STATE OF MICHIGAN

IN THE SUPREME COURT

APPEAL FROM THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST

HON. KAHLILIA Y. DAVIS
36th District Court

Docket No. 161134

Formal Complaint No. 101

HON. KAHLILIA DAVIS' PETITION FOR REVIEW

ORAL ARGUMENT REQUESTED

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STATEMENT OF JURISDICTION

Respondent filed this petition within 28 days after being served. The JTC served Respondent with its Decision and Recommendation for Discipline on September 23, 2022.

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STATEMENT OF QUESTIONS INVOLVED

1. Is it proper for the JTC to utilize a claim that was not included in the Second Amended Formal Complaint and where the Respondent has no history of discipline as a method to fashion a recommendation to the Michigan Supreme Court for discipline in the current case?

   Respondent answers "NO."

   The JTC answered "YES."

2. Is it proper for Respondent to be denied proper resources [i.e. judicial training or being deprived of a court reporter in violation of MCL 600.8602(1)] as a an instrument of creating a means of discrediting Respondent by alleging that she committed judicial misconduct?

   Respondent answers "NO."

   The JTC presumably answers "YES."

3. Is Respondent liable for being sick, being required to be hospitalized, needing recuperation, and being released by her doctors only after being authorized to be back to work?

   Respondent answers "NO."

   The JTC presumably answers "NO."

4. Should the Master have any genuine role in ascertaining whether witnesses are credible and whether those witnesses who are not credible should be disregarded in hearings?

   Respondent answers "YES."

   The JTC may answer "YES."

Statement of Facts

Kahlilia Davis was elected to the 36th District Court on November 8, 2016 for a term commencing on January 1, 2017. Unfortunately, Judge Davis was suffering from serious medical problems that prevented her from performing her judicial duties until March 6, 2017.

After the first month of her assuming the bench, investigations were commenced by the Judicial Tenure Commission [hereinafter referred to as "JTC."]. Starting on April 7, 2017, only one month from Respondent's starting her judicial career. Judge Davis was subjected to investigation from the JTC stating, inter alia, inquiries that, in the following extracts, pursuant to then MCR 9.208(B) [now MCR 9.221(E)], compelled compliance:

2. On what date were you sworn into office? Who swore you in?

3. Please confirm that your term of office began on January 1, 2017.

5. What date did you first appear for work as a judge? Since then, what days have you appeared for work as a judge?

6. What days have you sat as a judge and what hours have you been on the bench on those days?

7. On what date did you first sit a full day on the bench?

12. Since your election in November 2016 until the present, did you receive any communication from the Chief Judge of the 36th District Court, including any requests, questions or directives regarding your absences? If so, please provide the date(s) of all communications and the nature of each. If any communication was in writing ir via email, please provide copies of all communications.

13. Did you comply with all of the requests or directives you received from the Chief Judge of the 36th District Court between the time of your election and the present? If so, please provide the dates when you complied, explain how you complied, and provide copies of any communications from you or any documents you provided. If you did not comply, please explain which requests or directives you failed to comply with and why you failed to comply.

There were a total of 23 paragraphs of requests in the April 7, 2017 .

There was a plethora of additional JTC investigative requests over the course of five years, including a request on May 28, 2020, by a 63 page letter, with 252 paragraphs, and a number of sub-paragraphs and 448 pages of attachments. Eighteen days later, on June 15, 2020, Judge Davis was bombarded with another set of JTC investigative requests, in which there were 18 pages of requests with 119 sub-paragraphs and 116 pages of attachments.

There were a number of other letters from the JTC, each containing an extravagance of investigative requests. To put it moderately, the five years of the JTC's investigation of Judge Davis would be enough to cause many to resign rather than suffer the slings and arrows of misfortune that Judge Davis was required to endure.

When Judge Davis was able to perform her duties as of March 6, 2017, she was originally able to choose a court reporter pursuant to MCL 600.8602(1). However, in October, 2017, the 36th District Court administration removed her right to have a court reporter, and she was not allowed to have a court reporter until January, 1,2020, at

which time Judge Blount, the former Chief Judge, was no longer Chief Judge, having been replaced by Chief Judge William McConico.

In October, 2017, Respondent was assigned by the 36th District Court administration to courtroom 340, in which video recorder equipment was located. Respondent did not know how to operate the video recorder machine. She was not given proper training in operating the machine. Under MCR 8.109(B), training was to be provided to her in conformity with the SCAO Michigan Trial Court Standards for Courtroom Technology [hereinafter referred to as "SCAO Standards"] which, pursuant to MCR 8.109(B), requires that a trial court that uses video recording equipment must adhere to the operating standards published by the State Court Administrative Office, to wit: the SCAO Standards. The 36th District Court administration failed to comply with the requirements of MCR 8.109(B) and with the SCAO Standards.

During her tenure, Respondent requested, and caused requests to be made of the 36th District Court administration on several occasions, that she be provided with a court reporter so that a record could be made of proceedings in her courtroom. Her requests were denied or simply ignored.

Not being able to operate the video recording machine, not having a court reporter or a court recorder to perform such responsibilities, and not having received appropriate assistance from the 36th District Court administration, including not having been instructed as to video recording operating standards in accordance with the SCAO

requirements, pursuant to MCR 8.109(B), Respondent was stuck between the proverbial rock and a hard place. If she did nothing, she could be accused of failing to perform judicial functions in her courtroom. However, inasmuch as she had to do something to remedy the situation in which she found herself, she had to be able to cause proceedings to be recorded. Had the 36th District Court administration complied with MCL 600.8602(1), the whole situation would have been obviated.[1]

At some point, the JTC commenced an investigation into Respondent's conduct. The JTC initially sent communications to Respondent on May 3, 2019, August 20, 2019 and December 20, 2019. Responses were provided to the JTC as to those three communications. The JTC issued Complaint No. 101, dated March 16, 2020, which was filed by the JTC with this Court. On or about May 14, 2020, the JTC filed a motion for Respondent to be suspended during the pendency of proceedings under Complaint No. 101. The JTC further sought to have Respondent deprived of her pay.

Two weeks later, on May 28, 2020, the JTC sent a written communication to Respondent, consisting of 63 pages of text comprising 252 numbered paragraphs, with a number of sub-paragraphs, and a total of 512 pages. On June 15, 2020, the JTC sent

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[1] On October 20, 2017, Judge Blount removed Respondent from adjudicative responsibilities until April 2, 2018. Thus Respondent had no court reporter due to Judge Blount's removal of Respondent's court reporter commencing on October 20, 2017.

another written communication to Respondent, consisting of 18 pages of text and a total of 134 pages.

On June 17, 2020, this Court partially granted the JTC's motion and entered an order suspending Respondent pending proceedings under Complaint No. 101. However, this Court denied the branch of the JTC's motion seeking a cessation of Respondent's pay.

The last three written communications included a total of 1,090 interrogatories, 55 requests for production of documents, and 8 requests for medical releases.

On June 15, 2020, Respondent filed a Motion for Protective Order in response to the communication dated May 28, 2020. On July 3, 2020, Respondent filed a Motion for Protective Order in response to the communication dated June 15, 2020.

On July 22, 2020, the Chairperson of the JTC filed an order denying the two Motions for Protective Order.

Over the course of her judicial experience, it became clear that Respondent was to become a pariah. Judge Davis was bereft of the same amenities in the 36th District Court as were bestowed upon other judges. Thus, she was deprived of training on the video recording equipment; she was rejected from having court reporters in her courtroom in 2019 despite continuously seeking court reporters while other judges were given a full compliment of court reporters; and she had her chambers set all the way to

the other end of the courthouse, causing her, with ambulatory disability, to suffer extreme exhaustion that causes breathing to be unpleasant and painful.

The JTC, in its Second Amended Complaint, in 7 counts, made a number of accusations against Judge Davis. Hearings were held with the Hon. Cynthia Stephens as Master presiding over the proceedings.

After the hearings, the JTC sent its decision to this Court on September 23, 2022.

I.

THE CHARGES CONTAINED IN THE SECOND AMENDED COMPLAINT

Standard of Review

> Judicial Tenure cases come to this Court on recommendation of the JTC, but the authority to discipline judicial officers rests solely in the Michigan Supreme Court. This Court reviews de novo the JTC's findings of fact, conclusions of law, and recommendations for discipline. The Court may accept or reject the recommendations of the JTC or modify them by imposing greater, lesser, or entirely different sanctions. *In re Simpson*, 500 Mich 533, 545, 902 NW2d 383, 391 (2017).

The JTC set forth its decision and recommendation to this Court. The factual claims that led to the JTC's decision and recommendation are set forth herein.

A. Count I

In Count I, the JTC alleged that Judge Davis engaged in a bunch of alleged judicial misconduct, claiming that she engaged in abuse of contempt of court powers

in *Detroit Real Estate, Inc v Sharon Hayes*, 36th District Case No. 17-307300-LT. Joy Eck, a manager for Detroit Real Estate had filed an application for an order of eviction of Ms. Hayes. Eck left an eviction notice on the property in which Hayes resided. The eviction notice stated that "The Court has ordered the bailiff and they [sic] will be out to your house to evict you." However, Judge Davis never entered an order of eviction and did not order the bailiff to evict Hayes. Thereafter, Hayes filed a motion for a hearing, for which Judge Davis held a hearing on May 8, 2017.

It became clear to Judge Davis that Eck's notice stating that the Court entered an order of eviction was false and that Eck had engaged in falsification by placing such a notice at Hayes' residence. Accordingly, Judge Davis adjourned the hearing to May 24, 2017, to show cause why Eck should not be held in civil contempt. On May 24, 2017, Eck and Diane Wyrock, attorney for Detroit Real Estate, appeared in court. Judge Davis held a show cause contempt hearing at which Eck admitted that the notice that she posted at Hayes' residence was not proper because a court order had not been entered. Then Judge Davis stated that Eck committed a fraud in what she did. The judge then ordered Eck to pay Hayes $3,000 and to pay a fine of $500.00 to the Court and to sit down in the courtroom and write out checks that were ordered. Judge Davis, at the May 8, 2017 hearing, told Wyrock to bring someone from Detroit Real Estate with a checkbook on May 24. At the May 8th hearing, after Eck made the admission concerning the eviction notice, she was told to have the checkbook. Eck violated Judge

Davis's directive and did not have a checkbook with her on May 24th. Wyrock had told Eck to bring a checkbook. Wyrock then left the courtroom to retrieve a checkbook for Eck, who then wrote the checks, gave them to Wyrock who paid the people who were to receive them, and Eck was free to go.

The Master, the Hon. Cynthia Stephens, concluded that the claim as to Eck did not demonstrate that the evidence was insufficient as to preponderance of the evidence. The JTC ruled against the Master.

There was another case in Count I in *Celestine Sanders v Nicole Thomas*, 36th District Case No. 17-321869-LT. Jerry Johnson, a process server, stated that he had personally served Nicole Thomas with a summons. It was apparent that there was a question as to Johnson's having actually serving Thomas with the summons. Thomas stated that she was at work at 8:30 AM and had not been served personally on September 19, 2017. Johnson had sworn that he personally served Thomas on September 19, 2017 at 8:35 AM. At the hearing on October 11, 2017, the judge determined that Johnson's claim was false and she sentenced Johnson to 5 days in the Wayne County Jail. The next day, the Chief Judge Nancy Blount ordered that Johnson be released from jail and on October 13, 2017, Judge Joseph Baltimore dismissed the contempt charge.[2]

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[2] Ms. Eck had been subpoenaed by the JTC to appear at the disciplinary hearings. Ms. Eck never appeared at the hearings.

B. Count II

Count II involved a process server named Myran Bell, who had signed a proof of service stating that he had served a summons and complaint at 430 Frederick, in Detroit on August 26, 2017. [T, Vol I, 7/7/22, p 29.] In fact, Bell never served the summons and complaint at all. [T, Vol I, 7/7/22, p 29.] He did not even know who had served the process. [T, Vol I, 7/7/22, p 38.] Yet, he falsely stated that he had served the process and admitted the same at the disciplinary hearing on July 7, 2022.

He denied, under oath, that he lied on stating that he served the summons and complaint when that was not true. [T, Vol I, 7/7/22, p 31.] Bell also stated, under oath, that he did not put any information on the proof of service that he knew was not true at the time. [T, Vol I, 7/7/22, p 31.] He further testified that he never knowingly put wrong information on any other proof of service in other cases. [T, Vol I, 7/7/22, p 31.]

At the disciplinary hearing, under cross-examination, he admitted to having signed 5 or 6 proofs of service in other cases in which he asserted that he had served the summonses even though, in reality, he did not actually serve process in those matters. [T, Vol I, 7/7/22, p 38-39.]

Judge Davis had an incident in which she observed a process server who had served a summons and complaint at 430 Frederick on August 29, 2017. [T, Vol V, 7/15/22, p 391.] Inasmuch as she was living at that address at the time, and she was at

the house during days prior to August 29, 2017 and a number of days that would have included August 26, 2017, it was clear that she knew that no one had served a summons on August 26, 2017, at 430 Frederick. [T, Vol V, 7/15/22, p 398.] Thus, she was able to discern that Bell did not serve process at 430 Frederick on August 26, 2017. In fact, Judge Davis saw the person who delivered the summons to the door at 430 Frederick on August 29, 2017, at which time she took a picture of the individual. Some litigants had been using Bell as a process server. Judge Davis, having realized that Bell was falsifying in proofs of service, indicated that he was not to be used for process serving and that if Bell was employed for service of process for a case in her courtroom, she would dismiss the case.

C. **Count III**

Count III involves Bible verses. There were some questions that then Chief Judge Nancy Blount had with Judge Davis. Judge Blount wanted to know whether Judge Davis was present in the 36th District Court building and wanted Judge Davis to provide information showing that she was there. Accordingly, in order to respond to Judge Blount's requirement, Judge Davis placed a Bible verse in an e-mail and sent the same to Judge Blount, to the 36th District Court Administrator, to Judge Paul Paruk, who is the SCAO Region I Administrator, and to her then lawyer, Stephen Chacko. Judge Davis did not articulate the purpose of the Bible verses nor did she seek to maliciously target any individual by use of the Bible verses. Judge Paruk testified that

he took the Bible verses to mean that the individuals to whom the e-mails were sent were bad people, wicked, wrongdoers, vile murderers, sexually immoral, and the father of the devil. Judge Paruk also felt that the verses were threatening, disrespectful, contemptuous, frustrating, and disappointing.

When asked if he knew what Judge Davis was thinking of when she simply put a Bible verse in an e-mail, Judge Paruk stated that he can only give his own interpretation. [T, Vol II, 7/8/22, p 176.] He stated that he made a conclusion. [T, Vol II, 7/8/22, p 178.]

However, the Bible verses say what they say and there is nothing in the verses that speak to Judge Paruk, or to Judge Blount, or to anyone who received an e-mail. Judge Davis was merely exercising her First Amendment rights, not only for freedom of speech, but also for freedom of religion. Judge Davis never sought to make harmful statements against anyone. All she was doing was to quote verses from the Bible as a means of letting the 36th District Court know that she was in the courthouse.

Judge Paruk testified as follows concerning the Bible:

> Q. And then after that, six -- four days later there was this Bible verse; correct?
>
> A. Yes.
>
> Q. Now, you believe, based upon what I understand, that somehow or other that particular email from Judge Davis with that particular Bible verse somehow or other is connected with these other ones. Is that what you're telling me?

A. Yes.

Q. But how would you know if that's what she was doing, or do you know whether or not she simply put out a Bible verse because she wanted to just put it out there for whatever reason?

A. She never explained that to me.

Q. Okay. Did anybody -- well, let me put it like this. If she didn't explain it to you, you didn't know for sure why she put that Bible verse in there four days after Judge Blount put her last email for that particular –

A. No, I don't.

[T, Vol. II, 7/8/22, pp 175-176.]

As to the presence of Judge Davis for work in the 36th District Court, she suffered from much medical difficulty that required her to undergo surgeries, treatment for serious infections, and other indisposition that damaged her health, resulting in physicians requiring that she not be at work for periods of time. Judge Paruk testified that Judge Davis alerted the 36th District Court of medical problems that required that she be away from her work. Judge Paruk testified that a judge who must take a day or days off due to sickness was OK. [T, Vol. II, 7/8/22, p 194.]

D. <u>Count IV</u>

Count IV refers to conducting proceedings without an official record. The situation involved the inability for Judge Davis to obtain assistance from the 36th District Court administration.

Judge Davis had been in more than one courtroom, all of which used court reporters except when Judge Davis was in Courtroom 340. Judge Blount testified that Judge Davis should have been trained as to the video recording equipment. [T, Vol. I, 7/7/22, p 85.] Judge Blount also said that it was her understanding that Judge Davis was trained. [T, Vol. I, 7/7/22, p 85.] Judge Blount testified that she was not present when Judge Davis was to be trained on the video recording equipment. [T, Vol. I, 7/7/22, p 85.] However, in further cross-examination, Judge Blount stated that she did not know whether Judge Davis was trained as to operation and maintenance of the equipment. [T, Vol. I, 7/7/22, p 86.]

Dionne Drew, who was Judge Davis's courtroom clerk, testified in direct examination that she did not believe that Judge Davis was trained in the how to operate the video recording equipment. [T, Vol. II, 7/8/22, p 203.] Judge Davis testified that she was not provided with training for operating video recording equipment. [T, Vol. V, 7/15/22, p 406.] In fact, there was no witness who testified that Judge Davis actually had been trained to operate the video recording equipment.

With respect to the claim that Judge Davis had disabled the video recording equipment in Courtroom 340, Dionne Drew claimed that Judge Davis was literally on her knees. She claimed that Judge Davis disconnected the video recording equipment and she stated that she assumed that Joyce Thomas and Pam Triplett, supervisors of Drew, saw Judge Davis loosen the video recording equipment under the judge's bench.

However, court investigators concluded that Drew's claim of Thomas and Triplett's seeing Judge Davis disabling the video recording equipment, not assuming the same, was false, in which the following was stated by Parnell Williams, 36th District Court Human Resources Deputy Director:

> You claimed that Ms. Joyce Thomas and Ms. Pamela Triplett saw Judge Davis disconnect the video equipment, as an excuse for why you failed to notify anybody. Upon further investigation, the Court finds that your claims regarding Ms. Thomas and Ms. Triplett are not credible. In fact, the Court has determined that these claims are completely false.

[Exhibit "E," that was introduced into evidence at the hearing on July 8, 2022.]

Dionne Drew claimed that she, herself, saw Judge Davis disabling the video recording equipment. Drew alleged that Judge Davis was on her chair and got down on her knees quickly. [T, Vol. II, 7/8/22, p 223.] Drew said that Judge Davis was on the bench's chair and from there her knees were on the floor. Drew testified that she knew that it was important to have the video recording equipment operate, but she did not do anything to alert anyone that the video recording equipment was not operating. She said she called for a court reporter. Drew also was asked the following question and gave the following answer:

> Q. It took her all that time to get off the chair, get on her knees, pull out the plug, and then real quickly get back in her chair all in a matter of seconds, correct?

A. Correct. I didn't time it.

[T, Vol. II, 7/8/22, p 224.]

Then, only a few minutes later, when the JTC attorney engaged in redirect examination, Drew changed her story, and said that Judge Davis did not sit in the chair. [T, Vol. II, 7/8/22, p 233.] Then Drew said that she did not recall that the Judge's robe was on at that time—not that Drew was sure, only that she did not recall whether it was on. [T, Vol. II, 7/8/22, p 234.]

Then, on re-cross examination, Drew said that Judge Davis took 2 to 3 seconds to kneel down. Then, Drew claimed the following:

Q. From the time that she got off the chair, doing all the stuff that you said, getting back up on the chair, how long did it take?

A. It was quick.

Q. How long?

A. It was not slow. It was I'm upset, this is it, and that's what happened.

Q. So your saying three, four, ten seconds?

A. Seconds.

Q. Seconds?

A. Seconds, not minutes.

Drew changed her story by stating as follows:

Q. Okay. And then she sat -- she didn't sit, but she went on her knees. How long did it take for her to get to her knees after she got to that spot?

A. I didn't count the time. It was not long at all. It didn't take that long. I'm sure it took her a minute to get up, but it didn't take a long time.

[T, Vol. II, 7/8/22, p 235.]

It is hard to understand how Judge Davis would be able to operate the video recording equipment if she was not trained as to how to operate the video recording equipment.

Judge Davis testified that she was not provided with training for operating video recording equipment. [T, Vol V, 7/15/22, p 406.] In fact, there was no witness who stated that Judge Davis actually had been trained to operate the video recording equipment.

As to Judge Davis's allegedly getting on her knees below the judge's bench, Drew would have needed x-ray vision. For, Drew would have had to look through the wooden barrier that covered all of the sides of the bench. Accordingly, Drew's claim about Judge Davis's kneeling on the floor of the judge's bench and disabling the video recording equipment was just not possible.

Drew's friend, Morgan Hairston, was a security office at the 36th District Court. She had been assigned to Judge Davis's Courtroom 340. She testified as follows:

Q. Can you describe what the video equipment looked like? Did you ever see it yourself?

A. No. Besides some cords, I mean, I didn't—no, I didn't.

[T, Vol. II, 7/8/22, p 240.]

She further testified as follows:

Q. What did you see?

A. She was, like, pulling the cords.

She was pulling the cords off of her—I don't know if it was a Mic or—I really don't know what it was, but she was, like messing around with them.

Q. All right. Well, let's talk specifically what you saw. Where was the equipment that you say Judge Davis pulling the cords or messing with the cords, as you put it? Where was it located?

A. Well, they had cords on the floor. They had them, I guess, on her desk or something.

Q. Was it up on the judge's bench?

A. Yes. On her bench. Sorry, I couldn't really see up there all the way, I mean, because I don't—I was working on the side.

[T, Vol. II, 7/8/22, p 240-241.]

Q. Okay. All right. I want you to describe specifically what you saw Judge Davis do with regard to the video recording equipment.

A. She just—I guess I don't know what she was doing with it. I don't know if she was trying to—I just don't know. But she did get down and was messing with the cords or disconnecting them.

[T, Vol. II, 7/8/22, p 242.]

It is clear at this point that Hairston could not see the top of the bench, because she stated so. She could not see the floor under the bench because there was a barrier around the judge's bench that prevents one from seeing the floor. All she knew is what she kept on saying, to wit: the Judge was messing with the cords. Her claim that she saw cords under the bench is not realistic from the vantage point at which she was located.

Hairston further testified as follows:

Q. Now, from where you were sitting, were you sitting at you desk when this thing with the cords occurred?

A. Yes.

Q. Okay. Now, when you were sitting with your desk, what exactly did you see Judge Davis do?

A. She was just messing around with the cords just—

Q. What do you mean by "messing with the cords"?

A. Like I said, I couldn't really see up there. Like, I wasn't up there with her. So I don't know what she was doing with the cords, and I don't know how they—

Q. How did you even know that she had cords there if you couldn't see it?

A. Because I had been there while the Itech team was coming in back and forth to try to install the video or get it up and running.

Q. They weren't in the courtroom at the time, were they?

A. No, they were not.

[T, Vol. II, 7/8/22, p 255-256.]

Clearly, Hairston was tripping herself by claiming that she could see the cords because the techs were coming back and forth, but at the time the techs were not in the courtroom.

Now, Hairston had another statement to make.

Q. ...And so now we have a situation where you say that my client did something. Did she kneel down? Did she jump down? What did she do to get to the so-called cords?

A. She kneeled down, she kneeled down out of her chair and—

Q. Out of her chair?

A. Yes. I know there were cords, because I saw them put the cords there.

Q. So she was first in the chair and then she went and went down to get the cords?

A. Yes.

Q. Now, did she lean over from the chair or did she kneel down on the floor?

A. She probably had to do both, like lean up a little and kneel down, Like use maybe her—

Q. Did you see that?

A. Yes.

Q. You could actually see it from where you were sitting?

A. Yes. She's tall and I am too, so—

Q. And what did she do when she was down there with the cords? What did you see?

A. I know that she disconnected them.

Q. It's not a question of what you know. The question is what I asked you is, what did you see?

A. I saw her disconnecting them.

Q. Okay. Now tell me. You saw her disconnecting what?

A. The cords.

[T, Vol. II, 7/8/22, p 256-257.]

At this time, Hairston came up with another statement.

Q. ....You say now that you saw it. Before you said you didn't really see it. So I'm asking again. Did you see her actually do anything with the video equipment cords or other kind of stuff like that?

A. Yes, I did.

Q. Okay.

A. I said I couldn't see it clearly. Like, I was not standing directly next to her.

Q. Well, you were sitting at the time, weren't you.

A. Yes, I was sitting.

Q. So you weren't standing.

A. Yeah, well, I wasn't near her basically. I wasn't near her. I wasn't sitting close to her and I wasn't standing close to her, but I still was able to —I could still see her. I could see the clerk. I can still see a look like—how I can still see the judge right now, I can see her. I can see her.

[T, Vol. II, 7/8/22, p 257-258.]

As to lack of an official record, Judge Davis was put into a Hobson's choice. She wanted to have a record of hearings. She was not given training for the video recording equipment. At the same time, even though almost every judge the 36th District Court had court reporters at their disposal, Judge Davis was denied the same when she was put in Courtroom 340. The Court administration refused to train her on video recording equipment or to give her the same accommodations as were provided to other judges.

The 36th District Court administration was aware that Judge Davis was not trained for video recording equipment. They refused either to provide her with training or else with court reporters. They did neither.

Of the 28 judges in the 36th District Court, 25 did not use the 25 video machines in their courtrooms. Of the three judges who were elected in 2016—Kenyatta Stanford Jones, Austin William Garrett, and Kahlilia Yvette Davis—only Judge Davis did not have a court reporter.

The JTC places the blame on Judge Davis, stating that she did not personally contact Judge Blount about training or court reporters. The JTC places blame on Judge Davis claiming that she did not direct her clerk or secretary to contact the 36th District Court administration. Yet, Judge Davis did direct her clerk, Dionne Drew, to contact the administration for help.

Trial courts that use video recording equipment must adhere to the video recording operating standards published by the State Court Administrative Office. See MCR 8.109(A). Among those standards are the following:

> The video operator must receive initial hands-on start-up training and follow-up training from the digital recording vendors and court staff on start-up procedures and advanced features of the system.
>
> The video operator should also be trained by court personnel on courtroom procedures and storage responsibilities, including: 1) logging procedures; and 2) basic training on microphone use and placement, equipment set-up, operation and maintenance, failure recovery, troubleshooting, backup and restore procedures, and routine inspection procedures.

Michigan Trial Court Standard For Courtroom Technology, §1, Chap 3(B)(2)(c).

The aforementioned Standards require that the trial court adhere to the same. It is clear that the 36th District Court did not comply with Standard §1, Chap 3(B)(2)(c). It is equally clear that Judge Davis was not given the training as set forth in that Standard as required by the Michigan Supreme Court. The responsibility for that lies with the former 36th District Court administration, not by Judge Davis.

> Each judge of the district court shall appoint his or her own recorder or reporter.

MCL 600.8602(1).

As such, given that Judge Davis should not have been subject to the 36th District Court administration's failure, either to provide her with training, which was not done, or to have provided Judge Davis with court reporters, which was not done, either.

E. Count V

Count V involves unauthorized recording of and publication of court proceedings.

Shannon Walker, a staff member of the City of Detroit Law Department, testified that there was a black box that had a video recording equipment that she believed was in the jury box at Courtroom where Judge Davis was presiding. [T, Vol. II, 7/8/22, p 268-269.] There was no verification of Ms. Walker's claim as no witness was brought in to the disciplinary hearing stating that such video recording equipment was located in a jury box.

There was a colloquy in which Judge Mullins testified as follows:

> Q. In Courtroom 340 did you ever see a jury box, kind of like -- I don't know if there is a jury box there. I can't say.
>
> A. Yes.
>
> Q. Here, that's where the jury box is.
>
> A. Yes.

Q. Did they have a jury box in Courtroom 340?

A. Yes.

Q. And did you ever see anything in the jury box while you were there?

A. Only officers would use the jury box to sit there while they were waiting for their cases to be called.

Q. So there would be officers sitting there and perhaps there might be other people sitting there if there was an overflow of people in the courtroom?

A. I just recall that officers would routinely sit there while they were waiting for their cases to be called.

[T, Vol III, 7/11/22, pp 337-338.]

Accordingly, Judge Mullins saw a jury box in Room 340, but there was no discussion about any video recording equipment in the jury box, which she testified was filled with police officers routinely sitting there waiting for their cases to be called.

Ms. Walker also testified that in the beginning of 2019, she was looking through Facebook and she saw Judge Davis with a camera that pointed to her face and her calling cases. [T, Vol II, 7/8/22, p 271.] She further claimed that she heard Ms. Mullins's voice and Ms. Walker stated that she said to Ms. Mullins that she heard her voice from Facebook and she thought that it was being put on Facebook Live. Yet, no document or other exhibit was admitted into evidence that indicates that there was any such voice from Judge Davis that actually occurred.

Ms. Mullins, now a 28th District Court judge, was a witness for the JTC on July 13, 2022. Judge Mullins said nothing about Judge Davis's having published a court hearing on Facebook. The JTC attorney did not seek any testimony from Judge Mullins as to any recordings on Facebook.

Curiously, no alleged Facebook page of courtroom proceedings, purportedly from Judge Davis, was presented. No confirmation by Judge Mullins, who was present at the JTC hearing, and who allegedly was told by Shannon Walker that Judge Davis put a court hearing on Facebook, was adduced at the hearing on July 13, 2022.

Accordingly, there was no evidence from anyone supporting Ms. Walker's claim that Judge Davis published a court hearing to Facebook.

It should also be remembered that Ms. Walker testified that the video recording equipment was in the jury box. Such a claim is incongruent with all of the evidence that was elicited in the hearings.

Ms. Walker also claimed that, with respect to Judge Davis's vehicle being at the blue striped parking space in the parking lot near LA Fitness, she saw a security guard taking pictures of the vehicle.

Cassandra Starkey was called as a witness by the JTC counsel. She testified as follows:

Q. And what did you do at that point?

A. I went into the gym to let them know that someone was parked and I could not get into my car. He called security.

Q. Who was it that called security?

A. The manager.

Q. Okay. Did security arrive?

A. Yes.

Q. And what did the security officers do when they arrived?

A. He came. He looked. He says he couldn't get in there.
He said but he could --

MR. SCHWARTZ: Objection as to what the "he" is as to what that person said.

BY MS. DAJANI:

Q. Just tell us what the security officers did.

A. He walked around the car and identified there was a sticker on the window.

Q. A placard?

A. Yes.

[T, Vol IV, 7/13/22, pp 347-348.]

No testimony was elicited by Ms. Starkey that any security officers took pictures of Respondent's car. Ms. Starkey stated that she took a picture of Judge Davis's vehicle, which she said was before the police officer arrived. Thus, it was Cassandra

Starkey who took the pictures fo Judge Davis's vehicle, not a security guard as Ms. Walker stated.

Again Ms. Walker's testimony lacked any documentary support. The Master concluded that Ms. Walker was not credible. Ms. Walker's testimony lacked credibility.

With respect to credibility, the Master was in the best position to assess the witnesses. Judge Stephens, with decades of experience, is particularly able to make a determination of a witness' credibility.

The JTC is not compelled to defer to the master's findings of fact. *In re Chrzanowski*, 465 Mich 468, 480, 636 NW2d 758, 766 (2001). However, while the JTC may make recommendations as to discipline of judges, it is the Supreme Court that reviews the JTC's decision *de novo* and it is the Supreme Court that has the ultimate decision.

Thus, Ms. Walker appears to be unreliable as to her claims concerning items that she believes and her claim that she believed that Judge Davis published a court proceeding to Facebook, without confirmation from another source, does not warrant reliability and confidence.

F. Count VI

Count VI deals with a parking violation. Judge Davis parked in a space that was identified by blue stripes. There was a statute that indicates that such a space cannot

be used for parking immediately adjacent to a space designated for parking by persons with disabilities. Judge Davis is a person with disabilities. She has a license plate that signifies that she is a person with disabilities. She has a tag for the front windshield from the Michigan Secretary of State that indicates that she is a person with disabilities. Judge Davis's vehicle was in a space that was for unloading and loading for people with disabilities. She was unloading her walker from her vehicle and then loaded the vehicle with that same walker.

Police Officer Nathan Gyani arrived at the space where Judge Davis's vehicle was located. [T, Vol III, 7/11/22, p 288.] He performed a LEIN run of the vehicle and determined that the vehicle belonged to Kahlilia Davis. [T, Vol III, 7/11/22, p 289.] Officer Gyani viewed a placard that was on the driver's side window. [T, Vol III, 7/11/22, p 290.] When asked on cross-examination whether the placard meant anything to him, he stated that to him, it meant nothing. He stated that the placard did not confer any authority on Judge Davis to park in the blue striped space.

Officer asked Judge Davis if the vehicle in question was her vehicle, and she stated "yes." [T, Vol III, 7/11/22, p 291.] He then told her that it was illegal for her to have parked her vehicle in the space, to which he testified that she stated "I know." Office Gyani asked Judge Davis if she was on official business but he could not recall her answer. [T, Vol III, 7/11/22, p 291.] Officer Gyani indicated that he had no intention to impound her vehicle. [T, Vol III, 7/11/22, p 297-298.]

Officer Gyani told Judge Davis that she was not free to go and was being detained because he was conducting an investigation. [T, Vol III, 7/11/22, p 292.] Officer Gyani acknowledged that Judge Davis had the right to park in a handicapped space, just not in the blue striped space. Other than parking her vehicle in the blue striped space, there was no indication that Judge Davis engaged in any impropriety in connection with her event with Officer Gyani.

As to Judge Davis's event before Judge Alexis Krot, there was no disrespect. Judge Davis advised Judge Krot that she was required to return to her courtroom in Detroit to preside over her docket that day.

G. Count VII

Count VII involves alleged misrepresentation by Judge Davis, most of that which is claimed is not worthy of discussion.

The JTC, in its decision, limited the charges to one matter, to wit: the allegation concerning the video equipment.

As to Count VII(C), the JTC alleged that Judge Davis engaged in misrepresentation regarding the video recording equipment in Courtroom 340. Once again, there is a claim by Shannon Walker that Judge Davis did something that was wrong. In this matter, Ms. Walker claims that Judge Davis admitted to her of disabling the video recording equipment. Ms. Walker stated that she had to report this to the chief judge or court administrator.

If, in fact, Walker did make a report telling the chief judge or the court administrator that Judge Davis had disabled the video recording equipment, it would be beyond belief that the chief judge or the court administrator would not have brought such information to Judge Paul Paruk. However, there was nothing in any of the hearings that Judge Paruk was told of Ms. Walker's claim against Judge Davis. If Ms. Walker failed to bring her claim against Judge Davis to the chief judge or the court administrator, such would have been unusual because Ms Walker would then be subject to action by the Attorney Grievance Commission. Moreover, if, in fact, that Judge Davis actually made the statement to Ms. Walker about disabling a video recording equipment, why would it take 3 years for Ms. Walker to bring such information to the proper authorities—assuming that there really was such statement by Judge Davis.

There was no claim in the Second Amended Complaint that there was misrepresentation in Count VII referencing Count V.

II.

THE JTC'S CONDUCT IN QUESTIONABLE CONDUCT VIA-A-VIS RESPONDENT

Standard of Review

> Though the JTC makes recommendations in judicial tenure cases, this Court alone ultimately has the authority to sanction judicial officers. Const. 1963, art. 6, § 30. Consequently, we review the JTC's findings and recommendation de novo. *In re Servaas*, 484 Mich. 634, 642, 774 N.W.2d 46 (2009). The allegations must be

supported by a preponderance of the evidence. *Id. In re Morrow*, 508 Mich 490, 497, 976 NW2d 644, 648 (2022).

Respondent was elected as a 36th District Court judge on November 8, 2016. She took the oath of office at the end of that year. In that time and over two months later, Respondent was stricken with a serious health problem that required her to be treated in a hospital and then required her to have a period of recuperation. She was not able to commence her judicial duties on March 6, 2017, when she had received authorization by her treating physician that she was satisfactory to go to work.

A. Hostile Media Coverage and the JTC DRD's Discussion of the Same

Unfortunately, during the period of time from her election through the period of time in the beginning of 2017 through March 6, 2017, Respondent was the subject of hostile media coverage. The JTC, in its Decision and Recommendation for Discipline [hereinafter referred to as "DRD"], stated that "repeated media coverage in Wayne County ...casts not only Respondent, but the judiciary as a while, in a negative light." DRD p 43. The JTC stated as follows:

> In response to the Master's Report, disciplinary counsel noted at that time that a search of the internet revealed articles about respondent's inappropriate conduct on the following news sources: Fox2Detroit.com; ClickonDetroit.com; the Detroit Free press; the Detroit News; WXYZ.com; ABAjournal.com; Deadline detroit.com; and AP news.com. The news stories cover several years, from February 2017 in a Fox 2 story title

"The Case of the No Show Judge" to March 2022 stories regarding the amended complaint.

JTC DRD, pp 43-44.

The utilization of the media, which in present times is not always considered a reliable source of information, is an unfortunate basis for concluding that accusing a judge of wrongdoing. Such is generally not a reasonable basis to have an adjudication based upon media statements. "Court may not take judicial notice of newspaper articles as they constitute inadmissible hearsay." *People v McKinney*, 258 Mich App 157, 161 670 NW2d 254, 258 (2003).

The media have rights under the First Amendment to make statements in newspapers, on the radio, or on television, except under certain limited circumstances. However, even though the media is free to say what they want, the system of justice should not get into politicizing by joining in with rabble. When the Judicial Tenure Commission gets into the bed with those in the media who seek to scandalize the judiciary, questions should be asked lest the judiciary lose its reputation. There was no justification for the JTC to publish the screed that appears on pages 43-44 of the DRD.

In fact, during February, 2017, Respondent was recuperating from the surgery that she endured prior to her doctor's authorizing her to go to work. The media simply slathered Respondent with wrongful claims that were not the product of journalistic appropriateness. This serves to disparage Respondent in an effort to have her viewed with a jaundiced eye.

B. JTC's DRD Unwarranted Claim That Was Unreliable

The JTC's DRD, in footnote 1 on page 4, made what may simply have been a *faux pas*, but one which is not well served by the JTC or those who are responsible.

Respondent was not permitted to be on the ballot for the November 8, 2022, election because she had failed to pay all of her election fees, resulting in her making a statement on her affidavit of identity that was not correct. The JTC, in its DRD, set forth a statement that is as follows:

> Respondent's false statement in her affidavit of identity (AOI) was not charged as a basis for finding misconduct in any count of the SAFC. Accordingly, the Commission considers Respondent's sworn false statement in the AOI **only as a consideration in fashioning its recommendation for discipline**, and not for the underlying finding of misconduct. See *In re Moore*, 464 Mich 98, 117 &n16; 626 NW2d 374 (2001); see also *In re Morrow*, 508 Mich 490, 504 n4; 976 NW2d 644 (2022), citing *Moore*. Although Respondent's false statement was not a finding in connection with a disciplinary proceeding, see id., it was a factual finding of both the Court of Claims and Court of Appeals in formal proceedings, and each court noted that Respondent did not contest the falsity of her statement in the AOI. See Exs. A, B, *infra*. [Emphasis supplied.]

DRD, p 4, n 4.

In that statement, the JTC's DRD alleged that, under the authority of *In re Moore*, *supra*, that the JTC could consider Respondent's affidavit "only as a consideration in fashioning its recommendation for discipline." DRD, p 4, n 4. The

JTC's DRD also alleged that *In re Morrow, supra,* could also serve as an authority for fashioning the same recommendation.

However, the JTC claimed that the aforementioned statement which its DRD made regarding Respondent's affidavit, such does not accord with the actual opinions.

> The commission recommended that Judge Moore be suspended for nine months without pay. In so recommending, **the commission assessed previous discipline imposed on Judge Moore** and applied the Deming factors cited by this Court in *In re Brown*, 461 Mich. 1291, 1292-1293, 625 N.W.2d 744 (1999). See part III. We principally agree with the commission's analysis of the case under the Deming factors and that Judge Moore's history of such behavior requires a significant sanction. However, we have disagreed with a few of the findings of misconduct on which the sanction was based. Further, we agree with the commission that Judge Moore has been a diligent jurist during his twenty years on the bench and that he often means well, even where his judicial behavior has been inappropriate. Therefore, we modify the commission's recommendation and order that Judge Moore be suspended for six months without pay. [Emphasis supplied.]

In re Moore, 464 Mich 98, 133, 626 NW2d 374, 393–394 (2001).

Moore, cited by JTC's DRD, **did not** indicate that a certain incident, that was not the result of a disciplinary action, would warrant a consideration in fashioning its recommendation for discipline.

> As to the first factor, the JTC reasoned that there was a pattern or practice of misconduct because, in 2004, the State Court Administrative Office had sent respondent a letter warning him not to have personal conversations with coworkers and to refrain from hugging them. That conduct

> resulted in an admonishment from the JTC in 2005. There was also evidence that respondent made inappropriate remarks to female prosecutors in 2018 and 2019.
>
> Respondent contends that the JTC should not have considered uncharged conduct. But the JTC is obliged to consider prior discipline when making its recommendation. MCR 9.244(B)(1) ("The commission's report must include a list of all respondent's prior disciplinary actions under MCR 9.223(A)(2)-(5) or MCR 9.224 and must include an acknowledgement that the commission has included its consideration of any prior discipline in the commission's recommended action."). And we have upheld the consideration of evidence that a respondent judge had received admonitions and censures. See, e.g., *In re Moore*, 464 Mich. 98, 117 & n 16, 626 N.W.2d 374 (2001).
>
> Respondent cites *In re Simpson*, 500 Mich. 533, 902 N.W.2d 383 (2017), to argue otherwise, but **Simpson involved uncharged misconduct that never formed the basis for any disciplinary action.** Thus, **to the extent the JTC in this case considered other formal discipline**, the JTC acted appropriately. We need not determine whether the JTC erred by considering other uncharged misconduct that did not form the basis for official discipline because even if such conduct is excluded, we would conclude that a six-month suspension is appropriate. [Emphasis supplied.]

In re Morrow, 508 Mich 490, 505, 976 NW2d 644, 652 (2022).

Morrow did not provide sustenance for the DRD's claim as asserted in p 4, n 4. This Court determined that it was not necessary in *Morrow* to consider uncharged misconduct that did not form the basis for official discipline. The Court simply concluded that there were other bases for imposing discipline.

Moreover, the Second Formal Complaint made no mention as to Respondent's affidavit matter. *Morrow* did not determine whether the JTC could consider uncharged misconduct as a basis for official discipline.

There is a case in which the issue of uncharged misconduct was not considered by the Court, although two Justices did separately consider the same.

> Ryman was not charged in the formal complaint of the Tenure Commission with perjury or false swearing, and, therefore, he cannot properly be disciplined on that account.

In re Ryman, 394 Mich 637, 647, 232 NW2d 178, 181 (1975) [Levin and Kavanagh in dissent.]

The two Justices went further, as follows:

> Similarly, see *State Bar v. Jackson*, 390 Mich. 147, 155, 211 N.W.2d 38, 42 (1973), where this Court held that a lawyer 'may only be found guilty of misconduct as charged in the complaint. See, *In Re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968).

Id, n 1.

Given this Court's opinions in *State Bar v Jackson, supra*; *Matter of Crain,* 400 Mich 484, 491, 255 NW2d 624, 626 (1977); and *In re Corace,* 390 Mich 419, 425, 213 NW2d 124, 128 (1973), and the seminal opinion of *in re Ruffalo*, 390 US 544, 88 SCt 1222, 20 LEd2d 117 (1968), it appears that what is appropriate for lawyers, if the formal complaint did not include charges and the lawyer in question could not be disciplined for a non-charge, such should be applicable for judges or magistrates.

Accordingly, it is submitted that the JTC's DRD effort to consider recommending discipline that would include consideration of non-charges should be disregarded. It is also suggested that the JTC be instructed not to engage in the JTC's desire as set forth in p 4 and n 4 of the DRD's recommendation.

III.

THE CONDUCT BY FORMER 36TH DISTRICT COURT CHIEF JUDGE NANCY BLOUNT SERVED TO CREATE THE PROBLEMS THAT CAUSED THE JTC TO PURSUE CLAIMS OF MISCONDUCT AGAINST RESPONDENT.

Standard of Review

> Though the JTC makes recommendations in judicial tenure cases, this Court alone ultimately has the authority to sanction judicial officers. Const. 1963, art. 6, § 30. Consequently, we review the JTC's findings and recommendation de novo. *In re Servaas*, 484 Mich. 634, 642, 774 N.W.2d 46 (2009). The allegations must be supported by a preponderance of the evidence. *Id. In re Morrow*, 508 Mich 490, 497, 976 NW2d 644, 648 (2022).

As has been indicated *supra*, there were some mistakes that Respondent made that were inappropriate.[3] Other issues that were alleged in the Second Amended Formal Complaint involved require an analysis that will be set forth herein.

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[3] Some of those mistakes include Respondent's holding Jerry Johnson in contempt in *Sanders v Thomas,* 36th District Case No. 17-321869-LT; and Respondent displayed a Detroit Police Department placard in her vehicle when a police officer responded to a citizen's complaint at a parking lot at the LA Fitness center.

A. Chronology of Respondent's Tenure as Judge in the Blount Era

The JTC claims that Respondent breached the standards of judicial conduct by "engaging in misconduct in office and persistent failure to perform judicial duties, contrary to the Michigan Constitution Art 6, Section 30(2)." The JTC claimed that Respondent engaged in routine tardiness and missing days of work. In essence, the JTC portrays Respondent as being a perpetual absentee.

Respondent's time during her tenure is set forth herein:

1/1/2017-3/6/17	Respondent was incapable of being in court due to medical problems for which she was hospitalized and requiring significant recuperation thereafter that prevented her from performance on judicial duties until March 6, 2017.
3/6/17-7/9/17	Respondent performed judicial duties.
7/9/17-9/17	Respondent had a leg infection that was cut out of their thigh. Respondent's physician gave her release to in August but Judge Blount told Respondent not to return to work until September, 2017.
9/17-10/20/17	Return to work.
10/20/17-4/1/18	Judge Blount removed Respondent from adjudicative responsibilities.
4/2/18-4/30/18	Respondent was restored to adjudicative responsibilities by standing in for Judge Cylenthia Miller.
4/30/18-5/13/18	Respondent was hospitalized and required recuperation thereafter.
5/18/18-5/31/18	Respondent stood in for Judge Miller

7/1/18-12/27/18	Respondent was placed on status as an auxiliary judge by Judge Blount, which essentially put Respondent in a non-adjudicative status with minimal standing for which she was required to serve for approximately 15 days with no responsibility thereafter.
1/1/19-1/31/19	Respondent was placed back in Room 340 and had the business license docket.
2/1/19-3/4/19	Judge Blount limited Respondent's business license docket to one day a week on a Wednesday. Respondent had no other responsibility for the other days of the week.
3/4/19-1/1/20	Judge Blount told Respondent that she was no longer required to be present at the court house and no longer had any duties or responsibilities.
1/1/20-6/17/20	Judge Blount ceased being Chief Judge of the 36th District Court on January 1, 2020 and Judge William McConico became Chief Judge at that time. Respondent was put back onto normal judicial adjudication and remained in the role until June 17, 2020.
6/17/20-present	On June 17, 2020, at the request of the JTC, Respondent was placed on interim suspension, with pay, denying the JTC's request for pay to be withheld.

As can be observed, other than the interim suspension that commenced on June 17, 2020, Respondent's medical health leave was 109 days; her time at work was 249 days; Judge Blount's removal of Respondent from adjudicative responsibilities was 180 days; Blount's assignment of Respondent to the auxiliary was 180 days; Blount's assignment of Respondent to limited business license matters was 17 days; and Blount's removal of Respondent from the Court House was 302 days.

Judge Blount's punishment of Respondent was either minimizing Respondent's responsibilities and duties or removing Respondent from the Court House, totaling 679

days. Thus, in her role as Chief Judge, Judge Blount's minimizing and/or completely nullifying Respondent's ability to engage in adjudication was far greater than Respondent's role as adjudicator.

B. The Era of Judge William McConico

As of the end of December 31, 2019, Judge Blount ceased being the Chief Judge of the 36th District Court and Judge McConico was appointed by this Court as Chief Judge of the 36th District Court, commencing January 1, 2020. The Respondent no longer had any difficulties. Respondent was provided with a court reporter, just as has been the practice of the overwhelming number of the judges of the 36th District Court. Respondent continued to serve as an adjudicator during Chief Judge McConico's position until, on June 17, 2020, the Supreme Court, upon the JTC's request, imposed an interim suspension on Respondent after the JTC filed a Formal Complaint against Respondent.

IV.

THE ABILITY TO ASSESS AND ASCERTAIN THE CREDIBILITY OF WITNESSES IS CENTRAL TO DETERMINATION TO THE OUTCOME OF A MATTER

The Standard of Review

> Our power of review *de novo* does not prevent us from according proper deference to the master's ability to observe the witnesses' demeanor and comment on their credibility. *Matter of Jenkins*, 437 Mich 15, 22, 465 NW2d 317, 320 (1991).

One of the more significant aspects of arriving at a decision in adjudication is to establish the credibility, or lack thereof, of witnesses. The role of a Master is not unimportant. In fact, it is a key to achieving assessment of credibility of witnesses.

> The power to discipline a judge resides exclusively in this Court, but it is exercised on recommendation of the JTC. Const 1963, art 6, § 30. Respondent's complaints with regard to the master's factual findings amount to a disagreement about the weight and credibility that should be afforded to the various witnesses. The master, as trier of fact, was in the best position to assess the credibility of the witnesses. Our power of review de novo does not prevent us from according proper deference to the master's ability to observe the witnesses' demeanor and comment on their credibility.

In re Noecker, 472 Mich.1, 9–10, 691 NW2d 440, 444–445 (2005).

> Our power of review de novo does not prevent us from according proper deference to the master's ability to observe the witnesses' demeanor and comment on their credibility.

Matter of Loyd, 424 Mich 514, 535, 384 NW2d 9, 19 (1986).

In connection with *Eck*, Judge Davis, based upon Eck's admitting falsely notifying residents that the Court entered an order evicting them from their houses, Judge Davis ordered that Eck make a payment to the victim of the eviction, plus a fine to the Court. In *Johnson*, Judge Davis, based upon information that Johnson had falsely served a resident with a summons and complaint, for which Judge Davis held him in contempt, and ordered that he be in jail for 5 days. The question is not simply that Judge Davis engaged in contempt proceedings, but rather whether the Judge did

so maliciously. However, there was no indication that Judge Davis had engaged in such. In fact, neither Eck nor Johnson testified in the disciplinary hearings.

> One principle that has guided this Court's disciplinary analysis, but which is not expressly accounted for by the *Brown* factors, is the principle that dishonest or selfish conduct warrants greater discipline than conduct lacking such characteristics. Generally speaking, we have imposed greater discipline for conduct involving exploitation of judicial office for personal gain.

In re Morrow, 496 Mich 291, 302–303, 854 NW2d 89, 96 (2014).

What the hearings showed was that Judge Davis did not exploit judicial office for person gain. Judge Davis received nothing, other than her salary that she received from being a judge. Judge Davis has not engaged in selfish conduct.

The contempt order by Judge Davis as to Johnson is

> The partial dissent also suggests that respondent's error was misconduct because the contempt order violated a basic principle of civil contempt—that the contemnor must be given the "keys to the jailhouse." But again, it is not the violation of basic principles of law that transforms legal error into misconduct; it is acting without good faith and due diligence that compounds legal error and gives rise to judicial misconduct. For the reasons previously stated, we conclude that respondent acted in good faith and exercised due diligence.

In re Gorcyca, 500 Mich 588, 641, 902 NW2d 828, 855 (2017).

The Second Amended Complaint claimed that Judge Davis engaged in misrepresentation of statements that she had given in connection with depositions that the JTC had taken. For example, Judge Davis said that she had not received training

from the 36th District Court. However, even former Chief Judge of 36th District Court admitted that the training was much abbreviated for Judge Davis while other new judges had full training. [T, Vol I, 7/7/22, p 47.] Judge Davis had no training with respect to video recording equipment, which she was unable to operate as a result. [T, Vol V, 7/15/22, p 406.] There was no effort by Judge Davis to engage in intentional misrepresentation or misleading statement. Misrepresentation must be intentional in order to establish judicial misconduct.

> [W]e do not believe that the JTC has sustained its burden of proving by a preponderance of the evidence that respondent made an intentional misrepresentation or misleading statement.

In re Simpson, 500 Mich 533, 553, 902 NW2d 383, 395 (2017).

The Second Amended Complaint claimed that Judge Davis made a misrepresentation concerning the video recording equipment in Courtroom 340. However, in testimony given by witnesses who were called by the JTC, it became obvious that those witnesses were the ones who made misrepresentations as to the video recording equipment, not Judge Davis.[4] Certainly the JTC cannot sustain its burden as to the alleged misrepresentation.

Judge Davis is alleged to have committed misrepresentation regarding her not being able to have an official record of proceedings in Courtroom 340. Anyone in

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[4] See testimony by Dionne Drew, T, Vol II, 7/8/22, pp 224, 235, and testimony by Morgan Hairston, T, Vol II, 7/8/22, pp 240-241, 255-256, 256-257.

Courtroom 340 would be aware of two obvious factors, to wit: there was no video recording equipment being operated, and there were no court reporters in the courtroom. Thus, it is whimsical at best that any parties and attorneys would see that an official record was not being made because there was nothing to provide the same. The reason was that the 36th District Court neither provided Judge Davis with training on the video recording equipment nor court reporters. The 36th District Court administration was not oblivious to lack of training and the denial of court reporters. Apparently, either they did not care to do what was necessary for official records to be made in Judge Davis's Courtroom 340, or they had another objective. The claim that Judge Davis engaged in misrepresentation in this matter is floccinaucinihilipilification. It certainly does not provide a basis for establishing a preponderance of the evidence regarding all of the claims of misrepresentations set forth in Count VII of the Second Amended Complaint.

> A common definition of "misrepresent" is "to give a false or misleading representation of usually] with an intent to deceive or be unfair[.]" Note that "misrepresent" is defined in terms of a "misleading" statement, which renders the meaning of "misleading" somewhat tautological. But a common definition of "mislead" is "to lead in a wrong direction or into a mistaken action or belief often by deliberate deceit[.]" These definitions make clear that both a misrepresentation and a misleading statement generally include an actual intent to deceive. While the definitions do not categorically exclude a lesser mens rea, we believe that respondent makes a solid point that "[i]t is inconsistent to find one without the other as both seemingly require a wrongful intent to misdirect."

> Even though there may be some instances in which a misrepresentation and a misleading statement are not based on an actual intent to deceive, we believe that, at a minimum, there must be some showing of wrongful intent. In this case, respondent merely speculated as to her intent and other than the possibility that the guess was self-serving, which the Commission acknowledged and rejected, we cannot conclude that respondent's guess is akin to either a misrepresentation or a misleading statement.

Gorcyca, *supra* 500 Mich at 639; 902 NW2d at 854.

Judge Davis did the best that she could in her role as a 36th District Court Judge. While she did make mistakes, as virtually everyone does, she did not act in a manner intentionally designed to cause harm. Having spent her legal career mostly in criminal defense prior to being elected as a judge, she worked diligently in her judicial work.

Unfortunately, she was subject to disparate treatment by Judge Nancy Blount, who was chief judge of the 36th District Court during 2013 to the end of 2019. From 2017, when the term as a judge commenced, to the end of 2019, after which Judge Blount was no longer the chief judge, Judge Davis was deprived of the necessities of being a judge. She was deprived of having a courtroom court reporter, when, in 2019, she was moved to Courtroom 340, even though almost all other judges were provided with court reporters. By being placed in Courtroom 340 which was on one side of the court building, and placing her chambers on the other side of the court building far away from Courtroom 340, Judge Davis was placed in a most difficult position. Inasmuch as she has been disabled long before being a judge and continuing to the

present, it was a major problem for her. Walking down to the chambers from Courtroom 340, caused her to become exhausted and to make it difficult for her to breathe. The 36th District Court administration was aware of Judge Davis's plight, but they did nothing to accommodate her.

A review of the Findings of Fact provides a basis for concluding as to the lack of the JTC's having achieved a preponderance of the evidence concerning each of the Counts that are set forth in the Second Amended Complaint.

Now, she was being investigated by the JTC for 5 years and has been suspended on an interim basis. It is submitted that the present situation should never have occurred. Even where Judge Davis may have erred in some cases that were before her, judicial misconduct is not what she committed.

V.

THE ANALYSIS AS TO THE SANCTIONS THAT ARE TO BE IMPOSED

Standard of Review

> The purpose of the judicial disciplinary process is to protect the people from corruption and abuse on the part of those who wield judicial power." *In re Brennan*, 504 Mich. 80, 83–84, 929 N.W.2d 290, 292 (2019). This Court's overriding duty in the area of judicial discipline proceedings is to treat equivalent cases in an equivalent manner and ... unequivalent cases in a proportionate manner. *Id*, 504 Mich at 84, 929 NW2d 290 at 292. Findings of misconduct must be supported by a preponderance of the evidence. Although we review the JTC's recommendations de novo, this Court generally will

> defer to the JTC's recommendations when they are adequately supported. *In re Haley*, 476 Mich 180, 189, 720 NW2d 246, 251 (2006).

Determining a sanction is a troublesome decision that is difficult. Sometimes, as when a judge engages in fraud or taking a bribe the sanction to be meted out is simple. Other matters are no so easy.

The matter which this Court is facing involves some unusual circumstances. For example, Respondent was the victim of her Chief Justice who sabotaged her and who made her life a hell. It was only after Judge McConico became Chief Justice of the 36th District Court that Respondent was freed from the unpleasantness to which she was forced.

Had Judge Davis not been subject to Judge Blount's actions, Respondent would not have been a respondent facing the JTC. Had Respondent had a court reporter, as required by MCL 600.8602(1), Respondent would have always have had courtroom hearings recorded. Instead, she had no court reporter because Judge Blount and her minions refused to have a court reporter provided to Respondent. Judge Blount allowed 25 36th District judges to utilize court reporters, even though each of those same 25 judges had video recording equipment in their courtrooms that are presently unused. Judge Blount did not provide Respondent with training for video recording equipment. Blount said that Respondent should have been trained [see T, Vol. I, 7/7/22, p 85.] However, Judge Blount later admitted that she did not know if any

training was undertaken. [T, Vol. I, 7/7/22, p 86.] Respondent's courtroom clerk, Dionne Drew, testified that she did not believe that any training of Respondent occurred. [T, Vol. II, 7/8/22, p 203.]

Both Dionne Drew and Morgan Hairston gave testimony in which they made statements that were accusations against Respondent. However, as indicated earlier in this brief, their claims were highly questionable because they would not have had the ability to see things [i.e. cords] in the floor of the judge's bench when they could not see through opaque barrier.

Thus, the JTC's claim that Respondent engaged in a shabby allegation does not constitute preponderance of the evidence. Respondent received no benefit. She was entitled to a court reporter under MCL 600.8602(1). She was the only judge in the 36th District Court who did not have the right to choose a court reporter.

There is no evidence that establishes that Respondent engaged in maliciousness.

With regards to cases that have been adjudicated by this Court, the following are of some instruction.

1. The JTC recommended that the Hon. J. Cedric Simpson be removed from office based upon a number of misconduct findings. This Court found that such recommendation was inappropriate and imposed a nine-month suspension and costs.

> At the outset, we could locate no finding in the master's report that respondent "lied under oath" as the partial dissent suggests. Instead, the penultimate sentence of the master's report provides that "Respondent made

> misleading statements to the Commission's investigators and to the Master when he testified to the nature of the text messages and denied interfering with the police investigation and the prosecution of Ms. Vargas." But it is far from clear that a "misleading statement" is equivalent to a "lie under oath." We have not yet addressed, for example, whether materiality or an intention to deceive are necessary to prove that a judge testified falsely under oath. Before being removed from office, a respondent judge is certainly entitled to an opportunity to provide input on these critical questions (as well as whether the specific elements are proved in a given case, if we decide they are necessary).

In re Simpson, 500 Mich 533, 570–571, 902 NW2d 383, 405 (2017).

> Respondent's judicial misconduct warrants a serious sanction to restore the public's faith and confidence in the judiciary. However, for the reasons explained above, we conclude that the recommended sanction of removal from office is disproportionate to the misconduct. We therefore modify the JTC's recommendation and order that the Honorable J. Cedric Simpson, judge of the 14A District Court, be suspended without pay from the performance of his judicial duties for a period of nine months. In addition, because respondent engaged in conduct involving "intentional misrepresentation" or "misleading statements" under MCR 9.205(B), we order him to pay costs in the amount of $7,565.54. Finally, pursuant to MCR 7.315(C)(3), the Clerk is directed to issue the order forthwith.

Id, 500 Mich at 572, 902 NW2d at 405–406.

The Supreme Court, based upon its view of the circumstances, denied following the JTC's recommendation that Judge Simpson be removed from his judicial position and ordered a nine-month suspension.

2. The JTC recommended that Steven R. Servaas be removed from his judicial position..

> The Judicial Tenure Commission (JTC) recommended that this Court remove 63rd District Court Judge Steven Servaas (respondent) from office for vacating his office, as well as for judicial misconduct involving a comment and two drawings of a sexual nature. Because we conclude that the only appropriate forum to determine whether respondent vacated his judicial office is a quo warranto action filed by the Attorney General in the Court of Appeals, we reject the JTC's recommendation as to the vacation of office claim. Respondent's conduct concerning the comment and two drawings was unquestionably inappropriate; however, a majority of this Court concludes that respondent's conduct did not rise to the level of blatant judicial misconduct requiring the most severe sanction: removal from office. In this respect, we view respondent's actions as an aberration given his 35 years of apparent unblemished service as Judge of the 63rd District Court. Accordingly we impose public censure only.

In re Servaas, 484 Mich 634, 637, 774 NW2d 46, 47 (2009).

As indicated in its opinion, the Supreme Court decided that a censure was a proper sanction.

3. The Supreme Court reviewed a recommendation by the JTC that the Hon. Louis Simmons be censured for alleged acts of judicial misconduct. However, after having reviewed the report and recommendation of the Judicial Tenure Commission together with the petition by Judge Simmons and the response thereto and have considered the oral arguments of counsel, the Supreme Court concluded that imposition of a public censure on this judge was not appropriate. Accordingly, the Supreme Court

rejected the JTC's recommendation and imposed no punishment. *Matter of Simmons*, 444 Mich, 781, 513 NW2d 425 (1994).

The Supreme Court has the ultimate decision on discipline for judges. As demonstrated above, the Supreme Court is not bound by the JTC's recommendations. The Supreme Court's exercise of the proposed discipline of Respondent is not limited to the JTC's views. For, not all of the JTC's conclusions are appropriate. Respondent was prohibited in large measure from resources that should have been made available to her at the 36th District Court during the Blount era. It was only after Blount ceased as Chief Judge, and Judge McConico took over, that Respondent was provided the resources that all other 36th District Court judges enjoyed.

Request for Relief

Respondent recognizes that she did make some mistakes. She did not engage in intentional wrongdoing. The JTC recognized that their claim about misrepresentation is not based upon strong evidence. Thus, the JTC decided to limit their recommendation to one claim about misrepresentation, to wit: the weak allegation concerning a purported playing with cords from video recording equipment. For reasons set forth in this Brief, it is demonstrated that the JTC failed to prove a preponderance of evidence regarding the video recording equipment claim.

Respondent had been the subject of injection by the JTC for 5 years. She has been under the interim suspension for 2½ years. To the extent that this Court

determines that a sanction is required, it is submitted that such be limited to a sanction that is not greater than the suspension that is currently in effect.

Dated: October 21, 2022

SCHWARTZ, PLLC

By:

/s/ Michael Alan Schwartz

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VERIFICATION

I, Kahlilia Y Davis, do hereby certify, under the penalties of perjury, that the information contained in the accompanying Petition is correct to the best of my information, knowledge and belief.

10/21/22

KAHLILIA Y. DAVIS

CERTIFICATE OF COMPLIANCE

I, MICHAEL ALAN SCHWARTZ, does hereby certify that and states the following:

1. I am the sole owner of SCHWARTZ, PLLC, and I prepared Respondent's Petition for review by the Michigan Supreme Court.

2. The brief prepared by me complies with print type requirements.

3. I rely upon the word count of the word processing system that I used to prepare respondent's brief, using Times Roman size that is 13 point font.

4. The word processing system that I utilize counted the number of words in the Petition of the Brief as 12,603.

/s/ Michael Alan Schwartz
MICHAEL ALAN SCHWARTZ, P-30938