IN THE SUPREME COURT OF IOWA
Supreme Court No. 24-2030
JQC No. 23-132

IN THE MATTER OF:
DAVID JAMES HANSON,
JUDICIAL MAGISTRATE
FIRST JUDCIAL DISTRICT

ON APPLICATION OF THE IOWA COMMISSION ON JUDICIAL QUALIFICATIONS

APPLICANT'S BRIEF AND ARGUMENT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Is a 90-day suspension and training warranted for a magistrate who ruled using extra-judicial resources of dubious value, sexual stereotypes, and racial slurs.

ROUTING STATEMENT

The Iowa Supreme Court may discipline a judge upon application by a commission on judicial qualifications. Iowa Const. Art. V, § 19; Iowa Code §§ 602.2101, 602.2106(3)(b) (2023). The Judicial Qualifications Commission hears complaints and, when necessary, forwards recommendations to the Supreme Court. Iowa Code § 602.2103. The Attorney General prosecutes the proceedings before the Commission and on appeal. *Id.* § 602.2104(2); 602.2106(2). This matter is properly before the Iowa Supreme Court.

NATURE OF THE CASE

The Judicial Qualifications Commission recommends the Iowa Supreme Court suspend Magistrate David J. Hanson for 90 days without pay and order mandatory participation in anger management and bias training. *See* Iowa Code § 602.2106(3)(*b*); Iowa Ct. R. 52.24(1).

STATEMENT OF THE FACTS

The Honorable David J. Hanson is a part-time magistrate in Fayette County. Appl. JQC No. 23-132 (12/18/2024) at 1. He has practiced law for over 36 years. *Id.* at 3. He was appointed in January 2022. *Id.*

On August 5, 2022, he refused to sign an arrest warrant in a sexual abuse case. *See* Compl. (8/15/2022), Binder p. 2; *see* Order Giving Rise to Complaint, JQC 23-132, Denial of Request for Arrest Warrant. Magistrate

Hanson identified this as his "ruling in anger over what I thought was a specious request for an arrest warrant, and I own up to that. If I make a decision and somebody don't like it, well, I'm sorry." Tr. (11/14/24) at 4:2–8, Binder p. 11.

Shortly less than a year later—on July 18, 2023—Magistrate Hanson was presiding over *State v. Rodriguez*, Fayette County STA0031463, STA0031464, and STA0031465. Compl. (7/19/23), Binder p. 3. The matter concerned driving without a license and not having insurance. *Id.* at 4. But, as the intern who was prosecuting this case recalled, Magistrate Hanson asked, "[i]s this guy a wetback? An illegal?" *Id.* The Magistrate also asked if the prosecutor was sure the defendant had not also stolen someone's identification. *Id.* The Magistrate's comments made the intern "extremely uncomfortable" and made it "difficult" for her. *Id.* She was concerned the Magistrate was biased based on his "racist slurs." *Id.*

Magistrate Hanson characterized this an anonymous complaint and later testified that he did not recall the incident. Tr. (11/14/24) at 4:9–18, Binder p. 11. He said, "people can say whatever they want to say. … [U]nless they're willing to put their names to it … then I pay no attention." *Id.* "[W]hatever's said I have no way of identifying, so I'm not going to even argue the point. There's no point to it." *Id.*

Hanson elected not to have a contested hearing with witnesses before the Commission. *See* Appl., JQC No. 23-132 at 3. He said, "[t]he Commission can make whatever decision it wants to make, and I will roll with the punch and take whatever you give me. … [S]o just do what you think is right." Tr. (11/14/24) at 5:2–17, Binder p. 12.

The Commission recommends a 90-day suspension and education on anger management and bias. Appl., JQC No. 23-132 at 7. As to the first complaint, the Commission found:

> Magistrate Hanson based conclusions upon stereotypical views and observations as to how a male victim of sexual assault should react when allegedly assaulted by a female offender. The order is unfitting of a judicial officer because it expressed bias, included unnecessary and inappropriate commentary about parties, relied on extrajudicial resources of questionable substance, applied an incorrect legal standard, and included information suggesting a conflict of interest.

Appl., JQC No. 23-132 at 3; *see* Order Giving Rise to Complaint, JQC 23-132, Denial of Request for Arrest Warrant.

As to the second incident not quite a year later, the Commission found Magistrate Hanson, "made racially disparaging remarks concerning a litigant who was to appear before him in a pending case." *Id.* The Commission noted Hanson indicated he did not recall the matter, but the

complainant and another person "recalled similar remarks/questions…." *Id.*

The Commission concluded that Magistrate Hanson violated Rule 51:1.2. *Id.* at 5. It found by a convincing preponderance of the evidence that his conduct in both instances would create in reasonable minds an adverse perception of honesty, impartiality, temperament, or fitness to serve as a judge. *Id.* (quoting Iowa Ct. R. 51:1.2). That it occurred in a public setting would erode public confidence more than if it occurred in private. *Id.* This, the Commission found, amounted to a substantial violation of the canons of judicial ethics. *Id.*

The Commission also concluded that Magistrate Hanson violated Rule 51:2.3(A) and (B). *Id.* 5–6. These provisions, the Commission noted, concern avoiding bias and prejudice. *Id.* 5. Engaging in acts manifesting bias or prejudice brings the judiciary into disrepute. *Id.* Acts of these types include "slurs" and "suggestions of connections between race, ethnicity, or nationality and crime," among other things. *Id.* The Commission determined the unrefuted allegations of 2022 and 2023 satisfied the examples of manifestations of bias or prejudice, impaired the fairness of the proceedings, and brought the judiciary into disrepute. *Id.* Thus, the

Commission found substantial violations of Rule 51:2.3(A) and (B) and the canons of judicial ethics. *Id.* 6.

The Commission then turned to an appropriate remedy. It noted these violations occurred within a short time span, the first within six months of appointment. *Id.* It found the pattern alarming. *Id.* It also found concerning Magistrate Hansen's lack of willingness to address the situation, express remorse, or modify his conduct. *Id.* It found Magistrate Hanson's behavior more serious than that in *In re Jenkins*, 503 N.W.2d 425 (Iowa 1993). There, the judge made degrading personal characterizations about those appearing before him. *Id.* 7. But here, though there were fewer instances, the stereotyping and racial disparagement was more serious and warranted a more severe sanction. Accordingly, the Commission recommended a 90-day suspension without pay and an order for mandatory participation in anger management and bias training. *Id.* 7.

* * *

ARGUMENT

I. Magistrate Hanson violated the Code of Judicial Conduct when he refused to sign an arrest warrant based on dubious extrajudicial resources, sexual stereotypes, and an incorrect legal standard. He also made racially derogatory remarks and assumptions in open court. A 90-day suspension and training are proper.

Standard of Review

This Court "review[s] the record as in an appeal of an equity action and render[s] an appropriate decree." *In re Carstensen*, 316 N.W.2d 889, 891 (Iowa 1982). Accordingly, the review of facts is *de novo*. *Id.* at 893. This Court gives "respectful consideration" of the Commission's recommendations but is not bound by them. *In re Inquiry Concerning Eads*, 362 N.W.2d 541, 550 (Iowa 1985). "The proper burden of proof for establishing ethical violations [is] a convincing preponderance of the evidence." *Iowa Supreme Court Attorney Disciplinary Bd. v. Carpenter*, 781 N.W.2d 263, 266 (Iowa 2010); *In re Inquiry Concerning Stigler*, 607 N.W.2d 699, 705 (Iowa 2000). But in this case, the facts are undisputed.

Sanctions in judicial disciplinary proceedings should not punish the individual judge, but restore and maintain the dignity, honor, and impartiality of the judicial office, and protect the public from further excesses. *In re Harned*, 357 N.W.2d 300, 302 (Iowa 1984). Thus, any

sanction should track the conduct involved and vindicate and reaffirm the integrity of the entire judicial process. *See Eads*, 362 N.W.2d at 551.

Merits

The Court should adopt the Commission's recommendation. Magistrate Hanson does not dispute what occurred. But neither did he express contrition or a promise to forego such behavior. As such, the violations of 51:1.2 and 51:2.3(A) and (B) merit a 90-day suspension and remedial education.

A. Rule 51:1.2 requires actions that promote public confidence in the integrity and impartiality of the judiciary. Rejecting an arrest warrant based on sexual stereotypes, going outside the record, and using the wrong standard does not do that. Nor does suggesting a defendant is a "wetback" who might also commit identity theft.

The first Canon of judicial conduct states, "A judge shall uphold and promote the independence, integrity, and impartiality of the Judicary, and shall avoid the appearance of impropriety." Iowa Rule of Court 51:1.2 further states, "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." The first comment to the rule explains, "[p]ublic confidence in the judiciary is eroded by improper conduct and conduct that creates an appearance of

impropriety." Iowa R. Ct. 5:1.2 cmt. 1. The fifth comment to the rule provides a test: "The test for the appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge." *Id.* cmt. 5.

To recap, in the 2022 complaint, Magistrate Hanson declined to sign an arrest warrant based on a stereotypical belief he held of how a male sexual assault victim would react when a female assaults them: "The boy will automatically think: "Alright! I'm gonna GET some!". Compl. (8/15/2022), Binder p. 2; Appl., JQC No. 23-132 at 3; Order Giving Rise to Complaint, JQC 23-132, Denial of Request for Arrest Warrant at 5. Turning to the internet, he found information to support his view of the victim's "innate physical advantage" to suppose that if the victim wanted, he could have overpowered the defendant. *Id.* He also conducting online research, determining that because the victim's genitals "functioned as designed," he could not have been impaired by alcohol or marijuana. *Id.* at 5–6. Finally, relying on www.besthealthmag.ca, he answered why the victim fell asleep in a way that he felt undermined probable cause. *Id.* He indicated he ruled

this way, in anger, because he thought the warrant application was specious. Tr. (11/14/24) at 4:2–8.

The Commission determined the order expressed "bias, included unnecessary and inappropriate commentary about the parties, relied on extrajudicial resources of questionable substance, applied an incorrect legal standard and included information suggesting a conflict of interest." Appl., JQC No. 23-132 at 3; Order Giving Rise to Complaint, JQC 23-132, Denial of Request for Arrest Warrant, *passim*.

At a root level, improper judicial bias occurs when a Magistrate relies on information he did not obtain in the matter before him. *See State v. Millsap*, 704 N.W.2d 426, 423 (Iowa 2005) (concerning Canon 3, holding only personal bias from facts learned outside the judge's participation in the case may be disqualifying). And here, a warrant "shall" issue if the application for it states probable cause to believe an offense was committed. Iowa Code § 804.1. Generally, courts may not go beyond the "four corners" of the search warrant application to decide probable cause. *State v. Gogg*, 561 N.W.2d 360, 363 (Iowa 1997). To refuse to sign a warrant based on matters outside the four corners of the application is improper. *See, e.g.*, *In re Van Brocklin*, 274 N.Y.S.2d 57, 58–59 (N.Y. S.Ct. App. Div. 1966) (refusal to sign arrest warrant because of concern for burden on taxpayers).

To deny that which an application states based on a stereotypical view of what men generally do fairly defines extrajudicial bias. To conduct online research, to say nothing of improperly noticing facts, compounds the proof of extrajudicial bias. This is all to say, the Magistrate was not impartial.

In the 2023 matter, Magistrate Hanson asked if the defendant was a "wetback? An illegal?" or if he had not committed other crimes, like identity theft. Compl. (7/19/23) Binder p. 3. The Commission found this raised concerns of bias or discrimination. Appl. JQC No. 23-132 at 3.

"Wetback," as few would contest, is an offensive noun "used as an insulting and contemptuous term for a Mexican who enters the U.S. illegally." https://www.merriam-webster.com/dictionary/wetback. The Iowa Supreme Court has uncontroversially frowned on "inappropriate and unnecessary characterizations" of litigants. *In re Jenkins*, 503 N.W.2d at 426. Elsewhere, numerous state supreme courts have had little difficulty finding a violation of judicial canons in derogatory racial, sexual, or ethnically insensitive remarks. *See, e.g.*, *In re Mulroy*, 709 N.E.2d 464, 465–66 (N.Y. Ct. App. 2000) ("derogatory racial remarks about a crime victim"); *In re Schiff*, 635 N.E.2d 286, 286 (N.Y. Ct. App. 1994) ("inappropriate and derogatory remarks about certain ethnic groups"); *In re Brown*, 907 A.2d 684, 688 (Pa. Ct. Jud. Disc. 2006) ("racially and

ethnically insensitive terms"); *In re Hutchins*, 661 S.E.2d 343, 348 (S.C. 2008) (magistrate used racial epithets that "clearly evinced a bigoted animus").

A prosecutor could not disparage a person, much less a defendant, in a manner half as pejoratively. *See State v. Graves*, 668 N.W.2d 860, 875–76 (Iowa 2003) (reversing conviction where prosecutor argued to jury the defendant was "lying"). The Court rightly has determined such behavior runs counter to a prosecutor's duty to do justice. A Magistrate cannot say worse without it doubly injuring perceptions of fairness and impartiality in the judiciary.

Considering the two events, the Commission correctly found the Magistrate's actions reflected adversely on the judiciary and violated Rule 51:1.2.

B. Rule 51:2.3 prohibits actions or statements that evince bias or prejudice. The uncontested facts show Magistrate Hanson violated this rule.

The second Canon of judicial conduct states, "A judge shall perform the duties of judicial office impartially, competently, and diligently." Rule 51:2.3(A) and (B) therefore provide:

> (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

> (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

Rule 51:2.3(A), (B).

A judge who manifests bias or prejudice in a proceeding impairs the fairness of that proceeding and brings the judiciary into disrepute. *Id.* cmt. 1. Like the comments to Rule 51:1.2, comments to this rule provide a yardstick by which to measure conduct:

> Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; insensitive statements about crimes against women; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

Id. cmt. 2.

Magistrate Hanson's conduct violated Rule 51:2.3(A) and (B). The comments to the rule include the very things the Magistrate did: use of

"slurs," "negative stereotyping," and "connections between race, ethnicity, or nationality and crime." *Id.* At the risk of gilding the lily, this Court and others have found such conduct runs afoul of the Canon that this rule supports. *In re Jenkins*, 503 N.W.2d at 426; *see, e.g.*, *In re Removal of a Chief Judge*, 592 So.2d 671, 672 (Fla. 1992) (published remarks endorsing stereotypes violates Canon 2); *In re Stearns*, 645 P.2d 99, 99 (Cal. 1982) (censuring judge who made racially stereotypical remarks in chambers). The Magistrate's conduct brought the judiciary into disrepute, as the unrefuted and irrefutable convincing preponderance of the evidence shows.

The denial of the search warrant traded on numerous sexual stereotypes. Order Giving Rise to Complaint, JQC 23-132, Denial of Request for Arrest Warrant at 5–6. It did so while misapplying the law, confusing the proof necessary to convict for "probable cause." *Id.* at 6. The Magistrate's later in-court behavior certainly left the prosecuting student intern "extremely uncomfortable" and at a loss for what to do. Compl. (7/19/23), Binder p. 3–4. Deliberate, in court, and in writing, the violations were substantial. *See In re Dean*, 855 N.W.2d 186, 189 (Iowa 2014) (requiring violations of rules be "substantial").

C. Suspension and education offer appropriate remedial discipline.

The Commission recommends a 90-day, unpaid suspension along with anger management and bias training. *See* Iowa Code § 602.2106 (Commission to make application to the Supreme Court for discipline); R. Proc. JQC 52.24 (Commission "shall" dismiss complaint or make application to the Supreme Court for discipline); *In re Carstensen*, 316 N.W.2d at 892 ("The Commission has express authority to recommend that a judge be disciplined."). In deciding appropriate discipline, decision-makers consider the following non-exhaustive list of factors:

> whether the misconduct is an isolated instance or evidenced a pattern of [mis]conduct; (b) the nature, extent and frequency of occurrence of the acts of misconduct; (c) whether the misconduct occurred in or out of the courtroom; (d) whether the misconduct occurred in the judge's official capacity or in his [or her] private life; (e) whether the judge has acknowledged or recognized that the acts occurred; (f) whether the judge has evidenced an effort to change or modify his [or her] conduct; (g) the length of service on the bench; (h) whether there have been prior complaints about this judge; (i) the effect the misconduct has upon the integrity of and respect for the judiciary; and (j) the extent to which the judge exploited his [or her] position to satisfy [any] personal desires.

In re McCormick, 639 N.W.2d 12, 16 (Iowa 2002) (quoting *In re Deming*, 736 P.2d 639, 659 (Wash. 1987)).

The Court may also look to both attorney and judicial disciplinary cases. *In re Krull*, 860 N.W.2d 38, 43 (Iowa 2015). But a judge is held to a higher standard than an attorney. *Id.* (quoting *In re Gerard*, 631 N.W.2d 271, 277 (Iowa 2001)). The Court has explained in attorney discipline cases that there is no standard for a particular type of misconduct. *Iowa S.Ct. Atty. Disc. Bd. v. Neff*, 5 N.W.3d 296, 314 (Iowa 2024). The circumstances of each case drive the appropriate response. *Id.*

The Commission compared this case to *In re Jenkins*. There, the judge received a public reprimand for ten instances over thirteen years where he would make degrading remarks. *In re Jenkins*, 503 N.W.2d at 426. But, while there were more instances, Jenkin's statements were not so sexually- or racially-charged as here. Neither—arguably—did Jenkin's actions lead to a failure of prosecution as apparently occurred here in 2022.

To underscore the seriousness the Commission attaches to Magistrate Hanson's conduct, it cited *In re Goodfarb*, 880 P.2d 620, 623 (Ariz. 1994). There, the judge referred to a postconviction relief applicant by a racial epithet in chambers with counsel. *In re Goodfarb*, 880 P.2d at 621. He resisted allowing a record on his statement, suggested he spoke in jest, and

was being sarcastic about the applicant's *Batson v. Kentucky*[1] claim. *Id.* The judge had earlier been sanctioned for using profanity in the courtroom. *Id.*

The Arizona Supreme Court agreed with its judicial qualifications commission that a suspension—not censure—was warranted. *Id.* at 623. While mitigating factors existed, the actions occurred in public. *Id.* Another judge had been suspended for a year following a criminal offense that occurred off the bench; this matter occurred in the performance of judicial duties. This judge did have a prior disciplinary matter (and Magistrate Hanson does not). *Id.* The commission there recommended a three-month suspension with behavioral counseling. *Id.* The judge had decided not to continue with his term, which still had six months. *Id.* So, counseling was likely moot, except as to how it might benefit the judge personally. *Id.* And in the end, the Court concluded:

> We are of the view that this case presents a question more of judgment and behavior than of language. The use of such language during the course of judicial proceedings is so debilitating to the administration of justice that we think the public, and the public's perception of justice will be better served by

[1] *Batson v. Kentucky*, 476 U.S. 79 (1986) concerns a claim the jury was unrepresentative, often due to purposefully discriminatory peremptory strikes.

> suspending Judge Goodfarb for the balance of his remaining term.

Id.

One member of the Arizona Supreme Court concurred to say that removal for this kind of behavior should remain on the table. *Id.* (Moeller, V.C.J., specially concurring). Other state supreme courts have removed judges for such behavior (though usually involving more instances of it). *See, e.g.*, *In re Mulroy*, 709 N.E.2d at 465-66; *In re Schiff*, 635 N.E.2d at 286.

The Commission does not recommend removal here. It recommends a 90-day suspension and anger and bias training. Afterall, this is the magistrate's first brush with a judicial ethics complaint. But the behavior is corrosive to judicial integrity. Myths about sex-assault victims pervade society. *See* Tyler J. Buller, *Fighting Rape Culture with Noncorroboration Instructions*, 53 Tulsa L. Rev. 1, 2–3 (2017) ("The research shows that myths about sex-assault victims are pervasive, continually reinforced by rape culture and false stereotypes."). A magistrate deciding whether to issue a warrant based on them and not the record is inconsistent with their judicial duty.

Some members of this Court have cautioned against trading on charged topics such as immigration. *See State v. Booker*, 989 N.W.2d 621,

636 (Iowa 2023) (Mansfield, J. concurring) (in review of *Batson* challenge, writing, "What's next? In a case with a Mexican-American defendant, will the prosecutor be able to ask whether a prospective juror supports higher levels of immigration on our southern border? Our country is polarized enough without a voir dire process threatening to make it more so."). Using a slur associated with illegal immigration, even suggesting the defendant might have committed crimes related to illegal immigration, injects politics and racial animus into the courtroom. Propagating outside-the-record tropes invites cultural battles best left outside the courtroom.

So. Magistrate Hanson has no other ethics matters in his 36-year professional history. There are two instances of impropriety. But they are serious. And they occurred within six months of joining the bench and within twelve months of each other. They occurred in open court while he presided or in a writing ruling. Magistrate Hanson admitted to the 2022 ruling but passed it off as a fit of anger. The ruling's length suggests enough time should have allowed the fit to pass. He did not recognize it as wrong below. He neither refuted the comments he made in 2023, nor acknowledged they would be improper if anyone else said them. The record gives no indication Magistrate Hanson appreciates a need to modify his conduct in court.

Accordingly, the record shows by a convincing preponderance of the evidence that Magistrate Hanson violated Rules 51:1.2 and 52:2.3(A) and (B). And it shows a need for substantial discipline and education.

CONCLUSION

The Commission respectfully recommends the Court discipline Magistrate Hanson by imposing a 90-day suspension without pay and ordering him to complete anger management and bias training.

Respectfully submitted,

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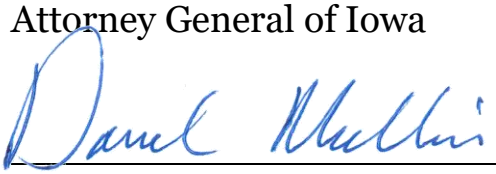

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CERTIFICATE OF COMPLIANCE

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