 59; R's Ans., par. 19)

Following the May 30, 2012 lunch, Respondent engaged in a six-month sexual affair with Mott. (TX, Vol. 1, p. 68; Vol. 2, p. 397-398; R's Ans., par. 24) During that time, Respondent and Mott maintained contact in person as well as by phone, through emails and via text messages. (E's Exh. 22; TX, Vol. 1, p. 60-61; R's Ans., par. 20-22) Many of the text messages were transmitted while Respondent was on the bench (TX, Vol. 1, p. 86-87) and many contained inappropriate and sexually explicit comments. (E's Exh. 22) The text and email messages also contained demeaning and/or derogatory references to defendants and witnesses as well as other members of the bench and/or employees of the court. (E's Exh. 22, Tx, Vol. 1, p. 104-107)

On numerous occasions, Respondent also permitted Mott to enter the courthouse through a back entrance reserved for judges, court employees and members of the Wayne County Sheriff's Department (R's Ans., par. 26; E's Exh. 22, txt, 11/15/2012 @ 9:33:04 AM; txt, 11/15/22012 @ 9:33:32 AM; R's Ans., par. 26), repeatedly made arrangements to park her vehicle in areas reserved for judges (TX, Vol. 2, p. 542-543; E's Exh. 22, txt., 8/15/2012 @ 4:37:38 PM), and repeatedly brought her phone into the courthouse for her, all in violation of the court's security policy. (TX, Vol. 1, p. 84-85; 548-549) On numerous occasions Respondent also utilized his judicial chambers to engage in sexual conduct with Mott (R's Ans., par. 25; TX, Vol. 1, p. 71), while on other occasions, Respondent allowed Mott to remain alone in his chambers when he was on the bench. (TX, Vol. 1, p. 71; E's Exh. 22, txt. 10/30/2012 @ 3:03:19 PM; 11/1/2012 @ 9:50:02 AM; R's Ans. par. 28)

Throughout the affair, Respondent participated in many discussions of the *People v King* case with Mott (TX, Vol. 1, p. 79; p. 88), including the need to have it removed from his docket. (TX, Vol. 1, p. 89) On September 6, 2012, when Mott mentioned that she was under the impression that *People v King* had been transferred out of his court (TX, Vol. 1, p. 89-90; E's Exh. 22, txt. 9/6/2012 @4:18:26 PM), Respondent explained that he was in the *process* of transferring it, that the receiving judge had to agree to take it, and that the transfer process was far more involved than simply "taking the file upstairs." (E's Exh. 22, txt. 9/6/2012 @ 4:20:01 PM) In fact, Respondent discussed the transfer issue with the Hon. James Callahan in July of 2012, when he contacted Judge Callahan stating that he had a felony non-support case that presented him with a conflict of interest. (TX, Vol. 1, p. 43-44) Although Judge Callahan assured Respondent that he would accept the case (TX, Vol. 1, p. 45), Respondent failed to disqualify himself and failed to have the case transferred until September 18, 2012.³ (R's Ans., par. 44)

It is undisputed that Respondent covered all expenses of his affair with Mott, including entertainment, meals, hotels, as well as some of Mott's personal living expenses. (TX, Vol. 1, p. 79; Vol. 2, p. 468; Vol. 3, p. 772-773; Vol. 3, p.780) As the affair continued into the summer of 2012, Respondent took out a \$5,000.00 personal loan for Mott, which she used towards a down payment on a house she was in the process of purchasing. (TX, Vol. 1, p. 69; p. 103) In order to keep her expenses down, by mid-August, Respondent moved Mott and her two children into his deceased mother's Ann Arbor house (E's Exh. 22, txt., 8/17/2012 @ 9:39:01 PM) until Mott could move into her newly purchased home in the first half of September of 2012. (E's Exh. 22, txt. 8/24/2012; TX, Vol. 1, p. 70-71; Vol. 3, p. 780-783)

Shortly after the start of the affair, Respondent instructed Mott to keep him informed whether King was in compliance with the terms of his delayed sentence agreement. (TX, Vol. 1, p.

³ Contrary to his claim that he had never used his judicial position to assist Mott, Respondent admitted to calling the courtroom of the Hon. Susan Borman with regards to a landlord/tenant matter Mott had pending. (TX, Vol. 3, p. 777; E's Exh. 22, txt., 8/17/2012 @ 5:38:36 PM)

79) As directed, Mott notified Respondent when King began to fall behind in his child support obligations. (TX, Vol. 1, p. 80; R's Ans., par. 29) On August 12, 2012, four days before King's first review hearing, Mott sent a text message reminding Respondent that she planned on attending the hearing and needed his assistance in bringing her cell phone into the courtroom so she could advise Respondent what she wanted "done" in case King did not bring the outstanding child support amount to court. (E's Exh. 22, txt. 8/12/2012 @ 8:51:53 PM)

In the August 12, 2012 text messages, Mott also made several suggestions how Respondent should handle the August 16, 2012 hearing, including by ordering King to make an immediate \$2500.00 child support payment and sending him to jail. (E's Exh. 22, txt. 8/12/2012) Mott also informed Respondent that King was on probation for a felony conviction in Oakland County Circuit Court and that a jail term in Wayne County could violate that probation and result in a ten-year prison term. (TX, Vol. 1, p. 83; E's Exh. 22, txt. 8/12/2012, @ 9:24:07 PM) Noting that a jail term from him could act as an incentive for King to meet his child support obligations (E's Exh. 22, txt. 8/12/2012, @ 9:18:50 PM), Respondent stated that he would "run it by the prosecutor." (E's Exh. 22, txt., 8/12/2012 @ 9:24:42 PM) As an alternative to Mott's suggestions, Respondent offered to place King on a tether until the court-ordered support payments were made up. (E's Exh. 22, txt. 8/12/2012, @ 8:59:13 PM; @ 9:10:24 pm) On August 15, 2012, Mott again transmitted a text message asking if Respondent was successful in making parking arrangements for her for the following morning. (E's EX 22, txt. 8/15/2012 @ 4:37:38 PM 5:45:27 PM). In an answer to Respondent's inquiry, Mott reminded Respondent that the name of her child's father was Robert King. (E's Exh. 22, txt. 8/15/2012, @ 6:01:27 pm - 6:02:26 pm)

Before arriving at the courthouse on August 16, 2012, Mott asked Respondent, via a text message, whether the prosecutor "agreed wit^[4] our deal since she cut him a break last time??" (E's

⁴ All text message quotations are as they appear in Examiner's Exhibit 22, without changes or corrections.

Exh. 22, txt. 8/16/2012 @9:36:19 AM) Noting, "I think Ur B.D.^{5]} is here!!" (E's Exh. 22, txt. 8/16/2012, @ 9:31:13 AM), Respondent replied, "Look 4 'my girl' Sharon Grier, she's our prosecutor & she's been 'prepped'" (E's Exh. 22, txt. 8/16/2012; @ 9:44:38 AM). At 10:45 AM, Mott advised Respondent that she was placing her cell phone in his truck which was parked outside the courthouse. (E's Exh. 22, txt. 8/16/2012 @10:45:51 AM) As he had done on previous occasions, Respondent left his judicial bench, retrieved the cell phone and returned it to Mott through his court officers as she sat in his courtroom. (TX, Vol. 2, p. 413; 548-551; E's Exh. 22, txt 8/16/2012 @ 9:08:37 AM)

During the August 16, 2012 review hearing, Respondent was advised that although King was still behind in his child support obligations, he had made a \$300.00 payment to the Friend of the Court ("FOC") on August 15, 2012. (E's Exh. 27, p. 8) Consistent with his August 12, 2012 discussion with Mott, Respondent ordered the defendant placed on a tether until the full \$672.00 owed under the delayed sentence agreement was paid. (E's Exh. 27, p. 8; R's Ans., par. 39) The case was then adjourned until August 29, 2012. (E's Exh. 27, p. 8) On August 17, 2012, Respondent advised Mott, once again via a text message, that he had arranged to have the Friend of the Court notify him if, and when, King had made the required support payment. (TX, p. 87-88; E's Exh. 22, txt 8/17/2012 @10:41:48 AM)

On September 18, 2012, Respondent sent Mott two text messages advising her that *People v King* was finally being transferred. In the first message, Respondent stated that he was "running" up to Judge Callahan's courtroom with the file. (E's Exh. 22, txt 9/18/2012 @8:46:19 AM) Respondent followed up with a second message, stating:

DONE DEAL!!!:-). I told a story so well, I had me believing it!! Brother King is on his way 2 'hangin' Judge Callahan. He fuck up Once & he's through!!

⁵ "B.D." stands for "baby daddy." (TX, Vol. 1, p. 85)

(E's Exh. 22, txt 9/18/2012 @9:48:10 AM) September 18, 2012 was also the date that the disqualification order was signed by the Chief Presiding Judge Timothy Kenny. (E's Exh. 4) While the reason Respondent provided to Judge Kenny for removing *People v King* from his docket was "[c]onflict of interest, custodial parent friend of family" (E's Exh. 4), the reason he advanced to the Assistant Prosecuting Attorney Sharon Grier ("Grier") was that a friendship had developed between his and Mott's teen age sons. (E's Exh. 4; R's Ans., par. 47; TX, Vol. 1, p. 222)

Despite his disqualification, Respondent continued to provide Mott with information about *People v King*. On November 15, 2012, the day of King's review hearing before Judge Callahan, Respondent once again exchanged text messages about the case with Mott, promising to find out from Grier why the matter was adjourned in Callahan's court. (E's Exh. 22, txt 11/15/2012 @ 9:49:08-10:02:02 AM)

Throughout the affair, Respondent repeatedly reminded Mott that they have to be discreet because of the pendency of another JTC investigation stemming from his text transmission of what appeared to be a nude photograph of himself to a female Wayne County Sheriff's deputy (the *shirtless photo* matter). On June 20, 2012, Respondent told Mott that the pending JTC investigation had him nervous (E's Exh. 22, e-mail 6/20/2012 @7:18 PM) and that "everybody" could be in trouble "[i]f it got out that we were seeing each other before your B.D's case closed." (E's Exh. 22, email, 6/20/2012 @7:18 PM). On October 24, 2012, the day that the Michigan Supreme Court issued a public sanction against him (E's Exh. 16), Respondent sent Mott a text message expressing, in sexually vulgar terms, his contempt for the JTC and for Charlie LeDuff (LeDuff), the Fox2 reporter who exposed his conduct in the so-called shirtless photo incident. (E's Exh. 22, txt. 10/24/2012, @ 5:33:36; @ 5:37:56)

Respondent also made numerous representations to Mott that he was unhappy in his marriage. As early as June 21, 2012, Respondent told Mott, via e-mail, that he was in a "marriage of convenience" and that he and his wife, Laverne, had previously considered a divorce. (E's Exh. 22,

email 6/21/2012 @ 1:00 PM) On separate occasions, Respondent referred to his wife as the “wicked witch in ‘The Wiz’” (E’s Exh. 22, email June 23, 2012 @ 11:33 AM) and told Mott that the closing of his mother’s estate would mean more money for the two of them once they were together. (E’s Exh. 22, email July 5, 2012 @ 9:16 AM) Respondent also referred to the house that Mott had purchased in September of 2012 as “our house,” and stated that it was ideal for them “when [they were] down 2 just one kid.” (E’s Exh. 22, txt. 9/1/2012 @ 5:02:36 PM)

On October 11, 2012, Respondent filed a complaint for divorce from his wife. (TX, Vol. 3, p. 829; E’s Exh. 45) Respondent personally prepared and signed the complaint and on November 11, 2012, he personally served it on Mrs. McCree. (E’s Exh. 47; TX, Vol. 2, p. 339; Vol. 3, p. 833-834) Between the two dates, Respondent and Mott continued to see each other, continued to attend various social functions and events involving their children, and continued to proclaim their love for each other. (E’s Exh. 22, txt., 10/16/2012 @ 7:24:53 AM; @ 7:40:24 AM; @ 8:53:02 AM; @10:59:47 PM; 10/17/2012 @ 8:56:45 AM; 10/24/2012 @ 5:33:36 PM; 10/29/2012 @ 10:52:56 PM; 11/2/2012 @ 1:17:53 PM; 11/6/2012 @ 7:33:09 AM; 11/6/2012 @ 3:44:05 PM; 11/8/2012 @ 6:27:06 PM; 11/8/2012 @ 7:29:26 PM; 11/9/2012 @ 11:12:20 AM) Respondent also continued telling Mott that he thought of her house as his “home” (E’s Exh. 22, 10/16/2013 @ 10:12:40 AM), asking for her patience before they became a “public couple” (E’s Exh. 22, txt. 10/16/2013 @6:02:54 PM), and promising that “[a] day will come when [they] share an address.” (E’s Exh. 22, txt. 10/16/2012 @ 10:41:22 PM) On November 1, 2012, Mott advised Respondent that she was pregnant with his child. (TX, Vol. 1, p. 71) On November 6, 2012, Respondent gave Mott a check for \$1,000 from an account held in his and his deceased mother’s names. (E’s Exh. 22)

On November 8, 2013, Respondent and Mott agreed that he would delete all text messages from his cell phone and that Mott would send what she referred to as a “break up” text intended to be seen by Respondent’s wife. (E’s Exh. 22, txt. 11/8/2012 @ 8:20:26 PM) Shortly thereafter, Mott transmitted a *fake* “break up” message expressing outrage that Respondent permitted his wife to

“dictate [their] relationship,” stating that she and Respondent were *done*, and that he would have to pay for her abortion as well as the time away from her job. (E’s Exh. 22, txt. 11/8/2012 @ 8:54:56 PM; @ 9:09:03 PM) Less than thirty minutes later, Respondent informed Mott that his wife had read the message over his shoulder and that “[T]he deed [was] done.” (E’s Exh. 22, txt. 11/8/2012 @ 9:16:32 PM) Next morning, Respondent texted that he was leaving his marital home and that if things worked out as they had planned, Mott would be welcomed at his friends’ parties. (E’s Exh. 22, txt. 11/9/2012, @ 11:12:20 AM) In response, Mott offered advice as to what personal documents Respondent should retrieve from the marital home in order to hide his finances from Mrs. McCree. (TX, Vol. 1, p. 77; E’s Exh. 22, txt. 11/9/2012, @ 11:08:02 AM)

It is undisputed that on November 7, 8 and 9 Respondent was on medical leave from his court. It is also undisputed that on November 8, 2012, the *People v Tillman* case⁶ was handled by the Hon. Kevin Robbins (“Judge Robbins”) in Respondent’s absence. (R’s Ans., par. 66) The defendant, Damone Tillman (“Tillman”), was Mott’s cousin. (TX, Vol. 1, p. 98) Tillman was charged with failure to pay child support, a felony⁷ (R’s Ans., par. 59), and had pled guilty as charged before Respondent on January 18, 2012. (R’s Ans., par. 62; E’s Exh. 43) On April 19, 2012, Respondent sentenced Tillman to probation, conditioned on timely payment of his child support obligations. (E’s Exh. 43; R’s Ans., par. 64) On October 31, 2012, Respondent issued a warrant for Tillman’s arrest for violating his probation by not making the required payments. (R’s Ans. 65; E’s Exh. 43) Following his arrest, on November 8, 2012 Tillman was brought before Judge Robbins who set the bond at \$500.00 cash or surety. (R’s Ans., par. 66) Because Tillman did not post the bond immediately, he was transferred to the Dickerson facility of the Wayne County Jail. (E’s Exh. 49)

⁶ Case No. 2012-000686-01-FH

⁷ MCL 750.165

Mott became aware of Tillman's incarceration through her family. (TX, Vol. 1, p. 98) The family also told Mott that the jail computers reflected a "remand" status for Tillman, rather than the \$500.00 bond imposed by Judge Robbins, and that based on that error, the jail refused to accept the money that the family attempted to post on Tillman's behalf. (TX, Vol. 1, p. 100) Mott discussed the situation with Respondent, advised him of her familial relationship to Tillman, and asked Respondent to "straighten out [the] bond issue." Respondent agreed to do so. (TX, Vol. 1, p. 100)

On November 13, 2012, Mott sent Respondent a text reminding him that she and her family were on their way to his courtroom "on the Damone Tillman case." (E's Exh. 22, txt. 11/13/2012 @ 10:51:03) After their arrival, Mott sent another text as well as a note while Respondent was on the bench adjudicating other matters. (TX, Vol. 1, p. 100-101) Thereafter, Respondent signed an order reducing Tillman's bond to \$500.00 (E's Exh. 49), the amount that the family had paid on Tillman's behalf to the FOC earlier that morning. (E's Exh. 49) Not only was the *People v Tillman* matter not scheduled on the November 13, 2012 docket (R's Ans., par. 68), Respondent did not add it to the docket and did not handle it on the record. (TX, Vol. 1, p. 102) Furthermore, a copy of Respondent's order was never placed in Tillman's court file. (TX, Vol. 4, p. 940-941; E's Exh. 43; E's Exh. 49) Rather, Respondent advised Mott that her family could secure Tillman's release by presenting the jail with the FOC receipt.⁸ (E's Exh. 22, txt. 11/13/2012 @12:11:13 – 12:22:44 PM) The order was then forwarded to the Wayne County Jail and placed in Tillman's inmate file. (E's Exh. 49)

On November 13, 2012, Respondent mistakenly sent to Mott a text message that he intended to send to his wife, explaining that while Mott had agreed to an abortion, she was imposing a new set of "conditions." (E's Exh. 22, txt., 11/13/2012 @ 10:52:25 AM) After reading that message, Mott advised Respondent that she no longer trusted him and that the two of them needed to "talk." (E's

⁸ The use of bond money towards child support obligations was customary in child support cases in Respondent's court. (TX, Vol. 2, p. 362)

Exh. 22, txt., 11/13/2012 @ 10:54:30 AM) Despite that incident, Respondent continued to text with Mott about *People v King* and its status. (E's Exh. 22, txt 11/15/2012 @ 9:49:08-10:02:02 AM)

Unsuccessful in getting Mott to terminate her pregnancy, on November 19, 2012 Respondent contacted Wayne County Prosecutor Kym Worthy (Worthy) claiming that he was a victim of stalking by a woman with whom he had a "brief" extra-marital affair. (TX, Vol. 1, p. 34) Respondent did not disclose to Worthy that he had met Mott while she was a complaining witness on a case pending before him or that their texting was still on-going. (TX, Vol. 1, p. 37) Respondent also did not mention anything about being extorted. Based solely on Respondent's stalking allegation, Prosecutor Worthy, whose office regularly handled matters involving judicial safety (TX, Vol. 1, p. 34), immediately assigned one of her assistant prosecutors, Robert Donaldson (Donaldson), as well as the Chief of Investigations, James Bivens (Bivens) and several investigators, to look into the situation. (TX, Vol. 1, p. 36)

On November 20, 2012, Donaldson and Detective Timothy Matouk (Matouk), met with Respondent in his judicial chambers. (TX, Vol. 1, p. 178; p. 192) During the hour and a half meeting, Respondent informed Donaldson and Matouk that he was involved in a sexual affair with a woman who claimed to be pregnant. (TX, Vol. 1, p. 179; p. 193) Referring to himself as the "king of latex" (TX, Vol. 1, p. 193), Respondent expressed doubt that he was the father of Mott's child. (TX, Vol. 1, p. 195) Although Respondent admitted to meeting Mott when she was in his courtroom, he claimed that as soon as he realized that she was a witness in a case pending before him, he had the matter transferred to another judge. (TX, Vol. 1, p. 195) For the first time, Respondent admitted that during the course of the relationship he had given Mott \$6,000 and claimed that she was demanding an additional \$10,000 to "go away." (TX, Vol. 1, p. 193-194).

Following that meeting, Donaldson and Matouk conducted a preliminary investigation which disclosed that *People v King* was not transferred until September 18, 2012, well after Mott first appeared before Respondent and well into the sexual affair. (TX, Vol. 1, p. 182-184) The

investigation also revealed that since the onset of the affair, Respondent had presided over at least one hearing in *People v King* and had ordered the defendant to wear a tether until all child support payments due under the delayed sentence agreement were paid. (TX, Vol. 1, p. 196-198) Based on the results of the investigation, Prosecutor Worthy declined to authorize any charges against Mott. (TX, Vol. 1, p. 39)

Respondent's allegations to the Prosecutor's Office came to Mott's attention after a business card was left on her vehicle by one of Worthy's detectives. (TX, Vol. 1, p. 137) Outraged at Respondent's attempt to have her charged with a felony, she contacted reporter Charlie LeDuff of Fox2 News and disclosed the details of their affair, including the pregnancy. (R's Ans., par. 55) Mott also provided LeDuff with a copy of some of the text messages she had exchanged with Respondent during the previous six months. On December 6, 2012, a story aired on Fox2 News exposing Respondent's conduct. (R's Ans., par. 56)

ARGUMENT

A. COUNT I – IMPROPER CONDUCT – *People v King*

As the master stated in his findings of fact and conclusions of law, Respondent's failure to disqualify himself from *People v King* and his use of his judicial position to "advance his own interests" demonstrated "gross dereliction of [his] judicial duties." (MR, p. 13) Guided by the same overwhelming evidence, the Commission likewise concluded that Respondent's relationship with Mott, even "without more," constituted judicial misconduct. ("D&R", p. 9)

Contrary to Respondent's continuing attempts to portray himself as a "vulnerable" and "lonely" man (TX, Vol. 2, p. 400; p. 403) who was pursued by a woman determined to become his wife (TX, Vol. 1, p. 402), the evidence proved that Respondent not only initiated the ex parte contact with Mott, he aggressively pursued her, repeatedly apologized for their scheduling conflicts, and at

times begged her not to terminate the affair. (E's Exh. 22, txt. 7/3/2012 @ 2:33:38 PM; 9/3/2012 @ 9:00:54 AM; 10/4/2012 @ 8:05:46 PM; 10/11/2012; 11/2/2012) The evidence also proved that not only did Respondent fail to timely recuse himself from *People v King*, he had made an intentional and conscious decision to keep the case on his docket and repeatedly engaged in ex parte discussions about the case with Mott throughout their affair. Finally, the evidence proved that Respondent committed perjury during the formal hearing before the master when testifying about his actions in *People v King*.

It is undisputed that Respondent's affair with Mott began on May 21, 2012, when she was present in his court for King's guilty plea (TX Vol. 1, p. 57). It is also undisputed that Respondent spoke with Mott on the record (E's Exh. 26, p. 5; p. 18-22), and, as such, was well aware of her identity and status in the *King* case. It is further undisputed that Respondent was watching Mott (TX, Vol. 2, p. 394-395) and that at the conclusion of the May 21 docket, he joined in the conversation she was engaged in with Respondent's court officers. (TX, Vol.2, p. 395) This is supported by a text message Respondent transmitted to Mott on May 30, 2012 in which, referring to May 21, 2012, he stated: "Actually, I was QUITE impressed. The conversation flowed & seemed natural. I was trying NOT 2 get 'caught' peeping those long ass legs." (Emphasis in original) (E's Exh. 22, txt, 5/30/2012 @5:33:29 PM) Defendant also admitted in the May 30, 2012 texts that he found Mott attractive (TX, Vol. 2, p. 396-397), that she had "caught his eye" (TX, Vol. 2, p. 395), and that he had "picked up [Mott's] files as [she] was exiting the courtroom." (E's Exh. 22, txt. 5/30/2012 @ 5:11:09 PM)

Respondent's formal hearing testimony that the ex parte contact was initiated by Mott and that she had provided him with her business card was refuted by his own text messages. (E's Exh. 22) These messages not only support Mott's testimony that *he* gave her *his* card and asked her to call him (TX, Vol. 1, p. 57), they demonstrate that Respondent lied while under oath before the

master. In a May 30, 2012, text, Respondent told Mott that “[h]ad Jewell⁹ not been [in] that day, I’d have asked Deputy Green 2 escort U back N2 chambers so I would B SOOOO obvious giving U my biz card:-.” (E’s Exh. 22, txt., 5/30/2012 @ 5:24:07 PM) By providing his business card and asking for Mott to contact him, Respondent was soliciting ex parte communication from a litigant.

Even if the business card exchange was mutual, as Respondent now claims in his brief to the Court, that act alone created a serious appearance of impropriety. By asking her to “give [him] a call” (TX, Vol. 1, p. 57), or by returning the message she had left for him at his court (TX, Vol. 3, p. 538), Respondent was expressing a personal interest in Mott which created an appearance of impropriety requiring him to disqualify himself and have the case transferred to another judge. MCR 2.003. To compound the improper conduct even further, Respondent made plans to meet Mott for lunch (TX, Vol. 1, p. 59; Vol. 2, p. 396) and then to continue seeing her. (E’s Exh. 22, txt. 5/30/2012 @4:14:39 PM; @4:17:35 PM) By so doing, Respondent made a conscious decision to be involved with a woman who was a litigant in a case pending before him. As he testified at the formal hearing, Respondent knew what he was doing when he entered and continued his relationship with Mott. (TX, Vol. 2, p. 401)

Respondent’s claim that his failure to disqualify himself from *People v King* prior to August 16, 2012 was because the case was not on his mind (TX, Vol. 2, p. 406-407), or that it was a simple case of a “bonehead oversight” (TX, Vol. 2, p. 430), was proven false not only by Respondent’s and other witnesses’ testimony, but once again, by Respondent’s own text and email messages. As early as June 20, 2012, Respondent sent Mott an email stating, in part:

[Y]ou are the complaining witness on a case that is before me. Naturally if it got out that we were seeing each other before your B.D.’s case is closed, everybody could be in deep shit.

(E’s Exh. 22, email, Wed. Jun 20, 2012 at 7:18 PM)

⁹ Jewell Johnson is Respondent’s secretary. (TX, Vol. 3, p. 455)

As the master found, Respondent retained the case so that he could assist Mott in the collection of child support and as a way to keep her interested. (MR, p. 9) Respondent himself testified that he was surprised that a woman half his age was interested in him. (TX, Vol. 2, p. 397) Contradicting his formal hearing testimony that he tried to break the affair off on several occasions but that Mott had either “sweet talked” or threatened him back into it (TX, Vol. 2, p. 401; p. 465), Examiner’s Exhibit 22 is replete with texts in which each time Mott indicated she had to re-think their relationship Respondent begged *her* to give him “another chance. (E’s Exh., 22, txt. 7/2/2012 @5:59:21 PM; 7/3/2012 @2:33:38 PM; 9/3/2012 @ 9:00:54 AM; 10/4/2012 @ 8:05:46 PM; 10/11/2012 @ 2:00:27 PM; 11/2/2012 @ 11:44:32 AM)

The same overwhelming evidence was the basis for the Commission’s finding that by testifying at the formal hearing that it just did not “DAWN” on him to recuse himself from *People v King*, that the failure to recuse himself was an “oversight” and that he simply “wasn’t thinking about it” before he finally transferred the case to Judge Callahan on September 18, 2012 (TX, Vol. 2, p. 540, 541; 545-546), Respondent lied under oath. (D&R, p. 11-12) Respondent’s argument accusing the Commission of “twisting” his words and taking them “out of context” (R’s Brief, p. 19-22) is nothing short of a baseless misrepresentation.

First, Judge Callahan testified that in July of 2012, Respondent called him stating that a felony non-support case on his docket presented him with a conflict of interest and asking whether Judge Callahan was willing to accept the case onto his docket. (TX, Vol. 1, p. 43-44) Judge Callahan testified that although his consent was not necessary for a transfer (TX, Vol. 1, p. 43), he assured Respondent that he would accept the case. (TX, Vol. 1, p. 45) Despite that assurance, and clearly well aware of his ethical and legal obligation to disqualify himself, Respondent continued to keep *People v King* on his docket.

Next, Mott testified that since the onset of the affair, she and Respondent engaged in numerous discussions about *People v King* (TX, Vol. 1, p. 79) and that Respondent specifically

asked her to keep him notified whether King was in compliance with his delayed sentence conditions. Mott testified that she was to advise Respondent when King fell behind in his monthly payments so that he could gauge how much money he needed for her personal expenses. (TX, Vol. 1, p. 79) It is undisputed that Defendant was covering most of Mott's expenses during the affair. (TX, Vol. 3, p. 772-773) In fact, Respondent himself admitted that he allowed Mott and her two children to move into his deceased mother's Ann Arbor house because he could not afford her request that he put her up in a "hotel with a kitchen and living quarters." (TX, Vol. 3, p. 780)

Mott's testimony is supported by numerous text messages, beginning with an August 12, 2012 message in which she reminded Respondent: "Just keep in mind thur ill be in ur courtroom & need to bring in my phone so I can text you what I want done in case he [King] makes a payment that morning..." (E's Exh. 22, txt., 8/12/12 @ 8:51:53 PM) What followed was a 46-minute text conversation discussing the sentence that Respondent would impose on the defendant. These suggestions included a \$2500.00 cash payment directly to Mott (E's Exh. 22, txt., 8/12/2012 @8:51:53); a nine-month jail term; a 150-day jail term with release upon the payment of \$1500.00 (E's Exh. 22, txt. 8/12/2012 @9:10:24); and a tether, to be removed if the Defendant paid \$2500.00 within 30 days (E's Exh. 22, txt. 8/12/2012 @9:10:24 PM; @9:20:51 PM).

The lack of merit in Respondent's accusations against the Commission is also demonstrated by the following formal hearing testimony elicited from Respondent himself:

- Q. In your answer to the Formal Complaint 93, in Paragraph 44, you stated that it did not dawn on you to transfer the case on May 21 or May 30th; isn't that correct?
- A. That is correct.
- Q. And you used the word "dawn on me."
- A. Correct.
- Q. So on May 21st, it did not dawn on you; correct?
- A. I saw no reason to?

Q. On May 30th, did you see any reason to?

A. In hindsight, yes.

Q. No. On May 30 –

A. No.

(TX, Vol. 2, p. 540)

Q. On May 30th, after the lunch date, you make additional plans, do you not?

A. Yes

Q. And, in fact, you put Ms. Mott's phone number in your index?

A. Yes.

Q. And that's because you plan and expect to continue seeing her –

A. Yes.

Q. --isn't that correct?

A. I'm sorry.

Yes, Ma'am.

Q. And so still, at that point, having the intention to see her after May 30th, you still claim that it didn't dawn on you not to keep the case of *People v. King*?

A. Correct.

(TX, Vol. 2, p. 540-541)

Q. On the 19th –

A. Yes.

Q. -- [referring to plans Respondent made for a June 21, 2012 date with Mott at the Westin Hotel] -- during this prelude, Mr. McCree, did it dawn on you on that day or evening that maybe, just maybe, *People v. King* should be out of your courtroom?

A. No.

(TX, Vol. 2, p. 545-546)

At the time of his ex parte discussions with Mott, Respondent was also aware that any jail sentence in his court could potentially expose King to a 10-year prison sentence on his Oakland County probation. (TX, Vol. 1, p. 83: E's Exh. 22, txt, 8/12/2012, @ 9:24:07 PM) Knowing so, in response to Mott's text that King "will pay cause [King's family] won't let him go 2 jail (E's Exh. 22, txt., 8/12/2012, @ 9:24:07 PM), Respondent stated: "Cool, I'll run it by the prosecutor." (E's Exh. 22, txt., 8/12/2012, @9:20:51 PM; 9:24:42 PM). Clearly, Respondent not only engaged himself in an ex parte conversation with a litigant, he was planning on involving the prosecutor in his unethical and illegal conduct.

Respondent again discussed *People v King* with Mott on August 15, 2012, one day before the review hearing. On that date, Mott provided Respondent with the name of her father's child (E's Exh. 22, txt. 8/15/2012 @6:01:27 PM; @6:02:26 PM) and reminded him to make parking arrangements for her court appearance on the following day (E's Exh. 22, txt, 8/12/2012 @ 4:37:38). This is consistent with Mott's testimony that on numerous occasions, Respondent arranged for her to park her vehicle in an area reserved for judges. (TX, Vol. 2, p. 542-543) Respondent himself admitted making such arrangements on at least "half a dozen" occasions. (TX, Vol. 2, p. 543)

Next, on August 16, 2012, the day of the actual review hearing, Respondent advised Mott: "I think Ur B.D. is here!!" (E's Exh. 22, txt. 8/16/2012 @9:31:13 AM) Clearly, Respondent was familiar not only with the defendant's name, but also with his appearance. In another text message he sent to Mott on the same day, Respondent confirmed his discussion of *People v King* with the prosecutor, Sharon Grier. In response to Mott's inquiry whether the "prosecutor agree[d] with our deal since she cut him a break last time???" (E's Exh. 22, txt., 8/16/2012 @ 9:36:19), Respondent stated: "Look 4 'my girl' Sharon Grier, she's our prosecutor & she's been 'prepped'." (E's Exh. 22,

txt., 8/16/2012, @ 9:44:38 AM) Respondent's testimony that his comments to Mott were false and only designed to "appease" her (TX, Vol. 2, p. 426-427), an argument he repeats to this Court (R's Brief, p. 6), was not only refuted by the evidence, it demonstrates Respondent's willingness to use his judicial position to further his sexual relationship with Mott.

Respondent's claim that the sentence he imposed on King was the same as he had imposed on other defendants charged with similar offenses, and that as such his affair with Mott had no impact on *People v King*, is not only irrelevant, it is false. The evidence presented at the formal hearing clearly demonstrated, and the Master and the Commission found, that Respondent's motive in retaining *People v King* was, at least in part, to ensure that King continued his child support payments and thus reduce some of Respondent's financial burden of having to support Mott. (MR, p. 10; D&R, p. 13)

By his own admissions, Respondent was covering all expenses of his affair with Mott. (TX, Vol. 3, p. 771-772) In fact, Respondent admitted to moving Mott and her two children into his deceased mother's Ann Arbor home in August of 2012 because he could not afford putting her up in a "hotel with a kitchen area," as she had requested. (TX, Vol. 3, p. 780; E's Exh. 22, txt., 8/17/2012, @ 9:39:01 PM) The text messages also proved that Respondent not only took a personal \$5,000.00 loan that was used as a down payment on Mott's new house, he also covered some of her personal living expenses. (E's Exh. 22, txt., 8/24/2012, @10:20:52-10:23:42 AM) On at least two occasions, Respondent complained to Mott about their expenses as well as the financial problems he was having in meeting the bills in the McCree household. (E's Exh. 22, txt., 9/11/2012 @ 7:33:52 PM; 10/30/2012 @ 9:26:29 - 9:53:37 PM) Clearly, any term of incarceration would only ensure King's inability to make any child support payments to Mott, leaving it up to Respondent to continue having to support two households.

What makes Respondent's actions even more egregious is the fact that his conduct with respect to *People v King* was taking place while he was being investigated by the Commission for

having texted what appeared to be a nude photograph of himself to a female Wayne County Sheriff's Deputy. The evidence clearly proved that very early in his affair with Mott Respondent was well aware that his conduct in *People v King* was illegal and unethical. As early as June 20, 2012, Respondent told Mott,

My Judicial Tenure Commission matter has me nervous, as you might expect, I have to be **real** careful until this matter [the so-called shirtless photo investigation] is put to rest. (Emphasis in original)

(E's Exh. 22, email, Wed. June 20, 2012, @ 7:18 PM) On September 6, 2012, Respondent again acknowledged the impropriety of having *People v King* pending in his court when he told Mott that he was "DEEPLY concerned that certain levels of 'us' remain COMPLETELY UNDETECTED as long as U'r still a litigant N case B4 me..." (Emphasis in original) (E's Exh. 22, txt., 9/6/2012 @ 4:16:27 PM)

Finally, Respondent's refusal to acknowledge the gravity of the situation he created and the unethical nature of his conduct was clearly demonstrated by his formal hearing testimony that the fault lay with the defendant, Robert King, for failing to comply with the conditions of his delayed sentence agreement. Respondent's blame-the-victim approach was that if King had made his child support payments in a timely manner, he would not have had to appear in court on August 16, 2012 (TX, Vol. 3, p. 762-763), and there would have been no need to have *People v King* removed from Respondent's docket. (TX, Vol. 3, p. 763)

The Commission's finding that "Respondent engaged in a personal, intimate relationship with a litigant in a case before him and then lied about" (D&R, p. 11) is supported by overwhelming evidence. Without question, Respondent committed misconduct in office by initiating an ex parte contact with a litigant on a matter pending before him, by failing to disqualify himself from the case, and by using the prestige of his office to maintain his sexual affair. The evidence also proved that during the formal hearing Respondent lied under oath as to why he failed to comply with his ethical and legal obligations. Respondent's own testimony as well as his formal hearing behavior, which

may best be characterized as arrogant, insolent, and at times bizarre, demonstrated his continued refusal to recognize the seriousness of his misconduct and its negative impact on the public's perception of the judiciary. Respondent's attitude towards the judicial disciplinary process was best demonstrated on the very day that the Court issued its sanction in the "shirtless photo" matter, when in a text message to Mott he stated:

Fuck all dem MF's. Bring it on!! Can't wait 4 Verne 2 leave & Pookie 2 get home. I'm turning this 'sick' feeling N2 anger!!

(E's Exh. 22, txt. 10/24/2012, @ 5:33:36 PM)

As a judicial officer, Respondent is under a continuous duty to conduct himself in a proper manner and to avoid "all impropriety and appearance of impropriety." (MCJC, Canon 2 A) Respondent must also not only respect and observe the law, his conduct should at all times "promote public confidence in the integrity and impartiality of the judiciary." (MCJC, Canon 2 B; MCR 9.205) In fact, the Michigan Code of Judicial Conduct requires members of the judiciary to "accept restrictions on [their] conduct that might be viewed as burdensome by the ordinary citizen" and to do so freely and willingly. (MCJC, Canon 2 A) Respondent not only failed to conform his conduct to these requirements, he repeatedly demonstrated his refusal to take responsibility for his actions as well as his contempt for the disciplinary process.

B. COUNT II - FILING OF A FALSE REPORT OF A FELONY

The master determined that Respondent was "improperly seeking to get the [Wayne County] Prosecutor and her office involved with alleged crimes that were non-existent" (MR, p. 15). As such, the master found that the Examiner proved the allegations contained in Count II of the formal complaint, i.e., that Respondent had filed false misdemeanor and felony complaints against Mott in violation of MCL 750.411a and MCL 750.505. The Commission, likewise, found that Respondent had made misrepresentations to Prosecutor Worthy and her investigating team about the details of the criminal allegations against Mott. These misrepresentations included failing to inform the

Prosecutor that Mott had been a complainant in a case before him (D&R, p. 13), and misrepresenting that he immediately recused himself from *People v King* once he realized the conflict existed. (D&R, p. 13) Not only are the Commission's conclusions well-founded, the evidence clearly and undeniably proved that Respondent's allegations that Mott was stalking him and extorting money from him were false.

Respondent testified that the stalking and extortion began on October 31, 2012 when he "categorically" terminated his affair with Mott. (TX, Vol. 2, p. 398; p. 471; R's Ans., Par. 54) Respondent testified that despite his telling Mott that they were done (TX, Vol. 2, p. 470-472), Mott continued to call his cell and home phones demanding to speak with, and to see, him. (TX, Vol. 2, p. 470-472) Respondent testified that he did not want to continue his affair, that he wanted to stay in his marriage (TX, Vol. 2, p. 473-474), and that all contacts he had with Mott after November 1, 2012 were only to confirm and terminate the alleged pregnancy. (TX, Vol. 2, p. 397; p. 475) Respondent claimed that on November 1, 2012, he was concerned enough about Mott's presence at his house that he called the Detroit Police Department (TX, Vol. 2, p. 478-479), and that after Mott's repeated acts of stalking him and his wife he contacted Prosecutor Worthy on November 19, 2012. (TX, Vol. 2, p. 483; p. 509) Respondent also claimed that on November 18, 2012 Mott had appeared on Belle Isle where he was jogging (TX, Vol. 2, p. 490-492), that she appeared in the parking area behind the courthouse as he arrived for work on November 20, 2012 (TX, Vol. 2, p. 505), and that she drove through his neighborhood on November 21, 2012 (TX, Vol. 2, p. 266-267). Respondent also testified that on November 10, 2012 Mott assaulted him at her house. (TX, Vol. 4, p. 917-918) Respondent was vehement about being "frightened for his family's safety" (TX, Vol. 2, p. 479, Vol. 2, p. 508 Vol. 4, p. 890) and concerned about Mott's threats to go public about the affair. (TX, Vol. 2, p. 502) The text messages exchanged between Respondent and Mott proved that these claims as well as Respondent's under-oath testimony on this issue were false.

At 5:10 AM on November 1, 2012, the day after his relationship with Mott was allegedly terminated (TX, Vol. 2, p. 398; p. 471; R's Ans., Par. 54), Respondent sent a text apologizing to Mott for "all the emotional 'venting' yesterday" and promising to be "calmer." (E's Exh. 22, txt. 11/1/2012 @5:10:45 AM) By 9:50 that morning, Respondent had Mott in his judicial chambers, unattended, as evidenced by her question: "If jjjewell knocks should I open the door??? I don't wanna interfear w/any works she has 2 do 4 u." (E's Exh. 22, txt. 11/1/2012 @ 9:50:02 AM) Respondent's claim that all post-October 31, 2012 contacts he had with Mott were only to resolve the pregnancy issue was also proven false by his November 2, 2012 message in which he stated:

No dear. Why is it that ALWAYS when I'm the slightest bit delinquent responding U 'conclude" that I don't want U...Not to be 'overly conclusory' my damn self, but if Ur saying its over between us EXCEPT 4 our child, *then U tell me that!!*" (Emphasis provided)

(E's Exh. 22, txt., 11/2/12, @ 11:44:32 AM). By early that same afternoon, Respondent advised Mott that he was on his way to see her. (E's Exh. 22, txt., 11/2/2012 @ 1:17:53 PM) Similar messages demonstrating that the affair was continuing after November 1, 2012 appear in Examiner's Exhibit No. 22 on November 6 (E's Exh. 22, txt., 11/6/2012 @ 9:48:25 AM; @ 3:44:05 PM), November 8 (E's Exh. 22, txt., 11/8/2012 @ 6:27:06 PM; @ 7:10:42 PM; @7:11:57 - 7:15:44 PM), and November 9 (E's Exh. 22, txt., 11/9/2012 @ 9:06:11 AM; @11:12:20 AM).

These messages, in Respondent's own words, also support Mott's testimony that the affair was continuing at least until mid-November. Respondent testified that he and his wife had devised what the master referred to as a "scam to get [Mott] to have the abortion" (MR, p. 15), and that he was forwarding to his wife the text messages he was sending to and receiving from Mott (R's Exh. W). However, none of the texts showing his continued physical contact with Mott were included in what he had forwarded to Mrs. McCree. (TX, Vol. 2, p. 300; 306-310) Respondent clearly did not want his wife to read Mott's November 6, 2012 text in which she stated "Hows it looking for you to

come back today?...I miss you so much baby, being held in ur arms this afternoon meant so much to me.” (E’s Exh. 22, txt., 11/6/2012 @ 3:44:05 PM)

Further evidence that Respondent continued his affair with Mott beyond November 1, 2012, appears in Respondent’s November 8 and November 9, 2012 texts. These texts also prove that Respondent testified falsely before the master when he claimed that he did not start saving text messages until well after November 1, 2012 (TX, Vol. 2, p. 428; Vol. 4, p. 917), and that he routinely erased each text as soon as he received it. (TX, Vol. 2, p. 429; Vol. 4, p. 917) Thus on November 8, 2012, Respondent told Mott, “Lemme do some ‘repair’ w/Lauren. I’M GOOD til 9 pm & I still have 2 delete a ton of shit!!” (E’s Exh. 22, txt., 11/8/2012 @ 7:18:41 PM) Approximately an hour later, Mott advised Respondent to “DELETE ALL TXT AND VMAIL (E’s Exh. 22, txt., 11/8/2012 @ 8:20:26 PM), followed by “ILL SEND UR ‘BREAK UP’ TXT in 45min...I LOVE U.NOW START DELETING.” (E’s Exh. 22, txt., 11/8/2012 @ 8:20:26 PM) Indeed, Mott did send a *false break up* message to Respondent at 8:54 PM, and again at 9:09 PM on November 8, 2012, to which Respondent replied, “No need 2 text/call. Shirley^[10] read (over my shoulder) Ur last text:-) The deed is done!! Turning off phone!” (E’s Exh. 22, txt., 11/8/2012, @9:16:32 PM) On November 9, 2012, Respondent told Mott that he was leaving his marital home, prompting her to offer advice as to what personal documents he should take with him. (TX, Vol. 1, p. 77; E’s Exh. 22, txt., 11/9/2012 @ 9:06:11 AM; @ 11:02:15 AM; @ 11:12:20 AM)

Respondent’s own exhibit, Exhibit V, likewise proved that he was neither stalked nor extorted. On November 16, 2012, as Respondent was at Chase Bank asking Mott, via texts, for the “amount” of money necessary to cover the “termination” of her pregnancy, Mott responded with “Huh? I’m lost, call me.” (R’s Exh. V, txt., 11/16/2012 @ 1:57 PM) Mott’s confusion continued through the next several text exchanges in which Respondent insisted on the existence of a

¹⁰ Respondent referred to Mrs. McCree using various nicknames including “Shirley,” “Verne,” “Laverne,” and “Evelene.” (TX, Vol. 1, p. 67; E’s Exh. 22, txt., 6/26/2012 @ 7:41:51; 9/25/2012 @ 6:23:13 PM; 9/30/2012 @ 5:41:44 PM; 9/30/2012 @ 7:09:47 PM; 10/5/2012 @ 5:41:37 PM; email, 7/5/2012 @ 9:16 AM)

“termination” agreement. Of significance is that Exhibit V is filled with Mott’s messages telling Respondent that if he did not want to see her, all he had to do was to let her know. Absent from Exhibit V is any indication that Respondent did not want any further contacts from Mott. (R’s Exh. V) Likewise absent is any reference to any demands by Mott for either \$10,000 or \$20,000.

Respondent’s argument that his misrepresentations to Worthy and her investigators as to the timing of his recusal from *People v King* are “entirely irrelevant” because the “details concerning the timing of [his] recusal did not involve a crime and thus did not violate any law” (R’s Brief, p. 27) is without merit. The obvious relevancy is that the lie demonstrates Respondent’s awareness of his obligation to recuse himself from *People v King* long before September 18, 2012. Respondent’s argument also demonstrates a pattern of playing word games in order to divert attention from yet another in a series of unethical acts. Finally, it demonstrates Respondent’s continuing refusal to appreciate or accept the serious nature of his wrongdoing in using his judicial position to make false criminal allegations against Mott in violation of the Michigan Code of Judicial Conduct and the criminal statutes of MCL 750.411a and MCL 750.505.

C. COUNT III – IMPROPER CONDUCT – PEOPLE V TILLMAN

The master found that Respondent’s actions in *People v Tillman* were “beyond an appearance of impropriety” and that “they were in violation of the ethical standards.” (MR, p. 16) Likewise, the Commission found that Respondent’s ex parte communications with Mott regarding *People v Tillman* and his failure to recuse himself from that case immediately upon learning that Tillman was Mott’s cousin constituted judicial misconduct.

The Commission found, as did the master, that Respondent discussed the *People v Tillman* matter prior to November 13, 2012 and that he was doing so with full awareness of the familial relationship between Tillman and Mott. (MR, p. 15; D&R, p. 10) The Commission and the master also found that Respondent relied on Mott’s representations about her cousin’s erroneous remand

designation at the Wayne County Jail when he agreed to “straighten” the matter out.¹¹ (MR, p. 15; D&R, p. 10; TX, Vol. 1, p. 100) On the morning of November 13, 2012, confirming their previous discussions, Mott transmitted a text message to Respondent reminding him that, “FYI...me and family will be in ur courtroom shortly on Damone Tillma case...” (E’s Exh. 22, txt., 11/13/2012 @ 10:30:15 AM) In his reply, Respondent did not show a lack of understanding of what Mott was referring to, and only advised her that his courtroom was “packed.” (E’s Exh. 22, txt., 11/13/2012 @ 10:46:51 AM) When Mott appeared in Respondent’s courtroom with members of Tillman’s family, she and Respondent exchanged more text messages, while he was on the bench and she in the audience of his court, in which Respondent instructed Mott’s uncle to take the “receipt” to the jail in order to secure Tillman’s release. (E’s Exh. 22, txt., 11/13/2012, @ 12:22:44 PM) The evidence proved that Respondent was not on the bench when Tillman’s bond was set by Judge Robbins on November 8, 2012. The evidence also proved, and the Commission found, that the *People v Tillman* case was not scheduled for a hearing on November 13, 2012 when Respondent issued the bond reduction order. (E’s Exh. 22, txt, 9/17/2012 @ 9:15:05 PM; TX, Vol. 1, p. 450)

Respondent’s clerk Darlene Covington (Covington) testified that by signing the order (E’s Exh. 49), Respondent was only directing the bond office to apply the money received by the jail to the defendant’s child support obligations with the FOC (a customary procedure in felony non-support cases). (TX, Vol. 2, p. 362; p. 364-366) According to Covington, after a bond is posted on a defendant’s behalf with the Wayne County Jail, it must be forwarded to the bond office at the courthouse. (TX, Vol. 2, p. 362) In turn, the bond office notifies the prosecutor, who then contacts the court to request an order directing the bond office to forward the money to the FOC. (TX, Vol. 2, p. 362-363) Covington testified that this process, which takes about a week (TX, Vol. 2, p. 365),

¹¹ Respondent’s involvement was a great deal more than “[stopping] to help an elderly woman who was confused about how to post bail for her grandson” as he professes in his brief. (R’s Brief, p. 22)

is what took place in Tillman. (TX, Vol. 2, p. 363) The evidence proved, however, that this procedure did not apply to, nor was it used in the Tillman's case.

First, at 9:56:43 AM on November 13, 2012, about half an hour prior to Mott's message informing Respondent that she and Tillman's family were on their way to his court, a walk-in cash payment was made on Tillman's behalf at the FOC office in the Penobscot building. (E's Exh. 49) The family did not post any money with the jail, and in fact, could not have posted any money due to Tillman's "remand" designation. (TX, Vol. I, p. 100) Second, on November 13, 2012, the prosecutor did not make any on-the-record requests in *People v Tillman*. In fact, as the Commission and the master found, the case was not scheduled on the November 13, 2012 docket (D&R, p. 10; MR, p. 16) and was never called on the record. (TX, Vol. 1, p. 102; D&R, p. 10) Third, the order that Respondent signed on November 13, 2012 (E's Exh. 49) was not made a part of the Tillman court file. It was transmitted to the jail and there made a part of the Tillman *jail file* (E's Exh. 43; E's Exh. 49). Clearly, the receipt that Respondent was directing the Tillman family to present at the jail was the FOC receipt that the family obtained on the morning of November 13, 2012. (E's Exh. 22, txt., 11/13/2012 @ 12:22:44 PM)

Contrary to Respondent's argument, this is not an issue of whether a judge should be disqualified because his spouse or other family member is employed by a firm or agency representing one of the parties. Rather, this is a case of Respondent engaging in a sexual affair with a litigant, discussing with her a case involving her incarcerated cousin, and then "fixing" what the mistress represents to be an error in the jail's computer. This is also a case of Respondent issuing an order without ever calling the case on the record and without permitting the prosecution or the defense to be heard on the matter. Finally, this is a situation wherein Respondent issued an order which he did not make a part of the court's file, thus creating a fraudulent court record.

D. COUNT IV – IMPROPER BENCH CONDUCT AND DEMEANOR

Although the Commission inexplicably failed to address this count of the Formal Complaint, the master determined that many of Respondent's text messages to Mott, which he was sending throughout their affair, many times while he was on the bench (MR, p. 16), contained disparaging remarks and inappropriate language for which there was "no excuse." (MR, p. 16) Many of these text messages are in clear violation of the Michigan Code of Judicial Conduct (MCJC).

Canon 1 of the MCJC, in relevant part, provides that a "judge should personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved." Noting that "[p]ublic confidence in the judiciary is eroded by irresponsible or improper conduct by judges," Canon 2 imposes on all members of the bench the requirement of avoiding "all impropriety and appearance of impropriety." The same Canon further provides that:

A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

In Section B, Canon 2 provides as follows:

A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect.

As early as 1978, the Michigan Supreme Court, referring to the mandate of Canon 1 that a judge must expect to be the subject of constant public scrutiny, stated that:

...a judge, whether on or off the bench, is bound to strive toward creating and preserving the image of the justice system as an independent, impartial source of reasoned actions and decisions. Achievement of this goal demands that a judge, in a sense, behave as though he is always on the bench.

In re Bennett, 403 Mich 178 (1978). The same principle was extended by the Court to situations of inappropriate comments made by judicial officers in private settings. In *In re Ferrara*, 458 Mich

350, 353 (1998), where the inappropriate comments were made in private telephone conversations between the judge and her ex-husband, the Michigan Supreme Court stated:

...we unequivocally state our view that whatever respondent's right to her own private opinion, a person harboring and communicating such revolting views is unworthy of holding the privileges and responsibilities of public office. Indeed, the mean-spirited, crude, and biased nature of tone of the statements that were made public are inexcusable and unacceptable from the judge.

In the present case, the formal hearing evidence proved that Respondent repeatedly transmitted messages containing inappropriate and sexually explicit comments. The evidence also proved that Respondent's messages contained inappropriate and/or derogatory references to defendants, litigants, and witnesses appearing before him as well as inappropriate and offensive comments about other members of the bench and/or employees of the court. Respondent's comments, contained in Examiner's Exhibit 22, are not only offensive in and of themselves, they clearly exhibit Respondent's complete lack of respect for the individuals who appear before him as well as for other members of the bench and the employees of the court. They also demonstrate a complete disrespect for the bench he was entrusted by the public to occupy. A sample of the improper comments include the following:

1. C'mon, U'r talking about the 'docket' from Hell; filled w/tatted up, overweight, half-ass English speaking, gap tooth skank hoes...and then U walk in." (E's Exh. 22, txt., 5/30/2012 @5:24:07 PM)
2. I was trying NOT 2 get 'caught' peeping those long ass legs. (E's Exh. 22, txt., 5/30/2012 @ 5:33:29 PM)
3. Just sent 2 deadbeat dads 2 jail:-) (E's Exh. 22, txt., 6/20/2012 @10:22:28 AM)
4. Oh yeah, I text from the bench. After last nite, its all I can do not 2 jerk off 'under' the bench:-). U know U have a magnificent pair of legs. (E's Exh. 22, txt., 6/20/2012 @11:23:07 AM)
5. One last thing. I went swimming so I'd refrain from jerking off..." (E's Exh. 22, txt., 6/20/2012 @ 6:19:22 PM)
6. On the bench. OK, I got a new one. Prisoner sitting N the box is accused of auto theft. He's BLIND!! Deputy had 2 lead him out of lockup!! WTF?? Back 2 Ur fine ass. Yes, I

thoroughly Njoyed Tuesday & the refreshingly open & honest discussion. Love it. I also loved kissing U & (as exclaimed) tasting Ur delicious breasts. Yum. Would have liked licking Ur thighs a little more (there's so much 2 Njoy). Thanks again 4 the candid conversation. U'R DA BEST." (E's Exh. 22, txt., 6/21/2012 @10:22:49 AM)

7. Now these fools tells me the drug court meeting is being moved 2 next week (poor attendance) (E's Exh. 22, txt., 6/21/2012 @1:14:41 PM)
8. ...U know those AA cops:-)...& 'our' folk N White peoples' neighborhoods! (E's Exh. 22, txt., 8/13/2012, @10:22:23 AM)
9. 2 funny, I just had Monica Conyer's nephew B4 me (ignorant shit...as usual). (E's Exh. 22, txt, 9/10/2012 @1:10:15 PM)
10. DONE DEAL!!!:-). I told a story so well, I had me believing it!!! Brother King is on his way 2 'hangin' Judge Callahan. He fuck up ONCE & he's through!!" (E's Exh. 22, txt., 9/18/2012 @ 9:48:10 AM)
11. Holy S**t Batman!! I have 17 Probation Violators, 10 of which owe child support! This is not going 2 B fun..." (E's Exh. 22, txt., 9/19/2012 @9:57:01 AM)
12. Wow...someone was doing their job locks ppl up...probably the group from the raid benny did on that 'sex house"...lol..." (E's Exh. 22, txt., 9/19/2012 @ 9:59:20 AM)
13. Just 'blessed out' a pissed off custodial mom who wouldn't shut up (and I wand ruling N her favor!!!) (E's Exh. 22, txt., 9/26/2012 @10:46:09 AM)
14. Still on the record 4 for a.m. docket. This is some shit. Got the word about judges Randon & Roberts:-) (E's Exh. 22, txt., 10/9/2012 @ 12:52:17 PM)
15. ..I just had one of the most worthless MF's come B4 me on this support docket." (E's Exh. 22, txt., 10/25/2012 @11:04:44 AM)
16. Ooooooh shit, Custodial Parent just I.D.'d the Defendant!!!!" (E's Exh. 22, txt., 10/30/2012 @ 2:56:32 PM)
17. Now here I am N a lonnnng line w/slow ass poll workers. Guess I'll B here a while!" (E's Exh. 22, txt., 11/6/2012 @7:26:08 AM)
18. But you are a damn laugh riot, you don't mince words when we "dis" White People", "Not shit Negro", and the world in general." (E's Exh. 22, email, 6/20/2012 @7:18 PM)

The fact that Respondent did not make the above listed comments on the record does not make them any less offensive or any less revealing of his unfitness to occupy a judicial position. If anything, they may actually reflect his true attitudes, some of which Respondent exhibited during

the formal hearing itself, showing a lack of willingness to recognize the seriousness of the proceedings against him. (TX, Vol. 2, p. 395; p. 397; p. 401; p. 403; p. 419; p. 430; p. 471)

E. COUNT V – MISREPRESENTATIONS

As the Commission appropriately found, the evidence proved that Respondent engaged in a “pervasive pattern of dishonesty” (D&R, p. 11) and that Respondent’s misrepresentations “go to the heart of the alleged misconduct.” (D&R, p. 12) The Commission’s finding that “Respondent engaged in a personal, intimate relationship with a litigant in a case before him and then lied about it to the Commission and to the master” (D&R, p. 13) is overwhelmingly supported by the evidence.

The allegations contained in paragraphs 80 and 81 of FC 93 were based on Respondent’s February 22, 2013 answer to the Commission’s 28-day letter in which he stated that he had “irrevocably” terminated his relationship with Mott on October 31, 2012. The evidence admitted at the formal hearing clearly showed that Respondent’s affair with Mott continued beyond October 31, 2012.

Mott testified that on October 31, 2012 Respondent did not say anything about ending their relationship. (TX, Vol. 1, p. 72) Her testimony is supported by numerous text messages that Respondent sent to Mott immediately before and after October 31, 2012, all of which prove that their relationship was continuing. On October 29, 2012, after informing Mott that his son “gave [them] up” and that his daughter was upset about the news (E’s Exh. 22, txt., 10/29/2012 @ 10:52:56 PM), Respondent told Mott “Love U baby, relax, & let me work:-) G’NITE (SMOOCHIES). (E’s Exh. 22, txt., 10/29/2012 @ 10:52:56) On the morning of October 30, 2012, Respondent told Mott that he was “...still hoping to C you this afternoon.” (E’s Exh. 22, txt., 10/30/2012, @ 7:30:15 AM) Later that morning, he followed up with a text stating: “Docket moving, but its long. Lunch is a must;-) (E’s Exh. 22, txt., 10/30/2012, @11:19:02 AM), and “Love U 2. Just 2 make U smile, Jewell is gone:-).” (E’s Exh. 22, txt., 10/30/2012 @11:26:22 AM)

The evidence also proved that on November 2, 2012, Respondent told Mott that “..if Ur saying its over between us EXCEPT 4 our child, then U tell me that!” (E’s Exh. 22, txt., 11/2/2012, @ 11:44:32 AM) A few hours later, he advised her that he was on his way to her house. (E’s Exh. 22, txt., 11/2/2012, @1:17:53 PM) On November 6, 2012, in response to Mott’s question “...we still on 4 this afternoon rite??” (E’s Exh. 22, txt., 11/6/2012, @7:29:37), Respondent stated: “Yes, I have 2 pay my ‘Dave’ loan payment 2day, so I’ll B there as SOON as I break 2day...look 4 me EARLY THIS AFTERNOON (MayB 12:30 – 12:45).” (E’s Exh. 22, txt., 11/6/2012 @7:33:09 AM) It is undisputed that Respondent retained the keys to Mott’s house after the alleged termination of the relationship. (TX, Vol. 4, p. 901) Exhibit 22 also contains other text messages proving that the relationship included physical contact after October 31, 2012. (E’s Exh. 22, txt., 11/6/2012 @ 3:44:05 PM; txt., 11/8/2012 @ 7:16:45 PM – 7:29:26 PM) Clearly, Respondent’s answer to the Commission’s 28-day letter in which he claimed that his relationship with Mott was “irrevocably” terminated on October 31, 2012 was false.

The allegations contained in paragraphs 82 and 83 of FC 93 were based on Respondent’s February 22, 2013 answer to the Commission’s 28-day letter in which he stated that the reason he told Mott to keep their affair confidential was to keep his wife and family from learning of it. The formal complaint alleged that Respondent’s statement was false, in that his real reason was to keep the affair from being discovered by the *Commission* which was in the midst of an investigation into his so-called shirtless photo incident.

Examiner’s Exhibit 22 is replete with proof that it was the JTC, and not his family, that Respondent was concerned would find out about his affair with Mott. As early as June 21, 2012, Mott sent an email to Respondent stating:

I do understand why you are very tense about our situation being that the JTC is still undecided how to handle the “mess at hand” along with me being a witness on an open case...” (E’s Exh. 22, email, 6/21/2012 @5:28:20 AM)

Messages with similar content were exchanged between Respondent and Mott throughout their relationship. Thus on September 6, 2012, Respondent stated:

...We're working 2gether 2 move U/us 4ward! Yeah, I'm deeply concerned that certain levels of 'us' remain COMPLETELY UNDETECTED as long as U'r still a litigant N case B4 me & while my nuts R still on a chopping block B4 the JTC...

(E's Exh. 22, txt. 9/6/2012 @ 4:16:27 PM) While additional messages demonstrate that Respondent may have had concerns about the affair being discovered by the media, none show that he had any concerns for his wife and family. In fact, almost from the onset of the affair, Respondent accompanied Mott to such public events and functions as U of M football games, church services, bars (TX, Vol. 1, p. 67-68) and other public places. (Vol. 4, p. 931) Respondent also took Mott to the residences of his and his wife's mutual friends. (TX, Vol. 3, p. 687) Respondent's lack of concern about public exposure of his affair was demonstrated by his willingness to involve his 12-year-old son, Justin, by taking him to such functions as picnics, go cart racing, roller blading and laser tag with Mott and her son, Christopher. (E's Exh. 22, txt., 8/30/2012 @ 8:22:33 AM; @ 8:45:47 AM; 9/27/2012 @ 66:50 PM; 9/29/2012 @ 2:53:48 PM; 9/29/2012 @ 4:00:29 PM; TX, Vol. 1, p. 68) At least on one occasion after the boys became friends, Respondent used his son as an *excuse* to spend the night at Mott's house. (E's Exh. 22, txt., 9/25/2012 @ 6:06:00-6:57:24 PM)

Even on the date that Respondent filed a complaint for divorce from his wife, his only concern was the media. (E's Exh. 22, txt. 10/11/2012, @ 2:00:27 PM) That concern continued throughout October, including October 24, 2012, the date that the Court issued its sanction of Respondent in connection with what appeared to be a *nude* photo. On that date, Respondent told Mott:

JUST finished, & Verne's car is ready. FOX2...w/that MF Charlie LeDuff is parked out N front of the building w/their cameras!!! OK, I'll call U N a couple minutes, I gotta call my lawyer. I'm thinking, if they try 2 follow maybe it may not B wise 2 come by Ur place. Lets talk, baby, YOUR man is nervous!!

(E's Exh. 22, txt. 10/24/2012 @ 12:34:32 PM)

The allegations contained in paragraphs 84 and 85 of FC 93 were based on Respondent's February 22, 2013 answer to the Commission's 28-day letter in which he stated that he filed for divorce to keep Mott from disclosing the affair to his wife and to persuade Mott to terminate her pregnancy. The evidence proved that:

1. The text messages throughout the entire affair never showed that Respondent had any concern about his wife's discovery of the affair, and
2. On October 11, 2012, when the divorce was filed, Respondent did not know that Mott was pregnant. (TX, Vol. 1, p. 71)

The allegations contained in paragraphs 86 through 89 of FC 93 were based on Respondent's February 22, 2013 answer to the Commission's 28-day letter in which he claimed that he was not aware of any familial relationship between Tillman and Mott and that he did not take any action in *People v Tillman*. The evidence proved, and the Commission found, that Respondent was well aware of Mott's relationship to Tillman and that based on their ex parte discussions of the Tillman's case, he issued the bond reduction order on November 13, 2012.

Respondent's misrepresentations were not limited to his answers to the Commission's 28-day letter. In fact, throughout the formal hearing, Respondent provided false sworn testimony which, as discussed in more detail throughout this brief, may be summarized as follows:

1. On May 21, 2012, Mott provided him with her business card. (TX, Vol. 2, p. 395)
2. *People v King* was never on his mind until the eve of the August 16, 2012 review hearing. (TX, Vol. 2, p. 412)
3. His failure to disqualify himself from *People v King* prior to September 18, 2012, was a case of a simple "oversight." (TX, Vol. 2, p. 407-408)
4. On August 16, 2012, he was not aware that King was on probation to Oakland County Circuit Court and potentially facing a ten-year prison term. (TX, Vol. 2, p. 451)

5. Instructing Mott to communicate with prosecutor Grier who had been “prepped” on their agreement as to King’s sentence was nothing more than his attempt to pacify Mott. (TX, Vol. 2, p. 426-427; p. 436-437)
6. Respondent was being stalked and extorted by Mott. (TX, Vol. 2, p. 482; Vol. 2, p. 490; Vol. 2, p. 491; Vol. 2, p. 493; Vol. 2, p. 501-502; Vol. 2, p. 505; Vol. 2, p. 507)
7. All contact Respondent had with Mott after October 31, 2012 was solely for the purpose of ending her pregnancy. (TX, Vol. 2, p. 398; Vol. 2, p. 477)
8. On November 13, 2012, he took no action in *People v Tillman*. (TX, Vol. 450-454)
9. He never used his judicial position to assist Mott in any way. (Vol. 2, p. 408)

Further evidence of Respondent’s complete lack of respect for the judicial system and the sanctity and significance of the oath are his actions surrounding the October 11, 2012 filing of his divorce complaint (E’s Exh. 45) and its November 11, 2012 service on Mrs. McCree. (E’s Exh. 47) Although Respondent contends that this misconduct cannot form the basis for discipline because it was not pleaded in the formal complaint, the Commission is free to consider any evidence offered at the formal hearing especially when it goes to the question of whether Respondent committed perjury.

Respondent himself testified that although he had signed and filed the divorce action (TX, Vol. 3, p. 829; p. 833-834), he did so only to ensure that Mott would not disclose his affair to his wife and family, and that it was never his intention to follow through with the case. (TX, Vol. 3, p. 831) In addition to the falsehood of the claimed purpose behind the filing, i.e., to ensure that the affair was not disclosed to Respondent’s wife and family, Respondent’s admission is a clear violation of MCR 2.114 which provides, in relevant part, as follows:

- (D) The signature of an attorney or party...constitutes a certification by the signed that

- (2) to the best of his or her knowledge, information and belief formed after reasonably inquiry, the document is well grounded in fact.... and
- (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

By serving the complaint himself, Respondent also violated MCR 2.103 (A) which states that a process in civil actions “may be served by any legally competent adult *who is not a party*” to such action. In short, Respondent had once again used the judicial system for his own improper purpose. Respondent not only perpetrated fraud upon the court, he violated the perjury statute, MCL 750.423, which provides as follows:

Any person authorized by any statute of this state to take an oath, or any person of whom an oath shall be required by law, shall willfully swear falsely, in regard to *any matter or thing*, respecting which such oath is authorized or required, shall be guilty of perjury. (Emphasis supplied)

F. CONCLUSION

The evidence overwhelmingly supports the Commission’s conclusion that Respondent engaged in improper and illegal conduct and that he had made misrepresentations to the Commission as well as to the master during the formal hearing. Respondent also demonstrated his disrespect for the bench and for the disciplinary process. Referring to himself as an “accommodator” (TX, Vol. 2, p. 400) with an “effervescent personality” (TX, Vol. 2, p. 395), whose “eye” was caught by Mott’s appearance (TX, Vol. 2, p. 395), Respondent saw his affair with a litigant, his repeated ex parte discussions about her own and her cousin’s cases and his failure to disqualify himself from these cases as an “oversight” (TX, Vol. 2, p. 430), and claimed that his conduct resulted in “no harm, no foul.” (TX, Vol. 2, p. 438) In fact, Respondent testified that he routinely engaged in similar ex parte conversations, on street corners and in gas stations, either with litigants or their families, about the cases pending before him. Referring to his docket as a “cattle call” (TX, Vol. 2, p. 433), Respondent justified such ex parte communications by stating that these individuals,

to whom he referred as “fertile, uneducated, and broke” residents of the county (TX, Vol. 2, p. 418), represented potential voters. (TX, Vol. 2, p. 556) Respondent also had the audacity to claim that the fault for his presiding over *People v King* rested with King, as it was King’s failure to comply with the terms of his delayed sentence agreement that necessitated a hearing. (TX, Vol. 3, p. 762-763) In fact, Respondent testified that had King continued making the required payments, the case could have remained on his docket. (TX, Vol. 3, p. 763)

Respondent used his judicial position to lure Mott into a sexual affair and keep her in it for as long as it suited him. When the affair ended, because he got caught by his wife, Respondent attempted to use his position to intimidate Mott into silence by filing false charges against her with the Prosecutor’s Office. The evidence in this matter overwhelmingly demonstrated that Respondent lied to Mott, to his wife and children, to his courtroom prosecutor, to Prosecutor Worthy and her staff, and to other members of the bench, and then lied to the Commission and the master. As Mott told Respondent in an October 30, 2012 message, “...guess I shoulda believd u in church when u said u can’t go 1 day without lien...” (E’s Exh. 22, txt., 10/30/2012, @ 3:01:54) Finally, as to the inappropriate, derogatory, and at times sexually explicit comments that he had transmitted on so many occasions, Respondent’s attitude is best exhibited by his testimony that his texts represent a “spit in the ocean” of his “colorful vocabulary.” (TX, Vol. 2, p. 428; p. 457)

DISCIPLINARY ANALYSIS

A. The Brown Factors

The Michigan Supreme Court set forth the criteria for assessing proposed sanctions in *In re Brown*, 461 Mich 1291, 1292-1293, 625 NW2d 744 (1999). Clearly mindful of that criteria, the Commission recommended that this Honorable Court remove Respondent from his judicial office and conditionally suspend him, without pay, for a period of six years, beginning on January 1, 2015,

should he be elected to judicial office in 2014. The Commission also recommended that the Court order Respondent to pay costs in the amount of \$11,945.17. The Commission's recommendation is clearly warranted by the egregious nature of Respondent's misconduct.

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

As the Commission noted in its disciplinary analysis, Respondent initiated and maintained a six-month sexual relationship with Mott, a complaining witness in a case before him. During that time frame, Respondent engaged in numerous breaches of the canons as well as violations of criminal statutes. Respondent repeatedly discussed the case in which Mott was involved as well as another case in which her cousin was the defendant. In both cases, Respondent took action consistent with what he and Mott had agreed upon in their ex parte discussions. Being well aware of the conflict of interest, Respondent intentionally failed to disqualify himself from either of the cases. To compound this unethical and illegal conduct even further, Respondent testified that he regularly discussed other cases pending on his docket with the litigants or their families outside of the court.¹² Respondent also admitted that if the defendant in *People v King* had complied with the conditions of the delayed sentence agreement by making his child support payments on regular basis, he would have allowed the case to remain on his docket until its scheduled dismissal in April of 2013.

Respondent also engaged in a long pattern of texting inappropriate and derogatory comments, many from the bench, about other litigants, witnesses, court employees, members of the public and other members of the bench. He had also repeatedly violated various security measures of the courthouse, including permitting his mistress access to the building through an unsecured entrance and access to his chambers where he repeatedly left her unattended. Finally, Respondent used his judicial position to attempt to intimidate Mott into silence and used the courts to file false

¹² See e.g., Vol. 2, p. 416; Vol. 2, p. 555-556.

pleadings in his own divorce case. Respondent's conduct is not an isolated instance of misconduct. This factor weighs heavily in favor of the imposition of a severe sanction such as recommended by the Commission.

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

The Commission found that Respondent's misconduct was committed both on and off the bench and that it directly related to Respondent's judicial duties. (D&R, p. 17) This finding was clearly based on the fact that Respondent intentionally kept and presided over a case in which his mistress was a litigant, engaged in ex parte discussions about pending matters, including her own case as well as her cousin's, made repeated inappropriate and vulgar comments while on the bench, and used his judicial position in an attempt to intimidate her to remain quiet about her pregnancy with Respondent's child. Respondent also arranged to bring Mott's cell phone into the courtroom for her. Not only was that another violation of the court's security policy, the purpose behind this blatant violation was to allow Mott to communicate with Respondent about her case during the actual court proceedings.

As the Michigan Supreme Court stated, a judge's conduct must not undermine the public's faith that judges are as subject to the law as those who appear before them. *In re Noecker*, 472 Mich 1 (2005). Respondent's conduct clearly did not instill such belief in those who became aware of his actions through the media's coverage of this matter. In fact, his conduct exhibits an absolute and flagrant lack of respect for the bench. This factor weighs heavily in favor of the imposition of a severe sanction.

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

Respondent's misconduct was clearly prejudicial to the actual administration of justice. Although Respondent argues that the sentence he had imposed in *People v King* was similar to the sentences he had imposed in other cases, his repeated ex parte communications, inappropriate

conduct and demeanor, filing false misdemeanor and felony report, filing false and fraudulent pleadings with the Third Circuit Court, and his misrepresentations to the Commission and the master are all contrary to the proper administration of justice. As the Commission stated in its disciplinary analysis, a neutral and impartial judge is one of the central tenets of our judicial system. (D&R, p. 17) This factor weighs heavily in favor of the most extreme sanction.

(4) Misconduct that does not implicate the actual administration of justice or its appearance of impropriety, is less serious than misconduct that does.

As stated in Factor 3, the nature of Respondent's misconduct reflects a lack of respect for justice and the courts and goes to the very heart of the proper administration of justice.

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

Respondent's misconduct is part of a pattern of deliberate, premeditated behavior. Beginning with the contact Respondent initiated with Mott on May 21, 2012 and continuing until November of that year, Respondent repeatedly disregarded the ethical and legal obligations that are imposed on all members of the judiciary. Furthermore, since the beginning of his affair with Mott, Respondent violated numerous security measures of the courthouse. The following acts established Respondent's deliberate, unethical and illegal conduct:

1. Repeated ex parte communications with Mott about her pending matter.
2. Repeated ex parte communications with Mott about her cousin's pending matter.
3. Repeated failure to recuse himself from either the *King* or the *Tillman* case and have them transferred to another judge.
4. Providing false information as to the reason for his ultimate decision to recuse himself from *People v King*.
5. Repeated inappropriate comments about litigants, witnesses, members of his courtroom audience, and other members of the bench and/or employees of the court.
6. Repeated misrepresentation to the Commission during the investigation of this matter.

7. Repeated false testimony while under oath during the formal hearing before the master.

This factor again weighs heavily in favor of the imposition of the most extreme sanction.

- (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.**

As the Commission stated, the ability of the justice system to reach the most just result in a case is undermined when one party has an intimate relationship with the judge and continually engages in ex parte communications regarding that party's case while the other party is required to follow the rules and procedures governing the admission of evidence and the making of arguments to the court. (D&R, p. 19). To put it bluntly, a just result cannot occur when Respondent disposes of cases pending before him for the sole purpose of satisfying his personal objectives and agenda (including those of his mistress). Just results cannot occur when Respondent deliberately violates the law and ethics. This factor weighs heavily in favor of the imposition of the most extreme sanction.

- (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 class of citizenship.**

There is no evidence that Respondent's conduct was based on any consideration of a class of citizenship. This factor is not an issue in this case.

B. Other Considerations

The Commission has also considered other factors in past cases as suggested by the American Judicature Society.¹³

- (1) The Judge's conduct in response to the Commission's inquiry and disciplinary proceedings. Specifically, whether the judge showed remorse and made an effort to change his or her conduct and whether the judge was candid and cooperated with the Commission.**

¹³ "How Judicial Conduct Commissions Work," American Judicature Society, 1999, pp. 15-16.

The Michigan Supreme Court has previously addressed this issue in its consideration of sanctions, although it is not identified in *Brown, supra*, as a specific factor. Misrepresentations, lies and deceitful testimony by a judge constitute a sufficient basis for removal from office. As the Michigan Supreme Court has stated in *In re Justin*, 490 Mich 394, 424 (2012).

[S]ome misconduct, such as lying under oath, goes to the very core of judicial duty and demonstrates the lack of character of such a person to be entrusted with judicial privilege.

A judge who lies under oath is unfit to be a judge. *In re Justin, supra*.

In the present case, not only did Respondent repeatedly provide testimony that was discredited by other witnesses and by other properly admitted evidence, his formal hearing demeanor demonstrated that he has absolutely no respect for his judicial position, no appreciation for the serious nature of the charges against him, and no concern for the overwhelming evidence in support of those charges. This factor weighs heavily in favor of the imposition of the most extreme sanction.

(2) The effect the misconduct had upon the integrity of and respect for the judiciary.

Respondent's misconduct has been the subject of extensive media coverage, which casts not only Respondent but also the judiciary as a whole in a negative light.

(3) Years of judicial experience.

Respondent has been a judge since 1985, first on the bench of the 36th District Court and beginning in 2004, on the bench of the Wayne County Circuit Court. There is no mitigation because of inexperience. To the contrary, Respondent's length of service only exacerbates the wrongfulness of his behavior.

C. Proportionality

As the Michigan Supreme Court stated in *In re Ferrara*, 458 Mich 350 (1998);

Our primary concern in determining the appropriate sanction is to restore and maintain the dignity and impartiality of the judiciary and to protect the public.

In *In re James*, 492 Mich 553 (2012), Justice Stephen J. Markman emphasized in his dissenting opinion that our judicial system “is only as good as its constituent judges.” In support of that principle, Justice Markman relied on *In re Probert*, 411 Mich 210 (1981) where the Court stated:

[W]hen one commits judicial misconduct he not only marks himself as a potential subject of judicial discipline, he denigrates an institution. Accordingly, a decision on judicial discipline must also be responsive to a significant institutional consideration, “the preservation of the integrity of the judicial system.” Institutional integrity, after all, is at the core of institutional effectiveness. *Id.*, at 231.

In the present case, Respondent’s prolonged unethical and illegal conduct is inexcusable. He had violated the Code of Judicial Conduct as well as Michigan court rules and statutes, provided false and misleading answers to the Commission’s inquiries and committed perjury during his testimony before the master. It is abundantly clear that Respondent has no respect for the very laws he was entrusted to enforce, and which he is himself obligated to observe in all activities. Respondent’s flippant and contemptuous attitude about his actions in this as well as the *shirtless photo* matter, as well as towards the disciplinary proceedings, clearly warrants the Commission’s recommendation for removal followed by a six-year conditional suspension.

Referring to the Commission’s recommendation as “draconian” (R’s Brief, p. 32) and accusing its members of only paying “lip service” to the *Brown* factors, Respondent contends that his punishment should be limited to the period of the interim suspension he has served to date. In support of that argument, Respondent relies on such prior disciplinary cases as *In re Halloran*, 486 Mich 1054 (2010); *In re Steenland*, 482 Mich 1221 (2008); *In re Templin*, 432 Mich 1220 (1989);

and *In re Logan*, 486 Mich 1050 (2010).¹⁴ A review of those cases reveals that none are comparable in their scope and seriousness to the harm which Respondent had perpetrated upon the judiciary.

Certainly, Judge Halloran's dismissal of cases so as to comply with timeliness requirements on case disposition or Judge Steenland's operating of a motor vehicle while visibly impaired cannot be compared to Respondent's practice of trading his judicial office for sexual favors, using his position to attempt and intimidate his pregnant mistress into silence by filing false felony reports, and lying to the county prosecutor, to the Commission, and to the master. Even Judge Templin's conduct pales in comparison to Respondent's actions between May and December of 2012. Although Judge Templin had a social relationship with a defendant whose case was pending before him, he did not initiate the relationship during a court proceeding, did not discuss with her the outcome of the proceedings, did not communicate with her while the case was before him, and did not permit her to make his judicial decisions. Judge Templin also did not use his chambers for sexual exploits and did not leave the woman unattended in his chambers. Finally, Judge Templin did not make repeated misrepresentations to the Commission and did not commit perjury before the master.

The judicial misconduct in *Logan, supra*, was also a far cry from the misconduct committed by Respondent. In *Logan*, the judge, based on a phone call from a county commissioner, set an ex parte bond for another commissioner who was in custody for domestic assault. Respondent claims that his conduct is less severe than in the *Logan* case because unlike Judge Logan, he did not "interject himself into a matter that was not before him" (R's Brief, p. 42) and because he "did not abuse his authority to give preferential treatment to a party." (R's Brief, p. 42) Respondent's argument is not only without merit factually, it demonstrates his continued refusal to recognize the

¹⁴ *Steenland, Templin, and Logan* were all discipline by consent of the Respondent, so there are policy reasons not to treat them the same as fully-litigated matters.

wrongfulness of his own behavior or to acknowledge the fact that *People v King* represents only a portion of a wide pattern of unethical and illegal conduct.

Respondent's extensive and far reaching abuse of his judicial position merits the imposition of the sanction recommended by the Commission. Clearly, in making that recommendation, the Commission considered all facts and circumstances involved in this matter. The fact that the Commission took the unprecedented¹⁵ step of *unanimously* recommending a six-year conditional suspension in addition to the recommendation for removal was undoubtedly motivated by the recognition that in less than a year, Respondent may once again attempt to return to the bench. By recommending a six-year conditional suspension, the Commission demonstrated its extraordinary concern with Respondent's lack of fitness to be a judge, the harm that his misconduct has inflicted on the bench, and the public's perception of the judiciary as a whole.

Respondent's argument that the right to choose who will hold a judicial office rests with the voters and that the Court does not have the power to interfere with that choice (R's Brief, p. 44-45) ignores the fact that the people's right to the service of a judge whom they have elected is not absolute. Rather, it is "subject to express and distinct limitations and qualifications provided for by the Constitution and statutes." *In the Matter of Del Rio*, 400 Mich at 665; 685 n 6 (1977); *In re Huff*, 352 Mich 402 (1958). Although raised in the context of a constitutional challenge to the Court's power to issue an interim suspension, in *Gruenburg v. Kavanagh*, 413 FSupp 1132 (2000), the federal court also stated that:

[n]othing in the federal constitution mandates that a state must permit a judge to hold judicial office unhampered by standards of conduct. A state that creates a public office can set standards of conduct for the state officer.

Id., at 1137.

¹⁵ In *Nettles-Nickerson*, the Commission's conditional suspension recommendation decision was not unanimous, as three Commissioners filed dissenting briefs.

In Michigan, the Constitution, Art. 6, §30, grants the Court the power to suspend or remove a judge for a:

... conviction of a felony, physical or mental disability which prevents the performance of judicial duties, misconduct in office, persistent failure to perform his duties, habitual intemperance or conduct that is clearly prejudicial to the administration of justice.

The Court's exercise of that power does not interfere with the right of the electorate to vote for the candidate of their choice. Rather, it merely assists the voters by permitting only those candidates who meet the minimum standards of fitness required for a judicial position to appear on the ballot. Just as voters could not insist on a judicial candidate who had not met the five-year practice of law requirement or who had exceeded the 70 years of age limitation provided for in Art. 6, §19 of the Michigan Constitution, they cannot insist on voting for a candidate who has been determined unfit to be a judge. Furthermore, to adopt Respondent's argument would render the Court's removal power meaningless as any order of removal would automatically become a suspension for the remainder of a respondent's term in office.

As Justice Markman stated in *In re James, supra*, re-election does not insulate or immunize a judge from the consequences of his or her misconduct committed in a prior term. *Id.* at 574. Noting that the people are entitled to a judiciary of the highest integrity and that the Court always bears the obligation to maintain and enforce standards of judicial fitness, Justice Markman stated:

...the elective power of the people does include the responsibility to ensure the qualifications of those elected, but they do not bear this responsibility alone. Our Constitution provides that in addition to this responsibility on the part of the electorate, this Court has a separate and distinct duty to uphold the integrity of the judiciary. Rather, this Court's obligation to maintain the integrity of the judicial branch is indissoluble, and the fact of election does not dispel the harmful effects of judicial misconduct, either within or beyond the boundaries of the election district.

A conditional suspension is the only method to ensure that the sanction imposed by the Court properly protects the public and preserves the integrity of the judiciary. The Court has conditionally suspended judges for periods beyond their current terms in the past. *See e.g., In the*

Matter of Probert, supra, at 237. In *Probert*, the respondent had lost his re-election bid before the Supreme Court had issued its opinion. Thus, the Commission's recommendation for removal was moot. Although the Court declined to enjoin the respondent permanently from sitting as a judge, it did suspend him *conditionally*, without pay, for a period of five years, barring him from being paid as a judge or exercising the powers and authority of a judge, should he somehow get himself elected to a judicial office. *See, too, In the Matter of Del Rio*, 400 Mich 665, 726 (1977) (where the Court suspended the respondent for a period of five years, regardless of whether he was re-elected to the office he then held or any other.)

In *In re Johnson*, 689 So2d 1313, 1313-1314 (La, 1997), that state's disciplinary agency recommended that the Respondent be removed from office. During the pendency of the case before the Louisiana Supreme Court, the Respondent was re-elected. The court subsequently ordered the Respondent's removal from office. The Respondent later claimed the court's decree only removed him from office for the remaining one month of his office and that he could begin serving the second term to which he had been elected. The court rejected this argument and held its prior decree removed the judge for his present term and the subsequent term to which he was elected. *See also In re Carrillo*, 542 SW2d 105 (Tex, 1976).

Respondent argues that the *Probert, supra*, and *Del Rio, supra*, cases involved factually distinct subject matters from the present case. Referring to Judge Probert and Judge Del Rio as "terrors" (R's Brief, p. 46), Respondent contends that the two cases are inapplicable herein because Respondent's misconduct "doesn't even begin to approach the outer boundaries of the repeated, abusive and flagrant misconduct" that judges Probert and Del Rio had engaged in. (R's Brief, p. 46) A comparison of the findings of fact in Probert and Del Rio cases, however, shows that Respondent's claim could not be more erroneous.

In *In re Del Rio, supra*, and *In re Probert, supra*, the general categories of misconduct were:
a) Disregarding statutes, court rules and canons in the administration of justice; b) Improper use of a

judicial office to benefit friends and court employees; c) Conduct giving rise to the appearance and substance of impropriety and partiality; and d) Gross lack of judicial temperament. As in those cases, Respondent herein had willfully and habitually disregarded statutes, court rules, canons and other ethical responsibilities in the administration of justice. Without restating each and every fact, Respondent's use of his judicial position to start and further his sexual affair and to then threaten his mistress into silence is a clear violation of statutes, court rules, canons and other ethical responsibilities. Respondent's issuance of an off-the-record bond reduction order and failure to make it a part of the court file is, as in *Probert, supra*, a clear case of an alteration, or falsification, of a court record. As in *Del Rio, supra* and *Probert, supra*, Respondent's repeated degrading comments about those appearing before him is a gross lack of judicial temperament. The fact that Respondent's comments were not made on the record does not minimize their seriousness. In fact, their seriousness may even be greater since unlike in *Del Rio* or *Probert*, Respondent's comments were not subject to an appellate review.

As the Commission had recommended, Respondent should be removed and conditionally suspended in order to protect the public and to preserve the integrity of the judiciary. Under the present circumstances, removal alone is insufficient. The judicial disciplinary system must state clearly and affirmatively that Respondent is unfit to be a judge. He had demonstrated his lack of fitness when he bartered the bench for sex and when he lied under oath. He is unfit for office today, will be unfit tomorrow, and will remain unfit beyond the present term of his office. The Court should ensure that this unfit individual not be allowed to frustrate the standard of fitness required of all judges.

D. Costs

MCR 9.205 provides in part:

In addition to any other sanction imposed, a judge may be ordered to pay the costs, fees and expenses incurred by the commission in prosecuting the complaint only if the judge engaged in conduct involving fraud, deceit, or

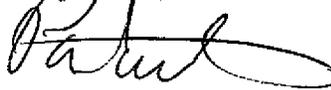
intentional misrepresentation, or if the judge made misleading statements to the commission, the commission's investigators, the master, or the Supreme Court.

The evidence overwhelmingly supports that Respondent engaged in numerous instances of misconduct and violations of law. Respondent also made intentional misrepresentations and misleading statements to the Commission and to the master during the formal hearing. As the Commission had recommended, Respondent should be ordered to pay the costs incurred by Commission in the amount of \$11,945.17.

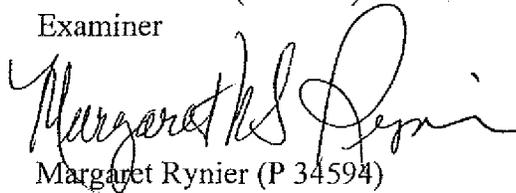
RELIEF REQUESTED

The Court should remove Respondent from the office of Judge of the 3rd Circuit Court and conditionally suspend him, without pay, for six years effective January 1, 2015. Further, the Court should order Respondent to pay costs in the full amount of \$11,945.17.

Respectfully submitted,



Paul J. Fischer (P 35454)
Examiner



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