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IN THE SUPREME COURT
OF THE STATE OF WISCONSIN

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**CLERK OF SUPREME COURT
OF WISCONSIN**

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

Wisconsin Judicial Commission,
Complainant,

Case No. 18AP628-J

v.

The Honorable Leonard D. Kachinsky,
Respondent.

**BRIEF AND APPENDIX OF THE WISCONSIN JUDICIAL COMMISSION
REGARDING SANCTIONS**

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. WHAT IS THE APPROPRIATE SANCTION FOR JUDGE KACHINSKY'S MISCONDUCT?

The Judicial Conduct Panel recommended that Judge Kachinsky's eligibility for service as a reserve municipal court judge be suspended for a period of at least one year but not more than three years, and that he never be eligible to serve as a reserve municipal court judge for the Village of Fox Crossing while Mandy Bartelt is employed as the Village of Fox Crossing Municipal Court Manager.

STATEMENT AS TO ORAL ARGUMENT AND PUBLICATION

The Judicial Commission does not request oral argument and believes the Supreme Court's opinion should be published. Judicial disciplinary matters are of substantial and continuing statewide interest.

STATEMENT OF THE CASE

This case is an original action in the Supreme Court, pursuant to Wis. Stat. § 757.85(5). The Judicial Commission (Commission) filed a complaint on April 4, 2018, alleging that the Honorable Leonard D. Kachinsky engaged in judicial misconduct based upon his abusive treatment of his court manager who he supervised, the manner in which he addressed disputes with his court manager and Village officials concerning this treatment, the numerous ways in which he retaliated against the court manager for complaining about his conduct, and other related matters.

A Judicial Conduct Panel (Panel), consisting of the Honorable Joan F. Kessler, presiding, the Honorable Mark D. Gundrum, and the Honorable William W. Brash III, was appointed to hear the case. The Panel conducted an evidentiary hearing on February 7 and 8, 2019, concerning this matter.

On February 26, 2019, the Panel filed its Findings of Fact, Conclusions of Law and Recommendation of Discipline (Findings). The Panel found that Judge Kachinsky engaged in judicial misconduct and recommended a suspension of his eligibility for service as reserve municipal judge for one to three years and a removal of his eligibility for service as a reserve

municipal judge for the Village of Fox Crossing while the court manager is employed in that position in Fox Crossing.

The matter is now before the Supreme Court for review of the Panel's findings and for determination and imposition of appropriate discipline.

STATEMENT OF FACTS

It is the Commission's position that virtually all of the relevant facts (for purposes of this Brief) are concisely stated in the Panel's Findings. Findings, 3 – 32 (¶¶1-78).

However, it should be noted that, at the evidentiary hearing, when asked by the Panel for its recommendation as to discipline, the Commission took the position that, as a result of the misconduct alleged, Judge Kachinsky should be suspended for the remainder of his term in judicial office (ending on April 30, 2019) and his eligibility for future reserve judge status should be removed, while Judge Kachinsky took no position. 2.18.19 Evidentiary Hearing Transcript (2.18.19 Tr., 476); Commission Appendix (C-APP. 102).

ARGUMENT

I. Suspension of Judge Kachinsky's Current Judicial Office until April 30, 2019 and Permanent Removal of his Eligibility for Reserve Municipal Court Judge Appointment is the Appropriate Discipline in this Case.

The Wisconsin Constitution, Article VII, Section 11, provides that judges shall be subject to reprimand, censure, suspension, or removal as the result of disciplinary proceedings. As stated in In re Gorenstein, 147 Wis.2d 861, 873, 434 N.W.2d 603 (1989):

The purpose of judicial discipline is to protect the court system and the public it serves from unacceptable judicial behavior. The discipline to be imposed, then, is to be determined by the extent of the protection needed, based upon the seriousness of the judge's misconduct and the likelihood that it would recur.

Discipline should be responsive to the gravity of the misconduct and is designed to foster confidence in the integrity of the judicial system the public has every right to expect and demand. In re Aulik 146 Wis. 2d 57, 78, 429 N.W.2d 759 (1988).¹ Discipline is imposed by the Supreme Court on a de novo basis, although the Panel's recommendation is entitled to some deference. In re

¹ In Aulik, the Supreme Court also opines:

Inevitably, members of the public will, from time to time, disagree with decisions of our courts, but that disagreement should never rest upon lack of confidence in the court's integrity. Public confidence in the integrity of the judicial system is essential. It is our responsibility, and the responsibility of every judge, to merit and maintain that confidence. Id.

Crawford, 245 Wis.2d 373, 392, 629 N.W.2d 1 (2001) (citing In re Seraphim, 97 Wis.2d 485, 513, 294 N.W.2d 485 (1980)).

The misconduct in this case is serious, aggravated and persistent. In finding that Judge Kachinsky violated Supreme Court Rules 60.02 and 60.03(1), the Panel noted that:

It takes little discussion to conclude that Judge Kachinsky's conduct toward Bartelt was such that it would cause persons to question his character and even more so, lose respect for his willingness and ability to comply with and enforce restrictions that make this a society of laws and justice rather than one of selfish indulgence for a person's own desires. Despite numerous interventions and directives by the human resources manager, the Village manager, the Village attorney, law enforcement, a circuit court commissioner, a circuit court judge, and Bartelt herself, Judge Kachinsky persisted in conduct contrary to those directives and was driven solely by his myopic view of what his work relationship with Bartelt should be. Judge Kachinsky evidenced disbelief in Bartelt's expressed desires to limit their relationship, ultimately viewing village officials as the cause of the deterioration of their friendship. Given the part-time nature of his judgeship and that his presence at the office of the municipal court could generally be limited to the Thursday night court sessions, Judge Kachinsky could have easily complied with the directives to limit his communications with Bartelt to work matters. He did not do so. His actions are not those reflective of the respect a judge must have for the fair and legal ordering of society. For this reason, public confidence in the judiciary is eroded by Judge Kachinsky's irresponsible and improper conduct. Also, his conduct was unbecoming to a judge. A judge is expected to recognize and respect the boundaries imposed on his or her position. Judicial Conduct Panel Findings, 38-39 (Feb. 26, 2019).

The manner in which Judge Kachinsky conducted himself prior to being notified of the Village's intent to file an ethics complaint against him is concerning in many ways.²

However, the most aggravating factors in this case concern the manner in which Judge Kachinsky behaved after being notified: (1) in a June 29, 2017 letter from the Village's attorney, that the Village had filed a complaint with the Commission; and (2) in a July 21, 2017 letter from the Commission, that he was being investigated. Findings, 29 (¶73), 4(¶3). Furthermore, in its July 21, 2017 letter, the Commission reminded Judge Kachinsky to "scrupulously avoid retaliatory conduct or witness intimidation." Id.

The Panel found that Judge Kachinsky, in spite of his knowledge that a complaint was filed against him regarding his

² Such concerning behavior includes, but is not limited to, the judge: (1) hiding behind a waist-high counter before "popping up and shouting roar" to surprise the court manager; (2) making unwanted disclosures about the court manager's "second honeymoon" on Facebook; (3) sending repeated and persistent emails to the court manager about his personal relationship with her and trivial matters; and (4) "observ[ing the court manager's] customer service" by watching her from a distance of approximately five feet behind her desk, meowing at her, and telling her a story about a dog being raped in an attempt to give her a "pep talk." Findings, 7-19 (¶¶14-43); 2.8.19 Tr. (Cross Examination of Respondent) 403-405 (C-APP. 103-105). Judge Kachinsky completely disregarded his court manager's wishes that their relationship be limited to work, as demonstrated in his June 16, 2017 email in which he stated that he was feeling "spunky" and in his threats to terminate her employment if she did not engage in a personal relationship with him. Id.

conduct, violated SCR 60.02 and 60.03(1) when he engaged in numerous acts of retaliatory conduct.³ Findings, 34 (¶81). Many other instances of post-notification conduct were found by the Panel to be “irresponsible and improper conduct and conduct unbefitting of a judge” (Findings, 35 (¶81)), including, but not limited to, his decision to send an email to the court manager on November 3, 2017, informing her:

³ The Panel stated:

Judge Kachinsky engaged in the following retaliatory conduct: reprimanded Bartelt on three occasions, including a reprimand for not returning a Christmas greeting, sent Bartelt a counseling letter, sent her the “kitchen sink” email, continued to suggest he would terminate Bartelt’s employment, sent the email to an attorney misrepresenting that Bartelt was looking for other employment, left the mock letter of resignation on his desk for Bartelt to see, made a Facebook post that referenced Bartelt’s refusal to return a Christmas greeting, and caused her concern by relating to her that he knew where members of her family lived as well as details about her home. Id.

See also 2.8.19 Tr. (Cross Examination of Respondent), 422-433 (detailing the November and December 2017 conduct of the judge), *and* 420-421 (concerning the August 2017 misrepresentation to the attorney about the court manager’s employment status). (C-APP. 122-133, 120-121).

Furthermore, although not explicitly noted by the Panel as retaliatory conduct, there were several additional incidents which could be perceived as retaliation, including: (1) on July 14, 2017, Judge Kachinsky sent an email to a village board member stating: “[f]rankly, if the Village is the party pursuing the complaint to the Judicial Commission [which the judge already knew to be true based upon the aforementioned June 29, 2017 letter], I think the Board should consider defunding it in closed session” (Findings, 30 (¶73)); and (2) on July 17, 2017, the judge lunged towards the court manager over her desk, knocking items down, and whispered, “Are you afraid of me now?” in his attempt to intimidate her (Findings, 21 (¶48)). *See also* 2.8.19 Tr. (Cross Examination of Respondent) 412-415. (C-APP. 112-115).

By this time next week, something things are going to happen that will cause a lot of fire and fury at the Municipal Building. No, I am not resigning. Just be psychologically prepared.” Findings, 23 (¶57).⁴

As a result of fears surrounding this declaration, Village of Fox Crossing Police Department Chief Tim Seaver interviewed Judge Kachinsky. Findings, 24 (¶57). The judge giggled several times during the interview. Id.

Furthermore, Judge Kachinsky repeatedly attempted to undermine injunctions issued by two other judicial officials in court proceedings against him compelling him to limit his communications with the court manager to workplace issues.⁵

⁴ Other post-notification misconduct included: (1) on the same day he was given Attorney Macy’s letter about the filing of a judicial misconduct complaint (June 29, 2017), Judge Kachinsky posted on Facebook in a manner visible to his 600+ Facebook friends, including numerous members of the local legal community, “[t]he sh-- is not over. I might have an employee termination today. Not mine.” (Findings, 20 (¶45)); (2) on July 8, 2017, Judge Kachinsky sent an email to the court manager and the Village’s Human Resources director in which he called the court manager a “coward.” (Findings, 20 (¶46)); (3) after court on the evening of July 20, 2017, the judge smeared blood from a cut on his arm onto an envelope that he left on his desk, located right next to the court manager’s desk, in an attempt to intimidate her or evoke sympathy, and (4) later that same evening, the judge sent the court manager an email in which he called her a “weakling” (Findings, 21-22 (¶¶50-51). *See also* 2.8.19 Tr. (Cross Examination of Respondent), 410-412, 415-419 (C-APP. 110-112, 115-119).

⁵ On February 15, 2018, in Winnebago County case no. 18CV102, a harassment injunction was issued against Judge Kachinsky ordering that all communications be “work-related and essential to the functioning of the Village of Fox Crossing Municipal Court.” Findings, 27 (¶65). The Panel found that, on February 27, 2018, the judge sent her an email that was neither. Findings, 27 (¶67).

On June 19, 2018, during a de novo review of the aforementioned injunction, the circuit court judge, in upholding the injunction, told Judge

(footnote continued)

There has not been a comparable judicial ethics case in Wisconsin involving such retaliatory conduct or such numerous instances of post-notification misconduct. Rather than acting with care and prudence during the course of the Commission's investigation, Judge Kachinsky pursued a markedly different approach, often lashing out at anyone who would dare question the propriety of his conduct and acting in a manner beneath the dignity and integrity of his judicial office.

In recommending a sanction, the Panel compared Judge Kachinsky's misconduct to the misconduct addressed in three past judicial discipline cases: In re Van Susteren, 118 Wis.2d 806, 818, 348 N.W.2d 579 (1984) (two-year suspension); Gorenstein (two-year suspension); and In re Staege, 165 Wis.2d 21, 26, 476 N.W.2d 876 (1991) (three-year suspension). Findings, 42-43.

The Panel crafted a distinctive recommendation which incorporated both suspension from future judicial office and what

Kachinsky that the court was issuing a restraining order "prohibiting any conduct or contact between [the judge and the court manager] other than that absolutely necessitated through the course of your employment." Findings, 28 (¶68). Less than two weeks later, Judge Kachinsky placed various items on or near his desk for the court manager to see, including a one-page document with a photograph of the village manager's face and the text, "I am from the government and I am here to help you. WWRD #notmetoo," and a copy of the Village's sexual harassment policy with the word "sexual" highlighted seven times in yellow marker. The Panel found that neither action was a communication related to the operation of the municipal court. Findings, 28-29 (¶¶68-70).

could amount to permanent removal from eligibility for future judicial office in Fox Crossing so long as the court manager is still employed by the municipality. Findings, 44.

It is hard to imagine a circumstance in the future where any municipality in Wisconsin would voluntarily utilize Judge Kachinsky to come to their municipality to oversee court proceedings for their municipality, acting as a reserve municipal court judge, given that Judge Kachinsky: (1) has a current restraining order against him in Fox Crossing based upon the actions he has taken against his court manager which arose from one of three civil lawsuits filed which involve Judge Kachinsky; (2) was suspended pending the outcome of a judicial disciplinary proceeding; and (3) may face disciplinary action in connection with this case.

As a result of Judge Kachinsky's acts of retaliation and the misconduct he committed after he received notice that a judicial ethics complaint was filed against him, it is the Commission's belief that the facts in the instant case are distinguishable from Van Susteren, Gorenstein, and Staege.

CONCLUSION

Given the aforementioned aggravating factors, it is the Commission's recommendation that Judge Kachinsky be suspended for the remainder of his term of judicial office (ending on April 30, 2019) and removed from eligibility for reserve municipal court judge status.⁶

A review of the Court's website reflects that there are currently only six reserve municipal court judges in Wisconsin, appointed pursuant to Wis. Stat. § 800.065(2)(a).⁷ Based upon the manner in which he has comported himself as detailed in this case, Judge Kachinsky should never be one of them.

Dated this 13th day of March, 2019.

Respectfully submitted,

WISCONSIN JUDICIAL COMMISSION

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⁶ As a municipal court judge who has served eight or more years as a municipal judge, Judge Kachinsky is eligible for appointment as a reserve municipal court judge, pursuant to Wis. Stat. § 800.065(2)(a).

⁷ See The Wisconsin Supreme Court Office of Judicial Education, Municipal Court Directory (2016-2017), 60-61.
(<https://www.wicourts.gov/contact/docs/muni.pdf>).

CERTIFICATION

I certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is: 2,274 words.

Dated this 13th of March, 2019.

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CERTIFICATION REGARDING ELECTRONIC BRIEF

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12)(f).

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

Dated this 13th of March, 2019.

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