STATE OF MICHIGAN 44TH CIRCUIT COURT JUDICIAL CIRCUIT LIVINGSTON	PROOF OF SERVICE FOR PARTY NOTIFICATION	CASE NO. 2025 0000000392-AS

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Judge: SUSAN LONGSWORTH

Date: WEDNESDAY MARCH 19, 2025

Plaintiff/Petitioner		Defendant/Respondent
TYRONE TOWNSHIP PLANNING COMMISSION	v	

SEE ENCLOSED OPINION AND ORDER DATED 3/18/2025.

CERTIFICATE OF MAILING

The following parties were served by e-mail (MCR 2.107(C)(4)):

Name	Complete address of service
CHARLES NICHOLAS CURCIO	NCURCIO@CURCIOFIRM.COM
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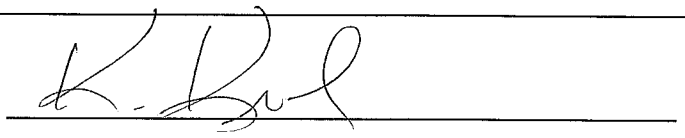
03/19/2025
Date



STATE OF MICHIGAN

IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

In re CHRIS ROPETA, in his capacity as a member of the TYRONE TOWNSHIP PLANNING COMMISSION.

Case No. 25-392-AS
Hon. Susan Longsworth

_____/

OPINION AND ORDER

At a session of Court held in the Courthouse in the City of Brighton, County of Livingston, State of Michigan, on

March 18, 2025

This matter is before the Court on the Verified Complaint of Chris Ropeta, in his capacity as a member of the Tyrone Township Planning Commission, and the Order to Show Cause issued February 27, 2025.

I. FACTS AND PROCEEDINGS

Plaintiff, Chris Ropeta, filed the instant action on February 24, 2025. The Verified Complaint alleges that Tyrone Township is a Michigan general law township in Livingston County, organized pursuant to the Revised Statutes of 1846. Plaintiff is a resident of Tyrone Township. He was elected as a Trustee on the Tyrone Township Board of Trustees (the "Board of Trustees") during the November 2024 election. On December 3, 2024, he was appointed to serve on the Tyrone Township Planning Commission (the "Planning Commission") for a three-year term.

Plaintiff alleges that during a meeting held on February 18, 2025, the Board of Trustees voted by a margin of 4 to 3 to charge him with misfeasance and malfeasance in office, and to set a public hearing to remove him from the Planning Commission. The

approved minutes of the February 18 meeting indicate that the charges against Mr. Ropeta were for the following reasons[1]:

> Trustee Ropeta conspired to conceive and actively participated in drafting a letter to the Planning Commission members informing them that the "Township Board" was charging them with nonfeasance and requested they appear before the Board for a public hearing to explain their position;
>
> Trustee Ropeta conducted township business in the name of the Township Board and thereby misrepresented the Board and its authority;
>
> Language written in the letter directly stated that the "Township Board" made a collective decision to charge planning commissioners with nonfeasance, even though there was never a publicly held meeting of the township board, quorum present, or vote taken;
>
> Trustee Ropeta was present upon letter delivery, knowing the letter held false statements that would adversely impact fellow planning commissioners.

Plaintiff asserts that the letters referenced in the motion were dated December 10, 2024, and were delivered to various members of the Planning Commission by Township Supervisor Greg Carnes. In pertinent part, the letters indicated that the recipient was being charged with nonfeasance for attending less than 80% of the meetings of the Planning Commission held in 2024, and they directed the recipient to appear at a hearing on December 17 to show cause why they should not be removed. The letters were signed only by Supervisor Carnes, not by Mr. Ropeta. Further, Mr. Carnes rescinded the letters shortly after sending them, and no removal hearings were held.

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[1] In its response to the Verified Complaint, the Board of Trustees asserts that charges of malfeasance and misfeasance against Plaintiff were "approved" by the Board on February 18, 2025. However, the document attached as Exhibit A, entitled "Tyrone Township Charge of Malfeasance and Misfeasance by Planning Commission Member, Chris Ropeta" is unsigned, and the date of the public hearing is blank. At oral argument, counsel for the Board of Trustees initially represented that the charges were signed by the Tyrone Township Clerk, but then later admitted that the charges were not signed. Counsel for Plaintiff indicated that his client had never seen the formal charges until they were attached as an exhibit to the Board of Trustees' brief.

In his Verified Complaint, Plaintiff alleges that the charges against him are legally deficient, and asks the Court to enter an order of Superintending Control on or before March 18, 2025 (one week before the likely date of the removal hearing) or, alternatively, set a show cause hearing for a date on or before March 18 to determine whether an order of superintending control should be issued.

On February 27, 2025, the Court issued an Order to Show Cause Regarding Request for Superintending Control, directing the Tyrone Township Board of Trustees to appear and show cause why an order of superintending control should not issue as requested in the Verified Complaint. The parties appeared on March 18, 2025 and the Court heard argument of counsel.

II. LEGAL STANDARDS

Superintending control is an extraordinary remedy generally limited to determining whether a lower court exceeded its jurisdiction, acted in a manner inconsistent with its jurisdiction, or failed to proceed according to law. *In re Credit Acceptance Corp*, 273 Mich App 594, 598; 733 NW2d 65 (2007). For superintending control to lie, the plaintiff must establish that the defendant has failed to perform a clear legal duty and that plaintiff is otherwise without an adequate legal remedy. *Id.*; MCR 3.302(B).

By statute, a circuit court "has a general superintending control over all inferior courts and tribunals, subject to supreme court rule." MCL 600.615. "The circuit court has superintending or supervisory control power over an inferior tribunal when the former has authority to review the actions of the latter." *Barham v WCAB*, 184 Mich App 121, 129; 457 NW2d 349 (1990) (citation omitted). Thus, a complaint for superintending

control may be filed to determine whether an inferior tribunal, e.g., a city council, exceeded its jurisdiction and acted according to the law. *Nichols v City of Fraser*, unpublished opinion per curiam of the Court of Appeals, issued Jan. 15, 2019 (Docket No. 341699).

III. ANALYSIS

A. Plaintiff's Arguments

In the Verified Complaint, Plaintiff asserts that under the Michigan Planning Enabling Act, the "legislative body may remove a member of the planning commission for misfeasance, malfeasance, or nonfeasance in office on written charges and after a public hearing." MCL 125.3815(9).[2]

Plaintiff argues that the charges against him are legally deficient in at least three aspects. In other words, the charges do not constitute adequate grounds for removal from the Planning Commission even if the Township Board is able to prove all the facts alleged.

First, the charges are replete with conclusory statements that do not provide sufficient detail to enable Plaintiff to reasonably respond. See *Dillon v Lapeer State Home & Training Sch*, 364 Mich 1, 23; 110 NW2d 588 (1961) ("A general statement so obscure as "neglect of duty," "political activity" or similar generalities would be insufficient" under a statute that requires only general notice of the charges against an officer, let alone a statute requiring specific notice) (citation omitted). The charges allege that Plaintiff "conspired to conceive" the letters that Mr. Carnes sent to the Planning Commissioners who had attended less than 80% of the meetings in the prior year. This

[2] The Michigan Planning Enabling Act defines "legislative body" as "the county board of commissioners of a county, the board of trustees of a township, or the council or other elected governing body of a city or village." MCL 125.3803(e).

language does not adequately define Plaintiff's alleged role in the incident. The charges further allege that Plaintiff knew that "the letter contained false statements" without specifying what statements were false. The charges also fail to specify what "adverse impacts" were caused by Plaintiff's alleged actions.

Second, the charges fail to allege any misconduct in Plaintiff's capacity as a Planning Commissioner, as required for removal under MCL 125.3815(9). The Michigan Supreme Court has held that "[t]he misconduct which will warrant the removal of an officer must be such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it is necessary to separate the character of the man from the character of the office." *Wilson v Council of City of Highland Park*, 284 Mich 96, 98; 278 NW 778 (1938). To warrant removal, the alleged misconduct must relate to the duties of the office from which removal is sought. Here, the charges allege actions that Plaintiff took in his capacity as a Township Board member – not in his official capacity as a Planning Commissioner. Nothing in the charges suggests that Plaintiff failed to perform his Planning Commission duties or engaged in misconduct while acting as a Planning Commissioner. To the contrary, the alleged conduct – addressing attendance issues of Planning Commissioners – falls squarely within the Township Board's responsibilities under MCL 125.3815(9), which empowers the Board to remove Planning Commissioners for nonfeasance. If Plaintiff's conduct as a Township Board member was improper, the appropriate remedies are removal by the governor under MCL 168.369 or censure by the Township Board. Indeed, the Township Board has already censured Plaintiff, in his capacity as Township Board member, for the same conduct on which these charges are based.

Third, the alleged conduct, even if proven, does not constitute malfeasance or misfeasance warranting removal from office. Malfeasance and misfeasance are categories of misconduct in office, which requires "intentional or purposeful misbehavior or wrongful conduct pertaining to the requirements and duties of office by an officer." *People v Coutu*, 235 Mich App 695, 706; 599 NW2d 556 (1999). Malfeasance is "the doing of a wrongful act", while misfeasance is "the doing of a lawful act in a wrongful manner". *Id.* at 705-706. Here, the charges allege only that Plaintiff participated in an attempt to address Planning Commissioner attendance issues. There is no allegation of corrupt behavior or intentional wrongdoing.

Plaintiff asks the Court to issue an order of superintending control dismissing the charges against him and prohibiting the Township Board from conducting the removal hearing. He asks the Court to resolve the matter on an expedited basis, as permitted by MCR 3.302(E)(3)(b), because the removal hearing is likely to be held on March 25, 2025.

B. The Board of Trustees' Arguments

In response, the Board of Trustees argues that Plaintiff is not entitled to an order for superintending control, and asks the Court to dismiss the Verified Complaint under MCR 3.302(E)(3)(a)(iii).

First, Plaintiff has no standing to bring this action for superintending control. a party seeking an order for superintending control must still have standing to bring the action. *Beer v City of Fraser Civil Serv Comm*, 127 Mich App 239, 243; 338 NW2d 197 (1983). "A party lacks standing to bring a complaint for superintending control where plaintiff has shown no facts whereby it was injured." *Id.* Plaintiff must show an actual injury and not one that is "conjectural or hypothetical." *MOSES, Inc v SEMCOG*, 270

Mich App 401, 413; 716 NW2d 278 (2006). Here, Plaintiff has not shown that he has an actual injury. The only injury alleged in the complaint are the *potential* "significant effort and expense of preparing a defense against the charges" against Plaintiff as a result of the upcoming Board hearing. These are completely hypothetical expenses, and Plaintiff's complaint has no allegations of how he has been injured *now* by the *future* hearing.

Second, Plaintiff is not entitled to superintending control because he has not alleged that the Board of Trustees has failed to perform any legal duty, and he has other remedies available at law after the removal hearing. Plaintiff must show both that the Board of Trustees "failed to perform a clear legal duty *and* the absence of an adequate legal remedy." *Recorder's Court Bar Ass'n v Wayne Circuit Court*, 443 Mich 110, 134; 503 NW2d 885 (1993). Plaintiff has not met either of these elements. First, there was no failure to perform a clear legal duty. Plaintiff acknowledges that the Planning Commission proceedings are authorized by statute. The Planning Commission "may remove a member of the planning commission for misfeasance, malfeasance, or nonfeasance in office on written charges and *after a public hearing*." MCL 125.3815(9) (emphasis added). Under the plain language of the statute, there are grounds to create written charges and hold a public hearing on Plaintiff's potential removal. He has made no allegation that the Board of Trustees or the Planning Commission is *failing to perform a legal duty* when there is statutory authorization. Further, Plaintiff has an adequate remedy at law after the hearing. Michigan caselaw is clear that a removed person may seek superintending control *after the removal has occurred.* Plaintiff has not shown any reason why she should be allowed to skip the line when his legal remedy comes later. He

has not discussed the elements required for superintending control and the elements have not been met.

Third, the charges against Plaintiff are adequate and supported by substantial evidence. Plaintiff alleges that the charges against him are insufficient, conclusory, and do not warrant his removal from the Planning Commission. But the formal written charges tell a different story.[3] The charges allege that Plaintiff "worked and consulted with" Supervisor Greg Carnes and Trustee Dean Haase to draft "a letter naming charges of non-feasance". The document "falsely and misleadingly" claimed to be from the Board of Trustees, charging Planning Commission members of nonfeasance. The Michigan Supreme Court has held that similar charges were sufficient. In *McNabb v Bd of Supervisors of Delta Co*, 319 Mich 261, 263; 29 NW2d 684 (1947), the charges against the official stated:

> That Commissioner Marcus McNabb has been guilty of violation of law and public confidence in that he has used property belonging to the Delta county road commission for his personal use, in the furtherance of his own private business as surveyor to the expense of the county and the detriment of its citizens.

In ruling against the removed commissioner, the Court determined that the commissioner "was specifically charged." *Id.* at 264. Here, the charges against Plaintiff outline how he worked with others to create a false document, giving him ample notice of the charges ahead of the hearing later this month. He has shown no authority that this charging document is insufficient as written charges under MCL 125.3815(9). Plaintiff's complaint is an attempt to use the Court as a vehicle to dismiss the charges against him ahead of the

[3] Again, the charges attached to the Board of Trustees' response brief as Exhibit A are unsigned, do not indicate the date of the public hearing, and apparently had not been provided to Plaintiff before the filing of the response brief.

hearing. There is no means for a prehearing motion to dismiss charges for his removal in the manner that he is attempting.

Fourth, this case presents a political question, and the Court should not intervene. Plaintiff is asking this Court to intervene in the active process of another branch of government. Such a request is precluded by the political question doctrine. The Court of Appeals addressed the doctrine in *Wilkins v Gagliardi*, 219 Mich App 260, 265–266; 556 NW2d 171 (1996):

> Analysis of an issue under the political question doctrine, requires a three-part inquiry:
> (i) Does the issue involve resolution of questions committed by the text of the Constitution to a coordinate branch of Government? (ii) Would resolution of the question demand that a court move beyond areas of judicial expertise? (iii) Do prudential considerations [for maintaining respect between the three branches] counsel against judicial intervention? [citations and quotation marks omitted]

Here, all three elements are met. The resolution of this issue is a future hearing of a municipal body that is authorized under MCL 125.3815(9). The resolution of this issue, as Plaintiff would have it, asks the Court to move into the Board of Trustees and the Planning Commission's area of expertise; namely, their internal operations and statutorily authorized formulation of charges and hearings for potential removed members. Lastly, prudential considerations strongly counsel against judicial intervention – especially at this stage. Plaintiff has not shown any legal authority or reason for intervention *prior to a hearing.*

For all of these reasons, the Court should dismiss the action with prejudice.

C. The Court's Ruling

At this stage, Plaintiff has not shown that the Board of Trustees has failed to perform a clear legal duty and that he is otherwise without an adequate legal remedy. *In*

re Credit Acceptance Corp, 273 Mich App at 598.[4] There has not been a failure to perform a clear legal duty. The Planning Commission "may remove a member of the planning commission for misfeasance, malfeasance, or nonfeasance in office on written charges and after a public hearing." MCL 125.3815(9). Under the plain language of the statute, the Board of Trustees has the authority to create written charges and hold a public hearing on Plaintiff's potential removal. Further, Plaintiff has an adequate remedy at law after the hearing. Michigan caselaw is clear that a removed person may seek superintending control *after the removal has occurred.* In short, Plaintiff has not shown he is entitled to the "extraordinary remedy" of superintending control, which is generally limited to determining whether a lower court exceeded its jurisdiction, acted in a manner inconsistent with its jurisdiction, or failed to proceed according to law. *In re Credit Acceptance Corp*, 273 Mich App at 598.

WHEREFORE, IT IS HEREBY ORDERED that Plaintiff is not entitled to an order for superintending control, and the Verified Complaint is dismissed.[5]

This Order resolves the last pending claim and closes the case.

IT IS SO ORDERED.

3/18/2025

Susan Longsworth (P65575)
Circuit Judge

[4] Because the Court finds that dismissal is warranted on this basis, the Court does not address the other arguments raised by the Board of Trustees.

[5] Nothing in the Court's ruling precludes Plaintiff from seeking relief from the Court after he is removed, if he is removed.