

STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

Hon. Byron J. Konschuh
40th Circuit Court
255 Clay St.
Lapeer, Michigan 48446

Formal Complaint No. 100

Master: Hon. William J. Caprathe

Judicial Tenure Commission
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ORDER ADJOURNING MAY 4, 2020, HEARING AND SCHEDULING ORDER

On March 23, 2020, the Chairperson issued an Order adjourning the hearing before the Commission which was scheduled to occur on April 4, 2020. The adjournment was based upon the advent of the Covid 19 Pandemic and the reasons for the adjournment were set forth in the order. The matter was re-scheduled for May 4, 2020.

On Monday April 27, 2020, the Chairperson for the commission held a conference call with Don Campbell, Trent Collier, and Lynn Helland, to update counsel in this matter on logistical difficulties that continued to be present relative to conducting the May 4, 2020, hearing. Essentially, due to the continuation of the shelter in place order issued by the governor, as well as various administrative orders issued by the Supreme Court, and the closure of various Court facilities and limitation of staff in those facilities, the Chairperson advised all counsel that the ability to conduct the hearing under the framework of utilizing polycom, as previously identified, at various Court/SCAO/JTC facilities was compromised.

During the conference call, the Chairperson identified two options for counsel. The first option was to proceed with the hearing utilizing Zoom technology. The second option was to adjourn the hearing.

Both counsel expressed objection to conducting the hearing via Zoom technology.

The Chairperson advised counsel he would honor counsels' objections to use of Zoom. Accordingly, the hearing scheduled for May 4, 2020, in this matter is hereby adjourned.

The matter will be re-set for hearing on Friday, May 29, 2020. The time, location, and other logistical details will follow in a separate order.

The Chairperson further notes in this Order some considerations that have occurred to him after the phone conference. These were positions not shared in the phone conference and so

the Chairperson shares them with counsel now, so that if they wish to prepare pleadings to address these comments they are on notice.

The Chairperson notes that various concerns were raised during the call related to use of Zoom technology for the hearing. The Chairperson is attune to those concerns. The Chairperson will continue to investigate whether there are ways to mitigate the concerns raised by counsel. The Chairperson identifies this point because it is unclear at this juncture how many more (if any) shelter in place orders and/or Supreme Court administrative orders (of a new nature or extending prior Administrative Orders) will issue between now and May 29, 2020. Further, the Chairperson recognizes that Court facilities may continue to be closed after the expiration of the governor/supreme court orders currently in place. If such a scenario occurs, and counsel still objects to use of Zoom they may wish to memorialize their objections in writing, for the record. The Chairperson notes this because if the concerns of counsel can be resolved through a live in person hearing, that is the preference of the Chairperson. However, if that option is not available (which may very well be the scenario facing all concerned) that may necessitate further consideration of Zoom, even over objection of counsel. To hopefully put a clearer point on the issue, if the options available to the Commission are to simply keep adjourning the hearing until a live in person hearing can occur or to have a Zoom hearing because the Commission does not have the means to have a live in person and/or polycom hearing as initially planned, then the Chairperson is likely to require a hearing via Zoom, even over objection of counsel. The Chairperson identifies this position because the first option of multiple future adjournments would not be appropriate given that there is a reasonable probability that the ability to hold a live in person hearing is not likely to change dramatically in a positive way, in a timely manner.

SO ORDERED.

Dated: April 29, 2020



Hon. Monte J. Burmeister P48732
Chairperson of the Judicial Tenure Commission