STATE OF WISCONSIN IN THE SUPREME COURT

In the Matter of Judicial Disciplinary Proceedings
Against the Honorable Leonard D. Kachinsky

WISCONSIN JUDICIAL COMMISSION,
Complainant

Case No. 18 AP 628-J

v.

THE HONORABLE LEONARD D. KACHINSKY,
Respondent

KACHINSKY'S BRIEF REGARDING JUDICIAL CONDUCT PANEL REPORT

LEN KACHINSKY
Fox Crossing Municipal Judge
State Bar No. 01018347
832 Neff Court
Neenah, WI 54956-2031
Phone: (920) 841-6706
Fax: (775) 845-7965
E-Mail: LKachinsky@core.com

Respondent

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Leonard D. Kachinsky (Kachinsky) , submits the following in response to the Judicial Conduct Panel's (Panel) report of February 26, 2019. References will be made to exhibits and testimony in the hearing transcript (TR:___). Although the hearing took two days, the pages of the transcripts were sequentially numbered so Kachinsky will not refer to the date of the testimony.

STATEMENT ON ISSUES

I. DID THE EXECUTIVE BRANCH OF THE VILLAGE OF FOX CROSSING HAVE THE LEGAL AUTHORITY TO REGULATE KACHINSKY'S CONTACTS WITH THE MUNICIPAL COURT MANAGER?

The Panel appeared to answer this question in the affirmative. Much of the case against Kachinsky was based upon the belief by the Commission and Panel that Kachinsky was required to follow the "directives" of the Village Manager and Village

Attorney to maintain a "work only" communication policy toward Mandy Bartelt, the Village Municipal Court Manager. Kachinsky disagrees for the reasons stated below. Kachinsky also believed that a "work only" communication policy was highly damaging to workplace performance in the long run.

II. DID SOME OF KACHINSKY'S ACTIONS CONSTITUTE RETALIATION TOWARD BARTELT OR INTIMIDATION OF HER?

The Commission and Panel answered this question in the affirmative. Kachinsky disagrees. Simply because a subordinate (Bartelt) has made a complaint against a judge (Kachinsky) does not mean that the judge loses his supervisory responsibilities or that the judge cannot document problematic behavior by a subordinate and determine if a record of the behavior should be placed in the subordinate's personnel record. Further, the behavior labelled as "intimidation" by the Panel did not amount to the same.

III. WERE ANY OF THE JUDICIAL PANEL'S FINDINGS OF FACT CLEARLY ERRONEOUS?

The Commission and Panel answered this question in the negative. Kachinsky agrees that most of the findings of fact were supported by the record. However, a few were not. Further, additional relevant facts should have been found in some instances.

IV. DID KACHINSKY'S ACTIONS IN AN EMAIL TO BARTELT REGARDING PROBLEMS IN ANOTHER COURT AND IN POSTING A PAPER CONTAINING THE VILLAGE SEXUAL

HARASSMENT POLICY WHILE LEAVING ANOTHER POSTER ON HIS DESK NEAR THE PHONE VIOLATE THE RESTRAINING ORDER IN 18 CV 102?

The Commission and the Panel answered this question in the affirmative. Kachinsky disagrees and believes that the findings were clearly erroneous.

V. WAS THE RECOMMENDED DISCIPLINE OF ONE TO THREE YEARS SUSPENSION OF ELIGIBILITY TO SERVE AS A RESERVE MUNICIPAL JUDGE WITH RESTRICTIONS AS TO SERVICE IN FOX CROSSING APPROPRIATE?

The Commission and the Panel answered this question in the affirmative. Kachinsky believes that if the evidence of his conduct is re-evaluated by this court in light of the issues raised in this brief that the appropriate discipline would be a nine month suspension with the condition that during the few remaining days in Kachinsky's term that he not have the authority to terminate the appointment of Mandy Bartelt as the municipal court manager. Kachinsky believes that he should be given credit for the time served under the suspension imposed by this court on July 3, 2018 to the date of the court's decision. Kachinsky also believes that his appointment as a reserve judge and assignments be left in the discretion of the chief judge of the district.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not requested as Kachinsky believes that the briefs of the parties will fully meet and discuss the issues on appeal. Publication is routine for cases decided by the Wisconsin Supreme Court.

STATEMENT OF THE CASE

This case was commenced by the filing of a judicial ethics complaint by the Village of Fox Crossing (Village) on June 27, 2017. The Wisconsin Judicial Commission (Commission) conducted an investigation which included my formal appearance before the Commission on February 23, 2018 (Exhibit 95) . On April 4, 2018, the Commission filed a formal complaint with this court. On April 28, 2018, Chief Judge Lisa S. Neubauer of the Court of Appeals appointed Court of Appeals Judges Joan F. Kessler, Mark D. Gundrum and William W. Brash III as members of the Judicial Conduct Panel (Panel). The Commission filed an amended complaint on September 14, 2018 and Kachinsky filed an answer on September 28 2018.

An evidentiary hearing was held on February 7 and 8, 2019 (TR). On February 26, 2019, the Panel filed its Findings of Fact, Conclusions of Law and Recommendation.

STATEMENT OF FACTS

Kachinsky was municipal judge in Fox Crossing and its predecessor municipality, the Town of Menasha, since 1997. When Kachinsky assumed office, Susan Hermus was

the municipal court manager. Kachinsky appointed her to continue which she did until May 2016 when Hermus retired.

Kachinsky and Bartelt met at the Outagamie County Justice Center where Bartelt was a deputy clerk (TR: 139). They became Facebook (FB) friends around 2011-2014 (TR: 33). On November 1, 2015, following chemotherapy for leukemia, Kachinsky was hospitalized with a severe picc line infection for 7 weeks, including rehabilitation. Kara Nagorny, a court reporter, made some #LenStrong bracelets and passed them out in the Justice Center (TR: 341) . Bartelt was one of many who wore the bracelets (TR: 342)

In early April 2016, Hermus informed Kachinsky of her retirement (TR: 342). In addition to sources used by Human Resources, Kachinsky also posted on Facebook about the opening. Bartelt responded by Facebook Messenger, submitted an application and resume and was hired. On May 13, 2016, Bartelt invited Kachinsky and his wife (Barb) to a gathering at World of Beers in Appleton to celebrate her new job. Bartelt started May 16, 2016. On May 18, 2016, Kachinsky went to Froedtert Hospital for a bone marrow stem cell transplant for acute leukemia (TR: 342).

While Kachinsky was at Froedtert, Kachinsky and Bartelt communicated frequently by email about her progress in learning her job. Kachinsky performed municipal judge duties that did not require his physical presence in Fox Crossing (TR: 342). Once Bartelt has the basics down, they initiated a series of long-delayed upgrades to the Municipal Court office. They included

1. Recruited and hired a municipal court manager after Sue Hermus retired.
2. Converted records to electronic format.
3. Revised forms to increase efficiency.

4. Use of 3rd Millennium on-line classes for THC and alcohol violations
5. Improved cash handling procedures.
6. Implemented changes necessary because of incorporation and attachment to the Village.
7. Implemented State Debt Collection (SDC) procedures for collection of unpaid forfeitures in lieu of incarceration in most cases.
8. Reorganized office for improved customer service
9. Eliminated backlog of warrants.
10. Arranged for forms and orders to be signed by judge between court sessions by email rather than waiting for judge to sign them on court nights.
11. Investigated and changed billing procedures by Herrling Clark resulting in substantial reduction in legal fees.

(TR 356-357). When Kachinsky returned to Fox Crossing after the bone marrow transplant and recovery period, a "Welcome Back Judge K" party was held which Bartelt and her family attended. There were also 4 Judge K Challenge Runs with Bartelt and, on one occasion Bartelt's sister, Molly McKenna, at which substantial personal information was exchanged[1] (TR: 346-348). On December 15, 2016, Bartelt and Kachinsky and their spouses met for lunch at Café Nutrition to exchange Christmas gifts and celebrate Bartelt's success with her job. That night, after court, Kachinsky returned to Froedtert because of Graft v. Host Disease (GVHD) which had basically shut down his GI system. Kachinsky was hospitalized until February 1, 2017 but while in the hospital continued to do municipal court and other work as time and circumstances permitted. Like before, Kachinsky communicated frequently by email and Facebook with Bartelt.

After Kachinsky returned to Fox Crossing on February 1, 2017, functions of the court continued with fine-tuning of the upgrades to the operation. Bartelt was the primary implementer of the upgrades with consultations and supervision by Kachinsky.

[1] Bartelt claimed not to remember any of the conversations (TR 143-145) which seems incredible under the circumstances.

The upgrading process continued for several months after Kachinsky returned on February 1, 2017. However, the incidents below and the reaction of the people involved to them soon stopped the operation of a happy productive workplace.

During March 2017 , Kachinsky discussed with Bartelt their relationship and whether to have any outside events (TR: 355). Kachinsky sent Bartelt fewer emails than Bartelt alleged in the injunction paperwork (TR: 357; Exhibit 205 and 206). Kachinsky rarely called or texted Bartelt outside the office (TR: 361-362).

The allegations in this case are best understood by viewing the table below. References are to the paragraphs in the Amended Complaint.

Paragraph	**Date**	**Incident**	**Exhibit**	**Finding by Panel**
11	March 28, 2017	Post on FB regarding 2nd honeymoon	None	No finding
11	March 31, 2017	Surprise visit to office with Kara Nagorny	1, 214	No finding
11	April 2017	Requests to Bartelt to have pictures taken (Noelle Kachinsky & the Voigts)	2, 9	No finding
12	April 2017	Personal emails sent after the "keep our work relationship more work-related" email of April 18, 2017 (Exhibit 3)	3,4, 5,6,7, 8,10	No finding
13	April 25, 2017	Informed Bartelt about her mother being at her house on the weekend and on earlier occasions		No finding
17	Week of May 7, 2017	After May 4, 2017 meeting, Kachinsky visits office three times in one week.	None	Finding of violation of SCR 60.02 and 60.03(1)

18	May 2017	Communications with Bartelt after May 4, 2017 meeting	12, 13, 14, 15, 16, 17,18	Finding of violation of SCR 60.02 and 60.03(1)
19	June 16, 2017	Email to Bartelt wishing her husband a happy Father's Day	21	Finding of violation of SCR 60.02 and 60.03(1)
20	June 24, 2017	Email with table proposing rules for future office relationship	22	Finding of violation of SCR 60.02 and 60.03(1)
21	June 26, 2017	Emails to Lisa Malone about possible termination of Bartelt	25	Finding of violation of SCR 60.02 and 60.03(1)
23	June 29, 2017	Further emails to Lisa Malone on termination	28	Finding of violation of SCR 60.02 and 60.03(1)
24	June 29,2017	Facebook (FB) remark about possible termination	29	Finding of violation of SCR 60.02 and 60.03(1)
25	July 8, 2017	Email to Malone about unfriending her on Facebook with blind copy to Bartelt	30	Finding of violation of SCR 60.02 and 60.03(1)
26	July 14, 2017	Email to Village Board about Judicial Commission investigation	32, 33	Not a violation of Judicial Code. No misuse of position.
27	July 17, 2017	Kachinsky asks Bartelt if afraid of him and knocks items off of desk	215	Finding of violation of SCR 60.02 and 60.03(1)
28	July 20, 2017	Kachinsky tells Bartelt to "Cool your jets" during court session		Insufficient proof to support claim of improper courtroom decorum
29	July 20, 207	Kachinsky suffers cut while leaving after court which he stops with an envelope and leaves envelope on Kachinsky's desk	35	Finding of violation of SCR 60.02 and 60.03(1)
30	July 20, 2017	Email to Bartelt about being a weakling and	36	Finding of violation of SCR 60.02 and

		wanting to try to work things out in spite of wife's contrary opinion		60.03(1)
31	July 26, 2017	Gives Bartelt a white flag and says "you win."	39	Finding of violation of SCR 60.02 and 60.03(1)
32	August 15, 2017	Makes FB post to Baker stating that will probably not be "doped" up and be able to do court	44	Not a basis for disciplinary action
33	August 21, 2017	Email to Hoff suggesting he hire Bartelt	46	Finding of violation of SCR 60.02 and 60.03(1) as alleged retaliation
34	September 5, 2017	Left "refused to sign" letter of resignation on desk	53	Finding of violation of SCR 60.02 and 60.03(1) as retaliation or intimidation
35	October 27, 2017	Letter of reprimand for forwarding emails on casual wear and misdelivered mail to Sturgell as breach of chain of command	54. 55. 56, 57	Finding of violation of SCR 60.02 and 60.03(1) as retaliation or witness intimidation
36	November 2, 2017	Statement to Bartelt and Malone about being compared to Harvey Weinstein and Bill O'Reilly		Finding of violation of SCR 60.02 and 60.03(1) as non-work related conversation
37	November 3, 2017	Email to Bartelt about letter of reprimand in (35) and warning of something going to happened that will cause "fire and fury" in municipal building.	58, 59, 60 , 61	Finding of violation of SCR 60.02 and 60.03(1) as being a non-work related conversation
39	November 25, 2017	Email to Bartelt about Thanksgiving Greetings and not wanting to work with someone who openly despises him and picture of kitchen sink	65	Finding of violation of SCR 60.02 and 60.03(1) as being a non-work related conversation
40	November	Letter of reprimand about	67	Finding of violation of

	26, 2017	Bartelt telling others I was stalking her[2]		SCR 60.02 and 60.03(1) by retaliatory conduct
41	December 23, 2017	Letter of reprimand about Christmas greetings and rapport	69, 70	Finding of violation of SCR 60.02 and 60.03(1) by retaliatory conduct
42	December 23, 2017	Post on FB about co-worker who refuses to return Christmas greetings	71	Finding of violation of SCR 60.02 and 60.03(1) as retaliation or witness intimidation
43	December 28, 2017	Meeting with Bartelt and CPT DeBoer at which Kachinsky indicates that he knew where Bartelt's relatives lived, etc	72	Finding of violation of SCR 60.02 and 60.03(1) as retaliation or witness intimidation.
44	January 4, 2018	Email to Bartelt regarding Kachinsky's car plates and value of Bartelt's residence	73	Finding of violation of SCR 60.02 and 60.03(1) as retaliation or witness intimidation
46	January 14, 2018	Letter of reprimand for not following instruction to forward emails regarding farewell parties for 2 employees.	75	Finding of violation of SCR 60.02 and 60.03(1) as retaliation or witness intimidation
48-49	February 15, 2018	Kachinsky asked Bartelt and Malone to observe him for signs of impairment and while he took gabupentin	82, 83, 79, 80, 217	Finding of violation of SCR 60.02 and 60.03(1) as violation non work-related conversation and not essential to operation of court
57-64	July 24, 2017	Email to Chief Seaver about status of Gelhar prior OWI convictions	38, 43	No violation of ex parte communication rule because for the purpose of determining whether or not court had jurisdiction and calendaring
70	February 27, 2018	Email to Bartelt about Ozaukee Co judge and	84, 79, 80, 217	Finding of violation of SCR 60.02 and

[2] This letter was rescinded by me after Bartelt filed a grievance.

		clerk situation		60.03(1) as violation of injunction in 18 CV 102.
72-75	June 29, 2018	Poster about Chapter 27 of Personnel Manual and Sturgell	89, 90, 91, 92	Finding of violation of SCR 60.02 and 60.03(1) as violation of injunction in 18 CV 102

STANDARD OF REVIEW

The primary role of the Judicial Conduct Panel was to determine whether or not the Judicial Commission proved by clear and convincing evidence that violations of the Judicial Code occurred. Sec. 757.89, Wis. Stats. It was not to decide whether it would have made some of the personnel policy choices Kachinsky did during the time frame. It was only to decide whether the choices made by Kachinsky were outside of the range of acceptable behavior under the Judicial Code.

The standard of review of the Judicial Conduct Panel's findings of fact and conclusions of law is the same as that in civil cases. Sec. 757.91, Wis. Stats. On review of a factual determination made by a trial court without a jury, an appellate court will not reverse unless the finding is clearly erroneous. *Noll v. Dimiczxeli's, Inc.*, 115 Wis. 2d 641, 643, 340 N.W.2d 575 (Wis. App. 1983); Sec. 805.17(2), Wis. Stats. However, the interpretation and application of a statute present questions of law that this court reviews de novo while benefitting from the analyses of the court of appeals and circuit court. *Tetra Tech EC, Inc. v. Wis. Dep't of Revenue*, 2018 WI 75, ¶16, 382 Wis2d 496, 914

N.W.2d 21 (citing *State v. Alger*, 2015 WI 3, ¶ 21, 360 Wis.2d 193, 858 N.W.2d 346). The Judicial Code of Conduct, established by Supreme Court Rule, is a statute.

ARGUMENT

I. THE VILLAGE OF FOX CROSSING DID NOT HAVE AUTHORITY TO REGULATE CONTACT BETWEEN BARTELT AND KACHINSKY

Throughout the Panel's report, there was an assumption that the Village Human Resources, Village Manager and Village Attorney had authority to regulate the interaction of Judge Kachinsky and the Municipal Court Manager. This was not correct.

Other than the circuit court through the restraining orders in 18 CV 102, no other entity had legal authority to interfere with Judge Kachinsky's interactions with his clerk.

Bartelt was an at-will employee. She was subject to possible termination by the Judge at any time and for any reason other than an unlawful reason. See *Bammert v. Don's SuperValu, Inc.,* 2002 WI 85, ¶9, 254 Wis.2d 347, 646 N.W2d 365.

The municipal judge's authority regarding the municipal court clerk is set forth by Sec. 755.10(1) which reads as follows:

> **755.10 Employees. (1)** Except as provided in sub. (2), the judge shall in writing appoint the personnel that are authorized by the council or board. The council or board shall authorize at least one clerk for each court. Except as provided in sub. (2), the hiring, termination, hours of employment, and work responsibilities of the court personnel, when working during hours assigned to the court, shall be under the judge's authority. Their salaries shall be fixed by the council or board. The clerks shall, before entering upon the duties of their offices, take the oath provided by s. 19.01and give a bond if required by the council or board. The cost of

> the bond shall be paid by the municipality. Oaths and bonds of the clerks shall be filed with the municipal clerk.

The statute does not specifically state that the judge is the supervisor of the municipal court clerk. However, the statutory scheme which designates the judge as the authority to hire, fire, set hours and set work responsibilities would make no sense unless it also included the normal responsibilities of a supervisor to oversee, motivate, evaluate and correct the performance of the municipal court clerk.

The applicable canons of statutory construction are well-known:

> ¶7 The purpose of statutory interpretation is to discern the intent of the legislature. (citation omitted). When we interpret a statute, we begin with the statute's plain language, because we assume that the legislature's intent is expressed in the words it used. Id. ; *State ex rel. Kalal v. Circuit Court for Dane Cty.* , 2004 WI 58, ¶45, 271 Wis.2d 633, 681 N.W.2d 110. "Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." *Kalal* , 271 Wis.2d 633, ¶45, 681 N.W.2d 110. We interpret statutory language in the context in which it is used, in relation to the language of surrounding or closely related statutes, and in a reasonable manner, to avoid absurd or unreasonable results. *Id.* , ¶46. ¶7 The purpose of statutory interpretation is to discern the intent of the legislature. Id. , ¶16. When we interpret a statute, we begin with the statute's plain language, because we assume that the legislature's intent is expressed in the words it used. *Id. ; State ex rel. Kalal v. Circuit Court for Dane Cty.* , 2004 WI 58, ¶45, 271 Wis.2d 633, 681 N.W.2d 110. "Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." *Kalal* , 271 Wis.2d 633, ¶45, 681 N.W.2d 110. We interpret statutory language in the context in which it is used, in relation to the language of surrounding or closely related statutes, and in a reasonable manner, to avoid absurd or unreasonable results. *Id.* , ¶46.

City of Madison v. State Dep't of Health Servs., 2017 WI App 25, ¶7, 375 Wis.2d 203, 895 N.W.2d 844. The intent of the legislature in enacting Sec. 755.10, Wis. Stats. was to designate the municipal court judge as an independent authority within the municipality to manage the personnel within his or her jurisdiction.

Further support for this position can be found in the analysis of the Legislative Reference Bureau of Senate Bill 383, Laws of 2009, which stated as to Sec. 755.10 that the bill (ultimately enacted as Act 402, Laws of 2009) set forth certain requirements which included:

> 8. Requires the municipality to authorize at least one clerk position for the municipal court and gives the municipal judge authority over the hiring, work responsibilities, and firing of court personnel. The bill provides that the judge's supervisory authority is a prohibited subject of collective bargaining for court personnel who are not employed by a city of the first class and requires the clerk to attend continuing education programs approved by the supreme court.
>
> Available at http://docs.legis.wisconsin.gov/2009/related/drafting_files/wisconsin_acts/2009_act_402_sb_383/02_sb_383.

The prohibition against infringing upon the judge's authority regarding court personnel is particularly significant since Act 402 was prior to Act 10, Laws of 2011 that substantially reduced the role of collective bargaining in public sector labor relations in Wisconsin.

The judge's supervisory authority in this case was not subject to a higher level of supervision (other than the voters and the supreme court). No other authority could interject itself in the supervision of court personnel. This includes the municipality that

chose to create a municipal court knowing the municipality was required to recognize the court's independence as a co-equal branch of government. Sec. 755.01(1), Wis. Stats.

The Village began involuntary monitoring of Kachinsky's in-person conversations with Bartelt on June 1, 2017 when it assigned members of the Fox Crossing Police Department to be in the court office before and after court (TR 269-270)[3]. Thereafter, monitoring was generally conducted by Lisa Malone, the Human Resources Manager, or Jeff Sturgell, the Village Manager (TR: 269-270). It is absurd to argue, as the Village did during the period of time at issue in this case., that it could restrict and/or involuntarily monitor the in-person conversations of the municipal judge and municipal court clerk to "protect" the clerk from the theoretical possibility of physical or emotional abuse from the judge. There is no credible evidence that such behavior occurred or would likely occur. The issue of the Village's authority was the subject of an action brought by Kachinsky against the Village in Winnebago County Case No 17 CV 954 during November 2017. The issue was not resolved due to events which made the issue essentially moot. However, the ruling of Judge Peter Grimm on January 25, 2018 in denying my motion for a temporary restraining order against the Village (Exhibit 216) cited a number of cases holding that courts have the authority to control its own personnel. These included *In re Janitor of the Supreme Court*, 35 Wis. 410 (1874); *In re Cannon*, 206 Wis. 374, 240 N.W. 441 (Wis., 1932); and *Barland v. Eau Claire County*, 575 N.W.2d 691, 216 Wis.2d 560 (Wis., 1998).

[3] Kachinsky asks the court to take judicial notice of proceedings in Winnebago County Case No. 17 CV 954. That suit, filed by Kachinsky, sought to restrain Fox Crossing from involuntarily monitoring all one-on-one conversations between Kachinsky and Bartelt.

Second, there was no legal authority that authorized the Village to decide whether restricting on one-on-one conversations or monitoring of the same is necessary to protect the integrity of pending investigations or for other reasons. The municipal court is a co-equal branch of government. The court could not, for example, require the Village Board to permit it to be present during closed sessions discussing this case or any other matter. Similarly, the Village could not insist on regulating, being present at and listening in on conversations between the judge and the clerk that may cover a wide variety of topics. With consent of the Judge, Bartelt could have recorded the conversations using an application on her I-phone in lieu of personal monitoring but that alternative was rejected. The Village and Bartelt could summon law enforcement if there was or appears likely to be a disturbance in the municipal court office. The Village police department was about 20 yards away from the municipal court office. The clerk has access to a Village phone with speed dial.

The conduct of Judge Kachinsky toward Bartelt was not equivalent to the actions of someone who might make sexual advances or remarks toward a co-worker. In that situation, "no" means "no." However, trying to restore a level of personal rapport after it deteriorated was a legitimate and laudable objective, provided the efforts were reasonable in manner, timing and frequency. Reasonable and experienced persons might differ in their opinion of how that can be done. However, the "directives" to not engage in any non-work related conversations were as best advice which Kachinsky was free to accept or reject. Those "directives" were open-ended as to duration. Kachinsky's eventual rejection of the advice to totally cease and desist from any communications with Bartelt

on June 27, 2017 (Exhibit 26) that might be construed as "personal" or nonwork-related was not a violation of any legally binding authority. Bartelt's request that absolutely no personal conversations take place was given considered but was not binding upon Kachinsky. As an employee, Bartelt did not have the right to dictate a total ban on any communication by Kachinsky that might be construed as personal[4] by her[5].

Nevertheless, Kachinsky largely adhered to the suggestion of Attorney Macy and Village Manager to abstain from personal communication with Bartelt from May 26, 2017 until June 27, 2017[6] when Kachinsky decided it was unworkable (Exhibit 26). Despite that conclusion and the end of Kachinsky's verbal commitment to follow the "work only" policy, during the 12 months thereafter until Kachinsky's arrest and suspension shortly before the 4th of July 2018, the occurrence of personal communication without a substantial work connection were infrequent. [7]

As I testified (TR: 371-372), some element of personal rapport was required between the Judge and the Clerk in Bartelt's job. Accordingly, I occasionally (prior to the injunction in 18 CV 102) sought to initiate some personal but not personally invasive communications with Bartelt to restore morale and see if there was any possibility of improving the situation. The communications related to the work place and did not seek

[4] The definition of a "personal" communication compared with a "business" one can be problematic. Bartelt appeared to include ordinary workplace greetings as "personal."
[5] Bartelt complained about me announcing that I was coming into the building to drop off TPN bags for deposit and about wishing her to have a good work-out and good weekend, and welcoming back from vacation, among other things (TR: 55-56, 101).
[6] Major exception was the Happy Father's Day email of June 16, 2017 (Exhibit 21) and the suggestion for a meeting outside of the office, possibly with Bartelt's husband, to avoid administration monitoring (Exhibit 22)
[7] Most notable exception in the record was the Happy Thanksgiving email of November 25, 2017 (Exhibit 65). Even that focused on workplace customs. See also special efforts initiated after Malone informed Kachinsky of Bartelt's emotional condition (outlined in Exhibit 70; TR: 274).

highly personal information from Bartelt. Although I was disappointed that the strong personal friendship between Bartelt and me ended, I did not insist that it be restored for Bartelt to keep her job. I wanted our relationship to be at least an ordinary friendly workplace relationship but it was not (Exhibits 24, 25, 26, 51, 57, 58, 87; TR: 263-265). As I testified and remarked in emails, my concern was workplace performance and not personal desires. If co-workers have a minimum amount of personal rapport, everyone works better and more effectively. That was not "myopic" (p.38 of Panel report). It is something that was within the common knowledge of anyone with experience in an office environment.

The violations of the work-related communication policy found by the Panel were from Paragraphs 17-20, 36-39 and 48-49 of the Amended Complaint. It is important to note the wording of Bartelt's April 18, 2017 email on workplace communication. It was to "keep our work relationship more work-related" (Exhibit 3). It was not to totally cease any and all communications that might be construed as personal. Following that email, Kachinsky sent Bartelt several emails on how he would do that (Exhibits 4, 5 & 6). Bartelt seemed to approve. One of the email simply stated, "Mandy—have a good workout." (Exhibit 7). Another (Exhibit 8) gently suggested resuming Judge K Challenge Runs.

Similarly, the consensus on new workplace rules reached on May 4, 2017 provided that, "All phone and email communications will be centered on business matters" (Exhibit 11). This was also not a total ban on non-work communication.

During the week of May 10, 2017, Kachinsky could recall only being at the office twice based upon his Clio Calendar (Exhibit 207). On May 8, 2017, Kachinsky dropped by briefly to drop off LPN bags for the police to pick up as part of the prescription drug program (Exhibit 12; TR:169-170). The email indicated Kachinsky would be there at 11:30 to drop them off and speak with Bartelt briefly. The calendar and email indicated Kachinsky had an appointment to see a client at Dodge Correctional at around 1:45 p.m. On Wednesday, May 10, 2017, Kachinsky had a wedding to perform at 1 p.m. and a car appointment at around 2:00 p.m. There were trials on the calendar for May 11, 2017 but it is unknown if they were held or settled. There were legitimate purposes for each of Kachinsky's stops at the Municipal Court office that week.

As a matter of good supervision, it was desirable for Kachinsky to at least stop by the office once a week if circumstances permitted even if there was not court or a wedding. Bartelt found a number of problems in the office that she fixed in her first 10 months when my supervision of Hermus was more lax than it should have been. The municipal judge is responsible for the operation of the court. The buck stops with him/her. For examples where insufficient supervision by the municipal judge result in thefts and other problems, please see articles about the Village of Oregon and City of Sparta: https://madison.com/wsj/news/local/courts/former-oregon-official-charged-with-theft-from-municipal-court-funds/article_76867fa3-d536-5348- and https://lacrossetribune.com/stories/news/prosecutor-looking-into-missing-sparta-court-funds/article_28d99cb5-bf7f-566f-a34f-a4b138a694f0.html.

The communications in paragraphs 18-19 were included discussion about possible events (Exhibits 15 and 17) to which Bartelt responded and a Father's Day greeting (Exhibit 21). Bartelt was not asked to plan a party. She was just asked to give input as to whether to have the event or not and what the format should be. I did not cajole. nag or threaten her.

Asking Bartelt to evaluate me for signs of impairment (48-49) was a response to complaints to the Judicial Commission that I had been impaired by prescription drugs. While Bartelt could not make a diagnosis, she could observe me to look for glassy eyes, slurred speech, mental confusion or other symptoms that might warrant viewing by an experienced police officer. Bartelt was only asked to do an initial screening. It was very work-related to at least check if the judge was impaired in light of past (false) accusations.

Kachinsky's failure to follow the "directives" of the Village Administration (see page 38 of Panel Report) did not demonstrate a "distain for systems put in place to avoid harassment in the work place" as the Panel suggested (page 42). For one thing, there was no Village policy on harassment, just sexual harassment (Exhibit 91). Even the sexual harassment policy lacked an outline of the investigative and other procedures used to implement it. After the Injunction order of February 15, 2018 (Exhibit 80; please also see Exhibit 217, a transcript of the decision of Court Commissioner Krueger on February 15, 2018), Kachinsky believes he followed the legally binding limitations placed on his interactions with Bartelt as will be argued below.

II. KACHINSKY'S ACTIONS DID NOT CONSTIUTE RETALIATION TOWARD AND/OR INTIMIDATION OF BARTELT.

Another issue discussed by the Panel was that certain actions taken by me were in retaliation for Bartelt's cooperation with the Village's complaint or meant to intimidate her (pages 20, 22, 34). The Panel listed on page 34 a number of actions it regarded as retaliatory or intimidating. In order to determine if they were or not, one needs to consider what "retaliation" or "intimidation" meant in the context of this case which dealt primarily with workplace conduct. Cases involving alleged violation of fair employment practices (mostly federal) are instructive.

Employment actions must be materially adverse in order to constitute "retaliation." See *Rabinovitz v. Pena*, 89 F.3d 482, 489 (7th Cir.1996); see also *Smart v. Ball State Univ.*, 89 F.3d 437, 441 (7th Cir.1996). It defined a material adverse employment action as follows:

> [A] materially adverse change in the terms and conditions of employment must be more disruptive than a mere inconvenience or an alteration of job responsibilities. A materially adverse change might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation.

Crady v. Liberty Nat'l Bank & Trust Co., 993 F.2d 132, 136 (7th Cir.1993); see also *Sweeny v. West*, 149 F.3d 550, 556 (1998) (instances of different treatment are insufficient to establish retaliation if differences have little or no effect on an employee's job).

In order to present a *prima facie* case of retaliation, a plaintiff is required to show (1) he engaged in protected activity; (2) the defendant knew of the plaintiff's engagement in the protected activity; (3) the employer took adverse employment action against him; and (4) a causal connection between the protected activity and the adverse employment action. *Brooks v. Lexington-Fayette Urban Housing Auth.*, 132 S.W.3d 790, 803 (Ky. 2003).

A causal connection between the protected activity and the adverse employment action must be established by circumstantial evidence when no direct evidence exists. *Brooks*, 132 S.W.3d at 804 (citing *Nguyen v. City of Cleveland*, 229 F.3d 559, 566 (6th Cir. 2000)). An inference can be drawn through circumstantial evidence that the protected activity was the likely cause of the adverse action. *Nguyen*, 229 F.3d at 566. This is often shown by the temporal proximity between the protected activity and the adverse action. *Id.* A court may also consider whether the plaintiff was treated differently by the employer than similarly situated individuals. *Barrett v. Whirlpool Corp.*, 556 F.3d 502, 517 (6th Cir. 2009).

Retaliation claims supported by circumstantial evidence are analyzed under the *McDonnell Douglas* burden-shifting framework. *Fuhr v. Hazel Park School District*, 710 F.3d 668, 674 (6th Cir. 2013). Once a *prima facie* case for retaliation has been established, the burden shifts to the defendant to articulate some legitimate non-retaliatory reason for its decision. *Kentucky Department of Corrections v. McCullough*, 123 S.W.3d 130, 134 (Ky. 2003). The burden then shifts back to the plaintiff to show that defendant's stated reason was pretext and not the true reason for its decision. *Id.*

To establish a causal connection, the employee must produce sufficient evidence so that it could be inferred that the adverse employment action would not have been taken had the employee not filed a complaint. *Nguyen v. City of Cleveland,* 229 F.3d 559, 563 (6th Cir. 2000). "Temporal proximity alone will not support an inference of retaliatory discrimination when there is no other compelling evidence." *Id*. at 566.

As will be argued below, there was no temporal or other connection between Bartelt's participation in the complaint against Kachinsky and the alleged retaliatory acts. While Kachinsky's acts can still be considered violations of other provisions of the Judicial Code, any finding that those acts were retaliatory was clearly erroneous.

The Panel found the letters of reprimand (Exhibits 57, 67, 70 and 75) to be "retaliatory." However, there was no claims that the allegations in the letters by Kachinsky were untrue or fabricated (TR: 192-198). The letters served a purpose in documenting workplace behavior by Bartelt that was troubling. It is hard to prove someone had a bad attitude unless specific instances can be cited. The letters of reprimand also gave Bartelt the opportunity to respond. Bartelt responded to the second letter of reprimand with the result that it was dropped after the grievance was filed and before a hearing before Village Manager Sturgell. The fourth letter of reprimand was amended to a counseling letter after Bartelt pointed out that I only "requested" rather than ordered her to forward the requested emails. Finally, none of the letters of reprimand (which were removed from Bartelt's file on January 30, 2018) had any significant effect on Bartelt's conditions of employment or prospects for promotion. In Bartelt's overall

witness stand demeanor on this and other issues Bartelt's responses to questions on cross examination showed a convenient lack of memory of anything not written down.

Other alleged retaliatory acts included the FB post on how sad it was that a coworker did not return Christmas greetings (Exhibit 71). The post did not identify Bartelt as the coworker or identify the gender, position or place of employment of the coworker[8]. While knowledgeable persons who knew Bartelt and me could connect the dots, the post was not written in such a way as to "retaliate." While it could be regarded as public venting that was conduct below the high standards of a judge, it was not retaliatory or intimidating. Similarly, the statement about knowing the location of Bartelt's relatives, the value of Bartelt's residence or informing her of my license plate number was not retaliation. They will be analyzed as possible "intimidation" below.

"Intimidation" is not defined in Sec. 939.22 (the definitional statute for crimes such as witness intimidation) or Sec. 940.44-940.46, Wis. Stats, which define the crime of witness intimidation. However the acts prohibited are those aimed at prohibiting behavior that might tend to prevent or dissuade a person from making complaints to lawful authorities or from cooperating with lawful authorities about certain matters. In an harassment injunction case, this court applied the common dictionary definition of "intimidate" as "to make timid or fearful." , *Bachowski v. Salamone,* 139 Wis.2d 397, 407, 407 N.W.2d 533 (1987).

As will be argued below, none of the actions listed on pages 34-35 of the Panel report met the definition of either "retaliation" or "intimidation."

[8] There were approximately 160 employees on the average Fox Crossing payroll (TR: 275).

The Christmas greeting post on Facebook (Exhibit 71) was not visible to Bartelt as she had unfriended Kachinsky in late May 2017. If she would not ordinarily know of it, she could not be intimidated by it. The statements about knowing the location of Bartelt's relatives should not have been considered intimidating. Except for Bartelt, there is nothing in the record that I knew anything about their location other than the municipality. There is no evidence I knew the street address or, as to Molly McKenna, at which of the numerous Thedacare locations she worked. I told Bartelt in March 2017 about how I knew she had lots of relatives within a 90 mile radius and a busy family life (TR: 377). At no time is there any evidence in the record that I alluded to taking any action with respect to them that Bartelt might reasonably fear.

Kachinsky acknowledges that conduct that is not "retaliation" or "intimidation" may violate the Judicial Code prohibitions against not maintaining and enforcing high standards of conduct (SCR 60.02) and respect and compliance with the law (SCR 60,03). The Panel did not decide if there were violations of SCR 60.04(1)(d).

III. SOME OF THE FINDINGS OF FACT AND CONCLUSIONS OF LAW WERE CLEARLY ERRONEOUS OR INCOMPLETE.

Set forth below are my comments on the Findings of Fact by the Panel:

1. Agree with the findings in paragraphs 1-7.
2. Agree with the findings in paragraph 8. However, overly lax supervision of Bartelt's predecessor did not mean it had to continue once Bartelt was hired,

especially since major changes were made in office procedures (TR: 355-356) once Bartelt became oriented with the duties of her job, primarily on her own once her predecessor retired and I was in the hospital for a bone marrow transplant on Bartelt's third day on the job.

3. Agree with paragraphs 9-13.
4. Agree that the record supports the findings in paragraph 14, although, as I testified my recollection was that the words uttered were "This is a raid."
5. Agree with paragraph 15.
6. Agree with paragraph 16. However, please note that Exhibit 2 (which requested cooperation with photographs) was Kachinsky passing on a request from his daughter. The issue was not raised again once Bartelt declined.
7. Agree with paragraph 17 about Bartelt's email of April 18, 2017 (Exhibit 3). However, by its literal terms, the email requested a reduction in non-work related conversations, not their total cessation. Further, Bartelt was aware that I made cat noises from what others told her (TR; 142). Bartelt never asked me to stop making cats noises (TR: 173-174). She was bigger than me and in good physical shape (TR: 174). Bartelt asked the criminal case judge to put me in prison for 18 months (TR: 175). Bartelt also approved filing a lawsuit against me seeking damages for infliction of extreme emotional distress (TR: 177-178; Exhibit 218). Bartelt provided incorrect information to the Judicial Commission as to a comment I made on taking oxycodone that she later had to retract after listening to a recording of the court session (TR: 179-182; Exhibit

212, page 5). Bartelt claimed I provided legal advice to defendants but could not provide even one specific example (TR: 187-188; Exhibit 212).

8. The record supports paragraph 18. However, see my comments in the paragraph above.
9. The record supports paragraphs 19 and 20. However the emails in question were in lieu of more time-consuming in-person discussions. They were work-related in that they demonstrated I was willing to adjust my behavior to accommodate some of Bartelt's concerns. Please note that on the first page of Exhibit 5 (April 22, 2017) , Bartelt remarked that she was pleased that I took Barb (my wife) out to eat, a comment that was personal but not highly personal. Although the emails were sent on a weekend, it was to the Municipal Court office, not Bartelt's residence and there no indication a response was expected.
10. The record supports Paragraph 21. Although Exhibit 6 was sent on a weekend, it was to the Municipal Court office and there no indication a response was expected.
11. The record supports Paragraph 22 but see my testimony (TR: 364-366) which explained how I was notified of Barbara Strobel's location and explained it to Bartelt. That testimony was similar to my submissions to the Judicial Commission (40) and testimony at the Formal Appearance (95) and was unrebutted at the Judicial Conduct Panel hearing.
12. The record supports Paragraph 23-25.

13. The record supports Paragraph 26 but the Panel found it was not a violation.
14. The record supports Paragraph 27. However, the record does not support a finding that the knocking of items off the desk was intentional as it occurred when Kachinsky was leaning over a room divider to quietly ask Bartelt if she was afraid of him. See picture of where incident occurred in Exhibit 215. See also Bartelt's testimony confirming that a divider was between them during the July 17, 2017 incident (TR: 207).
15. The record supports most of Paragraph 28 but it was found to be insufficiently proven to be a violation.
16. The record supports Paragraph 29 as to the acts alleged. However, the location of the envelope (on my desk) did not support a finding it was intimidation. It was, at worst, poor office etiquette.
17. The record supports Paragraph 30. Perhaps using the word "weakling" might have offended some but it would be difficult to communicate any other words to convey the message that nothing that had occurred between Bartelt and me appeared sufficient by me to justify her fear of being alone in the same room as me.
18. The record supports Paragraph 31 regarding the white flag. While this was an unconventional way of conceding defeat, it was a way of interjecting some humor into the situation in an effort to lower tensions.
19. The record supports Paragraph 32. However, the coherent message contained therein did not display signs of impairment after the hip surgery was done.

Further, it simply explained the obvious: painkillers wear off and would not necessarily be needed for me to perform court on the scheduled day.

20. The record supports paragraph 33. My belief that Bartelt was seeking new employment was conjecture based upon a flex time request.

21. The record supports paragraph 34. However, the "refused to sign" letter of resignation was not intimidation or retaliation. It was a show of resolve.

22. The record supports paragraph 35. Please note, however, the comments in the November 3, 2017 email (Exhibit 37) regarding the teaching purpose of the letter of reprimand regarding the chain of command. It was not retaliation or witness intimidation.

23. The record supports paragraph 36. I uttered the statement out of frustration with the monitoring which treated me like one who committed sexual harassment. This venting was below the standards of conduct expected from a judge. However, it was in chambers and not in the presence of the general public.

24. The record supports paragraph 37. Please note that I had informed Bartelt, the recipient of the email, months before during a Judge K Challenge run that I did not possess firearms and that my military experience was not in a combat zone.

25. The record supports paragraph 39. However, the email and picture of a kitchen sink were not intimidating to Bartelt as a witness but an attempt at humor to defuse tensions. It was a work related conversation.

26. The record supports paragraph 40. The Panel did not find that I was "stalking" or tracking Bartelt or her mother.

27. The record supports paragraph 41 but see discussion above on letters of reprimand.

28. The record supports paragraph 42 but see discussion above on the December 23, 2017 Christmas greetings post. Bartelt may be my immediate co-worker but there were over 160 Fox Crossing employees (TR: 275) who could be considered the same.

29. The record supports that I made the statements in paragraph 43. However, see the discussion above as to how the knowledge was obtained and how Bartelt should have known the knowledge was obtained. Further, I mentioned other open sources such as whitepages.com (TR: 226). In CPT DeBoer's opinion, it did not appear I understood Bartelt was upset by my comments on the location of her relatives (TR: 226). Further Bartelt testified to unfounded fears that I was at her gym and her residence (TR: 163-164). Bartelt also mistakenly claimed that I told persons that she was pregnant (TR; 164-167; Exhibit 220). Bartelt feared I had placed eavesdropping devices in the municipal court office (TR: 168-169). Bartelt also feared I would sabotage her car even though the employee parking lot was monitored by a camera (TR; 171-173). Given these other unfounded fears, it was reasonable for me to

take Bartelt's expressions of fear with a grain of salt, especially since Bartelt had an audience for them[9].

30. The record supports paragraphs 44 and 46. However, see discussion above about the January 4, 2018 email and the January 14, 2018 letter of reprimand.

31. The record supports paragraph 47- 49. However, the Panel did not find the act of taking a gabapentin pill before court on February 15, 2018 to be a violation[10]. Further, see explanation above as to what the intent of the demonstration was.

IV. KACHINSKY'S ACTIONS IN AN EMAIL TO BARTELT REGARDING PROBLEMS IN ANOTHER COURT AND IN POSTING A PAPER CONTAINING THE VILLAGE SEXUAL HARASSMENT POLICY WHILE LEAVING ANOTHER POSTER ON HIS DESK NEAR THE PHONE DID NOT VIOLATE THE RESTRAINING ORDER IN 18 CV 102.

The restraining order issued by Court Commission Krueger on Febraury 15, 2018 was not as clear as the Commission and Panel claimed it was. The written order (Exhibit 80) only prohibited harassment of Bartelt. A transcript of Court Commissioner Krueger's oral ruling (Exhibit 217) defined harassment as communications that are personal in nature and have no connections with the parties' work duties" (Exhibit 27: 6). Kachinsky believed that he still was

[9] Please recall my surprise that Bartelt did not display fear during the unmonitored July 17, 2017 visit to the office, prompting my questions to her when I left.

[10] The February 15, 2015 email that preceded the court session (Exhibit 81) was found to be a non-work related communication. However that was clearly erroneous as it clearly related to procedures that were going to be followed in court that night.

responsible for Bartelt's professional development which included knowledge of situations in other courts in Wisconsin. That is what the Ozaukee County email (Exhibit 84) was about. It was not about Bartelt's family or personal life. It was meant to inform her of a work situation to which she might compare her own. I thought it was particularly apt since Bartelt used to work in Ozaukee County.

The restraining order issued by Judge Stengel on June 19, 2018 (92) did not contain latent ambiguities like the Krueger order. However, the conduct of Judge Kachinsky on June 29, 2018 (which was discovered on July 2, 2018) did not violate the restraining order. The restraining order stated in relevant part that "all communications between [Bartelt] and [Kachinsky] shall be limited to what is necessary to perform the functions of the Village of Fox Crossing Municipal Court" (Exhibit 92:2).

There were two posters in the municipal court office discovered that were not there before. The Sturgell poster (Exhibit 90) was on the desk near the phone (TR 387). It was not in a location to expressly communicate to Bartelt (such as Bartelt's desk or eye level as the other one was). The message on the Sturgell poster did not appear to be directed to Bartelt. The finding that it was a communication to Bartelt was clearly erroneous.

The Chapter 27 poster (Exhibit 91) was posted at eye level and meant to communicate to Bartelt. (TR: 386). The Panel found it violated the injunction because it was not essential to the operation of the municipal court. However, if a

page from the Village Personnel Manual and insuring that employees knew what it said was not essential, it is hard to think of many other things that would be.

The issue of what sexual harassment was and Bartelt's belief that she was a victim of it was apparent in several incidents. Bartelt believed a voicemail regarding me needing to see her body language was sexual harassment (TR: 153-156; Exhibit 209). She also was upset by an email indicating it was nice to hear her voice (TR: 156-157; Exhibit 209B). Bartelt also wrote comments on emails for the Judicial Commission investigator regarding 4 events she considered sexual harassment (TR: 157-158 ; Exhibit 210). These including staring and making cat noises; an email about being sorry about holding her after hours; voicemails and emails referring to body language. However at one point in the Goodnough interview, Bartelt stated my actions were not of a sexual nature (TR: 188-189) . But Bartelt regarded a question by me to her as to whether or not she was wearing Packer attire to be a form of sexual harassment (TR: 217-218). This court can also take judicial notice through the Judicial Dashboard that in its answer to the suit I filed against the Village in Case No. 17 CV 954 that part of the Village's Answer and Affirmative Defenses was that there a founded sexual harassment finding against me.[11] Sexual harassment was also an issue in negotiations between Kachinsky and the Village (TR: 386). Sexual harassment and Bartelt's misunderstanding of it was definitely an issue at municipal court which needed to

[11] See Answer and Affirmative Defense dated December 7, 2017. Sturgill, amazingly, could not recall making such a finding in spite of its obvious significance (TR: 306-307).

be addressed by posting a copy of Chapter 27 of the Personnel Manual. Posting a copy of Sexual Harassment policy was essential to the operation of the municipal court to insure that Bartelt understood what that actually was.

V. THE APPROPRIATE DISCIPLINE IN THIS CASE WOULD BE A NINE MONTH SUSPENSION WITH A RESTRICTION UPON TERMINATING BARTELT'S APPOINTMENT RATHER THAN RECOMMENDED DISCIPLINE OF ONE TO THREE YEARS SUSPENSION OF ELIGIBILITY TO SERVE AS A RESERVE MUNICIPAL JUDGE WITH RESTRICTIONS AS TO SERVICE IN FOX CROSSING.

The allegations that Kachinsky believes have been adequately proven consist of primarily demeanor violations as the conflict between Kachinsky and Fox Crossing heated up during the course of the events in this case (April 2017 through July 2018). Kachinsky served as a municipal judge honorably since May 1, 1997. There were no incidents in which Kachinsky flouted clear-cut legal obligations. There were incidents in which the tensions slightly boiled over into inappropriate comments, e-mails and FB posts. Kachinsky did not directly threaten, yell at or belittle Bartelt. He did give her fair warning about behaviors that were concerning to Kachinsky. This was hardly an aggravated case that warrants a one-to-three year suspension from eligibility to serve as reserve municipal judge as recommended.

The comparison of this case with *In re Van Susteren,* 118 Wis. 2d 806, 348 N.W.2d 579 (1984) and *In re Staege* 165 Wis. 2d 21, 476 N.W.2d 876 (1991)

are flawed..

Van Susteren was a judge with a prior reprimand case. He committed several instances of gross neglect of judicial duty and failure to comply with court orders for completion of estates. Van Susteren also was convicted of five misdemeanor counts of failing to timely file income taxes for a corporation in which he was an officer and stockholder. *Van Susteren*, 348 N.W.2d at 580-582. Van Sustern was suspended from the bench for two years.

Staege was a municipal judge in the Town of Raymond for two years. He was found in contempt for violation of a junk storage ordinance after a trial and unsuccessful appeal. Staege served 3 and ½ months in jail before his property was cleaned up. *Staege*, 470 N.W.2d at 877. Staege was suspended from eligibility for municipal judge for three years.

In this case, there were no convictions or findings of contempt. Kachinsky was arrested on July 2, 2018 and released without charges 22 hours later. However, Kachinsky's Winnebago County Jail booking photo was distributed in Wisconsin media and, thanks to the internet, throughout the world in a matter of hours. Charges were filed against Kachinsky in Winnebago County Case No. 18 CF 509. The two restraining order violation charges that correspond to the allegations by the Commission in paragraphs 72-76 were dismissed by the State in early December 2018. After a jury trial on the stalking charge on December 6,7 and 10, 2018, Kachinsky was found not guilty. Fox Crossing halted Kachinsky's pay on July 14, 2018 and it was never reinstated.

The violations of the Judicial Code supported by the evidence are primarily matters of demeanor in out-of-courtroom interactions with Bartelt. The Facebook postings did not specifically identify Bartelt but persons who knew them well could figure out to whom Kachinsky was referring. Similarly, labelling Bartelt was a "weakling" and "coward" fell below the high standards to which judges are supposed to adhere. However, Kachinsky does not believe he should be disciplined for attempting to redefine the judge/clerk relationship after Bartelt clearly broke off their close but very appropriate, nonphysical friendship and salvage at least an ordinary office relationship similar to what exists in most workplaces. That is what a "low level professional relationship" was and nothing more in spite of claims to the contrary.

Similarly, Kachinsky should not be disciplined for merely contemplating the termination of Bartelt. We do not, in our system of judicial discipline, punish judges for thoughts that are not carried through. Kachinsky submitted a proposed termination letter (Exhibit 28) to Malone precisely because he was not sure he wanted to do it and wanted her input. Fox Crossing's response was a letter to Kachinsky from Attorney Macy (Exhibit 27) which indicated that Fox Crossing would not recognize any termination of Bartelt and not fund a replacement. On May 7, 2017, the Village Board passed a resolution (Exhibit 219) to similar effect that indicated that if Bartelt's appointment was terminated, any replacement would be given 20 (instead of 40) hours per week at minimum wage with no fringe benefits. The extremes to which the executive and legislative branches of Fox Crossing government were willing to go to play "Chicken" against me with providing municipal court services to the citizenry was astounding.

All of this demonstrates that the personality conflict between Kachinsky and Bartelt soon morphed into a battle between the branches of government. Kachinsky, unlike VanSustern and Staege, did not defy clearly established authority. He stood his ground to protect the separation of powers. Over the 14 month period when Kachinsky was subject to the involuntary monitoring, , there was no profane or vulgar language in spite of the unrelenting tensions of the situation. The most significant activity that undermined public confidence in system of justice was the distribution of my booking photo in the media for charges that were dropped or resulted in a not guilty verdict. Other than possibly the frustrated remarks about Harvey Weinstein and Bill O'Reilly, there was nothing that came close to yelling. The problems never manifested themselves in the courtroom to the general public.

CONCLUSION

This was a personality conflict and misunderstanding between Kachinsky and Bartelt that escalated through a series of events into a power struggle between Kachinsky and the Fox Crossing administration. The Administration supported Bartelt over Kachinsky and accepted Bartelt's professed (though overblown) fears that Kachinsky was so dangerous that she could not be in the same room with him unless someone from the Administration was present.

The Panel correctly set forth on page 40 the factors for determining the appropriate discipline. However, the characterization of many of the incidents as

violation of "directives," "retaliation," "intimidation," or flagrant violation of court orders was not supported by the record.

On April 2, 2019, a new municipal judge will be elected in Fox Crossing. That judge should not be burdened with having to deal with a personnel problem not of his[12] making. Should this court reinstate me prior to the expiration of my term on April 30, 2019, I would not want or need the authority to terminate Ms. Bartelt. The new judge should decide whether to appoint Bartelt indefinitely, appoint Bartelt temporarily pending further consideration of applicants, including Bartelt, or immediately appointing someone else.

Since the Judicial Conduct Panel hearing and report, I attended another continuing legal education conference in Elkhart Lake so that if I was appointed a reserve municipal judge, the continuing education requirement for 2019 would be met. During my 22 years as municipal judge, no complaints were ever made about how I treated litigants and attorneys. My comprehensive knowledge of the applicable law in municipal court is well documented. In semi-retirement, I have continued to accept four-to-five State Public Defender appellate cases per month. Given the hourly rates, it is more for intellectual stimulation and a sense of duty to the justice system rather than money.

A fair and just resolution of this complaint would be a finding of judicial misconduct on the counts I have conceded were proven. A suspension of nine months would be more than commensurate with seriousness of the proven violations. I also

[12] The candidates, John Schomisch and Timothy Hogan, are both males.

request that I be eligible for appointment as a reserve municipal judge at the discretion of the District Judge.

Dated this 11th day of March 2019

_____

LEN KACHINSKY
Municipal Judge, Respondent
SBN: 01018347
831 Neff Court
Neenah, WI 54956-2031

CERTIFICATION AS TO BRIEF LENGTH

I hereby certify that this brief conforms to the rules contained in Sec. 809.19(8)(b) and (c) for a brief and appendix produced with a serif proportional spaced font. This brief has 9879 words, including certifications.

Dated this 11rd day of March 2019

_____

LEN KACHINSKY

CERTIFICATION OF ELECTRONIC FILING

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Rule 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 11th day of March 2019

LEN KACHINSKY