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

Master: William J. Caprathe

Judicial Tenure Commission
Lynn A. Helland P32192
Margaret N.S. Rynier P34594
3034 W. Grand Boulevard, Suite 8-450
Detroit, Michigan 48202
(313)- 875-5110

Colins Einhorn Farrell PC
Donald D. Campbell P43088
Colleen H. Burke P66448
Trent B. Collier P66448
4000 Town Center, Floor 9
(248) 355-4141

MASTER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

The amended formal complaint (complaint) charges Judge Byron J. Konschuh (Respondent) with eight counts of misconduct based on alleged violations of Michigan Court Rules (MCR), Michigan Rules of Professional Conduct, (MRPC), and the Michigan Code of Judicial Conduct (MCJC or "Canons"). It is alleged that he committed these violations before, and during his tenure as the Lapeer County Prosecuting Attorney and after he became a Lapeer County Circuit Court Judge. He is also charged with providing false information to the Michigan State Police (MSP) during their investigation of his actions when he was the Lapeer County Prosecutor and to the Michigan Judicial Tenure Commission (JTC) after he was sworn in as Circuit Court Judge.

The Respondent's misconduct charges fall into five general categories: The misdemeanor of public officer's failure to account for county money (Count I), financial improprieties (Counts II,III,IV, and V), improper demeanor (Count VI), failure to disclose/disqualify (Count VII), and misrepresentations throughout the allegations underlying the complaint (Count VIII).

JURISDICTION

Both sides agree that Respondent, as a judge, was and still is, subject to all the duties and responsibilities imposed on him by the Michigan Supreme Court, and 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). In addition, pursuant to MCR 9.202(B) the Judicial Tenure Commission has jurisdiction over Respondent's pre-bench Conduct.

STANDARD OF PROOF

Traditional 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 (1976); *In re Seitz*, 441 Mich 590, 624 (1993); *In re Haley*, 476 Mich 180, 195 (2006). The standard of proof is preponderance of the evidence. *Id* at 189; MCR 9.223(A). Disciplinary Counsel must establish misconduct by a preponderance of the evidence. *Id* at 189. Preponderance of the evidence means, "the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact, but by evidence that has the most convincing force…." Black's Law Dictionary (11th Ed 2019), preponderance of the evidence.

THE ROLE OF THE MASTER

The Master's report must contain a brief statement of the proceedings and findings of fact and conclusions of law with respect to the issues presented by the complaint and the answer. (MCR 2.236). The Master does not address sanctions. The standards of judicial conduct are established by MCR 9.202 and the Michigan Code of Judicial Conduct. *Ferrara*, 458 Mich 350, 359-60 (1998). The Master must evaluate Respondent's conduct objectively rather than focusing on his subjective intent. *Id*. at 362, the MSC, citing *In re Tschirhart*, 422 Mich 1207, 1209-1210 (1985), where the Michigan Supreme Court stated that:

> "The 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 subjective 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."

.

PROCEEDINGS

On February 6, 2019, the JTC filed an eight-count complaint. On March 18th the JTC filed an amended complaint that expanded on some of the details but did not change the essence of the charges. On March 18 the supreme court appointed William J. Caprathe as the Master.

On April 2, 2019 Respondent filed his answer to the amended formal complaint together with affirmative defenses. A pretrial hearing/meeting was conducted on April 15. Motions were heard on June 12. The public hearings Commenced on June 28 at the 47th District Court in Farmington Hills, and concluded on September 23. During the hearings, 39 witnesses testified, and more than 350 exhibits were admitted. Closing arguments were heard on September 23. Counsel for both sides submitted their written Proposed Findings of Fact and Conclusions of Law on November 4, 2019, and their responses to each other's proposals on November 12, 2019. The date for the submission of the Master's report was extended to on or before December 30, 2019.

BACKGROUND

Respondent was admitted to the State Bar of Michigan in 1985. In 1988 he obtained a master's degree in business administration with a concentration in finance. That same year he joined the Lapeer County Prosecutor's Office (LCPO) as an Assistant Prosecuting Attorney (APA). In 1992 he was promoted to the position of the chief assistant under then-Prosecutor Justus Scott. In November 2000 Scott was elected to the Lapeer County probate court. In the same election, Respondent ran unopposed and was elected as the Lapeer County Prosecutor. He took office in January 2001. He continued as the elected prosecuting attorney until April 8, 2013. Beginning in 2001, he also served as the Lapeer County Corporation counsel, providing the county with legal advice/opinions on various issues other than labor matters.

On March 23, 2013, Respondent was appointed to the Lapeer County Circuit Court. On April 8, 2013 he was formally separated from the LCPO and sworn in as Lapeer County Circuit Court Judge. In July 2014, the Shiawassee County prosecuting attorney, acting as special prosecutor through the Michigan office of the Attorney General, charged Respondent with five counts of embezzlement by a public official, over $50, in violation of MCL 750.175. Deana Finnegan was the special Prosecutor. Mike Sharkey and Tom Pabst represented Respondent in the Criminal matter. Respondent's preliminarily examination was in September and October 2014. Respondent's attorneys argued that the funds at issue were not public funds. District Court Judge Terrance Dingnan disagreed, and bound the cases over for trial.

The parties mediated the charges against Respondent on March 8, 2016, with retired Circuit Court Judge Robert Ransom as the mediator. At the end of the mediation, the parties signed a stipulation, stating, in part: "In order to prevent further taxpayer expense of a trial in this matter, the parties have agreed that 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. …" The parties' agreement at that time did not mention or involve Respondent entering a no contest plea to the Criminal statue, MCL 750.485.

However, at the time of entering the plea on March 31, 2016 before Judge Neithercut, Prosecutor Finnegan filed an amended complaint and agreement, stating Respondent would plead to Count 6, a misdemeanor, and the charge would be dismissed if he successfully completed the delayed sentence. Although Respondent was surprised by the amendment, he signed a sentence agreement stating that he was pleading no contest to "failure to account contrary to MCL 750.485." On March 31, 2016 Judge Neithercut accepted the plea to Count six but did not mention 750.485. Instead, the Court recited the original agreement that Respondent and his attorney had worked out with the prosecutor and mediator and held that the County was not entitled to restitution. The Court then delayed the sentencing to July 1, 2016 and dismissed the case with prejudice in July of 2016.

Respondent, by his attorney Tom Pabst, filed in May of 2017 a civil action, which included a Malicious Prosecution Claim. Judge Kumasi granted the defendants' summary-disposition motions and concluded that Respondent pleaded to a misdemeanor.

COUNT I
False Statements Regarding the Misdemeanor Plea

There is not a preponderance of the evidence that Respondent made false statements about his no contest plea being to an accounting statute, rather than to a criminal misdemeanor statute. Disciplinary Counsel alleges that Respondent did so, on February 19, 2018 in his Motion *Nunc Pro Tunc*, in which he represented that the Plea was to a non-criminal accounting statute, rather than a misdemeanor. Also, he testified the same on November 15, 2017 at a deposition in a lawsuit against the County, and again in his answer to the amended formal complaint and during his testimony before the Master in the present case.
It is not enough for the Disciplinary Counsel to establish that Respondent made a false statement.

It must prove that Respondent had a wrongful intent at the time. *In re Gorcyca*, 500 Mich 588, 639 (2017) ("Even though there may be some instances in which a misrepresentation and a

misleading statement are not based on actual intent to deceive, we believe that, at a minimum, there must be some showing of wrongful intent.") There is no evidence showing a wrongful intent here.

First, Respondent had not seen the motion before his attorney Tom Pabst filed it. He could not intend to mislead the Court when he had no opportunity to review it before it was filed. Second, the motion did not hide the fact that Respondent pleaded no contest to MCL750.485. The Motion included two documents entitled "Motion/Order of Nolle Prosequi," both of which reference MCL 750.485. Although the motion argued that including MCL 750.485 was a mistake, it included a document supporting a counter argument. The Attorney Discipline Board addressed similar facts in *Grievance Administrator v. Wax* (Bd. Opinion, 98)-112-Ga, September 22, 1999) In that case, the Grievance Administrator accused the Respondent of lying about the contents of his Appellate brief even though the Respondent submitted a copy of his brief with the document that supposedly lied about it. *Id*. at 1-2. The hearing panel concluded, and the Attorney Discipline Board agreed, that "If Respondent intended to lie about the contents of his appellate brief, it is unlikely that he would have attached a copy to his answer." *Id*. at. 2. The same rationale applies here. If Respondent intended to mislead the Court, he would not have included documents referencing MCL750.485.

Third, Respondent's Motion made a good-faith legal argument about his plea. The parties' original agreement was limited to MCL 21.44, and they never discussed adding MCL 750.485 before the post-facilitation hearing on March 31, 2016. The prosecutor surprised Respondent when she appeared for the post-facilitation hearing with a new complaint. He felt caught off guard and pressured into an outcome inconsistent with the mediated agreement. He brought the issue before Judge Neithercut and accepted the Court's ruling. Having a Court rule against your good faith interpretation of the facts and/or law is not misconduct.

COUNTS II, III, IV, AND V

There is not a preponderance of the evidence that Respondent engaged in embezzlement by depositing County funds into his personal bank accounts. In addition, The proofs did not establish by a preponderance of the evidence that Respondent violated a County policy by entering into the Transmodus and BounceBack contracts, that was in effect at the relevant times.

COUNT II: Transmodus Heartland

The proofs did not establish by a preponderance of the evidence, that there was a policy in effect in 2008, that the Respondent's use of the Transmodus and BounceBack agreements violated, and therefore does not support a finding of misconduct by Respondent. John Biscoe, the County Controller testified that he did not believe that the contracts policy existed in written form in

2008. He offered this testimony after he identified the Grants, Contracts and Agreements Policy that Disciplinary Counsel relies on.

Doreen Clark, John Briscoe's Assistant, contrary to her boss, testified that she thought the Policy had been in effect since 1996. Mr. Biscoe's testimony carries greater weight than that of his subordinate, especially since much of Clark's testimony was equivocal. For example, she stated "I cannot, I guess, confirm or deny that …."

The State treasury guidelines are neither binding nor authoritative on rh the LCPA Office. Biscoe described the Treasury publication as "a narrative" and a "guideline." There is no evidence that Respondent ever saw or was aware of them. Cary Vaughn, an expert in accounting, confirmed that the guidelines are only for training purposes and not considered as a legal requirement. He also testified that the Treasury removed these guidelines from its website in 2004, and he could not say when they first appeared. Tim Turkelson, Respondent's successor as Lapeer County Prosecutor, testified at the Master's hearing. He speculated that some accounting policy was in effect in 2005 that precluded Respondent's actions, but he provided no specifics, and his credibility was questionable.

The remaining portions of Count II concern the missing $15.00. Respondent understood that he could not sign a money order over to the County. That is why he had his staff deposit the money order and then send the money over to the appropriate parties. An employee in Respondent's office forwarded $42.28 to the County, which distributed that amount to the victims. There is no evidence that Respondent kept the remaining $15.00. Such an allegation has not been proven by a preponderance of the evidence.

COUNT III: BounceBack

Count III concerns the BounceBack program. The JTC Complaint alleges that Respondent entered the program without following County policies, and that he deposited BounceBack checks into his personal checking account. The complaint cites 42 checks, all listing the Lapeer County Prosecutor as payee. As discussed in Count II, there has not been proof by a preponderance of the evidence that the contract policy was in effect in 2008. As for the 42 checks listed in the amended formal complaint, Respondent never disputed that he deposited them. BounceBack issued funds under a contract with the prosecutor's office, not the County. Under these facts, it is unclear if these funds belonged to the prosecutor's office or the county.

Respondent testified that he spent approximately $7,783.00 on the prosecutor's office. The BounceBack funds were a portion of that amount. The proofs did not establish that Respondent committed misconduct when he used money that he understood to belong to the

prosecutor's office to reimburse himself for payments he made for the benefit of the prosecutor's office.

COUNT IVA: LEORTC

For many years the LCPO APAs provided legal instruction at training sessions/seminars/legal updates sponsored and paid for by the LEORTC. This included legal updates offered at the 911 dispatch center in the City of Lapeer and at the corrections academies in Flint/Fenton. Preparation for the training took place at the LCPO using office equipment and supplies. Each training was conducted during business hours and the participating APAs did not take any vacation, sick, or compensatory time from their county positions to prepare for or to participate in it.

In October and again in December 2000, while still the chief assistant under Justus Scott, Respondent participated with other LCPO APAs in two LEORTC training sessions. Following each session Respondent submitted a cost documentation sheet designating himself as the sole recipient of any compensation. Respondent admitted having received two checks from LEORTC for a total of $600.00, both of which he deposited into his personal account. He did not notify the County of the training funds the LCPO received and did not maintain any accounting records/ledgers showing how these funds were used.

In September of 2011 and again in September 2012, Caitlin Wilson provided legal instructions at LEORTC sponsored corrections academy in Flint/Fenton, Michigan. LEORTC issued two checks to the LCPO, $300.00 for 2011 and $480.00 for 2012, which Respondent deposited into his personal account and did not notify the County or set up ledgers as to how the funds were used. He gave APA Wilson $80.00 for the additional hours she spent preparing for the training and directed her to submit mileage vouchers to the County.

The evidence does not support the allegation of financial improprieties related to the fees the prosecutor's office received from the Corrections Academy, or the allegation that Respondent improperly deposited those funds. No law or regulation that was in effect at that time, was contrary to Respondent's handling of those funds. Accounting expert witness Cary Vaughn confirmed that the Treasury policies referred to are "for training purposes only and should not be considered a legal interpretation of the items presented." Furthermore, Respondent used these fees to reimburse himself for funds he expended on behalf of the prosecutor's office. The prosecutor's office provided the training and the prosecutor's office received the benefits.

COUNT IV B: City of Lapeer Cases

Between 2001 and 2008 Respondent and the LCPO APAs also made court appearances on behalf of the city of Lapeer. The city attorney paid Respondent for every case covered. Respondent received $100.00 to $300.00, each year for his and his staff's appearance on behalf of the City of Lapeer. Respondent deposited these funds in his personal bank account, without notifying the County. He also did not set up any accounting ledgers keeping track of how the City of Lapeer funds were being spent and did not report these funds for tax purposes.

Respondent testified that he deposited fees from the City of Lapeer into his checking account as reimbursement for expenses he incurred to benefit the prosecutor's office. Then prosecutor, Justus Scott did the same thing with the City of Lapeer fees. As stated regarding Count IVA: LEORTC, there was not a preponderance of the evidence that the way the City of Lapeer funds were handled, was illegal and thus the evidence does not support a finding of misconduct by Respondent.

COUNT V - Improper Reimbursements

In addition to the funds from LEORTC and the City of Lapeer, Disciplinary Council also alleges Respondent inappropriately deposited into his personal accounts money he received by submitting reimbursement vouchers for his Staff's Christmas and Secretary/Administrative Assistant Day Luncheons and other food items. Although they were not subject to reimbursement under the Michigan Department of Treasury Guidelines, the guidelines were merely for training purposes and Respondent had no obligation to follow them. Nor is there evidence that they were in effect when Respondent accepted reimbursements for the 2011/2012 Luncheons and other food items. The same expert who testified that the Treasury guidelines were not mandatory to follow, testified that these guidelines were removed from its website in 2004. And, in any event, there was more than sufficient evidence to conclude that these reimbursements qualified as staff development i.e. "Training."

COUNT VI: Improper Demeanor

During the 2016 election for Lapeer County Circuit Judge, attorney David Richardson was a write-in candidate against incumbent Judge Nick Holowka. Respondent assisted Mr. Richardson's campaign, including building and distributing campaign signs. On October 4, 2016 he placed a "David Richardson for Circuit Judge" sign on the corner of Roods Lake Road and

Haines in the City of Lapeer/Mayfield Township, on an easement to the home of Mr. and Mrs. Ed Oyster. On October 5, Respondent noticed that the sign had been removed. He immediately went to the Oyster door and asked Mrs. Oyster who removed the Richardson sign. She denied having any information about the sign. Soon thereafter, Oyster's son came to the door and also denied any knowledge about the sign. While at the front door Respondent advocated on behalf of Mr. Richardson. There is conflicting testimony regard regarding Respondent's alleged use of profanity. There was not a preponderance of the evidence that Respondent used any inappropriate language or demeanor with the Oysters. Although Bonnie Oyster was uncomfortable with the conversation with Respondent, the Code of Judicial Conduct does not prohibit Judges from being very insistent. Also, Respondent did nothing wrong by assisting Richardson's campaign. The Code of Judicial Conduct, Cannon 7(A)(1) only prohibits judges from endorsing candidates for non-judicial office. Richardson was running for a judicial office.

COUNT VII: Disqualification and Disclosures

This Count alleges that Respondent failed to fully disclose conflicts and improperly failed to disqualify himself or receive a written or on-the-record waiver of a possible conflict. Chief Judge Holowka, on July 21, 2014, because of the pending criminal charges, placed Respondent on administrative leave from the bench. Respondent was reinstated in April 2016 and resumed his judicial duties in July of 2016, after the criminal case was dismissed. Judge Holowka denied Respondent's request to retain an ethics expert and told Respondent to "handle the criminal cases at the pretrial level, potential adjournments, scheduling, ministerial acts,...that if anything was going to be contested like a preliminary exam," he should recuse himself. Respondent was represented in the criminal case by Michael Sharkey. Mr. Sharkey's fee, still outstanding in its entirety, is $415,250.00

During the 2016 election year, before and after returning to the bench, Respondent became involved in two election campaigns. One, discussed in the preceding section, was his longtime friend and law school classmate, David Richardson's bid for the 40th Circuit Court Judgeship. The other was the attorney who represented Respondent in the criminal case, Michael Sharkey, who declared his candidacy for Lapeer County Prosecutor against incumbent Timothy Turkelson. Respondent's open support of Sharkey's attempt to defeat Turkelson in and of itself violated 7(A)(1)(b), which prohibits a judge from supporting a candidate for a non-Judicial Office.

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 Richardson was an attorney of record. Respondent also presided over Sharkey's criminal and civil cases before Sharkey became the County Prosecutor. Between April and December of 2016, he also presided over cases in which Turkelson, a prosecution witness in Respondent's criminal case, was the attorney of record as the

County Prosecutor. Records from more than 100 civil and criminal cases, and an accompanying stipulation, 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). Canon 3(C) of the Michigan Code of Judicial Conduct (MCJC). It 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 2,003(C), include situations where a judge is biased for or against a party or attorney 2.003(C)(1)(a): "The Judge, based on objective and reasonable perception, has under (I) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v. Massey* [citations omitted], or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Conduct." 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." Cannons 2(A), 2(B).

Respondent's relationships with Turkelson, Sharkey, and Richardson, albeit vastly different, clearly fit within the concerns expressed by MCR 2.003 and the Cannons. Respondent's bias against Turkelson is obvious. He opposed Turkelson's appointment as the Prosecutor, was critical of Turkelson's Prosecutorial hiring/firing decisions became convinced that Turkelson was involved in a conspiracy to have him removed from his judicial seat and accused Turkelson of conducting an improper criminal investigation of him.

As of March 2016, and by July of 2016, Respondent was considering filing a grievance with the Attorney Grievance Commission and a Libel per se lawsuit against Turkelson. On May 17, 2017, Respondent did file a civil action against, among others, Turkelson, alleging libel/slander and malicious prosecution. Under all these circumstances, Respondent was either biased against Turkelson, or at least created a clear appearance of bias, calling for Respondent's disqualification.

During the two years as Respondent's attorney, Sharkey devoted many hours to Respondent's criminal case working late into the evening and weekends. During those years, Respondent encouraged Sharkey to declare his candidacy against Turkelson who was running for Prosecutor. Respondent permitted Sharkey to use Respondent's name on fundraising literature. Sharkey's work and effort helped produce a favorable result for Respondent, i.e. a no contest plea to one misdemeanor with a deferred sentence, no restitution imposed on the defendant, and complete dismissal at the end of a short non-reporting probation. Sharkey's representation resulted in an outstanding bill for $415,250.00 in legal fees that Respondent has yet to begin paying. Although Respondent testified that he was not aware of the amount of the financial obligation to Sharkey

until he may have received the bill in November of 2017, he was aware of Sharkey's $250 per hour rate as of July 2017. On numerous occasions he offered to start making payments, and in social settings openly spoke about the fact that he owed a lot of money to Sharkey and that Sharkey's representation was "going to cost a fortune." The social, professional, and financial relationship between Respondent and Sharkey created not only the appearance of impropriety, but a significant risk that Respondent was biased in Sharkey's favor.

Respondent also failed in his duty to provide timely and adequate disclosure of his relationships with Richardson, Sharkey, and Turkelson. Respondent's written notices placed on counsels' tables in the courtroom were inadequate. In the first notice dated July 18, 2016, Respondent did not even refer to Sharkey's representation of him or the debt he owed Sharkey for that representation. He used the 40th Circuit Court letterhead to accuse his attorney's political opponent of prosecutorial misconduct. At the time, the campaign between Sharkey and Turkelson was in full swing. Respondent's purported notice was less of a disclosure of potential conflict than it was campaign literature on behalf of Sharkey.

In the second and third notices, dated December 7, 2016, and January 3, 2017 Respondent disclosed that Sharkey was his attorney in the criminal case. However, he omitted the crucial fact that he owed Sharkey a substantial legal fee. He also continued his accusations of prosecutorial misconduct and fabrications against Turkelson and that Turkelson conducted a felony criminal investigation and initiated a prosecution against Respondent. In March of 2016, all charges brought against Respondent were dismissed.

In addition to being inadequate in content, these notices were not properly disclosed or made available to the litigants. It is unreasonable to expect that in pro per litigants will enter the attorney arena, scrutinize documents on counsels' table, understand the significance of Respondent's notices, and then raise the issue of disqualification. Also, on many occasions the notices were entirely absent from the attorney's tables. It is irrelevant whether the Lapeer County Legal Community was aware of the details of Respondent's criminal case, his animosity towards Turkelson, or his assistance in Richardson's campaign. Disclosure is for the benefit of the litigants. The knowledge of the Lapeer Legal Community was useless to attorneys from other counties. It is also irrelevant whether Sharkey and Richardson believed there was a conflict of interest between them and Respondent. The duty to disclose belonged to Respondent. Judicial disqualification may be waived, but any such waiver must be in writing or placed on the record. Respondent testified that "quite often" he made a statement disclosing his potential conflict of interest at the start of the day's docket. "Quite often" is not every day in every case. Also, at the start of the day's docket is not sufficient because not all litigants or their counsel would necessarily be present in Court to hear any such announcements. There were over 100 cases involving Turkelson, Richardson, and Sharkey, in which Respondent did not disqualify himself and did not obtain written or on-the-record waivers. Respondent, through his secretary/court

recorder, presented only three post-January 2017 criminal cases when Sharkey was the prosecutor, in which he requested counsel to acknowledge the notice and place a waiver on the record as required by Court Rule. Respondent provided no evidence of any cases involving Turkelson or Richardson in which he followed the Court rule.

It was established by a preponderance of the evidence that the Respondent failed to comply with his judicial responsibilities under the Court Rules and the Michigan Code of Judicial Conduct with respect to Count VII.

COUNT VIII: Alleged Misrepresentations

Disciplinary counsel alleges that Respondent made false statements to the Michigan State Police. However, there is not a preponderance of the evidence 1.) that the statements made by Respondent to Detective Pdendergraff were false or 2.) That the money wasn't deposited to reimburse himself for money spent on items for the LCPO, and 3.) That he had knowledge of whether or not those items were reimbursable.

Regarding the misdemeanor plea, there is not a preponderance of the evidence that Respondent intentionally made false statements about this plea. The evidence showed that he made statements reflecting his good faith interpretation of the facts, even if his interpretation was incorrect.

Disciplinary Counsel alleges Respondent made several false statements in relation to the allegations found in Count II-V. However, there was not a preponderance of the evidence that Respondent made material misrepresentations regarding these alleged financial improprieties.

Lastly, it is alleged that Respondent made false statements regarding his demeanor alleged in Count VI. Again, Disciplinary Counsel did not show by a preponderance of evidence that Respondent made misrepresentations in relation to his demeanor in the encounter with the Oysters.

CONCLUSIONS

For the above stated reasons in Counts I through VI, and Count VIII, disciplinary counsel failed to establish Respondent's misconduct by a preponderance of the evidence.
For the above stated reasons in Count VII, regarding Disqualification and Disclosures, Respondent's misconduct has been established by a preponderance of the evidence.