

STATE OF MICHIGAN
IN THE SUPREME COURT

COMPLAINT AGAINST
HONORABLE DEBRA NANCE
Forty-Sixth District Court, Southfield Michigan

Docket No. FC 106

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**THE HONORABLE DEBRA NANCE’S ANSWER AND AFFIRMATIVE
DEFENSES TO FIRST AMENDED COMPLAINT**

Respondent, The Honorable Debra Nance, by and through her attorneys, Miller, Canfield, Paddock, and Stone P.L.C., hereby submits her Answer and Affirmative Defenses to the First Amended Complaint of the Judicial Tenure Commission (“JTC”), as follows:

COUNTER-BACKGROUND

The purpose of a “BACKGROUND” statement is to assert the specific facts and circumstances leading to the complaint filed against the Respondent named in the complaint. In the instant Complaint, the JTC fails to disclose or describe the facts or circumstances that lead to its belief that Respondent committed “intentional misrepresentation” in support of the Complaint. While the following paragraphs describe, at length, the JTC’s allegations regarding interactions on Mackinac Island during an annual District Judge Judicial Conference on August 20, 2019, there has been no past or current grievance or charge filed by anyone on Mackinac Island regarding the

actions of Respondent Nance on that occasion. The facts and circumstances that lead the JTC to believe that there has been misconduct by Respondent Nance on July 28, 2020 as cited in Count One, and on September 10, 2021 as cited in Count Two, have not been set forth in the background of the instant Complaint. Instead, the JTC has chosen to replicate background allegations from a different Respondent's complaint.

To clarify the Answers provided by Respondent Nance below, and to provide background and context for the allegations and the dates set forth in the Complaint, given that there is no explanation of the relevant dates at the beginning of either Count, Respondent states as follows:

Regarding the events on Mackinac Island on August 20, 2019, Respondent was unexpectedly called as a *res gestae* witness on July 10, 2020, to give testimony under oath. On July 16, 2020 Respondent made a written request to review the video of the event in question, in order to refresh her recollection, before testifying. This request was made because the event she was asked to testify about, which she believed had been resolved amicably at the time, took place almost a year prior to her scheduled testimony. Said request was denied by the JTC, without explanation. On July 28, 2020, Respondent cooperated in giving testimony before the JTC Investigators, relying *only* on her perceptions, year-old recall, recollections, and memory.

Nonetheless, in August 2021 Respondent received a Request for Investigation alleging "intentional misrepresentation" as to her July 28, 2020 unrefreshed testimony. Because the Request for Investigation required Respondent to answer specific questions about never-before-seen video, Respondent renewed her request for the video in order to respond as best as possible. The video was retrieved from the home of the JTC Investigator in late August 2021. Although the video that was produced to Respondent had a 20-minute time gap, Respondent reviewed the video

and filed her Answer to the Request for Investigation on September 10, 2021 to the best of her ability.

In December 2022, Respondent received the instant formal Complaint alleging “intentional misrepresentation” as to her year-old cooperative testimony on July 28, 2020, and “intentional misrepresentation” as to her Answer to the Request to Investigate submitted on September 10, 2021.

In addition to, and without waiving any of the foregoing, Respondent Nance Answers as follows:

1. Respondent Nance has been a licensed lawyer and member of the State Bar of Michigan since 2000.

ANSWER: Respondent admits the allegations set forth in paragraph 1.

2. Respondent Nance is, and since 2012 has been, a judge of the 46th District Court, County of Oakland, State of Michigan.

ANSWER: Respondent admits that she is currently a judge of the 46th District Court, County of Oakland, State of Michigan. Respondent answers further and states that, while elected November 6, 2012 her term of office did not begin until January 1, 2013.

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

ANSWER: Respondent neither admits nor denies the allegation set forth in paragraph 3 because the allegation states a legal conclusion for which no response is required.

4. Respondent Nance and a colleague attended a judicial conference at Mackinac Island on August 20, 2019. Respondent Nance's colleague rented bicycles from the Mackinac Island Bike Shop on Main Street for herself and respondent Nance.

ANSWER: Respondent admits the allegations set forth in paragraph 4.

5. When respondent Nance and her colleague returned their bicycles to the shop, respondent Nance explained to the bicycle shop staff that she had a problem operating the bicycle. Respondent Nance and her colleague requested an accommodation on the cost.

ANSWER: Respondent admits that, at the conclusion of the ride, she and her colleague returned the bicycles to the shop from which they were rented. Respondent denies that "she" had a problem operating the bicycle. Respondent answers further and states that, rather than having a problem operating the bicycle due to a personal challenge or impediment, it was the bicycle itself that did not function correctly. Had the rented bicycle been in proper working condition throughout the ride, Respondent would not have experienced any challenges during the ride.

6. One of the employees summoned Ira Green, the proprietor of the bike shop. A discussion lasting about 20 minutes ensued primarily between Mr. Green and respondent Nance's colleague while respondent Nance looked on and sometimes participated.

ANSWER: Respondent admits that a conversation ensued between her colleague and Mr. Green. Respondent answers further and states that after Mr. Green refused to offer an accommodation on Respondent's malfunctioning rental, Respondent simply agreed to reimburse her colleagues for ½ of the bill on the rental as the two had previously discussed. When Respondent's colleague sought to pay Mr. Green the full amount of \$23.00 for both rentals, issues arose between Respondent's colleague and Mr. Green. The issues concerned the name on the credit card Respondent's colleague used to rent the bicycles and Mr. Green's inability to locate

Respondent's colleague in his computer system. While Respondent's colleague and Mr. Green discussed those issues, Respondent disengaged from the conversation as those matters did not concern her.

7. While Mr. Green had the bike rental paperwork in his hand and as respondent Nance watched, respondent Nance's colleague reached over the cash register and forcibly attempted to take the paper out of Mr. Green's hand.

ANSWER: Respondent denies the allegations set forth in paragraph 7. Respondent answers further and states that upon her review and perspective of the video, Respondent's colleague first shows Mr. Green her ID to prove her name, then her credit card to prove the card she used to rent the bicycles, and then took a receipt out of her purse and laid it on the counter so Mr. Green could review it. At 19:08:03 in the video, Mr. Green picked up the receipt, and folds and unfolds it in his hands. At 19:08:05, according to the video, Mr. Green appeared to lean in towards Respondent's colleague as if to return her receipt, as the receipt was close enough that she could reach for it. As Respondent's colleague takes the receipt between her fingers, Mr. Green then drew his hands back as Respondent's colleague follows his hand, still holding the receipt between her fingers. Mr. Green then uses two hands to grip the receipt, and while Respondent's colleague holds onto same, the receipt rips leaving each party holding half of the paperwork.

8. Respondent Nance's colleague then said to Mr. Green words to the following effect:

You assaulted me. Did you just assault me? You took my receipt and tore it up. I want the police. Now we need the police. I am going to call them. Because you just assaulted an elected official who is here . . . who came here by invitation for a conference. You assaulted me. I asked you for my receipt back. You snatched my receipt back from me. You snatched my receipt and threw it away and grabbed my hand and you hurt me. You touched my hand with force and violence. I am a female. I am a judge. I am here for a conference and you --- . . . --- I am an African America female. That was racist, and it was disrespectful and it was violent.

* * * *

No, you settle down. You touched me. I am afraid, I'm shaken. I'm in fear of my safety. --- With violence.”

ANSWER: Respondent neither admits nor denies the allegations set forth in paragraph 8 because Respondent lacks knowledge or information sufficient to form a belief as to the truth of allegations and therefore leaves the JTC to its proofs. Respondent answers further and states that the JTC reported to the Respondent that the words above were transcribed by a “lip reader” who is unknown to the Respondent, and the transcripts from whom were not produced to Respondent until spring of 2022, nearly three years after the event on Mackinac Island. Respondent cannot aver to the legitimacy or accuracy of the lip-reading transcript and leaves the JTC to its proof thereof. In addition, while Respondent cannot testify as to what exact words, she had heard her colleague say, as recalled to the best of her ability, Respondent did not hear, or did not recall, all of the words above alleged to have been said by her colleague. Answering further, Respondent was never asked or testified as to this collection of words as they appear. In addition, the video shows that there were several instances in which Respondent walked away from the exchange occurring between Mr. Green and her colleague, and as a result, did not hear and/or recall the entire conversation. At times while her colleague was speaking to Mr. Green, Respondent was having a separate discussion with Officer Hardy, and therefore did not hear what her colleague was saying.

9. After this exchange, police officer Kenneth Hardy arrived at the bicycle rental business. Officer Hardy spoke with respondent Nance and her colleague for more than ten minutes immediately upon arriving.

ANSWER: Respondent admits the allegations set forth in paragraph 9. Respondent further answers that, prior to providing a sworn statement to the JTC on July 28, 2020, she requested to view the video from August 20, 2019. Respondent wanted to refresh her memory in order to testify

as accurately as possible, nearly a year later. For reasons unknown, Respondent's oral and written requests to refresh her memory with the video, including the request made through her attorney on July 16, 2020, were denied. Nevertheless, the testimony given by Respondent on July 28, 2020 was true and accurate to the best of her recollection of a year-old event. Any misstatements are attributable to a lack of clear recall. Specifically, after having viewed the video in September 2021, Respondent acknowledged the length of her interaction with Officer Hardy as being close to ten minutes. The Respondent's overall impression, as stated by Respondent in her sworn testimony, was that Officer Hardy did not give Respondent and her colleague "the time of day." Reviewing the video has helped Respondent to recall that when Officer Hardy initially began walking towards Respondent and her colleague, Respondent walked forward to approach him. Rather than stopping to speak with Respondent, Officer Hardy continued to stroll towards the vendor before coming to a stop—meaning that Respondent had to follow Officer Hardy in order to speak with him. While talking to Officer Hardy within the first few minutes of his arrival, Respondent's perception was that his manner and body language reflected detachment and disinterest. Nonetheless, the video does confirm that Officer Hardy spent about ten minutes total in the presence of Respondent and her colleague, albeit only four of those minutes included conversation directly with Respondent. Officer Hardy spent the remaining time speaking only with Respondent's colleague. The video reflects that after approximately four minutes, Respondent disengaged from the conversation with Officer Hardy as her colleague continued. Respondent's testimony was an honest recollection of feeling dismissed by the officer from the outset. Officer Hardy further dismissed Respondent and her colleague from the bicycle shop to "the curb" and would not allow Respondent and her colleague to view the video in his presence. Respondent had very little one-on-one contact with Officer Hardy. Answering further, Respondent states her belief that these events, taken together,

contributed to her mistaken recall of a very brief interface with Officer Hardy, as is confirmed by the video. However, none of the testimony offered by Respondent on July 28, 2020 was intended to be untrue or misleading and is only attributable to a lack of recall. Had Respondent been permitted to view the video as requested on July 16, 2020, , she could have testified to the ten-minute interaction as measured by the video. Respondent submits that failing to hear a conversation, or a lack of recall concerning words allegedly spoken by another one year prior, does not constitute an intentional misrepresentation.

10. Mr. Green took Officer Hardy and another Mackinac Island police officer, Officer Smyth, to his office to view security video that captured Mr. Green's interaction with respondent Nance and her colleague.

ANSWER: Denied. Respondent answers further and states Mr. Green took Officer Hardy, Respondent, and her colleague, to the back of his store. Respondent does not recall that Officer Smyth was present. There Officer Hardy instructed Respondent and her colleague to leave because Mr. Green did not want them there—although Respondent never heard Mr. Green make any statements to suggest or otherwise indicate that Respondent and her colleague were not welcome to participate in reviewing the video, even after Respondent directly asked Mr. Green if she could watch the video.

11. Neither Mr. Green nor anyone associated with law enforcement told respondent Nance or her colleague where they should wait during this review. In particular, no one told them to stand by the curb or in the street, or words to that effect.

ANSWER: Denied. Respondent answers further and states that though Mr. Green did not direct either she or her colleague to do anything while the video was being reviewed, it was Officer Hardy who gave Respondent and her colleague instructions to both leave the store and stand by the curb.

Respondent answers further and states that, while she never heard Mr. Green say anything while the parties were at the back of the store, it was Officer Hardy that turned to Respondent and said something to the effect of “leave, he does not want you here”. When Officer Hardy told Respondent and her colleague to leave, Respondent asked where they should go, and Officer Hardy said “to the curb”.

12. While Mr. Green and the police officers reviewed the security video, respondent Nance and her colleague waited in a place of their own choosing. That place was mostly or entirely the sidewalk near Mr. Green’s business office, and not the curb or the street.

ANSWER: Respondent denies the allegations set forth in paragraph 12 as untrue. Respondent further answers that she and her colleague did not wait in a place of their own choosing. They were marched back towards the exit of the bicycle shop by Officer Hardy who subsequently threatened Respondent with a trespass charge, as documented in his police report. Respondent’s colleague walked out of the store first and stood in the doorway. Officer Hardy told her to move away. She stepped onto the sidewalk and asked if she could stand there, stating that it was a public sidewalk. Officer Hardy repeated once again, “I said stand at the curb”. Respondent recalled that to disobey an officer, in uniform, giving a direct command, could constitute resisting and obstructing a police office and could be grounds for arrest. After being threatened with trespass, Respondent did not want to further provoke Officer Hardy. Respondent and her colleague went to the curb. While at the curb, Respondent used her cell phone to call 911, feeling that the customer dispute was spiraling out of control. When public safety answered the call, Respondent requested a supervisor come to the bike shop over the customer dispute. Respondent testified to this event in July 2020. However, when Respondent eventually obtained a copy of the video in September 2021, a 20-

minute section of the video that would have contained a shot of Officer Hardy directing her and her colleague to stand at the curb was missing from the video, with no explanation.

13. While Mr. Green and Officers Hardy and Smyth reviewed the security video, Michigan State Police Trooper Bergsma arrived and spoke with respondent Nance and her colleague.

ANSWER: Admitted in part and denied in part. Respondent admits that Mr. Green and Officer Hardy remained in the store to review the video. Respondent denies the allegations related to Officer Smyth, as Respondent has no recollection of Officer Smyth being in the shop and does not recall when he arrived. Trooper Bergsma walked on the scene shortly after Respondent called 911. Only, when Trooper Bergsma arrived on the sidewalk, did Respondent feel comfortable to leave the curb after Officer Hardy's order.

COUNT ONE – FALSE STATEMENTS ON JULY 28, 2020

14. Paragraphs 1-13 are incorporated in this count.

ANSWER: Respondent hereby restates and reincorporates by reference her above answers to paragraphs 1 through 13 of the First Amended Complaint as if fully set forth herein.

15. Respondent Nance testified on July 28, 2020, that during the August 20, 2019 interaction with Mr. Green her colleague did not say any words to the effect that she was in fear for her life after allegedly being assaulted.

ANSWER: Respondent denies the allegations set forth in paragraph 15 as untrue. Respondent further answers and states that in her July 28, 2020 testimony she did not testify as to whether her colleague claimed to be "in fear for her life." Respondent was not asked whether she heard her colleague say she was "in fear for her life". Respondent asserts that during her July 28, 2020 testimony, she was asked to read from Officer Hardy Police report and respond to its content. The

transcript of her testimony at page 82:2-5 reads “Number 4, I am scared for my life. I don’t remember. She didn’t say anything like that. We weren’t scared for our lives. [We were] [s]cared of being hauled off and arrested”. While reading from the police report Respondent used the words “I don’t remember” when asked if her colleague said anything similar to “I am scared for my life.” However, the complaint has omitted Respondent’s use of the words “I don’t remember”.

16. Respondent Nance’s statement was false and she knew it was false, in that while respondent Nance looked on, on August 20, 2019 her colleague had told Mr. Green words to the effect that she feared for her safety or for her life in the course of alleging that he assaulted her.

ANSWER: Respondent denies the allegations set forth in paragraph 16 as untrue. Respondent denies making any purposeful or intentionally false statements on July 28, 2020 and further answers that her testimony on July 28, 2020 was to the best of her recollection at the time and without the benefit of having reviewed the video, despite multiple requests. Respondent did not testify that her colleague was “in fear for her life”, nor was she asked whether her colleague was “in fear for her life.” This is a complete mischaracterization of Respondent’s testimony.

17. Respondent Nance testified on July 28, 2020, that during the August 20, 2019 interaction with Mr. Green her colleague did not make any sort of reference to the fact that Mr. Green had attacked an African American female or an African American judge.

ANSWER: Admitted in part and denied in part. Respondent admits giving testimony on July 28, 2020 in which she denied that her colleague used the words “African-American female judge” and “African-American judge.” Respondent further answers that such testimony was to the best of her recollection at the time, without the benefit of having reviewed the video, despite multiple requests, and without having been privy to every statement made by her colleague on August 20,

2019. Respondent further denies making any purposeful or intentionally false statements on July 28, 2020.

In the July 28, 2020 transcript at 17:7-9. Respondent was asked whether her colleague used the string of words, “African American Judge”. To which Respondent replied “no”. On page 19:20 Respondent was again asked about the words “African American Judge”. Again, she denied that those words were used. On page 79:9 Respondent was asked to read from Officer Hardy’s report in reference to the exact words “sitting African American Female Judge” and repeated the words “African American Judge” in her response on 79:14. However, the transcript supports that the Respondent on July 28, 2020 was ever asked about the words “African American female” as alleged. After viewing the video, the Respondent does recall the use of the phrase “African American.” Had the Respondent been given an opportunity to refresh her recollection by review of the video, she may have recalled that those two words were used as early as July of 2020, but said request was denied.

18. Respondent Nance’s statement was false and she knew it was false, in that while respondent Nance looked on, on August 20, 2019 her colleague did inform Mr. Green words to the effect that he had assaulted an African American woman or judge.

ANSWER: Respondent denies the allegations set forth in paragraph 18 as untrue. Respondent denies making any purposeful or intentionally false statements on July 28, 2020 and further answers that her testimony on July 28, 2020 was to the best of her recollection at the time, without the benefit of having reviewed the video, despite multiple requests, and without having been privy to every statement made by her colleague on August 20, 2019.

19. Respondent Nance testified at least nine separate times on July 28, 2020 that she and her colleague did not have the opportunity to talk with Officer Hardy after their interaction

with Mr. Green on August 20, 2019 because Officer Hardy did not give them the opportunity to speak with him. Collectively, these statements communicated that Officer Hardy completely disregarded respondent Nance and her colleague upon his arrival at the bike shop despite their efforts to speak with him, and that this disregard was an aspect of respondent Nance and her colleague being treated poorly during their interactions with Mr. Green and law enforcement because they were African American.

ANSWER: Admitted in part and denied in part. Respondent admits that at 23:9 – 17; 26:10-15; 29:11-13; 36:21-23; 61:10-11; 66:1-5 and, 87:18-20 she testified that the police officer walked right past her, or in various places or used the idiom “he didn’t give us the time of day”. Respondent Nance asked to see the video before testifying but was denied. Therefore, in cooperating as a voluntary witness, she had only her perceptions of Officer Hardy and her unrefreshed recall.

Viewing the video has helped Respondent to recall that when she saw Officer Hardy approaching, she walked towards him and he continued to stroll towards the vendor before coming to a stop. This caused Respondent to follow Officer Hardy in order to speak with him. Respondent’s perception was that his overall manner and body language reflected detachment and disinterest. She did not recall feeling *seen or heard*. Nonetheless, the video does confirm that the Officer Hardy spent approximately ten minutes at the scene before entering the shop.

In the video, Respondent is seen looking into the street while her colleague continues to talk with Officer Hardy. Respondent had very little one-on-one contact with Officer Hardy, none of which was positive. Respondent now believes that these events, taken together, contributed to her mistaken recall of the amount of time spent with Officer Hardy, as is now confirmed by the

video. Further, Respondent did not testify that she and her colleague were “being treated poorly” because they “were African Americans”.

20. Respondent Nance’s statements that she and her colleague did not have the opportunity to speak with Officer Hardy upon his arrival were false and respondent Nance knew they were false because Officer Hardy spoke with respondents for more than 10 minutes while respondent Nance was present when he first arrived at the bike shop, immediately after respondent Nance and her colleague interacted with Mr. Green on August 20, 2019.

ANSWER: Respondent admits that Officer Hardy spoke with her and/or her colleague for a total of approximately 10 minutes on August 20, 2019. Respondent denies the remaining allegations as set forth in paragraph 20 as untrue. Respondent denies making any purposeful or intentionally false statements on July 28, 2020 and further answers that her testimony on July 28, 2020 was to the best of her recollection at the time and without the benefit of having reviewed the video, despite multiple requests.

21. Respondent Nance testified on July 28, 2020 that on August 20, 2019, when Officer Hardy went with Mr. Green to review the security video, Officer Hardy told her and her colleague to wait by the curb, which respondent Nance characterized as demeaning and comparable to the inappropriate way African Americans have been mistreated in the United States.

ANSWER: Respondent admits that she gave testimony on July 28, 2020 indicating that Officer Hardy instructed she and her colleague to stand by the curb after directing them to leave the bicycle store. Respondent further admits that said instruction is demeaning because there was no demonstration of potential criminal activity. Respondent further states that Officer Hardy had already threatened her with a trespass charge—making Respondent apprehensive that his subsequent instruction could lead to further detention and/or arrest.

Respondent neither admits nor denies the characterization of her testimony as demonstrative of the “the inappropriate way African Americans have been mistreated in the United States” and leaves the JTC to its proofs. Respondent asserts that being told to “stand at the curb” was a form of detention that put the Respondent of fear of a possible arrest.

22. This testimony was false and respondent Nance knew it was false because no one told respondent Nance or her colleague to wait by the curb.

ANSWER: Respondent denies the allegations set forth in paragraph 22 as untrue. Respondent further answers that she and her colleague were instructed to stand at the curb by Officer Hardy who directed them out of the bicycle shop.

23. Respondent Nance’s knowingly false and misleading statements as described above in paragraphs 15-22 violated the following court rule, canons, and Rules of Professional Conduct:

a. Canon 2(A), which requires a judge to avoid all impropriety and appearance of impropriety;

b. Canon 2(B), which prohibits conduct that tends to erode confidence in the integrity of the judiciary;

c. Michigan Rule of Professional Conduct 8.4(b), which forbids a lawyer to engage in conduct involving dishonesty, deceit, or misrepresentation, where such conduct reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer.

d. Michigan Rule of Professional Conduct 8.4(c), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

e. Michigan Court Rule 9.104(6), which prohibits knowing misrepresentation of facts or circumstances surrounding a request for investigation or complaint.

ANSWER: Respondent denies the allegations set forth in paragraph 23(a)-(e) as untrue.

COUNT TWO – FALSE STATEMENTS ON SEPTEMBER 10, 2021

24. Paragraphs 1-13 and 14-22 are incorporated in this count.

ANSWER: Respondent hereby restates and reincorporates by reference her above answers to paragraphs 1 through 22 of the First Amended Complaint as if fully set forth herein.

25. The Commission requested respondent Nance's comments on August 11, 2021. Respondent Nance provided an answer to the request on September 10, 2021.

ANSWER: Respondent admits the allegations set forth in paragraph 25.

26. Answers # 10, 13, 20, 32, and 34 of respondent Nance's answer to the Commission's request for comments claimed that on August 20, 2019 Officer Hardy told respondent Nance and her colleague to wait by the curb while he reviewed the video recording of the interaction between Mr. Green, respondent Nance's colleague, and respondent Nance. Collectively, respondent Nance's answers characterized this instruction as demeaning and comparable to the inappropriate way African Americans have been mistreated in the United States.

ANSWER: Respondent admits that her answers indicate that Officer Hardy instructed she and her colleague to stand by the curb after directing them to leave the bicycle store. Respondent further admits that said instruction is demeaning because there was no demonstration of potential criminal activity. Respondent neither admits nor denies the characterization of her testimony discussing the instruction as demonstrative of the "the inappropriate way African Americans have been mistreated in the United States" and leaves the JTC to its proofs. Respondent further states that Officer Hardy had already threatened her with a trespass charge—making Respondent apprehensive that his subsequent instruction could lead to her own detention and/or arrest. It was Officer Hardy's threat of charges, and the feeling that additional police presence was required, that prompted Respondent to call 911 and request a supervisor as demonstrated by her phone records.

27. Respondent Nance's answers described in paragraph 26 were false and respondent Nance knew they were false, because neither Officer Hardy nor any other person in authority told

respondents to wait by the curb on August 20, 2019 while Officer Hardy reviewed the video of the interaction between Mr. Green, respondent Nance's colleague, and respondent Nance.

ANSWER: Respondent denies the allegations set forth in paragraph 27 as untrue. Respondent answers further and states that there are approximately 20 minutes missing from the video that will likely show that she was instructed to stand by the curb with her colleague while the video tape was being reviewed.

28. Respondent Nance's knowingly false and misleading statements as described above in paragraphs 26-27 violated the following court rule, canons, and Rules of Professional Conduct:

a. Canon 2(A), which requires a judge to avoid all impropriety and appearance of impropriety;

b. Canon 2(B), which prohibits conduct that tends to erode confidence in the integrity of the judiciary;

c. Michigan Rule of Professional Conduct 8.4(b), which forbids a lawyer to engage in conduct involving dishonesty, deceit, or misrepresentation, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

d. Michigan Rule of Professional Conduct 8.4(c), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

e. Michigan Court Rule 9.104(6), which prohibits knowing misrepresentation of facts or circumstances surrounding a request for investigation or complaint.

ANSWER: Respondent denies the allegations set forth in paragraph 28(a)-(e) as untrue.

AFFIRMATIVE DEFENSES

In further answer and by way of affirmative defense, Respondent Nance states that she will rely upon the following, if applicable, and if supported by facts to be determined through appropriate discovery:

A. The JTC is without jurisdiction or authority to enforce violations of MCL 9.100 *et seq.*, disciplinary rules applicable to the Attorney Grievance Commission.

- B. The JTC has failed to allege conduct violative of any applicable Rule of Professional Conduct.
- C. The JTC has failed to allege conduct violative of Canon 2(A).
- D. The JTC has failed to allege conduct violative of Canon 2(B).
- E. At all times relevant to this investigation, Respondent acted in good faith with regard to the proceedings and had reasonable grounds for believing her actions were not in violation of any canon or statute.
- F. Respondent did not give any statements with a deliberate intent to mislead.
- G. Failing to recall specific facts while offering statements and/or testimony made to the best of one's recollection, cannot constitute knowingly false and intentionally misleading statements.
- H. The JTC has failed to produce or otherwise allow inspection of exculpatory evidence.
- I. The Complaint is barred by laches and the JTC's unreasonable and inexcusable delay in proceeding with a Formal Complaint.
- J. The alleged false statements of the Respondent are immaterial and/or lack materiality.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C

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