



## **BACKGROUND**

1. Respondent was admitted to the Indiana Bar on May 12, 2006.
2. At all relevant times to the Charges, from 2013 through 2018, Respondent practiced law as a solo practitioner in South Bend, Indiana.
3. Since January 1, 2019, Respondent has served as Judge of St. Joseph Probate Court located in South Bend, Indiana. As St. Joseph Probate Court Judge, Respondent also is responsible for overseeing the St. Joseph Probate Court Juvenile Justice Center in South Bend, Indiana, also known as the Thomas N. Frederick Juvenile Justice Center (“Juvenile Justice Center” or “JJC”).

## **SUMMARY OF CHARGES**

4. These Charges allege misconduct by Respondent in his role as an attorney and later as a judge during the course of his dealings with Levering Russell Cartwright (“Cartwright”) and as a fiduciary for a charitable trust.
5. Counts 1 and 2 of the Charges allege that Respondent, while representing Cartwright, had a conflict of interest when he mixed his role as attorney for Cartwright with his roles as power of attorney for Cartwright and later beneficiary of Cartwright’s various trusts and bank accounts. During his representation of Cartwright, Respondent also engaged in an improper business transaction with Cartwright by lending money to Cartwright and receiving an interest in Cartwright’s real estate.
6. Count 3 of the Charges alleges that after Respondent became a judge, he improperly continued his fiduciary relationships with Cartwright by remaining his power of attorney.
7. Counts 4, 5, and 6 of the Charges allege that Respondent engaged in improper extrajudicial activities that undermined his independence, integrity, and impartiality as

a judge, engaged in willful misconduct, and abused the prestige of judicial office to advance the private interests of another. He did so by utilizing his role as the sole trustee of the Cartwright Foundation to donate funds to the St. Joseph Probate Court and Juvenile Justice Center for renovations and improvements in such a manner that the public would not be able to determine the source of funds and his familial relationship to businesses/owners who provided goods and services for the renovations and improvements. Respondent accomplished this plan by:

- a. Channeling funds from the charitable foundation to a local law firm, which then transferred the funds to a 501(c) organization previously created to assist with services, improvements, and updates for the St. Joseph Probate Court and Juvenile Justice Center;
  - b. Providing the law firm with specific instructions that the donations be kept anonymous but with directives to the 501(c) on how the donations were to be spent; and
  - c. Engaging in discussions and entering into no-bid agreements with businesses owned by a family member and/or others to provide goods and services for the probate court, utilizing money donated by the charitable foundation that Respondent controlled as a fiduciary.
8. Count 7 of the Charges alleges that Respondent failed to accurately report and/or failed to report required information on his Statements of Economic Interest.

## CARTWRIGHT'S FINANCIAL HISTORY

9. Cartwright's parents had substantial assets, and they provided for him for his projected lifetime through two irrevocable trusts in which Cartwright is the income beneficiary.
10. During his lifetime, Cartwright's father also created a 501(c) charitable foundation ("C Foundation").
11. In addition, prior to the formation of his professional relationship with Respondent, Cartwright created a revocable trust.
12. At the time Respondent began his legal representation of Cartwright and during all relevant periods described in the Charges, Cartwright had an interest in the trusts listed below.

### *Trusts Created by Cartwright's Parents*

13. Cartwright's father ("father") created a trust naming Cartwright as the beneficiary of the trust income during Cartwright's lifetime. After Cartwright's death, the principle is to be distributed in equal shares to Cartwright's two children. Father's trust was last known to have a value over \$10,000,000.
14. Cartwright's mother ("mother") created a trust naming Cartwright as the beneficiary of the trust income during Cartwright's lifetime. Like with his father's trust, the principle of mother's trust is to be distributed in equal shares to Cartwright's two children after Cartwright's death. Mother's trust was last known to have a value over \$1,000,000.
15. Combined, father's trust and mother's trust generated about \$350,000 to \$400,000 of income per year. The income from father's trust and mother's trust was deposited into Cartwright's bank account regularly.

*1993-2 Trust*

16. In the early 1990s, Cartwright created a revocable trust, known as the 1993-2 Trust. Cartwright was the settlor and sole trustee of this trust.
- a. Cartwright is the sole income beneficiary of the trust; and is free to keep the trust, liquidate it, and change its remainder beneficiaries.
  - b. At the time of Cartwright's death, the assets of the 1993-2 Trust will pass to whoever is named as the beneficiaries at the time.
  - c. The 1993-2 Trust is valued at over \$6,000,000. The assets of the 1993-2 Trust secure a loan of about \$1,700,000.
17. A local branch of a national bank ("the bank") managed the funds held in the 1993-2 Trust for many decades. In 2020, the bank received a request to transfer the 1993-2 Trust to another institution, a credit union in which Respondent maintained his personal funds.

*The C Foundation*

18. In 1961, Cartwright's father organized and initially funded the C Foundation, a nonprofit, private charitable organization. The C Foundation is organized under Illinois law and is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. The C Foundation is managed by the trustees with advice from outside advisors as needed.
- a. Cartwright was one of the trustees of the C Foundation for many years.
  - b. In 2015, at a time when Respondent was representing Cartwright on other legal matters, Respondent became a co-trustee with Cartwright, at Cartwright's request, and took on the responsibilities of managing the C Foundation.

- c. Later, in the fall of 2015, Cartwright resigned as co-trustee, leaving Respondent as the sole trustee of the C Foundation.
  - d. After Respondent began to serve as Judge of St. Joseph Probate Court on January 1, 2019, Respondent continued to serve as trustee of the C Foundation.
19. In 2020, the C Foundation had assets of \$1,347,895. The C Foundation distributed \$86,500 in grants in 2020; \$125,770 in 2019; \$67,600 in 2018; and \$66,600 in 2017.

### **FACTS GIVING RISE TO ATTORNEY MISCONDUCT CHARGES**

#### **Formation of Attorney-Client Relationship**

20. In 2013, Respondent's practice consisted primarily of criminal defense and juvenile matters.
21. At the time, Cartwright was seventy-three (73) years old and was seeking to dissolve his marriage from his second wife.
22. Respondent first met Cartwright in his capacity as an attorney and then again when Cartwright sought him out for representation in his pending dissolution matter.
23. In July 2013, Respondent appeared in the pending dissolution matter on behalf of Cartwright under Cause No. 71D06-1306-DR-000347.
24. On January 9, 2015, Respondent represented and filed on Cartwright's behalf with the trial court a mediated settlement agreement in the pending dissolution matter in Cause No. 71D06-1306-DR-000347.
- a. The settlement agreement called for actions to be performed by the parties that became highly contested and litigated after January 9, 2015.
  - b. Respondent continued to represent Cartwright in the contested litigation and post-dissolution matters for several years thereafter.

*Respondent's Conflict of Interest as an Attorney*

25. At the time Respondent began representing him, Cartwright had substantial financial assets valuing several million dollars and annual income of approximately \$350,000 as the beneficiary of a family trust.
26. Shortly after beginning representation of Cartwright, Respondent obtained physical custody of Cartwright's personal checking account checkbook and wrote checks to pay bills or other disbursements on behalf of Cartwright.
27. On October 15, 2014, Cartwright executed a power of attorney prepared by Respondent at his law office naming Respondent as Cartwright's attorney-in-fact.
28. The October 15, 2014 power of attorney granted Respondent broad powers, including but not limited to buying and selling trust property; transferring trust property; and exchanging trust property.
29. On February 20, 2015, Cartwright named Respondent a co-trustee of the C Foundation.
30. On March 18, 2015, Cartwright purchased a new construction, single family residence ("Mishawaka property") for \$249,900.
31. In 2015, Respondent made multiple loans over a period of time to his client, Cartwright, totaling approximately \$50,000.
  - a. Respondent did not prepare or provide any written documentation to Cartwright regarding the loans.
  - b. No terms of repayment of the loans or interest calculation were provided to Cartwright.

- c. No security for these loans was discussed or acquired at the time the loans to Cartwright initially were made.
  - d. Respondent did not advise Cartwright to seek independent legal advice regarding the loan transactions.
32. On August 12, 2015, Respondent became the beneficiary of Cartwright's revocable trust.
33. On October 13, 2015, Respondent prepared a quitclaim deed, signed by Cartwright, granting Respondent co-ownership, with right of survivorship, of the Mishawaka property.
- a. The quitclaim deed naming Respondent as co-owner of the Mishawaka property was intended as security against the loans Respondent made to Cartwright, representing security five times the loaned amount.
  - b. Shortly thereafter, the loans to Respondent were repaid in the form of stock transfers to Respondent. These stock transfers had a value in the amount of approximately \$60,000.
  - c. Respondent took no action at the time the loans were repaid to release the security until the Mishawaka property was sold in May 2017.
34. In April 2016, Cartwright named Respondent as a joint owner of Cartwright's personal checking account, with rights of survivorship.
35. In June 2016, Cartwright restated or amended his revocable trust to name Respondent as both beneficiary and successor trustee.
36. On January 18, 2018, at a time when Respondent was still representing Cartwright on various legal matters, Cartwright executed an updated power of attorney still naming



Respondent attorney-in-fact. On June 5, 2018, Cartwright restated or amended his revocable trust, again naming Respondent as residual beneficiary but also adding Respondent's spouse and children as contingent residual beneficiaries. Cartwright also named Respondent as successor trustee.

37. During the time that Respondent received an interest as a residual beneficiary of the revocable trust and as successor trustee, Respondent continued to act as Cartwright's attorney in Cause No. 71D06-1306-DR-000347.

38. Respondent did not file his motion to withdraw as counsel in Cartwright's divorce/post-divorce matter until December 20, 2018.

#### **FACTS GIVING RISE TO JUDICIAL MISCONDUCT CHARGES**

39. On January 10, 2018, Respondent filed a declaration of candidacy for Judge of the St. Joseph Probate Court.

40. Respondent was elected Judge of St. Joseph Probate Court on November 6, 2018 and took office around January 1, 2019.

#### **Remodeling Project**

41. Prior to his election as judge, Respondent decided that an additional courtroom at the JJC would be beneficial for use by the magistrate assigned to the probate court.

42. On February 6, 2019, Respondent attended a meeting of the board of directors of the Friends of the St. Joseph County Juvenile Justice Center ("Friends of the JJC"), a nonprofit organization that had been created shortly before 1997.

- a. The purpose of this meeting was to discuss potential available funds to support the JJC and initiatives for the youth who are serviced by the juvenile court.

- b. At the February 6, 2019 meeting, attorney Michael Misch was elected to the board of directors of Friends of the JJC.
  - c. During the meeting, Respondent and Michael Misch led a discussion about the building of a new courtroom with donated funds from a yet to be named foundation.
  - d. Unbeknownst to other members of the Friends of the JJC board (Michael Misch excluded), the “yet to be named foundation” was the C Foundation, for which Respondent was the sole trustee.
43. On February 22, 2019, Respondent, as the sole trustee of the C Foundation, signed a resolution authorizing the C Foundation to borrow funds.
- a. Respondent then submitted an application to the local chapter of a national bank to establish a line of credit for \$300,000, secured by the assets of the C Foundation.
  - b. The loan application to the bank indicated that the funds from the line of credit were to be used for a youth wing at the JJC.
44. The source of funding for the magistrate courtroom project was not disclosed to the County Commissioners, the County Council, or members of the Friends of the JJC (other than Michael Misch).
45. In March 2019, Respondent sought the services of a general contractor he knew to give an estimate regarding remodeling space in the JJC to provide the new courtroom.
46. On March 19, 2019, Respondent received a proposal-contract of \$97,286 from the contractor to complete the remodeling project.
47. Respondent did not seek bids from other contractors for the new courtroom project.

48. On April 10, 2019, to keep the source of the funding for the magistrate courtroom project unknown to the public, Respondent, using funds from the line of credit secured by the C Foundation, issued a check in the sum of \$100,000 from the C Foundation to the law firm in which Michael Misch was a partner (“law firm”).
49. The law firm deposited the \$100,000 into its attorney trust account.
50. On April 12, 2019, the law firm issued two checks from its trust account payable to the Friends of the JJC. One check was for \$95,000, and the second check was for \$5,000, representing the \$100,000 that Respondent had transferred from the C Foundation to the law firm.
51. The board of directors of the Friends of the JJC, at Respondent’s request, entered into an agreement with the contractor selected by Respondent for the remodeling project.
52. On April 16, 2019, the St. Joseph County Board of Commissioners met at a regularly-scheduled Commissioner meeting. At that meeting, the Commissioners approved an agreement with the Friends of the JJC to make improvements to the JJC. The Board of County Commissioners did not know the source of the funds to be used.
53. The contractor completed the magistrate courtroom project for less than the proposed amount. The total amount of the magistrate courtroom project was \$80,124, which was invoiced and dated September 30, 2019.

**Remodel of JJC Break Rooms**

54. In the spring of 2019, Respondent asked the owner of R & K Ceramic Tile, LLC (“R & K”) to remodel or refurbish three separate break rooms in the JJC.
55. The owner of R & K is Kenneth Cichowicz, Respondent’s father.

56. The funding for the breakroom project was supplied by the Friends of the JJC at the direction or request of Respondent.
57. No bids or estimates from other contractors were sought for the breakroom remodeling projects.
58. The Friends of the JJC issued checks to R & K for work or products supplied for the improvement to the JJC in a total amount of \$24,800. Friends of the JJC issued the following checks to R & K:
- a. June 4, 2019, in the amount of \$6,500;
  - b. December 13, 2019, in the amount of \$6,500;
  - c. February 12, 2020, in the amount of \$1,400;
  - d. March 20, 2020, in the amount of \$7,400;
  - e. April 24, 2020, in the amount of \$3,000, which was returned for insufficient funds. R&K received the additional \$3,000 on a later date.
59. There are no known publicly-available documents regarding the breakroom projects.

**Automobile Purchases**

60. In 2020, Respondent sought to purchase three automobiles for use by the Court Appointed Special Advocates program (“CASA”) affiliated with the juvenile court in St. Joseph County.
61. Respondent did not seek funding for the three automobiles from the County Commissioners or County Council. Rather, he used the line of credit secured by the assets of the C Foundation to purchase the automobiles in the manner described below to avoid disclosure of the source of the funds.

62. Using the C Foundation line of credit, on January 8, 2020, Respondent wrote a check from the account of the C Foundation to the law firm for \$60,000.

63. The law firm then deposited the \$60,000 into its attorney trust account and issued a check on its attorney trust account in the sum of \$60,000 payable to the Friends of the JJC.

64. The Friends of the JJC then issued funds in the sum of \$51,000 to Victory Auto, LLC (“Victory Auto”) for the purchase of the three automobiles.

65. The owner of Victory Auto is Kenneth Cichowicz (“Kenneth”), Respondent’s father.

66. Respondent planned with Kenneth to locate and purchase the three automobiles.

**Acting as a Fiduciary and Receiving Extrajudicial Compensation While Serving as Judge**

67. Upon taking office as Judge of St. Joseph Probate Court, Respondent continued to act as a fiduciary for Cartwright and as sole trustee of the C Foundation.

68. In 2018, Respondent acquired a 2019 Cadillac Escalade. The automobile was purchased subject to an automobile loan.

a. In 2019, funds derived from a trust in which Cartwright was the beneficiary were used to pay off the automobile loan for the 2019 Cadillac Escalade.

b. Respondent testified at a deposition on September 28, 2022, that the funds used to pay off the loan for the 2019 Cadillac Escalade were compensation for his transportation services for Cartwright.

69. In October 2019, Respondent became the beneficiary of a Cartwright Individual Retirement Account (“IRA”), which had a value of \$357,000. At the same time, Respondent’s spouse was named as contingent beneficiary of the IRA.

70. In December 2020, Respondent obtained a personal loan with a credit union to pay off a Cartwright debt owed to the bank in the amount of approximately \$1,700,000.

**Directive to the Bank to Transfer All Cartwright's Funds to Respondent**

71. In December 2020, Respondent communicated with a bank official at the bank holding Cartwright's funds regarding a directive to transfer all of Cartwright's assets to Respondent's personal financial account held at another financial institution. At the time, Cartwright's assets were more than \$6,000,000.

72. On December 2, 2020, Cartwright called a bank official at the bank to indicate that he wanted to transfer all his trust assets to Respondent.

73. On December 23, 2020, the bank received a direction letter and transfer instruction to transfer all trust assets held on behalf of Cartwright to Respondent's separate personal investment account.

**Statements of Economic Interest**

74. On January 10, 2018, Respondent, as a judicial candidate, filed a Statement of Economic Interest ("SEI") with the Indiana Commission on Judicial Qualifications.

- a. In the January 10, 2018 SEI, Respondent disclosed that he was a partial owner of Victory Auto.
- b. On January 8, 2018, Respondent signed the SEI and certified that the information in the SEI was true, accurate, and complete to the best of his knowledge and belief.
- c. On April 27, 2022, Respondent testified in a deposition that the statement regarding his partial ownership of Victory Auto was not true.

- d. Respondent did not indicate any ownership interest in Victory Auto on his 2019 SEI.
  - e. At no time has Respondent attempted to correct or update his 2018 SEI.
75. On his 2020 SEI, Respondent failed to publicly report extrajudicial compensation he received in the form of paying off a personal loan, as described in ¶ 68.
76. At no time has Respondent attempted to correct or update his 2020 SEI.

### **CHARGES**

The Commission incorporates the facts set out in ¶¶ 1-76 into the Charges below.

#### **COUNT 1**

By continuing to represent Cartwright after becoming Cartwright's power of attorney and the beneficiary of Cartwright's various trusts and bank accounts, Respondent violated Rule 1.7(a)(2) of the Rules of Professional Conduct, which prohibits a lawyer from representing a client if the representation involves a concurrent conflict of interest, including a personal interest of the lawyer, which creates a significant risk that the representation will be materially limited.

#### **COUNT 2**

By lending money to Cartwright and receiving an interest in Cartwright's real estate in October 2015, at a time when Respondent was serving as Cartwright's attorney, Respondent violated Rule 1.7(a)(2) of the Rules of Professional Conduct and Rule 1.8(a) of the Rules of Professional Conduct, which prohibits a lawyer from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security or other pecuniary interest adverse to a client unless certain conditions are met, which did not occur in this situation.

### **COUNT 3**

By continuing to serve as the power of attorney for Cartwright after Respondent was elected Judge of St. Joseph Probate Court, Respondent violated Rule 1.2 of the Code of Judicial Conduct, which requires a judge to act all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and to avoid impropriety and the appearance of impropriety; and Rule 3.8 of the Code of Judicial Conduct, which prohibits a judge from serving in a fiduciary position unless it is for the estate, trust, or person of a member of the judge's family.

### **COUNT 4**

By directing that funds from the C Foundation (in which Respondent served as sole trustee) be donated anonymously in 2019 and 2020 for the purpose of renovating the St. Joseph Probate Court and/or the St. Joseph Juvenile Justice Center and otherwise obscuring the source of the funding, Respondent violated Rules 1.2 and 3.1(C) of the Code of Judicial Conduct, which prohibits a judge from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality, and committed willful misconduct unrelated to office.

### **COUNT 5**

By directing that funds received from the Friends of the JJC (after an anonymous donation from the C Foundation) be used for tile services by a business owned and/or operated by Kenneth Cichowicz, a family member of Respondent, to renovate the St. Joseph Probate Court and St. Joseph Juvenile Justice Center, Respondent violated Rules 1.2 and 1.3 of the Code of Judicial Conduct, which prohibits a judge from abusing the prestige of judicial office to advance the private interests of another.



**COUNT 6**

By directing that funds received from the Friends of the JJC (after an anonymous donation from the C Foundation) be used to purchase automobiles for the St. Joseph CASA Program from a business owned by Kenneth Cichowicz, a family member of Respondent, Respondent violated Rules 1.2 and 1.3 of the Code of Judicial Conduct.

**COUNT 7**

By inaccurately reporting and/or failing to report information on his 2018 and 2020 Statements of Economic Interest, Respondent violated Rule 1.1 of the Code of Judicial Conduct, which requires a judge to comply with the law, including the Code of Judicial Conduct; Rule 1.2; and Rule 3.15(B) of the Code of Judicial Conduct, which requires a judge to publicly report certain information regarding compensation received for extrajudicial activities and ownership interests.

WHEREFORE, the Commission respectfully requests that, upon the filing of Respondent's Answer, the Indiana Supreme Court appoint three Masters to conduct a public hearing on the charges that Respondent committed judicial misconduct as alleged, and further prays that the Supreme Court find that Respondent committed misconduct and that it impose upon him the appropriate sanction.

Respectfully submitted,



February 7, 2023

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DATE

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**CERTIFICATE OF SERVICE**

I certify that a copy of this “Notice of the Institution of Formal Proceedings and Statement of Charges” was sent by certified mail, postage pre-paid and electronically, to Respondent, through counsel, at the following mailing and electronic addresses:

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February 7, 2023

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DATE



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