

**STATE OF MICHIGAN
IN THE SUPREME COURT**

COMPLAINT AGAINST

HON. J. CEDRIC SIMPSON
14-A District Court
415 W. Michigan Avenue
Ypsilanti, Michigan 48202

**MSC No. 150404
FC 96**

**BRIEF IN SUPPORT OF THE COMMISSION'S
DECISION AFTER REMAND AND RECOMMENDATION FOR DISCIPLINE**

PROOF OF SERVICE

ORAL ARGUMENT REQUESTED

Paul J. Fischer (P35454)
Examiner

Margaret N.S. Rynier (P34594)
Co-Examiner

Judicial Tenure Commission
3034 West Grand Boulevard
Suite 8-450
Detroit, Michigan 48202
(313) 875-5110

May 2, 2016

TABLE OF CONTENTS

INDEX OF AUTHORITIES iii

COUNTER-STATEMENT OF PROCEEDINGS (Post-Remand)iv

COUNTER-STATEMENT OF QUESTIONS INVOLVEDvi

COUNTER STATEMENT OF FACTS (Post-remand matter) 1

ARGUMENT 6

 I. RESPONDENT PROFFERED NO EXCULPATORY EVIDENCE.....6

 II. EXAMINER WAS NOT REQUIRED TO PROVIDE THE DOCUMENTS TO THE
RESPONDENT, EVEN IF THE EXAMINER HAD KNOWN THAT HE HAD THEM..... 10

 III. THE FINDING THAT RESPONDENT ENGAGED IN JUDICIAL MISCONDUCT
REMAINS UNREBUTTED 11

CONCLUSION..... 14

INDEX OF AUTHORITIES

CASES

Brady v Maryland, 373 US 83, 87; 83 SCt 1194; 10 LEd2d 215 (1963)6, 10, 11
In re Adams, 494 Mich 162 (2013).....12
People v Cox, 268 Mich App 440 (2005)7
People v Lester, 232 Mich App 262 (1998)6
People v Stanaway, 446 Mich 643 (1994).....6

RULES

MCR 9.208(C)(1)(a)(ii)11

COUNTER-STATEMENT OF PROCEEDINGS (Post-Remand)

On December 23, 2015, the Court remanded this matter to the JTC to consider certain information that the Respondent alleged the Examiner had obtained before the evidentiary hearing before the Master, but which had not been made available to the Respondent. The Court ordered that

“[i]f it finds it appropriate, the JTC shall issue a new decision and recommendation. In order to expedite the resolution of this matter, we ORDER the Commission to submit its decision after remand to this Court within 28 days of the date of this order [i.e., on or before January 20, 2016].

On January 11, 2016, the JTC considered the matter and then remanded the matter to the Master for consideration of the evidence at issue and for a determination of whether the evidence would alter his findings in this matter.

We further remand this matter to the Master for a determination of how the non-disclosure occurred and the reasons for the nondisclosure. The Master may supplement the record with further testimony as to all issues contained in this Statement on Remand as he deems it appropriate.

The JTC filed a petition for extension of time on January 20, 2016, which the Court granted by order dated January 22, 2016, stating that

[t]he new decision and recommendation will be accepted as timely filed if submitted within 28 days of the filing of the master’s post-remand report. If the Judicial Tenure Commission’s new decision and recommendation and the respondent’s supplemental petition, if any, are not filed with this Court by March 25, 2016, the matter will not be scheduled for oral argument during the current term.

The Master then scheduled the matter for two hearings: the first on February 19, 2016 to allow Respondent to move to disqualify the Examiner and all attorneys in the Examiner’s office, and the second on February 29, 2016 on the substantive issues raised in Respondent’s remand allegations. The Master denied Respondent’s motion to disqualify at the conclusion of the

February 19th motion hearing, and again at the start of the February 29th evidentiary hearing, when Respondent renewed it.

On March 7, 2016, the Master issued his post-remand findings of fact and conclusions of law, which included his order denying Respondent's motion to re-open the proofs to admit a witness's alleged cell phone records. On March 10, 2016, Respondent filed a motion before the JTC for leave to file objections to the Master's report following remand. The Examiner filed a response on March 11, 2016, and the JTC denied Respondent's motion on March 14, 2016. On that same day, the JTC issued, and filed with the Court, its "Decision After Remand and Recommendation for Discipline." On April 11, 2016, Respondent filed his supplemental brief in support of his petition to reject or modify the JTC's recommendation. The Examiner is filing this brief in opposition.

COUNTER-STATEMENT OF QUESTIONS INVOLVED

Did the evidence and testimony regarding matters that happened a month after Respondent's intervention in his friend's drunk driving arrest in any way exculpate his conduct?

Respondent answers, "YES."

The Commission answered, "NO."

The Master answered, "NO."

The Examiner answers "NO."

COUNTER STATEMENT OF FACTS (Post-remand matter)

Crystal Vargas was a student in Respondent's pre-trial skills course, T¹, 45-46, his intern, T, 55-56; 58, and someone with whom he shared approximately 14,000 text messages and/or phone calls in a four-month period, T, 20; MR², 6; D&R³, 9-10. As the master stated, ". . . Ms. Vargas . . . was clearly more than a mere employee." MR, 10. Some background information to the post-remand proceedings is essential. The following is adapted from the Examiner's original brief (filed November 17, 2015):

In the early morning hours of Sunday, September 8, 2013, a legally-drunk Vargas ignored a red traffic signal, proceeded through the intersection, and was struck by a tow truck driven by Allan Cook. T, 177-178. Vargas immediately called the Respondent, who arrived less than three minutes later, while Pittsfield Township Police Officer Robert Cole was already was administering the first sobriety test. E's Exh. 7⁴ @4:29:56; T, 95. Respondent parked his vehicle, T, 246-247, and approached Officer Cole and Vargas. T, 248. At a distance of approximately 30 feet, Respondent stopped and addressed Officer Cole. E's Exh. 7 @4:30:45. Not wanting any further intrusion into his investigation scene, T, 249, Officer Cole suspended the "walk and turn" sobriety test he was administering to Vargas, and walked over to Respondent, leaving Vargas unattended. E's Exh. 7 @4:30:52.

¹ References to the transcript of the original hearing (March 30-April 1, 2015) are marked simply "T, ."

² "MR" refers to the **Master's** (original) **Report**, dated April 28, 2015.

³ "D&R" refers to the JTC's original **D**ecision and **R**ecommendation, dated August 31, 2015.

⁴ "E's Exh. 7" is the video recorded at the crime scene, with references to the date stamp, offered by the Examiner.

Respondent immediately identified himself as “Judge Simpson,” informed the officer that Vargas was his intern, T, 100, and began asking questions about how the accident happened. (E’s Exh. 7 @4:30:54) Rather than following his routine practice of having family members return to their vehicles and wait until the investigation is completed, Officer Cole deferred to Respondent’s status as a judge and proceeded to answer his questions. T, 250. When Officer Cole advised Respondent that Vargas was unhurt, E’s Exh. 7 @4:31:04; T, 250, and that he was trying to make sure that she was “okay to drive,” E’s Exh. 7 @4:31:10, Respondent inquired, “Well, does she just need a ride or something?” E’s Exh. @4:31:15; T, 253) Thereafter, without seeking or obtaining Officer Cole’s permission, T, 251), Respondent walked over to Vargas and began a conversation with her (E’s Exh. 7, at 4:31:19; T, 252) After some time had passed, Officer Cole interrupted Respondent’s and Vargas’s conversation to resume the sobriety test instructions. E’s Exh. 7 @4:31:47; T, 255. Although Respondent moved a short distance away, he remained in proximity during most of Vargas’s sobriety testing. E’s Exh. 7, @4:31:55; @4:33:34; @4:36:22.

After failing her field sobriety tests, T, 260), Vargas was escorted to the front of Officer Cole’s patrol car where she was asked to submit to a preliminary breath test (PBT). T, 260. Based on the result of that test, 0.137, E’s Exh. 7, @4:39:44; T, 260, Vargas was arrested and placed in the back seat of the police vehicle. T, 260-261; E’s Exh. 7, @4:39:50. Thereafter, Officer Cole walked to Respondent and advised him of the reason for the arrest, including the result of the PBT test. T, 261.

Between September 8, 2013 and November 2013, a number of e-mails were exchanged among the officers and administration of the Pittsfield Township Police Department, as well as between the police and the township attorney (Victor Lillich) and between the police chief (Matt Harshberger) and the chief judge of the district court (Hon. Kirk Tabbey), where Respondent served. The JTC had already obtained many, but not all, of those documents⁵ in the course of its investigation. RH⁶, pp 21-22; 25-26; 46. During the course of the investigation, the JTC staff had been receiving documents from various sources. RH, 21. The Pittsfield Township Police Department, however, advised the investigating attorney that there was a new township attorney, and a FOIA (Freedom of Information Act) request would have to be made. RH, 21.

To make that request, the attorney asked the new township attorney (James Fink) to e-mail her, so that she would have his e-mail address in her computer. RH, 19. This was a common practice for her, to ensure that any confidential materials were sent to the proper recipient. RH, 19-20. At 1:56 pm on September 17, 2014, Mr. Fink e-mailed the JTC attorney a blank e-mail. RH, 19; 21. As there was no topic for the e-mail, even the “re:” section was blank. RH, 23. Eight minutes later, the JTC attorney clicked “reply” to that 1:56 pm e-mail, and made the formal FOIA request. RH, 19. She did so only to be in compliance with the township’s protocol. RH, 25. The attorney thought she already *had* everything she needed. RH, 25. She was not seeking additional documents.

Yet, more documents came. *See* Exhibit B. RH, 15. On October 15, 2014, Fink complied with the FOIA request, attaching the documents to a reply e-mail. Examiner’s Exhibit

⁵ Respondent obtained all the e-mails via a FOIA request to the Pittsfield Township Police Department, and the documents were admitted into evidence at the post-remand hearing as his Exhibit B.

⁶ As did Respondent, the Examiner will refer to the transcript from the February 29, 2016 Remand Hearing as “RH.”

122. Exhibit B, including the cover letter at 0009, were attachments to that e-mail (Examiner's Exhibit 122). The e-mail was received that same day.

On October 15, 2014, the JTC attorney opened that October 15, 2014 e-mail from Fink, but she did not notice that there was any kind of attachment. RH, 23. She did not realize that Fink was responding to her FOIA request, despite the body of the e-mail saying: "Please see attached documents." RH, 23-24. Rather, the JTC attorney needed to talk to Fink, so she opened the last e-mail she had received from him in order to e-mail him by simply pressing "reply." RH, 22. She asked him to get in touch with her ASAP. RH, 22. They spoke, but apparently the topic of FOIA requests never came up.

A year later, after obtaining copies of the items in Exhibit B via his own FOIA request, Respondent composed and circulated an e-mail alleging that those items were exculpatory and that the JTC and/or the Examiner had withheld them from him. RH, 37; Examiner's Exhibit 129. On October 9, 2015, someone forwarded that e-mail to the JTC attorney. RH, 35-36.

The JTC attorney then called Fink, but he was not in his office. RH, 37. She then called Pittsfield Township Police Department Chief of Police Matt Harshberger, who was aware that the Township had recently provided a copy of the documents contained in Exhibit B to the Respondent or his attorney. RH, 38; 126-127. Harshberger testified that the JTC attorney genuinely seemed unaware of the existence of the documents (Exhibit B). RH, 128. The JTC attorney testified that she contacted her IT department for help in retrieving any such e-mail and attachment. RH, 38. She also testified that Fink called her back. RH, 38.

On Monday, October 12, 2015, the IT people recovered the e-mail and the attachment. RH, 38. The IT personnel testified that the JTC had switched from one e-mail system to another

in September 2015. RH, 158. There was no way to tell if the attachment had ever been opened. RH, 161-162.

Based on some of the e-mails written by the police (that Officer Cole had done everything “by the numbers,” “by the book,” and that “we [the police] had done nothing wrong”), Respondent sought remand from the Court, alleging that these materials were “exculpatory.” The Court remanded the matter to the JTC, which, in turn remanded it to the Master. Respondent then presented the testimony of the Examiner and the Co-Examiner to try to establish that the e-mails and documents in Exhibit B had been deliberately withheld.

He next called the deputy police chief, Gordon Schick, who had 24 years of law enforcement experience, 20 of which were with the Pittsfield Township Police Department. RH, 68. Schick testified that the officer at the scene has a lot of discretion from start to finish. RH, 74-75. He further testified that Cole had performed a textbook OWI investigation and that the Respondent had not interfered “whatsoever.” RH, 75. On cross-examination, Schick conceded that it is crucial for the arresting officer to keep the arrestee under observation for 15 minutes before administering any breath tests. RH, 80. The failure to do so “could really raise an issue and could impact the case and the probability of conviction.” RH, 97.

James Fink testified that he had several phone calls with the JTC attorney, “not all of which I documented, not all of which I billed my client for.” RH, 105. He insisted that he did *not* speak to the JTC attorney on October 9, 2015, did not have a phone record to prove it one way or the other, and did not believe any such record existed.⁷ RH, 119.

⁷ Respondent moved after the hearing to re-open the proofs an admit something he claimed was a phone record. The Master denied the motion. **Master’s Report Following Remand (MRFR)**, dated March 7, 2016, pp 5-6.

ARGUMENT

I. RESPONDENT PROFFERED NO EXCULPATORY EVIDENCE

“Exculpatory” means just that: removing guilt (from the Latin: *ex* “out of” or “away from” *culpa* “guilt”). It is exactly the opposite of “inculpatory” (from the Latin: *in* “in” or “into” *culpa* “guilt”). Thus, exculpatory evidence is that which removes guilt from someone. “Exculpatory evidence” is evidence that exonerates or tends to exonerate a person.⁸ The FOIA materials at issue here (Respondent’s Exhibit B) do no such thing.

A criminal defendant has a due process right to obtain exculpatory evidence possessed by the prosecutor if it would raise a reasonable doubt about the defendant's guilt. *People v Stanaway*, 446 Mich 643, 666 (1994), citing *Brady v Maryland*, 373 US 83, 87; 83 SCt 1194; 10 LEd2d 215 (1963). In order to establish a *Brady* violation, a defendant must prove: (1) that the state possessed evidence favorable to the defendant;^[9] (2) that the defendant did not possess the evidence nor could the defendant have obtained it with any reasonable diligence;^[10] (3) that the prosecution suppressed the favorable evidence;^[11] and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different.^[12] *People v Lester*, 232 Mich App 262, 281 (1998).

People v Cox, 268 Mich App 440, 448 (2005). Respondent has failed to meet a single prong of that test.

A. The JTC did *not* possess evidence favorable to the Respondent

It is now clear that on October 15, 2014 the JTC did, in fact, possess the documents in Respondent’s Exhibit B. RH, 15; 21. However, those documents were sent by James Fink *via* e-

⁸ “Exculpatory:” Clearing or tending to clear from alleged fault or guilt; excusing.” Black’s Law Dictionary (4th ed., 1968)

⁹ The FOIA evidence is not favorable to Respondent; it is neutral to him. It is favorable to Officer Cole and the Pittsfield Police.

¹⁰ Respondent could “have obtained [that FOIA evidence] with any reasonable diligence” just as the Examiner did, and just as Respondent in fact *did* do a year later.

¹¹ There was no *suppression* of any evidence.

¹² The evidence would not, and does not, make one whit of difference. Cole testified to Respondent’s destabilizing effect, Lillich freely conceded that he was “sitting” on the warrant request for the Respondent, and the lies told at the formal hearing remain intact.

mail only, not *ever* by regular mail. RH, 47. More to the point, the JTC attorney who received the e-mail did not realize at the time that the documents were attached. RH, 21; 23. It was not until October 9, 2015 that the attorney had any inkling that those documents had been attached to the October 15, 2014 e-mail. RH, 37.

The Master found it credible that the JTC attorney did not notice the attached documents, and he concluded that that failure constituted negligence. MRFR¹³, pp 2-3; 5. The JTC attorney's

“failure to open the e-mail was a result of negligence on her part in not realizing what it was, and . . . she thought she already received all of the pertinent documents, but in violation of the [police] department's policy to require a Freedom of Information request. The Master finds this a credible explanation for the reasons discussed below . . .”

MRFR, 3 (internal citation omitted). The Master elaborated on this “credible explanation for the ‘reasons discussed below’” by eviscerating Respondent's baseless allegation that racism was behind a deliberate effort to hide this information:

[W]ithout any supporting evidence, [Respondent] urges the Master to find that the Examiner's actions are racially motivated and that there was an inherent agreement between the Examiner and his associate to withhold evidence from Respondent based on his [Respondent's] race. The argument does not pass the test of Occam's Razor that the ‘simplest of competing theories be preferred to the more complex.’”

MRFR, 5 (internal citation omitted).

The Master reviewed the testimony from the hearing on remand as well as all the exhibits submitted, including Exhibit B with its alleged exculpatory material. The Master acknowledged Respondent's claim that the e-mails show that the upper echelons of the Pittsfield Township Police Department believed that arresting Officer Cole had done everything “by the numbers.” The Master noted, however, that whatever the police elite thought of the *officer's* conduct had no

¹³ Master's Report Following Remand (MRFR), dated March 7, 2016.

bearing on the propriety of the Respondent's. MRFR, p 3. Moreover, the Master noted that the e-mails contained further damning evidence which he had not previously considered: "Exhibit 134 . . . is pertinent because it shows how concerned the victim party to the crash was that he might not get a fair result because 'the judge showed up.'" MRFR, p 3.

Thus, the evidence was not *exculpatory* of anything **Respondent** had done. To the contrary, it further *inculcated* him for the effect it had on the innocent victim of Respondent's friend's drunken driving. At best, the evidence showed that the administration of the police department held their officer blameworthy. If someone had offered that officer a bribe, and the officer refused it, the bribe offerer would be guilty, even if the arresting officer had "done everything by the book" in refusing it. Officer Cole knew who Respondent was, as he had appeared before him. T, 250. He also testified about the various ways he modified his behavior due to the Respondent's interference.¹⁴ Even Respondent's witness at the remand hearing – the deputy chief of police – testified that Respondent causing Officer Cole to interrupt the 15-minute observation period required before administering breath tests could potentially corrupt the results and create a meritorious issue for the arrestee in the criminal proceedings. RH, 80; 97.

Respondent interfered at the scene of the crime, and it is simply fortuitous that that interference did not impugn the prosecution of the case. Respondent may not have made a difference at the scene, but it was not for lack of trying – and no ordinary member of the public

¹⁴ Cole did not tell Respondent to go back to his car as he would have told anyone else (T, 248-250); he did not tell Respondent to wait the 15 minutes while he (Cole) conducted the required observation period, as he would have anybody else (T, 249-250); he interrupted Vargas's sobriety tests and approached Respondent because "[Respondent's] not just a family member. He's Judge Simpson, so I'm going to talk to him," (T, 250); he did nothing when Respondent walked up to Vargas without being given permission, (T, 251); he did nothing when Respondent approached Vargas – without permission – while she was in custody, (T, 263-264); he did not search Respondent – as he would have anyone else – when he let him to talk to her when she is in custody because he is a judge he would not have permitted anyone else to approach a suspect and engage her in a conversation, (T, 265); he did not see Respondent as a threat, "[b]ecause he's a judge," (T, 265); no one else – no other individual – would have been allowed to approach the investigation scene, but Respondent got to because he was a judge, (T, 271); no one else – no other individual – would have been allowed to approach the arrestee and engage her in conversation, but Respondent got to because he was a judge, (T, 271)

would have even had that opportunity. It is that interference that constitutes the basis of Count I (Interference With a Police Investigation) more fully set out in the Examiner's original brief. Despite Respondent's best efforts, the Master and the Commission remain convinced of his misconduct. Nothing in the materials he produced at the remand hearing exculpated him. The Master and the Commission correctly determined that Respondent committed misconduct, and the Court should similarly find.

B. The Respondent did not possess the evidence nor could he have obtained it with any reasonable diligence

The second prong of the *Brady* test is that Respondent did not have the evidence *nor could he have obtained it with any reasonable diligence*. Assuming for the sake of argument that Respondent did not have the materials in Exhibit B until after the hearing on the formal complaint, he easily *could have* had he bothered to submit his *own* FOIA request. The materials he claims are exculpatory and hidden from him were neither. They were as available to him on September 17, 2014 when the JTC requested them as they were whenever it was that he finally did. Respondent wholly fails to satisfy this element of the *Brady* test.

C. The Examiner did not suppress anything

Respondent alleges that the Examiner "suppressed" the documents in Respondent's Exhibit B. However, as previously argued, the documents themselves were available for the asking from the Pittsfield Township Police Department under FOIA. Even if the Examiner *had* "suppressed" *his* copies of the documents, they were available for Respondent to obtain directly from the source. The Master found that there was negligence in failing to find the documents the Pittsfield Police e-mailed to her through their attorney. MRFR, pp 3; 5. "Suppression" is an

intentional act. Here, at worst there was negligence in not discovering them.¹⁵ Respondent fails to satisfy the third prong of *Brady*.

D. Even if Respondent had had the evidence before the original hearing, there is *no* probability or likelihood that the outcome would have been different

The last prong of the *Brady* test is that had the evidence been used at the original hearing, it would have actually made a difference. Here, there is *no* probability or likelihood that the outcome would have been different. The Master has already reviewed the evidence and has rejected any challenge to his prior findings, as did the Commission. The Master even found that there was additional evidence in some of the e-mails that further bolstered the finding that Respondent's interference at the crime scene was problematic.¹⁶

Respondent has failed to satisfy even a single prong of the *Brady* test. The Master rejected his claims, and reaffirmed his prior findings that Respondent had committed misconduct. The Commission did the same, and re-iterated its recommendation that Respondent be removed from office. The Court should reject Respondent's claims as well, and remove him from office.

II. EXAMINER WAS NOT REQUIRED TO PROVIDE THE DOCUMENTS TO THE RESPONDENT, EVEN IF THE EXAMINER HAD KNOWN THAT HE HAD THEM

Under the court rules, the parties shall provide to one another the names and addresses of all persons whom they intend to call at the hearing, a copy of all statements and affidavits given by those persons, and any material in their possession that they intend to introduce as evidence at

¹⁵ Furthermore, both the Master and the JTC rejected unequivocally Respondent's claim that there was any racial bias or motivation at work.

¹⁶ : "Exhibit 134 . . . is pertinent because it shows how concerned the victim party to the crash was that he might not get a fair result because 'the judge showed up.'" MRFR, p 3.

the hearing. Further, “the commission shall make available to the respondent for inspection or copying all *exculpatory* material in its possession.” MCR 9.208(C)(1)(a)(ii)(emphasis supplied).

Respondent has argued that the documents in his Exhibit B are “exculpatory.” As has been shown, they are not. They are merely a collection of after-the-fact opinions regarding the propriety of the arresting officer. Even the deputy police chief’s testimony that Respondent did not interfere does not make any of the documents “exculpatory.” The deputy chief of police is entitled to his opinion, as the master and the Commission are entitled to theirs. The materials in Exhibit B are *not* exculpatory; they are opinions regarding Officer Cole. Respondent committed misconduct by interfering at the crime scene, then with the prosecuting official, and then by providing false testimony at the hearing.

III. THE FINDING THAT RESPONDENT ENGAGED IN JUDICIAL MISCONDUCT REMAINS UNREBUTTED

After reviewing all of the exhibits and all the testimony, including from the remand hearing, the Master *again* concluded that Respondent had committed misconduct. The Commission *again* adopted the Master’s findings and recommended that the Respondent be removed from office. The evidentiary support for these findings and this recommendation are overwhelming. The Examiner relies on the original brief filed in this matter in support of the Commission’s decision and recommendation. Respondent interfered with the police at the scene of the crime, he interfered with the prosecuting authorities, and he lied at the hearing. A judge who lies under oath is unfit to be a judge. *In re Adams*, 494 Mich 162 (2013). The Court should adopt the Commission’s recommendation and remove Respondent from office.

The evidence in this matter overwhelmingly supports the Commission’s conclusions that Respondent engaged in improper, unethical, and illegal conduct on the scene of Vargas’s arrest

and in his contacts with Lillich. The evidence also supports the Commission's conclusion that Respondent made numerous misrepresentations during the investigation of this matter as well as in his Answer to FC 96 and during his testimony before the Master.

Despite his attempt to portray himself as a dedicated jurist and a mentor to his law school students, Respondent used his judicial position to interfere with a police investigation in order to insure that Vargas, with whom he had established a personal relationship, was not arrested for driving while drunk and causing a collision. When Respondent was not successful at the crime scene, he used his judicial position to interfere with the prosecution of the case, questioning the reliability of the evidence, discussing attorneys that Vargas should consider retaining, and delaying the issuance of the warrant for almost two months. These actions are not only irresponsible, improper and unethical, they constitute obstruction of justice.

Respondent's legal legerdemain was no more than an effort to refocus the Court's attention from *his* conduct to that of others. However, the evidence overwhelmingly shows 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. Respondent should be ordered to pay the costs incurred by Commission in the amount of \$7,565.54, as recommended.

CONCLUSION

WHEREFORE, the Examiner requests that the Supreme Court adopt the JTC's recommendation that Respondent be **REMOVED** from office and be ordered to pay costs in the amount of \$7,565.54.

Respectfully submitted,

/s/ Paul J. Fischer
Paul J. Fischer (P-35454)
Examiner

/s/ Margaret N.S. Rynier
Margaret N.S. Rynier (P-34594)
Co-Examiner

3034 West Grand Boulevard
Suite 8-450
Detroit, Michigan 48202
(313) 875-5110

Dated: May 2, 2016

H:\FMLCMPLT\96 Simpson\Examiner's Brief After Remand 05 02 2016.docx