

STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. KAHLILIA Y. DAVIS
36th District Court
Detroit, Michigan

MSC 161134
Formal Complaint No. 101

**THE JUDICIAL TENURE COMMISSION’S OBJECTION AND ANSWER TO
RESPONDENT’S MOTION FOR RECONSIDERATION**

The Michigan Judicial Tenure Commission (the “Commission”), by Commission counsel, hereby objects to and answers the July 10, 2023 “Motion for Reconsideration” (the “Motion”) by respondent former judge Kahlilia Davis (“Respondent”). For the reasons set forth below, Respondent’s Motion should be denied.

Introduction

On June 23, 2023, this Court issued its Order (the “Order”). *See* MCR 9.252(A). This Court concluded that Respondent “engaged in repeated, deliberate misconduct that besmirched the judiciary’s reputation and prejudiced the administration of justice.” (Order p 6.) Respondent’s “pervasive” misconduct included seven distinct charges which this Court found were supported by a preponderance of the evidence, including material misrepresentations and lying under Count VII. (*Id* pp 1-3.) “The nature and pervasiveness of respondent’s misconduct *requires the highest condemnation and harshest sanction.*” (*Id* p 6) (emphasis added). The harshest available sanction was “a six-year conditional suspension without pay [], with the

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suspension barring respondent from serving in a judicial office during that period,” which is what this Court therefore ordered. (*Id.*)

Seventeen days after this Court’s Order, on July 10, 2023, Respondent filed her “Motion for Reconsideration.” Respondent’s Motion is limited to her argument that her suspension should have been shorter in duration than the six years ordered by this Court.

Respondent did not cite a court rule or other authority under which she filed the Motion. MCR 9.253, entitled “Motion for Rehearing,” would be the only rule relevant to the relief Respondent seeks for this judicial disciplinary proceeding governed by MCR 9.200, *et seq.*, and such motion had to be filed within 14 days of this Court’s Order.

Even if reconsideration was available and timely, Respondent fails to state any valid grounds for such relief. She presents nothing new that was not already before this Court when it rendered the discipline; she misstates that this Court’s order precludes her from running for and being elected judge in the next election, which is false, and she presents no compelling basis on which to conclude that this Court was wrong in deciding that her misconduct is deserving of the “highest condemnation and harshest sanction.” (Order p 6.) Accordingly, Respondent’s Motion should be denied.

Argument

I. Respondent’s Motion is Untimely.

MCR 7.303(A) provides the jurisdiction of this Court to “review a Judicial Tenure Commission order recommending discipline, removal, retirement, or suspension (*see MCR 9.250 to 9.253.*)” (emphasis added). As MCR 7.303(A) sets forth, such judicial disciplinary proceedings are governed by MCR 9.250 to 9.253. Nothing in the judicial

disciplinary rules adopts or otherwise incorporates the rules from Chapter 7 of the Michigan Court Rules. *Compare* MCR 9.122(B) (“Rules Applicable. Except as modified by this rule, subchapter 7.300 governs an appeal.”). Thus, general motions for reconsideration under MCR 7.311(G) do not apply to this proceeding. The closest analog to the reconsideration rule that could apply to this proceeding is MCR 9.253, entitled “Motion for Rehearing,” which provides:

“Unless the Supreme Court directs otherwise, the respondent may file a motion for rehearing *within 14 days after the filing of the decision*. If the Supreme Court directs in the decision that a motion for rehearing may not be filed, the decision is final on filing.”

(emphasis added). Fourteen days after this Court’s Order was July 7, 2023, but Respondent did not file her Motion until July 10, 2023, making it untimely filed without leave. Denial on that basis alone is appropriate.

II. Respondent States No Grounds For Reconsideration.

Even if reconsideration was available and timely, Respondent fails to state any valid ground for such relief. To succeed on a motion for reconsideration, “[t]he moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.” MCR 7.311(G); MCR 2.119(F)(3). “Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration *which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted.*” MCR 2.119(F)(3) (emphasis added.)

Respondent's only argument on reconsideration is that, since she was suspended on an interim basis for "three years,"¹ she should get credit for time served and should have received less than the six-year suspension under this Court's Order. Respondent's argument fails for multiple reasons. She fails to mention in her Motion that she was suspended *with pay* during her interim suspension, *see* June 17, 2020 Order of this Court, and she presents nothing new that was not already before this Court when it entered its June 23, 2023 Order.

The parties fully briefed and this Court was well aware of Respondent's interim suspension, including extensively discussing it during oral argument, when it rendered Respondent's discipline in its Order of June 23, 2023. (*See, e.g.*, Respondent's Petition for Review p 39 (setting forth the interim suspension with pay, beginning June 17, 2020; *see also* Commission's Reply to Petition, p 23 ("Respondent concedes that she has been suspended from her judicial position *with pay* since 'June 17, 2020.'") (emphasis in original, citing Respondent's Petition for Review p 39); March 1, 2023 Oral Argument, at 8:54 to 12:17 of 44:23.)

Contrary to Respondent's unsupported suggestion, the six-year suspension ordered by this Court *does not mean* that Respondent is precluded from running for and being elected as judge in the next election. (Motion p 2 ("Moreover, the language of

¹ This "three-year" period is misleading. Respondent counts from the date of her interim suspension with pay under this Court's June 17, 2020 Order until the subject final Order in this case dated June 23, 2023. But the Secretary of State *removed Respondent from the general election ballot* for the November 2022 election because Respondent made incorrect statements on her affidavit of identity regarding having paid all outstanding late fees. (Order p 1 n1.) Respondent was therefore not on interim suspension during the time in which she was not a judge.

the Order suggests that such that Respondent could be prevented from ever becoming a judge again in this State.”.) Rather, in the event Respondent wins such an election, her suspension will continue until its expiration. In this regard, this Court’s Order speaks for itself: “Should respondent *be elected or appointed to judicial office during that time* [of her six year suspension], she ‘will nevertheless be debarred from exercising the power and prerogatives of the office until at least the expiration of the suspension.’” (Order p 1 (emphasis added), citing *In re Probert*, 411 Mich 210, 237 (1981); *see also In re Korschuh*, 507 Mich 984 (2021). Indeed, the shorter suspension that Respondent requests would be utterly meaningless and fail to actually discipline her for her “pervasive misconduct” because she would serve it in its entirety while off the bench, thwarting its purpose.

Nor is there any merit to Respondent’s assertion that Judge Probert’s conduct was purportedly worse than hers, and therefore Respondent should be suspended for less time than he was suspended. As already discussed, this Court found that Respondent’s misconduct is deserving of the “highest condemnation and harshest sanction.” (Order p 6.) This Court’s finding was based upon its analysis and conclusion that “[s]ix of the seven *Brown* factors favor a severe sanction here.” (*Id* p 4.) Other judges besides Respondent and Judge Probert, who were no longer sitting judges when receiving discipline for their misconduct, have received the same six-year suspension. *E.g.*, *In re Korschuh*, 507 Mich 984 (2021). The fact that Michigan law does not currently support an even longer suspension or an outright ban on Respondent holding

office does not mean that she is entitled to a lesser suspension than other judges who also deserved the “harshest sanction” available. (See Order p 6.)

Conclusion

The Michigan Judicial Tenure Commission respectfully requests that the “Motion for Reconsideration” (the “Motion”) filed by respondent former judge Kahlilia Davis be denied.

DYKEMA GOSSETT PLLC

Dated: July 24, 2023

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