STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

| COMPLAINT AGAINST | Formal Complaint No. 101 |
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| Hon. KAHLILIA Y. DAVIS<br>36th District Court | Hon. CYNTHIA DIANE STEPHENS<br>Master |

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**RESPONDENT'S REPLY TO PETITIONER'S**

**BRIEF IN SUPPORT AND OPPOSITION OF REPORT OF MASTER**

The brief that was produced by Petitioner contains some unfortunate observations that are not appropriate. Respondent's Reply Brief will analyze such utterances as well as noting other factors.

1. **The Role of the Master**

A Master is one or more judges, or former judges, appointed by the Supreme Court, at the request of the Judicial Tenure Commission ["JTC"], to hold hearings on a complaint against a respondent. MCR 9.201(E). The Supreme Court "appointed a master to hold hearings and make findings of fact and law." *In re Servaas*, 484 Mich 634, 658, 774 NW2d 46, 58 (2009).

> While we conclude that, where a master is appointed, the JTC may exercise *de novo* review of the record, it must, like all other reviewing tribunals apply the standard of proof applicable in civil proceedings: a preponderance of the evidence standard. MCR 9.211 ("the commission or the master shall proceed with a public hearing which must

> conform as nearly as possible to the rules of procedure and evidence governing the trial of a civil action").

*In re Chrzanowski*,, 465 Mich 468, 483 636 NW2d 758, 767 (2001).

It should be noted that the Master plays an important role in the hearings. Although the JTC may exercise *de novo* review where appropriate, the Master has the responsibility to assess the demeanor of the witnesses and report the same to the JTC when such is a factor in the Report. Thus, demeanor, as well as other observations by the Master, are of importance in the JTC's evaluation of the disciplinary outcome. Such also is of value to the Supreme Court.

> The power to discipline a judge resides exclusively in this Court, but it is exercised on recommendation of the JTC. Const 1963, art 6, § 30. Respondent's complaints with regard to the master's factual findings amount to a disagreement about the weight and credibility that should be afforded to the various witnesses. **The master, as trier of fact, was in the best position to assess the credibility of the witnesses. "Our power of review *de novo* does not prevent us from according proper deference to the master's ability to observe the witnesses' demeanor and comment on their credibility."** [Emphasis supplied.]

*In re Noecker*, 472 Mich 1, 9–10, 691 NW2d 440, 444–445 (2005).

Accordingly, the Master was within her ambit to assess the credibility of witnesses and to report the same to the JTC.

**2. Petitioner's Criticism of the Master in Count I**

**A. The Eck Matter**

Petitioner claims the following:

> The first issue addressed by the Master was whether respondent prejudged her finding of contempt, and whether she had a factual basis to find contempt. The Master's conclusion that respondent did not prejudge contempt, and did have a basis to find contempt, rested solely on one finding of fact: that Ms. Wyrock "admitted" that she had previously admonished Ms. Eck to cease the practice of prematurely posting eviction notices. (Report pp 2, 7.)

*Petitioner's Brief*, p 9.

Petitioner claims that the Master concluded that Respondent prejudged the contempt solely on one finding of fact—that Eck's lawyer previously admonished Eck to cease the practice of prematurely posting eviction notices. Such claim is stated by Petitioner to reside on Pages 2 and 7 of the Master's Report. In fact, on Page 2, the Master's Report makes no statement at all concerning Eck or any contempt. As to Page 7 of the Master's Report, the following was stated:

> 1. The court did not abuse its contempt power relative to Ms. Eck. FC101 asserts that the respondent pre-judged this matter, had no factual basis for the contempt finding and had no authority or basis for the award of punitive damages. The assertion of pre-judging and the allegation of no factual basis for the contempt are intertwined. The petitioner argues that there is no record evidence that Ms. Eck acted intentionally and willfully. However, Ms. Eck's counsel admitted on May 8, 2017, that this posting was improper and that she had previously admonished her client to cease the practice. Ms. Eck, who was always represented by counsel, offered no contrary information. The statement that: "somebody is going to pay" was made after plaintiff counsel's admission on May 8, 2017. This statement was not based upon a pre-judgement without evidentiary basis. It is predictable then that some civil

> remedy would follow wrongful conduct. The statement of counsel and the testimony of Ms. Eck both provide a factual basis for the finding of contempt. Petitioner's proofs fail as to this allegation.

First, Petitioner undertakes a proposition that the Master concluded that Respondent acted solely as prejudging contempt. Petitioner does not provide for any other premise. Petitioner's premise is limited to one belief, and one belief only. No allowance was made for other alternatives.

A review of Petitioner's Exhibit No. 6, T, 5/8/17, reveals that Eck had caused to be falsely posted on Hayes's door a notice stating that Respondent had Ordered a Writ of Eviction to have Hayes evicted from her house.

Petitioner's argument on Page 9 of her Brief, in alleging that the Master solely rested on one finding of fact—that being that the Master said that Ms. Wyrock said that she had admonished Eck not to engage in the practice of posting notices prior to a judge's actually entered an order of eviction.

> THE COURT: And I am going to recall this writ.
>
> MS. WYROCK: So, you are voiding the Writ; I understand. So are we still having a Writ Hearing, or do I have to apply all over again?
>
> THE COURT: No. We are going to have a Writ Hearing and a Show Cause Hearing.
>
> MS. WYROCK: And the show cause is based upon that flier?
>
> THE COURT: Yes.

MS. WYROCK: Okay, Just so I can, you know, tell my client.

THE COURT: And tell them they are going to be very sorry that they did that. So, bring a checkbook.

* * * *

MS. WYROCK: I have passed your sentiments very strongly through my clients, right now.

[Petitioner's Exhibit No. 6, T, 5/8/17, pp 14-15.]

Respondent entered an Order to Show Cause required Eck to appear on May 24, 2017, and show cause why she should not be held in contempt and also as to show cause why she should not be sanctioned. See Petitioner's Exhibit No. 7.

On May 24, 2017, a colloquy between Respondent and Eck was as follows:

THE COURT: Ms. Eck, I don't see you writing a check. I don't see you sitting. You're standing by a door. That is not what I asked you to do. I told your lawyer yo have your bring a checkbook with you. Where is it?

MS. ECK: I didn't even bring a purse with me.

THE COURT: Well, then, you're going to stay here. Your lawyer better find it because otherwise, you're going to jail today. Don't even do that again.

Ms. Wyrock, did I tell you to tell her to bring a checkbook?

MS. WYROCK: I did.

[Petitioner's Exhibit No. 8, T, 5/24/17, pp 5-6.]

The transcripts of May 8, 2017 and May 24, 2017 [Petitioner's Exhibits Nos. 6 and 8] indicate that there was an issue involving Eck's causing notices to be placed on Hayes' residence stating that bailiffs will be coming to evict her, even though Respondent had not entered any such order. What was key to the matter was not what Wyrock told Eck prior to the notices being posted, but rather that Eck had improperly caused such notices to be posted without there having been any judicial authority giving Eck the right to post such notice that bailiffs were coming to evict the resident.

That was the real basis for the contempt show cause. It appears that the Master may have conflated Wyrock's admonishing her client, on May 8, 2017, to bring her checkbook to the courtroom on May 24, 2017, which Eck failed to do.

Eck's contempts are based upon the following:

(A) Eck caused notices to be posted on Hayes's door stating that the Court ordered bailiffs to evict her from her house. The last segment of Petitioner's Exhibit No. 4 shows a flier sent out that wrongfully claimed that "THE COURT HAS ORDERED THE BAILIFF AND THEY WILL BE OUT TO YOUR HOUSE TO EVICT YOU." That statement was false and the allegation in the notice that the Court ordered something that was not true was contemptuous.

(B) On May 8, 2017, at Respondent's courtroom, Respondent told Eck's attorney, Diane Wyrock, the following:

> THE COURT: ...the bailiffs aren't ordered until I sign the writ that I've signed this morning.

MS. WYROCK: That is absolutely, correct. I don't —

THE COURT: So that would be a misrepresentation.

MS. WYROCK: I'm not responsible for that, but —

THE COURT: I don't believe that you are responsible for that. I don't believe that you go out and out these things on the door and I certainly don't—I would hope that as an officer of the court; you wouldn't do that—

MS. WYROCK: No. I wouldn't and I'm going to advise my client to stop doing that practice because you told me to—

[Petitioner's Exhibit No. 6, T, 5/8/17, pp 11-12.]

(C) On May 8, 2017, Respondent indicated that Eck had to come to the Court on May 24, 2017, with a checkbook to address a Writ Hearing and sanctions. [Petitioner Exhibit No. 6, T, 5/8/17, ] 16.

(D) At the proceedings in Respondent's courtroom on May 24, 2017, Eck admitted what she did in connection with the posting of the notices that falsely claimed that bailiffs had been ordered to come and evict Hayes from her residence, the following was stated in open court:

THE COURT: You see the top of it? [the notice about eviction]
The court has ordered the bailiff and they will be out to your house to evict you. You may still receive cash for your keys. Call Joy or Trish today. Are you Joy, right?

MS. ECK: Yes.

THE COURT: ....Do you know why I have a problem with this, ma'am.

MS. ECK: I do.

THE COURT: Tell me what you think I have a problem with this?

MS. ECK: Because that should have went [sic] **after we already had the writ signed.** [Emphasis supplied.]

[Petitioner's Exhibit No. 8, T, 5/24/22, p 4.]

Plainly, Eck admitted that what she had done in posting false statements on notices of eviction was wrong.

(E) After having been told by Respondent on May 8, 2017, to have a checkbook brought to the courtroom at the next hearing, Wyrock told Eck to bring a checkbook to the courtroom on May 24, 2017. Petitioner's Exhibit No. 8, p 6, shows that Eck disregarded such instruction from Respondent and from Wyrock. She knew, back in May 8, 2017, that she was to abide by the Respondent's direction. However, such disregard of the same is an act of contempt on the part of Eck.

Thus, Petitioner's allegation as to the Master's Report concerning Eck is flawed. The Master correctly found that Respondent did not prejudge contempt. Petitioner's claim is the product of her own overzealousness and is wrong.

Another observation should be noticed.

Petitioner, in Page 9 of her brief, stated the following:

> The Master's conclusion that respondent did not prejudge contempt, and did have a basis to find contempt, rested solely on one finding of fact: **that Ms. Wyrock "admitted" that she had previously admonished Ms. Eck to case the practice of prematurely posting eviction notices.** (Report pp. 2, 7). [Emphasis supplied.]

[*Petitioner's Brief*, 8/15/22, p 9.]

The Master, in her Report, stated as follows:

> The petitioner argues that there is no record evidence that Ms. Eck acted intentionally and wilfully. However, **Ms. Eck's counsel admitted on May 8, 2017, that this posting was improper** and that she had previously admonished her client to cease the practice. Ms. Eck, who was always represented by counsel, offered no contrary information. [Emphasis supplied.]

*Master's Report*, p 7.

Petitioner simply decided to omit the portion of the Master's Report that set forth that Ms. Wyrock, on May 8, 2017, admitted that the posting of the notices—the ones that were false and contemptuous—were improper. [See page 7 of this Brief, in which is an extract of the transcript of May 8, 2017.] Ms. Wyrock's admission occurred prior to any finding of contempt. Petitioner's claim was incorrect and should not have made a false aspersion against the Master.

At the end of hearings on May 24, 2017, Eck, with her attorney, Wyrock, admitted that what Eck did was wrong concerning the posting of the notices. Thus, Eck and her attorney, Wyrock, both admitted that what Eck did was improper. [Petitioner's

Exhibit No. 8, T, 5/24/17, p 4.] Such admission by Eck was sufficient to establish that the Petitioner's claims were not proven by a preponderance of the evidence.[1]

As can be seen, there are a number of items that show that Eck had engaged in wrongful conduct. Petitioner's guesses as to what Respondent may have thought [see *Petitioner's Brief*, p 10] is no substitute for facts that are documented in the record.

Given that there was no decision by Respondent regarding contempt of Eck until May 24, 2017, there could not have been an abuse of contempt on May 8, 2017, when Ms. Wyrock admitted that Eck caused posting false statements regarding the judge's ordering of bailiffs to perform an eviction. As stated above, Eck admitted that she caused the false notices to be posted at the home of Hayes on May 24, 2017.

Petitioner decided to engage in an unfortunate attack against Respondent, by stating the following:

> [T]he Master was clearly wrong to find that respondent's ignorance and abuse of her authority were ethical. The uncontroverted evidence and the Master's own findings demonstrate that respondent did not show even minimal professional competence.

*Petitioner's Brief*, 8/15/22, p 11.

Petitioner does not recognize that the Master acknowledged that new judge who had been on the bench for two months may make a mistake without being labeled as

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Petitioner's remark [*Petitioner's Brief*, 8/15/22, p 11] as to one's being "especially humble" was not fair and not correct..

one who does not even show minimal professional competence or being accused of a persistent lack of legal knowledge.[2]

As the Master properly determined, Respondent did not engage in an abuse of the contempt power as to Eck. Petitioner's criticism of the Master is not warranted.

**B. The Johnson Matter**

Petitioner spent 8 pages in connection with the Eck matter. The Johnson matter was given only 3 pages by the petitioner. In essence, Petitioner endorses the Master's findings and conclusions concerning the Johnson matter. Respondent believes that those claims that were found by the Master not to have been proven by a preponderance of the evidence should remain as the Master indicated. As to the other parts of the *Johnson* matter, the aspects set forth in the initial Respondent's Brief provide sufficient information for the JTC to review.

**3. Petitioner's Criticism of the Master in Count II**

Petitioner appears not to be of any interest in the credibility, or lack thereof, of Myran Bell, whom she placed on the stand as the first witness in the hearings. In fact,

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It is ironic that Petitioner, who stated on p 14 of her Brief of 8/15/22, that punitive damages have no legal authority in Michigan, cited to *Porter v Porter*, 285 Mich App 450, 455, 776 NW2d 377, 381 (2009), in which the Court stated "Criminal contempt differs from civil contempt in that the sanctions are punitive rather than remedial." Nevertheless, civil sanctions primarily intended to compel the contemnor to comply with the court's order may also have a punitive effect. *Id*, Mich App at 456.

if Petitioner believed that Bell's credibility was of no import, one must wonder why Petitioner called him as a witness at all.[3]

As indicated in Respondent's Brief filed with the JTC on August 15, 2022, Bell admitted that he did not serve a summons and complaint on 430 Frederick in the City of Detroit on August 29, 2017, on August at 26, 2017, or at any other time. Moreover, on cross-examination he admitted that he had falsely signed a proof of service as to 430 Frederick and that he had served process on a number of other matters in which his signature falsely claimed that he had served the process even though he never did so.

Petitioner apparently does not understand that one of the duties and responsibilities of a Master is to observe a witness, assess the witness' demeanor, listen carefully to the witness' testimony, and to report to the JTC the credibility of the witness. A Master who performs such skills is in the best position to assess the credibility of the witness. See *Noecker*, *supra* at 472 Mich at 9.

A person who, on numerous occasions, engages in making false statements, is not generally considered as one who is reliable, trustworthy, and dependable. One who makes such false statements may be questioned as not being appropriate for performing certain duties. A Master may undertake such determinations. In this case, the Master did just that.

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Petitioner claims that "[i]n a sense, the Master's finding about Mr. Bell's credibility is irrelevant." *Petitioner's Brief*, p 20, n 18. Petitioner appears not to recognize the purpose of assessing a witnesses credibility.

## 4. **Petitioner's Criticism of the Master in Count III**

Petitioner makes a great fuss over Respondent's citation of Bible verses. Petitioner seeks to interpret the Bible verses as being intended to harm Judge Blount and Judge Paruk. Petitioner further utilizes a view that is based upon her own attitude. Curiously, in the hearing of July 15, 2022, Petitioner did not bother to enquire of Respondent why she utilized the Bible verses in her correspondence with Judge Blount, Judge Paruk, and some others, including her then-attorney at the time.

The Master provided a reasonable assessment of the Bible verses issue that was succinct and not using flamboyant language. [See Master's Report, p 18, ¶B.] The Master came to the proper conclusion.

The Master concluded that Respondent failed to discharge administrative responsibilities. It is questionable that the Master was correct in that determination. The discussion thereof is set forth in Respondent's analysis of Petitioner's Criticism of the Master in Count IV.

It should be noted that from December 26 to December 28, Respondent had a medical problem.

> THE MASTER: And the question was, Did you fail to appear on those dates? That's probably yes or no or I can't answer yes or no.
>
> THE RESPONDENT: On December 26th, I've already said I went for the MRIs December 26, 2018. December 27 I went to work. I did the docket. Then I went to my doctor's, I stated previously. And then my doctor took me

off from that day until June -- not June. I'm sorry. Until January. I apologize.

BY MR. SCHWARTZ: Q. Okay. So would it or would it not be correct to say that in none of those days did you simply absent yourself from the court, except for having to deal with medical problems that you had?

A. Correct. And I do have the documentation.

Q. Okay. Do you remember the name of the doctor who gave you that statement that you were not to work?

A. Yes.

Q. What's his name?

A. Dr. Myron Laban. L-A-B-A-N is the last name.

Q. Okay. And you remember when the -- do you remember when you saw him, you mentioned December 27 of 2018; is that correct?

A. Correct.

Q. Do you remember when the activity that you were -- let me put it like this.
Did he say that you should be off work for a certain period of time?

A. Yes.

Q. Do you remember what the period of time was?

A. It was December 28th through I believe January 18th or 19th. I have the -- I have the paperwork. I have the doctor's note from that.

[T, 7/15/22, pp 441-442.]

Apparently, Petitioner forgot to remember the testimony that was taken on July 15, 2022, in which Respondent's testimony indicated her situation between December 26 and December 28, 2018..

**5. <u>Petitioner's Criticism of the Master in Count IV</u>**

Count IV refers to conducting proceedings without an official record. The situation involved the inability of Respondent to obtain assistance from the 36th District Court administration.

Respondent's Brief, dated August 15, 2022, sets forth what of what is involved in Count IV. Petitioner appears not to understand that Respondent was the only judge in the 36th District Court who was prevented from having a court reporter in her courtroom, except on one day—February 20, 2019.

The Master correctly indicated that Petitioner did not prove that Respondent disabled or destroyed the video graphic equipment. Petitioner failed to recognize that the witnesses were not in a position to have seen what, if anything, occurred below the bench where any wires, plugs, or other items would reside.

As demonstrated in the hearing of July 8, 2022, the only two individuals who claim to have seen anything below the top of the bench were Dionne Drew, the courtroom clerk, and Morgan Hairston, a security officer.

Respondent had been in more than one courtroom, all of which used court reporters except when Respondent was in Courtroom 340. Judge Blount testified that

Respondent should have been trained as to the video equipment in Room 340. Judge Blount also said that it was her understanding that Respondent was trained. Judge Blount testified that she was not present when Respondent was to be trained on the video equipment. However, in further cross-examination, Judge Blount stated that she did not know whether Respondent was trained as to operation and maintenance of the equipment.

Dionne Drew, who was Respondent's courtroom clerk, testified in direct examination that she did not believe that Respondent was trained in the how to operate the video equipment. Respondent testified that she was not provided with training for operating video equipment. In fact, there was no witness who testified that Respondent actually had been trained to operate the video equipment.

With respect to the claim that Respondent had disabled the video equipment in Courtroom 340, Dionne Drew claimed that Respondent was literally on her knees. She claimed that Respondent disconnected the video equipment and she stated that she assumed that Joyce Thomas and Pam Triplett, supervisors of Drew, saw Respondent loosen the video equipment under the judge's bench. However, court investigators concluded that Drew's claim of Thomas and Triplett's seeing Respondent disabling the video equipment, not assuming the same, was false, in which the following was stated by Parnell Williams, 36th District Court Human Resources Deputy Director:

> You claimed that Ms. Joyce Thomas and Ms. Pamela Triplett saw Judge Davis disconnect the video equipment,

> as an excuse for why you failed to notify anybody. Upon further investigation, the Court finds that your claims regarding Ms. Thomas and Ms. Triplett are not credible. In fact, the Court has determined that these claims are completely false.

[See Respondent's Exhibit "E."]

Dionne Drew claimed that she, herself, saw Respondent disabling the video equipment. Drew alleged that Respondent was on her chair and got down on her knees quickly. Drew said that Respondent was on the bench's chair and from there her knees were on the floor. Drew testified that she knew that it was important to have the video equipment operate, but she did not do anything to alert anyone that the video equipment was not operating. She said she called for a court reporter. Drew also was asked the following question and gave the following answer:

> Q. It took her all that time to get off the chair, get on her knees, pull out the plug, and then real quickly get back in her chair all in a matter of seconds, correct?
>
> A. Correct. I didn't time it.

[T, 7/8/22, p 224.]

Then, only a few minutes later, when the JTC attorney engaged in redirect examination, Drew changed her story, and said that Respondent did not sit in the chair. [T, 7/8/22, p 233.]

Then, on re-cross examination, Drew said that Respondent took 2 to 3 seconds to kneel down. [T, 7/8/22. p 235.] Then, Drew claimed the following:

Q. From the time that she got off the chair, doing all the stuff that you said, getting back up on the chair, how long did it take?

A. It was quick.

Q. How long?

A. It was not slow. It was I'm upset, this is it, and that's what happened.

Q. So your saying three, four, ten seconds?

A. Seconds.

Q. Seconds?

A. Seconds, not minutes.

[T, 7/8/22, p 224.]

Drew changed her story by stating as follows:

Q. Okay, How long did it take for her to get to her knees after she got to that spot?

A. I didn't count the time. It was not long at all. It didn't take that long. I'm sure it took her a minute to get up, but it didn't take a long time.

[T, 7/8/22, p 235.]

It is hard to understand how Respondent was be able to operate the video equipment if she was not trained as to how to operate the video equipment.

Respondent testified that she was not provided with training for operating video equipment. In fact, there was no witness who stated that Respondent actually had been trained to operate the video equipment.

As to Respondent's allegedly getting on her knees below the judge's bench, Drew would have needed x-ray vision. For, Drew would have had to look through the wooden barrier that covered all of the sides of the bench. Even if Drew were 7 feet tall, which might be the top of the judge's bench, she still would not have been able to see through the wooden barrier. Accordingly, Drew's claim about Respondent's kneeling on the floor of the judge's bench and disabling the video equipment was just not possible.

Drew's friend, Morgan Hairston was a security office at the 36th District Court. She had been assigned to Respondent's Courtroom 340. She testified as follows:

> Q. Can you describe what the video equipment looked like? Did you ever see it yourself?
>
> A. No. Besides some cords, I mean, I didn't—no, I didn't.

[T, 7/8/22, p 240.]

She further testified as follows:

> Q. What did you see?

A. She was, like, pulling the cords.
She was pulling the cords off of her—I don't know if it was a Mic or—I really don't know what it was, but she was, like messing around with them.

Q. All right. Well, let's talk specifically what you saw. Where was the equipment that you say Respondent pulling the cords or messing with the cords, as you put it? Where was it located?

A. Well, they had cords on the floor. They had them, I guess, on her desk or something.

Q. Was it up on the judge's bench?

A. Yes. On her bench. Sorry, I couldn't really see up there all the way, I mean, because I don't—I was working on the side.

Q. Okay. All right. I want you to describe specifically what you saw Respondent do with regard to the video recording equipment.

A. She just—I guess I don't know what she was doing with it. I don't know if she was trying to—I just don't know. But she did get down and was messing with the cords or disconnecting them.

[T, 7/8/22, pp 240-242.]

It is clear at this point that Hairston could not see the top of the bench, because she stated so. She could not see the floor under the bench because there was a barrier around the judge's bench that prevents one from seeing the floor. All she knew is what she kept on saying, to wit: the Judge was messing with the cords. Her claim that she

saw cords under the bench is not realistic from the vantage point at which she was located.

Hairston further testified as follows:

> Q. Now, from where you were sitting, were you sitting at you desk when this thing with the cords occurred?
>
> A. Yes.
>
> Q. Okay. Now, when you were sitting with your desk, what exactly did you see Judge Davis do?
>
> A. She was just messing around with the cords just—
>
> Q. What do you mean by "messing with the cords?"
>
> A. Like I said, I couldn't really see up there. Like, I wasn't up there with her. So I don't know what she was doing with the cords, and I don't know how they—
>
> Q. How did you even know that she had cords there if you couldn't see it?
>
> A. Because I had been there while the Itech team was coming in back and forth to try to install the video or get it up and running.
>
> Q. They weren't in the courtroom at the time, were they?
>
> A. No, they were not.

[T, 7/8/22, p 255-256.]

Clearly, Hairston was tripping herself by claiming that she could see the cords because the techs were coming back and forth, but at the time the techs were not in the courtroom. Now, Hairston had another statement to make.

> Q. ...And so now we have a situation where you say that my client did something. Did she kneel down? Did she jump down? What did she do to get to the so-called cords?
>
> A. She kneeled down, she kneeled down out of her chair and—
>
> Q. Out of her chair?
>
> A. Yes. I know there were cords, because I saw them put the cords there.
>
> Q. So she was first in the chair and then she went and went down to get the cords?
>
> A. Yes.
>
> Q. Now, did she lean over from the chair or did she kneel down on the floor?
>
> A. She probably had to do both, like lean up a little and kneel down, Like use maybe her—
>
> Q. Did you see that?
>
> A. Yes.
>
> Q. You could actually see it from where you were sitting?
>
> A. Yes. She's tall and I am too, so—

Q. And what did she do when she was down there with the cords? What did you see?

A. I know that she disconnected them.

Q. It's not a question of what you know. The question is what I asked you is, what did you see?

A. I saw her disconnecting them.

Q. Okay. Now tell me. You saw her disconnecting what?

A. The cords.

[T, 7/8/22, pp 256-257.]

At this time, Hairston came up with another statement.

Q. ....You say now that you saw it. Before you said you didn't really see it. So I'm asking again. Did you see her actually do anything with the video equipment cords or other kind of stuff like that?

A. Yes, I did.

Q. Okay.

A. I said I couldn't see it clearly. Like, I was not standing directly next to her.

Q. Well, you were sitting at the time, weren't you.

A. Yes, I was sitting.

Q. So you weren't standing.

A. Yeah, well, I wasn't near her basically. I wasn't near her. I wasn't sitting close to her and I wasn't standing close to her, but I still was able to —I

> could still see her. I could see the clerk. I can still see a look like—how I can still see the judge right now, I can see her. I can see her.

[T, 7/8/22, pp 257-258.]

It is clear at this point that Hairston could not see the top of the bench, because she so stated. She could not see the floor under the bench because there was a barrier around the judge's bench that prevents one from seeing the floor. All she knew is what she kept on saying, to wit: the Judge was messing with the cords. Her claim that she saw cords under the bench is not realistic from the vantage point at which she was located.

Inasmuch as neither Drew nor Hairston could actually see what occurred on the floor below the top of the bench, and since the floor under the top of the bench was not available to Drew and Hairston, they were not in a position to see the floor under the bench due to an obstruction around the bench,

As to lack of an official record, Respondent was put into a Hobson's choice. She wanted to have a record of hearings. She was not given training for the video equipment. At the same time, even though almost every judge the 36th District Court had court reporters at their disposal, Respondent was denied the same when she was put in Courtroom 340. The Court administration refused to train her on video equipment or to give her the same accommodations as were provided to other judges.

The 36th District Court administration was aware that Respondent was not trained for video equipment. They refused either to provide her with training or else with court reporters.

Of the 28 judges in the 36th District Court, 25 did not use the 25 video machines in their courtrooms. Of the three judges who were elected in 2016—Kenyatta Stanford Jones, Austin William Garrett, and Kahlilia Yvette Davis—only Respondent did not have a court reporter.

Hairston's testimony lacks credibility. Her claim that she could see what was going on below the bench that could not be seen, while sitting at her desk, is impossible.

The JTC places the blame on Respondent, stating that she did not personally contact Judge Blount about training or court reporters. The JTC places blame on Respondent claiming that she did not direct her clerk or secretary to contact the 36th District Court administration. Yet, Respondent did direct her clerk, Dionne Drew, to contact the administration for help to obtain a court reporter. [T, 7/8/22, p229.]

Trial courts that use video recording equipment must adhere to the video recording operating standards published by the State Court Administrative Office. Among those standards are the following:

> The video operator must receive initial hands-on start-up training and follow-up training from the digital recording vendors and court staff on start-up procedures and advanced features of the system.

> The video operator should also be trained by court personnel on courtroom procedures and storage responsibilities, including: 1) logging procedures; and 2) basic training on microphone use and placement, equipment set-up, operation and maintenance, failure recovery, troubleshooting, backup and restore procedures, and routine inspection procedures.

Michigan Trial Court Standard For Courtroom Technology, §1, Chap 3(B)(2)(c).

The aforementioned Standards require that the trial court adhere to the same. It is clear that the 36th District Court did not comply with Standard §1, Chap 3(B)(2)(c). It is equally clear that Respondent was not given the training as set forth in that Standard as required by the Michigan Supreme Court. The responsibility for that lies with the former 36th District Court administration, not by Respondent.

As such, given that Respondent should not have been subject to the 36th District Court administration's failure, either to provide her with training, which was not done, or to have provided Respondent with court reporters. The 36th District Court administration simply ignored Respondent.

Thus, since Judge Blount was aware of Respondent's request for a court reporter for her courtroom, and Judge Blount did not provide Respondent with a video recording person who satisfied SCAO standards, the following question is put forth: why did Judge Blount refuse to provide Respondent with a proper staff person to ensure the production of an official record for Respondent's cases?

Judge Blount had a duty to assist other judges (I. e. Respondent) in the performance of their responsibilities. See MCR 8.110(C)(2)(f). It is difficult to understand how depriving Respondent of a court reporter or a video recording person is compatible with assisting Respondent in the performance of her responsibilities. It certainly did not provide Respondent with the means of assisting other judges or other court officials in their administrative responsibilities.

Respondent did not intentionally fail to make a record of official proceedings. Given the foregoing, Respondent could not achieve making such a record due to Judge Blount's nonexistent assistance to Respondent in the performance of producing a record of official proceedings. Thus, Respondent had no resources to have a record other than what she did, to wit: to place a record on her cell phone.

To put it bluntly, it is not implausible that what Judge Blount was seeking was to sabotage Respondent in her novice role as a judge.

The Master correctly concluded that Respondent did not disable or destroy video-graphic equipment and Petitioner's claim to the contrary was not proven by a preponderance of the evidence.

**6. Petitioner's Criticism of the Master in Count V**

Count 5 involves unauthorized recording of and publication of court proceedings.

Shannon Walker, a staff member of the City of Detroit Law Department, testified that there was a black box that was a video recording equipment that it was in the jury box at Courtroom where Respondent was presiding. Ms. Walker also testified that in the beginning of 2019, she was looking through Facebook and she saw Respondent with a camera that pointed to her face and her calling cases. She further claimed that she heard Ms. Mullins's voice and Ms. Walker stated that she said to Ms. Mullins that she heard her voice from Facebook and she thought that it was being put on Facebook Live.

Ms. Mullins, now a 28th District Court judge, was a witness for the JTC on July 13, 2022. Judge Mullins said nothing about Respondent's having published a court hearing on Facebook. The JTC attorney did not seek any testimony from Judge Mullins as to any recordings on Facebook.

Curiously, no alleged Facebook page of courtroom proceedings, purportedly from Respondent, was presented. No confirmation by Judge Mullins, who was present at the JTC hearing, and who allegedly was told by Shannon Walker that Respondent put a court hearing on Facebook, was adduced at the hearing on July 13, 2022.

Accordingly, there was no evidence from anyone, or any thing, supporting Ms. Walker's claim that Respondent published a court hearing to Facebook.

It should also be remembered that Ms. Walker testified that the video recording equipment was in the jury box. Such a claim is incongruent with all of the evidence that was elicited in the hearings.

Ms. Walker also claimed that with respect to Respondent's vehicle being at the blue striped parking space in the parking lot near LA Fitness she saw a security guard taking pictures of the vehicle. However, Cassandra Starkey stated that she took a picture of Respondent's vehicle, which she said was before the police officer arrived. Thus it was Cassandra Starkey who took the pictures fo Respondent's vehicle, not a security guard as Ms. Walker stated.

Thus, Ms. Walker appears to be unreliable as to her claims concerning items that she believes and her claim that she believed that Respondent published a court proceeding to Facebook, without confirmation from another source, does not warrant reliability and confidence.

The Master concluded that Ms. Walker lacked accuracy of her memory of three years ago.

### 7. Petitioner's Criticism of the Master in Count VI

Count 6 deals with a parking violation. Respondent parked in a space that was identified by blue stripes. There was a statute that indicates that such a space cannot be used for parking immediately adjacent to a space designated for parking by persons with disabilities. Respondent is a person with disabilities. She has a license plate that

signifies that she is a person with disabilities. She has a tag for the front windshield from the Michigan Secretary of State that indicates that she is a person with disabilities. Respondent's vehicle was in a space that was for unloading and loading for people with disabilities. She was unloading her walker from her vehicle and then loaded the vehicle with that same walker.

Police Officer Nathan Gyani arrived at the space where Respondent's vehicle was located. He performed a LEIN run of the vehicle and determined that the vehicle belonged to Kahlilia Davis. Officer Gyani viewed a placard that was on the driver's side window. When asked on cross-examination whether the placard meant anything to him, he stated that to him, it meant nothing. [T, 7/11/22, p 310.] He stated that the placard did not confer any authority on Respondent to park in the blue striped space.

Officer Gyani asked Respondent if the vehicle in question was her vehicle, and she stated "yes." He then told her that it was illegal for her to have parked her vehicle in the space, to which he testified that she stated "I know." Office Gyani asked Respondent if she was on official business but he could not recall her answer. Officer Gyani indicated that he had no intention to impound her vehicle.

Officer Gyani told Respondent that she was not free to go and was being detained because he was conducting an investigation. Officer Gyani acknowledged that Respondent had the right to park in a handicapped space, just not in the blue striped space. Other than parking her vehicle in the blue striped space, there was no

indication that Respondent engaged in any impropriety in connection with her event with Officer Gyani.

As to Respondent's event before Judge Alexis Krot, there was no disrespect. Respondent advised Judge Krot that she was required to return to her courtroom in Detroit to preside over her docket that day.

**8. Petitioner's Criticism of the Master in Count VII**

Petitioner started on Count VII with a sentence that is not appropriate. Petitioner stated as follows:

> In order to exonerate respondent of the most serious misconduct charged in the complaint, the Master resolved every single credibility determination in her favor.[4]

[*Petitioner's Brief*, 8/15/22, p 51.]

First, the claim by Petitioner that the Master intended to exonerate Respondent is wrong. The Master, in her 40 years in the judiciary, has pursued a temperate course of action that is not partial. The Master, as is required in finding facts, does not favor one party over another. What Petitioner states, in claiming that the Master sought to

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[4] The term "exonerate" means "to free from responsibility." *Black's Law Dictionary*, 7th Ed., p 597. Inasmuch as the Master is charged with the duty and responsibility of preparing and transmitting to the commission a report that contains a brief statement of the proceedings and findings of fact and conclusions of law with respect to the issues presented by the complaint and the answer [MCR 9.236], Petitioner's claim that the Master sought to exonerate Respondent is inapposite to the purpose of the hearings concerning the Formal Complaint. The criticism stating "exonerate"against the Master should not have been placed in the record.

exonerate Respondent, is that the Master was biased in her role. That is an inapt view that derogates the Master and diminishes the system of justice.

However, Petitioner's criticism of the Master does not stop here. As to alleged training that Petitioner claims, a further disparagement of the Master is set forth, as follows:

> To exonerate respondent of this falsehood, the Master focused on whether there was evidence that respondent had training regarding a contempt proceeding.

[*Petitioner's Brief*, 8/15/22, p 52.]

The Master was not seeking to exonerate Respondent or anyone else and Petitioner's disrespect of the Master is indecorous. It is unfortunate that Petitioner has accused the Master of seeking to engage exoneration for a party.

With respect to the Master's analysis of Count VII, there was a detailed, succinct report concerning the four sub-counts [from "A" through "D"] that clearly set forth the basis for determination of the facts and conclusions of law. The Master's conclusion that the Petitioner failed to prove any of the claims in Count VII is well determined.

As to the claim alleging misrepresentation regarding training, it is clear that there was no genuine training.

**<u>The "Other Acts"</u>**

The Petitioner engaged in inappropriate reference to a matter that is not part of the record. Certainly, the JTC should have to review the record of proceedings in

considering recommendations to the Supreme Court.[5] Even more important, there was nothing in the Second Amended Formal Complaint that contains anything that Petitioner stated in "Other Acts.." Petitioner should know better. Such is improper.

* * * *

The Master provided a Report that was the product of listening carefully to the witnesses, reviewing exhibits that were made part of the record, and analyzing the facts and applicable conclusions of law. While there may have been disputes as to some of the ultimate conclusions set forth in the Report, the Master used her experience and knowledge to come to reasonable and appropriate culmination.

Respondent had a most difficult time during her tenure as a Judge of the 36th District Court. The chief judge of the court, Nancy Blount, made it rough on Respondent. Judge Blount placed Respondent at the most distant part of the court house, with Respondent's courtroom No. 340 at one end of the court house, and the chambers at the other end, knowing that Respondent had physical difficulties that made it laborious to ambulate between the two rooms that were s far from each other. Judge Blount singled out Respondent from having a court reporter for Respondent's courtroom, when virtually all other judges had such accommodation and even though the chief judge testified that no judge was required to use video recording equipment.

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The Supreme Court shall review the record of the proceedings in issuing opinions. MCR 9.252(A).

Judge Blount also refused to provide Respondent with a video operator. Judge Blount also was aware that Respondent did not have official training for video recording. Judge Blount removed Respondent from adjudication duties. Judge Blount ordered Respondent to be present at the court house without any actual duties and responsibilities.

With the health problems that Respondent suffered, she did her best to work to the fullest of her ability. It was not her fault that she was deprived of the resources that were provided to the rest of the judges in the 36th District Court that would have allowed her official reporting in her courtroom.

While she did engage in errors, she was deprived of the judicial experience that would have occurred over a period of years. However, much of the time that would have been usable by Respondent was not available. Part of the unavailable time was the result of Judge Blount's removing Respondent from the normal duties and responsibilities of a district judge. Additionally, as a result of the time that the JTC took to commence hearings, Respondent was subject to an interim suspension of in excess of two (2) years before hearings commenced.[6]

Petitioner's claims concerning failing to discharge administrative responsibilities, maintain professional competence in judicial administration and facilitate the performance of administrative responsibilities of other judges and court

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Investigation of Respondent started in April, 2017 and continued into 2002.

officials, are not appropriate. Initially, it should be observed that Judge Blount's refusal to provide Respondent with proper resources to engage in the administrative responsibilities prevents a finding that Respondent is liable for such circumstances.

Due to Judge Blount's refusal and/or failure to provide Respondent with proper resources that are supplied to the rest of 36th District Court judges, Respondent was reduced to the status of pariah.

**Sanctions**

Respondent did have some mistakes that she made. The Report from the Master made it clear that much of what was asserted by the Petitioner did not prove misconduct by a preponderance of the evidence. Some of which was found by the Master was, in part, questionable inasmuch as Judge Blount made it virtually impossible for Respondent to achieve that which would otherwise have been accomplished had proper resources been supplied.

It is submitted that removal of Respondent's status as a judge is not warranted. Any sanctions should be significantly less.

Dated : August 22, 2022

SCHWARTZ, PLLC

By:

/s/ Michael Alan Schwartz

MICHAEL ALAN SCHWARTZ, P-30938
Attorney for Judge Kahlilia Davis
30300 Northwestern Highway, Suite 113
Farmington Hills, Michigan 48334-3217
(248) 932-0100
phrog@schwartzlawyer.com

STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST

Formal Complaint No. 101

Hon. KAHLILIA Y. DAVIS
36th District Court

Hon. CYNTHIA DIANE STEPHENS
_____________________________________________/

## CERTIFICATE OF SERVICE

Michael Alan Schwartz hereby certifies, under the penalties of perjury, that on August 22, 2022, he did cause to be served the appended Respondent's Brief in Support and Opposition of Report of Master by causing 9 copies of the same to be served in person to the Judicial Tenure Commission and by causing a copy of the same to be served by e-mail to the following:

Hon. Cynthia D. Stephens
[cynthiadianestephens@stephenslegalsolutions.com]

Dina Dajani, Esq.
[dajanid@courts.mi.gov]

/s/ Michael Alan Schwartz
MICHAEL ALAN SCHWARTZ