STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. BYRON J. KONSCHUH
40th Circuit Court
255 Clay Street
Lapeer, Michigan 48446

Formal Complaint No. 100

DECISION AND RECOMMENDATION FOR DISCIPLINE

At a session of the Michigan Judicial Tenure Commission, Detroit, Michigan, on August 5, 2020,

PRESENT:

Hon. Monte J. Burmeister, Chairperson
Mr. Thomas J. Ryan, Esq., Vice-Chairperson
Hon. Karen Fort Hood, Secretary
Mr. Ari Adler
Mr. James W. Burdick, Esq.
Hon. Pablo Cortes
Hon. Jon H. Hulsing
Ms. Siham Awada Jaafar
Hon. Brian R. Sullivan

I. Introduction

The Judicial Tenure Commission of the State of Michigan ("Commission") files this recommendation for discipline against Hon. Byron J. Konschuh ("Respondent"), who at all material times was an assistant or prosecuting attorney for the County of Lapeer, State of Michigan, or a judge of the 40th Circuit Court in the City of Lapeer, County of Lapeer, State of Michigan. This action is taken pursuant to the authority of the Commission under Article 6, § 30 of the Michigan Constitution of 1963, as amended, and MCR 9.202.

Having reviewed the transcript, the exhibits, the master's report, disciplinary counsel's objections to the master's report, and Respondent's response to disciplinary counsel's objections,

and having considered the oral arguments of counsel, the Commission unanimously concludes that the Examiner has established by a preponderance of the evidence that Respondent committed misconduct. Respondent earned a master's degree in finance and accounting, prosecuted criminal cases for many years and presided as a judge over criminal cases, yet took the position in this proceeding that he committed no misconduct in taking public money and putting it in his personal accounts, without accounting for it, and converting it to his own use. This misconduct included a pattern of deception and dishonesty, embezzlement, misrepresentations and false statements, lying under oath, and failure to disclose relevant facts regarding his relationships with certain attorneys appearing before him, as well as failure to disqualify himself or receive a written or on-the-record waiver of any possible conflict.

For the reasons set forth herein, the Commission unanimously recommends the Supreme Court remove Respondent from the office of judge of the 40th Circuit Court and suspend Respondent for a period of six years thereafter on the basis of his misconduct. In addition, the Commission recommends the Supreme Court order Respondent to pay costs, fees, and expenses in the amount of $74,631.86 pursuant to MCR 9.202(B), because Respondent engaged in conduct involving fraud, deceit, and intentional misrepresentation, and based on his intentional misrepresentations and misleading statements made to the Commission.

II. Jurisdiction

As a judge, Respondent is subject to all the duties and responsibilities imposed on him by the Michigan Supreme Court, and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.202. As an attorney licensed by the State of Michigan, Respondent was, and still is, subject to the standards of conduct applicable to an attorney under MCR 9.103(A) and the Michigan Rules of Professional Conduct (MRPC). Pursuant to MCR 9.202(B)(2), the Judicial Tenure Commission has jurisdiction over Respondent's pre-bench conduct.

III. Procedural Background

On February 6, 2019, the Judicial Tenure Commission filed Formal Complaint (FC) 100. It charged Respondent with eight counts of misconduct based on multiple violations of criminal statutes, Michigan Court Rules ("MCR"), Michigan Rules of Professional Conduct ("MRPC"), and canons of the Michigan Code of Judicial Conduct ("MCJC" and the "Canons"). The complaint alleged Respondent committed these violations before and during his tenure as the Lapeer County Prosecuting Attorney and after he became a Lapeer County Circuit Court judge.

As to the specific counts of the complaint, as amended March 18, 2019, Count I charged that Respondent pled no contest to a crime in 2016, and that he later made false statements about whether he had done so. Count II charged that Respondent embezzled county funds received under what should have been a county approved contract with a collection company, Hartland Payment Systems/Transmodus, while Respondent served as the Lapeer County Prosecutor. Count III charged that Respondent embezzled county funds received under what should have been a county approved contract with another collection company, Bounce Back, while Respondent served as the Lapeer County Prosecutor. Count IV charged that Respondent embezzled county funds received under financial arrangements with the Law Enforcement Officers Regional Training Commission ("LEORTC") and the City of Lapeer. Count V charged that Respondent embezzled county funds by submitting improper and/or fraudulent voucher requests for reimbursement to the Lapeer County Finance Department. Count VI charged Respondent with improper demeanor regarding his support of Mr. David Richardson as a judicial candidate, Respondent's placement of campaign lawn signs on others' property, and Respondent's October 5, 2016, confrontation of a land owner who removed the campaign lawn sign. Count VII charged Respondent with failing to disclose or disqualify himself in cases in which attorneys David Richardson, Michael Sharkey and Tim Turkelson represented parties due to Respondent's relationships with those attorneys. Count VIII charged Respondent with

providing false information to the Michigan State Police ("MSP") during its criminal investigation into Respondent's embezzlement as well as making misrepresentations to the Commission during its investigation, and misrepresentations to others.

On March 18, 2019, the Supreme Court appointed Hon. William J. Caprathe as the master ("Master"). On April 2, 2019, Respondent filed his answer to the complaint together with his affirmative defenses (Respondent's "Answer," cited as "R's Ans."). A public hearing commenced on June 28 and concluded on September 23, 2019 (the "Hearing"). More than 35 witnesses testified and more than 350 exhibits were admitted.

IV. Master's Findings of Fact and Conclusions of Law

On December 30, 2019, the Master issued a report containing his findings of fact and conclusions of law (the "Master's Report"). The Master concluded that it was established by a preponderance of the evidence that Respondent committed misconduct in office as alleged under Count VII, failure to disclose and/or disqualify. With respect to the remaining counts, the Master concluded there was not a preponderance of evidence to establish allegations under each of those counts. Respondent did not file an objection to the Master's Report pursuant to MCR 9.240 and accepted the Master's conclusion that Respondent committed misconduct under Count VII.

Disciplinary counsel timely filed objections to the Master's Report. Disciplinary counsel agreed with the Master's finding that Respondent committed misconduct as charged in Count VII by failing to disqualify himself from, or disclose his relationships in, cases in which he had a potential conflict of interest. Disciplinary counsel objected to the remainder of the Master's Report finding the evidence insufficient to establish the allegations in Counts I-VI and VIII, largely based upon the Master's Report's failure to consider or reference a multitude of evidence from the voluminous record. Respondent timely responded to disciplinary counsel's objections. On May 29, 2020, the Commission held a public hearing on the disciplinary counsel's objections to the Master's Report

pursuant to MCR 9.241, which was conducted via Zoom video based upon various executive orders by the Governor and administrative orders of the Michigan Supreme Court relating to the ongoing COVID-19 pandemic.

V. Standard or Proof

Judicial discipline is a civil proceeding, the purpose of which is not to punish but to maintain the integrity of the judicial process. *Matter of Mikesell*, 396 Mich 517, 527; 243 NW2d 86 (1976); *In re Seitz*, 441 Mich 590, 624; 495 NW2d 559 (1993); *In re Haley*, 476 Mich 180, 195; 720 NW2d 246 (2006). The standard of proof applicable in judicial disciplinary matters is the preponderance of the evidence standard. *In re Ferrara*, 458 Mich 350, 360; 582 NW2d 817 (1998) (cite omitted). The disciplinary counsel bears the burden of proving the allegations by a preponderance of the evidence. MCR 9.233(A). The Commission reviews the master's findings of fact and conclusions of law de novo, and the Commission may, but need not, defer to the master's findings of fact. *In re Chrzanowski*, 465 Mich 468, 482; 636 NW2d 758 (2001). In *Ferrara, supra*, 458 Mich at 362, the Michigan Supreme Court, citing *In re Tschirhart*, 422 Mich 1207, 1209-1210; 371 NW2d 850(1985), recognized:

> "*[t]he proper administration of justice requires that the Commission view the Respondent's actions in an objective light.* The focus is necessarily on the impact his statements might reasonably have upon knowledgeable observers. Although the Respondent's subject intent as to the meaning of his comments, his newly exhibited remorsefulness and belated contrition all properly receive consideration, any such *individual interests are here necessarily outweighed by the need to protect the public's perception of the integrity of the judiciary*."

(emphasis added). It is the Commission's, not the master's conclusions and recommendations that are ultimately subject to review by the Michigan Supreme Court. *Chrzanowski*, 465 Mich at 481.

VI. Commission's Findings of Fact and Conclusions of Law

The Commission unanimously accepts and adopts the Master's findings of fact and conclusions of law that Respondent committed misconduct under Count VII, and that such conduct

was clearly prejudicial to the administration of justice. Although the Commission is troubled by the allegations contained in Count V (improper reimbursement) and Count VI (abusive demeanor), after review of the record the Commission, like the Master, concludes that disciplinary counsel did not satisfy its burden of proving the allegations by a preponderance of the evidence. Additionally, the Commission upon de novo review of the entire record finds, contrary to the Master, that disciplinary counsel established by a preponderance of the evidence that Respondent committed misconduct in office and was involved in conduct that is clearly prejudicial to the administration of justice, as alleged under Counts I, II, III, IV, and VIII.

VII. Findings of Fact on Counts I, II, III, IV, and VIII

Count I: 2016 Criminal Misdemeanor Plea & False Statements.

Count I charged that Respondent pled no contest to a crime in 2016, and he later made false statements about whether he had done so. If established, such misconduct constitutes: (a) misconduct in office and conduct clearly prejudicial to the administration of justice, as defined by Michigan Constitution Article 6 Section 30, MCR 9.202(B); (b) conduct in violation of the standards imposed on members of the bar as a condition of the privilege to practice law, contrary to MCR 9.103(A); (c) conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2); (d) conduct contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3); (e) conduct in violation of MRPC 8.4, 8.4(c) and MCR 9.104(4); (f) conduct that violates a criminal law of Michigan, contrary to MCR 9.104(5), to wit, MCL 750.485; (g) conduct involving fraud, deceit, or intentional misrepresentations, including misleading statements to the Judicial Tenure Commission, contrary to MCR 9.202(B); (h) failure to establish, maintain, enforce and personally observe high standards of conduct so the integrity and independence of the judiciary may be preserved, contrary to Canon 1; (i) irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of Canon 2(A); (j) conduct

involving impropriety and the appearance of impropriety, in violation of Canon 2(A); (k) failure to respect and observe the law, contrary to Canon 2(B); (1) failure to act in a manner that promotes public confidence in the integrity of the judiciary, contrary to Canon 2(B); (m) and conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b). The Commission reviewed the record de novo and rejects the Master's findings and conclusions as to Count I.

Plea to a Crime

Contrary to the Master's finding, the Commission finds there was well more than a preponderance of the evidence Respondent pled no contest to a crime. After Respondent left his position as Lapeer County Prosecutor to become a judge in April 2013, his successor, Tim Turkelson, discovered that for several years prior Respondent had been personally taking checks that had been issued to the Prosecutor's Office. An MSP investigation confirmed Respondent had deposited, into his personal accounts and accounts he held with his wife and son, $1,802.00 that had been paid to the Prosecutor's Office. This $1,802.00 consisted of (1) $1,022 in referral fees from Bounce Back, a collection company with which Respondent contracted to handle select bad check cases on behalf of the Prosecutor's Office (Hearing Transcript (cited as "Trans.") pp. 81-83, 223-30; Examiner's ("E") Exhibits ("Ex.") 9-74); and (2) $780 in payments by the LEORTC for training sessions conducted by one of his assistant prosecuting attorneys, on county time (Trans. pp. 82¬83; E's Ex. 92k). The payments were made through 44 checks. (E's Exs. 9-74, 92k.)

Based on the MSP investigation, in July 2014 Special Prosecutor Deana Finnegan issued a criminal complaint charging respondent with five felony counts of embezzlement by a public official. (Trans. p. 81; E's Exs. 1 a, 1 b.) The preliminary examination commenced on September 24, 2014, before Hon. Terrance Dignan. (R's Ans. ¶12.) Judge Dignan bound Respondent over for

trial as charged to Lapeer County Circuit Court, where the case was assigned to then Genesee Circuit Court Judge Geoffrey L. Neithercut, Lapeer case number 14-012016-FY and Genesee case number 14-36353. (R's Ans. ¶13; E's Ex. 1c.)

On March 8, 2016, the parties met to take the unusual step of mediating Respondent's case with the assistance of former judge Robert M. Ransom. (Trans. pp. 3215-3216; E's Ex. lcc.) Following mediation the parties signed a "stipulation and agreement," (E's Ex. li), which in part provided:

> "MCL 21.44 required each department and County office to make an annual financial report involving public monies. While it is still not clear that the stipends or fees fall into the definition of public monies, the parties agree that the monies raised could be interpreted as public monies that would require financial reporting.
>
> In order to prevent further tax payer expense of a trial in this matter, the parties have agreed that Judge Konschuh will plead 'no contest' that there may be an interpretation of MCL 21. 44 that supports the argument that he should have reported the collection of these funds to the State or other appropriate entity for accounting purposes. After a delay of sentence as determined by the Court, the matter will be dismissed with prejudice."

After the stipulation was reached, on the same day of March 8, 2016, Respondent appeared before Judge Neithercut and entered a plea of no contest to a 90-day misdemeanor under MCL 750.485 of "Public Officer – Failure to Account for Public Money." Judge Neithercut accepted his plea, found Respondent guilty, and referred him for a presentence investigation and report. (E's Exs. 1f, 1g, 1h, 1n, 1o, 1ff, 1cc pp. 3-5, 7, 9, 11-12, 16-18; Trans. pp. 98-101, 117-132, 146, 824, 2479-80, 2486, 2757, 2797, 2891, 3217-21; *see also* R's Ans. ¶¶16, 17, 26.) Judge Neithercut sentenced Respondent on March 31, 2016. (E's Ex. 1p.) Pursuant to the plea agreement, the prosecutor dismissed the case in July of 2016. (E's Ex. lk.)

Respondent claims the stipulation proves that his plea was only to a violation of an accounting statute, MCL 21.44, and not to a crime under MCL 750.485. (R's Ans. ¶¶22, 31, 32.) On February 19, 2018, nearly two years after his plea and after he filed his civil case against the

county and others, Respondent filed a Motion Nunc Pro Tunc, (E's Ex. 1t), in which he explicitly stated he did not plead no-contest to MCL 750.485, a misdemeanor, but pled no contest under MCL 21.44. (Trans. pp. 136-137, 3243.) But the Commission concludes the preponderance of evidence, including Respondent's own admissions and other evidence set forth below, does not support Respondent's claim, and that Respondent's testimony and statements to the contrary are misrepresentations.

At the preliminary examination of his criminal case, throughout his pre-trial motions, in his applications for leave to appeal in the Court of Appeals and the Supreme Court, and in the deposition taken in his civil matter, Respondent persistently argued that the original criminal charges should be dismissed because the funds at issue were not public or county money, an argument rejected by Judge Dignan and Judge Neithercut. (Trans. p. 87; E's Exs. laa, lz.) In light of that, as Prosecutor Finnegan explained at the March 5, 2018, hearing on Respondent's Motion Nunc Pro Tunc, in order to facilitate the plea Respondent agreed that under MCL 21.44 the funds "could be interpreted as public monies requiring financial reporting." (E's Exs. li, lcc.) This stipulation and agreement was for the purpose of establishing the factual basis for Respondent's no-contest plea under MCL 750.485. (E's Ex. 1 cc, p. 16.) The purpose of the stipulation was to establish that the funds could be considered as public monies, contrary to the position Respondent had persistently taken until that time, and therefore his failure to report them provided a factual basis and necessary element for Respondent's plea to a crime under MCL 750.485.

Before tendering the plea, Respondent also filled out and signed several documents that were utilized by Judge Neithercut during the hearing. (Trans. pp. 91-101; E's Exs. lf, g, lh.) One of the documents signed by Respondent, along with his legal counsel, (Trans. pp. 91-101), included their filling out and initialing all information the form required, including that Respondent was pleading "no contest" to "Fail to Account, contr. to 750.485," that the offense carried a maximum of 90 days

in jail and a maximum fine of $500, and that Respondent understood that a no contest plea "constitutes a conviction." (Trans. pp. 98-101.) In the section asking Respondent to "state in your own words what you did," Respondent, using the language of MCL 750.485, handwrote:

> "FAIL TO ACCOUNT FOR —> See Exhibit "1"
> NO CONTEST — request EXAM TRANSCRIPT
> BE USED AS FACTUAL BASIS

(E's Ex. lh.)

Another document that Respondent, his attorneys, and Ms. Finnegan signed before the plea hearing was the "plea agreement/sentence agreement." (E's Ex. 1f.) By signing it, Respondent expressly agreed to plead "no contest to Count 6 - Public Officer — Failure to Account for Public Money" under MCL 750.485. (E's Ex. lf, Section 1.) He also agreed to a "delayed sentence with a dismissal with prejudice upon successful completion of the terms of the delay." (Trans. pp. 95-96; E's Ex. 1f, Section 3.)

Respondent's understanding he was pleading to a misdemeanor was further established by the video and corresponding transcript of the plea hearing. (E's Exs. 1(l), 1cc.) At the outset, prosecutor Finnegan made a clear record of the parties' agreement including the fact that Respondent would plead no contest to count 6 of the newly amended information, which she identified as public officer failure to account for county money. In exchange for that plea, Ms. Finnegan "agreed to dismiss today counts one through five, embezzlement by a public official over $50." (E's Ex. lcc, pp. 3-4.) In addition to Respondent, his attorneys, Mr. Pabst and Mr. Sharkey, were present during the plea process. When given an opportunity to respond, Respondent's counsel, Mr. Pabst, objected only to Ms. Finnegan's reference to restitution. In fact, he added: ". . . other than that, I think she stated everything correctly except there's no provision for restitution in here." (E's Ex. 1cc, p. 5.) Neither Respondent, Mr. Pabst, or Mr. Sharkey expressed any view that Respondent was not pleading no contest to a 90-day misdemeanor. Yet, as discussed later in this decision, Mr. Pabst,

with Respondent's concurrence, filed a Motion Nunc Pro Tunc on the basis that Respondent did not plead to a misdemeanor under MCL 750.485.

At the time of his plea, Respondent had been practicing criminal law for more than a quarter of a century, and had served as a judge who presided over criminal cases, as well. The Commission deems incredible his contention he did not understand the implications of having signed an Advice of Rights and Plea/Sentence Agreement form in connection with his plea, especially in light of Judge Neithercut's "exhaustive Advice of Rights routine." (E's Ex. 1(l); E's Ex. lcc, p. 7.) When Judge Neithercut asked Respondent how he would plead to the charge of "being a public officer who failed to account for county money," Respondent replied "No contest, Your Honor." (E's Ex. 1cc, p. 16.)

Finally, just eight days after his plea, Respondent's current counsel sent a letter to the Attorney Discipline Board, with a copy to the Attorney Grievance Commission as well as to Respondent, Mr. Sharkey, and Mr. Pabst. (E's Ex. 1 ff.) The letter, required under MCR 9.120, stated that on March 8, 2016, Respondent was "convicted of the misdemeanor offense of Failure to Account for County Money contrary to MCL 750.485." (*Id.*)

False Statements About Misdemeanor Plea

Respondent's later denial of the clear fact he pleaded to a misdemeanor crime appears to have been motivated by his desire to file a civil lawsuit against Lapeer County and several individuals. On May 17, 2017, Respondent filed a civil action against Lapeer County and several of its employees, including witnesses who had testified against him at the preliminary exam in the criminal case. His civil complaint included a claim of malicious prosecution. That claim required proof that the underlying criminal proceedings were terminated in Respondent's favor. (Trans. p. 2859); *Matthews v Blue Cross and Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998); *see also* MCL 600.2907. In furtherance, Respondent knowingly filed a false and fraudulent pleading, his Motion Nunc Pro Tunc in the criminal case. (Trans. pp. 135-137; E's Ex. 1t.) Judge

Neithercut denied that motion. (E's Exs. lee, 1(l).) In addition, in his November 15, 2017, deposition in his civil case, Respondent claimed he did not plead no-contest to any crime including he did not plead to a misdemeanor. (Trans. pp. 717-718.) Respondent repeated his false denials in his answers to the Commission's inquiries during the investigation into this matter and his answer to the complaint. (Trans. pp. 3332, 3335-36; R's Ans. ¶22.) Contrary to the Master's finding, the Commission finds there was well more than a preponderance of the evidence Respondent knowingly and deliberately made multiple false statements about his plea as charged in Count I.

COUNTS II - IV: EMBEZZLEMENT OF COUNTY FUNDS – COUNTY POLICY

Counts II, III, and IV of the Amended Complaint, separately set forth in more detail below, allege Respondent took several types of funds that belonged to Lapeer County and engaged in long term embezzlement by depositing county funds in his and his family's personal bank accounts. Some of the evidence that those funds belonged to the county was a policy that money coming to a county office belonged to the county, which policy was confirmed by the testimony of Doreen Clark, a long-time assistant to the county controller. (E's Ex. 5k; Trans. pp. 1927-28.)

The Lapeer County policy is relevant because, although a violation of the policy alone would not constitute misconduct, nor is the policy necessary to a finding of embezzlement and/or misconduct, the evidence shows Respondent was familiar with the policy, his handling of the money the Lapeer County Prosecutor's Office received violated that policy, and such violations are evidence of Respondent's unethical and illegal intent with respect to the county money he took spanning over several years. But, even had that policy not existed, Respondent was still not entitled to keep any money the Lapeer County Prosecutor's Office received from the Hartland money order (Count II), the Bounce Back checks (Count III), or the other sources of funds that are the subjects of Count IV, all discussed below. Rather, the existence of the policy, Respondent's familiarity with it,

and his knowing and repeated violations of it, were just one piece of evidence — albeit an important piece — that showed his conversions of county money were knowing and deliberate.

The Commission rejects the Master's findings and conclusions regarding the Lapeer County policy in this regard. The Commission finds the evidence showed the subject county policy existed and Respondent was well aware of it, and was even responsible at times for reviewing county contracts and training others in his office on the policy. (Trans. pp. 149-156, 857-59, 896-97 983, 1017, 1205-1212, 1913-16, 1927-28.) The policy had two particularly pertinent aspects: (1) it required that all contracts and agreements involving county departments be approved by the county board of commissioners, (E's Ex. 5j); and (2) it required that all revenues be deposited with the county treasurer's office within 24 hours of receipt. (E's Ex. 5j, 5k). Respondent did not disclose to the board the Hartland contract, which enabled him to receive the money order discussed below regarding Count II. (Trans. pp. pp 172-75, 232-235). Nor did Respondent disclose to the board the Bounce Back contract, which enabled him to receive the 42 checks that are the subject of Count III, discussed below. (Trans. pp 172-75, 232-235.) Respondent did not deposit or cause to be deposited the revenues of the money order that was the subject of Count II or the Bounce Back checks subject to Count III with the county treasurer's office within 24 hours of receipt, as discussed regarding each count below.

The Commission finds Respondent's claimed ignorance of the policy is not credible in light of the multiple sources of evidence, including the testimony of other witnesses, and is contrary to Respondent's admissions he reviewed contracts submitted by other county departments, as required under the policy, both when he was the chief assistant prosecutor and when he became the prosecutor. (Trans. p. 172.)

Count II: Embezzlement (Hartland Money Order).

Count II charged that Respondent embezzled $15 of a $60.28 money order the Lapeer County Prosecutor's Office received as payment for an insufficient funds check. If established, the misconduct charged in Count II constitutes: (a) conduct in violation of the standards imposed on members of the bar as a condition of the privilege to practice law, contrary to MCR 9.103(A); (b) conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2); (c) conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3); (d) conduct in violation of MRPC 8.4, 8.4(c) and MCR 9.104(4); (e) conduct that violates a criminal law of Michigan, contrary to MCR 9.104(5), to wit, MCL 750.174 and MCL 750.485; and (f) conduct involving dishonesty, fraud, deceit, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b). The Commission reviewed the record de novo and rejects the Master's findings and conclusions as to Count II.

In 2008, Respondent entered into a verbal agreement with a company named Hartland, under which Hartland sought to collect on "bad check" cases designated by the Prosecutor's Office. The amount collected was the face amount of the dishonored check plus a $35 fee. (Trans. pp. 157-160, 162-165, 177-178; R's Ans. ¶¶50-51,56; E's Ex. 6a). Respondent, on behalf of the Lapeer County Prosecutor's Office, stopped using Hartland by the end of 2008.

In early February 2009, under the Hartland program but after it had ended, Respondent's office received a Western Union Money Order as payment for a dishonored $25.28 check that had been written by Sherri Ohenley to the Past Tense Country Store in Lapeer. (Trans. pp. 163, 182-85, 1689-90; R's Ans. ¶¶ 57-62; E's Exs. 6e, 6f). The money order, in the amount of $60.28, represented the face amount of Ohenley's dishonored check plus Hartland's $35 fee. (Trans. pp. 182-187; E's Ex. 6b.) Respondent admitted he cashed the Ohenley money order on May 14, 2009, and he

deposited the entire $60.28 into his and his wife's personal bank account at Lapeer County Bank & Trust. (Trans. pp. 188; R's Ans. ¶65; E's Ex. 6g.)

The next day, Respondent provided only $45.28, i.e., $15 less than the full amount of the money order, to Pat Redlin, a clerical employee of Respondent's office. (Trans. pp. 2032-2035; R's Ans. ¶68; E's Exs. 6h, 6i.) Ms. Redlin testified that, at Respondent's direction, she provided the full amount Respondent had given her to the Lapeer County Treasurer's Office. (*Id.*) Thus, only $45.28 of the $60.28 money order was provided to the treasurer's office. (Trans. pp. 190-92, 2033-36; R's Ans. ¶71; E's Exs. 6h, 6i.) The treasurer's office never received the remaining $15 from the Ohenley money order and Hartland never received any of its $35 fee. (Trans. pp. 163, 229, 1898-1902; E's Exs. 149, 150.) In other words, the evidence showed Respondent received the entirety of the money, but gave $15 less than the entirety to Ms. Redlin, consistent with his pattern and practice with many checks from Hartland's successor, Bounce Back, discussed below. Although the amount in question of $15.00 is not substantial, the Commission finds this instance of misconduct to be consistent with Respondent's pattern of embezzlement of depositing money he received in his public capacity into his own personal bank accounts, an extraordinary thing for a public official to do.

The Master did not address this evidence. Contrary to the Master's conclusion, the Commission finds the preponderance of the evidence summarized above shows Respondent committed misconduct as charged in Count II by embezzling a portion of the Hartland money order.

Count III: Embezzlement (Bounce Back Checks).

Count III charged that Respondent embezzled 42 checks totaling more than $1,200 the Lapeer County Prosecutor's Office had received under its contract with Bounce Back. If established, the misconduct charged in Count III constitutes: (a) conduct in violation of the standards imposed on members of the bar as a condition of the privilege to practice law, contrary to MCR 9.103(A); (b) conduct prejudicial to the proper administration of justice, contrary to MCR 9.104(1);

(c) conduct that exposes the legal profession to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2); (d) conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9,104(3); (e) conduct that violates MRPC 8.4, 8.4(c) and MCR 9.104(4); (f) conduct that violates criminal laws of Michigan, to wit, MCL 750.175 (embezzlement by a public official over $50) and MCL 750.249 (Uttering and Publishing); and (g) conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b). The Commission reviewed the record de novo and rejects the Master's findings and conclusions as to Count III.

Effective January 1, 2009, Respondent entered into a written contract with Bounce Back, another collection company. (Trans. pp. 160-161, 217-221, 3247; R's Ans. ¶75; E's Ex. 7a). The new contract replacing the Hartland program granted Bounce Back the exclusive license to operate a check enforcement program "under the Prosecuting Attorney's, name, authority, and control." (Trans. pp. 223-226; E's Ex. 7a-§1a). Under the contract, the Lapeer County Prosecutor's Office was to receive a $5 fee from each $40 processing fee Bounce Back collected. (Trans. pp. 225-228; E's Ex. 7a.)

As with Hartland, Respondent did not submit the Bounce Back contract to the Board of Commissioners. (Trans. pp. 922-23). Respondent also did not notify the Board of Commissioners, the County Controller, the County Treasurer's Office, or the County Finance Department of the existence of the contract or the $5/check fee the Lapeer County Prosecutor's Office was receiving from Bounce Back. (Trans. pp. 231-37).

Between September 2009 and April 2013, Respondent deposited into his personal bank accounts 42 checks sent to the Lapeer County Prosecutor's Office by Bounce Back. These checks, totaling $1,022, represented various aggregate amounts of the $5 fee paid to the county. (Trans. p.

252; R's Ans. ¶¶82, 83; E's Exs. 8, 8a). Each check was made payable either to "Lapeer County Prosecuting Attorney's" or the "Prosecuting's Attorney's Office." (Trans. pp. 228-29; R's Ans. ¶83.) Respondent admitted he deposited each of the 42 checks into personal bank accounts he held with his wife and son at Lapeer County Bank & Trust, Chase Bank, or Independent Bank. (Trans. p. 264; R's Ans. ¶¶ 93-346; E's Exs. 9-74.) Respondent deposited the last of the checks after he was informed he was appointed to the bench. (Trans. pp. 269-271; R's Ans. ¶346; E's Ex. 74.) Respondent did not keep a copy of any of the checks, or maintain accounting ledgers to show his receipt and use of these funds, rather he instructed his staff to give him the checks. (Trans. pp. 256-260, 260-65, 277-78, 1820-21.)

Bounce Back operated in the county by the authority and under the name of a county department — the Lapeer County Prosecutor's Office. (Trans. pp. 3246-49.) The contract involved a fundamental function of that county department — the handling and disposition of criminal offenses. It was no different than the Hartland contract under Count II, which was supervised by Respondent's then chief assistant, Michael Hodges. (Trans. pp. 157-160). Bounce Back relied on the power of Respondent's county office to compel payments of restitution to victims of bad checks. (E's Exs. 7a §3, 7a §1(a).) Respondent admitted he authorized the Bounce Back contract for use in Lapeer County in his capacity as the county prosecutor, and that Bounce Back was a collection agency for his county office. (Trans. pp. 225, 349, 3246-47, 3249.)

Therefore, the Commission rejects Respondent's implausible and unsupported justification for taking the money that the Bounce Back contract was not a "county" contract, and therefore the funds received under it were not county money, and the Commission rejects this argument for the same reasons as it pertains to the contracts involved in Counts II and IV, as well. (Trans. pp 178, 180, 225-26, 248, 250, 251.) The Commission is not persuaded by Respondent's position that the funds he deposited in his own private bank accounts would or should be off set by money he is

alleged to have spent on the prosecutor's office over the years. Respondent kept no ledger of deposits or expenses. Moreover, there is nothing in the elements of the embezzlement statute to suggest that it is a defense that the person doing the appropriation was compensating himself, under his own rules, for expenses he incurred with respect to the entity from which he embezzled. There simply is no legal authority for Respondent's position.

Contrary to the Master's conclusion, the Commission finds the preponderance of the evidence summarized above shows Respondent committed misconduct as charged in Count III by embezzling county money received in the form of checks from Bounce Back. Respondent held public office. He knowingly appropriated to his own use money he received in his official capacity, therefore embezzling the money in question.

Count IV (LEORTC and City of Lapeer).

Count IVA charged that Respondent embezzled funds paid to the county by LEORTC, and Count IVB charged that Respondent embezzled funds paid to the county by the City of Lapeer. If established, the misconduct charged in Count IVA-B constitutes: (a) violation of the standards imposed on members of the bar as a condition of the privilege to practice law, contrary to MCR 9.103(A); (b) conduct prejudicial to the proper administration of justice, contrary to MCR 9.104(1); (c) conduct that exposes the legal profession to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2); (d) conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3); (e) conduct that violates MRPC 8.4, 8.4(c) and MCR 9.104(4); (f) conduct that violates criminal laws of Michigan, to wit, MCL 750.175 (embezzlement by a public official over $50) and MCL 750.249 (Uttering and Publishing); and (f) conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b). The

Commission reviewed the record de novo and rejects the Master's findings and conclusions as to Count IV.

As to Count IVA, the Master accurately found that, for many years, the Lapeer assistant prosecuting attorneys provided legal instruction at law enforcement training sessions/seminars/legal updates that were sponsored and paid for by the LEORTC. (Master's Report ("MR" p. 7; Trans. pp. 282-83.) The evidence showed that preparation for the trainings took place at Respondent's office, using office equipment and supplies. (Trans. pp. 1417-20.) Each training was conducted during business hours, and the participating assistant prosecuting attorneys did not take any vacation, sick, or compensatory time from their county positions to prepare for or to participate in the training. (Trans. pp. 283-84.)

The evidence further showed that in October and again in December of 2000, while still the chief assistant prosecutor under prosecutor Justus Scott, Respondent participated with other Lapeer assistant prosecuting attorneys in two LEORTC training sessions. (R's Ans. ¶¶366-370.) Following each session, Respondent submitted a cost documentation sheet designating himself as the sole recipient of any compensation. Respondent admitted having received two checks at that time from LEORTC, for a total of $600, both of which he deposited into his personal accounts. (Trans. pp. 320-321; R's Ans. ¶366.) Respondent also admitted he did not notify the county board of commissioners, the county controller, or the county treasurer's office of the training funds his office had received, and that he did not maintain any accounting records/ledgers showing how these funds were used. (R's Ans. ¶¶369, 370.)

The Master also correctly found that in 2011 and 2012, assistant prosecuting attorney Cailin Wilson provided legal instruction at a LEORTC sponsored corrections academy in Flint/Fenton, Michigan. (MR p. 7; Trans. pp. 1415-28; R's Ans. ¶348.) Respondent did not participate in either session. (Trans. p. 283; R's Ans. ¶349.) In 2012, Respondent directed Ms. Wilson to submit her

mileage expenses for the training to the county, (Trans. pp. 1428, 1432), and then Respondent approved her mileage reimbursement voucher, authorizing the county to pay it. (Trans. p. 1432; E's Ex. 92h.) Pursuant to Ms. Wilson's request on the cost documentation forms. (Trans. p. 1426), the LEORTC issued two checks, for $300 in 2011 and for $480 in 2012, made payable to the Lapeer County Prosecutor's Office. (R's Ans. ¶¶356-57; E's Ex. 92k). Despite the county resources that were used to generate this money, Respondent deposited these checks into his personal bank accounts. (Trans. pp 287-89; R's Ans. ¶359; E's Ex. 92k.)

The Master's Report did not address the period between these 2001 and 2011 trainings, during which Respondent and the Lapeer assistant prosecuting attorneys participated in sixteen other LEORTC training sessions. (Trans. p. 302; R's Ans. ¶361.) For each session, Respondent submitted a cost documentation sheet designating only himself as the recipient of all compensation. (Trans. p. 304.) Respondent deposited sixteen checks for these trainings, totaling $4,850, into his personal bank accounts. (Trans. p. 323; R's Ans. ¶361; E's Ex. 92d.) Respondent admitted he did not notify the county board of commissioners, the county controller, or the county treasurer's office of the funds that LEORTC was paying for these training sessions. (Trans. pp. 316-17.) Respondent also admitted he did not maintain any accounting records/ledgers to show how these funds were used. (R's Ans. ¶365.)

As to Count IVB, and apart from the LEORTC, the Master further found, correctly, that between 2001 and 2008 Respondent and the Lapeer assistant prosecuting attorneys made court appearances on behalf of the City of Lapeer, and that the Lapeer City Attorney paid Respondent for every case covered. (MR p. 8; Trans. pp. 331, 336-38, 1467; R's Ans. ¶372.) Respondent admitted that between 2001 and 2008 he received $100 to $300 each year for his and his staff's appearances on behalf of the City of Lapeer. (Trans. p. 338.) These court appearances the assistant prosecuting attorneys made on behalf of the City of Lapeer took place on county time, i.e., the attorneys did not

take any vacation, sick, or compensatory time from their county employment to make these appearances. (Trans. pp. 337-338.) As with the funds paid by the LEORTC, Respondent deposited the City of Lapeer funds in his personal bank accounts without notifying the board of commissioners, the treasurer's office, or county controller. (Trans. pp. 338-40; R's Ans. ¶¶372, 374). Respondent also did not set up any accounting ledgers or any other methods of keeping track of how he spent the City of Lapeer's funds. (Trans. pp. 338-40; R's Ans. ¶375.)

Contrary to the Master's conclusion, the Commission finds the preponderance of the evidence summarized above shows Respondent committed misconduct as charged in Counts IVA and IVB by embezzling county funds paid to the county by LEORTC and the City of Lapeer.

Count VII: Failure to Disclose Or Disqualify.

Count VII charged Respondent with improperly failing to disclose his relationships with Michael Sharkey, Dave Richardson, and Tim Turkelson when he presided over cases in which those attorneys appeared, or to disqualify himself from those cases. If established, the misconduct charged in Count VII constitutes: (a) misconduct in office and conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution Article 6, Section 30 and MCR 9.202(B); (b) conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2); (c) failure to establish, maintain, enforce and personally observe high standards of conduct so the integrity and independence of the judiciary may be preserved, contrary to Canon 1; (d) conduct involving impropriety and the appearance of impropriety, in violation of Canon 2(A); (e) failure to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, contrary to Canon 2(B); and (f) failure to disclose possible grounds for disqualification, contrary to Canon 3(C) and MCR 2.003. The Commission defers to and adopts the Master's findings and conclusions as to Count VII.

The Master correctly determined that Respondent improperly failed to disclose his relationships with Michael Sharkey, Dave Richardson, and Tim Turkelson when he presided over cases in which those attorneys appeared, or to disqualify himself from those cases, as charged by Count VII. Respondent did not object to the Master's findings or conclusions regarding Count VII, rather Respondent "accept[ed] the master's conclusion" that he committed the misconduct as charged in Count VII. (Respondent's Response to Disciplinary Counsel's Objections to Master's Report, p 60.) Although the Master's Report reaches the correct conclusion, and the Commission adopts the Master's Report and conclusions on this count, since it does not cite to parts of the record that support that conclusion, we provide the following record support.

As a result of the criminal charges, on July 21, 2014, Respondent was placed on administrative leave from the bench. (E's Ex. 3a, 3b, 3c.) He was reinstated in April of 2016, (E's Ex. 3e), and resumed his judicial duties in July of 2016 after the criminal case was dismissed. (Trans. p. 554.) Respondent was represented in the criminal case by Michael Sharkey. (R's Ans. ¶¶459-460.) Mr. Sharkey's legal fee, still outstanding in its entirety during this proceeding, is $415,250. (R's Ans. ¶¶461-462; E's Ex. 2e.)

During the 2016 election year, before and after returning to the bench, Respondent became involved in two election campaigns. One was of his long-time friend and law school classmate, David Richardson. (Trans. pp. 532-533, 2917; R's Ans. ¶¶450, 451.) The other was that of his criminal attorney, Michael Sharkey. (Trans. p. 3340; R's Ans. ¶¶459-460.) In April of 2016, Mr. Sharkey declared his candidacy for the office of the prosecuting attorney against the incumbent Timothy Turkelson. (R's Ans. ¶468.)

Respondent admitted that during the 2016 campaign he expressed his support for Mr. Richardson's bid for the 40th Circuit Court. (R's Ans. ¶453a.) He was also openly supportive of Mr. Sharkey's attempt in a non-judicial partisan election to defeat Mr. Turkelson in violation of

Canon 7(A)(1)(b).[1] (R's Ans. ¶469.) Respondent made phone calls to potential voters regarding the placement of the candidates' campaign signs, (Trans. p. 3339; R's Ans. ¶¶453d, 454, 471), and put up campaign signs on various public and private properties. (R's Ans. ¶¶453d, 454, 471.)

From the time he returned to the bench in July of 2016 until August of 2017 Respondent presided over numerous civil and criminal cases in which Mr. Richardson was the attorney of record. (Trans. p. 460-465; R's Ans. ¶454; E's Ex. 137.) Respondent also presided over Mr. Sharkey's criminal and civil cases before Mr. Sharkey became the county prosecutor, (Trans. p. 562; R's Ans. ¶¶463, 475), and presided over the criminal cases after Mr. Sharkey became the county prosecutor. (Trans. p. 563.) Between April and December of 2016 Respondent also presided over cases in which Mr. Turkelson, a prosecution witness in Respondent's criminal case, (Trans. pp. 564-565; R's Ans. ¶467), was the attorney of record as the county prosecutor. (R's Ans. ¶473.)

Records from more than 100 civil and criminal cases, and an accompanying stipulation, established that Respondent did not disqualify himself from Mr. Richardson's, Mr. Sharkey's, or Mr. Turkelson's cases. (Trans. pp. 564, 565, 566; E's Exs. 137, 138, 139.) Respondent also did not provide sufficient on-the-record disclosures of his relationships with these individuals in cases in which they were the attorneys of record, and did not obtain written or on-the-record waivers of any potential conflict of interest from the parties as required by MCR 2.003 (E). Canon 3(C) of the Michigan Code of Judicial Conduct (MCJC) requires judges to raise the issue of disqualification whenever there is "cause to believe that grounds for disqualification may exist under MCR 2.003(C)." The grounds for disqualification, listed in MCR 2.003(C), include situations where a judge is biased for or against a party or attorney (MCR 2.003(C)(1)(a)), and those where the judge,

[1] As to the Master's finding that Canon 7 was violated, the Commission notes its complaint did not allege a violation of Canon 7. However, the Commission adopts the Master's findings as to Count VII of the complaint. In that section of the Masters' Report, in addition to finding multiple instances of failure to disqualify, the Master also found respondent violated Canon 7. While not pled by the

based on objective and reasonable perception, has either a serious risk of actual bias impacting the due process rights of a party or has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Conduct. MCR 2.003(C)(1)(b). Canon 2 obligates members of the bench to "avoid all impropriety and appearance of impropriety" and calls for judges to "observe the law and to engage in conduct and manner that promotes public confidence in the integrity and impartiality of the judiciary." (Canons 2(A), 2(B).)

Respondent's relationships with Mr. Turkelson, Mr. Sharkey, and Mr. Richardson, albeit vastly different, clearly fit within the concerns expressed by MCR 2.003 and the Canons. Respondent's bias against Mr. Turkelson is obvious and profound. He opposed Mr. Turkelson's appointment as the Prosecuting Attorney, (Trans. p. 556), was critical of Mr. Turkelson's prosecutorial and hiring/firing decisions, (Trans. p. 561), became convinced that Mr. Turkelson was involved in a conspiracy to have him removed from his judicial seat, (Trans. pp. 3367-3370) and accused Mr. Turkelson of conducting an improper criminal investigation of him. (E's Exs. 114a, 114b, 114c.)

As of March of 2016, and certainly by July of 2016, Respondent was also considering filing a grievance with the Attorney Grievance Commission and a "libel per se" lawsuit against Mr. Turkelson. (Trans. pp. 561-562; E's Ex. 114a.) On May 17, 2017, Respondent did file a civil action against, among others, Mr. Turkelson alleging libel/slander and malicious prosecution. (Trans. p. 561; E's Ex. 114a, 142.) Under these circumstances, Respondent was clearly biased against Mr. Turkelson and should have disqualified himself from presiding over all criminal cases in which Mr. Turkelson was the chief law enforcement officer of the county. The same circumstances created a clear appearance of impropriety which also called for respondent's disqualification.

Commission, the Commission believes it important to recognize this ethical breach established by the Master.

Respondent was also required to disqualify himself from all cases in which Mr. Sharkey was the attorney of record, whether as a private practitioner or as the county's prosecuting attorney. During the two years as Respondent's attorney, Mr. Sharkey devoted an inordinate number of hours to Respondent's criminal case, routinely working late into the evening and weekends. (Trans. pp. 2444-2447.) During the same two years, Respondent encouraged Mr. Sharkey to declare his candidacy against Mr. Turkelson, (Trans. p. 555), and permitted Mr. Sharkey to use Respondent's name on fundraising literature. (E's Ex. 114d.) Mr. Sharkey's work and effort produced a very favorable outcome for Respondent: a no contest plea to a misdemeanor with a deferred sentence and a dismissal at the end of a short non-reporting probation. It also resulted in an outstanding bill for $415,250 in legal fees that Respondent has yet to begin paying as of the hearing in this matter. (Trans. pp. 571-572, 2448-244.9)

Examiner's Exhibits 137, 138, and 139 list over 100 cases involving Mr. Turkelson, Mr. Richardson and Mr. Sharkey, in which Respondent did not disqualify himself, make adequate disclosures, or obtain written or on-the-record waivers. The evidence proved Respondent failed to comply with his judicial responsibilities and under the Court Rules and the Michigan Code of Judicial conduct Accordingly, the Commission accepts the Master's findings and conclusions as correct, and also determines the preponderance of the evidence established, Respondent committed the misconduct charged in Count VII.

Count VIII: Misrepresentations.

Count VIII charged Respondent with making numerous misrepresentations in criminal and civil court proceedings, to the MSP when investigating the criminal embezzlement charges against Respondent, and to the JTC in its investigation in this matter and in Respondent's answer to the complaint in this matter. If established, the misconduct charged in Count VIII constitutes: (a) misconduct in office and conduct clearly prejudicial to the administration of justice, as defined by

Michigan Constitution Article 6, Section 30, MCR 9.104(1) and MCR 9.202(B); (b) conduct in violation of the standards imposed on members of the bar as a condition of the privilege to practice law, contrary to MCR 9.103(A); (c) conduct that exposes the legal profession and the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2); (d) conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3); (e) conduct in violation of MRPC 8.4, 8.4(c) and MCR 9.104(4); (f) knowingly making misleading statements to an officer of the MSP during a criminal investigation Obstruction of Justice, MCL 750.478a; (g) conduct involving fraud, deceit, or intentional misrepresentations, including intentional misrepresentations and misleading statements to the Judicial Tenure Commission, contrary to MCR 9.202(B); (h) failure to establish, maintain, enforce and personally observe high standards of conduct so the integrity of the judiciary may be preserved, contrary to Canon 1; (i) irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of Canon 2(A); (j) impropriety and the appearance of impropriety, in violation of Canon 2(A); and (k) failure to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, contrary to Canon 2(B). The Commission reviewed the record de novo and rejects the Master's findings and conclusions as to Count VIII.

The Commission finds the preponderance of the evidence shows Respondent made misrepresentations in connection with his criminal, civil, and disciplinary cases. Respondent falsely denied that he pled to a crime in his criminal case, as set forth above under Count I. In addition to his false statements to that effect, Respondent made the same misrepresentations in his answer to the January 14, 2019, 28-Day letter when he claimed he understood he was only pleading "no contest . . . to an interpretation of MCL 21.44." (R's Ans., ¶¶508-511; Trans. pp. 3332-33.)

Respondent's contentions that he pled no contest under MCL 21.44, a non-criminal accounting statute, and not to a crime under MCL 750.485, is simply not supported by the record.

Nor is Respondent's position that he had no criminal conviction because Judge Neithercut did not accept his no contest plea consistent with the record. Respondent, who had spent over a decade as the chief prosecuting attorney, certainly was familiar with the proceedings, the documents he signed, and what occurred during the plea. Eight days after his plea, Respondent's current counsel, Mr. Campbell, sent a letter to the Attorney Discipline Board, with a copy to the Attorney Grievance Commission as well as to Respondent and others, which disclosed, as required under MCR 9.120, that Respondent was "convicted of the misdemeanor offense of Failure to Account for County Money contrary to MCL 750.485" on March 8, 2016. The letter makes no reference to MCL 21.44.

It is also illuminating that, during the hearing on Respondent's Motion Nunc Pro Tunc (two years after his plea when Respondent was engaging in civil litigation against Lapeer County and others), Respondent chose not to accept Judge Neithercut's offer to allow Respondent to withdraw his no contest plea to the criminal misdemeanor under MCL 750.485 if in fact he was of the view that he pled to the non-criminal statute under MCL 21.44 rather than MCL 750.485. The Commission finds that Respondent's positions, statements, and testimony that he did not plead to or have a conviction to a misdemeanor under MCL 750.485 are false, and constitute misrepresentations and deception.

Respondent also testified falsely that he was unaware of Lapeer County's "Grants, Contracts, and Agreements" policy. (Trans. pp. 172-76.) As discussed above regarding Count II, Respondent deposited a money order from a bad check case, and gave $15 less than the total to his staff to be distributed to the treasurer. In his July 2016 and February 2017 statements to the Commission, Respondent denied keeping that $15; denied that he failed to forward the $15 to the treasurer's office; denied failing to send $35 to Hartland, which was entitled to that fee; and claimed he forwarded the entire amount of the money order to the treasurer's office to voucher to the appropriate parties. (Trans. p 718-19; R's Ans. ¶73.) Specifically, Respondent testified, and also

claimed in his answer to the complaint (R's Ans. ¶65), that after depositing the check in his account he gave the entire $60.28 to his staff to forward to the county treasurer's office. (Trans. pp. 191-192, 195, 196.) That was false. Pat Redlin, a clerical employee of Respondent's office, testified that on May 15, 2009, Respondent gave her $45.28; that is, $15 less than what Respondent had received. She testified that at Respondent's direction she provided the full amount Respondent had given her to the Lapeer County Treasurer's Office. (Trans. pp. 2032-2035; R's Ans. ¶68; E's Exs. 6h, 6i.)

Consistent with her testimony, the deposit advice form she provided to the treasurer's office along with the money referred to only $45.28, which it labeled as restitution for the Past Tense Country Store. (E's Ex. 6h.) That same day, Respondent authorized an invoice voucher directing the Lapeer County Finance Department to disburse the identical amount, $45.28, to the victim as restitution. (Trans. pp. 190-92, 2033-36; R's Ans. ¶71; E's Ex. 6i.) The treasurer's office never received the remaining $15 from the money order. (Trans. pp. 163, 229, 1898-1902; E's Exs. 149, 150.) Further, Respondent claimed he needed to cash the money order before turning the proceeds over to the treasurer because it was made payable to him, and therefore the treasurer's office could not accept it. (Trans. pp. 188-189.) But that was also false, as explained by Dana Miller, the county treasurer. A money order is cash regardless of who the designated payee is, or even if the payee is completely undesignated, and the treasurer's office would have accepted this one without difficulty. (Trans. pp. 2111-13.) By putting the money order into his own account, Respondent added an unnecessary step to getting the money to the victim. The preponderance of the evidence shows Respondent's denials and claims about this money were false.

Respondent's actions with respect to the Bounce Back contract and checks (Count III), from his entering into the contract without disclosure to the board to his personally keeping its proceeds, violated Lapeer County policy that was in effect at all relevant times during his actions. When the MSP was investigating Respondent for embezzling money from his office, Respondent could not

deny taking the money, so he tried to excuse his embezzlement on the basis that he was entitled to the money, as compensation for money he spent on his office, such as for lunches for crime victims, flowers, cards, water, cakes for staff, and plaques for staff and police officers. (E's Ex. 90d pp. 2-3, 6, 7; E's Ex. 90f p. 7.) These statements were false, in that crime victims' meals were paid by victims' services, (Trans. pp. 1782-83), flowers and cakes were paid for by staff, (Trans. pp. 1800-1802), and plaques were paid for with office contributions. (Trans. p. 474.)

The Commission finds the preponderance of the evidence shows Respondent made multiple knowing misrepresentations to the MSP, to the Commission, to the court in his criminal case, and in his deposition in a civil case he filed as plaintiff.

Misrepresentations at the Formal Hearing

In addition to the misrepresentations Respondent made as charged in Count VIII, Respondent also made materially and deliberately false statements during the hearing before the Master. MCR 9.202(B) makes it misconduct to make false statements to the master. Respondent falsely testified before the Master that Judge Neithercut did not accept his plea to MCL 750.485.

Respondent falsely told the Master he was unaware of Lapeer County's "Grants, Contracts, and Agreements" policy. (Trans. pp. 172-176, 204.) Respondent falsely testified at the formal hearing that his assistant prosecuting attorneys handled trials, including jury trials, on behalf of the City of Lapeer, perhaps to inflate the alleged money received from the City which Respondent falsely contended was not county money. (Trans. p. 334.) Respondent's counsel made this representation in his opening statement and Respondent mirrored it when he testified on July 2, 2019, that his assistant prosecuting attorneys had "occasionally" conducted jury trials on behalf of the City of Lapeer. (Trans. pp. 333-34). That statement was false. Current court administrator Michael Delling testified that between 1996 and 2013, only two City of Lapeer cases went to a jury. (Trans. p. 3393; E's Exs. 153-155.) Neither was handled by assistant prosecuting attorneys. (Trans.

pp. 3392-96, 3405.) District Court Judge Laura Barnard, who has been on the bench of the 71-A District Court in Lapeer since 1990, testified that in all those years, she did not have any county assistant prosecuting attorneys conduct any trials on behalf of the City of Lapeer. (Trans. pp. 3403-3404.) Tim Turkelson, who had been a Lapeer County assistant prosecuting attorney from 1995 until 2005, confirmed that during that time frame the county assistant prosecutors did not conduct any trials, jury or otherwise, on behalf of the City of Lapeer. (Trans. p. 1247.)

The evidence discussed in this section shows Respondent made knowing misrepresentations in his testimony before the Master.

VIII. Conclusions of Law

Respondent's conduct breached the standards of judicial conduct, and he is responsible for the following:

a. Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30 and MCR 9.202;

b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.202(B);

c. Conduct in violation of the standards imposed on members of the bar as a condition of the privilege to practice law, contrary to MCR 9.103(A);

d. Conduct that is prejudicial to the proper administration of justice, contrary to MCR 9.104(1);

e. Conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2);

f. Conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3);

g. Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, in violation of MRPC 8.4, 8.4(c) and MCR 9.104(4);

h. Conduct that violates a criminal law of a state or of the United States, an ordinance, or tribal law pursuant to MCR 2.615, contrary to MCR 9.104(5), including but not limited to MCL 750.175 (embezzlement by a public official

over $50), MCL 750.485 (Public official – failure to account for public money), and MCL 750.249 (Uttering and Publishing).

i. Knowing misrepresentation of any facts or circumstances surrounding a request for investigation or complaint, contrary to MCR 9.104(6);

j. Knowingly providing false and/or misleading statements and/or representations to an officer of the Michigan State Police during a criminal investigation;

k. Conduct involving fraud, deceit, or intentional misrepresentations, contrary to MCR 9.202(B);

l. Conduct involving intentional misrepresentations and misleading statements to the Judicial Tenure Commission, contrary to MCR 9.202(B);

m. Failure to establish, maintain, enforce and personally observe high standards of conduct so the integrity and independence of the judiciary may be preserved, contrary to Michigan Code of Judicial Conduct ("MCJC") Canon 1;

n. Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of MCJC Canon 2(A);

o. Conduct involving impropriety and the appearance of impropriety, in violation of MCJC Canon 2(A);

p. Failure to respect and observe the law, contrary to MCJC Canon 2(B);

q. Failure to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, contrary to MCJC Canon 2(B);

r. Failure to be faithful to the law and maintain professional competence in it, contrary to MCJC Canon 3(A)(1);

s. Failure to disqualify, contrary to MCJC Canon 3(C) and MCR 2.003(C);

t. Failure to disclose possible grounds for disqualification, contrary to MCJC Canon 3(C) and MCR 2.003;

u. Public endorsement of a candidate for nonjudicial office, contrary to MCJC Canon 7;

v. Conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b);

w. A pattern of misconduct in violation of the Code of Judicial Conduct.

IX. Disciplinary Analysis

The Commission concludes Respondent committed judicial misconduct by misrepresenting and falsely denying his criminal plea, embezzling county funds under the Hartland contract, embezzling county funds under the Bounce Back contract, embezzling county funds paid to the Lapeer County Prosecutor's Office by the LEORTC and the City of Lapeer, failing to disclose or disqualify himself based upon his relationships with attorneys Richardson, Sharkey and Turkelson, and making misrepresentations to the courts in his criminal and civil legal proceedings, under oath at his deposition, to the MSP in its investigation of his embezzlement, and to the Commission and Master in this proceeding. Based on its finding of misconduct, the Commission recommends Respondent be removed from judicial office and be suspended for six years thereafter. In addition, the Commission recommends that the Supreme Court order Respondent to pay costs, fees and expenses in the amount of $74,631.86 pursuant to MCR 9.202(B). This recommendation is based on the following evaluation of the factors set forth in *In re Brown*, 461 Mich 1291, 1292-1293; 625 NW2d 744 (1999). The Commission is aware of MCR 9.244(B)(1), and has included its consideration in the recommendation as well.

A. The *Brown* Factors.

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

The evidence established Respondent committed multiple lengthy patterns of misconduct, including:

1) Contracting with a company to collect on his office's bad check cases, using his assistant prosecutors to administer that program on county time, and keeping the fees for himself;

2) Taking money for work done by his assistant prosecuting attorneys on county time to provide case coverage for the City of Lapeer and to conduct LEORTC trainings;

3) Making misrepresentations, including misrepresentations about having entered a plea in a criminal case; and

4.) Failing to disclose his relationships or disqualify himself when attorneys Richardson, Sharkey and Turkelson had cases before him.

Thus, the evidence showed Respondent's pattern of deceit. Respondent's dishonesty was not an isolated incident, but pervaded his conduct both on and off the bench. For instance, from 2001 through 2012, Respondent took about $9,300 in Hartland, Bounce Back, LEORTC training, and City of Lapeer money. (Trans. pp. 3371-73.)

In *In re Gorcyca*, 500 Mich 588, 637; 902 NW2d 828 (2017), the Court noted "[t]he fact that a statement may be incorrect does not, by itself, render the statement 'false' within the context of a legal proceeding." The *Gorcyca* decision involved a judge's representation regarding the meaning of a gesture she made with her finger. The representation at issue in *Gorcyca* was isolated and finite in nature. By contrast, the record in the instant case reveals a series of Respondent's misrepresentations that appear to have been made intentionally as part of his pattern of deceit. The first *Brown* factor weighs heavily in favor of a more serious sanction.

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

The evidence showed Respondent engaged in misconduct on the bench. Respondent's failure to disclose his personal attorney-client relationship with Mr. Sharkey, his support for the judiciary and friendship with law school classmate attorney Richardson, and his working in the prosecutor's office, and rivalry with, attorney Turkelson, to parties appearing before him in cases in which those attorneys represented a party was misconduct on the bench.

As the Master found with respect to Count VII:

> "records from more than 100 civil and criminal cases... establish that Respondent did not disqualify himself from Richardson's, Sharkey's, or Turkelson's cases. He also did not provide sufficient on the record disclosures of his relationships with these

> individuals in cases in which they were the attorneys of record, and did not obtain written or on-the-record waivers of any potential conflicts of interest from the parties, as required by MCR 2.003(E) and Canon 3(C) . . . ."

At the time respondent was presiding over Mr. Sharkey's cases, he owed Mr. Sharkey over $400,000 for defending his criminal case. He did not disclose that fact to the parties appearing before him. A judge's conduct must not undermine the public's faith that judges are as subject to the law as those who appear before them. *In re Noecker*, 472 Mich 1, 13 (2005). Respondent's conduct clearly did not instill such belief in those who had any dealings with his court. This factor points to a more severe sanction.

(3) ***Misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety.***

Respondent's misconduct was prejudicial to the actual administration of justice. "[T]here is not much, if anything, that is more prejudicial to the actual administration of justice than testifying falsely under oath." *In re Adams*, 494 Mich at 182. Again, the evidence showed that Respondent lied under oath during his criminal proceeding, during his deposition in the civil case, and in sworn statements to the Commission. Respondent made misrepresentations in a civil lawsuit he filed. He made misrepresentations to the MSP during their criminal investigation, to the Commission during their disciplinary investigation, and to the Master during the Formal Hearing.

In addition, as set forth above, Respondent failed to disclose his relationships with Mr. Richardson, Mr. Sharkey, and Mr. Turkelson. By doing so, he deprived litigants in over a hundred cases of their right and the ability to make an informed decision whether they wished to have him preside over their cases, and perhaps tainted those proceedings with his biases. This factor weighs in favor of a harsher sanction.

(4) ***Misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does.***

Respondent engaged in crimes of dishonesty, which was extensively covered by news outlets and widely known by the populace. This likely would impact the administration of justice and, at minimum, implicates the appearance of impropriety, insofar as Respondent engaged in crimes of dishonesty and then later, as a judicial officer, presided over all manner of cases, not the least of which involved cases of similar misconduct. Further, such misconduct, whether or not meeting this factor for more severe treatment, independently warrants a harsher sanction under other factors discussed, and, as just noted with respect to the third factor, a substantial part of Respondent's misconduct did in fact implicate the actual administration of justice.

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

In virtually all cases, Respondent's misconduct was premeditated and deliberate rather than spontaneous. Respondent's depositing the Hartland money order and Bounce Back checks into his own account was an extraordinary thing for a public official to do with money he received in his public capacity. The personal accounts in which Respondent deposited county funds included deposits into his son's account, from which Respondent admitted he did not withdraw any money. (Trans. p. 274.) Money a public official receives in his official capacity belongs to the public, not to him. That is the principle enforced by Michigan's criminal law through MCL 750.175, the statute Respondent was first charged with violating in his criminal case: "Any person holding any public office in this state . . . who knowingly and unlawfully appropriates to his own use . . . the money or property received by him in his official capacity or employment [is guilty of a felony]." Respondent engaged in such misconduct over a period of many years utilizing a pattern of embezzlement. Indeed, all of Respondent's misconduct was deliberate and premeditated:

1) Taking fees from the companies that collected on his office's bad check cases;

2) Taking money for work done by his assistant prosecutors on county time to provide case coverage for the City of Lapeer and to conduct LEORTC trainings;

3) Falsely characterizing his plea in his criminal case; and

4) Concealing his conflicts of interest with Messrs. Richardson, Sharkey and Turkelson.

Further, Respondent's attempts to mislead the Commission do not appear to have been made spontaneously. Almost certainly, Respondent would have given himself time to reflect on his written submissions to the court in his criminal proceeding and his responses to the Commission before submitting them. Therefore, it cannot be said that these misrepresentations were made spontaneously. Respondent had the time and opportunity to consider disclosing the relevant information but repeatedly failed to do so. The fifth *Brown* factor weighs heavily in favor of a more serious sanction.

(6) ***Misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery.***

Respondent's concealment of his conflicts of interest in cases over which he presided undermined the ability of the justice system to discover the truth of what happened in those cases. Respondent impeded a criminal investigation by providing false and misleading information to the MSP in its investigation of his embezzlement. He impeded the discovery of truth in his civil lawsuit when he made material misrepresentations under oath during his deposition. He again impeded the discovery of truth by filing a motion to "correct" the record in his criminal case by falsely asserting that he had not pled to a crime. This factor weighs in favor of the most extreme sanction.

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

There is no evidence that Respondent's misconduct was based on any consideration of a class of citizenship. This factor is not in issue in this case.

In sum, the Commission's consideration of the totality of all seven *Brown* factors weighs in support of the imposition of a more severe sanction.

In addition to the *Brown* factors, the Michigan Supreme Court has consistently concluded that "dishonest or selfish conduct warrants greater discipline than conduct lacking such characteristics," and the Court has generally "imposed greater discipline for conduct involving exploitation of judicial office for personal gain." *In re Morrow*, 496 Mich 291, 302-303; 854 NW2d 89 (2014). Further, in *In re Adams*, 494 Mich 162, 181; 833 NW2d 897 (2013), the Court reasoned that a sanction may be less severe where a respondent acknowledges his or her misconduct and is truthful throughout the disciplinary proceeding, but "where a respondent is not repentant, but engages in deceitful behavior during the course of a Judicial Tenure Commission disciplinary investigation, the sanction must be measurably greater." (Quoting *In re Noecker*, 472 Mich 1, 18; 691 NW2d 440 (2005) (Young, J., concurring). This principle further supports the Commission's conclusion that Respondent's dishonest conduct warrants a more severe sanction, as the record shows Respondent has failed to take responsibility for his misconduct and has attempted to minimize, and to provide false explanations for, his misconduct throughout these proceedings.

B. Other Considerations.

The Commission has also considered other factors in past cases, as suggested by the American Judicature Society ("How Judicial Conduct Commissions Work," American Judicature Society 1999, pp. 15-16):

> **i) The judge's conduct in response to the Commission's inquiry and disciplinary proceedings. Specifically, whether the judge showed remorse and made an effort to change his or her conduct and whether the judge was candid and cooperated with the Commission.**

The Michigan Supreme Court has endorsed this factor, and has held that misrepresentations, lies, and deceitful testimony are a sufficient basis for removal from office. In *In re Justin*, the Court stated:

> "[o]ur judicial system has long recognized the sanctity and importance of the oath. An oath is a significant act, establishing that the oath taker promises to be truthful. As the "focal point of the administration of justice," a judge is entrusted by the public and has the responsibility to seek truth and justice by evaluating the testimony given under oath. When a judge lies under oath, he or she has failed to internalize one of the central standards of justice and becomes unfit to sit in judgment of others."

490 Mich 394, 424; 809 NW2d 126 (2012). The Court also noted that:

> *[S]ome misconduct, such as lying under oath, goes to the very core of judicial duty and demonstrates the lack of character of such a person to be entrusted with judicial privilege.*
> *... Lying under oath, as the respondent has been adjudged to have done, makes him unlit for judicial office.*

Id. at 424 (emphasis in original); *see also In re Ryman*, 394 Mich 637, 642-643; 232 NW2d 178 (1975); *In re Loyd*, 424 Mich 514, 516; 535-536; 384 NW2d 9 (1986); *In re Ferrara*, 458 Mich at 372-373; *In re Noecker*, 472 Mich at 3; *In re Nettles-Nickerson*, 481 Mich 321, 322; 750 NW2d 560 (2008); *In re James*, 492 Mich 553, 568-570; 821 NW2d 144 (2012).

As noted above, Respondent lied in his November 15, 2017, deposition when he claimed, under oath, he did not plead to a crime. In addition to this false statement, Respondent has persistently refused to acknowledge that he committed any misconduct. At the formal hearing, he repeatedly provided facts and explanations which were discredited by other witnesses and the great weight of the evidence. Respondent's false statements under oath and his lack of remorse alone are sufficient basis to remove him from office.

In *In re Adams*, 494 Mich at 173, the respondent signed her attorney's name to a pleading without permission and then filed the pleading in the respondent's divorce case. In addition, the respondent lied under oath in her divorce proceedings and made misrepresentations to the Commission during its investigation. *Id*. at 171, 175. While the Commission recommended that the

respondent be suspended without pay for 180 days and be ordered to pay costs, the Court "[did] not believe that such a sanction would sufficiently address the harm done to the integrity of the judiciary." *Id*. at 184. Rather, the Court concluded that "because testifying falsely under oath is 'antithetical to the role of a Judge who is sworn to uphold the law and seek the truth,' (citation omitted), and also because respondent has not demonstrated any apparent remorse for her misconduct and continues to deny responsibility for her actions, we believe that the only proportionate sanction is to remove respondent from office." *Id*. at 186-187.

The Court's statements in *Adams* leave little doubt that removal from office is the appropriate sanction in this case. In addition to other fraudulent, dishonest and deceitful misconduct, Respondent made intentional and false representations, under oath, during his criminal proceedings and the Commission's investigation and proceedings. Dishonesty in these circumstances erodes the public's confidence in the judiciary, *In re Noecker*, 472 Mich at 13, and renders a judge "unfit to sit in judgment of others." *In re Justin*, 490 Mich at 424. Further, Respondent has continued to deny and to minimize his misconduct throughout these proceedings. The Commission therefore concludes that Respondent's misconduct warrants removal from office.

ii) The effect the misconduct had upon the integrity of and respect for the judiciary.

Respondent's misconduct has been the subject of repeated media coverage in Lapeer County, which casts not only Respondent, but the judiciary as a whole, in a negative light. Respondent's misconduct contributes to the public perception that, as testified to at the formal hearing by attorney Carol Ann Jaworski, the Lapeer County judiciary is subject to the workings of an "old boy network." (Trans. p. 819.)

iii.) Years of judicial experience.

This factor focuses on whether a judge's relevant experience is an aggravating or mitigating factor. Respondent committed his criminal misconduct after many years as a prosecutor. He made

his false statements after many years as a prosecutor and, in some instances, after several years as a judge. Respondent's length of relevant service only exacerbates his misconduct.

C. The Basis for the Level of Discipline and Proportionality

The primary concern in determining an appropriate sanction is to "restore and maintain the dignity and impartiality of the judiciary and protect the public." *In re Ferrara*, 458 Mich at 372. In determining an appropriate sanction in this matter, the Commission is mindful of the Michigan Supreme Court's call for "proportionality" based on comparable conduct, as it set forth under MCR 9.244(B)(2). The Commission has undertaken to ensure that the action it is recommending is reasonably proportionate to the conduct of the Respondent and reasonably equivalent to the action that has been taken previously in equivalent cases. Based on the facts, the Commission concludes removal from office along with a six-year suspension is an appropriate and proportional sanction for Respondent's misconduct, and is reasonably equivalent to removal that has occurred previously in equivalent cases.

Respondent's misconduct involved not only his court, but the entire Lapeer County government. The clear message of his actions, and the way he has reacted since he was caught, is that those who are in power are free to disregard the laws that govern the less powerful. These were not isolated incidents of bad judgment but a decade-plus pattern of using his prosecutorial and judicial position to benefit himself. His actions eroded public confidence in the judiciary, exposed the court to obloquy, contempt, censure and reproach, and were prejudicial to the proper administration of justice. Embezzling public funds, then lying about it, is so corrosive to the judiciary that only removal from office is proportionate to the misconduct.

The preponderance of evidence establishes that Respondent committed misconduct as alleged under the counts of the complaint the Commission recommends (Counts I, II, III, IV, VII, and VIII). That misconduct included false statements and violations of criminal statutes, in addition to

violations of the Canons. The misconduct encompassed nearly two decades, including both before and after he became a judge. *Brown* observed that "[t]he most fundamental premise of the rule of law is that equivalent misconduct should be treated equivalently." 461 Mich at 1292. The judicial disciplinary case that is most analogous to the financial misconduct demonstrated in this case is *In re James*, 492 Mich 553 (2012). The Court removed Judge James from the bench because, in large part, she had engaged in financial improprieties involving public funds and made intentional misrepresentations to the master and Commission. The Court stated that Judge James's pervasive treatment of public funds as "her own 'publicly funded private foundation,'" together with her misrepresentations, made it "necessary and appropriate" to remove her from the bench.

Like Judge James, Respondent engaged in a long pattern of financial improprieties from the time he became the elected county prosecutor until he left office more than a decade later. Like Judge James, respondent came into possession of these public funds by virtue of his elected position. Unlike Judge James, who at least opened a bank account for the funds in question and thus allowed SCAO to conduct a proper audit, Respondent, with a master's degree in finance and accounting, not only did not open a dedicated account for the funds he took, he deposited those funds into his personal accounts without so much as a personal ledger or other accounting record.

Thus, in consideration of all the *Brown* factors and additional factors considered by the Court, the Commission concludes removal and a six-year suspension thereafter is the appropriate and proportionate discipline for Respondent.

X. Assessment of Costs, Fees, and Expenses

As noted, the Commission finds Respondent engaged in conduct involving fraud, deceit, and intentional misrepresentation, and made intentional misrepresentations and misleading statements to the courts in his criminal and civil legal proceedings, the MSP in its investigation of his embezzlement, and the Commission in his written responses to the Commission and during his

testimony. Respondent's long term pattern of embezzlement, deceit, and recalcitrance, among other factors, caused extraordinary expense for the Commission in this matter. Accordingly, the Commission requests that Respondent be ordered to pay the costs, fees, and expenses incurred by the Commission in prosecuting the complaint. *See* MCR 9.202(B). The Examiner has submitted an affidavit showing costs, fees, and expenses incurred by the Commission in the amount of $74,631.86, a copy of which is attached. Therefore, the Commission requests an assessment of costs, fees, and expenses in the total amount of $74,631.86.

XI. Conclusion and Recommendation

The Commission concludes Respondent committed misconduct in office by, among other actions, misrepresenting and falsely denying his criminal plea, embezzling county funds under the Hartland contract, embezzling county funds under the Bounce Back contract, embezzling county funds paid to the Lapeer County Prosecutor's Office by the LEORTC and the City of Lapeer, failing to disclose or disqualify himself based upon his relationships with attorneys Richardson, Sharkey and Turkelson, and making misrepresentations to the courts in his criminal and civil legal proceedings, under oath at his deposition, to the MSP in its investigation of his embezzlement, and to the Commission and Master in this proceeding.

On the basis of his judicial misconduct, the Commission recommends that Respondent be removed from office and that the removal extend through the next judicial term. Respondent's current term expires at the end of this year, and he has expressed his intention to seek reelection. Given his patent unfitness to serve in the judiciary, the appropriate sanction should include removal with a six year suspension. Respondent's misconduct is comparable to, or worse than, the misconduct that caused the Supreme Court to remove other judges. *In re James*, 492 Mich 553 (2012); *In re Brennan*, 504 Mich 80; 929 NW2d 290 (2019). Respondent should be removed as

well, and suspended for the next term, consistent with *In re McCree*, 495 Mich 51 (2014) and *In re Brennan*.

In addition, on the basis of the Commission's findings that Respondent engaged in conduct involving fraud, deceit, and intentional misrepresentation, and made intentional misrepresentations and misleading statements to the Commission and to the Master, the Commission recommends that Respondent be ordered to pay an assessment of costs, fees, and expenses in the total amount of $74,631.86.

JUDICIAL TENURE COMMISSION

HON. MONTE J. BURMEISTER
Chairperson

THOMAS J. RYAN, ESQ.
Vice-Chairperson

HON. KAREN FORT HOOD
Secretary

ARI ADLER

JAMES W. BURDICK, ESQ.

HON. PABLO CORTES

HON. JON H. HULSING

SIHAM AWADA JAAFAR

HON. BRIAN R. SULLIVAN

STATE OF MICHIGAN
IN THE SUPREME COURT

IN THE MATTER OF:

Hon. Byron J. Konschuh
40th Circuit Court
255 Clay Street
Lapeer, MI 48446
_____/

Formal Complaint No. 100

Master: Hon. William J. Caprathe

AFFIDAVIT of LYNN A. HELLAND

State of Michigan)
Wayne County)

LYNN A. HELLAND, being sworn, says:

(1) I am the Executive Director with the Judicial Tenure Commission. I am familiar with the facts stated in this affidavit, and, if sworn as a witness, I am competent to testify to them.

(2) To date the Judicial Tenure Commission has incurred the following expenses for the following purposes in connection with Formal Complaint No. 100:

a. Master's services **$27,141.32**

b. Witness fees, mileage and travel **$ 1,418.11**

1	Laura Barnard	$68.84
2	David Best	$53.56
3	John Biscoe	$68.84
4	Fred Blanchard	$63.94
5	Angela Caughel	$63.94
6	Doreen Clark	$68.84
7	Lawrence Gadd	$24.56
8	Kevin Hart	$65.16
9	Leigh Hauxwell	$68.84
10	Michael Hodges	$68.84
11	Wendy Jackson	$63.94
12	Carol Jaworski	$63.94
13	Dana Miller	$68.84
14	Bonnie Oyster	$63.94
15	Samuel Oyster	$63.94
16	Mark Pendergraff	$69.94

17	Patricia Redlin	$56.23
18	Michael Sharkey	$63.94
19	Tom Sparrow	$62.84
20	Colleen Starr	$62.84
21	Christine Strasser	$52.98
22	Cary Vaughn	$63.94
23	Zachary Zeleney	$45.44

c. Court reporter (transcripts /court reporter fees) **$40,381.50**

d. Graphic Science (electronic conversion- transcripts/exhibits) **$ 1,114.25**

e. Security **$ 4,558.68**

TOTAL: **$74,631.86**

Lynn A. Helland

Subscribed and sworn to before me on
May 27, 2020 in Wayne County

Camellalynette Corbin, Notary Public Wayne County
My Commission Expires: 7-10-2026

CAMELLALYNETTE CORBIN
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Jul 10, 2026
ACTING IN COUNTY OF