STATE OF MICHIGAN
IN THE SUPREME COURT

COMPLAINT AGAINST:

HON. JAMES P. NOECKER **FORMAL COMPLAINT NO. 73**
Judge, 45th Circuit Court
Centreville, MI 49032
_____/

PETITION FOR INTERIM SUSPENSION

Pursuant to MCR 9.219, the Michigan Judicial Tenure Commission ("Commission"), by its executive director and general counsel, Paul J. Fischer, requests this Honorable Court to order the immediate interim suspension of Hon. James P. Noecker ("Respondent"), currently a 45th Circuit Court Judge in St. Joseph County, Michigan. In support of this petition, the Commission states as follows:

1. On August 19, 2004, the Commission filed Formal Complaint No. 73, which alleges that Respondent's persistent use of alcohol had a deleterious effect on the administration of justice, that he had consumed alcohol prior to crashing into a party store in Sturgis, Michigan on March 12, 2003, and that he had been covering up that fact ever since by, in part, lying to the police, the public, and the Commission. A copy of the formal complaint is appended as **Attachment A**.

2. The Commission also filed in this Court a petition for appointment of a master, pursuant to MCR 9.210(B)(1). The Court appointed the Hon. John Fields, retired circuit judge from Berrien County as the master.

3. Respondent filed a timely, verified answer, pursuant to MCR 9.209(B)(1). In his answer, Respondent admitted some of the substantive allegations in the formal complaint, and he denied others. A copy of Respondent's answer is appended as **Attachment B**.

4. The master conducted a public hearing in January 2004. He issued his report on April 30, 2004. A copy of the report is appended as **Attachment C**.

5. The Respondent had asserted in his answer to the formal complaint, and then again at the hearing, that he had not had anything to drink prior to the crash, that he left the scene of the crash before the arrival of the police so that he could find the husband of the store owner, and that he had only had a drink *after* arriving home.

6. The master found that Respondent told the police that:

a. He had stepped in the mud while at his wife's warehouse;

b. He had driven his vehicle from the warehouse approximately 50 yards to the Klinger Lake Trading Post [the site of the crash];

c. Respondent stated that his foot had slipped off the brake and onto the gas and his vehicle struck the side of the building;

d. He went inside the Klinger Lake Trading Post;

e. He unsuccessfully went to look for Mr. Pankey [the co-owner of the store];

f. He returned home;

g. His wife took his blood pressure which registered a very high reading;

h. His wife poured a glass of vodka for him;

i. Respondent later stated that he poured his own glass of vodka rather than his wife pouring it for him;

j. Respondent consumed the drink of approximately 3-5 ounces of vodka in an attempt to reduce his blood pressure;

k. Respondent stated that he had not consumed any alcohol prior to the collision with the building.

7. The master specifically found that:

a. Respondent had consumed alcoholic beverages prior to the collision at the Klinger Lake Trading Post on March 12, 2003, and alcohol was a factor in the collision. Master's report p 22 (paragraph 40);

b. Respondent's statement that it never crossed his mind that he should stay at scene of the collision until the police arrived was

"not credible." Respondent is a judge and a former prosecuting attorney. Master's report, p 22 (paragraph 36);

c. Respondent statement that he had not thought about the impact that consuming 3-5 ounces of vodka after he had arrived home would have upon his claim that he had not consumed alcohol before the collision at the Klinger Lake Trading Post was "not credible." Respondent is a judge and a former prosecuting attorney. Master's report, p 22 (paragraph 37); and

d. Respondent's statements to the media, police, the Michigan Judicial Tenure Commission and to the Master at the public hearing that he had not been drinking prior to the collision were "not accurate." Master's report, p 22 (paragraph 39).

8. Furthermore, the master found that Respondent's past abuse of alcohol was a proximate cause of:

a. Respondent's failure to periodically enter timely legal decisions in matters taken under advisement; and

b. His failure to conduct certain proceedings and complete cases within the time frames referenced in MCR 8.110 [Speedy Trial] Reports.

9. In addition, the master found that Respondent's lack of proper attention to appropriate case-flow management procedures was also a factor in the undue delay in the conduct of certain proceedings and completion of many cases.

10. Most troubling of all, perhaps, is the master's finding that Respondent's statements at the public hearing that he had not been drinking prior to the collision were "not accurate." Master's report, p 22 (paragraph 39). That characterization is a diplomatic nicety for saying that the Respondent was not truthful at the hearing.

11. Simply put, the Respondent has been lying about this matter from the beginning. He lied to everyone, even the master, to whom he had the audacity to lie under oath.

12. The purpose of the judicial disciplinary system is to preserve the integrity of the judiciary.

13. In order to do so in this case, the Respondent must be suspended on an interim basis pending resolution of this matter by the Commission and then the Court.

14. The public can have no faith in a judge who has been proven to have lied, and to have made false statements under oath. Furthermore, Respondent's alcohol dependence has caused untold delay for years in scheduling and resolving

cases. Moreover, Respondent's administrative duties have suffered as a result of his alcoholism.

15. 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 ***immediately*** pending resolution of this matter.

16. The court rules provide that "[t]he commission shall set forth in the petition [for interim suspension] an approximate date for submitting a final recommendation to the Court." MCR 9.219(A)(2). It is expected that the Commission will issue its final recommendation to the Court within 35 days of the public hearing provided for in MCR 9.216. It is estimated that that hearing will be held no later than July 16, 2004.

17. The court rules provide that the Court may expedite matters "[w]hen the integrity of the judiciary requires." MCR 9.207(E). This may be one such occasion, as the allegations themselves have brought great disrepute upon the judiciary. If the Court reduces the filing deadlines under MCR 9.215 and 9.216 (which presently make the public hearing under MCR 9.216 unlikely until July), the Commission could set this matter down for the public hearing in June, and would file its Decision and Recommendation within 35 days of that hearing.

18. This matter has received a good deal of media attention. The Respondent has exposed the judicial system and the judiciary in general to ridicule

and scorn. Respondent's conduct evidences a lack of judicial fitness. He has maligned his judicial office and has caused severe harm to the integrity of the judiciary. The public cannot be comfortable with a judge who has been found to have made false statements, and to have engaged in a cover-up of his illegal activity. The public interest and the protection of the integrity of the judiciary require the immediate suspension of the Respondent.

WHEREFORE, the Michigan Judicial Tenure Commission respectfully requests that this Honorable Court enter an order suspending the Respondent from his judicial position and from performing all judicial duties pending final adjudication of the formal complaint.

Respectfully submitted,

JUDICIAL TENURE COMMISSION
OF THE STATE OF MICHIGAN

By: _____

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Dated: May 3, 2004