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1 STATE OF MICHIGAN
2 BEFORE THE JUDICIAL TENURE COMMISSION
3 -----
4 COMPLAINT AGAINST:
5
6 Hon. J. Cedric Simpson Formal Complaint No. 96
7 14-A District Court
8 415 West Michigan Avenue
9 Ypsilanti, Michigan 48202
10 -----
11 P R O C E E D I N G S
12 held before the Michigan Judicial Tenure Commission at
13 3034 West Grand Boulevard, 14th Floor, Detroit, Michigan, on
14 Monday, June 8, 2015, commencing at or about 10:00 a.m.
15 APPEARANCES:
16 For the MJTC: MICHIGAN JUDICIAL TENURE COMMISSION
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1 APPEARANCES, (CONT'D.):
2 PRESIDING MEMBER:
3 Hon. David H. Sawyer, Chairperson
4 COMMISSION MEMBERS PRESENT:
5 Mr. Thomas J. Ryan, Esq., Dean
6 Ms. Nancy J. Diehl, Esq., Secretary
7 Hon. Pablo Cortes
8 Hon. Nanci J. Grant
9 Hon. Monte J. Burmeister
10 Hon. Michael M. Hathaway
11 Ms. Melissa B. Spickler
12 Mr. David T. Fischer
13
14 ALSO PRESENT: Hon. J. Cedric Simpson
15 and others
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1 Detroit, Michigan
2 Monday, June 8, 2015 - 10:00 a.m.
3 COURT OFFICER: All rise. The Judicial Tenure
4 Commission for the State of Michigan is now in session.
5 Please be seated.
6 THE CHAIRPERSON: Good morning.
7 ALL: Good morning.
8 THE CHAIRPERSON: I'm David Sawyer, chairman
9 of the Michigan Judicial Tenure Commission. Pursuant to
10 MCR 9.216, the Commission is conducting a public hearing
11 in the matter of Formal Complaint No. 96 In re:
12 J. Cedric Simpson, a judge of the 14-A District Court in
13 Washtenaw County, Michigan.
14 The other members of the Commission are,
15 starting at my right -- and, well, let's see. Starting
16 to my right, yeah. No. I've got it turned around here.
17 Pablo Cortes, who is a district judge elected
18 by his fellow district judges, is from the Grand Rapids
19 area, Wyoming to be exact.
20 Thomas Ryan, past president of the State Bar.
21 And seated next to him, elected to the Commission, a
22 member of the State Bar. Mr. Ryan is the current dean
23 of the Commission, so we rely heavily on his expertise
24 and knowledge.
25 Dave Fischer is one of the two civilian

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<p>1 members that is neither an attorney nor a judge. He was 2 appointed to the Commission by Governor Snyder. 3 Mr. Fischer is not related in any way to the Examiner, 4 Paul Fischer. 5 Then there is the Honorable Michael M. 6 Hathaway, a Wayne Circuit judge, elected by the members 7 of the State Bar. 8 To my right is Nancy Diehl, another past 9 president of the State Bar of Michigan, elected to the 10 Commission by members of the State Bar. Ms. Diehl also 11 serves as Commission secretary. 12 Next to her is the Honorable Nanci J. Grant, 13 the chief judge of the Oakland Circuit, elected by her 14 fellow circuit judges. Judge Grant is an immediate past 15 chair of the Commission. 16 Next to the her is the Honorable Monte 17 Burmeister, Crawford County Probate Court, elected by 18 his fellow probate judges. 19 And our final last person, not to be outdone 20 here and to be introduced, is Melissa Spickler, the 21 other civilian member that is neither an attorney nor a 22 judge, who was appointed by Governor Snyder. 23 I would first like to thank the Court of 24 Appeals -- I guess I'm thanking myself from the Court of 25 Appeals -- and the staff for allowing the Commission to</p>	<p>1 end of the presentation. Each side will have a total of 2 30 minutes to argue the case. We have a timer here, and 3 I will let you know when five minutes of your time is 4 left. 5 If the party arguing first wishes to reserve 6 time for rebuttal, please let me know before I start. 7 Respondents have filed objections to the Master's 8 report, so, Mr. Mogill, you have the opportunity to 9 first argue. You may begin. 10 MR. MOGILL: Thank you, Judge, and good 11 morning to all the members of the Commission. I would 12 like to reserve five minutes for rebuttal. 13 This is obviously a serious matter, but the 14 evidence in this case that is critical, the evidence 15 that the Commission should be reviewing very carefully 16 is the evidence in the record, not the evidence that the 17 Examiner wishes had been in the record. I'd like to -- 18 what I propose to do this morning is go through the 19 three aspects of the charges as well as the legal issues 20 in an ultimately straightforward order. 21 The first claim is that Judge Simpson 22 interfered with the officer when Ms. Vargas was 23 ultimately arrested. The officer who was at the scene, 24 Officer Cole, testified. His testimony is clear, it is 25 unequivocal, and it is uncontradicted and it is also</p>
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<p>1 use the courtroom for this public hearing. The chief 2 clerk of the Court of Appeals, Jerry Zimmerman, and the 3 clerk for this district, the 1st District, have been 4 helpful in making arrangements to allow us to be here 5 today. I would also like to thank George Seros for 6 providing security and other services. 7 With that said, we are now ready to proceed at 8 the hearing of this matter. The record should reflect 9 that that Examiner, Paul Fischer, is present as is 10 Associate Examiner, Margaret Rynier. And Respondent, 11 Judge Simpson, is present along with his attorney, 12 Kenneth Mogill. 13 By way of background, on November 12, 2014, 14 Formal Complaint 96 issued against the Respondent. The 15 Supreme Court ultimately appointed Peter Houk, a retired 16 Ingham County Circuit judge to hear evidence in this 17 matter, a public hearing beginning on March 30, 2015, 18 and concluding on April 1, 2015. The Master issued his 19 report pursuant to MCR 9.214 on April 28, 2015. 20 The Respondent filed objections to that report 21 pursuant to MCR 9.215. Today is the date and the time 22 set for public hearing pursuant to MCR 9.216 to hear 23 objections. The Commission will refrain from asking 24 questions during the oral argument until I inquire of 25 each commissioner if he or she has any questions at the</p>	<p>1 corroborated by the videotape that was made of the 2 incident. Judge Simpson did not directly or indirectly 3 in any way interfere or attempt to interfere with 4 anything that Officer Cole did or wanted to do at the 5 scene. 6 Judge Simpson did not ask or imply that 7 Officer Cole should do or not do anything that he would 8 otherwise have done in the exercise of his discretion as 9 an officer at the scene. Officer Cole exercised his 10 discretion as he saw fit as a matter of good police 11 work, and he made it clear that if he thought anybody, 12 including Judge Simpson, were doing anything that would 13 in any way interfere or attempt to interfere with his 14 work, he would have done something about it. He would 15 have said, "No, don't do this" or "Please stand 16 someplace else." 17 None of that occurred. Officer Cole also 18 never complained. There is no evidence whatever that 19 Officer Cole ever complained to anyone about 20 Judge Simpson's activities at the scene. 21 Judge Simpson going to the scene was entirely 22 consistent with his long history of making himself 23 available to assist his students in his role as an 24 adjunct professor at Cooley Law School, his interns in 25 his role as a judge, when they had issues in their life,</p>

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<p>1 whether it's personal issues or professional issues, and 2 to make himself available literally at any time of the 3 day or night. And that's to any of the students, and 4 the record is clear about that. It is well supported, 5 not only by Judge Simpson's testimony but by the 6 testimony of Associate Dean Joan Vestrand and former 7 students Christina Curri and Traci Hytower as well as 8 Ms. Vargas' testimony as well.</p> <p>9 One of the issues that is present here is 10 whether it was per se impermissible for Judge Simpson to 11 appear at the scene. The Examiner cites no authority to 12 suggest that it was per se impermissible, and the 13 Master's report suggests that he didn't necessarily 14 believe that that was the case either. And I 15 respectfully submit to the Commission that it's not 16 per se impermissible.</p> <p>17 Clearly, it can raise questions, and 18 Judge Simpson was candid and said, you know, on 19 reflection if a situation like this were to come up 20 again, I wouldn't go to the scene. But the fact that 21 something can be questioned, I think it goes to his 22 ultimate good faith is I want to avoid even questions, 23 but going to the scene is not itself improper. The 24 question is, what was done or not done at the scene? 25 Unlike if Judge Simpson had attempted to interfere,</p>	<p>1 arrest, the time to ask those questions was later, not 2 when Officer Cole was at the scene. In fact, if 3 Judge Simpson had asked about that, that would have 4 constituted something much closer to an interference. 5 And there is also no -- there is also no 6 validity to the claim that when he -- when Judge Simpson 7 was satisfied that Ms. Vargas had not been injured, that 8 he should have left the scene. He could have left the 9 scene. It was also permissible to remain at the scene. 10 The question is: Did he do anything at the scene that 11 he shouldn't have done that interfered in any way with 12 the officer? And as to that, again, the evidence is 13 clear that he did not.</p> <p>14 Nor did Officer Cole interpret Judge -- 15 because, in fact, Officer Cole was interpreting it 16 correctly -- interpret Judge Simpson's question: Does 17 she just need a ride or something? as anything other 18 than a benign question. The Examiner would have you 19 believe that this was, a-ha, a hint that let her go, 20 don't do something that you might otherwise do. That 21 wasn't what Judge Simpson said, it wasn't what Judge 22 Simpson inferred, and importantly the officer correctly 23 did not interpret it otherwise.</p> <p>24 For all of these reasons, with respect to the 25 claim that Judge Simpson interfered at the scene, the</p>
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<p>1 Officer, why don't you do this or not do that, none of 2 which occurred.</p> <p>3 Ultimately, the best evidence, the evidence 4 that I respectfully submit should be controlling to this 5 Commission with respect to this claim, is the video. 6 And I ask you to look at it. Look at it carefully. 7 Look at it thoroughly. It belies any claim of 8 interference. Ultimately when you do that, not only is 9 there -- there is no evidence, let alone a preponderance 10 of the evidence of interference.</p> <p>11 And the Examiner's argument I think ultimately 12 defeats itself with respect to this claim. Again, there 13 is nothing wrong with Judge Simpson introducing himself 14 as Judge Simpson. He is who he is. It would have, in 15 fact, been more questionable if he had not introduced 16 himself as who he was. The question is whether he did 17 anything to exploit the relationship, and he did. The 18 officer had appeared before him. Officer Cole knew who 19 he was anyway.</p> <p>20 The argument that there is something 21 inconsistent about a benign presence because he didn't 22 ask about Ms. Vargas' boyfriend, Mr. Foglia, makes no 23 sense, with all due respect. That was not -- if 24 Judge Simpson, as he did, had concerns that Mr. Foglia 25 was somehow related to Ms. Vargas' presence and ultimate</p>	<p>1 evidence is utterly lacking and as part of this body's 2 de novo review, I respectfully request that you 3 determine exactly that.</p> <p>4 The second allegation is with respect to the 5 decision by Mr. Lillich, the township attorney at the 6 time, to proceed with prosecuting or ultimately in this 7 case to recuse his office but to proceed with 8 prosecuting Ms. Vargas. As to this allegation, too, 9 there is no evidence of interference at all.</p> <p>10 Judge Simpson in the discharge of his 11 responsibilities had a legitimate reason to contact 12 Mr. Lillich. Ms. Vargas was working as an intern. He 13 had an absolute responsibility to determine whether or 14 not she had been truthful with him when she reported 15 what she claimed had happened. He had an absolute 16 responsibility to determine whether to take disciplinary 17 action against her.</p> <p>18 It was entirely reasonable under those -- for 19 those reasons for him to contact Mr. Lillich. It was 20 also entirely reasonable in the particular circumstances 21 of this incident for him as well to raise the question 22 of the apparent discrepancy in the Breathalyzer results.</p> <p>23 MEMBER GRANT: I'm sorry. Could you say that 24 sentence again? 25 MR. MOGILL: To inquire as to the apparent</p>

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1 discrepancy in the Breathalyzer results.
 2 MEMBER GRANT: Thank you.
 3 MR. MOGILL: Because that inquiry also went to
 4 the question of whether Ms. Vargas was being or was not
 5 being candid and truthful with him in her recitation and
 6 therefore in terms of what he would or would not do in
 7 response, either in retaining her as an intern or
 8 imposing some kind of discipline or not.
 9 Importantly, and I think this is key and again
 10 it's utterly inconsistent with the Examiner's claim as
 11 to what they wish -- as to what they claim the evidence
 12 shows. Mr. Lillich's testimony was unequivocal that
 13 Judge Simpson did not do anything to ask directly or
 14 indirectly that he do or not do anything other than how
 15 he normally does his job. Question, on pages 335 and
 16 336 of the transcript.
 17 "QUESTION: . . . in neither of the
 18 conversations or in any communication
 19 Judge Simpson had with you with respect
 20 to Ms. Vargas, it's correct, is it not,
 21 that he did not attempt to use his
 22 status as a judge to get you to do or
 23 not do anything that you were otherwise
 24 going to do?
 25 "ANSWER: No, I don't know think he did

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1 anything like that.
 2 "QUESTION: Was there a wink and a nod
 3 involved?
 4 "ANSWER: No. No, there wasn't a wink or
 5 a nod involved."
 6 And then with respect to the Examiner's claim
 7 that at the very least Judge Simpson's communications
 8 with Mr. Lillich delayed the process -- and I'll get to
 9 this quote in a second -- Mr. Lillich was clear there
 10 was no set timeline. There is a range that is normal
 11 within which matters are was processed, that this case
 12 was processed within that normal range. And so the
 13 question was:
 14 "QUESTION: With respect to the different
 15 communications that you had with
 16 Judge Simpson in September of 2013, did
 17 either one of these delay the processing
 18 of the case?
 19 "ANSWER: No. I wouldn't call that
 20 period of time a delay, really."
 21 And that's at page 336 of the transcript.
 22 Mr. Lillich also testified that it's entirely
 23 within his normal practice when there is a retained
 24 attorney involved to hold off in making his decision
 25 until the attorney contacts him and has a chance to

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1 communicate with him. The attorney Ms. Vargas retained
 2 was John Shea, an Ann Arbor practitioner. And as both
 3 Mr. Lillich's and Mr. Shea's testimony makes clear, if
 4 there was any delay -- and again Mr. Lillich was clear
 5 it was all within normal ranges -- it was the two of
 6 them playing phone tag. It had nothing to do with
 7 Judge Simpson.
 8 There is also, also in contrast to the claims
 9 of the Examiner, nothing at all that interferes with any
 10 aspect of Mr. Lillich's investigation or decision-making
 11 as a result of Judge Simpson and he having had a brief
 12 conversation about possible attorneys to whom
 13 Judge Simpson might refer Ms. Vargas. That is literally
 14 mere conversation. It has nothing to do with
 15 Mr. Lillich's decision-making process and has no -- it
 16 had no impact whatever.
 17 Ultimately, the decision by Mr. Lillich to
 18 recuse his office and have the matter referred to the
 19 Washtenaw County Prosecutor's Office was a measure taken
 20 as a prophylactic measure. It would have been entirely
 21 reasonable. It was reasonable for him to recuse. It
 22 was also -- excuse me. It also would have been
 23 reasonable for him not to recuse his office.
 24 And finally as to this point, the Examiner's
 25 argument in their brief, that, well, it would have been

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1 okay for Judge Simpson to call the deputy director of
 2 public safety, Gordon Schick, but not Mr. Lillich, I
 3 think is an entirely contradictory argument. It either
 4 was or was not permissible for some form of contact,
 5 whether it was with one of the -- somebody in police
 6 administration or Mr. Lillich.
 7 And for the Examiner to concede that it would
 8 have been okay to talk with Mr. Schick I think belies
 9 the claim that there was anything inherently improper in
 10 contacting Mr. Lillich. Again, look to the substance of
 11 the communications. Judge Simpson did not directly or
 12 indirectly ask Mr. Lillich to do anything or not do
 13 anything he otherwise wouldn't do, and there was no wink
 14 and a nod. There was no interference.
 15 The third set of allegations is that
 16 Judge Simpson misrepresented himself -- or made
 17 misrepresentations, excuse me, in the course of the
 18 investigation because he did not -- because he denied
 19 that there was an inappropriate relationship between him
 20 and Ms. Vargas. The Examiner's argument with respect to
 21 this claim is not just wrong on the law and the facts,
 22 it's dangerous. Because it takes an utter absence of
 23 facts and asks not only to shift the burden of proof
 24 from the Commission to Judge Simpson, but it also asks
 25 this Commission to make a determination of an

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1 inappropriate relationship in the absolute absence of
2 any indication of wrongful contact.

3 The Examiner is assuming there must be some
4 kind of inappropriate relationship that was present here
5 from the fact that there was a large number of
6 communications between Judge Simpson and Ms. Vargas,
7 obviously a very large number. I can stand before you
8 this morning and tell you that if -- that if this amount
9 of evidence were enough to say there is an inappropriate
10 relationship, pretty much any other litigator and I are
11 guilty repeatedly in cases that we get involved in of
12 inappropriate relationships with co-counsel, because
13 we're texting and e-mailing and calling each other over
14 and over and over again literally at all hours of the
15 day and night.

16 The claim that there is anything about this
17 set of communications that is qualitatively different is
18 absolutely incompatible with the reality of law
19 practice. It's incompatible with how folks function
20 doing their work these days. It's also incompatible
21 with respect to Judge Simpson and how he lives his life
22 juggling his responsibilities on the bench, as a member
23 of the community, as a professor, as a parent. It's not
24 at all unusual for him to be working on projects that
25 can't be handled right on the bench at any time of the

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1 day or night.

2 And so the fact that there is a large number
3 of text messages and calls here, yes, there are. But
4 those communications are evidence of somebody who is
5 working hard and not somebody who is doing anything
6 inappropriate. What exactly is it that the Examiner is
7 claiming was the inappropriate relationship? Are they
8 insinuating that Judge Simpson and Ms. Vargas were
9 having an affair? Are they insinuating that he was
10 giving her exam answers? What is it that they're
11 insinuating? They're making a claim of an inappropriate
12 relationship. It's their burden to establish what the
13 inappropriate relationship was.

14 There is not an iota of evidence that is
15 inconsistent with the testimony of both Judge Simpson
16 and Ms. Vargas that he was available to her and was a
17 mentor to her. He was communicating with her about
18 troubles she was having in her relationship with
19 Mr. Foglia, which he has done with other students and
20 interns, and that once things got rolling in a
21 particular case, the Nassif case, which involved
22 hundreds of thousands of text messages that they had to
23 review and determine what to do with what, that there
24 was an enormous need for frequent communication between
25 them, and there was obviously frequent communication.

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1 And while the Examiner would have you believe
2 that that's evidence of some kind of an inappropriate
3 relationship, in fact, it's evidence of hard work and
4 conscientious discharge of professional
5 responsibilities.

6 The Examiner's insinuation that there must
7 have been something wrong with the relationship,
8 something inappropriate with the relationship between
9 Judge Simpson and Ms. Vargas is ultimately also
10 belied -- it kind of collapses on itself when you look
11 at the text message record. The insinuation, well,
12 maybe -- she must have been at his house before getting
13 arrested at 4:30 in the morning, approximately 4:30 in
14 the morning. After all, she was only a couple of miles
15 away and she was going north, heading back toward her
16 apartment from the direction of his house. And yet the
17 text message records show that they were texting -- that
18 there were texts between them at 1:00, approximately
19 1:30, approximately 3:20.

20 If she had been there, if they had been
21 together at his home during the night, they wouldn't be
22 texting each other. These messages are, in fact,
23 evidence -- yet further evidence that belies the
24 claim -- the insinuation, excuse me, being made.

25 There is absolutely again no evidence whatever

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1 that Judge Simpson and Ms. Vargas were anything other
2 than truthful in both indicating the nature of their
3 relationship as mentor and boss and that the large
4 volume of communications were exactly as they have
5 reported them to be and backed that up with supporting
6 documentation.

7 Two last points. One, I want to address the
8 Examiner's claim that the Master erred in determining
9 that there was no misconduct in office, and, two, I want
10 to address the In re: Brown factors.

11 In the Examiner's claim that the Master was
12 wrong in finding that there was not misconduct in office
13 here, the Examiner is conflating what acts can
14 constitute misconduct in office with the state of mind
15 that is needed if those acts are engaged in in order to
16 constitute misconduct in office. And the Master
17 correctly determined, based on the law as he set it out
18 in his report, that the state of mind that is required
19 in order to constitute misconduct in office as a
20 specific charge is it has to be willful, it has to be
21 purposeful conduct, and that there was no preponderance
22 of the evidence of such evidence in this case.

23 Again, the Examiner's argument, to the
24 contrary, conflates acts with state of mind. The
25 Examiner also wrongly asserts that the formal complaint

Page 21	<p>1 charged misconduct in office under 9.205(B). In fact, 2 it doesn't. The formal complaint charges misconduct in 3 office only under the constitutional provision. For all 4 of these points -- for all these reasons, excuse me, the 5 Master was correct with respect to determining that 6 Judge Simpson did not engage in misconduct in office. 7 Finally, with respect to the In re: Brown 8 factors, the claim that there is no pattern or practice 9 involved here. What we have here is Judge Simpson 10 functioning again as a mentor and a boss to a student. 11 There is no claim that he acted inappropriately with 12 respect to anybody else, any other student. There is no 13 allegation, again, of anything that would come close to 14 being a pattern. 15 He appeared at the scene in response to 16 Ms. Vargas' call to him and did not interfere with the 17 officer. He did not interfere with Mr. Lillich. That's 18 all one -- a single series of events and not anything 19 that would constitute a pattern or practice. 20 There is no allegation of misconduct on the 21 bench. With respect to three and four, factors three 22 and four, the evidence does not support even remotely a 23 claim of actual prejudice to the administration of 24 justice. This case, again, there was no interference 25 with Officer Cole. Ms. Vargas' arrest proceeded through</p>	Page 23	<p>1 In summary, what we've got here is a situation 2 where we have a very highly respected judge, who was an 3 attorney starting in 1986. He's been a judge since 4 1999. He has a wonderfully unblemished record, highly 5 regarded in the community through awards that he has 6 received from many different organizations throughout 7 the community. He's respected by his colleagues as 8 evidenced by the testimony of Judge Conlin. A professor 9 at Cooley Law School, who is accessible to students in 10 ways that were described glowingly by Associate 11 Dean Vestrand. 12 But it's also a no-nonsense support of 13 students as reflected by his having received the Tough 14 Love Drill Sergeant Award by students a couple of years 15 ago, and again, which ties in also with another aspect 16 of his good faith. When Ms. Vargas got in trouble -- 17 when Ms. Vargas called him: Have you called the police 18 yet? The right thing to do in a situation like that is 19 call the police, reminding her of her duty to report to 20 school the fact of her arrest. Him personally, as part 21 of his duty as an adjunct professor, showing up at the 22 school before 9:00 on the next day, Monday, because he 23 had to report as well. Being supportive but also being 24 accountable and holding students accountable. 25 There is no issue here of the quality of</p>
Page 22	<p>1 court. Judge Simpson had nothing to do, did not attempt 2 to have anything to do with that prosecution, and there 3 was no evidence whatever nor was there, in fact, any 4 actual prejudice to the administration of justice. 5 The fifth factor, was it spontaneous or 6 premeditated/deliberated? Well, obviously getting a 7 call in the middle of the night and deciding to go to 8 the scene, that's a pretty spontaneous act and it would 9 be impossible to characterize it otherwise. And 10 similarly, given the legitimacy of a need to determine 11 whether Ms. Vargas had been truthful with him with 12 respect to her version of what had occurred, there was 13 nothing premeditated or deliberated about his 14 communications with Mr. Lillich. 15 There was also no evidence of the sixth 16 factor, no evidence of undermining or attempting to 17 undermine the ability of the system to discover the 18 truth in the matter. We have a different view of what 19 occurred and did not occur than does the Examiner. 20 Those disagreements are part of life. That is not what 21 this factor addresses. Judge Simpson has been entirely 22 cooperative and forthright throughout the investigation 23 in responding and responding in a timely manner. This 24 factor doesn't exist. And the last factor, there's not 25 even -- the Examiner concedes is not involved.</p>	Page 24	<p>1 Judge Simpson's judging. He has a proper attitude 2 toward his responsibilities as a judicial officer. This 3 has been a, obviously, as I'm sure all of you can 4 imagine, challenging and painful experience. But one of 5 the things that he has taken from it, and this goes back 6 to his initial response to the request for comments, 7 even though it was not improper for him to be at the 8 scene and even though it was not improper for him to 9 contact Mr. Lillich, were these situations ever to arise 10 again, he would not go to the scene. He would not 11 contact Mr. Lillich. Because even though the fact that 12 these raise questions is not itself misconduct, in the 13 future he would make sure to avoid conduct that even 14 raises questions. 15 THE CHAIRPERSON: You have five minutes left, 16 Counsel. 17 MR. MOGILL: And that was exactly -- 18 literally, Judge, that was exactly where I was 19 finishing. 20 For all of these reasons, I respectfully ask 21 the Commission to find a determination based on the 22 record here that there was no misconduct as to any of 23 the sets of allegations. Thank you. And if there are 24 any questions, I am happy to address them. 25 THE CHAIRPERSON: Commissioner Hathaway?</p>

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<p>1 MEMBER HATHAWAY: Well, let me ask you about 2 the Nassif case, because the Respondent has now 3 presented the Nassif case as a cause or a source of the 4 contact, the enormous number of contacts, texts, and 5 calls, between Vargas and the Respondent. What, if 6 anything, did Vargas say in her deposition about the 7 Nassif case and the role that it may have played in 8 their communications? 9 MR. MOGILL: Her testimony was entirely 10 consistent with Judge Simpson's that he had assigned her 11 to review these -- it was literally over a hundred 12 thousand text messages that she had to review and report 13 to him much about, discuss with him which ones get 14 disclosed, which ones are not -- are covered by 15 privilege. Her testimony was entirely consistent that 16 these communications, once that part of her work got 17 going, were related to that work. 18 MEMBER HATHAWAY: She mentioned the Nassif 19 case? 20 MR. MOGILL: Oh, yeah. 21 MEMBER HATHAWAY: In the Respondent's initial 22 responses to why he was having all these communications 23 with Vargas, he didn't mention the Nassif case. I think 24 he attributed it to other causes or reasons. 25 MR. MOGILL: I think if you look at the</p>	<p>1 MEMBER HATHAWAY: And Judge Simpson had a role 2 to play in the initial prosecution of a criminal case 3 involving Nassif? 4 MR. MOGILL: He was assigned to hear the 5 preliminary examination. 6 MEMBER HATHAWAY: Okay. And what exactly did 7 he expect this intern to do, then, with the evidence? 8 What was her role? 9 MR. MOGILL: One of the issues was who -- 10 there were, like I said, over a hundred thousand text 11 messages that had been seized and some of them are 12 potentially going to be evidentiary and -- 13 MEMBER HATHAWAY: So he wanted her to review 14 them before the preliminary exam? 15 MR. MOGILL: Yes. 16 MEMBER HATHAWAY: He wanted his own intern to 17 review these texts? 18 MR. MOGILL: Yeah, as part of his -- I'm 19 sorry. I didn't mean to interrupt you, Judge. 20 MEMBER HATHAWAY: Okay. And was she the only 21 intern that was assigned to that task? 22 MR. MOGILL: Yes. 23 MEMBER HATHAWAY: There were a number of 24 interns working for him, I guess, at this time. 25 MR. MOGILL: Yes, as is normal.</p>
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<p>1 questions that were asked and the answers that were 2 given, there has been -- there was some confusion or 3 misunderstanding between the Commission and us as to 4 what timeframes they were talking about, what 5 communications. 6 There has been no contradiction whatever 7 between the fact that once -- that she was 8 communicate -- Ms. Vargas was communicating with 9 Judge Simpson in the summer of 2013 about problems she 10 was having with her ex-boyfriend, who was also a law 11 student at Cooley, and that he assigned her to work on 12 the Nassif case on a preliminary matter even before he 13 got the text messages and that once she got the text 14 messages she had a huge amount of work to do and they 15 were in communication about that. 16 MEMBER HATHAWAY: What was the Nassif case? 17 What was Judge Simpson's role in it? 18 MR. MOGILL: The Nassif case was a case 19 involving an attorney, who has since had his license 20 suspended in Ann Arbor, who was charged with a sexual 21 assault. There was -- there were drugs, I believe. 22 There were issues about drugs, and there were extremely 23 sensitive claims being made involving possibility of 24 judicial misconduct by another member of the bench and 25 possibly others.</p>	<p>1 MEMBER HATHAWAY: There was a table full of 2 them. Was this a paid internship? 3 MR. MOGILL: It was an unpaid internship. 4 MEMBER HATHAWAY: And how many hours a week 5 was she expected to devote to this internship? 6 MR. MOGILL: I think the number of hours 7 varied. 8 MEMBER HATHAWAY: She was getting credit, 9 school credit for this, or -- 10 MR. MOGILL: No. Yeah, I didn't think so. 11 No. 12 MEMBER HATHAWAY: A gratuitous internship? 13 MR. MOGILL: Well, it's, I think -- I know I 14 can speak from experience seeing other students. It's a 15 wonderful opportunity for students to be able to intern 16 in judicial chambers and get the experience that goes 17 along with that, even without monetary or course 18 credit -- monetary compensation or course credit. 19 MEMBER HATHAWAY: So what was she supposed to 20 do with these texts in the Nassif case? Review them 21 all, summarize them? 22 MR. MOGILL: Yes. 23 MEMBER HATHAWAY: Notate them? 24 MR. MOGILL: And help the judge decide what to 25 do with the different -- you know, how to categorize</p>

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<p>1 them and decide what to do with the different 2 categories. 3 MEMBER HATHAWAY: So the attorneys on both 4 sides of the Nassif case did not do that and did not 5 provide that -- 6 MR. MOGILL: Well, there was a question as to 7 what at the prosecutor's office was allowed to -- one of 8 the questions was, what's the prosecutor's office 9 allowed to see? What's covered by attorney-client 10 privilege? Because these are messages between Nassif 11 and other clients who are unrelated to the 12 investigation. 13 MEMBER HATHAWAY: So this was an in-camera 14 inspection? 15 MR. MOGILL: Oh, yeah. 16 MEMBER HATHAWAY: Okay. Let me see if I have 17 anything else. I guess I don't. That's all. 18 MR. MOGILL: Thank you, Judge. 19 THE CHAIRPERSON: Commissioner Fischer? 20 MEMBER FISCHER: Not at this time. 21 THE CHAIRPERSON: Commissioner Ryan? 22 MEMBER RYAN: Thank you. Mr. Mogill, just I 23 understand we're talking about facts now and not 24 supposition or desires. When was Judge Simpson actually 25 assigned the Nassif case? Wasn't it like</p>	<p>1 the text messages at that point? 2 MR. MOGILL: That's correct. 3 MEMBER RYAN: So she spent -- so she was 4 trying to brainstorm possible issues that may occur? 5 MR. MOGILL: No. There was an issue of 6 status quo, maintaining the status quo that he wanted 7 her to research and she did research prior to the matter 8 being formally assigned, prior to the text messages 9 being turned over to him for the in-camera review. 10 MEMBER RYAN: Okay. Now, I know you've done 11 some of this work, so it seems to me that -- and I have 12 too. It seems to me that if someone said this was, 13 while unfortunate, kind of a garden variety OWI case 14 with an accident. Fortunately nobody was hurt. The PBT 15 was 13, .13. The DataMaster was .10. There doesn't 16 seem to be an issue about there's always a difference. 17 There's usually a discrepancy between the PBT and the 18 DataMaster because the DataMaster is evidential. The 19 PBT is not. Correct? 20 MR. MOGILL: Uh-huh. 21 MEMBER RYAN: All right. So it seems that 22 when you say that Judge Simpson wanted to know about 23 whether or not he had to take any formal action if 24 Ms. Vargas was telling him the truth, it seemed his 25 interest was whether or not there might be an evidential</p>
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<p>1 September 12th? 2 MR. MOGILL: The text messages came to him 3 September 12th. The case was assigned to him on a date 4 in August. But what's important, and the record is 5 clear, because of how the assignment system works in 6 that court with the rotation, he knew before the case 7 was formally assigned that it was going to be assigned 8 to him, because his number would be up next. And he 9 assigned Ms. Vargas to do preliminary research on a 10 status quo issue before the case was actually assigned 11 to him. 12 MEMBER RYAN: So he got a file before the case 13 was assigned to him? 14 MR. MOGILL: He began getting a leg up before 15 the file was assigned to him. 16 MEMBER RYAN: Where did these text messages 17 come from, then, if he didn't have the file yet? 18 MR. MOGILL: No. He didn't have the text 19 messages until September 12th. 20 MEMBER RYAN: Okay. 21 MR. MOGILL: But he knew the case was coming 22 to him, knew some of the issues, and had Ms. Vargas 23 begin doing research, and, in fact, she did a memorandum 24 to him on this. 25 MEMBER RYAN: But she hadn't looked at any of</p>	<p>1 issue with the discrepancy between the PBT and the 2 DataMaster and it wasn't really involved whether or not 3 she was being truthful but whether or not this issue was 4 some reason for the case to have an issue, an 5 evidentiary issue; correct? 6 MR. MOGILL: I respectfully disagree with 7 that. But because the issue, as it played out here 8 after she was arrested, the number appeared on her blood 9 alcohol after she was taken into custody dropped so fast 10 and she was released so much earlier than one would 11 normally expect if there was the normal ranges, that it 12 raised a question as to whether the machine was accurate 13 or she was being truthful as well as raising an 14 evidentiary issue. Mr. Shea had a legitimate basis for 15 raising that set of questions as an evidentiary issue. 16 Judge Simpson had a legitimate reason for being 17 concerned about whether she was being truthful in that 18 particular set of circumstances. 19 MEMBER RYAN: Mr. Lillich, the township 20 prosecutor, so he got the case sometime after the 8th of 21 September and I think on the 26th of October he wrote a 22 denial letter. 23 MR. MOGILL: Yes. 24 MEMBER RYAN: Okay. That's about a month and 25 a half?</p>

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<p>1 MR. MOGILL: Yes.</p> <p>2 MEMBER RYAN: Okay. And he's kind of</p> <p>3 collateral damage in this case because he lost a</p> <p>4 contract because of this.</p> <p>5 MR. MOGILL: Yes.</p> <p>6 MEMBER RYAN: Okay. And then apparently at</p> <p>7 some December function he made something of an apology</p> <p>8 to Judge Simpson. I mean, is that true, that he was</p> <p>9 sorry he couldn't manage the case better?</p> <p>10 MR. MOGILL: You know, the exact words are</p> <p>11 not -- I mean, I don't think anybody remembers what the</p> <p>12 exact words were. Mr. Lillich testified to that. And</p> <p>13 there are two points about that that are important.</p> <p>14 One, it wasn't in response to anything</p> <p>15 Judge Simpson asked or inferred either then or earlier.</p> <p>16 And, two, not only was Mr. Lillich collateral damage, to</p> <p>17 use your phrase, but as a result of the case being</p> <p>18 referred from his office to the county prosecutor</p> <p>19 instead of it being reduced in all likelihood to</p> <p>20 impaired, Ms. Vargas ended up pleading on the nose.</p> <p>21 That's Ms. Vargas' issue, not Judge Simpson's issue.</p> <p>22 MEMBER RYAN: Right. Nothing further. Thank</p> <p>23 you.</p> <p>24 THE CHAIRPERSON: Commissioner Cortes?</p> <p>25 MEMBER CORTES: Didn't he have about five</p>	<p>1 hundreds of phone calls in one case?</p> <p>2 MR. MOGILL: Yes. I just finished a matter</p> <p>3 that I was working pretty much nonstop from the</p> <p>4 beginning of November till the end of April. And if</p> <p>5 this kind of standard were applied, then someone is</p> <p>6 going to think I was having an affair with my co-counsel</p> <p>7 in the case or doing something else inappropriate with</p> <p>8 co-counsel. We were literally at all hours of day or</p> <p>9 night in touch with each other seven days a week,</p> <p>10 responding to preparing a cert petition, preparing a</p> <p>11 merits brief in the Supreme Court, preparing a reply</p> <p>12 brief in the Supreme Court, and preparing for oral</p> <p>13 argument in the Supreme Court. And that's not unusual</p> <p>14 in litigation.</p> <p>15 And one of the things that I think is</p> <p>16 important here is when you go back and forth, you think</p> <p>17 you're just talking for a couple of minutes. You have</p> <p>18 boom, boom, boom, boom, boom, you've got a dozen in no</p> <p>19 time at all, text messages. Getting to a hundred,</p> <p>20 getting to five hundred, getting to a thousand, it</p> <p>21 happens just like that.</p> <p>22 MEMBER CORTES: You're texting opposing</p> <p>23 counsel at 3:00 in the morning?</p> <p>24 MR. MOGILL: I'm sorry?</p> <p>25 MEMBER CORTES: You're texting opposing</p>
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<p>1 interns at his disposal? Four or five?</p> <p>2 MR. MOGILL: There were about half a dozen</p> <p>3 interns.</p> <p>4 MEMBER CORTES: So he assigned one intern to</p> <p>5 read a hundred thousand text messages?</p> <p>6 MR. MOGILL: There are a couple of good</p> <p>7 reasons for that, Judge. One is you've got an extremely</p> <p>8 sensitive situation, and the more people who are</p> <p>9 involved in it, the more risk there is of something</p> <p>10 leaking, and so it makes sense to keep the number as low</p> <p>11 as possible.</p> <p>12 And second, when you're looking to categorize</p> <p>13 different messages in terms of what's off limits to the</p> <p>14 prosecutor and whatever else, the risk of consistent --</p> <p>15 the interest of consistency is more at risk when you</p> <p>16 have different people exercising different judgments,</p> <p>17 making different recommendations, different reports. It</p> <p>18 makes good sense to assign all of them to one intern.</p> <p>19 It wouldn't have been unreasonable to go beyond one</p> <p>20 intern, but it certainly made good sense in terms of</p> <p>21 policy and again protecting against leaks and ensuring</p> <p>22 consistency to do it that way.</p> <p>23 MEMBER CORTES: And you're saying that in your</p> <p>24 practice on a single case with a single attorney on your</p> <p>25 side, you exchanged a thousand text messages and</p>	<p>1 counsel at 3:00 in the morning?</p> <p>2 MR. MOGILL: No. Co-counsel.</p> <p>3 MEMBER CORTES: Your co-counsel at 3:00 in the</p> <p>4 morning?</p> <p>5 MR. MOGILL: Yes. And that's not at all</p> <p>6 unusual. And the other thing to point out about this,</p> <p>7 Judge, is the representative from Sprint was not</p> <p>8 testifying as an expert. He was testifying anecdotally</p> <p>9 as to his own personal experiences without any</p> <p>10 indication that these are representative of anything</p> <p>11 else. And to generalize from that would be an injustice</p> <p>12 and unfair to anybody who could find themselves in the</p> <p>13 same situation. So I hope that answers your question.</p> <p>14 MEMBER CORTES: All right.</p> <p>15 THE CHAIRPERSON: Commissioner Diehl?</p> <p>16 MEMBER DIEHL: Officer Cole did indicate, did</p> <p>17 he not, that he did things differently than he normally</p> <p>18 would have because Judge Simpson was there?</p> <p>19 MR. MOGILL: What he indicated was that he</p> <p>20 exercises his discretion depending on the totality of</p> <p>21 the circumstances at the scene in each case. Some are</p> <p>22 more intense, and he needs to do this or that. Some are</p> <p>23 less intense. He exercises his discretion as he sees</p> <p>24 fit.</p> <p>25 MEMBER DIEHL: Well, he says he normally asks</p>

Page 37	<p>1 somebody whether they've been drinking, but he did not</p> <p>2 do that because he assumed she had been at</p> <p>3 Judge Simpson's home and he didn't want to ask. That's</p> <p>4 correct?</p> <p>5 MR. MOGILL: He did not ask her where she had</p> <p>6 been because he assumed she had been at Judge Simpson's</p> <p>7 house. So it's only partially correct.</p> <p>8 MEMBER DIEHL: And also he allowed</p> <p>9 Judge Simpson to get in the back of the scout car, which</p> <p>10 he would not have allowed.</p> <p>11 MR. MOGILL: Judge Simpson did not get in the</p> <p>12 back of the scout car. Judge Simpson was able to speak</p> <p>13 with Ms. Vargas when she was in the back of the scout</p> <p>14 car. The important point here is that Officer Cole was</p> <p>15 in charge of the scene. He was not hesitant about</p> <p>16 saying yes or no to anything, and he did what he thought</p> <p>17 was appropriate at all times and that Judge Simpson</p> <p>18 didn't ask him directly or indirectly to do or not do</p> <p>19 anything differently.</p> <p>20 MEMBER DIEHL: Thank you.</p> <p>21 THE CHAIRPERSON: Commissioner Grant?</p> <p>22 MEMBER GRANT: What year in school was</p> <p>23 Ms. Vargas?</p> <p>24 MR. MOGILL: She was a third year.</p> <p>25 MEMBER GRANT: Did she sign any sort of</p>	Page 39	<p>1 MR. MOGILL: Yes.</p> <p>2 MEMBER GRANT: That she wasn't paid.</p> <p>3 MR. MOGILL: Yes.</p> <p>4 MEMBER GRANT: And she wasn't getting any</p> <p>5 credit.</p> <p>6 MR. MOGILL: Yes.</p> <p>7 MEMBER GRANT: So how do the hours -- does the</p> <p>8 contract speak about hours? Because that was always my</p> <p>9 understanding that either the college, the school, or</p> <p>10 the court sets the hours.</p> <p>11 MR. MOGILL: It makes complete sense to me if</p> <p>12 I were an intern working for a judge and having the</p> <p>13 opportunity to --</p> <p>14 MEMBER GRANT: That's not what I'm -- I'm</p> <p>15 sorry for interrupting. I think you know me pretty well</p> <p>16 in terms of I always really direct questions.</p> <p>17 MR. MOGILL: Okay.</p> <p>18 MEMBER GRANT: I prefer a direct answer. So</p> <p>19 nobody set the hours on this internship?</p> <p>20 MR. MOGILL: I don't think that's -- I don't</p> <p>21 think that's a question that can be answered yes or no</p> <p>22 without being misleading. There are the normal hours,</p> <p>23 but -- and frankly, I don't recall what those are</p> <p>24 specifically. But when you have an assignment to do, if</p> <p>25 you take it home with you, you work on it at night, you</p>
Page 38	<p>1 agreement or contract with the district court to be an</p> <p>2 intern?</p> <p>3 MR. MOGILL: Yes.</p> <p>4 MEMBER GRANT: Were we provided a copy of</p> <p>5 that?</p> <p>6 MR. MOGILL: I don't -- it was listed as an</p> <p>7 exhibit, and I don't recall if it was admitted. It was</p> <p>8 admitted, so it should be there in the record.</p> <p>9 MEMBER GRANT: What are the terms and</p> <p>10 conditions of the contract?</p> <p>11 MR. MOGILL: You know, I don't recall the</p> <p>12 details and -- but I will say, Judge, that I don't</p> <p>13 believe there is any language in there that is specific</p> <p>14 enough that it's going to have any bearing one way or</p> <p>15 the other. But there is a written agreement, and it is</p> <p>16 part of the record.</p> <p>17 MEMBER DIEHL: There is an agreement as part</p> <p>18 of the record, you're saying?</p> <p>19 MR. MOGILL: Yeah. Yeah, there's -- for all</p> <p>20 the interns, there is a form that they have to fill out.</p> <p>21 THE CHAIRPERSON: Isn't that a confidentiality</p> <p>22 agreement basically?</p> <p>23 MR. MOGILL: Essentially, yeah.</p> <p>24 THE CHAIRPERSON: All right.</p> <p>25 MEMBER GRANT: You said that her hours varied.</p>	Page 40	<p>1 work on it overnight, you have something, a huge project</p> <p>2 like this, it's not going to be one you can do during</p> <p>3 normal hours, so -- and I hope that's a direct answer,</p> <p>4 because I certainly want to give you a direct answer.</p> <p>5 MEMBER GRANT: Where does this absolute</p> <p>6 responsibility to contact the township attorney arise</p> <p>7 from?</p> <p>8 MR. MOGILL: Judge Simpson is employing a</p> <p>9 group of interns. They are working for him --</p> <p>10 MEMBER GRANT: He's not employing them.</p> <p>11 They're not paid. They're not getting credit.</p> <p>12 MR. MOGILL: They're employed, whether they're</p> <p>13 paid or not. They're working for the court. They're</p> <p>14 responsible to maintain confidentiality. They're</p> <p>15 responsible to work in a way that is consistent with --</p> <p>16 MEMBER GRANT: So where is the absolute</p> <p>17 responsibility --</p> <p>18 MR. MOGILL: Yes.</p> <p>19 MEMBER GRANT: -- to contact the township</p> <p>20 attorney during an investigation to determine</p> <p>21 credibility, to determine if the Breathalyzer results</p> <p>22 are a discrepancy? Where is the absolute</p> <p>23 responsibility? You used that phrase three times, by</p> <p>24 the way.</p> <p>25 MR. MOGILL: Okay.</p>

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1 MEMBER GRANT: Okay.
 2 MR. MOGILL: He has an absolute right to
 3 determine whether an intern working --
 4 MEMBER GRANT: No, you said absolute
 5 responsibility.
 6 MR. MOGILL: I don't --
 7 MEMBER GRANT: There's a difference between a
 8 right and responsibility. That's what I'm asking you.
 9 MR. MOGILL: Okay. I would ask that you -- it
 10 is legitimate for Judge Simpson or any judge in his
 11 situation to want to know whether an intern of his, who
 12 has been arrested, is being truthful with him, whether
 13 or not, and that inquiry follows directly from that. To
 14 me, if it's legitimate, he has a right to do it. And if
 15 it helps him do his job better, I think as a judge and
 16 make sure that the integrity of his chambers is not
 17 compromised, I respectfully submit that that also
 18 renders that a responsibility.
 19 MEMBER GRANT: Thank you.
 20 THE CHAIRPERSON: Commissioner Burmeister?
 21 MEMBER BURMEISTER: You made a comment, if I
 22 have it correctly. If I have it wrong, let me know.
 23 But as I understood one of your comments about
 24 Judge Simpson going to the scene where Ms. Vargas was
 25 that he introduced himself as a judge, and I think your

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1 comment was something to the effect of that it would be
 2 improper for him not to identify himself as a judge.
 3 And my question to you is: If the purpose for
 4 him going to the scene is essentially to check on
 5 Ms. Vargas and make sure she's okay, why is there any
 6 need to introduce himself as a judge? Why not: I'm her
 7 friend, Cedric or Mr. Simpson, et cetera. I just wanted
 8 to see if she was okay.
 9 I don't understand that comment about it would
 10 have been improper for him not to introduce himself as a
 11 judge.
 12 MR. MOGILL: I believe what I said was it
 13 would have been odd for him not to introduce himself as
 14 a judge. If I said "improper," my intention was to use
 15 the word "odd," but --
 16 MEMBER BURMEISTER: Okay.
 17 MR. MOGILL: Because I don't think it would
 18 have been improper. But if I'd have said the word, I
 19 think -- I truly think, you're in a small community.
 20 He's been a judge for 16 -- 14 years at the time. The
 21 officer knows him. People in the community, he knows
 22 them; they know him. I mean, there's no secret here
 23 that he's a judge, and this is how he's known in the
 24 community. And again I think it would have been odd,
 25 and I hope I didn't say "improper," because my intention

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1 was to say "odd," and I do believe that.
 2 MEMBER BURMEISTER: All right. Thank you.
 3 THE CHAIRPERSON: Commissioner Spickler?
 4 MEMBER SPICKLER: To echo a couple of the
 5 other people on the Commission, I just think his mere
 6 presence at the scene or even a conversation with
 7 Lillich, do you not think it might have changed the
 8 outcome had he not been the judge at the scene or on the
 9 phone call, making these phone calls? Just who he is
 10 things may have been handled differently?
 11 MR. MOGILL: With respect to the scene, it is
 12 possible that the officer might have exercised his
 13 discretion to some degree a little bit differently.
 14 What he did there -- and Ms. Diehl's comments, you know,
 15 are entirely appropriate. He's not -- it's not cookie
 16 cutter. He doesn't do everything exactly the same in
 17 each incident at the scene. Is it possible he might
 18 have done things a little bit differently around the
 19 edges? Sure.
 20 But the question is: Did Judge Simpson do
 21 anything either in fact or with the intent to interfere?
 22 And to the extent that there was any difference in what
 23 the officer did, was it substantive or not? And I think
 24 the answer to that is not. And again, that having been
 25 said, if this situation were to come up again,

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1 Judge Simpson would not go to the scene.
 2 With respect to Mr. Lillich, the outcome was
 3 exactly what anybody knew it was going to be.
 4 Ms. Vargas was going to be charged based on her blood
 5 alcohol, based on the fact of the accident.
 6 Judge Simpson didn't ask him not to charge. He didn't
 7 ask -- infer, you know, maybe you shouldn't charge.
 8 There was no wink and a nod, as Mr. Lillich testified.
 9 Nothing about that that would have been in any way
 10 different other than the fact that ultimately
 11 Mr. Lillich's office recused itself and the matter was
 12 prosecuted by the county prosecutor's office.
 13 MEMBER SPICKLER: Thank you.
 14 THE CHAIRPERSON: What bothers me, and I'm
 15 just going to mention this, is that you keep saying that
 16 your client had a responsibility to get to the core
 17 whether she's telling the truth. Well, he went to the
 18 scene. He was able to talk to the individual at the
 19 scene. What really bothers me is you go a step further
 20 and you call the city attorney. You raise evidentiary
 21 questions. It then sits on a back burner, and finally
 22 the police chief says: Hey, hold it. It's got to move
 23 out of here. And he goes and that doesn't look good.
 24 How do you respond to that?
 25 MR. MOGILL: It was legitimate for him to make

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<p>1 that inquiry because he had a legitimate interest in</p> <p>2 following up on --</p> <p>3 THE CHAIRPERSON: Following up tends to be</p> <p>4 representing, and at the point that's the problem when</p> <p>5 you interject yourself as a judge to the city attorney,</p> <p>6 who appears before you at all times. That seems to me</p> <p>7 an undue influence peddling.</p> <p>8 MR. MOGILL: Again, if the situation --</p> <p>9 Judge Simpson was clear. If a situation like this were</p> <p>10 to come up again, he would not make that call. But</p> <p>11 there was no intention to interfere, and Mr. Lillich</p> <p>12 indicated that there was no interference.</p> <p>13 THE CHAIRPERSON: Okay. I've got your answer.</p> <p>14 MR. MOGILL: Okay. Thank you, Judge.</p> <p>15 THE CHAIRPERSON: Does anyone have any other</p> <p>16 questions? We'll move on, then.</p> <p>17 MEMBER CORTES: I have a question.</p> <p>18 THE CHAIRPERSON: Oh, do you? Go ahead.</p> <p>19 MEMBER CORTES: Just a follow up with</p> <p>20 Judge Sawyer. So he shows up at the scene and sees</p> <p>21 she's okay, and there is an ambulance already there by</p> <p>22 coincidence. That city has emergency responders. He's</p> <p>23 not a doctor. So he just shows up and sees she's okay.</p> <p>24 Then he goes to the city attorney, in your</p> <p>25 version, to see if she's truthful with him, if she is</p>	<p>1 the delay.</p> <p>2 MEMBER CORTES: Why did he --</p> <p>3 MR. MOGILL: But he was out of it by then.</p> <p>4 MEMBER CORTES: Why is he discussing what</p> <p>5 attorneys she should get or not get?</p> <p>6 MR. MOGILL: Well, by coincidence, one of the</p> <p>7 attorneys whose name came up was Joe Simon, who happened</p> <p>8 to be Mr. Nassif's lawyer, and that would have been a</p> <p>9 real conflict for Ms. Vargas to be represented by him</p> <p>10 while she's looking at these text messages and reporting</p> <p>11 on them in a case where he's representing the defendant.</p> <p>12 That --</p> <p>13 MEMBER CORTES: So where in his communications</p> <p>14 with the city attorney are you pulling out the theory</p> <p>15 it's to get to her story to see if she's a good fit as</p> <p>16 an intern? Where are those communications where they</p> <p>17 discuss that at all?</p> <p>18 MR. MOGILL: The substance of the</p> <p>19 communications about the discrepancy in the different</p> <p>20 blood alcohol results. That's -- he needs to determine</p> <p>21 whether she's being truthful. He has a legitimate basis</p> <p>22 for determining whether she's being truthful. Does it</p> <p>23 raise questions? Yes. Are those questions sufficient</p> <p>24 to rise to the level of an appearance violation? I</p> <p>25 respectfully submit no.</p>
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<p>1 fit to be an intern or not, but they end up discussing</p> <p>2 the discrepancy in the PBT and the DataMaster, what</p> <p>3 attorney she should have or shouldn't have, what</p> <p>4 attorney he can work with and not work with, and all the</p> <p>5 rest of that. I never saw anything about, well, is she</p> <p>6 telling the truth? Is she lying?</p> <p>7 Then he gave -- the city attorney agrees to</p> <p>8 delay it so she can do this, that, and the other thing.</p> <p>9 It's not until the police chief gets involved that this</p> <p>10 thing gets kickstarted and starts moving again. Don't</p> <p>11 you agree that smacks of the appearance of impropriety</p> <p>12 like he's trying to get her out of a jam, all of those</p> <p>13 things put together?</p> <p>14 MR. MOGILL: I think, Judge, that it's correct</p> <p>15 that the totality raises a question, but I don't think</p> <p>16 that anything that Judge Simpson did violates the</p> <p>17 appearance standard. And I think that's a critical</p> <p>18 distinction, and it's important because Judge Simpson</p> <p>19 didn't ask Mr. Lillich to delay anything. Judge Simpson</p> <p>20 didn't ask Mr. Lillich to do anything different from how</p> <p>21 he normally does it, and it is entirely normal for</p> <p>22 Mr. Lillich to wait, if there is a retained attorney</p> <p>23 involved, to hear from that attorney before moving</p> <p>24 ahead. And the record is uncontradicted, there was</p> <p>25 phone tag between Mr. Lillich and Mr. Shea. That was</p>	<p>1 THE CHAIRPERSON: Thank you, Counsel. You</p> <p>2 have time for rebuttal. At this time, we ask</p> <p>3 Mr. Fischer. You may proceed.</p> <p>4 MR. FISCHER: Thank you. Good morning,</p> <p>5 Commissioners.</p> <p>6 There are three parts to the case. You've</p> <p>7 heard them gone over carefully, and I'm going to go over</p> <p>8 them a little bit. One matter that is not an element of</p> <p>9 the case is whether or not Judge Simpson was having an</p> <p>10 inappropriate sexual relationship with his intern. It's</p> <p>11 not alleged. It's not something that anybody asked the</p> <p>12 Master to find. It's not anything that I'm asking you</p> <p>13 to find. Whether or not he had a sexual relationship</p> <p>14 with her is not before you. It might be in the</p> <p>15 background. Nobody is asking you to make any findings</p> <p>16 about it. It may be something that you conclude, but</p> <p>17 it's not necessary for anybody to decide in relationship</p> <p>18 to this case.</p> <p>19 The three areas. The interference with the</p> <p>20 police investigation at the scene. So you know that the</p> <p>21 police are investigating Vargas for the drunk driving.</p> <p>22 He shows up. Simpson shows up at -- Judge Simpson shows</p> <p>23 up at 4:30 in the morning. She tells the officer that,</p> <p>24 you know, that's Judge Simpson. And he comes down to</p> <p>25 see, and tells him, yeah, yeah, I'm Judge Simpson.</p>

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<p>1 You'll see that. You can see that in the DVDs that 2 everybody has gotten as a set of the exhibits. That's 3 Exhibit 7 and 9. Exhibit 7 is a I think just the 4 straight running of the scene. And Exhibit 9 is an 5 enhanced version where it's broken up into little 6 segments and the sound is, you know, filtered out so you 7 can actually hear things a little bit better. And he 8 says it's Judge Simpson. You can hear him.</p> <p>9 The officer has made clear -- Officer Cole has 10 made clear, if it were anybody other than the judge, 11 that person would have been told to wait in the car. 12 Judge Simpson doesn't. He comes to the scene, and it's 13 something that he should have known as a former 14 prosecutor, as a judge. You don't go walking around the 15 crime scene. And he talks with her, and he's talking 16 with the suspect in criminal case.</p> <p>17 When she gets arrested and put in cuffs and 18 put in the backseat of the car, he's still talking to 19 her, leaning in, talking to her whatever it is that he 20 wants to talk about. Nobody else gets to do that. 21 Nobody gets to do that.</p> <p>22 The officer said he had to keep an eye both on 23 Ms. Vargas and on the Respondent, and on Judge Simpson. 24 And then Judge Simpson has his great line: Maybe she 25 just needs a ride home. That's your wink, wink, nod,</p>	<p>1 problem with your Breathalyzer? Oh, it works? Great. 2 Oh, it's broken? Fine.</p> <p>3 That's not what he did. He calls the 4 prosecutor two days after the incident. The prosecutor 5 didn't even have the police report yet. And what is he 6 telling her? She's a good kid. She's in a bad 7 relationship. All right. What does that have to do 8 with anything about whether she was honest with him? 9 It's got nothing to do with that, because that's not why 10 he called.</p> <p>11 He's already making a play to short-circuit 12 the process again. He didn't get his way with the 13 officer. He's going to try it again with this lawyer 14 that he knows and knows well.</p> <p>15 So the prosecutor gives him the police report 16 on September 13th. So why does he call the prosecutor 17 again on the 17th? Because he needs to continue his 18 effort, his campaign, to short-circuit the process by 19 discussing evidentiary issues, things that the defense 20 attorney should discuss, not a friend of the attorney. 21 And think, if anybody called up the prosecutor, just, 22 Hi, I'm a friend of Ms. Vargas. That's nice. The 23 prosecutor is going to hang up on them. But it's the 24 judge, the judge that Mr. Lillich appears in front of 25 all the time, and you take that phone call.</p>
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<p>1 nod. Don't investigate. Don't prosecute her. Let her 2 go.</p> <p>3 He was offering to short-circuit the whole 4 process. And those words aren't mine: short-circuit 5 the process. That's the Master's words. The Master, 6 who heard this as an independent neutral, said that's 7 what it seemed to him. Respondent's question clearly 8 implies that he is available to short-circuit the 9 process. The process, the legal process, the process 10 that this man, Judge Simpson, is a judicial officer and 11 in charge of running as well, he wants to short-circuit 12 it on behalf of a friend, somebody who is clearly more 13 than just an intern.</p> <p>14 And that brings us to the second part of the 15 case, because, even if you had doubts about what his 16 intentions were at the scene, you look at what he did 17 next. He calls the prosecutor. Why? Well, he tells 18 you because he wanted to make sure she wasn't lying to 19 him. In our brief, we suggested -- I'm not trying to 20 write a manual for how judges should behave on crime 21 scenes. But we said if he really wanted to know whether 22 this -- whether she was lying to him, he wanted to know 23 if this discrepancy between the Breathalyzer and the 24 PBT. If he really wanted to know that, he could have 25 asked the chief of police. Hi, Chief. Is there a</p>	<p>1 In fact, they discuss the pros and cons of 2 which attorney Ms. Vargas should have, and Mr. Mogill 3 just told you -- in the testimony you'll hear Simpson -- 4 Judge Simpson say, I can't use him, referring to this 5 guy, Joe Simon, who was representing Nassif. And 6 Mr. Mogill just told you, of course, Mr. Simon is 7 representing Nassif, he obviously can't represent 8 Ms. Vargas. There's a conflict.</p> <p>9 Really? What conflict would that be? There's 10 no conflict. Judge Simpson's not going to hear this 11 case against Vargas. It's his intern. There is no 12 conflict at all, other than it's not who Judge Simpson 13 wanted to have. He's got no business having any input 14 in this. So he's trying to influence the prosecutor, 15 and it does. Because the prosecutor says to 16 Judge Simpson: I'll be glad to sit on it, the case, or 17 hold it.</p> <p>18 Mr. Lillich, for whatever else he did, 19 testified that he never had a judge call him that way, 20 the way that Judge Simpson did, in 25 years. And 21 afterwards at some party -- I think it was a Christmas 22 party, Mr. Lillich, the prosecutor, goes up to 23 Judge Simpson and says -- this is on page 330 of the 24 transcript: I'm sorry or whatever about "not being able 25 to deal with the Vargas warrant."</p>

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1 So the coverup afterward. He's tried to
 2 short-circuit the process twice or three times if you
 3 count the two phone calls to the prosecutor. It's these
 4 text messages. He can't get around the text messages.
 5 We're not invading -- we're not in dangerous territory
 6 by having you make an assumption that 5,000 text
 7 messages between two people a month is something out of
 8 the ordinary. Because you as individuals can think how
 9 often do you use text messages? How often do you text
 10 the most important people in your life, let alone
 11 somebody who works for you?
 12 I would venture to say -- I have no idea, but
 13 I would venture to say that Mr. Mogill's text messages
 14 to whoever his co-counsel are do not reach the 5,000 a
 15 month level. And if they did, then he could testify
 16 about that in a hearing if the AGC were to bring charges
 17 against him. It would clearly be an exception.
 18 As the representative from Sprint testified,
 19 5,000 a month is drug dealer level. There is something
 20 wrong with that number of messages. And what's wrong
 21 with it, because it's not just the fact that they're
 22 texting, is the Respondent never said a word about these
 23 texts until he had to because he got caught with them.
 24 The process is -- and this is one of the
 25 exhibits. I forget if it's 1, 2, 3, or 4 that are in

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1 there, the exhibits that you have, is the comment
 2 letter. You know, you went to the scene. What kind of
 3 relationship did you have with this lady, Ms. Vargas?
 4 And he said, no, I didn't have any kind of a
 5 relationship with her outside of the office, no social
 6 contact outside of group context, and nothing special.
 7 Didn't say anything about her in the 28-day letter.
 8 And granted, he wasn't specifically asked
 9 about the 14,000 text messages, but he did say that
 10 there was no special relationship between them. All
 11 communications were work-related. And then when the
 12 formal complaint is issued, which alleges the 14,000
 13 text messages, oh, all of a sudden, oh, that's right.
 14 You know, she had this really big case to work on, this
 15 Nassif case. It required her to review thousands of
 16 cases, thousands of texts.
 17 Vargas testified that in her internship for
 18 him -- and by the way, this internship, it's not some
 19 kind of an official court position. The court there
 20 doesn't do internships. Just Judge Simpson does. He
 21 has lots of them coming through.
 22 She testified she did mostly civil things,
 23 civil and landlord-tenant, and this and that. And, oh,
 24 yeah, she had this one big case. That was it. It was a
 25 part of what she did. But the majority of what she did

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1 in her testimony, her deposition testimony, is that she
 2 did mostly other things. So it's ironic, then, that the
 3 text messages in this case are what trip him up.
 4 Because while she mentioned -- while Vargas
 5 mentioned that she had this other criminal case that she
 6 was doing, she never said that it was some really big
 7 case that was taking up all of her time.
 8 And third, even if she really were writing
 9 memos or whatever it was for Judge Simpson, who does
 10 this by text? Are there memos? No. Nothing was
 11 introduced into evidence at the hearing. Are there
 12 e-mails? Nothing was introduced at the hearing. Text
 13 messages. Is this the way Judge Simpson, who is
 14 teaching a class in pretrial procedure, is this what he
 15 teaches? This is how we're going to do business? Have
 16 nothing recorded, just have text messages?
 17 Fourth and worst of all is he testified that
 18 he got the text messages on September 12th. So he wants
 19 you to believe that between the time of the incident
 20 when Nassif was arrested, July 29, 2013, and
 21 September 12th that there were thousands of text
 22 messages necessary before they even got the texts. I
 23 think one thing is clear: These text messages were not
 24 about work. He lied. He lied under oath at the
 25 hearing. That's what the Master found, and so should

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1 the Commission.
 2 The Respondent tried to cover up his
 3 involvement in the Vargas matter even further, and he
 4 testified to this at the hearing. I've got a chart of
 5 it. Not even a chart. It's a segment. It's a little
 6 section from the text message, the phone records from
 7 Ms. Vargas, which were subpoenaed, which were put into
 8 evidence. This is just a little blurb from them.
 9 If you look over here on the left -- your
 10 right -- the top line shows the calling number, the
 11 number that was called, whether it was an inbound or
 12 outbound call, when the phone call took place or
 13 communication, and how long it lasted. If you look at
 14 the far right column, when there is a zero, that means
 15 it was a text message. There was no length for the
 16 contact to last. The one at the bottom or towards the
 17 bottom, 67 means it was a 67-second phone call.
 18 Going back to the far left, the calling
 19 number. The 956 number is Ms. Vargas'. And so on
 20 September 8, 2013, it says 3:20 and 9 seconds, but the
 21 Sprint representative testified when it's a text
 22 message, it goes by Kansas City time, which is an hour
 23 earlier. When it's a phone call, it goes by our time,
 24 by Eastern Time, and so it's the correct time.
 25 So it says 3:20 because it's Kansas time.

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1 It's really 4:20 here in Ann Arbor or in the Eastern
 2 Time Zone. And at 3:20:09 she texts -- or excuse me.
 3 At 4:20:09 she texts him. That's the outbound. It's
 4 her phone number.
 5 MEMBER DIEHL: Wait a minute. We're Eastern.
 6 If it's Central Time --
 7 MEMBER GRANT: It's an hour earlier.
 8 MEMBER DIEHL: It's earlier.
 9 MR. FISCHER: Right. So it shows 3:20.
 10 We're -- at 3:20 in Kansas, it's 4:20 in Detroit.
 11 COMMISSION MEMBERS: Right. Right.
 12 MR. FISCHER: It's earlier in California than
 13 it is here.
 14 COMMISSION MEMBERS: That's correct.
 15 MR. FISCHER: Right?
 16 MEMBER DIEHL: Yeah.
 17 MR. FISCHER: So at 4:20 in the morning in
 18 Detroit, when it's 3:20 in the morning in Kansas City
 19 where Sprint is located, she texts him. That's her
 20 number outbound to his number inbound. So that's a
 21 text. We don't know what the text says, but she texted
 22 him.
 23 And then at 4:20:28, so 21 seconds later, he
 24 texts her back. And again he texts her again -- 39
 25 seconds, 4:20 and 39 seconds. She texts him. She texts

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1 him. And then there is a text from her again -- excuse
 2 me -- from him to her at 4:23. The next thing, the
 3 second to the last line there shows her phone call, 4:24
 4 and 33 seconds. That's the phone call she made after
 5 she crashed.
 6 MEMBER DIEHL: So she was texting -- oh, never
 7 mind.
 8 MR. FISCHER: She was texting, yes. In all
 9 likelihood, she was texting while drunk on the road at
 10 4:20 in the morning. It shouldn't be a surprise that
 11 she crashed.
 12 Now, he testified that he went to bed at 1:30,
 13 went to sleep at 1:30 that night -- that morning and
 14 that he didn't wake up until her phone call came at
 15 4:25. That is untrue. They were texting for several
 16 minutes at least. There were several other texts during
 17 the night, but they were texting in the moments before
 18 the crash. In fact, they were probably texting while
 19 she crashed. He was not truthful. He lied about it at
 20 the hearing. The Master called him on it, using the
 21 legal niceties of not credible and unbelievable and it
 22 is, because he lied.
 23 Now, the Supreme Court has stated, all too
 24 often unfortunately, that a judge who lies under oath is
 25 unfit to be a judge. There is no question that

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1 Judge Simpson lied repeatedly under oath, both in the
 2 investigation and continuing those false statements at
 3 the hearing and right there in black and white. And I'm
 4 not going to go through all the lies, because there are
 5 a number of them listed in Count 3. It's in our brief.
 6 But I ask the Commission to remember these
 7 names: Beverly Nettles-Nickerson, Sylvia James, James
 8 Justin, Wade McCree Jr., and Deborah Ross Adams. All
 9 lied under oath, and all were removed from office by the
 10 Supreme Court. The Supreme Court has clearly stated a
 11 judge who lies under oath is unfit to be a judge.
 12 Judge Simpson has lied under oath. He is unfit to be a
 13 judge. There is only one recommendation that this
 14 Commission should make to the Court. It must be for
 15 removal.
 16 And when a judge lies, he is liable for the
 17 cost of that prosecution, so I offer, as I have attached
 18 to the brief -- a brief that was very well written by
 19 Ms. Rynier, by the way. I offer the affidavit of
 20 Camella Thompson, showing the legitimate costs of the
 21 hearing to be \$7,565.54. And I urge the Commission to
 22 then recommend to the Court to recommend that they
 23 remove Judge Simpson and order him to pay the costs of
 24 the prosecution in that amount. Are there any
 25 questions?

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1 THE CHAIRPERSON: Commissioner Spickler?
 2 MEMBER SPICKLER: Not at this time.
 3 THE CHAIRPERSON: Commissioner Baumgartner?
 4 Baumgartner? I do that all the time. Burmeister. I
 5 know. Baumgartner, he's up near your area, though.
 6 MEMBER BURMEISTER: He is. I have no
 7 questions. Thank you.
 8 THE CHAIRPERSON: Commissioner Grant?
 9 MEMBER GRANT: Is the issue with the text
 10 messages because of the alleged lying under oath?
 11 Because let's say there were a hundred -- let's say
 12 there were a million text messages.
 13 MR. FISCHER: Between Judge Simpson and --
 14 MEMBER GRANT: Between Judge Simpson and
 15 Vargas. What's the consequence?
 16 MR. FISCHER: If there is just text messages,
 17 well, then he lied about them. If during the first, the
 18 comment letter, if he had said she's someone special to
 19 me and we text. We text. All right, well, that would
 20 be the end of that. But it's the fact that he said, no,
 21 I had no contact with her other than business and the
 22 only other social contacts I had were in groups. That
 23 wasn't true.
 24 MEMBER GRANT: So your issue with point three,
 25 the text messages, is not even the relationship itself?

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1 MR. FISCHER: That's correct.
 2 MEMBER GRANT: It's lying about it?
 3 MR. FISCHER: Lying about it. And he said
 4 that she'd been working on all these text messages, and
 5 he testified she didn't get them -- he didn't get them
 6 until September 12th. If he is writing some kind of --
 7 she's writing some brief or a memo or whatever it is for
 8 him between the time of the incident, which is July 29th
 9 until the time he got them, that's an awful lot of
 10 discussion to go back and forth. But the real purpose
 11 of -- as he testified or as he tries to make clear, what
 12 the real purpose of these text messages was to explain
 13 what the other -- the Nassif text messages were about.
 14 That's just not true.
 15 THE CHAIRPERSON: Commissioner Diehl?
 16 MEMBER DIEHL: Yes. Can you address the issue
 17 of the misconduct in office?
 18 MR. FISCHER: Yes, thank you.
 19 MEMBER DIEHL: The Master indicated there was
 20 not because there was no intent.
 21 MR. FISCHER: Yes.
 22 MEMBER DIEHL: And then you argue under
 23 MCR 9.205(B), and then the Respondent indicates you did
 24 not allege that in the formal complaint and you cannot
 25 expand that at this point and expand what the complaint

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1 says. So I'm interested in your response.
 2 MR. FISCHER: With all due respect to
 3 Mr. Mogill, the constitution sets out what is, what
 4 constitutes misconduct, and that's in Article VI
 5 Section 30. And one of the things that it says is
 6 misconduct in office. Then the court rules, which the
 7 constitution addresses to the Supreme Court to
 8 promulgate, also discuss misconduct in office.
 9 What the Master did wrong and what Mr. Mogill
 10 is relying on is the Master then looked at misconduct in
 11 office under the criminal statutes where it is defined
 12 as a criminal act. The constitution and the court rule
 13 involving judicial misconduct are not talking about a
 14 criminal act. They're talking about if a judge commits
 15 misconduct, that's misconduct in office.
 16 Any misconduct by a judge is misconduct in
 17 office. If a judge were also then convicted of the -- I
 18 don't know if it's a misdemeanor or if it's a felony of
 19 misconduct in office, that would be also misconduct in
 20 office but not in the criminal sense. It would only be
 21 in the judicial disciplinary sense. So that's where the
 22 Master got it wrong.
 23 We're not talking about him having committed a
 24 crime, so it is not a specific intent matter. It's a
 25 matter of if he's done these things that are determined

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1 to be misconduct, he is in office. That is misconduct
 2 in office. It's the very essence of what the judicial
 3 disciplinary system is about.
 4 MEMBER DIEHL: Thank you.
 5 THE CHAIRPERSON: Commissioner Cortes?
 6 MEMBER CORTES: No questions.
 7 THE CHAIRPERSON: Commissioner Ryan?
 8 MEMBER RYAN: I have no questions. Thank you.
 9 THE CHAIRPERSON: Commissioner Fischer?
 10 MEMBER FISCHER: Could you review the phone
 11 call to the prosecutor to talk about the -- I'm not
 12 up-to-date on the terms of art for the equipment they
 13 used or the result.
 14 MR. FISCHER: So there were two phone calls.
 15 And Judge Simpson testifies and maintains now that the
 16 reason he did that, the reason he called the prosecutor
 17 is because he was bothered by the fact that the PBT, the
 18 preliminary Breathalyzer, which is a test for what your
 19 blood alcohol is but it's not admissible in court, that
 20 that was -- I forgot what it was -- .13. And then when
 21 they take her back to the station and do the test that
 22 is admissible in court, it was .10 or something like
 23 that.
 24 And Mr. Mogill argues now or perhaps argues in
 25 the brief as well that that was too big a spread. She

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1 shouldn't have dropped that far. She should have been
 2 maybe a .12 or a .11 and the fact that there was this
 3 spread means that there was something wrong with either
 4 the PBT or with the Breathalyzer itself. And so he --
 5 they're arguing that Judge Simpson wanted to know
 6 whether there was really something wrong with the
 7 instruments or whether Vargas had lied to him about what
 8 her result was.
 9 But, see, he was on the scene so he knows what
 10 the PBT was. He was right there when it happened. So
 11 the only real question could be whether there was
 12 something wrong with the Breathalyzer instrument.
 13 MEMBER FISCHER: But he was calling --
 14 MR. FISCHER: The prosecutor.
 15 MEMBER FISCHER: -- the prosecutor to ask that
 16 question?
 17 MR. FISCHER: Right. And the prosecutor --
 18 MEMBER FISCHER: And the reason was why?
 19 MR. FISCHER: Well, that's a good question. I
 20 don't really know. The prosecutor wouldn't know. The
 21 prosecutor is a lawyer who sits in his office some
 22 distance away from where the police station is, and the
 23 police station -- or the jail was where the
 24 Breathalyzer, the admissible unit, is located.
 25 So the prosecutor would have to then go and

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1 make phone calls and find out, and this is the type of
 2 thing that a defense attorney would or could raise in a
 3 hearing, not with somebody just without any real
 4 interest in the matter would be doing. Judge Simpson,
 5 in essence, was planting the seed of evidentiary issues
 6 in the prosecutor's brain, which is what the defense
 7 attorney can or should do, not a judicial officer.
 8 MEMBER FISCHER: Thank you.
 9 THE CHAIRPERSON: Commissioner Hathaway?
 10 MEMBER HATHAWAY: So in terms of misconduct in
 11 office, your position is that you don't have to show,
 12 quote, corrupt intent, close quote?
 13 MR. FISCHER: Yes, that's correct.
 14 MEMBER HATHAWAY: Is that correct?
 15 MR. FISCHER: Yes.
 16 MEMBER HATHAWAY: And that's the standard that
 17 is contained in a Court of Appeals or Supreme Court case
 18 when there is a prosecution of misconduct in office?
 19 MR. FISCHER: Yeah. Judge Houk went and used
 20 all criminal cases there. I mean, if you look at the
 21 Supreme Court's decisions in any of these judicial
 22 misconduct cases -- take drunk driving. It's not a
 23 specific intent crime, but they will say it constitutes
 24 misconduct, and there you go. That's misconduct.
 25 MEMBER HATHAWAY: Okay. So you would want us

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1 to look at the plain, specific, unadorned language in
 2 the constitution where misconduct in office is defined,
 3 the various kinds of misconduct in office?
 4 MR. FISCHER: Yes. It's unfortunately not
 5 defined that it constitutes A, B, and C --
 6 MEMBER HATHAWAY: Well, or examples, yes.
 7 MR. FISCHER: Yes. And then through the case
 8 law which will show this is misconduct or -- there is
 9 never anyplace anywhere in any of their decisions that
 10 says you need to show specific intent.
 11 MEMBER HATHAWAY: Okay. And then next, in
 12 terms of your allegations that the Respondent lied or
 13 was untruthful at any point along the way, under oath or
 14 not under oath, during the course of the investigation,
 15 excluding examples where he is urging us to infer a
 16 favorable or benign conclusion from the facts and urging
 17 us to infer a different conclusion, let's -- for the
 18 moment, let's say those aren't lies. What are your
 19 specific examples of objective lying or
 20 misrepresentations by him?
 21 MR. FISCHER: I'll give you --
 22 MEMBER HATHAWAY: Okay.
 23 MR. FISCHER: With the phone call. I mean, he
 24 said he was sleeping and then gets woken up by --
 25 MEMBER HATHAWAY: When he got a phone call,

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1 and there appears to be some interchange of texts.
 2 MR. FISCHER: And he clearly wasn't sleeping.
 3 He was texting. Unless he texts in his sleep, but he
 4 didn't argue that either.
 5 MEMBER HATHAWAY: Anything else?
 6 MR. FISCHER: No, Judge Hathaway.
 7 MEMBER HATHAWAY: Okay.
 8 THE CHAIRPERSON: I don't have any further
 9 questions. Anyone else have any questions?
 10 (No response.)
 11 THE CHAIRPERSON: Thank you.
 12 MR. FISCHER: Thank you.
 13 THE CHAIRPERSON: Mr. Mogill, you have five
 14 minutes.
 15 MR. MOGILL: Thank you, Judge. There is
 16 absolutely no evidence that would support a finding that
 17 Judge Simpson was attempting to short-circuit the
 18 process, and Mr. Fischer can say that till the cows come
 19 home. He relies on Officer Cole's testimony -- or
 20 excuse me -- relies on Judge Simpson asking whether
 21 Ms. Vargas needed a ride home and asks you to interpret
 22 that as a wink and a nod. But look at Officer Cole's
 23 testimony at pages 252 and 253.
 24 As I said in my initial argument,
 25 Judge Simpson didn't intend it that way and Officer Cole

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1 didn't interpret it that way, and that's the best
 2 evidence of the fact that it was a benign question.
 3 Judge Simpson didn't know whether she'd been drinking at
 4 the time. Judge Simpson didn't know whether her car was
 5 drivable. It was an utterly benign question.
 6 It is also, I think, beyond credible to
 7 suggest that the Examiner is not asking you to infer
 8 that there was some kind of an inappropriate personal
 9 relationship. Oh, we're not asking you to find that
 10 there was an inappropriate sexual relationship. They
 11 are asking you to find that there was something improper
 12 about the relationship, because they need to do that in
 13 order to get to the claim of misrepresentations and they
 14 still haven't told you or us --
 15 THE CHAIRPERSON: Mr. Mogill, I wonder if you
 16 could just --
 17 MR. MOGILL: Yes.
 18 THE CHAIRPERSON: -- respond to these calls
 19 that he makes the allegation that your client under
 20 oath --
 21 MR. MOGILL: Yes.
 22 THE CHAIRPERSON: -- said he never made these,
 23 and that would seem to refute that.
 24 MR. MOGILL: There are no -- okay. What
 25 you've got, first of all -- and I want to respond very

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1 directly, Judge Sawyer.
 2 What you've got is a series of events -- if I
 3 may leave the podium for a second?
 4 THE CHAIRPERSON: Sure, go ahead.
 5 MR. MOGILL: So where the zeros are and
 6 3:20:09 to 3:23, these are 4:20:09 to 4:23.
 7 THE CHAIRPERSON: Yeah, they understand.
 8 MR. MOGILL: Because these are text messages.
 9 Right.
 10 THE CHAIRPERSON: Right.
 11 MR. MOGILL: Ms. Vargas texts him. He
 12 apparently texts back.
 13 THE CHAIRPERSON: But he said he didn't.
 14 MR. MOGILL: I understand that, and that may
 15 well -- and, frankly, there is nothing --
 16 THE CHAIRPERSON: That's under oath.
 17 MR. MOGILL: -- to suggest that that is a lie
 18 as opposed to an honest mistake of recollection. In the
 19 middle of the night, you get a text message. You
 20 respond. You're half asleep. You get awakened. It is
 21 entirely possible you're not going to remember, and that
 22 it is not a lie under oath.
 23 I also ask you to look carefully at the
 24 questions that were asked, the answers that were given.
 25 Ultimately, the issue here, I think Judge Cortes nailed

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1 it. The question is not whether one -- whether the
 2 issue is misconduct in office, because it's not. It's a
 3 question of whether or not there is a violation of an
 4 appearance standard.
 5 And for all the reasons I've already indicated
 6 in my briefs and taking your time this morning, I
 7 respectfully submit that the issue of questions that can
 8 be raised is not the same as a violation of appearance
 9 and that all we've ultimately got here is conduct that
 10 leads to questions and not a violation of an appearance
 11 standard.
 12 The Examiner is asking you to infer that
 13 she -- that Ms. Vargas was texting while she crashed.
 14 That's utter speculation.
 15 He's asking you to find that there was -- that
 16 Ms. Vargas testified there was no contact outside the
 17 office. That's not true. Look at the record.
 18 Ms. Vargas was very clear. She was having her personal
 19 problems with Mr. Foglia, her ex-boyfriend. She was
 20 relying on Judge Simpson as someone to talk to, which
 21 he's done with other students, male and female, as the
 22 record is clear.
 23 Look at the whole record, because they are
 24 asking you to look at snippets and not the whole record.
 25 And I thank you very much for your time. I'm sorry.

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1 One second, please.
 2 Those -- and I just want to underscore to the
 3 best -- those text messages were not asked about
 4 certainly directly in Judge Simpson's testimony.
 5 Also the claim that there is inconsistencies
 6 between the answers to the 28-day letter -- excuse me --
 7 the initial request for comments, the 28-day letter, and
 8 the formal complaint, when you look at the questions
 9 that were asked and the answers that were given, it's
 10 the wording of the questions that was responded to. And
 11 in fact, we took the Commission -- the Examiner to task
 12 in responding to certain of the questions because their
 13 suggestion that there was a change of story is
 14 ultimately based on, no, it's a different question and
 15 we were responding truthfully to all of those.
 16 THE CHAIRPERSON: Thank you, Mr. Mogill.
 17 Do any commissioners have any further
 18 questions you would like to ask?
 19 MEMBER HATHAWAY: I do not.
 20 THE CHAIRPERSON: Thanks.
 21 MEMBER DIEHL: I do. Assume we don't agree
 22 with you on some of these issues. I mean, what I'm --
 23 you're saying no discipline is appropriate. What if we
 24 believe that going to the scene and staying at the scene
 25 and calling the city attorney is interference? I mean,

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1 you don't think -- do you want to address what
 2 discipline is appropriate?
 3 MR. MOGILL: I would be --
 4 MEMBER DIEHL: I assume you don't agree that
 5 removal is, but let's get -- would you help us a little
 6 here?
 7 MR. MOGILL: Absolutely.
 8 MEMBER DIEHL: We may not agree with
 9 everything everybody is saying, but I think you should
 10 be a little more realistic with the facts that are
 11 before the Commission and help us in going forward if
 12 you have anything to say in that regard.
 13 MR. MOGILL: I would be happy to. And that's
 14 why -- and that's one of the reasons why I wanted to
 15 underscore that I think Judge Cortes nailed it in
 16 looking at the issue as being an appearance issue.
 17 If, in fact, you find that there was
 18 misconduct involved in either going to the scene or
 19 remaining at the scene or contacting Mr. Lillich, I
 20 think what is important is to obviously look at the
 21 totality and look at Judge Simpson's record, look at his
 22 state of mind, look at what his intentions were, look at
 23 what his reflection has been on the consequences of
 24 those decisions and whether he realizes that that would
 25 be something that would be prudent not to do again.

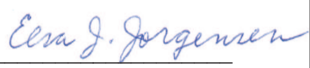
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1 And when you do all that and take those
 2 circumstances together and compare them to the ultimate
 3 results in the cases that I have cited in my brief, I
 4 respectfully submit that the sanction that should be
 5 imposed is one that does not involve a suspension and
 6 would ask you to recommend a sanction that does not
 7 involve a suspension.
 8 THE CHAIRPERSON: Thank you, Counsel.
 9 MEMBER HATHAWAY: I do have a question, just
 10 very briefly. I think you write in your objections to
 11 the Master's findings that Judge Simpson has a
 12 completely blemish-free record with respect to the
 13 Judicial Tenure Commission. Is that, in fact, the case?
 14 MR. MOGILL: Yeah.
 15 MEMBER HATHAWAY: There have been no
 16 disciplines?
 17 MR. MOGILL: No disciplines.
 18 MEMBER HATHAWAY: Okay. All right.
 19 THE CHAIRPERSON: Mr. Fischer, you have
 20 offered an affidavit of Camella Thompson, Administrative
 21 Assistant to the Commission, in support of your request
 22 for costs pursuant to MCR 9.205(B).
 23 Mr. Mogill, is there any objection to the
 24 Commission receiving this affidavit into evidence?
 25 MR. MOGILL: No.

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1 THE CHAIRPERSON: So no objection, the
 2 affidavit is admitted and made part of the record.
 3 (Affidavit admitted.)
 4 THE CHAIRPERSON: That being -- there being
 5 nothing further, the Commission will take this matter
 6 under advisement. We'll issue a written decision
 7 recommendation. That decision recommendation will be a
 8 public document and will be posted on the Commission
 9 website. The Commission thanks counsel, both counsel,
 10 for well-written briefs and thorough arguments today.
 11 We stand adjourned.
 12 (Proceedings concluded at 11:26 a.m.)
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1 STATE OF MICHIGAN)
) SS.
 2 COUNTY OF OAKLAND)
 3 CERTIFICATE OF REPORTER
 4 I, ELSA J. JORGENSEN, Certified Shorthand
 5 Reporter, a Notary Public, do hereby certify that I
 6 recorded in shorthand the proceedings held on Monday,
 7 June 8, 2015, that the foregoing 74 pages comprise a
 8 complete, true, and accurate record to the best of my
 9 ability of the proceedings.
 10
 11 
 12 _____
 ELSA J. JORGENSEN, CSR-6600
 13 Notary Public, Oakland County, Michigan
 14 My Commission Expires: 12/13/2016
 15 Dated: This 10th day of June 2015
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

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