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
Master: Hon. William J. Giovan

RESPONSE TO OBJECTIONS TO MASTER'S REPORT, PETITION TO ADOPT MASTER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW, DISCIPLINARY ANALYSIS, AND BRIEF IN SUPPORT

LYNN H. HELLAND (P32192)
Examiner

CASIMIR J. SWASTEK (P42767)
Associate Examiner

3034 W. Grand Blvd. Suite 8-450
Detroit, Michigan 48202
(313) 875-5110

Date: February 19, 2019

I. INTRODUCTION

On June 11, 2018, the Commission authorized Formal Complaint No. 99 (FC 99) against respondent, and on July 23 authorized an amended formal complaint. The hearing on the amended complaint took place from October 1 through October 10, and on November 19. The Master heard testimony from 16 witnesses, including respondent, and received more than 175 exhibits.

On October 15, during the recess in the hearing, the Examiners moved to amend the formal complaint to add charges supported by the evidence already admitted and by the anticipated remaining evidence. Respondent did not object. On November 20 the Master granted the motion to amend. The Examiners filed a Corrected Second Amended Complaint on November 26.[1] The parties submitted written closing arguments, and the Master issued his report on December 20.

The Master determined that respondent engaged in misconduct as to fourteen of the fifteen counts in the second amended complaint.[2] The Misconduct section of this brief shows the Master's findings and conclusions are fully supported by the evidence. The Sanction section argues that the Commission should recommend that respondent be removed from the bench.

The Examiner has the burden of proving allegations of judicial misconduct by a preponderance of evidence. *In re Gorcyca*, 500 Mich 588, 613 (2017). The Commission's review is *de novo*. *In re Chrzanowski*, 465 Mich 468, 482 fn 14 (2001).

---

[1] The complaint was corrected to address typographical errors in the draft second amended complaint that had been submitted with the motion to amend.

[2] The Master did not address Count VIII. The Examiners do not object to the Master's lack of a finding with respect to this count. Count XVII charged false statements, and consisted of many separate false statements charged as subcounts. The Examiners withdrew Counts XVII(b)(i) and XVII(k). The Examiners neglected to include Count XVII(o) in an appendix that purported to include all false statements, so the Master made no finding with respect to that count. The Examiners do not seek a finding on that count.

II. MISCONDUCT

The Master found that respondent committed seven different types of misconduct, each with its own history.[3] Respondent essentially objects to the Master's findings in their entirety. She attributes some of the Master's findings to applying a different standard to her conduct than would apply to a male judge's conduct. Her objections rest on mistakes of law, misunderstanding of the Master's findings, selective use of facts, and omission of critical context. The misconduct described below is equally serious for male and female judges, and the Examiners urge the Commission to adopt the Master's findings in full.

1. Respondent's failure to disqualify herself in *People v. Kowalski*; Second Amended Complaint Counts I, V[4]

The Master found that respondent's failure to disclose her relationship with Michigan State Police trooper Sean Furlong, or disqualify herself from the case in which he was the main witness, was "perhaps the most serious charge proven against respondent… that infected the integrity of a serious criminal proceeding, a charge of double homicide first-degree murder that resulted in a sentence of life imprisonment without parole" Report, p 2. The Master based his decision on the facts summarized below. Report, pp 2-7.

People v Kowalski was assigned to respondent in March 2009, and trial took place in January 2013. Furlong was central to the case; he was the co-officer in charge of the investigation, and co-officer in charge and main prosecution witness during the trial (Respondent Tr 10/1/18, p 158/7-10; Piszczatowski Tr 10/4/18 pp 920/15 – 921/13; Maas Tr 10/4/18 pp 991/11 – 982/15, 1003/8-10). He took Kowalski's statement, which was the key piece of evidence at trial

[3] The separate types of misconduct are: failure to disclose/disqualify; false statements; tampering with evidence; abusive treatment of others; using court resources for campaign purposes; using court employees for personal errands; and inappropriate behavior during depositions.

[4] The Master's report consists of eight sections. For ease of reference this brief adopts the report's organization.

(Respondent Tr 10/1/18, p 158/1-6; Piszczatowski Tr 10/4/18, p 921/9-13; Maas Tr 10/4/18, pp 991/23 – 992/6). Respondent, exercising her discretion, admitted the statement into evidence over Kowalski's pretrial objection at a hearing at which Furlong was the main witness. She also exercised her discretion to prevent a defense expert from testifying about the unreliability of the statement Furlong took from Kowalski.[5] Right or wrong, respondent's pretrial rulings had a very negative impact on the defense case (Piszczatowski Tr 10/4/18, p 966/1-13).

On January 4, 2013, the Friday before trial, attorney Tom Kizer sent a letter to the prosecutor and Kowalski's lawyer regarding respondent's relationships with Furlong and Furlong's close friend and fellow MSP officer Chris Corriveau, who was also a witness in *Kowalski* (Ex. 1-9; Piszczatowski Tr 10/4/18, pp 922/19 – 923/14). The letter and respondent's handling of it are discussed in greater detail in the false statements section, Section 5 below at pp 56-59. The letter caused Kowalski to seek to disqualify respondent. She refused, after characterizing her relationships with Furlong and Corriveau as nothing more than routine professional friendships.[6]

Below are the Master's findings in support of his conclusion that respondent's relationship with Furlong required disclosure and her disqualification, with transcript references added:

- Respondent consistently met with Furlong and Corriveau in chambers behind closed doors, which, contrary to her statement at the time, was different than how she treated other officers (Cox Tr 10/3/18, p 584/10- 586/23; Bove Tr 10/4/18, pp 786/14 – 787/7; Zysk Tr 10/9/18, p 1463/18 – 1464/20);

---

[5] Respondent argues that Furlong was not the main witness at trial – Kowalski's taped confession was. Respondent's brief pp 17-18. While it does not matter to respondent's obligations whether Furlong was "a" witness or "the main" witness, this argument is a little disingenuous. Respondent's pretrial ruling ensured that the statement Furlong took from Kowalski would not be challenged by expert testimony. The jury's attitude toward the statement was almost certainly impacted by its attitude toward Furlong as he sat through the trial, and likely influenced by respondent's attitude toward Furlong as well.

[6] Respondent's characterization is explored further in the false statement section, Section 5.

- She met with Furlong in small social groups, and had lunch and attended sporting events with him alone (Cox Tr 10/3/18, pp 588/23 – 589/19; Bove Tr 10/4/18, 787/8-10; Ryan Tr 10/2/18, p 484/8-12; Zysk Tr 10/9/18, p 1465/9-12);[7]
- She gave her husband's U of M football tickets to Furlong (Root Tr 10/3/18, pp 574/21 – 575/25; Respondent Tr 10/1/18, pp 193/11-17, pp 194/20 – 195/14);
- She gave Furlong regular use of her cottage in Holland (Root Tr 10/3/18, pp 573/22 – 574/9; Ryan Tr 10/2/18, p 481/3-20, pp 484/18 – 485/3, 9-25, p 486/3-10, Tr 11/19/18 p 1773/17-22; Respondent Tr 10/1/18, p 182/10 - 183/6, Tr 10/8/18 pp 1647/25 – 1648/6, Tr 10/10/18, pp 1624/8 – 1625/8; Morrison Tr 10/4/18, pp 852/18 – 853/19);
- Respondent had Furlong as a guest at her cottage among a small group of friends. Although the Master did not state it, Furlong's visits to respondent's cottage as a guest included one trip that lasted nearly a week, and a weekend trip in 2012 that consisted of respondent, Furlong, Corriveau, and Kim Morrison (Morrison Tr 10/4/18, pp 852/18-853/19; Ryan Tr 10/2/18, p 481/8-17; 11/19/18, p 1773/13-22);
- She went Christmas shopping with Furlong and someone else (Ryan Tr 10/2/18, p 486/11-22; Ryan Tr 11/19/18, pp 1768/25 – 1770/7, 1807/20 – 1808/20; Respondent Tr 10/1/18, p 191/16-21). The evidence showed respondent did this for three years while *Kowalski* was pending before her;[8]
- Furlong was a dinner guest at her home (Ryan Tr 10/2/18, pp 491/4-24, 492/5-13, 492/25-493/1, Tr 10/3/18, pp 561/19 – 562/12, Tr 11/19/18, pp 1771/14 – 1772/8; Pollesch Tr 10/9/18, pp 1426/25 – 1427/5). Although the Master did not state this, those dinners included one at which respondent and other women removed their clothes while in respondent's pool (Ryan Tr 10/2/18, pp 491/4 – 492/13; Pollesch Tr 10/9/18 pp 1428/15 – 1430/9);
- Before *Kowalski* was assigned to her, respondent was already sure Kowalski was guilty based on remarks made to her by Furlong (Cox Tr 10/3/18, pp 590/12 – 591/19);
- She had 1500 *social* telephone conversations with Furlong between July 2008 and the start of trial (Ex. 1-31, rows 3-1935; Respondent Tr 10/1/18, pp 165/19-23, 169/10-12; Ex. 1-14 (Respondent Dep Tr Root v Brennan 2/9/17, p 120/2-9); Ex. 16 p 13);
- Respondent and Furlong talked on the phone with each other between one and two hours per month during the 14 months before trial, and 80% of those calls were initiated by respondent (Respondent Tr 10/1/18, pp 166/13-22, 169/2-9; Ex. 1-22; Ex. 1-29);
- Respondent and Furlong exchanged about 400 social texts from 2010 to the start of trial (Ex. 1-31, seriatim between rows 536 and 1935); and

---

[7] The evidence does not show that respondent and Furlong were alone at a sporting event before the Kowalski trial. Although the evidence shows that respondent often had lunch with Furlong, and often left alone with him to go to lunch, and sometimes said she was going to lunch with Furlong without mentioning others, there is no direct evidence that she ate alone with him.

[8] Respondent claims she only did this twice. Respondent's brief p 16. She is mistaken.

- Respondent and Furlong even exchanged calls and texts *during* the trial, with the phone conversations totaling a half hour in length, plus another 20 conversations between verdict and sentence (Ex. 1-19, rows 257-259 (calls on January 18 and 19, 2013); Ex. 1-31 rows 1936-1952 (texts between January 18 and 19, 2013); Ex. 1-31, rows 1953-2179)[9]

While the allegation in the amended complaint focused on respondent's failure to disclose her relationship with Furlong on the eve of trial, the Master noted that this disclosure should have occurred when *Kowalski* was assigned to her. Report at p 7. That would have been long before she presided over hearings that concerned the admissibility of the statement Furlong took and whether that statement would be called into question by expert testimony. Report at p 7; Piszczatowski Tr 10/4/18, pp 942/19 – 23, 925/13-19; Maas Tr 10/4/18, p 993/2-8, 15-18.

The depth of respondent's relationship with Furlong is further demonstrated by facts in the record that were not cited by the Master. For example, Furlong was one of only three trusted friends respondent asked to proofread a statement she submitted to the Judicial Tenure Commission in 2009, in response to a complaint about her (Respondent Tr 10/1/18, pp 195/20 – 196/14; Ryan Tr 10/2/18, pp 487/24 – 488/25). Other significant facts about the relationship, including the details of her socializing with Furlong, are summarized in Attachment 1.

Based on all the above the Master found that respondent's failure to recuse herself from *Kowalski* was "gross misconduct." Report p 7. Respondent claims the Master erred as a matter of law. She argues that disqualification is governed by MCR 2.003, and "appearance of impropriety" is not a basis for disqualification under MCR 2.003.[10] Therefore, she says, the failure to disqualify even when there is an appearance of impropriety is not misconduct. Respondent's brief pp 8-9, 18. To support her claim she cites two Michigan Supreme Court cases from 2006. *Id*. at pp 8-9.

---

[9] The Master included a reference to respondent's purchase of an airline ticket for Furlong. This did happen, but not until three years after *Kowalski* was concluded.

[10] The Master did not explicitly find that respondent's failure to disqualify was an appearance of impropriety. Instead, he found it was "gross misconduct," and cited Canon 3(C).

Were we living in 2007, respondent's argument might have force. At that time MCR 2.003 apparently did not make appearance of impropriety a basis for a judge's recusal from a case. Attachment 2. However, respondent's involvement with *Kowalski* began in 2009, and she seems to have missed that MCR 2.003 was amended in 2009 to explicitly state that an appearance of impropriety *is* a reason for a judge to disqualify herself. Attachment 3. This amendment came *after* the cases on which respondent relies. After 2009 there is no doubt that in Michigan an appearance of impropriety requires a judge's recusal. MCR 2.003(C)(1)(b).

To refute the Master's claim that she should have disqualified herself, respondent then attempts to divide and conquer the evidence. She claims that the Master is wrong to say she gave UM football tickets to Furlong. Respondent's brief p 16. She is technically correct – it was actually respondent's husband who provided the tickets – but the Master is correct in substance; her husband gave the tickets at respondent's initiative (Root Tr 10/3/18, pp 574/21 – 575/25; respondent Tr 10/1/18, pp 193/11-17; respondent Tr 10/1/18, pp 194/20 – 195/14).

Respondent claims there is no evidence that she went to lunch with Furlong alone. Respondent's brief p 16. To the contrary, the evidence showed that respondent told people she was going to lunch with Furlong, not with Furlong and others. (Bove Tr 10/4/18, 787/8-10; Ryan Tr 10/2/18, p 484/8-12; Zysk Tr 10/9/18, pp 1464/21 – 1465/7) Respondent attempts to minimize this evidence by posing the supposedly rhetorical question: "Since when . . . does an occasional lunch with someone portray a very close social relationship?" Respondent's brief p 16. There are two problems with this rhetorical question: a) the evidence showed that respondent's lunches with Furlong were not "occasional," but were a regular event, as was her meeting with Furlong and others after work at a local bar (Respondent Tr 10/1/18, pp 186/18 – 187/11, 191/3-10); b) it was

not the lunches alone that demonstrated the close social relationship, but the lunches along with all the other contacts.

Respondent notes that it was not only Furlong with whom she met privately in her chambers, but Chris Corriveau and Trooper Scott Singleton as well.[11] She wonders whether the Master is alleging that respondent romanced all three of them. Respondent's brief p 15. Respondent misses the point of the Master's finding. Attorney Kizer's pretrial letter alleged that respondent met privately in chambers with Corriveau. Respondent answered by stating that that is just how she interacted with police generally, that she did not treat Furlong or Corriveau any more special than other officers. She elaborated on this claim in her statements to the Commission during the investigation. Unfortunately, her pretrial statement to the Commission was false and her elaborations were false. The evidence showed that as of the time of Kizer's letter, Furlong and Corriveau were the only officers who met with respondent behind closed doors. It does not matter whether these meetings were "romantic." What matters is whether respondent had a special relationship with them. Her meeting with them, and only them among all police officers, in private, is evidence that she did have a special relationship.

Respondent attempts to avoid the significance of her pretrial phone relationship with Furlong by subtly twisting the Master's finding, then "disproving" the twisted version. Respondent claims the Master found that respondent's phone and text contact with Furlong was "unique." Respondent's brief p 16. She then demonstrates that it was not literally "unique." She claims the Master concluded that the number of calls she made to Furlong was "extraordinary." Respondent's brief p 17. She then argues that there is no evidence that the raw number of contacts was objectively

[11] The one other police officer who eventually received treatment similar to Furlong and Corriveau was another MSP officer, Scott Singleton, who respondent referred to as "hot." Respondent began to see him privately three years after the *Kowalski* trial, in early 2015 (Cox Tr 10/3/18, pp 586/24 – 587/13).

"extraordinary." She claims the Master found that respondent talked far more on the phone with Furlong than with "others." Respondent's brief p 17. She then demonstrates that there were two other people with whom respondent spent a comparable amount of time on the phone, and argues that therefore Furlong was not "singularly special." She concludes that the phone contacts are not significant evidence to support the Master's finding that she had a very close personal relationship with Furlong.

But the Master never purported to find that respondent's phone and text contact with Furlong was "unique," or "extraordinary," or "singularly special." He only found that the frequency of the calls, their overall duration, and their social nature were among the facts respondent did not disclose that were "more than sufficient to have required her disqualification." Report at pp 4-5. The evidence supports this finding. It showed that for the fourteen months before the *Kowalski* trial, respondent spent far more time on the phone with three people than with anyone else. The three people were her sister, her friend Shawn Ryan, and Furlong. Exhibit 24 revised. It does not matter whether respondent's relationship with Furlong was singularly special. What matters is whether it was more than the casual professional relationship she described to counsel on the eve of the *Kowalski* trial. It clearly was.

The Master found the facts summarized above to be more than enough to require respondent's disqualification, but went on to state: "The denial of disqualification was all the more egregious, however, because, by the time of the disqualification motion and for a significant period before, Judge Brennan had a romance with detective Furlong. Yes, a romance." Report, p 5. As she mischaracterized the Master's other findings, respondent also mischaracterizes this finding in order to attack it. She claims that when the Master said "romance" he really meant "sex." She then

complains that a finding that she engaged in sex with Furlong prior to the *Kowalski* trial violated a prehearing stipulation. Respondent's brief pp 12-13.

Respondent is wrong, but it takes a little background to show how she is wrong. We have to begin with paragraph 17c of the complaint, which alleged: "In response to another allegation in the [Kizer pretrial] letter, respondent denied that she ever had a sexual relationship with Detective Sergeant Furlong." This allegation was accurate – in fact, respondent admitted making this statement during her testimony (Respondent Tr 10/1/18, pp 206/19 – 206/22; 1666/5-12, 17-22). However, prior to the hearing on the complaint, respondent turned the quoted language on its head, claiming it was actually an assertion that she and Furlong *had* a sexual relationship before the *Kowalski* trial. Respondent objected strenuously to this "allegation," claiming it was highly prejudicial to her. To eliminate this issue, the Examiners stipulated before the hearing that the complaint did not allege respondent and Furlong had sex prior to *Kowalski*. Motion hearing (Helland) Tr 9/19/18, pp 52/22 – 53/5, 55/1-3, 5-12; (Kolenda) Tr 9/19/18, p 54/20-25).

The Examiners never stipulated that respondent did not have an intensely close and even romantic relationship with Furlong – only that the evidence would not show a *sexual* relationship that predated *Kowalski*. The Examiners never tried to establish a sexual relationship at the hearing. Meanwhile, other portions of the complaint stressed respondent and Furlong's close personal pre-*Kowalski* relationship, including the fact that they had kissed. The evidence at the hearing showed there were romantic elements to respondent's relationship with Furlong, both before and shortly after the *Kowalski* trial. It was that evidence on which the Master relied in referring to the relationship as a "romance." The Master never purported to find that the relationship involved sexual intercourse prior to *Kowalski*. In other words, respondent obtained the prehearing

stipulation by misrepresenting the allegation in the complaint, and now misrepresents the Master's finding to complain that the stipulation has been violated.

To support his conclusion that respondent and Furlong were engaged in a romance, the Master cited the evidence of their overall relationship, mentioned above, and two other facts. The first was that respondent and Furlong shared a romantic kiss in respondent's chambers in 2007, when respondent turned 50. This finding was supported by two witnesses (Ryan Tr 10/2/18, pp 494/11 – 495/7; Zysk Tr 10/9/18 pp 1465/17 – 1466/15). The Master concluded:

> For [respondent] to speak to 2 persons about the incident with pleasant excitement, as was the case, it had to be a romantic kiss, not a peck on the cheek.[12] In professional work a police officer does not ordinarily walk up and kiss a judge in chambers. For that to happen without a calamity in the courthouse, there had to be prior romantic sentiments between them in order to permit the event to have occurred at all. Report, p 5.

The second incident with which the Master supported his conclusion of a romance between respondent and Furlong occurred on April 22, 2013, only seven weeks after Kowalski was sentenced. Respondent's secretary, Kristi Cox, went to respondent's office after lunch in preparation for the afternoon court proceedings (Cox Tr 11/19/18, p 1833/9-15). She was surprised to find respondent sitting on the floor under the window, pulled into a ball and obviously very distressed (Cox Tr 10/3/18, pp 593/14 – 594/4; Cox Tr 11/19/18, pp 1833/19 – 1834/1).

A short time later, respondent's best friend, Shari Pollesch, came to respondent's office. Respondent told Pollesch she was so distraught because Furlong had told her the two of them could

[12] Respondent complains about the Master's characterization of respondent's tone, when describing the incident, as "pleasant excitement." The Examiners agree that no witness used those words. However, it is clear that the Master was distinguishing the kiss respondent and Furlong shared from a mere peck on the cheek. Whether or not respondent later described this incident with "pleasant excitement," the kiss was clearly much more than a peck on the cheek. That was the Master's only point in using the language he chose, and his underlying point is accurate.

not be friends anymore (Pollesch Tr 10/9/18, pp 1401/23-1402/1).[13] After spending a few minutes with respondent, Pollesch determined that respondent was too distraught to handle her docket. She instructed Cox to reschedule respondent's afternoon docket and to inform the parties that respondent had food poisoning (Cox Tr 10/3/18, p 594/6-10 & 11/19/18 pp 1855/14-1856/1; Pollesch Tr 10/9/18, p 1402/8-18; Ex 1-30, docket sheets). Cox considered it highly unusual to cancel a docket, because respondent was "flawless" about taking care of her docket during Cox's decade with her (Cox Tr 10/3/18, p 596/1-4).

Again, the Master's conclusions about the incident are significant:

> What is common to both [Cox's and Pollesch's] versions of the incident is that the judge and [Furlong] were both considerably distressed because they could no longer be together. The distress didn't come because they couldn't discuss sports scores any longer. It came, obviously, from the breakup of a romance. That relationship, moreover, did not arise overnight. To have such sorrowful effect at its anticipated ending, the relationship had to have originated some considerable time earlier. Report, p 6.

The record contains still more evidence that supports the inference of a romantic relationship before the *Kowalski* trial. A month or two before the trial respondent's close friend, Shawn Ryan, shared dinner with respondent and Furlong. She noticed respondent look at Furlong with a certain "look of affection" that she had not seen before from respondent (Ryan Tr 10/2/18, pp 497/24 – 498/18). In 2012, well after the 2007 kiss and a year before the 2013 meltdown in chambers, Kim Morrison had a conversation with respondent in which respondent raised Furlong's name in a way that made Morrison wonder if respondent "liked" Furlong; it caused Morrison to conclude it was a good thing Morrison had not expressed an interest in Furlong herself (Morrison Tr 10/4/18, pp 849/23- 851/19).

[13] A few weeks after this incident respondent told Cox that what had so upset her is that her husband had told her to stop speaking with Furlong (Cox Tr 10/3/18 p 596/5-15 & 11/19/18 p 1835/2-16; p 1837/8-21). Whether respondent's statement to Pollesch, her statement to Cox, or perhaps both statements, were correct is immaterial. Both statements made clear that her anguish was due to the prospect of losing her connection with Furlong.

Yet more evidence that the Master's inference was correct is found in respondent's contacts with Furlong during the *Kowalski* trial. For the most part respondent ceased her calling and texting Furlong while the trial was in progress. This was such a dramatic departure from their pattern of the previous five and a half years that it must be an implicit, and very appropriate, acknowledgment that they considered it improper to communicate privately during the trial. Yet, halfway through the trial, respondent called Furlong three times for a total of a half hour, and exchanged several texts with him. Ex. 1-19, rows 257-259 (calls on January 18 and 19, 2013); Ex. 1-31 rows 1936-1952 (texts between January 18 and 19, 2013). She broke their phone and text silence even though, just two weeks earlier, she had denied a motion to disqualify her that was based on her personal relationship with Furlong. And what was her compelling reason for doing so? She was bored, and wanted someone to talk with (Respondent Tr 10/1/18, p 229/11-23; Ex. 16 p 13; Ex. 19 pp 14 – 15 ¶ 11.(iii)a). She would not have chosen Furlong as her talking partner, under those circumstances, unless she felt exceptionally close to him. In fact, respondent acknowledged to Shawn Ryan, shortly after her meltdown in chambers, that Furlong was the person she most liked to talk with at the end of the day (Ryan Tr 10/2/18, pp 499/7 – 500/9).

The Master noted that a police officer kissing a judge would normally cause a "calamity in the courthouse" unless there were prior romantic sentiments between them. Respondent is offended by the Master's conclusion. Respondent's brief pp 14-15. She mischaracterizes the Master's finding as being that respondent "asked for it." That is not what the Master found; the observation he actually did make was well taken.

Respondent objects to the Master's finding that her meltdown in her chambers over the thought of not speaking with Furlong, just seven weeks after Kowalski was sentenced, indicates a romantic relationship that had been in place for a significant time. She notes that males and females

can be close without being romantic. That is undoubtedly true, but it misses the point of the Master's finding. Whether or not respondent and Furlong were "romantic," the meltdown demonstrates that they were exceptionally close and most likely had been for some time. It's the closeness of their relationship that called for disclosure and disqualification, not whether they were that close in a romantic way.

The Michigan Supreme Court addressed a romantic relationship between a judge and an attorney with whom the judge had court-related business in *In re Chrzanowski*, 465 Mich 468, 490 (2001). The Court disciplined Judge Chrzanowski for "her improper appointments of counsel, *her failure to disclose those appointments, and for her false statements* to interviewing officers."[14] (Emphases added) The only significant factual distinction between Chrzanowski and here is that Judge Chrzanowski was in a sexually intimate, rather than a romantic or very close personal, relationship. That distinction makes no difference. Respondent's failing to disclose a romantic or close personal relationship is similar enough to Judge Chrzanowski's actions to likewise be deemed misconduct.

The *Kowalski* trial took three weeks. Respondent did not make any additional disclosures of her friendships with Furlong or Corriveau during the trial (Piszczatowski Tr 10/4/18, p 942/4-10; Maas Tr 10/4/18, p 998/11-14). She did not disclose that during the trial she talked with Furlong on the phone for more than a half hour, nor that she texted back and forth with him (Piszczatowski Tr 10/4/18, pp 942/19-23, 944/8-13; Maas Tr 10/4/18, p 998/4-6, 15-19). She did not disclose that she had another 20 phone conversations with him totaling more than four hours, plus more texts, between the verdict and sentencing (Piszczatowski Tr 10/4/18, p 943/5-11; Maas

[14] Judge Chrzanowski was suspended for one year.

Tr 10/4/18, p 999/7 - 12). It would have been very important to counsel to be aware of any of this information (Piszczatowski Tr 10/4/18, pp 943/12 – 944/7; Maas Tr 10/4/18, pp 998/20 – 999/3).

Conclusions of law as to Counts I and V

The Master found that the allegations in Counts I and V of the Second Amended Complaint were proved by a preponderance of the evidence. He concluded: "The respondent's concealment of her relationship with Detective Furlong and failure to recuse herself was gross misconduct that violated Canons 1, 2, and 3C of the Michigan Code of Judicial Conduct." The Examiners urge the Commission to agree with the Master and to go further. The evidence summarized in this section proves respondent violated:

- MCJC Canon 1, in that she failed to observe high standards of conduct and undermined the integrity of the judiciary;
- MCJC Canon 2(A), in that her irresponsible and improper conduct eroded public confidence in the judiciary;
- MCJC Canon 2(A), in that she created at least the appearance of impropriety;
- MCJC Canon 2(B), in that her conduct degraded public confidence in the integrity and impartiality of the judiciary;
- MCJC Canon 2(C), in that respondent allowed her social relationship with Furlong to influence her judicial judgment whether to disqualify herself from Kowalski;
- MCJC Canon 3(C) and MCR 2.003(C)(1)(b), in that respondent failed to disclose a basis for her disqualification and to disqualify herself from the proceedings.

2. Second Amended Complaint
Count IV: Unreasonable delay in disqualification
Count XVI: Destruction of Evidence

In December 2016 respondent's husband, Don Root, filed for divorce. The divorce case was automatically assigned to respondent. She did not disqualify herself immediately, although she was aware she needed to do so. While the case was still on her docket, Root filed an emergency motion to preserve evidence, which covered "email messaging, text messages, phone records, . . .

and other relevant data" in respondent's possession. Ex 4-3. Respondent continued to not disqualify herself, even when asked to do so by the chief judge's secretary. While the case remained on her docket or very shortly after, respondent took efforts to delete data from her cell phone, and ultimately succeeded in deleting all data from it. A few weeks later, during her divorce deposition, respondent lied about her efforts to remove data from her phone.[15]

The Master found that respondent's delay in disqualifying herself from her own divorce, tampering with evidence related to her divorce, and lying about it afterwards, was misconduct. Report, pp 7-10. The facts supporting the Master's conclusions are summarized in detail in Attachment 4, which has a timeline of events that mostly took place during the first week of December, 2016. Those events include:

- Respondent's acknowledgment, in the early morning of Friday, December 2, that when Root filed for divorce the case would be assigned to her and she would disqualify herself;
- Respondent's learning from her chief judge, later on December 2, that Root had filed;
- Respondent's being personally informed by her chief judge's secretary that Root filed an emergency motion to preserve evidence on Tuesday, December 6, which motion sought to preserve all messages, texts, and all other relevant electronic data in respondent's possession;
- Respondent refusing to sign a disqualification order presented to her in person on December 6 by the chief judge's secretary, who made a special trip to respondent's Brighton courthouse for that purpose, and later refusing to sign the order as it was presented to her by her own secretary;
- Respondent lying to her chief judge's secretary in the course of refusing to sign the disqualification order, by telling the secretary she had not yet spoken to her divorce attorney, when she had actually spoken to him both earlier that day and the day previous;
- Respondent asking others, including her court staff and a police officer, for assistance in deleting information from her phone, which requests included sending her court recorder out of the courtroom, while court was in session, to research how to delete an email account from her phone;
- Respondent representing to her chief judge that she signed the disqualification order on Wednesday, December 7, and claiming that she sent the order to the Howell courthouse via court mail on December 7, but failing to do so;

[15] Respondent's various false statements about these events are explored in detail in Section 5, below.

- Respondent handing the disqualification order to a court staff member on December 8 to deliver to her chief judge, telling the staff member that the order was the document the chief judge was "having a cow" about; and
- Respondent causing all data to be removed from her cell phone.

The Examiners note that during the investigation respondent was asked about her failure promptly to disqualify herself from her divorce. She responded under oath, in part: "I know this will sound absurd but I do not know that it even registered with me that [the divorce case] was my file until [the chief judge's secretary] came to the Brighton court." Exhibit 19 at p 32 ¶60. This sounds especially absurd in light of respondent's telling Root, just before he filed for divorce, that the case would be assigned to her and she would disqualify herself. Ex 4-10 p 5. This false statement is not charged as misconduct, but it does offer a glimpse into respondent's credibility.

Respondent argues that the Master ignored that Root's emergency motion was directed to respondent's chief judge, rather than to respondent. Respondent's brief p 18 fn 12.She argues that it was therefore the chief judge who failed to do his job, and she should not be punished for his failure. This creative argument overlooks that the motion was filed in the case that was assigned to respondent, which was the only case in which it could have been filed and which made her the only judge who could hear it; at least so long as she was on the case. Her argument ignores that the only reason the case was still assigned to her when Root filed the motion is because she had failed to disqualify herself between December 2 and December 6. And finally, her argument ignores that even if her chief judge could have intervened in a case that was assigned to her, and could thereby have removed from her the ability to commit this particular misconduct, the fact that he did not do so hardly absolves respondent of her misconduct.

Respondent argues that Root's motion did not apply to her cell phone. Therefore, she argues, the Master erred in concluding that her removing data from her cell phone while the data was subject to Root's motion. Respondent is correct that the motion did not explicitly seek to

preserve respondent's cell phone, but her argument is beside the point. What the motion did seek to preserve was email messages, text messages, and other relevant electronic data. The proposed order Root submitted along with his emergency motion went into much greater detail concerning the data he sought to protect. Ex. 4-3. Respondent's phone was a repository of that data. When respondent deleted the data from her old phone, she destroyed at least some relevant data, and maybe a lot. No one can tell, because respondent made it impossible to figure that out. She is simply wrong that the motion did not prevent her destroying data that was on the cell phone.

Respondent notes that Root's motion did not seek to prevent respondent replacing her cell phone. Respondent's brief p 19. That is accurate, but beside the point. She also argues that the motion only required her to preserve data, a requirement she could fulfill by putting the data in another place. She claims that this is all she did – she bought a new phone, transferred data from the old phone to the new phone, and having done that, she discharged all her responsibilities with respect to the old phone and was free to destroy it.

The problems with respondent's argument include that her actions did not, in fact, preserve all data from the old phone; indeed, her actions made it impossible to determine what data from the old phone was and was not preserved. Further, respondent never bothered to share with anyone, such as the party who had filed the motion to preserve evidence, either before or after she deleted the data from her phone, that she had elected to copy some part of the data that was on the old phone and then delete the data from the old phone. That is, despite the pending motion, she acted unilaterally with respect to the old phone. Another problem with respondent's argument is that even by her own admission, she encountered "glitches" copying whatever she tried to copy from the old phone to the new one (Respondent Tr 10/8/18, pp 1337/20-21, 1339/18 – 1340/12-18). It

was after respondent encountered these glitches that she destroyed the data on the old phone, making it impossible to verify the completeness of any data transfer.[16]

Respondent claims she only intended to copy, not destroy, data. That is inconsistent with her urgent desire, between when Root filed his motion on December 6 and respondent had her old phone reset on December 8, to delete an email account from that phone. If she was not concerned with concealing or destroying data, she had no urgent need to delete data from the old phone.

Respondent makes a great deal of the fact that she only asked her court recorder, Felica Milhouse, to delete a Hotmail account from her old phone, not *all* the contents. Respondent's brief p 19. Respondent's point is mysterious. Milhouse's testimony shows that respondent urgently wanted her to find a way to delete respondent's Hotmail account from the phone, two days after Root filed his motion to preserve electronic data (Milhouse Tr 10/3/18, p 528/5-20). Although respondent's cross-examination of Milhouse showed she could not recall clearly whether it was a Hotmail or Gmail account respondent wanted her to remove, she was unwavering in her testimony that respondent was anxious to have her remove one of those accounts.

A later forensic search of Milhouse's computer by the Michigan State Police corroborated Milhouse's memory that it was a Hotmail account respondent wanted removed – the examination showed Milhouse made numerous internet searches that morning on the subject of removing a Hotmail account from an iPhone. Stipulation (expert witness) 11-2-18, ¶ 3. These searches took place shortly before respondent had ***all*** data removed from the phone by resetting it to its factory settings. Stipulation (expert witness) 11-2-18, ¶ 2. Milhouse never claimed that respondent asked her to remove all data from the phone, and it is not clear how it makes any difference whether

[16] Respondent similarly testified about the data transfer at her divorce deposition: "There was a problem transferring too, and I don't remember why. I don't know if it was because of a new company. It was a mess." Ex 1-14, p 206/12-14.

respondent asked Milhouse to remove some data from the phone or all data from the phone. Either action tampered with the evidence Root's emergency motion sought to preserve.[17]

Respondent makes another mysterious argument, to the effect that the expert witness stipulation precludes the Examiners from arguing, and precluded the Master from finding, that respondent did anything other than preserve the contents of her old phone. Respondent's brief pp 20-21. To make this claim respondent has cited the least material part of the stipulation and ignored the part that hangs her.

As respondent notes, the parties stipulated that when a person buys a new cell phone it is common to copy contents from an old phone to the new phone. The parties certainly did stipulate that this is an accurate description of common cell phone practice. However, nothing in the stipulation said that respondent did any of these things; this practice has nothing to do with data that is subject to a motion to preserve evidence; this practice has nothing to do with *deleting* data from any phone; and this "common" practice has nothing to do with whatever actions respondent actually took in this particular case.

The same stipulation also states that merely copying data from an old phone to a new phone does not delete any data from the old phone; deleting data requires a separate step. It says that in an act completely distinct from copying information to a new phone, in the early afternoon of December 8, 2016, her iPhone was reset to factory settings. It says that the reset meant the phone no longer contained *any* user data. It says that because her phone was reset, a forensic examiner

[17] The extent to which respondent is willing to twist the evidence to try to exculpate herself is demonstrated by her argument that when respondent asked Milhouse to delete an account from respondent's phone, "[m]ost likely, 'account' meant to them the mechanism for obtaining and being billed for cellphone use." Respondent's brief p 20. This is a thoroughly creative effort to revise Milhouse's testimony. Her testimony is crystal clear that she understood respondent to be asking her to delete a Hotmail (or Gmail) email account, not some cellphone service account (Milhouse Tr. 10/3/18, pp 558/13 – 559/1. There is no hint, either in Milhouse's testimony or in the internet searches she performed, that she was trying to delete cellphone billing information.

could no longer determine what data, *if any*, was copied from her old phone to her new phone before the reset, and what data was destroyed. It says that even when data is copied from an old phone to a new phone with the best of intentions, it is likely that some useful data is not copied, including registry data, metadata, file system data, and database information, all of which are important to a forensic search of the old phone. Stipulation (expert witness) 11-2-18, ¶ 2.

In light of respondent's obligation to preserve evidence once Root filed his motion, it does not matter whether phone buyers commonly copy data to their new phone. The only thing that matters is that respondent had an obligation to preserve data on her old phone, and in an act that was completely distinct from copying anything, she deleted all information from the phone that had the data she was required to preserve. Based on the stipulation, the Master could only find that respondent failed to preserve data covered by the motion, even if she honestly attempted to transfer everything to a new phone.[18]

Conclusions of law as to Counts IV & XVI

The Master determined that "[respondent] delayed in disqualifying herself from her own court case when she should have done so immediately, in order to facilitate her attempt and ultimate success in deleting data from a cell phone that she knew was the subject of a pending order to preserve it and its contents." Report, p 10.The evidence clearly supports the Master's conclusion, but even if respondent's failure promptly to disqualify herself was for some reason other than to enable her to destroy evidence, her delay was unreasonable under the circumstances. The Master also concluded that respondent's deleting data from her cell phone "more likely than

[18] After the Master submitted his report the Examiner became aware of new information to the effect that the stipulation contains potentially material errors. This brief is based on the stipulation currently in the record. The Examiner anticipates filing a motion to inform the Commission about the new information.

not" made her guilty of tampering with evidence, in violation of MCL 750.483a(5)(a).[19] Report, pp 9-10. In addition, the Master correctly noted that even if she did not violate the letter of the statute, "a judge needn't have committed a criminal act in order to be guilty of misconduct." The Master found respondent's actions with respect to the motion to preserve evidence and her cell phone were misconduct, whether or not they violated the statute. Report, p 10.

Based on these findings, the Master determined that respondent violated MCJC Canons 1, 2, and 3. The Examiners urge the Commission to agree with the Master. The evidence summarized in this section proves respondent violated:

- MCJC Canon 1, in that she failed to observe high standards of conduct and undermined the integrity of the judiciary;
- MCJC Canon 2(A), in that her irresponsible and improper conduct eroded public confidence in the judiciary;
- MCJC Canon 2(A), in that she created at least the appearance of impropriety;
- MCJC Canon 2(B), in that her conduct degraded public confidence in the integrity and impartiality of the judiciary;
- MCJC Canon 2(B), in that her evidence tampering violation of MCL 750.483a(5)(a) failed to respect and observe the law;
- MCJC Canon 2(C), in that respondent allowed her relationship with her husband and her husband's lawyer to affect her judgment with respect to disqualifying herself from her divorce case;
- MCJC Canon 3(A)(1), in that respondent was not faithful to the law; and
- MCJC Canon 3(A)(5), in that respondent failed to dispose reasonably promptly, under the circumstances, of her obligation to disqualify herself from her own case.

[19] After the hearing on the formal complaint concluded, respondent was charged with three felonies based on her actions and lies with respect to her divorce: perjury, destruction of evidence, and obstruction of justice. *People v Theresa Brennan,* 53rd District Court Case No. 18-3155-FY.

3. Failure to disclose relationships and/or to grant disqualification in cases where attorney Shari Pollesch or her firm served as counsel
Second Amended Complaint Count II

The Master found misconduct in respondent's failure to disqualify herself, from 2014 through 2016, in cases in which Shari Pollesch or a member of her firm represented a party. Report, pp 10-14. In fact, not only did respondent not recuse herself in those cases, she never disclosed the relationships that provided the basis for recusal. The Master focused on respondent's failure to recuse, but respondent's failure to disclose was misconduct as well.

The facts summarized below describe Pollesch's representation of respondent's then-husband's business and respondent's friendship with Pollesch, and demonstrate respondent should have disclosed these relationships and disqualified herself.

Pollesch representation of respondent's husband & sister

Don Root was respondent's husband until early 2017. Root owned a plastics business named Uniplas (Pollesch Tr 10/9/18, p 1390/5-10). In 2011 Root retained Pollesch to represent Uniplas (Pollesch Tr 10/9/18, p 1396/2-5; Ex. 2-2). Pollesch continued to represent Uniplas until late 2016 or early 2017 (Pollesch Tr 10/9/18, p 1396/6-9; Ex. 2-3 (invoices)).

In addition to the work she did for Uniplas, Pollesch prepared two personal legal documents for Root in 2015 (Pollesch Tr 10/9/18, pp 1396/25 – 1397/5). Pollesch also handled divorce negotiations for respondent's sister Lorna (Pollesch Tr 10/9/18, p 1397/6-19).

Respondent's friendship with Pollesch

Pollesch and respondent have been close friends for about 25 years (Pollesch Tr 10/9/18, p 1387/13-16). Respondent acknowledged during the hearing that she considered Pollesch one of her best friends prior to 2014 (Respondent Tr 10/1/18, p 195/15-19). She made her home available for Pollesch's wedding in 2002 (Root Tr 10/3/18, pp 567/24 – 568/4; Pollesch (Tr 10/9/18, p

1387/24). Respondent's friend Kim Morrison observed that respondent and Pollesch had a longstanding and deep friendship (Morrison Tr 10/4/18, p 855/9-22).

Respondent and Pollesch took ski trips with each other and other women, in Northern Michigan and out west (Pollesch Tr 10/9/18, p 1388/10-18; Respondent Tr 10/2/18, pp 285/23 – 286/3). They have been part of the same book club since the 2000's, and were two of a group of five book club members who also socialized outside the club (Pollesch Tr 10/9/18, pp 1388/19 – 1389/13). Pollesch has been to respondent's cottage (Pollesch Tr 10/9/18, pp 1389/18 – 1390/1). Very often, if the weather was nice, respondent and Pollesch walked with each other during lunch (Pollesch Tr 10/9/18, p 1400/7-13). Pollesch was one of the three trusted friends (including Sean Furlong) who respondent asked to proofread a response to questions she submitted to the Judicial Tenure Commission in 2009 (Respondent Tr 10/1/18, pp 195/20 – 196/14).

As noted in Section I, above, it was Pollesch who came to respondent's chambers in 2013, when respondent was so distraught at the prospect of ending her relationship with Furlong that she could not hear cases. It was Pollesch who took charge that day; Pollesch who had the authority to decide that respondent could not handle her afternoon docket, instructed the court staff to cancel the docket, and decided what excuse should be given to the public (Cox Tr 10/3/18, p 594/6-10 & 11/19/18 pp 1855/14-1856/1; Pollesch Tr 10/9/18, p 1402/8-18; Ex 1-30, docket sheets).

Respondent's handling of a 2014 incident in *Halliday v Halliday* revealed respondent's deep feelings for Pollesch. Pollesch's firm, through attorney Amy Krieg, represented one of the parties (Krieg Tr 10/4/18, pp 881/19-22). During a pretrial conference in June, respondent precipitously leaped to the conclusion that Krieg had facilitated a crime during her representation.[20] Respondent's overreaction prompted Pollesch's firm to seek respondent's

[20] The details of the disrespectful manner in which respondent treated Krieg are addressed below in Section 4.

disqualification from the case. The hearing on the motion to disqualify was held in early July. The video of the hearing shows respondent deeply distressed by the situation. Ex 2-18 (video) at 9:31:33-9:31:50 and 10:16:33 – 10:18:00. At one point she told Krieg: "I care deeply about those people in your office." At another point she began to cry and had to pause the proceedings for over a minute. Ex 2-17 p 11/20-21; 22/20; Ex 2-18 (video) at 10:16:33 - 10:18. Respondent denied the motion to disqualify, but her chief judge granted it on appeal, because both respondent and Krieg were so emotional (Pollesch Tr 10/9/18, p 1406/3-12; Ex 2-45 p 20/6-11). Part of the basis for the chief judge's decision was his understanding that "Pollesch is a good friend of" respondent. Ex 2-45 pp 19/21 – 20/11.[21]

Respondent's treatment of Krieg in *Halliday* caused Pollesch to stop talking with respondent for almost two years (Pollesch Tr 10/9/18, pp 1404/23 – 1405/11; 1406/13 - 1408/9). Although respondent and Pollesch ceased talking, respondent retained her strong feelings for Pollesch. Months after the *Halliday* hearing, in December 2014, respondent referred to Pollesch as her best friend while on the record in another case. Ex 2-42, p 7/17-18; Ex 2-43 (video) at 3:36:00 – 3:36:15; Respondent Tr 10/2/18, pp 283/20 – 284/23.[22]

Implication that Pollesch represented respondent

The Master found it significant that in response to respondent's husband subpoenaing Pollesch to testify in their divorce in early 2017, Pollesch resisted through a letter that intimated she had an attorney-client relationship with respondent. Report, p 12. Pollesch wrote: "I have consulted with both of the parties [in respondent's divorce] for years on a number of legal matters,

[21] Respondent's statements at that time reflect a bias or prejudice in favor of an attorney (or attorneys, in this case Pollesch's law firm), which is another violation of MCR 2.003(C)(1)(a).

[22] Pollesch's mother passed away in June 2016. Respondent came to the funeral, where she and Pollesch hugged, expressed how much they missed each other, and agreed to speak again (Pollesch Tr 10/9/18, p 1408/1-9).

both personal and business." Exhibit 2-9. During the Commission's investigation Pollesch recanted any suggestion that she actually represented respondent, respondent denied that Pollesch ever represented her personally, and there is no independent evidence that Pollesch provided legal services directly to respondent. In other words, the evidence does not establish that Pollesch actually represented respondent. Nonetheless, the Master was correct – even if Pollesch did not actually represent respondent, her letter makes clear that she felt so close to respondent that she would use their intimacy to fight a subpoena requiring her to testify in respondent's divorce case.

Respondent's non-disclosure of her relationships with Pollesch

Between May 2014 and November 2016 respondent had five cases in which Pollesch appeared for one of the parties. Exs. 2-27, 2-29, 2-31, 2-33, 2-34 and 2-36.[23] Between April 2014 and December 2016 she had another five cases in which a member of Pollesch's firm appeared for a party. Exs. 2-38, 2-16, 2-21, 2-24 and 2-40. She did not disclose, in any of these cases, either the fact that Pollesch represented her husband's business or her close friendship with Pollesch (Respondent Tr 10/2/18, p 287/10-18).

Attorney David Caplan appeared before respondent, with Pollesch as opposing counsel, in *Graunstadt v Graunstadt* on June 30, 2014 (Caplan Tr 10/3/18, p 766/8-20; Ex 2-31). That was several days before the *Halliday* hearing that ultimately led to respondent and Pollesch temporarily not speaking. Caplan confirmed that respondent never disclosed her husband's business or personal relationships with Pollesch. He also said that had respondent disclosed the relationships he would have asked her to disqualify herself (Ex 2-31; Caplan Tr 10/3/18, pp 766/21 – 768/5).

[23] There are six proceedings for the five cases, because in one case, new counsel appeared for a third party after the initial court proceeding. Respondent did not disclose her relationships with Pollesch and her firm in either of the proceedings. Exs 2-33 and 2-34.

Attorney Margaret Kurtzweil appeared before respondent, with Pollesch as opposing counsel, in *Schiebner v Schiebner* on November 3, 2016 (Kurtzweil Tr 10/5/18, pp 1029/13-15, 1032/7-11). That was months after respondent and Pollesch reconciled. She, too, confirmed that respondent did not disclose her husband's or her relationships with Pollesch (Kurtzweil Tr 10/5/18, pp 1032/23 – 1034/16). She said that had she been aware of those relationships she would have had serious doubts about respondent's impartiality in a case in which Pollesch represented the opposing party (Kurtzweil Tr 10/5/18, pp 1032/23 – 1034/16).

Respondent did not disclose Pollesch's representation of Root even though she was well aware she needed to disclose financial ties between Root and attorneys who appeared before her. For example, those financial ties were her basis for routinely disqualifying herself from cases in which Root's landlord, Dennis Dubuc, appeared as a lawyer (Respondent Tr 10/10/18, pp 1717/20-25 & 1718/16 – 1719/8; Exs 2-8, 2-10, 2-12, 2-14).

The Master concluded that the relationships between respondent and Pollesch "should have been enough to require [respondent] to provide a recusal- or at least a disclosure- in cases assigned to [her] where Pollesch or her firm were counsel." Report, p 11. Respondent argues that judges need friends, so should not have to recuse themselves merely because they know an attorney well or regularly socialize with them. Respondent's brief pp 21-22. Like many of respondent's arguments, this one is correct in the abstract and misguided as applied to this case. Pollesch was more than merely someone respondent knew well and socialized with regularly. Pollesch represented her husband and she described Pollesch as her best friend. Further, respondent not only did not recuse herself, she did not even disclose her relationships.

Respondent also repeats her mistaken claim that even if it created an appearance of impropriety for her to preside over cases in which Pollesch and her firm were the lawyers,

appearance of impropriety is not a basis for disqualification under MCR 2.003. The argument is no more correct with respect to Pollesch than it was with respect to respondent's relationship with Sean Furlong during the *Kowalski* case, discussed in Section 1, above.

The Master was further troubled by respondent's silence about her relationships with Pollesch even when she was asked to recuse herself on the basis of those relationships in early 2017, in *McFarlane v McFarlane*. This case came to respondent on remand from the Court of Appeals. The attorney opposing Pollesch moved to disqualify respondent on the basis of Pollesch's letter, described above, in which Pollesch claimed to represent respondent's husband and intimated that she also represented respondent. Respondent denied the motion, and gave as her primary reason that she had not known until just a couple of months previously that Pollesch had represented her husband's business. Respondent further stated that she was not a part of her husband's business.

The Master determined that respondent lied when she claimed not to know Pollesch had represented her husband for years. That lie is discussed in Section 5, below. The Master also described as "fatuous" respondent's reliance on any separation between her and her husband's business. Respondent mischaracterizes the Master's remark in order to challenge it. Respondent argues that the Master found it "fatuous" that respondent was not involved in her husband's business. Respondent's brief p 21. In fact, the Master found the argument fatuous because it completely ignored respondent's obvious self-interest in the income her husband derived from the business. Report at p 12.[24]

[24] In a related claim, respondent appears to argue that it was sexist for the Master to find that Pollesch's representation of respondent's husband's business required disclosure or disqualification. Respondent's theory is that the Master could not accept that a woman could be unrelated to her husband's affairs. Respondent's objections at ¶ 1; brief p 23. This is another argument that misses the mark. Had the genders been reversed – that is, had respondent had the business while her husband was the judge, and had Pollesch represented respondent in her

In any event, what troubled the Master was that, even when respondent's relationship with Pollesch was squarely raised in a motion to disqualify in *McFarlane*, respondent denied the motion without bothering to disclose the true extent of the relationship. Report at p 12. Respondent has no answer to that concern, other than to criticize (mistakenly) the ethics opinion that was brought to respondent's attention in connection with the motion to disqualify. Respondent's brief pp 22-23. The Master was right to be troubled. Respondent's failure to recognize her obligation to be candid about the Pollesch relationships when she was asked to disqualify herself on the basis of those relationships is no different than her failure to recognize her obligation to be candid about the Furlong and Corriveau relationships when she was asked to disqualify herself in *Kowalski*.

Once again, *In re Chrzanowski* is relevant. The Supreme Court stated that the respondent's failure to recuse herself in the face of her relationship with counsel had "a negative effect on the appearance of propriety in judicial decision making, and the appearance of integrity of the judicial office in general." 465 Mich at 476 fn 9.[25] Though respondent's relationship with Pollesch was not a romantic one, that appearance of impropriety was precisely the Master's concern with respect to respondent presiding over cases in which Pollesch was involved. Report at p 14.

Conclusions of law – Count II

The Master found that the allegations in Count II of the Second Amended Complaint were proved by a preponderance of the evidence, and as a result, respondent violated MCJC Canons 1,

business – there is no doubt that her husband would have had an ethical obligation to at least disclose the relationship when Pollesch appeared in his courtroom.

[25] There is some evidence of respondent's conduct being impacted by her relationship with Pollesch. Examples are respondent's hostile treatment of Kurtzweil in *Schiebner* and her overreactions in *Halliday*, which are addressed in the text. In any event, *Chrzanowski* rejected the argument that a judge has a lessened duty to disclose when the proceedings over which she presides are non-adversarial or there was an apparently fair disposition of the case. Chrzanowski, 465 Mich at p 476, fn 9.

2 and 3(C). The Examiners urge the Commission to agree with the Master. The evidence summarized in this section proves respondent violated:

- MCJC Canon 1, in that she undermined the integrity of the judiciary;
- MCJC Canon 2(A), in that her irresponsible and improper conduct eroded public confidence in the judiciary;
- MCJC Canon 2(A), in that she created at least the appearance of impropriety;
- MCJC Canon 2(B), in that her conduct degraded public confidence in the integrity and impartiality of the judiciary;
- MCJC Canon 2(C), in that respondent allowed her social relationship with Pollesch to influence her judgment whether to disqualify herself from cases involving Pollesch and her firm;
- MCJC Canon 3(C) and 2.003(C)(1)(a) and (b), in that respondent failed to disclose a basis for her disqualification and to disqualify herself from the proceedings.

4. Persistent abuse of attorneys, litigants, witnesses, and employees Second Amended Complaint Counts IX, X and XV

The Master determined that respondent was consistently abusive to attorneys, litigants and witnesses, and her own court staff. Report, pp 14-18.[26]

Respondent's treatment of lawyers & litigants

An impressive array of witnesses testified, with great uniformity, that respondent treated lawyers and litigants very disrespectfully during court proceedings. Robbin Pott was respondent's research attorney from November 2016 until May 2017 (Pott Tr 10/2/18, pp 424/7-9; 436/23-25). Prior to that she had herself been a litigator and had supervised litigation (Pott Tr 10/2/18, pp

[26] The Master found that it was "the universal opinion of any witnesses who testified about the judge's demeanor" that she was consistently disrespectful. Respondent mischaracterizes this as a statement by the Master that every witness who testified said that respondent was consistently abusive, rather than only the witnesses who testified about demeanor. Respondent's brief p 23. Setting aside her exaggeration, respondent is still correct that not every demeanor witness said respondent was "consistently" abusive. Some of the demeanor witnesses identified only a few instances of abusive treatment. Although respondent is correct on this narrow point, in the larger picture she is not. Collectively, the witnesses who testified about respondent's demeanor showed that she was persistently disrespectful. Not universally, but persistently.

421/1-22; 438/22 – 439/13). She observed that respondent did not treat people with respect, she did not hear cases openly and fairly and objectively, and berated litigants and attorneys. Pott said respondent created a very tense, angry, chaotic courtroom (Pott Tr 10/2/18, p 431/17 – 432/2). Pott concluded that respondent made rulings before all of the parties has an opportunity to be fairly heard.[27] She cut off both in pro per litigants and attorneys. She would not allow them to answer questions fully and would not allow them to ask questions (Pott Tr, 10/2/18, pp 432/20 – 434/20). Pott testified that it was an almost daily occurrence that respondent would shout or yell or cut off attorneys during their arguments (Pott Tr 10/2/18, p 457/2-4).[28]

David Caplan is a litigator with 44 years of experience in family law (Caplan Tr 10/3/18, pp 764/24 – 765/2). When asked to characterize respondent's demeanor, he characterized her as "unique." He said she had the worst demeanor of any judge before whom he had appeared in his career, due to her rudeness to counsel (Caplan Tr 10/3/18 p 765/15 – 766/2). He elaborated that respondent frequently dressed down attorneys in front of their clients when it was not necessary to do so (Caplan Tr 10/3/18, p 772/1-18). Respondent's only answer is to suggest that Mr. Caplan is not credible because he was unable to provide specifics. Respondent's brief p 25. However, with his 44 years of litigation experience, Mr. Caplan's conclusion about respondent's demeanor is

---

[27] Maybe not directly revealing a poor demeanor, but still relevant to respondent's problematic attitude toward litigants, was Pott's testimony regarding respondent's approach to cases. Before respondent prepared for cases on her motion docket, she asked Pott on more than one occasion whether the litigants had attorneys. If they were in pro per, respondent would skip prepping for the cases and would say: "They won't know any better – I can wing it out there" (Pott Tr, 10/2/18, p 432/3-13). Pott also saw respondent give preferences to cases where litigants were represented versus not represented (Pott Tr, 10/2/18, p 432/14-16).

[28] Respondent attempts to diminish Pott's testimony by misstating the Master's handling of it. Respondent claims that the Master characterized Pott as "an experienced litigator in a position to evaluate judges." Respondent's brief p 24. What the Master actually said is that Pott "had been a litigator." Report at p 14. Having constructed her false premise, respondent then demeans Pott's experience. What is noteworthy is that none of Pott's observations about respondent's demeanor lose any of their force whether Pott was a litigator with extensive experience or limited experience.

entitled to weight – especially since it is completely consistent with the testimony of the other demeanor witnesses.

Amy Krieg was a litigator for Shari Pollesch's firm from 2012 into 2016 (Krieg Tr 10/4/18, pp 881/19 – 882/14). The Master stated that because of Krieg's relationship with Pollesch one would expect respondent to give her "courteous treatment," but that was "[n]ot so." Report, p 15. Krieg's first negative experience with respondent was in 2014 in connection with *Halliday v Halliday*, discussed above (Krieg Tr 10/4/18, pp 882/17 – 883/9). She appeared before respondent on June 24 for a pretrial conference early in the case (Krieg Tr 10/4/18, pp 887/15 – 888/10). During the conference respondent became concerned about an aspect of the case. [29] She called the attorneys to chambers, where she accused Krieg's clients of committing a crime for which her bailiff could take them into custody right then, and said Krieg was implicated as their attorney (Krieg Tr 10/4/18, pp 888/23 – 889/3). The conversation was heated. Respondent's threat of arrest made Krieg fear for her clients (Krieg Tr 10/4/18, p 890/10-19), When Krieg tried to explain why respondent was mistaken, respondent cut her off (Krieg Tr 10/4/18, pp 890/20 – p 891/1).

Respondent claims that the Master understated Krieg's offense; that Krieg actually admitted to a likely federal crime. Respondent's brief p 26.[30] No evidence supports her claim. Rather, this is precisely the conclusion that respondent too-quickly embraced, that led to her overly aggressive treatment of Krieg. In fact, respondent's claim underscores the disrespectful way she treated Krieg. If she suspected something as extraordinary as Krieg having conspired with her

---

[29] The merits of respondent's concern are irrelevant to this argument. What matters is whether respondent was respectful and courteous. That said, the Examiners believe respondent's concern was misplaced from the outset.

[30] Respondent goes on to describe the supposed criminal conduct. Respondent's brief p 26. What she describes is a supposed crime by Krieg's *client*, not Krieg herself. Although this proceeding is not for the purpose of determining whether respondent was right, it should be noted that respondent's characterization of the *client's* alleged crime fails to capture the complexity of the situation Krieg was trying to communicate to respondent at the pretrial.

clients to commit a crime, common courtesy and common sense dictate that she should hear Krieg out before acting on her suspicion. But hearing Krieg out is exactly what respondent refused to do.

Respondent's handling of the pretrial conference caused Krieg to seek respondent's disqualification (Krieg Tr 10/4/18, p 891/9-18). At the hearing on the motion to disqualify, respondent threatened to turn Krieg in to the Attorney Grievance Commission (Krieg Tr 10/4/18, p 892/15-19). Krieg felt accused while she sat at the hearing with her client present (Krieg Tr 10/4/18, p 893/16-19). As noted by the Master in his report, respondent caused Krieg to leave the practice of litigation, because she did not want to be treated the way respondent had treated her (Report, p 15; Krieg Tr 10/4/18, p 899/5-11).[31]

Margaret Kurtzweil appeared before respondent more than once, and observed that respondent was consistently testy with attorneys and litigants (Kurtzweil Tr 10/5/18, pp 1023/8 – 1024/21, 1025/4-11). That was not a problem for Kurtzweil personally, until she appeared before respondent on *Schiebner v Schiebner* in November 2016, with Shari Pollesch on the other side (Kurtzweil Tr 10/5/18, pp 1026/5-13; 1029/13-17).

Schiebner had previously been assigned to a different judge, and this was the first hearing before respondent (Kurtzweil Tr 10/5/18, p 1028/8-9). Early in the hearing, after Kurtzweil had the temerity to disagree with her, respondent became extremely angry with Kurtzweil for what she perceived to be Kurtzweil's overly close relationship with the receiver. She lit into Kurtzweil, who said respondent's treatment of her "was wicked" (Kurtzweil Tr 10/5/18, pp 1035/14 – 1036/8; Ex. 30 , at 2:00:51 – 2:01:37).

What is noteworthy about respondent's attacking Kurtzweil is: 1) respondent based her conclusion solely on having watched a video of a proceeding before the previous judge; and 2) the

[31] Krieg also testified about respondent's harsher treatment of her after the *Halliday* case, compared with before (Krieg Tr 10/4/18, p 895/8-21).

previous judge, who was there when that prior interaction took place, had expressed no concerns about it. Also noteworthy, and consistent with testimony of other demeanor witnesses, is that respondent tore into Kurtzweil before making any effort to understand Kurtzweil's position (Kurtzweil Tr 10/5/18, pp 1038/19 – 1039/2; Respondent Tr 10/8/18, pp 1730/6 – 1732/24). The Master noted Kurtzweil's statement that in her experience as a litigator, respondent was an "outlier" with respect to her temperament; that is, her temperament was well outside the norm. Kurtzweil had never seen another judge behave as respondent did (Report, p 15; Kurtzweil Tr 10/5/18, pp 1046/1-3, 22 – 1047/14). Due to the way respondent treated her, Kurtzweil decided to never appear before respondent again (Kurtzweil Tr 10/5/18, pp 1047/16 – 1048/1).

Respondent disagrees with the Master's finding that respondent unjustifiably "excoriated" Kurtzweil, claiming that no transcript supports that finding. Respondent's brief p 25. Respondent is correct that no transcript uses the word "excoriate." Instead, it uses the word "appalled." Ex. 2-36 p 10/20-23. Since the Master did not purport to quote respondent, but merely to characterize how she treated Kurtzweil, respondent's use of the word "appalled," in context, sure looks like an excoriation. In any event, respondent's focus on the transcript is a bit of a misdirection. The Commission can get a much better sense of respondent's outburst by reviewing the video.

Respondent also attempts to minimize the force of Kurtzweil's testimony by noting that Kurtzweil said respondent was "testy" on some occasions, and "testy" is not misconduct. Respondent's brief pp 25-26.[32] Whether or not respondent's "testy" demeanor toward others was misconduct depends entirely on what the witness means by "testy" and whether that rises to the level of discourtesy. Kurtzweil also described respondent as an "outlier." A merely cranky judge is common, not an "outlier." Were respondent only a normal level of crankiness in Kurtzeil's

[32] Respondent ignores Kurtzweil's testimony regarding respondent's demeanor that was directed toward Kurtzweil on November 3, 2016, which Kurtzweil described as "wicked." (Kurtzweil Tr 10/5/18, pp 1035/14 – 1036/8)

presence, she would not have described her as an "outlier." The fact that Kurtzweil did not have particulars to support her assessment may be a reason to not rely solely on her for her overall observation that respondent was persistently disrespectful, but the fact that her observation is, again, consistent with the negative impressions of the other demeanor witnesses gives it some force.

Specific instance of disrespect – Brisson v Terlecky

Carol Lathrop Roberts is a general practitioner who appeared in respondent's court four dozen times or more (Roberts Tr 10/5/18, pp 1127/11 – 1128/1). In a nutshell, Roberts found respondent's behavior in the courtroom appalling. Roberts said respondent intimidated litigants and attorneys; she was abusive, including to her staff; and she was routinely unpleasant. It seemed that respondent was often angry and let everyone know (Roberts Tr 10/5/18, p 1128/7-25). Roberts felt respondent was consistently the most disrespectful judge with whom she was familiar; disrespectful to the whole process. As noted by the Master, Roberts called her "a black smear on the judiciary" (Report, pp 15-16; Roberts Tr 10/5/18, p 1143/10-16).

Brisson v Terlecky was a paternity action in which Roberts represented the mother/defendant (Roberts Tr 10/5/18, p 1133/19-21). The trial date was June 21, 2017 (Roberts Tr 10/5/18, pp 1139/6-7). Roberts came to the hearing expecting to have trouble, based on her history with respondent. She went so far as to arrange for counsel to be on standby in case she was locked up (Roberts Tr 10/5/18, p 1140/9-15).

The June 21 proceedings, lasting around 16 minutes, are captured in Ex. 8-3; the transcript is Ex. 8-2. Roberts attempted to explain to respondent that under the applicable paternity law the trial could not take place that day. The video shows that respondent interrupted Roberts every time Roberts tried to make her argument, never letting her complete it. When Roberts insisted on trying

to explain to respondent the law on which Roberts was relying to support a result respondent did not want to reach, respondent lost her temper and had Roberts taken to the lockup for a short time. Ex 8-2, p 4/22 – 13/17.

Respondent demonstrated no patience and no willingness to hear counsel out. She seemed, and seems, to have no recognition that her unwillingness to listen, even for a short time, was not only disrespectful to counsel, it aggravated respondent's own frustration. The Master stated in his report that while respondent had a right to stop Roberts and take control of the proceeding: "Surely, however, there should be a more appropriate first remedy for unnecessary persistence then arresting a lawyer."[33] Report, p 16.

Respondent argues that the Master should not have accepted Roberts's testimony because Roberts was mistaken about whether respondent had let her put her appearance on the record on June 21.[34] Respondent's brief p 27. Respondent characterizes Roberts's mistake as dishonesty, which is a little ironic in light of respondent's vigorous defense to charges that *she* was repeatedly dishonest, discussed in Section 5 below, that innocent mistakes are not the same as dishonesty. There is no basis to think Roberts was dishonest, as opposed to merely mistaken.

Even if the Master believed Roberts was dishonest, as opposed to mistaken, on this point, it would be his prerogative to decide whether that made her other testimony unreliable. The Master never found that Roberts was dishonest, so never undertook that calculus, but it is worth noting that there was good reason for the Master to accept the portion of her testimony relating to cases

---

[33] With respect to the Master's choice of words, Roberts's persistence was only "unnecessary" in the sense that she continued talking after respondent told her to stop. In fact, her persistence was minimal, and was a reaction to respondent cutting her off before she could complete her brief statement and cite the applicable law.

[34] Respondent argues as well that Roberts was mistaken about whether respondent allowed her to make a record. Respondent's brief p 27. Although the Master accepted, for purposes of the hearing, that Roberts was mistaken, the record shows that Roberts was correct that respondent never allowed her to make a complete record; say, for example, by allowing her to cite the statute on which she relied, or to complete her argument.

other than *Brisson* – that is, i.e. that respondent *routinely* treated attorneys poorly, including in cases not reflected by the video of the *Brisson* hearing — because her testimony was completely consistent with the testimony of several other witnesses.

Specific instance of disrespect – <u>Sullivan v Sullivan</u>

Respondent's court recorder, Kristi Cox, saw that respondent often treated poorly people who were older or hard of hearing (Cox Tr 10/3/18, pp 598/16 – 599/2). Bruce Sage is an older attorney who is somewhat hard of hearing. Sage is a lawyer with 44 years of litigation experience who has appeared before many judges without difficulty (Sage Tr 10/5/18, pp 1085/19 – 1087/12). Respondent was the exception (Sage Tr 10/5/18, pp 1099/22 -1100/4).

Sage represented the plaintiff in *Sullivan v Sullivan*, a divorce case over which respondent presided in 2015 and 2016. Sage felt he was always "climbing up the mountain" when representing Ms. Sullivan, because he had to take on both opposing counsel and respondent (Sage Tr 10/5/18, pp 1088/18 – 1089/1). Respondent kept interrupting his cross and direct of witnesses. She criticized him; he felt she had no respect for him at all. Respondent's treatment of Sage interfered with his ability to put on his case. It was not just that respondent would not allow him to ask questions – more than once she threatened to fine him (Sage Tr 10/5/18, p 1100/5-23). Sage testified that he loves practicing law, but found it distasteful to practice in front of respondent (Sage Tr 10/5/18, pp 1089/10 – 1090/1).

Sage felt mocked by respondent (Sage Tr 10/5/18, p 1089/17-19). Exhibit 10-11 shows why he felt that way. In one excerpt respondent is seen and heard asking for the patience of Job to deal with Sage; to the amusement of the opposing party, who was sitting right next to her while she did so. (Ex 10-11, excerpt "#8-2015-10-22_10.19.01.314-Part C-trimmed"; Respondent Tr 10/2/18, pp 306/11 – 308/1) In another instance Sage mispronounced "Herve Leger," the name of

a foreign fashion label that may not be familiar to many.[35] (Ex. 10-11, the excerpt named "Sullivan Trial #9 trimmed" at 2:12:49) Respondent toyed with the mispronunciation, then instructed someone off-camera that Sage's mistake would go into respondent's "best of" video, which was a collection she maintained of embarrassing moments in court.[36] Sage was so troubled by the way respondent treated him that he hired an investigator to come to court to watch the *Sullivan* proceedings, to let him know whether he was imagining respondent's bias. It is telling that respondent's conduct caused an attorney to go to this length to assure himself he was not crazy (Sage Tr 10/5/18, pp 1101/11 – 1102/7).

Sullivan v Sullivan included a full-day trial and eight other hearings before respondent. Ex. 10-1. It is a bit of a logistical hurdle to communicate respondent's disrespect of Sage without going through the entire several hours of proceedings. Exhibit 10-11 attempts to overcome the hurdle by compiling over 30 excerpts from the *Sullivan* proceedings during which respondent treated Sage – or, on a couple of occasions, opposing counsel – excessively curtly or rudely.[37]

Respondent's treatment of Sage caused the Court of Appeals to reverse *Sullivan* and remand it to a different judge. Ex. 10-2. The court did not base its disqualification on any one incident, but on the extensive pattern of hostility respondent showed toward Sage throughout the proceedings. Ex 10-2 pp 8-9.

---

[35] The mispronunciation is not apparent in the transcript. For reference, it occurs at Ex 10-3, p 163/12-12.

[36] Several other telling excerpts include when respondent told Sage he had made a childish comment (Ex 10-3, p 168-170; Ex 10-11, the excerpt labeled "Sullivan Trial #10 trimmed" at 3:05:44 – 3:06:31), when she used a demeaning tone of voice that Sage testified "was not uncommon" (Ex 10-3, p 79-81; Ex 10-11, the excerpt labeled "Sullivan Trial #4 trimmed"; Sage Tr 10/5/18, pp 1091/22 – 1092/10) and when respondent needlessly interfered in Sage's attempt to make a record. (Ex. 10-3, p 214-222; Ex. 10-11, excerpt labeled "Sullivan Trial #14 trimmed"; Sage Tr 10/5/18, pp 1092/24 – 1093/24). Other video excerpts are self-explanatory and quite revealing of respondent's demeaning conduct.

[37] If the Commission wishes to view any excerpt in context, Ex. 10-12 contains all of the *Sullivan* court proceedings. Note that a couple of the excerpts in Exhibit 10-11 were included by mistake and are not particularly revealing.

The Master quoted from the Court of Appeals opinion. Report at pp 16-17. Respondent objects to the Master's doing so. She seems to believe that the Master treated the opinion as *res judicata*. Respondent's brief pp 27-28. She claims she had no opportunity to defend against that opinion, and therefore the Master's reference to it violated due process.

Once again, respondent has misconstrued the proceedings. Nothing in the Master's report indicates that his quoting the Court of Appeals opinion meant he treated it as binding without conducting his own review. And respondent *did* have an opportunity to challenge the Court of Appeals criticism. She had that opportunity in the hearing on the formal complaint, during which her treatment of Sage during *Sullivan* was very much in dispute. Had respondent offered a plausible rebuttal to the observations by the Court of Appeals, the Master might have had a reason to qualify, rather than simply borrow, the court's analysis. Respondent did not do so.

Respondent's treatment of employees

The Master found that respondent was notoriously abusive toward her staff, as well. Report at pp 17-18. Respondent objects that she did not receive proper notice that she would be charged with this misconduct. She claims she could only be charged after receiving a 28-Day letter. Respondent's brief pp 30-31. She is mistaken. MCR 9.213 provides in part:

> The master, before the conclusion of the hearing, or the commission, before its determination, may allow or require amendments to the complaint or answer. The complaint may be amended to conform to the proofs *or to set forth additional facts, whether occurring before or after the commencement of the hearing*. (emphasis added)

While respondent acknowledges that Rule 9.213 allows the Master to amend the complaint, she makes the curious argument that a 28-Day letter is still required. Respondent's brief p 31. The purpose of the 28-Day letter is to give a judge notice of the charges. Rule 9.213 contains its own notice provision, concluding with the requirement that if the complaint is amended, respondent be

given "reasonable time" to answer and prepare a defense. The Examiners notified respondent and the Master, well before the conclusion of the first phase of the hearing, that at its conclusion we would seek to amend the complaint to add charges. On October 15, shortly after the first phase of the hearing, the Examiners filed a motion to amend that put respondent on explicit notice of the new charges. By then, respondent had seen first-hand the evidence in support of the new allegations. The hearing resumed 35 days later, on November 19. Respondent had plenty of time – certainly more than 28 days – to answer if she wanted; prepare a defense if she wanted; or request more time to do either of those things, if she wanted. She chose not to. She has no legitimate complaint about the notice she received.

Respondent seems to suggest that the Supreme Court limited Rule 9.213 so it only permits amendment based on facts arising after the complaint was authorized. Nothing in the language of Rule 9.213 suggests such a limitation. *In re Simpson*, 500 Mich 533, 549 fn 20 (2017), on which respondent relies for her claim, says the Commission can proceed on additional charges that arise after the complaint is filed. However, the only question *Simpson* addressed was whether additional charges could be brought based on false statements made during the hearing on the complaint. The Court did not purport to address the part of Rule 9.213 that authorizes new charges based on information that predates the hearing.

There is no reason to construe Rule 9.213 as respondent argues. The purpose of the 28-Day letter of MCR 9.207 is to give respondent notice, and Rule 9.213 requires reasonable notice, which she received. Further, respondent's proposed construction of the rule would be unworkable. If respondent were correct, the Master would have been equally precluded from amending the complaint to include charges based on respondent's evidence tampering, even though knowledge of important details of that tampering were unknown to the Examiners until the eve of the hearing.

The Master would be precluded from amending the complaint to conform to the proofs, if the proofs in question concern events that took place before the formal complaint was filed

Delving into literalism, respondent next argues that the Master's finding that respondent abused her staff is inaccurate, because no witness testified that respondent "was continually abusive to her own court staff." Respondent's brief p 31. While respondent is literally correct, she is once again substantively very wrong.

As noted by the Master, former court administrator Francine Zysk testified that she quit her job due to the poor way respondent treated her (Zysk Tr 10/9/18, p 1528/13-17). Zysk added that as of 2017, seventeen to twenty-one staff members had left the Brighton court due to respondent's treatment of them (Zysk Tr 10/9/18, pp 1462/16-25, 1528/13-17). She said that every employee in the civil division who went to the Brighton court complained to Zysk about respondent; they asserted that no one should be talked to or spoken to the way respondent spoke to them (Zysk Tr 10/9/18, p 1461/11-19). Zysk said "dictatorial" was an accurate word to describe respondent (Zysk Tr 10/9/18, p 1462/6-11).

Kristi Cox was respondent's secretary and court recorder from 2005 into 2015 (Cox Tr 10/3/18, pp 580-16 – 581/12). Although she was not independently wealthy, in 2015 she took a two-level pay demotion to leave respondent (Cox Tr 10/3/18, p 680/9-14). Cox was diagnosed with post-traumatic stress disorder, which she attributed to working with respondent (Cox Tr 10/3/18, p 680/9-19). Respondent demeaned, degraded, and belittled Cox during most of the time Cox worked for her (Cox Tr 10/3/18, p 600/9-24).

For example, in court, in front of other people, respondent would say to Cox: "Why did you do that?" or "What were you thinking?" If Cox tried to reply, respondent told her "that was rhetorical. Don't talk to me" (Cox Tr 10/3/18, p 601/1-9). Respondent's tone toward Cox was

"barking"; it was accusatory and horrific (Cox Tr 10/3/18, p 601/10-13). Respondent sometimes told Cox she did not feel like looking at her, and sent Cox back to her desk to work there. The only time respondent was *not* unkind to Cox was during election years (Cox Tr 10/3/18, p 602/12-17).[38]

Respondent's abuse of Cox was visible to others. Respondent's one-time good friend, APA Shawn Ryan, saw respondent talk down to Cox in the courtroom (Ryan Tr 10/3/18, p 508/14-22). If there was a mistake, respondent would address Cox in a rude way in the middle of the courtroom when people were watching; it made Ryan and others feel uncomfortable (Tr 10/3/18, Ryan, pp 508/14-20, 509/11-21). Carol Lathrop Roberts appeared before respondent dozens of times, and observed that respondent would speak to Cox in a very brusque, rude, dismissive manner. It appeared to Roberts that respondent always seemed to angry about something, and often Cox was the target of the anger (Roberts Tr 10/5/18, p 1128/7-25).[39]

Attorneys and police who attended court told Cox they felt sorry for her, and asked her why she put up with it. Respondent's very close friend, Sean Furlong, was troubled enough that he offered to talk with respondent about how she treated Cox (Cox Tr 10/3/18, pp 601/20 – 602/2). Even respondent acknowledged, in a limited way, that she treated Cox poorly. She admitted she sometimes demeaned Cox in court (Respondent Tr 10/2/18, p 278/13-14). She also admitted throwing files down and at times being angry, though she denied throwing files in Cox's face (Respondent Tr 10/2/18, p 278/15-23).

---

[38] Additional examples of respondent's poor treatment of Cox are respondent's demonstrating her anger at Cox by violently passing files to Cox in the courtroom (Cox Tr 10/3/18, pp 605/16 – 606/5); respondent's yelling at Cox regarding errors in preparing jury instructions, a task not even part of Cox's job (Cox did not have a law degree) (Cox Tr 10/3/18, p 602/20 – 603/11); and respondent's attributing errors by others to Cox, while being unwilling to consider that she was mistaken in doing so (Cox Tr 10/3/18, p 603/12-604/5).

[39] Other witnesses testified about respondent's abusive conduct toward Cox. Those included Judge Reader's secretary, Jeannine Pratt (Pratt Tr 10/2/18, pp 331/18 – p 332/4); former chief probation officer and court administrator Francine Zysk (Zysk Tr 10/9/18, p 1455/21-25 and p 1456/1-19); and Kim Morrison, who found it painful to watch (Morrison Tr 10/4/18, pp 856/14 – 857/3).

Jessica Sharpe was respondent's law clerk in 2014-2016. She noticed that respondent was fairly good to Cox for about the first year Sharpe worked for respondent, which was 2014 (and an election year). Even then, respondent would periodically treat Cox in a very aggressive or demeaning manner and be "just outright mean" to her. That increased in 2015 to the point Cox had to leave (Sharpe Tr 10/3/18, p 697/3-10).

Sharpe was also a target for respondent's disrespect by the end of her tenure. She said that initially respondent treated her well, but by the end she treated Sharpe comparably to the way she had treated Cox (Sharpe Tr 10/3/18, p 697/11-20). Sharpe said that when her relationship with respondent deteriorated, it deteriorated rapidly. Respondent became aggressive and disrespectful, and Sharpe could do nothing right (Sharpe Tr 10/3/18, pp 714/16 – 715/1). Respondent would angrily kick Sharpe out of the courtroom even though her job was to be there, and at times when irritated, would fling files at Sharpe with some velocity instead of handing them to her (Sharpe Tr 10/3/18, pp 715/5 – 716/8). Sharpe ultimately quit rather than take respondent's abuse (Sharpe Tr 10/3/18, p 722/20-24).

Lisa Bove was respondent's secretary from Cox's departure in 2015 until August 2016 (Bove Tr 10/4/18, pp 782/22-25; 805/25 – 806/1). Bove both worked for respondent and socialized with her. She described respondent as a "Jekyll and Hyde" personality (Bove Tr 10/4/18, p 790/6-11). Any day could be great when Bove walked in, but within a few minutes, depending on who was before respondent and what was happening, "it could get kind of ugly" (Bove Tr 10/4/18, p 791/2-8).[40]

[40] One specific incident described by Sharpe, Bove, and Zysk at the formal hearing related to respondent's anger at her staff when a jury pool was mistakenly sent home without a jury being selected. The three staff members provided inconsistent testimony about who was responsible for the error, but provided consistent testimony regarding respondent's reaction to the event when she learned of it: she was angry or heated and refused to listen to their explanations (Sharpe Tr 10/3/18, pp 717/15-20, 751/18 – 752/7; Bove Tr 10/4/18, p 797/3-15; Zysk Tr 10/9/18; pp 1459/22 – 1461/5). Another explosion happened when the court's Polycom system could not be used

Conclusions of law as to Counts IX, X and XV

The Master found that the allegations in Counts IX, X and XV of the Second Amended Complaint were proved by a preponderance of the evidence, and therefore that respondent violated MCJC Canons 2(B), 3(A)(3) and 3(A)(10), and MCR 9.205(B)(1)(c). The Examiners urge the Commission to agree with the Master and to go further. The evidence summarized in this section proves respondent violated:

- MCJC Canon 1, in that she undermined the integrity of the judiciary;
- MCJC Canon 2(A), in that her improper conduct eroded public confidence in the judiciary;
- MCJC Canon 2(A), in that she created at least the appearance of impropriety;
- MCJC Canon 2(B), in that her conduct degraded public confidence in the integrity and impartiality of the judiciary;
- MCJC Canons 2(B) and 3(A)(14), in that she failed to treat every person fairly, with courtesy and respect
- MCR 9.205(B)(1)(c), in that she persistently failed to treat persons fairly and courteously.

5. Lying under oath – Second Amended Complaint
Count XIII: False statements in court proceedings
Count XVII (a, c through f, l and m): False statements at deposition
Count XVII (b-ii, g, h, i, j, l, n and p) and Count XIV: False statements to the Commission

The Master determined that respondent made numerous false statements. Report, pp 18-19. The Master introduced his findings that respondent lied by stating:

> The scope of Judge Brennan's willingness to give false testimony under oath is breathtaking. She testified falsely in depositions, in sworn answers to Commission questions, and during the hearing as well. (Report, p 18)

during a court proceeding, even though Sharpe and Bove had verified that it was working properly just before the proceeding. Respondent yelled at Bove and Sharpe for not being prepared for court, which Bove considered unjustified because the problem appeared to be on the other side of the communications link and she and Sharpe could not control that (Bove Tr 10/4/18, pp 797/16 – 799/20). These incidents are consistent with the central theme of the demeanor testimony, that when something did not go as respondent wanted she refused to listen to the explanations, jumped to quick conclusions regarding blame, and berated her victim; no matter who (if anyone) was responsible for what had occurred.

The Master noted that if he attempted to address each lie "it would be verbose in what has already been a lengthy process." Instead he adopted as part of his report Appendix 2 to the Examiner's closing argument, which listed the many lies established by the evidence.[41]

Respondent challenges the Master's incorporation of Appendix 2. She suggests he could not reasonably have relied on it, because it made no references to the record and therefore it was not possible to track down any evidentiary support for the lies. Respondent's brief p 35. Respondent overlooks that the Examiners filed a closing argument with the Master to which Appendix 2 was attached. Every lie in Appendix 2 was substantiated in the argument and by the evidence. The reason for Appendix 2 was that respondent's lies were discussed throughout the argument in the contexts in which respondent made them lies, which made it difficult to keep track of them. Appendix 2 was merely intended to be a convenient list. The Master saw the evidence supporting each lie as he read the Examiners' argument.

When assessing respondent's credibility, the Master found it illustrative that on the last day of the hearing respondent contradicted her own testimony within the span of a few minutes. (Report, pp 18-19) The Master did not provide the context. It follows:

A major issue during the investigation and the hearing was whether respondent had her employees perform personal tasks for her during work. At the very end of the hearing she was granted the chance to testify in surrebuttal. During this testimony respondent made the extraordinary claim – a claim she had not made at any time during the previous almost two years of investigation plus hearing – that she had cleared having her employees do personal things during work time with both her State Court Administrative Office regional administrator and her

[41] The Master adopted "Appendix 2" to the Commission's closing argument and left the title intact. There was no "Appendix 1" to the report.

chief judge (Respondent Tr 11/19/18 pp 1891/9 – 1893/7).[42] Respondent had not made this claim in any of her three letters answering the Commission's questions about employees doing work for her, nor her answer to the first amended complaint. Ex. 16 pp 49 – 53; Ex. 19 pp 64-71; Ex. 21 pp 47 – 55; and Ex. 32 pp 26 – 31. She did not make this claim as the first witness at the hearing, when she was asked about having her employees do personal errands for her (Respondent Tr 10/1/18, pp 96/6-16, 243/19 – 246/15; Respondent Tr 10/2/18, pp 250/14 – 260/4, 268/2 – 275/13). She had not made this claim when she later testified in her defense about employees doing personal errands for her (Respondent Tr 10/9/18, pp 1575/20 – 1582/8, 1586/6 – 1594/5). She only made this claim in the closing minutes of the hearing.

If true, her claim may have been exculpatory evidence with respect to the personal tasks. However, when pressed on cross examination about that important testimony, respondent essentially abandoned it (Respondent Tr 11/19/18, pp 1920/13 – 1925/14). The contradiction between her two versions of events was glaring, and for the Master, indicative of her overall credibility.

Respondent argues that she did not really change her testimony. Respondent's brief p 42 ¶ 15. Comparison of her testimony at Respondent Tr 11/19/18 pp 1891/9 – 1893/7 with her testimony at Respondent Tr 11/19/18, pp 1920/13 – 1925/14 demonstrates that she did.

Respondent asks: if the lie discussed in the preceding paragraphs was so obvious, why was it not also included in Appendix 2? Respondent's brief p 42 ¶ 15. Respondent apparently thinks this question is rhetorical. It is not. Appendix 2 consists of the lies that were charged in the second amended complaint and proved by the evidence. The lie discussed in the preceding

[42] The Master referred to the "local court administrator" in his report. Respondent testified that she communicated with the chief judge and the SCAO regional administrator, not any 53rd District Court administrator.

paragraph, occurring during the final minutes of the hearing, was never charged in the complaint and therefore did not belong in the Master's Appendix 2.

Respondent objects repeatedly that mere mistakes or failures of memory are not lies. See, e.g., respondent's brief p 36 ¶ 1. Respondent is once more correct in the abstract but mistaken in the particulars. Respondent made plenty of statements that were false but which were reasonably susceptible of being innocent mistakes, so were not charged as lies. The false statements that were charged as lies are *not* plausibly mere mistakes or innocent failures of recollection. The lies that were charged share the characteristic that they served respondent's apparent interests at the time she made them, and that plus their content or their context or both makes it implausible that they were innocent memory lapses.

Charged False Statements

Each of respondent's false statements the Master found to be misconduct is discussed below, along with necessary context, citations to supporting evidence, and analysis of respondent's objections if she made any.[43]

False Statements Pertaining to Divorce

Respondent made the false statements described in Count XVII(a)-(g) in connection with her not disqualifying herself from her divorce proceeding and deleting data from her cell phone. The context is central to understanding the falsity of her statements.

The detailed timeline of the events between December 1 and 9, 2016, is in Attachment 4. In a nutshell, by December 1 respondent knew her husband, Don Root, would file for divorce. On December 2 she said she would disqualify herself when the divorce was filed. Though the divorce

[43] Appendix 2 to the Master's report had a different organization than is in this section. That is because the evidence supporting the conclusions in Appendix 2 had been detailed in the Examiner's closing argument to the Master, which made the organization in Appendix 2 then convenient. The Examiner believes the organization in this brief is more suitable now, since the evidence demonstrating each lie needs to be summarized and many lies are related.

was filed that day, she did not disqualify herself. The Monday following the filing respondent talked with her divorce lawyer, but she did not disqualify herself. The next day, Root filed an emergency motion to preserve evidence, including all email accounts, messages, and relevant data. Jeannine Pratt, Chief Judge David Reader's secretary, called respondent to inform her the motion had been filed and to ask that she disqualify herself. Respondent asked for information about the motion, so Pratt read the title and first paragraph to respondent and said she would email it to her. Pratt also informed respondent she would come to respondent's court later that day to pick up an order disqualifying respondent from the case. Pratt then emailed respondent the motion along with an order to disqualify herself. Right after speaking with Pratt, respondent spoke again with her divorce lawyer. When Pratt came to respondent's chambers to pick up the signed order, respondent refused to give it to her and instead said she needed to speak with her lawyer. Two days later, on December 8, respondent handed the disqualification order, bearing respondent's signature and dated December 7, to then court administrator John Evans for delivery to Judge Reader.

Some of the evidence the emergency motion sought to preserve resided on respondent's cell phone. Between December 6 and December 8 respondent asked several people how to delete data, including her Hotmail account, from her cell phone. On December 8 she had all data deleted from that phone. Six and nine weeks later, respondent was deposed in her divorce case.

Respondent's failure to promptly disqualify herself, her refusing to disqualify herself until she talked with her attorney, and her deleting data from her cell phone while the data was subject to a motion to preserve, were all highly improper. That left respondent with the problem of how to explain her actions when she was asked about them during her divorce deposition and during the Commission's investigation.

1) ***Count XVII(a)-*** During her divorce deposition on January 16, 2017, respondent testified she first learned an ex parte motion had been filed in the divorce when

> her lawyer so informed her. The testimony was false because the chief judge's secretary informed respondent of the motion on December 6, 2016, at the time the secretary asked respondent to sign an order disqualifying herself from her case.

On January 16, 2017, respondent testified that it was her attorney, not Pratt, who first told her the ex parte motion had been filed. Ex. 1-13, respondent Dep. Tr Root v Brennan, 1/16/17, pp 47/18-24, 50/9-12. That statement was false. Not only was it Pratt who informed respondent of the motion, respondent's attorney did not file an appearance until December 7 and did not himself receive the divorce complaint and ex parte motion until December 7. Ex. 4-8; Ex. 4-7.

Respondent's false statement was material. She made other statements, during her deposition and during the Commission's investigation, in which she attempted to distance herself from being aware as of her December 6 refusal to disqualify herself that the emergency motion had been filed. Ex 1-13, p 46/19-24, p51/12-17; Ex 16, p 23-24; Ex 19, p 29 ¶ 55, p 30-31 ¶ 57; Ex 21, p 21-22 ¶ 146 – 150. Her claim that she first learned about the motion to disqualify from her attorney, rather than Pratt, if accepted by a factfinder, would help distance her from bad intent at the moment she refused Pratt's request that she disqualify herself.

Respondent characterizes her false testimony as a mere mistake, not a lie. Respondent's brief p 36 ¶ 1. However, it is not plausible that respondent would have forgotten, in a short six weeks, that Pratt informed her of the motion and asked her to disqualify herself on the basis of the motion. Part of the reason it is not plausible is that the conversation between Pratt and respondent was no routine phone call. At the time of the call respondent was in the middle of her multi-day refusal to disqualify herself from her own case – about as basic and fundamental an obligation of a judge as exists. Respondent's learning about the motion from Pratt triggered her efforts to delete data from her cell phone – violating another fundamental obligation of a judge. It is important that respondent could not admit she learned of the motion from Pratt during her divorce deposition

without also admitting that she was well aware the motion was pending at the moment she refused to disqualify herself two hours after receiving the motion. Respondent's false testimony about how she learned of the motion is one of several false statements respondent made about the sequence of events, all of which are integral to her false overall narrative that while she perhaps could have handled these few days a little better than she did, she never deliberately refused to disqualify herself or destroy evidence. This false statement was no mere mistake.[44]

> ***2) Count XVII(b(ii))*** – In October 2017 respondent stated to the Commission that she first spoke to her divorce attorney *following* Ms. Pratt's personal visit on the afternoon of December 6, 2016. This statement was false, in that as of the time respondent spoke with Pratt, she had spoken with her attorney at least twice.
>
> ***Count XVII(c)*** – On January 16, 2017, respondent testified in her divorce deposition that she told Pratt she would sign the disqualification order the day after Ms. Pratt gave it to her on December 6, 2016, and she was not ready to sign it when Ms. Pratt gave it to her because she was busy. This testimony was false, in that respondent never said these words to Pratt, and respondent was not too busy to sign a disqualification order at the time Pratt requested that she do so.

Counts XVII(b)(ii) and XVII(c) are based on additional statements respondent made in support of her exculpatory narrative about the way she handled her divorce. They relate to respondent's statements to Pratt when Pratt attempted to have her sign the disqualification order.

As noted above, when Pratt went to the Brighton courthouse on December 6 to pick up the signed order of disqualification she had emailed respondent two hours earlier, respondent refused

---

[44] Tellingly, respondent continued her efforts to minimize her awareness of the pending motion to preserve evidence even into the formal hearing on the complaint. Early in the formal hearing, at a time when she had never yet acknowledged that she actually was aware of the motion to preserve evidence when Pratt requested the order to disqualify, respondent testified somewhat ambiguously that she knew "presently" that the motion to preserve evidence had been sent to her, but did not presently know whether she knew that on the day Pratt sent it to her (Respondent Tr 10/1/18, p 140/18-23). In a similarly ambiguous manner, she further testified that Pratt's sending her an email with the motion attached did not mean she actually opened the email or the attached motion (Respondent Tr 10/1/18, p 137/2-10). It is unlikely that respondent did not open the email. After all, Pratt testified that respondent asked for information about the motion during their phone call, and Pratt read part of the motion to her and advised her that she would send it by email, which Pratt promptly did. . (Pratt Tr 10/2/18, pp 320/25 – 321/13; Ex. 4-3).

to give it to her, telling her she needed to speak with her attorney. Absent some legitimate reason for delay (and respondent gave none to Pratt), respondent's refusal to sign the disqualification order until she spoke with her attorney was clear misconduct. The record of this case shows that respondent does not acknowledge misconduct – not ever. To exculpate herself from this particular misconduct, then, respondent needed an alternative explanation for what she did.

She provided part of that alternative explanation during her divorce deposition, six weeks later. Opposing counsel asked respondent how she found out the case was assigned to her, which respondent attributed to Pratt's visit to the Brighton court. Ex 1-13, pp 45/21 – 46/8. Respondent did not admit that she told Pratt she needed to talk with her lawyer. Rather, she claimed that what she told Pratt was that she was too busy at that moment to sign the order and would sign it the next day. Respondent continued the false narrative when responding to the Commission's questions about these events. In October 2017 and January 2018 she told the Commission, under oath, that she first spoke to her attorney *after* Pratt's attempt to get the disqualification order. Ex. 16 p 23; Ex.19 pp 29-30 ¶ 53. This statement was accompanied by respondent's denial that her refusal to sign the disqualification order was linked to her statement to Pratt that she had not spoken with her attorney. Ex 16 p 22; Ex 19, p 30, ¶ 55.

In a January 2018 response to the Commission's questions, respondent acknowledged Pratt's position that respondent told her she needed to talk with her attorney. Respondent told the Commission that when she told Pratt she had not spoken with her attorney, she could see how Pratt could think her not having spoken with the attorney was her reason for refusing to sign the disqualification order. Ex. 19 p 30 ¶ 56: "I do not remember saying I had to consult with an attorney before signing the order of disqualification. But I can see how my mentioning I had not spoken to an attorney could be considered the same"; *cf.* Ex 16 p 22 "I do remember saying

something to the effect that I would sign it later and that I had not spoken to an attorney"; Ex. 21 p 22 ¶ 153. The clear implication of respondent's statements to the Commission is that Pratt was confused, but understandably so, when she concluded that respondent refused to sign the order *because* she had not spoken with her attorney.

This whole narrative was false, including the portion charged as misconduct. As Appendix 1 lays out, the *only* thing respondent told Pratt was that she needed talk with her attorney. But respondent had already spoken with her attorney; in fact, twice by the time Pratt came to her chambers, including a six minute call just two hours earlier. Pratt's only reason to be there was to obtain the order to disqualify. Having just talked with her lawyer, the only reason for her to tell Pratt she not spoken with her attorney, immediately after refusing to sign the disqualification order, was to explain to Pratt *why* she did not sign the order.

Further, respondent was not too busy to take a few seconds to sign her name to an order that was already prepared. Neither court administrator Evans nor Pratt saw respondent doing anything that would made her too busy to sign the order right away, and Evans was surprised she did not do so (Evans Tr 10/2/18, pp 410/20-25, 411/12-17; Pratt Tr 10/2/18, p 329/11-19). Pratt noted that respondent was speaking with Evans near the door to the courthouse and was not wearing her robe, causing Pratt to conclude she had not just come off the bench and was not immediately going onto the bench (Pratt Tr 10/2/18, p 329/11-19). One of respondent's consistent themes in her statements to the Commission and throughout the formal hearing has been that after her first few years on the bench she never had enough work to keep her busy. December 6 was no different than any other day in this respect.

Respondent objects that she did not testify during her deposition that she told Pratt she was "too busy" to sign the disqualification order. Respondent brief p 36 ¶ 2. This is another one of

respondent's literally true but substantively false statements. Her actual testimony was: "And she had an order for disqualification, and I was — I think it was a Tuesday, because I was really busy. And I said I would take care of it when I had time the next day." Ex 1-13, p 46/5-8. There is no meaningful distinction between respondent telling Pratt she would do it when she had time and her telling Pratt she was then too busy.

Respondent notes, accurately, that when pressed during the deposition she ultimately claimed she did not remember her exact words with Pratt; she only remembered the circumstance that she was busy. Respondent's brief p 36 ¶ 2. Of course, if she is correct that she did not remember, such that her earlier testimony was an innocent mistake, it is not misconduct. However, there was nothing innocent about respondent's testimony. Her claim that she told Pratt she did not have time to sign the disqualification order was an essential part of her overall exculpatory claim that she was too busy to sign the disqualification order before or when Pratt came by. Her testimony was a temporary attempt to recast the actual, inculpatory, conversation she had with Pratt. That is not the same as an innocent mistake.

In October 2017 respondent told the Judicial Tenure Commission, under oath, that she first spoke to her divorce attorney following Pratt's visit to her chambers on the afternoon of December 6, 2016. Ex. 16 p 23; Ex.19 pp 29-30 ¶ 53. Respondent did not object to the Master's finding that this representation was false and was misconduct as charged in Count XVII(b)(ii).

> ***3) Count XVII(d)*** – On January 16, 2017, respondent testified in her divorce *deposition* that when she asked her staff for assistance in deleting information from her cell phone, she was only speaking "jokingly." This testimony was false, in that respondent was not joking when she requested staff assistance with deleting information from her cell phone between December 6 and December 8, 2016.
>
> ***Count XVII(e)*** – On February 9, 2017, respondent testified in her divorce deposition that she did not request help with deleting messages from her cell phone. This testimony was false, in that respondent asked her employee, Felica

> Milhouse, to help her delete her Hotmail email account from her cell phone on December 8, 2016.

Attachment 4 describes respondent's efforts to delete data from her cell phone, from which the following summary is taken. After Root filed his motion to preserve electronic data, respondent asked members of her staff and a police officer how to delete data from her cell phone. Her requests so troubled her research attorney, Robbin Pott, that Pott consulted with a lawyer to see whether respondent's actions were jeopardizing Pott's own license. Ultimately, on the morning of December 8, respondent ordered her court recorder to leave the courtroom during a hearing in order to search the internet for how to delete a Hotmail account from respondent's iPhone.

During her divorce deposition six weeks later, respondent was asked whether she had sought her staff's help deleting data from her cell phone. She responded that she did so "jokingly." That was false. She clearly was not joking – it was no joke that caused Pott to fear for her license, and no joke that caused respondent's court recorder to leave her duty station to find ways to delete data from the phone. Respondent admitted as much during the formal hearing (Respondent Tr 10/10/18, pp 1704/19 – 1705/14).

Respondent's only justification for perjuring herself about the sincerity of her request for help deleting information from her phone was that she did not want to make it easy for her husband's attorney (Respondent Tr 10/10/18, p 1705/11-13). Although that was respondent's claimed justification for lying under oath, it is worth noting that had she given a truthful answer she would have implicated herself in tampering with evidence.

Respondent objects that her testimony was not false, because she was joking in part. Respondent's brief p 37. Her only evidence in support of that claim comes from the very same deposition in which she merely claimed she was joking, and is therefore suspect. When she admitted during the formal hearing that she was actually serious when she asked for help deleting

data from the phone, that would have been a perfect opportunity to mention her jokes as well. She did not do that. Viewed in the light very most favorable to respondent, her testimony during her deposition was misleading; and therefore constitutes misconduct.

Respondent did not object to the Master's finding that she testified falsely during her February 9, 2017, deposition, when she denied asking for help deleting messages from her phone, as charged in Count XVII(e).

> ***4)*** **C*ount XVII(f)*** – On February 9, 2017, respondent testified in her divorce deposition that she did not take any steps to delete data from, or to reset, her cell phone. This testimony was false, in that respondent caused a technician to delete messages from her cell phone on December 8, 2016.

Attachment 4 summarizes the evidence that shows respondent had the data on her cell phone deleted on December 8. Just two months after she did that, during her second divorce deposition, counsel asked her whether she had taken any steps to have her old phone reset. She told him she had not. Ex. 1-14 (Respondent Dep Tr, *Root v Brennan*, February 9, 2017, p 206/1-10). Respondent's testimony was false, as shown by Attachment 4 and as admitted by respondent during the formal hearing (Respondent Tr 10/10/18, pp 1706/15 – 1707/6).

Respondent denies that she denied having reset her old phone. Respondent's brief p 37 ¶ 4. The evidence summarized in Attachment 4 demonstrates that the Master was right.

> ***5)*** ***Count XVII(g)*** – In April 2018 respondent informed the Commission, under oath and in the context of responding to an allegation that she had unreasonably delayed signing the order to disqualify herself from her divorce case, that although a motion to preserve evidence was pending, "[t]here was nothing to preserve." Respondent elaborated that her husband already had her phone records and she had admitted to having extramarital affairs. The statements were false, because the contents of respondent's cell phone were required to be preserved under the pending ex parte motion to preserve evidence; those contents were not encompassed within "phone records" possessed by respondent's husband; and those contents had potential relevance beyond whether they disclosed the mere existence of extramarital affairs.

The Commission sent respondent a 28-day letter in March 2018. The Commission was then aware that respondent had delayed disqualifying herself from her divorce even after the motion to preserve evidence was filed, but was not yet aware that respondent had reset her cell phone at that same time. The 28-Day letter asked respondent about refusing to disqualify herself once she was aware the motion to preserve evidence had been filed. Exhibit 20 p 21 ¶ 155. In April 2018 respondent answered, with the observation that although a motion to preserve evidence was pending "[t]here was nothing to preserve." Ex. 21 p 23 ¶ 156 (paragraph beginning "During the discovery . . ."). Respondent elaborated that her husband already had her phone records and she had admitted to having extramarital affairs.

Respondent's actions belied her claim that there was nothing to preserve. She clearly believed there was something to preserve, because she had her court recorder scrambling to delete data from the phone shortly after the motion was filed, and she took the step of having the phone cleared of all data. The Hotmail account she asked Milhouse to learn how to delete is an example of data on the phone that would not be encompassed within "phone records" possessed by respondent's husband. Respondent's demonstrated belief that there was something to preserve was correct.

Respondent's statement that there was nothing to preserve was false. The contents of her phone had potential relevance beyond whether they disclosed the mere existence of extramarital affairs. This lie was material because respondent's actions made it impossible to determine whether there was anything to preserve, and the lie put an innocent gloss on her actions.

Respondent did not object to the Master's finding that her false statement to the Commission that there was nothing to preserve on her old phone, was misconduct.

False Statements About Respondent's Relationship with Furlong & Corriveau

The next several false statements are based on respondent's efforts to conceal, minimize, or normalize her relationship with Sean Furlong and his close friend, Chris Corriveau.

1) ***Count XIII(A)*** – On January 4, 2013, during proceedings in the *Kowalski* case, respondent omitted relevant facts regarding her relationship with Sean Furlong and minimized the nature of her relationship with Furlong. Her statements and omissions intentionally and willfully concealed the relevant true nature of her relationship with Furlong.

On the Friday before the *Kowalski* trial, Brighton attorney Tom Kizer sent a letter to *Kowalski* counsel alerting them to respondent's relationships with Furlong and Corriveau. In pertinent part the letter asserted that respondent met privately in her chambers with Corriveau for a search warrant and had a lengthy social relationship with Furlong and Corriveau (Ex. 1-9; Piszczatowski Tr 10/4/18, p 924/14-25).[45]

Counsel met respondent in chambers that same day to discuss the letter (Piszczatowski Tr 10/4/18, pp 927/11 – 928/8). When *Kowalski's* lawyer raised the letter, respondent took over the conversation and started talking about it, unsolicited (Piszczatowski Tr 10/4/18, p 928/20-25). Respondent said she knew a lot of people. She said she had a relationship with Furlong and Corriveau in that she knew them. She had seen "him" [sic] at parties, fundraisers, retirement parties, and "we might go out" or respondent might see "him" [sic] at the bar (Piszczatowski Tr 10/4/18, p 930/3-10). Respondent said nothing to confirm that she had a lengthy or close social relationship with either Furlong or Corriveau (Piszczatowski Tr 10/4/18, pp 930/24 – 931/4). She described her relationships with them as not all that deep; as being just a "professional

[45] Respondent claims Kizer's letter "insinuated" that she and Furlong were sexually intimate before the *Kowalski* trial. Respondent's brief pp 11-12. She makes that claim as an apparent explanation for why she volunteered to counsel in *Kowalski* that she did not have a sexual relationship with Furlong. With all respect, it does not appear to the Examiners that Kizer's letter intimates a sexual relationship. Its most extreme reference is to "the further perception that there is something more disturbing beneath the surface." Ex. 1-9 p 3. Unless one is predisposed to find a reference to a sexual relationship in the phrase "something more disturbing," the "insinuation" is not there.

relationship," in respondent's words (Piszczatowski Tr 10/4/18, pp 931/16 – 932/2). Again, respondent likened her friendship with Furlong to "being friends with" people in the prosecutor's office. Ex 1-6, p 6/14-16.

Respondent's relationships with Furlong and Corriveau are summarized in Section 1, above, at pp 3-12. The evidence shows respondent omitted significant information about her relationship with Furlong when she talked with counsel. For example, she did not reveal that during the four preceding years she and Furlong had shared over 1000 phone conversations, all about personal matters (Piszczatowski Tr 10/4/18, pp 933/24 – 934/3).[46] She did not tell them that during the 14 months prior to trial she had spent as much time on the phone with Furlong as with anyone else, and much more than with most people (Piszczatowski Tr 10/4/18, p 934/4-8). Either of these facts would have been very significant to counsel (Piszczatowski Tr 10/4/18, p 934/9-11). Respondent also did not disclose that she had regular social interactions with Furlong and Corriveau, not just a casual professional relationship (Piszczatowski Tr 10/4/18, p 936/4-14).

Kizer's letter alleged that respondent had a private meeting with Corriveau in chambers. During the pretrial conference, respondent did not disclose that she gave Furlong and Corriveau preferential treatment when they came to the courthouse (Piszczatowski Tr 10/4/18, p 936/19-24). Respondent did not disclose that she had removed her clothing while in her pool, at a party at which Furlong was present (Piszczatowski Tr 10/4/18, pp 936/25 – 937/3). Counsel would have considered that fact "huge" with respect to whether respondent should hear the case, but respondent made no disclosure of anything with any sexual overtones (Piszczatowski Tr 10/4/18, p 937/5-12). Respondent also never mentioned that for three years she had gone Christmas

[46] Exhibit 1-31 shows the total actually exceeded 1500 calls during that period.

shopping with Furlong and someone else (Piszczatowski Tr 10/4/18, p 937/21-25).[47] In short, she said nothing in chambers that added to the information in the letter (Piszczatowski Tr 10/4/18, p 937/18-20). To the contrary, respondent communicated the idea that the letter overstated the nature of her relationship with Furlong and Corriveau. (Maas Tr 10/4/18, p 996/20-25)

After the meeting in chambers respondent went on the record to hear Kowalski's motion to disqualify her. She revealed nothing else of note during the hearing, concerning her friendships with Furlong or Corriveau (Ex 1-6 Tr; Ex 1-7 video). To the extent respondent revealed anything about those relationships during the hearing, she likened them to her acquaintance with the previous prosecutor and his wife. Ex 1-6 Tr p 6/14-16; Ex 1-7 (Video). Based on what respondent said in chambers and on the record, counsel were led to believe that respondent had a normal professional and casual social relationship with Furlong, not a close personal friendship (Piszczatowski Tr 10/4/18, pp 939/15 – 940/20; Maas Tr 10/4/18, pp 997/19 – 998/1).

The Master compared respondent's January 4 description of her relationship with Furlong to the evidence of that relationship, and determined that respondent's description during the January 4 proceedings concealed its true depth. Report at pp 4-5. The Master was clearly right. Respondent had been very close to Furlong for years. Kristi Cox, who as respondent's secretary and court recorder only knew of respondent's relationship with Furlong and Corriveau based on what she saw in court and on whatever respondent said in her presence, did not think respondent fairly disclosed the extent of her friendships with them that day (Cox Tr 10/3/18, p 593/8-10).

Respondent objects to the Master's conclusion. She says that her January 4 description of her relationship with Furlong was "merely incomplete," not false. Respondent's brief p 38 ¶ 7. She

---

[47] Additional testimony by *Kowalski* counsel regarding respondent's failure to reveal relevant facts regarding her relationship is at: Piszczatowski Tr 10/4/18, pp 933/24 – 934/4-8, p 936/4-24, p 937/21-25, pp 939/15 – 940/20; Maas Tr 10/4/18, p 993/15-18, pp 997/19 – 998/1.

claims that silence is not untruthful. With respect, respondent has an overly narrow definition of truth and falsehood. Her statements and omissions (apparently respondent characterizes her omissions as "silence") in chambers painted a certain picture of her relationship with Furlong. That picture was false. Her statement during the hearing on the motion to disqualify likened her relationship with Furlong to her professional relationship with the prior prosecutor. That was misleading. Respondent was not merely incomplete. She concealed every relevant fact that would have created a basis for her to disqualify herself.

Respondent committed a "silent fraud" on the *Kowalski* parties. When there is a legal or equitable duty of disclosure, "[a] fraud arising from the suppression of the truth is as prejudicial as that which springs from the assertion of a falsehood." Titan Insurance v Hyten, 491 Mich 547, 557 (2012).

> ***2) Count XVII(i)*** – In October 2017 and January, April, and August 2018, respondent claimed to the Commission, under oath, that she rarely handled search warrants at the bench and she routinely took all police officers into her office and closed the door with them. She further wrote that she did not treat one police officer differently than another. These statements were false, because respondent did not routinely take police officers other than Furlong and Corriveau into her office and close the door.

The false statements alleged in Count XVII(i) were part and parcel of respondent's concealing her true relationships with Furlong and Corriveau from *Kowalski* counsel. One of the allegations in attorney Kizer's pretrial letter to *Kowalski* counsel was that respondent met with Corriveau behind her closed office door. During the hearing on the motion to disqualify her, respondent said, in a dismissive tone, that he came for a search warrant, and that is what she does for officers who came to her court (Ex 1-7 p 8/11-17; p 6 at 2:55:00). At the formal hearing respondent confirmed that by those remarks she intended to communicate that she met with *all* officers who came to her court behind closed doors (Respondent Tr 10/1/18, p 223/9-18).

Respondent made this statement as part of denying Kizer's claim that she had a close relationship with Corriveau and Furlong.

Respondent doubled down on this claim in her answers to the Commission's questions whether she gave preferential treatment to Furlong and Corriveau by meeting with them behind closed doors. She represented that she met with law enforcement officials behind closed doors most of the time, and rarely did warrants on the bench. Ex. 19 pp 16 ¶ 13.d, 23 ¶ 30.e, 26 ¶ 33; Ex. 21 pp 2 ¶ 4.h, 7 ¶ 14.f. She confirmed those representations while testifying at the formal hearing (Respondent Tr 10/1/18, pp 223/9 – 225/2).

Respondent's description of her practice was false at the *Kowalski* disqualification hearing, false in her answers to the Commission, and false during her testimony at the formal complaint hearing. Kristi Cox knew both Furlong and Corriveau, and observed respondent's contact with them around the courthouse and on some social occasions (Cox Tr 10/3/18, pp 581/16 – 582/21). In general, when a police officer came into the court room for a search warrant while a matter was proceeding, respondent would stop the proceedings and go off the record, the officer would approach, and respondent would handle the warrant on the bench (Cox Tr 10/3/18, p 584/10-20). If respondent was not in the courtroom, respondent would handle the warrant in her office. When respondent did this for most officers, the door would not be closed and the officer would be in the office a short time (Cox Tr 10/3/18, pp 584/22 – 586/4).

However, if Furlong or Corriveau made search warrant requests while respondent was in a proceeding in the courtroom, respondent would take a recess, take Furlong or Corriveau to her office, and close the door. Furlong's and Corriveau's visits always took longer. Cox noticed this because she had people waiting in the courtroom for respondent to return to the bench (Cox Tr. 10/3/18, p 586/9-23). Before the *Kowalski* trial respondent did not close the door with any officer

other than Furlong and Corriveau (Cox Tr 10/3/18, pp 585/18 – 586/4). Other Michigan State Police officers came to the court to get warrants besides Furlong and Corriveau, but none of them received the "off-the-bench, closed-door" treatment that Furlong and Corriveau received (Cox Tr 10/3/18, p 677/9-21). The only other officer Cox observed who received treatment similar to that accorded Furlong and Corriveau was a Trooper Singleton, and he received that treatment only right before Cox left respondent's employ in 2015, well after the *Kowalski* trial (Cox Tr 10/3/18, pp 586/24 – 587/13). There were probably 30-40 times over Cox's employ with respondent that she met with Furlong, Corriveau, or Singleton behind closed doors (Cox Tr 10/3/18, p 588/12-22).

Cox was not the only witness who noticed the special treatment Furlong and Corriveau received. Lisa Bove was a Brighton district court employee between 2008 and 2013. She described respondent as being noticeably friendly with Corriveau and Furlong during that time. She noticed that respondent would meet with them behind closed doors, though she did not know if any other officers were treated that way (Bove Tr 10/4/18, pp 786/14 – 787/7). Similarly, Francine Zysk observed that Furlong was at the court a lot during the period she was chief probation officer, which began in 2006. She stated respondent was "very close" with Furlong, and "simply friends" with Corriveau. She described respondent's relationship with Furlong and Corriveau as different than her relationships with other law enforcement officers (Zysk Tr 10/9/18, p 1463/18 – 1464/20).

Though Felica Milhouse only began working for respondent in late 2016, what she observed then is consistent with Cox's description of respondent's treatment of officers who came to the court, and inconsistent with respondent's claim that she met with all police officers behind closed doors. During her employment Milhouse observed that when officers came to obtain search warrants, if respondent was on the bench she would pause the record, turn on the "white noise" machine, and do the warrant from the bench. If respondent was in her office when an officer came

by, Milhouse would walk the officer back into respondent's office. Milhouse thought the door remained open, though she was not sure (Milhouse Tr 10/3/18, pp 533/6 – 534/1).

The Master found that respondent lied about treating Corriveau and Furlong no differently than other police officers. Respondent apparently objects that the evidence does not support the Master's conclusion.[48] Respondent's brief p 40 ¶ 11. Her objection rests on selectively reviewing the witnesses' testimony. The evidence cited above supports the Master's finding.

Respondent also objects that it cannot possibly matter whether respondent's denial that she gave preferential treatment to Furlong or Corriveau was false.[49] Respondent's brief p 40 ¶ 11. Respondent appears not to appreciate that were she to have been truthful in response to Kizer's claim that she met privately with Corriveau, she would have had to acknowledge a special relationship with a witness in the murder trial that was about to start. A full disclosure of her meeting privately with Corriveau would have had to include a full disclosure that she also met with Furlong privately. If she had acknowledge to the Commission that she met privately only with Furlong and Corriveau, she would have had to admit she provided false information to counsel while hearing the motion to disqualify her from the *Kowalski* trial. She lied during the *Kowalski*

---

[48] Respondent argues that even if respondent gave preferential treatment to Furlong and Corriveau (and later, Singleton), that does not support a claim that she had a close friendship or a romance with Furlong, unless the Master believed she was romancing all three officers. Respondent's brief p 40 ¶ 11. First, she is wrong – preferential treatment does support the finding of a close relationship. Second, she posed the wrong question – the proper question is whether she had a special enough relationship with Furlong or Corriveau to require greater disclosure than she made to *Kowalski* counsel. If she also had *romantic* feelings for Furlong, that would just be an additional fact requiring greater disclosure.

[49] Implicit in respondent's argument is that when a judge lies, materiality is a necessary precondition to finding misconduct. Materiality is an element of a criminal charge of perjury. Judicial misconduct, though, does not rest on the criminal law. Judicial lies undermine the integrity of the judiciary, even when the lies are not material to any particular proceeding. It is not clear why *any* judicial lie should be acceptable under the canons, though the consequences may vary depending on the circumstances of the lie. In any event, all of respondent's lies were material.

disqualification hearing, and perpetuated her lie when questioned by the Commission. Though respondent may not see it, those lies were highly material.

3) ***Count XVII(h)*** – In April 2018 respondent claimed to the Commission, under oath, that she had not texted with Sean Furlong during the *Kowalski* trial. This statement was false, because respondent and Furlong texted 13 times during the trial.[50]

An earlier portion of this brief describes respondent's lengthy and frequent phone and text relationship with Furlong, which included over 1500 calls during the four and a half years before trial and over 400 texts during the three years before trial. As a judge with eight years of experience by the time the *Kowalski* trial began, respondent had to know she had no business communicating privately with a witness during a trial. Her awareness of her duty is demonstrated by the fact that her phone and text conversations with Furlong stopped just before the trial began and resumed with a vengeance when the trial was complete, but were nearly nonexistent during the trial.

Nearly, but not completely, nonexistent. Even though respondent's relationship with Furlong had led to a motion to disqualify her, she was still driven to call and text him in the middle of trial. They exchanged 14 texts during the trial. Ex. 1-31, rows 1936-1939, 1941-1943, 1945-1947, 1949-1952. Respondent was the initiator of two of the four threads of texts.

As part of the investigation into respondent's misconduct, the Commission asked her about her texting with Furlong while *Kowalski* was assigned to her. Respondent acknowledged having texted with him while the case was pending generally, but denied having done so during the trial. Ex 21 p 3 ¶ 7. During the formal hearing she also testified that she did not believe she texted with Furlong during the trial (Respondent Tr 10/1/18, pp 232/22 – 233/8). Those statements were obviously false, as shown by the 14 texts respondent and Furlong exchanged in the middle of trial.

[50] Though the allegation was that there were 13 texts, there were actually 14, as demonstrated in the text.

Respondent's denial that she texted with Furlong during the trial was not an innocent failure of recollection. At the time she made her statements to the Commission, she had no way to know that months later the Commission would unexpectedly receive records revealing her texts with Furlong and disproving her statement to the Commission. She had already attempted to minimize her talking with him on the phone during the trial, claiming it was only one call rather than three. For her to acknowledge that she both talked *and* texted with the key witness during a murder trial under circumstances she knew she should avoid would have been admitting serious misconduct. As a judge she would have had a guilty conscience about her actions. It is not plausible that she would forget having violated her office by texting with him during trial.

Respondent does not object to the Master's finding that respondent's false statement about her texting was misconduct.

> ***4) Count XVII(j)*** – In October 2017, and January and April 2018, respondent provided information to the Commission, under oath, concerning her relationship with Sean Furlong as follows: 1) That she socialized with Sean Furlong "because" she was socializing with Shawn Ryan; 2) That Sean Furlong would come to Jameson's, the bar where respondent often met with Mr. Furlong and others, "because of his relationship with Shawn Ryan"; and 3) That it would have been "extremely rare" for her to see Mr. Furlong at Jameson's without Shawn Ryan being there. These statements were false, because respondent often socialized with Mr. Furlong at Jameson's when Shawn Ryan was not present.

Shawn Ryan is an assistant prosecuting attorney in Livingston County who was also a friend of respondent's beginning around 2006, not long after respondent took the bench (Ryan Tr 10-2-18, p 476/3-10). Ryan was also friends with Furlong, and it was Ryan who initially invited respondent to join that circle of friends in about 2006 (Ryan Tr 10-2-18, p 477/15-25).

For obvious reasons, respondent's relationship with Furlong was a central focus of the Commission's investigation into respondent's misconduct. The Commission asked respondent, in detail, to describe her friendship with Furlong. Her answers, across several statements she provided

to the Commission, frequently and gratuitously invoked Ryan, although the Commission's question to respondent had only been about her relationship with Furlong. Ex. 16 pp 9 – 13, 15; Ex. 19 pp 8 – 14, 17; Ex. 21 pp 1-2, 8 – 9. Respondent's statements to the Commission, just cited, convey the clear impression that she was straining to make Ryan the focus of her friendship, and Ryan's own friendship with Furlong the primary reason Furlong was in the picture; thereby minimizing her own relationship with Furlong.

Thus, as part of explaining her relationship with Furlong, respondent told the Commission that Furlong came to the bars that respondent also frequented "because" Ryan was there. Ex. 16 p 9; Ex. 19 p 10 ¶ 5.1.c. She told the Commission it would be "extremely rare" for her to be at Jameson's (one of the bars) with Furlong, without Ryan also being there. Ex. 21 p 8 ¶ 25; *cf*. Ex. 19 p 23 ¶ 31 ("When I socialized with Furlong and Corriveau, [Ryan] was present").

These statements were false (Ryan Tr 11/19/18, p 1768/11-24). Ryan described the outings as a group thing, in which no one person was there "because of" another person (Ryan Tr 10/2/18, pp 482/23 – 483/9). Although respondent may have initially participated with the group because Ryan invited her to do so, Ryan was only the impetus behind respondent's *initial* involvement, in 2006. After that (that is, the six years from 2007 through 2012), respondent had her own friendship with Furlong and Corriveau (Ryan Tr 10/2/18, pp 483/18 – 484/1).

Another participant in the group of friends was now-assistant prosecuting attorney Kim Morrison. When respondent identified the nucleus who met after work, she denied that Kim Morrison was part of it (Respondent Tr 10/1/18, p 187/4-6). To the contrary, Morrison described extensive socializing with respondent, Furlong, and Corriveau, and described it as usually happening *without* Ryan after 2009. Morrison met Corriveau and Furlong around 2007, and started socializing with them and respondent around that time (Morrison Tr 10/4/18, pp 834/7-20, 835/1-

7, 839/15-22). They mostly hung out in a restaurant or bar, and occasionally at respondent's house (Morrison Tr 10/4/18, p 836/19-21). Morrison stated that she, respondent, Furlong, and Corriveau were close friends during the period 2008 through 2012, and the other three were close enough to regularly socialize together without Morrison being there (Morrison Tr 10/4/18, p 854/2-11).

Morrison recalled that in the very early stages Ryan was sometimes a part of the group (Morrison Tr 10/4/18, pp 837/14 – 839/3). Ryan's complementary perspective is that the group sometimes included Morrison (Ryan Tr 10/2/18, p 479/8-16). Although Morrison only hung out with this group every two to three weeks, as their friend she was aware they socialized without her when during the weeks she could not make it (Morrison Tr 10/4/18, pp 837/21 – 838/15). For example, Morrison would talk to Corriveau, who would say he was at the bar with Furlong and respondent, and early on, with Ryan also (Morrison Tr 10/4/18, p 838/9-15).

Morrison recalled that at some point Ryan dropped out of the group, perhaps after one year or two years (about 2009), after which it was still respondent, Furlong, Corriveau, and at times Morrison who got together (Morrison Tr 10/4/18, pp 838/23 – 839/3, 840/11-24). Ryan's similar recollection is that between 2007 and early 2010 she, respondent, Furlong, and Corriveau, sometimes with others, went out once or twice per week for drinks (Ryan Tr 10/2/18, pp 479/23 – 480/11, 496/12 – 497/7). Beginning in 2010 she was less a part of this activity because she began spending a lot of time with her then-boyfriend (Ryan Tr 10/2/18, p 479/17-22; pp 496/12 – 497/9). After Ryan turned her focus elsewhere, Morrison continued to socialize regularly with respondent, Furlong, and Corriveau through 2011, until personal circumstances circumscribed her own ability to do so (Morrison Tr 10/4/18, p 841/10 – 842/25).

Like Ryan, Morrison testified that it is inconsistent with her recollection that the only reason Furlong was at Jameson's was because of Ryan, or that the reason respondent socialized

with Furlong was because she was socializing with Ryan (Morrison Tr 10/4/18, pp 843/25 – 844/11). Morrison explicitly denied that, before early 2013 (when the *Kowalski* trial took place), it would have been "extremely rare" for respondent to have socialized with Furlong and Corriveau with Ryan not there. Rather, she confirmed that it was pretty common for them to socialize without Ryan (Morrison Tr 10/4/18, p 843/11-22).

The Master was clearly correct to find that respondent's statements to the Commission, about Ryan's influence on Furlong's presence when respondent was also present, were false. Respondent objects that the Master got it backwards – it was Ryan who understated her relationship with Furlong to inflate respondent's relationship with him. Respondent's brief p 39 ¶ 10. One problem with respondent's claim is that there is no evidence that Ryan did understate her own relationship with Furlong – she even acknowledged having had sex with him in 2009 and before (Ryan Tr 10-3-18, pp 523/22 – 524/4). Another problem is that Ryan had absolutely no motive to understate her own relationship with Furlong or, more importantly, to inflate respondent's relationship with him. Yet another problem is that respondent's claim completely ignores Morrison's testimony – the same Morrison who respondent falsely denied was even a part of socializing with Furlong.

Respondent also argues that even if she overstated, to a large degree, her friendship with Ryan, "overstatement to a large degree" is partially true and is therefore not a falsehood. Respondent's brief p 39 ¶ 10. Respondent's argument fails as a matter of logic. A statement that is mostly false does not become true if a nubbin of it is true. Respondent's argument also misses the point. The question was not whether respondent falsely described her relationship with Ryan. The question was whether she falsely described the impact of Ryan on her relationship with Furlong. She clearly did.

False Statements Concerning Pollesch

> ***Count XIII(B)*** – On April 25, 2017, at a hearing on a motion to disqualify respondent from *McFarlane v McFarlane* that was based on her relationships with attorney Shari Pollesch, including Pollesch's representation of respondent's former husband, respondent denied having known, before early January of 2017, that Pollesch had represented her then-husband.
>
> *Count XIV(A)* – On January 30, 2018, in response to the Commission's question whether respondent had falsely denied being aware that Shari Pollesch represented respondent's then-husband from 2011 through 2016, respondent said, under oath, that she was not aware of the representation until Pollesch's January 3, 2017 letter to attorney Tom Kizer. On April 19, 2018, in response to an allegation that Shari Pollesch provided legal services to respondent's then-husband from 2011 through 2016, respondent stated under oath that she did not know Pollesch or her firm had represented her ex-husband until Pollesch sent her letter to Tom Kizer on January 3, 2017.
>
> Respondent's statements described in Counts XIII(B) and XIV(A) were false, in that respondent had been aware of the representation since 2011.

As noted above in Section 2, respondent's good friend, attorney Shari Pollesch, represented the business of respondent's husband, Don Root, for the last five and a half years of their marriage, starting in June 2011 and ending shortly after Root filed for divorce in December 2016. In order to resist Root's subpoena to Pollesch to testify in a deposition for respondent's divorce, Pollesch sent a letter to Root's attorney, Tom Kizer, on January 3, 2017, stating that she could not testify – in part, because she had represented Root in his businesses. Ex 2-5.

In April 2017 a party in *McFarlane v McFarlane* sought to have respondent disqualify herself from a case in which Pollesch represented the opposing side, based on that letter. Ex. 13-2 p 8/15-19. Respondent held a hearing on April 25. In the course of denying the motion, respondent claimed she did not know Pollesch represented Root until her divorce, or perhaps a little before. Ex. 13-2 p 10/12-14; respondent Tr 10/2/18, pp 294/17 – 295/21.

Part of the Commission's investigation of respondent's misconduct focused on whether she had failed to disclose her relationship with Pollesch in connection with about ten cases between

2014 and 2016. To that end, the Commission asked respondent about her knowledge of Pollesch's representation of Root's businesses during the time those cases were pending before her. On January 30, 2018, she wrote, under oath, that she was unaware Root hired Pollesch until January 3, 2017. Ex. 19 pp 38 – 39 ¶ 73, p 41 ¶¶ 76, 81. The Commission sent respondent a 28-Day letter in which it alleged that she should have disclosed Pollesch's representation of Root. Respondent repeated her January 30 statement, under oath, in her response to the 28-day letter. Ex. 21 pp 13 – 14 ¶ 76, p 15 ¶ 85b,c, p 17 ¶ 89b,c.

The initiation of Pollesch's representing Root is significant. Before Root retained Pollesch, respondent discussed with Pollesch her belief that Root was stubborn about getting non-compete agreements with his employees (Pollesch Tr 10/9/18, pp 1392/10 – 1393/5). Pollesch later met Root for lunch. When she arrived, respondent was there as well. During the lunch they discussed Root's business issues (Pollesch Tr 10/9/18, pp 1394/13 – 1395/19). The discussion included legal issues relating to respondent's concern about the non-compete agreements and some others (Pollesch Tr 10/9/18, pp 1395/23 – 1396/1). At some point soon after that lunch, Root retained Pollesch to represent his business (Pollesch Tr 10/9/18, p 1396/2-5). The letter of engagement fixes the date as June 13, 2011. Ex. 2-2. Pollesch continued to represent the business until late 2016 or early 2017 (Pollesch Tr 10/9/18, p 1396/6-9; Ex. 2-3 (invoices)).

Respondent's various denials, in *McFarlane* and to the Commission, that she was aware Pollesch represented Root in his businesses between 2011 and 2017 were false. At this point respondent does not deny that she falsely described when she learned that Pollesch represented Root's businesses, though she appears to deny that the falsehoods were intentional. Respondent's brief pp 38-39 ¶ 10. They were intentional. It is implausible that respondent could have been the one to raise Root's legal issues with Pollesch, then participated in the lunch at which the three of

them discussed the issues, and somehow remained unaware for the following five and a half years that soon after the lunch her best friend began to represent her husband. Not only is respondent's claim implausible, it is contradicted by the evidence. Root testified that respondent was aware Pollesch represented him (Root Tr 10/3/18, pp 569/21 – 570/5 & 572/5-8). Respondent's employees, Kristi Cox and Jessica Sharpe, both recalled respondent stating that Pollesch represented Root (Cox Tr 10/3/18, p 597/2-15; Sharpe Tr 10/3/18, p 722/4-19). In fact, in December 2014 – pretty much the middle of Pollesch's representation of Root – respondent herself casually mentioned, on the record in an unrelated case, that Pollesch represented her husband. In doing that she also revealed some knowledge of the particulars of the relationship, because she knew her husband paid "a lot" for Pollesch's services. Ex 2-42 pp 7/17 – 8/4; Ex 2-43 (video-entire excerpt). She cannot have forgotten all this when she was speaking to counsel in *McFarlane* or providing statements to the Commission.

Respondent also argues that it does not matter whether respondent was "incorrect" as to when she learned that Pollesch represented Root. Respondent's brief pp 38-39 ¶ 10. She claims that the only thing that matters is that she told "the truth" that there was such a representation. Respondent apparently fails to understand why "the truth" required not only acknowledging the fact of the representation but the timing of her awareness. By the 2017 hearing in *McFarlane*, Pollesch's representation of Root had ended. However, it had not ended during Pollesch's firm's pre-2017 appearances in the case. Had respondent been truthful that she was aware much earlier that Pollesch represented Root, that truth would have immediately called into question respondent's involvement in those earlier proceedings. It would have equally called into question her involvement in every other case in which Pollesch or her firm had appeared during the course of the representation.

It must have been obvious to respondent that he truth about when she knew Pollesch represented Root was very important to the Commission's investigation into whether she had committed misconduct by failing to disclose that relationship for years. It would not have been misconduct for Pollesch to appear in cases before respondent without respondent disclosing Pollesch's representation of Root, if at the time of those appearances respondent were truly unaware that her best friend represented her husband. On the other hand, as the Master found, it was misconduct for respondent to fail to disclose the representation when she was aware of it. Had respondent not lied to the Commission about when she learned of the representation, she would have been admitting to misconduct.

False Statements About Staff Doing Campaign and Personal Work

1) ***Count XIV(B)*** – On October 27, 2017, January 30, 2018, and April 19, 2018, respondent wrote, under oath, that she never had Kristi Cox or Jessica Sharpe work on her campaigns for judicial office during work hours. These statements were false, in that respondent knowingly had Cox and Sharpe do work during office hours for her 2014 reelection campaign.

Attachment 5 describes the campaign work respondent had Kristi Cox and Jessica Sharpe do for her 2014 reelection campaign. We will not restate that discussion here, but will start from the premise that substantial evidence supported the Master's finding that respondent improperly had her employees do campaign work during work hours.

The Commission asked respondent several times about the evidence that she had Cox and Sharpe do campaign work for her during work hours. Respondent said:

> I have always been extremely cautious about not intertwining my campaigns and my judicial work. . . . I never allowed campaign work to be done during work hours. . . . Mixing my campaign with work was an absolute no. . . . I was absolute in keeping work and my campaigns separate. (Ex. 16 pp 54-55; Ex. 19 p 67 ¶ 160)

With respect to Sharpe, respondent wrote:

> She was never to work on my campaign during work hours. . . . The only things she could have done during work hours would have been door to door which I would not have known was being done during work hours and friends to friends cards. . . . I was adamant about keeping the campaign separate from work. No work during work hours or on County equipment. (Ex. 19 pp 70 – 71 ¶ 166)

The 28-day letter the Commission sent respondent alleged that respondent had Cox work on respondent's 2014 campaign during work hours. (Ex. 20 p 40 ¶ 320) Respondent answered, under oath: "No. I was emphatic about keeping my campaigns separate from work. Campaign work during work hours was prohibited." (Ex. 21 p 50 ¶ 320) In response to a similar allegation that respondent had Sharpe work on her 2014 campaign during work hours, respondent wrote: "She was never to work on my campaign during work hours. . . . I would not have let her. I was adamant about keeping the campaign separate from work. No work during work hours or on County equipment." Ex. 21 pp 53 – 54 ¶ 329.

Respondent's statements about Cox's and Sharpe's work on her campaign were false and she knew they were false. As both Cox and Sharpe explained, respondent actually *worked with them* as they did campaign work during work hours. They did this in respondent's courtroom, and in a corner of the courthouse where they could access the internet service of a neighboring business to avoid leaving a trace of their campaign work on the county's computer system (Cox Tr 10/3/18, pp 622/10 – 623/18, 625/11 – 626/1; Sharpe Tr 10/3/18, p 713/3-11). Cox and Sharpe were clear that respondent knew they did significant 2014 campaign work on county time (Cox Tr 10/3/18 pp 622/6 – 623/18, 624/9-12; Sharpe Tr 10/3/18, pp 713/3 – 714/15).

The Master found that respondent lied in her statements to the Commission that categorically and adamantly denied that she ever let her employees do any campaign work during work hours. Respondent appears to object to this finding. Respondent's brief pp 41-42 ¶ 14. If the Examiners understand respondent's objection, it is that in her various statements to the

Commission she was actually only "adamant" about not doing campaign work on court time during the 2006 and 2008 elections; she was not similarly categorical about the 2014 election; and all that matters is that when it was brought to respondent's attention that she had made a mistake, she acknowledged her mistake.

Respondent's objection is misplaced. It is also a revealing demonstration of respondent's changing positions. Respondent's various statements to the Commission about her staff's campaign work, which are cited above, were clearly intended to encompass the 2014 campaign. In them she was as adamant about there being no campaign work during that campaign as she was during the others.

However, the record shows that respondent's explanation changed after she made her statements to the Commission. She made her "adamant" denials when the Commission asked her about campaign work. After her denials the Commission became aware of Exhibit 11-1, which is a thumb drive containing campaign work Kristi Cox did for respondent, including during court hours. After that thumb drive was shared with respondent, when asked at the formal hearing about campaign work, her explanation shifted from a categorical denial to a claim that yes, there was a little campaign work, but the staff only did the work on their breaks (Respondent Tr 10/2/18, p 280/17-24). Respondent even acknowledged that she worked with Sharpe and Cox on the campaign, during the day, on two press questionnaires (Respondent Tr 10/10/18, pp 1719/9 – 1721/4). Respondent had not so much as hinted that her staff did campaign work on their "breaks" or that she worked with her staff during court hours in any of her statements to the Commission, though that would have been the natural time to point these things out if they were true. She made these claims for the first time after being confronted with Exhibit 11-1.

Respondent's new explanation is suspect not only because she never raised it until new evidence gave the lie to her original story, but because her staff deny it as well. Cox and Sharpe both were clear that respondent knew they did significant 2014 campaign work on county time. (Cox Tr 10/3/18 pp 622/6 – 623/18, 624/9-12, 625/11 – 626/1; Sharpe Tr 10/3/18, pp 713/3 – 714/15) As both Cox and Sharpe explained, respondent actually worked with them as they did campaign work, during work hours. Cox and Sharpe also testified that they did not take breaks or have extra time during the work day to do respondent's personal tasks, because they always had court work to do (Cox Tr 11-19-18, pp 1823/19 – 1824/2, pp 1824/21- 1825/5, p 1844/5-9; Sharpe Tr 11-19-18, pp 1859/25 – 1860/11).

2) ***Count XVII(p)*** – On August 24, 2018, respondent wrote, under oath, that Kristi Cox would not have lost her job had respondent lost her 2014 campaign for reelection, because Cox was protected by a union contract. This statement was false, because Cox had no such protection as respondent's employee.

Respondent made other false statements about the campaign work. The Commission asked her whether, in connection with pressuring Cox to work on her 2014 campaign, she told Cox that Cox would lose her job if respondent lost the election. In her answer to the complaint respondent denied having said this. She then doubled down, and claimed that it was actually Cox who jokingly made the statement to her. Ex. 32 p 31 ¶ 267. Cox directly contradicted respondent's claim (Cox Tr 10/3/18, pp 620/23 – 621/12). Given the abusive relationship that existed between respondent and Cox, Cox's testimony is plausible while respondent's attempt to turn the tables is not.[51]

Respondent sought to buttress her denial that she told Cox that Cox could lose her job, by explaining that Cox would not have lost her job because she was protected by a union contract. Ex. 32 pp 31 – 32 ¶ 267. This statement was also false, because, as respondent's employee, Cox

[51] This false statement was charged as misconduct in Count XVII(o) of the Second Amended Complaint. The Examiners neglected to include that count in Appendix 2 to our closing argument to the Master, so there is no finding by the Master with respect to it.

had no such protection. Moreover, respondent was particularly aware it was false, because as then-chief judge of her court, she had negotiated the union contract from which Cox was excluded (Cox Tr 10/3/18, p 621/13-22; *see also*, respondent Tr. 10/8/18, pp 1737/25 – 1738/1 (respondent negotiated union contracts)).

Respondent did not object to the Master's finding that her statement that Cox would not lose her job due to the union contract was false and therefore misconduct.

> ***3) Count XVII(n)*** – In October 2017 and January and August 2018, respondent informed the Commission, under oath, that "[her employees] would take [her personal bills] from [her] desk and pay them." Respondent claimed that Jessica Sharpe was respondent's employee who was "most insistent" about paying respondent's bills. Respondent's statements communicated that herr employees volunteered to pay respondent's bills. Respondent's statements were false, because Kristi Cox and Jessica Sharpe never volunteered to pay respondent's bills.

Section 6, below, and Attachment 5 detail respondent's having Kristi Cox and Jessica Sharpe do personal errands for her during work time. One of those errands was paying respondent's personal bills. When the Commission asked respondent about having her staff do personal errands for her during work, she did not deny that they paid her bills; instead, she falsely claimed that doing so was *their* initiative, not hers. In January and April 2018, she wrote to the Commission that "[her employees] would take [her personal bills] from [her] desk and pay them." Ex. 19 p 66 ¶ 159.a; Ex. 21 pp 48 – 49 ¶ 319.a thru c. In January 2018 she claimed Sharpe was her employee who was "most insistent" about paying her bills. Ex. 19 p 70 ¶ 165.a. The clear import of respondent's statements is that her employees volunteered to pay her bills. This implication was intended to support respondent's overall position that she did not direct her employees to do personal things for her.

If there was any doubt that this was respondent's intended implication, she removed that doubt during her testimony at the formal hearing (Respondent Tr 10/1/18, p 245/12-25). In fact,

respondent made up a whole interaction with Sharpe and Cox to give credence to her claim. She went so far as to say that her staff "hounded" her to let them pay her bills (Respondent Tr 10/1/18, p 246/11-15). Contrary to respondent's elaborate claim, though, both Cox and Sharpe made clear they did not volunteer; respondent directed them to pay the bills (Cox Tr 10/3/18 pp 611/2 – 612/9; Sharpe Tr 10/3/18, p 711/11-22).

The Master found that respondent's statements to the Commission were false. Respondent objects. She claims that although, perhaps, respondent did direct her employees to pay her bills, neither was "dragooned" into paying them. Respondent's brief p 41 ¶ 13. Respondent goes on to explain that because her employees never refused her directions, she thought they did not mind, and therefore, what she told the Commission was not a lie.

Respondent is incorrect. When it comes to whether or not she committed misconduct by her employees doing personal tasks for her, there is a world of difference between whether respondent caused them to do the errands or they did the errands on their own initiative. Respondent's statements to the Commission were an attempt to avoid responsibility, by putting the onus of the personal errands on her employees. That was a lie. The Master was correct.

4) ***Count XVII(l)*** – Jessica Sharpe stained respondent's deck in September 2015. On February 9, 2017, respondent testified during her divorce deposition that she was unaware Sharpe had stained her deck while being paid to work for Livingston County. Respondent reiterated that claim in statements under oath to the Commission in October 2017, and January and April, 2018. On February 9, 2017, respondent also testified during her divorce deposition that she did not have Sharpe do personal tasks for her during Sharpe's workday. In January and April 2018, respondent informed the Commission, under oath, that she did not ask her employees to do personal tasks for her while they were being paid by Livingston County and did not intend to do so. Respondent's February 9 testimony and her statements to the Commission were false, because respondent was well aware that she had repeatedly instructed her employees, including Sharpe, to attend to her personal business during times for which they were being paid by the county, including instructing or authorizing Sharpe to stain her deck while she was being paid by the county.

During her divorce deposition respondent testified that she did not have Sharpe run errands for her during work hours. Ex. 1-14, respondent Dep Tr Root v Brennan 2/9/17, pp 148/22 – 149/1. In April 2018 and in her answer to the complaint, respondent claimed to the Commission, under oath, that it was not her intent to have her employees do personal tasks for her while they were being paid by Livingston County. Ex. 21 p 47 ¶ 316, p 51 ¶ 325; Ex. 32 p 26 ¶ 245, p 28 ¶ 254. She repeated this idea during the formal hearing (Respondent Tr 10/2/18, pp 259/5 – 260/7).

The Master was correct to find these statements were false. Cox was certainly not on break when respondent told her to leave the courthouse during a hearing to get her coffee and a muffin. Ex 11-5 p 5/18-21. She was not on break when respondent was driving to the courthouse and called ahead to have Cox pick up coffee and a muffin before respondent arrived (Cox Tr 10/3/18, p 607/6-8). Felica Milhouse was not on break when respondent ordered her to leave the courtroom to research how to take a Hotmail account off her phone (Milhouse Tr 10/3/18, p 530/12-14). Sharpe was not on break when respondent told her to leave the courtroom to pay her bills; in fact, respondent was well aware Sharpe did them at work, on the clock (Sharpe Tr 10/3/18, p 708/3-6).

Respondent did not object to the Master's finding that respondent's denials that she had staff do personal errands during work hours were false.

Among the tasks respondent had Sharpe do was to stain her deck. She told Sharpe to leave to do that in the middle of a work day, while being paid by Livingston County, on September 1 & 2, 2015 (Sharpe Tr 10/3/18, pp 698/12 – 699/14 – 700/19; Cox Tr 10/3/18, p 619/7-20; Ex. 29). She told Sharpe to go even after Sharpe told her she was working at that time. Sharpe even texted respondent about the deck job during work hours (Sharpe Tr 10/3/18, pp 699/17 – 700/5; Ex. 11-11, p 2). Sharpe's payroll records confirm that Sharpe was paid by the county for 8 hours on both September 1 and 2, the days she stained the deck. Ex 29, pp 1, 2.

Sharpe was deposed in connection with respondent's divorce. Respondent testified that Sharpe, at her deposition, stated she stained respondent's deck while on the clock. Ex 1-14, p 133/13 – 134/10. Respondent was deposed at a later date, and Root's attorney asked her about Sharpe's testimony. Respondent testified that Sharpe had lied when she said she stained respondent's deck while being paid to work for Livingston County. Ex. 1-14, respondent Dep Tr Root v Brennan 2/9/17, pp 133/19 – 134/10, 253/21 – 254/13. Respondent reiterated this under oath to the Commission in October 2017; January and April, 2018; and in her answer to the complaint. Ex. 16 p 53; Ex. 19 p 69 ¶ 164.a; Ex. 21 pp 51-52 ¶ 326.a, Ex. 32 p 29 ¶ 255a.

The Master correctly found that respondent's statements and testimony were false. Respondent objects that her statements were not knowingly false, because she never knew Sharpe stained the deck while being paid by the county. Respondent's brief p 38 ¶ 6, p 40 ¶ 12. She says it is not enough that she told Sharpe to go stain the deck in the middle of the work day, because she assumed Sharpe would clock out with the county before doing the work. With respect, an employer cannot expect to tell an employee to go do something in the middle of the work day, when the employer says nothing about clocking out, and not anticipate that the employee remained on the clock. Respondent was Sharpe's boss and gave her an instruction. The most natural interpretation of the interaction between respondent and Sharpe would cause both parties to know Sharpe was on the clock.

5) **Count VII(m)** – On January 16 and February 9, 2017, respondent testified during her divorce deposition that Jessica Sharpe had done "really horrible things." Respondent described the things as: vomiting in one of respondent's beds; never apologizing; never offering to pay for the damage she caused. Respondent testified further that it was not in Sharpe's "nature" to apologize. This testimony was false, because Sharpe did apologize and did offer to pay for the damage.

Jessica Sharpe worked for respondent beginning in early 2014 (Sharpe Tr 10/3/18, p 694/22-23). In August 2015 Sharpe spent the evening partying with respondent, then spent the night at her house. During the night she became ill in one of respondent's beds (Sharpe Tr 10-3-18, p 708/17-18). She left without waking respondent (Sharpe Tr 10/3/18, pp 708/16 – 709/3). She tried to reach respondent by phone to apologize, but could not reach her so texted her instead. Ex 11-11 p 1; Sharpe Tr 10/3/18, p 709/13-22. Respondent answered, texting "it happens to the best of us" and she had woken up and been embarrassed about much worse herself. Ex. 11-11 p 1;[52] Sharpe Tr 10/3/18, p 709/19-22. Sharpe offered to pay for the sheets, but respondent declined because Sharpe was trying to save money. Instead, respondent said Sharpe could pay her bills (Sharpe Tr 10/3/18, p 710/14-19).

Notably, in light of respondent's testimony that was to come, months after this incident respondent advocated to make Sharpe her full time employee (Sharpe Tr 10/3/18, pp 694/10 – 695/9; 11/19/18, p 1860/12-16). Months after that, in April 2016, Sharpe quit working for respondent because she could no longer tolerate the way respondent treated her. Ex. 47.

Respondent was deposed in her divorce case on two separate days, less than a year after she drove Sharpe out of her office. Sharpe was also deposed, between respondent's two sessions. Before Sharpe testified, respondent said she was angry that Sharpe had been subpoenaed because she had done some "really horrible things" at work and at respondent's house. Ex. 1-13, respondent Dep Tr Root v Brennan 1/16/17, p 40/7-14. After Sharpe testified, respondent attacked her again during her second session. Respondent described the "really horrible things" she had previously referenced as Sharpe vomiting in one of her beds, then failing to apologize or pay for the damage. Respondent was pushed on this testimony, and said she was "certain" Sharpe had not apologized,

[52] The word "worse" is missing from Ex 11-11, but Sharpe testified to it (Sharpe Tr 10/3/18, p 709/19-22).

because it was "not in her nature" to do so. Ex. 1-14, respondent Dep Tr Root v Brennan 2/9/17, p 169/7 – 171/18. Respondent expressed no ambiguity or uncertainty.

The Master found that respondent's testimony was false. The facts cited above show the Master was correct. Respondent objects that she did not commit misconduct, but merely had an innocent failure of recollection caused by the passage of time. Respondent's brief pp 37-38 ¶ 5. That might be plausible if respondent was wrong as to just a detail or two rather than the heart of the matter; or if she had expressed any uncertainty about her recollection rather than being adamant about it; or if she had not made it a point to reinforce her certainty by falsely claiming that it was not in Sharpe's nature to apologize.

Only respondent knows why she testified as she did. As she said, she was angry that Sharpe had been deposed. She was clearly angry that Sharpe talked about the deck staining. She may still have had the anger she demonstrated toward Sharpe during Sharpe's last months working for her. Whatever its motivation, respondent chose to falsely malign Sharpe.

Respondent claims that the truthfulness of her testimony was unimportant. Respondent's brief p 37 ¶ 5. As we note above, it is always important for a judge to tell the truth while under oath. But respondent's lie was material for a more specific reason. At the time she falsely maligned Sharpe, she did so as part of trying to discredit Sharpe's own testimony that had been unfavorable to her.

False Statement to Attorney Bruce Sage

> ***Count XIII(c)*** – On October 5, 2015, during a proceeding in the case of *Sullivan v Sullivan*, respondent informed counsel for a party who lived in Florida that the court lacked the capability for witnesses to appear via telephone. That statement was false, as the court did have such a system.

Section 4, above, describes how respondent mistreated and disrespected attorney Bruce Sage, who represented the plaintiff in *Sullivan v Sullivan*. Sage's client lived in Florida, and it was

a significant expense for her to come to court; each trip cost about $2,000, including flight, rental car and hotel stay (Sage Tr 10/5/18, p 1102/13-23).

On October 5, 2015, respondent scheduled the next hearing for October 22, and said she expected Sage's client to be present. Sage asked whether his client could testify by telephone. Respondent stated: "No. We don't have a system that would allow that" (Sage Tr 10/5/18, pp 1103/3-12; Ex 10-7, p 30/22-25).

Respondent's statement was false. Her court had a phone system that would allow parties and witnesses to appear remotely. The system was as simple as Kristi Cox flipping a switch, after which the sound would come through the overhead speakers (Cox Tr 10/3/18, p 599/3-20). The system worked and was in place well before *Sullivan* was on respondent's docket. Respondent was aware of the system, having used it previously (Cox Tr 10/3/18, pp 599/21 – 600/8, 653/24 – 654/6; stipulation, Tr p 916/4-14).[53]

Interestingly, respondent seems to have been well aware of the truth of the matter. At another hearing five months later, respondent noted that the defendant might have to pay Sage's client's flight and hotel. She indicated those expenses had not been necessary, because they "could have gotten her on the phone." (Sage Tr 10/5/18, pp 1104/6-14; Ex 10-10, p 4/6-10) In fact, before Sage's client retained Sage, respondent had allowed her to appear by telephone during a pretrial. Ex 11-1, entries on 7/24 and 7/28. She must have been aware there was a suitable phone system.

The Master found that respondent's false statement was misconduct. Respondent objects that she did not mislead Sage – the phone really did not work. Respondent's brief p 39 ¶ 9. Her

[53] Respondent had used the system once. The caller called from a construction site on a cell phone, making him hard to hear. That apparently caused respondent to not want to use the system thereafter (Cox Tr 10/3/18, pp 599/23 – 600/8).

objection misconstrues the evidence.[54] Respondent had two systems available to her, and simply chose to not use the one that was designed for remote testimony. The system was never changed or "fixed." It always worked just fine.

It is not plausible that respondent was unaware of that, based on the fact that this had been her courtroom for over a decade, she had used the system in the past, and especially in light of her statement to the parties five months later that they *should* have used the system. What is more plausible is that her telling Sage there was no phone system was an aspect of her disrespecting him because she had little tolerance for him.

Conclusions of law as to Counts XIII, XVII[55] and XIV

The evidence summarized in this section shows that respondent deceived in three different arenas, a feat which reflects the breadth and casual nature of her dishonesty. She repeatedly lied on the bench while presiding over cases. She repeatedly lied during her divorce deposition. She repeatedly lied to the Commission during its investigation into her misconduct. The Michigan Supreme Court has stressed the importance of judicial honesty, including honesty in connection with judicial disciplinary proceedings.[56] Respondent's false statements in these differing contexts were a "deceit trifecta" in circumstances when honesty is *most* expected of a judge.

---

[54] In her answer to the complaint respondent doubled down on her claim that there was no phone by which Sage's client could have appeared remotely. Ex. 32, p 41/¶ 239, 240; p 55, ¶ 312. She contended that a system specifically designed for telephonic participation was installed *after* the *Sullivan* case. At the formal hearing on the complaint respondent learned that the evidence would show that contrary to her claim, the phone had *not* been upgraded for at least seven years. Stipulation at Tr p 916/4-14. After becoming aware of that evidence respondent changed her claim, to now assert that the change since *Sullivan* was that her new secretary, Felica Milhouse, had figured out how to use the court phone system. Actually, Milhouse only flipped the switch that had always been there, and which Cox also knew how to flip (Cox Tr 10/3/18, p 599/12-22). Respondent testified that she was surprised by Milhouse's success, and thought it was a "new system" (Respondent Tr 10/8/18, pp 1360/25 – 1361/23). Notably, respondent was talking about her own courtroom, where had presided over cases for more than 13 years.

[55] The Examiners dismissed the allegations in Count XVII(b-i) and (k). In addition, Count XVII(o) was not included in Appendix 2 and is therefore not part of the Report.

[56] *See, e.g.*, *In re Adams*, 494 Mich. 162, 181 (2013); *In re Justin*, 490 Mich 394, 424 (2012).

The Master found that the allegations in Counts XIII and XIV, and most of the subparagraphs of Count XVII, of the Second Amended Complaint were proved by the preponderance of evidence. The Master found that respondent's lies violated MCJC Canons 1 and 2. The Examiners urge the Commission to accept the Master's finding and go further. Respondent's lies violated:

- MCJC Canon 1, in that she failed to observe high standards of conduct and undermined the integrity of the judiciary;
- MCJC Canon 2(A), in that her irresponsible and improper conduct eroded public confidence in the judiciary;
- MCJC Canon 2(A), in that she created at least the appearance of impropriety;
- MCJC Canon 2(B), in that her conduct degraded public confidence in the integrity and impartiality of the judiciary;
- MCJC Canon 2(B), in that her perjury and false statements under oath failed to respect and observe the law;
- MCJC Canon 3(A)(1), in that respondent was not faithful to the law;
- MCR 9.205(B), in that respondent's lies were clearly prejudicial to the administration of justice;
- MCR 9.205(B), in that respondent was deceitful and made intentional misrepresentations and misleading statements, including to the Commission;
- MCR 9.208(B), which requires a judge to comply with a reasonable request made by the Commission in its investigation, in that respondent provided extensive false information rather than answer the Commission's questions truthfully.

6. Directing employees to perform respondent's personal business Second Amended Complaint Count XI

The Master found that respondent committed misconduct by having her staff do personal tasks for her during court time. Report, pp 19-21. Attachment 5 details the evidence of the personal tasks Kristi Cox and Jessica Sharpe did for respondent, which supports the Master's conclusion. This section focuses only on respondent's objections to the Master's finding.

Personal errands

Respondent argues that it is not misconduct for a judge to ask staff to do personal errands, unless the errands are a condition of employment. Respondent's brief p 43. Claiming there is no Michigan authority on point, respondent relies solely on dicta in a West Virginia case, *In Matter of Neely*, 364 SE2d 250 (W Va 1987). Her reliance is misplaced.

Respondent cited *Neely* in her closing argument to the Master, so he addressed it in his report. Report at pp 19-20. He noted *Neely*'s dicta that a judge does not create the appearance of impropriety by "occasionally" asking staff members to "voluntarily" do personal tasks that "only minimally" interfere with the performance of their duties. *See* 364 SE2d at pp 252-253. The Master concluded: "Whatever may be the correct standard of what a judge can properly ask of an employee, [respondent] went far beyond it." Report, p 20.

Respondent objects that the Master mischaracterized as dicta the portion of *Neely* on which she relies. She says it was not dicta, because it was necessary for the West Virginia court to define the line the judge in that case crossed. Respondent's brief p 45. Respondent misunderstands dicta. A dictum is any statement by the court that is not essential to the holding in the case. *Allison v AEW Capital Management, LLP*, 481 Mich 419, 437 (2008). The holding in *Neely* was that it was improper for the judge to demand personal services on threat of termination. Anything beyond that, concerning what the West Virginia court would have considered acceptable had those been the facts before it, was advisory – hence, dicta.

While the Master's analysis of *Neely* was correct, it turns out there is also helpful Michigan case law. The Michigan Supreme Court considered a judge's staff performing personal services in

In re Cooley, 454 Mich 1215 (1997). The Court publicly censured Judge Cooley for the following, among other things: [57]

> From at least 1987 until approximately 1994, Respondent on occasion appropriated the services of court personnel whom she requested to perform tasks related to the production [Judge Cooley's radio and television show] during court hours at the 36th District Court.

There is no hint that Judge Cooley threatened her staff with termination if they failed to comply. *Cooley* supports the Master's conclusion that respondent's use of her staff as her personal concierge service during work hours was misconduct.

Respondent objects to the Master's finding that Cox and Sharpe involuntarily did errands for her. Respondent's brief p 43. She argues that because she never threatened to fire anyone if they refused her demands, "the Master's use of the word 'involuntarily' (p 21) was totally unsubstantiated . . . ." *Id.*

Respondent's current position is a departure from that she took in her answers to the Commission's questions. There, she affirmatively claimed that her staff "volunteered" to do personal tasks for her. *See*, *e.g.*, Ex. 16 p 50 (delivering packages); Respondent Tr. 10/1/18, pp 244/22 – 245/8; Respondent Tr 10/7/18, p 1581/12-14, 1586/13-24. Both her prehearing claim and her current argument are wrong. In Michigan, judges are not free to order their staffs to do personal favors for them so long as termination is not the explicit penalty for refusal. Respondent told – she did not ask – Cox and Sharpe to take care of her personal business. When respondent told Cox to do personal things, her expression was: "I need you to do this." Cox felt compelled to do what respondent told her to do (Cox Tr 10/3/18, pp 610/2-5, 610/24 – 611/1, 612/8-9, 682/17 – p

[57] Judge Cooley committed other misconduct as well, including use of court resources for the program, soliciting funds for tthe program, and improper participation in the settlement of a court proceeding.

683/20). Around 90% of the time respondent asked Sharpe to do personal things, they were "urgent" and Sharpe did not feel she could say no (Sharpe Tr 10/3/18, pp 707/12 – 708/2).

Again relying on dicta in *Neely*, respondent also argues that her personal errands did not take the staff away from court business. Respondent's brief p 44. That, again, cannot be Michigan's standard. Judges are not free to turn their staffs into their servants so long as it is not apparent that there was an impact on court operations.

Respondent's argument is a close cousin to the position she took at the hearing. There, she claimed that her staff only did personal things for her when on "break." *See, e.g.*, Ex. 32 p 26 ¶ 245; Respondent Tr 10/2/18, pp 256/23 – 260/6; Respondent Tr 10/9/18, pp 1558/17-22, 1567/22 – 1570/2. It was apparently respondent's position that if she was not physically presiding in court, she and her staff were on "break," and this "break" time was employees' own time during which they could attend to personal errands for her. It appears that to respondent, "break" is an infinitely flexible notion – a "break" is something that occurred whenever staff did something personal for her when she was not on the bench.

Respondent's semantics are inconsistent with the staff's reality. Respondent testified, rather implausibly but nonetheless insistently, that Cox had nothing to do other than answer the phone when respondent was not in court (Respondent Tr 10/10/18, pp 1738/19 – 1740/5). To the contrary, Cox was so busy she often worked more than eight hours in a day (Cox Tr 10/3/18, pp 616/25 – 617/ 24; Cox Tr 11/19/18, pp 1818/5 – 1825/5; Sharpe Tr 11/19/18, p 1859/20 – 1860/20). Cox was "highly offended" that respondent claimed she had nothing to do when respondent was not in court (Cox Tr 11/19/18, p 1823/19-23).

Respondent's claim that her personal errands did not take away from court time is also completely inapplicable to those times Cox and Sharpe left the courthouse to attend to respondent's

home (once, over the course of two days) (Cox Tr 10/3/18, p 610/6-22; Sharpe Tr 10/3/18, pp 702/13 – 703/5), or waited while her car was worked on at the dealership (Sharpe Tr 10/3/18, pp 754/16 – 755/2; Ex. 11-8; Ex. 11-8); or left work early to deliver her packages to postal services. When Sharpe stained respondent's deck (one of the things she did do voluntarily), respondent told her to go do it even though she was on the clock and respondent knew she was on the clock (Sharpe Tr 10/3/18, pp 698/12 – 699/14, 700/6-19). The fact that respondent sent employees away from court for her errands, or sent them home early to make mail runs, shows she actually *intended* them to do her work on court time, not "personal" time.

The Master was right that even by the lights of *Neely*'s overly permissive dicta, respondent's demands were misconduct.

Conclusions of law as to Count XI

The Master determined that the allegations in Count XI of the Second Amended Complaint were proved by a preponderance of the evidence. He found that respondent violated MCJC Canons 1, 2, and 3(B)(1) and (2). The Examiners urge the Commission to accept the Master's findings. The evidence regarding personal errands proves respondent violated:

- MCJC Canon 1, in that she failed to observe high standards of conduct and undermined the integrity of the judiciary;
- MCJC Canon 1, in that she failed to remember that the judiciary is for the benefit of the public;
- MCJC Canon 2(A), in that her improper conduct eroded public confidence in the judiciary;
- MCJC Canon 2(A), in that she created at least the appearance of impropriety;
- MCJC Canon 2(B), in that her conduct degraded public confidence in the integrity and impartiality of the judiciary;
- MCJC Canons 2(B) and 3(A)(14), in that she failed to treat her employees fairly, with courtesy and respect;

- MCJC Canon 3(B)(1), in that having her staff do her errands during work hours was a failure to diligently discharge her administrative responsibilities;

- MCJC Canon 3(B)(2), in that having her staff do her errands during work hours was a failure to direct her staff to observe high standards of fidelity and diligence to the court's responsibilities

7. Employee campaign activity during court hours Second Amended Complaint Count XII

The Master determined that the evidence proved respondent engaged in misconduct when she had her staff work on her 2014 campaign during the work day. Report, pp 21-22. Attachment 5 details the evidence that supports the Master's conclusion that Kristi Cox and Jessica Sharpe did campaign work for respondent during work hours. This section focuses only on respondent's objections to the Master's conclusions.

In finding misconduct, the Master relied in part on the "absolute" prohibition against using public resources for campaign purposes that is in MCL 169.257(1). Respondent objects that this statute is inapplicable to her because during her 2014 campaign she was not "a public body or person acting for a public body." Respondent's brief p 46.

Respondent was plainly a judge, and a judge pretty plainly acts for the court to which she is assigned, and a court surely seems to be a "public body," so respondent's argument is a little hard to understand. It may be that what respondent is saying is that when she campaigned, she campaigned as a private individual; and therefore whatever she did during the campaign was not the action of someone working for a public body. If that is respondent's argument, while it is certainly creative it ignores the most salient features of her use of her staff and other court resources: she directed her *judicial* (not "personal") staff to do campaign work for her during *court* (not personal) time, which she was only able to do because she was the *judge* (not a mere citizen) who controlled the employment of that staff for *judicial* (not personal) purposes. The Master was correct that MCL 169.257(1) forbade respondent's use of her staff during work hours.

Respondent also appears to argue that if MCL 169.257(1) did not forbid her directing her staff to do campaign work for her, she cannot have violated any other canon or court rule either. Respondent's brief pp 46-47. That is another peculiar argument. In addition to MCL 169.257(1), respondent was charged with violating a host of canons, including those that forbade her to create an appearance of impropriety, forbade her to use her position for her personal benefit, forbade her to disrespect her employees, and forbade her to denigrate the public perception of the judiciary. Directing her staff to do work on her campaign during work hours violated each of those canons.

More particularly, respondent complains that the Master erred to conclude that respondent showed a deceptive intent when she had her staff use personal computers and a neighboring business's website to do her campaign work, so as not to appear on the county's wifi system. Respondent's brief p 47. If all respondent had done were to instruct her employees to not use court resources, including court computers and court internet service, to do campaign work, her argument might have some force. However, that is not what she did. She *wanted* to use court resources – her employees' time. In that context, the Master was well justified to find that her directing her staff to use their time for her campaign in a way that could not be detected by the county was done with deceptive intent.

Respondent tries to trivialize the amount of campaign work Cox and Sharpe did for her. She claims "virtually all" of what Cox did, she did on her own time. Respondent's brief p 48. The crux of respondent's position is that whatever Cox did for respondent at work, she did on "breaks." This is just a specific application of respondent's claim that whenever Cox and Sharpe did personal things for her, they did them on their own time. The argument is no more valid here than it was in the broader context.

Respondent takes issue with the Master's statement that during the hearing on the complaint respondent "made the false and insupportable claim that all [of the campaign work] was done 'during breaks.'" Respondent's brief p 48. Respondent has two objections: that it does not matter whether the work was really done during an actual break, if it was done during an available break time; and respondent did not necessarily lie when she made this claim.

Respondent's first argument has no more substance if applied to the mythical "available break time" than when applied to alleged actual "breaks." If "break time" existed at all for Cox and Sharpe, it existed only in respondent's head. One will search the record in vain for any evidence that Cox or Sharpe believed they were doing respondent's bidding on either actual breaks or available break time.[58]

Respondent's second argument (that she did not necessarily lie when she made this claim) is another oddity. After asserting it, she goes on to discuss whether materiality is an element of lying under oath. Respondent's brief p 48. This discussion is entirely academic. Respondent was not charged with the lie she is defending – the lie that Cox and Sharpe did the campaign work during breaks. In the course of dismissing respondent's argument the Master was justified in concluding that she lied. Whether or not *that* lie could have been charged as misconduct is irrelevant to the Master's finding that she lied about campaign work.

Conclusions of law as to Count XII

The Master found that the allegations contained in Count XII of the Second Amended Complaint were proved by a preponderance of the evidence. The Master found that respondent was responsible for violating MCL 169.257 of the Michigan Campaign Finance Act as well as

[58] What one will find is that they joked about the work being a "break" (Cox Tr 10/3/18, p 623/10-15). But Cox also made clear that it was no real break.

.

MCJC Canons 2(B), 3(B)(2) and 7(B)(1)(b). The Examiners urge the Commission to agree with the Master and to go further. The evidence summarized in this section proves respondent violated:

- MCJC Canon 1, in that she failed to observe high standards of conduct and undermined the integrity of the judiciary;
- MCJC Canon 1, in that she failed to remember that the judiciary is for the benefit of the public;
- MCJC Canon 2(A), in that her improper conduct eroded public confidence in the judiciary;
- MCJC Canon 2(A), in that she created at least the appearance of impropriety;
- MCJC Canon 2(B), in that she failed to respect and observe the law;
- MCJC Canon 2(B), in that her conduct degraded public confidence in the integrity and impartiality of the judiciary;
- MCJC Canons 2(B) and 3(A)(14), in that she failed to treat her employees with respect;
- MCJC Canon 2(C), in that she used the prestige of her office for her personal benefit;
- MCJC Canon 3(B)(1), in that having her staff do campaign work during work hours was a failure to diligently discharge her administrative responsibilities;
- MCJC Canon 3(B)(2), in that having her staff do campaign work during work hours was a failure to direct her staff to observe high standards of fidelity and diligence to the court's responsibilities;
- MCJC Canon 7B(1)(b), which in that she directed public employees subject to do what she was prohibited from doing;
- Misconduct in office pursuant to MCL 750.505 and Michigan common law (as defined in *People v Perkins*, 468 Mich 448, 456 (2003): (1) committing any act which is itself wrongful, malfeasance, (2) for committing a lawful act in a wrongful manner, misfeasance, or (3) for failing to perform any act that the duties of the office require of the officer, nonfeasance)

8. Misconduct during depositions
Second Amended Complaint Count VII

The Master found that respondent committed misconduct during depositions of two witnessed that were taken during her divorce case. Report, p 22. Respondent objects. Respondent's brief p 49. The Master's decision is supported by the evidence.

On January 18, 2017, respondent's friend, Sean Furlong, was deposed. Respondent was an observer. Furlong was asked by opposing counsel whether he and respondent had exchanged any texts or phone calls during the *Kowalski* trial, and responded that they had not. Ex. 1-4, Furlong Dep Tr *Root v Brennan* 1/18/17, p 56/2-10. Respondent interrupted the deposition to tell him they did communicate during the *Kowalski* trial and to give him a number for how often they had done so.[59] Ex. 1-4, Furlong Dep Tr *Root v Brennan* 1/18/17, p 56/6-19.

On March 9, 2017, Francine Zysk was deposed, and again respondent observed. Zysk was questioned about rumors of respondent having been caught intoxicated in her office in Brighton. Ex 3-2, Zysk Dep Tr 3/9/17, *Root v Brennan,* p 27/12-17. As Zysk began to answer the question respondent interrupted, stating: "Okay, you need to stop for a minute." Ex 3-2, Zysk Dep Tr 3/9/17, *Root v Brennan,* p 27/20-21. She then told Zysk: "You are lying. You're such a liar." Ex 3-2, Zysk Dep Tr 3/9/17, *Root v Brennan,* pp 27/25 – 28/1.

Respondent objects to the Master's conclusion that this was misconduct. Respondent's brief p 49. To the contrary, it certainly created an appearance of impropriety for respondent to interrupt testimony to coach or correct a witness, and to scold or intimidate a witness. Respondent's interruptions were also arguably proscribed by MCR 2.306(C)(5)(a), which forbids a deponent conferring with another while a question is pending. Respondent forced a "conferring" on both Furlong and Zysk. As a judge who then had twelve years of experience, respondent must have been aware that injecting herself into the depositions was inappropriate.

The Master noted that respondent's deposition misconduct was minor compared to her other "grievous conduct." Report p 22. The Examiners certainly agree. Respondent's interruptions, standing alone, would not be the basis for a formal complaint. However, as the Master correctly

[59] Respondent told Furlong they exchanged one communication. They actually spoke three times and exchanged fourteen texts over two days. Ex. 1-31, rows 1936-1952.

concluded, "it is certainly improper for anyone, particularly a judge, to interrupt a deposition in order to influence the testimony of a witness." Report, p 22. These interruptions are consistent with respondent's general disregard for the limits of her position, andwith her inability to control her outbursts, both of which were demonstrated by much of the other evidence discussed above.

Conclusions of law as to Count VII

The Master found that the allegations contained in Count VII of the Second Amended Complaint were proved by a preponderance of the evidence. This finding was correct. The evidence in this section shows that respondent violated:

- MCJC Canon 2(A), in that she created an appearance of impropriety;
- MCJC Canon 2(B), in that her actions degraded public confidence in the integrity of the judiciary.

III. DISCIPLINARY ANALYSIS[60]

The Master found that respondent committed misconduct as charged in 14 of the 15 counts of the Second Amended Formal Complaint. The misconduct included violations of criminal law, court rules and the Code of Judicial Conduct. The Master's findings are well supported by the evidence. Respondent's conduct was clearly prejudicial to the administration of justice, in violation of MCR 9.205(B). Pursuant to MCR 9.216, this section discusses the appropriate sanction. For the reasons stated below, the Examiner believes the appropriate sanction is to remove respondent from the bench.

The Michigan Supreme Court has stated that its "primary concern in determining the appropriate sanction is to restore and maintain the dignity and impartiality of the judiciary and to protect the public. *In re Ferrara,* 458 Mich 350,372; 582 NW2d 817 (1998). The Supreme Court established some guideposts for finding the appropriate sanction in *In re Brown*, 461 Mich 1291,

[60] It appears respondent did not do a disciplinary analysis, perhaps because she denies any misconduct whatsoever.

1292-1293; 625 NW2d 744 (2000). *Brown* observed that "[t]he most fundamental premise of the rule of law is that equivalent misconduct should be treated equivalently." Id. at p 1292.

That makes *In re Adams*, 494 Mich. 162 (2013), the essential starting point for sanction analysis in this case. *Adams* removed Hon. Deborah Ross Adams from the bench because she gave false testimony and forged her attorney's signature to documents during her divorce proceedings. The Supreme Court stated that because Judge Adams had engaged in deceit and intentional misrepresentation, removing her from judicial office was "necessary to restore and maintain the dignity and honor of the judiciary and, most importantly, to protect the public." *Id*. at 187. The Court removed Judge Adams although this was her only misconduct and although, at the time of her divorce, she was enduring significant personal turmoil as a result of her daughter's suicide. In deciding to remove Judge Adams, the Court noted that removal was its consistent sanction when a judge testifies falsely under oath, and cited seven additional cases in which it had imposed that sanction for that reason.

One of those cases was *In re Justin*, 490 Mich 394, 424 (2012), in which, in holding that lying under oath renders a judge unfit for office, the Court stated:

> [o]ur judicial system has long recognized the sanctity and importance of the oath. An oath is a significant act, establishing that the oath taker promises to be truthful. As the "focal point of the administration of justice," a judge is entrusted by the public and has the responsibility to seek truth and justice by evaluating the testimony given under oath. *When a judge lies under oath, he or she has failed to internalize one of the central standards of justice and becomes unfit to sit in judgment of others.*
>
> * * * *
>
> *[S]ome misconduct, such as lying under oath, goes to the very core of judicial duty and demonstrates the lack of character of such a person to be entrusted with judicial privilege . . . . Lying under oath, as the respondent has been adjudged to have done, makes him unfit for judicial office.*

(Emphases in original).

Section 2, above, and the timeline in Attachment 4, detail respondent's false testimony and evidence tampering in connection with her divorce. Unlike Judge Adams, respondent does not have the potentially mitigating circumstance of personal turmoil beyond going through divorce. There is no meaningful distinction that is in respondent's favor between her situation and that of Judge Adams. Therefore, *Adams* alone, and respondent's corrupt actions in connection with her divorce, alone, compel that she be removed from the bench.

Respondent is unlike Judge Adams in another way. Judge Adams's misconduct was confined to her divorce proceedings. Respondent's misconduct was sprawling, covering multiple years and multiple settings. In addition to her false testimony in her divorce deposition, she made numerous lies in court proceedings and under oath to the Commission. Her overall misconduct is far more extensive and far worse than anything Judge Adams did. For analysis of respondent's remaining misconduct, the seven sanction factors the Supreme Court identified in *Brown*, 461 Mich at 1292-93, are helpful:

(1) ***Misconduct that is part of a pattern or practice is more serious than isolated instances of misconduct.***

Respondent's misconduct consisted of patterns within patterns. She engaged in an extensive pattern of deceit, both under oath and while presiding in court. She engaged in a pattern of concealing her close relationships from parties in cases before her. She engaged in patterns of abusing litigants and her employees, and of having her employees do personal things for her.

Respondent's charged pattern of deceit included:

- Three false statements on the record during cases;
- Seven false statements under oath during her divorce depositions; and
- Ten false statements in her responses made under oath to the Commission during the investigation into her misconduct.

Respondent's failures to disclose her relationships or to disqualify herself included:

- In *People v* Kowalski, her relationship with Sean Furlong. Respondent did not disclose this relationship at any time during the preliminary proceedings, prior to the trial, during the trial, or between trial and sentencing;

- In ten separate cases between 2014 and 2016, her relationship with Shari Pollesch.

Respondent's persistent abuse of attorneys was demonstrated by the testimony of witnesses Krieg, Sage, Caplan, Roberts, Maas, and Kurtzweil.

Respondent's persistent abuse of staff was demonstrated by the testimony of witnesses Zysk, Ryan, Morrison, Cox, Sharpe, and Bove.

Respondent's persistently having her staff perform personal tasks for her was demonstrated by Cox and Sharpe.

The first *Brown* factor weighs heavily against respondent.

(2) *Misconduct on the bench is usually more serious than the same misconduct off the bench.*

Much of respondent's misconduct occurred on, or connected to, the bench. This includes her failures to disclose important relationships, her false statements during court hearings, and her abuse of litigants and public abuse of Cox and Sharpe. Her failure to promptly disqualify herself from her own divorce proceeding did not occur while she was literally on the bench, but it is so closely related to her judicial duties as to be inseparable from on-bench conduct.

A judge's conduct must not undermine the public's faith that judges are as subject to the law as those who appear before them. *In re Noecker*, 472 Mich 1, 13; 691 NW2d 440 (2005). Respondent's conduct on the bench and relating to her divorce proceeding clearly did not instill such belief in the litigants and attorneys who appeared before her.

The second *Brown* factor weighs heavily against respondent.

(3) ***Misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety.***

In *Adams* the Supreme Court stated that "there is not much, if anything, that is more prejudicial to the actual administration of justice than testifying falsely under oath." 494 Mich at 182. As noted above, when it comes to false statements, respondent is Judge Adams on steroids.

Respondent's failure to disclose her relationships was also prejudicial to the administration of justice. Now that the details of respondent's relationship with Furlong are known, defendant Kowalski, convicted of two homicides, has been granted a new trial that will have to take place more than ten years after the killings and six years after the original trial. Respondent's failure to disclose her relationships with Pollesch in ten cases denied parties the chance to challenge respondent's ability to be fair and impartial. Finally, respondent's tampering with the evidence pertaining to her own divorce also damaged the fair administration of justice.

The third *Brown* factor weighs heavily against respondent.

(4) ***Misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does.***

As stated in the preceding paragraph, much of respondent's misconduct went to the heart of the proper administration of justice. The fourth *Brown* factor does not assist respondent.

(5) ***Misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated.***

Most of respondent's misconduct was premeditated. That includes her concealment of her relationship with Furlong when asked about that relationship in *Kowalski*; her refusal to disqualify herself from her own divorce, her deleting the data on her cell phone after a motion to preserve data was filed, and her later false statements about those events; every one of her other charged false statements, which were just a fraction of the false statements established by the record; and her causing her employees to do personal and campaign work for her.

Respondent's outbursts during depositions were likely not premeditated. It is impossible to know whether respondent's abuse of lawyers and staff was premeditated, but it is significant that she was nice to staff during campaign years. Respondent apparently had the ability to turn her poor treatment of employees on and off, suggesting some degree of deliberate conduct.

The fifth *Brown* factor weighs heavily against respondent.

(6) ***Misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery.***

Respondent's most brazen case-affecting actions were in *Kowalski* and her own divorce. Respondent's concealment of her relationship with Furlong made it impossible to trust her pretrial rulings that favored the admission, without challenge, of evidence obtained by Furlong. Respondent's delaying her disqualification from her own divorce while she deleted data from her phone made it impossible to determine whether her phone had relevant information on it.[61] In *McFarlane v McFarlane* respondent lied about when she became aware that Shari Pollesch represented her then-husband's business, which denied opposing counsel the opportunity to explore respondent's potential bias. Respondent's failure to disclose her relationship with Pollesch in nine other cases deprived the parties of the same opportunity in those cases.

The sixth *Brown* factor weighs heavily against respondent.

(7) ***Misconduct that involves the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship.***

There is no evidence that respondent's misconduct was influenced by protected characteristics.

[61] Ultimately the case settled before the contents of the phone became an issue, but that was not known at the time respondent deleted what was on the phone.

Five of the seven *Brown* factors demonstrate that respondent's conduct is worse than that which caused Judge Adams to be removed from the bench.

B. Other Considerations

The Commission has also considered other factors in past cases:

1) The judge's conduct in response to the Commission's inquiry and disciplinary proceedings. Specifically, whether the judge showed remorse and made an effort to change his or her conduct and whether the judge was candid and cooperated with the Commission.

In *Adams* the Supreme Court stated:

> Where a respondent judge readily acknowledges his [or her] shortcomings and is completely honest and forthcoming during the course of the Judicial Tenure Commission investigation, . . . the sanction correspondingly can be less severe. However, where a respondent is not repentant, but engages in deceitful behavior during the course of a Judicial Tenure Commission disciplinary investigation, the sanction must be measurably greater. 494 Mich at p 181.

The Court's observation could have been designed to fit respondent's conduct. She acknowledges absolutely no wrongdoing. She was continually deceitful during the investigation. At the formal hearing she repeatedly provided facts and explanations that were discredited by other witnesses and by evidence that was undisputed. The Master found that respondent made nine false statements during the investigation that were charged as misconduct. Respondent's many lies in response to the Commission's questions are particularly troubling, because the focus on respondent's conduct is heightened in judicial disciplinary proceedings, so one would expect a judicial officer to take particular care to be honest. These facts alone are a compelling reason to remove respondent from office.

2) The effect the misconduct had upon the integrity of and respect for the judiciary.

Lest it be lost in the mass of other evidence, respondent has been charged with three felonies based on her dishonesty during her own divorce. To put it mildly, the whole of respondent's conduct casts a very negative pall on the judiciary.

3) Years of judicial experience.

Respondent has been a judge since 2005. Her length of service further exacerbates the wrongfulness of her behavior. She had to know better.

C. Proportionality

This factor is essentially resolved by *In re Adams*. Respondent was far worse than Judge Adams in several respects. Judge Adams was removed from the bench.

D. Costs

MCR 9.205(B) provides in part:

> In addition to any other sanction imposed, a judge may be ordered to pay the costs, fees, and expenses incurred by the commission in prosecuting the complaint only if the judge engaged in conduct involving fraud, deceit, or intentional misrepresentation, or if the judge made misleading statements to the commission, the commission's investigators, the master, or the Supreme Court.

The Master found, and the evidence overwhelmingly supports, that respondent engaged in deceit and/or intentional misrepresentation, including to the Commission. Respondent should be ordered to pay the costs incurred by Commission, which were $35,570.36. Attachment 6.

III. RECOMMENDATION

The Examiner recommends that the Commission accept the Master's findings, for the reasons stated above. The Examiner further recommends that the Commission find that respondent committed misconduct, as detailed at the end of each section in the Misconduct section of this brief. The Examiner urges the Commission to recommend that Hon. Theresa M. Brennan be removed from the office of judge of the 53rd District Court, and be ordered to pay costs in the amount of $35,570.36.

Respectfully submitted,

/s/ Lynn Helland
Lynn A. Helland (P P32192)
Examiner
3034 W. Grand Boulevard
Suite 8-450
Detroit, Michigan 48202
(313) 875-5110

/s/ Casimir J. Swastek
Casimir J. Swastek (P42767)
Associate Examiner

Dated: February 19, 2019