

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

COMPLAINT AGAINST

Hon. Kirsten Nielsen Hartig
52-4 District Court
Troy, MI
_____ /

FC No. 109

COMPLAINT

The Judicial Tenure Commission (“Commission”) has authorized this complaint against Honorable Kirsten Hartig (“respondent”), judge of the 52nd District Court, Division 4, City of Troy, County of Oakland, 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, and MCR 9.200 *et seq.*

1. Respondent has been a licensed lawyer and a member of the State Bar of Michigan since 1991.
2. Respondent is, and since January 2011 has been, a judge of the 52nd District Court, Division 4, County of Oakland, State of Michigan.
3. As a judge, respondent has been, and still is, subject to the duties and responsibilities imposed on her by the Michigan Supreme Court and is subject to the standards for discipline set forth in MCR 9.104 and 9.202.

**COUNT ONE – REFUSAL TO PROVIDE REPORT OF PSYCHOLOGICAL
EVALUATION TO THE COMMISSION**

4. Prior to April 2024 the Commission investigated allegations that respondent had committed certain misconduct in her capacity as a judge. The Commission investigation showed that respondent’s mental health was in issue.
5. As part of its investigation, and pursuant to MCR 9.220(D), on April 15, 2024, the Commission ordered respondent to undergo a psychological evaluation at a facility called All Points North at Commission expense.
6. Respondent was evaluated at All Points North in late May 2024.

7. All Points North completed its evaluation on June 6, 2024. All Points North provided the evaluation only to respondent.
8. The Commission asked respondent's counsel to provide a copy of the report on June 12, 2024.
9. Rather than provide the report, respondent's counsel asked to whom the report would be disseminated. The Commission informed respondent's counsel that the report would be kept confidential and dissemination would be restricted in accordance with MCR 9.261.
10. On June 18, 2024, respondent objected to providing the report.
11. On June 25, 2024, the Commission renewed its request that respondent provide the report.
12. In lieu of providing the report, respondent asked for more time to provide it. On June 26, 2024, the Commission gave respondent until July 9, 2024 to provide the report. At respondent's request, the Commission extended the deadline to July 12, 2024.
13. In lieu of providing the report by July 12, 2024, respondent asked for an additional extension of time to provide it. On July 16, 2024, the Commission informed respondent that she had until July 25 to provide the report.
14. In lieu of providing the report, on July 26, 2024, respondent objected to providing it.
15. On October 28, 2024, the Commission sent respondent a 28-day letter pursuant to MCR 9.222(A), informing her of its intent to file a public complaint for her failure to provide the All Points North evaluation in response to the Commission's demands.
16. Respondent did not provide the report until December 5, 2024, six months after it had been completed and four and a half months after the extended deadline the Commission set for production.
17. The All Points North report showed that as of the time All Points North evaluated respondent in May 2024, it had determined that respondent [REDACTED]

[REDACTED]¹

Respondent was aware of what the report said, and despite this finding, respondent withheld the report from the Commission from at least July 25 to December 5, 2024.

18. Respondent's persistent refusal to provide the report of the psychological evaluation that respondent had undergone pursuant to MCR 9.220(D), which report was part and parcel of the exam itself, violated the requirement of MCR 9.220(D) that respondent comply with the Commission's demand that she be examined.
19. The Commission's demand that respondent provide a copy of the evaluation she had undergone at the Commission's direction was a reasonable request within the meaning of MCR 9.202(B). Respondent's withholding of the report from the Commission for six months from its completion and for four and a half months from the extended deadline the Commission gave for producing it was a failure to comply with a reasonable demand by the Commission, in violation of MCR 9.202(B)(1)(f).

COUNT TWO-FALSE STATEMENTS TO THE COMMISSION

20. Paragraphs one through nineteen are incorporated in this count.
21. On December 5, 2024, respondent replied to the Commission's October 24, 2024 28-day letter.
22. In that reply, respondent stated to the Commission that "*The Request for Investigation was filed by Ms. Dana O'Neal*, who was subsequently fired for incompetence by the Honorable Joseph Fabrizio." The italicized portion of respondent's answer is false.
23. Respondent knew the statement in paragraph 22 was false because on March 28, 2024, the Commission sent respondent a request for comments that included a copy of the request for investigation that identified the two persons who

¹ The blacked out portion of this paragraph is sealed at the request of respondent pending a determination by presiding authorities as to whether it should be kept sealed during the pendency of the proceedings.

initiated the investigation as the respondent's then chief judge, the Honorable Joseph Fabrizio, and then regional administrator for the State Court Administrator's Office, Jennifer Phillips.

24. Respondent further stated in her December 5, 2024 response to the Commission that "Judge Hartig is a well-respected 3-term member of the judiciary, who is similarly well respected by her past and present staff, *none of whom were interviewed as part of this investigation.*" The italicized portion of respondent's answer is false.
25. Respondent knew the statement in paragraph 24 was false. When respondent answered the Commission's request for comments on July 23, 2024, she appended as Exhibit A an affidavit signed by Ann Costigan, respondent's assistant and court recorder, in which Ms. Costigan described the circumstances of her interview with Commission staff.
26. Respondent's statements that are quoted in paragraphs 22 and 24 were misconduct in violation of:
 - a. MCR 9.202(B), which provides, in pertinent part, "(1) [m]isconduct in office includes, but is not limited to "failure to cooperate with a reasonable request made by the commission in its investigation of respondent."
 - b. MCR 9.104, which provides, in pertinent parts, "[t]he following acts or omissions by an attorney individually, or in concert with another person, are misconduct and grounds for discipline, whether or not occurring in the course of an attorney-client relationship: . . . (2) conduct that exposes the legal profession or the courts to obloquy, contempt, censure or reproach" and (3) conduct that is contrary to justice, ethics, honesty, or good morals;"
 - c. Michigan Code of Judicial Conduct (MCJC) Canon 2(A), which provides, in pertinent part, "[a] judge just avoid all impropriety and appearance of impropriety;"

- d. MCJC Canon 2(B), which provides, in pertinent part, “[a] judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary;” and
- e. Michigan Rules of Professional Conduct (MRPC) Rule 8.4(b), which provides, in pertinent part, “It is professional misconduct for a lawyer to:
(b) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation...where such conduct reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer.”

**COUNT THREE – RESPONDENT’S MISTREATMENT/ABUSE OF
COURT EMPLOYEES AND OTHERS AND OBSTRUCTING THE
ADMINISTRATION OF HER COURT**

- 27. Paragraphs one through twenty-six are incorporated in this count.
- 28. Within a month of taking the bench in 2011 respondent was made aware that superintending administrative control of the court was vested in the chief judge as administered by the court administrator and that she had no authority over the court’s personnel. She has repeatedly been reminded of the limits of her authority since that time.
- 29. Notwithstanding her awareness of the limits of her authority, throughout her judicial tenure respondent has repeatedly attempted to assert control over departments and employees over whom she has no authority and has thereby repeatedly obstructed the administration of her court despite efforts by chief judges and court administrators to prevent her from doing so.
- 30. Throughout her judicial tenure, respondent has repeatedly treated court employees, court administrators, chief judges and others discourteously.
- 31. Incidents of the kind described in paragraphs 29 and 30 include but are not limited to the following:
 - a. In early 2018 respondent insisted that court administrator Jill Palulian hire respondent’s friend/neighbor, Ann Costigan, for a part-time position in the probation department.

- b. In May 2018, shortly after court administrator Dana O'Neal was hired, respondent sent her a "Communication of Absence Policy" which announced that O'Neal would be required to maintain a calendar with detailed information about her schedule, and that she must be available for communication by email or cell phone during her approved absences.
- c. In September 2018 respondent, while on the bench, berated probation supervisor Patti Bates and court administrator Dana O'Neal, and falsely and disrespectfully accused Bates and O'Neal of financial mismanagement of drug court funds and of callous disregard for a drug treatment participant.
- d. In October 2019 respondent criticized Dana O'Neal for not responding to three emails sent by respondent on the afternoon O'Neal attended a funeral and for "taking too much time off." Respondent told O'Neal that from that point on she would be required to get leave approval from both respondent and the chief judge, and that her leave requests must list the balance of her leave banks and attest there were no "emergent issues" unresolved at the court. Respondent also told O'Neal that she must be in contact with respondent every day, including her leave days, unless she was "unconscious."
- e. In about February 2020 respondent called O'Neal to her chambers and told her she was only allowed to take her lunch break between noon and 1:00 p.m., that she must tell both judges where she was going if she left the building, and that she must tell her staff where she was going if she left her personal office. Respondent also advised O'Neal that she could never be unavailable to her and that respondent could interrupt her at any time or place.
- f. On about March 16, 2020, at the beginning of the Covid pandemic, O'Neal informed respondent that her drug court docket would be canceled because of the pandemic. Respondent instructed O'Neal not to

cancel the session and warned her to “not forget who the judge is and who is not.”

- g. On about March 16, 2020, when reminded of the chief judge’s order to adjourn nonessential cases due to the Covid pandemic, respondent sent a disrespectful email to Chief Judge Fabrizio.
- h. On January 7, 2021, respondent commented to John Taylor, a public defender representing several defendants, words to the effect that his argument was not his best argument and that his statements made her want to put a hatchet in his neck.
- i. During a snowstorm in February 2021 respondent demanded that O’Neal provide a substitute for respondent’s law clerk, whose vehicle was stuck in the snow, though respondent was aware that O’Neal was under no obligation to assign court employees to do the job of respondent’s staff.
- j. In spring 2021 respondent disrupted a bench meeting by repeatedly and excessively demanding that the court administrator come up with a plan to provide substitute staff when her staff took a vacation, even though it was not the court administrator’s responsibility to arrange for substitutes. Respondent’s disruptive behavior interfered with completion of the agenda items for the bench meeting.
- k. In May 2021 respondent, who knew she did not have authority to establish the duties of magistrates, unilaterally expanded newly appointed magistrate Karen Liddle’s duties by directing that she handle respondent’s civil motions before respondent had to address them.
- l. During a drug court team meeting in July 2021 respondent directed pregnant probation officer Sidorella Arapi to stand up and display her belly to all Zoom participants in the meeting, without Ms. Arapi’s consent.
- m. In late August 2023 probation officers Nichole Crandall and Ashley Powers went to respondent’s chambers to determine whether respondent wanted to issue a probation violation in a particular case. Knowing that

she had no authority over probation officers, respondent questioned why Crandall had seen Powers's probationer that day and repeatedly asserted that Powers should be seeing her own people. Respondent also criticized the probation supervisor's decision to have Crandall see Powers's probationer and criticized Powers for following the direction of her supervisor.

- n. When respondent was advised by the court administrator that Powers and Crandall felt bullied by her behavior described in the preceding paragraph, respondent told the court administrator that she no longer wished to communicate with Powers and Crandall and that Powers would no longer be permitted to come to her chambers.
- 32. The conduct described in paragraph 31(a) violated Canon 2(C), which provides, in pertinent part, that "[a] judge should not use the prestige of office to advance personal business interests or those of others."
 - 33. The conduct described in paragraphs 31(a)-(b), (d)-(f), (i)-(k), and (m) violated Canon 3(B)(1), which provides, in pertinent part, that "[a] judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the administrative responsibilities of other judges and court officials."
 - 34. The conduct described in paragraphs 31(c), (g)-(h), and (l)-(n) violated:
 - a. Canon 3(A)(3), which provides, in pertinent part, that "[a] judge should be patient, dignified, and courteous to [those] with whom the judge deals in an official capacity"; and
 - b. Canon 3(A)(14), which provides, in pertinent part, that "a judge should treat every person fairly, with courtesy and respect."
 - 35. The conduct described in paragraph 31(h) violated Canon 3(A)(12), which provides, in pertinent part, that "[i]n addressing counsel . . . the judge should avoid a controversial manner or tone.
 - 36. During the period 2018 through 2023 respondent exceeded her authority frequently enough, as illustrated in part by the incidents described in Paragraph

31, that she obstructed the administrative duties of other court personnel and her chief judges during this time, in violation of Canon 3(B)(1).

37. During the period 2018 through 2023 respondent bullied court personnel and treated court personnel disrespectfully so frequently, as illustrated in part by the incidents described in Paragraph 31, that she created a climate of fear among court personnel that obstructed the administrative functions of the court, all in violation of Canons 3(A)(3) and 3(B)(1).

COUNT FOUR - IMPROPER DISMISSAL OF CRIMINAL CASES

38. Paragraphs one through thirty-seven are incorporated in this count.
39. The Oakland County Prosecutor's Office District Courts Division assigns assistant prosecutors to appear in the various district courts throughout Oakland County to prosecute "state law" dockets.
40. "State law" day is a day designated in each district court for handling criminal law matters based on state law.
41. When a district court schedules state law matters on a day other than its regularly scheduled state law day, it affects the ability of that court's prosecutor to appear in *another* district court for *its* state law docket and/or takes the prosecutor away from the out-of-court work needed to prepare for regularly scheduled state law dockets.
42. Respondent did not confine her state law docket to state law days.
43. During the pandemic it became very difficult for the Oakland County Prosecutor's Office District Courts Division to ensure that a prosecutor was available for each court as needed.
44. In November 2021 Barbara Morrison was Chief of the Oakland County Prosecutor's Office District Courts Division.
45. Because respondent did not confine state law matters to her designated state law day, Morrison asked respondent, her bench mate (Hon. Maureen McGinnis), and the court administrator for respondent's court (Dana O'Neal), that respondent's court set "state law" cases only on regularly scheduled "state law"

- days. Morrison's request explained the scheduling difficulties the prosecutor's office was having as a result of the pandemic and the impact on other courts of hearing state law cases on other than the designated day.
46. Respondent did not agree to Morrison's request and continued to set state law cases on non-state law days.
 47. Respondent's answers to the Commission's request for comments mischaracterized Morrison's effort to coordinate scheduling as trying to impose "mandates" on her, with no legitimate basis for this characterization.
 48. On January 7, 2022, Morrison advised respondent, her bench mate, and interim court administrator Alex Black that the prosecutor's office was requesting adjournments of all in-person district court matters through January and asked that prosecutors be permitted to appear for their hearings via Zoom. In support of the request, the prosecutor's office cited a high and rising Covid positivity rate in Oakland County and the desire to avoid putting members of the public, court staff, or its own staff at risk.
 49. On January 11, 2022, assistant prosecuting attorney Jeff Hall filed a motion to adjourn *People v Jessica Price*, 21-1413-FY, which was set for preliminary examination before respondent on the same day. The basis of Hall's adjournment request was the surge of the Omicron variant of Covid, the very high Covid positivity rate for Oakland County, and the fact that one of his witnesses, a police officer, had tested positive for Covid. Respondent denied the adjournment request.
 50. Defense counsel made an oral motion to dismiss *Price* because the prosecutor did not offer the testimony of witnesses. Defense counsel's motion acknowledged that the dismissal would be without prejudice.
 51. Respondent asked Hall whether he intended to recharge the case. When Hall informed respondent that he would recharge the case, respondent accused him of acting solely for the purpose of getting around her denial of the adjournment. Respondent had no legitimate basis for making this accusation.

52. Respondent then *sua sponte* raised the possibility of dismissing the case *with* prejudice, which would prevent the prosecution from refileing the case.
53. Respondent dismissed the case without specifying whether the dismissal was with or without prejudice.
54. Respondent set a hearing for March 15, 2022, and invited the parties to brief whether the dismissal should be with or without prejudice.
55. On March 15, 2022, respondent entered a second order dismissing the case, this time specifying that dismissal was with prejudice.
56. Respondent lacked the jurisdiction and authority to dismiss *Price* again, this time with prejudice, after having already entered an order dismissing it.
57. Respondent also lacked the authority to dismiss *Price* with prejudice even if she had not already dismissed it, because MCR 6.110(F) provides that in the absence of a probable cause finding the court must discharge the defendant without prejudice.
58. It is fundamental to respondent's role as a district court judge to know the scope of her authority to dismiss a case at the preliminary examination stage.
59. It is also fundamental to respondent's role as a judge to avoid undermining the public's faith in her impartiality.
60. Respondent's ruling to dismiss *Price* with prejudice was not made in good faith and/or with due diligence and was made under circumstances that demonstrated that she was dismissing with prejudice to punish the prosecution rather than on the merits of the case.
61. On January 11, 2022, three defendants incarcerated on felony charges in the following cases did not appear for their preliminary examinations because they were under Covid quarantine at the Oakland County Jail: *People v. Darrice Armstrong*, 21-2952-FY; *People v. Jerrick Lewis*, 21-2954-FY; and *People v. Damian Dukes*, 21-3036-FY ("*Armstrong*" cases).
62. Respondent set the next preliminary examination date for January 31, 2022, over the objection of prosecutor Hall. Hall's objection was on the ground that the prosecutor's office was seeking adjournments of all in-person examinations

through the month of January due to the surge in the highly contagious Omicron variant of Covid. Hall also advised that he was already scheduled to be in another court on January 31, and that it was unlikely that there would be another prosecutor available to take his place in respondent's court. He explained that the increase in Covid cases was causing staff shortages in the prosecutor's office, particularly in the district courts division.

63. On January 27, 2022, Hall reminded the court via email that he could not be present for the January 31 hearing. He also filed an emergency motion to adjourn the preliminary examination.
64. On January 28, the last business day before the scheduled exam date, respondent denied the request for adjournment, dismissing the prosecutor's concerns regarding Covid. Respondent did not address Hall's assertion that he was scheduled to be in a different court on the scheduled preliminary exam date.
65. Counsel for the defendants moved to dismiss the *Armstrong* cases with prejudice even though no testimony had been taken.
66. Respondent dismissed the cases with prejudice. Respondent's decision chastised the Oakland County Prosecutor's Office for their opposition to holding examinations in-person during the Covid pandemic. Respondent concluded, without foundation, that Hall's nonappearance at the *Armstrong* cases preliminary examinations were a deliberate move by the prosecutor to control respondent's docket.
67. Respondent lacked the authority to dismiss the *Armstrong* cases with prejudice. MCR 6.110(F) provides that in the absence of a probable cause finding, the court must discharge the defendant without prejudice.
68. Respondent's dismissal with prejudice in the *Armstrong* cases was not made in good faith and/or with due diligence.
69. The circumstances under which respondent dismissed the *Armstrong* cases demonstrated that she was dismissing to punish the prosecution rather than on the merits of the cases.
70. Respondent's actions identified in Count Four were misconduct in violation of:

- a. MCJC Canon 2(B), which provides, in pertinent part, that “[at] all times, the conduct and manner of a judge should promote public confidence in the . . . impartiality of the judiciary” and “[a] judge should treat every person fairly”; and
- b. MCJC Canon 3(A)(1), which provides, in pertinent part, that “[a] judge should be faithful to the law and maintain professional competence in it.”

Pursuant to MCR 9.230(B), an original verified answer to the foregoing complaint, and nine copies thereof, must be filed with the Commission within 14 days after service of the complaint upon respondent. Such answer must contain a full and fair disclosure of all facts and circumstances pertaining to the allegations. Willful concealment, misrepresentation, or failure to file an answer and disclosure are additional grounds for disciplinary action.

JUDICIAL TENURE COMMISSION
OF THE STATE OF MICHIGAN

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June 4, 2025