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Judicial Tenure Commission

December 12, 2023

Hon. Charles T. LaSata
c/o Theresa Asoklis, Esq.
Collins Einhorn Farrell PC
4000 Town Center, 9th Floor
Southfield, MI 48075-1473

RE: Request for Investigation No. 2020-23919

Dear Judge LaSata,

We have completed our review of the above request for investigation. As you know, we investigated three types of misconduct: impatience and discourtesy toward criminal defendants and defense lawyers, repeated disregard for governing law, and violations of Canon 7 in connection with your wife's political campaigns.

We found "a tale of two judges." That is, we found serious and ongoing problems with several aspects of your actions and attitude as a judge for a decade that ended when we brought our concerns to your attention in September 2020, after which you became a very different judge. After considering both the severity of the problems we found and, critically, the complete turnaround in your judicial persona after we contacted you, we dismiss the request for investigation with an admonition, pursuant to MCR 9.223(A)(4).

Demeanor issues were the most frequent complaints we received about you, and we found concerns about your demeanor substantiated. You attributed your demeanor issues to trauma you experienced due to a 2016 shooting just outside your courtroom. While we have no doubt that your trauma from the shooting was real and contributed to the problems with your demeanor, and we applaud you for recognizing

and addressing that trauma, our investigation showed that valid concerns about your demeanor preceded the shooting as well.

Our investigation focused on particulars that occurred after the shooting. We found that at times you disparaged criminal defendants in personal terms, which violated Canon 3(A)(3)'s requirement that you be "patient, dignified and courteous" and Canon 3(A)(14)'s requirement that you treat every person fairly, with courtesy and respect. The canons allow a judge to criticize defendants' actions, but not to denigrate or humiliate them. Your public expression of your negative opinions of these defendants also called your evenhandedness into question in violation of Canon 2(B), which requires you to preserve the public's faith in your impartiality. Even when the facts of a case justify a harsh sentence, you must maintain judicial neutrality and impose a sentence based on the defendant's crimes rather than your personal anger.

In addition, we found that you violated Canons 2(B), 3(A)(3), and 3(A)(14) on two occasions when you ignored the concerns of defendants who were appearing before you that their lawyers were absent. You did not pause to determine whether the defendants' concerns were justified; and they were. You explained your oversight by pointing to your heavy docket, but the fact that you had a heavy docket did not give you license to ignore the defendants' protests that they were unrepresented by lawyers.

We also found that your treatment of criminal defense attorneys violated Canon 2(A)'s requirement that you avoid all impropriety and appearance of impropriety, Canons 2(B) and 3(A)(14)'s requirement that you treat every person fairly, with courtesy and respect, Canon 3(A)(3)'s requirement that you treat anyone with whom you deal in an official capacity with patience, dignity, and courtesy, and Canon 3(A)(1)'s requirement that you be faithful to the law and maintain professional competence in it.

Thus, we found that on one occasion you were inattentive to a defense attorney's attempt to make a record. We found that on several occasions you opined, without good reason, that motions filed by criminal defense attorneys were frivolous or were only filed to delay the proceedings. On some occasions you threatened attorneys with sanctions or with the filing of a grievance with the Attorney Grievance Commission for filing what you believed to be frivolous motions. We note that on one occasion when you did that, another judge granted the motion you had dismissed as "frivolous."

We found that on another occasion you relied inappropriately on MCR 1.109(E)(5) and (6) as authority for imposing a "sanction" in the form of a fine on a criminal defense attorney. Even when an attorney does file a frivolous motion, the rule does not authorize a fine. MCR 1.109(E)(7) ("The court may not assess punitive damages"). Since there is no precedent for requiring a defendant to pay the

prosecution's costs of defending pretrial motions, and since in any case you made no effort to compute the prosecution's costs, it follows that a monetary sanction would be an improper fine that disregarded the law, in violation of Canon 3(A)(1).

Your definition of "frivolous" seemed broad enough to encompass any motion you thought would be unsuccessful. But even a weak motion filed by a criminal defense lawyer is seldom frivolous. As the Supreme Court reminded you when reversing and remanding in *People v Krestel*, before finding that a position is frivolous you must consider "the wide latitude given to the judgment of criminal defense counsel . . . and a criminal defendant's right to present a defense." 505 Mich 1139 (2020) (unpublished).

Even when lawyers are irritating, "the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary." Canon 2(B). Many times, when you made threats of any kind, your doing that seemed to be an expression of your impatience or anger more than the result of careful consideration whether the threatened action was justified or appropriate.

We found that on other occasions you stated that you were considering fines against public defenders who were not present in your courtroom when their cases were called. The reality of your courthouse is that public defenders were expected to be ready to proceed in multiple courts at the same time. Under these circumstances, threatening fines against public defenders who were not present when your court called their cases showed a lack of concern not only for the difficult positions of the defenders, but also for how your demands to have them present in your court would affect your judicial colleagues who also required their presence.

You represented to us in 2020 that you will no longer make unjustified threats to file grievances or impose sanctions, and our sources confirm that you have kept that resolution for the last three years. Again, we very much appreciate your recognition that your actions were inappropriate. You must continue to avoid the appearance that you prejudge motions filed by criminal defendants to be frivolous or filed merely to cause delay.

On another occasion you told a criminal defendant that they could file a malpractice suit based on their attorney's "poor lawyering." That was a serious infringement on the attorney-client relationship.

We also found that you were not faithful to the law in some circumstances. You acknowledged that you did not comply with MCR 6.106 regarding pretrial release until after our September 2020 letter requesting your comments. Even though the 2016 amendment to the rule was discussed in many judges' meetings and memos, you continued to require cash bonds in most cases. We understand and appreciate that you are now making a point of complying with those rules by releasing defendants on

personal recognizance when it is appropriate and by stating your reasons on the record if you deny pretrial release or impose conditional release after considering the factors in MCR 6.106(F).

You sometimes took actions against defendants that appear to have been motivated by anger. Thus, you once *sua sponte* increased a defendant's bond after they moved to withdraw their guilty plea without providing any justification, suggesting you were punishing them for deciding to go to trial. That created the appearance of impropriety in violation of Canon 2(B) and disregarded the law of due process in violation of Canon 3(A)(1).

Our investigation also revealed that you did not apply the factors set out in MCR 6.425, so found defendants "able" to pay costs, fines, and fees with little support in the record. In other cases you required costs and fines to be paid at sentencing—and ordered the defendants incarcerated immediately when they said they did not have sufficient funds on their person to pay fines and costs at once.

The clear language of MCR 6.425 required you to make a record of the factors supporting a finding of ability to pay "without manifest hardship" and to find that the defendant had not made a good faith effort to pay. It was your responsibility to make this determination before ordering incarceration for failure to pay. It appears to us that you allowed your belief that MCR 6.425 was bad public policy to override the rule's clear language. In doing so, you violated Canon 3(A)(1), which requires a judge to be faithful to the law. We understand that this is another practice you abandoned upon learning that we were investigating you and we applaud you for that.

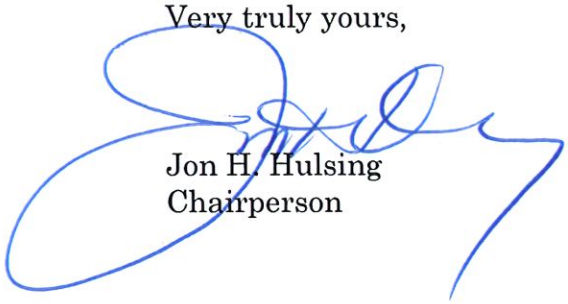
Finally, we investigated whether you violated Canon 7(A)(1)(b), which prohibits a judge from "publicly endorsing a candidate for non-judicial office." Our evidence showed that: 1) A picture of you with your wife and others under a campaign banner supporting your wife's candidacy appeared on your public Facebook page; 2) you drove a car with a bumper sticker supporting your wife's candidacy; and 3) you publicly displayed a campaign sign for your wife on election day "at least briefly." You dispute our evidence by asserting: 1) the post on Facebook was not made by you, 2) you did not knowingly drive a car with this bumper sticker on it, and 3) the sign you held on election day was only for a brief moment. We recognize that the campaign was your wife's and that the circumstances put you in an awkward position, but the canons contain no exception for spouse's campaigns. We caution you to use care in the future regarding any campaign activities for non-judicial offices.

The reason we are only admonishing you despite the findings outlined above is because our obligation is not to punish but to protect the public, and it appears that you have taken this process, and our concerns, to heart and have made significant changes to the way you fulfill your responsibilities. Attorneys who practice before you told us that the atmosphere in your courtroom has improved markedly. When you

met with our staff you communicated in a heartfelt way that you were dismayed that your actions in dealing with criminal defendants had caused them harm and were also dismayed to realize your poor treatment of criminal defense attorneys, and you truly desire to be a judge of whom your community can be proud. In light of the three years of evidence that you have been sincere about this, we believe the public is now protected. We encourage you to continue to monitor your emotions in court, especially when dealing with criminal defendants and criminal defense attorneys. We encourage you to display the courtesy, empathy and respect you said you aspire to when you met with our staff.

You have been a judge since 2005. Though the problems our investigation disclosed were extensive and longstanding, this is the first time anyone brought meritorious complaints about you to our attention. As we have noted repeatedly, your demeanor during the past three years is a marked improvement over your demeanor for the decade prior. For these reasons, we are confident you will embrace what we have brought to your attention and continue make the necessary changes.

Very truly yours,



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