

September 11, 2014

Via regular mail and email to fischerp@courts.mi.gov

Paul J. Fischer, Esq.
Executive Director & General Counsel
Judicial Tenure Commission
Suite 8-450, Cadillac Place Bldg
3034 W Grand Blvd
Detroit MI 48202

re: Request for Investigation #2014-20857

Dear Mr. Fischer:

This letter responds to yours of June 6, 2014, as to which you have graciously extended the time for response to today's date. This letter, submitted pursuant to the provisions of MCR 9.207(D)(1), is based on my careful review of mutually available materials as well as my investigation of the underlying facts and my knowledge as to what testimony would be elicited should the matter proceed to a hearing. For all the reasons set out below, and for all of the reasons set out in Judge Simpson's April 18, 2014, answer to the request for investigation in this matter, which answer is incorporated by reference herein, I respectfully submit that the Commission should conclude that Simpson's conduct at issue in this matter did not violate the Michigan Code of Judicial Conduct and that there is, therefore, no basis for continued investigation or action in this matter.

Clarification of the relevant facts is key to a proper understanding and resolution of this matter. Paragraphs 5-7 of your June 6 letter imply a personal and/or social relationship between Judge Simpson and Crystal Vargas. There was no personal or social relationship between Judge Simpson and Ms. Vargas, and, if this matter were to proceed to a hearing, the undisputed testimony would establish that –

- Judge Simpson did *not* at any time have social contact with Ms. Vargas other than in group settings including other law students and/or court staff;
- his contact with Ms. Vargas at such gatherings was no different from his contact with other students;
- Judge Simpson did *not* have a social relationship with Ms. Vargas; and
- Judge Simpson did *not* treat Ms. Vargas differently from any student or intern with

respect to providing his cell phone number or home address.

Through Ms. Vargas' internship with him, Judge Simpson was aware of problems Ms. Vargas was having with a former boyfriend who had apparently been violent toward her and was apparently stalking her; he was concerned for Ms. Vargas' safety, and he had communicated with her as to the availability of resources to help her in the event she needed help. This is hardly social contact or contact that is in any way inappropriate, however. Judge Simpson regularly provides his cell phone number to all interns assigned to his court, and he holds an annual staff/intern bonfire to which all staff and interns are invited. He provided Ms. Vargas and all other interns his home address for the purpose of enabling all of them to attend the bonfire. Any suggestion that Judge Simpson had an inappropriate relationship with Ms. Vargas, that she had been to his home prior to her arrest or that he had knowledge that she had been drinking prior to her arrest is untrue and would not be supported by any evidence at a hearing.¹ Moreover, Ms. Vargas has already testified at her *de bene esse* deposition that she neither expected, requested nor received any special treatment from Judge Simpson.

Paragraphs 8-27 question the propriety of Judge Simpson's conduct when he responded to Ms. Vargas' telephone call to him at approximately 4:30 a.m. on September 8, 2013, that she had been in an automobile accident. The best evidence of how Judge Simpson conducted himself at the scene is the police videotape of the events following the officer's arrival at the scene. This videotape explicitly documents that –

- Judge Simpson did *not* at any time while at that scene in any way intrude on the officer's conduct of his investigation;
- he did *not* otherwise interfere in any way with the officer's work at the scene; and
- he did *not* ask for or suggest or imply in any way that he wanted special treatment for Ms. Vargas.

To the contrary, the videotape provides extremely strong evidence that Judge Simpson conducted himself appropriately throughout the time he was at the scene. Moreover, the videotape documents that it was the arresting officer's idea that Ms. Vargas give Judge Simpson her car keys and cell phone following her arrest. If this matter were to proceed to a hearing, *no* evidence would support a claim that Judge Simpson acted inappropriately while at the scene of Ms. Vargas' accident.

¹Judge Simpson was divorced not long before September 2013, his teenage daughter lives with him, and both his son and his daughter were with him for the entire weekend beginning Friday afternoon, September 6, 2013. Judge Simpson was not dating anyone at the time, and even if he had been, he would not have brought a date to his home while his children were there.

Paragraphs 28-33 question Judge Simpson's conduct following Ms. Vargas' release from jail after her arrest. In particular, paragraph 29 is incorrect in asserting that Judge Simpson "instructed Ms. Vargas to come to your house"; to the contrary, Ms. Vargas showed up at his home unexpectedly following her release from jail, nor would there be any testimony to the contrary in the event this matter were to proceed to a hearing. While it is correct that Judge Simpson used his credit card to pay the towing charges for Ms. Vargas' car, he did so only after Ms. Vargas' multiple attempts to use a debit or credit card of her own were rejected. Moreover, Ms. Vargas repaid Judge Simpson in full within days of retrieving her car. Ms. Vargas has provided documentary confirmation to your staff that she did not have sufficient funds in her debit card account to use it to pay the towing charges and that on September 10, 2013, her mother deposited enough money into that account so that she could repay Judge Simpson in full and that she promptly did so. There was nothing in any way improper about Judge Simpson's conduct in going with Ms. Vargas to retrieve her car or in paying the towing charges for her, nor would any evidence establish otherwise.

Paragraphs 34-53 question Judge Simpson's contacts with Pittsfield Township attorney Victor Lillich in relation to Ms. Vargas' arrest. While it is correct that Judge Simpson had three telephone conversations with Mr. Lillich regarding Ms. Vargas' arrest, it is incorrect to assert or imply, as particularly suggested in paragraphs 40 and 47, that Judge Simpson sought any special treatment whatever for Ms. Vargas or that he expressed concern that she would be "railroaded" in court. To the contrary –

- If this matter were to proceed to a hearing, Mr. Lillich would testify that Judge Simpson did *not* at any time ask for or imply that he wanted any special treatment for Ms. Vargas, he does not recall Judge Simpson having stated or suggested that he wanted to help Ms. Vargas or was fearful of her being "railroaded", and he does not believe that Judge Simpson would have made either such statement;²
- Judge Simpson had a legitimate basis for wanting an opportunity to review the police reports and related information regarding Ms. Vargas' arrest, since she was an intern in his chambers and it was important to him to determine whether she could be trusted as an

²That Judge Simpson was not seeking any special treatment for Ms. Vargas from anyone is well-illustrated by the following: (1) He promptly, specifically reminded Ms. Vargas of her obligation, pursuant to Cooley Law School policy, to self-report her arrest to the school; (2) on Monday, September 9, 2013, he personally reported her arrest to the law school, as also required by the school's policies; (3) because Ms. Vargas was an intern at the court, he promptly, personally reported the fact of her arrest to the chief judge *pro tem*, Hon. Richard E. Conlin; and (4) when Ms. Vargas was required to be in court for hearings in the case against her, Judge Simpson instructed her that she could not use the building access accorded her as an intern but would have to use the same entrance used by the public.

intern and, in particular, whether she had been fully truthful with him in what she had reported to him concerning her arrest. Further, given the significant differences in blood alcohol levels reported at the scene and not long thereafter at the jail, there was a legitimate basis for questioning the reliability of the on-scene testing, and it was important to Judge Simpson, for his purposes in evaluating whether to retain Ms. Vargas as an intern, to have a full understanding of what Ms. Vargas' blood alcohol level had been at the scene; and

- With respect to Ms. Vargas' retention of an attorney, Judge Simpson does not specifically recall his conversation with Mr. Lillich as to this subject, and it is possible that he and Mr. Lillich may have discussed the names of several local attorneys Judge Simpson had already mentioned to Ms. Vargas as competent attorneys to consider retaining, since he had done so well before speaking with Mr. Lillich. Any such discussion was permissible, however, as there is nothing inappropriate about a judge providing an individual with the names of attorneys they may wish to consider retaining in a matter, and the allegations of paragraphs 50-52 are incorrect in suggesting that Judge Simpson intruded on Ms. Vargas' decision as to counsel.

With respect to the allegations of paragraphs 54-56, Ms. Vargas' decision as to whether to retain counsel and, if so, whom to retain was hers to make, and Judge Simpson did *not* at any time interfere with that decision-making. The allegation of paragraph 54 is incorrect, as Judge Simpson did not "instruct[] her [Ms. Vargas] to contact Mr. Shea"; Judge Simpson merely and properly gave Ms. Vargas the names of three attorneys she might consider retaining; he left it to her to decide for herself whether to find their contact information and whether or not to contact any of them or another attorney altogether. While it is correct, as asserted in paragraphs 55 and 56, that Judge Simpson spoke with attorney John Shea regarding Ms. Vargas' arrest after Ms. Vargas had retained him, the nature of the conversation was informational only. Judge Simpson did not intrude on the attorney-client relationship or assist or attempt to assist Mr. Shea in his representation of Ms. Vargas, and there was nothing inappropriate about the conversation. In the event this matter were to proceed to a hearing, there would not be any evidence to the contrary.

Judge Simpson understands and accepts that a judge must at all times maintain and personally observe high standards of conduct. He takes this standard of behavior seriously, and he acts in accord with it in all aspects of his life. He also acts on his values in many Bar- and community-oriented ways, including having served as a commissioner of the State Bar, president of the Washtenaw County Bar Association and a member of the Michigan State Bar Foundation. Judge Simpson has also served on the boards and, in some cases, as president or other board officer, of numerous community organizations, including the Community Action Network, Peace Neighborhood Center, Ypsilanti Corner Health Center and Dawn Farms.

Judge Simpson understands that there can be a fine line between what a judge may and may

Paul J. Fischer, Esq.
Executive Director & General Counsel
Judicial Tenure Commission
September 11, 2014
Page 5

DRAFT 9/11/2014 – #2

not ethically do as a private citizen and that caution is always warranted. At all times in connection with the matter under investigation, he attempted to conform his conduct to these high standards, but he also understands that, in retrospect, he could have avoided even being questioned as to his conduct if he had not gone to the scene of the accident and had not communicated with Mr. Lillich about Ms. Vargas' arrest. However, because the testimony, if this matter proceeds to a hearing, would establish that he did not have an inappropriate relationship with Ms. Vargas and did not at any time use or attempt to use his judicial office to gain special treatment for Ms. Vargas, either at the scene or from Mr. Lillich or anywhere else, a hearing would establish that Judge Simpson acted appropriately in this matter and did not in any way undermine public respect for or confidence in the judiciary.

For all of these reasons, I respectfully submit that this request for investigation should be resolved without the filing of a formal complaint.

Finally, pursuant to MCR 9.207(D)(3), I request that the Commission offer Judge Simpson an opportunity to appear informally before the Commission to present relevant information and answer any questions or concerns any member of the Commission might have.

Thank you in advance for your attention to this matter.

Sincerely,

Kenneth M. Mogill

//
c: Hon. J. Cedric Simpson