June 26, 2023

Michael V. Goetz, Esq.
Grievance Administrator
Michigan Attorney Grievance Commission
17th Floor, Buhl Building
535 Griswold Street
Detroit, MI 48226

Dear Mr. Goetz:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent, unethical conduct seeking to overturn legitimate election results.

We request that Grievance Commission investigate Daniel J. Hartman (P53632) for repeated and serious violations of the Michigan Rules of Professional Conduct. In three separate matters he has demonstrated a complete and utter disregard for his responsibilities as a member of the bar, as detailed below. This past month, the Third Judicial Circuit Court imposed sanctions against Hartman for the frivolous matters he brought. A copy of that order is attached. We would be happy to provide the relevant pleadings in the underlying matters, as well. As those documents exceed 300 pages, please let us know if you would like them and we can provide them to you electronically.

The preamble to the Rules of Professional Conduct states that in addition to being a representative of clients, a lawyer is "an officer of the legal system and a public citizen having special responsibility for the quality of justice."

The rules relevant to this request are:

1. Rule 3.1, Meritorious Claims and Contentions. Rule 3.1 provides, "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous . . . "

The comment to the rule states, "What is required of lawyers is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good-faith arguments in support of their clients' positions."

2. Rule 3.3, Candor Toward the Tribunal. Rule 3.3 provides that (a) A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal . . . "

3. Rule 4.4, Respect for Rights of Third Persons. Rule 4.4(a) provides that, "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person . . . "

The comment to the rule states, "Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons."

4. Rule 8.4, Misconduct. Rule 8.4 provides that it is professional misconduct to: (a) violate or attempt to violate the Rules of Professional Conduct . . . "

Respondent Hartman violated these rules in each of the three matters described below.

I. RESPONDENT HARMAN FILED SUIT IN 2022 TO DECERTIFY THE 2020 PRESIDENTIAL ELECTION AND RERUN IT.

A general election was held on November 3, 2020, for the office of President of the United States and numerous other elective offices. The presidential election was won by Joseph R. Biden, Jr.; it was certified by the Michigan Board of State Canvassers on November 23, 2020; the electors elected in Michigan for Mr. Biden cast their electoral votes on December 16, 2020; and the electoral votes were cast in Congress on January 6, 2021, following an insurrection, instigated by former President Donald Trump, by persons seeking to prevent the peaceful transfer of power. President Biden was sworn into office on January 20, 2021.

On September 2, 2022, Respondent Daniel Hartman and Russell A. Newman, a member of the state bar of Florida, filed suit in the United States District Court for the Western District of Michigan, asking the court to "decertify the Michigan's 2020 presidential election and to recall Michigan's Joseph R. Biden presidential electors," and asking that Michigan elected officials be ordered to rerun the Michigan 2020 presidential election "with paper ballots only, on a single election day, with the votes being counted by hand, with members of all political parties present to observe, with a public livestream of all vote counting."[1]

His preposterous request for relief was made in the case of *Ickes v Benson*, Case No. 1:22-cv-00817 (W.D. Mich.), filed by Respondent Hartman and Mr. Newman, representing Election Integrity Fund and Force, the Macomb County Republican Party, and several individuals, against Defendants Michigan Governor Gretchen Whitmer and Michigan Secretary of State Jocelyn Benson. (ECF No. 3) In an amended complaint (ECF No. 8) Respondent added the Michigan Board of State Canvassers as an additional defendant. Also on September 2, 2022, Respondent filed an emergency motion to preserve evidence asking that the defendants be restrained from destroying records relating to the 2020 election. (ECF No. 2)

[1] While alleging that the election was null and void, Respondent sought decertification and a rerun only of the presidential election, not of the numerous other offices elected at the same time using the purportedly uncertified machines.

The complaint was based upon the purported discovery – nearly two years after the fact-- that election equipment used in Michigan had not been certified in accordance with federal and state law, and that consequently the election was null and void. Election deniers in two other states, Arizona and Kansas, were, at about the same time, raising virtually identical claims – that voting machines were uncertified, that the 2020 election was "null and void," and demanding "decertification" and a "rerun" of the 2020 presidential election. In nearly identical language all three suits requested that the presidential election be rerun on a single day, using only paper ballots, counted by hand, with members of all parties present to observe, with public livestreaming of this vote counting.[2]

The suits filed in Arizona and Kansas differed in a critical respect from the Michigan case. They were filed *pro se*, (Although the Arizona case caption said it was "prepared with the assistance" of Russell Newman.) *Ickes v Benson* was filed by Respondent Daniel Hartman, a member of the Michigan bar, who was precluded by Rule 3.1 of the Rules of Professional Responsibility from bringing a proceeding which was frivolous. This case was patently frivolous.

The assertion that voting machines used in Michigan were not certified was false. The state defendants provided the court with publicly available evidence that the Respondent's assertions regarding certification of the voting equipment were wrong. (ECF No. 18) More importantly, it was absurd to claim that lack of certification of voting equipment, even had it been true, would have resulted in the nullification of the election results. There is no law, and Respondent cited none, which would allow the decertification of any election, let alone the election of the President of the United States. Certification in accordance with the Electoral Count Act, 3 U.S. Code §15, is final.

Additionally, it is worth noting that the total lack of merit in the complaint was nearly matched by the lack of competence with which it was pursued. Respondent Hartman did not trouble to comply with the court rules applicable to requests for temporary and preliminary injunctive relief. The Court, in ruling on these requests, (ECF Nos. 7 and 25) observed that the initial and amended complaints were neither verified nor signed by any of the plaintiffs and that the action was based only on rumor, speculation and personal belief. The Court also wrote that it appeared that the plaintiffs lacked standing, that they had sued the wrong defendants (as the governor and secretary of state had no responsibility for preservation of voting records), and that even if the machines were not certified all voters would have been equally affected so that there could have been no denial of equal protection.

In *King v Whitmer*, 505 F. Supp. 3rd 720 (E.D. Mich, 2020), several plaintiffs challenged the 2020 election results and asked the court to decertify the presidential election results. The court held, *inter alia*, that an election cannot be decertified and that the only avenue for challenging elections results is a timely request by a candidate for a recount. United States District Judge Linda Parker concluded, "In fact, this lawsuit seems to be less about achieving the relief Plaintiffs seek—as much of that relief is beyond the power of this Court—and more about the impact of their allegations on People's faith in the democratic process and their trust in government." *Id.* at 739.

[2] *Wood, et al v Brnovich, et al*, Ariz. Sup. Ct. cv-22-0217, 8/31/2022; *Roberts v Caskey*, 2:22-cv-2366 (D.C. Kansas), 9/15/2022.

Respondent Hartman's utterly frivolous suit was part of a continuing campaign by election deniers around the country filed for the purpose of further eroding the peoples' confidence in the democratic process and trust in their government. In this regard Respondent clearly violated Rule 4.4 of the Rules of Professional Conduct. Use of the courts to attack the foundations of democracy burdens the populace as a whole and cannot be countenanced. Respondent also violated Rules 3.1 in filing this frivolous action and 3.3 in making false statements to the tribunal.

II. RESPONDENTS HARTMAN AND TAYLOR FILED SUIT TO DEPRIVE DETROIT VOTERS OF THEIR ABSENTEE VOTING RIGHTS.

Respondent Hartman continued his attack on the administration of elections and people's faith and confidence in democratic elections by his next frivolous suit, *Karamo v Winfrey and the City of Detroit Board of Election Inspectors*, No. 22-012759-AW. This action was filed with attorney Alexandria Taylor (P75271) in Wayne County Circuit Court, on October 26, 2022, seeking mandamus, a preliminary injunction, and declaratory relief regarding the November 8, 2022, general election, to be held only 13 days after the filing of the action. Plaintiffs were Kristina Karamo, Election Integrity Fund and Force, and several other individuals. The complaint identified the defendants as Detroit City Clerk Janice Winfrey and the City of Detroit Board of Election Inspectors. There is no such board.[3]

Motion for disqualification of the circuit court bench

Respondents Hartman and Taylor filed the complaint in Wayne Circuit Court, but simultaneously filed a motion to disqualify all 58 members of the circuit court bench, supporting the motion with an affidavit from Hartman replete with false statements of law regarding responsibility for the conduct of elections [4] and concluding with the assertion that an adverse determination against the county clerk would affect her working relationship with the circuit court bench. There could not be "an adverse determination" against the county clerk as she was not a defendant. The defendant was Janice Winfrey, the Detroit city clerk. After a short hearing Respondents withdrew the motion.

The complaint and requested relief

Respondents Hartman and Taylor claimed in writing and in argument that the suit was initiated "to shed light on a dark place," that there was "deep rooted corruption" in the conduct of elections in Detroit, and that they sought an election "free from corruption and political puppeteering." There was no shred of evidence offered to support the repeated and slanderous

[3] Each precinct, in Detroit and in other jurisdictions, has a Board of Election Inspectors. There are 450 precincts and 450 Boards of Election Inspectors in Detroit. There is a Detroit Election Commission, with some statutory election responsibility. Respondents were unable to clarify who they were attempting to sue and did not amend the complaint.

[4] Hartman's affidavit asserted falsely that the Detroit elections are conducted by the Wayne County Clerk and Board of Elections. In Michigan elections are conducted not by counties but by cities and townships. Detroit elections are not conducted by the Wayne County Clerk but by the Detroit City Clerk. Hartman falsely asserted that there is a significant relationship between the Detroit and Wayne County Clerks as to election supervision responsibilities. The Wayne County Clerk has no such responsibilities.

charges of "corruption." Rather, Respondents' claims all related to their assertions that the law was not being correctly followed with regard to the delivery, receipt and tabulation of absentee ballots. On this subject Respondents' claims were completely unsupported by any evidence and completely contradicted by the law.

The complaint requested, *inter alia*, that the court require that all Detroit voters to either vote in person or request an absentee ballot in person; that it eliminate the tabulation of ballots in absent voter counting boards and require them to be counted in election day precincts; and that it "halt the counting of ballots cast through drop boxes that are not effectively monitored."

The court permitted a day of testimony [5] on November 3, 2022, during which Respondent Hartman was allowed to question Christopher Thomas, who served as Elections Director for the State of Michigan for thirty years and who is now a senior advisor to Clerk Janice Winfrey in Detroit, and Daniel Baxter, Director of Absentee Voting Operations in the Detroit clerk's office. Respondents called no witnesses and offered no substantive evidence. Oral argument was held on November 4, with Respondent Taylor arguing for the Plaintiffs.

It was undisputed that the procedures followed by Detroit in the processing of absentee ballots, challenged by Respondents Hartman and Taylor, were the same as the procedures followed in other jurisdictions in the State of Michigan, but Respondents sought relief only against the City of Detroit. The obvious difference between the other jurisdictions and Detroit is that Detroit has the largest population and that the majority of that population African American. Respondents sought to disenfranchise tens of thousands of African American voters. The only possible conclusion for this fact was that this lawsuit was motivated by blatant racism.

At oral argument after the evidentiary hearing the court asked Respondent Taylor to state what relief plaintiffs were seeking but she refused to do so, saying that this information would be provided to the court and opposing counsel when final briefs were filed later that day. At the close of argument, the court observed, "As a judge for 26 years, this is the first time I have ever had a circumstance where the party instigating a lawsuit when asked by the judge what's relief you're asking for? I don't get an answer. I'm told wait to see in a brief." In the opinion denying relief and dismissing the case, the court also noted that, "During the 48 hours between November 2nd and November 4th, Plaintiffs' relief requests changed three times."

Absentee ballot application and signature verification

Article II, Section 4(1)(h) of the Michigan Constitution states that every qualified elector in the state has the right "to vote an absent voter ballot without giving a reason" and "the right to choose whether the absent voter ballot is applied for, received and submitted in person or by mail."

A clerk, upon receipt of an absentee ballot application, compares the signature on the application to that in the qualified voter file to see if there is sufficient agreement. MCL

[5] In *Costantino v City of Detroit*, 950 N.W.2d 707 (Mich, 2020), Judge Timothy Kenny, who had presided over this challenge to the Detroit election ballot tabulation, was criticized in concurring opinions for making credibility determinations without an evidentiary hearing.

168.761(2). Respondents Hartman and Taylor asserted that the absence of a standard [6] for signature verification meant that verification was impossible, notwithstanding that the verification practice was specifically allowed by statute, had been followed for decades, and was the same across the state. They requested that the Court "require all Detroit voters to vote in person or obtain their ballots in person at the clerk's office."[7]

This argument was not simply unsupported by law but contrary to it. If accepted, it would have deprived Detroit voters of their constitutionally guaranteed right to apply for an absentee ballot by mail and would have required that the 60,000 absentee ballots already submitted in Detroit be rejected. Persons who could not physically go to the clerk's office to request an absentee ballot, including the ill and disabled, and military and overseas voters, would have been deprived of the right to vote, notwithstanding that one of the purposes of absentee voting is to allow voting by those who cannot go to a precinct or to the clerk's office in person and notwithstanding the federal requirement that absentee ballots be made available to military personnel and those residing overseas.

Absentee ballot tabulation

Larger jurisdictions, which may have tens of thousands of absentee ballots, count the ballots in absent voter counting boards, MCL 168.765a, and signature verification is done by the clerks prior to the delivery of the ballots to the counting boards. MCL 168.765a(6). In smaller jurisdictions absentee ballots are delivered to the precincts on election day, the signatures on the ballot envelopes are verified by the boards of elections inspectors, and the ballots are tabulated. MCL 168.765 and 766.

Respondents Hartman and Taylor made the astounding and completely insupportable request that the court totally ignore the statute and instead order that the city of Detroit not count the tens of thousands of absentee ballots which had been received, and those yet to be received, in absent counting boards, but instead deliver them to the precincts for signature verification and tabulation. They asserted as follows with regard to absent voter counting boards: "The AVCB has many problems that cannot be remedied. As it is an optional process it must be sent to the scrap heap of history as a failed experiment." [8]

Drop boxes

[6] Secretary of State Benson in 2020 promulgated a standard for signature verification, but in *Genetski v Benson*, #20-000216-MM, unpublished opinion and order of the Michigan Court of Claims, the court held that Secretary Benson lacked authority to provide this guidance without complying with the Administrative Procedures Act. The guidance was, therefore, not in effect prior to the 2022 election and clerks proceeded as previously to determine whether the signatures on the applications and in the QVF were in sufficient agreement. Plaintiffs falsely asserted that this case required the Secretary to promulgate a standard, which it did not. It said only that if she promulgated such guidance she had to do so in accordance with the APA.

[7] When voting in person or requesting an absentee ballot in person, a voter either shows picture identification or signs an affidavit that she lacks picture identification.

[8] Respondents seemed to be under the impression that absent voter counting boards were a recent "experimental" innovation. To the contrary, they had been in use for decades, as Respondents would have known had they done the research required of any attorney filing a lawsuit.

Respondents' request regarding drop boxes misstated both the law and the facts. They stated, "Plaintiffs request that the Court order Detroit to . . . halt the counting of ballots cast through drop boxes that are not effectively monitored." In their post-hearing brief Respondents expanded on this request, stating, "Plaintiffs request declaratory relief that effective monitoring include a review of the depositing of absentee ballots to monitor against a person 'stuffing' multiple ballots at one time or depositing a solitary ballot multiple time. (sic) . . . "

This request made no legal or factual sense. The counting of ballots "cast through drop boxes" could not have been halted as it had not begun. More importantly, ballots are not "cast" by placing them in a drop box. The implicit claim that fraudulent ballots may be "stuffed" in drop boxes is false as no ballot is tabulated until a signature on the ballot envelope is matched to a signature in the qualified voter file. In addition, it is permissible for a person to deposit a number of ballots into a drop box. MCL 168.761 and 764. And further, what could Respondents mean by "depositing a solitary ballot multiple times"? Would the ballot be attached by a string so it could be retrieved and redeposited? If so, what difference could such an exercise make? A ballot returned in a drop box is tabulated only once, as is a ballot returned by mail or personally delivered to the office of the clerk. Quite apart from this nonsense, Plaintiffs cited no law requiring that the drop boxes be monitored in some "effective" fashion but simply made this claim to feed the conspiratorial claim that drop boxes are used for unlawful purposes.

Rejection and/or duplication of ballots

Electronic voting tabulators reject ballots which are damaged or defective. MCL 168.798a. These ballots are then duplicated so they can be tabulated.

The tabulators also reject ballots which have overvotes, other errors or corrections, and, in a primary election, ballots where the voter has voted for candidates of more than one political party. MCL 168.795. The rejected ballots are examined by observers from different parties to determine what votes on the ballot are valid, applying MCL 168.803, which expressly provides in relevant part at section 803(1)(f), that "A failure to properly mark a ballot as to 1 or more candidates does not alone invalidate the entire ballot if the ballot has been properly marked as to other candidates." Ballots with the valid votes so identified are then duplicated so that those votes can be tabulated by machine. A more technologically advanced procedure for dealing with overvotes or other errors is called adjudication. This allows for ballots which are tabulated using high-speed scanners to have the ballot image examined on a screen, again by two observers from different parties, who can make the determination from looking at the screened image that would otherwise be made by examining the physical ballot.

Respondents Hartman and Taylor contended, with absolutely no support, that the adjudication process, which is part of the certified software component of the high-speed scanner tabulators, was not properly certified (which Christopher Thomas refuted) and that adjudication somehow "manipulated" votes, while the procedure is simply designed to count the votes which are validly cast while not counting the erroneous and invalid votes. [9]

[9] The high-speed scanners with adjudication software used in Detroit are also used in Grand Rapids, Lansing, Farmington Hills, Rochester Hills, Troy, Livonia, and Canton Township, among other jurisdictions.

Respondents took the utterly frivolous position, completely contrary to the law, that any ballot rejected by the tabulator had to be rejected in toto, with none of the votes on that ballot counted. They further contended, also contrary to the law, that the only ballot which could be duplicated was one which was damaged or defective. Acceptance of these absurd positions would have resulted in the disenfranchisement of numerous voters if they had made any errors in marking their ballots. It would also have precluded the duplication of military and overseas ballots which are not marked on regular ballots, contrary to a specific provision which provides for their duplication. MCL 168.798c(1). Respondents asserted that these ballots could not be duplicated but had to be counted by hand.

Judge Kenny's Opinion and Order

It is not contended that a proceeding is frivolous simply because it is rejected by a judge. However, the decision of Judge Timothy Kenny in this matter is significant in that he emphasized the total lack of merit in the plaintiffs' claims, the total lack of evidentiary support, and the outrageous and unconstitutional nature of the relief sought. He wrote that,

> "[T]he Court finds that Plaintiffs presented no evidence in support of their allegations and Plaintiffs' interpretation [of sections in Michigan election law] does not accurately interpret or apply these sections."

And further,

> "The preliminary injunction [sought by Plaintiffs] would serve to disenfranchise tens of thousands of eligible voters in the city of Detroit. Additionally, the city of Detroit would be the only community in Michigan to suffer such an adverse impact. Such harm to the citizens of the city of Detroit, and by extension the citizens of the state of Michigan is not only unprecedented, it is intolerable."

And in a final conclusion,

> "Plaintiffs have raised a false flag of election law violations and corruption concerning Detroit's procedures for the November 8th election. This Court's ruling takes down that flag.
>
> Plaintiffs' failure to produce any evidence that the procedures for this November 8th election violate state or federal election law demonizes the Detroit City Clerk, her office staff and the 1,200 volunteers working this election. These claims are unjustified, devoid of any evidentiary basis and cannot be allowed to stand."

Respondents Hartman and Taylor violated Rules 3.1 and 3.3 by bringing and pursuing this frivolous action supported by their false statements of law and fact. They further violated Rule 4.4 in their arguments seeking to deprive the citizens of the city of Detroit of their constitutional and statutory rights to vote by absentee ballot.

III. RESPONDENT HARTMAN ARGUED FOR THE RECOUNTS OF THE 2022 ELECTION RESULTS ON PROPOSALS 2 AND 3, SEEKING TO MISUSE THE STATUTORY PROCEDURE.

After the definitive rejection of every frivolous and false contention made in *Karamo v Winfrey* (which Respondents did not appeal), Respondent Hartman represented plaintiffs in yet another action, this one seeking the recount in numerous precincts in 47 counties around the state of votes from the 2022 election on Proposal 2, Promote the Vote, and Proposal 3, Reproductive Freedom for All.

The recount petitions were filed by Jerome J. Allen[10] and supported by Election Integrity Fund and Force (EIF, a plaintiff represented by Respondent Hartman in both the *Ickes* and *Karamo* cases discussed above.) The petitions were delivered to the Bureau of Elections by Stefanie Lambert, who was sanctioned for her role in the *King v Whitmer* case and who was charged with misconduct in a formal complaint brought by the Michigan Attorney Grievance Commission.

The petitions for recount alleged fraud or mistake as follows: (1) the voting system was not configured in accordance with federal guidelines, so the votes couldn't be accurately counted; (2) adjudication software used in Detroit, Grand Rapids, Lansing, and elsewhere was not certified and its use "manipulated and altered votes" and violated the law; (3) votes were counted on ballots which were rejected by the tabulators; (4) the electronic voting systems were not certified in accordance with state law; (5) the tabulators were connected to the internet; (6) the e-poll books were connected to the internet; (7) there was a significant deviation between the votes cast for the three Republicans at the top of the ticket and Republican candidates further down the ballot, which deviation was not "normal."

Not only had most of these contentions been rejected in *Karamo v Winfrey*, they had no relevance to the statutory reasons for a recount. A recount petition must allege "fraud or error committee by the inspectors of election in the return made by said inspectors or of any county canvassing board in the canvass of votes . . . " MCL 168.880. The function of the recount is simply to determine whether the votes were correctly tabulated. The recount of a statewide ballot proposal is conducted by the Board of State Canvassers, directing and supervising county canvassers. The state or county boards are authorized by Section 168.885 to issue subpoenas to the election inspectors "in the matter of the recount," to secure the records to be recounted. They do not investigate allegations of fraud or error other than in the tabulation itself.

Respondent Hartman represented Jerome Allen and the Election Integrity Fund in an appearance before the Board of State Canvassers in a hearing on December 5, 2022, when the board was considering whether to conduct the recount and what procedures would be followed.

The canvassers were outraged by the recount requests, Chairman Daunt accurately calling them "unnecessary frivolous, and ridiculous." (Transcript p 48) As Respondent Hartman conceded, there was no possibility the recounts could change the outcome of the vote on either of

[10] Recount petitions must be initiated by a sworn statement from an elector.

these proposals, which had passed by very large margins. In fact, it was undisputed that if every vote in the recounted precincts were changed from yes to no the proposals would still have won.[11]

Respondent Hartman argued, in exchanges with canvassers, that the recount requests were not frivolous as the recounts would empower county boards of canvassers to issue subpoenas and conduct investigations, and to look for evidence of the practices which Judge Kenny had just held were lawful, but which EIF continued to challenge. He further asserted that county canvassers could also investigate the "not normal" deviation between votes for the candidates at the top of the ticket and other candidates. The canvassers made clear that this position was not supported by the law, that Respondent Hartman was advocating an impermissible use of the county canvassing boards, whose subpoena power, referenced in 168.885, extended only to compel election inspectors to produce the elections records if they failed to do so.

The Board of State Canvassers then adopted procedures to implement its responsibility under MCL 168.889, which provides;

> All recounts provided for in sections 878 et seq. of this act shall be conducted in the several counties wherein the votes to be counted were cast by the respective boards of county canvassers in each of the several counties, subject to the direction, supervision and control of the board of state canvassers. . . Said board shall provide each board of county canvassers with such rules and regulations as in the opinion of the said board of state canvassers shall be necessary to conduct such recount . . .

The procedures then adopted made it clear that the county boards of canvassers were to follow the directions of the Board of State Canvassers and its agents. In the following days, agents of the Board of State Canvassers then proceeded to travel to counties around the state to supervise the recounts, entailing considerable expense to the state taxpayers and to the county taxpayers whose officials were required to participate.

A hearing was held on December 21, 2022, to certify the results of the recounts. Respondent Hartman filed a pleading making "objections/challenges or protests to the process of the recount." He complained that the county boards of canvassers were reduced to a passive role, that observers were not permitted to examine the whole ballot but were only permitted to see the vote on the proposal being recounted, that observers were not permitted to examine duplicated ballots, that subpoenas were not issued to make full and complete investigations, that there was no investigation of the matters alleged in the stated reasons for the recount, including the certification of the election machinery.

Respondent Hartman's objections were factually correct but legally false and frivolous. Observers were only permitted to view the votes on the proposals being recounted. They had no right to further examine the ballots and the boards of county canvassers had no right to issue

[11] In 2018 the legislature amended the statute regarding recount petitions by candidates, MCL 168.879, to require that the candidate allege a good-faith belief that the recount could change the outcome. The section regarding recounts of ballot proposals, MCL 168.880, was not amended at that time, no such recount having been requested for many decades. In reluctantly approving the recounts addressed here, the Board of State Canvassers recommended that the statute be amended to require a good-faith belief that the outcome would be changed.

subpoenas or conduct investigations. All these objections were correctly rejected by the Board of State Canvassers as Respondent Hartman had completely misrepresented the function of a recount and had sought to use it for impermissible purposes.

By his representations in this matter Respondent Hartman violated Rule 3.1 in presenting frivolous claims, Rule 3.3 in making false statements of law and fact to the Board of State Canvassers, and Rule 4.4 in burdening the state and county officials required to participate in these frivolous recount efforts.

CONCLUSION

The Attorney Grievance Commission should investigate Respondent Hartman's violations of the Rules of Professional Conduct and should find that he violated the rules as described above.

Sincerely,

Michael Teter
Managing Director, The 65 Project
[redacted]

STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

KRISTINA KARAMO; PHILIP O'HALLORAN, MD; BRANDEN GIACOBZAAI; TIMOTHY MAHONEY; KRISTIE WALLS; PATRICIA FARMER; and ELECTION INTEGRITY FUND AND FORCE,

Plaintiff,

v.

JANICE WINFREY, in her official capacity as the CLERK OF THE CITY OF DETROIT, ELECTION INSPECTORS, in their official Capacity

Defendants.

CASE NO. 22-012759-AW

OPINION & ORDER

At a session of this Court
Held on: June 12, 2023
In the Coleman A. Young Municipal Center
County of Wayne, Detroit, MI

PRESENT: Honorable Timothy M. Kenny
Third Judicial Circuit Court of Michigan
(Visiting Judge)

Defendant Janice Winfrey, in her official capacity as the Detroit City Clerk, brings a motion for attorney fees and costs claiming Plaintiffs' complaint for mandamus, preliminary injunction, declaratory judgment and other relief was frivolous under Michigan law. The request for costs and attorney fees was made with the Defendants' November 4, 2022 brief in opposition to the Plaintiffs' motion for a preliminary injunction. For the reasons stated below, Defendant Winfrey's motion for costs and attorney fees in the

amount of $58.459.20 is granted jointly and severally against attorneys Daniel Hartman, Alexandria Taylor and all named Plaintiffs in the October 26, 2022 complaint.

BACKGROUND

On October 26, 2022, thirteen days before the Michigan general election, Plaintiffs filed a complaint against defendant Janice Winfrey in her official capacity as the Detroit City Clerk and the Detroit Board of Election Inspectors in their official capacity. Plaintiffs sought mandamus, preliminary injunction, declaratory judgment and other relief.

The timing of Plaintiffs' complaint clearly indicates MCL 691.1031 applies. The statute states: "There shall be a rebuttable presumption of laches if the action is commenced less than 28 days prior to the date of the election affected."

After an eight hour evidentiary hearing on November 3, 2022, this Court ruled laches applied. This Court held Plaintiffs did not need to wait two months in order to take legal action regarding defendant Winfrey's conduct of the August 2, 2022 primary election. Administrative and legal remedies for alleged August 2022 primary election violations were available to Plaintiffs.

The complaint filed by Plaintiffs thirteen days before the November 8, 2022 general election alleged violations of Michigan election law were continuing to occur in advance of the November election day. For example, Plaintiffs' complaint paragraphs 31 and 118(b) alleged absentee ballot drop boxes were not being monitored as required by law. Plaintiffs also alleged in paragraph 118(a) that defendant Winfrey's office was not

complying with the "verification of identity" process for absentee ballots as required by Michigan law. Additionally, in paragraph 127 of their complaint, Plaintiffs alleged ". . . the illegal and ultra vires actions of the Detroit Clerk and Board of Elections will result in an illegal election".

SANCTIONS

Michigan Court Rules and statutes provide the standard for determining if a complaint or defense is frivolous.

MCR 1.109(E) provides in pertinent part:

> (5) *Effect of Signature*. The signature of a person filing a document, whether or not represented by an attorney, constitutes a certification by the signer that:
>
> (a) he or she has read the document
>
> (b) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a food-faith argument for the extension, modification, or reversal of existing law; and
>
> (c) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation
>
> (6) *Sanctions for Violation*. If a document is signed in violation of this rule, the court, on the motion of a party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.
>
> (7) *Sanctions for Frivolous Claims and Defenses*. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages.

MCL 600.2591 provides:

(1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.

(2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.

(3) As used in this section:

(a) "Frivolous" means that at least 1 of the following conditions is met:

(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit.

(b) "Prevailing party" means a party who wins on the entire record.

In Meisner V. Weston Condo Ass'n 321 Mich App 702; 909 NW2d 890 (2017) the Court of Appeals explained:

> "The purpose of imposing sanctions for asserting a frivolous action or defense is to deter parties and their attorneys from filing documents or asserting claims or defenses that have not been sufficiently investigated and researched or that are intended to serve an improper purpose. *BJ's & Sons Constr Co, Inc v Van Sickle, 266 Mich App 400, 405; 700 NW2d 432 (2005)* (quotation marks and citation omitted).
>
> A court must determine whether a claim or defense is frivolous on the basis of the circumstances at the time it was asserted. *Robert A Hansen Family Trust v FGH Indus, LLC, 279 Mich App 468; 486; 760 NW2d 526 (2008)."* *(at 731)*

At the time of the filing of their October 26, 2022 complaint, Plaintiffs sought an order from the Court declaring ". . . that only Absentee Ballots that have been requested in person can be validly voted in the election" (paragraph 27 of Plaintiffs' complaint).

Testimony at the November 3, 2022 evidentiary hearing revealed that approximately 60,000 absentee voters had returned their ballots as of November 3rd. Plaintiffs requested relief would have negated many of those votes and required all absentee voters to come to the City Clerk's Office for a ballot. Plaintiffs' relief request would have applied, for example, to registered Detroit voters serving in the military overseas as well as voters in Detroit nursing homes.

The requested order to require all absentee voters to obtain their ballots in person defies Michigan Constitution 1963 Art. 2, Sec.4(g). This amendment to the Michigan Constitution passed by the voters in 2018, expanded the right to vote absentee. Plaintiffs merely threw out the allegation of "corruption in Detroit" as the reason for disregarding the Michigan Constitution in this state's largest city.

Plaintiffs' request to have the Detroit Clerk halt the collection of absentee ballots for the November 8, 2022 election and require all Detroit voters seeing an absentee ballot to appear in person at the Detroit Clerk's Office is without any legal support or merit. A blanket assertion of corruption does not overturn a Michigan Constitutional provision. Pursuant to MCL 600.2591 (3)(a)(*iii*) Plaintiffs' legal position is devoid of arguable legal merit and is therefore frivolous under the statute.

It is noteworthy that Plaintiffs' complaint alleged election law wrongdoing by Defendants that would adversely impact the November 8, 2022 election. They asserted violations of Michigan election law that were ongoing at the time of the October 26, 2022 complaint. However, no evidence produced at the November 3, 2022 evidentiary hearing supported claims impacting the November 8, 2022 general election.

After conducting a lengthy evidentiary hearing on November 3, 2022, this Court issued a written opinion on November 7, 2022 rejecting all of Plaintiffs' requests for relief. The opinion indicated the complaint in this cause was not supported by any facts underlying their allegations. There was no reasonable basis to believe the facts underlying their legal position were in fact true.

A clear example of the lack of facts supporting Plaintiffs' position involved the allegation of lack of opportunity for anyone to observe those individuals depositing absentee ballots in ballot drop boxes in Detroit. The November 3, 2022 evidentiary hearing produced testimony that all Detroit ballot drop boxes had video camera coverage consistent with Michigan election law and that video coverage was retained for thirty days. The information could easily have been obtained from the Detroit Clerk's Office but was not.

A review of this Court's November 7th opinion indicates Plaintiffs' complaint was rife with speculation, an absence of facts and a lack of understanding of Michigan election statutes and Detroit absentee ballot procedures.

Defendant Winfrey's motion for sanctions also applies to Plaintiffs' motion to disqualify the entire Third Circuit Court bench in a single motion.

In their motion, Plaintiffs contend The Third Circuit Court has a close working relationship with the Wayne County Clerk's Office and due to that relationship, a number of Third Circuit Court judges might prefer not to hear Plaintiffs' case (note, however, the Wayne County Clerk is not a defendant in this case).

Plaintiffs' complaint allegations alluded to the fact the City of Detroit Clerk's Office submits their election results to the Wayne County Clerk's Office. Nothing was alleged to show a bias toward Defendant Detroit City Clerk by the Third Circuit Court bench. Plaintiffs do not set forth a disqualification pleading, well grounded in fact as required in MCR 1.109(E)(5)(b) or MCL 600.2591(3)(a)(*ii*) and (*iii*) in order to meet the requirements of MCR 2.003. This Court finds Plaintiffs' motion for disqualification frivolous under the Michigan Court Rules and MCL 600.2591.

CONCLUSION

This Court finds Plaintiffs' complaint and motion for disqualification of the entire 57 judge Third Circuit Court bench to be frivolous under the Michigan Court Rules and MCL 600.2591. Sanctions are to be imposed jointly and severally against the attorneys, David Hartman, Alexandria Taylor and all the named Plaintiffs in the October 26, 2022 complaint. John J. Fannon Co. v Fannon Prods LLC, 269 Mich App 162; 712 NW 2d 731 (2005).

This Court has reviewed the proposed attorney fee request including the documentation of time expended, and the hourly fee sought. The hourly fees are reasonable consistent with the expertise in election and municipal government law and with the Oakland County rates for similar legal work as guided by the State of Michigan 2020 Economics of Law Practice, Attorney Income and Billing Rate Summary Report. This Court will exclude $4,893.75 in attorney fees sought for services submitted for the sanctions motion as not reasonable for the motion and brief. All other costs and attorney fees are reasonable.

Defendant, Janice Winfrey, in her Official Capacity as Detroit City Clerk is awarded costs and attorney fees in the amount of $58,459.20.

HON. TIMOTHY M. KENNY
THIRD CIRCUIT COURT
(VISITING JUDGE)

JUNE 12, 2023