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

AMENDED COMPLAINT

The Michigan Judicial Tenure Commission ("Commission") files this complaint against Honorable Theresa M. Brennan ("respondent"), judge of the 53rd District Court, County of Livingston, State of Michigan. This action is taken pursuant to the authority of the Commission under Article 6, Section 30 of the Michigan Constitution of 1963, as amended, and MCR 9.200 *et seq.* The filing of this complaint has been authorized and directed by resolution of the Commission.

1. Respondent is, and at all material times was, a judge of the 53rd District Court, County of Livingston, State of Michigan.

2. As a judge, respondent was and is subject to all the duties and responsibilities imposed on her by the Michigan Supreme Court, and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205.

COUNT I- FAILURE TO DISCLOSE/DISQUALIFY

PEOPLE V KOWALSKI

A. *Kowalski pretrial proceedings- Sean Furlong*

3. Respondent was assigned as the presiding trial judge for *People v Jerome Walter Kowalski,* Case No. 08-17643-FC, on about March 9, 2009.

4. Michigan State Police Detective Sergeant Sean Furlong was identified as a significant witness for the prosecution, as he took the statement of defendant Kowalski.

5. After respondent was assigned to *Kowalski* she had substantial contact with Detective Sergeant Furlong, including but not limited to the following:

   a. Attending bars/restaurants for dinner and/or drinks

   b. Dinner and parties at her house

   c. Shopping trips

   d. Trips to her cottage

   e. Sporting events (including but not limited to University of Michigan football games, Detroit Tigers baseball games, and Detroit Red Wings hockey games)

   f. Concerts

   g. Golfing

   h. Detective Sergeant Furlong made multiple closed door visits to respondent's chambers.

6. On some of the occasions described above, respondent paid for or provided food, drinks, event tickets, or other expenses on behalf of Detective Sergeant Furlong.

7. While *Kowalski* was pending before respondent she had numerous private telephone conversations with Detective Sergeant Furlong, including 239 telephone calls between November 3, 2011, and December 28, 2012.

8. While *Kowalski* was pending before respondent she routinely exchanged texts with Detective Sergeant Furlong.

9. During pretrial proceedings in *Kowalski* that occurred prior to January 4, 2013, respondent did not disclose the existence and nature of her friendship with Detective Sergeant Furlong to the parties.

10. Respondent's failure to disclose the extent of her relationship with Detective Sergeant Furlong prevented Walter Piszczatowski, attorney for defendant Kowalski, and Pamela Maas, Assistant Prosecuting Attorney, from obtaining knowledge of relevant facts relating to that relationship.

B. *January 4, 2013- Kowalski pretrial conference*

11. Just before trial, on January 4, 2013, counsel in *Kowalski* requested to meet with respondent regarding the case.

12. In chambers, counsel advised respondent they had been notified, via a letter from local attorney Thomas Kizer dated January 4, 2013, that respondent

had failed to disclose "the relationship and extent thereof" between herself and Detective Sergeant Furlong.

13. Respondent was provided with a copy of Mr. Kizer's letter, which she read in chambers.

14. Respondent's relationship with Detective Sergeant Furlong was described in the letter as a "lengthy social relationship" including the fact that he had been a guest in her home.

15. In chambers on January 4, 2013, defense counsel Walter Piszczatowski advised respondent that his client wanted to raise the issue of her disqualification based on the material contained in Mr. Kizer's letter.

16. During the January 4 conference, counsel relied on respondent to fully and fairly disclose the nature of her relationship with Detective Sergeant Furlong.

17. During the January 4 conference in chambers, respondent stated to counsel that:

    a. She had occasionally gone drinking with Detective Sergeant Furlong in the same way that she did with assistant prosecuting attorneys; and

    b. Detective Sergeant Furlong had been to her house.

    c. In response to another allegation in the letter, respondent denied that she ever had a sexual relationship with Detective Sergeant Furlong.

18. Respondent failed to disclose the full extent and nature of her relationship with Detective Sergeant Furlong, by omitting significant social activities

respondent engaged in with him before or while *Kowalski* was pending, including but not limited to:

a. Regular visits to bars/restaurants

b. Shopping trips

c. Trips to her cottage

d. Attending sporting events together (including but not limited to University of Michigan football games, Detroit Tigers baseball games, and Detroit Red Wings hockey games)

e. Attending concerts together

f. Golfing together

g. On some of the social outings, respondent paid for food, drinks, event tickets, or other expenses on behalf of Detective Sergeant Furlong

h. While *Kowalski* was pending, respondent often spoke on the telephone with Detective Sergeant Furlong, including but not limited to 239 telephone calls between November 3, 2011, and December 28, 2012

i. While *Kowalski* was pending, respondent routinely exchanged texts with Detective Sergeant Furlong

j. Detective Sergeant Furlong made visits to respondent's chambers, typically with the door closed

19. Respondent's remarks in chambers on January 4 minimized the nature of her relationship with Detective Sergeant Furlong.

20. Respondent's conduct during the in-chambers conference served to conceal the true nature of her relationship with Detective Sergeant Furlong.

21. After the conference, respondent went on the record with counsel to address the defendant's motion for disqualification.

22. Mr. Piszczatowski made an oral motion for respondent's disqualification on the record.

23. During the hearing, and based on the disclosures respondent had made of her relationships with Detective Furlong, respondent asked Mr. Piszczatowski to confirm that there were "no particular or specific facts of impropriety." (Transcript, January 4, 2013, page 4, lines 12-13)

24. Mr. Piszczatowski replied that there were none "to his knowledge."

25. Respondent was the only person involved in the proceedings held on January 4, 2013, in chambers or on the record, who had knowledge of the extent of her contacts and friendship with Detective Sergeant Furlong that would reveal any of the "particular or specific facts of impropriety" she asked counsel to disavow.

26. While on the record, respondent made various additional statements regarding her relationship with Detective Sergeant Furlong.

27. Respondent stated:

    a. Respondent was "friends with the two witnesses," which included Detective Sergeant Furlong and Detective Chris Corriveau. (Transcript, January 4, 2013, page 6, lines 9-10)

b. Her relationships with Detective Sergeant Furlong and Detective Corriveau were "nothing more than a friendship." (Transcript, January 4, 2013, page 7, lines 6-7)

c. Respondent "shouldn't even have to say that on the record" referring to her assertion that the relationships with Detective Sergeant Furlong and Detective Corriveau were nothing more than a friendship. (Transcript, January 4, 2013, page 7, lines 6-8)

d. Respondent stated "there is one, only one really fact in the letter" that respondent would address, and that "[t]here [were] no other facts" relevant to her possible disqualification based on her relationships with Detective Sergeant Furlong and Detective Corriveau. (Transcript, January 4, 2013, page 8, lines 11-13)

e. The "one, only one really fact" that respondent described was that "one of the witnesses came into Court on November 14th and I stopped proceedings and we went back into chambers. He came in for a search warrant. That's what I do." (Transcript, January 4, 2013, page 8, lines 13-16) The witness to whom respondent referred was Detective Corriveau.

28. Respondent's treatment of Detective Corriveau, when he visited her courtroom, was comparable to the way she treated Detective Sergeant Furlong, but different than the way she reacted to visits by other police officers.

29. In particular, respondent met with Detective Sergeant Furlong and Detective Corriveau, but not other officers, in chambers behind closed doors, when they requested she issue warrants.

30. Respondent's statements on the record falsely described and minimized the nature of her contact with Detective Corriveau when he came into her chambers on November 14.

31. Further, respondent's statements on the record concealed that the treatment she accorded Detective Corriveau on November 14 was comparable to the way she treated Detective Sergeant Furlong on multiple occasions.

32. Respondent's statements on the record, both on their own and when considered with respondent's statements in chambers just prior to the hearing, created the false impression that respondent's relationship with Detective Sergeant Furlong was no different than a routine, occasionally social, relationship between a judge and prosecutors or other law enforcement personnel.

33. Respondent's statement on the record that her relationship with Detective Sergeant Furlong was nothing more than a friendship, made immediately after respondent had characterized the relationship, in chambers, as having occasionally gone drinking in the same way she did with assistant prosecuting attorneys and having had Detective Sergeant Furlong to her house, created a false impression of her relationship with Detective Sergeant Furlong, as respondent well knew.

34. Respondent's statement on the record that there were no facts, other than the facts she disclosed, that were relevant to her possible disqualification based on her relationship with Detective Sergeant Furlong was false, and respondent knew it to be false.

35. Respondent's statements on the record did not reveal the extent of her relationship with Detective Sergeant Furlong, but instead concealed that relationship.

36. Respondent's statements on the record did not make an accurate disclosure and description of relevant information concerning the nature of her relationships with Detective Sergeant Furlong and Detective Corriveau.

37. Respondent's statements on the record did not disclose, and instead concealed, the frequency, duration, and nature of her telephone and text communications with Detective Sergeant Furlong while the *Kowalski* case was pending.

38. Respondent's remarks on the record minimized the nature of her relationship with Detective Sergeant Furlong.

39. At the hearing respondent concluded as to Detective Sergeant Furlong and Detective Corriveau: "I don't believe that friendship has affected or would affect or should appear as it's going to affect how I am as a judge or how I would handle this case." (Transcript, January 4, 2013, page 6, lines 10-13)

40. It was impossible for Mr. Piszczatowski or Ms. Maas to assess how respondent's friendship with Detective Sergeant Furlong "affected or would affect or should appear as it's going to affect how [respondent was] as a judge or how [she] would handle [the] case" based on respondent's failure

to make a full and accurate disclosure and description of her relationship with Detective Sergeant Furlong.

41. It was impossible for Mr. Piszczatowski to effectively address the issue of respondent's disqualification based on respondent's failure to make a full and accurate disclosure and description of her relationship with Detective Sergeant Furlong.

42. Respondent denied the motion for disqualification on the record on January 4, 2013. (Transcript, January 4, 2013, page 9, lines 6-7)

43. Mr. Piszczatowski proceeded to seek a de novo review of respondent's decision to deny the motion for disqualification with Chief Judge David Reader, pursuant to MCR 2.003(D)(3)(a)(1).

44. Judge Reader, on his review, denied the motion for disqualification.

45. Judge Reader could not make an informed decision on the motion for disqualification as a result of respondent's failure to make a full and accurate disclosure and description of her relationships and contacts with Detective Sergeant Furlong.

C. *Kowalski trial- Furlong*

46. While the trial in *People v Kowalski* was pending, in addition to serving as a witness, Detective Sergeant Furlong was a "co-officer in charge" and assisted Assistant Prosecuting Attorney Maas.

47. From January 7, 2013, the date the *Kowalski* trial began, through January 28, 2013, the date the jury in *Kowalski* issued its verdict, respondent had three private telephone conversations with Detective Sergeant Furlong.

48. On January 17, 2013, respondent took a weekend trip to Washington, D.C., with friends.

49. Respondent's flight was delayed from the evening of January 17 until the morning of January 18.

50. Respondent's cell phone records reflect that on the evening of January 17 she called Detective Sergeant Furlong twice, including one call placed by respondent that was nine minutes long at 8:53 p.m., and another call placed by respondent that was 17 minutes long at 10:14 p.m.

51. Respondent's cell phone records do not reflect any phone calls to her husband, Donald Root, on the evening of January 17 when her flight was delayed.

52. Respondent's cell phone records reveal that she called Detective Sergeant Furlong again on January 19, 2013, which was a nine-minute call placed by respondent at 3:02 p.m.

53. Respondent's cell phone records reflect that while she was on her trip she only called Mr. Root, her husband, on January 18, 2013.

54. Respondent failed to disclose these conversations with Detective Sergeant Furlong to counsel in *Kowalski* even though she knew that defense counsel had already sought respondent's removal from the case based on her relationship with Detective Sergeant Furlong.

55. Respondent testified at her deposition taken in relation to her divorce proceeding that she only called Detective Sergeant Furlong once while the trial was pending. (Brennan deposition transcript, *Root v Brennan*, February 9, 2017, page 202, line 13 to page 203, line 21)

56. From January 28, 2013, the date the jury issued its guilty verdict as to Kowalski, to March 5, 2013, the date respondent issued the sentence in the case, while the proceeding remained active on her docket, respondent had at least 26 telephone conversations with Detective Sergeant Furlong, 20 of which were longer than one minute.

57. From February 2, 2013, through February 10, 2013, respondent traveled with her husband on a vacation to Vieques, Puerto Rico.

58. Respondent's cell phone records reveal that on February 3, 2013, while on that vacation with her husband, respondent made two telephone calls to Detective Sergeant Furlong, one of which was 12 minutes in length at 10:17 p.m. and the next 18 minutes in length at 10:29 p.m.

59. Respondent's cell phone records reveal that on February 8, 2013, while on that vacation with her husband, respondent made another telephone call to Detective Sergeant Furlong, lasting one minute at 9:34 a.m.

60. Respondent failed to disclose to counsel of record any of her telephone communications with Detective Sergeant Furlong made while the *Kowalski* proceeding was pending.

61. Respondent's failure to disclose the communications she had with Detective Sergeant Furlong during the trial and while awaiting sentencing deprived Mr. Piszczatowski and APA Maas of evidence that was relevant to whether to renew the issue of respondent's disqualification from *People v Kowalski.*

62. Respondent was aware of the defendant's request for her disqualification based on her relationship with Detective Sergeant Furlong, as a result of the motion argued on January 4, 2013.

63. Respondent failed to disqualify herself from *People v Kowalski* based on the communications she had with Detective Sergeant Furlong during the trial.

64. Respondent's actions as described in Count I, and in conjunction with her actions reflected in Counts II and III, constitute a pattern of improper conduct in violation of the Code of Judicial Conduct.

COUNT II- FAILURE TO DISCLOSE

SHARI POLLESCH & BURCHFIELD PARK & POLLESCH PC

65. Shari Pollesch is an attorney who currently maintains a law office in Brighton, Michigan, as a member of Burchfield Park & Pollesch PC.

66. Ms. Pollesch was, at all relevant times, a member, owner, and/or employee of the legal firm of Burchfield Park & Pollesch PC (or its predecessors), hereinafter "BP&P."

67. Respondent became acquainted with Ms. Pollesch in the late 1990's and became close personal friends with her in the early 2000's.

68. During their friendship respondent regularly socialized with Ms. Pollesch, including but not limited to:

    a. Respondent and Ms. Pollesch belonged to the same book club, which met monthly, with Ms. Pollesch joining the club at respondent's invitation

    b. Respondent and Ms. Pollesch went to each other's cottages with the book club

    c. Respondent and Ms. Pollesch went to each other's cottages on a number of occasions in addition to the trips with the book club

    d. Respondent went on ski vacations with Ms. Pollesch, both to northern Michigan and to the western United States

    e. Respondent traveled to Washington, D.C., with Ms. Pollesch

    f. Respondent played in an adult concert band with Ms. Pollesch for several years

g. Respondent exercised with Ms. Pollesch by taking regular walks with her, meeting both at each other's houses and at the Brighton courthouse

h. Ms. Pollesch occasionally went to respondent's house for dinner parties

i. Ms. Pollesch went to respondent's house a number of times to go swimming while respondent was a judge

j. Respondent and Ms. Pollesch attended bonfires at each other's houses

k. Respondent attended movies with Ms. Pollesch several times per year

l. Respondent regularly met Ms. Pollesch for lunch

m. Ms. Pollesch attended respondent's cottage with her husband, while respondent was present

n. Respondent hosted Ms. Pollesch's wedding at her house in 2002

o. Ms. Pollesch worked on respondent's campaign for circuit court judge in 2000 and for district court judge in 2006 and 2008

p. Ms. Pollesch attended an election party at respondent's home in 2008

q. Ms. Pollesch has, over respondent's judgeship, been the judge's closest friend who is a practicing attorney

69. Respondent was married to Donald Root, her former husband, from 1990 through March 2017.

70. Mr. Root owned and operated two businesses, which were Uniplas, Inc., and Upcycle Polymers, LLC.

71. In 2011 respondent suggested to Mr. Root that he consult with Ms. Pollesch about certain legal issues he had with his business.

72. Ms. Pollesch and/or her firm provided legal services to Mr. Root starting in June 2011 and ending in or around December 2016.

73. The legal services Ms. Pollesch and/or her firm provided Mr. Root included serving as counsel for Uniplas, Inc., beginning in 2011, and Upcycle Polymers, LLC, since its incorporation in 2012.

74. Ms. Pollesch and/or her firm also provided personal legal services to Mr. Root in the form of preparing an estate plan for him in or around May 2015.

75. Ms. Pollesch and/or her firm provided legal services to respondent's sister, Lorna Marie Brennan.

76. Ms. Pollesch filed an appearance on behalf of Lorna Brennan on October 14, 2014, in *Nathaniel J. Voght v Lorna M. Brennan*, Livingston County Circuit Court Case No. 14-049047-DM.

77. Ms. Pollesch was the attorney of record for Lorna Brennan until the case was resolved in January 2015.

78. Respondent consulted Ms. Pollesch, on an informal basis, concerning legal issues which arose in respondent's personal life.

79. Respondent spoke with Ms. Pollesch about legal issues which were raised in court in cases before respondent and legal issues which arose in the context of Ms. Pollesch's work as an attorney, when they found the issues interesting or compelling.

A. *Appearances by Pollesch*

80. Ms. Pollesch appeared before respondent as counsel of record in the following cases:

a. *Firek v Firek,* 44th Circuit Court Case No. 14-6108-DO;

b. *Wright v Wright*, 44th Circuit Court Case No. 14-6119-DO;

c. *Graunstadt v Graunstadt,* 44th Circuit Court Case No. 14-6183-DO;

d. *Mason v Schwartz,* 44th Circuit Court Case No. 15-28584-CH; and

e. *Schiebner v Schiebner,* 44th Circuit Court Case No. 13-47392-DM.

81. In the above cases, counsel and/or the parties made their initial appearance before respondent as follows:

a. *Firek v Firek*, on May 12, 2014;

b. *Wright v Wright*, on May 19, 2014;

c. *Graunstadt v Graunstadt*, on June 30, 2014;

d. *Mason v Schwartz*, on June 9, 2015, and September 15, 2015 (when additional counsel appeared); and

e. *Schiebner v Schiebner*, on November 3, 2016.

82. At the first appearance, and at all times while the cases were pending, respondent failed to disclose to the parties and counsel in those cases:

a. Any information about respondent's social relationship with Ms. Pollesch, including but not limited to the information outlined above;

b. That Ms. Pollesch had provided legal services to respondent's husband and his businesses;

c. For those appearances after October, 2014, that Ms. Pollesch represented respondent's sister, Lorna Brennan, in the sister's divorce;

d. That respondent had, at times, consulted Ms. Pollesch on an informal basis as to respondent's personal legal issues; and/or

e. That respondent and Ms. Pollesch had discussed on an "intellectual basis" legal issues that arose in cases to which respondent was assigned as a judge, or legal issues which arose in Ms. Pollesch's work as an attorney.

83. At no time during the pendency of the above cases did respondent obtain a waiver of any disqualification due to her relationships with Ms. Pollesch.

B. *Appearances by other Birchfield Park & Pollesch attorneys*

84. Attorneys other than Ms. Pollesch who were employed by BP&P appeared as counsel of record in cases before respondent.

85. The BP&P attorneys appeared before respondent as counsel of record in the following cases:

a. *FMG v Deyo*, 44th Circuit Court Case No. 14-27863-CK- David Park;

b. *Halliday v Halliday*, 44th Circuit Court Case No. 14-27923-CZ- Amy Krieg;

c. *McFarlane v McFarlane*, 44th Circuit Court Case No. 15-6492-DO- Amy Krieg;

d. *Oceola Twp v Wines*, 44th Circuit Court Case No. 15-28497-CZ- Amy Krieg; and

e. *Vaughn v VonBuskirk*, 44th Circuit Court Case No. 16-50745-DZ- Kenneth Burchfield.

86. In the above cases counsel and/or the parties made their initial appearance before respondent as follows:

a. *FMG v Deyo*- April 1, 2014;

b. *Halliday v Halliday*- June 24, 2014;

c. *McFarlane v McFarlane*- March 6, 2015;

d. *Oceola Twp v Wines*- April 7, 2015; and

e. *Vaughn v VonBuskirk*- December 6, 2016.

87. At the first appearance, and at all times while the cases were pending, respondent failed to disclose to the parties and counsel in those cases:

a. That Ms. Pollesch and/or her firm had provided legal services to respondent's husband and his businesses; or

b. That Ms. Pollesch represented Lorna Brennan, respondent's sister, in the sister's divorce (as to appearances occurring after October 2014).

88. At no time during the pendency of the above cases did respondent obtain a waiver of any disqualification due to the business relationship between Mr. Root and BP&P.

89. At no time during the pendency of *McFarlane v McFarlane, Oceola Twp v Wines* or *Vaughn v VonBuskirk* did respondent obtain a waiver of any disqualification due to the business relationship between Lorna Brennan and BP&P.

90. Respondent's actions as described in Count II, and in conjunction with her actions reflected in Counts I and III, constitute a pattern of improper conduct in violation of the Code of Judicial Conduct.

COUNT III- FAILURE TO DISCLOSE/DISQUALIFY

FRANCINE ZYSK a/k/a SUMNER a/k/a TYLER

91. Francine Zysk is currently the 53rd District Court administrator, and has been since 2015.

92. Ms. Zysk served as chief probation officer for the 53rd District Court before she became court administrator.

93. Respondent had regular contact with Ms. Zysk in the court environment due to Ms. Zysk's roles as district court administrator and chief probation officer.

94. From mid-2013 through 2016 respondent had a close social relationship with Ms. Zysk.

95. The socialization included, but was not limited to:

a. Meeting for drinks at local bars or respondent's home

b. Meeting at local restaurants for dinner

c. Dinner parties at respondent's or Ms. Zysk's home

d. Celebrating birthdays

e. Exchanging gifts

f. Attending sporting events, including Detroit Tigers and Detroit Red Wings games

g. Exercising at a local "boxing facility" on several occasions

h. Shopping for furniture

i. Ms. Zysk and her daughter spending the night at respondent's house on several occasions from late 2015 through 2016

j. Travel together on a weekend trip to Chicago in February 2016

96. Ms. Zysk volunteered for respondent's reelection campaign in 2014.

A. *Zysk Sumner v Sumner divorce*

97. Respondent was the judge assigned to *Francine Zysk Sumner v Paul Anthony Sumner,* 44th Circuit Court Case No. 14-006386-DO, as of its filing on or around November 7, 2014.

98. Respondent heard proofs in the case and entered a consent judgment of divorce on January 6, 2015.

99. Respondent failed to disclose to Mr. Sumner, at the hearing on January 6, 2015, or at any other time, the nature of her work relationships with Ms. Zysk as outlined above.

100. Respondent failed to disclose to Mr. Sumner, at the hearing on January 6, 2015, or at any other time, the nature of her social relationship with Ms. Zysk as outlined above.

101. At no time during the pendency of *Sumner v Sumner* did respondent obtain a waiver of any disqualification due to her relationships with Ms. Zysk.

102. Respondent failed to disqualify herself from the proceeding based on the work and social relationships with Ms. Zysk even though respondent recognized a conflict of interest between herself and Ms. Zysk which compelled respondent to disqualify herself from a small claims case involving Ms. Zysk in September 2016, as noted below.

103. In 2016, Ms. Zysk and Mr. Sumner encountered a post-judgment dispute as to their divorce.

104. Ms. Zysk advised respondent of the existence of the dispute.

105. The discussion between respondent and Ms. Zysk regarding the post-judgment dispute constituted an ex parte communication.

106. After Ms. Zysk advised respondent of the existence of the dispute, Ms. Zysk filed an *in pro per* motion to enforce the judgment of divorce for medical care on July 6, 2015.

107. Attorney Erik Mayernik filed an appearance on behalf of Mr. Sumner, as well as a response to the motion to enforce judgment of divorce, on about July 15, 2015.

108. Mr. Mayernik filed a motion for respondent's disqualification from the case on about July 17, 2015.

109. The motion for disqualification was based on respondent's close working relationship with Ms. Zysk, her friendship with Ms. Zysk, and the fact that Ms. Zysk worked on respondent's "recent re-election campaign in 2015." [*sic*]

110. On July 16, 2015, Mr. Mayernik sent an email to respondent's court offices with a judge's copy of the material he filed with the court, including the motion for disqualification that was filed with the court the next day.

111. In a letter attached to the email of July 16, Mr. Mayernik asked that the motion for disqualification be heard on the same date as Ms. Zysk's motion.

112. As of July 16, 2015, a judge's copy of the motion for disqualification was filed with respondent's court office, placing respondent on notice of defense counsel's concerns about respondent's continued presiding over *Zysk v Sumner*.

113. Counsel appeared before respondent on July 20, 2015, to advise respondent that the dispute between the parties had been resolved.

114. The litigants did not appear at the July 20 hearing, so respondent was the only individual present at the hearing who was in a position to know the relevant details of her relationship and communications with Ms. Zysk, and the fact that Ms. Zysk had previously talked with respondent about her post-judgment dispute with Mr. Sumner.

115. When counsel appeared at the hearing on July 20, knowing that defense counsel had sought respondent's removal from the case based on her relationship with Ms. Zysk, respondent failed to advise the attorneys, on the record, of:

a. The nature of the increased social contact respondent had with Ms. Zysk after she filed for, and obtained, the divorce from Mr. Sumner; and/or

b. A conversation Ms. Zysk had with respondent prior to Ms. Zysk's filing of the motion to enforce the judgment of divorce with the court, in which Ms. Zysk talked with respondent about her post-judgment dispute with Mr. Sumner.

116. Respondent asked Mr. Mayernik at the hearing on July 20, 2015, on the record, if the matter could proceed in spite of the pending disqualification motion.

117. In response, Mr. Mayernik agreed not to proceed with a hearing on the disqualification motion and to enter the stipulated resolution.

118. Mr. Mayernik's consent was granted without full knowledge of the facts relating to the conflict of interest that existed based on respondent's relationships and communications with Ms. Zysk, due to respondent's failure to reveal that information either at, or any time before, the hearing.

119. Respondent failed to disqualify herself from the proceeding based on the work and social relationships with Zysk, although respondent recognized a conflict of interest between herself and Ms. Zysk which compelled

respondent to disqualify herself from a small claims case involving Ms. Zysk in September 2016, as noted below.

B. *Tyler v Tyler divorce*

120. Respondent was assigned to *Francine Zysk Tyler v Johnnie J. Tyler,* 44th Circuit Court Case No. 16-006808-DO, as of its filing on about January 26, 2016.

121. In addition to the work and social relationships respondent maintained with Ms. Zysk as outlined above, while Ms. Zysk was married to Mr. Tyler, respondent knew enough details about Ms. Zysk's relationship with Mr. Tyler that respondent was worried about Ms. Zysk's safety with him.

122. In January 2016 respondent went to the home Ms. Zysk shared with Mr. Tyler and moved some of Ms. Zysk's belongings out of the premises.

123. Respondent allowed Ms. Zysk and her daughter to stay at respondent's home for several nights out of concern for their safety as to Mr. Tyler.

124. When Ms. Zysk's car broke down, respondent lent Ms. Zysk an extra vehicle respondent owned.

125. Respondent was witness to some aspects of Ms. Zysk's marital relationship with Mr. Tyler, with the potential of being called as a witness at a legal proceeding involving those individuals.

126. Respondent heard proofs in the case, and entered a default judgment of divorce, on April 6, 2016.

127. Respondent failed to disclose to Mr. Tyler, at the hearing on April 6 or at any other time, the nature of her work relationships with Ms. Zysk as outlined above.

128. Respondent failed to disclose to Mr. Sumner, at the hearing on April 6 or at any other time, the nature of her social relationship with Ms. Zysk as outlined above.

129. Respondent failed, at any time while the proceeding was pending, to disqualify herself from the case in light of her role as a potential witness in the case.

130. Respondent failed to disqualify herself from the proceeding based on the work and social relationships with Zysk, although respondent recognized a conflict of interest between herself and Ms. Zysk which compelled respondent to disqualify herself from a small claims case involving Ms. Zysk in September 2016, as noted below.

C. *Zysk v Tyler small claims case*

131. Respondent was assigned to *Francine Zysk v Johnnie James Tyler, II,* 53rd District Court Case No. 16-3079-GC, as of its filing on about September 6, 2016.

132. The case involved allegations by Ms. Zysk as to her former husband, Johnnie Tyler.

133. 53rd District Court Magistrate Judge Jerry Sherwood disqualified himself from the case on around September 8, 2016.

134. Magistrate Judge Sherwood listed the reason for disqualifying himself from the case as "Plaintiff is the Court Administrator for the 53rd District Court."

135. 53rd District Court Judge Suzanne Geddis disqualified herself from the case on around September 7, 2016.

136. 53rd District Court Judge Carol Sue Reader disqualified herself from the case on around September 9, 2016.

137. The case register of actions reflects the "order for disqualify" [*sic*] was sent to "BDC" [Brighton District Court] for "sig" [signature] on September 12, 2016.

138. Respondent signed an order removing the case from the Small Claims Division to the General Civil Division of the District Court on around September 13, 2016.

139. The order of removal is based on respondent's conclusion that the small claims division was not the proper jurisdiction for a claim alleging fraud.

140. Respondent had a work relationship with Ms. Zysk similar to that of Magistrate Sherwood, Judge Geddis, and Judge Carol Sue Reader.

141. In addition to the work relationship, respondent had a close social relationship with Ms. Zysk as outlined above.

142. Respondent witnessed events relating to the marriage of Ms. Zysk and Mr. Tyler that could have related to the issues pending in the small claims proceeding.

143. As such, in addition to the social and work relationships respondent maintained with Ms. Zysk, respondent knew information relating to, and was a potential witness in, Ms. Zysk's divorce and small claims cases as to Mr. Tyler.

144. Respondent disqualified herself from the case on around September 21, 2016.

145. Respondent checked the following provisions on the disqualification order as a basis for her disqualification:

    a. "I have, based on objective and reasonable perceptions, a serious risk of actual bias impacting the due process rights of a party as enunciated in Caperton v Massey, 556 US 868; 129 S Ct 2252; 173 L Ed 2d 1208 (2009)"; and

    b. "I have personal knowledge of disputed evidentiary facts concerning the proceeding."

146. In her response to the Commission's 28-day letter, dated April 19, 2018, respondent provided an additional reason for her disqualification in *Zysk v Tyler*.

147. Assertion # 138 of the 28-day letter alleged:

> In addition to the social and work relationships you maintained with Ms. Zysk, as outlined above, you were a potential witness to her divorce case.

148. In reply, respondent stated:

> Although the question asks "divorce case", I will answer the question as if it was meant to say small claims case. I could not have been a witness because I did not know the facts surrounding the small claims case. However, it did not matter. Because of my social and working relationship with Ms. Zysk I disqualified myself.

149. Respondent failed to immediately disqualify herself from the small claims case even though:

a. The other district court judges and a district court magistrate had already done so;

b. Respondent had a work relationship with Ms. Zysk;

c. Respondent had a close social relationship with Ms. Zysk; and

d. Respondent was a potential witness to the small claims proceeding.

150. Prior to recusing herself, respondent issued an order of removal in the case notwithstanding that:

a. The other district court judges and a district court magistrate had already disqualified themselves;

b. Respondent had a work relationship with Ms. Zysk;

c. Respondent had a close social relationship with Ms. Zysk; and

d. Respondent was a potential witness to the small claims proceeding.

151. Respondent's actions as described in Count III, and in conjunction with her actions reflected in Counts I and II, constitute a pattern of improper conduct in violation of the Code of Judicial Conduct.

COUNT IV- FAILURE TO DISQUALIFY

ROOT V BRENNAN

152. Respondent was the defendant in *Donald Root v Theresa Brennan*, 44th Circuit Court Case No. 16-7127-DO.

153. The complaint in respondent's divorce was filed on around December 2, 2016.

154. The divorce proceeding was assigned to respondent based on the court policy at the time that respondent was to preside over all "DO" cases filed in the Livingston County Circuit Court.

155. Chief Judge David Reader contacted respondent by telephone on December 2, 2016, to advise her that the complaint for divorce had been filed by Mr. Root.

156. On December 6, 2016, Jeanine Pratt, secretary to Judge Reader, contacted respondent to advise her that Mr. Root's attorney had filed an emergency ex parte motion related to the divorce.

157. The emergency ex parte motion sought a mutual restraining order for the parties to preserve evidence in the case.

158. During that conversation Ms. Pratt also advised respondent that the judge's disqualification from the divorce case was needed as the emergency ex parte motion had been filed.

159. Ms. Pratt advised respondent in the telephone conversation that she would be coming to the Brighton court house that afternoon to pick up the signed disqualification order in the case.

160. Respondent asked Ms. Pratt to describe what was in the motion, and in response (under the direction of Judge Reader) Ms. Pratt sent the motion to respondent via email.

161. Ms. Pratt also emailed a disqualification order to respondent for respondent to sign on December 6, 2016.

162. On December 6, after Ms. Pratt had sent the emergency motion and disqualification order to respondent, Ms. Pratt appeared at the Brighton courthouse to pick up the signed disqualification order as to respondent's divorce.

163. Respondent advised Ms. Pratt that she would not be signing the disqualification order until the next day.

164. Respondent further stated that she "had not spoken with her attorney yet."

165. At the time respondent failed to sign the disqualification order she had been aware of the existence of the divorce proceeding for four days, and had been

advised (and provided with a copy) of the pending emergency ex parte motion.

166. Respondent signed the disqualification order and dated it December 7, 2016.

167. Although respondent's signed disqualification order was dated December 7, 2016, it was not provided to any personnel from the Howell courthouse until December 8, 2016, when respondent gave it to 44th Circuit Court Administrator John Evans in the Brighton courthouse.

168. Respondent did not produce a signed copy of the disqualification order until six days after she knew the complaint for divorce was filed, and two days after she knew the plaintiff had filed an emergency ex parte motion in the case.

COUNT V- APPEARANCE OF IMPROPRIETY

SEAN FURLONG

169. Respondent was assigned as the presiding trial judge to *People v Jerome Walter Kowalski,* Case No. 08-17643-FC, on or about March 9, 2009.

170. Paragraphs 4 through 63 as alleged above in Count I are incorporated by reference as if fully stated in this count.

171. Respondent maintained repeated social contacts with Detective Sergeant Furlong while *Kowalski* was assigned to her and she was aware that Detective Sergeant Furlong was identified as a witness.

172. Respondent failed to disclose the nature of her contacts and friendship with Detective Sergeant Furlong while the *Kowalski* case was pending and assigned to her.

173. Respondent failed to disqualify herself from the *Kowalski* case due to her telephone conversations with Detective Sergeant Furlong while the matter was pending, including the phone conversations that took place prior to the verdict and those that occurred after the verdict and before sentencing.

174. The actions and failures to act that are described in paragraphs 170 through 173 created the appearance of impropriety.

COUNT VI- APPEARANCE OF IMPROPRIETY/ EX PARTE COMMUNICATION

FRANCINE ZYSK

175. During the time respondent has been a 53rd District Court judge she has maintained a working relationship with Francine Zysk (a/k/a Sumner a/k/a Tyler) due to her role as a probation officer, the Chief Probation Officer, and later, the 53rd District Court Administrator.

176. Respondent was assigned as the presiding trial judge for the following cases involving Ms. Zysk (the "Zysk cases"):

    a. *Francine Zysk Sumner v Paul Anthony Sumner*, 44th Circuit Court Case No. 14-006386-DO;

b. *Francine Z. Tyler v Johnnie J. Tyler*, 44th Circuit Court Case No. 16-006808-DO; and

c. *Francine Zysk v Johnnie James Tyler, II*, 53rd District Court Case No. 16-3079-GC.

177. Paragraphs 91 through 150, alleged above in Count III, are incorporated by reference as if fully stated in this count.

178. Respondent failed, at any time while the *Tyler* proceeding was pending, to disclose the nature of her contacts with Ms. Zysk and that respondent was potentially a witness in the divorce proceedings.

179. Respondent failed to disclose relevant facts to parties in, and/or presided over, and/or failed to timely disqualify herself from, all of the Zysk cases even though respondent maintained work and close social relationships with Ms. Zysk, had an ex parte communication with Ms. Zysk, and was a potential witness in some cases.

180. The conduct described above creates an appearance of impropriety and constitutes a failure to disclose a substantive ex parte communication with a party to cases assigned to respondent.

COUNT VII- CONDUCT DURING DEPOSITIONS

ROOT V BRENNAN

181. Respondent was the defendant in *Donald Root v Theresa Brennan,* 44th Circuit Court Case No. 16-7127-DO.

182. On January 18, 2017, respondent attended the deposition of Detective Sergeant Furlong as it related to *Root v Brennan*.

183. At one point during the deposition Detective Sergeant Furlong was questioned by Thomas Kizer, attorney for Donald Root, about contact Detective Sergeant Furlong had with respondent during the *Kowalski* trial. (Furlong deposition transcript, *Root v Brennan*, January 18, 2017, page 56, line 2)

184. Mr. Kizer asked Detective Sergeant Furlong if he had exchanged any texts or phone calls with respondent during the Kowalski trial. (Furlong deposition transcript, *Root v Brennan*, January 18, 2017, page 56, lines 6-10)

185. Detective Sergeant Furlong responded that he did not. (Furlong deposition transcript, *Root v Brennan*, January 18, 2017, page 56, lines 6-10)

186. Respondent then interceded in the deposition while Detective Sergeant Furlong was under oath and being examined by opposing counsel, by advising him that in fact respondent did have a communication with him,

stating: "We did once." (Furlong deposition transcript, *Root v Brennan*, January 18, 2017, page 56, line 12)

187. During respondent's own deposition, taken in her divorce on February 9, 2017, respondent testified that she had one telephone conversation with Detective Sergeant Furlong while the *Kowalski* trial was pending. (Brennan deposition transcript, *Root v Brennan*, February 9, 2017, page 202, line 13 to page 203, line 21)

188. Respondent's phone records reveal that respondent had at least three conversations with Detective Sergeant Furlong while the *Kowalski* trial was ongoing and before the jury rendered a verdict.

189. On March 9, 2017, respondent attended the deposition of Francine Zysk as it related to *Root v Theresa Brennan.*

190. At one point during the deposition Ms. Zysk was questioned by Mr. Kizer about rumors of respondent being caught intoxicated in her office in Brighton. (Zysk deposition transcript, *Root v Brennan*, March 9, 2017, page 27, line 12)

191. Respondent interceded in Mr. Kizer's questioning of Ms. Zysk by stating: "Okay, you need to stop for a minute." (Zysk deposition transcript, *Root v Brennan*, March 9, 2017, page 27, lines 20-21)

192. Respondent then stated to Ms. Zysk: "You are lying. You're such a liar." (Zysk deposition transcript, *Root v Brennan*, March 9, 2017, page 27, line 25 – page 28, line 1)

COUNT VIII- FAILURE TO BE FAITHFUL TO THE LAW

BRISSON V TERLECKY

193. Respondent was assigned to preside over *Kevin Brisson v Erin Terlecky,* 44th Circuit Court Case No. 17-051753-DP.

194. The case involved a paternity dispute between the parties.

195. An Order for Genetic Testing was entered on May 15, 2017.

196. The parties appeared before respondent on June 21, 2017, on a date scheduled for a non-jury trial.

197. At the proceeding held on June 21, plaintiff Brisson was represented by attorney David Bittner and defendant Terlecky was represented by attorney Carol Lathrop Roberts.

198. At the June 21 hearing, the attorneys advised respondent that the genetic testing had been completed and the results were served on the parties the day before the court proceeding, that is, June 20, 2017.

199. Ms. Roberts asserted that the paternity act required that respondent allow 14 days after service of the paternity tests before the trial could be held to allow for any objection by the parties. MCL 722.716(4)

200. In response to Ms. Roberts's assertion respondent replied that the parties would proceed with the trial on other issues and reserve the paternity issue for 14 days.

201. In response to respondent's directive that the trial would begin immediately and that only the paternity issue would be stayed, Ms. Roberts asked respondent to comply with the statute and stay the entire trial for 14 days.

202. In reply, respondent raised her voice at Ms. Roberts and instructed her to sit down and be quiet.

203. Respondent threatened to place Ms. Roberts in the court's lockup if she continued her effort to make a record based on the facts and statute applicable to the case.

204. When Ms. Roberts continued to attempt to make a record as to the requirements of the statute, respondent ordered her court officer to take Ms. Roberts to the court lockup.

205. As Ms. Roberts was taken away, respondent accused her of threatening respondent, though respondent had no substantive basis to do so.

206. MCL 722.716(4) states:

> Subject to subsection (5), the result of blood or tissue typing or a DNA identification profile and the summary report shall be served on the mother and alleged father. The summary report shall be filed with the court. Objection to the DNA identification profile or summary report is waived unless made in writing, setting forth the specific basis for the objection, within 14 calendar days after service on the mother and alleged father. The court shall not schedule a trial on the issue of paternity until after the expiration of the 14-day period. If an objection is not filed, the court shall admit in proceedings under this act the result of the blood or tissue typing or the DNA identification profile and the summary report without requiring foundation testimony or other proof of authenticity or accuracy. If an objection is filed within the 14-day period, on the motion of either party, the court shall hold a hearing to determine the admissibility of the DNA identification profile or summary report. The objecting party has the burden of proving by clear and convincing evidence by a qualified person described in subsection (2) that foundation testimony or other proof of authenticity or accuracy is necessary for admission of the DNA identification profile or summary report.

207. Prior to sending Ms. Roberts to the lockup, respondent failed to read MCL 722.716(4) even though it was the statute on which Ms. Roberts was relying and to which Ms. Roberts referred respondent.

208. Prior to sending Ms. Roberts to the lockup, respondent failed to allow Ms. Roberts to complete her argument with respect to the requirements of MCL 722.716(4) and a stay of the trial.

209. When Ms. Roberts was being taken out of the courtroom she instructed her client to contact attorney Thomas Kizer, to obtain his representation for any

contempt or other proceeding respondent may have conducted as to Ms. Roberts' actions before respondent.

210. After Ms. Roberts left the courtroom with the court officer, respondent within a minute reconsidered and had Ms. Roberts escorted back to the courtroom.

211. When the court officer brought Ms. Roberts back from the lockup respondent accused her of forum shopping, with no substantive basis for doing so.

212. Respondent then granted the 14-day stay as required by MCL 722.716(4).

213. When respondent granted the stay, respondent remarked to Ms. Roberts in a dismissive and condescending tone: "Let's play this game."

214. Respondent accused Ms. Roberts of playing a game by attempting to enforce a mandatory stay as required by statute.

COUNT IX- IMPROPER DEMEANOR

BRISSON V TERLECKY

215. Respondent was assigned to preside over *Kevin Brisson v Erin Terlecky,* 44th Circuit Court Case No. 17-051753-DP.

216. Paragraphs 194 through 214, alleged above in Count VIII, are incorporated by reference as if fully stated in this count.

217. Respondent's conduct as described above constitutes a failure to treat others fairly and with courtesy and respect, and a failure to be patient, dignified, and courteous to lawyers with whom the judge dealt with in an official capacity.

COUNT X- IMPROPER DEMEANOR

SULLIVAN V SULLIVAN

218. Respondent was assigned to preside over *Michael Sullivan v Denise Sullivan,* 44th Circuit Court Case No. 14-006162-DO.

219. Attorney Bruce Sage filed an appearance on behalf of defendant Sullivan on about July 29, 2014.

220. On December 15, 2014, respondent presided over a motion hearing in *Sullivan v Sullivan.*

221. During that proceeding respondent made the following remarks to Mr. Sage (Transcript, December 15, 2014, p. 27, l. 11-19):

> THE COURT: -- and the date that I was giving my opinion, I want statements for every single account.
>
> MR. SAGE: Okay.
>
> THE COURT: If you ask me one more time, sir, about the unvested stock, I will sanction you. I was very clear in my decision.

> If you ask me one more time about considering money spent on the house or the, as you say, girlfriend, I will sanction you. I've been very clear about that.
>
> If you ask me one more time about monies taken out allegedly in violation of my ex parte order, I will sanction you. I've been very clear about that.

222. On January 12, 2015, respondent presided over a motion hearing in *Sullivan v Sullivan*.

223. The following exchange occurred at the January 12 hearing (Transcript, January 12, 2015, p. 19, l. 18 – p. 20, l. 7):

> THE COURT: Okay. Well ultimately -- what -- what I don't understand, Mr. Sage, is that you wanted $15,000 a month in spousal support.
>
> MR. SAGE: I think that's what my client testified to.
>
> THE COURT: I gave her 12. What is your complaint?
>
> MR. SAGE: Because spousal support and property distribution are two different --
>
> THE COURT: No kidding. Don't insult me please.
>
> MR. SAGE: Pardon me?
>
> THE COURT: Don't insult me. Of course I know that.
>
> MR. SAGE: I'm not insulting you. You asked me a question. I'm giving you my very best answer I can. Spousal support and property distribution are different topics.

224. On October 21, 2015, respondent presided over an evidentiary hearing in *Sullivan v Sullivan*.

225. The following exchange occurred at the October 21 hearing (Transcript, October 21, 2015, p. 48, l. 20 – p. 49, l. 20):

> MR. SAGE: The motion that you entered came with all respect, Your Honor, was –
>
> THE COURT: Stop.
>
> MR. SAGE: -- (inaudible) –
>
> THE COURT: Stop.
>
> MR. SAGE: -- represent –
>
> THE COURT: Stop.
>
> MR. SAGE: -- Mrs. Sullivan please.
>
> THE COURT: Mr. Sage, when I say stop you stop. I'm gonna take a break. Don't you ever do that again.
>
> THE BAILIFF: All rise.
>
> (At 2:59 p.m., Court recessed)
>
> (At 3:20 p.m., Court reconvened)
>
> THE COURT: Call your next witness. Come on --
>
> MR. SAGE: May Ms. --
>
> THE COURT: -- up.
>
> MR. SAGE: -- Sullivan reassume the stand?
>
> THE COURT: Mr. Sage, I don't know if it's that you're hard of hearing, but I yelled about my third or fourth stop. The first stop –

THE BAILIFF: You're still under oath.

THE COURT: -- you are to stop, understood? Understood?

MR. SAGE: Yes.

THE COURT: I'm warning you it will be a $100 sanction if you don't.

226. On October 22, 2015, respondent presided over a motion hearing in *Sullivan v Sullivan*.

227. The following exchange occurred at the October 22 hearing (Transcript, October 22, 2015, p. 10, l. 20 – p. 11, l. 15):

THE COURT: What about phone and cable?

THE WITNESS: Phone and cable is $250 a month.

THE COURT: Anything else?

THE WITNESS: Cell phone.

THE COURT: Well I said phone and cable and then you said phone and cable was 250.

THE WITNESS: That's my –

THE COURT: Your cable better –

THE WITNESS: -- land line, Your Honor.

THE COURT: You -- your cable and land line are –

THE WITNESS: And –

THE COURT: -- 250?

THE WITNESS: -- wifi, yes.

THE COURT: That's ridiculous.

THE WITNESS: I know it is, but I -- it's the only game in town.

THE COURT: Yeah, I can't believe that. What's your cell phone?

THE WITNESS: About 235.

THE COURT: Okay. Those two together that's ridiculous. All right.

228. The following exchange also occurred at the October 22 hearing (Transcript, October 22, 2015, p. 75, l. 18 – p. 76, l. 9):

> THE COURT: … And the Separate Agreement and Release, and the testimony that I've heard regarding the monies he received pursuant to that, clearly shows that it was unvested stock that became vested after the Judgment of Divorce was entered. So those amounts are not to be considered. And, Mr. Sage, I don't know why you're asking these questions because my judgment is very clear. Now the monies -- the cash money that wasn't unvested stock but B and C of that agreement were definitely unvested. Not considering that –
>
> MR. SAGE: Well I would like to respond to that and I'll do so in my closing, Your Honor. But the only thing –
>
> THE COURT: I'm not finished, Mr. Sage.
>
> MR. SAGE: Oh, I -- you stopped talking. I thought you were finished.
>
> THE COURT: Oh, for heavens sake. [*sic*] If I take a breath that doesn't mean I stopped.

229. The following exchange also occurred at the October 22 hearing (Transcript, October 22, 2015, 84, l. 15 – p. 85, l. 3):

> THE COURT: And $2,000 well we could keep going and you're gonna waste that in attorney fees. But I'd like to get it done within the next couple of minutes. It's not rocket science.
>
> MR. SAGE: All right.
>
> THE COURT: Who's the patron sane of patience? [*sic*]
>
> THE WITNESS: Jobe. [*sic*]
>
> THE COURT: Jobe? [*sic*]
>
> THE WITNESS: Yeah.
>
> THE COURT: Jobe, please Jobe. [*sic*]

230. The following exchange also occurred at the October 22 hearing (Transcript, October 22, 2015, 91, l. 7 – p. 92, l. 5):

> THE COURT: oh [sic], there you go. I thought you said 512. Okay. We're fine. That's exact amount. Now you think he has 56,069. What do you think he has Mr. Sage?
>
> MR. SAGE: I don't have my –
>
> MS. PESKIN-SHEPHERD: She has his 56.
>
> THE COURT: She has? Well you have to be able to tell me.
>
> MR. SAGE: Well I didn't know that –
>
> THE COURT: Mr. Sage, don't even -- and every time you start saying you didn't know I'm gonna sanction you a $100. You should have been prepared, simple as that. Do you have anything in your paperwork that shows what her share of the

93,519 was? Anything? You put it in your motion that it was 7,000, you didn't back it up.

MR. SAGE: And it was admitted.

THE COURT: What?

MR. SAGE: And it was admitted on the record. They admitted it.

THE COURT: No, it wasn't, Mr. Sage.

MR. SAGE: Okay.

THE COURT: All I want is backup material. And if you can't give it to me then I'm going to rely on their figure. So the bottom line is that she had 9,309 more than he did.

231. The following exchange also occurred at the October 22 hearing (Transcript, October 22, 2015, 113, l. 14 – p. 114, l. 9):

THE COURT: I have been very clear you may not ask him about unvested stock –

MR. SAGE: It's not –

THE COURT: -- that -- that vested. And that's exactly what B and C are.

MS. PESKIN-SHEPHERD: If I might, Your Honor, it's actually –

THE WITNESS: It is B and C.

THE COURT: It is B and –

MS. PESKIN-SHEPHERD: Oh, it is –

THE COURT: -- C.

MS. PESKIN-SHEPHERD: -- B and C. I'm sorry. Earlier -- earlier you had said –

THE COURT: Stop.

MS. PESKIN-SHEPHERD: -- two different ones.

THE COURT: My gosh. This is insane. You are not going to ask about B and C about unvested stock that became vested again. If you do it will be a $100. I have said that at least five times.

MR. SAGE: I will not ask him about that anymore.

THE COURT: Thank you.

232. The following exchange also occurred at the October 22 hearing (Transcript, October 22, 2015, 125, l. 15 – p. 126, l. 23):

THE COURT: … As far as life insurance he is not -- I'm gonna hold that decision in abeyance. He's not employed. I want to see what employment he gets. It's clear that it was supposed to be through his employer, but there's not even a term on there. I mean usually you say how long and what it's for. I don't even know what anybody intended. Not really. I had no testimony on what the intent was relative to that. I suspect I am gonna order him to get some life insurance.

MR. SAGE: I'm thinking, Your Honor, not going to allow closing arguments?

THE COURT: Are you makin' a joke?

MR. SAGE: No, I'm not tryin' to make a joke. I want the record –

THE COURT: I just gave my –

MR. SAGE: -- to be clear.

THE COURT: -- decision.

MR. SAGE: OI [*sic*] just want the record to be clear because I was gonna raise some points that I think –

THE COURT: Mr. Sage, there's nothing that says you're entitled to a closing. I gave my decision. For you to stand up and say I'm assuming you're not gonna let me make a closing –

MR. SAGE: I didn't want to interrupt you, Your Honor.

THE COURT: No, Mr. Sage, I'm not. We're done. Get the other people in here.

THE BAILIFF: (Inaudible).

THE COURT: You know what, I'm gonna hold onto my set.

MS. PESKIN-SHEPHERD: I'm gonna write it up and –

MR. SAGE: Get it to me and I'll –

MS. PESKIN-SHEPHERD: Let's -- save it.

THE BAILIFF: Do you have everything you need?

THE COURT: Get those people in here.

233. On March 28, 2016, respondent presided over a review hearing in *Sullivan v Sullivan*.

234. The following exchange occurred at the March 28 hearing (Transcript, March 28, 2016, p. 58, l. 16 – p. 59, l. 7):

THE WITNESS: And you know general household purchases, and also right now –

THE COURT: Like what? Clorox? Toilet paper?

THE WITNESS: Yeah, you know, just –

THE COURT: Yeah, okay. Walmart. What else?

THE WITNESS: I'm sorry. I'm thinking.

UNIDENTIFIED SPEAKER: Your pets?

THE WITNESS: Oh, yeah, my pets. I have a blind elderly dog, and I have a –

THE COURT: Quit helping her.

THE WITNESS: Thank you.

THE COURT: Seriously.

THE WITNESS: Thank you, because they are expensive.

THE COURT: Yeah, well, maybe you need to get rid of them.

235. On December 15, 2014, while presiding over a hearing in *Sullivan v Sullivan*, respondent ordered defendant Denise Sullivan to appear in person at the next scheduled proceeding. The following exchange occurred (Transcript, December 15, 2014, p. 26, l. 20 – p. 27, l. 1):

THE COURT: 8:00 on the 12th. Be here.

MR. SAGE: Now would that be for an evidentiary hearing, Your Honor?

THE COURT: Only on that issue.

MR. SAGE: And is the Court ordering my client to appear?

THE COURT: You bet I am.

236. On October 5, 2015, while presiding over a hearing in *Sullivan v Sullivan*, respondent restricted defendant Denise Sullivan from participating in future proceedings by telephone, even though she lives in Florida. The following exchange occurred (Transcript, October 5, 2015, p. 30, l. 12-25):

> THE COURT: Stop. The trial was in October. He told me what his income was as -- as of that date. You had his -- his pay information. And it sounds like he made a lot more after that. What -- what has me bothered is the issue of the unvested stock and what he knew and when he knew it. And we're gonna have an evidentiary hearing on that issue. And you better get some life insurance on -- on your life. You knew you weren't gonna have a job. You should have let me know that. So pick a date. I need about an hour. A couple weeks. I expect your client here.
>
> MR. SAGE: Your Honor, can she testify by telephone?
>
> THE COURT: No. We don't have a system that would allow that.

237. On March 28, 2016, at the review hearing in *Sullivan v Sullivan*, respondent commented on defendant Denise Sullivan's appearance in person and her ability to participate by telephone. The following exchange occurred (Transcript, p. 4, l. 6 – l. 14):

THE COURT: You know what –

> MS. PESKIN-SHEPHERD: -- without everybody's income information.
>
> THE COURT: -- it was all about him, really. It was all about him today.
>
> MS. PESKIN-SHEPHERD: Okay, that's fine.
>
> THE COURT: Well, he may be paying her flight out here, and hotel. We could have gotten her on the phone. Come on up.

238. Respondent did not order plaintiff Sullivan to pay for the flight and hotel of defendant Sullivan on March 28, 2016.

239. Respondent considered imposing fees on plaintiff Sullivan for defendant Sullivan's travel expenses for attending the hearing, which fees only were incurred as a result of respondent's prior representation that the court lacked the ability for defendant Sullivan to appear by telephone.

240. Defendant Sullivan and her attorney relied on respondent's misrepresentations that the court phone system did not permit defendant to participate remotely to refrain from making any further inquiry about the participating by phone.

241. Defendant Sullivan appealed under Court of Appeals case numbers 330543 & 334273.

242. The Michigan Court of Appeals issued an opinion in the consolidated appeals on May 17, 2018. The Michigan Court of Appeals opinion stated:

> The record is replete with instances in which the judge treated defendant or her attorney, Bruce Sage, with apparent hostility.
>
> * * *
>
> It is true that some of these remarks, viewed in isolation, are of relatively little impact or import, but it is important to view them as a pattern. Sage did not demonstrate hostility or aggressiveness throughout the proceedings but the judge displayed a pattern towards him and defendant of at least apparent hostility. It seems especially egregious for the judge to have recommended that defendant "get rid of" her pets.
>
> * * *
>
> The appearance of justice would be better served if the case is remanded to a different judge.

243. Respondent's treatment of Mr. Sage and defendant Sullivan, including but not limited to the conduct described above, reflected an improper demeanor, a failure to be patient, dignified and courteous to litigants and lawyers, and a failure to treat every person fairly, with courtesy and respect.

COUNT XI- RESPONDENT DIRECTING STAFF TO CONDUCT RESPONDENT'S PERSONAL TASKS ON COURT TIME

A. *Personal tasks undertaken by Kristi Cox*

244. Kristi Cox was respondent's secretary and court recorder from mid-2005 through March 2015.

245. While Ms. Cox worked in those roles, respondent instructed Ms. Cox to leave the courthouse, while being paid as a county employee, to complete personal tasks for respondent.

246. Those tasks included but were not limited to:

a. Going to the bank to make withdrawals from respondent's personal account

b. Picking up coffee and a muffin (or other breakfast items) for respondent at a local shop by the courthouse

c. Dropping off respondent's personal mail at the post office

d. Dropping off respondent's packages at overnight mail outlets (FedEx, UPS, etc.)

e. Taking respondent's car to be washed or filled with gas

f. Going to respondent's home to wait for service personnel

247. While Ms. Cox worked for respondent, the judge instructed her to perform personal tasks for respondent during work hours that did not involve leaving the courthouse.

248. Those tasks included but were not limited to:

a. Paying respondent's personal bills by writing out checks using the judge's personal accounts

b. Paying respondent's personal bills by phone or on line

c. Contacting, and paying bills relating to, various utilities, debtors, and others on respondent's behalf when payments were late, to avoid cancellation of services

d. Scheduling or canceling respondent's personal appointments for manicures, pedicures, and waxing

e. Finding clothes for respondent on the internet based on a picture shown by respondent to staff

f. Searching the internet at respondent's request to locate personal items for respondent and finding the best price for those items

g. Assisting with respondent's personal travel arrangements, including reservations and the purchase of airline tickets

h. Purchasing tickets for concerts and sporting events for respondent

i. Using county software programs (e.g. Springfield and Alimony/Child Support Prognosticator) during work hours to run child support and spousal support figures relating to the divorce of respondent's sister, Rosemarie, when that case was not assigned to respondent

249. Respondent had Ms. Cox work on her 2008 and 2014 campaigns for judicial office during work hours.

250. The campaign tasks included but were not limited to:

a. Securing volunteers for campaign events

b. Preparing "friend to friend" cards

c. Assistance in replying to candidate surveys submitted for respondent's reply

d. Traveling to her home to pick up campaign materials

e. Utilizing personal laptops to perform services relating to respondent's campaigns

251. Ms. Cox's performance of personal tasks for respondent, during work hours, is not within a court employee's job responsibilities.

252. During the times Ms. Cox was performing the personal tasks for respondent, Ms. Cox was being compensated for her work time by Livingston County.

B. *Personal tasks undertaken by Jessica Yakel*

253. Jessica Yakel worked as respondent's research attorney and attorney magistrate in the 53rd District Court from around February 2, 2014, through April 4, 2016.

254. While Ms. Yakel worked for respondent, respondent instructed Ms. Yakel to leave the courthouse while she was being paid as a county employee to complete personal tasks for respondent.

255. Those tasks included but were not limited to:

a. Staining respondent's deck

b. Installing Netflix service on respondent's television at her home

c. Travel to respondent's home to take water samples for quality testing, and delivering those samples to the company performing the testing

d. Taking respondent's car to Brighton Chrysler for repairs and maintenance

e. Dropping off respondent's personal mail at the post office

f. Dropping off respondent's packages at overnight mail outlets (FedEx, UPS, etc.)

g. Taking respondent's car to have it washed

h. Picking up coffee and a muffin or other breakfast items for respondent, at a coffee shop outside the courthouse, on an ongoing basis

256. While Ms. Yakel worked for respondent, respondent instructed her to perform personal tasks for respondent during work hours that did not involve leaving the courthouse.

257. Those tasks included but were not limited to:

a. Legal research on personal issues relating to respondent and her family

b. Paying respondent's personal bills by writing out checks using respondent's personal accounts

c. Paying respondent's personal bills by phone or on line

d. Contacting and paying bills relating to various utilities, debtors, and others on respondent's behalf when payments were late, to avoid cancellation of services

e. Assisting with respondent's personal travel arrangements, including the purchase of airline tickets

f. Revising the cable service at respondent's cottage

g. Purchasing tickets for concerts for respondent

h. Researching personal items on the internet for respondent to purchase

i. Searching the internet at respondent's request, to locate personal items for her and finding the best price for those items

j. Finding clothes on the internet based on a picture shown by respondent to Ms. Yakel.

258. Respondent had Ms. Yakel work on her 2014 campaign for judicial office during work hours.

259. The campaign tasks included, but were not limited to:

a. Research on "gifts" to hand out at campaign events

b. Assistance in replying to candidate surveys submitted for respondent's reply

c. Utilizing personal laptops to perform services relating to respondent's campaigns

260. Performance of personal tasks for respondent, during work hours, is not within a court employee's job responsibilities.

261. During the times Ms. Yakel was performing the personal tasks for respondent, Ms. Yakel was being compensated for her work time by Livingston County.

COUNT XII- IMPROPER CAMPAIGN ACTIVITIES

262. In 2014 respondent served as a judge of the 53rd District Court in Brighton, in Livingston County, Michigan. Respondent's term as a 53rd district judge ended on December 31, 2014.

263. In 2014 respondent ran for reelection to her judicial office and conducted a campaign to do so.

264. In 2014 Kristi Cox served as respondent's court recorder/secretary and was an employee of the 53rd District Court.

265. In 2014 Jessica Yakel served as respondent's research attorney and a magistrate and was an employee of the 53rd District Court.

266. During the course of respondent's 2014 campaign for judicial office and at respondent's request and direction, including from May 2014 through October 2014, Ms. Cox and Ms. Yakel provided services in support of respondent's judicial campaign.

267. To compel Ms. Cox to work on the 2014 campaign, respondent made a statement to her to the effect of:

> You realize that if I do not get reelected you will be out of a job.

268. During the course of her 2014 campaign for judicial office, including from May 2014 through October 2014, respondent utilized court office space in the Brighton courthouse to facilitate her judicial campaign.

269. During the course of respondent's 2014 campaign for judicial office, Ms. Cox and Ms. Yakel, at times, each worked on respondent's campaign at the Brighton courthouse during the hours they were obligated to provide services as 53rd District Court employees.

270. The services provided by Ms. Cox and Ms. Yakel on respondent's 2014 campaign, that were completed during work hours in the Brighton courthouse and while they were being paid as court employees, included but were not limited to:

a. Preparation of material for the campaign and campaign related events
b. Locating and ordering campaign supplies
c. Conducting errands for the campaign, including purchasing or picking up supplies and obtaining supplies from respondent's home
d. Completing a response to a candidate survey circulated by a local media entity

271. Respondent directed Ms. Cox and Ms. Yakel to perform some of the services relating to her campaign during court hours, while they were being paid to perform their work duties and/or using court office space in the Brighton courthouse.

272. Respondent knew Ms. Cox and Ms. Yakel performed services relating to her campaign during court hours, while they were being paid to perform their work duties, and utilizing court office space.

273. Respondent participated in some of the campaign projects worked on by Ms. Cox and Ms. Yakel during court work hours, some of which utilized office space in furtherance of her campaign for reelection.

274. Respondent's direction to Ms. Cox and Ms. Yakel not to use the court's electronic equipment and information services for the campaign served to conceal the fact that court staff was working on the campaign during work hours.

275. Respondent's direction to Ms. Cox and Ms. Yakel to use portable laptop computers and WiFi internet service of a restaurant near the courthouse to prepare campaign-related materials served to conceal the fact that court staff was working on the campaign during work hours.

276. Respondent's conduct as described above constitutes a violation of the Michigan Campaign Finance Act, MCL 169.257, which states in relevant part:

> (1) A public body or a person acting for a public body shall not use or authorize the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a).

277. Respondent's conduct as described above in relation to her campaign for judicial office constitutes misconduct in office pursuant to MCL 750.505 and Michigan common law.

COUNT XIII- MISREPRESENTATIONS DURING COURT PROCEEDINGS

A. *January 4, 2013- Kowalski pretrial conference- Facts regarding relationship with Furlong*

278. As alleged above, respondent was assigned as the presiding trial judge for *People v Jerome Walter Kowalski,* Case No. 08-17643-FC, on about March 9, 2009.

279. Paragraphs 11 through 45 as alleged above in Count I-B are incorporated by reference as if fully stated in this count.

280. Respondent omitted relevant facts relating to her relationship with Detective Sergeant Furlong as set forth above.

281. Respondent's remarks on the record minimized the nature of her relationship with Detective Sergeant Furlong.

282. Respondent's conduct while on the record served to intentionally and willfully conceal the relevant true nature of her relationship with Detective Sergeant Furlong.

283. Judge Reader could not make an informed decision on the motion for disqualification as a result of respondent's concealment of her relationship and contacts with Detective Sergeant Furlong.

B. *Knowledge of Pollesch's representation of Root- remarks in McFarlane v McFarlane*

284. Respondent was married to Donald Root from 1990 through March 2017.

285. Mr. Root owned and operated two businesses, which were Uniplas, Inc. and Upcycle Polymers, LLC.

286. In 2011 respondent suggested to Mr. Root that he consult with Ms. Pollesch about certain legal issues he had with his business.

287. Following respondent's recommendation, Ms. Pollesch provided legal services to Mr. Root starting in June 2011 and ending in or around December 2016.

288. Ms. Pollesch's legal services for Mr. Root included serving as counsel for Uniplas, Inc. beginning in 2011, and Upcycle Polymers, LLC, since its incorporation in 2012.

289. Ms. Pollesch also provided personal legal services to Mr. Root in the form of preparing an estate plan for him in or around April and May 2015.

290. Respondent was assigned to preside over *Marcia McFarlane v Dale McFarlane,* 44th Circuit Court Case No.15-6492-DO.

291. On or around April 17, 2017, defendant Dale McFarlane, through his attorney Dennis Brewer, filed a motion to recuse based on respondent's relationship with Ms. Pollesch and the fact that Ms. Pollesch represented respondent's husband.

292. At the hearing on the motion to recuse, held on April 25, 2017, respondent addressed her knowledge of Ms. Pollesch's representation of Root.

293. Respondent stated (4/25/17 transcript, p. 10, l. 11-18):

> If she [Ms. Pollesch] had an obligation to disclose, then that's between the two of you. I didn't know. I didn't know until the divorce. Well, maybe, I might have known before, a little before that. But you were never before me. And, you know, since, I guess my business is all out there anyway, the bottom line is there were almost two years that we didn't speak. And I believe it was during that time that my, my now ex-husband was getting advice.

294. Respondent's reference to "the divorce" was her divorce from Mr. Root.

295. Respondent's reference to "almost two years that we didn't speak" was to herself and Ms. Pollesch.

296. In around June 2011, when Mr. Root retained Ms. Pollesch, respondent attended a lunch with Mr. Root and Ms. Pollesch where Ms. Pollesch's representation of Mr. Root's businesses was discussed by all present.

297. On December 16, 2014, respondent presided over a pretrial proceeding in *Parker & Parker v Magyari*, 53rd District Court Case No. 14-4250-GC.

298. At that proceeding, respondent addressed a remark by attorney Jon Thomas Emaus, counsel for defendant Michael Magyari, that attorney Robert Parker and Mr. Magyari were friends (which allegedly impacted fees and the attorney/client relationship).

299. In response to the statement that there was a friendship between counsel and his client, respondent stated:

> So what? That doesn't help me. My best friend does my husband's legal work and boy he pays! A lot!

300. The reference by respondent to "my best friend" was a reference to Ms. Pollesch.

301. When Mr. Emaus stated he was sure there was an agreement "there" (between Ms. Pollesch and Mr. Root) as to the terms of the payments and what the legal fees might be, respondent replied: "I know. I know."

302. Respondent added:

> He knows what he gets charged an hour and he trusts her. He pays.

303. In around April 2015 Ms. Pollesch prepared estate planning documents on behalf of Mr. Root.

304. In accordance with those documents, on April 19, 2015, respondent signed an Acceptance of Designation as Patient Advocate that was prepared by Ms. Pollesch for Mr. Root.

305. The Acceptance of Designation as Patient Advocate acknowledges respondent's acceptance of the role of Patient Advocate as set forth in a Health Care Power of Attorney and was a part of that document.

306. The Health Care Power of Attorney, which named respondent as Patient Advocate, was signed by Mr. Root on April 8, 2015, with his signature witnessed and notarized by Ms. Pollesch.

307. Respondent had knowledge of Ms. Pollesch's representation of Mr. Root as early as June 2011 and definitively by December 16, 2014.

308. The complaint in respondent's divorce was filed on December 2, 2016.

309. Respondent's representations concerning when she learned that Ms. Pollesch was representing her former husband made on April 25, 2017, at the hearing on the motion to recuse in *McFarlane v McFarlane,* were false.

C. *Court's ability to accommodate testimony by telephone- Sullivan v Sullivan*

310. Respondent was assigned to preside over *Michael Sullivan v Denise Sullivan,* 44th Circuit Court Case No. 14-006162-DO.

311. Paragraphs 235 through 240 as alleged above in Count X are incorporated in this section.

312. At all relevant dates in *Sullivan v Sullivan*, including October 5, 2015, the 53rd District Court had the capability for witnesses to appear at, and participate in, proceedings via telephone.

313. Respondent's statement to Mr. Sage on October 5 that the court lacked the capability for witnesses to appear via telephone was false.

314. Respondent's statements to Mr. Sage that denied his request that his client appear in person, and that informed him the court could not accommodate an appearance by telephone, would cause a reasonable attorney to believe, and caused Mr. Sage to believe, that his client was obligated to participate in court hearings in person.

315. Respondent's statements to Mr. Sage caused him not to seek a phone appearance for defendant Sullivan for the proceeding in *Sullivan v Sullivan* held on March 28, 2016.

316. Respondent's statements to Mr. Sage caused defendant Sullivan to incur the unnecessary expense of traveling to Michigan from Florida for the

proceeding in *Sullivan v Sullivan* held on March 28, 2016, and perhaps on other dates.

317. The misrepresentations made by respondent, during court proceedings as described in this count and also when combined with the misrepresentations described in Count XIV, below, constitute patterns of misconduct in violation of the Code of Judicial Conduct.

COUNT XIV- MISREPRESENTATIONS TO COMMISSION

A. *Knowledge of Pollesch's representation of Root*

318. In accordance with its investigation of Request for Investigation Nos. 2017-22481 and 2017-22577, the Commission issued a request to respondent for her comment pursuant to MCR 9.207(D)(2) via a letter dated August 31, 2017.

319. The request for comment included inquiries to respondent as follows:

a. Did Pollesch or her law firm provide legal services to Uniplas, Inc., Upcycle Polymers, LLC, or any other business owned by your former husband, Don Root? (#72)

b. Was Pollesch retained by your husband to represent his businesses in or around June 2011? (#73)

c. Did you ever disclose on the record in any of these cases that Pollesch and her firm were providing legal services to your husband or his businesses? If so, please list the cases where you made that disclosure, the dates of that disclosure, and copies of videos of any disclosures made on the record. (#76)

d. At a hearing in *McFarlane v McFarlane* on April 25, 2017, did you state the following when you considered the defendant's motion for disqualification (transcript, page 6, lines 8-19)?

* * *

> It was from your husband that you first learned Pollesch represented him. (# 80-b)

e. Did you ever encourage Root to retain Pollesch to provide legal services to his businesses? (#81)

f. Were you at a lunch with Root and Pollesch in 2011 when they first discussed Pollesch providing legal services to Root's businesses? (#82)

320. Respondent submitted her signed and notarized response to the request for comments, in narrative form, to the Commission on about October 27, 2017.

321. In her comments respondent stated the following, under oath and in narrative form (without reference to numbered questions), in response to the Commission's inquiries about Ms. Pollesch's representation of Mr. Root and his businesses:

> During our marriage, my husband complained about employees leaving his employment and starting their own plastics companies. I was a broken refrain [sic] talking about non-compete agreements. I did not practice labor law and did not know what should be or could be contained in a non-compete agreement. I may have suggested Ms. Pollesch's firm. That would not surprise me. I do not remember meeting with Ms. Pollesch and my husband for legal services. At some point, Ms. Pollesch provided legal services for my husband. It was my husband that told me but I do not remember when he told me, or what services were provided. Ms. Pollesch never told me. I

> remember being impressed that she had honored the attorney client privilege my husband had with her.
>
> Don may have come home one evening and told me he met with Ms. Pollesch. Don and I fought about what I thought he should be doing business wise. He did not like talking with me about his businesses because he believed I did not respect his business acumen. As a result, business was a topic we avoided.
>
> Don moved out of the marital home in September 2013. It is even more likely that we did not talk about his meetings with Ms. Pollesch.
>
> About a year before we separated, Don created another business. It came as a surprise to me that he had incorporated another business. I had no knowledge beforehand that he was going to do that. Ms. Pollesch probably did that work.
>
> When we separated, my husband had a new will prepared. He wanted me to have a new will prepared. I never did. Ms. Pollesch may have prepared his new will. I do not know.
>
> Since Ms. Pollesch and I had stopped seeing each other the summer of 2014 until just before the divorce was filed, she would not have communicated to me anything she was doing for my husband or his businesses. I now know they met for work and socially. In my opinion, their conversations helped perpetuate the break between Ms. Pollesch and me. They were both angry with me and their anger was fed when they got together.

322. On December 13, 2017, the Commission sent a letter to respondent asking her to provide numbered responses to the original numbered requests for her comment, and to respond to each inquiry.

323. The Commission directed that the supplemental response be notarized.

324. Inquiry #73 in the request for comment asked:

> Was Pollesch retained by your husband to represent his businesses in or around June 2011?

325. In her supplemental comment, respondent stated in reply to inquiry #73:

> I do not know when my ex-husband retained Shari. When I was an attorney, I provided legal services for my ex-husband's businesses. Once I was a judge, my dad provided legal services for my ex-husband's businesses. I did not know Don decided to hire Shari. Don and I fought about what I thought he should be doing business wise. He did not like talking with me about his businesses because he believed I did not respect his business acumen. As a result, business was a topic we avoided.
>
> During our marriage, my husband complained about employees leaving his employment and starting their own plastics companies. I was a broken refrain [sic] talking about non-compete agreements. I did not practice labor law and did not know what should be or could be contained in a non-compete agreement. I may have suggested Ms. Pollesch's firm. That would not surprise me. If he took my advice and hired her, I did not know until her letter of January 3, 2017, to Mr. Kizer.
>
> I have a vague recollection that he met with Shari. By the power of elimination it had to be Don that told me he met with Shari because Shari never did. But I do not remember when he told me he met with her. Don moved out of our home in the fall of 2013. Prior to that, he may have come home one evening and told me he met with Shari.
>
> About a year before we separated, Don created another business. It came as a surprise to me that he had incorporated another business. I had no knowledge beforehand that he was going to do that. It was not until after the divorce was filed I learned Shari did the work.

> When we separated, my husband had a new will prepared. He wanted me to have a new will prepared. I never did. Ms. Pollesch may have prepared his new will. I do not know.
>
> Since Ms. Pollesch and I had stopped seeing each other the summer of 2014 until just before the divorce was filed, she could not have communicated to me anything she was doing for my husband or his businesses. Knowing Shari, she would not have told me even if we were speaking. She would protect the attorney client privilege. I now know they met for work and socially. In my opinion, their conversations helped perpetuate the break between Ms. Pollesch and me. They were both angry with me and their anger was fed when they got together.

326. Inquiry #76 in the request for comment asked:

> Did you ever disclose on the record in any of these cases that Pollesch and her firm were providing legal services to your husband or his businesses? If so, please list the cases where you made that disclosure, the dates of that disclosure, and copies of videos of any disclosures made on the record.

327. In her supplemental comment, respondent stated in reply to inquiry #76:

> No. I did not know Shari or her firm had represented my ex-husband until she sent her letter to Mr. Kizer dated January 3, 2017. Don moved out of our home in the fall of 2013. Shari and I stopped communicating in June 2014 until November 2016. Additionally, please see my answer to question 73.

328. Inquiry #79 in the request for comment asked:

> If you did not disclose the fact that Pollesch (or her firm) represented your husband and/or his businesses in any cases where she or attorneys from her firm appeared in cases pending before you, please explain why you did not do so given your obligation under MCJC 3C.

329. In her supplemental comment, respondent stated in reply to inquiry #79:

I did not know of the representation to disclose. Please see my answer to question 76.

330. Inquiry #80 in the request for comment asked respondent:

> At a hearing in *McFarlane v McFarlane* on April 25, 2017, did you state the following when you considered the defendant's motion for disqualification (transcript, page 6, lines 8-19):
>
> a. Pollesch represented your husband and his business;
>
> b. It was from your husband that you first learned Pollesch represented him;
>
> c. You had no legal interest in your husband's business through the time he filed for divorce;
>
> d. "In the end" you did not end up with the business;
>
> e. You did not have any stock and were not a shareholder; and
>
> f. You were not a manager?

331. In her supplemental comment, in response to question #80, respondent replied "Yes" to each of the inquiries.

332. On March 22, 2018, the Commission issued a 28-day letter to respondent pursuant to MCR 9.207(D)(1).

333. Respondent provided a reply, under oath, to the 28-day letter on around April 19, 2018.

334. The 28-day letter to respondent alleged in paragraph # 72-q:

> During your friendship you regularly socialized with Ms. Pollesch, including but not limited to:

* * *

q. Ms. Pollesch has, over your judgeship, been your closest friend who is a practicing attorney.

335. In response to that allegation, respondent stated only:

> She has not been my only friend who is an attorney, during my judgeship.

336. In the 28-day letter to respondent the Commission alleged in paragraph #76:

> Ms. Pollesch provided legal services to Mr. Root starting in June 2011 and ending in or around December 2016.

337. In response to that allegation, respondent stated:

> I did not know Shari or her firm had represented my ex-husband until she sent her letter to Mr. Kizer dated January 3, 2017. Don moved out of our home in the fall of 2013. Shari and I stopped communicating in June 2014 until November 2016.
>
> When I was an attorney, I provided legal services for my ex-husband's businesses. Once I was a judge, my dad provided legal services for my ex-husband's businesses. I did not know Don decided to hire Shari. Don and I fought about what I thought he should be doing business wise. He did not like talking with me about his businesses because he believed I did not respect his business acumen. As a result, business was a topic we avoided.
>
> During our marriage, my husband complained about employees leaving his employment and starting their own plastic companies. I was a broken refrain talking about noncompete agreements. [*sic*] I did not practice labor law and did not know what should be or could be contained in a noncompete agreement. I may have suggested Ms. Pollesch's firm. That would not surprise me. If he took my advice and hired her, I did not know until her letter of January 3, 2017 to Mr. Kizer.

> I have a vague memory of knowing he met with Shari. By the power of elimination, it had to be Don that told me he met with Shari because Shari never did. But I do not remember when he told me he met with her. Don moved out of our home in the fall of 2013. Prior to that, he may have come home one evening and told me he met with Shari.
>
> About a year before we separated, Don created another business. It came as a surprise to me that he had incorporated another business. I had no knowledge beforehand that he was going to do that. It was not until after the divorce was filed I learned Shari did the work.
>
> When we separated, my husband had a new will prepared. He wanted me to have a new will prepared. I never did. Ms. Pollesch may have prepared his new will. I do not know.
>
> Since Ms. Pollesch and I had stopped seeing each other the summer of 2014 until just before the divorce was filed, she could not have communicated to me anything she was doing for my husband or his businesses. Knowing Shari, she would not have told me even if we were speaking. She would protect the attorney client privilege.

338. In the 28-day letter to respondent the Commission alleged in paragraph number #77:

> Ms. Pollesch's legal services for Mr. Root included serving as counsel for Uniplas, Inc. beginning in 2011, and Upcycle Polymers, LLC, since its incorporation in 2012.

339. In response to the allegation, respondent merely replied:

> Please see my answer to question 76.

340. In the 28-day letter to respondent the Commission alleged in paragraph #78:

> Ms. Pollesch also provided personal legal services to Mr. Root in the form of preparing an estate plan for him in or around May 2015.

341. In response to the allegation, respondent merely replied:

> Please see my answer to question 76.

342. In the 28-day letter to respondent the Commission alleged in paragraph #84:

> Ms. Pollesch appeared as counsel of record in the cases listed in Attachment 1.[1]

343. In response to the allegation respondent answered: "Yes."

344. In the 28-day letter to respondent the Commission alleged in paragraph #85:

> While the cases in Attachment 1 were pending, you failed to disclose to the parties and counsel in those cases:
>
> a. Any information about your social relationship with Ms. Pollesch, including but not limited to the information outlined above;
>
> b. That Ms. Pollesch had provided legal services to your husband and his businesses;
>
> c. That Ms. Pollesch represented your sister in her divorce;
>
> d. That you had, at times, consulted Ms. Pollesch on an informal basis as to your personal legal issues; or
>
> e. That you and Ms. Pollesch had discussed on an "intellectual basis" legal issues that arose in cases to which you were assigned as a judge, or legal issues which arose in Ms. Pollesch's work as an attorney.

[1] The attachment included the cases identified in paragraphs 80 and 81 above.

345. In response to the allegation respondent asserted:

a. I did not disclose that we were friends.

b. I did not know of the representation to disclose.

c. I did not know of the representation to disclose.

d. I did not "consult" with Ms. Pollesch.

e. I did not disclose what Ms. Pollesch and I talked about on our walks.

346. In the 28-day letter to respondent the Commission alleged in question # 86:

> At no time during the pendency of the cases in Attachment 1 did you obtain a waiver as to any disqualification due to your relationships with Ms. Pollesch.

347. In response to the allegation respondent asserted:

> I did not know I had a duty to disclose I was friends with Ms. Pollesch. Please see my answer to question 8.
>
> If I did have an obligation to disclose my friendship or to obtain a waiver, a review of the cases shows that the situation to disclose never arose.

348. In the 28-day letter to respondent the Commission alleged in question #88:

> Other attorneys employed by BP&P appeared as counsel of record in the cases listed in Attachment 1.[2]

349. In response to that allegation respondent stated: "Yes."

[2] The attachment included the cases identified in paragraphs 85 and 86 above.

350. In the 28-day letter to respondent the Commission alleged in paragraph #89:

> While the cases involving attorneys from BP&P were pending, you failed to disclose to the parties and counsel in those cases:
>
> a. Any information about your social relationship with Ms. Pollesch, including but not limited to the information outlined above;
>
> b. That Ms. Pollesch had provided legal services to your husband and his businesses;
>
> c. That Ms. Pollesch represented your sister in her divorce;
>
> d. That you had, at times, consulted Ms. Pollesch on an informal basis as to your personal legal issues; or
>
> e. That you and Ms. Pollesch had discussed, on an "intellectual" basis, legal issues that arose in cases to which you were assigned as a judge, or legal issues which arose in Ms. Pollesch's work as an attorney.

351. In response to the allegation respondent asserted:

> a. I did not disclose I was friends with Ms. Pollesch.
>
> b. I did not know of the representation to disclose.
>
> c. I did not know of the representation to disclose.
>
> d. I did not "consult" with Ms. Pollesch.
>
> e. I did not disclose what Ms. Pollesch and I talked about on our walks.

352. In the 28-day letter to respondent the Commission alleged in paragraph #90:

> At no time during the pendency of the cases in Attachment 1 did you obtain a waiver as to any disqualification due to your relationships with Ms. Pollesch and BP&P.

353. In response to that allegation respondent asserted:

> I did not know I had an obligation to obtain a waiver because of my friendship with Ms. Pollesch.

354. In about June 2011 respondent attended a lunch with Mr. Root and Ms. Pollesch where Ms. Pollesch's representation of Mr. Root's businesses was discussed by all present.

355. On December 16, 2014, respondent presided over a pretrial proceeding in *Parker & Parker v Magyari*, 53rd District Court Case No. 14-4250-GC.

356. At that proceeding respondent addressed a remark by attorney Jon Thomas Emaus, counsel for defendant Michael Magyari, that attorney Robert Parker and Mr. Magyari were friends (which allegedly impacted fees and the attorney/client relationship).

357. In response to the statement that there was a friendship between counsel and his client, respondent stated:

> So what? That doesn't help me. My best friend does my husband's legal work and boy he pays! A lot!

358. The reference by respondent to "my best friend" was a reference to Ms. Pollesch.

359. When Mr. Emaus stated he was sure there was an agreement "there" (between the "best friend" – Ms. Pollesch and respondent's "husband" – Mr.

Root) as to the terms of the payments and what the legal fees might be, respondent replied: "I know. I know."

360. Respondent added:

> He knows what he gets charged an hour and he trusts her. He pays.

361. In about April 2015 Ms. Pollesch prepared estate planning documents on behalf of Mr. Root.

362. In accordance with those documents, on April 19, 2015, respondent signed an Acceptance of Designation as Patient Advocate that was prepared by Ms. Pollesch for Mr. Root.

363. The Acceptance of Designation as Patient Advocate acknowledges respondent's acceptance of the role of Patient Advocate as set forth in a Health Care Power of Attorney and was a part of that document.

364. The Health Care Power of Attorney, which named respondent as Patient Advocate, was signed by Mr. Root on April 8, 2015, and his signature was witnessed and notarized by Ms. Pollesch.

365. Respondent had knowledge of Ms. Pollesch's representation of Mr. Root and his businesses long before she received Ms. Pollesch's letter to Mr. Kizer dated January 3, 2017.

366. Respondent's representations to the Commission in her comment, supplemental comment, and response to the 28-day letter concerning when

she learned of Ms. Pollesch's representation of Mr. Root and his businesses were false.

367. Respondent's characterizations to the Commission in her comment, supplemental comment, and response to the 28-day letter as to the substance of her knowledge of Ms. Pollesch's representation as to Mr. Root and his businesses was false.

B. *Knowledge of and participation in campaign work during court hours*

368. Paragraphs 262 through 277 as alleged in Count XII above are incorporated in this section.

369. During its investigation of Request for Investigation Nos. 2017-22481 and 2017-22577, the Commission asked respondent for her comment pursuant to MCR 9.207(D)(2), via a letter dated August 31, 2017.

370. Respondent submitted her signed and notarized response to the request for her comments, in narrative form, to the Commission on about October 27, 2017.

371. Inquiry #160 of the Commission's request stated:

> Did you have Cox work on your 2008 and 2014 campaigns for judicial office during work hours? If so, please describe what Cox did for each of those campaigns.

372. Inquiry #166 of the Commission's request stated:

> Did you have Yakel work on your 2014 campaign for judicial office during work hours? If so, please describe what Yakel did for that campaign and why you had her do so during work hours.

373. In respondent's narrative response to the request for her comment she stated, with regard to campaign activities involving court employees:

> I never allowed campaign work to be done during work hours.
>
> * * *
>
> Mixing my campaign with work was an absolute no.
>
> * * *
>
> I never asked anyone other than friends, with whom I did not work, and family to help me with my campaigns. If someone offered that was not a friend or family, I accepted.

374. The above statements to the Commission were false and respondent knew they were false.

375. On December 13, 2017, the Commission sent a supplemental letter to respondent asking her to provide numbered responses to the original numbered requests for her comment and to respond to each inquiry.

376. Respondent provided a supplemental response to the request for comments, under oath, on about January 30, 2018.

377. In her supplemental comment, she stated in reply to inquiry #160 (quoted above):

> I never allowed campaign work to be done during work hours.
>
> * * *
>
> Mixing my campaign with work was an absolute no.
>
> * * *
>
> I never asked anyone other than friends, with whom I did not work, and family to help me with my campaigns. If someone offered that was not a friend or family, I accepted.

378. In her supplemental comment, respondent stated in reply to inquiry #166 (quoted above):

> She was never to work on my campaign during work hours. She worked part time. When she left to go door to door, I assumed she clocked out.
>
> * * *
>
> The only things she could have done during work hours would have been door to door which I would not have known was being done during work hours and friends to friends cards. I never saw her doing friends to friends cards at work. I was adamant about keeping the campaign separate from work. No work during work hours or on County equipment.

379. Respondent's statements to the Commission with respect to inquiries #160 and #166, in her January 30, 2018, response to the request for supplemental comments, were false and respondent knew they were false.

380. On March 22, 2018, the Commission issued a letter to respondent pursuant to MCR 9.207(D)(1), also referred to as a "28-day letter."

381. Respondent replied to the 28-day letter, under oath, on about April 19, 2018.

382. Allegation #320 in the 28-day letter stated:

> You had Ms. Cox work on your 2008 and 2014 campaigns for judicial office during work hours.

383. In response to allegation #320, respondent stated:

> No. I was emphatic about keeping my campaigns separate from work. Campaign work during work hours was prohibited.

384. Respondent's answer to allegation #320 was false and respondent knew it was false.

385. Allegation #329 in the 28-day letter stated:

> You had Ms. Yakel work on your 2014 campaign for judicial office during work hours.

386. In response to allegation #329, respondent stated:

> She was never to work on my campaign during work hours.
>
> * * *
>
> Everything else was at night or on a weekend. When she went door to door, she was expected to "clock out." I never saw her doing friends' to friends' cards at work. I would not have let her. I was adamant about keeping the campaign separate from work. No work during work hours or on County equipment.

387. Respondent's answer to allegation #329 was false and respondent knew it was false.

388. Respondent's knowing misrepresentations in her statements to the Commission constitute a pattern of misconduct in violation of the Code of Judicial Conduct.

389. Respondent's knowing misrepresentations as described in Count XIV, combined with those described in Count XIII, above, constitute a pattern of misconduct in violation of the Code of Judicial Conduct.

390. The conduct described in paragraph nos. 1 – 389 constitutes:

a) Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30 and MCR 9.205;

b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.205(B);

c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to Code of Judicial Conduct Canon 1;

d) Failure to be aware that the judicial system is for the benefit of the litigant and the public, and not the judiciary, contrary to Code of Judicial Conduct, Canon 1;

e) Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of Code of Judicial Conduct Canon 2(A);

f) Conduct involving impropriety and the appearance of impropriety, in violation of Code of Judicial Conduct Canon 2(A);

g) Failure to respect and observe the law, contrary to Code of Judicial Conduct Canon 2(B);

h) Failure to act in a conduct and manner that promotes public confidence in the integrity and impartiality of the judiciary, contrary to Code of Judicial Conduct Canon 2(B);

i) Allowing social or other relationships to influence judicial conduct or judgment, contrary to Code of Judicial Conduct Canon 2(C);

j) The use of the prestige of office to advance personal business interests or those of others, contrary to Code of Judicial Conduct Canon 2(C);

k) Failure to ensure that judicial duties take precedence over all other activities, as mandated by Code of Judicial Conduct Canon 3;

l) Failure to be faithful to the law and maintain professional competence in it, contrary to Code of Judicial Conduct Canon 3(A)(1);

m) Failure to be patient, dignified, and courteous to lawyers and litigants with whom respondent dealt in an official capacity, contrary to Code of Judicial Conduct Canon 3(A)(3);

n) Engaging in ex parte communications in connection with pending or impending proceedings, contrary to Code of Judicial Conduct Canon 3(A)(4);

o) Failure to promptly dispose of the business of the court, contrary to Code of Judicial Conduct Canon 3(A)(5);

p) A failure to treat every person fairly, and with courtesy and respect, contrary to Code of Judicial Conduct Canons 2(B) and 3(A)(10);

q) Failure to diligently discharge administrative responsibilities, to maintain professional competence in judicial administration, and to facilitate the performance of the administrative responsibilities of other judges and court officials, contrary to Code of Judicial Conduct Canon 3(B)(1) and MCR 9.205(A);

r) Failure to direct staff in the judge's control to observe high standards of fidelity, diligence, and courtesy to others with whom they deal in their official capacity, contrary to Code of Judicial Conduct Canon 3(B)(2);

s) Failure to disclose possible grounds for disqualification, contrary to Code of Judicial Conduct Canon 3(C) and MCR 2.003;

t) Failure to disqualify in violation of MCR 2.003(C);

u) Improper conduct during depositions, contrary to MCR 2.306(C);

v) Actions that constitute the use of public resources for a campaign for judicial office, including but not limited to personnel and office space, in violation of MCL 169.257;

w) Misuse of judicial office for personal advantage or gain, contrary to MCR 9.205(B)(1)(e);

x) Perjury, in violation of MCL 750.423;

y) Conduct contrary to MCL 722.716(4);

z) Failure to prohibit public employees subject to the judge's direction or control from doing for respondent what respondent is prohibited from doing under Code of Judicial Conduct Canon 7(B)(1)(b);

aa) Conduct reflecting deceit, intentional misrepresentation, and/or engaging in misleading statements to the Commission, pursuant to MCR 9.205(B);

bb) Misuse of judicial office for personal advantage or gain, contrary to MCR 9.205(B)(1)(e);

cc) Conduct which exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(A)(2); and

dd) A pattern of misconduct in violation of the Code of Judicial Conduct.

Pursuant to MCR 9.209, respondent is advised that an original verified answer, under oath, to the foregoing amended complaint, and nine copies thereof, must be filed with the Commission within 14 days after service upon respondent of the complaint. Such answer shall be in a form similar to the answer in a civil action in a circuit court and shall contain a full and fair disclosure of all the facts and circumstances pertaining to respondent's alleged misconduct. Any willful concealment, misrepresentation, or failure to file such answer and disclosure shall be additional grounds for disciplinary action under the complaint.

JUDICIAL TENURE COMMISSION
OF THE STATE OF MICHIGAN

3034 W. Grand Boulevard, Suite 8-450
Detroit, Michigan 48202

By: /s/
Lynn A. Helland (P32192)
Examiner

/s/
Casimir J. Swastek (P42767)
Associate Examiner

July 23, 2018

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