

BEFORE THE BOARD OF PROFESSIONAL CONDUCT  
OF  
THE SUPREME COURT OF OHIO

FILED  
NOV 25 2015

In re:

BOARD OF PROFESSIONAL CONDUCT

Complaint against

Hon. Edward Joseph Elum  
Massillon Municipal Court  
Two James Duncan Plaza  
Massillon, OH 44646-6690

No. 15-069

Attorney Registration No. (0010772)

COMPLAINT AND CERTIFICATE

Respondent,

(Rule V of the Supreme Court Rules for  
the Government of the Bar of Ohio.)

Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411

Relator.

Now comes the relator and alleges that Edward Joseph Elum, an Attorney at Law, duly admitted to the practice of law in the state of Ohio, is guilty of the following misconduct:

1. Respondent, Edward Joseph Elum, was admitted to the practice of law in the State of Ohio on May 6, 1977. Respondent is subject to the Code of Judicial Conduct, the Code of Professional Responsibility, the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.
2. Respondent has served as a Massillon Municipal Court judge since January 1, 1996.
3. Respondent was previously suspended from the practice of law in Ohio for six months, with the entire six-month suspension stayed upon conditions on December 18, 2012.

*Disciplinary Counsel v. Elum*, 2012-Ohio-4700. Respondent's prior disciplinary case arose out of two sets of circumstances in which respondent acted outside and beyond his

authority, intimidating a criminal defendant with profane and abusive language in an impromptu hearing without the defendant's attorney present, and interfering with an internal police investigation and issuing baseless orders beyond his authority to the police chief and to the prosecutor to provide him with prurient photographs and texts that were the subject of the police investigation.

### COUNT I

4. On May 11, 2015, Antonio Pettis approached respondent in the courthouse parking lot and requested his assistance with a legal problem Mr. Pettis was having with his landlord, Susan Beatty.
5. Mr. Pettis was a family friend of respondent's, having played on the Massillon High School football team with respondent's son, Paul, and having recently been to the Elum family home at the invitation of respondent's wife, Margaret, for help filling out a Police Academy scholarship application.
6. Mr. Pettis had failed to pay his rent due May 1, 2015. Ms. Beatty had posted the 3-day notice to vacate on his door on or about May 4, 2015, but had not yet filed any eviction action in respondent's court.
7. Mr. Pettis described the dispute to respondent and informed him that although Mr. Pettis had not timely paid the rent due on May 1, he currently had enough money to pay the rent and wanted respondent's help resolving the matter.
8. Respondent agreed to help Mr. Pettis and took him into the courthouse to respondent's chambers. Once there, respondent telephoned Ms. Beatty on behalf of Mr. Pettis and,

during a nine-minute conversation, directed her to accept a resolution of the dispute that was favorable to Mr. Pettis.

9. Respondent identified himself at the outset of the conversation to Ms. Beatty. Respondent knew during the course of the conversation that Ms. Beatty was aware that respondent was a Massillon municipal court judge.
10. Ms. Beatty was taken aback by the call. She was both surprised and intimidated by the substance of respondent's call, by his authoritative tone and by the fact that he was a judge.
11. In response to inquiries from Relator, and in his October 9, 2015 deposition, respondent stated that he knew his telephone call to Ms. Beatty was wrong, that it was a violation of the Code of Judicial Conduct and that it was a "mistake". Nevertheless, respondent at no time terminated the call because of his awareness that it was improper. Instead, he continued with the substance of the call and the attempt to intimidate Ms. Beatty into complying with Mr. Pettis' wishes.
12. During the course of the conversation, respondent represented the interests of Mr. Pettis as if he were acting as Mr. Pettis' attorney and advocating in a negotiation, albeit on an unequal footing, with Ms. Beatty.
13. Respondent initially instructed Ms. Beatty to accept the late rent payment from Mr. Pettis.
14. Ms. Beatty responded that she did not believe an amicable resolution was possible, that Mr. Pettis was chronically late with his rent payments, was difficult to deal with and sometimes verbally abusive, and that she did not wish to retain Mr. Pettis as a tenant.

15. Respondent then adopted a tone of command and ordered Ms. Beatty to be quiet and listen. When she attempted to respond, the judge interrupted her to clarify that he did not want to hear anything from her, he simply wanted her to understand and do what he was instructing her to do. Respondent informed Ms. Beatty that if she had anything to say, she could have her attorney telephone him later.
16. Although respondent was conscious that an attorney is prohibited from contacting a represented party without obtaining informed consent from opposing counsel, and although he repeatedly told Ms. Beatty to have her attorney contact him, respondent failed to ask Ms. Beatty if she was in fact represented by counsel, or for the name of her attorney. Respondent also failed to offer to conference in Ms. Beatty's counsel so that counsel could participate in the conversation and so she could have the benefit of his legal advice during the "negotiation".
17. Although Ms. Beatty had already voluntarily extended Mr. Pettis' deadline for vacating the property from May 7 to May 10, respondent instructed Ms. Beatty to permit Mr. Pettis to stay until Tuesday, May 12 in order to have additional time to remove his belongings from the unit.
18. During the telephone conversation, respondent openly, and within the hearing of Ms. Beatty, consulted with Mr. Pettis regarding his demands.
19. Following one such consultation, respondent instructed Ms. Beatty to return to Mr. Pettis \$900.00, the equivalent of two months' rent, as a refund of his security deposit. Respondent made this demand despite the fact that Mr. Pettis had only tendered a security deposit of \$450.00.

20. At another point in the conversation, Ms. Beatty mistakenly told respondent that she had already had the locks changed on Mr. Pettis' apartment.
21. Respondent threatened Ms. Beatty that she had made a grave error and would be liable to Mr. Pettis for treble damages for prematurely changing the locks without a court order. Respondent told Ms. Beatty that if she did not agree to Mr. Pettis' terms, he would end up owning the entire property and she would never get him out.
22. As a final instruction, respondent forbade Ms. Beatty to charge Mr. Pettis any rent for May 1 through May 12, the unpaid days during which Mr. Pettis retained possession and control of the property.
23. Mr. Pettis moved out of the apartment on May 12, 2015, the day after the telephone call.
24. Upon vacating the unit, Mr. Pettis left trash, personal property and damaged furniture on the front lawn of the apartment. Ms. Beatty subsequently bore the expense of having the furniture, personal property and trash hauled away by a private trash removal company.
25. Ms. Beatty did not ever file an eviction action against Mr. Pettis or any other action for back rent, damage to the apartment, or to recover the expense of the trash removal.
26. On May 14, 2015, respondent again telephoned Ms. Beatty and left a message on her answering service asking her to return his call or to have her attorney call him about the Pettis matter.
27. Ms. Beatty did not return the call from respondent, but did contact her attorney, George Urban, to discuss the matter. She learned from Mr. Urban that it was possible to file a grievance against the judge for his intimidating and unethical conduct.

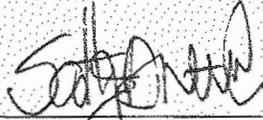
28. On May 22, 2015, respondent telephoned Ms. Beatty a third time about the Pettis matter and left a message on her answering service requesting that she return his call or have her attorney call him.
29. Ms. Beatty did not return the third call from respondent, but following that call, she obtained a grievance form and filed her grievance with relator.
30. At his October 9, 2015 deposition, respondent admitted that his calls and conversation were improper under Ohio ethics law.
31. At the deposition, respondent also admitted that the disagreement between the parties was more complicated than he understood at the time of the call, and that the complexity was foreseeable and should have been anticipated by respondent. He also admitted that the purpose of the call was to influence the conduct of Ms. Beatty with respect to her legal rights and interests.
32. Also at his deposition, respondent conceded that any comment regarding possible treble damages or other consequences for changing the locks constituted a legal opinion that was intended to influence Ms. Beatty's conduct. He further acknowledged that he understood how a person in Ms. Beatty's position could feel intimidated by receiving such a call from a judge.
33. Respondent knew at the time of his calls to Ms. Beatty that the matter was not pending in his court, was not appropriate for mediation, and that he was not an appropriate mediator. Nevertheless, in responding to relator's letters of inquiry, Respondent initially implied that the conversation was part of a new pilot mediation program he had established at the court. Over the course of the investigation, and in response to specific questions from relator, respondent has changed his position to an acknowledgement, both in writing and

at his deposition, that the conversation was not a mediation and was not a part of any mediation program at the court.

34. Respondent's conduct as alleged in Count I violates the Code of Judicial Conduct: Rule 1.2 [a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety]; Rule 2.4(B) [a judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment]; Rule 2.4(C) [a judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge]; Rule 2.6(B) [a judge shall not act in a manner that coerces any party into settlement]; Rule 3.1(C) [a judge shall not participate in activities that would appear to a reasonable person to undermine the judge's *independence, integrity, or impartiality*]; Rule 3.1(D) [a judge shall not engage in conduct that would appear to a reasonable person to be coercive]; Rule 3.10 [a judge shall not practice law]; and the Rules of Professional Conduct: 8.4(d) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice].

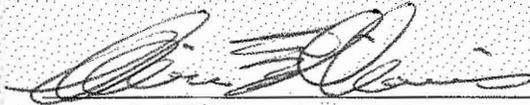
### **CONCLUSION**

Wherefore, pursuant to Gov. Bar R. V, the Code of Judicial Conduct, and the Rules of Professional Conduct, relator alleges that respondent is chargeable with misconduct; therefore, relator requests that respondent be disciplined pursuant to Rule V of the Rules of the Government of the Bar of Ohio.



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Scott J. Drexel (0091467)  
Disciplinary Counsel



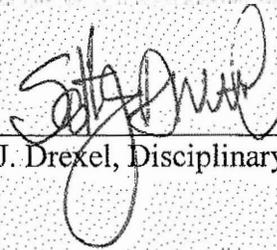
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### **CERTIFICATE**

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Kevin L. Williams is duly authorized to represent relator in the premises and has accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: November 25, 2015



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Scott J. Drexel, Disciplinary Counsel

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT  
OF  
THE SUPREME COURT OF OHIO**

**In re:**

**Complaint against**

**Hon. Edward Joseph Elum  
Massillon Municipal Court  
Two James Duncan Plaza  
Massillon, OH 44646-6690**

**Case No.: B5-1067J**

**Attorney Reg. No. 0010772**

**Respondent,**

**WAIVER OF DETERMINATION  
OF PROBABLE CAUSE**

**(Rule V(11)(B) of the Supreme Court  
Rules for the Government of the Bar  
of Ohio)**

**Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411**

**Relator.**

Pursuant to the provisions of Rule V(11)(B) of the Supreme Court Rules for the Government of the Bar of Ohio, respondent, **Edward Joseph Elum**, stipulates that there is probable cause for the filing of a Complaint in the above-referenced proceeding and hereby waives the determination of probable cause by a Probable Cause Panel of the Board of Professional Conduct.

Dated: November 23, 2015

By:   
Edward Joseph Elum (0010772)  
Respondent *Pro Se*