STATE OF MICHIGAN
IN THE SUPREME COURT

IN THE MATTER OF:

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

Formal Complaint No. 99
MSC No. 157930

Master: Hon. William J. Giovan

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PETITION FOR INTERIM SUSPENSION WITHOUT PAY

Pursuant to MCR 9.219(A)(1), the Michigan Judicial Tenure Commission (Commission) Deputy Executive Director, with the permission of the Commission, and by designation of the Executive Director, requests this Court to order the immediate interim suspension without pay of Hon. Theresa M. Brennan (respondent), currently judge of the 53rd District Court, Livingston County, Michigan. This petition is filed due to the circumstances summarized below, a significant portion of which came to light either just before or during the hearing on Formal Complaint No. 99 (FC 99), and which call for respondent to be immediately suspended without pay for the proper administration of justice.

This petition is accompanied by transcripts and exhibits from the formal hearing on FC 99, conducted from October 1 through October 10 and November 19, 2018, and other supporting documents. This petition rests on just a fraction of the misconduct established at the formal hearing, but includes proof of misconduct sufficiently serious to warrant immediate action by this Court.

The Deputy Executive Director states as follows in support of this petition:

1. At all relevant times Hon. Theresa Brennan was a Livingston County district court judge assigned to the courthouse in Brighton, Michigan.

2. Beginning February 10, 2017, and continuing for the next seventeen months, the Commission conducted an investigation into allegations in Requests for Investigation 2017-22481, 2017-22577, and several additional Requests for Investigation, that respondent committed judicial misconduct.

3. The investigation disclosed evidence that supported several of the allegations in RFIs 2017-22481 and 2017-22577 and also demonstrated other improper conduct. Based on that evidence the Commission authorized Formal Complaint No. 99 (FC 99) against respondent, which was filed on June 12, 2018.

4. On June 14, 2018, this Court appointed retired 3rd Circuit Court Judge William J. Giovan to serve as master in the proceedings.

5. On July 23, 2018, the Commission authorized an amended formal complaint, which was filed on that date.

6. The amended formal complaint included several allegations that respondent was untruthful.

7. Respondent filed an answer to FC 99 on August 15, 2018.

8. A hearing on FC 99 took place before Judge Giovan from October 1 through October 10, 2018. On October 10 the hearing was recessed to November 19, when it was completed.[1] Commission Executive Director Lynn A. Helland acted as Examiner, and staff attorney Casimir Swastek acted as Associate Examiner.

9. In late September 2018, during the week before the October 1 beginning of the hearing, the Michigan State Police made the Examiner aware of significant evidence not previously known to the Examiner. The new evidence, coupled with portions of respondent's testimony and other evidence developed during the hearing, demonstrates that respondent tampered with evidence and perjured herself, both of which are felonies under Michigan law.

10. Because the Examiner was not aware of the evidence developed by the Michigan State Police, respondent's perjury and tampering with evidence were not charged in the Amended Formal Complaint. On November 20, 2018, the master granted the Examiner's motion to amend the complaint to include allegations of misconduct based on perjury and tampering with evidence.

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[1] The recess was to give respondent adequate notice, pursuant to MCR 9.208(C), of the evidence the Michigan State Police provided the Examiner within the week before the hearing began.

11. Based on the new evidence, including respondent's admissions during her sworn testimony in the hearing on FC 99 to facts that prove respondent lied under oath during her divorce deposition and tampered with relevant evidence in her divorce case, on November 21, 2018, the Examiner filed a motion and brief with the Commission requesting the Commission petition this honorable Court to suspend respondent without pay. Respondent filed a response to the motion on November 27, 2018.

12. The Commission considered the Examiner's motion and respondent's answer at the Commission's regularly scheduled meeting on December 10, 2018. On December 11, 2018, the Commission denied the motion.

13. On December 2, 2018 the Michigan Attorney General filed a criminal complaint charging respondent with three felony counts. An amended criminal complaint was filed on December 18, 2018. The amended complaint charges respondent with: 1) Perjury – Other than Court Proceeding, contrary to MCL 750.423; 2) Tampering with Evidence, contrary to MCL 750.483a(6)(a); and 3) Common Law Offenses, in violation of MCL. 750.505, based on respondent corruptly delaying the execution of a recusal order after she was assigned as the judge in her own divorce, and using the delay to dispose of evidence relevant to the divorce that was subject to an ex parte motion to preserve evidence prior to her recusal. A copy of the amended criminal complaint is provided as Attachment 1.

14. Respondent was arraigned on the criminal complaint on December 18, 2018, before the Hon. G. David Guinn of the 67th District Court.[2] The next action date in the case is a probable cause conference on January 16, 2019.

15. On December 20, 2018, the Master issued his report in FC 99.

16. On December 27, 2018, the Commission scheduled a public hearing on March 4, 2019, to hear objections to the Master's report. The Commission's scheduling order is Attachment 2.

17. On January 9, 2019, the Commission issued an order reconsidering its denial of the Examiner's motion to petition this Court to suspend respondent without pay, and authorizing the Executive Director to designate a Commission staff member to file this petition with this Court. The Commission's order is Attachment 3.

18. The Executive Director designated the Deputy Executive Director to file this petition. The Deputy Executive Director did not act as Examiner or Associate Examiner for the hearing in FC 99.

19. The evidence that supports this petition is as follows:

a. Prior to early December 2016, respondent's then husband, Donald Root, provided and paid for respondent's cell phone through his business. (Respondent Hrg Tr 1, p 148/18-22 (Attachment 4))[3]

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[2] Sitting by assignment after the entire Livingston County bench recused themselves.

b. Between December 1 and December 5, 2016, respondent and Root had a series of communications prior to the initiation of a divorce proceeding. (Respondent Hrg Tr 6, pp 1299/23 – 1302/13 (Attachment 5); Respondent Hrg Tr 8, pp 1695/23 – 1696/24 (Attachment 6); Ex. 4-10 (Attachment 7))

c. Respondent testified at the FC 99 hearing that one or two days before the divorce was filed, Root advised her that he wanted the cell phone returned to him. (Respondent Hrg Tr 6, pp 1335/15 – 1336/13 (Attachment 5))[4]

d. Root filed a complaint for divorce on Friday, December 2, 2016.[5] (Respondent Hrg Tr 1, p 105/20-23 (Attachment 4); Examiner's Exhibit 1-3 Register of Actions (Attachment 8))

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[3] Transcript references to the formal hearing on FC 99 are designated by witness name, the phrase "Hrg Tr" followed by a numeral for transcript volume (1-9, corresponding to October 1-5 and 8-10, and November 19), the relevant page numbers/line numbers, and the attachment number of the transcript. Transcript references to testimony respondent gave during her divorce deposition are designated by witness name, the phrase "Dep Tr" followed by the name of the case, the date of the deposition, the relevant page/line numbers, and the attachment number of the transcript. Exhibit references are to exhibits admitted at the formal hearing or stipulated for admission into the record.

[4] Text messages between respondent and Root during the period December 2-5, 2016, suggest a somewhat different story (although the merits of this motion do not depend on which scenario is correct). Text messages dated December 2, 2016, reflect that respondent wanted to retain her cell phone and attempted to obtain a new plan that was not maintained by Root's business. Root offered no objection. On December 5, 2016, respondent advised Root that she had to obtain a new cell phone as she could not transfer her old phone to a new plan. (Ex. 4-10 p 3 (12/1/16 8:39 p.m.); p 4 (12/2/16 7:14 a.m.); p 6 (12/2/16 2:34 p.m.); p 7 (12/5/16 6:10 p.m.) (Attachment 7))

[5] *Donald Root v Theresa Brennan*, 44th Circuit Court Case No. 16-7127-DO.

e. *Root v Brennan* was assigned to respondent pursuant to a local court order adopted in 2014 under which respondent was designated to preside over all Livingston County divorce proceedings without children. Those cases bore the docket number designation "DO." (Respondent Hrg Tr 8, p 1691/17-22 (Attachment 6))

f. A text from respondent to Root on December 2, 2016, that precedes Root's filing of the complaint for divorce, shows that respondent knew, before the divorce complaint was filed, that the case would be assigned to her and she was obligated to disqualify herself from the matter. (Ex. 4-10 p 5 (12/2/16 7:14 a.m.) (Attachment 7))

g. Respondent learned later on December 2, 2016, via a telephone call from Chief Judge David Reader, that Root had filed the complaint for divorce. (Respondent Hrg Tr 1, p 106/5-9 (Attachment 4); Reader Hrg Tr 2, pp 356/10 – 357/10 (Attachment 9))

h. After Root filed for divorce respondent was aware she had to disqualify herself from *Root v Brennan* since she was a named party in the divorce proceeding. (Respondent Hrg Tr 1, p 106/18-20 (Attachment 4))[6] Respondent failed to disqualify herself at that time. (Respondent Hrg Tr 1, p 108/16-25 (Attachment 4))

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[6] See MCR 9.2003(C)(1)(g).

i. On Tuesday, December 6, 2016, Root filed an ex parte motion for a mutual restraining order to preserve evidence (“the ex parte motion”) at the Howell court location.[7] (Pratt Hrg Tr 2, pp 319/4 – 320/6 (Attachment 10); Examiner’s Exhibit 1-3 (Attachment 8))

j. The ex parte motion sought to preserve financial and electronic evidence including “email messaging, text messages, phone records ... and other relevant data in the possession of [respondent] and her agents.” (Ex. 4-3 p 2 ¶4 (Attachment 11))

k. On December 6, at the direction of Judge Reader, his secretary Jeannine Pratt left a message for respondent to call her. Respondent called Ms. Pratt back at 11:47 a.m., at which time Ms. Pratt passed along Judge Reader’s message that the court needed her to sign an order disqualifying herself from *Root v Brennan*. (Pratt Hrg Tr 2, p 320/8-24 (Attachment 10); Ex. 4-9 p 2 (labeled as page 16 on the exhibit) (Attachment 12))

l. During the telephone call Ms. Pratt advised respondent that Root’s ex parte motion had been filed and told respondent she needed to disqualify herself from her divorce case because the other judges had to “sign off” and the disqualification had to be provided to the State

[7] All filings in Livingston County courts are done at the Howell court location, regardless of whether a matter is assigned to a judge sitting at the Brighton courthouse.

Court Administrative Office. Ms. Pratt told respondent she would come to the Brighton court during the afternoon of December 6 to pick up the signed disqualification order. (Pratt Hrg Tr 2, p 320/19-24; p 324/17-25 (Attachment 10))

m. During the phone conversation respondent asked for information about the motion. With the approval of Judge Reader, Ms. Pratt read the title and first paragraph of the motion to preserve evidence to respondent, and advised respondent she would email the motion to her. (Pratt Hrg Tr 2, pp 320/25 – 322/18 (Attachment 10))

n. Immediately after getting off the phone with Ms. Pratt, respondent spoke with her divorce attorney (phone number 616-831-1700) from 11:51 to 11:57 a.m. (Ex 4-6 p 3 (Attachment 13))

o. Ms. Pratt emailed the draft disqualification order to respondent at 11:57 a.m. on December 6. (Ex 4-2 (Attachment 14))

p. Ms. Pratt scanned the ex parte motion and emailed it to respondent at 11:58 a.m. on December 6. (Pratt Hrg Tr 2, p 322/8-18 (Attachment 10); Ex 4-3, (Attachment 11))

q. Ms. Pratt traveled to the Brighton court on the afternoon of December 6 to pick up respondent's signed order of disqualification. Respondent refused to sign the order and instead informed Ms. Pratt that she

needed to speak with her attorney. (Pratt Hrg Tr 2, p 328/1-12 (Attachment 10); Evans Hrg Tr 2, pp 407/17 – 408/4 (Attachment 15))

r. Robbin Pott served as respondent's research attorney starting on November 17, 2016. (Pott Hrg Tr 2, p 424/3-9 (Attachment 16))

s. Ms. Pott observed respondent's secretary, Tammi Morris, attempt to get respondent to sign the disqualification order and observed respondent refuse to sign it, causing Ms. Morris to be distressed. (Pott Hrg Tr 2, pp 426/16 – 427/16 (Attachment 16))

t. During the week of December 5, 2016, Ms. Pott overheard respondent speak to Ms. Morris and Felica Milhouse, respondent's court recorder, about how to delete email accounts, texts, and photos from her cell phone. (Pott Hrg Tr 2, pp 428/15 – 429/7 and 446/24 – 448/12 (Attachment 16))

u. Ms. Pott initially believed respondent's inquiry about deleting information from her cell phone must have been a joke, because she did not think a person would really do such a thing. She came to believe respondent was serious, though, in part because she heard respondent make the inquiry repeatedly; including asking a police officer, who came to the court to have a warrant signed, what the best way was to destroy a cell phone. She also believed respondent was

serious because she was simultaneously refusing to sign the disqualification order. Ms. Pott was so concerned she consulted a lawyer acquaintance to determine whether her own license to practice law might be at risk as a result of respondent's conduct (Pott Hrg Tr 2, pp 429/1 – 430/19 (Attachment 16))

v. Felica Milhouse, respondent's court recorder, was hired in October 2016. (Milhouse Hrg Tr 3, p 525/9-11; p 527/24-25 (Attachment 17))

w. Ms. Milhouse testified that a month or two into her employment, respondent made a request, either to Ms. Milhouse or to all of her staff, asking if they knew how to delete an email account from respondent's cell phone. (Milhouse Hrg Tr 3, pp 527/9 – 528/8 (Attachment 17))

x. Respondent handed her cell phone to Ms. Milhouse for Ms. Milhouse to determine whether there was a delete option contained in the settings of the phone. Ms. Milhouse could not discover how to delete information as requested by respondent using the settings on the cell phone. (Milhouse Hrg Tr 3, p 528/14-20 (Attachment 17))

y. As respondent and Ms. Milhouse entered the courtroom to begin a court proceeding, respondent directed Ms. Milhouse to call the pending case and then leave the courtroom to see whether she could

figure out how to delete the email account from the phone. (Milhouse Hrg Tr 3, pp 528/21 – 529/14 (Attachment 17))

z. After Ms. Milhouse called the case she left the courtroom, again attempted to review the settings on the phone to delete the account, and when that was not successful she conducted an internet search on how to delete the email account from the iPhone. (Milhouse Hrg Tr 3, pp 529/19 – 530/2 (Attachment 17))

aa. Respondent gave Ms. Milhouse the impression that the request to delete the email account was a matter of urgency that needed to be done right away. (Milhouse Hrg Tr 3, p 529/10-14 (Attachment 17))

bb. Ms. Milhouse did not believe respondent was joking when respondent asked her to delete the email account from her phone. While Ms. Milhouse researched how to delete a Hotmail account from respondent's iPhone, she felt pressure to complete that task and return to the courtroom because that was where her duty lay. (Milhouse Hrg Tr 3, p 530/3-19 (Attachment 17))

cc. Although Ms. Milhouse did not know exactly when respondent asked her for assistance with deleting information from her old iPhone, Ms. Milhouse stated that respondent's requests to delete the information were made right after the divorce case started, as she recalled

respondent advising her the cell phone account was in "his" name and "he" wanted the phone back because it was "his." (Milhouse Hrg Tr 3, p 532/8-15 (Attachment 17))[8]

dd. The parties stipulated that a forensic review of Ms. Milhouse's court computer revealed that between 10:00 a.m. and 5:45 p.m. on December 8, 2016, 72 internet searches were made on variations of the phrase "how to terminate [or delete or deactivate] a Hotmail account permanently." (Stipulation, November 2, 2018 (Attachment 18))[9]

ee. Respondent testified at the FC 99 hearing that during this same week she went to an AT&T store to purchase a new cell phone. At the store she had data copied from her old phone to the new phone. (Respondent Hrg Tr 6, pp 1337/20-21, 1339/18 – 1340/18 (Attachment 5))

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[8] Although not clear from Ms. Milhouse's testimony alone, Mr. Root provided the cell phone for respondent and is the "his" and "he" referenced by Ms. Milhouse.

[9] The parties entered into this stipulation during the formal hearing based on the information then available to them. Following the hearing the Michigan State Police provided the Examiner with additional investigative material, which the Examiner then provided to respondent. The new material, which has not been made part of the record, shows that the stipulation is incorrect in some respects that are immaterial to this petition, e.g. the number of internet searches on Ms. Milhouse's computer and the time period over which the searches took place, the date respondent purchased her new cell phone, and the extent to which store personnel would assist a customer to copy data from an old phone to a new phone.

ff. Respondent said some “glitches” were encountered when copying data from her old cell phone to her new cell phone. (Respondent Hrg Tr 6, p 1340/12-14 (Attachment 5))

gg. After respondent had data copied from her old phone to the new phone, she had her old phone reset to its factory settings. (Respondent Hrg Tr 6, pp 1341/22 – 1342/1 (Attachment 5); Respondent Hrg Tr 8, p 1701/8-23 (Attachment 6)). Respondent’s having the phone reset had the effect of removing all data from her old phone. (Stipulation, November 2, 2018 (Attachment 18))

hh. A forensic review of respondent’s old cell phone determined that it was reset to factory settings on December 8, 2016. (Stipulation, November 2, 2018 (Attachment 18))

ii. Because the phone had been reset to factory settings, a forensic examination of the phone could not determine what data, if any, was copied from the old phone to the new phone before the old phone was reset. It was also impossible to determine whether data that had been on the old phone was deleted without having been copied to the new phone. (Stipulation, November 2, 2018 (Attachment 18))

jj. At the time respondent made her inquiries about removing information from her old phone, and at the time she deleted data from

the old phone by having it reset to factory settings, she was aware that Root had filed a motion to preserve evidence. (Respondent Hrg Tr 8, pp 1699/1 – 1701/23 (Attachment 6))

kk. Respondent admitted during the hearing on FC 99 that she knowingly deleted, or caused to be deleted, information from the old phone. Respondent admitted that at the time she did so she knew that the phone was the subject of a motion to preserve evidence that was pending in her divorce case. (Respondent Hrg Tr 8, pp 1700/22 – 1701/23 & 1704/3-6 (Attachment 6))

ll. On December 8, 2016, Judge Reader received respondent's signed disqualification from her divorce case. The disqualification was dated December 7. Respondent testified that she signed the document on the morning of December 7 and then put it in the court mail system for delivery to Judge Reader in Howell that day. However, the order did not arrive in the court mail on December 7, although Ms. Pratt specifically asked the mail clerk to pick it up. In fact, respondent handed the signed order of disqualification to court administrator John Evans the next day, on the morning of December 8. (Ex. 4-5 (Attachment 19); Respondent Hrg Tr 6, pp 1320/5 – 1326/5

(Attachment 5); Pratt Hrg Tr 2, pp 329/20 – 330/24 (Attachment 10); Evans Hrg Tr 2, pp 411/21 – 412/21 (Attachment 15))

mm. On January 16 and February 9, 2017, respondent was deposed in *Root v Brennan*. She was placed under oath before providing testimony. (Ex. 1-13 (Respondent Dep Tr, *Root v Brennan,* January 16, 2017, p 4 (Attachment 20)); Ex. 1-14 (Respondent Dep Tr, *Root v Brennan,* February 9, 2017, p 110 (Attachment 21))

nn. During respondent's January 16 deposition she was asked the following questions and provided the following answers:

> Q. Okay. Did you ever go around at some point in time saying to your staff, anybody, I need to know how to delete stuff from this phone, did you say that to anybody?
>
> A. Jokingly I did.
>
> Q. You were joking?
>
> A. Yes.

(Respondent Hrg Tr 8, p 1704/12-18 (Attachment 6); Ex. 1-13 (Respondent Dep Tr, *Root v Brennan,* January 16, 2017, p 59/7-13 (Attachment 20))

oo. During the hearing on FC 99 respondent gave the following answers in response to the following questions about having asked for

assistance with deleting information from her old phone and about her prior deposition testimony concerning those requests:

> Q. You weren't actually joking, were you?
>
> A. Yes and no.
>
> THE MASTER: I'm sorry?
>
> THE RESPONDENT: I'd say -- excuse me. My voice. Yes and no.
>
> THE MASTER: Yes and no?
>
> THE RESPONDENT: Yeah. It's not -- it's not an absolute.
>
> THE MASTER: Well, the question asks whether you were sincerely requesting how to get the information deleted from the phone.
>
> THE RESPONDENT: I –
>
> THE MASTER: Did you mean that?
>
> THE RESPONDENT: I did.
>
> THE MASTER: Okay.
>
> THE RESPONDENT: I did.
>
> THE MASTER: So it wasn't a joke?
>
> THE RESPONDENT: Well, I guess it's my relationship with [Root's attorney], and I wasn't making it easy. So, yes, I did seriously want to take off my phone that I had to give back to [Root].

(Respondent Hrg Tr 8, pp 1704/19 – 1705/14 (Attachment 6))

pp. At the February 9, 2017, divorce deposition respondent gave the following answers in response to the following questions about how she had handled her old phone after learning that Root had filed for divorce:

> Q. All right. Did you ever reset your phone after -- do you know the difference between deleting and resetting the phone?
>
> A. No.
>
> Q. Okay. So you never took any steps to reset it, meaning get rid of everything that's on there by having it physically reset so all your apps go off, everything goes off that phone? Did you do that after?
>
> A. No. I never had all my apps go off the phone.

(Ex. 1-14 (Respondent Dep Tr, *Root v Brennan,* February 9, 2017, p 206/1-10 (Attachment 21)))

qq. During the hearing on FC 99 respondent gave the following answers in response to the following questions about having deleted the data from her old phone and about her prior deposition testimony with respect to having done so:

> Q. But you had taken steps to reset the phone, hadn't you?
>
> A. Well, see, there again, reset, delete, transfer – all of that I don't even know -- like I said, I wasn't even sure what he was asking about reset.

Q. Well, here. Let me repeat it, because he explained it.

> "QUESTION: So you never took any steps to reset it, meaning get rid of everything that's on there by having it physically reset?"

A. What was my answer?

Q. "No. I never had all my apps go off the phone." But that's –

A. Okay.

Q. Isn't that exactly what you had the technician do at the store when you bought the new phone?

A. Yes.

(Respondent Hrg Tr 8, pp 1706/15 – 1707/6 (Attachment 6))

rr. Later during the hearing on FC 99 respondent gave the following answers in response to the following questions about the testimony she gave during her deposition:

(By Mr. Helland)

Q. Right. Okay. My question was, when did you start changing the story you were giving about what you did with the phone? Was it after you learned that MSP was looking at it? Was it two weeks ago, excuse me, when you learned the results of MSP looking at it?

A. The next time that I've ever been asked about the phone would have been here, so –

Q. So here?

> A. Well, it's different than what I was willing to tell [Root’s attorney].
>
> Q. Significantly different. He asked, "Did you have the phone -- did you have information on the phone deleted?" You told him no. Here you're saying yes. That's different; you're right.
>
> A. I never intended on making [Root’s attorney's] job easy.

(Respondent Hrg Tr 8, pp 1708/20– 1709/9 (Attachment 6))

ss. Respondent also testified about having requested assistance to delete data from her old cell phone and having caused the old cell phone to be reset to its factory settings earlier in the FC 99 hearing. Although respondent’s answers to the questions asked during that part of her testimony concerning the cell phone and motion to preserve evidence were less responsive than those quoted above, respondent made clear that testimony she gave during her deposition was intended to not make it easy for Root’s attorney. (Respondent Hrg Tr 1, pp 140/18 – 155/4; see 154/16 (Attachment 4))

tt. Respondent never informed Root or anyone else that she had deleted the data from the old cell phone nor that she had attempted to transfer data from the old cell phone to a new cell phone. (Respondent Hrg Tr 8, pp 1701/24 – 1702/9 (Attachment 6))

uu. During the hearing on FC 99 respondent testified she thought it was acceptable to delete the data from her old phone without informing anyone she had done so, even though she knew the phone was then subject to a motion to preserve evidence. Respondent attempted to justify her actions by claiming that she had first copied unspecified data from the old phone to a new (but undisclosed) phone. (Respondent Hrg Tr 8, pp 1700/18 – 1704/6 (Attachment 6))

20. The evidence summarized above establishes that when respondent deleted the data from her old cell phone (or caused that data to be deleted) on December 8, 2016, she tampered with evidence in her divorce case, which was an official proceeding.

21. Respondent violated MCL 750.483a(5)(a), which makes it a crime to "[k]nowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in a present or future official proceeding." Violation of this statute is a felony punishable by a maximum 4 year prison sentence. MCL 750.483a (6)(a).

22. Respondent has been criminally charged with violating that statute in count 2 of the amended criminal complaint. (Attachment 1)

23. The evidence summarized above establishes that respondent committed perjury during her divorce deposition when she testified she was joking

when she asked about having data deleted from her phone, and again when she testified that she did not take steps to have her phone reset to its factory settings, in violation of MCL 750.423. Violation of MCL 750.423 is a felony punishable by a maximum 15 year prison sentence.

24. Respondent has been criminally charged with violating that statute in count 1 of the amended criminal complaint. (Attachment 1)

25. Respondent's tampering with evidence and her perjury during her divorce deposition, so she would not "make it easy" for her husband's attorney, is inconsistent with the most fundamental principles of the rule of law and demonstrates that respondent is not fit to be a judge. In the case of *In re Justin,* 490 Mich 394 (2012), reh den 491 Mich 870 (2012), (citing *In re Noecker,* 472 Mich 1 (2005) at 17-18) this Court stated at 424 (emphasis original):

> Because the record fully supports the finding that respondent lied under oath, the appropriate sanction is removal from office. Respondent's act of lying under oath categorically renders him unfit for office. As this Court has noted,
>
>> [o]ur judicial system has long recognized the sanctity and importance of the oath. An oath is a significant act, establishing that the oath taker promises to be truthful. As the "focal point of the administration of justice," a judge is entrusted by the public and has the responsibility to seek truth and justice by evaluating the testimony given under oath. *When a judge lies under oath, he or she has failed to internalize one of the central standards of justice and becomes unfit to sit in judgment of others.*
>
> The Court also noted that;

> *[S]ome misconduct, such as lying under oath, goes to the very core of judicial duty and demonstrates the lack of character of such a person to be entrusted with judicial privilege.*
>
> *...Lying under oath, as the respondent has been adjudged to have done, makes him unfit for judicial office. [FN 57]*
>
> [FN 57] *Noecker*, 472 Mich at 17-18 (YOUNG, J., concurring) (emphasis added; citations omitted).

26. In addition to respondent's admissions to facts that show she committed perjury and tampered with evidence, the evidence at the formal hearing established a pattern of lies and misrepresentations made by respondent to the Commission and in her sworn testimony during the hearing on FC 99.

27. Included in respondent's lies and misrepresentations established by the record in the formal hearing is her concealment of relevant facts about, and the true nature of, her relationships with Michigan State Police Detectives Sean Furlong and Chris Corriveau, witnesses in *People v Kowalski*, case no. 08-017643 FC. Detective Furlong was the key witness in the case as he had taken the defendant's alleged confession to the double homicide. (Piszczatowski Hrg Tr 4 p 921/9-13 (defense attorney in *Kowalski*) (Attachment 25)) Respondent's relationships with Furlong and Corriveau were why counsel in *Kowalski* met with respondent on January 4, 2013 (the Friday before the Monday trial date). (Examiner's Exhibit 1-6 transcript January 4, 2013 (Attachment 22); Respondent Hrg Tr 1, pp 204/22 – 210/22 (Attachment 4))

28. On that date, when asked about the relationships, respondent concealed highly relevant information regarding her relationship with Furlong, such as the frequency of her phone calls and texts and her socializing with him, and lied about her treatment of Corriveau when he came to her court for search warrants. Respondent falsely communicated to counsel that her relationship with Furlong was a routine social and professional relationship. (Examiner's Exhibit 1-6, Transcript January 4, 2013 (Attachment 22); Piszczatowski Hrg Tr 4 pp 925/13-16, 930-941 (Attachment 25))

29. Respondent denied Kowalski's motion to disqualify. Respondent's concealment and lies were material because they denied the parties in *Kowalski* and Chief Judge Reader, on review of the motion to disqualify, an accurate understanding of how strong respondent's relationship was with Furlong. (Piszczatowski Hrg Tr 4 p 941/12-24 (Attachment 25))

30. There was extensive evidence at the formal hearing that respondent knowingly concealed the extent of the relationship that she had with Furlong during the years Kowalski was assigned to her. Because the evidence is extensive it is not appropriate to include it all in this petition. The fact that respondent's relationship with Furlong was more than a routine social and professional relationship is succinctly illustrated by the frequency and length of their phone and

text communications, as shown by Exhibits 1-21 (Attachment 26)[10], 1-24 (revised) (Attachment 27), and 1-31 (Attachment 28).[11]

31. Exhibit 1-21 (Attachment 26) shows the number of telephone call minutes (excluding calls of 1 minute or less) between respondent and Furlong for each of the 14 months before the *Kowalski* trial started at the beginning of January 2013.[12] It shows that respondent spoke with Furlong on the phone for a total of nearly one hour to just over two hours every single month during that period.[13]

32. Exhibit 1-24 (revised) (Attachment 27) shows that respondent spent more time on the phone with Furlong during that period than with any other person except of one her sisters, who barely edged Furlong out.

33. Exhibit 1-31 (Attachment 28) shows that from July 21, 2008 until before the *Kowalski* trial respondent and Furlong spoke a total of more than *1500* times, and texted another 400 times.[14] (Ex. 1-31, dates 7/21/2008 to 12/28/2012

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10 Ex 1-21 (Attachment 26) was not individually labelled as it was part of a digital disc with other digital exhibits.

11 Attachment 28 is not labelled with an exhibit sticker because it is taken from Ex 1-31 that was on a digital disc. The disc was labelled as Ex 1-31.

12 The *Kowalski* case was assigned to respondent on March 9, 2009. The trial was delayed by interlocutory appeals regarding the admissibility of the defendant's proffered experts relating to defendant's confession. (see COA Case Number: 294054 and MSC Case Number: 141932) On January 4, 2013, the prosecution and defense received a letter alleging a relationship between respondent and Detective Sean Furlong (Piszczatowski Hrg Tr 4, pp 922/19-925/12 (Attachment 25)). Respondent conducted a pretrial on the defense motion to disqualify respondent. The trial began January 7, 2013, and the jury verdict finding defendant guilty of two counts of first degree murder was rendered on January 28. Respondent sentenced defendant on March 5, 2013.

13 Exhibit 1-21 (Attachment 26) shows that in the two lowest months (February and August 2012) the total was 59 minutes, and in the highest month (November 2012) it was 124 minutes.

14 Exhibit 1-31 is a chronological list (from Furlong's phone records) of all calls and texts between respondent's cell phone ((810) 599-9827) and Furlong's cell phone ((734) 637-5688) between July 21, 2008, and December

(Attachment 28)) All of these contacts were social. (Respondent Hrg Tr 10/1/18, pp 165/19-23, 169/10-12 (Attachment 4); Examiner's Ex. 1-14 Respondent Dep Tr 2/9/17, p 120/2-9) (Attachment 21)).

34. Exhibit 1-31 also shows that respondent called Furlong, the key prosecution witness, three times for a total of more than a half hour *during the trial*, and that she and Furlong exchanged 14 texts *during the trial*. (Ex. 1-31, dates 1/8/2013 to 1/19/13) (Attachment 28); Respondent Hrg Tr 1, p 226/7-20 (Attachment 4)) Finally, Exhibit 1-31 shows that respondent and Furlong had another 26 calls, speaking for a total of more than four hours, and texted each other about 200 times, between the end of the trial and Kowalski's sentencing. (Ex. 1-31, 1/19/2013 to 3/5/2013 (Attachment 28); Respondent Hrg Tr 1, pp 234/20 – 236/8 (Attachment 4))

35. After reviewing of the evidence established at the hearing on FC 99, the Livingston County Prosecutor's Office stipulated with Mr. Kowalski's counsel to vacate the defendant's convictions and grant the defendant a new trial. On January 8, 2019, 35th Circuit Court Judge Matthew Stewart signed an order

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17, 2014. Attachment 28 consists of those calls from Exhibit 1-31 between July, 21, 2008, and March 8, 2013 (the sentencing date in *Kowalski* was March 5, 2013). The list shows the date and time of the contact, whether the contact is a text or a call, the duration of all calls, and whether the contact originated with respondent's phone or Furlong's phone. The information in this list was provided to the Examiner by the Michigan State Police on the eve of the hearing in the formal complaint.

vacating the convictions and granting a new trial.[15] (Attachment 23) The order states in part,

> By stipulation of the parties to entry of this Order; after a thorough review of the conduct of the trial judge in this case, Judge Theresa M. Brennan, the parties having agreed that her failure to recuse herself from conducting the trial in this matter establishes "a probability of actual bias on the part of the judge…too high to be constitutionally tolerable" under the Due Process Clause as established by *Caperton v AT Massey Coal Co,* 556 US 868 (2009), and that such conduct constitutes a structural error requiring reversal of Defendant's convictions; and the parties otherwise agreeing to the terms and conditions of this Order as the appropriate remedy;

36. Respondent's conduct in *Kowalski*, including her misrepresentations, has directly resulted in vacating two 2013 first degree murder convictions for a 2008 crime. The prosecutor now must retry a case that is over ten years old.

37. Respondent's lies and misrepresentations concerning her relationship with Furlong were clearly prejudicial to the administration of justice.

38. In *In re Adams*, 494 Mich. 162 (2013), this Court removed Hon. Deborah Ross Adams from the bench because she gave false testimony and forged her attorney's signature to documents during her divorce proceedings. The Court stated that because Judge Adams had engaged in deceit and intentional misrepresentation, removing her from judicial office was "necessary to restore and maintain the dignity and honor of the judiciary and, most importantly, to protect the public." *Id*. at 187. The Court removed Judge Adams although this was her

[15] Sitting by assignment upon the recusal of the entire Livingston County bench.

only misconduct and although, at the time of her divorce, she was enduring significant personal turmoil as a result of her daughter's suicide.

39. Respondent's actions with respect to her divorce, as summarized above, are comparable to Judge Adams's actions that resulted in her removal from the bench, with two significant differences: there are no mitigating circumstances in this case comparable to the mitigating circumstances that were nonetheless insufficient to excuse Judge Adams's misconduct; and the allegations asserted in the second amended complaint and pending in FC 99 reflect much more wide-ranging misconduct by respondent than was ever alleged against Judge Adams, including lies told under oath by respondent in several contexts other than just her divorce and her relationship with Furlong.

40. On June 13, 2018, current Livingston County Chief Judge Miriam Cavanaugh removed respondent from her docket. (Judge Cavanaugh's press release, Attachment 24). Although respondent has not heard cases since June, she has continued to enjoy the other perquisites of being a judge in the State of Michigan.

41. The purpose of the judicial disciplinary system is to preserve the integrity of the judiciary. The public's confidence in the judiciary is eroded when a judge continues to enjoy the perquisites of her office after having admitted to

engaging in felonious conduct more serious than that which caused this Court to remove another judge from the bench.

42. In order to maintain the public's confidence in the courts and to maintain the integrity of the judicial system, the Deputy Executive Director, with the Commission's permission, asks this Court to suspend respondent without pay, with respondent's pay to be held in escrow pending final resolution of the formal proceedings.

43. The Michigan Supreme Court has previously ordered suspension without pay while a disciplinary action was pending. See, *e.g.:*

(a) Formal Complaint No. 11 (Hon. Frank S. Szymanski), suspended without pay in January, 1977 (Michigan Supreme Court Docket No. 55510).

(b) Formal Complaint No. 27 (Hon. Edward W. Lawrence), suspended without pay in May of 1983 (Michigan Supreme Court Docket No. 70171).

(c) Formal Complaint No. 29 (Hon. Evan H. Callanan, Sr.), suspended without pay in October of 1983 (Michigan Supreme Court Docket No. 72548).

(d) Formal Complaint No. 79 (Hon. Martin Bradfield) suspended without pay in 2006 (Michigan Supreme Court Docket No. 128843).

(e) Formal Complaint No. 93 (Hon. Wade H. McCree), suspended without pay in 2013 (Michigan Supreme Court Docket No. 146826).

44. In order to maintain the public perception of fairness in the courts and in order to maintain the integrity of the judicial system, respondent must be suspended pending final resolution of this matter.

WHEREFORE, the Deputy Executive Director, with the permission of the Michigan Judicial Tenure Commission, respectfully requests that this Court enter an order suspending respondent, without pay, from her judicial position pending final adjudication of the formal complaint, and placing her salary in escrow during that time.

Respectfully submitted,

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Glenn J. Page (P 31703)
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Dated: _________________________