STATE OF MICHIGAN

BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

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

Formal Complaint No. 99

COMPLAINT

The Michigan Judicial Tenure Commission ("Commission") files this complaint against Honorable Theresa M. Brennan ("respondent"), judge of the 53rd District Court, County of Livingston, State of 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 53rd District Court, County of Livingston, State of Michigan.

2. As a judge, respondent was and 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- FAILURE TO DISCLOSE/DISQUALIFY

PEOPLE V KOWALSKI

A. *Kowalski pretrial proceedings- Sean Furlong*

3. Respondent was assigned as the presiding trial judge for *People v Jerome Walter Kowalski,* Case No. 08-17643-FC, on about March 9, 2009.

4. Michigan State Police Detective Sergeant Sean Furlong was identified as a significant witness for the prosecution, as he took the statement of defendant Kowalski.

5. After respondent was assigned to *Kowalski* she had substantial contact with Detective Sergeant Furlong, including but not limited to the following:

   a. Attending bars/restaurants for dinner and/or drinks

   b. Dinner and parties at her house

   c. Shopping trips

   d. Trips to her cottage

   e. Sporting events (including but not limited to University of Michigan football games, Detroit Tigers baseball games, and Detroit Red Wings hockey games)

   f. Concerts

   g. Golfing

   h. Detective Sergeant Furlong made multiple closed door visits to respondent's chambers.

6. On some of the occasions described above, respondent paid for or provided food, drinks, event tickets, or other expenses on behalf of Detective Sergeant Furlong.

7. While *Kowalski* was pending before respondent she had numerous private telephone conversations with Detective Sergeant Furlong, including 239 telephone calls between November 3, 2011, and December 28, 2012.

8. While *Kowalski* was pending before respondent she routinely exchanged texts with Detective Sergeant Furlong.

9. During pretrial proceedings in *Kowalski* that occurred prior to January 4, 2013, respondent did not disclose the existence and nature of her friendship with Detective Sergeant Furlong to the parties.

10. Respondent's failure to disclose the extent of her relationship with Detective Sergeant Furlong prevented Walter Piszczatowski, attorney for defendant Kowalski, and Pamela Maas, Assistant Prosecuting Attorney, from obtaining knowledge of relevant facts relating to that relationship.

B. *January 4, 2013- Kowalski pretrial conference*

11. Just before trial, on January 4, 2013, counsel in *Kowalski* requested to meet with respondent regarding the case.

12. In chambers, counsel advised respondent they had been notified, via a letter from local attorney Thomas Kizer dated January 4, 2013, that respondent

had failed to disclose "the relationship and extent thereof" between herself and Detective Sergeant Furlong.

13. Respondent was provided with a copy of Mr. Kizer's letter, which she read in chambers.

14. Respondent's relationship with Detective Sergeant Furlong was described in the letter as a "lengthy social relationship" including the fact that he had been a guest in her home.

15. In chambers on January 4, 2013, defense counsel Walter Piszczatowski advised respondent that his client wanted to raise the issue of her disqualification based on the material contained in Mr. Kizer's letter.

16. During the January 4 conference, counsel relied on respondent to fully and fairly disclose the nature of her relationship with Detective Sergeant Furlong.

17. During the January 4 conference in chambers, respondent stated to counsel that:

    a. She had occasionally gone drinking with Detective Sergeant Furlong in the same way that she did with assistant prosecuting attorneys; and

    b. Detective Sergeant Furlong had been to her house.

    c. In response to another allegation in the letter, respondent denied that she ever had a sexual relationship with Detective Sergeant Furlong.

18. Respondent failed to disclose the full extent and nature of her relationship with Detective Sergeant Furlong, by omitting significant social activities

respondent engaged in with him before or while *Kowalski* was pending, including but not limited to:

a. Regular visits to bars/restaurants

b. Shopping trips

c. Trips to her cottage

d. Attending sporting events together (including but not limited to University of Michigan football games, Detroit Tigers baseball games, and Detroit Red Wings hockey games)

e. Attending concerts together

f. Golfing together

g. On some of the social outings, respondent paid for food, drinks, event tickets, or other expenses on behalf of Detective Sergeant Furlong

h. While *Kowalski* was pending, respondent often spoke on the telephone with Detective Sergeant Furlong, including but not limited to 239 telephone calls between November 3, 2011, and December 28, 2012

i. While *Kowalski* was pending, respondent routinely exchanged texts with Detective Sergeant Furlong

j. Detective Sergeant Furlong made visits to respondent's chambers, typically with the door closed

19. Respondent's remarks in chambers on January 4 minimized the nature of her relationship with Detective Sergeant Furlong.

20. Respondent's conduct during the in-chambers conference served to conceal the true nature of her relationship with Detective Sergeant Furlong.

21. After the conference, respondent went on the record with counsel to address the defendant's motion for disqualification.

22. Mr. Piszczatowski made an oral motion for respondent's disqualification on the record.

23. During the hearing, and based on the disclosures respondent had made of her relationships with Detective Furlong, respondent asked Mr. Piszczatowski to confirm that there were "no particular or specific facts of impropriety." (Transcript, January 4, 2013, page 4, lines 12-13)

24. Mr. Piszczatowski replied that there were none "to his knowledge."

25. Respondent was the only person involved in the proceedings held on January 4, 2013, in chambers or on the record, who had knowledge of the extent of her contacts and friendship with Detective Sergeant Furlong that would reveal any of the "particular or specific facts of impropriety" she asked counsel to disavow.

26. While on the record, respondent made various additional statements regarding her relationship with Detective Sergeant Furlong.

27. Respondent stated:

    a. Respondent was "friends with the two witnesses," which included Detective Sergeant Furlong and Detective Chris Corriveau. (Transcript, January 4, 2013, page 6, lines 9-10)

b. Her relationships with Detective Sergeant Furlong and Detective Corriveau were "nothing more than a friendship." (Transcript, January 4, 2013, page 7, lines 6-7)

c. Respondent "shouldn't even have to say that on the record" referring to her assertion that the relationships with Detective Sergeant Furlong and Detective Corriveau were nothing more than a friendship. (Transcript, January 4, 2013, page 7, lines 6-8)

d. Respondent stated "there is one, only one really fact in the letter" that respondent would address, and that "[t]here [were] no other facts" relevant to her possible disqualification based on her relationships with Detective Sergeant Furlong and Detective Corriveau. (Transcript, January 4, 2013, page 8, lines 11-13)

e. The "one, only one really fact" that respondent described was that "one of the witnesses came into Court on November 14th and I stopped proceedings and we went back into chambers. He came in for a search warrant. That's what I do." (Transcript, January 4, 2013, page 8, lines 13-16) The witness to whom respondent referred was Detective Corriveau.

28. Respondent's treatment of Detective Corriveau, when he visited her courtroom, was comparable to the way she treated Detective Sergeant Furlong, but different than the way she reacted to visits by other police officers.

29. In particular, respondent met with Detective Sergeant Furlong and Detective Corriveau, but not other officers, in chambers behind closed doors, when they requested she issue warrants.

30. Respondent's statements on the record falsely described and minimized the nature of her contact with Detective Corriveau when he came into her chambers on November 14.

31. Further, respondent's statements on the record concealed that the treatment she accorded Detective Corriveau on November 14 was comparable to the way she treated Detective Sergeant Furlong on multiple occasions.

32. Respondent's statements on the record, both on their own and when considered with respondent's statements in chambers just prior to the hearing, created the false impression that respondent's relationship with Detective Sergeant Furlong was no different than a routine, occasionally social, relationship between a judge and prosecutors or other law enforcement personnel.

33. Respondent's statement on the record that her relationship with Detective Sergeant Furlong was nothing more than a friendship, made immediately after respondent had characterized the relationship, in chambers, as having occasionally gone drinking in the same way she did with assistant prosecuting attorneys and having had Detective Sergeant Furlong to her house, created a false impression of her relationship with Detective Sergeant Furlong, as respondent well knew.

34. Respondent's statement on the record that there were no facts, other than the facts she disclosed, that were relevant to her possible disqualification based on her relationship with Detective Sergeant Furlong was false, and respondent knew it to be false.

35. Respondent's statements on the record did not reveal the extent of her relationship with Detective Sergeant Furlong, but instead concealed that relationship.

36. Respondent's statements on the record did not make an accurate disclosure and description of relevant information concerning the nature of her relationships with Detective Sergeant Furlong and Detective Corriveau.

37. Respondent's statements on the record did not disclose, and instead concealed, the frequency, duration, and nature of her telephone and text communications with Detective Sergeant Furlong while the *Kowalski* case was pending.

38. Respondent's remarks on the record minimized the nature of her relationship with Detective Sergeant Furlong.

39. At the hearing respondent concluded as to Detective Sergeant Furlong and Detective Corriveau: "I don't believe that friendship has affected or would affect or should appear as it's going to affect how I am as a judge or how I would handle this case." (Transcript, January 4, 2013, page 6, lines 10-13)

40. It was impossible for Mr. Piszczatowski or Ms. Maas to assess how respondent's friendship with Detective Sergeant Furlong "affected or would affect or should appear as it's going to affect how [respondent was] as a judge or how [she] would handle [the] case" based on respondent's failure

to make a full and accurate disclosure and description of her relationship with Detective Sergeant Furlong.

41. It was impossible for Mr. Piszczatowski to effectively address the issue of respondent's disqualification based on respondent's failure to make a full and accurate disclosure and description of her relationship with Detective Sergeant Furlong.

42. Respondent denied the motion for disqualification on the record on January 4, 2013. (Transcript, January 4, 2013, page 9, lines 6-7)

43. Mr. Piszczatowski proceeded to seek a de novo review of respondent's decision to deny the motion for disqualification with Chief Judge David Reader, pursuant to MCR 2.003(D)(3)(a)(1).

44. Judge Reader, on his review, denied the motion for disqualification.

45. Judge Reader could not make an informed decision on the motion for disqualification as a result of respondent's failure to make a full and accurate disclosure and description of her relationships and contacts with Detective Sergeant Furlong.

C. *Kowalski trial- Furlong*

46. While the trial in *People v Kowalski* was pending, in addition to serving as a witness, Detective Sergeant Furlong was a "co-officer in charge" and assisted Assistant Prosecuting Attorney Maas.

47. From January 7, 2013, the date the *Kowalski* trial began, through January 28, 2013, the date the jury in *Kowalski* issued its verdict, respondent had three private telephone conversations with Detective Sergeant Furlong.

48. On January 17, 2013, respondent took a weekend trip to Washington, D.C., with friends.

49. Respondent's flight was delayed from the evening of January 17 until the morning of January 18.

50. Respondent's cell phone records reflect that on the evening of January 17 she called Detective Sergeant Furlong twice, including one call placed by respondent that was nine minutes long at 8:53 p.m., and another call placed by respondent that was 17 minutes long at 10:14 p.m.

51. Respondent's cell phone records do not reflect any phone calls to her husband, Donald Root, on the evening of January 17 when her flight was delayed.

52. Respondent's cell phone records reveal that she called Detective Sergeant Furlong again on January 19, 2013, which was a nine-minute call placed by respondent at 3:02 p.m.

53. Respondent's cell phone records reflect that while she was on her trip she only called Mr. Root, her husband, on January 18, 2013.

54. Respondent failed to disclose these conversations with Detective Sergeant Furlong to counsel in *Kowalski* even though she knew that defense counsel had already sought respondent's removal from the case based on her relationship with Detective Sergeant Furlong.

55. Respondent testified at her deposition taken in relation to her divorce proceeding that she only called Detective Sergeant Furlong once while the trial was pending. (Brennan deposition transcript, *Root v Brennan*, February 9, 2017, page 202, line 13 to page 203, line 21)

56. From January 28, 2013, the date the jury issued its guilty verdict as to Kowalski, to March 5, 2013, the date respondent issued the sentence in the case, while the proceeding remained active on her docket, respondent had at least 26 telephone conversations with Detective Sergeant Furlong, 20 of which were longer than one minute.

57. From February 2, 2013, through February 10, 2013, respondent traveled with her husband on a vacation to Vieques, Puerto Rico.

58. Respondent's cell phone records reveal that on February 3, 2013, while on that vacation with her husband, respondent made two telephone calls to Detective Sergeant Furlong, one of which was 12 minutes in length at 10:17 p.m. and the next 18 minutes in length at 10:29 p.m.

59. Respondent's cell phone records reveal that on February 8, 2013, while on that vacation with her husband, respondent made another telephone call to Detective Sergeant Furlong, lasting one minute at 9:34 a.m.

60. Respondent failed to disclose to counsel of record any of her telephone communications with Detective Sergeant Furlong made while the *Kowalski* proceeding was pending.

61. Respondent's failure to disclose the communications she had with Detective Sergeant Furlong during the trial and while awaiting sentencing deprived Mr. Piszczatowski and APA Maas of evidence that was relevant to whether to renew the issue of respondent's disqualification from *People v Kowalski.*

62. Respondent was aware of the defendant's request for her disqualification based on her relationship with Detective Sergeant Furlong, as a result of the motion argued on January 4, 2013.

63. Respondent failed to disqualify herself from *People v Kowalski* based on the communications she had with Detective Sergeant Furlong during the trial.

64. Respondent's actions as described in Count I, and in conjunction with her actions reflected in Counts II and III, constitute a pattern of improper conduct in violation of the Code of Judicial Conduct.

COUNT II- FAILURE TO DISCLOSE

SHARI POLLESCH & BURCHFIELD PARK & POLLESCH PC

65. Shari Pollesch is an attorney who currently maintains a law office in Brighton, Michigan, as a member of Burchfield Park & Pollesch PC.

66. Ms. Pollesch was, at all relevant times, a member, owner, and/or employee of the legal firm of Burchfield Park & Pollesch PC (or its predecessors), hereinafter "BP&P."

67. Respondent became acquainted with Ms. Pollesch in the late 1990's and became close personal friends with her in the early 2000's.

68. During their friendship respondent regularly socialized with Ms. Pollesch, including but not limited to:

    a. Respondent and Ms. Pollesch belonged to the same book club, which met monthly, with Ms. Pollesch joining the club at respondent's invitation

    b. Respondent and Ms. Pollesch went to each other's cottages with the book club

    c. Respondent and Ms. Pollesch went to each other's cottages on a number of occasions in addition to the trips with the book club

    d. Respondent went on ski vacations with Ms. Pollesch, both to northern Michigan and to the western United States

    e. Respondent traveled to Washington, D.C., with Ms. Pollesch

    f. Respondent played in an adult concert band with Ms. Pollesch for several years

g. Respondent exercised with Ms. Pollesch by taking regular walks with her, meeting both at each other's houses and at the Brighton courthouse

h. Ms. Pollesch occasionally went to respondent's house for dinner parties

i. Ms. Pollesch went to respondent's house a number of times to go swimming while respondent was a judge

j. Respondent and Ms. Pollesch attended bonfires at each other's houses

k. Respondent attended movies with Ms. Pollesch several times per year

l. Respondent regularly met Ms. Pollesch for lunch

m. Ms. Pollesch attended respondent's cottage with her husband, while respondent was present

n. Respondent hosted Ms. Pollesch's wedding at her house in 2002

o. Ms. Pollesch worked on respondent's campaign for circuit court judge in 2000 and for district court judge in 2006 and 2008

p. Ms. Pollesch attended an election party at respondent's home in 2008

q. Ms. Pollesch has, over respondent's judgeship, been the judge's closest friend who is a practicing attorney

69. Respondent was married to Donald Root, her former husband, from 1990 through March 2017.

70. Mr. Root owned and operated two businesses, which were Uniplas, Inc., and Upcycle Polymers, LLC.

71. In 2011 respondent suggested to Mr. Root that he consult with Ms. Pollesch about certain legal issues he had with his business.

72. Ms. Pollesch and/or her firm provided legal services to Mr. Root starting in June 2011 and ending in or around December 2016.

73. The legal services Ms. Pollesch and/or her firm provided Mr. Root included serving as counsel for Uniplas, Inc., beginning in 2011, and Upcycle Polymers, LLC, since its incorporation in 2012.

74. Ms. Pollesch and/or her firm also provided personal legal services to Mr. Root in the form of preparing an estate plan for him in or around May 2015.

75. Ms. Pollesch and/or her firm provided legal services to respondent's sister, Lorna Marie Brennan.

76. Ms. Pollesch filed an appearance on behalf of Lorna Brennan on October 14, 2014, in *Nathaniel J. Voght v Lorna M. Brennan*, Livingston County Circuit Court Case No. 14-049047-DM.

77. Ms. Pollesch was the attorney of record for Lorna Brennan until the case was resolved in January 2015.

78. Respondent consulted Ms. Pollesch, on an informal basis, concerning legal issues which arose in respondent's personal life.

79. Respondent spoke with Ms. Pollesch about legal issues which were raised in court in cases before respondent, and legal issues which arose in the context of Ms. Pollesch's work as an attorney, when they found the issues interesting or compelling.

A. *Appearances by Pollesch*

80. Ms. Pollesch appeared before respondent as counsel of record in the following cases:

a. *Firek v Firek,* 44th Circuit Court Case No. 14-6108-DO;

b. *Wright v Wright,* 44th Circuit Court Case No. 14-6119-DO;

c. *Graunstadt v Graunstadt,* 44th Circuit Court Case No. 14-6183-DO;

d. *Mason v Schwartz,* 44th Circuit Court Case No. 15-28584-CH; and

e. *Schiebner v Schiebner,* 44th Circuit Court Case No. 13-47392-DM.

81. In the above cases, counsel and/or the parties made their initial appearance before respondent as follows:

a. *Firek v Firek,* on May 12, 2014;

b. *Wright v Wright,* on May 19, 2014;

c. *Graunstadt v Graunstadt,* on June 30, 2014;

d. *Mason v Schwartz,* on June 9, 2015, and September 15, 2015 (when additional counsel appeared); and

e. *Schiebner v Schiebner,* on November 3, 2016.

82. At the first appearance, and at all times while the cases were pending, respondent failed to disclose to the parties and counsel in those cases:

a. Any information about respondent's social relationship with Ms. Pollesch, including but not limited to the information outlined above;

b. That Ms. Pollesch had provided legal services to respondent's husband and his businesses;

c. For those appearances after October, 2014, that Ms. Pollesch represented respondent's sister, Lorna Brennan, in the sister's divorce;

d. That respondent had, at times, consulted Ms. Pollesch on an informal basis as to respondent's personal legal issues; and/or

e. That respondent and Ms. Pollesch had discussed on an "intellectual basis" legal issues that arose in cases to which respondent was assigned as a judge, or legal issues which arose in Ms. Pollesch's work as an attorney.

83. At no time during the pendency of the above cases did respondent obtain a waiver of any disqualification due to her relationships with Ms. Pollesch.

B. *Appearances by other Birchfield Park & Pollesch attorneys*

84. Attorneys other than Ms. Pollesch who were employed by BP&P appeared as counsel of record in cases before respondent.

85. The BP&P attorneys appeared before respondent as counsel of record in the following cases:

a. *FMG v Deyo*, 44th Circuit Court Case No. 14-27863-CK- David Park;

b. *Halliday v Halliday*, 44th Circuit Court Case No. 14-27923-CZ- Amy Krieg;

c. *McFarlane v McFarlane*, 44th Circuit Court Case No. 15-6492-DO- Amy Krieg;

d. *Oceola Twp v Wines*, 44th Circuit Court Case No. 15-28497-CZ- Amy Krieg; and

e. *Vaughn v VonBuskirk*, 44th Circuit Court Case No. 16-50745-DZ- Kenneth Burchfield.

86. In the above cases counsel and/or the parties made their initial appearance before respondent as follows:

a. *FMG v Deyo*- April 1, 2014;

b. *Halliday v Halliday*- June 24, 2014;

c. *McFarlane v McFarlane*- March 6, 2015;

d. *Oceola Twp v Wines*- April 7, 2015; and

e. *Vaughn v VonBuskirk*- December 6, 2016.

87. At the first appearance, and at all times while the cases were pending, respondent failed to disclose to the parties and counsel in those cases:

a. That Ms. Pollesch and/or her firm had provided legal services to respondent's husband and his businesses; or

b. That Ms. Pollesch represented Lorna Brennan, respondent's sister, in the sister's divorce (as to appearances occurring after October 2014).

88. At no time during the pendency of the above cases did respondent obtain a waiver of any disqualification due to the business relationship between Mr. Root and BP&P.

89. At no time during the pendency of *McFarlane v McFarlane, Oceola Twp v Wines,* or *Vaughn v VonBuskirk* did respondent obtain a waiver of any disqualification due to the business relationship between Lorna Brennan and BP&P.

90. Respondent's actions as described in Count II, and in conjunction with her actions reflected in Counts I and III, constitute a pattern of improper conduct in violation of the Code of Judicial Conduct.

COUNT III- FAILURE TO DISCLOSE/DISQUALIFY

FRANCINE ZYSK a/k/a SUMNER a/k/a TYLER

91. Francine Zysk is currently the 53rd District Court administrator, and has been since 2015.

92. Ms. Zysk served as chief probation officer for the 53rd District Court before she became court administrator.

93. Respondent had regular contact with Ms. Zysk in the court environment due to Ms. Zysk's roles as district court administrator and chief probation officer.

94. From mid-2013 through 2016 respondent had a close social relationship with Ms. Zysk.

95. The socialization included, but was not limited to:

    a. Meeting for drinks at local bars or respondent's home

    b. Meeting at local restaurants for dinner

    c. Dinner parties at respondent's or Ms. Zysk's home

    d. Celebrating birthdays

    e. Exchanging gifts

f. Attending sporting events, including Detroit Tigers and Detroit Red Wings games

g. Exercising at a local "boxing facility" on several occasions

h. Shopping for furniture

i. Ms. Zysk and her daughter spending the night at respondent's house on several occasions from late 2015 through 2016

j. Travel together on a weekend trip to Chicago in February 2016

96. Ms. Zysk volunteered for respondent's reelection campaign in 2014.

A. <u>*Zysk Sumner v Sumner divorce*</u>

97. Respondent was the judge assigned to *Francine Zysk Sumner v Paul Anthony Sumner,* 44th Circuit Court Case No. 14-006386-DO, as of its filing on or around November 7, 2014.

98. Respondent heard proofs in the case and entered a consent judgment of divorce on January 6, 2015.

99. Respondent failed to disclose to Mr. Sumner, at the hearing on January 6, 2015, or at any other time, the nature of her work relationships with Ms. Zysk as outlined above.

100. Respondent failed to disclose to Mr. Sumner, at the hearing on January 6, 2015, or at any other time, the nature of her social relationship with Ms. Zysk as outlined above.

101. At no time during the pendency of *Sumner v Sumner* did respondent obtain a waiver of any disqualification due to her relationships with Ms. Zysk.

102. Respondent failed to disqualify herself from the proceeding based on the work and social relationships with Ms. Zysk even though respondent recognized a conflict of interest between herself and Ms. Zysk which compelled respondent to disqualify herself from a small claims case involving Ms. Zysk in September 2016, as noted below.

103. In 2016, Ms. Zysk and Mr. Sumner encountered a post-judgment dispute as to their divorce.

104. Ms. Zysk advised respondent of the existence of the dispute.

105. The discussion between respondent and Ms. Zysk regarding the post-judgment dispute constituted an ex parte communication.

106. After Ms. Zysk advised respondent of the existence of the dispute, Ms. Zysk filed an *in pro per* motion to enforce the judgment of divorce for medical care on July 6, 2015.

107. Attorney Erik Mayernik filed an appearance on behalf of Mr. Sumner, as well as a response to the motion to enforce judgment of divorce, on about July 15, 2015.

108. Mr. Mayernik filed a motion for respondent's disqualification from the case on about July 17, 2015.

109. The motion for disqualification was based on respondent's close working relationship with Ms. Zysk, her friendship with Ms. Zysk, and the fact that Ms. Zysk worked on respondent's "recent re-election campaign in 2015." [*sic*]

110. On July 16, 2015, Mr. Mayernik sent an email to respondent's court offices with a judge's copy of the material he filed with the court, including the motion for disqualification that was filed with the court the next day.

111. In a letter attached to the email of July 16, Mr. Mayernik asked that the motion for disqualification be heard on the same date as Ms. Zysk's motion.

112. As of July 16, 2015, a judge's copy of the motion for disqualification was filed with respondent's court office, placing respondent on notice of defense counsel's concerns about respondent's continued presiding over *Zysk v Sumner*.

113. Counsel appeared before respondent on July 20, 2015, to advise respondent that the dispute between the parties had been resolved.

114. The litigants did not appear at the July 20 hearing, so respondent was the only individual present at the hearing who was in a position to know the relevant details of her relationship and communications with Ms. Zysk, and the fact that Ms. Zysk had previously talked with respondent about her post-judgment dispute with Mr. Sumner.

115. When counsel appeared at the hearing on July 20, knowing that defense counsel had sought respondent's removal from the case based on her relationship with Ms. Zysk, respondent failed to advise the attorneys, on the record, of:

a. The nature of the increased social contact respondent had with Ms. Zysk after she filed for, and obtained, the divorce from Mr. Sumner; and/or

b. A conversation Ms. Zysk had with respondent prior to Ms. Zysk's filing of the motion to enforce the judgment of divorce with the court, in which Ms. Zysk talked with respondent about her post-judgment dispute with Mr. Sumner.

116. Respondent asked Mr. Mayernik at the hearing on July 20, 2015, on the record, if the matter could proceed in spite of the pending disqualification motion.

117. In response, Mr. Mayernik agreed not to proceed with a hearing on the disqualification motion and to enter the stipulated resolution.

118. Mr. Mayernik's consent was granted without full knowledge of the facts relating to the conflict of interest that existed based on respondent's relationships and communications with Ms. Zysk, due to respondent's failure to reveal that information either at, or any time before, the hearing.

119. Respondent failed to disqualify herself from the proceeding based on the work and social relationships with Zysk, although respondent recognized a conflict of interest between herself and Ms. Zysk which compelled

respondent to disqualify herself from a small claims case involving Ms. Zysk in September 2016, as noted below.

B. *Tyler v Tyler divorce*

120. Respondent was assigned to *Francine Zysk Tyler v Johnnie J. Tyler,* 44th Circuit Court Case No. 16-006808-DO, as of its filing on about January 26, 2016.

121. In addition to the work and social relationships respondent maintained with Ms. Zysk as outlined above, while Ms. Zysk was married to Mr. Tyler, respondent knew enough details about Ms. Zysk's relationship with Mr. Tyler that respondent was worried about Ms. Zysk's safety with him.

122. In January 2016 respondent went to the home Ms. Zysk shared with Mr. Tyler and moved some of Ms. Zysk's belongings out of the premises.

123. Respondent allowed Ms. Zysk and her daughter to stay at respondent's home for several nights out of concern for their safety as to Mr. Tyler.

124. When Ms. Zysk's car broke down, respondent lent Ms. Zysk an extra vehicle respondent owned.

125. Respondent was witness to some aspects of Ms. Zysk's marital relationship with Mr. Tyler, with the potential of being called as a witness at a legal proceeding involving those individuals.

126. Respondent heard proofs in the case, and entered a default judgment of divorce, on April 6, 2016.

127. Respondent failed to disclose to Mr. Tyler, at the hearing on April 6 or at any other time, the nature of her work relationships with Ms. Zysk as outlined above.

128. Respondent failed to disclose to Mr. Sumner, at the hearing on April 6 or at any other time, the nature of her social relationship with Ms. Zysk as outlined above.

129. Respondent failed, at any time while the proceeding was pending, to disqualify herself from the case in light of her role as a potential witness in the case.

130. Respondent failed to disqualify herself from the proceeding based on the work and social relationships with Zysk, although respondent recognized a conflict of interest between herself and Ms. Zysk which compelled respondent to disqualify herself from a small claims case involving Ms. Zysk in September 2016, as noted below.

C. *Zysk v Tyler small claims case*

131. Respondent was assigned to *Francine Zysk v Johnnie James Tyler, II,* 53rd District Court Case No. 16-3079-GC, as of its filing on about September 6, 2016.

132. The case involved allegations by Ms. Zysk as to her former husband, Johnnie Tyler.

133. 53rd District Court Magistrate Judge Jerry Sherwood disqualified himself from the case on around September 8, 2016.

134. Magistrate Judge Sherwood listed the reason for disqualifying himself from the case as "Plaintiff is the Court Administrator for the 53rd District Court."

135. 53rd District Court Judge Suzanne Geddis disqualified herself from the case on around September 7, 2016.

136. 53rd District Court Judge Carol Sue Reader disqualified herself from the case on around September 9, 2016.

137. The case register of actions reflects the "order for disqualify" [*sic*] was sent to "BDC" [Brighton District Court] for "sig" [signature] on September 12, 2016.

138. Respondent signed an order removing the case from the Small Claims Division to the General Civil Division of the District Court on around September 13, 2016.

139. The order of removal is based on respondent's conclusion that the small claims division was not the proper jurisdiction for a claim alleging fraud.

140. Respondent had a work relationship with Ms. Zysk similar to that of Magistrate Sherwood, Judge Geddis, and Judge Carol Sue Reader.

141. In addition to the work relationship, respondent had a close social relationship with Ms. Zysk as outlined above.

142. Respondent witnessed events relating to the marriage of Ms. Zysk and Mr. Tyler that could have related to the issues pending in the small claims proceeding.

143. As such, in addition to the social and work relationships respondent maintained with Ms. Zysk, respondent knew information relating to, and was a potential witness in, Ms. Zysk's divorce and small claims cases as to Mr. Tyler.

144. Respondent disqualified herself from the case on around September 21, 2016.

145. Respondent checked the following provisions on the disqualification order as a basis for her disqualification:

    a. "I have, based on objective and reasonable perceptions, a serious risk of actual bias impacting the due process rights of a party as enunciated in Caperton v Massey, 556 US 868; 129 S Ct 2252; 173 L Ed 2d 1208 (2009)"; and

    b. "I have personal knowledge of disputed evidentiary facts concerning the proceeding."

146. In her response to the Commission's 28-day letter, dated April 19, 2018, respondent provided an additional reason for her disqualification in *Zysk v Tyler*.

147. Assertion # 138 of the 28-day letter alleged:

> In addition to the social and work relationships you maintained with Ms. Zysk, as outlined above, you were a potential witness to her divorce case.

148. In reply, respondent stated:

> Although the question asks "divorce case", I will answer the question as if it was meant to say small claims case. I could not have been a witness because I did not know the facts surrounding the small claims case. However, it did not matter. Because of my social and working relationship with Ms. Zysk I disqualified myself.

149. Respondent failed to immediately disqualify herself from the small claims case even though:

a. The other district court judges and a district court magistrate had already done so;

b. Respondent had a work relationship with Ms. Zysk;

c. Respondent had a close social relationship with Ms. Zysk; and

d. Respondent was a potential witness to the small claims proceeding.

150. Prior to recusing herself, respondent issued an order of removal in the case notwithstanding that:

a. The other district court judges and a district court magistrate had already disqualified themselves;

b. Respondent had a work relationship with Ms. Zysk;

c. Respondent had a close social relationship with Ms. Zysk; and

d. Respondent was a potential witness to the small claims proceeding.

151. Respondent's actions as described in Count III, and in conjunction with her actions reflected in Counts I and II, constitute a pattern of improper conduct in violation of the Code of Judicial Conduct.

COUNT IV- FAILURE TO DISQUALIFY

ROOT V BRENNAN

152. Respondent was the defendant in *Donald Root v Theresa Brennan*, 44th Circuit Court Case No. 16-7127-DO.

153. The complaint in respondent's divorce was filed on around December 2, 2016.

154. The divorce proceeding was assigned to respondent based on the court policy at the time that respondent was to preside over all "DO" cases filed in the Livingston County Circuit Court.

155. Chief Judge David Reader contacted respondent by telephone on December 2, 2016, to advise her that the complaint for divorce had been filed by Mr. Root.

156. On December 6, 2016, Jeanine Pratt, secretary to Judge Reader, contacted respondent to advise her that Mr. Root's attorney had filed an emergency ex parte motion related to the divorce.

157. The emergency ex parte motion sought a mutual restraining order for the parties to preserve evidence in the case.

158. During that conversation Ms. Pratt also advised respondent that the judge's disqualification from the divorce case was needed as the emergency ex parte motion had been filed.

159. Ms. Pratt advised respondent in the telephone conversation that she would be coming to the Brighton court house that afternoon to pick up the signed disqualification order in the case.

160. Respondent asked Ms. Pratt to describe what was in the motion, and in response (under the direction of Judge Reader) Ms. Pratt sent the motion to respondent via email.

161. Ms. Pratt also emailed a disqualification order to respondent for respondent to sign on December 6, 2016.

162. On December 6, after Ms. Pratt had sent the emergency motion and disqualification order to respondent, Ms. Pratt appeared at the Brighton courthouse to pick up the signed disqualification order as to respondent's divorce.

163. Respondent advised Ms. Pratt that she would not be signing the disqualification order until the next day.

164. Respondent further stated that she "had not spoken with her attorney yet."

165. At the time respondent failed to sign the disqualification order she had been aware of the existence of the divorce proceeding for four days, and had been advised (and provided with a copy) of the pending emergency ex parte motion.

166. Respondent signed the disqualification order and dated it December 7, 2016.

167. Although respondent's signed disqualification order was dated December 7, 2016, it was not provided to any personnel from the Howell courthouse until December 8, 2016, when respondent gave it to 44th Circuit Court Administrator John Evans in the Brighton courthouse.

168. Respondent did not produce a signed copy of the disqualification order until six days after she knew the complaint for divorce was filed, and two days after she knew the plaintiff had filed an emergency ex parte motion in the case.

COUNT V- APPEARANCE OF IMPROPRIETY

SEAN FURLONG

169. Respondent was assigned as the presiding trial judge to *People v Jerome Walter Kowalski,* Case No. 08-17643-FC, on or about March 9, 2009.

170. Paragraphs 4 through 63 as alleged above in Count I are incorporated by reference as if fully stated in this count.

171. Respondent maintained repeated social contacts with Detective Sergeant Furlong while *Kowalski* was assigned to her and she was aware that Detective Sergeant Furlong was identified as a witness.

172. Respondent failed to disclose the nature of her contacts and friendship with Detective Sergeant Furlong while the *Kowalski* case was pending and assigned to her.

173. Respondent failed to disqualify herself from the *Kowalski* case due to her telephone conversations with Detective Sergeant Furlong while the matter was pending, including the phone conversations that took place prior to the verdict and those that occurred after the verdict and before sentencing.

174. The actions and failures to act that are described in paragraphs 170 through 173 created the appearance of impropriety.

COUNT VI- APPEARANCE OF IMPROPRIETY/ EX PARTE COMMUNICATION

FRANCINE ZYSK

175. During the time respondent has been a 53rd District Court judge she has maintained a working relationship with Francine Zysk (a/k/a Sumner a/k/a Tyler) due to her role as a probation officer, the Chief Probation Officer, and later, the 53rd District Court Administrator.

176. Respondent was assigned as the presiding trial judge for the following cases involving Ms. Zysk (the "Zysk cases"):

a. *Francine Zysk Sumner v Paul Anthony Sumner*, 44th Circuit Court Case No. 14-006386-DO;

b. *Francine Z. Tyler v Johnnie J. Tyler*, 44th Circuit Court Case No. 16-006808-DO; and

c. *Francine Zysk v Johnnie James Tyler, II*, 53rd District Court Case No. 16-3079-GC.

177. Paragraphs 91 through 150, alleged above in Count III, are incorporated by reference as if fully stated in this count.

178. Respondent failed, at any time while the *Tyler* proceeding was pending, to disclose the nature of her contacts with Ms. Zysk and that respondent was potentially a witness in the divorce proceedings.

179. Respondent failed to disclose relevant facts to parties in, and/or presided over, and/or failed to timely disqualify herself from, all of the Zysk cases even though respondent maintained work and close social relationships with Ms. Zysk, had an ex parte communication with Ms. Zysk, and was a potential witness in some cases.

180. The conduct described above creates an appearance of impropriety and constitutes a failure to disclose a substantive ex parte communication with a party to cases assigned to respondent.

COUNT VII- CONDUCT DURING DEPOSITIONS

ROOT V BRENNAN

181. Respondent was the defendant in *Donald Root v Theresa Brennan,* 44th Circuit Court Case No. 16-7127-DO.

182. On January 18, 2017, respondent attended the deposition of Detective Sergeant Furlong as it related to *Root v Brennan*.

183. At one point during the deposition Detective Sergeant Furlong was questioned by Thomas Kizer, attorney for Donald Root, about contact Detective Sergeant Furlong had with respondent during the *Kowalski* trial. (Furlong deposition transcript, *Root v Brennan*, January 18, 2017, page 56, line 2)

184. Mr. Kizer asked Detective Sergeant Furlong if he had exchanged any texts or phone calls with respondent during the Kowalski trial. (Furlong deposition transcript, *Root v Brennan*, January 18, 2017, page 56, lines 6-10)

185. Detective Sergeant Furlong responded that he did not. (Furlong deposition transcript, *Root v Brennan*, January 18, 2017, page 56, lines 6-10)

186. Respondent then interceded in the deposition while Detective Sergeant Furlong was under oath and being examined by opposing counsel, by advising him that in fact respondent did have a communication with him,

stating: "We did once." (Furlong deposition transcript, *Root v Brennan*, January 18, 2017, page 56, line 12)

187. During respondent's own deposition, taken in her divorce on February 9, 2017, respondent testified that she had one telephone conversation with Detective Sergeant Furlong while the *Kowalski* trial was pending. (Brennan deposition transcript, *Root v Brennan*, February 9, 2017, page 202, line 13 to page 203, line 21)

188. Respondent's phone records reveal that respondent had at least three conversations with Detective Sergeant Furlong while the *Kowalski* trial was ongoing and before the jury rendered a verdict.

189. On March 9, 2017, respondent attended the deposition of Francine Zysk as it related to *Root v Theresa Brennan.*

190. At one point during the deposition Ms. Zysk was questioned by Mr. Kizer about rumors of respondent being caught intoxicated in her office in Brighton. (Zysk deposition transcript, *Root v Brennan*, March 9, 2017, page 27, line 12)

191. Respondent interceded in Mr. Kizer's questioning of Ms. Zysk by stating: "Okay, you need to stop for a minute." (Zysk deposition transcript, *Root v Brennan*, March 9, 2017, page 27, lines 20-21)

192. Respondent then stated to Ms. Zysk: "You are lying. You're such a liar." (Zysk deposition transcript, *Root v Brennan*, March 9, 2017, page 27, line 25 – page 28, line 1)

COUNT VIII- FAILURE TO BE FAITHFUL TO THE LAW

BRISSON V TERLECKY

193. Respondent was assigned to preside over *Kevin Brisson v Erin Terlecky*, 44th Circuit Court Case No. 17-051753-DP.

194. The case involved a paternity dispute between the parties.

195. An Order for Genetic Testing was entered on May 15, 2017.

196. The parties appeared before respondent on June 21, 2017, on a date scheduled for a non-jury trial.

197. At the proceeding held on June 21, plaintiff Brisson was represented by attorney David Bittner and defendant Terlecky was represented by attorney Carol Lathrop Roberts.

198. At the June 21 hearing, the attorneys advised respondent that the genetic testing had been completed and the results were served on the parties the day before the court proceeding, that is, June 20, 2017.

199. Ms. Roberts asserted that the paternity act required that respondent allow 14 days after service of the paternity tests before the trial could be held to allow for any objection by the parties. MCL 722.716(4)

200. In response to Ms. Roberts's assertion respondent replied that the parties would proceed with the trial on other issues and reserve the paternity issue for 14 days.

201. In response to respondent's directive that the trial would begin immediately and that only the paternity issue would be stayed, Ms. Roberts asked respondent to comply with the statute and stay the entire trial for 14 days.

202. In reply, respondent raised her voice at Ms. Roberts and instructed her to sit down and be quiet.

203. Respondent threatened to place Ms. Roberts in the court's lockup if she continued her effort to make a record based on the facts and statute applicable to the case.

204. When Ms. Roberts continued to attempt to make a record as to the requirements of the statute, respondent ordered her court officer to take Ms. Roberts to the court lockup.

205. As Ms. Roberts was taken away, respondent accused her of threatening respondent, though respondent had no substantive basis to do so.

206. MCL 722.716(4) states:

> Subject to subsection (5), the result of blood or tissue typing or a DNA identification profile and the summary report shall be served on the mother and alleged father. The summary report shall be filed with the court. Objection to the DNA identification profile or summary report is waived unless made in writing, setting forth the specific basis for the objection, within 14 calendar days after service on the mother and alleged father. The court shall not schedule a trial on the issue of paternity until after the expiration of the 14-day period. If an objection is not filed, the court shall admit in proceedings under this act the result of the blood or tissue typing or the DNA identification profile and the summary report without requiring foundation testimony or other proof of authenticity or accuracy. If an objection is filed within the 14-day period, on the motion of either party, the court shall hold a hearing to determine the admissibility of the DNA identification profile or summary report. The objecting party has the burden of proving by clear and convincing evidence by a qualified person described in subsection (2) that foundation testimony or other proof of authenticity or accuracy is necessary for admission of the DNA identification profile or summary report.

207. Prior to sending Ms. Roberts to the lockup, respondent failed to read MCL 722.716(4) even though it was the statute on which Ms. Roberts was relying and to which Ms. Roberts referred respondent.

208. Prior to sending Ms. Roberts to the lockup, respondent failed to allow Ms. Roberts to complete her argument with respect to the requirements of MCL 722.716(4) and a stay of the trial.

209. When Ms. Roberts was being taken out of the courtroom she instructed her client to contact attorney Thomas Kizer, to obtain his representation for any

contempt or other proceeding respondent may have conducted as to Ms. Roberts' actions before respondent.

210. After Ms. Roberts left the courtroom with the court officer, respondent within a minute reconsidered and had Ms. Roberts escorted back to the courtroom.

211. When the court officer brought Ms. Roberts back from the lockup respondent accused her of forum shopping, with no substantive basis for doing so.

212. Respondent then granted the 14-day stay as required by MCL 722.716(4).

213. When respondent granted the stay, respondent remarked to Ms. Roberts in a dismissive and condescending tone: "Let's play this game."

214. Respondent accused Ms. Roberts of playing a game by attempting to enforce a mandatory stay as required by statute.

COUNT IX- IMPROPER DEMEANOR

BRISSON V TERLECKY

215. Respondent was assigned to preside over *Kevin Brisson v Erin Terlecky,* 44th Circuit Court Case No. 17-051753-DP.

216. Paragraphs 194 through 214, alleged above in Count VIII, are incorporated by reference as if fully stated in this count.

217. Respondent's conduct as described above constitutes a failure to treat others fairly and with courtesy and respect, and a failure to be patient, dignified, and courteous to lawyers with whom the judge dealt with in an official capacity.

COUNT X- RESPONDENT DIRECTING STAFF TO CONDUCT RESPONDENT'S PERSONAL TASKS ON COURT TIME

A. *Personal tasks undertaken by Kristi Cox*

218. Kristi Cox was respondent's secretary and court recorder from mid-2005 through March 2015.

219. While Ms. Cox worked in those roles, respondent instructed Ms. Cox to leave the courthouse, while being paid as a county employee, to complete personal tasks for respondent.

220. Those tasks included but were not limited to:

a. Going to the bank to make withdrawals from respondent's personal account

b. Picking up coffee and a muffin (or other breakfast items) for respondent at a local shop by the courthouse

c. Dropping off respondent's personal mail at the post office

d. Dropping off respondent's packages at overnight mail outlets (FedEx, UPS, etc.)

e. Taking respondent's car to be washed or filled with gas

f. Going to respondent's home to wait for service personnel

221. While Ms. Cox worked for respondent, the judge instructed her to perform personal tasks for respondent during work hours that did not involve leaving the courthouse.

222. Those tasks included but were not limited to:

a. Paying respondent's personal bills by writing out checks using the judge's personal accounts

b. Paying respondent's personal bills by phone or on line

c. Contacting, and paying bills relating to, various utilities, debtors, and others on respondent's behalf when payments were late, to avoid cancellation of services

d. Scheduling or canceling respondent's personal appointments for manicures, pedicures, and waxing

e. Finding clothes for respondent on the internet based on a picture shown by respondent to staff

f. Searching the internet at respondent's request to locate personal items for respondent and finding the best price for those items

g. Assisting with respondent's personal travel arrangements, including reservations and the purchase of airline tickets

h. Purchasing tickets for concerts and sporting events for respondent

i. Using county software programs (e.g. Springfield and Alimony/Child Support Prognosticator) during work hours to run child support and spousal support figures relating to the divorce of respondent's sister, Rosemarie, when that case was not assigned to respondent

223. Respondent had Ms. Cox work on her 2008 and 2014 campaigns for judicial office during work hours.

224. The campaign tasks included but were not limited to:

a. Securing volunteers for campaign events

b. Preparing "friend to friend" cards

c. Assistance in replying to candidate surveys submitted for respondent's reply

d. Traveling to her home to pick up campaign materials

e. Utilizing personal laptops to perform services relating to respondent's campaigns

225. Ms. Cox's performance of personal tasks for respondent, during work hours, is not within a court employee's job responsibilities.

226. During the times Ms. Cox was performing the personal tasks for respondent, Ms. Cox was being compensated for her work time by Livingston County.

B. *Personal tasks undertaken by Jessica Yakel*

227. Jessica Yakel worked as respondent's research attorney and attorney magistrate in the 53rd District Court from around February 2, 2014, through April 4, 2016.

228. While Ms. Yakel worked for respondent, respondent instructed Ms. Yakel to leave the courthouse while she was being paid as a county employee to complete personal tasks for respondent.

229. Those tasks included but were not limited to:

a. Staining respondent's deck

b. Installing Netflix service on respondent's television at her home

c. Travel to respondent's home to take water samples for quality testing, and delivering those samples to the company performing the testing

d. Taking respondent's car to Brighton Chrysler for repairs and maintenance

e. Dropping off respondent's personal mail at the post office

f. Dropping off respondent's packages at overnight mail outlets (FedEx, UPS, etc.)

g. Taking respondent's car to have it washed

h. Picking up coffee and a muffin or other breakfast items for respondent, at a coffee shop outside the courthouse, on an ongoing basis

230. While Ms. Yakel worked for respondent, respondent instructed her to perform personal tasks for respondent during work hours that did not involve leaving the courthouse.

231. Those tasks included but were not limited to:

a. Legal research on personal issues relating to respondent and her family

b. Paying respondent's personal bills by writing out checks using respondent's personal accounts

c. Paying respondent's personal bills by phone or on line

d. Contacting and paying bills relating to various utilities, debtors, and others on respondent's behalf when payments were late, to avoid cancellation of services

e. Assisting with respondent's personal travel arrangements, including the purchase of airline tickets

f. Revising the cable service at respondent's cottage

g. Purchasing tickets for concerts for respondent

h. Researching personal items on the internet for respondent to purchase

i. Searching the internet at respondent's request, to locate personal items for her and finding the best price for those items

j. Finding clothes on the internet based on a picture shown by respondent to Ms. Yakel.

232. Respondent had Ms. Yakel work on her 2014 campaign for judicial office during work hours.

233. The campaign tasks included, but were not limited to:

a. Research on "gifts" to hand out at campaign events

b. Assistance in replying to candidate surveys submitted for respondent's reply

c. Utilizing personal laptops to perform services relating to respondent's campaigns

234. Performance of personal tasks for respondent, during work hours, is not within a court employee's job responsibilities.

235. During the times Ms. Yakel was performing the personal tasks for respondent, Ms. Yakel was being compensated for her work time by Livingston County.

COUNT XI- MISREPRESENTATIONS

A. *January 4, 2013- Kowalski pretrial conference- Facts regarding relationship with Furlong*

236. As alleged above, respondent was assigned as the presiding trial judge for *People v Jerome Walter Kowalski,* Case No. 08-17643-FC, on about March 9, 2009.

237. Paragraphs 11 through 45 as alleged above in Count I-B are incorporated by reference as if fully stated in this count.

238. Respondent omitted relevant facts relating to her relationship with Detective Sergeant Furlong as set forth above.

239. Respondent's remarks on the record minimized the nature of her relationship with Detective Sergeant Furlong.

240. Respondent's conduct while on the record served to intentionally and willfully conceal the relevant true nature of her relationship with Detective Sergeant Furlong.

241. Judge Reader could not make an informed decision on the motion for disqualification as a result of respondent's concealment of her relationship and contacts with Detective Sergeant Furlong.

B. *Knowledge of Pollesch's representation of Root- remarks in McFarlane v McFarlane*

242. Respondent was married to Donald Root from 1990 through March 2017.

243. Mr. Root owned and operated two businesses, which were Uniplas, Inc. and Upcycle Polymers, LLC.

244. In 2011 respondent suggested to Mr. Root that he consult with Ms. Pollesch about certain legal issues he had with his business.

245. Following respondent's recommendation, Ms. Pollesch provided legal services to Mr. Root starting in June 2011 and ending in or around December 2016.

246. Ms. Pollesch's legal services for Mr. Root included serving as counsel for Uniplas, Inc. beginning in 2011, and Upcycle Polymers, LLC, since its incorporation in 2012.

247. Ms. Pollesch also provided personal legal services to Mr. Root in the form of preparing an estate plan for him in or around April and May 2015.

248. Respondent was assigned to preside over *Marcia McFarlane v Dale McFarlane,* 44th Circuit Court Case No.15-6492-DO.

249. On or around April 17, 2017, defendant Dale McFarlane, through his attorney Dennis Brewer, filed a motion to recuse based on respondent's relationship with Ms. Pollesch and the fact that Ms. Pollesch represented respondent's husband.

250. At the hearing on the motion to recuse, held on April 25, 2017, respondent addressed her knowledge of Ms. Pollesch's representation of Root.

251. Respondent stated (4/25/17 transcript, p. 10, l. 11-18):

> If she [Ms. Pollesch] had an obligation to disclose, then that's between the two of you. I didn't know. I didn't know until the divorce. Well, maybe, I might have known before, a little before that. But you were never before me. And, you know, since, I guess my business is all out there anyway, the bottom line is there were almost two years that we didn't speak. And I believe it was during that time that my, my now ex-husband was getting advice.

252. Respondent's reference to "the divorce" was her divorce from Mr. Root.

253. Respondent's reference to "almost two years that we didn't speak" was to herself and Ms. Pollesch.

254. In around June 2011, when Mr. Root retained Ms. Pollesch, respondent attended a lunch with Mr. Root and Ms. Pollesch where Ms. Pollesch's representation of Mr. Root's businesses was discussed by all present.

255. On December 16, 2014, respondent presided over a pretrial proceeding in *Parker & Parker v Magyari*, 53rd District Court Case No. 14-4250-GC.

256. At that proceeding, respondent addressed a remark by attorney Jon Thomas Emaus, counsel for defendant Michael Magyari, that attorney Robert Parker and Mr. Magyari were friends (which allegedly impacted fees and the attorney/client relationship).

257. In response to the statement that there was a friendship between counsel and his client, respondent stated:

> So what? That doesn't help me. My best friend does my husband's legal work and boy he pays! A lot!

258. The reference by respondent to "my best friend" was a reference to Ms. Pollesch.

259. When Mr. Emaus stated he was sure there was an agreement "there" (between Ms. Pollesch and Mr. Root) as to the terms of the payments and what the legal fees might be, respondent replied: "I know. I know."

260. Respondent added:

> He knows what he gets charged an hour and he trusts her. He pays.

261. In around April 2015 Ms. Pollesch prepared estate planning documents on behalf of Mr. Root.

262. In accordance with those documents, on April 19, 2015, respondent signed an Acceptance of Designation as Patient Advocate that was prepared by Ms. Pollesch for Mr. Root.

263. The Acceptance of Designation as Patient Advocate acknowledges respondent's acceptance of the role of Patient Advocate as set forth in a Health Care Power of Attorney and was a part of that document.

264. The Health Care Power of Attorney, which named respondent as Patient Advocate, was signed by Mr. Root on April 8, 2015, with his signature witnessed and notarized by Ms. Pollesch.

265. Respondent had knowledge of Ms. Pollesch's representation of Mr. Root as early as June 2011 and definitively by December 16, 2014.

266. The complaint in respondent's divorce was filed on December 2, 2016.

267. Respondent's representations concerning when she learned that Ms. Pollesch was representing her former husband made on April 25, 2017, at the hearing on the motion to recuse in *McFarlane v McFarlane,* were false.

C. *Knowledge of Pollesch's representation of Root- statements to Commission*

268. In accordance with its investigation of Request for Investigation Nos. 2017-22481 and 2017-22577, the Commission issued a request to respondent for her comment pursuant to MCR 9.207(D)(2) via a letter dated August 31, 2017.

269. The request for comment included inquiries to respondent as follows:

a. Did Pollesch or her law firm provide legal services to Uniplas, Inc., Upcycle Polymers, LLC, or any other business owned by your former husband, Don Root? (#72)

b. Was Pollesch retained by your husband to represent his businesses in or around June 2011? (#73)

c. Did you ever disclose on the record in any of these cases that Pollesch and her firm were providing legal services to your husband or his businesses? If so, please list the cases where you made that disclosure, the dates of that disclosure, and copies of videos of any disclosures made on the record. (#76)

d. At a hearing in *McFarlane v McFarlane* on April 25, 2017, did you state the following when you considered the defendant's motion for disqualification (transcript, page 6, lines 8-19)?

* * *

> It was from your husband that you first learned Pollesch represented him. (# 80-b)

e. Did you ever encourage Root to retain Pollesch to provide legal services to his businesses? (#81)

f. Were you at a lunch with Root and Pollesch in 2011 when they first discussed Pollesch providing legal services to Root's businesses? (#82)

270. Respondent submitted her signed and notarized response to the request for comments, in narrative form, to the Commission on about October 27, 2017.

271. In her comments respondent stated the following, under oath and in narrative form (without reference to numbered questions), in response to the Commission's inquiries about Ms. Pollesch's representation of Mr. Root and his businesses:

> During our marriage, my husband complained about employees leaving his employment and starting their own plastics companies. I was a broken refrain [sic] talking about non-compete agreements. I did not practice labor law and did not know what should be or could be contained in a non-compete agreement. I may have suggested Ms. Pollesch's firm. That

> would not surprise me. I do not remember meeting with Ms. Pollesch and my husband for legal services. At some point, Ms. Pollesch provided legal services for my husband. It was my husband that told me but I do not remember when he told me, or what services were provided. Ms. Pollesch never told me. I remember being impressed that she had honored the attorney client privilege my husband had with her.
>
> Don may have come home one evening and told me he met with Ms. Pollesch. Don and I fought about what I thought he should be doing business wise. He did not like talking with me about his businesses because he believed I did not respect his business acumen. As a result, business was a topic we avoided.
>
> * * *
>
> Don moved out of the marital home in September 2013. It is even more likely that we did not talk about his meetings with Ms. Pollesch.
>
> About a year before we separated, Don created another business. It came as a surprise to me that he had incorporated another business. I had no knowledge beforehand that he was going to do that. Ms. Pollesch probably did that work.
>
> When we separated, my husband had a new will prepared. He wanted me to have a new will prepared. I never did. Ms. Pollesch may have prepared his new will. I do not know.

272. On December 13, 2017, the Commission sent a letter to respondent asking her to provide numbered responses to the original numbered requests for her comment, and to respond to each inquiry.

273. The Commission directed that the supplemental response be notarized.

274. Inquiry #73 in the request for comment asked:

> Was Pollesch retained by your husband to represent his businesses in or around June 2011?

275. In her supplemental comment, respondent stated in reply to inquiry #73:

> I do not know when my ex-husband retained Shari. When I was an attorney, I provided legal services for my ex-husband's businesses. Once I was a judge, my dad provided legal services for my ex-husband's businesses. I did not know Don decided to hire Shari. Don and I fought about what I thought he should be doing business wise. He did not like talking with me about his businesses because he believed I did not respect his business acumen. As a result, business was a topic we avoided.
>
> During our marriage, my husband complained about employees leaving his employment and starting their own plastics companies. I was a broken refrain [sic] talking about non-compete agreements. I did not practice labor law and did not know what should be or could be contained in a non-compete agreement. I may have suggested Ms. Pollesch's firm. That would not surprise me. If he took my advice and hired her, I did not know until her letter of January 3, 2017, to Mr. Kizer.
>
> I have a vague recollection that he met with Shari. By the power of elimination it had to be Don that told me he met with Shari because Shari never did. But I do not remember when he told me he met with her. Don moved out of our home in the fall of 2013. Prior to that, he may have come home one evening and told me he met with Shari.
>
> About a year before we separated, Don created another business. It came as a surprise to me that he had incorporated another business. I had no knowledge beforehand that he was going to do that. It was not until after the divorce was filed I learned Shari did the work.
>
> When we separated, my husband had a new will prepared. He wanted me to have a new will prepared. I never did. Ms. Pollesch may have prepared his new will. I do not know.

> Since Ms. Pollesch and I had stopped seeing each other the summer of 2014 until just before the divorce was filed, she could not have communicated to me anything she was doing for my husband or his businesses. Knowing Shari, she would not have told me even if we were speaking. She would protect the attorney client privilege. I now know they met for work and socially. In my opinion, their conversations helped perpetuate the break between Ms. Pollesch and me. They were both angry with me and their anger was fed when they got together.

276. Inquiry #76 in the request for comment asked:

> Did you ever disclose on the record in any of these cases that Pollesch and her firm were providing legal services to your husband or his businesses? If so, please list the cases where you made that disclosure, the dates of that disclosure, and copies of videos of any disclosures made on the record.

277. In her supplemental comment, respondent stated in reply to inquiry #76:

> No. I did not know Shari or her firm had represented my ex-husband until she sent her letter to Mr. Kizer dated January 3, 2017. Don moved out of our home in the fall of 2013. Shari and I stopped communicating in June 2014 until November 2016. Additionally, please see my answer to question 73.

278. Inquiry #79 in the request for comment asked:

> If you did not disclose the fact that Pollesch (or her firm) represented your husband and/or his businesses in any cases where she or attorneys from her firm appeared in cases pending before you, please explain why you did not do so given your obligation under MCJC 3C.

279. In her supplemental comment, respondent stated in reply to inquiry #79:

> I did not know of the representation to disclose. Please see my answer to question 76.

280. Inquiry #80 in the request for comment asked respondent:

> At a hearing in *McFarlane v McFarlane* on April 25, 2017, did you state the following when you considered the defendant's motion for disqualification (transcript, page 6, lines 8-19):
>
> a. Pollesch represented your husband and his business;
>
> b. It was from your husband that you first learned Pollesch represented him;
>
> c. You had no legal interest in your husband's business through the time he filed for divorce;
>
> d. "In the end" you did not end up with the business;
>
> e. You did not have any stock and were not a shareholder; and
>
> f. You were not a manager?

281. In her supplemental comment, in response to question #80, respondent replied "Yes" to each of the inquiries.

282. On March 22, 2018, the Commission issued a 28-day letter to respondent pursuant to MCR 9.207(D)(1).

283. Respondent provided a reply, under oath, to the 28-day letter on around April 19, 2018.

284. The 28-day letter to respondent alleged in paragraph # 72-q:

> During your friendship you regularly socialized with Ms. Pollesch, including but not limited to:
>
> * * *
>
> q. Ms. Pollesch has, over your judgeship, been your closest friend who is a practicing attorney.

285. In response to that allegation, respondent stated only:

> She has not been my only friend who is an attorney, during my judgeship.

286. In the 28-day letter to respondent the Commission alleged in paragraph #76:

> Ms. Pollesch provided legal services to Mr. Root starting in June 2011 and ending in or around December 2016.

287. In response to that allegation, respondent stated:

> I did not know Shari or her firm had represented my ex-husband until she sent her letter to Mr. Kizer dated January 3, 2017. Don moved out of our home in the fall of 2013. Shari and I stopped communicating in June 2014 until November 2016.
>
> When I was an attorney, I provided legal services for my ex-husband's businesses. Once I was a judge, my dad provided legal services for my ex-husband's businesses. I did not know Don decided to hire Shari. Don and I fought about what I thought he should be doing business wise. He did not like talking with me about his businesses because he believed I did not respect his business acumen. As a result, business was a topic we avoided.
>
> During our marriage, my husband complained about employees leaving his employment and starting their own plastic companies. I was a broken refrain talking about noncompete agreements. [*sic*] I did not practice labor law and did not know what should be or could be contained in a noncompete agreement. I may have suggested Ms. Pollesch's firm. That would not surprise me. If he took my advice and hired her, I did not know until her letter of January 3, 2017 to Mr. Kizer.
>
> I have a vague memory of knowing he met with Shari. By the power of elimination, it had to be Don that told me he met with Shari because Shari never did. But I do not remember

when he told me he met with her. Don moved out of our home in the fall of 2013. Prior to that, he may have come home one evening and told me he met with Shari.

About a year before we separated, Don created another business. It came as a surprise to me that he had incorporated another business. I had no knowledge beforehand that he was going to do that. It was not until after the divorce was filed I learned Shari did the work.

When we separated, my husband had a new will prepared. He wanted me to have a new will prepared. I never did. Ms. Pollesch may have prepared his new will. I do not know.

Since Ms. Pollesch and I had stopped seeing each other the summer of 2014 until just before the divorce was filed, she could not have communicated to me anything she was doing for my husband or his businesses. Knowing Shari, she would not have told me even if we were speaking. She would protect the attorney client privilege.

288. In the 28-day letter to respondent the Commission alleged in paragraph number #77:

> Ms. Pollesch's legal services for Mr. Root included serving as counsel for Uniplas, Inc. beginning in 2011, and Upcycle Polymers, LLC, since its incorporation in 2012.

289. In response to the allegation, respondent merely replied:

> Please see my answer to question 76.

290. In the 28-day letter to respondent the Commission alleged in paragraph #78:

> Ms. Pollesch also provided personal legal services to Mr. Root in the form of preparing an estate plan for him in or around May 2015.

291. In response to the allegation, respondent merely replied:

> Please see my answer to question 76.

292. In the 28-day letter to respondent the Commission alleged in paragraph #84:

> Ms. Pollesch appeared as counsel of record in the cases listed in Attachment 1.[1]

293. In response to the allegation respondent answered: "Yes."

294. In the 28-day letter to respondent the Commission alleged in paragraph #85:

> While the cases in Attachment 1 were pending, you failed to disclose to the parties and counsel in those cases:
>
> a. Any information about your social relationship with Ms. Pollesch, including but not limited to the information outlined above;
>
> b. That Ms. Pollesch had provided legal services to your husband and his businesses;
>
> c. That Ms. Pollesch represented your sister in her divorce;
>
> d. That you had, at times, consulted Ms. Pollesch on an informal basis as to your personal legal issues; or
>
> e. That you and Ms. Pollesch had discussed on an "intellectual basis" legal issues that arose in cases to which you were assigned as a judge, or legal issues which arose in Ms. Pollesch's work as an attorney.

295. In response to the allegation respondent asserted:

> a. I did not disclose that we were friends.
>
> b. I did not know of the representation to disclose.

[1] The attachment included the cases identified in paragraphs 80 and 81 above.

c. I did not know of the representation to disclose.

d. I did not "consult" with Ms. Pollesch.

e. I did not disclose what Ms. Pollesch and I talked about on our walks.

296. In the 28-day letter to respondent the Commission alleged in question # 86:

> At no time during the pendency of the cases in Attachment 1 did you obtain a waiver as to any disqualification due to your relationships with Ms. Pollesch.

297. In response to the allegation respondent asserted:

> I did not know I had a duty to disclose I was friends with Ms. Pollesch. Please see my answer to question 8.
>
> If I did have an obligation to disclose my friendship or to obtain a waiver, a review of the cases shows that the situation to disclose never arose.

298. In the 28-day letter to respondent the Commission alleged in question #88:

> Other attorneys employed by BP&P appeared as counsel of record in the cases listed in Attachment 1.[2]

299. In response to that allegation respondent stated: "Yes."

300. In the 28-day letter to respondent the Commission alleged in paragraph #89:

> While the cases involving attorneys from BP&P were pending, you failed to disclose to the parties and counsel in those cases:
>
> a. Any information about your social relationship with Ms. Pollesch, including but not limited to the information outlined above;

[2] The attachment included the cases identified in paragraphs 85 and 86 above.

b. That Ms. Pollesch had provided legal services to your husband and his businesses;

c. That Ms. Pollesch represented your sister in her divorce;

d. That you had, at times, consulted Ms. Pollesch on an informal basis as to your personal legal issues; or

e. That you and Ms. Pollesch had discussed, on an "intellectual" basis, legal issues that arose in cases to which you were assigned as a judge, or legal issues which arose in Ms. Pollesch's work as an attorney

301. In response to the allegation respondent asserted:

a. I did not disclose I was friends with Ms. Pollesch.

b. I did not know of the representation to disclose.

c. I did not know of the representation to disclose.

d. I did not "consult" with Ms. Pollesch.

e. I did not disclose what Ms. Pollesch and I talked about on our walks.

302. In the 28-day letter to respondent the Commission alleged in paragraph #90:

> At no time during the pendency of the cases in Attachment 1 did you obtain a waiver as to any disqualification due to your relationships with Ms. Pollesch and BP&P.

303. In response to that allegation respondent asserted:

> I did not know I had an obligation to obtain a waiver because of my friendship with Ms. Pollesch.

304. In about June 2011 respondent attended a lunch with Mr. Root and Ms. Pollesch where Ms. Pollesch's representation of Mr. Root's businesses was discussed by all present.

305. On December 16, 2014, respondent presided over a pretrial proceeding in *Parker & Parker v Magyari,* 53rd District Court Case No. 14-4250-GC.

306. At that proceeding respondent addressed a remark by attorney Jon Thomas Emaus, counsel for defendant Michael Magyari, that attorney Robert Parker and Mr. Magyari were friends (which allegedly impacted fees and the attorney/client relationship).

307. In response to the statement that there was a friendship between counsel and his client, respondent stated:

> So what? That doesn't help me. My best friend does my husband's legal work and boy he pays! A lot!

308. The reference by respondent to "my best friend" was a reference to Ms. Pollesch.

309. When Mr. Emaus stated he was sure there was an agreement "there" (between the "best friend" – Ms. Pollesch and respondent's "husband" – Mr. Root) as to the terms of the payments and what the legal fees might be, respondent replied: "I know. I know."

310. Respondent added:

> He knows what he gets charged an hour and he trusts her. He pays.

311. In about April 2015 Ms. Pollesch prepared estate planning documents on behalf of Mr. Root.

312. In accordance with those documents, on April 19, 2015, respondent signed an Acceptance of Designation as Patient Advocate that was prepared by Ms. Pollesch for Mr. Root.

313. The Acceptance of Designation as Patient Advocate acknowledges respondent's acceptance of the role of Patient Advocate as set forth in a Health Care Power of Attorney and was a part of that document.

314. The Health Care Power of Attorney, which named respondent as Patient Advocate, was signed by Mr. Root on April 8, 2015, and his signature was witnessed and notarized by Ms. Pollesch.

315. Respondent had knowledge of Ms. Pollesch's representation of Mr. Root and his businesses long before she received Ms. Pollesch's letter to Mr. Kizer dated January 3, 2017.

316. Respondent's representations to the Commission in her comment, supplemental comment, and response to the 28-day letter concerning when she learned of Ms. Pollesch's representation of Mr. Root and his businesses were false.

317. Respondent's characterizations to the Commission in her comment, supplemental comment, and response to the 28-day letter as to the substance of her knowledge of Ms. Pollesch's representation as to Mr. Root and his businesses was false.

318. The conduct described in paragraph nos. 1 – 317 constitutes:

a) Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 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 6, Section 30, and MCR 9.205(B);

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 Code of Judicial Conduct Canon 1;

d) Failure to be aware that the judicial system is for the benefit of the litigant and the public, and not the judiciary, contrary to Code of Judicial Conduct, Canon 1;

e) Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of Code of Judicial Conduct Canon 2(A);

f) Conduct involving impropriety and the appearance of impropriety, in violation of Code of Judicial Conduct Canon 2(A);

g) Failure to respect and observe the law, contrary to Code of Judicial Conduct Canon 2(B);

h) Failure to act in a conduct and manner that promotes public confidence in the integrity and impartiality of the judiciary, contrary to Code of Judicial Conduct Canon 2(B);

i) Allowing social or other relationships to influence judicial conduct or judgment, contrary to Code of Judicial Conduct Canon 2(C);

j) The use of the prestige of office to advance personal business interests or those of others, contrary to Code of Judicial Conduct Canon 2(C);

k) Failure to ensure that judicial duties take precedence over all other activities, as mandated by Code of Judicial Conduct Canon 3;

l) Failure to be faithful to the law and maintain professional competence in it, contrary to Code of Judicial Conduct Canon 3(A)(1);

m) Failure to be patient, dignified, and courteous to lawyers with whom respondent deal in an official capacity, contrary to Code of Judicial Conduct Canon 3(A)(3);

n) Engaging in ex parte communications in connection with pending or impending proceedings, contrary to Code of Judicial Conduct Canon 3(A)(4);

o) Failure to promptly dispose of the business of the court, contrary to Code of Judicial Conduct Canon 3(A)(5);

p) Failure to diligently discharge administrative responsibilities, to maintain professional competence in judicial administration, and to facilitate the performance of the administrative responsibilities of other judges and court officials, contrary to Code of Judicial Conduct Canon 3(B)(1) and MCR 9.205(A);

q) Failure to direct staff in the judge's control to observe high standards of fidelity, diligence, and courtesy to others with whom they deal in their official capacity, contrary to Code of Judicial Conduct Canon 3(B)(2);

r) Failure to disclose possible grounds for disqualification, contrary to Code of Judicial Conduct Canon 3(C) and MCR 2.003;

s) Failure to disqualify in violation of MCR 2.003(C);

t) Improper conduct during deposition contrary to MCR 2.306(C);

u) Conduct contrary to MCL 722.716(4);

v) Failure to prohibit public employees subject to the judge's direction or control from doing for respondent what respondent is prohibited from doing under Code of Judicial Conduct Canon 7(B)(1)(b);

w) Failure to cooperate with reasonable requests from the Commission during an investigation, contrary to MCR 9.208(B);

x) Conduct reflecting deceit, intentional representation, and/or engaging in misleading statements to the Commission, pursuant to MCR 9.205(B);

y) Misuse of judicial office for personal advantage or gain, contrary to MCR 9.205(B)(1)(e);

z) Conduct which exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(A)(2); and/or

aa) A pattern of misconduct in violation of the Code of Judicial Conduct.

Pursuant to MCR 9.209, respondent is advised that an original verified answer, under oath, 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. Any 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

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June 12, 2018