

STATE OF MICHIGAN

BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

IN THE MATTER OF:

Hon. Wade H. McCree
Wayne County Circuit Court
Frank Murphy Hall of Justice
1421 St. Antoine, Room 202
Detroit, Michigan 48226

Formal Complaint No. 93

DECISION AND RECOMMENDATION

At a session of the Michigan Judicial
Tenure Commission held on September 9,
2013, in the City of Detroit

PRESENT:

Hon. Nanci J. Grant, Chairperson
Hon. David H. Sawyer, Vice-Chairperson
Hon. Pablo Cortes, Secretary
Thomas J. Ryan, Esq.
Nancy J. Diehl, Esq.
Brenda L. Lawrence
David T. Fischer
Hon. Monte Burmeister
Hon. Michael M. Hathaway

I. Introduction

The Judicial Tenure Commission of the State of Michigan (“Commission”) files this recommendation for action against Hon. Wade H. McCree (“Respondent”), who at all material times was a judge of the 3rd Circuit Court.

This decision is made pursuant to the authority of the Commission under Article 6, § 30 of the Michigan Constitution of 1963, as amended, and MCR 9.203.

On or about March 12, 2013, the Commission filed Formal Complaint No. 93 against Respondent, alleging improper conduct in *People v King* (Count I); false report of a felony (Count II), improper conduct in *People v Tillman* (Count III), improper bench conduct and demeanor (Count IV), and misrepresentations (Count V).¹ On or about March 26, 2013, Respondent filed his answer to the formal complaint. Thereafter, the Michigan Supreme Court appointed Charles A. Nelson as Master. An evidentiary hearing before the Master began on May 20, 2013 and concluded on May 29, 2013. The Master issued his findings of fact on June 23, 2013.

The Commission heard the oral arguments of counsel on August 5, 2013. Based on the evidence and exhibits presented at the formal hearing and the arguments of counsel, the Commission concludes that Respondent committed misconduct contrary to the Michigan Code of Judicial Misconduct. The Commission recommends that the Michigan Supreme Court remove Respondent from office and conditionally suspend him, without pay, for a period of six years

¹ Pursuant to MCR 9.219, Respondent has been suspended without pay since February 8, 2013.

beginning on January 1, 2015, with the suspension becoming effective only if Respondent is re-elected to judicial office on the November, 2014 ballot.²

II. Standard of Proof

The standard of proof applicable in judicial disciplinary matters is the preponderance of the evidence standard. *In re Ferrara*, 458 Mich 350, 360; 582 NW2d 817 (1998). The Examiner bears the burden of proving the allegations set forth in the Complaint. MCR 9.211(A). The Commission reviews the Master's findings de novo. *In re Chrzanowski*, 465 Mich 468, 480-481; 636 NW2d 758 (2001).

III. Findings of Fact

At all material times, Respondent was a judge of the 3rd Circuit Court in Detroit, Michigan. These proceedings are based on Respondent's maintenance of a personal and intimate relationship with Geniene Mott, a complaining witness in a case before him. Respondent's relationship with Mott began on May 21, 2012, and lasted approximately through mid-November, 2012. Respondent did not recuse himself from the case in which Mott was the complaining witness until September 18, 2012. During his relationship with Mott, Respondent used his chambers to engage in sexual intercourse with Mott, permitted Mott to enter the courthouse through an employee entrance without going through security, allowed Mott to

² Respondent's current term of office expires on December 31, 2014.

remain alone in his chambers while he was on the bench, arranged for Mott to park her vehicle in an area reserved for judges, and brought Mott's 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. In addition, Respondent regularly engaged in numerous ex parte discussions with Mott regarding *People v King*, a case on Respondent's docket in which Mott was the complaining witness, as well as another case on Respondent's docket in which Mott's relative was a defendant, *People v Tillman*. Finally, since these proceedings were initiated, Respondent has made material misrepresentations, under oath, regarding his misconduct.

People v King

People v King, Wayne Circuit Court Case No. 12-003141-01-FH, was a felony non-support case assigned to Respondent's docket in March, 2012. Geniene Mott was the complaining witness and Robert King was the defendant. Mott was in the courtroom on May 21, 2012, when Respondent held a hearing in *People v King*, during which King pleaded guilty to the charges pursuant to a delayed sentencing agreement under MCL 771.1(1).³ Under King's delayed sentencing

³ MCL 771.1(1) permits sentencing to be delayed and the charges to be dismissed if the defendant complies with all court-ordered conditions of probation. If the defendant fails to satisfy the conditions of probation, the guilty plea would be accepted and sentence would be imposed.

agreement, Respondent ordered that King pay \$280.50 per month in child support and scheduled additional payments to satisfy arrearages. Respondent then scheduled review hearings for August 16, 2012 and November 15, 2012 to ensure Defendant's compliance with the plea agreement.

At the conclusion of the May 21, 2012 docket call, Mott remained in the courtroom and engaged in a conversation with Respondent and court personnel. At some point, Respondent and Mott exchanged telephone numbers. On May 22, 2012, Mott called Respondent and left a message for him to call her. Respondent returned Mott's call and arranged to meet her for lunch on May 30, 2012. On May 30, 2012, Respondent and Mott had lunch together and planned to meet again. Thereafter, Respondent and Mott engaged in a sexual affair that lasted approximately six months.

During the affair, Respondent regularly engaged in ex parte communications with Mott regarding *People v King*, which remained pending. Mott testified that Respondent, who was paying "most" of Mott's personal bills during the affair, directed her to keep him informed with respect to whether King was making the scheduled child support payments. On August 12, 2012, just four days before King's review hearing, Respondent and Mott exchanged the following text messages regarding *People v King*:

MOTT: 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 makes a payment that morning otherwise lock his ass up until he pays 2500 cash directly 2 me via FOC . . . u seem to always call his case last so ill show up late & we can leave together.

RESPONDENT: Likewise, my truck will B unlocked so U can set anything out of sight N my car. We'll hold the case till U get there, or B sure to call Sharon Grier ahead of time so she'll know U (the 'C.P.')

will B N the courtroom. I figured if hasn't come current by his courtdate, he gets jail to pay. If he says he can bring me the \$\$, I'll put him on a tether till he brings the receipt 2 FOC or do 'double time.'

MOTT: Huh??? Teether? 4 how long and how much??

MOTT: Double time meaning 5k instead od 2500??

RESPONDENT: Oooops, did I misspell 'tether'. No, some guys say if they get locked up they can't bring the \$\$, but if they let out they can. So here's the deal: go 2 jail (150 days), release upon payment of \$1500. OR, get a tether & bring back w/n 30 days \$2500 or serve 9 months! BONUS: pay w/n the 30 days, remove tether.

RESPONDENT: I can't order 2 pay more than the probation order would have required oer the same period. If he's truly \$2500 Bhind as of Thursday, then that's what it'll cost 2 get out of jail!

MOTT: He's about 15k behind. . . 2500 is asking much plus YOU only ordered him 2 pay \$50 bucks a month toward arrage . .@ that rate ill be getting CS til Racheal is 26.

RESPONDENT: BTW, yes, single moms R admitted N@ J & J . . . N addition to those who get divorced or widowed after their initiation.

RESPONDENT: When U say 15K Bhind, U mean since the onset of support, or since he's been on Probation 2 me?

MOTT: Since on set of support.

RESPONDENT: OK, the math will be based on his failures since being placed on probation, but if Ur righ, the threat of jail will loosen his purse strings!

MOTT: ok, so let's go with what u proposed. . . . go to jail (150 days), release upon payment of \$1500. OR, get a tether & bring back w/n 30 days \$2500 or serve 9 months! BONUS: pay w/n the 30 days, remove tether.

MOTT: He will pay cause they won't let him go 2 jail PLUS u sending him 2 jail would violate his oakland county probation and he gets 10yrs.

RESPONDENT: Cool. I'll run it by the prosecutor.

MOTT: Make sure she's aware they already let him off by accepting 400 for probation when they told him 1000

MOTT: Now back 2 us what are we doin after court on Thursday???

RESPONDENT: Will do. That's good 2 know.

On the morning of the August 16, 2012 review hearing, Respondent, who was already in the courtroom, directed Mott, via text message, to park in an area reserved for judges. Respondent then assisted Mott in bringing her cell phone into the courtroom so that she could communicate with Respondent, by text messaging, while he was on the bench. In fact, Respondent admitted that he violated the court's security policy on three or four occasions by advising Mott to put her cell phone in his truck and by then retrieving the cell phone from his truck, placing the cell phone in a manila envelope and giving it to one of his court deputies to hand to Mott in the courtroom.

Before the hearing began, Respondent and Mott engaged in the following texting conversation:

RESPONDENT: I think U'r B.D.⁴ is here!!

MOTT: Did the prosecutor agree wit our deal since she cut him a break last time??

RESPONDENT: Look 4 'my girl' Sharon Grier, she's our prosecutor & she's been 'prepped.'

At the August 16, 2012 review hearing, in accordance with the discussions he had with Mott, Respondent ordered that King, who was \$672.00 behind on the plea agreement, be placed on a tether until the \$672.00 was paid. Respondent noted that he would consider withdrawing the plea agreement if the amount due was not paid by the end of the month. Respondent advised Mott that the Friend of the Court would notify him of any payments made by King.

Approximately one month later, on September 18, 2012, Respondent advised Mott, via text message, that he was attempting to have the case transferred to Judge Callahan. Several minutes later, Respondent texted to Mott:

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

⁴ Presumably, "B.D." refers to "baby daddy."

The order transferring the case to Judge Callahan was entered on September 18, 2012, and indicated that the reason for the transfer was “conflict of interest; custodial parent friend of family.” Soon thereafter, the relationship between Respondent and Mott began to deteriorate. On or about December 6, 2012, Mott contacted a local television news reporter, disclosed the details of her relationship with Respondent, and turned over text messages she had exchanged with Respondent.

Without more, Respondent’s relationship with Mott, a litigant in a case before him, constituted judicial misconduct. Respondent went further, however, and regularly engaged in ex parte communications with Mott regarding *People v King*, even while sitting on the bench. It is clear that Respondent’s actions constituted judicial misconduct with respect to *People v King*.

People v Tillman

The case of *People v Tillman*, Wayne Circuit Court Case No. 2012-000686-01-FH, was a felony non-support matter assigned to Respondent in January, 2012. The defendant, Damone Tillman, was Mott’s cousin or uncle. On January 18, 2012, Tillman appeared before Respondent, who had not yet met Mott, and pleaded guilty to failing to pay child support. On April 19, 2012, Respondent sentenced Tillman to probation, with the condition that he timely pay his child support and arrearage obligations. On October 30, 2012, Respondent issued a

bench warrant against Tillman for violating his probation. Tillman was arrested on the warrant and taken to jail. On November 8, 2012, Tillman appeared before Judge Kevin Robbins, who was substituting for Respondent while Respondent was on medical leave. Judge Robbins reduced Tillman's bond to \$500. Tillman did not immediately post the bond, and was therefore transferred to jail. Thereafter, Mott's family advised Mott that, although the family had attempted to pay the bond, the jail refused to accept the money due to a computer error indicating a "remand" status for Tillman. Mott testified that Respondent "was supposed to straighten it out."

On November 13, 2012, at approximately 10:30 a.m., Mott sent Respondent a text message advising him that she and her family would be in his courtroom shortly on the *Tillman* case. Although the *Tillman* case was not scheduled for hearing that day and the case was never called, Mott and her family soon arrived in Respondent's courtroom. Mott testified that, after arriving in the courtroom, she sent a note to Respondent, who was on the bench, by handing the note to the court deputy. The deputy then handed the note to Respondent. Mott testified that she also sent a text message to Respondent while he was on the bench. At some point that morning, Respondent signed an order reducing Tillman's bond to \$500.00 on the basis of a determination made earlier by Judge Robbins. While still on the

bench, Respondent advised Mott, by text message, that Tillman should be released from jail once his receipt for payment of the bond was taken to the jail:

MOTT: Ok, what's the deal with tillman?? Had 2 go outside 2 use my phone

MOTT: Ok I got my phone . . (thanks to Jerome) Let me know what's up?? I gotta whole lot to do.

RESPONDENT: Yes, lets talk!!! I've got a foot up my ass, & EVERYONE N my pocket!!!! I'm outta money like crazy which is why I was asking 4 clarity as 2 my \$ duties w/U, I gotta pay her lawyer (& consult w/mine).

RESPONDENT: Defendant should B released from Dickerson. I should B done N mayB an hour.

* * *

MOTT: Ok cool . . . does my uncle need 2 stay and get any paperwork 2 take there 2 dickerson??? Or what does he do next???

RESPONDENT: Just his receipt taken 2 the jail.

Respondent's ex parte communications with Mott regarding *People v Tillman* and Respondent's failure to immediately recuse himself from *People v Tillman* upon learning that Tillman was Mott's relative constituted judicial misconduct.

Misrepresentations

The evidence revealed that Respondent engaged in a pervasive pattern of dishonesty that included lying under oath to the Commission and to the Master. For example, Respondent testified at the formal hearing that at the time of his first

sexual encounters with Mott on June 19-21, 2012, it 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.” In addition, in his answer to the formal complaint, Respondent swore that it did not dawn on him until the date of the August 16, 2012 review hearing that Mr. King would be appearing before him. An e-mail to Mott on June 20, 2012, however, demonstrated the falsity of Respondent’s sworn testimony at the formal hearing and in his answer to the complaint:

RESPONDENT: Second, you 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 closed, everybody could be in deep shit.

On September 6, 2012, Respondent again acknowledged the impropriety of his relationship with Mott when he sent her the following text:

RESPONDENT: 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 and while my nuts are still on a chopping block B4 the JTC.

These text messages reveal that, contrary to Respondent’s testimony at the formal hearing and his answer to the complaint, Respondent was fully aware of the impropriety of his relationship with Mott and that it had dawned on him as early as June 20, 2012, that he should not be in an intimate relationship with the complaining witness in a case before him. These misrepresentations go to the

heart of the alleged misconduct. 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.

Other Misconduct

- On November 19, 2012, Respondent reported to Wayne County Prosecutor Kym Worthy that he was being stalked and extorted by Mott. Respondent did not tell Worthy that Mott had been a complainant in a case before him. While Respondent did tell Worthy's investigators that Mott had been a complainant in a case before him, he falsely told the investigators that he immediately recused himself from the case once he realized the conflict.
- On August 17, 2012, Respondent called the office of Wayne Circuit Judge Susan Borman to check on a landlord-tenant matter Mott had before Judge Borman. While Respondent spoke only to Judge Borman's court reporter, his conduct shows his willingness to use his judicial office to further Mott's interests.
- On October 11, 2012, in violation of MCR 2.114, Respondent prepared and filed a divorce complaint against his wife even though,

as he admitted at the formal hearing, he had no intention of going through with the divorce. On November 11, 2012, Respondent served the divorce papers on his wife himself in violation of MCR 2.103(A). At Respondent's request, the divorce complaint against Respondent's wife was dismissed on November 28, 2012.

IV. Conclusions of Law

A preponderance of the evidence at the formal hearing shows that Respondent breached the standards of judicial conduct and is responsible for the following:

- a. Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30 and MCR 9.205;
- b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30 and MCR 9.205;
- c. Conduct that is prejudicial to the proper administration of justice, in violation of MCR 9.104(1);
- d. Failure to establish, maintain, enforce, and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to MCJC, Canon 1;
- e. Irresponsible or improper conduct that eroded public confidence in the judiciary, in violation of MCJC, Canon 2A;

- f. Conduct involving impropriety and appearance of impropriety, contrary to MCJC, Canon 2A;
- g. Failure to respect and observe the law and to conduct oneself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary contrary to the Code of Judicial Conduct, Canon 2B;
- h. Allowing family, social, or other relationships to influence judicial conduct or judgment in violation of the Code of Judicial Conduct, Canon 2C;
- i. Failure to be faithful to the law, contrary to MCJC, Canon 3A(1);
- j. Conduct in violation of Code of Judicial Conduct, Canon 3A(4), that a judge shall not initiate, permit, or consider ex parte communications;
- k. Conduct in violation of Code of Judicial Conduct, Canon 3C, that a judge should raise the issue of disqualification whenever the judge has cause to believe that grounds for disqualification may exist under MCR 2.003(B);
- l. Conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2);
- m. Conduct that is contrary to justice, ethics, honesty or good morals, contrary to MCR 9.104(3);
- n. Conduct that violates the standards or rules of professional conduct adopted by the Supreme Court, contrary to MCR 9.104(4);
- o. Conduct in violation of MCR 2.003;
- p. Conduct in violation of MCR 2.103;
- q. Conduct in violation of MCR 2.114; and
- r. Conduct in violation of MCL 750.423.

V. 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). A discussion of the relevant factors follows.

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

The evidence reveals a pattern of misconduct in this case. For a six month period, Respondent maintained a personal and intimate relationship with Geniene Mott, the complaining witness in a case before him. During this time, Respondent participated in ex parte communications with Mott regarding her case, as well another case in which Mott's relative was a party. Rather than immediately recusing himself from these matters, Respondent took steps to maintain the secrecy of his relationship while the matters were pending. In addition, the evidence revealed a pattern of dishonesty that included lying under oath to the Commission and to the Master. This factor weighs in favor of a more serious sanction.

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

The evidence reveals misconduct on the bench. The evidence shows that Respondent began and maintained a personal and intimate relationship with a litigant in a case before him without recusing himself from the case. The evidence

shows that Respondent participated in ex parte communications with the litigant regarding her case as well as another case in which her relative was a party. Respondent texted the litigant from the bench regarding her case and arranged to bring the litigant's cell phone into the courtroom for her, in violation of the court's security policies, so that they could exchange text messages during the proceedings. Respondent's misconduct directly involved his judicial duties on the bench. This factor weighs in favor of a more serious 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.*

The stipulated facts reveal misconduct that is prejudicial to the actual administration of justice. A neutral and impartial judge is one of the central tenets of our judicial system. Respondent wholly disregarded his duty to remain a detached, impartial figure by engaging in a personal relationship with a litigant in a case before him and by regularly engaging in ex parte discussions regarding the litigant's case, as well as another case in which the litigant had an interest. In addition, Respondent's misrepresentations to the Commission and the Master were prejudicial to the actual administration of justice because they brought deceptive evidence before the Commission and the Master. This factor supports the imposition of a more serious 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 discussed above, Respondent's misconduct implicated the actual administration of justice and, therefore, supports the imposition of a more serious sanction.

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

The evidence revealed conduct that was premeditated and deliberated. Respondent's improper relationship with a litigant in a case before him spanned a six-month time period, during which Respondent had time to examine and evaluate his conduct. During the six-month time period, Respondent had numerous ex parte communications with Ms. Mott regarding *People v King* and *People v Tillman*. Respondent failed to recuse himself from these matters. There was evidence that Respondent was aware of the impropriety of his relationship with Mott and that he took steps to maintain the secrecy of the relationship rather than to recuse himself from the cases in a timely manner. In addition, Respondent deliberately made misrepresentations the Commission and the Master in an attempt to minimize his improper conduct. This factor therefore weighs in favor of a more serious 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.

Again, a neutral and impartial judge is at the core of our judicial system. Respondent's engagement in an intimate affair with a litigant in a case before him introduced bias and partiality into the truth-seeking function of the judicial system. Furthermore, 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.

(7) Misconduct that involves the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship.

The facts do not reveal evidence of conduct involving the unequal application of justice on the basis of a class of citizenship.

In sum, the *Brown* factors weigh heavily in support of the imposition of a more serious sanction.

B. The Basis for the Level of Discipline and Proportionality

In determining an appropriate sanction in this matter, the Commission is mindful of the Michigan Supreme Court's call for "proportionality" based on comparable conduct. Respondent's misconduct centers on his maintenance of a

personal and intimate relationship with a litigant in a case before him, his numerous ex parte communications regarding the litigant's case, as well as another case in which the litigant's relative was a party, and his misrepresentations, under oath, to the Commission and the Master.

Respondent's misconduct affected not only the litigants in the *King* and *Tillman* cases, but harmed the integrity of the judicial system as a whole. In determining an appropriate sanction, the Commission recognizes the importance of responding to this institutional harm. As our Supreme Court reasoned in *In re Probert*, 411 Mich 210, 225; 308 NW2d 773 (1981):

When we are confronted with a case of misconduct in office and the question of judicial discipline arises, we are obliged to make a judgment concerning the respondent's fitness to be a judge in light of his misconduct. Thus, a decision to enter an order of judicial discipline must be responsive to individual considerations. But our concern encompasses more: when one commits judicial misconduct he not only marks himself as a 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.

Based on the testimony and evidence submitted at the formal hearing and the arguments of counsel, the Commission believes that removal from office is an appropriate and proportional sanction for Respondent's misconduct. In addition, due to the especially egregious nature of Respondent's conduct and the damage

done to the perception of the judiciary by Respondent's conduct, the Commission recommends that, in addition to removal, Respondent be conditionally suspended, without pay, for a period of six years, commencing January 1, 2015.⁵ This suspension would be conditional, only to become effective in the event Respondent is re-elected to judicial office on the November, 2014 ballot.

VI. Recommendation

The Commission concludes that Respondent committed judicial misconduct. Based on the egregious nature of the misconduct, the Commission recommends that the Michigan Supreme Court remove Respondent from judicial office and conditionally suspend him from office, without pay, for a period of six years, beginning January 1, 2015. In addition, pursuant to MCR 9.205(B), the Commission recommends that Respondent be ordered to pay costs in the amount of \$11,945.17.

⁵ The Michigan Supreme Court has imposed such a conditional suspension on at least four occasions. See *In re Probert*, 411 Mich 210; 308 NW2d 773 (1981); *In re Bennett*, 403 Mich 178; 267 NW2d 914 (1978); *In re Del Rio*, 400 Mich 665; 256 NW2d 727 (1977); *In re Mikesell*, 396 Mich 517; 243 NW2d 86 (1976).

JUDICIAL TENURE COMMISSION

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