

STATE OF MICHIGAN
Before the Michigan Judicial Tenure Commission

COMPLAINT AGAINST

MSC No 165050
Formal Complaint No. 104

Hon. Paul J. Cusick
Third Circuit Court
1441 St. Antoine
Detroit, Michigan 48226

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Report of Master

INTRODUCTION

The foundation for this complaint rests on Respondent's conduct as an Assistant Attorney General in three criminal matters investigated and prosecuted by Judge Cusick commencing in 2013. All three cases involve the same defense attorney, Michael Komorn. Attorney Komorn also filed complaints with the Attorney Grievance Commission against Assistant Attorney General Dianna Collins, Judge Cusick's successor on two of these files, and Attorney General Schuette regarding this matter. These were dismissed by the Commission without requiring Collins or Schuette to answer. (JTC HR. Vol. 15 P. 2005-2008)

The Complaint in this matter is composed of five counts contained in 177 numbered paragraphs, most containing multiple sub paragraphs spread over sixty-four

pages. In addressing the individual counts, the original numbering of the paragraphs has been preserved for ease of reference.

Disciplinary Counsel, Margaret Rynier, commenced the hearing against Judge Cusick by summing up those charges as follows:

... the recurring theme in this case is the intentional abandonment of the ethical and legal obligations as an attorney and as a prosecutor on the part of Judge Cusick ... Judge Cusick, as an attorney general or an assistant attorney general, abandoned his duties by allowing a witness, Ms. Loggie, to commit perjury and allowing that perjury to stand and continue to stand, knowing that it was false. He abandoned these duties by presenting a witness at an evidentiary hearing and allowing that witness to testify, knowing that she had previously committed perjury in open court. He abandoned those duties by interfering with defense counsel's cross-examination at the preliminary He abandoned those duties by interfering with defense counsel's cross-examination at the preliminary examination, at an evidentiary hearing, at another preliminary examination in the Berry case. He also abandoned his duties by withholding evidence from the defense in three separate cases and by withholding evidence and information from his successor, who took his caseload over, and also by making material misrepresentations to the Commission during the investigation of this matter, knowing that they were false. So the question becomes, what evidence is there? (JTC HR Vol 1 Pp 5-6)

It is fair to say that because of the lapse of time, many witnesses struggled with recalling specific events. This factor cannot be readily dismissed. The several Counts have been copied at the beginning of each section for ease of reading and reference.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Disciplinary Counsel carries the burden of proof in this matter by a preponderance of the evidence. Additional findings of fact and conclusions of law are integrated in this report for ease of reading.

COUNT I

Section A

Subornation of Perjury

Count I encompass two broad complaints: subornation of perjury in the 35th District Court and Obstructing/Interfering with Cross-examination. These allegations will be dealt with separately.

The gravamen of the subornation charge contained in "Count I, Section A" of the complaint, relates to the testimony of Brandy Loggie at the preliminary examination of Amanda Joslin. No credible evidence has been presented that Brandy Loggie willfully lied or that Respondent encouraged her to testify to anything other than the truth. And, importantly, Disciplinary Counsel concedes that:

While the headings of Counts I and II of the Complaint are labeled "suborning perjury" and list the corresponding statute, MCL 750.424, in the violation section (sic), paragraph 129f none of the paragraphs under these counts allege that respondent suborned Ms. Loggie's perjury. **Disciplinary counsel concedes that the record does not include any evidence that respondent caused Ms. Loggie to commit perjury.** (*emphasis added*) Disciplinary Counsel's Proposed Findings of Fact & Conclusions of Law Pg.23 fn12

This concession, twenty-three pages into the Disciplinary Counsel's Proposed Findings of Fact and Conclusions of Law, is at best confounding.

Count I is contained in the Complaint at paragraphs 116 through 123 as follows:

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.
- b. She initiated the contact with the police (Task Force) about the Pure Wellness Center.
- c. There was nothing "specific" that occurred that made her interested in contacting the police.
- 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."
- e. When she contacted the police, she told them that "there is a woman selling marijuana just to anybody."

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.
- b. Ms. Loggie's testimony had discrepancies.
- c. Ms. Loggie did not "initiate contact with the Task Force."
- d. Ms. Loggie had been "prompted" to call the Task Force by Thomas McCully.

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.

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.
- 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.
- c. Requesting a recess in the proceeding to inform Brandy Loggie about her obligation to provide truthful, accurate, and complete testimony/answers.
- d. Requesting a recess in the proceeding to obtain a copy of Ms. Loggie's Source Card.
- e. Eliciting any testimony from Detective Zinser regarding the circumstances under which Ms. Loggie became a CI with the Task Force.
- f. Disclosing Ms. Loggie's perjury, i.e., her materially false, inaccurate, incomplete, and/or misleading testimony to the court.

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.
- b. She did not initiate the contact with the Task Force.
- c. She had been prompted to contact the Task Force.
- d. She was working with the Task Force for Thomas McCully's sentencing benefit.
- e. She had a forfeiture case pending against her based on her involvement in the McCully organization.

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.

- b. To establish that Ms. Joslin was involved in illegal transactions of marijuana and marijuana products at the Pure Wellness Center.
- c. To respond to objections posed by Mr. Komorn.
- d. To support his arguments to bind Ms. Joslin over for trial on the charges contained in the charging document.

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.
- 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.

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.

Perjury is defined in pertinent part by MCL 750.423:

Any person authorized by a statute of this state to take an oath, or any person of whom an oath is required by law, who **willfully swears falsely** in regard to any matter or thing respecting which the oath is authorized or required is guilty of perjury, a felony punishable by imprisonment for not more than 15 years. (*Emphasis supplied*)

The allegations in paragraph 116, sub paragraph "a" that when Ms. Loggie testified she "was not under subpoena and was appearing in court voluntarily;" "was false, inaccurate, incomplete, and/or misleading in material ways." as asserted in paragraph 118 of the complaint are unsupported.

No record of the service of a subpoena on Ms. Loggie was produced at the hearing. Respondent, Detective Zinser, and Sgt. Calleja when questioned had no knowledge as to whether a subpoena had been served on the witness. Sgt. Calleja testified that:

Q. (Mr. Campbell) I'm going to collect that exhibit, if I may. Thank you. Mr. Calleja, you testified yesterday when asked about the subpoenas in the Joslin preliminary examination that they may have been -- and I think I got your wording correct. Correct me if I'm wrong -- they may have been verbally served. Do you remember those

words?

A. Yes.

Q. We'll get into some play-by-play here. What does verbally served mean?

A. It could be in person by mouth, and it could be over the phone. That would be my way of saying verbally.

Q. You would agree with me that a verbal service over the phone is not actual service for court of law purposes?

A. As far as that individual being responsible to be there, correct.

Q. So you're agreeing with me. Yes? (*Emphasis added*)

A. Yes.

JTC HR Vol 9 Pg 1724

When questioned by Respondent's counsel, Detective Zinser testified that he did not recall serving any subpoenas in this case. JTC HR. Vol 13 Pg 2312. And Ms. Loggie told Respondent prior to the examination that she would be more than willing to testify. (Ex 88dd, Bates # 2778) This note was entered in Legal Files (the Attorney General's computerized note keeping system) before the preliminary examination strongly supporting that her testimony at the preliminary examination was truthful.

The allegation contained in subparagraph "b" that Ms. Loggie lied when she testified that she contacted the police about the Wellness Center was not substantiated. Sgt. Calleja testified that he and Tom McCully, Ms. Loggie's boyfriend, talked about having Ms. Loggie doing a controlled buy at Pure Wellness, and Tom McCully talked to Ms. Loggie who then called Sgt. Calleja. (JTC HR. Vol.8 pp 1496-1498.) Ms. Loggie literally did call the police.

The allegations in sub-paragraphs 116 "c", "d" and "e" are Ms. Loggie's responses to several questions asked by defense counsel at the commencement of his cross examination at the Joslin preliminary examination. They, together with paragraph 117, must be viewed in the context of paragraph 118 which asserts that:

"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."

The four allegations contained in paragraph 117 regarding what Detective Zinser said to Judge Cusick during the preliminary examination of Ms. Joslin have not been proven. Detective Zinser, called by Disciplinary Counsel, testified at the JTC hearing when questioned by Mr. Campbell that:

Q. You did not say anything to Dianna Collins during the pendency of time that she had the case until the time of trial relative to any concerns coming out of the preliminary examination; Correct. That's because your concerns were taken care of at the preliminary examination; correct?

A. Correct

JTC HR Vol 13 2404-2405

The specific assertions by Disciplinary Counsel in the Complaint in Paragraph 116 "c-e" bear the hall marks of truthfulness, not deceit. Paraphrasing those allegations, *Brandy Loggie said, there wasn't a specific reason she called the police, but there was a woman selling marijuana to just anyone and it was dangerous because of the amounts.* Sgt. Cajella, called by Disciplinary Counsel, testified that in September 2014 Loggie told him that she was cooperating as a CI because of public safety, and she testified to that more than a year later at the preliminary examination on Nov. 3, 2015. JTC HR Vol 9 pg 1699.

Respondent testified that Ms. Loggie similarly told him prior to the preliminary examination that:

... she seemed to have some animus, if I recall, toward Ms. Joslin. She had sold vape pens to her, and she indicated to me and to Detective Zinser present that she's turned her life around and she doesn't like Pure Wellness dispensary and that when she goes to Pure Wellness dispensary she sees people who are visibly high and go into their cars and drive around, it's a bad business, and it needs to be -- it should be shut down, and she's happy that she's able to shut it down and thankful that we are as well, or something of that sort. That's the extent of the conversation that I

had with Ms. Loggie that I recall on November 3rd of 2015. JTC HR. Vol 4 pp 749-750.

This is consistent with Ms. Loggie's testimony at the JTC hearing when she complained of being shorted of product by Pure Wellness when she purchased product for her own medical use. JTC HR Vol 10, Pg 1839-1844.

Detective Zinser, the officer in charge of the Joslin investigation, testified at the JTC hearing that his preliminary examination testimony concerning Ms. Loggie's testimony was still true today. Mr. Campell queried Detective Zinser as follows:

Q. Line 9, Mr. Komorn asks this question. "I'm asking what was your understanding why she is in a restaurant signing that form, an agreement to be confidential informant and given a number. What is her motivation for being with you?"

Do you see that?

A. I do. ...

Q. Line 13, "I can't say" -- this is your answer. "I can't say what exactly everyone's motivation is. Some people are motivated because of criminal charges. Some people are motivated because they want to work with the police, and they like the thrill. Without specific knowledge of the conversation between the prosecutor and the sergeant, I don't know. I don't know."

Fair statement?

A. Fair.

Q. True then?

A. Yes.

Q. True today?

A. Correct.

JTC HR Vol 13 pg 2377

This opinion was repeated by several witnesses throughout the hearing and is shared by the Master. Importantly, those witnesses stated that a person may have more than one reason for testifying. See for example, Judge Kenny, JTC HR. Vol 18 Pg 3388; Dianna Collins, JTC HR Vol. 16 Pg 2951.

Much emphasis was placed on the "source Card" signed by Brandy Loggie and how it should have alerted Respondent to her real motivation for testifying. Several things are true about the source card. (1) it was signed in blank by Brandy Loggie and the remarks regarding Thomas McCully were not on it when she signed it. (2) It is not a

contract or agreement, but rather a means of preserving information regarding contacts and credibility of the "source." (3) Source cards are not generally available to the prosecution. For example, Dianna Collins testified that in eighteen years as an Assistant Prosecutor in Washtenaw County, she had never seen one and Assistant Attorney General Rollistin testified that in 35 years of prosecution it was unusual to see source cards. (4) Respondent testified that the first time he saw the Loggie source card was after he was on the bench.

The conclusions asserted in paragraph 122 and essentially reasserted in paragraph 123, that, "despite his knowledge that Brandy Loggie's testimony was materially false, inaccurate, incomplete and/or misleading ...that Respondent stood by and took no action to correct them..." are simply without credible support as shown above and should be dismissed.

Section B Count I **Obstructing Cross Examination**

"Section B" of Count I alleges that Respondent obstructed or interfered with defense counsel's cross examination at the preliminary examination of Brandy Loggie and Officer Zinser. This count is premised upon two claims; first that, 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 and second Respondent repeatedly objected and interfered with defense counsel's questioning. (Italics supplied) A similar complaint was set forth regarding the cross examination of Detective Zinser. The question of Respondent's alleged knowledge of Brandy Loggie's untruthfulness was addressed supra and is meritless.

The assertion of obstruction of questioning of Ms. Loggie is not supported by the record. Mr. Komorn cross-examined Ms. Loggie for a total of forty-five pages. Respondent interposed a total of eight objections, five of which were sustained. It is incomprehensible that sustained objections can be the basis of a complaint of ethical misconduct by an attorney. Three overruled objections hardly qualify as impeding a forty-five-page cross examination. Interestingly, Judge Gerou interjected *sua sponte* at least seven times to

clarify questions asked by Mr. Komorn or to protect the witness from badgering. See for example Ex. 67A Bates Pg.1359. When the impartial magistrate interjects at a rate equivalent to the prosecutor, it suggests that Mr. Komorn's questioning was both argumentative and confusing.

A review of the closing argument of the Disciplinary Counsel and the proposed findings of fact and conclusions of law reveals no arguments advanced in support of the allegations that Respondent impeded the cross examination of Detective Zinser and thus that allegation will be treated as abandoned.

Count I Section B has not been proven by a preponderance of the evidence and should be dismissed.

COUNT II
Suborning Perjury In 3rd Circuit Court

130. This count incorporates 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.
- 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.

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

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. 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);

Disciplinary Counsel has conceded that to the extent this count alleges subornation of perjury that it is *unsupported* on the record. Disciplinary Counsel Proposed Findings of Fact & Conclusions of Law Pg.23 fn12. This count also fails because it relies solely on the assertion that Ms. Loggie's testimony at the preliminary examination was, "... false, inaccurate, incomplete, and/or misleading ...". As addressed in Count I, the Master concludes that it was not. This count should be dismissed.

COUNT III **WITHHOLDING OF INFORMATION/EVIDENCE**

Like Count I, this count contains sub parts that will be addressed individually.

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

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.

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.
- 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.

- c. Any documents and/or information regarding Brandy Loggie's involvement in the McCully organization.
- d. Any documents and/or information regarding Brandy Loggie's involvement in the February 2013 delivery of marijuana to Kentucky.
- e. Any documents and/or information regarding Thomas McCully generating and/or assisting the Task Force in the Joslin investigation.
- f. Any documents and/or information regarding Brandy Loggie's involvement in the Joslin investigation.
- g. A copy of, and/or any information about, the Source Card Thomas McCully signed on about May 12, 2014.
- 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.
- i. A copy of, and/or any information/details about, the Source Card Brandy Loggie signed on about September 4, 2014.
- 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.
- k. Any documents and/or information/details regarding the forfeiture actions then pending against Brandy Loggie and/or Thomas McCully.
- l. Any information about the relationship between Thomas McCully and Brandy Loggie.

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.

In analyzing the allegations made in this sub count, it is important to focus on the opening sentence of paragraph 136 that states: "*respondent knowingly and/or intentionally did not include, and did not instruct anyone else to include:*" ... (*emphasis added*) then follows thirteen numbered paragraphs of alleged exclusions. Most of those items relate to Thomas McCulley and his various cases. It is also important to focus on the date of the alleged exclusions, July 22, 2015, and to recall that the date of the preliminary examination was November 3, 2015, and Respondent's separation from the Attorney General's office in November of 2016.

William Rollistin, Respondent's superior, testified that Respondent had a very robust docket:

A. Yeah. I mean, this was a robust docket. Okay. I can't

give you the number of cases on it. And you've got to remember, too, our office we're based in Detroit. It's where his work site was and mine. And, you know, we cover 83 counties. We don't go downstairs and get off the elevator and walk in the courtroom. JTC HR. Vol 19 Pp 3552-3553

During this period, Respondent was handling a homicide case in Lapeer County and various sexual assault cases. As discussed at length in Count I, supra, Brandy Loggie told Sgt. Calleja nearly a year before the preliminary exam she was cooperating because of public safety concerns. She repeated that to Respondent just before the exam and to Dianna Collins nearly two years later when she was being prepped for trial.

Respondent testified that:

BY MR. CAMPBELL:

Q. Judge, you're still under oath. You understand that?

A. Yes.

Q. When you dismissed the 36th District Court against Mr. Berry and Mr. Michael, did you believe that McCully had been involved in the Joslin matter in any way, shape, or form?

A. No.

Q. So the dismissal -- just to, again, set the timeline here. The dismissal occurs in March of 2016; correct?

A. Yes.

Q. By that time the Joslin preliminary examination has finished three months earlier; correct?

A. Yes.

JTC HR Vol 7 pg 1215

If Respondent did not believe that McCully had been involved in the Joslin matter in any way, shape, or form, there would have been no reason to open the McCully files to counsel on the Joslin matter. This conclusion is bolstered by the fact that the only apparent involvement of McCully in the Joslin matter was his demurring to participate

when requested by Sgt. Calleja and referring him to Ms. Loggie as he was afraid that he (McCully) would be recognized as a major supplier of marijuana. JTC HR Pg 1494-1496.

The only evidence on the record that suggests more of a McCully involvement are two emails from Sgt. Calleja and McCully's defense attorney Mr. Fishman (both of which were saved to the Joslin Legal files and accessible to Respondent's successor). The Fishman email included a spread sheet that referenced Brandy Loggie working for McCully, but Respondent doesn't recall seeing that spread sheet at any time before these proceedings. JTC HR Vol 5 Pg 991. Those emails do not implicate the McCully Drug Trafficking Organization, and do not provide the basis for a "discovery" of the files as they are not material to the Joslin case.

Brandy Loggie was interviewed in Judge Kenny's jury room and secretly recorded by Mr. Komorn on August 17, 2017. Ms. Loggie when asked whether she discussed her agreement with the police with Respondent, she answered, "No, no". She further stated that no one told her not to mention it. Respondents Ex. YY.2. This is consistent with Respondent's testimony that the first time he talked with Ms. Loggie was just prior to the preliminary examination and the only reason she expressed for agreeing to work as a CI was that to which she later testified. JTC HR Vol 4 pp 749-750. The information regarding Loggie testifying because of McCully was unknown to Respondent as it didn't become available until after he left the Attorney General's office.

However, Joslin's defense counsel did elicit from Ms. Loggie on cross exam at the preliminary examination that she had signed what he characterized as confidential informant agreement (source card), and he did not follow up on the terms of that "agreement". PE Tr Ex 67a Bates 1334. When the officer in charge of the investigation (Zinser) offered to tell defense counsel "everything about Brandy Loggie" but not in the presence of the defendant Amanda Joslin, Respondent did not object, and defense counsel never followed through. PE Tr Ex 67a Bates 1467.

The allegations in this sub count are largely not material to the Joslin case; were unknown to the Respondent and otherwise not supported as shown by the Zinser testimony and the Komorn cross examination. Disciplinary Counsel has failed to carry the burden of proof by a preponderance of the evidence as to Count III A.

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.
- b. Any information and/or documents disclosing that Thomas McCully was the CI in the Berry investigation.
- 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.
- d. A copy of, and/or any information about, Thomas McCully's Source Card.
- 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.
- f. Any documents and/or information regarding the forfeiture action then pending against Thomas McCully.

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.

There was no requirement to provide information to Darryl Berry or his attorney Michael Komorn information about Thomas McCully or his Drug Trafficking Organization since McCully was not a res gestae witness in the case and his organization was not involved with the Berry operation. In *People v Paredes -Meza* Mich App Docket No 291607 (2010) (Unpublished) the court said:

Based on the testimony of agent Schmidt, defendant argues that the CI was a res gestae witness whose identity should have been disclosed to him. We disagree. First, there is no evidence that the CI was a res gestae witness. Agent Schmidt testified that the CI was in the car with him and Immigration and Customs Enforcement Agent Leslie Defreitas, but there was no evidence presented that the CI witnessed any events leading to defendant's arrest that were not also witnessed by agents Schmidt and Defreitas. Thus, the CI's testimony would not have aided in developing a full disclosure of the facts because other witnesses addressed anything the CI would have testified to in the continuum of the criminal transaction.

Similarly, in the present case, McCully was not a participant in the underlying case but merely an informant who introduced officer Lowes to a grower and seller of marijuana plants.

One of the confounding issues presented in this Complaint and this Count in particular, is that the Commission is essentially being tasked to sit as an appellate court. This issue should have been resolved at the trial court and appealed. If it was, the appellate court would apply the rule that:

A trial court's decision regarding whether to order the production of a confidential informant is reviewed for an abuse of discretion. *People v Poindexter*, 90 Mich App 599, 608; 282 NW2d 411 (1979). An abuse of discretion occurs only when the court chooses an outcome outside the principled range of outcomes. *People v Miller*, 482 Mich 540, 544; 759 NW2d 850 (2008). *People v Paredes -Meza* Mich App Docket No 291607 (2010) Citations omitted.

The Master cannot find an abuse of discretion by either the Assistant Attorney General arguing forcefully to protect a confidential informant or the circuit judge's protection of that witness and believes that the count should be dismissed because Disciplinary Counsel has failed to show by a preponderance of the evidence the violations charged.

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.

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.

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.
- b. The relationship between Brandy Loggie and Thomas McCully.
- c. A copy of, and/or any information about, the Source Card Brandy Loggie signed on about September 4, 2014.
- 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.
- e. A copy of, and/or any information about, the Source Card Thomas McCully signed on about May 12, 2014.
- 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.
- 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.
- h. Thomas McCully being the CI in the Berry investigation.
- 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.
- j. Brandy Loggie's false, inaccurate, incomplete, and/or misleading testimony at the November 3, 2015, preliminary examination before the Hon. Michael Gerou.

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.

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.

This is a fascinating count because it has so many facets. One is the tight administration practiced in the Attorney General's office and the professional management of the files. A second is the motivation for the count. Did Ms. Collins or the Attorney General suggest that the Respondent failed as alleged? The third is the time available to the Respondent to accomplish all that the count taxes him with. A fourth is the close supervision of the assistants and the reporting that is expected of them. A fifth is the professional caliber of the staff. Respondent's superiors were all attorneys with decades of experience in the criminal law. Finally, the respect that Respondent still enjoys from his former superiors.

The Attorney General's Office practices tight supervision. Mr. Rollistin testified at JTC HR Vol. 18 Pg 3522 that Respondent discussed with him and Mr. Cunningham the issue of the need to dismiss the Wayne County case to protect the CI (McCully). The record is replete with references to Respondent being required to file a request to initiate litigation backed up with a memorandum. Also, plea agreements needed to be approved after a written request. Memoranda to the files were kept in a computer program called Legal Files. Respondent was a copious memorandum maker. In fact, he testified that he was counseled to keep his memoranda shorter. When he left the Attorney General's office, the cases that are the subject of this complaint were in banker boxes. These resources, including Mr. Rollistin, were all available for Collins and the information readily discoverable as is shown by its production at the hearing. Respondent left the Attorney General's Office in November of 2016. The Joslin trial did not occur until August of 2017, nearly a year later. The contentious preliminary examination in this matter was completed on December 18, 2015. At that exam, Loggie disclosed that she was a CI. There was ample time for Ms. Collins to discover this from the files and transcripts and to discuss it

with her superiors and gain access to electronic file notes as well as the banker boxes of material. She also had adequate time to discuss the cases with the police officers involved before the trial.

As previously noted, Mr. Rollistin described Respondent's case load as "robust." Ms. Collins testified that she spent parts of two weeks going over files with the Respondent. He separately boxed files for her. JTC HR Vol 15 pp 2795-2798. The Master concludes there was ample time and opportunity, eight months, for Ms. Collins to consult with Rollistin, and case officers on the case to be thoroughly prepared on all issues. There is no evidence to suggest that Respondent withheld evidence from her and that his actions impeded access to materials to the defense. This count should be dismissed.

COUNT IV

OBSTRUCTING/INTERFERING WITH CROSS-EXAMINATIONS PEOPLE V BERRY

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

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.

146. Prior to the April 7, 2016 preliminary examination in *People v Berry, et al*, 53d District Court case nos. 17-0473 and 16-0476, Respondent did not disclose to Mr. Komorn:

- a. That Thomas McCully was a res gestae witness.
- b. That Thomas McCully was the CI.
- 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.
- d. That Thomas McCully had a pending forfeiture matter.

147. During the April 7, 2016 preliminary examination in *People v Berry, et al*, 53d District Court case nos. 17-0473 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).
- b. The fact that the CI (Thomas McCully) was a res gestae witness.
- 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.
- d. That the CI (Thomas McCully) had a pending forfeiture matter.

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.

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).

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.

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.

This count stands or falls based on whether Thomas McCully is deemed a res gestae witness. He was not. The claims here echo those in Count III B. In addressing that count, the Master relying on *Paredes-Meza* Mich App Docket No 291607 (2010) (Unpublished) found that:

There was no requirement to provide information to Darryl Berry or his attorney Michael Komorn any information about Thomas McCully or his Drug Trafficking Organization since McCully was not a res gestae witness in the case and his organization was not involved with the Berry operation. In *People v Paredes-Meza* Mich App Docket No 291607 (2010) (Unpublished) the court said:

Based on the testimony of agent Schmidt, defendant argues that the CI was a res gestae witness whose identity should have been disclosed to him. We disagree. First, there is no evidence that the CI was a res gestae witness. Agent Schmidt testified that the CI was in the car with him and Immigration and Customs

Enforcement Agent Leslie Defreitas, but there was no evidence presented that the CI witnessed any events leading to defendant's arrest that were not also witnessed by agents Schmidt and Defreitas. Thus, the CI's testimony would not have aided in developing a full disclosure of the facts because other witnesses addressed anything the CI would have testified to in the continuum of the criminal transaction.

The Master continued; "similarly, in the present case McCully was not a participant in the underlying case but merely an informant who introduced officer Lowes to a grower and seller of marijuana plants." McCully observed nothing in the introductory meetings that Detective Lowes could not testify to and had no underlying role that has been disclosed.

Disciplinary Counsel's reliance on *People v Cadle*, 204 Mich App 646 (1994) is misplaced as the alleged informant was a part of Amo's drug conspiracy and may have participated in this crime. No such claim has been advanced in this matter against McCulley. The Count must be dismissed.

COUNT V
MISREPRESENTATIONS TO THE COMMISSION

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."

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.

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."

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.

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."

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.

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."

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.

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]."

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.

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].”

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.

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.”

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.

This is a good place to recall that Respondent is clothed with the presumption of innocence throughout these proceedings. And that the allegations contained in the Complaint require proof of actual knowledge, or intentional unlawful misconduct. (See for example the preceding paragraph No. 165 of the Complaint.) Also, this is a good place to consider that many witnesses who testified had difficulty recalling facts when questioned at the hearing.

For example, Dianna Collins testified at the hearing that she was “confused” about the timing of events related to a second surreptitious recording made by Komorn.

Q. Thank you. Let's go -- well, I want to make sure your memory is clear on that. There is another time that Mr. Komorn recorded you; correct?

A. Yes. There were twice.

Q. The second time was also without your consent; correct?

A. Correct. I -- it was -- it was over -- I said you cannot record this. Do not record it.

Q. Did you have an impression whether he was accepting that or was agreeing with you?

A. I thought he was agreeing with me.

Q. Is that why that meeting went forward? If he had said I'm recording it, would that meeting have gone forward?

A. I don't know that I would have minded it if he'd just set it on the table and said I'm going to record it. I don't know that I would have objected to it. I would

have asked for a copy of it if I'd been aware of it.
But I -- but I -- I guess, I mean, I did tell him that I
didn't want it recorded so that's --

Q. Safe to say you were under the impression at the time he
was not recording it?

A. Yes, I was.

Q. Thank you. Also present at that time was
Sergeant Calleja? Do you remember that?

A. Yes.

Q. And Thomas McCully was also there; correct?

A. Right.

**Q. We'll come back to that. But that is at a later time
and it's associated with the Berry case; correct?**

**A. I would have thought it was associated with this case,
with the Joslin case, but I'm not sure. Because
judge -- I'm not sure. I don't know. (Emphasis added)**

Q. Do you remember the judge ordering Mr. Komorn to produce
the McCully tapes at some point?

**A. I don't. I don't. I don't remember whether that
happened or not. (Emphasis added)**

Q. In my asking the question, does that make you pause in
remembering whether it was the Joslin tape or the
McCully tapes that were actually produced by court
order? Can you tell between the two now?

A. I can. It was the -- it was the Joslin tape, because it
was -- it was something I kept after when I -- on the
record when he said that it had been taped, I asked the
Court to order him to give it to me. And eventually the
Court did, so I just kind of kept after that. Like
there was court order in place and he wasn't sending it.
And so finally eventually he show-caused me also in that
court, and so there was a motion with the show cause and
he wasn't complying with that order. It kind of went
back and forth. So I remember that.

Q. Do you remember who the judge was?

A. Hatty.

Q. And you agree that's not Wayne County?

A. No. That's Livingston County.

Q. And you agree if it's Livingston County, it's Berry and
not Joslin?

A. Correct. I agree. But I don't know about the McCully
part of it. I agree that Livingston County is Berry
definitely, and it was in the Berry case that he made
comment about the Loggie interview being taped.

Q. And that comment would have been after the Joslin trial?

A. Correct. Well after, if I remember correctly.

This was not an inconsequential series of events to which Ms. Collins was testifying. She had been secretly recorded by opposing counsel twice yet was having trouble remembering in which court.

Similarly, Sgt. Cajella testified on cross that:

BY MR. CAMPBELL:

Q. Do you remember in the meeting with Mr. Komorn and Mr. McCully and Ms. Collins that Mr. McCully was asked for his reasons in serving as a CI?

A. I remember the meeting.

Q. Okay. Do you remember the question?

A. No.

Q. *Do you remember Mr. McCully at some point in the meeting saying that the reason he serves a CI was -- let me get a moment here -- "It was an opportunity for me not to be the person I was before"?*

A. *I couldn't hear that clearly like that.*

Q. *But do you remember that actually being said?*

A. No.

Q. *Do you remember Mr. Komorn asking what was the agreement, and Mr. McCully answering that he did not know of any agreement?*

A. No.

Q. You never objected to any statement that Mr. McCully ever made in your presence with Mr. Komorn about why he served as a CI; correct?

A. Same with Brandy Loggie, same thing. The ulterior reasons didn't affect me.

Q. You never said to Dianna Collins Thomas McCully is lying about why he served as a CI?

A. I didn't need to. She knew, Komorn knew, and McCully knew. (*Emphasis added*) JTC HR. Vol.9 Pg 1658

McCully's statement is a critical fact because it mirrors Ms. Loggie's reason for cooperating. During the investigation, it should be pointed out, Ms. Loggie and Mr. McCully had a child together, it is not an unreasonable assumption that perhaps both were trying to get their lives together.

A review of the testimony of Detective Lowes, who was the officer in charge of the Berry investigation, is revealing because for virtually every question he was asked he had to refresh his memory from reports. This is significant because he and Respondent were

at the same level of responsibility during the investigation and when Respondent was answering the Complaint and 28-day letter he did not have the luxury of turning to notes about these cases. These examples demonstrate that when busy professionals are requested to recall specific events of isolated cases several years old faulty or incomplete memories are not unusual and cannot be relied upon to provide the basis for a charge of intentional misconduct.

Addressing some specific allegations; paragraph 152 alleges that,

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."

Recall that Ms. Loggie was brought into the Joslin investigation through a conversation between Sgt. Cajella and Mr. McCully. Cajella testified that there was no agreement with Loggie:

Q. It's true you never told Detective Zinser what your conversation with the prosecutor was; correct?

A. Correct.

Q. You never told Detective Zinser about any conversation you had with Brandy Loggie as to what her benefit would be?

A. Correct.

Q. And, in fact, when Detective Zinser testified here he testified truthfully; correct?

A. To the best of my knowledge, yes.

Q. So when he says he wasn't told what the deal was, that's accurate; correct?

A. Correct. There was no deal. Cajella JTC HR Vol 9 P 1704 (Emphasis added)

A charitable view of Sgt. Cajella's testimony is that he was confused or forgetful from time to time. It could also be that his cynical view of the legal process colored his testimony. He testified that he did not necessarily believe that the agreement stated on the record at McCully's plea hearing before Judge Groner was truthful because:

Q. Is that because you did not -- you don't believe the people speaking on the transcript or for some other reason?

A. No. It's because I have no idea what was going on in the background or behind the scenes, so.

Q. Do you read this transcript to mean anything other than there is no deal?

A. That's exactly how it reads.

Q. If there's no deal, how can you say that possibly there was a deal?

MS. RYNIER: Objection. Argumentative.

THE MASTER: I can't hear you.

MS. RYNIER: I'm sorry. Objection. Argumentative.

THE MASTER: Overruled.

THE WITNESS: Sorry to offend everybody in this room who's an attorney, but I know how things work and I know that things are done sometimes behind the scene or they're already in progress, and that's why I gave my answer.

BY MR. CAMPBELL:

Q. And that's why you stand by that answer today, despite having read the transcript which says the exact opposite; right?

A. That's correct.

Q. And that would make everybody on that transcript a liar; right?

MS. RYNIER: Objection, Your Honor. That's an improper question and counsel knows that. He's asking for this witness to characterize statements made by other individuals at a hearing that he was not present for.

MR. CAMPBELL: Judge, this is a test of his credibility.

THE MASTER: The objection is overruled.

BY MR. CAMPBELL:

Q. Do you remember the question?

A. Yes.

Q. Can you answer it?

A. Yes, I would stick to my answer.

Q. Which is?

A. The same exact thing that's written.

MR. CAMPBELL: Can my question be reread? I don't believe that's responsive to my question.

THE MASTER: Please reread the question.

"QUESTION: And that would make everybody

on that transcript a liar; right?")

THE WITNESS: If they had lied, yes.

BY MR. CAMPBELL:

Q. For there to -- if there was a deal beforehand, that would be everybody lying on the transcript?

A. If they say that in court, yes.

Q. Thank you. You agree with me that what's on the transcript is Mr. McCully taking a chance without any defined benefit; correct?

A. Correct.

Q. Taken on its face, he says he's doing what you say you've never seen anybody do, which is to become a CI without a purpose -- without a defined benefit?

A. My personal feelings, I think the otherwise.

Q. Which is?

A. But I don't know.

Q. What does it mean "think the otherwise"?

A. That there may have been a deal already in progress. I

don't have to be right, but that's what I think. JTC HR Vol 9 PP 1599-1603

This witness cannot be relied upon to refute the Respondent, Judge Groner, Mr. Fishman and McCully.

Much attention has been paid to the Kastigar letter that was drafted by Respondent and signed by McCully and Fishman. That letter, the statement at the plea hearing and the recitation that no promises were made, together with the unofficial policy of the Attorney General's Office that no deals would be made because, "we all know what WC judges will do" (Rollistin JTC HR Vol 19 pp 3456-3457) forms a formidable basis for believing Respondent saying, especially five years after the fact, that no promises of credit for Loggie's work had been made was truthful, at least in his mind. When replying to the "Request for Comments" respondent did not have the files that have been relied upon by the Commission to refresh his memory.

One final metric of memory. Rollistin counseled and mentored Respondent on the McCully organization. He worked over a list of which people should be prosecuted. When queried about Brandy Loggie, he could not recall anything about her prior to October of 2013, and she was not among people recommended to be charged Rollistin JTC HR VOL 19 pp 3434-3437.

Disciplinary Counsel has failed to prove by a preponderance of the evidence the charges contained in paragraphs 152 through 165, and the count should be dismissed.

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
- b. Her involvement in the McCully organization;
- c. Her involvement in the delivery of marijuana to Kentucky in February of 2013,
- d. Her pending forfeiture case;
- e. The circumstances under which she became a CI for the Task Force; and
- f. Her CI work serving as a benefit to Thomas McCully's sentence.

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.

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.

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.

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.

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.

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."

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.

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
- 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."

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.

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."

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.

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).

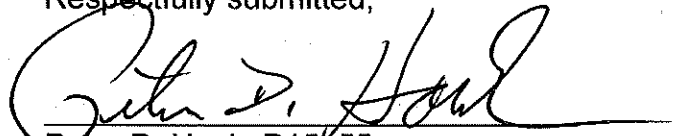
Regardless of how many times the claims in this count are repackaged they remain not proven by a preponderance of the evidence. Each of them has been previously addressed and further elucidation is not warranted. This count has not been proven by a preponderance of the evidence.

CONCLUSION

The Master is mindful that Disciplinary Counsel's task has been burdened with the problems imposed by COVID. However, that is a double-edged sword. It has resulted in charges and materials making their presence known to the Respondent five years after the alleged events when both memories and access to files have been limited. During those five years, Respondent has enjoyed the confidence of his Chief Judge who appointed him to head up the education program for appointed counsel because, "given Judge Cusick's relationship and how he was regarded throughout the court, especially with attorneys and with his fellow judges, I thought he was the perfect person to appoint." JTC HR Vol 17 p3105. The Master presided over seven days of testimony by the Respondent. His demeanor was one all judges should strive to emulate. He was, in short, very credible.

It is my opinion that all five Counts in this Complaint should be dismissed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter D. Houk", written over a horizontal line.

Peter D. Houk, P15155
Master