

**STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION**

COMPLAINT AGAINST

Hon. Paul J. Cusick
Third Circuit Court
Detroit, MI

Complaint No. 104

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COMPLAINT

The Judicial Tenure Commission (“Commission”) has authorized this complaint against Honorable Paul J. Cusick (“respondent”), judge of the Third Circuit Court, County of Wayne, State of Michigan, and directed that it be filed. This action is taken pursuant to Article 6, Section 30 of the Michigan Constitution of 1963 (as amended), MCR 9.100 et seq. and MCR 9.200 *et seq.*

1. Respondent has been a licensed attorney and a member of the State Bar of Michigan since 2007.
2. As an attorney, respondent has been, and still is, subject to the standards of conduct applicable under MCR 9.103A, MCR 9.104, and the Michigan Rules of Professional Conduct (“MRPC”).
3. Respondent is, and since November 2016 has been, a judge of the Third Circuit Court, County of Wayne, State of Michigan.

4. 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 9.202.
5. Between October of 2011 and November of 2016, respondent was employed by the Office of the Michigan Attorney General (AG) as an Assistant Attorney General (AAG).
6. As an AAG respondent was subject to the duties and responsibilities imposed on him by the MRPC, including, but not limited to Rules 3.3; 3.4; 3.8; and 8.4.
7. Pursuant to MCR 9.205(B)(2), the Commission has jurisdiction over respondent for conduct committed while he was a member of the State Bar of Michigan.

FACTUAL BACKGROUND

8. Between 2013 and his separation from the AG's office in November of 2016, respondent, as an AAG, was the "lead attorney" in the following investigations and/or prosecutions:
 - a. The investigation and prosecution of a large-scale marijuana organization, which was operated primarily by Thomas McCully, Ryan Goble, and Nicholas Stevens (McCully investigation) and which ultimately resulted in *People v McCully, et al*, 35th District Court case

- no. 13AG86, Third Circuit Court case nos. 14-0923 and 14-1140 (later consolidated under case no. 14-1140).
- b. The investigation and prosecution of a large-scale marijuana organization which was operated primarily by Darryl Berry (Berry investigation) and which ultimately resulted in *People v Darryl Berry and Jeffrey Michael*, 36th District Court case no. 16-900099/16-55791 and *People v Darryl Berry, et al*, 53d District Court case nos. 16-0473 through and including 16-0476, 44th Circuit Court case no. 17-024613.
 - c. The investigation and prosecution of the Pure Wellness Center, a marijuana dispensary in Canton Township, Michigan, owned and operated by Amanda Joslin (Joslin investigation), which ultimately resulted in *People v Amanda Joslin*, 35th District Court case no. 15AG161; Third Circuit Court case no. 16-0143 and in *People v Amanda Joslin, Eric DeJonghe, and Jacob Scholin*, 14-A District Court, Washtenaw County, Michigan, case no. 15F21261, 22nd Circuit Court case nos. 16-000277; 16-000278, and 16-000279.
9. The McCully, Berry, and Joslin investigations were handled by the Western Wayne Narcotics Task Force (Task Force).

10. As the lead attorney, respondent:
 - a. Maintained personal, telephonic and/or email contact with the Task Force investigating officers.
 - b. Assisted the Task Force in the preparation of, and reviewed and approved, all search warrants related to the McCully, Berry, and Joslin investigations and/or prosecutions.
 - c. Issued investigative subpoenas and took investigative subpoena testimony from witnesses, suspects, and/or defendants in the McCully, Berry, and/or Joslin investigations and/or prosecutions.
 - d. Received and maintained a physical copy of various documents pertaining to the McCully, Berry, and Joslin investigations and prosecutions.
 - e. Maintained ongoing notes/updates in the AG's internal electronic "Legal files" system regarding the progress of, and developments in, the McCully, Berry, and Joslin investigations and/or prosecutions.
11. As the lead attorney in the McCully, Berry, and Joslin investigations and/or prosecutions, respondent was aware that:
 - a. Members of the Task Force did not have the authority to enter into any offers, promises, deals, and/or understandings regarding charges and/or

sentences with any defendants, suspects, witnesses, and/or confidential informants (CIs).

- b. Any offers, promises, deals, and/or understandings regarding charges and/or sentences with any defendants, suspects, witnesses or CIs had to be made and/or approved by a prosecuting official.
- c. All CIs working with the Task Force were required to sign a “Confidential Source” form/card (Source Card).

A. McCully investigation and prosecution

- 12. Respondent was assigned to the McCully investigation and/or prosecution in early 2013.
- 13. The Task Force officers involved in the McCully investigation included, but were not limited to, Sgt. Paul Calleja, Captain (then Lieutenant) Andrew Osborne, Lt. David Kelly, and retired Chief (then officer) Paul Tennes.
- 14. Based on the entirety of the McCully investigation, on about December 4, 2013, respondent prepared and submitted to his superiors a “Request to Initiate Litigation” (Request to Initiate) in which he outlined the evidence and the charges he recommended issuing against Thomas McCully and nine other persons.

15. When submitting the Request to Initiate regarding the McCully investigation, respondent was aware that:
- a. Thomas McCully was the head of the organization.
 - b. Brandy Loggie was Thomas McCully's girlfriend and was pregnant with and/or was the mother of his newborn child.
 - c. Brandy Loggie was involved in the deliveries and/or sales of marijuana for Thomas McCully and the McCully organization.
 - d. In early 2013, Brandy Loggie solicited Micah Delavale to make marijuana deliveries for Thomas McCully and the McCully organization.
 - e. In February of 2013, Thomas McCully and Brandy Loggie used Micah Delavale to deliver approximately seven pounds of marijuana to Kentucky.
 - f. On about February 26, 2013, while attempting to deliver the marijuana in Kentucky, Micah Delavale was arrested by the Lexington, Kentucky, Police Department.
 - g. Prior to Micah Delavale's arrest in Kentucky, Thomas McCully and Brandy Loggie maintained contact with Micah Delavale, by phone and through text messages, regarding the marijuana Mr. Delavale was delivering from Michigan to Kentucky.

- h. After Micah Delavale's Kentucky arrest, Brandy Loggie maintained contact with Micah Delavale, by telephone and through text messages, regarding the arrangements Thomas McCully was making for Mr. Delavale's bond/bail in Kentucky.
- i. On about July 9, 2013, the Task Force arrested Thomas McCully and Brandy Loggie for their involvement/participation in the McCully organization.
- j. At the time of her arrest, Brandy Loggie was in possession of a backpack containing her driver's license, seven cell phones, five cell phone chargers, and \$7,022 in cash.
- k. During her custodial interview, Brandy Loggie admitted that:
 - 1. She was aware that Thomas McCully was selling large amounts of marijuana.
 - 2. She observed many heat-sealed one-pound bags of marijuana and large amounts of cash at Thomas McCully's residence, which she had shared with him.
 - 3. She arranged for Micah Delavale to make marijuana deliveries for Thomas McCully.
 - 4. She rented the vehicle Micah Delavale used in the Kentucky delivery.

5. She paid for Micah Delavale's Kentucky attorney.
16. On about December 13, 2013, in 35th District Court in Plymouth, Michigan, under case no. 16AG86, respondent filed/authorized felony charges against ten individuals, including Thomas McCully, Ryan Goble, and Nicholas Stevens, for their roles in the McCully organization.
17. Respondent charged Thomas McCully, Ryan Goble, and Nicholas Stevens with:
 - a. Conducting a criminal enterprise, a 20-year felony (MCL 750.159)
 - b. Conspiracy to conduct a criminal enterprise, a 20-year felony (MCL 750.159)
 - c. Conspiracy to manufacture and/or deliver marijuana, a 4-year felony (MCL 750.157)
18. Respondent also filed a habitual offender–second offense notice (MCL 769.10) against Thomas McCully and a habitual offender–third offense notice (MCL 769.11) against Nicholas Stevens.
19. Respondent did not recommend to his superiors, and did not file/authorize, any charges against Brandy Loggie.
20. On about January 30, 2014, in respondent's presence, Thomas McCully, Ryan Goble, and Nicholas Stevens waived their right to a preliminary examination and were bound over for trial under Third Circuit Court case number 14-1140

for Thomas McCully and Ryan Goble and under circuit case number 14-0923 for Nicholas Stevens (later consolidated under case no. 14-1140).

21. Shortly after the bind-over, respondent began plea negotiations/discussions with attorneys Steven Fishman (representing Thomas McCully), Christopher Kessel (representing Ryan Goble), and Neil Rockind (representing Nicholas Stevens).
22. Arraignment on the information (AOI) for Thomas McCully, Ryan Goble, and Nicholas Stevens was held on about February 13, 2014, before Third Circuit Court Judge David Groner.
23. On March 4, 2014, AAG Kim Mitseff initiated forfeiture proceedings in Third Circuit Court against various individuals involved in the McCully organization, including Thomas McCully and Brandy Loggie.
24. Included in the forfeiture proceedings, at least in part, were the following:
 - a. \$56,743.02 in funds and/or property belonging to Thomas McCully.
 - b. \$7,022 in funds and/or property confiscated from Brandy Loggie at the time of her July 9, 2013, arrest.
25. On or shortly after March 4, 2014, respondent became aware of the forfeiture proceedings pending against various members of the McCully organization, including Thomas McCully and Brandy Loggie.

26. On about March 6, 2014, respondent made the following plea offers to Thomas McCully, Ryan Goble and Nicholas Stevens:
- a. In exchange for dismissal of Counts 2 and 3, and the habitual-3rd notice, respondent offered that Nicholas Stevens could plead guilty to one count of conducting a criminal enterprise, a 20-year offense, with a sentence agreement that included 51 months to 20 years in prison, concurrent with a felonious assault prison sentence he was already serving.
 - b. In exchange for dismissal of Counts 2 and 3, respondent offered that Ryan Goble could plead guilty to one count of conducting a criminal enterprise, a 20-year offense, with a sentence agreement that included one year in the Wayne County Jail.
 - c. In exchange for dismissal of Counts 2 and 3 and the habitual-2nd notice, respondent offered that Thomas McCully could plead guilty to one of the 20-year felony counts contained in the charging document, with a sentence agreement that included a minimum of four years in prison.
27. On March 6, 2014, before Hon. David Groner and in respondent's presence, Nicholas Stevens accepted respondent's plea offer and pled guilty to one count of conducting a criminal enterprise, a 20-year felony (MCL 750.159(i)(4), with a sentence agreement that included 51 months to 20 years

in prison in exchange for a dismissal of the remaining counts and the habitual-3rd notice.

28. On March 6, 2014, Steven Fishman, representing Mr. McCully and standing in for Mr. Goble's counsel of record Neil Rockind, requested a one-week adjournment for Thomas McCully and Ryan Goble.
29. In making that request, Mr. Fishman advised Judge Groner, in part, that the parties were "making a deal" and would soon have a resolution for both defendants.
30. Respondent did not disagree with, or object to, Mr. Fishman's representations.
31. On about March 13, 2014, respondent and Mr. Fishman reached an agreement, deal, and/or understanding that Thomas McCully would plead guilty as charged in case no. 14-1140-FY and would "cooperate" with the Task Force in exchange for a favorable consideration/reduction/mitigation in his sentence.
32. On March 13, 2014, before Judge Groner and in respondent's presence:
 - a. Ryan Goble accepted respondent's plea offer and tendered a guilty plea to one count of conducting a criminal enterprise with a sentence agreement that included one year in the Wayne County Jail in exchange for a dismissal of the remaining counts.

- b. Thomas McCully tendered a plea of guilty as charged to all counts under sentencing guidelines of 72 to 150 months.
33. On about March 13, 2014 respondent stipulated to delay Thomas McCully's sentencing until June 17 to allow Mr. McCully time to "demonstrate" his cooperation as a CI with the Task Force.
34. Between March 13 and May 2, 2014, respondent and Mr. Fishman continued their contacts, conversations and/or discussions regarding the details of Mr. McCully's "cooperation" and/or service as a confidential informant (CI) with the Task Force.
35. On May 2, 2014, in respondent's and Mr. Fishman's presence, members of the Task Force conducted Mr. McCully's "debriefing" regarding his CI service and/or "cooperation" with the Task Force.
36. As part of the agreement, deal, and/or understanding for Thomas McCully to become a CI and "cooperate" with the Task Force, respondent and the Task Force agreed to protect from disclosure Thomas McCully's identity as a CI.
37. On about May 12, 2014, Thomas McCully met with Sgt. Calleja and signed a "Confidential Source" form/card agreement (Source Card).
38. On about May 12, 2014, Sgt. Calleja wrote in the "remarks" area/section of Mr. McCully's Source Card, "working for a reduced sentence, Michigan AG office Paul Cusick."

39. Sgt. Calleja's annotation on Mr. McCully's Source Card was consistent with respondent's agreement, deal, and/or understanding that Thomas McCully would serve as a CI and would "cooperate" with the Task Force in exchange for a reduction/consideration/mitigation in his sentence in Third Circuit Court case no. 14-1140.
40. Sgt. Calleja made the annotation on Mr. McCully's Source Card with respondent's knowledge and permission.
41. On or shortly after May 12, 2014, Thomas McCully began to work with the Task Force as a CI.
42. Shortly before June 17, 2014, respondent requested and/or agreed to have Thomas McCully's sentencing postponed from June 17 to August 25, 2014, in order to allow additional time for Mr. McCully to demonstrate his "cooperation" with the Task Force.
43. Respondent agreed to the following additional adjournments of Thomas McCully's sentencing in case no 14-1140:
 - a. From August 25 to November 19, 2014
 - b. From November 19, 2014, to May 4, 2015
 - c. From May 4 to September 10, 2015

44. Throughout 2014 and 2015 respondent maintained contact with the Task Force and Mr. Fishman regarding:
 - a. Thomas McCully having generated and/or assisted in the Joslin and other investigations.
 - b. Brandy Loggie having generated and/or assisted in the Joslin and other investigations.
 - c. Brandy Loggie's CI work being on behalf of Thomas McCully.
 - d. The importance of protecting Thomas McCully's CI status from disclosure.
45. Among the cases Thomas McCully "generated" and/or assisted in as a CI for the Task Force were the Berry investigation and the Joslin investigation.
46. On about January 7, 2016, respondent appeared before Hon. David Groner for Thomas McCully's sentencing in Third Circuit Court case no. 14-1140.
47. On about January 7, 2016, with respondent's agreement not to object, Judge Groner sentenced Thomas McCully to a one-year non-reporting probation and imposed approximately \$1800 in fines and costs.
48. Brandy Loggie was present during Thomas McCully's sentencing hearing and used the money she had posted for Mr. McCully's bond in December of 2013 to pay the fines and costs associated with his sentence.

B. Berry investigation and prosecution

49. The Task Force began the Berry investigation in about July/August of 2014. In that investigation:
- a. Respondent became its lead AAG in about July/August of 2014 and remained in that position until his separation from the AG's office in November of 2016.
 - b. The Task Force officers included, but were not limited to, Sgt. Calleja and Sgt. (then officer) Robert Lowes.
 - c. The Task Force officers maintained contact with respondent regarding investigative developments and provided him with various reports and/or documents.
50. The Task Force utilized Thomas McCully as a CI in the Berry investigation with respondent's knowledge and consent.
51. The Berry investigation was completed on about September 28, 2015.
52. On or shortly before September 28, 2015, respondent reviewed and approved search warrants on Darryl Berry's marijuana grow operations in several counties, including Livingston County.
53. On about September 28, the Task Force executed two search warrants, approved by respondent, on Darryl Berry's marijuana grow operations in Livingston County.

54. Shortly after the search warrants were executed, respondent became aware that Michael Komorn represented Darryl Berry.
55. Mr. Komorn remained as Mr. Berry's attorney throughout the *People v Berry, et al*, prosecution.
56. On about January 19, 2016, respondent prepared and submitted to his superiors a Request to Initiate in which he outlined the evidence and the charges to be issued against several individuals, including but not limited to Darryl Berry, Jeffrey Michael, Dennis James, and Joseph Zubor.
57. In that Request to Initiate, respondent acknowledged that the Berry investigation was initiated, at least in part, as a result of Thomas McCully's cooperation with the Task Force.
58. As of January 19, 2016, respondent was aware that:
 - a. The Task Force initiated the Berry investigation with information Thomas McCully provided while serving as a CI with the Task Force.
 - b. Thomas McCully was the only CI the Task Force utilized in the Berry investigation.
 - c. On about August 6, 2014, while serving as a CI, Thomas McCully arranged a meeting at a Detroit marijuana dispensary to introduce undercover officer Sgt. Robert Lowes to Darryl Berry.
 - d. Jeffrey Michael was present during the August 6 introductory meeting.

- e. During the August 6 introductory meeting, in Thomas McCully's presence, Darryl Berry and Jeffrey Michael made a hand-to-hand delivery of marijuana to Sgt. Lowes.
 - f. During the August 6 introductory meeting, in Thomas McCully's presence, Darryl Berry discussed and entered into an agreement to make future sales of whole marijuana plants to Sgt. Lowes.
 - g. On about September 5, 2014, Thomas McCully accompanied Sgt. Lowes to Darryl Berry's marijuana grow operation in Livingston County.
 - h. On about September 5, 2014, in Thomas McCully's presence, Sgt. Lowes paid Darryl Berry a "deposit" for the purchase of three marijuana plants, the possession of which he was to take at a later date when the plants were fully grown.
 - i. On about October 13, 2014, Darryl Berry delivered three fully grown marijuana plants to Sgt. Lowes.
59. On about February 3, 2016 respondent issued/authorized felony charges in Wayne and Livingston Counties against various individuals involved in the Berry organization, including Darryl Berry and Jeffrey Michael.
60. In Wayne County respondent issued a felony "delivery of marijuana" charge against Darryl Berry and Jeffrey Michael under 36th District Court case no. 16-900099/16-55791.

61. The Wayne County case against Darryl Berry and Jeffrey Michael was based on Darryl Berry's and Jeffrey Michael's delivery of marijuana to Sgt. Lowes during the introductory August 6, 2014 meeting in Detroit.
62. Thomas McCully was a res gestae witness in the Wayne County case, 36th District Court case no. 16-900099/16-55791.
63. On about March 4, 2016, respondent dismissed the Wayne County case against Darryl Berry and Jeffrey Michael, which was then pending in 36th District Court under case no. 16-900099/16-55791, to protect Thomas McCully's status as a CI from disclosure.
64. In the Livingston County case, under 53d District Court case nos. 16-0476 and 16-0473, respondent issued/authorized felony charges of conducting criminal enterprises, to wit, manufacturing marijuana; delivery/manufacture of 45 kilograms or more of marijuana, 200 plants or more; conspiracy to manufacture marijuana; and delivery of marijuana against Darryl Berry and others.
65. The Livingston County charges in 53d District Court case nos. 16-0473 and 16-0476 were based on Darryl Berry's agreement to deliver, and the actual delivery, of three fully grown marijuana plants to Sgt. Lowes.
66. Thomas McCully was a res gestae witness in the Livingston County case, 53d District Court case nos. 16-0473 and 16-0476, against Darryl Berry.

67. Respondent did not include any information about Mr. McCully's involvement in the Berry investigation in the discovery he provided, or authorized to be provided, to Mr. Berry's attorney, Michael Komorn.

C. Joslin investigation and prosecution

68. The Task Force began the Joslin investigation in about June/July of 2014. In that investigation:

a. Respondent became the lead AAG shortly after June of 2014 and remained in that position until his separation from the AG's office in November of 2016.

b. The investigating officers included, but were not limited to, Sgt. Calleja and Detective (then officer) Brian Zinser.

c. The Task Force officers maintained contact with respondent, in person, by phone, and/or by email, regarding various investigative developments.

69. By about June/July of 2014, respondent was aware that:

a. Pure Wellness required membership for the purchase of marijuana and/or marijuana products.

b. A valid medical marijuana card was required for membership at the Pure Wellness Center.

70. In about June/July of 2014, the Task Force wanted Thomas McCully, in his role as a CI, to make controlled buys from the Pure Wellness Center.

71. Thomas McCully could not and/or did not make controlled buys from the Pure Wellness Center, at least in part, because:
 - a. He did not have a valid medical marijuana card and thus could not become a member of the Pure Wellness Center, and/or
 - b. There were concerns that someone at the Pure Wellness Center would recognize him as a large-scale marijuana producer/grower.
72. Thomas McCully offered, suggested, and/or agreed for his girlfriend, Brandy Loggie, to serve as a CI and to make controlled buys from the Pure Wellness Center as an additional sentencing consideration and/or benefit for Mr. McCully in *People v McCully, et al*, Third Circuit Court case no. 14-1140.
73. In 2014 and 2015 Brandy Loggie had a valid medical marijuana card which enabled her to make controlled buys of marijuana and/or marijuana products by being or becoming a “member” of the Pure Wellness Center.
74. Before making any contact with Ms. Loggie, the Task Force sought and obtained respondent’s approval to use Ms. Loggie as a CI for Mr. McCully’s sentencing benefit.
75. Shortly before September 4, 2014, Thomas McCully facilitated telephonic contact and/or conversation between the Task Force and Brandy Loggie.

76. During that contact and/or conversation, Brandy Loggie:
 - a. Agreed to become a CI for the Task Force in order to help her boyfriend, Thomas McCully, in Third Circuit Court case no. 14-1140.
 - b. Agreed to make controlled buys from the Pure Wellness Center.
77. On about September 3, 2015, Ms. Loggie signed a membership agreement with the Pure Wellness Center.
78. On about September 4, 2014, Sgt. Calleja and Detective Zinser met with Brandy Loggie in Canton, Michigan.
79. During the September 4, 2014, meeting, Brandy Loggie signed a Confidential “Confidential Source” form/card (Source Card) with the Task Force.
80. At the conclusion of the September 4, 2014, meeting:
 - a. Sgt. Calleja wrote “assisting boyfriend Thomas McCully [CI number (redacted)] on his charges” in the remarks section of Ms. Loggie’s Source Card.
 - b. Brandy Loggie accompanied Detective Zinser to the Pure Wellness Center, where she made the first controlled buy of marijuana and/or marijuana products.
81. Between September 4, 2014, and March 16, 2015:
 - a. The Task Force conducted surveillance of the Pure Wellness Dispensary.
 - b. Ms. Loggie assisted the Task Force in other criminal investigations.

- c. The Task Force advised/notified respondent about Brandy Loggie's CI work on behalf of Thomas McCully in the Joslin and other investigations.
82. On about March 16, 2015, respondent advised/instructed the Task Force that additional controlled buys would be necessary before he could/would issue/authorize any search warrants for the Pure Wellness Dispensary and/or for Ms. Joslin's Ypsilanti home.
83. On about March 16, 17, and 18 of 2015, under the supervision of the Task Force, Ms. Loggie made three additional controlled buys of marijuana and marijuana products from the Pure Wellness Center.
84. After March 18, 2015, Brandy Loggie did not do any further CI work for the Task Force.
85. On about March 19, 2015, respondent reviewed and authorized, and the Task Force executed, search warrants for the Pure Wellness Center in Canton Township and for Amanda Joslin's home in Ypsilanti, Michigan.
86. On about March 19, 2015, the Task Force arrested Amanda Joslin, her boyfriend Eric DeJonghe, and her son Jacob Scholin, in connection with the Joslin investigation.
87. Based on the Joslin investigation, on about May 25, 2015, respondent submitted to his superiors/supervisors a Request to Initiate in which he outlined the evidence and the charges he recommended issuing against

Amanda Joslin, Eric DeJonghe, and Jacob Scholin in Wayne and Washtenaw Counties.

88. At the time respondent submitted the Joslin investigation Request to Initiate, he was aware that:
- a. The Pure Wellness Center first came to the attention of the Task Force in 2014, in part, through complaints made by Canton Township officials and/or Canton Township building inspectors.
 - b. Anyone wishing to purchase marijuana and/or marijuana products was required to become a member of the Pure Wellness Center.
 - c. Membership at the Pure Wellness Center required a valid medical marijuana card.
 - d. Thomas McCully generated and/or assisted the Task Force in the Joslin investigation.
 - e. In 2014, Thomas McCully was unable to make controlled buys because he did not have a valid/active medical marijuana card and/or because of concerns he would be recognized as a major marijuana grower/distributor.
 - f. Thomas McCully offered/suggested/agreed for the Task Force to use his girlfriend, Brandy Loggie, as a CI in the Pure Wellness and any other investigations.

- g. Ms. Loggie’s CI work was to be on behalf of Thomas McCully and was to serve as a benefit to Mr. McCully in his sentence in Third Circuit Court case no. 14-1140.
- h. Third Circuit Court case no. 14-1140 was then pending before the Hon. David Groner.
- i. In 2014 and 2015, Brandy Loggie had a valid medical marijuana card.
- j. Ms. Loggie’s medical marijuana card enabled her to purchase marijuana and/or marijuana products by being, or becoming, a “member” of the Pure Wellness Center.
- k. In about June/July of 2014 Brandy Loggie agreed to become a CI for the Task Force to help her boyfriend, Thomas McCully, in Third Circuit Court case no. 14-1140.
- l. On about September 3, 2014, Ms. Loggie became a member of the Pure Wellness Center.
- m. Brandy Loggie signed a Source Card with the Task Force.
- n. In 2014, Brandy Loggie did not have any criminal charges/cases pending against her.
- o. In 2014 and 2015, Brandy Loggie had a forfeiture matter pending in Third Circuit Court that was based on her involvement in the McCully organization.

- p. On about September 4, 2014, Ms. Loggie made a controlled buy of marijuana and/or marijuana products from the Pure Wellness Dispensary.
 - q. In March of 2015, Ms. Loggie made three additional controlled buys of marijuana and/or marijuana products from the Pure Wellness Dispensary.
89. On about July 15, 2015, respondent filed/authorized the following charges:
- a. In Wayne County, under 35th District Court case no. 15-AG161, Third Circuit Court case no. 16-0143, respondent charged Amanda Joslin with conducting a criminal enterprise, MCL 750.159; delivery of marijuana, MCL 333.7401; and possession with intent to deliver marijuana, MCL 333.7401.
 - b. In Washtenaw County, under 14-A District Court case no. 15F21261, 22nd Circuit Court case nos. 16-000277; 16-000278; and 16-000279, respondent charged Amanda Joslin, Eric DeJonghe, and Jacob Scholin with conspiracy to manufacture/deliver marijuana, MCL 750.157a and with possession with intent to deliver marijuana, MCL 333.7401.
90. In the Wayne and Washtenaw County cases listed in paragraph 89 above, Amanda Joslin was initially represented by attorney Matt Abel and then by Attorney Michael Komorn.

91. On about July 22, 2015, respondent reviewed, and approved, discovery materials provided by the AG's office to Ms. Joslin's then attorney, Mr. Komorn. In that discovery, respondent did not include and did not instruct anyone else to include:
- a. Any information or documents about Mr. McCully's pending criminal matter, CI agreement, or Source Card.
 - b. Any information or documents about Ms. Loggie's involvement in the McCully organization, her relationship to Mr. McCully, the CI agreement with the Task Force, or Source Card.
 - c. Any information or documents regarding the forfeiture case pending against Mr. McCully or Ms. Loggie.
92. Preliminary examination in 35th District Court case no. 15-AG161 was initially scheduled for July 31, 2015. It was subsequently postponed to September 11, the day after Mr. McCully's scheduled sentencing.
93. Preliminary examination in *People v Joslin*, 35th District Court case no. 15AG161, commenced on November 3 and was completed on December 18, 2015.
94. During the November 3, 2015, preliminary examination in *People v Joslin*, 35th District Court case no. 15A161, respondent presented Brandy Loggie and Detective Brian Zinser as his witnesses.

95. On about December 18, 2015, Hon. Michael Gerou bound *People v Joslin*, 35th District Court case no 15AG161, to Third Circuit Court where it was assigned to Hon. Timothy Kenny under Third Circuit Court case no. 16-000143.
96. On about June 27, 2016, respondent offered Ms. Loggie as a witness in an evidentiary hearing conducted before Judge Kenny on the issue of entrapment by estoppel.
97. After his judicial appointment in October of 2016, respondent's case files, including those originating from the Joslin and Berry investigations, were reassigned to AAG Dianna Collins.
98. After several delays, the trial in *People v Joslin*, Third Circuit Court case no. 16-000143, commenced on August 14, 2017, and was continued to August 17, 2017.
99. On about August 16, 2017, AAG Dianna Collins interviewed Brandy Loggie in the presence of Sgt. Calleja.
100. Immediately after that interview, Sgt. Calleja informed AAG Collins, in part, that:
 - a. Ms. Loggie became a CI to benefit her boyfriend.
 - b. The boyfriend had a pending criminal case at the time of the Joslin investigation and/or prosecution.

101. On about August 16, 2017, AAG Collins contacted Mr. Komorn via email and advised him, in part, that:
 - a. Ms. Loggie’s CI work in the Joslin investigation was a “benefit to her boyfriend who had a pending case at the time.”
 - b. AAG Collins did not know the name of Ms. Loggie’s boyfriend.
 - c. Information about Ms. Loggie serving as a CI for the benefit of her boyfriend was not in the discovery materials that AAG Collins had in her *Joslin* case file.
 - d. AAG Collins was concerned that Mr. Komorn’s discovery materials likewise did not contain any information about Ms. Loggie serving as a CI for the benefit of her boyfriend.
102. Mr. Komorn confirmed he had not received discovery materials indicating that Ms. Loggie had served as a CI for the benefit of Mr. McCully.
103. On about August 17, 2017:
 - a. AAG Collins and Mr. Komorn made Judge Kenny aware of the prosecution’s failure to provide the defense with any information or documents about Ms. Loggie’s relationship with Mr. McCully, about the McCully organization, or about Ms. Loggie’s CI work being for Mr. McCully’s benefit.

- b. AAG Collins and Mr. Komorn also advised Judge Kenny that Ms. Loggie may have committed perjury during the November 3, 2015, preliminary examination.
 - c. Judge Kenny instructed AAG Collins to provide Mr. Komorn with all police reports and other relevant documents from the McCully investigation, including Mr. McCully's and Ms. Loggie's Source Cards.
 - d. Judge Kenny also directed AAG Collins, Mr. Komorn, and Det. Zinser to interview Ms. Loggie in the court's jury room regarding her testimony during the November 3, 2015, preliminary examination.
104. During the jury room interview with Ms. Loggie, conducted on about August 17, 2017, AAG Collins and Mr. Komorn learned that:
- a. Ms. Loggie's boyfriend was Thomas McCully.
 - b. At the time of the *Joslin* preliminary examination, Thomas McCully had a criminal case pending against him for a large marijuana grow operation.
 - c. At the time of the November 3, 2015, preliminary examination, Ms. Loggie did not have any criminal charges pending against her.
 - d. Ms. Loggie's CI work was not for any personal benefit to her.
 - e. Ms. Loggie signed the Source Card with the Task Force to help her boyfriend, Thomas McCully.

- f. At the preliminary examination, Ms. Loggie did not disclose that she had become a CI with the Task Force to help Thomas McCully.
 - g. Ms. Loggie said that at the preliminary examination she did not disclose that she had signed a Source Card and worked with the Task Force to help Thomas McCully, because:
 - 1. She wanted to keep her testimony short.
 - 2. She felt harassed by Ms. Joslin, who had posted photos of Ms. Loggie and her minor child on Facebook and had referred to Ms. Loggie as an informant.
 - h. Prior to testifying at the November 3, 2015, preliminary examination, Ms. Loggie had informed respondent about the Facebook posting(s) and about being afraid of Ms. Joslin and provided respondent with a copy of the postings.
105. Based on the jury room interview, on about September 6, 2017, Mr. Komorn advised Judge Kenny that:
- a. Ms. Loggie “admitted that she committed perjury at the preliminary exam. She admitted that she lied, she admitted she knew she was lying.”
 - b. Ms. Loggie “admitted that or gave a reason which she – which really doesn’t matter because a lie is a lie, but she gave some reason that she was afraid or scared of [Ms. Joslin.]”

- c. Ms. Loggie brought her fears of Ms. Joslin to respondent's attention.
106. On about September 6, 2017, Judge Kenny appointed attorney Jeffrey Schwartz to represent Brandy Loggie:
- a. After consulting with Mr. Schwartz, Brandy Loggie rejected Ms. Collins's offer of immunity and asserted her 5th Amendment right against self-incrimination.
 - b. Judge Kenny ruled that Ms. Loggie's preliminary examination testimony was "perjured" and could not be used at trial.
107. In about October of 2017, at the conclusion of the *Joslin* bench trial, Judge Kenny found Ms. Joslin not guilty of conducting a criminal enterprise and of delivery of marijuana, and guilty of possession with intent to deliver marijuana.
108. Ms. Joslin appealed her conviction to the Michigan Court of Appeals.
109. In an August 14, 2018, response to Ms. Joslin's appeal, the AG's office conceded that:
- In this case involving an illegal marijuana dispensary, the State failed to disclose the terms of an informant's cooperation as part of discovery, and to make matters worse, the informant gave testimony on that issue at the preliminary examination that the trial court later found was "not...truthful."
110. In about December of 2018 the Court of Appeals vacated Ms. Joslin's conviction on the grounds of insufficiency of evidence.

111. The AG's office did not appeal the Court of Appeals ruling, in part because of concerns that "perjured testimony [was] presented at the preliminary examination."

COUNT I – 35TH DISTRICT COURT

A. Suborning Perjury

112. This count incorporates paragraphs 1 through and including 111.

113. During Brandy Loggie's direct examination at the November 3, 2015, preliminary examination in *People v Joslin*, 35th District Court case no. 15A161, respondent limited his questions to the controlled buys Ms. Loggie made on September 4 of 2014 and on March 16, 17, and 18 of 2015.

114. During Detective Zinser's direct examination at the November 3, 2015, preliminary examination in *People v Joslin*, 35th District Court case no. 15A161, respondent limited his questions primarily to:

- a. Detective Zinser's observations during Brandy Loggie's controlled buys.
- b. Detective Zinser's actions during the March 19, 2015 execution of search warrants issued in the Joslin investigation.

115. Respondent knowingly and intentionally did not elicit from Ms. Loggie or from Detective Zinser any information regarding:

- a. Ms. Loggie's relationship with Thomas McCully.
- b. Ms. Loggie's involvement in the McCully organization.

- c. The Third Circuit Court forfeiture case then pending against Brandy Loggie.
 - d. The circumstances under which Ms. Loggie became a CI.
 - e. The fact that Ms. Loggie's CI work was serving as a benefit in Thomas McCully's sentence.
116. During Mr. Komorn's cross-examination, Brandy Loggie testified, in part, that:
- a. She was not under subpoena and was appearing in court voluntarily.
 - b. She initiated the contact with the police (Task Force) about the Pure Wellness Center.
 - c. There was nothing "specific" that occurred that made her interested in contacting the police.
 - d. She contacted the police because she felt: "...it [was] dangerous for [Ms. Joslin] to sell that amount of marijuana to people who [were] driving around on the streets."
 - e. When she contacted the police, she told them that "there is a woman selling marijuana just to anybody."
117. During Mr. Komorn's cross-examination of Brandy Loggie, Detective Zinser, while seated next to respondent, advised respondent that:
- a. Ms. Loggie's testimony was inaccurate.

- b. Ms. Loggie’s testimony had discrepancies.
 - c. Ms. Loggie did not “initiate contact with the Task Force.”
 - d. Ms. Loggie had been “prompted” to call the Task Force by Thomas McCully.
118. During the November 3, 2015, preliminary examination, respondent was aware that Brandy Loggie’s testimony was false, inaccurate, incomplete, and/or misleading in material ways.
119. During the November 3, 2015, preliminary examination, respondent did not take any remedial/corrective measures regarding Ms. Loggie’s materially false, inaccurate, incomplete, and/or misleading testimony, including but not limited to:
- a. Seeking information and/or explanation from Detective Zinser about his comments/statements that Ms. Loggie’s testimony was not accurate and/or that it had discrepancies.
 - b. Requesting a recess in the proceeding to obtain additional information from Brandy Loggie and/or Detective Zinser regarding the circumstances under which she became a CI for the Task Force.
 - c. Requesting a recess in the proceeding to inform Brandy Loggie about her obligation to provide truthful, accurate, and complete testimony/answers.

- d. Requesting a recess in the proceeding to obtain a copy of Ms. Loggie's Source Card.
 - e. Eliciting any testimony from Detective Zinser regarding the circumstances under which Ms. Loggie became a CI with the Task Force.
 - f. Disclosing Ms. Loggie's perjury, i.e., her materially false, inaccurate, incomplete, and/or misleading testimony to the court.
120. During the November 3, 2015, preliminary examination, respondent did not correct or clarify Ms. Loggie's testimony to reflect that:
- a. She was appearing pursuant to a subpoena.
 - b. She did not initiate the contact with the Task Force.
 - c. She had been prompted to contact the Task Force.
 - d. She was working with the Task Force for Thomas McCully's sentencing benefit.
 - e. She had a forfeiture case pending against her based on her involvement in the McCully organization.
121. At the conclusion of the November 3, 2015, preliminary examination, respondent argued and/or relied on Brandy Loggie's perjured testimony:
- a. To establish that Ms. Joslin was the owner of the Pure Wellness Center.
 - b. To establish that Ms. Joslin was involved in illegal transactions of marijuana and marijuana products at the Pure Wellness Center.

- c. To respond to objections posed by Mr. Komorn.
 - d. To support his arguments to bind Ms. Joslin over for trial on the charges contained in the charging document.
122. Despite his knowledge that Brandy Loggie's testimony was materially false, inaccurate, incomplete and/or misleading, respondent:
- a. Permitted and/or caused Ms. Loggie's perjured testimony to remain as part of the record in *People v Joslin*, 35th District Case no. 15A161.
 - b. Permitted and/or caused Judge Gerou unknowingly to rely, at least in part, on Brandy Loggie's perjured testimony when determining the sufficiency of the evidence for a bind over.
123. Respondent did not correct or clarify Ms. Loggie's perjured, i.e., materially false, inaccurate, incomplete, and/or misleading preliminary examination testimony at any time after the November 3, 2015 preliminary examination and prior to his departure from the AG's office in November of 2016.

B. Obstructing/Interfering With Cross-examination

124. This count incorporates paragraphs 1 through and including 123.
125. During the November 3, 2015 preliminary examination in *People v Joslin*, 35th District Court case no. 16A161, while aware that Ms. Loggie's testimony was materially false or misleading with respect to her motive for testifying,

respondent knowingly and/or intentionally interfered with and obstructed Mr. Komorn's attempts to determine Ms. Loggie's true motive for testifying.

126. During Mr. Komorn's cross-examination of Brandy Loggie, respondent repeatedly objected to Mr. Komorn's questions/inquiries regarding:
 - a. The circumstances under which Brandy Loggie became a CI.
 - b. Brandy Loggie's role and/or involvement in any other police investigations.
 - c. Brandy Loggie's motivation for working with the Task Force as a CI.
 - d. Brandy Loggie's contacts with Amanda Joslin and the Pure Wellness Center prior to September 4, 2014.
127. During Mr. Komorn's cross-examination of Detective Zinser, respondent repeatedly objected to questions/inquiries regarding:
 - a. The circumstances under which Brandy Loggie became a CI.
 - b. Brandy Loggie's role and/or involvement in any other police investigations.
 - c. Ms. Loggie's motivation for working with the Task Force as a CI.
 - d. The accuracy of Ms. Loggie's testimony.
128. Respondent objected to the questions described in the preceding two paragraphs to prevent Mr. Komorn learning that Ms. Loggie became a CI to

help her boyfriend, Mr. McCully, which information was material to Ms. Loggie's credibility as a witness.

129. At the time respondent prevented Mr. Komorn from learning that Ms. Loggie became a CI to help Mr. McCully, respondent knew that Mr. Komorn was entitled to receive that information in order properly to impeach Ms. Loggie and properly to represent Ms. Joslin.

Respondent's conduct as described in this count constitutes:

- a. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1863, as amended, Article 6, Section 30, MCR 9.104(1);
- b. Conduct in violation of the standards imposed on members of the bar as a condition of the privilege to the practice of law, contrary to MCR 9.103A;
- c. Conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2);
- d. Conduct that was contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3);
- e. Conduct that violated the standards or rules of professional responsibility adopted by the Supreme Court, in violation of MCR 9.104(4);
- f. Conduct that violated criminal laws of the State of Michigan, that is, MCL 750.424, which prohibits a lawyer from suborning perjury, and MCL 750.505, which prohibits a lawyer from committing misconduct in office, all contrary to MCR 9.104(5);
- g. Conduct in violation of MRPC 3.3, which prohibits a lawyer from providing false statements of material fact or law to a tribunal and requires a lawyer to correct false statements of materials fact previously provided to a tribunal;

- a. Conduct in violation of MCL 767.40a, which requires a prosecuting attorney to disclose and provide the defense with names of res gestae witnesses;
- h. Conduct in violation of MRPC 3.8 which, in part, requires a prosecuting attorney to make “timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the degree of the offense;
- i. Conduct in violation of MRPC 8.4(a), which prohibits conduct that violates or attempts to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- j. Conduct in violation of MRPC 8.4(b), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer; and
- k. Conduct in violation of MRPC 8.4(c), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

COUNT II

SUBORNING PERJURY IN 3RD CIRCUIT COURT

130. This count incorporates paragraphs 1 through and including 129.
131. Despite his knowledge that Brandy Loggie’s November 3, 2015 preliminary examination testimony was false, inaccurate, incomplete and/or misleading, in Third Circuit Court respondent:
 - a. Subpoenaed and presented Brandy Loggie as a credible witness for an evidentiary hearing conducted before Judge Kenny on June 27, 2016.

- b. Utilized and relied on Ms. Loggie’s testimony in various pleadings and arguments he filed, made, and/or responded to before Judge Kenny, including, but not limited to, the June 27, 2016 evidentiary hearing.
132. Respondent permitted and/or caused Judge Kenny unknowingly to rely on Brandy Loggie’s untruthful, incomplete, and/or inaccurate testimony when making his rulings/decisions on various objections and/or motions including, but not limited to:
- a. Motion to Quash
 - b. Evidentiary hearing on a motion to dismiss conducted on about June 27, 2016.
133. In Third Circuit Court, respondent did not correct or clarify Ms. Loggie’s false, inaccurate, incomplete, and/or misleading preliminary examination testimony at any time prior to his departure from the AG’s office in November of 2016.

Respondent’s conduct as described in this count constitutes:

- a. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1863, as amended, Article 6, Section 30, MCR 9.104(1);
- b. Conduct in violation of the standards imposed on members of the bar as a condition of the privilege to the practice of law, contrary to MCR 9.103A;
- c. Conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2);

- d. Conduct that was contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3);
- e. Conduct that violated the standards or rules of professional responsibility adopted by the Supreme Court, in violation of MCR 9.104(4);
- f. Conduct that violated criminal laws of the State of Michigan, that is, MCL 750.424, which prohibits a lawyer from suborning perjury, and MCL 750.505, which prohibits a lawyer from committing misconduct in office, all contrary to MCR 9.104(5);
- g. Conduct in violation of MRPC 3.3, which prohibits a lawyer from providing false statements of material fact or law to a tribunal and requires a lawyer to correct false statements of materials fact previously provided to a tribunal;
- h. Conduct in violation of MRPC 3.8, which, in part, requires a prosecuting attorney to make “timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the degree of the offense;
- i. Conduct in violation of MRPC 8.4(a), which prohibits conduct that violates or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- j. Conduct in violation of MRPC 8.4(b), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer; and
- k. Conduct in violation of MRPC 8.4(c), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

COUNT III

WITHHOLDING OF INFORMATION/EVIDENCE

134. This count incorporates the allegations contained in paragraphs 1-133, as stated above.

A. People v Amanda Joslin

135. On about July 22, 2015, respondent reviewed and approved discovery materials/documents provided by the AG's office to Ms. Joslin's then attorney, Mr. Komorn, in *People v Joslin*, 35th District Court no. 15A161.

136. In the July 22, 2015, discovery materials, respondent knowingly and/or intentionally did not include, and did not instruct anyone else to include:

- a. Any documents and/or information about Thomas McCully's organization.
- b. Any documents and/or information about Thomas McCully's criminal case, Third Circuit Court no. 14-1140, which was then pending before the Hon. David Groner.
- c. Any documents and/or information regarding Brandy Loggie's involvement in the McCully organization.
- d. Any documents and/or information regarding Brandy Loggie's involvement in the February 2013 delivery of marijuana to Kentucky.

- e. Any documents and/or information regarding Thomas McCully generating and/or assisting the Task Force in the Joslin investigation.
 - f. Any documents and/or information regarding Brandy Loggie's involvement in the Joslin investigation.
 - g. A copy of, and/or any information about, the Source Card Thomas McCully signed on about May 12, 2014.
 - h. Any details of Mr. McCully's agreement, deal, or understanding to become a CI with the Task Force in exchange for a sentencing consideration in Third Circuit Court case no. 14-1140.
 - i. A copy of, and/or any information/details about, the Source Card Brandy Loggie signed on about September 4, 2014.
 - j. Any details of Ms. Loggie's agreement, deal or understanding to become a CI with the Task Force in exchange for a sentencing benefit to Thomas McCully in Third Circuit Court case no. 14-1140.
 - k. Any documents and/or information/details regarding the forfeiture actions then pending against Brandy Loggie and/or Thomas McCully.
 - l. Any information about the relationship between Thomas McCully and Brandy Loggie.
137. Respondent did not provide and did not instruct anyone else to provide to Amanda Joslin or her attorneys, Matt Abel and/or Michael Komorn, any of

the documents and/or information listed in paragraph 136 above at any time prior to his separation from the AG's office in November of 2016.

B. People v Darryl Berry, et al

138. Prior to the commencement of the April 7, 2016, preliminary examination in *People v Berry*, 53d District Court case nos. 16-0476 and 16-0473, respondent did not provide and did not instruct anyone else to provide to Darryl Berry and/or his attorney, Mr. Komorn:
- a. Any information and/or documents disclosing that Thomas McCully was a res gestae witness in the Berry investigation, as required by MCL 767.40a.
 - b. Any information and/or documents disclosing that Thomas McCully was the CI in the Berry investigation.
 - c. Any documents and/or information about Thomas McCully's organization or about the criminal case, Third Circuit Court no. 14-1140, which was pending while Thomas McCully was working as a CI with the Task Force on the Berry investigation.
 - d. A copy of, and/or any information about, Thomas McCully's Source Card.
 - e. Any details of Mr. McCully's agreement, deal, or understanding to become a CI with the Task Force in exchange for a sentencing consideration in Third Circuit Court case no. 14-1140.

- f. Any documents and/or information regarding the forfeiture action then pending against Thomas McCully.
139. In 53d District Court case nos. 16-0476 and 16-0473 respondent did not provide, and did not instruct anyone else to provide, to Darryl Berry or his attorney, Michael Komorn, any of the documents and/or information listed in paragraph 138 above at any time prior to his separation from the AG's office in November of 2016.

C. AAG Dianna Collins

140. After his judicial appointment in October of 2016, respondent's case files regarding the Joslin and Berry investigations and/or prosecutions were transferred to AAG Dianna Collins.
141. Prior to his separation from the AG's office, respondent and AAG Collins discussed the cases she was taking over, including *People v Berry, et al*, 53d District Court case nos. 16-0476 and 16-0473, *People v Joslin*, 35th District Court case no. 15-AG161, Third Circuit Court case no. 16-0143, and *People v Joslin, DeJonghe and Scholin*. 14-A District Court case no. 15F21261-FY, 22nd Circuit court case nos. 16-000277; 16-000278; and 16-000279.
142. During those conversations/discussions with AAG Collins, respondent did not disclose or make AAG Collins aware of:

- a. The existence and/or details of the McCully organization investigation and/or prosecution.
- b. The relationship between Brandy Loggie and Thomas McCully.
- c. A copy of, and/or any information about, the Source Card Brandy Loggie signed on about September 4, 2014.
- d. Any details of Ms. Loggie's agreement, deal, or understanding to become a CI with the Task Force in exchange for a sentencing consideration in Mr. McCully's case, Third Circuit Court case no. 14-1140.
- e. A copy of, and/or any information about, the Source Card Thomas McCully signed on about May 12, 2014.
- f. Any details of Thomas McCully's agreement, deal, and/or understanding to become a CI with the Task Force in exchange for a sentencing consideration in Third Circuit Court case no. 14-1140.
- g. Thomas McCully being a res gestae witness in *People v Darryl Berry, et al*, 53d District Court case nos. 16-0476 and 16-0473.
- h. Thomas McCully being the CI in the Berry investigation.
- i. The decision to protect Thomas McCully's identity as a CI by dismissing *People v Darryl Berry and Michael Jeffrey*, 36th District Court case no. 16-900099/16-55791.

- j. Brandy Loggie's false, inaccurate, incomplete, and/or misleading testimony at the November 3, 2015, preliminary examination before the Hon. Michael Gerou.
143. Respondent's failure to provide and/or disclose the information and/or documents outlined in paragraph 142 above to AAG Collins caused AAG Collins not to provide and/or disclose that information and/or documents to attorney Michael Komorn.

Respondent's conduct as described in this count constitutes:

- a. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1863, as amended, Article 6, Section 30, and MCR 9.104(1);
- b. Conduct in violation of the standards imposed on members of the bar as a condition of the privilege to the practice of law, contrary to MCR 9.103A;
- c. Conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2);
- d. Conduct that was contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3);
- e. Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, in violation of MCR 9.104(4);
- f. Conduct that violated MCL 750.505, a criminal law of the State of Michigan, which prohibits a lawyer from committing misconduct in office, contrary to MCR 9.104(5);
- g. Conduct in violation of MCL 767.40a, which requires a prosecuting attorney to disclose and provide the defense with names of res gestae witnesses;

- h. Conduct in violation of MRPC 3.8, which, in part, requires a prosecuting attorney to make “timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the degree of the offense;
- i. Conduct in violation of MRPC 8.4(a), which prohibits conduct that violates or attempts to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- j. Conduct in violation of MRPC 8.4(b), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer; and
- k. Conduct in violation of MRPC 8.4(c), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

COUNT IV

OBSTRUCTING/INTERFERING WITH CROSS-EXAMINATIONS

PEOPLE V BERRY

- 144. This count incorporates paragraphs 1 through and including 143.
- 145. During the April 7, 2016, preliminary examination in *People v Berry, et al*, 53d District Court case nos. 16-0473 and 16-0476, respondent focused and/or limited the questions he posed to Sgt. Robert Lowes regarding the investigatory events that took place in the Berry investigation between September 24, 2014, and September 28, 2015.

146. Prior to the April 7, 2016 preliminary examination in *People v Berry, et al*, 53d District Court case nos. 17-0473 and 16-0476, respondent did not disclose to Mr. Komorn:
- a. That Thomas McCully was a res gestae witness.
 - b. That Thomas McCully was the CI.
 - c. That Thomas McCully had worked with the Task Force on the Berry investigation in exchange for a sentencing benefit in Third Circuit Court case no. 14-1140.
 - d. That Thomas McCully had a pending forfeiture matter.
147. During the April 7, 2016 preliminary examination in *People v Berry, et al*, 53d District Court case nos. 17-0473 and 16-0476, respondent did not make any inquiries of any of his witnesses and did not disclose:
- a. The identity of the CI (Thomas McCully).
 - b. The fact that the CI (Thomas McCully) was a res gestae witness.
 - c. That the CI (Thomas McCully) had worked with the Task Force on the Berry investigation in exchange for a sentencing benefit in Third Circuit Court case no. 14-1140.
 - d. That the CI (Thomas McCully) had a pending forfeiture matter.

148. During the April 7, 2016 preliminary examination, respondent acknowledged he chose not to proceed with and/or to dismiss other criminal cases in order to protect the CI's (Thomas McCully's) identity.
149. During the April 7, 2016 preliminary examination in *People v Berry, et al*, 53d District Court case nos. 16-0473 and 16-0476, respondent knowingly and/or intentionally interfered with and obstructed Mr. Komorn in his attempt to make inquiries about the identity of the CI (Thomas McCully).
150. At the time respondent failed to disclose, and obstructed Mr. Komorn's efforts to learn, that Mr. McCully was a res gestae witness to the marijuana transaction on which the charges were based, and to learn that Mr. McCully was the CI, respondent was well aware that Mr. Komorn was entitled to this information under MCL 767.40a.

Respondent's conduct as described in this count constitutes:

- a. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1863, as amended, Article 6, Section 30, and MCR 9.104(1);
- b. Conduct in violation of the standards imposed on members of the bar as a condition of the privilege to the practice of law, contrary to MCR 9.103A;
- c. Conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2);
- d. Conduct that was contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3);

- e. Conduct that violated the standards or rules of professional responsibility adopted by the Supreme Court, in violation of MCR 9.104(4);
- f. Conduct that violated MCL 750.505, a criminal law of the State of Michigan prohibits a lawyer from committing misconduct in office, contrary to MCR 9.104(5);
- g. Conduct in violation of MCL 767.40a, which requires a prosecuting attorney to disclose and provide the defense with names of all res gestae witnesses;
- a. Conduct in violation of MRPC 3.3, which prohibits a lawyer from providing false statements of material fact or law to a tribunal and requires a lawyer to correct false statements of materials fact previously provided to a tribunal;
- h. Conduct in violation of MRPC 3.4 which, in part, prohibits a lawyer from unlawfully obstructing another party's access to evidence and from unlawfully altering, destroying, or concealing a document or other material having potential evidentiary value;
- i. Conduct in violation of MRPC 8.4(a), which prohibits conduct that violates or attempts to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- j. Conduct in violation of MRPC 8.4(b), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer; and
- k. Conduct in violation of MRPC 8.4(c), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

COUNT V

MISREPRESENTATIONS TO THE COMMISSION

151. This count incorporates paragraphs 1 through and including paragraph 150.

A. Request for Comments

152. In his May 10, 2021, answers to the Commission's request for comments, on page 3, respondent stated in part that at the time Brandy Loggie testified at the *People v Joslin* preliminary examination he was not aware "that [she] was working under some sort of agreement for the benefit of Mr. McCully."
153. Respondent's representation contained on page 3 of his May 10, 2021, answers to the Commission's request for comments was false and/or misleading, and he knew it was false and/or misleading when he made it.
154. In his May 10, 2021, answers to the Commission's request for comments, on page 8, respondent stated that "during the Joslin case" he did not recognize the "potential importance of Ms. Loggie's connection to Mr. McCully."
155. Respondent's representation contained on page 8 of his answers to the Commission's request for comments was false and/or misleading and he knew it was false and/or misleading when he made it.
156. In his May 10, 2021 answers to the Commission's request for comments, in response to question #86(d) respondent stated that Thomas McCully's sentence was "in no way contingent on Ms. Loggie's cooperation or testimony."

157. Respondent's representation contained in response to question #86(d) of the Commission's request for comments was false and/or misleading and he knew it was false and/or misleading when he made it.
158. In his May 10, 2021, answers to the Commission's request for comments, in response to question #87(d) respondent stated that he "litigated the Joslin matter believing that Attorney Komorn had all the discovery he had requested and was entitled to receive."
159. Respondent's representation contained in response to question #87(d) of the Commission's request for comments was false and/or misleading and he knew it was false and/or misleading when he made it.
160. In his May 10, 2021, answers to the Commission's request for comments, in response to question #105, respondent stated that he was "not aware of untruthful or inaccurate testimony at the November 3, 2015 preliminary examination concerning why Ms. Loggie became a CI for the [Task Force]."
161. Respondent's representation in response to question #105 of the Commission's request for comments was false and/or misleading and he knew it was false and/or misleading when he made it.
162. In his May 10, 2021 answers to the Commission's request for comments, in response to question #105, respondent stated that the reason he did not correct Ms. Joslin's false, incorrect, and/or inaccurate preliminary examination

testimony regarding the circumstances under which she became a CI for the Task Force was because he “was not aware of untruthful or inaccurate testimony at the PE concerning why Ms. Loggie became a CI for the [Task Force].”

163. Respondent’s representation in response to question #105 of the Commission’s request for comments was false and/or misleading and he knew it was false and/or misleading when he made it.

164. In his May 10, 2021 answers to the Commission’s request for comments, in response to question #107, respondent stated that he did not make any effort to speak to Ms. Loggie about her testimony at the *Joslin* preliminary examination because he “was unaware of any unaddressed issues regarding her PE testimony.”

165. Respondent’s representation in response to question #107 of the Commission’s request for comments was false and misleading and he knew it was false and/or misleading when he made it.

B. 28-Day Letter

166. In his May 2, 2022 answers to the Commission’s 28-Day Letter, in response to question #128, respondent denied that his desire and intent to protect Thomas McCully’s identity as a CI was the reason that during the November

3, 2015 preliminary examination in *People v Joslin* he did not ask Ms. Loggie about:

- a. Ms. Loggie's relationship to Mr. McCully;
- b. Her involvement in the McCully organization;
- c. Her involvement in the delivery of marijuana to Kentucky in February of 2013,
- d. Her pending forfeiture case;
- e. The circumstances under which she became a CI for the Task Force; and
- f. Her CI work serving as a benefit to Thomas McCully's sentence.

167. Respondent's representation in response to question #128 of the Commission's 28-Day Letter was false and/or misleading and he knew it was false and/or misleading when he made it.

168. In his May 2, 2022 answers to the Commission's 28-Day Letter, in response to question #130, respondent stated that during the November 3, 2015 preliminary examination he "did not object to any properly crafted questions" that asked or sought information about any agreement or promises related to Ms. Loggie.

169. Respondent's representation in response to question no. #130 of the Commission's 28-Day Letter was false and/or misleading and he knew it was false and/or misleading when he made it.

170. In his May 2, 2022 answers to the Commission’s 28-Day Letter, in response to question #132, respondent denied that his objections to questions Mr. Komorn posed to Brandy Loggie were designed to protect Thomas McCully’s identity as a CI in the Berry and other investigations.
171. Respondent’s representation in response to question #132 of the Commission’s 28-Day Letter was false and/or misleading and he knew it was false and/or misleading when he made it.
172. In his May 2, 2022 answers to the Commission’s 28-Day Letter, in response to questions #134, #140, #145, and #146, respondent stated that during the November 3, 2015, preliminary examination, he was “unaware of any testimony that was intentionally untruthful, inaccurate, incomplete, and/or designed to be misleading.”
173. Respondent’s representations in response to questions #134, #140, #145, and #146 were false and/or misleading and he knew they were false and/or misleading when he made them.
174. In his May 2, 2022 answers to the Commission’s 28-Day Letter, in response to paragraph #178, respondent stated that while he was “aware” during the November 3, 2015 preliminary examination “that [Ms. Loggie] was a CI,”
- a. He was unaware at the PE that Ms. Loggie was working under an agreement for the benefit of Mr. McCully, and

- b. He has “no doubt...that he did not understand or believe that Ms. Loggie’s [CI] activity was a factor or consideration in Mr. McCully’s sentencing.”
175. Respondent’s representations contained in paragraph #178 of his May 2, 2022 answers to the Commission’s 28-Day Letter were false and/or misleading and he knew they were false and/or misleading when he made them.
176. In his May 2, 2022 answers to the Commission’s 28-Day Letter, in response to question #184, respondent stated that he “litigated the Joslin matter believing that Attorney Komorn had all the discovery he had requested and was entitled to receive.”
177. Respondent’s representation contained in response to question #184 of the Commission’s 28-Day Letter was false and/or misleading and he knew it was false and/or misleading when he made it.

Respondent’s conduct as described in this count constitutes:

- a. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1863, as amended, Article 6, Section 30, and MCR 9.104(1)
- b. Conduct in violation of the standards imposed on members of the bar as a condition of the privilege to the practice of law, contrary to MCR 9.103A;
- c. Conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(2);

- d. Conduct that was contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3);
- e. Conduct that violated the standards or rules of professional responsibility adopted by the Supreme Court, in violation of MCR 9.104(4);
- f. Conduct that violated MCL 750.505, a criminal law of the State of Michigan, which prohibits a lawyer from engaging in misconduct in office, contrary to MCR 9.104(5);
- g. Conduct in violation of MRPC 3.3, which prohibits a lawyer from providing false statements of material fact or law to a tribunal and requires a lawyer to correct false statements of materials fact previously provided to a tribunal;
- h. Conduct in violation of MRPC 8.4(a), which prohibits conduct that violates or attempts to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- i. Conduct in violation of MRPC 8.4(b), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer;
- j. Conduct in violation of MRPC 8.4(c), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice;

- k. Conduct that is irresponsible and/or improper, in violation of Michigan Code of Judicial Conduct Canon 2(A); and
- l. Conduct that undermines public confidence in the integrity of the judiciary, in violation of Michigan Code of Judicial Conduct Canon 2(B).

MICHIGAN JUDICIAL TENURE COMMISSION
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Margaret N.S. Rynier (P34594)
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November 23, 2022

ADDENDUM TO FC 104

TIMELINE OF SIGNIFICANT EVENTS

DATE/TIME FRAME	EVENT
February 2013	Respondent is assigned to the investigation and prosecution of a marijuana organization (DTO) operated by Thomas McCully, Ryan Goble, and Nicholas Stevens.
May 2013	Respondent attends a Task Force PowerPoint presentation providing details about the McCully investigation.
July 9, 2013	McCully and Loggie are arrested in Michigan.
Dec 13, 2013	Respondent issues criminal charges against McCully and 9 others. Forfeiture cases are filed against McCully, Loggie, and others. Loggie is not charged criminally.
Jan 20, 2014	McCully, Goble, and Stevens preliminary examinations.
Jan/Feb 2014	Respondent commences plea negotiations with attorneys for Mr. McCully (Steven Fishman), Mr. Goble and Mr. Stevens.
March 6, 2014	Stevens accepts respondent's offer to plead guilty. Mr. Fishman requests additional time to resolve Mr. McCully's and Mr. Goble's matters.
March 13, 2014	Mr. Goble accepts respondent's offer to plead guilty. Mr. McCully pleads as charged with no sentence agreement. Sentencing for Mr. McCully is set for June 17, 2014. Mr. McCully agrees to cooperate/work with the task force.
May 2, 2014	Respondent debriefs Mr. McCully.
May 12, 2014	Mr. McCully meets with Sgt. Calleja and signs a CI agreement.
June/July 2014	<p>The Joslin/Pure Wellness investigation is initiated. Mr. McCully suggests using Ms. Loggie to make undercover marijuana purchases at Joslin's dispensary. The Task Force obtains respondent's permission to use Ms. Loggie's efforts for Mr. McCully's benefit. Respondent agrees.</p> <p>Respondent agrees to postpone Mr. McCully's sentencing from August 25 to November 19, 2014.</p>

DATE/TIME FRAME	EVENT
Aug 7, 2014	Mr. McCully provides information that leads the Task Force to initiate the Berry investigation. Mr. McCully introduces Sgt. Lowes to Darryl Berry, who sells loose marijuana to Sgt. Lowes.
Aug 25, 2014	Mr. McCully accompanies Sgt. Lowes to Mr. Berry's Livingston grow operation where Sgt. Lowes makes a deposit for the purchase of whole plants.
Sep 2014	Ms. Loggie signs a CI agreement on which Sgt. Calleja writes "assisting boyfriend, Thomas McCully...on his charges." On the same day, Ms. Loggie makes the first undercover buy of marijuana from Ms. Joslin's Pure Wellness Center.
Oct. 23, 2014	Sgt. Lowes returns to Berry's Livingston grow operation to pick up the whole marijuana plants and leaves a deposit for additional plants for a pickup in May of 2015.
Nov 2014	Respondent agrees to adjourn Mr. McCully's sentencing to May 4, 2015.
Jan 16, 2015	Sg. Calleja updates respondent on Mr. McCully's CI work and advises respondent that Ms. Loggie did some CI work "on McCully's behalf."
Jan 26, 2015	Sgt. Calleja updates respondent on Mr. McCully's CI work and advises respondent about an "ongoing MJ Dispensary case in Canton" in which "Loggie is working on McCully's behalf."
Feb 3, 2015	Respondent meets with Sgt. Calleja and AG's Chief of Trials, Richard Cunningham, about the Joslin investigation. Respondent instructs that additional controlled buys are to be made from the Pure Wellness Center.
March 16, 17, and 18, 2015	Ms. Loggie makes additional buys of marijuana from Joslin's Pure Wellness Center per respondent's direction.
March 19, 2015	Respondent authorizes search warrants for Pure Wellness Center and Ms. Joslin's home. Both are executed on that day.
July 9-14, 2015	Respondent authorizes criminal charges against Ms. Joslin and others in Wayne and Washtenaw Counties. Michael Komorn represents Ms. Joslin in both cases.

DATE/TIME FRAME	EVENT
July 23, 2015	Respondent reviews and approves Mr. Komorn's discovery material in Ms. Joslin's cases. The discovery does not include any information of the McCully investigation, Ms. Loggie's involvement in it, or her CI work being for Mr. McCully's benefit.
Aug 6 2015	Mr. Fishman emails respondent regarding Mr. McCully's progress, referring to Ms. Loggie as "cooperating" and being "a witness" in one of respondent's pending matters. Respondent acknowledges Ms. Loggie's work and suggests adjourning Mr. McCully's sentencing from September 10, 2015 to January of 2016.
Sep 4, 2015	Respondent agrees to adjourn Mr. McCully's sentencing September 10, 2015 to January 7, 2016. Ms. Joslin's Wayne County preliminary examination is adjourned from September 11, 2015, to October, then to November 3, 2015.
Sep 23, 2015	Sgt. Lowes emails respondent asking how to protect the identity of the CI (Mr. McCully) in the Berry investigation.
Sep 28, 2015	Respondent issues search warrants for Mr. Berry's grow operations in Livingston, Washtenaw and Genesee Counties. Executed on the same date.
Nov 3, 2015	Preliminary examination in <i>People v Joslin</i> starts in 35 th District Court. On cross examination, over respondent's repeated objections, Ms. Loggie claims she initiated contact with the police about Ms. Joslin because she had concerns for traffic safety and does not mention Mr. McCully or the benefit of her work to his sentencing. Det. Zinser informs respondent that Ms. Loggie's testimony is inaccurate. Respondent takes no action.
Jan 7, 2016	Mr. McCully is sentenced to one-year non-reporting probation.
Feb 1, 2016	Respondent authorizes Livingston County charges against Darryl Berry (and others) for the manufacture and sale of marijuana.

DATE/TIME FRAME	EVENT
	<p>Respondent authorizes Wayne County charges against Darryl Berry and another for delivery of marijuana to Sgt. Lowes during the August 6, 2014 meeting.</p> <p>Michael Komorn represents Darryl Berry in both matters.</p>
Feb 2016	Mr. Fishman asks respondent not to use Mr. McCully as a witness in the Wayne County case against Darryl Berry.
March 4, 2016	Respondent dismisses the Wayne County case against Darryll Berry and the other person, representing that doing so is in the “interests of justice.”
June 27, 2016	Respondent appears at an evidentiary hearing in <i>People v Joslin</i> before Judge Kenny, at which he presents Ms. Loggie as a credible witness; relies on her testimony in his arguments; and does not correct the misleading parts of the preliminary examination record with respect to Ms. Loggie’s reasons to contact the police about Ms. Joslin.
October 2016	As a result of his judicial appointment respondent transfers the Joslin case to AAG Dianna Collins but does not provide AAG Collins with any information about the McCully matter, Ms. Loggie’s relationship with Mr. McCully, or the benefit that Mr. McCully received from Ms. Loggie’s CI work in the Joslin case.
Aug 14, 2017	First day of Joslin trial. Case continued to August 17, 2017.
Aug 16, 2017	Sgt. Calleja informs AAG Collins that Ms. Loggie’s CI work was to serve as a benefit for Mr. McCully’s pending matter. AAG Collins notifies Mr. Komorn of this and of the fact that this was not disclosed at preliminary examination.
Aug 17 to Sep 25, 2017	<p>Judge Kenny is made aware of the situation.</p> <p>Ms. Loggie admits to Mr. Komorn, AAG Collins and Sgt. Calleja that she did not disclose that she was testifying to help Mr. McCully.</p> <p>Ms. Loggie asserts her 5th amendment right not to testify about her earlier testimony.</p> <p>Judge Kenny bars the prosecution from using Ms. Loggie’s preliminary examination testimony.</p>

DATE/TIME FRAME	EVENT
Oct 3, 2017	Judge Kenny finds Ms. Joslin guilty of possession with intent to deliver marijuana.
Aug 14, 2018	In the brief to the Michigan Court of Appeals (COA), the AG's office concedes that Ms. Loggie's preliminary examination testimony was "untruthful."
Dec 2018	The COA vacates Ms. Joslin's conviction on the grounds of insufficiency of evidence. The AG's office does not appeal to the Michigan Supreme Court in part because of concerns that the Court will look into Mr. Komorn's allegations that respondent permitted Ms. Loggie to commit perjury.
May 2021	Respondent answers the Commission's request for comments.
May 2022	Respondent answers the Commission's 28-Day Letter.