STATE OF MICHIGAN
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

Hon. Jeanette O'Banner-Owens
36th District Court
421 Madison
Suite 3068
Detroit, MI 48226
_____/

Docket No.
Formal Complaint No. 80

COMPLAINT

The Michigan Judicial Tenure Commission ("JTC") files this complaint against Honorable Jeanette O'Banner-Owens ("Respondent"), 36th District Court Judge, Detroit, Michigan. This action is taken pursuant to the authority of the Commission under Article 6, Section 30 of the Michigan Constitution of 1963, as amended and MCR 9.200 *et seq*. The filing of this Complaint has been authorized and directed by resolution of the Commission.

1. Respondent is, and at all material times was, a judge of the 36th District Court in Detroit, Michigan.

2. As a judge, Respondent is subject to all the duties and responsibilities imposed on her by the Michigan Supreme Court, and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205.

COUNT I: DEMEANOR/INAPPROPRIATE COMMENTS

3. Respondent has frequently demonstrated an unnecessarily harsh demeanor, interrupted witnesses excessively, made inappropriate and sarcastic remarks and unjustified threats of contempt. Examples include, but are not limited, to:

A. (*Evelyn Dubose v Honda Collier and Gary King*, Case No. 05-201411 SC)

(1) The plaintiff in *Evelyn Dubose v Honda Collier and Gary King*, Case No. 05-201411 SC, sued the defendants in small claims regarding a claim of alleged property damage to a fence.

(2) On information and belief, the defendants, Gary King and Honda Collier, are husband and wife.

(3) On May 31, 2005, the parties had appeared before Magistrate Thomas Shannon who ruled in favor of the defendants.

(4) Plaintiff Dubose filed a "claim of appeal" on June 8, 2005.

(5) On July 1, 2005, Respondent presided over Ms. Dubose's appeal.

(6) During the July 1, 2005 hearing, Respondent made several inappropriate and offensive remarks reflective of an unacceptable prejudgment before any testimony was presented, characterizing Ms. Collier as a "renegade," someone engaging in "illegal" activity who was trying to "hoodwink and bamboozle," harass and intimidate Ms. Dubose, while referring to Ms. Dubose as a "gentlewoman," and telling her to keep on talking and to take her time.

(7) Respondent claimed to be allowing Ms. Collier to speak, but repeatedly cut her off, even when she was trying to respond to a question.

(8) Respondent also employed inappropriate biblical and religious references to suggest Ms. Collier was acting immorally.

(9) After awarding plaintiff Dubose damages that exceeded both the amount she had claimed and the amount Respondent had calculated, Respondent warned Ms. Collier to stay off plaintiff's property. Ms. Collier responded no one was

on plaintiff's property. Respondent then made comments demonstrating excessive concern for the plaintiff, suggested she wait before departing, and implied she had something to fear from Ms. Collier.

B. (*Tonya M. Thomas-Barnes v Cassandra Marshall, Case No. 04-202751*)

(1) In *Tonya M. Thomas-Barnes v Cassandra Marshall*, Case No. 04-202751, the parties appeared before Respondent on June 27, 2005, *in pro per,* for a final pretrial conference.

(2) During the June 27, 2005 pretrial, Respondent scheduled a bench trial for August 29, 2005, and advised the parties to notify their witnesses, after which she asked Ms. Barnes, "This was sold in a Sheriff's sale?"

(3) For some reason, Respondent then proceeded to "try" the matter she had just scheduled for trial on August 29, 2005, without swearing the parties in or giving them the opportunity to fully prepare, present their witnesses or evidence.

(4) Respondent denied Ms. Marshall any meaningful opportunity to state her position, made incorrect assumptions and remarks suggesting unacceptable prejudgment against Ms. Marshall, without having heard or understood the facts,and exhibited a sarcastic demeanor toward her.

(5) Respondent concluded the pretrial conference by dismissing the case and granting the counterclaim.

C. (*BDB Properties, LLC v Khadijah Ahmad*, Case No. 04-145195)

(1) In *BDB Properties, LLC v Khadijah Ahmad*, Case No. 04-145195, Respondent presided over the plaintiff's motion for reconsideration and oral argument on July 20, 2005. Respondent had previously ordered the plaintiff to return moneys properly paid by the defendant tenant to the Plaintiff.

(2) Respondent disparaged the plaintiff, based on Respondent's own failure to understand the matter before her, with comments such as:

> THE COURT: [I]t's just a case of a person trying to do right and living in the building. Plaintiff *abused every method to nickel and dime to get her after she just tried to pay it off.* I'm satisfied. If the matter was before me again, and I heard such a case of egregiousness. *Where a person actually brings you a check and they still get a garnishment* for additional monies, after they've moved and paid everything off, and tried to do the best they could in moving. Counselor, I'm not persuaded. (TR, pp. 15 – 16, emphasis added)
>
> * * *
>
> In this case, I just believe it is not the ordinary case, but *I've never seen anyone that is so bent on continuing to collect from a person who has tried to be as gracious as possible in moving out of the building and giving the keys back.* And having the approval of the people that work there to help her move.
>
> So, I'm going to leave it as it is counselor. Of course, you're very welcome whatever your rights to appeal to my brother and sister judges over in Circuit Court.

D. Prior Incidents: (a) *Miller v Singh*, Case No. 2001-20290 and (b) *Maxtara Contractors Inc v Hernetha Hamilton*, Case No. 2003-201587

(a) *Miller v Singh*, Case No. 2001-20290

(1) In *Miller v Singh*, Case No. 2001-20290 (set forth more fully in Count II, E (a) par. (1), on October 12, 2001, Respondent repeatedly cut off Mr. Singh, who is from India and speaks with an accent, preventing him from explaining his position, angrily referred to his lease agreement and attempt to mitigate damages by protecting his house after it was abandoned by the tenant as "illegal" and "immoral" acts toward the tenant, an African American who Respondent emphasized was a "citizen of the City of Detroit, County of Wayne, State of Michigan" while repeatedly emphasizing Mr. Singh was not.

(2) Respondent, without justification, found Mr. Singh in contempt and ordered him into the "box," directed the opposing party to obtain a transcript of proceedings and take it to the police, and wrongly implied Mr. Singh had committed a crime.

(3) On August 21, 2002, Respondent continued to disparage Mr. Singh in remarks to his attorney, stating she believed Mr. Singh "macked [sic] him for the money for $100 a month extra" and referred to Mr. Singh "like he is the gestoppel [sic]."

(b) *Maxtara Contractors, Inc., d/b/a Bathtub Liners of Michigan, Inc., v. Hernietha Hamilton*, Case No. 03-201587

(1) In the small claims case, *Maxtara Contractors, Inc., d/b/a/ Bathtub Liners of Michigan, Inc., v. Hernietha Hamilton*, Case No. 03-201587, set forth more

fully in Count II, par. E(b), Mr. Oslund, representing his plaintiff corporation, mentioned that although it was a default, the Magistrate had gone over the evidence.

(2) Respondent, who had already incorrectly claimed he needed an attorney, responded angrily by unjustifiably threatening him with contempt, and arbitrarily granting the defendant's objection to the garnishment:

> THE COURT: Let me say this, sir. *Number one, you're going to be sitting in the box because no one argues with me. So I'm going to ask you to watch your demeanor, because you really need an attorney to represent you.* Because you may find yourself in a situation that you don't want to be in. I'm looking at the Judge's order. If I say it's a nonappearance default, that's exactly what it is. You need an attorney... Objection to garnishment granted. (*Maxtara* Transcript, p. 8)

E. Miscellaneous Inappropriate Comments

(1) Respondent has frequently made disparaging comments to litigants, court employees, and others to the effect that "when intelligence leaves the room, only ignorance is left" and "some people have class that money can't buy."

(2) With respect to solicitation cases, Respondent has on occasion made comments to the effect that Eight Mile Road is not a boundary but "they" come into Detroit to do their dirty work.

(3) In speaking with other judges Respondent frequently makes comments of a religious nature, including, but not limited to, stating her "life is in God's hands," "God is good," and "I am blessed," and greeting others as a "sister in Jesus."

4. Respondent's conduct, as alleged in Count I, constitutes the following violations of judicial conduct standards:

a. Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;

b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30, and MCR 9.205;

c. Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Michigan Code of Judicial Conduct ("MCJC"), Canon 1;

d. Failure to bear in mind that the judicial system is for the benefit of the litigant and the public, not the judiciary, contrary to MCJC, Canon 1;

e. Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;

f. Failure to respect and observe the law and to conduct yourself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to MCJC, Canon 2B;

g. Failure to be faithful to the law and to maintain professional competence in it, contrary to MCJC, Canon 3A(1);

h. Failure to be patient, dignified, and courteous to those with whom you deal in an official capacity, contrary to MCJC, Canon 3A(3);

i. Demonstrating a severe attitude toward witnesses, tending to prevent the proper presentation of the cause or ascertainment of the truth, and failure to avoid a controversial manner or tone in addressing litigants or witnesses, in violation of MCJC, Canon 3A(8)

j. Abuse of the contempt power;

k. Lack of personal responsibility for her own behavior and for the proper conduct and administration of the court in which she preside, contrary to MCR 9.205(A);

l. Persistent incompetence in the performance of judicial duties, contrary to MCR 9.205(B)(1)(a);

m. Persistent failure to treat persons fairly and courteously, contrary to MCR 9.205 (B)(1)(c);

n. Treating persons unfairly or discourteously because of the person's race, gender, or other protected personal characteristic, contrary to MCR 9.205(B)(1)(d);

o. Conduct prejudicial to the administration of justice, in violation of to MCR 9.104(1);

p. Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(2);

q. Conduct contrary to justice ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and

r. Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(4).

COUNT II: LACK OF KNOWLEDGE/INCOMPETENCE

5. Respondent has frequently voiced erroneous legal opinions and issued erroneous rulings, demonstrating a lack of competence inexcusable in an experienced judge. Examples include, but are not limited to:

A. (*People v Evuard Roovell Lazar*, Case No. 525982)

(1) On January 19, 2005, Respondent presided over a plea hearing in *People v Evuard Roovell Lazar*, Case No. 525982, a misdemeanor case of operating while intoxicated ("OWI") involving a rear-end accident.

(2) Mr. Lazar, a resident of Grosse Pointe, was represented by attorney Gary Wilson. Mr. Wilson advised Respondent that Mr. Lazar wished to tender a plea of no contest to the charges of operating while intoxicated.

(3) Respondent replied, "Can't do it for a no contest" but "he can establish a plea." Respondent then asked for the "reason that he has to have it no contest?" Mr. Wilson replied that there had been an accident with an alleged injury.

(4) Respondent appeared confused as to the purpose of a *nolo contendere* plea. She first denied that one of the reasons was to protect from civil liability, claiming "*nolo contendere* is reserved for two reasons. *And that wouldn't be to protect him from civil liability if he's injured another citizen*" and then almost immediately admitting the reasons are "You're too drunk to remember, *or either to protect him from civil liability.*"

(5) In denying the defendant's plea, Respondent made comments that reflected her ruling was motivated by bias or created the appearance of bias.

B. (*Evelyn Dubose v Honda Collier and Gary King*, Case No. 05-201411 SC)

(1) The plaintiff in *Evelyn Dubose v Honda Collier and Gary King*, Case No. 05-201411 SC, sued the defendants in small claims regarding a claim of alleged property damage to a fence.

(2) During the July 1, 2005 hearing, as set forth more fully in Count I A, Respondent made several disparaging remarks and exhibited a harsh demeanor suggestive of bias or prejudgment in favor of the plaintiff and against defendant Collier.

(3) Ms. Collier purchased a house next to the plaintiff. The house lacked a driveway. Ms. Collier obtained a survey revealing the plaintiff had encroached on the property by 17 inches necessary for the driveway installation, necessitating the temporary removal of a fence and storage shed.

(4) Respondent insisted Ms. Collier acted "illegally" by not obtaining prior court authority.

(5) The plaintiff had sought $2,483.85 in alleged damages. Respondent calculated a total of $2,533.00 in damages but awarded plaintiff $3,000.00 plus costs. (*Dubose* TR, pp. 12, 22)

(6) On rehearing, Judge Bradfield reduced the award to $1,601.85 plus costs.

C. (*Tonya M. Thomas-Barnes v Cassandra Marshall, Case No. 04-202751*)

(1) In *Tonya M. Thomas-Barnes v Cassandra Marshall*, Case No. 04-202751, the parties appeared before Respondent on June 27, 2005, *in pro per,* for a final pretrial conference at which Respondent scheduled a bench trial for August 29, 2005 on the plaintiff's counter-complaint, and advised the parties to notify their witnesses.

(2) Respondent then asked Ms. Barnes, "This was sold in a Sheriff's sale?" and proceeded to "try" the matter, without the parties having been sworn in, or having the opportunity to prepare and present witnesses or evidence.

(3) Respondent appeared to have prejudged the matter and demonstrated a sarcastic demeanor toward Ms. Marshall, interrupted her and denied her any meaningful opportunity to explain her position.

(4) Respondent concluded the pretrial conference by dismissing the case and granting Ms. Thomas-Barnes' counterclaim.

(D) (*BDB Properties, LLC v Khadijah Ahmad*, Case No. 04-145195)

(1) In *BDB Properties, LLC v Khadijah Ahmad*, Case No. 04-145195, set forth more fully in Count I C, the Plaintiff had received a default judgment against the defendant tenant Ahmad. After receiving notice her wages were going to be garnisheed, the defendant paid the plaintiff.

(2) The plaintiff released the garnishment and was ready to issue a satisfaction of judgment. On April 18, 2005, the defendant filed an objection to the garnishment. Respondent presided over the hearing on May 4, 2005 and ordered release of the monies the defendant had paid.

(3) Plaintiff filed a motion for reconsideration and oral argument. On July 20, 2005, Respondent presided over the hearing on the plaintiff's motion.

(4) Both the plaintiff and defendant tenant had explained that the tenant had paid the amount of the judgment, $2,743.18, *after* the garnishment, yet Respondent was unable to grasp the situation:

THE COURT: Now, you were saying that you walked into their office?

MS. AHMAD: Paid them the $2,700 –

THE COURT: -- forty-three dollars and 18 cents.

THE COURT: Right. *Then after that, they filed a Motion to Garnish you?*

MS. AHMAD: *No, they filed the Motion to Garnish me first. Then I paid it.* (TR, p. 8, emphasis added)

(5) In her ruling, Respondent misstated the facts with respect to the timing of the garnishment, notwithstanding having been advised by *both* parties that the defendant paid the money owed *after* the garnishment. Respondent also demonstrated an inability to comprehend the issue at hand, resulting in the incomprehensible order that plaintiff return the payment made by defendant pursuant to the garnishment.

E. Prior Incidents: (a) *Miller v Singh*, Case No. 2001-20290 and (b) *Maxtara Contractors Inc v Hernetha Hamilton*, Case No. 2003-201587

(a) (*Miller v Singh*, Case No. 2001-20290)

(1) In *Miller v Singh*, Case No. 2001-20290, Respondent misstated the law, falsely implied Mr. Singh had committed a crime and unjustifiably threatened him with contempt:

THE COURT: Let me caution you. *Because you've given me enough information that your acts are criminal.* It does not comply with landlord tenant law in the State of Michigan. *And you're going to have a hard time in the City of Detroit, County of Wayne* where you have gone over there and the person has paid to July 31st. And you used self-help, and

lock out any property. You cannot lock a person out ever. *It's illegal, not only immoral.* I don't care what these pictures is; do you understand me Mr. Singh?

MR. SINGH: Ma'am, ma'am, I do understand but—

THE COURT: *Mr. Singh have a seat in the box. You're illegal and you're wrong.*

MR. SINGH: Ma'am unless—

THE COURT: *Mr. Singh I caution you. Cause it's going to cost you when I* [sic] *you start talking when I haven't asked you to. You're illegal. You're against the laws in the State of Michigan.*

Any time you go over and lock, change locks on a person, and they have not paid rent for a month is only when you're able to file a suit. But the law says that you never take yourself over there and change the locks on a party anywhere in the State of Michigan. You can go to the 52 states. *The law does not allow you to do that in America. And when you do that, you're going to find yourself in places that you never been.*

This Court is looking at you today 'cause you're in contempt of court. When I'm talking, if you continue to tell me of an illegal act, that we have you on the record in stating that you did to a citizen of the City of Detroit, County of Wayne, State of Michigan. It's illegal. Not only immoral, it's illegal. And I've heard enough on the record, that is illegal in any state.

You're using *vigilante* that you can't do. Check with any legal office. Check with the one that's in your jurisdiction; Beverly Hills, Michigan. Where a former governor came from, Jim Blanchard. It's illegal. And no governor will allow it. No president of the United States would allow it. So you're going to have some problems. And when you start tell me about some pictures after you admitted to me that you changed the locks on a person's house, you're gone beyond the law. And it's unacceptable.

You don't want me to exercise any powers when you're in contempt suspontae [*sic*]. *You can go to jail today, forthwith, without a trial.* And if you don't believe the Court, you call the judges of Beverly Hills, Michigan.

They'll tell you the same thing. (*Miller v Singh*, 01-20290, October 12, 2001, TR, pp. 22 – 24)

(b) (*Maxtara Contractors, Inc., d/b/a Bathtub Liners of Michigan, Inc., v. Hernietha Hamilton*, Case No. 03-201587)

(1) In *Maxtara Contractors, Inc., d/b/a/ Bathtub Liners of Michigan, Inc., v. Hernietha Hamilton*, Case No. 03-201587, Respondent committed legal error in insisting the plaintiff corporation could not appear in small claims without an attorney, a position contrary to fundamental small claims law, and unjustifiably threatened the plaintiff representative with contempt.

(2) Mr. Jeffrey S. Oslund appeared before Respondent on behalf of plaintiff Maxtara Contractors in the small claims matter. Respondent denied his corporation its day in court by denying its statutory right to represent itself, and ignored a motion to reconsider and to have the matter removed from Small Claims to District Court.

(3) Respondent told Mr. Oslund he needed an attorney and asked him if he wanted the matter adjourned so that his attorney could "come forward." He responded, "Absolutely, your honor."

(4) Notwithstanding Respondent's erroneous statement and Mr. Oslund's response, she denied him the right to counsel, threatened him with contempt for no reason, and arbitrarily granted the defendant's objection to garnishment.

(5) When Mr. Oslund explained he represented Maxtara Contractors as president of the corporation Respondent stated: "Okay, so then you must be represented by an attorney. And you should know that." Mr. Oslund replied: "This small claims matter that I'm on?" (*Maxtara* TR, p. 4)

(6) After yet again misinforming Mr. Oslund that the plaintiff corporation needed an attorney, Respondent asked him: *"So what do we do here? Do you want me to adjourn this so your attorney can come forward?"* (TR, p. 7, emphasis added)

(7) When Mr. Oslund responded in the affirmative, Respondent directed him to the Wolverine Bar Association:

> THE COURT: You need an attorney too. The Wolverine Bar Association is the African-American Bar Association that would give you corporate representation. Let me ask you sir, so didn't get the work so why are you –

(8) Mr. Oslund mentioned that although it was a default, the Magistrate had gone over the evidence. Respondent challenged his statement, threatened him with contempt, and arbitrarily granted the defendant's objection to the garnishment:

> THE COURT: Let me say this, sir. Number one, you're going to be sitting in the box because no one argues with me. So I'm going to ask you to watch your demeanor, because you really need an attorney to represent you. Because you may find yourself in a situation that you don't want to be in. I'm looking at the Judge's order. If I say it's a nonappearance default, that's exactly what it is. You need an attorney... Objection to garnishment granted.

(9) Respondent wrongly claimed it is the law in the state of Michigan that a corporation, whether or not it is on a small claims matter, must be represented by an attorney, "not could be, not may, not should be, but must," and that Mr. Oslund should know that.

(10) Respondent, a district court judge for 16 years, acted intentionally, negligently or incompetently by insisting the plaintiff corporation needed to be represented by an attorney in a small claims case, contrary to MCL 600.8412.

(11) Respondent, at the time a district court judge for 16 years, acted intentionally, negligently or incompetently by insisting the plaintiff corporation needed to be represented by an attorney in a small claims case, contrary to MCL 600.8408.

(12) Respondent's actions were also contrary to MCR 4.301, the Michigan Court Rule regarding Small Claims, which provides that actions in a small claims division are governed by the procedural provisions of Chapter 84 of the Revised Judicature Act, MCL 600.8401 *et seq*.

6. Respondent's conduct, as alleged in Count II, constitutes the following violations of judicial conduct standards:

a. Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;

b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30, and MCR 9.205;

c. Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Michigan Code of Judicial Conduct ("MCJC"), Canon 1;

d. Failure to bear in mind that the judicial system is for the benefit of the litigant and the public, not the judiciary, contrary to MCJC, Canon 1;

e. Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;

f. Failure to respect and observe the law and to conduct yourself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to MCJC, Canon 2B;

g. Failure to be faithful to the law and to maintain professional competence in it, contrary to MCJC, Canon 3A(1);

h. Failure to be patient, dignified, and courteous to those with whom you deal in an official capacity, contrary to MCJC, Canon 3A(3);

i. Demonstrating a severe attitude toward witnesses, tending to prevent the proper presentation of the cause or ascertainment of the truth, and failure to avoid a controversial manner or tone in addressing litigants or witnesses, in violation of MCJC, Canon 3A(8)

j. Abuse of the contempt power;

k. Lack of personal responsibility for her own behavior and for the proper conduct and administration of the court in which she preside, contrary to MCR 9.205(A);

l. Persistent incompetence in the performance of judicial duties, contrary to MCR 9.205(B)(1)(a);

m. Persistent failure to treat persons fairly and courteously, contrary to MCR 9.205 (B)(1)(c);

n. Treating persons unfairly or discourteously because of the person's race, gender, or other protected personal characteristic, contrary to MCR 9.205(B)(1)(d);

o. Conduct prejudicial to the administration of justice, in violation of to MCR 9.104(1);

p. Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(2);

q. Conduct contrary to justice ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and

r. Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(4).

COUNT III: ETHNOCENTRIC REMARKS/BIAS

7. Respondent has frequently made ethnocentric remarks and other comments reflecting bias or creating the appearance of bias in favor of parties from Detroit or who are African-American versus other ethnic or racial origins. Examples include, but are not limited to:

A. (*People v Evuard Roovell Lazar*, Case No. 525982)

(1) In *People v Evuard Roovell Lazar*, Case No. 525982, Respondent made remarks reflecting a lack of impartiality and suggestive of bias because the African-American victim was from Detroit and Mr. Lazar, who is Caucasian, was not: "Right, and I don't want to protect him against civil liability as to *another citizen of Detroit that was injured.*"

(2) Respondent also emphasized that "he," referring to Mr. Lazar, was not someone she wanted to protect.

B. (Prior Incidents: *Miller v Singh*, Case No. 2001-20290 and *Maxtara Contractors Inc v Hernetha Hamilton*, Case No. 2003-201587)

(1) Respondent's comments regarding the "citizens of Detroit," made on January 19, 2005, in *People v Lazar*, set forth in detail in Count II, par. A and Count III, par. A, are part of a pattern of ethnocentric remarks she has made in prior cases:

(a) In *Miller v Singh*, Case No. 01-20290, the defendant was from India and spoke with an accent. Respondent was unduly harsh, repeatedly cut Mr. Singh off, falsely implied he had committed a crime, and demonstrated bias and favoritism by her actions and repeated remarks emphasizing that the plaintiff, an African American, was a "citizen of the City of Detroit, County of Wayne, State of Michigan," ordering Mr. Singh into the jury box for no reason and unjustifiably threatening him with contempt.

(b) On October 12, 2001, while conducting a hearing on appeal from small claims in *Miller v Singh*, 01-20290, Respondent demonstrated a harsh and improper demeanor toward the defendant landlord, and prevented him from presenting a meaningful defense. Both parties were *in pro per*. Her conduct, rulings and remarks created an appearance of prejudice and bias that was racial in nature.

(c) On August 21, 2002, Respondent continued to display a biased attitude toward Mr. Singh and his attorney:

THE COURT: *I believe that he saw a person that he could persuade that they could buy the house for $100 earnest money, while putting up a security deposit like a common tenant; and he macked [sic] him for the money* for $100 a month extra.

And then he didn't show up when the Defendant asked him to meet him. But went over there and used self-help on his own. *Like he is the gestoppel [sic] in the City of Detroit, County of Wayne, State of Michigan, and locked him out.*

MR. DYER: Your Honor briefly –

THE COURT: Counselor I'm not asking you to rule, and don't interrupt me. *It will cost you. I'm not playing with you. I've listened and indulged you for a long time with Mr. Singh. And I'm going to tell you the way I see him operating in the City of Detroit, County of Wayne, State of Michigan; okay?*

MR. DYER: That's fine, your Honor.

THE COURT: *I believe he macked [sic] him* for the extra $100 as earnest money, which was unfair.

(2) Respondent's comments regarding the "citizens of Detroit," made on January 19, 2005, in *People v Lazar*, set forth in detail in Count II, par. A and Count III, par. A, are part of a pattern of ethnocentric remarks she has made in prior cases, including *Maxtara Contractors Inc v Hernetha Hamilton*, Case No. 2003-201587.

(a) In *Maxtara Contractors, Inc., d/b/a/ Bathtub Liners of Michigan, Inc., v. Hernietha Hamilton*, Case No. 03-201587, the plaintiff had obtained a default judgment before the magistrate in small claims to garnishee the defendant, Ms. Hamilton, in the amount of $749, for a deposit for custom materials she had ordered, after which she decided not to have the work done. Approximately two months later, the defendant filed

an objection to the garnishment. Mr. Oslund, as president of the corporation, appeared on its behalf for a hearing on the objections on August 26, 2003.

(b) Respondent did not allow the plaintiff an opportunity to argue his position by himself or by an attorney, treated him condescendingly and harshly, threatened him with contempt without justification, made remarks suggestive of bias because he was not from Detroit, referred him to the Wolverine Bar Association which she identified as the "African-American Bar Association that would give you corporate representation," and displayed sympathy for the defendant, an African-American from Detroit, without ever hearing the plaintiff's evidence.

c) Respondent made comments suggestive of bias against the plaintiff corporation's representative, Mr. Oslund, who is Caucasian, and in favor of the defendant, who is African-American, by emphasizing the Plaintiff was from Troy:

> THE COURT: [A]nd it makes no difference which jurisdiction. You're from Troy, you're in Troy, then that Judge would ask you to have your attorney there too. If you're in Mackinaw, that Judge would ask you to have it there too. So it's not something that the Detroit Judge is making up. It is the law for the entire state; you should know that.

d) After the defendant, Ms. Hernietha Hamilton, was sworn in, Respondent questioned her about her objection. Respondent informed her she failed to appear at the June 2 hearing and failed to appeal within 21 days so the judgment was final.

e) Ms. Hamilton replied she was not at the hearing, which initiated the following dialogue during which, under the guise of questioning the defendant, Respondent assumed facts and argued on the defendant's behalf:

THE COURT: Right, so it was by default. You didn't even come to tell the Judge what was going on. *Because if he had heard you, he would have understood the situation.* Now that the judgment is probably back there in June 2nd, now you're coming to talk. *Why didn't you tell that Judge as to you not getting the work and they cashed your check, and spent your son's glasses money, and that you didn't even get the work done with this corporation?* (emphasis supplied)

MS. HAMILTON: You're right.

THE COURT: *And they've taken advantage of you by having you pay for it.* (emphasis supplied)

MS. HAMILTON: They took advantage of me, yes.

(f) The JTC expressed its deep concern over an apparent developing pattern of improper demeanor and appearance of bias created by Respondent's conduct. Respondent was warned that an additional incident might result in formal action.

(g) Nevertheless, on January 19, 2005, just one month later, Respondent engaged in the misconduct more fully set forth in Counts II and III in the *Lazar* case.

C. (Miscellaneous Ethnocentric Remarks)

(1) With respect to solicitation cases, Respondent has on occasion made comments to the effect that "Eight Mile Road is not a boundary but they come into Detroit to do their dirty work."

8. Respondent's conduct, as alleged in Count III, constitutes the following violations of judicial conduct standards:

a. Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;

b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30, and MCR 9.205;

c. Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Michigan Code of Judicial Conduct ("MCJC"), Canon 1;

d. Failure to bear in mind that the judicial system is for the benefit of the litigant and the public, not the judiciary, contrary to MCJC, Canon 1;

e. Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;

f. Failure to respect and observe the law and to conduct yourself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to MCJC, Canon 2B;

g. Failure to be faithful to the law and to maintain professional competence in it, contrary to MCJC, Canon 3A(1);

h. Failure to be patient, dignified, and courteous to those with whom you deal in an official capacity, contrary to MCJC, Canon 3A(3);

i. Demonstrating a severe attitude toward witnesses, tending to prevent the proper presentation of the cause or ascertainment of the truth, and failure to avoid a controversial manner or tone in addressing litigants or witnesses, in violation of MCJC, Canon 3A(8)

j. Abuse of the contempt power;

k. Lack of personal responsibility for her own behavior and for the proper conduct and administration of the court in which she preside, contrary to MCR 9.205(A);

l. Persistent incompetence in the performance of judicial duties, contrary to MCR 9.205(B)(1)(a);

m. Persistent failure to treat persons fairly and courteously, contrary to MCR 9.205 (B)(1)(c);

n. Treating persons unfairly or discourteously because of the person's race, gender, or other protected personal characteristic, contrary to MCR 9.205(B)(1)(d);

o. Conduct prejudicial to the administration of justice, in violation of to MCR 9.104(1);

p. Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(2);

q. Conduct contrary to justice ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and

r. Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(4).

COUNT IV: MENTAL STATE

9. Respondent Respondent's on- and off-the-bench conduct has noticeably deteriorated for approximately the last 20 to 30 months, including, but not limited to, inappropriate remarks, acting in a biased manner, creating the appearance of bias, failure to modify her conduct despite warnings by the JTC, forgetting or ignoring the law, making

responses not oriented to the questions raised, and appearing at events and in the courthouse dressed unprofessionally. Examples include, but are not limited to:

A. (Events of late July 2005)

(1) Laura Smith was Respondent's court reporter for approximately 10 years. At approximately 2:00 p.m. on July 27, 2005, Ms. Smith was sitting in the court room. Two court officers (Kenya Bishop and Derek Triplett), the fire marshal, and two defendants were also present.

(2) Respondent entered, broke into the officers' conversation, and commented to the effect, "When intelligence leaves the room, all you are left with is ignorance," then turned and left.

(3) Ms. Smith went into chambers and asked Respondent what did she mean and to whom was she referring by that comment. Respondent told her she lacked the intelligence to understand.

(4) The following morning, July 28, 2005, Respondent and Ms. Smith worked together in the courtroom, as usual, to complete the morning docket.

(5) When Respondent returned from her lunch break, she locked herself in her chambers.

(6) Respondent called Chief Judge Marylin Atkins and asked her to come, stating she feared for her life, wanted security present and Ms. Smith removed.

(7) Respondent also called the acting court reporter supervisor, Ruth Whitby, and asked her to come, stating she was afraid of Ms. Smith, felt threatened, and wanted her to remove Ms. Smith.

(8) There had been no provocation or even conversation between Respondent and Ms. Smith prior to the incident.

B. (Events of October 27, 2006)

(1) On the morning of October 27, 2006, Attorney James Abbott was seated at the back of Respondent's courtroom with the defendant, waiting for *Worldwide Asset Purchasing v Denise R. Dickerson*, Case No. 06-127028, to be called. He was substituting for attorney J. Grant Miller in a collection matter.

(2) The parties had entered into a consent agreement. Mr. Abbott was waiting to put it on the record and get it entered. He and the defendant were the last persons in the courtroom.

(3) Respondent had three files in front of her. She suddenly addressed Mr. Abbott, asking him about the attorneys in the other cases.

(4) Mr. Abbott had nothing to do with those other cases and did not know what she was talking about. He never got to say a word.

(5) Respondent's clerk, Rosa Maxwell, tried to tell her that Mr. Abbott was not appearing on the cases she was asking about, that he was in court just for the *Worldwide Asset* case, and that there was already a consent judgment.

(6) Respondent became angry with Rosa Maxwell, made some deprecatory comments directed at or about her, commented to the effect that she did not run the courtroom, then left the bench without further comment to Mr. Abbott.

(7) Ms. Rosa Maxwell has been employed by the 36th District court for approximately 30 years and had been Respondent's clerk for over four years.

(8) Ms. Maxwell telephoned the court clerk supervisor, Rose Williams, and advised her she could no longer work with Respondent because her conduct and demeanor had become intolerable and this incident was the last straw. Ms. Maxwell then left and began packing up her belongings.

(9) Mr. Abbot and the defendant found themselves alone in an empty courtroom.

(10) Mr. Abbot left and advised 36th District Court Chief Judge Marylin Atkins what had happened. She told him to come back at 2:00 p.m. and she would enter the consent judgment. When he went to get the file to take to Chief Judge Atkins, he found Respondent had apparently returned and dismissed the file, notwithstanding the fact there was a signed consent judgment in the file.

(11) Respondent dismissed the case without prejudice, based on the false premise that the plaintiff had not appeared.

C. (Psychological Examinations)

(1) Dr. Harvey Ager, board certified psychiatrist, examined Respondent on December 9, 2005. He issued a 17-page report in which he concluded Respondent "is not a likely candidate for psychiatric treatment because she is so defensive and exhibits so much denial" and "tends to project blame on others." He suspects she is exhibiting "significant psychiatric pathology of a paranoid nature which could influence her ability to perform her usual job as a judge." Based on his examination, Dr. Ager has strong doubts about Judge O'Banner-Owens ability to appropriately and impartially fulfill her duties as a

36th District Court Judge on a consistent basis and would therefore be uncomfortable having her preside over a matter in which he was a party.

(2) Dr. Manfred Greiffenstein evaluated Respondent on January 24, 2006. In his report, dated January 31, 2006, he found that Respondent has "definite mild deficits in memory and other higher cognitive functions," *i.e.*, her scores "were more consistent with an age much older than her chronological age," that the diagnosis of Mild Cognitive Impairment ("MCI") is "apt" and is associated with increased risk for later dementia, and that she is "functional with limitations." He noted that 10 – 15% of persons with MCI convert to Alzheimers within a year, and found that the neuro-cognitive findings could influence her performance as a judge under conditions of novelty and higher than normal workloads. Based on his examination, Dr. Greiffenstein has strong doubts about Respondent's ability to understand, encode, and recall the large volumes of evidence necessary to fulfill her duties as a 36th District Court judge on a consistent basis.

(3) Dr. Leonard Sahn, M.D., P.C., Diplomate American Board of Psychology & Neurology (N), Clinical Neurophysiology, examined Respondent on September 25, 2006. In his report, Dr. Sahn noted that Grievant denied any and all symptoms of any sort, physical or mental, that she was "extremely garrulous," bragged about her activities/accomplishments, and engaged in considerable namedropping. He concluded, "It is possible that this was a

manifestation of defensiveness, but it was a bit excessive." Dr. Sahn observed that in his experience of over 30 years, the diagnosis of dementia is far more likely when it is brought to the attention of the individual or physician by others. With respect to the allegations against Respondent and the transcripts that he reviewed, Dr. Sahn found that:

> [i]f they constitute accurate portrayals of events, *I would also be concerned regarding this individual's neuropsychiatric status and her competency, particularly in a position of such high responsibility and in which the need for proper temperament, impartiality (and certainly the appearance of impartiality*) and the ability to distinguish nuance and work under pressure are paramount. (Emphasis supplied)

Dr. Sahn observed, despite being unable to make a diagnosis of dementia:

> [i]t is well documented and well known that the primary criteria for the diagnosis of dementia, which can present with primarily psychiatric manifestations, largely depends on the history. Therefore, anyone hoping to make a diagnosis early on, particularly with respect to the early neuropsychiatric manifestations of organic dementia, *must rely on the observations of others and the behaviors that occur on a daily basis, particularly in stressful situations. Thus, it is of particular concern to me that, for example, someone who has known her for a long time, her court reporter, has, according to your letter, noted that there has been a marked deterioration in the judge's behavior over the last year or two. Id.*, emphasis supplied.
>
> * * *
>
> It should be stressed that individuals with early dementia or other neuropsychiatric manifestations of a dementing process usually deny the symptoms themselves, but they are obvious to individuals who know them well. In this particular case, since there are transcriptions of actual interactions that Judge

> O'Banner-Owens has had in the course of her work, it seems obvious that, at the very least, there has been disinhibition. I would also comment that *the syntax of the remarks of the judge are often not logically rigorous or do not make sense. Her remarks, at times, seem to be non sequiturs.* (Emphasis supplied)

Based on his examination, Dr. Sahn is concerned about Judge O'Banner-Owens neuropsychiatric status and her competency, and has strong doubts about her ability to appropriately and impartially fulfill her duties as a 36th District Court Judge on a consistent basis.

10. Respondent's conduct, as alleged in Count IV, constitutes the following violations of judicial conduct standards:

a. Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;

b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30, and MCR 9.205;

c. Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Michigan Code of Judicial Conduct ("MCJC"), Canon 1;

d. Failure to bear in mind that the judicial system is for the benefit of the litigant and the public, not the judiciary, contrary to MCJC, Canon 1;

e. Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;

f. Failure to respect and observe the law and to conduct yourself at all times in a manner which would enhance the

public's confidence in the integrity and impartiality of the judiciary, contrary to MCJC, Canon 2B;

g. Allowing family, social, or other relationships to influence judicial conduct or judgment, in violation of MCJC, Canon 2C;

h. Failure to be faithful to the law and to maintain professional competence in it, contrary to MCJC, Canon 3A(1);

i. Failure to be patient, dignified, and courteous to those with whom you deal in an official capacity, contrary to MCJC, Canon 3A(3);

j. Lack of personal responsibility for her own behavior and for the proper conduct and administration of the court in which you preside, contrary to MCR 9.205(A);

k. Mental disability that prevents consistent, competent performance of judicial duties, grounds for action as set forth in MCR 9.205 (B);

l. Persistent incompetence in the performance of judicial duties, contrary to MCR 9.205(B)(1)(a);

m. Persistent failure to treat persons fairly and courteously, contrary to MCR 9.205 (B)(1)(c);

n. Treating persons unfairly or discourteously because of the person's race, gender, or other protected personal characteristic, contrary to MCR 9.205(B)(1)(d);

o. Conduct prejudicial to the administration of justice, in violation of to MCR 9.104(1);

p. Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(2);

q. Conduct contrary to justice ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and

r. Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(4).

Pursuant to MCR 9.209, Respondent is advised that an original verified answer to the foregoing complaint, and nine copies thereof, must be filed with the Commission within 14 days after service upon Respondent of the Complaint. Such answer shall be in a form similar to the answer in a civil action in a circuit court and shall contain a full and fair disclosure of all the facts and circumstances pertaining to Respondent's alleged misconduct. The willful concealment, misrepresentation, or failure to file such answer and disclosure shall be additional grounds for disciplinary action under the complaint.

JUDICIAL TENURE COMMISSION
OF THE STATE OF MICHIGAN

3034 W. Grand Boulevard, Suite 8-450
Detroit, MI 48202

By: _____
Paul J. Fischer (P 35454)
Examiner

_____
Anna Marie Noeske (P 34091)
Associate Examiner

Dated: March 29, 2007

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