

STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST

Hon. Bruce Morrow
3rd Circuit Court
Wayne County, MI

Docket No. 161839
Formal Complaint No. 102

HON. BRUCE MORROW'S ANSWER TO COMPLAINT

Now comes Hon. Bruce Morrow, by and through his attorneys, Collins
Einhorn Farrell PC and for his answer to the Complaint, state as follows:

COUNT ONE
ALLEGED INAPPROPRIATE USE OF SEXUALLY GRAPHIC
LANGUAGE

1. Respondent is, and since January 1992 has been, a judge of the
Recorder's Court and Third Circuit Court, County of Wayne, State of
Michigan.

**ANSWER: Denied as untrue as stated. Judge Morrow was elected to the
Recorder's Court in 1992 and officially began his duties in January 1993.
He was later elected to the Third Circuit Court in 1998 and has served
since.**

2. As a judge, respondent has been, and still is, subject to the duties and responsibilities imposed on him by the Michigan Supreme Court, and is subject to the standards for discipline set forth in MCR 9.104 and 9.202.

ANSWER: Admitted as true.

3. On June 10 through June 12, 2019, respondent presided over a homicide jury trial, *People v James Edward Matthews*, case number 18-7023-01-FC.

ANSWER: Admitted as true.

4. Two female assistant prosecuting attorneys tried the case on behalf of Wayne County, and will be referred to herein as “APA A” and “APA B.”

ANSWER: It is admitted as true that two white female prosecuting attorneys tried the case on behalf of Wayne County. In further response, the defendant was represented by an attorney, referred to herein as “Def Atty X”.

5. During a break in the proceedings on June 11, 2019, APA A asked respondent for feedback about her direct examination of the medical

examiner.

ANSWER: Admitted as true. In further response, the request was for a critique or review of the presentation of the direct examination, but there had been other similar requests by both APA A & B during the trial.

6. Respondent told APA A he was going to come down from the bench to talk to her personally because what he was going to say to her would make her “blush.”

ANSWER: Denied as untrue in the form and manner stated. Judge Morrow recalls stating “could” and not “would”. Further, it was not “what” was going to be said so much as “where” it was going to be said from that could cause someone to “blush” in Judge Morrow’s view. The statement was made to put in context why Judge Morrow came down from the bench rather than giving that critique from there. His main purpose was to avoid or limit APA A from being embarrassed by an excessively communal and potentially tough critique. She sought a frank review from Judge Morrow; he was concerned that she could be embarrassed by such a critique being given from the bench. He wanted to avoid causing a

spectacle that could unnecessarily embarrass APA A and could cause her to become flush as a consequence while providing the critique that he understood she sought. In further response, blushing has been described as "... the most peculiar and most human of all expressions."¹ A blush erupts often when we feel embarrassed. It is a reaction when we recognize that we are out of our depth or have placed ourselves in an uncomfortable place. The blush is involuntary and uncontrollable.

Judge Morrow was concerned that giving his critique from the bench, commanding the attention of anyone who may have been in the courtroom, could cause unintended and avoidable embarrassment for APA A; where a more direct discussion, while appropriately judicial, professional, and public across counsel's table, would not carry the same risk of such for APA A.

7. Respondent came down from the bench and sat at the prosecutor's table next to APA A, who was seated in the middle of the table.

¹ Charles Darwin devoted Chapter 13 of his 1872 *The Expression of the Emotions in Man and Animals* to complex emotional states including self-attention, shame, shyness, modesty, and blushing.

The officer in charge was seated to APA A's left and respondent took the seat to her right,

ANSWER: Admitted as true. In further response, Judge Morrow sat in the only vacant chair at the prosecutor's table. Further, see above for context.

8. Respondent positioned himself very close to APA A, with his head very close to her head.

ANSWER: Denied as untrue in the form and manner stated. At all times, Judge Morrow and APA A were at what he would consider a judicial, professional, appropriate social distance that respected and protected their respective personal space. Also, the response to Paragraph 33 is incorporated here as if fully set forth.

9. Respondent asked APA A words to the effect of "so when a man and a woman are close, they start by holding hands, rubbing elbows, kissing, foreplay, then that leads to sex?"

ANSWER: Not contested. This is believed to be essentially accurate but very likely not verbatim.

10. Respondent asked APA A words to the effect of “would you want foreplay before or after sex?”

ANSWER: Denied as untrue as stated. In further response, Judge Morrow does not recall this phrasing and does not believe it is entirely accurate to the rhetorical question he asked. He recalls generally referring to what most people are perceived to want. The discussion was centered on how juries react and think about things; contrasting it with how lawyers tend to present testimony and evidence based on our own perceptions. Indeed, central to the critique was that lawyers present cases as each of us see it when we should present a case as jurors would want or need to have it presented. In context, Judge Morrow is certain that he focused the discussion and his questions on the concept of “everyone.” As “everyone” is one of the common definitions of “you,” he very likely could have used the word “you” in that particular sense. Still, he believes the phrasing was different from what is presented here.

11. Respondent said to APA A words to the effect of “You want the foreplay before the sexual intercourse. That’s what we call cuddling. No, you

start with holding hands.”

ANSWER: The answer to paragraph 10 is incorporated here as if fully set forth.

12. Respondent made an analogy for APA A to the effect “that the climax of sex is akin to getting the medical examiner to state the cause and manner of death after getting the details of his examination of the body.”

ANSWER: Denied as untrue. In further response, Judge Morrow does not recall referring to the climax of sex and does not believe he would have. He recalls saying that the cause and manner of death should be the climax of the medical examiner’s testimony. He does not recall any intention of linking the word “climax” to its sexual connotation.

13. Respondent told APA A words to the effect of “You start with all the information from the report, all the testimony crescendos to the cause and manner of death, which is the sex of the testimony.”

ANSWER: Not contested. This is believed to be essentially accurate but very likely not verbatim.

14. Respondent told APA A words to the effect of “you want to tease

the jury with the details of the examination.”

ANSWER: Not contested. This is believed to be essentially accurate but very likely not verbatim.

15. Respondent told APA A words to the effect of “you want to lead them to the climax of the manner and cause of death.”

ANSWER: Denied as untrue. In further response, Judge Morrow recalls explaining that the climax of the testimony from the medical examiner should be the cause and manner of death. He does not recall saying the sentence as it is produced here and does not believe he did.

16. Respondent’s discussion with APA A caused her to feel “frozen” and afraid to move.

ANSWER: Judge Morrow lacks knowledge and information to form a belief as to the truth of this allegation. In further response, APA A gave no outward or visible indication of such either at that moment or during the remainder of the trial and proceedings.

17. Respondent’s conduct described in this count violated Michigan Code of Judicial Conduct:

- a. Canon 1, which requires that a judge should personally observe high standards of conduct;
- b. Canons 2(B) and 3(A)(14), which require that a judge treat every person with courtesy and respect;
- c. Canon 3(A)(3), which requires that a judge be dignified and courteous to lawyers.

ANSWER: Denied as untrue. Judge Morrow believes the statements made were professionally and judicially appropriate. They were made publically in the courtroom with all counsel present. No one reacted in a manner to suggest any concern, upset, offense, distress, or mistreatment. Certainly, APA A showed no hint of any such reaction.

COUNT TWO
ALLEDGED INAPPROPRIATE USE OF SEXUALLY GRAPHIC
LANGUAGE

18. Paragraphs one through sixteen are incorporated in this count.

ANSWER: The answers to paragraphs 1- 16 are incorporated here as if fully set forth.

19. On June 11, 2019, while the jury in People v Matthews was

deliberating, respondent invited counsel for both sides to join him in chambers. Both assistant prosecutors and defense counsel joined respondent in chambers.

ANSWER: Admitted as true. This included Def Atty X.

20. Respondent discussed with APA B her reasons for having presented evidence that the defendant's DNA was found in the deceased victim's vaginal swab.

ANSWER: Admitted as true.

21. Respondent disagreed with APA B's reasons for having presented that evidence, and said words to the effect of "all you did was show they fucked!"

ANSWER: Denied as untrue. In further response, Judge Morrow does not recall saying the words quoted above, but he probably made a similar statement. He certainly does not recall that he emphasized the word "fucked" and does not believe he did so.

22. Respondent made fun of the defendant's testimony that he and the deceased did not have sex the way they normally did because the

deceased was pregnant and he did not want to hurt the baby and cause a miscarriage.

ANSWER: Denied as untrue. Previously, the JTC staff accused Judge Morrow of “laughing” at part of the defendant’s testimony. This was denied during the investigation and now, rightfully, abandoned by Disciplinary Counsel as a charge. Instead, the nebulous “made fun of” phrase is now offered in its place. Judge Morrow did not make fun of any person during the trial. Whether others mistook something he did in that manner he cannot say. No one raised any such concerns at the time. He does not believe he “made fun of” anyone.

In chambers, while the jury was deliberating, the evidence and testimony were discussed. Also, the presentations and arguments were discussed among and with counsel. Judge Morrow recalls that the issue of bias in presentations of a case was discussed. These discussions did involve the concept of what a jury may consider “normal” and “not normal” sex between people.

23. Respondent said words to the effect of “how big does this guy

think he is?"

ANSWER: Denied as untrue. In further response, Judge Morrow does not recall this question being stated during the meeting in-chambers. Certainly there were a wide and diverse set of questions and circumstances discussed as the issue of bias was explored.

24. Respondent said words to the effect of "does he think his dick is so big that he would hurt that baby?"

ANSWER: The answer to paragraph 23 is incorporated here as if fully set forth.

25. Respondent said words to the effect of "this guy must feel real good about himself to think his dick is that big."

ANSWER: The answer to paragraph 24 is incorporated here as if fully set forth.

26. During the in-chambers discussion, respondent criticized some of APA B's voir dire. During the critique respondent said to her words to the effect of "if I want to have sex with a woman on the first date, how would I figure that out? I wouldn't ask her if she wants family or children or what

she does, I would ask her ‘have you had sex on a first date before?’ Would you sleep with me on a first date?”

ANSWER: Not contested. In further response, ABA B requested the critique. Judge Morrow does not recall these exact words, but recalls that he did use a similar example to show and explain that very little if any of APA B’s *voir dire* seemed actually helpful to what APA B professed to have been trying to accomplish in her *voir dire*.

27. During the in-chambers discussion, in response to APA B’s statement that defendant claimed he and the victim had “non-traditional” sex, respondent spoke with APA B about her definition is of “non-traditional” sex. When APA B answered “not intercourse,” respondent told her that her view was shaped by her own bias and that most people did not define “non-traditional” sex the way she does.

ANSWER: Denied in the form and manner alleged as untrue. In chambers, while the jury was deliberating, the evidence and testimony were discussed. Also, the presentations and arguments were discussed among and with counsel. Judge Morrow recalls that the issue of bias in

presentations of a case was discussed. These discussions did involve the concept of what a prosecutor, the defendant, and a jury might consider “normal” and “not normal” sex between people.

28. Respondent’s conduct described in this count violated Michigan Code of Judicial Conduct:

- d. Canon 1, which requires that a judge should personally observe high standards of conduct;
- e. Canons 2(B) and 3(A)(14), which require that a judge treat every person with courtesy and respect;
- f. Canon 3(A)(3), which requires that a judge be dignified and courteous to lawyers.

ANSWER: Denied as untrue.

**COUNT THREE
ALLEGED VIOLATION OF CANONS 2(A), 2(B), 3(A)(3) & 3(A)(14) BY
QUESTIONING FEMALE ATTORNEYS WHO APPEARED BEFORE
HIM ABOUT THEIR PHYSICAL APPEARANCE**

29. Paragraphs one through sixteen and nineteen through twenty-seven are incorporated in this count.

ANSWER: The answers to paragraphs 1- 16 and 19-27 are incorporated

here as if fully set forth.

30. After the jury in People v Matthews was excused for the day on June 11, 2019, respondent approached the prosecutors' table and asked APA B how tall she was and how much she weighed.

ANSWER: Admitted as true. In further response, this exchange was part of a continuation of the in-chamber's discussion that was centered on bias. APA B had earlier posed the question, "Don't you think I'm tough enough?" to be able to receive and accept a frank critique, right after asking for that critique. The questions were to communicate that Judge Morrow had his doubts that she was emotionally, spiritually, or physically able to accept an honest and thoughtful critique based on the experience during their discussions.

31. After the jury was excused for the day on June 11, respondent asked APA A whether she weighed 115 pounds.

ANSWER: The answer to paragraph 30 is incorporated here as if fully set forth.

32. When APA A responded with respect to her weight, respondent

said words to the effect of “Well, I haven’t assessed your muscle mass yet.”

ANSWER: The answer to paragraph 30 is incorporated here as if fully set forth.

33. While respondent was having this conversation with APAs A and B, he was overtly eyeing both of their bodies.

ANSWER: Denied as untrue. Disciplinary Counsel draws upon what has become labeled as “the brute caricature” embedded within the white American psyche. It portrays black men as predators who target helpless white women. Post-Civil War it replaced the caricatures of Mammy, Coon, Tom and picaninny (portrayals that attempted to justify black slavery and to sooth white consciences). If blacks were childlike then the paternalistic institution where masters acted as quasi-parents was humane. History is replete with instances of institutional racism and, of course, individual racists who have sought to gain from employing the brute caricature against black men. Often times, it is very successful. The 1955 brutal murder of Emmett Till, a black 14 years old from Chicago visiting his relatives in Mississippi, resulted in a “not guilty” verdict from an all-

white jury who heard testimony that he had referred to female white clerk as “Baby.”



In contrast, consider Judge James Edwin Horton’s lone and heroic stand in *People v Hayward Patterson* (one of the Scottsboro Boys falsely charged with raping two white women on a train in 1931, convicted, and sentenced to death). On appeal, Judge Horton wrote, “History sacred and profane, and the common experience of humankind teach us that some people are prone for selfish reasons to make accusations upon the slightest

² An image and example of the “brute caricature” from the Ferris State University Jim Crow Museum of Racist Memorabilia.

<https://www.ferris.edu/HTMLS/news/jimcrow/brute/brute-image-gallery-01.htm>

provocation for ulterior purposes.”

The APAs A& B’s written statements do not use the phrase “overtly eyeing”. This allegation appears to be intended as essentially a “dog whistle” employed for those who are susceptible and influenced by the “brute caricature” in history and literature.

Echoing Judge Horton, the finding in this matter should be, “The testimony in this case is not only uncorroborated, but it also bears on its face indications of improbability and is contradicted by other evidence, and in addition thereto the evidence greatly preponderates in favor of the accused. It therefore becomes the duty of the Court to dismiss this matter.”

34. Respondent’s conduct described in this count violated:
 - a. MCR 9.202(B)(1)(D), which forbids treating a person discourteously because of the person’s gender;
 - b. Michigan Code of Judicial Conduct Canon 2(A), which states a judge must avoid all impropriety or appearance of impropriety;
 - c. Michigan Code of Judicial Conduct Canons 2(B) and

3(A)(14), which require a judge to treat every person with courtesy and respect;

d. Michigan Code of Judicial Conduct Canon 3(A)(3), which requires a judge to be dignified and courteous to lawyers.

ANSWER: Denied as untrue.

35. Respondent's conduct as described in Counts One through Three was a persistent failure to treat APAs A and B fairly and courteously, in violation of MCR 9.202(B)(1)(c).

ANSWER: Denied as untrue.

JUDGE MORROW'S AFFIRMATIVE DEFENSES

1. The Judicial Tenure Commission's unitary structure of investigation, prosecution, and adjudication violates Judge Morrow's right to Procedural Due Process.

Respectfully Submitted.
COLLINS EINHORN FARRELL
/s/ Donald D. Campbell
DONALD D. CAMPBELL (P43088)
Counsel for Hon. Bruce Morrow
4000 Town Center, 9th Floor
Southfield, MI 48075
(248) 355-4141

Dated: August 25, 2020

VERIFICATION

I declare under the penalties of perjury that this Answer to the Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Dated: 25 AUG 2020

Bruce Morrow

HON. BRUCE MORROW

RECEIVED by MSC 8/25/2020 3:54:28 PM

PROOF OF SERVICE

The undersigned certifies that the HON. BRUCE MORROW'S ANSWER TO COMPLAINT was served upon all parties to the above cause to each of the attorneys of record herein via E-File and Serve and U.S. mail if not registered to receive electronic copies through this Court on August 25, 2020.

By: /s/ Sherrie L. Marinkovich
SHERRIE L. MARINKOVICH