STATE OF MICHIGAN

BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

Hon. Theresa M. Brennan
53rd District Court
224 N. First Street
Brighton, MI 48116

_____/

Formal Complaint No. 99
Master: Hon. William J. Giovan

Lynn H. Helland P 32192
Examiner

Casimir J. Swastek P42767
Associate Examiner

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_____/

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EXAMINER'S MOTION TO AMEND COMPLAINT

The Examiner, by Lynn Helland and Casimir Swastek, asks the Master to amend the formal complaint in FC 99 to conform to the proofs introduced at the first phase of the hearing on the complaint and expected to be introduced at the second phase of the hearing. In support of this motion the Examiner states as follows:

1. On July 24, 2018, the Judicial Tenure Commission filed an amended formal complaint in FC 99.
2. The hearing on the formal complaint began October 1, 2018, and was suspended pending further proceedings on October 10, 2018.
3. The evidence introduced at the hearing established serious misconduct in addition to that charged in the amended formal complaint.
4. MCR 9.213 states in part: "The master, before the conclusion of the hearing, or the [Judicial Tenure Commission], before its determination, may allow or require amendments of the complaint or the answer. The complaint may be amended to conform to the proofs or to set forth additional facts, whether occurring before or after the commencement of the hearing."
5. The evidence at the hearing has established the following misconduct in addition to that charged in the amended formal complaint:
    a. Persistent failure to treat persons fairly or courteously, in violation of MCR 9.205(B)(1)(c), as demonstrated by testimony that respondent was unfair and discourteous to court employees, including Kristi Cox, Jessica Sharpe (then Yakel), Lisa Bove, Francine Zysk, and others; and that respondent was unfair and discourteous to lawyers and litigants, including but not limited to Carol Lathrop Roberts, Esq., and Bruce Sage, Esq., both of whom identified as having been treated

discourteously by respondent in the amended complaint, and Amy Krieg, Esq., and Margaret Kurtzweil, Esq.

b. Conduct that is clearly prejudicial to the administration of justice, in violation of MCR 9.205(B); conduct that consists of impropriety and the appearance of impropriety, in violation of Michigan Code of Judicial Conduct Canon 2(A); and conduct that showed disrespect for the law and undermined public confidence in the integrity of the judiciary, in violation of Canon 2(B). This conduct consisted of the following: as of December 6, 2016, respondent was the defendant in a divorce case and was the judge assigned to her own divorce case; on December 6, 2016, the plaintiff in the divorce case filed an ex parte motion to preserve evidence pertaining to the marriage, which motion would have to be decided by a judge other than respondent; that motion to preserve evidence applied to the data on respondent's cell phone, and respondent knew that the motion applied to the cell phone; that motion was still pending on December 8, 2016, and respondent knew it was still pending then; knowing that the motion to preserve evidence was pending, on December 8, 2016, respondent 1) instructed court employee Felica Milhouse to absent herself from her normal position in the courtroom in order to search online for the method of

deleting an account from respondent's cell phone, and 2) caused her cell phone to be restored to factory settings, thereby deleting all data from it.

c. False statements, in violation of MCR 9.205(B)(2) together with Michigan Rules of Professional Conduct 8.4(b), and in violation of Michigan Code of Judicial Conduct Canons 2(A) and 2(B). The following false statements are established by the evidence and are in addition to the false statements that are alleged in the amended formal complaint:

   i. On October 8-10, 2018, respondent testified during the hearing on the amended formal complaint. During her testimony she stated that on about December 1, 2016, Don Root caused her to believe that he had tapped her phone or hacked her text messages or her email accounts. Respondent further testified that this belief alarmed her and caused her to warn Mr. Root that it is a crime to hack into another person's private computer data. These statements were false, because 1) Mr. Root never gave respondent reason to believe he had gained secret access to her phone calls, text messages, or email accounts; and 2) respondent never warned Mr. Root about the criminal

consequences of accessing those accounts without the owner's permission. These false statements were material, because they purported to provide a rationale for respondent's decision, the following week, to delete data from her cell phone while it was subject to a motion to preserve evidence.

ii. During her divorce deposition on January 16, 2017, respondent testified that she first learned an ex parte motion had been filed against her when her lawyer so informed her. Exhibit 1-13 page 47 lines 18-24 and page 50 lines 9-12. This statement was false because Jeannine Pratt informed respondent of the ex parte motion on December 6, 2016, at the time Ms. Pratt asked respondent to sign an order disqualifying herself from her case. This false statement was material, in that it concealed the fact that respondent was aware that an ex parte motion was pending in the case at the time she refused to disqualify herself immediately, on December 6, 2016, when requested to do so by Jeannine Pratt.

iii. On December 6, 2016, at the time Jeannine Pratt presented respondent with a motion to disqualify herself from her divorce case, respondent informed Jeannine Pratt that she had not yet

spoken with her attorney. In January 2018 respondent stated to the Judicial Tenure Commission, under oath, that when she said those words to Ms. Pratt, she did not link them to her refusal to sign the disqualification order, but was merely noting that she had not yet spoken with her attorney. Exhibit 19 page 30 paragraph 56. In October 2017 respondent also stated to the Judicial Tenure Commission that she first spoke to her divorce attorney following Ms. Pratt's personal visit on the afternoon of December 6, 2016. Exhibit 16 page 23. These statements were false, in that as of the time respondent spoke with Ms. Pratt, respondent had spoken with her attorney at least twice, as shown by her telephone records that demonstrate a seventeen minute call with him on December 5, 2016, and a six minute call on the morning of December 6, 2016. Further, the December 6 morning call took place immediately after Ms. Pratt notified respondent of the ex parte motion, and less than three hours before Ms. Pratt asked respondent to sign the order disqualifying herself from her divorce case. These false statements were material, in that it would be clearly improper for respondent to refuse to sign the order of disqualification in

order to first talk with her attorney, and respondent's effort to separate her statement to Ms. Pratt that she would not sign the order from her statement that she had not spoken to her attorney was an effort to defeat the inference that her statement to Ms. Pratt supports a finding of misconduct. Further, respondent's statement to the Judicial Tenure Commission that she first spoke with her attorney *following* Ms. Pratt's visit is an effort to support her false characterization of her statement to Ms. Pratt as merely an observation that she had not spoken with her attorney, rather than an explanation why she would not immediately disqualify herself.

iv. On January 16, 2017, respondent testified in her divorce deposition that she told Jeannine Pratt she would sign the disqualification order the day after Ms. Pratt gave it to her on December 6, 2016, and that she was not ready to sign it when Ms. Pratt gave it to her because she was busy. Ex. 1-13 page 46 lines 16-18; page 52 lines 6-20. These statements are false, in that respondent never said these words to Ms. Pratt and respondent was not too busy to sign a disqualification order at the time Ms. Pratt requested that she do so. These false

statements are material, in that they concealed that respondent had actually communicated to Ms. Pratt that she would not sign the disqualification order until she spoke with her attorney.

v. On January 16, 2017, respondent testified in her divorce deposition that when she asked her staff for assistance in deleting information from her cell phone, she was only speaking "jokingly." Ex 1-13 page 59 line 6 to page 60 line 7. This testimony was false, in that respondent was not joking when she requested staff assistance with deleting information from her cell phone between December 6 and December 8, 2016. This false testimony was material, in that it concealed respondent's intent to obtain assistance with destroying evidence while a motion to preserve that very evidence was pending in her divorce case.

vi. On February 9, 2017, respondent testified in her divorce deposition that she did not request help with deleting messages from her cell phone. Exhibit 1-14 pages 205-207. This testimony was false, in that respondent asked her employee, Felica Milhouse, to help her delete messages from her cell phone on December 8, 2016. This false testimony was material,

in that it concealed that respondent had asked for assistance with destroying evidence while a motion to preserve that very evidence was pending in her divorce case.

vii. On February 9, 2017, respondent testified in her divorce deposition that she did not take any steps to delete data from, or to reset, her cell phone. Exhibit 1-14 pages 205-207. This testimony was false, in that respondent caused a technician to delete messages from her cell phone on December 8, 2016. This false testimony was material, in that it concealed that respondent had destroyed evidence while a motion to preserve that very evidence was pending in her divorce case.

viii. In April 2018 respondent informed the Judicial Tenure Commission, under oath and in the context of responding to an allegation that she had unreasonably delayed signing the order to disqualify herself from her divorce case, that although a motion to preserve evidence was pending, "[t]here was nothing to preserve." Respondent elaborated that her husband already had her phone records and she had admitted to having extramarital affairs. Exhibit 21 page 23 paragraph 156. This statement was false, because the contents of respondent's cell

phone were required to be preserved under the pending ex parte motion to preserve evidence; those contents were not encompassed within "phone records" possessed by respondent's husband; and those contents had potential relevance beyond whether they disclosed the mere existence of extramarital affairs. This false statement was material because it concealed that respondent had a motive to delete information from her phone before providing it to her husband, and concealed that she sought help with deleting data from her phone with intent to subvert the motion to preserve evidence, and concealed that she caused data to be deleted from her phone.

ix. In April 2018 respondent claimed to the Judicial Tenure Commission, under oath, that she had not texted with Sean Furlong during the Kowalski trial. Exhibit 21 page 3 paragraph 7. This statement was false, because respondent and Mr. Furlong texted 13 times during the Kowalski trial. It was material, in that it served to conceal the extent of respondent's improper communications with a witness during the Kowalski trial.

x. In October 2017 and January, April, and August 2018, respondent claimed to the Judicial Tenure Commission, under oath, that she rarely handled search warrants at the bench and she routinely took all police officers into her office and closed the door with them. She further wrote that she did not treat one police officer differently than another. Exhibit 16 pages 14, 18; Exhibit 19 page 16 paragraph 13.d and page 26 paragraph 33; Exhibit 21 page 2 paragraph 4h and page 7 paragraph 14f; Exhibit 21 page 9 paragraph 27k and page 10 paragraph 28g; Exhibit 33 paragraphs 5e and 29. These statements were false, because respondent did not routinely take police officers other than Mr. Furlong and Mr. Corriveau into her office and close the door. These false statements were material, because they concealed that respondent had made a false statement during the hearing on the motion to disqualify her just prior to the Kowalski trial, to the effect that she routinely treated police officers as Exhibit 1-9 alleged she had treated Mr. Corriveau. These false statements also attempted to conceal a significant indicium of how special was her friendship with Mr. Corriveau and Mr. Furlong.

xi. In October 2017 and January and April 2018, respondent informed the Judicial Tenure Commission, under oath, that she socialized with Sean Furlong "because" she was socializing with Shawn Ryan. Exhibit 16 page 9; Exhibit 19 page 10 paragraph 5.I.c; Exhibit 19 page 11 paragraph 5.I.k. Respondent also informed the Judicial Tenure Commission, under oath, that Sean Furlong would come to Jameson's, the bar where respondent often met with Mr. Furlong and others, "because of his relationship with Shawn Ryan." Exhibit 16 page 9; Exhibit 19 page 10 paragraph 5.1.c.Respondent also wrote that it would have been "extremely rare" for her to see Mr. Furlong at Jameson's without Shawn Ryan being there. Exhibit 21 page 8 paragraph 25. These statements were false, because respondent often socialized with Mr. Furlong at Jameson's when Shawn Ryan was not present. These false statements were material, because they were part of an effort to make it appear that Sean Furlong was actually Shawn Ryan's close friend rather than respondent's close friend. Respondent's effort to make it appear that Sean Furlong was Shawn Ryan's friend rather than respondent's friend appears in various places throughout

Exhibits 16, 19, and 21. See Exhibit 16 at pages 9, 10, 12, 15; Exhibit 19 at page 9 paragraph 5.I.b, page 10 paragraphs 5.I.c, 5.I.e and 5.I.h, page 11 paragraph 5.II.a, page 12 paragraphs 5.II.e, 5.II.g and 5.II.h, page 13 paragraph 5.II.i.ii, page 14 paragraphs 7, 8 and 10, page 17 paragraphs 1, 2 and 3, page 20 paragraph 21.(II).b, and page 23 paragraph 31 & 1.a, page 27 paragraph 37; Exhibit 21 at pages 1-2 paragraphs 4b-4e and 4g.

xii. In response to the question whether respondent had given University of Michigan football tickets to Mr. Furlong, respondent informed the Judicial Tenure Commission, under oath, that her husband had done that. Exhibit 16 page 11. This statement was misleading, because it was respondent who controlled giving the tickets to Mr. Furlong. This misleading statement was material because it attempted to minimize the relationship between respondent and Mr. Furlong, and to instead attribute a significant indication of that relationship to respondent's husband.

xiii. In January 2017 Jessica Sharpe testified during a deposition taken in respondent's divorce that respondent had Ms. Sharpe stain respondent's deck while Ms. Sharpe was being paid by

Livingston County. A few weeks later, on February 9, 2017, respondent testified during her own divorce deposition that she was unaware Jessica Sharpe had worked to stain her deck while Ms. Sharpe was being paid to work for Livingston County. Exhibit 1-14 page 133 line 25 to page 134 line 10. Respondent reiterated that same conclusion in statements under oath to the Judicial Tenure Commission in October 2017 and January and April, 2018. Exhibit 16 page 53; Exhibit 19 pages 68-69 paragraph 164.a; Exhibit 21 pages 51-52 paragraph 326a. On February 9, 2017, respondent testified during her divorce deposition that she did not have Jessica Sharpe do personal tasks for her during Ms. Sharpe's workday. Exhibit 1-14 page 148 line 22 to page 149 line 17. In January and April 2018, respondent informed the Judicial Tenure Commission, under oath, that she did not ask her employees to do personal tasks for her while they were being paid by Livingston County and did not intend to do so. Exhibit 19 page 68 paragraph 161; Exhibit 21 page 47 paragraph 316; Exhibit 21 page 51 paragraph 325. These statements were false, because respondent was well aware that she had repeatedly instructed her employees,

including Jessica Sharpe, to attend to her personal business during times for which they were being paid by the county. Respondent's testimony during the deposition and the information she provided to the Judicial Tenure Commission were false, in that respondent had instructed or authorized Ms. Sharpe to stain the deck while she was being paid by the county. Respondent's false testimony was material, because it attempted to conceal that she had instructed her employees to do personal tasks for her while they were being paid by Livingston County.

xiv. On January 16 and February 9, 2017, respondent testified during her divorce deposition that Jessica Sharpe had done "really horrible things," which respondent identified as vomiting in one of respondent's beds, after which Ms. Sharpe had failed to apologize and never offered to pay for the damage she caused. Respondent further testified that it was not in Ms. Sharpe's "nature" to apologize. Exhibit 1-13 page 40 lines 13-14; Exhibit 1-14 page 169 line 7 through page 171 line 18. This testimony was false, because Ms. Sharpe did apologize and did offer to pay for the damage. This false statement was material,

because it was intended to discredit Ms. Sharpe, who had provided testimony unfavorable to respondent while being deposed in connection with respondent's divorce.

xv. In October 2017 and January and August 2018, respondent informed the Judicial Tenure Commission, under oath, that "[her employees] would take [her personal bills] from [her] desk and pay them." Exhibit 16 page 51; Exhibit 19 page 66 paragraph 159.a; Exhibit 21 page 49 paragraph 319 a thru c. Respondent claimed that Jessica Sharpe was respondent's employee who was "most insistent" about paying respondent's bills. Exhibit 16 page 52; Exhibit 19 page 70 paragraph 165.a; Exhibit 33 paragraph 245. Respondent's statements communicated that respondent's employees volunteered to pay respondent's bills. Respondent's statements were false, because Kristi Cox and Jessica Sharpe never volunteered to pay respondent's bills. Respondent's false statements were material, because they concealed the extent to which she directed her employees to do personal tasks for her.

xvi. In August 2018 respondent affirmed under oath that she denied the allegation in the amended formal complaint that in

connection with obtaining Ms. Cox's assistance with respondent's 2014 campaign for office, she had told Kristi Cox that Ms. Cox would be out of a job if respondent did not win the election. Respondent also said that it was actually Ms. Cox who had "jokingly" made this statement. Exhibit 33 paragraph 267. This affirmation was false, because it was respondent who made this statement to Ms. Cox. This false statement was material because it concealed the extent to which respondent pressured Ms. Cox to work on respondent's 2014 campaign.

xvii. In August 2018 respondent affirmed to the Judicial Tenure Commission that Kristi Cox would not have lost her job had respondent lost her 2014 campaign for reelection, because Ms. Cox was protected by a union contract. Exhibit 33 paragraph 267. This statement was false, because Ms. Cox had no such protection as respondent's employee. Respondent was aware that the statement was false because, as chief judge, she had negotiated the union contract from which Ms. Cox was excluded. This false statement was material because it purported to reinforce respondent's false assertion that she had

not told Ms. Cox that Ms. Cox would lose her position if respondent were not reelected.

Respectfully submitted,

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October 15, 2018