

STATE OF MICHIGAN
JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST

Hon. Paul J. Cusick
Third Circuit Court
Detroit, Michigan

Docket No. 165050
Complaint No. 104

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HON. PAUL J. CUSICK'S ANSWER TO COMPLAINT

Now comes Hon. Paul J. Cusick, by and through his attorney, Collins Einhorn

Farrell PC and for his answer to the complaint, states as follows:

1. Respondent has been a licensed attorney and a member of the State Bar of Michigan since 2007.

ANSWER: Admitted as true.

2. As an attorney, respondent has been, and still is, subject to the standards of conduct applicable under MCR 9.103(A), MCR 9.104, and the Michigan Rules of Professional Conduct ("MRPC").

ANSWER: Admitted as true.

3. Respondent is, and since November 2016 has been, a judge of the Third Circuit Court, County of Wayne, State of Michigan.

ANSWER: Admitted as true.

4. As a judge, respondent has been, and still is, subject to the duties and responsibilities imposed on him by the Michigan Supreme Court and is subject to the standards for discipline set forth in MCR 9.202.

ANSWER: Admitted as true.

5. Between October of 2011 and November of 2016, respondent was employed by the Office of the Michigan Attorney General (AG) as an Assistant Attorney General (AAG).

ANSWER: Admitted as true.

6. As an AAG respondent was subject to the duties and responsibilities imposed on him by the MRPC, including, but not limited to Rules 3.3; 3.4; 3.8; and 8.4.

ANSWER: Admitted as true.

7. Pursuant to MCR 9.205(B)(2), the Commission has jurisdiction over respondent for conduct committed while he was a member of the State Bar of Michigan.

ANSWER: Admitted as true.

FACTUAL BACKGROUND

8. Between 2013 and his separation from the AG's office in November of 2016, respondent, as an AAG, was the "lead attorney" in the following investigations and/or prosecutions:

- a. The investigation and prosecution of a large-scale marijuana organization, which was operated primarily by Thomas McCully, Ryan Goble, and Nicholas Stevens (McCully investigation) and which ultimately resulted in *People v McCully, et al*, 35th District Court case no.

13AG86, Third Circuit Court case nos. 14-0923 and 14-1140 (later consolidated under case no. 14-1140).

ANSWER: Admitted as true.

b. The investigation and prosecution of a large-scale marijuana organization which was operated primarily by Darryl Berry (Berry investigation) and which ultimately resulted in *People v Darryl Berry and Jeffrey Michael*, 36th District Court case no. 16-900099/16-55791 and *People v Darryl Berry, et al*, 53d District Court case nos. 16-0473 through and including 16-0476, 44th Circuit Court case no. 17-024613.

ANSWER: Admitted as true.

c. The investigation and prosecution of the Pure Wellness Center, a marijuana dispensary in Canton Township, Michigan, owned and operated by Amanda Joslin (Joslin investigation), which ultimately resulted in *People v Amanda Joslin*, 35th District Court case no. 15AG161; Third Circuit Court case no. 16-0143 and in *People v Amanda Joslin, Eric DeJonghe, and Jacob Scholin*, 14-A District Court, Washtenaw County, Michigan, case no. 15F21261, 22nd Circuit Court case nos. 16-000277; 16-000278, and 16-000279.

ANSWER: Admitted as true.

9. The McCully, Berry, and Joslin investigations were handled by the Western Wayne Narcotics Task Force (Task Force).

ANSWER: Admitted as true.

10. As the lead attorney, respondent:

- a. Maintained personal, telephonic and/or email contact with the Task Force investigating officers.

ANSWER: Admitted as true.

- b. Assisted the Task Force in the preparation of, and reviewed and approved, all search warrants related to the McCully, Berry, and Joslin investigations and/or prosecutions.

ANSWER: Admitted as true.

- c. Issued investigative subpoenas and took investigative subpoena testimony from witnesses, suspects, and/or defendants in the McCully, Berry, and/or Joslin investigations and/or prosecutions.

ANSWER: Admitted as true.

- d. Received and maintained a physical copy of various documents pertaining to the McCully, Berry, and Joslin investigations and prosecutions.

ANSWER: Admitted as true.

- e. Maintained ongoing notes/updates in the AG's internal electronic "Legal files" system regarding the progress of, and developments in, the McCully, Berry, and Joslin investigations and/or prosecutions.

ANSWER: Admitted as true.

- 11. As the lead attorney in the McCully, Berry, and Joslin investigations and/or prosecutions, respondent was aware that:

- a. Members of the Task Force did not have the authority to enter into any offers, promises, deals, and/or understandings regarding charges and/or sentences with any defendants, suspects, witnesses, and/or confidential informants (CIs).

ANSWER: Admitted as true.

- b. Any offers, promises, deals, and/or understandings regarding charges and/or sentences with any defendants, suspects, witnesses or CIs had to be made and/or approved by a prosecuting official.

ANSWER: Admitted as true.

- c. All CIs working with the Task Force were required to sign a “Confidential Source” form/card (Source Card).

ANSWER: Neither admitted nor denied for lack of knowledge. In further response, Judge Cusick was not aware of any such alleged requirement. To Judge Cusick’s knowledge there was no such requirement expected or established by the Attorney General’s office. Judge Cusick does not recall the specific procedures that MSP had in place for use of a CI and does not believe he would have known these specific procedures.

A. McCully investigation and prosecution

12. Respondent was assigned to the McCully investigation and/or prosecution in early 2013.

ANSWER: Admitted as true.

13. The Task Force officers involved in the McCully investigation included, but were not limited to, Sgt. Paul Calleja, Captain (then Lieutenant) Andrew Osborne, Lt. David Kelly, and retired Chief (then officer) Paul Tennes.

ANSWER: Admitted as true.

14. Based on the entirety of the McCully investigation, on about December 4, 2013, respondent prepared and submitted to his superiors a “Request to Initiate Litigation” (Request to Initiate) in which he outlined the evidence and the charges he recommended issuing against Thomas McCully and nine other persons.

ANSWER: Admitted as true.

15. When submitting the Request to Initiate regarding the McCully investigation, respondent was aware that:

a. Thomas McCully was the head of the organization.

ANSWER: Admitted as true.

b. Brandy Loggie was Thomas McCully’s girlfriend and was pregnant with and/or was the mother of his newborn child.

ANSWER: Admitted as true.

c. Brandy Loggie was involved in the deliveries and/or sales of marijuana for Thomas McCully and the McCully organization.

ANSWER: Admitted as true.

d. In early 2013, Brandy Loggie solicited Micah Delavale to make marijuana deliveries for Thomas McCully and the McCully organization.

ANSWER: Admitted as true.

- e. In February of 2013, Thomas McCully and Brandy Loggie used Micah Delavale to deliver approximately seven pounds of marijuana to Kentucky.

ANSWER: Admitted as true.

- f. On about February 26, 2013, while attempting to deliver the marijuana in Kentucky, Micah Delavale was arrested by the Lexington, Kentucky, Police Department.

ANSWER: Admitted as true.

- g. Prior to Micah Delavale's arrest in Kentucky, Thomas McCully and Brandy Loggie maintained contact with Micah Delavale, by phone and through text messages, regarding the marijuana Mr. Delavale was delivering from Michigan to Kentucky.

ANSWER: Admitted as true.

- h. After Micah Delavale's Kentucky arrest, Brandy Loggie maintained contact with Micah Delavale, by telephone and through text messages, regarding the arrangements Thomas McCully was making for Mr. Delavale's bond/bail in Kentucky.

ANSWER: Admitted as true.

- i. On about July 9, 2013, the Task Force arrested Thomas McCully and Brandy Loggie for their involvement/participation in the McCully organization.

ANSWER: Admitted as true.

- j. At the time of her arrest, Brandy Loggie was in possession of a backpack containing her driver's license, seven cell phones, five cell phone chargers, and \$7,022 in cash.

ANSWER: Admitted as true.

- k. During her custodial interview, Brandy Loggie admitted that:

1. She was aware that Thomas McCully was selling large amounts of marijuana.

ANSWER: Admitted as true.

2. She observed many heat-sealed one-pound bags of marijuana and large amounts of cash at Thomas McCully's residence, which she had shared with him.

ANSWER: Admitted as true.

3. She arranged for Micah Delavale to make marijuana deliveries for Thomas McCully.

ANSWER: Admitted as true.

4. She rented the vehicle Micah Delavale used in the Kentucky delivery.

ANSWER: Admitted as true.

5. She paid for Micah Delavale's Kentucky attorney.

ANSWER: Admitted as true.

16. On about December 13, 2013, in 35th District Court in Plymouth, Michigan, under case no. 16AG86, respondent filed/authorized felony charges against ten individuals, including Thomas McCully, Ryan Goble, and Nicholas Stevens, for their roles in the McCully organization.

ANSWER: The court file number was 13AG86, it appears the First Assistant Attorney General William Rollstin signed and authorized the complaints (according to the register of action). In further response, the balance is admitted as true.

17. Respondent charged Thomas McCully, Ryan Goble, and Nicholas Stevens with:

a. Conducting a criminal enterprise, a 20-year felony (MCL 750.159)

ANSWER: Denied as untrue. In further response it was MCL 750.159i.

b. Conspiracy to conduct a criminal enterprise, a 20-year felony (MCL 750.159)

ANSWER: Denied as untrue. In further response it was MCL 750.159i.

c. Conspiracy to manufacture and/or deliver marijuana, a 4-year felony (MCL 750.157)

ANSWER: Admitted as true.

18. Respondent also filed a habitual offender–second offense notice (MCL 769.10) against Thomas McCully and a habitual offender–third offense notice (MCL 769.11) against Nicholas Stevens.

ANSWER: Admitted at true.

19. Respondent did not recommend to his superiors, and did not file/authorize, any charges against Brandy Loggie.

ANSWER: Admitted as true.

20. On about January 30, 2014, in respondent's presence, Thomas McCully, Ryan Goble, and Nicholas Stevens waived their right to a preliminary examination and were bound over for trial under Third Circuit Court case number 14-1140 for Thomas McCully and Ryan Goble and under circuit case number 14-0923 for Nicholas Stevens (later consolidated under case no. 14-1140).

ANSWER: Admitted as true.

21. Shortly after the bind-over, respondent began plea negotiations/discussions with attorneys Steven Fishman (representing Thomas McCully), Christopher Kessel (representing Ryan Goble), and Neil Rockind (representing Nicholas Stevens).

ANSWER: Admitted as true.

22. Arraignment on the information (AOI) for Thomas McCully, Ryan Goble, and Nicholas Stevens was held on about February 13, 2014, before Third Circuit Court Judge David Groner.

ANSWER: Admitted as true.

23. On March 4, 2014, AAG Kim Mitseff initiated forfeiture proceedings in Third Circuit Court against various individuals involved in the McCully organization, including Thomas McCully and Brandy Loggie.

ANSWER: Admitted as true.

24. Included in the forfeiture proceedings, at least in part, were the following:

a. \$56,743.02 in funds and/or property belonging to Thomas McCully.

ANSWER: Admitted as true.

b. \$7,022 in funds and/or property confiscated from Brandy Loggie at the time of her July 9, 2013, arrest.

ANSWER: Admitted as true.

25. On or shortly after March 4, 2014, respondent became aware of the forfeiture proceedings pending against various members of the McCully organization, including Thomas McCully and Brandy Loggie.

ANSWER: Admitted as true.

26. On about March 6, 2014, respondent made the following plea offers to Thomas McCully, Ryan Goble and Nicholas Stevens:

a. In exchange for dismissal of Counts 2 and 3, and the habitual-3rd notice, respondent offered that Nicholas Stevens could plead guilty to one count of conducting a criminal enterprise, a 20-year offense, with a sentence agreement that included 51 months to 20 years in prison, concurrent with a felonious assault prison sentence he was already serving.

ANSWER: Admitted as true.

b. In exchange for dismissal of Counts 2 and 3, respondent offered that Ryan Goble could plead guilty to one count of conducting a criminal enterprise, a 20-year offense, with a sentence agreement that included one year in the Wayne County Jail.

ANSWER: Admitted as true.

- c. In exchange for dismissal of Counts 2 and 3 and the habitual-2nd notice, respondent offered that Thomas McCully could plead guilty to one of the 20-year felony counts contained in the charging document, with a sentence agreement that included a minimum of four years in prison.

ANSWER: Admitted as true.

27. On March 6, 2014, before Hon. David Groner and in respondent's presence, Nicholas Stevens accepted respondent's plea offer and pled guilty to one count of conducting a criminal enterprise, a 20-year felony (MCL 750.159(i)(4), with a sentence agreement that included 51 months to 20 years in prison in exchange for a dismissal of the remaining counts and the habitual-3rd notice.

ANSWER: Admitted as true.

28. On March 6, 2014, Steven Fishman, representing Mr. McCully and standing in for Mr. Goble's counsel of record Neil Rockind, requested a one-week adjournment for Thomas McCully and Ryan Goble.

ANSWER: Admitted as true.

29. In making that request, Mr. Fishman advised Judge Groner, in part, that the parties were "making a deal" and would soon have a resolution for both defendants.

ANSWER: Admitted as true. In further response, the transcript, (Attachment 15 to RFI) reveals that Attorney Fishman speaking on his matter and standing in for Attorney Neil Rockind on behalf of Mr. Goble, at p.3 line 21, stated, "We're asking the Court to put this over one week and we will be resolving this – we'll have a resolution for both of them." And then after further discussion, Attorney Fishman at p4 line 18 stated, "No, we're going to take – we're making a deal."

30. Respondent did not disagree with, or object to, Mr. Fishman's representations.

ANSWER: Admitted as true. In further response, he did not confirm or endorse the representation.

31. On about March 13, 2014, respondent and Mr. Fishman reached an agreement, deal, and/or understanding that Thomas McCully would plead guilty as charged in case no. 14-1140-FY and would “cooperate” with the Task Force in exchange for a favorable consideration/reduction/mitigation in his sentence.

ANSWER: Denied as untrue. In further response, Mr. McCully pleaded as charged without the benefit of a plea agreement. In his notes within the AG’s “Legal Files” system, Judge Cusick wrote:

Thomas McCully pled guilty to all three counts (CCE, conspiracy to commit CCE, and Conspiracy to Deliver Marijuana). There was no Cobbs evaluation and it was stated on the record that there have been no promises regarding a sentence or anything else. His guidelines as charged are 72-150. His sentence is going to be on June 17th.

Attorney Fishman contacted Judge Cusick via email on March 27, 2014 (after the sentencing) raising the possibility of cooperation. The AG’s files show that on April 3, 2014, Judge Cusick and Attorney Fishman met. After the meeting, Judge Cusick made a note to the file wherein he confirmed that, “I made no promise regarding anything and basically just listened.” Also, and most importantly, a *Kastigar* letter is dated May 2, 2014—a month and half later. That letter sets out what Judge Cusick knew and understood about the status of Mr. McCully’s matter at the time. The letter expressly states “There is no agreement between your client and the Michigan Attorney General’s Office as to any sentence that may be imposed.” And, “Other than what has been stated, there is no other agreement between your client and the Michigan Department of Attorney General or any other investigating agencies.” Further, there was no “exchange” as that term is understood. Mr. McCully was cooperating unilaterally in the hopes of earning mitigation. Tab A, Kastigar letter.

32. On March 13, 2014, before Judge Groner and in respondent's presence:
- a. Ryan Goble accepted respondent's plea offer and tendered a guilty plea to one count of conducting a criminal enterprise with a sentence agreement that included one year in the Wayne County Jail in exchange for a dismissal of the remaining counts.

ANSWER: Admitted as true.

- b. Thomas McCully tendered a plea of guilty as charged to all counts under sentencing guidelines of 72 to 150 months.

ANSWER: Admitted as true.

33. On about March 13, 2014 respondent stipulated to delay Thomas McCully's sentencing until June 17 to allow Mr. McCully time to "demonstrate" his cooperation as a CI with the Task Force.

ANSWER: Admitted as true.

34. Between March 13 and May 2, 2014, respondent and Mr. Fishman continued their contacts, conversations and/or discussions regarding the details of Mr. McCully's "cooperation" and/or service as a confidential informant (CI) with the Task Force.

ANSWER: Admitted as true. In further response, these culminated in a *Kastigar* letter that expressly disclaims that any deal had been made or promise offered as to sentencing. See Tab A.

35. On May 2, 2014, in respondent's and Mr. Fishman's presence, members of the Task Force conducted Mr. McCully's "debriefing" regarding his CI service and/or "cooperation" with the Task Force.

ANSWER: Not contested, but Judge Cusick does not have a recollection of the meeting. His notes in Legal Files state:

Last Friday, May 2nd, Thomas McCully was debriefed regarding his knowledge of the manufacture and sales of marijuana in Michigan. Myself, Dave Kelly, Paul Calleja, Steve Fishman, and McCully were all at that meeting. The meeting lasted two hours and most of the questions came from Kelly and Calleja. It is fair to say that the information that McCully possessed and his willingness to cooperate with law enforcement is significant. He has already pled guilty and his sentence date is June 17th. Kelly and Calleja are going to try and test his credibility. Fishman and myself agree that we should try to adjourn the June 17th date a couple of months to determine if he is reliable. This may be somewhat mitigating at his sentence."

36. As part of the agreement, deal, and/or understanding for Thomas McCully to become a CI and "cooperate" with the Task Force, respondent and the Task Force agreed to protect from disclosure Thomas McCully's identity as a CI.

ANSWER: Denied as untrue. In further response, there was no "agreement, deal, and/or understanding" beyond what is contained in the *Kastigar* letter. Mr. McCully would only "become" a CI if he alone wanted to do so. There was no offer or inducement by the AG's office to do so. That did not exclude the fact that his service as a CI could be some mitigation at the time of sentencing. Also, there was no agreement with the AG's office to protect Mr. McCully's identity as a CI. And, the fact that Mr. McCully "pled guilty to all three counts with no promises and no Cobbs" was communicated to Sgt Calleja and other members of WWNTF via email on April 8, 2014, by Judge Cusick.

37. On about May 12, 2014, Thomas McCully met with Sgt. Calleja and signed a "Confidential Source" form/card agreement (Source Card).

ANSWER: Not contested. In further response, as noted in response to paragraph 36 above, there was no “agreement” beyond what is contained in the *Kastigar* letter. The Source Card is not an agreement.

38. On about May 12, 2014, Sgt. Calleja wrote in the “remarks” area/section of Mr. McCully’s Source Card, “working for a reduced sentence, Michigan AG office Paul Cusick.

ANSWER: Not contested as to what was written as to the date that is neither admitted nor denied for lack of knowledge, and the JTC is left to its proofs. In further response, the remark was added by Sgt. Calleja at some time. Judge Cusick cannot say when it was made. When interviewed by undersigned counsel, Sgt. Calleja could not say for sure when it was added. It is noteworthy that the *Kastigar* letter is dated May 2, 2014—ten days earlier. The fact that Mr. McCully “pled guilty to all three counts with no promises and no Cobbs” was communicated to Sgt. Calleja and other members of WWNTF via email on April 8, 2014 by Judge Cusick. Further, the *Kastigar* letter sets out what Judge Cusick knew and understood about the status of Mr. McCully’s matter at the time. When interviewed by counsel, Sgt. Calleja recalled being present on May 2nd at a debriefing and being informed that there was no agreement between Mr. McCully and the Michigan Attorney General’s Office as to any sentence that may be imposed. This is the same day the *Kastigar* letter is dated. Sgt. Calleja’s remarks appear to be his own thoughts and not related to any statement made by Mr. McCully and certainly were not related to any statement made by Judge Cusick.

39. Sgt. Calleja’s annotation on Mr. McCully’s Source Card was consistent with respondent’s agreement, deal, and/or understanding that Thomas McCully would serve as a CI and would “cooperate” with the Task Force in exchange for a reduction/consideration/mitigation in his sentence in Third Circuit Court case no. 14-1140.

ANSWER: Denied as untrue. In further response, the fact that Mr. McCully “pled guilty to all three counts with no promises and no Cobbs” was communicated to Sgt

Calleja and other members of WWNTF via email on April 8, 2014 by Judge Cusick. The *Kastigar* letter sets out what Judge Cusick knew and understood about the status of Mr. McCully's matter at the time. It expressly states that there is no agreement between Mr. McCully and the Michigan Attorney General's Office as to any sentence that may be imposed. There was no "exchange" at that term is understood. Mr. McCully acted unilaterally in the hope of convincing the Court that he could get the benefit of mitigation at sentencing.

40. Sgt. Calleja made the annotation on Mr. McCully's Source Card with respondent's knowledge and permission.

ANSWER: Denied as untrue. The *Kastigar* letter contains the only agreement with the AG's office or any investigative agency. Sgt. Calleja knew of the *Kastigar* letter and that there was no agreement between Mr. McCully and the Michigan Attorney General's Office as to any sentence that may be imposed.

41. On or shortly after May 12, 2014, Thomas McCully began to work with the Task Force as a CI.

ANSWER: Not contested.

42. Shortly before June 17, 2014, respondent requested and/or agreed to have Thomas McCully's sentencing postponed from June 17 to August 25, 2014, in order to allow additional time for Mr. McCully to demonstrate his "cooperation" with the Task Force.

ANSWER: Admitted as true.

43. Respondent agreed to the following additional adjournments of Thomas McCully's sentencing in case no 14-1140:

- a. From August 25 to November 19, 2014

ANSWER: Admitted as true.

b. From November 19, 2014, to May 4, 2015

ANSWER: Admitted as true.

c. From May 4 to September 10, 2015

ANSWER: Admitted as true.

44. Throughout 2014 and 2015 respondent maintained contact with the Task Force and Mr. Fishman regarding:

a. Thomas McCully having generated and/or assisted in the Joslin and other investigations.

ANSWER: Neither admitted nor denied for lack of knowledge and leave the JTC to its proofs. In further response, Judge Cusick does not recall being aware of Mr. McCully generating or assisting the Task Force in the Joslin investigation. Judge Cusick does not recall “maintaining contact” with Attorney Fishman about the Joslin investigation.

b. Brandy Loggie having generated and/or assisted in the Joslin and other investigations.

ANSWER: Neither admitted nor denied for lack of knowledge and leave the JTC to its proofs. In further response, Judge Cusick does not recall being aware of Ms. Loggie generating any of the investigations. Further, he does not recall “maintaining contact” with Attorney Fishman about Ms. Loggie’s assistance in any of the investigations.

c. Brandy Loggie’s CI work being on behalf of Thomas McCully.

ANSWER: Denied as untrue, in the form and manner as stated. In further response, Judge Cusick does not recall any such contact with Attorney Fishman and any such contact in 2014 with the Task Force. He is aware, now, of 2 emails in January 2015 where the Task Force used the term “behalf” as alleged. However, Judge Cusick expressly wrote to Sgt. Calleja that there were no promises made regarding any sentencing vis a vis Thomas McCully on April 8, 2014. Further, the *Kastigar* letter precludes any such agreements. And, finally, there was never any such agreement with Ms. Loggie.

d. The importance of protecting Thomas McCully’s CI status from disclosure.

ANSWER: Neither admitted nor denied for lack of knowledge. In further response, Judge Cusick is aware of contact in an email from Attorney Fishman in late 2015 about not publicizing Mr. McCully’s work. He is unaware of any other contact with the Task Force in 2014 and 2015 about this issue.

45. Among the cases Thomas McCully “generated” and/or assisted in as a CI for the Task Force were the Berry investigation and the Joslin investigation.

ANSWER: Neither admitted nor denied for lack of knowledge concerning the facts as whether or not Mr. McCully “generated” the Joslin investigation. The JTC is left to its proofs. Further, Judge Cusick does not recall that Mr. McCully assisted as a CI for the Task Force in the Joslin investigation. It is admitted as true that Mr. McCully generated and assisted as a CI in the Berry investigation.

46. On about January 7, 2016, respondent appeared before Hon. David Groner for Thomas McCully’s sentencing in Third Circuit Court case no. 14-1140.

ANSWER: Admitted as true.

47. On about January 7, 2016, with respondent’s agreement not to object, Judge Groner sentenced Thomas McCully to a one-year non-reporting probation and imposed approximately \$1800 in fines and costs.

ANSWER: Denied as untrue in the form and manner as alleged. There was no “agreement” as that term is understood. Judge Cusick had decided to recommend that there be no objection, and by December had received authorization to not object. This information was communicated to Attorney Fishman. This did not constitute an “agreement” as there was no *quid pro quo*. That had been made clear in the *Kastigar* letter. An agreement suggests that Mr. McCully was entitled to force the AG’s office to not oppose his sentence request – that is false.

48. Brandy Loggie was present during Thomas McCully’s sentencing hearing and used the money she had posted for Mr. McCully’s bond in December of 2013 to pay the fines and costs associated with his sentence.

ANSWER: Not contested.

B. Berry investigation and prosecution

49. The Task Force began the Berry investigation in about July/August of 2014. In that investigation:

ANSWER: Admitted as true.

- a. Respondent became its lead AAG in about July/August of 2014 and remained in that position until his separation from the AG’s office in November of 2016.

ANSWER: Admitted as true.

- b. The Task Force officers included, but were not limited to, Sgt. Calleja and Sgt. (then officer) Robert Lowes.

ANSWER: Admitted as true.

- c. The Task Force officers maintained contact with respondent regarding investigative developments and provided him with various reports and/or documents.

ANSWER: Admitted as true.

50. The Task Force utilized Thomas McCully as a CI in the Berry investigation with respondent's knowledge and consent.

ANSWER: Denied in the form and manner as stated as untrue.

51. The Berry investigation was completed on about September 28, 2015.

ANSWER: Admitted as true.

52. On or shortly before September 28, 2015, respondent reviewed and approved search warrants on Darryl Berry's marijuana grow operations in several counties, including Livingston County.

ANSWER: Admitted as true.

53. On about September 28, the Task Force executed two search warrants, approved by respondent, on Darryl Berry's marijuana grow operations in Livingston County.

ANSWER: Admitted as true.

54. Shortly after the search warrants were executed, respondent became aware that Michael Komorn represented Darryl Berry.

ANSWER: Admitted as true.

55. Mr. Komorn remained as Mr. Berry's attorney throughout the People v Berry, et al, prosecution.

ANSWER: Admitted as true.

56. On about January 19, 2016, respondent prepared and submitted to his superiors a Request to Initiate in which he outlined the evidence and the charges to be issued against several individuals, including but not limited to Darryl Berry, Jeffrey Michael, Dennis James, and Joseph Zubor.

ANSWER: Admitted as true.

57. In that Request to Initiate, respondent acknowledged that the Berry investigation was initiated, at least in part, as a result of Thomas McCully's cooperation with the Task Force.

ANSWER: Admitted as true.

58. As of January 19, 2016, respondent was aware that:

a. The Task Force initiated the Berry investigation with information Thomas McCully provided while serving as a CI with the Task Force.

ANSWER: Admitted as true.

b. Thomas McCully was the only CI the Task Force utilized in the Berry investigation.

ANSWER: Not contested.

- c. On about August 6, 2014, while serving as a CI, Thomas McCully arranged a meeting at a Detroit marijuana dispensary to introduce undercover officer Sgt. Robert Lowes to Darryl Berry.

ANSWER: Admitted as true.

- d. Jeffrey Michael was present during the August 6 introductory meeting.

ANSWER: Admitted as true.

- e. During the August 6 introductory meeting, in Thomas McCully's presence, Darryl Berry and Jeffrey Michael made a hand-to-hand delivery of marijuana to Sgt. Lowes.

ANSWER: Admitted as true.

- f. During the August 6 introductory meeting, in Thomas McCully's presence, Darryl Berry discussed and entered into an agreement to make future sales of whole marijuana plants to Sgt. Lowes.

ANSWER: Admitted as true.

- g. On about September 5, 2014, Thomas McCully accompanied Sgt. Lowes to Darryl Berry's marijuana grow operation in Livingston County.

ANSWER: Admitted as true.

- h. On about September 5, 2014, in Thomas McCully's presence, Sgt. Lowes paid Darryl Berry a "deposit" for the purchase of three marijuana plants, the possession of which he was to take at a later date when the plants were fully grown.

ANSWER: Admitted a true. In further response, on September 24, 2014, Detective Lowes went out and had a full discussion with Mr. Berry about his grow operation. On that date, Berry offered to sell him 70 plants growing at other locations.

- i. On about October 13, 2014, Darryl Berry delivered three fully grown marijuana plants to Sgt. Lowes.

ANSWER: Admitted as true.

59. On about February 3, 2016 respondent issued/authorized felony charges in Wayne and Livingston Counties against various individuals involved in the Berry organization, including Darryl Berry and Jeffrey Michael.

ANSWER: Admitted as true.

60. In Wayne County respondent issued a felony “delivery of marijuana” charge against Darryl Berry and Jeffrey Michael under 36th District Court case no. 16-900099/16-55791.

ANSWER: Admitted as true.

61. The Wayne County case against Darryl Berry and Jeffrey Michael was based on Darryl Berry’s and Jeffrey Michael’s delivery of marijuana to Sgt. Lowes during the introductory August 6, 2014 meeting in Detroit.

ANSWER: Admitted as true.

62. Thomas McCully was a res gestae witness in the Wayne County case, 36th District Court case no. 16-900099/16-55791.

ANSWER: No answer required as this is a legal conclusion. By way of further response by counsel for Judge Cusick, based on present knowledge of facts and law,

McCully wasn't a res gestae witness in the 36th District Court case no. 16-900099/16-55791. *People v Marji* 180 Mich App 525, 534 (1989), lv den, remanded 439 Mich. 896 (1991) (holding that the informant could not be considered a res gestae witness because the informant merely introduced an undercover police officer to the defendant and did not witness anything significant to the crime); *People v Jackson*, 30 Mich App 438, 439-440 (1971) (holding that a person's mere presence at an occurrence does not mean that they are witnesses to the occurrence or that they could testify as to the circumstances or facts which constitute the res gestae, i.e., the thing done); *People v Long*, 246 Mich App 582, 585 (2001) (holding that a res gestae witness is a person who witnessed first-hand some event in the continuum of the criminal transaction whose testimony *would aid in developing full disclosure* of the facts at trial); *People v Paredes-Meza*, unpublished per curiam opinion of the Court of Appeals, issued July 8, 2010 (Docket No. 291067) 2010 WL 2696652 (holding that informant didn't constitute a res gestae witness since informant witnessed the *same events* in criminal transaction that law enforcement also witnessed and informant's testimony wouldn't have aided in developing a full disclosure of the facts at trial).

63. On about March 4, 2016, respondent dismissed the Wayne County case against Darryl Berry and Jeffrey Michael, which was then pending in 36th District Court under case no. 16-900099/16-55791, to protect Thomas McCully's status as a CI from disclosure.

ANSWER: Denied as untrue in the form and manner as alleged. In further response, Judge Cusick was prepared to call Mr. McCully as a witness in the Wayne County case involving Messrs. Berry and Michael. He had filed that case along with cases in Livingston and Genesee. As a courtesy to Attorney Fishman, who represented Mr. McCully, Judge Cusick advised that Mr. McCully would be called as a witness in the Wayne County preliminary examination. Attorney Fishman urged that Mr. McCully not be used if it was possible to avoid. Judge Cusick conferred with his superiors. The main case was the Livingston County matter which included a 20-year felony with higher guidelines. The decision was made to dismiss the Wayne County case.

64. In the Livingston County case, under 53d District Court case nos. 16-0476 and 16-0473, respondent issued/authorized felony charges of conducting criminal enterprises, to wit, manufacturing marijuana; delivery/manufacture of 45 kilograms or more of marijuana, 200 plants or more; conspiracy to manufacture marijuana; and delivery of marijuana against Darryl Berry and others.

ANSWER: Admitted as true.

65. The Livingston County charges in 53d District Court case nos. 16-0473 and 16-0476 were based on Darryl Berry's agreement to deliver, and the actual delivery, of three fully grown marijuana plants to Sgt. Lowes.

ANSWER: Admitted as true.

66. Thomas McCully was a res gestae witness in the Livingston County case, 53d District Court case nos. 16-0473 and 16-0476, against Darryl Berry.

ANSWER: No answer required as this is a legal conclusion. By way of further response by counsel for Judge Cusick, based on present knowledge of facts and law, McCully wasn't a res gestae witness in the 53d District Court case nos. 16-0473 and 16-0476 because his testimony wouldn't have aided in developing the facts forming the heart of the criminal manufacturing 250+ plants charges. *Jackson*, 30 Mich App at 439-440 (holding that a person's mere presence at an occurrence does not mean that they are witnesses to the occurrence or that they could testify as to the circumstances or facts which constitute the res gestae, i.e., the thing done); *Long*, 246 Mich App at 585 (2001) (holding that a res gestae witness is a person who witnessed first-hand some event in the continuum of the criminal transaction whose testimony *would aid in developing full disclosure* of the facts at trial); *Paredes-Meza*, unpub op at 2 (holding that informant didn't constitute a res gestae witness since informant witnessed the *same events* in criminal transaction that law enforcement also witnessed and informant's testimony wouldn't have aided in developing a full disclosure of the facts at trial).

67. Respondent did not include any information about Mr. McCully's involvement in the Berry investigation in the discovery he provided, or authorized to be provided, to Mr. Berry's attorney, Michael Komorn.

ANSWER: Admitted as true.

C. Joslin investigation and prosecution

68. The Task Force began the Joslin investigation in about June/July of 2014. In that investigation:

ANSWER:

a. Respondent became the lead AAG shortly after June of 2014 and remained in that position until his separation from the AG's office in November of 2016.

ANSWER: Admitted as true.

b. The investigating officers included, but were not limited to, Sgt. Calleja and Detective (then officer) Brian Zinser.

ANSWER: Admitted as true.

c. The Task Force officers maintained contact with respondent, in person, by phone, and/or by email, regarding various investigative developments.

ANSWER: Admitted as true.

69. By about June/July of 2014, respondent was aware that:

a. Pure Wellness required membership for the purchase of marijuana and/or marijuana products.

ANSWER: Admitted as true.

- b. A valid medical marijuana card was required for membership at the Pure Wellness Center.

ANSWER: Admitted as true.

70. In about June/July of 2014, the Task Force wanted Thomas McCully, in his role as a CI, to make controlled buys from the Pure Wellness Center.

ANSWER: Not contested.

71. Thomas McCully could not and/or did not make controlled buys from the Pure Wellness Center, at least in part, because:

- a. He did not have a valid medical marijuana card and thus could not become a member of the Pure Wellness Center, and/or

ANSWER: This is not contested.

- b. There were concerns that someone at the Pure Wellness Center would recognize him as a large-scale marijuana producer/grower.

ANSWER: This is not contested.

72. Thomas McCully offered, suggested, and/or agreed for his girlfriend, Brandy Loggie, to serve as a CI and to make controlled buys from the Pure Wellness Center as an additional sentencing consideration and/or benefit for Mr. McCully in People v McCully, et al, Third Circuit Court case no. 14-1140.

ANSWER: Neither admit nor deny for lack of knowledge.

73. In 2014 and 2015 Brandy Loggie had a valid medical marijuana card which enabled her to make controlled buys of marijuana and/or marijuana products by being or becoming a “member” of the Pure Wellness Center.

ANSWER: Admitted as true.

74. Before making any contact with Ms. Loggie, the Task Force sought and obtained respondent’s approval to use Ms. Loggie as a CI for Mr. McCully’s sentencing benefit.

ANSWER: Denied as untrue. In further response, the *Kastigar* letter clearly states that there was no sentencing benefit promised to Mr. McCully and Judge Cusick had no authority to alter the conditions set forth in the *Kastigar* letter on his own. He would have needed authorization from his superiors as he did in other cases. Neither Judge Cusick nor anyone else at the AG’s office made any agreement with Ms. Loggie.

75. Shortly before September 4, 2014, Thomas McCully facilitated telephonic contact and/or conversation between the Task Force and Brandy Loggie.

ANSWER: Neither admit nor deny for lack of knowledge.

76. During that contact and/or conversation, Brandy Loggie:

- a. Agreed to become a CI for the Task Force in order to help her boyfriend, Thomas McCully, in Third Circuit Court case no. 14-1140.

Denied as untrue in the form and manner as alleged. In further response, on September 4, 2014, when Ms. Loggie met with Sgt. Calleja and Det. Zinser, Ms. Loggie told them that was concerned about people who were buying from her driving with marijuana and being high or too high to drive. She made the same statement during the preparation immediately prior to the Preliminary Examination. Then, at the Preliminary Examination on November 3, 2015, she made the same statement. On

August 17, 2017, at the time of the *Joslin* trial, she confirmed to AAG Collins, Attorney Komorn, and Det. Zinser that her statement at the Preliminary Examination was “True.” Then when asked by AAG Collins, “Was that something that... was that, the...part, so that was part...was that part of it or like ... which was ... you had your boyfriend you to work the case off for. When you signed your CI agreement, I guess is the better ... when you signed the CI agreement was it to help your boyfriend?” Ms. Loggie responded, “Yes.”¹

b. Agreed to make controlled buys from the Pure Wellness Center.

ANSWER: Not contested.

77. On about September 3, 2015, Ms. Loggie signed a membership agreement with the Pure Wellness Center.

ANSWER: Not contested.

78. On about September 4, 2014, Sgt. Calleja and Detective Zinser met with Brandy Loggie in Canton, Michigan.

ANSWER: Admitted as true.

79. During the September 4, 2014, meeting, Brandy Loggie signed a Confidential “Confidential Source” form/card (Source Card) with the Task Force.

¹ The JTC appears to have had a partial audio recording secretly made by Attorney Komorn during a proceeding on August 17, 2017 (“Komorn tape”) since 2018. Despite the recording containing material exculpatory information it was not made known to counsel for Judge Cusick until December 20, 2022 and not produced until December 27, 2022, well after the original due date for this response. Based on the Michigan Supreme Court entering new Internal Operating Rules for the JTC on December 7, 2022 mandating “fairness”, but still only after a direct demand for information on December 20th, was the tape and other materials produced to counsel for Judge Cusick. The tape was purposely hidden and intentionally not disclosed for more than 4 years. Further, there was no “CI agreement” despite that term being used during the interview.

ANSWER: Admitted as true.

80. At the conclusion of the September 4, 2014, meeting:
- a. Sgt. Calleja wrote “assisting boyfriend Thomas McCully [CI number (redacted)] on his charges” in the remarks section of Ms. Loggie’s Source Card.

ANSWER: Denied as untrue in the form and manner as alleged. In further response, the remarks were added by Sgt. Calleja but the date and circumstances are not as alleged. Sgt. Calleja, when interviewed, could not recall when he added that statement. He was, however, confident that Ms. Loggie was not aware of his “remarks”.

- b. Brandy Loggie accompanied Detective Zinser to the Pure Wellness Center, where she made the first controlled buy of marijuana and/or marijuana products.

ANSWER: Admitted as true.

81. Between September 4, 2014, and March 16, 2015:
- a. The Task Force conducted surveillance of the Pure Wellness Dispensary.

ANSWER: Admitted as true.

- b. Ms. Loggie assisted the Task Force in other criminal investigations.

ANSWER: Admitted as true.

- c. The Task Force advised/notified respondent about Brandy Loggie’s CI work on behalf of Thomas McCully in the Joslin and other investigations.

ANSWER: Admitted as true. In further response, this is an accurate reflection of two emails received from Sgt. Calleja in January 2015. This was a remark made by Sgt. Calleja. This reflects Sgt. Calleja's assumption. Judge Cusick does not recall these emails, but he must have received them. In further response, the fact that Mr. McCully "pled guilty to all three counts with no promises and no Cobbs" was communicated to Sgt Calleja and other members of WWNTF via email on April 8, 2014 by Judge Cusick. The *Kastigar* letter sets out what Judge Cusick knew and understood about the status of Mr. McCully's matter at the time. It expressly states that there is no agreement between Mr. McCully and the Michigan Attorney General's Office as to any sentence that may be imposed. Based on Judge Cusick's recollection, the interviews conducted by counsel, and the records (including the *Kastigar* letter and emails) Ms. Loggie's work as a CI was not a factor in any consideration in any aspect of the handling of Mr. McCully's case. Not by Judge Cusick, not by the AG's office, not by Attorney Fishman, and not by Judge Groner.

82. On about March 16, 2015, respondent advised/instructed the Task Force that additional controlled buys would be necessary before he could/would issue/authorize any search warrants for the Pure Wellness Dispensary and/or for Ms. Joslin's Ypsilanti home.

ANSWER: Admitted as true.

83. On about March 16, 17, and 18 of 2015, under the supervision of the Task Force, Ms. Loggie made three additional controlled buys of marijuana and marijuana products from the Pure Wellness Center.

ANSWER: Admitted as true.

84. After March 18, 2015, Brandy Loggie did not do any further CI work for the Task Force.

ANSWER: Admitted as true.

85. On about March 19, 2015, respondent reviewed and authorized, and the Task Force executed, search warrants for the Pure Wellness Center in Canton Township and for Amanda Joslin's home in Ypsilanti, Michigan.

ANSWER: Admitted as true.

86. On about March 19, 2015, the Task Force arrested Amanda Joslin, her boyfriend Eric DeJonghe, and her son Jacob Scholin, in connection with the Joslin investigation.

ANSWER: Admitted as true.

87. Based on the Joslin investigation, on about May 25, 2015, respondent submitted to his superiors/supervisors a Request to Initiate in which he outlined the evidence and the charges he recommended issuing against Amanda Joslin, Eric DeJonghe, and Jacob Scholin in Wayne and Washtenaw Counties.

ANSWER: Admitted as true.

88. At the time respondent submitted the Joslin investigation Request to Initiate, he was aware that:

- a. The Pure Wellness Center first came to the attention of the Task Force in 2014, in part, through complaints made by Canton Township officials and/or Canton Township building inspectors.

ANSWER: Admitted as true.

- b. Anyone wishing to purchase marijuana and/or marijuana products was required to become a member of the Pure Wellness Center.

ANSWER: Admitted as true.

- c. Membership at the Pure Wellness Center required a valid medical marijuana card.

ANSWER: Admitted as true.

- d. Thomas McCully generated and/or assisted the Task Force in the Joslin investigation.

ANSWER: Neither admitted nor denied for lack of knowledge. In further response, Judge Cusick does not recall being aware of Mr. McCully generating or assisting the Task Force in the Joslin investigation.

- e. In 2014, Thomas McCully was unable to make controlled buys because he did not have a valid/active medical marijuana card and/or because of concerns he would be recognized as a major marijuana grower/distributor.

ANSWER: Neither admitted nor denied for lack of knowledge. In further response, Judge Cusick does not recall being aware of Mr. McCully assisting or attempting to assist the Task Force in the Joslin investigation.

- f. Thomas McCully offered/suggested/agreed for the Task Force to use his girlfriend, Brandy Loggie, as a CI in the Pure Wellness and any other investigations.

ANSWER: Neither admitted nor denied for lack of knowledge. In further response, Judge Cusick does not recall being aware of Mr. McCully assisting the Task Force in the Joslin investigation.

g. Ms. Loggie's CI work was to be on behalf of Thomas McCully and was to serve as a benefit to Mr. McCully in his sentence in Third Circuit Court case no. 14-1140.

ANSWER: Denied as untrue.

h. Third Circuit Court case no. 14-1140 was then pending before the Hon. David Groner.

ANSWER: Admitted as true.

i. In 2014 and 2015, Brandy Loggie had a valid medical marijuana card.

ANSWER: Admitted as true.

j. Ms. Loggie's medical marijuana card enabled her to purchase marijuana and/or marijuana products by being, or becoming, a "member" of the Pure Wellness Center.

ANSWER: Admitted as true.

k. In about June/July of 2014 Brandy Loggie agreed to become a CI for the Task Force to help her boyfriend, Thomas McCully, in Third Circuit Court case no. 14-1140.

ANSWER: Denied as untrue. In further response, there was no agreement between Ms. Loggie and the AG's office.

l. On about September 3, 2014, Ms. Loggie became a member of the Pure Wellness Center.

ANSWER: Not contested.

m. Brandy Loggie signed a Source Card with the Task Force.

ANSWER: Denied as untrue.

n. In 2014, Brandy Loggie did not have any criminal charges/cases pending against her.

ANSWER: Neither admitted nor denied for lack of knowledge and leave the JTC to its proofs.

o. In 2014 and 2015, Brandy Loggie had a forfeiture matter pending in Third Circuit Court that was based on her involvement in the McCully organization.

ANSWER: Admitted as true.

p. On about September 4, 2014, Ms. Loggie made a controlled buy of marijuana and/or marijuana products from the Pure Wellness Dispensary.

ANSWER: Admitted as true.

q. In March of 2015, Ms. Loggie made three additional controlled buys of marijuana and/or marijuana products from the Pure Wellness Dispensary.

ANSWER: Admitted as true.

89. On about July 15, 2015, respondent filed/authorized the following charges:

a. In Wayne County, under 35th District Court case no. 15-AG161, Third Circuit Court case no. 16-0143, respondent charged Amanda Joslin with conducting a criminal enterprise, MCL 750.159; delivery of marijuana, MCL 333.7401; and possession with intent to deliver marijuana, MCL 333.7401.

ANSWER: Admitted as true.

- b. In Washtenaw County, under 14-A District Court case no. 15F21261, 22nd Circuit Court case nos. 16-000277; 16-000278; and 16-000279, respondent charged Amanda Joslin, Eric DeJonghe, and Jacob Scholin with conspiracy to manufacture/deliver marijuana, MCL 750.157a and with possession with intent to deliver marijuana, MCL 333.7401.

ANSWER: Admitted as true.

90. In the Wayne and Washtenaw County cases listed in paragraph 89 above, Amanda Joslin was initially represented by attorney Matt Abel and then by Attorney Michael Komorn.

ANSWER: Admitted as true.

91. On about July 22, 2015, respondent reviewed, and approved, discovery materials provided by the AG's office to Ms. Joslin's then attorney, Mr. Komorn. In that discovery, respondent did not include and did not instruct anyone else to include:

- a. Any information or documents about Mr. McCully's pending criminal matter, CI agreement, or Source Card.

ANSWER: Admitted as true.

- b. Any information or documents about Ms. Loggie's involvement in the McCully organization, her relationship to Mr. McCully, the CI agreement with the Task Force, or Source Card.

ANSWER: Admitted as true. In further response, Judge Cusick would have copied the "police jacket" after reviewing the materials and sent it or directed it to be sent to Attorney Komorn.

- c. Any information or documents regarding the forfeiture case pending against Mr. McCully or Ms. Loggie.

ANSWER: Admitted as true.

92. Preliminary examination in 35th District Court case no. 15-AG161 was initially scheduled for July 31, 2015. It was subsequently postponed to September 11, the day after Mr. McCully's scheduled sentencing.

ANSWER: Admitted as true, as the dates. In further response, the adjournment from July 31, 2015 until September 11, 2015 was at the request of Attorney Komorn.

93. Preliminary examination in People v Joslin, 35th District Court case no. 15AG161, commenced on November 3 and was completed on December 18, 2015.

ANSWER: Admitted as true.

94. During the November 3, 2015, preliminary examination in People v Joslin, 35th District Court case no. 15A161, respondent presented Brandy Loggie and Detective Brian Zinser as his witnesses.

ANSWER: Admitted as true.

95. On about December 18, 2015, Hon. Michael Gerou bound People v Joslin, 35th District Court case no 15AG161, to Third Circuit Court where it was assigned to Hon. Timothy Kenny under Third Circuit Court case no. 16000143.

ANSWER: Admitted at true.

96. On about June 27, 2016, respondent offered Ms. Loggie as a witness in an evidentiary hearing conducted before Judge Kenny on the issue of entrapment by estoppel.

ANSWER: Admitted as true.

97. After his judicial appointment in October of 2016, respondent's case files, including those originating from the Joslin and Berry investigations, were reassigned to AAG Dianna Collins.

ANSWER: Admitted as true.

98. After several delays, the trial in People v Joslin, Third Circuit Court case no. 16-000143, commenced on August 14, 2017, and was continued to August 17, 2017.

ANSWER: Admitted as true.

99. On about August 16, 2017, AAG Dianna Collins interviewed Brandy Loggie in the presence of Sgt. Calleja.

ANSWER: Not contested.

100. Immediately after that interview, Sgt. Calleja informed AAG Collins, in part, that:

a. Ms. Loggie became a CI to benefit her boyfriend.

ANSWER: Not contested.

b. The boyfriend had a pending criminal case at the time of the Joslin investigation and/or prosecution.

ANSWER: Not contested.

101. On about August 16, 2017, AAG Collins contacted Mr. Komorn via email and advised him, in part, that:

- a. Ms. Loggie's CI work in the Joslin investigation was a "benefit to her boyfriend who had a pending case at the time."

ANSWER: Not contested.

- b. AAG Collins did not know the name of Ms. Loggie's boyfriend.

ANSWER: Not contested.

- c. Information about Ms. Loggie serving as a CI for the benefit of her boyfriend was not in the discovery materials that AAG Collins had in her Joslin case file.

ANSWER: Not contested.

- d. AAG Collins was concerned that Mr. Komorn's discovery materials likewise did not contain any information about Ms. Loggie serving as a CI for the benefit of her boyfriend.

ANSWER: Not contested.

102. Mr. Komorn confirmed he had not received discovery materials indicating that Ms. Loggie had served as a CI for the benefit of Mr. McCully.

ANSWER: Not contested.

103. On about August 17, 2017:

- a. AAG Collins and Mr. Komorn made Judge Kenny aware of the prosecution's failure to provide the defense with any information or documents about Ms. Loggie's relationship with Mr. McCully, about the

McCully organization, or about Ms. Loggie's CI work being for Mr. McCully's benefit.

ANSWER: Not contested.

- b. AAG Collins and Mr. Komorn also advised Judge Kenny that Ms. Loggie may have committed perjury during the November 3, 2015, preliminary examination.

ANSWER: Denied as untrue in the form and manner as alleged. *People v Joslin* Bench Trial Transcript Vol 2, August 17, 2017: [AAG Collins]: "The thing I would disagree with that he says is, one of the things is that I do believe that the way the transcript reads, I don't consider what she did to be a lie in the sense that I think she was motivated for the reasons that she said she was to do it. She did voluntarily contact the police. So I don't think that certainly wasn't a complete answer. There's no question about that, but I don't think that anything is in here is lie." See also, *People v Joslin* Bench Trial Transcript Vol. 3, September 6, 2017, p.24:3-14: [AAG Collins]: "But I think that my—the reading of the transcripts and the fact that it wasn't brought out on direct that there was the situation, I think there's some leeway there from our prospective [sic] as to, you know, what her as a lay person what she knew her responsibilities were or were not. Again, I don't dispute the transcript; Mr. Komorn asked her a question and she certainly did not provide all of the information. I don't think that what she said is untrue. I think that she did not include—it was more of an omission, obviously, then [sic] not."

- c. Judge Kenny instructed AAG Collins to provide Mr. Komorn with all police reports and other relevant documents from the McCully investigation, including Mr. McCully's and Ms. Loggie's Source Cards.

ANSWER: Admitted as true.

d. Judge Kenny also directed AAG Collins, Mr. Komorn, and Det. Zinser to interview Ms. Loggie in the court's jury room regarding her testimony during the November 3, 2015, preliminary examination.

ANSWER: Admitted as true.

104. During the jury room interview with Ms. Loggie, conducted on about August 17, 2017, AAG Collins and Mr. Komorn learned that:

a. Ms. Loggie's boyfriend was Thomas McCully.

ANSWER: Admitted as true.

b. At the time of the *Joslin* preliminary examination, Thomas McCully had a criminal case pending against him for a large marijuana grow operation.

ANSWER: Admitted as true.

c. At the time of the November 3, 2015, preliminary examination, Ms. Loggie did not have any criminal charges pending against her.

ANSWER: Admitted as true.

d. Ms. Loggie's CI work was not for any personal benefit to her.

ANSWER: Admitted as true.

e. Ms. Loggie signed the Source Card with the Task Force to help her boyfriend, Thomas McCully.

ANSWER: Denied as untrue in the form and manner as alleged. In further response, on September 4, 2014, when Ms. Loggie met with Sgt. Calleja and Det. Zinser, Ms. Loggie told them that was concerned about people

who were buying from her driving with marijuana and being high or too high to drive. She made the same statement during the preparation immediately prior to the Preliminary Examination. Then, at the Preliminary Examination on November 3, 2015, she made the same statement. On August 17, 2017, at the time of the *Joslin* trial, she confirmed to AAG Collins, Attorney Komorn, and Det. Zinser that her statement at the Preliminary Examination was "True." Then when asked by AAG Collins, "Was that something that... was that, the...part, so that was part...was that part of it or like...which was... you had your boyfriend you to work the case off for. When you signed your CI agreement, I guess is the better...when you signed the CI agreement was it to help your boyfriend?" Ms. Loggie responded, "Yes."²

- f. At the preliminary examination, Ms. Loggie did not disclose that she had become a CI with the Task Force to help Thomas McCully.

ANSWER: Admitted as true.

- g. Ms. Loggie said that at the preliminary examination she did not disclose that she had signed a Source Card and worked with the Task Force to help Thomas McCully, because:

1. She wanted to keep her testimony short.

ANSWER: Denied as untrue in the form and manner as alleged. In further response, it is hard to imagine a witness who wants to prolong her testimony. Also, on August 17, 2017, Ms. Loggie told AAG Collins, Attorney Komorn, and Det. Zinser that, "... I just tried to be as open as possible ...".³

² See footnote 1, above.

³ The JTC hid this and it was not revealed until the compelled production of the Kormorn tape on December 27, 2022, see footnote 1, above.

2. She felt harassed by Ms. Joslin, who had posted photos of Ms. Loggie and her minor child on Facebook and had referred to Ms. Loggie as an informant.

ANSWER: Admitted as true.⁴

- h. Prior to testifying at the November 3, 2015, preliminary examination, Ms. Loggie had informed respondent about the Facebook posting(s) and about being afraid of Ms. Joslin and provided respondent with a copy of the postings.

ANSWER: Denied as untrue. In further response, when interviewed by counsel neither Det. Zinser nor AAG Collins had any memory of this alleged statement. Without the benefit of the tape, when interviewed by Judge Cusick's counsel during the investigation phase, Ms. Loggie denied any memory of ever telling Judge Cusick about the postings and believed that she did not do so. When the Komorn tape of the August 17, 2017 proceeding was finally produced, it contains Ms. Loggie stating that she sent "him" a "text" of the postings. The JTC failed and refused to interview Ms. Loggie during their investigation, despite being given her contact information on at least 2 occasions by Judge Cusick's counsel. Had they done so, they would have learned that "him" was in reference to Det. Zinser who was standing in the same room with her and was not a reference to Judge Cusick as the JTC has wrongly and recklessly assumed. Ms. Loggie confirmed to Judge Cusick's counsel that she has never had Judge Cusick's cell number and never texted him anything. She did clarify that she texted the postings to Thomas McCully and that he sent the posts to the police (Sgt. Calleja and/or Det. Zinser).

⁴ Judge Cusick was not aware of the harassment until sometime after the trial which took place in September of 2017.

105. Based on the jury room interview, on about September 6, 2017⁵, Mr. Komorn advised Judge Kenny that:

- a. Ms. Loggie “admitted that she committed perjury at the preliminary exam. She admitted that she lied, she admitted she knew she was lying.”

ANSWER: Not contested. In further response, AAG Collins did not agree. See again the response to Paragraph 103(b). Also, the Komorn tape reveals that his statement is completely untrue.

- b. Ms. Loggie “admitted that or gave a reason which she – which really doesn’t matter because a lie is a lie, but she gave some reason that she was afraid or scared of [Ms. Joslin.]”

ANSWER: Not contested.

- c. Ms. Loggie brought her fears of Ms. Joslin to respondent’s attention.

ANSWER: Not contested that this is what Mr. Komorn appears to have stated. In further response, Ms. Loggie said that she had informed Det. Zinser, not Judge Cusick during the August 17, 2017 proceeding that Mr. Komorn was referencing in his statement.

106. On about September 6, 2017, Judge Kenny appointed attorney Jeffrey Schwartz to represent Brandy Loggie:

ANSWER: Admitted at true.

- a. After consulting with Mr. Schwartz, Brandy Loggie rejected Ms. Collins’s offer of immunity and asserted her 5th Amendment right against self-incrimination.

⁵ The interview appears to have taken place on August 17, 2017 and the responses herein are given based as if the Komorn tape was made that date.

ANSWER: Not contested.

- b. Judge Kenny ruled that Ms. Loggie’s preliminary examination testimony was “perjured” and could not be used at trial.

ANSWER: Not contested.

107. In about October of 2017, at the conclusion of the Joslin bench trial, Judge Kenny found Ms. Joslin not guilty of conducting a criminal enterprise and of delivery of marijuana, and guilty of possession with intent to deliver marijuana.

ANSWER: Admitted as true.

108. Ms. Joslin appealed her conviction to the Michigan Court of Appeals.

ANSWER: Admitted as true.

109. In an August 14, 2018, response to Ms. Joslin’s appeal, the AG’s office conceded that:

In this case involving an illegal marijuana dispensary, the State failed to disclose the terms of an informant’s cooperation as part of discovery, and to make matters worse, the informant gave testimony on that issue at the preliminary examination that the trial court later found was “not...truthful.”

ANSWER: Not contested.

110. In about December of 2018 the Court of Appeals vacated Ms. Joslin’s conviction on the grounds of insufficiency of evidence.

ANSWER: Admitted as true.

111. The AG’s office did not appeal the Court of Appeals ruling, in part because of concerns that “perjured testimony [was] presented at the preliminary examination.”

ANSWER: Neither admitted nor denied for lack of knowledge.

COUNT I – 35TH DISTRICT COURT

A. [*Allegedly*] Suborning Perjury

112. This count incorporates paragraphs 1 through and including 111.

ANSWER: This response incorporates answers to paragraphs 1 through and including 111.

113. During Brandy Loggie’s direct examination at the November 3, 2015, preliminary examination in People v Joslin, 35th District Court case no. 15A161, respondent limited his questions to the controlled buys Ms. Loggie made on September 4 of 2014 and on March 16, 17, and 18 of 2015.

ANSWER: Admit as true that at the hearing to establish probable cause that a crime was committed and the defendant committed the crime he limited his questions to the elements of the case.

114. During Detective Zinser’s direct examination at the November 3, 2015, preliminary examination in People v Joslin, 35th District Court case no. 15A161, respondent limited his questions primarily to:

- a. Detective Zinser’s observations during Brandy Loggie’s controlled buys.

ANSWER: Admit as true that at the hearing to establish probable cause that a crime was committed and the defendant committed the crime he limited his questions to the elements of the case.

- b. Detective Zinser's actions during the March 19, 2015 execution of search warrants issued in the Joslin investigation.

ANSWER: Admit as true that at the hearing to establish probable cause that a crime was committed and the defendant committed the crime, he limited his questions to the elements of the case.

115. Respondent knowingly and intentionally did not elicit from Ms. Loggie or from Detective Zinser any information regarding:

- a. Ms. Loggie's relationship with Thomas McCully.

ANSWER: Denied as untrue.

- b. Ms. Loggie's involvement in the McCully organization.

ANSWER: Denied as untrue.

- c. The Third Circuit Court forfeiture case then pending against Brandy Loggie.

ANSWER: Denied as untrue.

- d. The circumstances under which Ms. Loggie became a CI.

ANSWER: Denied as untrue.

- e. The fact that Ms. Loggie's CI work was serving as a benefit in Thomas McCully's sentence.

ANSWER: Denied as untrue.

116. During Mr. Komorn's cross-examination, Brandy Loggie testified, in part, that:

a. She was not under subpoena and was appearing in court voluntarily.

ANSWER: Admitted as true (p.18).

b. She initiated the contact with the police (Task Force) about the Pure Wellness Center.

ANSWER: Denied as untrue in the form and manner as alleged. In further response, Attorney Komorn asked questions and Ms. Loggie provided answers. The transcript reveals that Attorney Komorn's questioning was chaotic, confusing, and poorly crafted. It was even more difficult to follow live. And it provoked an admonishment from the judge.

c. There was nothing "specific" that occurred that made her interested in contacting the police.

ANSWER: Denied as untrue in the form and manner as alleged. In further response, the transcript does not attribute the word "specific" to either Attorney Komorn or Ms. Loggie in the relevant part of the questioning. However, Ms. Loggie did testify, "No." when asked "Was there something that occurred that made you interested in contacting them?"⁶

d. She contacted the police because she felt: "...it [was] dangerous for [Ms. Joslin] to sell that amount of marijuana to people who [were] driving around on the streets."

ANSWER: Admitted as true. In further response, Attorney Komorn asked, inartfully, "You indicated that your reasons for being a confidential informant, working with the police, were because you decided to contact the police, is that right?" This conflated two ideas, the first being the

⁶ 11/3/2015 PE p21.

reason for being a confidential informant, and the second being working with the police. Ms. Loggie responded, "Because it is dangerous for her to sell that amount of marijuana to people who are driving around on the streets, like it is not safe." Attorney Komorn immediately followed, "Okay. So, that is what I am asking. So, for some reason, was it that particular dispensary, that particular location that made you want to call the police?" Ms. Loggie confessed, "I don't know why you are asking -- or how -- what -- I am confused. I am under oath here, so I don't want to speculate."⁷ The exchange in the transcript is less than clear. In person, it was even more unclear.

e. When she contacted the police, she told them that "there is a woman selling marijuana just to anybody."

ANSWER: Admitted as true. In further response, the full testimony was, "I just said that there -- that basically there was a woman selling marijuana just to anybody." Attorney Komorn adds, "I see." And, Ms. Loggie continues, "I mean, it's not -- it is pretty cut and dry. I mean, you have to have a caregiver. And, if you don't have a caregiver, then how can you sell marijuana to people that don't have caregivers? That's illegal, right?" Attorney Komorn then begins to answer her (rhetorical) question, when he is cut-off by the Judge⁸.

117. During Mr. Komorn's cross-examination of Brandy Loggie, Detective Zinser, while seated next to respondent, advised respondent that:

a. Ms. Loggie's testimony was inaccurate.

ANSWER: Neither admitted nor denied for lack of knowledge. In further response, Judge Cusick does not recall anything said by Det. Zinser while Ms. Loggie was being cross-examined. When interviewed by counsel, Det.

⁷ 11/3/2015 PE p23.

⁸ Id. p25

Zinser stated that he could not recall what he said to Judge Cusick other than a comment that something was inaccurate. At the PE, Det. Zinser testified that he believed he contacted Ms. Loggie first.⁹ In contrast to his testimony at the PE, during the trial, Det. Zinser conceded that Ms. Loggie did contact the police first, but added that he believes she was “prompted” to do so but did not contact them “out of the blue”. At trial, Det. Zinser testified that Ms. Loggie’s stated reasons for her help in the Pure Wellness case during the PE were not known to him to be completely untrue.¹⁰ He added that without knowledge of the actual agreement he could not answer whether Ms. Loggie gave truthful testimony or not.¹¹ There was no agreement with Ms. Loggie.¹² Further, the only agreement with Mr. McCully was contained in the *Kastigar* letter – and that stated there was no agreement. See, again, Tab A. At trial, Det. Zinser did not recall any back and forth with Judge Cusick during the exam.¹³ See also, the response at paragraph 119, below.

b. Ms. Loggie’s testimony had discrepancies.

ANSWER: See response to “a” above.

⁹ 11/3/2015 PE pp147, 151-153.

¹⁰ 9/25/2017 TR p.75. Also, Sgt. Calleja was interviewed by Judge Cusick’s counsel and he recalled Ms. Loggie giving essentially the same reason for helping out when she was signing up as a CI on September 4, 2014.

¹¹ *Id.* p88. Attorney Komorn clarified that Det. Zinser felt there could have been multiple non-exclusive reasons for Ms. Loggie’s involvement as a CI in the Pure Wellness investigation,

17 Q. Now if I understand your testimony, you’re saying that
 18 those answers aren’t necessarily not true because she
 19 could hate whoever she wants. She can have her opinion
 20 about whoever she wants, and that may in fact be her
 21 motivation for testifying. That’s what you are
 22 suggesting; right?
 23 A. Yes.[p.76]

¹² In the Komorn tape, made on August 17, 2017, Ms. Loggie confirmed this to everyone in the room – see footnote 1, above.

¹³ *Id.* pp.77-78.

c. Ms. Loggie did not “initiate contact with the Task Force.”

ANSWER: See response to “a” above.

d. Ms. Loggie had been “prompted” to call the Task Force by Thomas McCully.

ANSWER: See response to “a” above.

118. During the November 3, 2015, preliminary examination, respondent was aware that Brandy Loggie’s testimony was false, inaccurate, incomplete, and/or misleading in material ways.

ANSWER: Denied as untrue. In further response, Judge Cusick recalls believing during the PE that Ms. Loggie appeared to be doing her best to answer the questions he asked and the questions asked by Attorney Komorn. Some of Attorney Komorn’s questions were poorly crafted and confusing. Judge Cusick was unaware of any testimony that was intentionally untruthful, inaccurate, incomplete, and/or designed to be misleading.

119. During the November 3, 2015, preliminary examination, respondent did not take any remedial/corrective measures regarding Ms. Loggie’s materially false, inaccurate, incomplete, and/or misleading testimony, including but not limited to:

a. Seeking information and/or explanation from Detective Zinser about his comments/statements that Ms. Loggie’s testimony was not accurate and/or that it had discrepancies.

ANSWER: Denied as untrue in the form and manner as alleged. In further response, Judge Cusick does not recall any comments/statements that Ms. Loggie’s testimony was not accurate and/or that it had discrepancies. If he had heard that any perjured or materially false testimony was taking place, he would have taken remedial action. Det. Zinser testified that he

does not remember exactly what he said to Judge Cusick and does not recall any response from Judge Cusick. There was a continuance between November 3, 2015 and December 18, 2015, when Det. Zinser continued his testimony on cross-examination. Det. Zinser made no efforts to provide additional information and/or explanation regarding any alleged concerns that Ms. Loggie's testimony was not accurate or truthful or complete despite the passage of more than a month between the examination dates. In fact, Det. Zinser said that Ms. Loggie was credible and reliable when he testified at the preliminary examination.¹⁴

- b. Requesting a recess in the proceeding to obtain additional information from Brandy Loggie and/or Detective Zinser regarding the circumstances under which she became a CI for the Task Force.

ANSWER: Denied as untrue in the form and manner as alleged. In further response, see response to paragraph 119a above.

- c. Requesting a recess in the proceeding to inform Brandy Loggie about her obligation to provide truthful, accurate, and complete testimony/answers.

ANSWER: Denied as untrue in the form and manner as alleged. In further response, Ms. Loggie was reminded of her obligation to provide truthful testimony prior to testifying.

- d. Requesting a recess in the proceeding to obtain a copy of Ms. Loggie's Source Card.

ANSWER: Denied as untrue in the form and manner as alleged.

¹⁴ 11/3/2015 PE p148:25-26 ("Well, I could say she has a record of reliability, she is a credible CI."). See also 12/18/2015 PE p49:4-5 ("We have a reliable CI that we were using.") and p49:16-19 ("This is a very, I would say easy controlled buy for us to do, because we have the target identified, we have a reliable CI . . .").

- e. Eliciting any testimony from Detective Zinser regarding the circumstances under which Ms. Loggie became a CI with the Task Force.

ANSWER: Denied as untrue in the form and manner as alleged.

- f. Disclosing Ms. Loggie's perjury, i.e., her materially false, inaccurate, incomplete, and/or misleading testimony to the court.

ANSWER: Denied as untrue. In further response, see answer to paragraph 118.

120. During the November 3, 2015, preliminary examination, respondent did not correct or clarify Ms. Loggie's testimony to reflect that:

- a. She was appearing pursuant to a subpoena.

ANSWER: Neither admitted nor denied for lack knowledge. Judge Cusick has no recollection of Ms. Loggie being subpoenaed. The AG's file contains an unsigned subpoena from an earlier adjourned PE date and a signed subpoena relating to the 11/3/2015 PE date. There is no proof of service in the materials received from the AG's office.

- b. She did not initiate the contact with the Task Force.

ANSWER: Denied as untrue in the form and manner as alleged. In further response, during the PE in December 2015, Det. Zinser did testify on cross-examination that he believed *he called Ms. Loggie, rather than the reverse*.¹⁵ However, on August 17, 2017 Det. Zinser told AAG Collins and Attorney Komorn that Ms. Loggie did call Sgt. Calleja first, but that he thought she was prompted by Thomas McCully. At trial, in September 2017, Det. Zinser testified, as follows:

¹⁵ 9/25/2017 TR pp147, 151-153.

- Q.** What were the specific inaccuracies? What were the topics of the specific inaccuracies that you noticed that she testified to and specifically mentioned to the Attorney General at the time?
- A.** I don't recall exactly what, if I laid it out like this was completely inaccurate or what. I know that again I looked over to him. I said, you know, there is an inaccuracy. I know one of them that I mentioned to him I believe she said she had called us basically out of the blue. I told him no, she was prompted essentially to call us.¹⁶

That was the sole item Det. Zinser could recall. Yet, Ms. Loggie did not actually testify to calling the police "out of the blue". Importantly, at trial, Det. Zinser testified there was no back and forth with Judge Cusick during the PE.¹⁷ Likewise, Judge Cusick does not recall any "back and forth" with Det. Zinser during the PE.

People often have honest but different competing recollections of the same events. Given the questioning by Attorney Komorn, it is not entirely clear to Judge Cusick even now that the question to Ms. Loggie that elicited the response about calling the police was related to the first contact.

Det. Zinser has, himself, testified differently on two separate occasions. At the PE he testified that he called Ms. Loggie first. At the trial, he testified that she called the police first. Attorney Komorn did ask questions that were clearly designed to trick Det. Zinser.¹⁸

¹⁶ 9/25/2017 TR pp99-100.

¹⁷ Id. pp77-79.

¹⁸ Attorney Komorn did ask questions that were designed to trick Det. Zinser. See Id. p71 lines 19-21 Attorney Komorn asked Det. Zinser whether he recalled Ms. Loggie testifying "no" when asked whether there was a written CI contract. Although this supposition is plainly false – Ms. Loggie had admitted to signing documentation at the PE and later admitted to signing a CI contract at a separate Evid Hrg – Det. Zinser testified only, "I don't recall exactly her testimony." Later, Attorney Komorn returned to his false narrative and asked Det. Zinser, "But will you also agree with me that by her

c. She had been prompted to contact the Task Force.

ANSWER: Denied as untrue in the form and manner as alleged. In further response, Judge Cusick was unaware of the circumstances. Later in the PE, Det. Zinser testified that he called Ms. Loggie first. Then at trial, he changed that and testified that Ms. Loggie did call first, but added that he thought she was prompted. In the Komorn tape of August 17, 2017, just before trial, Det. Zinser said that the contacts ran through Sgt. Calleja, not him.¹⁹

d. She was working with the Task Force for Thomas McCully's sentencing benefit.

ANSWER: Denied in form and manner as alleged. Neither Mr. McCully nor Ms. Loggie had any such agreement with the AG.

e. She had a forfeiture case pending against her based on her involvement in the McCully organization.

ANSWER: Denied as untrue in the form and manner alleged.

121. At the conclusion of the November 3, 2015, preliminary examination, respondent argued and/or relied on Brandy Loggie's perjured testimony:

a. To establish that Ms. Joslin was the owner of the Pure Wellness Center.

not stating that she has an agreement that she's working off a case when I asked it directly, it is a false answer?" Det. Zinser did not challenge the false statement – it was false because Attorney Komorn had never asked the direct question – and responded, "Yes." (Id.pp.76-77).

¹⁹ The tape was not disclosed until December 20, 2022 and not produced until December 27, 2022, see footnote 1, above.

ANSWER: Denied in the form and manner as alleged. In further response, Ms. Joslin later testified this was true.

- b. To establish that Ms. Joslin was involved in illegal transactions of marijuana and marijuana products at the Pure Wellness Center.

ANSWER: Denied in the form and manner as alleged. In further response, Ms. Joslin later testified this was true.

- c. To respond to objections posed by Mr. Komorn.

ANSWER: Denied as untrue.

- d. To support his arguments to bind Ms. Joslin over for trial on the charges contained in the charging document.

ANSWER: Denied as untrue.

122. Despite his knowledge that Brandy Loggie's testimony was materially false, inaccurate, incomplete and/or misleading, respondent:

- a. Permitted and/or caused Ms. Loggie's perjured testimony to remain as part of the record in *People v Joslin*, 35th District Case no. 15A161.

ANSWER: Denied as untrue.

- b. Permitted and/or caused Judge Gerou unknowingly to rely, at least in part, on Brandy Loggie's perjured testimony when determining the sufficiency of the evidence for a bind over.

ANSWER: Denied as untrue.

123. Respondent did not correct or clarify Ms. Loggie's perjured, i.e., materially false, inaccurate, incomplete, and/or misleading preliminary examination testimony at any time after the November 3, 2015 preliminary examination and prior to his departure from the AG's office in November of 2016.

ANSWER: Denied as untrue. In further response Judge Cusick was not aware of any perjured testimony at the PE prior to his departure from the AG's office in November 2016.

B. [Allegedly] Obstructing/Interfering with Cross-examination

124. This count incorporates paragraphs 1 through and including 123.

ANSWER: This response incorporates answers to paragraphs 1 through and including 123.

125. During the November 3, 2015 preliminary examination in People v Joslin, 35th District Court case no. 16A161, while aware that Ms. Loggie's testimony was materially false or misleading with respect to her motive for testifying, respondent knowingly and/or intentionally interfered with and obstructed Mr. Komorn's attempts to determine Ms. Loggie's true motive for testifying.

ANSWER: Denied as untrue. In further response, the objections were valid.

126. During Mr. Komorn's cross-examination of Brandy Loggie, respondent repeatedly objected to Mr. Komorn's questions/inquiries regarding:

a. The circumstances under which Brandy Loggie became a CI.

ANSWER: Denied as untrue in the form and manner as alleged. Judge Cusick objected when he believed that Attorney Komorn was seeking information about other confidential investigations in which Ms. Loggie was involved beyond Pure Wellness. Judge Cusick objected to questions

that were not properly crafted and irrelevant. Judge Cusick did not object to any properly crafted question about relevant evidence that asked or sought information about any promises related to Ms. Loggie. She admitted to being a CI with signed CI documentation, and it was clear that she had worked with police in other investigations. Judge Cusick made legitimate objections because of her other involvement in other CI operations. He admitted credibility could be considered as an issue and made no objections regarding questions specifically about the CI documentation.

b. Brandy Loggie's role and/or involvement in any other police investigations.

ANSWER: Admitted as true that there were objections.²⁰ Denied as to them being "repeated", as that word is understood to mean.

c. Brandy Loggie's motivation for working with the Task Force as a CI.

ANSWER: Denied as untrue. In further response, Judge Cusick objected to questions that were not properly crafted or were irrelevant. Judge Cusick did not object to properly crafted questions that asked or sought information about any promise or agreement involving Ms. Loggie.

d. Brandy Loggie's contacts with Amanda Joslin and the Pure Wellness Center prior to September 4, 2014.

ANSWER: Neither admitted nor denied for lack of knowledge, the JTC is left to its proofs. In further response, these could not be found in the transcript.

127. During Mr. Komorn's cross-examination of Detective Zinser, respondent repeatedly objected to questions/inquiries regarding:

²⁰ 11/3/2015 PE pp19-22.

a. The circumstances under which Brandy Loggie became a CI.

ANSWER: Denied as untrue in the form and manner as alleged. Judge Cusick objected when he believed that Attorney Komorn was seeking information about other confidential investigations in which Ms. Loggie was involved beyond Pure Wellness. Judge Cusick objected to questions that were not properly crafted and irrelevant. Judge Cusick made legitimate objections because of her other involvement in other CI operations. Further, Judge Cusick denies that the objections were “repeated” as that word is understood to mean.

While the Formal Complaint does not cite to any specific objections in its allegations, Judge Cusick objected to questions regarding Loggie’s prior work as a CI based on relevance:

MR. KOMORN: ... I mean, was she someone that was a CI of yours before, that where I may be confused?

MR. CUSICK: Once again, Your Honor, objection, relevance. We have been over this over and over again. . . anything that happened with regards to this investigation is relevant. Anything that happened with regards to any other investigations is not.

MR. KOMORN: Well, I am not asking about the other investigations. I just want to know if she is a CI in this case alone? And, she became a CI in this case alone. . .

THE COURT: I will allow that one question. Has she been a CI previously?

DET. ZINSER: I will tell you everything about her, I am not going to do it here with the Defendant, you know, and the full circumstances with her.

THE COURT: No, as far as we are going to go is, has she been a CI before?

DET. ZINSER: Yes.
THE COURT: Okay, all right, that's it.

The Court upheld the objection and limited the questions to the Joslin/Pure Wellness investigations, consistent with Judge Cusick's proper objection.²¹

b. Brandy Loggie's role and/or involvement in any other police investigations.

ANSWER: Denied as untrue in the form and manner as alleged. Judge Cusick objected when he believed that Attorney Komorn was seeking information about other confidential investigations in which Ms. Loggie was involved beyond Pure Wellness. Judge Cusick objected to questions that were not properly crafted and irrelevant. Judge Cusick made legitimate objections because of her other involvement in other CI operations. Further, Judge Cusick denies that the objections were "repeated" as that word is understood to mean.

While the Formal Complaint does not cite to any specific objections in its allegations, Judge Cusick objected to questions regarding other dispensaries, and the Court upheld those objections. For example:

MR. KOMORN: Do you know the CI, now don't tell me the location, do you know her to go to other dispensaries and buy marijuana for her own personal use?

MR. CUSICK: Your Honor, that is not relevant.

MR. KOMORN: I am not asking—it is relevant, because you can't have it both ways. You can't use—she is going in to buy cannabis for herself to use from a dispensary, she doesn't have a caregiver, and they know it. And, they are not charging people with it.

²¹ 11/3/2015 PE p.151-152.

THE COURT: Then we are getting into whether they charge, whether they don't in other places. No, I think we are getting too far off track, I am not going to allow it.

c. Ms. Loggie's motivation for working with the Task Force as a CI.²²

ANSWER: See responses to 127(a) and (b), above. By way of further answer, based on a review of the transcript, there does not appear to be any questions or objections during Mr. Komorn's cross-examination of Detective Zinser specifically regarding Brandy Loggie's "motivation for working with the Task Force as a CI."

d. The accuracy of Ms. Loggie's testimony.

ANSWER: Denied as untrue in the form and manner as alleged. Judge Cusick objected to questions that were not properly crafted. While the Formal Complaint does not cite to any specific objections in its allegations, Judge Cusick objected to questions to Det. Zinser regarding Brandy Loggie's testimony as set forth below, and the Court again did not disagree with those objections and also found the line of questions from Attorney Komorn to be confusing:

MR. KOMORN: Okay. Do you agree that there is some discrepancies in terms of the items that she testified that she bought on September the 4th?

DET. ZINSER: I don't believe that her totals were correct with what she had purchased.

MR. KOMORN: On each of the four days, is that right?

DET ZINSER: I don't believe it was each of the four days, I am trying to recall.

THE COURT: It is kind of a confusing question.

MR. KOMORN: I am sorry, Your Honor.

²² 11/3/2015 PE p150.

MR. CUSICK: First of all, let the testimony speak for itself. Obviously, he has been able to cross examine Ms. Loggie, let's not have this witness comment on what Ms. Loggie said was right or wrong.

MR. KOMORN: Okay. But, wasn't it true also on September 4th she indicated that she only bought—she didn't buy the variety, she was wrong on the variety?

DET. ZINSER: I don't know what—

MR. CUSICK: Your Honor, this is—he can't testify—he just testified that he doesn't know, he didn't see the hand to hand transaction. He can't testify to specifically whether or not Brandy Loggie is right or wrong anyways in regards to anything other than what she gave him. He can testify to what he received.

THE COURT: Mr. Komorn, response? I mean, essentially, you are just saying there is a discrepancy between what his records show and what she testified to. But, he can't testify as to what she testified to.

MR. KOMORN: Oh, for example, on September the –

MR. CUSICK: Your Honor, he can ask what he tested, field tested, he has already testified to on September 4th, March 16th, and March 17th. He can ask him, what did you receive, what did you test?

MR. KOMORN: Let me do it this way.

MR. CUSICK: That's about all he can ask.

MR. KOMORN: Judge, if –I'm going to—going to—

THE COURT: Well, the investigating officer was here when the informant testified. But, again, her testimony is her testimony, and it has been recorded, and it is what it

is. He can testify as to what he did, what he knew, what he saw.²³

128. Respondent objected to the questions described in the preceding two paragraphs to prevent Mr. Komorn learning that Ms. Loggie became a CI to help her boyfriend, Mr. McCully, which information was material to Ms. Loggie's credibility as a witness.

ANSWER: Denied as untrue.

129. At the time respondent prevented Mr. Komorn from learning that Ms. Loggie became a CI to help Mr. McCully, respondent knew that Mr. Komorn was entitled to receive that information in order properly to impeach Ms. Loggie and properly to represent Ms. Joslin.

ANSWER: Denied as untrue.

Respondent's conduct as described in this count constitutes:

- a. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1863, as amended, Article 6, Section 30, MCR 9.104(1);
- b. Conduct in violation of the standards imposed on members of the bar as a condition of the privilege to the practice of law, contrary to MCR 9.103A;
- c. Conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2);
- d. Conduct that was contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3);
- e. Conduct that violated the standards or rules of professional responsibility adopted by the Supreme Court, in violation of MCR 9.104(4);
- f. Conduct that violated criminal laws of the State of Michigan, that is, MCL 750.424, which prohibits a lawyer from suborning perjury, and MCL

²³ 12/18/2015 PE pp.25-28.

- 750.505, which prohibits a lawyer from committing misconduct in office, all contrary to MCR 9.104(5);
- g. Conduct in violation of MRPC 3.3, which prohibits a lawyer from providing false statements of material fact or law to a tribunal and requires a lawyer to correct false statements of materials fact previously provided to a tribunal;
 - a.(sic) Conduct in violation of MCL 767.40a, which requires a prosecuting attorney to disclose and provide the defense with names of res gestae witnesses;
 - h. Conduct in violation of MRPC 3.8 which, in part, requires a prosecuting attorney to make “timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the degree of the offense;
 - i. Conduct in violation of MRPC 8.4(a), which prohibits conduct that violates or attempts to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 - j. Conduct in violation of MRPC 8.4(b), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer; and
 - k. Conduct in violation of MRPC 8.4(c), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

ANSWER: All of the allegations are denied as untrue. They are the product of a deeply flawed investigation that began with the wrong assumption that Judge Cusick engaged in misconduct and then proceeded by simply cherry-picking information that fit their biased notions. Further, evidence that was contrary to these notions was simply dismissed (the *Kastigar* Letter) or ignored (Ms. Loggie). Finally, evidence that could have been

used by Judge Cusick to defend himself was purposely withheld from him (the Komorn tape).²⁴

COUNT II
[ALLEGEDLY] SUBORNING PERJURY IN 3RD CIRCUIT COURT

130. This count incorporates paragraphs 1 through and including 129.

ANSWER: This response incorporates answers to paragraphs 1 through and including 129.

131. Despite his knowledge that Brandy Loggie’s November 3, 2015 preliminary examination testimony was false, inaccurate, incomplete and/or misleading, in Third Circuit Court respondent:

a. Subpoenaed and presented Brandy Loggie as a credible witness for an evidentiary hearing conducted before Judge Kenny on June 27, 2016.

ANSWER: Denied as untrue in the form and manner as alleged. In further response, it is admitted that Ms. Loggie was subpoenaed for the June 27, 2016 hearing.

b. Utilized and relied on Ms. Loggie’s testimony in various pleadings and arguments he filed, made, and/or responded to before Judge Kenny, including, but not limited to, the June 27, 2016 evidentiary hearing.

ANSWER: Denied in the form and manner as alleged. In further response, he did utilize and rely upon Ms. Loggie’s testimony, believing it was proper.

²⁴ Also dismissed and ignored were memos and witness statements from Judge Kenny, Attorney Fishman, Judge Groner, and numerous of Judge Cusick’s former supervisors that show his innocence.

132. Respondent permitted and/or caused Judge Kenny unknowingly to rely on Brandy Loggie's untruthful, incomplete, and/or inaccurate testimony when making his rulings/decisions on various objections and/or motions including, but not limited to:

a. Motion to Quash

ANSWER: Denied as untrue.

b. Evidentiary hearing on a motion to dismiss conducted on about June 27, 2016.

ANSWER: Denied as untrue.

133. In Third Circuit Court, respondent did not correct or clarify Ms. Loggie's false, inaccurate, incomplete, and/or misleading preliminary examination testimony at any time prior to his departure from the AG's office in November of 2016.

ANSWER: Denied as untrue in the form and manner as alleged. Judge Cusick does not believe the testimony was improper.

Respondent's conduct as described in this count constitutes:

- a. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1863, as amended, Article 6, Section 30, MCR 9.104(1);
- b. Conduct in violation of the standards imposed on members of the bar as a condition of the privilege to the practice of law, contrary to MCR 9.103A;
- c. Conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2);
- d. Conduct that was contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3);
- e. Conduct that violated the standards or rules of professional responsibility adopted by the Supreme Court, in violation of MCR 9.104(4);

- f. Conduct that violated criminal laws of the State of Michigan, that is, MCL 750.424, which prohibits a lawyer from suborning perjury, and MCL 750.505, which prohibits a lawyer from committing misconduct in office, all contrary to MCR 9.104(5);
- g. Conduct in violation of MRPC 3.3, which prohibits a lawyer from providing false statements of material fact or law to a tribunal and requires a lawyer to correct false statements of materials fact previously provided to a tribunal;
- h. Conduct in violation of MRPC 3.8, which, in part, requires a prosecuting attorney to make “timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the degree of the offense;
- i. Conduct in violation of MRPC 8.4(a), which prohibits conduct that violates or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- j. Conduct in violation of MRPC 8.4(b), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer; and
- k. Conduct in violation of MRPC 8.4(c), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

ANSWER: All of the allegations are denied as untrue. They are the product of a deeply flawed investigation that began with the wrong assumption that Judge Cusick engaged in misconduct and then proceeded by simply cherry-picking information that fit their biased notions. Further, evidence that was contrary to these notions was simply dismissed (the *Kastigar* Letter) or ignored (Ms. Loggie). Finally, evidence that could have been used by Judge Cusick to defend himself was purposely withheld from him (the Komorn tape).²⁵

²⁵ See footnote 24, above.

COUNT III

[ALLEGEDLY] WITHHOLDING OF INFORMATION/EVIDENCE

134. This count incorporates the allegations contained in paragraphs 1-133, as stated above.

ANSWER: This response incorporates answers to paragraphs 1 through and including 133.

A. People v Amanda Joslin

135. On about July 22, 2015, respondent reviewed and approved discovery materials/documents provided by the AG's office to Ms. Joslin's then attorney, Mr. Komorn, in People v Joslin, 35th District Court no. 15A161.

ANSWER: Admitted as true.

136. In the July 22, 2015, discovery materials, respondent knowingly and/or intentionally did not include, and did not instruct anyone else to include:

- a. Any documents and/or information about Thomas McCully's organization.

ANSWER: Denied as untrue in the form and manner as alleged.

- b. Any documents and/or information about Thomas McCully's criminal case, Third Circuit Court no. 14-1140, which was then pending before the Hon. David Groner.

ANSWER: Denied as untrue in the form and manner as alleged.

- c. Any documents and/or information regarding Brandy Loggie's involvement in the McCully organization.

ANSWER: Denied as untrue in the form and manner as alleged.

- d. Any documents and/or information regarding Brandy Loggie's involvement in the February 2013 delivery of marijuana to Kentucky.

ANSWER: Denied as untrue in the form and manner as alleged.

- e. Any documents and/or information regarding Thomas McCully generating and/or assisting the Task Force in the Joslin investigation.

ANSWER: Denied as untrue in the form and manner as alleged.

- f. Any documents and/or information regarding Brandy Loggie's involvement in the Joslin investigation.

ANSWER: Denied as untrue in the form and manner as alleged.

- g. A copy of, and/or any information about, the Source Card Thomas McCully signed on about May 12, 2014.

ANSWER: Denied as untrue in the form and manner as alleged.

- h. Any details of Mr. McCully's agreement, deal, or understanding to become a CI with the Task Force in exchange for a sentencing consideration in Third Circuit Court case no. 14-1140.

ANSWER: Denied as untrue.

- i. A copy of, and/or any information/details about, the Source Card Brandy Loggie signed on about September 4, 2014.

ANSWER: Denied as untrue in the form and manner as alleged.

- j. Any details of Ms. Loggie's agreement, deal or understanding to become a CI with the Task Force in exchange for a sentencing benefit to Thomas McCully in Third Circuit Court case no. 14-1140.

ANSWER: Denied as untrue.

- k. Any documents and/or information/details regarding the forfeiture actions then pending against Brandy Loggie and/or Thomas McCully.

ANSWER: Denied as untrue in the form and manner as alleged.

- l. Any information about the relationship between Thomas McCully and Brandy Loggie.

ANSWER: Denied as untrue in the form and manner as alleged.

137. Respondent did not provide and did not instruct anyone else to provide to Amanda Joslin or her attorneys, Matt Abel and/or Michael Komorn, any of the documents and/or information listed in paragraph 136 above at any time prior to his separation from the AG's office in November of 2016.

ANSWER: Admitted as true.

B. People v Darryl Berry, et al

138. Prior to the commencement of the April 7, 2016, preliminary examination in People v Berry, 53d District Court case nos. 16-0476 and 16-0473, respondent did not provide and did not instruct anyone else to provide to Darryl Berry and/or his attorney, Mr. Komorn:

- a. Any information and/or documents disclosing that Thomas McCully was a res gestae witness in the Berry investigation, as required by MCL 767.40a.

ANSWER: Denied as untrue in the form and manner stated. By way of further answer, see response to question #66, above.

- b. Any information and/or documents disclosing that Thomas McCully was the CI in the Berry investigation.

ANSWER: Admitted as true.

- c. Any documents and/or information about Thomas McCully's organization or about the criminal case, Third Circuit Court no. 14-1140, which was pending while Thomas McCully was working as a CI with the Task Force on the Berry investigation.

ANSWER: Admitted as true.

- d. A copy of, and/or any information about, Thomas McCully's Source Card.

ANSWER: Admitted as true.

- e. Any details of Mr. McCully's agreement, deal, or understanding to become a CI with the Task Force in exchange for a sentencing consideration in Third Circuit Court case no. 14-1140.

ANSWER: Denied as untrue in the form and manner alleged.

- f. Any documents and/or information regarding the forfeiture action then pending against Thomas McCully.

ANSWER: Admitted at true.

139. In 53d District Court case nos. 16-0476 and 16-0473 respondent did not provide, and did not instruct anyone else to provide, to Darryl Berry or his attorney,

Michael Komorn, any of the documents and/or information listed in paragraph 138 above at any time prior to his separation from the AG's office in November of 2016.

ANSWER: Admitted as true.

C. AAG Dianna Collins

140. After his judicial appointment in October of 2016, respondent's case files regarding the Joslin and Berry investigations and/or prosecutions were transferred to AAG Dianna Collins.

ANSWER: Admitted as true.

141. Prior to his separation from the AG's office, respondent and AAG Collins discussed the cases she was taking over, including People v Berry, et al, 53d District Court case nos. 16-0476 and 16-0473, People v Joslin, 35th District Court case no. 15-AG161, Third Circuit Court case no. 16-0143, and People v Joslin, DeJonghe and Scholin. 14-A District Court case no. 15F21261-FY, 22nd Circuit court case nos. 16-000277; 16-000278; and 16-000279.

ANSWER: Admitted as true.

142. During those conversations/discussions with AAG Collins, respondent did not disclose or make AAG Collins aware of:

- a. The existence and/or details of the McCully organization investigation and/or prosecution.

ANSWER: Admitted as true.

- b. The relationship between Brandy Loggie and Thomas McCully.

ANSWER: Admitted as true.

- c. A copy of, and/or any information about, the Source Card Brandy Loggie signed on about September 4, 2014.

ANSWER: Admitted as true.

- d. Any details of Ms. Loggie's agreement, deal, or understanding to become a CI with the Task Force in exchange for a sentencing consideration in Mr. McCully's case, Third Circuit Court case no. 14-1140.

ANSWER: Denied as untrue in the form and manner as alleged.

- e. A copy of, and/or any information about, the Source Card Thomas McCully signed on about May 12, 2014.

ANSWER: Admitted as true.

- f. Any details of Thomas McCully's agreement, deal, and/or understanding to become a CI with the Task Force in exchange for a sentencing consideration in Third Circuit Court case no. 14-1140.

ANSWER: Denied as untrue in the form and manner as alleged.

- g. Thomas McCully being a res gestae witness in *People v Darryl Berry, et al*, 53d District Court case nos. 16-0476 and 16-0473.

ANSWER: Denied as untrue in the form and manner as alleged. By way of further answer, see response to question #66, above.

- h. Thomas McCully being the CI in the Berry investigation.

ANSWER: Admitted as true.

- i. The decision to protect Thomas McCully's identity as a CI by dismissing *People v Darryl Berry and Michael Jeffrey*, 36th District Court case no. 16-900099/16-55791.

ANSWER: Admitted as true that Judge Cusick does not recall mentioning Mr. McCully by name. In further response, AAG Collins recalls that Judge Cusick informed her that he had dismissed a Wayne County case against Mr. Berry because the CI did not want to be made known.

- j. Brandy Loggie's false, inaccurate, incomplete, and/or misleading testimony at the November 3, 2015, preliminary examination before the Hon. Michael Gerou.

ANSWER: Denied as untrue in the form and manner as alleged.

143. Respondent's failure to provide and/or disclose the information and/or documents outlined in paragraph 142 above to AAG Collins caused AAG Collins not to provide and/or disclose that information and/or documents to attorney Michael Komorn.

ANSWER: Denied as untrue.

Respondent's conduct as described in this count constitutes:

- a. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1863, as amended, Article 6, Section 30, and MCR 9.104(1);
- b. Conduct in violation of the standards imposed on members of the bar as a condition of the privilege to the practice of law, contrary to MCR 9.103A;
- c. Conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2);
- d. Conduct that was contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3);

- e. Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, in violation of MCR 9.104(4);
- f. Conduct that violated MCL 750.505, a criminal law of the State of Michigan, which prohibits a lawyer from committing misconduct in office, contrary to MCR 9.104(5);
- g. Conduct in violation of MCL 767.40a, which requires a prosecuting attorney to disclose and provide the defense with names of res gestae witnesses;
- h. Conduct in violation of MRPC 3.8, which, in part, requires a prosecuting attorney to make “timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the degree of the offense;
- i. Conduct in violation of MRPC 8.4(a), which prohibits conduct that violates or attempts to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- j. Conduct in violation of MRPC 8.4(b), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer; and
- k. Conduct in violation of MRPC 8.4(c), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

ANSWER: All of the allegations are denied as untrue. They are the product of a deeply flawed investigation that began with the wrong assumption that Judge Cusick engaged in misconduct and then proceeded by simply cherry-picking information that fit their biased notions. Further, evidence that was contrary to these notions was simply dismissed (the *Kastigar* Letter) or ignored (Ms. Loggie). Finally, evidence that could have been used by Judge Cusick to defend himself was purposely withheld from him (the Komorn tape).²⁶

²⁶ See footnote 24, above.

COUNT IV
[ALLEGEDLY] OBSTRUCTING/INTERFERING WITH CROSS-EXAMINATIONS
PEOPLE V BERRY

144. This count incorporates paragraphs 1 through and including 143.

ANSWER: This response incorporates answers to paragraphs 1 through and including

145. During the April 7, 2016, preliminary examination in People v Berry, et al, 53d District Court case nos. 16-0473 and 16-0476, respondent focused and/or limited the questions he posed to Sgt. Robert Lowes regarding the investigatory events that took place in the Berry investigation between September 24, 2014, and September 28, 2015.

ANSWER: Admit as true that at the hearing to establish probable cause that a crime was committed and the defendant committed the crime he limited his questions to the elements of the case.

146. Prior to the April 7, 2016 preliminary examination in People v Berry, et al, 53d District Court case nos. 16-0473 and 16-0476, respondent did not disclose to Mr. Komorn:

- a. That Thomas McCully was a res gestae witness.

ANSWER: Denied as untrue in the form and manner stated, as this calls for a legal conclusion. By way of further answer, based on present knowledge of facts and law, McCully wasn't a res gestae witness in the 53d District Court case nos. 16-0473 and 16-0476 because his testimony wouldn't have aided in developing the facts forming the heart of the criminal manufacturing 250+ plants charges. *Jackson*, 30 Mich App at 439-440 (holding that a person's mere presence at an occurrence does not mean that they are witnesses to the occurrence or that they could testify as to the circumstances or facts which constitute the res gestae, i.e., the thing done); *Long*, 246 Mich App at 585 (2001) (holding that a res gestae witness is a

person who witnessed first-hand some event in the continuum of the criminal transaction whose testimony *would aid in developing full disclosure* of the facts at trial); *Paredes-Meza*, unpub op at 2 (holding that informant didn't constitute a res gestae witness since informant witnessed the *same events* in criminal transaction that law enforcement also witnessed and informant's testimony wouldn't have aided in developing a full disclosure of the facts at trial).

b. That Thomas McCully was the CI.

ANSWER: Admitted as true.

c. That Thomas McCully had worked with the Task Force on the Berry investigation in exchange for a sentencing benefit in Third Circuit Court case no. 14-1140.

ANSWER: Denied as untrue in the form and manner as alleged.

d. That Thomas McCully had a pending forfeiture matter.

ANSWER: Denied as untrue in the form and manner as alleged. In further response, the forfeiture matter had been resolved in November 2015.

147. During the April 7, 2016 preliminary examination in *People v Berry, et al*, 53d District Court case nos. 16-0473 and 16-0476, respondent did not make any inquiries of any of his witnesses and did not disclose:

a. The identity of the CI (Thomas McCully).

ANSWER: Admitted as true.

b. The fact that the CI (Thomas McCully) was a res gestae witness.

ANSWER: Denied as untrue in the form and manner as alleged. By way of further answer, see responses to the allegations at 66 and 146(a), above.

c. That the CI (Thomas McCully) had worked with the Task Force on the Berry investigation in exchange for a sentencing benefit in Third Circuit Court case no. 14-1140.

ANSWER: Denied as untrue in the form and manner as alleged.

d. That the CI (Thomas McCully) had a pending forfeiture matter.

ANSWER: Denied as untrue in the form and manner as alleged. In further response, the forfeiture matter is believed to have been resolved in November 2015.

148. During the April 7, 2016 preliminary examination, respondent acknowledged he chose not to proceed with and/or to dismiss other criminal cases in order to protect the CI's (Thomas McCully's) identity.

ANSWER: Admitted as true.

149. During the April 7, 2016 preliminary examination in People v Berry, et al, 53d District Court case nos. 16-0473 and 16-0476, respondent knowingly and/or intentionally interfered with and obstructed Mr. Komorn in his attempt to make inquiries about the identity of the CI (Thomas McCully).

ANSWER: Denied as untrue in the form and manner as alleged. In further response, the objections were made in good faith and sustained by Judge Reader.

150. At the time respondent failed to disclose, and obstructed Mr. Komorn's efforts to learn, that Mr. McCully was a res gestae witness to the marijuana transaction on which the charges were based, and to learn that Mr. McCully was the CI, respondent was well aware that Mr. Komorn was entitled to this information under MCL 767.40a.

ANSWER: Denied as untrue. In further response, there was no obstruction. Judge Cusick's objections were sustained. Further, based on present knowledge of facts and law, McCully wasn't a res gestae witness in the 36th District Court case no. 16-900099/16-55791. *People v Marji* 180 Mich App 525, 534 (1989), lv den, remanded 439 Mich. 896 (1991) (holding that the informant could not be considered a res gestae witness because the informant merely introduced an undercover police officer to the defendant and did not witness anything significant to the crime); *People v Jackson*, 30 Mich App 438, 439-440 (1971) (holding that a person's mere presence at an occurrence does not mean that they are witnesses to the occurrence or that they could testify as to the circumstances or facts which constitute the res gestae, i.e., the thing done); *People v Long*, 246 Mich App 582, 585 (2001) (holding that a res gestae witness is a person who witnessed first-hand some event in the continuum of the criminal transaction whose testimony would aid in developing full disclosure of the facts at trial); *People v Paredes-Meza*, unpublished per curiam opinion of the Court of Appeals, issued July 8, 2010 (Docket No. 291067) 2010 WL 2696652 (holding that informant didn't constitute a res gestae witness since informant witnessed same events in criminal transaction that law enforcement also witnessed and informant's testimony wouldn't have aided in developing a full disclosure of the facts at trial). MCL 767.40a only applies to known res gestae witnesses.

Respondent's conduct as described in this count constitutes:

- a. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1863, as amended, Article 6, Section 30, and MCR 9.104(1);
- b. Conduct in violation of the standards imposed on members of the bar as a condition of the privilege to the practice of law, contrary to MCR 9.103A;
- c. Conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2);
- d. Conduct that was contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3);

- e. Conduct that violated the standards or rules of professional responsibility adopted by the Supreme Court, in violation of MCR 9.104(4);
- f. Conduct that violated MCL 750.505, a criminal law of the State of Michigan prohibits a lawyer from committing misconduct in office, contrary to MCR 9.104(5);
- g. Conduct in violation of MCL 767.40a, which requires a prosecuting attorney to disclose and provide the defense with names of all res gestae witnesses;
- a.(sic) Conduct in violation of MRPC 3.3, which prohibits a lawyer from providing false statements of material fact or law to a tribunal and requires a lawyer to correct false statements of materials fact previously provided to a tribunal;
- h. Conduct in violation of MRPC 3.4 which, in part, prohibits a lawyer from unlawfully obstructing another party's access to evidence and from unlawfully altering, destroying, or concealing a document or other material having potential evidentiary value;
- i. Conduct in violation of MRPC 8.4(a), which prohibits conduct that violates or attempts to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- j. Conduct in violation of MRPC 8.4(b), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer; and
- k. Conduct in violation of MRPC 8.4(c), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

ANSWER: All of the allegations are denied as untrue. They are the product of a deeply flawed investigation that began with the wrong assumption that Judge Cusick engaged in misconduct and then proceeded by simply cherry-picking information that fit their biased notions. Further, evidence that was contrary to these notions was simply dismissed (the *Kastigar*

Letter) or ignored (Ms. Loggie). Finally, evidence that could have been used by Judge Cusick to defend himself was purposely withheld from him (the Komorn tape).²⁷

COUNT V

[ALLEGED] MISREPRESENTATIONS TO THE COMMISSION

151. This count incorporates paragraphs 1 through and including paragraph 150.

ANSWER: This response incorporates answers to paragraphs 1 through and including 150.

A. Request for Comments

152. In his May 10, 2021, answers to the Commission’s request for comments, on page 3, respondent stated in part that at the time Brandy Loggie testified at the People v Joslin preliminary examination he was not aware “that [she] was working under some sort of agreement for the benefit of Mr. McCully.”

ANSWER: Admit as true.

153. Respondent’s representation contained on page 3 of his May 10, 2021, answers to the Commission’s request for comments was false and/or misleading, and he knew it was false and/or misleading when he made it.

ANSWER: Denied as untrue.

154. In his May 10, 2021, answers to the Commission’s request for comments, on page 8, respondent stated that “during the Joslin case” he did not recognize the “potential importance of Ms. Loggie’s connection to Mr. McCully.”

ANSWER: Admitted as true.

²⁷ See footnote 24, above.

155. Respondent's representation contained on page 8 of his answers to the Commission's request for comments was false and/or misleading and he knew it was false and/or misleading when he made it.

ANSWER: Denied as untrue.

156. In his May 10, 2021 answers to the Commission's request for comments, in response to question #86(d) respondent stated that Thomas McCully's sentence was "in no way contingent on Ms. Loggie's cooperation or testimony."

ANSWER: Admitted as true. In further response, full statement was: a response to a question at #86(d)(2) centered on why Judge Cusick did not explain to Ms. Loggie, "that she must testify truthfully about her work for the WWNTF being in exchange for favorable sentencing consideration for Thomas McCully[.]" The full response was:

To the best of Judge Cusick's recollection he spoke with Ms. Loggie about the transactions that occurred at Pure Wellness and what she observed while she was in the Pure Wellness dispensary. She made clear that she wanted to help out because she observed people who were high and marijuana was being sold to them and they would go into their cars and drive around. It seemed to Judge Cusick there was some animus toward Ms. Joslin. At the time of the PE, Judge Cusick did not have the CI agreement. In hindsight, he wishes he would have gone over her role as a CI in more detail and prepared her better. In Judge Cusick's mind Mr. McCully was not a focus of the PE and he looked at Ms. Loggie as a separate CI in her own right who was involved in other confidential informant activities. Judge Cusick only focused on her relationship with Pure Wellness and regrets not going over the broader issues of how she got involved as a CI and what, if any, promises were made to her. He didn't tell her what to say or what not to say, just to testify truthfully. AAG Collins, when interviewed by counsel during this investigation, noted that at the time of trial Ms. Loggie indicated that she never

spoke with Judge Cusick about the CI agreement. Judge Cusick, by the time of the PE, believed that Mr. McCully should receive probation based on his own work as a CI for WWNTF. This view was expressed in a legal files entry in September 2015, months before Ms. Loggie testified. While Judge Cusick acknowledges he should have spoken to Ms. Loggie about her service as a CI and anticipated a connection, Mr. McCully's sentence was in no way contingent on Ms. Loggie's cooperation or testimony. Mr. McCully's sentence was based on his actions and his actions alone.

This is the truth about what Judge Cusick believed. It is clear from all of the evidence, including interviews with Judge Groner, Attorney Fishman, and, Judge Cusick's former superiors at the AG's Office, that is the case.

157. Respondent's representation contained in response to question #86(d) of the Commission's request for comments was false and/or misleading and he knew it was false and/or misleading when he made it.

ANSWER: Denied as untrue.

158. In his May 10, 2021, answers to the Commission's request for comments, in response to question #87(d) respondent stated that he "litigated the Joslin matter believing that Attorney Komorn had all the discovery he had requested and was entitled to receive."

ANSWER: Admitted as true. In further response, this is an incomplete quote from the RFI answer. After noting above that Judge Cusick did not recall taking any personal action on the discovery demand, it was acknowledged that Erica Hamilton, an administrative assistant at the AG' office had transferred the discovery materials via email and Judge Cusick was copied on those emails. The full response at #87(d) was:

Judge Cusick and Attorney Komorn had litigated a number of cases together. Attorney Komorn was aware that the AG's office and Judge Cusick had an open door and open folder policy. Judge

Cusick did not ever refuse to provide Attorney Komorn with anything to the best of his recollection and certainly, if that would have happened, it would have been addressed with the court. Judge Cusick litigated the *Joslin* matter believing that Attorney Komorn had all the discovery he had requested and was entitled to receive. Twice, Ms. Loggie testified that she had signed a CI agreement, under Attorney Komorn's questioning. [PE p.19 and Evid Hrg p.81]. Obviously, Attorney Komorn was made aware that the CI documentation existed by Ms. Loggie. Judge Cusick deeply regrets the lapse in not following through to ensure that the information was actually provided. It is noteworthy that Attorney Komorn did not follow-up in requesting the information. While it was not his responsibility to do so, had he done so it is a certainty that he would have received it.

159. Respondent's representation contained in response to question #87(d) of the Commission's request for comments was false and/or misleading and he knew it was false and/or misleading when he made it.

ANSWER: Denied as untrue.

160. In his May 10, 2021, answers to the Commission's request for comments, in response to question #105, respondent stated that he was "not aware of untruthful or inaccurate testimony at the November 3, 2015 preliminary examination concerning why Ms. Loggie became a CI for the [Task Force]."

ANSWER: Admitted as true.

161. Respondent's representation in response to question #105 of the Commission's request for comments was false and/or misleading and he knew it was false and/or misleading when he made it.

ANSWER: Denied as untrue. As the JTC was well aware, but hid from Judge Cusick, Ms. Loggie on the Komorn tape affirmed that her testimony at the PE was, "True."

162. In his May 10, 2021 answers to the Commission's request for comments, in response to question #105, respondent stated that the reason he did not correct Ms. Joslin's false, incorrect, and/or inaccurate preliminary examination testimony regarding the circumstances under which she became a CI for the Task Force was because he "was not aware of untruthful or inaccurate testimony at the PE concerning why Ms. Loggie became a CI for the [Task Force]."

ANSWER: Admitted as true.

163. Respondent's representation in response to question #105 of the Commission's request for comments was false and/or misleading and he knew it was false and/or misleading when he made it.

ANSWER: Denied as untrue.

164. In his May 10, 2021 answers to the Commission's request for comments, in response to question #107, respondent stated that he did not make any effort to speak to Ms. Loggie about her testimony at the Joslin preliminary examination because he "was unaware of any unaddressed issues regarding her PE testimony."

ANSWER: Admitted as true. In further response, the complete statement was:

Judge Cusick was unaware of any unaddressed issues regarding her PE testimony. The issue of who called who first had been addressed. Also, the issue of how much the items purchased weighed was also addressed.

165. Respondent's representation in response to question #107 of the Commission's request for comments was false and misleading and he knew it was false and/or misleading when he made it.

ANSWER: Denied as untrue.

B. 28-Day Letter

166. In his May 2, 2022 answers to the Commission's 28-Day Letter, in response to question #128, respondent denied that his desire and intent to protect Thomas McCully's identity as a CI was the reason that during the November 3, 2015 preliminary examination in *People v Joslin* he did not ask Ms. Loggie about:

- a. Ms. Loggie's relationship to Mr. McCully;

ANSWER: Admitted as true. In further response, the complete statement was:

This is untrue. The *Berry* Case and Mr. McCully were not connected to the *Joslin* matter in Judge Cusick's mind. As the record shows, Judge Cusick would have been prepared to have Mr. McCully testify in the Wayne County *Berry* case up until Attorney Fishman spoke to him, which was after the preliminary examination. Judge Cusick was prepared to send a subpoena to have Mr. McCully testify. It was only after the call with Mr. Fishman and consultation with Judge Cusick's supervisors that the decision was made to not have Mr. McCully testify. This was months after the *Joslin* preliminary examination. By way of reference, the *Joslin* preliminary examination took place in November and December 2015. The *Berry* case was not initiated in Wayne County until February 2016.

- b. Her involvement in the McCully organization;

ANSWER: See answer to 166(a), above.

c. Her involvement in the delivery of marijuana to Kentucky in February of 2013,

ANSWER: See answer to 166(a), above.

d. Her pending forfeiture case;

ANSWER: See answer to 166(a), above.

e. The circumstances under which she became a CI for the Task Force; and

ANSWER: See answer to 166(a), above.

f. Her CI work serving as a benefit to Thomas McCully's sentence.

ANSWER: See answer to 166(a), above.

167. Respondent's representation in response to question #128 of the Commission's 28-Day Letter was false and/or misleading and he knew it was false and/or misleading when he made it.

ANSWER: Denied as untrue.

168. In his May 2, 2022 answers to the Commission's 28-Day Letter, in response to question #130, respondent stated that during the November 3, 2015 preliminary examination he "did not object to any properly crafted questions" that asked or sought information about any agreement or promises related to Ms. Loggie.

ANSWER: Admitted as true. In further response, this is an incomplete quote from the RFI answer. The complete answer noted that the JTC had not cited any specific objections in the preliminary examination transcript to support this allegation, and still has not done so here. Further, that a review of the objections cited in the May 2, 2022 answer does not support the JTC's allegation. At the PE Ms. Loggie was asked

by Attorney Komorn about being a CI and signing a “document”. This question was not objected to.

169. Respondent’s representation in response to question no. #130 of the Commission’s 28-Day Letter was false and/or misleading and he knew it was false and/or misleading when he made it.

ANSWER: Denied as untrue.

170. In his May 2, 2022 answers to the Commission’s 28-Day Letter, in response to question #132, respondent denied that his objections to questions Mr. Komorn posed to Brandy Loggie were designed to protect Thomas McCully’s identity as a CI in the Berry and other investigations.

ANSWER: Admitted as true. In further response, the complete statement was:

This is untrue. The *Berry* Case and Mr. McCully were not connected to the *Joslin* matter in Judge Cusick’s mind. As the record shows, Judge Cusick would have been prepared to have Mr. McCully testify in the Wayne County *Berry* case up until Attorney Fishman spoke to him. Judge Cusick was prepared to send a subpoena to have Mr. McCully testify. It was only after the call with Mr. Fishman and consultation with Judge Cusick’s supervisors that the decision was made to not have Mr. McCully testify. This was months after the *Joslin* preliminary examination. By way of reference, the *Joslin* preliminary examination took place in November and December 2015. The *Berry* case was not initiated in Wayne County until February 2016.

171. Respondent’s representation in response to question #132 of the Commission’s 28-Day Letter was false and/or misleading and he knew it was false and/or misleading when he made it.

ANSWER: Denied as untrue.

172. In his May 2, 2022 answers to the Commission's 28-Day Letter, in response to questions #134, #140, #145, and #146, respondent stated that during the November 3, 2015, preliminary examination, he was "unaware of any testimony that was intentionally untruthful, inaccurate, incomplete, and/or designed to be misleading."

ANSWER: Admitted as true. In further response, the relevant portion of the statements in response to questions #134, #140, #145 and #146 were:

Judge Cusick recalls believing during the PE that Ms. Loggie appeared to be doing her best to answer the questions he asked and the questions asked by Attorney Komorn. Some of the questions were inartful and confusing. Judge Cusick was unaware of any testimony that was intentionally untruthful, inaccurate, incomplete, and/or designed to be misleading. Judge Cusick recalls that during the exam Attorney Komorn asked a number of confusing questions and Ms. Loggie did appear to be confused at times while testifying.

173. Respondent's representations in response to questions #134, #140, #145, and #146 were false and/or misleading and he knew they were false and/or misleading when he made them.

ANSWER: Denied as untrue.

174. In his May 2, 2022 answers to the Commission's 28-Day Letter, in response to paragraph #178, respondent stated that while he was "aware" during the November 3, 2015 preliminary examination "that [Ms. Loggie] was a CI,"

- a. He was unaware at the PE that Ms. Loggie was working under an agreement for the benefit of Mr. McCully, and

ANSWER: Admitted as true. In further response, the relevant portion of the statement was:

As for Judge Cusick's knowledge, he was unaware at the PE that Ms. Loggie was working under an agreement for the benefit of Mr. McCully. He was aware she was a CI. She affirmed in her testimony, when Attorney Komorn asked about her signing "a confidential informant document", that she did so. That document was not described as an agreement until June 27, 2016. Judge Cusick is now keenly aware of the emails from Det. Calleja (emails disclosed in Judge Cusick's answer the RFI) that state that Ms. Loggie was working "on behalf" of Mr. McCully. There is, however, no doubt in Judge Cusick's mind that he did not understand or believe that Ms. Loggie's activity was a factor or consideration in Mr. McCully's sentencing. He was very mindful of the *Kastigar* letter, which expressly stated "There is no agreement between your client and the Michigan Attorney General's Office as to any sentence that may be imposed." Mr. McCully had pleaded guilty as charged as of the date of the *Kastigar* letter, so there had been no plea bargain as to the charges. Judge Cusick was responsible for relaying the information to his superiors concerning a proposed disposition in Mr. McCully's matter and he does not recall, has not viewed, and there is no evidence presented that he weighed any conduct or service by Ms. Loggie in favor of Mr. McCully. This all supports Judge Cusick's strong recollection and deeply held conviction that it was not a factor. Further, and very importantly, Judge Cusick firmly believed that a defendant would not be held accountable for or gain credit from another's conduct.

- b. He has "no doubt...that he did not understand or believe that Ms. Loggie's [CI] activity was a factor or consideration in Mr. McCully's sentencing."

ANSWER: Admitted as true. In further response, see the answer to Paragraph 174(a).

175. Respondent's representations contained in paragraph #178 of his May 2, 2022 answers to the Commission's 28-Day Letter were false and/or misleading and he knew they were false and/or misleading when he made them.

ANSWER: Denied as untrue.

176. In his May 2, 2022 answers to the Commission's 28-Day Letter, in response to question #184, respondent stated that he "litigated the Joslin matter believing that Attorney Komorn had all the discovery he had requested and was entitled to receive."

ANSWER: Admitted as true. In further answer, the response to question #184 referenced the previous response to question #87(d) in answer to the Request for Investigation. The complete response was:

This is essentially accurate, but an incomplete quote from the answer. After noting above that Judge Cusick did not recall taking any personal action on the discovery demand, it was acknowledged that Erica Hamilton, an administrative assistant at the AG' office had transferred the discovery materials via email and Judge Cusick was copied on those emails. The full response at #87(d) was:

Judge Cusick and Attorney Komorn had litigated a number of cases together. Attorney Komorn was aware that the AG's office and Judge Cusick had an open door and open folder policy. Judge Cusick did not ever refuse to provide Attorney Komorn with anything to the best of his recollection and certainly, if that would have happened, it would have been addressed with the court. Judge Cusick litigated the *Joslin* matter believing that Attorney Komorn had all the discovery he had requested and was entitled to receive. Twice, Ms. Loggie testified

that she had signed a CI agreement, under his questioning. [PE p.19 and Evid Hrg p.81]. Obviously, Attorney Komorn was made aware that the CI documentation existed by Ms. Loggie. Judge Cusick deeply regrets the lapse in not following through to ensure that the information was actually provided. It is noteworthy that Attorney Komorn did not follow-up in requesting the information. While it was not his responsibility to do so, had he done so it is a certainty that he would have received it.

177. Respondent's representation contained in response to question #184 of the Commission's 28-Day Letter was false and/or misleading and he knew it was false and/or misleading when he made it.

ANSWER: Denied as untrue.

Respondent's conduct as described in this count constitutes:

- a. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1863, as amended, Article 6, Section 30, and MCR 9.104(1)
- b. Conduct in violation of the standards imposed on members of the bar as a condition of the privilege to the practice of law, contrary to MCR 9.103A;
- c. Conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2);
- d. Conduct that was contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3);
- e. Conduct that violated the standards or rules of professional responsibility adopted by the Supreme Court, in violation of MCR 9.104(4);
- f. Conduct that violated MCL 750.505, a criminal law of the State of Michigan, which prohibits a lawyer from engaging in misconduct in office, contrary to MCR 9.104(5);

- g. Conduct in violation of MRPC 3.3, which prohibits a lawyer from providing false statements of material fact or law to a tribunal and requires a lawyer to correct false statements of materials fact previously provided to a tribunal;
- h. Conduct in violation of MRPC 8.4(a), which prohibits conduct that violates or attempts to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- i. Conduct in violation of MRPC 8.4(b), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer;
- j. Conduct in violation of MRPC 8.4(c), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice;
- k. Conduct that is irresponsible and/or improper, in violation of Michigan Code of Judicial Conduct Canon 2(A); and
- l. Conduct that undermines public confidence in the integrity of the judiciary, in violation of Michigan Code of Judicial Conduct Canon 2(B).

ANSWER: All of the allegations are denied as untrue. They are the product of a deeply flawed investigation that began with the wrong assumption that Judge Cusick engaged in misconduct and then proceeded by simply cherry-picking information that fit their biased notions. Further, evidence that was contrary to these notions was simply dismissed (the *Kastigar* Letter) or ignored (Ms. Loggie). Finally, evidence that could have been used by Judge Cusick to defend himself was purposely withheld from him (the Komorn tape).²⁸

²⁸ See footnote 24, above.

RESPONSE TO ADDENDUM TO FORMAL COMPLAINT

The Judicial Tenure Commission included an alleged “timeline” as an addendum to its Formal Complaint. This attachment is outside the pleadings and does not require a response. Nevertheless, the timeline submitted by the Judicial Tenure Commission is incomplete and inaccurate, to the point of being misleading. To the extent a response is required, Judge Cusick denies that the timeline fully and/or accurately sets forth the facts of this case. Judge Cusick reserves the right to submit a counter-timeline in future filings.

JUDGE CUSICK’S AFFIRMATIVE DEFENSES

1. The Judicial Tenure Commission’s unitary structure of investigation, prosecution, and adjudication violates Judge Cusick’s right to Procedural Due Process.

Respectfully submitted,
COLLINS EINHORN FARRELL PC

/s/ Donald D. Campbell

Donald D. Campbell
Counsel for Hon. Paul J. Cusick
4000 Town Center, 9th Fl.
Southfield, MI 48075
248-355-4141

Dated: January 4, 2023

PROOF OF SERVICE

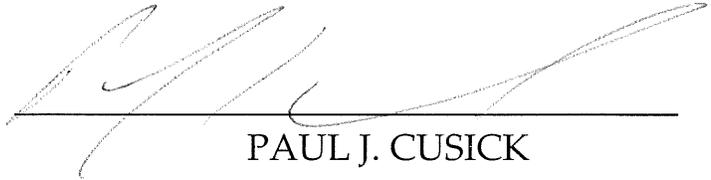
The undersigned certifies that the Hon. Paul J. Cusick’s Answer to the Complaint was served upon all parties to the above cause to each of the attorneys of record herein via E-File and Serve and U.S. mail if not registered to receive electronic copies through this Court on January 4, 2023.

By: /s/ Sherrie L. Marinkovich
SHERRIE L. MARINKOVICH

VERIFICATION

I declare under penalties of perjury that this Answer to the Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Dated: January 4, 2023



PAUL J. CUSICK

TAB A

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



CADILLAC PLACE
3030 WEST GRAND BOULEVARD
DETROIT, MICHIGAN 48202

BILL SCHUETTE
ATTORNEY GENERAL

May 2, 2014

Steve Fishman
615 Griswold St. Ste. 1125
Detroit, MI 48226

Re: People v Thomas McCully

Dear Mr. Fishman:

Based on our discussions, it appears that your client, Thomas McCully, may possess information of interest to law enforcement regarding the manufacture and sales of marijuana. If your client desires to meet with the investigating authorities he may do so under the following terms and conditions.

1. Your client agrees to make a complete and truthful statement of his knowledge regarding the manufacture and sales of narcotics that the Western Wayne Narcotics Team may be interested in investigating. Your client agrees to respond truthfully and completely to all questions asked by investigators and the Michigan Department of Attorney General and will volunteer all information that is reasonably related to the subjects discussed in the debriefing.
2. The parties agree that no statements made by your client during the proffer and discussion will be used directly against your client in any criminal case.
3. Investigating agencies may, however, make derivative use of, and may pursue, any investigative leads suggested by any statements made by or information supplied by your client related to this proffer, thus eliminating the necessity for a hearing pursuant to *United States v Kastigar*, 406 U.S. 441 (1972), and any such evidence is admissible at a trial or other proceeding involving your client.
4. On March 13, 2014, your client pled guilty to 1 count of Conducting a Criminal Enterprise, MCL 750.159(i); 1 count of Conspiracy to Commit a Criminal Enterprise, MCL 750.159(i); and 1 count of Conspiracy to Deliver/Manufacture Marijuana, MCL 333.7401(2)(d)(iii) before the Honorable David Groner of the Third

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Steve Fishman
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Circuit Court. His sentence is scheduled on June 17, 2014. There is no agreement between your client and the Michigan Attorney General's Office as to any sentence that may be imposed.

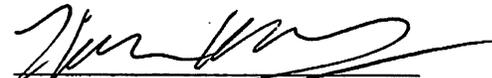
5. Other than what has been stated, there is no other agreement between your client and the Michigan Department of Attorney General or any other investigating agencies.

I understand that your client intends to proceed under these conditions. If that is correct, you and your client should sign the original of this letter.

Very truly yours,



Paul J. Cusick
Assistant Attorney General
Criminal Division
Tel: (313) 456-0089


Thomas McCully
Attorney Steve Fishman

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