IN THE SUPREME COURT
OF THE STATE OF MISSOURI

IN RE,	)	
THE MATTER OF THE HONORABLE BARBARA T. PEEBLES,	)	Case No. SC92811
Respondent.	)	Oral Argument Requested

RESPONDENT BARBARA T. PEEBLES' REPLY BRIEF

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JURISDICTIONAL STATEMENT

Respondent reaffirms and incorporates by reference the Jurisdictional Statement contained in her principal brief filed with the Court on October 26, 2012.

STATEMENT OF FACTS

Respondent disputes or responds to the following references in the Commission's Statement of Facts. [1]

Counsel for the Commission attributes to Judge Ohmer, testimony that "Judges previous to Respondent took the bench anywhere between 8:00 a.m. and 9:00 a.m." (AB 8-9). In fact, Judge Ohmer testified that prior judges to Respondent in Division 25 "tended" to appear on the bench, "some as early as 8:30, some between eight and nine – 8:30 and nine" (T 168). It is clear from the hearing transcript that Ohmer misspoke when he cited 8:00 a.m. as a start time; he corrected himself and stated that the tendency was for judges to begin between 8:30 and 9 a.m. Moreover, at no time did Ohmer state that there was a hard-and-fast rule regarding the start time for Division 25 or for any other division in the courthouse.

Moreover, it is important to note that while Respondent herself may not have been on the bench every morning as early as some judges who preceded her in Division 25, she was present in chambers, conducting time-sensitive matters on warrants and bonds (T749-50, 762). She cannot be faulted for choosing to attend to other duties

[1] The Answer Brief of the Commission will be referred to as "AB".

while her clerk announced dates, simply because her manner of conducting business failed to coincide with administrative choices made by judges before her.

Counsel also indicates that "on frequent occasions Ms. Tyler made announcements regarding continuances, dismissals, and capias warrants without the immediate supervision of Respondent" (AB 9). While Respondent may not have been physically on the bench during these announcements, she ratified each one upon taking the bench immediately after the close of announcements; moreover, none of these announcements concerned contested matters, nor required the exercise of discretion by Tyler.

Counsel describes generally, the unhappiness of attorneys who practiced in Division 25, including the "inconvenience" it caused some and the "grumbling" it induced (AB 10-12). While some attorneys may have been frustrated or felt their time was "wasted," it is also true that frustration is endemic to anyone practicing in a busy urban court. Respondent did her best to expedite matters and eliminate wasted time, by having her clerk dispose of matters which required only new dates or perfunctory dismissals.

Counsel references the "one or two conversations with Respondent" wherein Judge Ohmer "discussed" the attorney complaints (AB 12). It is important to note that Ohmer never specifically instructed Respondent to take the bench at a certain time, and indeed, what he communicated to her was vague and nonspecific:

> Q. And did you have only one phone call with the judge concerning timeliness?
>
> A. Well, you know, I think I talked to her about this kind of throughout, but as far as I can recall, in the springtime or whenever, you know, this was, I think, more or less one call, you know, and I don't recall any specific (sic). There certainly weren't a number of calls. If there was one or two, or if I had occasion to talk to her about something else, it may have come up.

(T 29).

Counsel also claims, in the same paragraph, that Ohmer cited Local Rule 2.1 to Respondent, which should have put her on notice as to her expected start-time (AB 12). In fact, Local Rule 2.1 states, "The hours of Court are from 9:00 a.m. to 5:00 p.m. Monday through Friday, except holidays. Each judge is responsible for the judge's division during those hours." Rule 2.1 merely sets out guidelines for the opening of the courthouse to the public; it does not direct or mandate, that judges take the bench at a specific time. Moreover, it is fair to say that all the judges in and of the circuit court, established their own habits and practices for the administration of their respective courtrooms.

Counsel also states in his Answer Brief, "Respondent made a public statement to the effect that no judge can tell her how to run her courtroom" (AB 12). Not only does the record betray this allegation, but Counsel's clear intent here is to imply that Respondent loudly and arrogantly proclaimed her authority to a rapt audience, or made

a declaration from the bench that she was somehow untouchable. This could not be further from the truth. While Respondent testified that she "probably" made a statement to the effect of "no other judge can tell you how to run your courtroom," there is simply no evidence that Respondent made pronouncements from the bench attesting to her "unbridled authority". Indeed, the evidence was to the contrary, that Respondent was roundly perceived as respectful and courteous. Moreover, while it may be Counsel's plan to portray Respondent as arrogant and unrepentant, she has shown both humility and contrition. In addition to the examples set out in Respondent's principal brief, she stated, for instance, that she "absolutely" regretted tearing Exhibit 26 out of the court file; that her public statements on a pending case were "inappropriate"; and that in hindsight, she said some things to Ms. Tyler that were "probably inappropriate" (T 717, 792, 806). She also testified, with respect to her China trip, "Had I had to do it all over again, I probably would sit down with the clerks and their supervisor, so there was no misunderstanding, and told them directly, on this docket, this is what should have been done, or this is what I need done, or let's make sure this judge is doing this, but in that case I did not do that" (T808).

Counsel indicates that Ms. Tyler "made her announcements by stating, 'This case will be dismissed,'" to the point of becoming a running joke in the courthouse (AB 13). Undoubtedly there were attorneys who took offense with both Tyler's tone and her temperament. Ultimately it was Respondent's job to reign in Tyler's grandiosity. The

fact remains, however, that Tyler was never a de facto judge; she did not assume discretionary powers; and she did not act as Respondent's proxy. Moreover, Counsel misrepresents the record where he claims that Tyler "used the judge's signature stamp on a few dismissals" (AB 15). Tyler testified that she and the other Division 25 clerk used pre-stamped and photocopied orders which were kept in the courtroom for routine matters, such as arraignments and continuances (T463). Further, while she answered Counsel, that she used the signature stamp when Respondent went to China, Counsel never followed up or asked her to expound, nor inquire into how she used it and under what circumstances (T463). Moreover, Counsel never introduced any exhibit reflecting use of the signature stamp during the time Respondent was out of the country; had Tyler used Respondent's signature stamp, surely Counsel would have presented the telltale document at the hearing.

Counsel refers to a meeting among Judges Ohmer and Garvey, the circuit clerk and others, including Respondent, where concerns were shared regarding the use of "pre-signed blank memos in Division 25" (AB 16). However, as discussed in Respondent's principal brief, there was precedent within the courthouse and the Division, for use of such forms; Respondent was not the first to institute them, nor was there any policy or edict banning them.

In his discussion of the Oliver incident and Exhibit 26, Counsel refers to Oliver's belief that "it was appropriate to argue the dismissal motion with Ms. Tyler", in light of

Tyler's reputation for acting like the judge (AB 18). What Oliver neglected to anticipate, and Counsel refuses to acknowledge, was that Tyler did *not* summarily grant Oliver's request; she did what she was supposed to do – defer the matter until the judge returned, because there was a question regarding the merits of the request. Counsel likewise places great stock in the fact that when Respondent did return, and the matter was renewed on the docket, she entered an order using the same type of dismissal motion used by the Public Defenders. What Counsel fails to address, is that this time the motion was in proper form, as it was made orally by either Oliver or an attorney from his office (T 789), and she simply signed off on it using the document made available to her. Respondent's choice to sign her order on the Public Defender's form in no way ratified or cured the previous document, Exhibit 26, which was irregular in that it was not signed by an attorney.

Counsel also discusses meetings between Tyler and the Circuit Attorney, once the investigation got underway (AB 19-20). In fact, there were three such meetings, and it was not until Tyler realized that the "paper" incident had become serious, some three months after meeting with Respondent in the hair salon, that Tyler told anyone about e Respondent's alleged remark that they would take the incident to their graves.

Tyler testified that she was first made aware of an issue regarding a missing piece of paper, when she was contacted by Clerk Jane Schweitzer early in 2011 (T482). According to Tyler, it was later that same day that Respondent made the remark that

they would take the incident to their graves (T483). Two weeks later, in January, Tyler met with an investigator from the Circuit Attorney's Office; at this time she denied knowing anything about a missing piece of paper and made no mention of Respondent's "grave" remark (T485, 490). In April, Tyler met with the Circuit Attorney, and it was not until this meeting that she disclosed anything about the remark Respondent had purportedly made in January (T486, 491). By this time the Circuit Attorney had asked Tyler to take a polygraph exam; she had retained counsel; and she knew beyond a doubt that the incident referred to by Schweitzer in January, had become a full-blown investigation (T486-87).

Not only was Tyler many months late in reporting the alleged remark, but on the day it was supposedly uttered by Respondent, neither she nor Respondent had reason to believe the incident would mushroom into a controversy. When Tyler was asked at the hearing whether, in speaking with Schweitzer, she "understood that the circuit attorney was investigating the case," Tyler responded, "She just told me that the circuit attorney's office wanted to question me about some paperwork that was in a file, and they would be coming to me shortly, and she just wanted me to be aware" (T482). Given the casual tenor of Schweitzer's communication to Tyler, neither Tyler nor Respondent would have had reason, that same day, to make an assertion as dire as "taking the matter to the grave."

Tyler also testified that, at the same time Respondent remarked they would take the matter to their graves, she also said they "would keep this between us" (T484). However, Tyler never told anyone, prior to the hearing before the Commission, that Respondent had made that statement (T 491).

ARGUMENT

I.

Respondent objects to the factual findings of the Commission, with regard to Count 4 of the Second Amended Notice and as set forth on page 21 of its Findings of Fact, Conclusions of Law and Recommendation, that her choice to take the bench most mornings an hour or more late constituted "tardiness" and was a "discourtesy" to parties appearing in her court, as the evidence showed that each judge handles his or her courtroom differently; that Respondent specifically instituted this policy so that her clerks could attend to uncontested matters involving standard continuances, dismissals and capias warrants, in large part so that these matters could be expedited for the convenience of the parties; and that if Respondent was not on the bench, she was generally available in chambers to consult with counsel, and further, Respondent objects to the conclusion that this conduct amounts to a violation of Supreme Court Rule 2 or Rule 2.03, or

constitutes judicial misconduct under Article V, Section 24 of the Missouri Constitution.

In response to Respondent's first point, Counsel for the Commission relies on case law from other jurisdictions. In offering these cases, he fails to address how they are applicable or even analogous to the present case. He also fails to suggest to the Court the type of reliance to place on these holdings, particularly in light of the Court's usual practice, which is to rely on rulings in foreign jurisdictions only when the case before it is one of first impression. This is not one of those cases.

Moreover, the cases cited by Counsel are distinguishable on the facts; for instance, Counsel cites *In the Matter of Barrett*, 593 A.2d 529 (Del. Jud., 1991), as authority for Respondent's removal. Unlike the judge here, however, the judge in that case was late starting court for *four and one-half years*.

Likewise, the judge in *In re Lokuta*, 964 A.2d 988 (Pa., 2008), was removed "among other things" for tardiness. Counsel fails to identify the judge's other infractions, and leaves this Court with the impression that tardiness, on its own, is grounds for removal. In the other cases cited, the judges were not removed but rather were suspended or reprimanded (AB 30). Moreover, without knowing exactly what the practices, procedures, and directives were in each of the courts at issue in these cases, the holdings offer no guidance whatsoever.

Interestingly, the only Missouri case cited by Counsel with respect to the lateness issue, is *In re Corning*, 538 S.W.2d 46 (Mo. 1976). In that case, however, the judge's lateness was but a side note; the acts which caused his removal were his dilatoriness in ruling on substantive motions, and his open and brazen membership in the Normandy Republican Club. Respondent here faces no such findings, and indeed, every witness before the hearing recognized her timeliness in making rulings and had no complaint with her professionalism and knowledge of the law. There is simply no support in the law for removing Respondent from the bench, because she was in chambers rather than on the bench while perfunctory matters were being called by her clerk.

Failing in the law, Counsel falls back on conclusions, such as people waiting for her and being inconvenienced, or on the Commission's finding that Respondent was often not in chambers (AB 33-34). The latter claim is belied by the hearing evidence; no one ever found Respondent lax or remiss in issuing warrants, dealing with bonds, or tending to pressing matters confronted by every bulk docket judge. Respondent was clearly taking care of business, because the business got done. Even Ohmer readily conceded that no police officer ever reported being unable to find Respondent to sign a search warrant, nor had any attorney from the Circuit Attorney's office ever complained that she was not available to sign an arrest warrant or new complaint (T85).

What Counsel seems most irked about, is "Respondent's failure to apologize to the 50-60 attorneys, parties, witnesses, court staff, and police officers waiting for

Respondent to appear" (AB 34). What Counsel fails to address is the fact that most of these people would have been faced with a long wait, regardless of when Respondent took the bench. Indeed, had she come out at 9:00 a.m. and taken up the matters Tyler had culled through, the cases of these individuals might still be deferred to the end of the docket. Given the volume of cases in Division 25, someone was bound to feel shorted. In spite of this, Respondent kept her composure, extending courtesy to those who appeared before her.

In a perfect world, no one would ever be inconvenienced by appearing in a courtroom. It is not realistic to expect our judges to apologize for doing their best in managing a taxing caseload.

II.

Respondent objects to the factual findings of the Commission, with regard to Count 5 of the Second Amended Notice and as set forth on pages 21 and 22 of its Findings of Fact, Conclusions of Law and Recommendation, that Respondent's practice of allowing her clerks to call the docket with respect to continuances, dismissals and capias required that her clerk dispense "advice" to attorneys and further, that it was conducted in the absence of supervision, both during normal work days and specifically during the time Respondent was in China, as the evidence showed that during those times when Respondent was not absent from the country and her clerks were calling the docket, they were ministering to

uncontested and non-discretionary housekeeping matters which were ratified by Respondent that same morning when she took the bench, and that during the period when Respondent was in China, the clerks had prearranged orders as to which matters to handle and which to defer to other judges in the courthouse, and moreover, that each morning during her absence another judge was physically present in courtroom, and further, Respondent objects to the conclusion that this conduct amounts to a violation of Supreme Court Rule 2 or 2.03, or constitutes judicial misconduct under Article V, Section 24 of the Missouri Constitution.

Counsel asserts here, that there was nothing inappropriate about Tyler being used "to expedite and coordinate dockets" (AB36). His complaint is that Tyler called the docket without the "immediate supervision" of the judge. He also asserts that to do so in the physical absence of a judge is tantamount to judging (AB). Counsel's argument is flawed in two respects. First, there is *not a single instance in the record* where Tyler exercised her own discretion on a case. Second, Tyler's manner of calling the docket, while she was in the courtroom and the judge was in chambers, did not cause what she did to become discretionary. Indeed, as Respondent argued in her principal brief, Tyler only announced matters that were perfunctory and uncontested; moreover, every entry that she made was reviewed and ratified by the judge – on the usual morning, when Respondent took the bench, and during the China trip, as soon as Respondent returned from her trip.

Counsel argues again and again under this point, that the real problem was the *appearance* that Tyler was acting like a judge, and the effect that it had on members of the local bar who took umbrage with her manner of addressing them. Respondent concedes that Tyler suffered from hubris and was off-putting; Respondent should have tempered Tyler's overzealousness and reigned in her arrogance. But Tyler's propensity to offend does not equate to a clerk run amuck. The fact remains that Counsel cannot point to a single instance where Tyler exercised discretion.

Counsel's claim is not only unsupported by the record, but it rests wholly on innuendo. He cites attorneys who were complaining to Ohmer that "the clerks were getting kind of more involved than they felt they should have" (AB 36). He cites page after page where a witness asserted that it "appeared" that the clerk, and not the Respondent, was running Division 25 (AB 36). He states that "to several of the attorneys who appeared before Respondent and Clerk Tyler on a regular basis, it *appeared* that Clerk Tyler had discretion to grant continuances, dismiss cases, and call capias warrants (AB 37). He neglects, however, to identify how these housekeeping matters, which had always been handled by the clerk in that department, were in fact discretionary.

Counsel claims that Tyler "made decisions," and offers, as examples, Tyler "announcing dismissals using the Judge's signature stamp" and entering "capias warrants in the docket sheets of non-appearing defendants" (AB 39). As discussed

earlier, however, Counsel cannot present a single document where Tyler personally stamped Respondent's name. Further, Tyler testified with respect to the calling of capias in Respondent's absence, that she did what she always did – have the sheriff call defendants' names several times during the docket, then call the capias at the end if they hadn't shown up (T474-75). Every capias that was announced in Respondent's absence was on her chair for her signature immediately upon her return (T495).

Undoubtedly, Tyler's style and self-importance offended many. But care must be taken not to conclude that she acted as a de facto judge, in the absence of proof.

III.

Respondent objects to the factual finding of the Commission, with regard to Count 6 of the Second Amended Notice and as set forth on pages 22 and 23 of its Findings of Fact, Conclusions of Law and Recommendation, that the reason she destroyed Exhibit 26 was because it highlighted the lack of supervision of the clerks and placed Respondent and the clerks in a bad light, as the evidence showed that the act was precipitated by Respondent's confusion and frustration over the presence of an unsigned, ambiguous and potentially misleading document in the court file and further, while Respondent's act in physically destroying Exhibit 26 rather than striking it and entering a corresponding order in the record was inappropriate and ill-advised, Respondent objects to the conclusion of

the Commission that said act amounts to a violation of Supreme Court Rule 2 or Rule 2.03, or constitutes judicial misconduct under Article V, Section 24 of the Missouri Constitution.

Counsel asserts that Respondent violated not only the Canons of Judicial Conduct, but also the law in tearing up Exhibit 26, and reasons that this Court can affirm those findings based on a preponderance of the evidence (AB 40). Not only is it patently unreasonable to urge a criminal finding in the absence of beyond a reasonable doubt, but the record fails to establish that Respondent's conduct was "knowing" by any standard.

First, Counsel argues that the decision of the St. Louis Circuit Attorney to forego prosecution under VAMS §575.110 is a fluid one and can change upon the development of new evidence (AB41). Respondent submits that there is no other smoking gun, and that the investigation is closed. The fact is, the Circuit Attorney considered both Tyler's and Respondent's statements and declined to prosecute.

Counsel also argues that the incident involving Oliver deserves special consideration, in light of the fact that Oliver's client "spent an additional month confined as a result of the delay in dismissing the charge pending in Division 25" (AB 41). This is simply preposterous. If Oliver were as concerned as he says for the rights of this client, he would have taken his request for a dismissal to any number of judges in the courthouse, in Respondent's absence from the country. Moreover, Tyler can

hardly be castigated for refusing Oliver's request; the proper thing was to defer the case until Respondent's return, rather than exercise her own discretion where facts were in issue regarding the number of continuances previously charged to the defendant.

Counsel also states that Respondent's claim is disingenuous, that she did not recognize Exhibit 26 on November 30, nor discern who the author was (AB41). As support for this, he cites to Tyler's testimony, that she "identified Oliver" as the person who prepared the document (AB41). This is not exactly true; Tyler only stated that, when Respondent asked from the bench who wrote it, "I told her who put it in the file" (T481). More importantly, the document was irregular and improper. Supreme Court Rule 55.03 provides, "Every pleading, motion and other filing shall be signed by at least one attorney of record in the attorney's individual name or by the self-represented party…Below the signature shall be printed the attorney's name, Missouri bar number (if applicable), address, telephone number, facsimile number, and electronic mail address, if any." Rule 55.03(a) (2010). Exhibit 26 contained none of this identifying information. While Respondent's action to remove it was impulsive, her explanation was not an unreasonable one, that she thought such an irregular document had no place in the file. Moreover, to the extent that it resembled a proposed order, it is not unusual that proposals, such as proposed findings of fact and conclusions of law of counsel, are not maintained as part of the court record.

Counsel also spends a great deal of time attempting to build a case for collusion between Respondent and Tyler and establishing a motive for Respondent's "need" to destroy the document. Counsel's entire argument hinges on the claim that Exhibit 26 was a damning document because it highlighted Tyler's behavior as a surrogate judge (AB 43-44). The irony, of course, is that Tyler did not act like a judge; there was a material dispute surrounding the merits of Oliver's dismissal request, and instead of resolving the dispute herself – which is what a judge would do – she deferred it for Respondent's consideration. Exhibit 26 was not proof-in-fact, of a courtroom operating as a runaway train. Tyler merely followed Division 25 protocol: she passed a contested matter to the judge.

Finally, Counsel addresses the criminal statute he contends was violated. VAMS §575.110 makes it a misdemeanor if a judge "falsely alters any public record" or "knowing he lacks authority to do so, he destroys…any public record." Knowledge is an element of the offense. While Respondent certainly did not use the best judgment when she tore Exhibit 26 from the file, she did not intend to falsify a record or do so knowing she lacked authority. By Respondent's account, she did so in reaction to the face of the document – not to its contents. She was not trying to cover up an unauthorized act by Tyler but rather responded in anger, to the presence of an errant document in the file.

Lastly, Counsel again relies on foreign cases to drive his argument for removal. As before, he provides no foundation for reliance on these cases, nor guidance as to why they are useful or compelling.

He cites *In re Justin*, 809 N.W.2d 126 (Mich., 2012), although there the judge was removed *only in part* because he altered a document that was being transmitted to the Secretary of State. He cites *Wenger v. Commission*, 630 P.2d 954 (Ca. 1981), again where a judge was removed *in part*, for backdating an affidavit. And he cites *In re Sterlinske*, 365 N.W.2d 876 (Wis. 1985), where the judge signed a false certificate attesting to a jury instructions conference which in fact never occurred.

In each of these cases, the conduct involved active falsification or fraud, acts considerably more deliberate than ripping a document from a file in a moment of pique.

IV.

Respondent objects to the factual findings of the Commission, with regard to Count 9 of the Second Amended Notice and as set forth on pages 24 and 25 of its Findings of Fact, Conclusions of Law and Recommendation, that her motivation in telling Assistant Circuit Attorney Smith that Exhibit 26 was an order and not a motion, was "to establish a defense based on a false premise" by attempting to portray the document as something it was not, and moreover, that this mischaracterization by Respondent constituted a failure of candor and

cooperation, as the evidence showed that Respondent's confusion over the origins and intent of the document was genuine and not unreasonable, and moreover, that Respondent undertook to cooperate with the investigation, in that she initiated contact with Attorney Smith and took personal responsibility for destroying the document, and further, Respondent objects to the conclusion that this conduct amounts to a violation of Supreme Court Rule 2 or Rule 2.03, or constitutes judicial misconduct under Article V, Section 24 of the Missouri Constitution.

Counsel's response to this point focuses undue attention on the proper name to call Exhibit 26. He characterizes it as a motion, and contends that anyone who understood it to be something else, must be prevaricating.

The features of the document alone made it subject to interpretation. It was irregular by any standard, as it contained interlineation, contained no signature line, and bore no attorney signature (E 26). It is no less fair to call it an order or a proposed order than it is to call it a motion. Respondent cannot be faulted simply for disagreeing with the type of pleading it purported to be.

Moreover, Counsel's insistence that Respondent's telephone conversation with Rachel Smith was intended merely to deflect or excuse blame (AB 51) is contrary to the record. Respondent was emphatic in the conversation that she alone was responsible for removing Exhibit 26 from the file. She did not equivocate on this.

While Respondent stands by her good faith belief that Exhibit 26 constituted an order or proposed order, she does not seek to condone or excuse her conduct in removing it. As stated in her principal brief, the act was imprudent and ill-advised. It was not, however, planned in advance, nor concealed later.

V.

Respondent objects to the recommended sanction of removal by five of the six members of the Commission, as set forth on page 25 of its Findings of Fact, Conclusions of Law and Recommendation, because even if this Court sustains the findings and conclusions of the Commission and condemns or admonishes Respondent's singular act of commenting on a pending case to a reporter; taking the bench late; allowing her clerk to call the docket in an unsupervised manner and failing to secure her docket while she was on vacation in China; improvidently or erroneously removing Exhibit 26 from a court file; or exercising a lack of candor and cooperation in the investigation into the removal of the document, her actions are all appropriately addressed or punished by a sanction less than removal; and moreover, because she has not been found guilty of a criminal offense nor found to exhibit fundamental defects in character or temperament which would disqualify her from judicial service, the sanction of

removal is neither just nor necessary to the public's continued confidence in the judicial system.

Counsel makes several assertions in responding to this point, which Respondent feels compelled to address.

Counsel states several times that Respondent's practice of taking the bench sometime in mid-morning, was part of a "calculated plan" (AB 53); that she "chose to inconvenience numerous members of the Bar and public on an ongoing basis" (AB 53); and that she "was more concerned about maintaining her calculated plan of avoiding the first docket call than in the efficient operation of her division" (AB 55). There is simply no evidence that Respondent had a "plan"; that it was "calculated"; that she was "avoiding" a first docket call; or that her courtroom was run inefficiently. These conclusions might have been reasonable, had it been shown that Respondent was chronically taking personal time; or that she cut her days short; or that court business was left languishing or unattended; or that there was no benefit to having her clerk cull through routine matters while she addressed other Division 25 concerns. The fact is that members of the Bar were put off by Tyler's style and mannerisms, and Respondent should have addressed these concerns directly with Tyler or with Tyler's supervisor. But the issue devolved more to personality; there was simply no complaint with Respondent's conduct from the bench or with her substantive rulings.

Counsel also suggests that the removal of Exhibit 26 from the court file was particularly egregious, because it was an "offense [that] had to do with the functioning of the court" (AB 55). While any duly filed document should remain in the court file, Respondent is at a loss as to how this action impacted the functioning of the court; the Williams matter was calendared and addressed upon Respondent's return and might have been addressed sooner, had Williams' attorney taken his request to another judge.

Counsel also asserts that Respondent "chose to leave for a two-week vacation out of the country without making proper arrangements for either continuing cases or a substitute judge" (AB54). While Respondent concedes she should have done more to assure her courtroom was covered, and been more precise in instructing her clerks how to proceed in her absence, the fact is that Division 25 was largely covered. During the first week, court was only in session for four days due to an official holiday, and Judge Garvey handled the Division on Friday. Over the second week, a judge was there throughout (T503-04). Tyler was not single-handedly minding the Division for ten court days during Respondent's absence.

Finally, Counsel contends that "Respondent failed to be candid with the Circuit Attorney's investigation of the missing document" (AB 56). As argued earlier, Respondent should not be faulted for construing Exhibit 26 the way that she did; moreover, she took early and unequivocal responsibility for its destruction.

CONCLUSION

Respondent is mindful that any review of judicial misconduct is a serious matter, and ultimately turns on the circumstances of the individual case.

For all the reasons set forth in her principal brief and the herein reply brief, and based on the precedent in this State, Respondent asks for a sanction far beneath removal from the bench, should this Court find actionable misconduct.

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CERTIFICATE OF COMPLIANCE AND SERVICE

I, Susan S. Kister, hereby certify to the following. The attached reply brief complies with the limitations contained in Rule 84.06(b). The reply brief was completed using Microsoft Word, which is no smaller than Times New Roman size 13 point. Excluding the cover page, the signature block, and this certificate of compliance and service, the reply brief contains 5945 words, which does not exceed the 31,000 words allowed for an appellant's brief.

I further certify that the reply brief was filed with the Clerk of the Court by operation of the Court's electronic filing system, and that a copy of the reply brief was served on James M. Smith, Administrator and Counsel for the Commission on Retirement, Removal and Discipline, by operation of the Court's electronic filing system, at jim.smith@courts.mo.gov.

/s/Susan S. Kister
Susan S. Kister