

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

FORMAL PROCEEDINGS DOCKET ENTRIES

Date of Filing

1. November 18, 2019 - [Notice of Formal Proceedings and Charges](#)
2. December 2, 2019 - [Judge Gentry's Answer](#)
3. December 16, 2019 - [Order and Notice of Hearing on Suspension from Duties Pending Final Adjudication](#)
4. December 17, 2019 - [Judge Gentry's Motion to Continue](#)
5. December 18, 2019 - [Order Granting Motion to Continue](#)
6. January 2, 2020 - [JCC's Witness and Exhibit List](#)
7. January 6, 2020 - [Order of Temporary Suspension](#)
8. January 27, 2020 - [Notice of Time and Place for Hearing](#)
9. January 23, 2020 - [Entry of Appearance](#)
10. January 23, 2020 - [Judge Gentry's Motion to Continue](#)
11. January 27, 2020 - [Order Denying Motion to Continue](#)
12. February 5, 2020 - [Motion to Dismiss](#)
13. February 5, 2020 - [Motion to Disclose](#)
14. February 5, 2020 - [Discovery Requests](#)
15. February 20, 2020 - [JCC's Response to Judge Gentry's Motion to Dismiss](#)
16. February 20, 2020 - [JCC's Response to Judge Gentry's Motion to Disclose](#)
17. February 20, 2020 - [Objection to Judge Gentry's Discovery Requests](#)
18. February 20, 2020 - [Motion for Rulings on Pending Motions](#)

19. February 24, 2020 - [Order on Pending Motions](#)
20. February 24, 2020 - [Prehearing Order](#)
21. March 19, 2020 - [Notice of Entry of Appearance \(Lawson\)](#)
22. March 19, 2020 - [Entry of Appearance of Counsel for Respondent \(Lewis\)](#)
23. March 19, 2020 - [Motion to Continue Final Hearing](#)
24. March 20, 2020 - [Counsel for the JCC's Response to the Motion to Continue](#)
25. March 20, 2020 - [Order Granting Motion to Continue](#)
26. March 24, 2020 - [Motion to Withdraw as Counsel \(Weakley\)](#)
27. March 24, 2020 - [Notice \(Motion to Withdraw\) \(Ryan\)](#)
28. March 25, 2020 - [Order Granting Motions to Withdraw as Counsel](#)
29. April 3, 2020 - [Order for Extension](#)
30. April 3, 2020 - [Amended Notice of Time and Place for Final Hearing](#)
31. April 3, 2020 - [Amended Prehearing Order](#)
32. April 7, 2020 - [Agreed Order](#)
33. June 16, 2020 - [Judge Gentry's Second Set of Interrogatories, Requests for Production of Documents and Requests for Admissions](#)
34. July 1, 2020 - [Objection to Judge Gentry's Second Discovery Requests and Requests for Discovery Depositions](#)
35. July 13, 2020 - [Judicial Conduct Commission's Witness List](#)
36. July 13, 2020 - [Judge Gentry's Witness List](#)
37. July 13, 2020 - [Motion to Compel and Memorandum in Support of Motion to Compel](#)
38. July 13, 2020 - [Motion in Limine RE: Digital Sexual Material](#)
39. July 13, 2020 - [Motion for Protective Order and Proposed Protective Order](#)
40. July 16, 2020 - [Response to Motion to Compel Discovery Responses and for Depositions](#)
41. July 16, 2020 - [Response to Judge Gentry's Motion to Exclude Digital Sexual Material](#)

- 42. July 16, 2020 - Response to Judge Gentry's Motion for Protective Order
- 43. July 16, 2020 - Motion to Compel Deposition of Christopher Mehling
- 44. July 16, 2020 - Motion in Limine of Counsel for the Commission to Admit Certain Evidence at the Hearing
- 45. July 17, 2020 - Amended Notice of Formal Proceedings and Charges
- 46. July 20, 2020 - Order on Pending Motions
- 47. July 20, 2020 - Motion to Dismiss Counts X through XII
- 48. July 23, 2020 - Objection to Judge Gentry's Exhibits
- 49. July 24, 2020 - Response to Motion to Compel Discovery Deposition of Judge Mehling
- 50. July 27, 2020 - Respondent's Pretrial Compliance Per Agreed Protective Order
- 51. July 29, 2020 - Response to Judge Gentry's Motion to Dismiss
- 52. July 29, 2020 - Respondent's Response to Commission Counsel Motion in Limine and Request to File Under Seal
- 53. July 29, 2020 - Respondent Objection to Prosecution Exhibits and Request to Alter Exhibit Publication Procedure
- 54. July 29, 2020 - Final Prehearing Order with Supreme Court Order 2020-55
- 55. July 29, 2020 - Order on Pending Motions
- 56. July 31, 2020 - Amended Answer and Stipulations of Judge Dawn Gentry
- 57. July 31, 2020 - Motion to Continue the Final Hearing and Motion in Limine Regarding Anticipated Testimony
- 58. August 4, 2020 - Response to Judge Gentry's Motion to Continue Hearing and Motion in Limine
- 59. August 4, 2020 - Reply in Support of Commission's Motion in Limine to Admit Certain Evidence at the Hearing
- 60. August 5, 2020 - Order Denying Motion to Continue Hearing
- 61. August 5, 2020 - Order Ruling on Counsel for the Commission's Objections to Judge Gentry's Exhibits

- 62. August 5, 2020 - Order on Respondent's Objection to Prosecution Exhibits and Request to Alter Publication Procedure
- 63. August 5, 2020 - Order on Final Prehearing Conference
- 64. August 7, 2020 - Order on Witness
- 65. August 12, 2020 - Order on Commission's Motion in Limine and Judge Gentry's Motion in Limine Regarding Anticipated Testimony

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

NOTICE OF FORMAL PROCEEDINGS AND CHARGES

Notice is hereby given of the initiation of formal proceedings under Rule 4.180 of the Rules of the Supreme Court. At the times set out in this Notice, you were Family Court Judge for Kentucky's 16th Judicial Circuit located in Kenton County.

While serving as Family Court Judge for Kenton County—in particular, since being elected to that position in November 2018—you have engaged in a pattern of conduct that constitutes misconduct in office and violates the Code of Judicial Conduct. Any of the Counts described below, on their own, constitute sufficient grounds for disciplinary action. But examined as a whole, the allegations in this Notice demonstrate a pattern of misconduct in office. As a result, the Commission has determined formal proceedings and charges are warranted.

Count I – Coercion to Participate in Judicial Campaign

During your campaign for Family Court Judge in Kenton County, while you were sitting on the bench as an appointee, you engaged in the following conduct related to your 2018 campaign for election to your current judicial office:

1. You coerced members of your GAL panel to donate the maximum amount to your campaign and to use personal time to engage in campaigning on your behalf.
2. You required your GAL panel members to serve on the finance committee for your campaign.
3. While in court, you solicited an attorney to put up a campaign sign.

4. You utilized court staff to work on your campaign during work hours. This conduct included, but is not necessarily limited to, having your staff attorney place and deliver campaign signs and having your case management specialist/mediator write thank-you notes for the campaign and publicly hold a campaign sign on Election Day. You also took steps to conceal this conduct.
5. You appointed attorney Delana Sanders to your GAL panel in exchange her husband's agreement to support your campaign. At the time, just months before the election, there was not an opening on your GAL panel. You also had your staff attorney research whether you could add an additional panel member so that you could appoint Ms. Sanders.

The actions set out above violate the relevant portions of the following Canons of the Code of Judicial Conduct:

- Canon 1, Rule 1.1, which requires a judge to comply with the law, including the Code of Judicial Conduct.
- Canon 1, Rule 1.2, which requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- Canon 2, Rule 2.1, which requires that the duties of judicial office shall take precedence over all of a judge's personal and extrajudicial activities.
- Canon 2, Rule 2.2, which requires a judge to uphold and apply the law, and to perform all duties of judicial office fairly and impartially.
- Canon 2, Rule 2.3(A), which requires a judge to perform the duties of judicial office, including administrative duties, without bias or prejudice.
- Canon 2, Rule 2.13(A), which provides in making administrative appointments, a judge shall exercise the power of appointments on the basis of merit and shall avoid nepotism, favoritism, and unnecessary appointments.
- Canon 3, Rule 3.1(D), which provides that when engaging in extrajudicial activities, a judge shall not engage in conduct that would appear to a reasonable person to be coercive.
- Canon 4, Rule 4.1(A), which provides requirements for political and campaign activities of judges and judicial candidates in office.
- Canon 4, Rule 4.1(B), which requires a judge or judicial candidate to take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under Rule 4.1(A).

Count II – Retaliation for Failure to Support Judicial Campaign

During your campaign or after your election as Family Court Judge in Kenton County in November 2018, you engaged in the following conduct:

1. During your campaign, you retaliated against Meredith Smith for not sufficiently supporting your campaign.
2. You retaliated against attorney Mike Hummel for failing to make the maximum monetary donation to your campaign and declining to campaign on your behalf by removing Mr. Hummel from the GAL panel.
3. You retaliated against attorneys who did not support your campaign by delaying hearing dates for their cases.
4. You retaliated against school liaison officer Kelly Blevins for supporting your opponent in the election.

Your actions violate the relevant portions of the following Canons of the Code of Judicial Conduct:

- Canon 1, Rule 1.1, which requires a judge to comply with the law, including the Code of Judicial Conduct.
- Canon 1, Rule 1.2, which requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- Canon 2, Rule 2.2, which requires a judge to uphold and apply the law, and to perform all duties of judicial office fairly and impartially.
- Canon 2, Rule 2.3(A), which requires a judge to perform the duties of judicial office, including administrative duties, without bias or prejudice.
- Canon 2, Rule 2.3(B), which provides a judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, or engage in harassment and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.
- Canon 2, Rule 2.4(B), which provides a judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

- Canon 2, Rule 2.6(A), which provides a judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.
- Canon 2, Rule 2.8(B), which provides a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.
- Canon 2, Rule 2.11(A), which provides a judge must disqualify herself in any proceeding in which her impartiality might reasonably be questioned.
- Canon 2, Rule 2.13(A), which provides in making administrative appointments, a judge shall exercise the power of appointments on the basis of merit and shall avoid nepotism, favoritism, and unnecessary appointments.
- Canon 3, Rule 3.1(D), which provides that when engaging in extrajudicial activities, a judge shall not engage in conduct that would appear to a reasonable person to be coercive.

Count III –Facilities & Timesheet Falsification

During your time in office, you engaged in the following conduct:

1. You filled out and approved a false timesheet for Meredith Smith.
2. You have on numerous occasions left the courthouse with Mr. Penrose and Ms. Aubrey during regular court hours, leaving the office without any staff coverage.
3. You knowingly approved inaccurate timesheets for Mr. Penrose and Ms. Aubrey by approving timesheets that you knew did not accurately reflect the hours those employees worked.
4. On one occasion, when you brought your children to work with you, your child witnessed a confidential proceeding and recognized the child involved in the proceeding, violating the confidentiality of proceedings in a family court case.
5. You permitted Mr. Penrose to spend work hours playing his guitar and singing in his office, disrupting other court employees during the workday.
6. You permitted staff to store and consume alcoholic beverages in court offices and at times consumed alcoholic beverages in the courthouse.

Your actions violate the relevant portions of the following Canons of the Code of Judicial

Conduct:

- Canon 1, Rule 1.1, which requires a judge to comply with the law, including the Code of Judicial Conduct.
- Canon 1, Rule 1.2, which requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- Canon 2, Rule 2.1, which requires that the duties of judicial office shall take precedence over all of a judge's personal and extrajudicial activities.
- Canon 2, Rule 2.5(A), which provides a judge shall perform judicial and administrative duties competently and diligently.
- Canon 2, Rule 2.12(A), which provides a judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under the Code of Judicial Conduct.
- Canon 2, Rule 2.13(B), which provides a judge shall not approve compensation of appointees beyond the fair value of services rendered.

Count IV – Retaliation Against School Employees

1. You directed Kelly Blevins and other school liaison officers to file school dependency, neglect, and abuse cases only once per month and to only file certain petitions as truancy cases rather than dependency, neglect, and abuse cases. When Ms. Blevins followed her employer's instructions regarding how to file such cases, you retaliated against her.
2. Following these actions, you refused to recuse yourself from Ms. Blevins' cases, despite having previously expressed personal animosity toward Ms. Blevins.

Your actions violate the relevant portions of the following Canons of the Code of Judicial

Conduct:

- Canon 1, Rule 1.1, which requires a judge to comply with the law, including the Code of Judicial Conduct.
- Canon 1, Rule 1.2, which requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- Canon 2, Rule 2.3(A), which requires a judge to perform the duties of judicial office, including administrative duties, without bias or prejudice.

- Canon 2, Rule 2.3(B), which provides a judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, or engage in harassment and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.
- Canon 2, Rule 2.8(B), which provides a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.
- Canon 2, Rule 2.11(A), which provides a judge must disqualify herself in any proceeding in which her impartiality might reasonably be questioned.

Count V – Ex Parte Communications with GAL Panel Members

You have on multiple occasions held pretrial conferences in dependency, neglect, and abuse cases with the members of your GAL panel to which private attorneys representing parties in those cases are not invited. Substantive decisions are made during these conferences, which are not held on the record.

Your actions constitute misconduct in office and violate the relevant portions of the following Canons of the Code of Judicial Conduct:

- Canon 1, Rule 1.1, which requires a judge to comply with the law, including the Code of Judicial Conduct.
- Canon 1, Rule 1.2, which requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- Canon 2, Rule 2.9, which provides a judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending matter.

Count VI –Harassment and Retaliation Against Katherine Schulz

1. You engaged in inappropriate and unwanted sexual advances toward Ms. Schulz.
2. After you made unwelcomed sexual advances toward Ms. Schulz, you sent another attorney on your GAL panel to speak with Ms. Schulz, accusing her of gossiping about you, as well as taking GAL assignments in Boone County. This conduct was

- reasonably interpreted as warning Ms. Schulz to remain quiet regarding sexual advances.
3. Following these events, you refused to recuse yourself from cases when Ms. Schulz represented one of the parties.
 4. You engaged in Snapchat conversations with members of your GAL panel and Mr. Penrose, some of which were sexual in nature.

Your conduct described above constitutes misconduct in office and violated the relevant portions of the following Canons of the Code of Judicial Conduct:

- Canon 1, Rule 1.1, which requires a judge to comply with the law, including the Code of Judicial Conduct.
- Canon 1, Rule 1.2, which requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- Canon 2, Rule 2.2, which requires a judge to uphold and apply the law, and to perform all duties of judicial office fairly and impartially.
- Canon 2, Rule 2.3(B), which provides a judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, or engage in harassment and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.
- Canon 2, Rule 2.8(B), which provides a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.
- Canon 2, Rule 2.11(A), which provides a judge must disqualify herself in any proceeding in which her impartiality might reasonably be questioned.
- Canon 2, Rule 2.12(A), which provides a judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under the Code of Judicial Conduct.
- Canon 3, Rule 3.1(C), which provides that when engaging in extrajudicial activities, a judge shall not participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

- Canon 3, Rule 3.1(D), which provides that when engaging in extrajudicial activities, a judge shall not engage in conduct that would appear to a reasonable person to be coercive.

Count VII – Inappropriate Hiring and Relationship with Mr. Penrose

1. You hired Stephen Penrose because you were engaged in a personal sexual relationship with him, not on the basis of merit. You terminated Meredith Smith by forcing her to resign to create a job opening for Mr. Penrose.
2. You engaged in inappropriate workplace behavior with Mr. Penrose. You also engaged in sexual activity with Mr. Penrose and Ms. Aubrey in a courthouse office, during work hours.
3. You improperly delegated judicial functions to Mr. Penrose.

Your conduct described above constitutes misconduct in office and violated the relevant portions of the following Canons of the Code of Judicial Conduct:

- Canon 1, Rule 1.1, which requires a judge to comply with the law, including the Code of Judicial Conduct.
- Canon 1, Rule 1.2, which requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- Canon 2, Rule 2.1, which requires that the duties of judicial office shall take precedence over all of a judge's personal and extrajudicial activities.
- Canon 2, Rule 2.2, which requires a judge to uphold and apply the law, and to perform all duties of judicial office fairly and impartially.
- Canon 2, Rule 2.4(B), which provides a judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.
- Canon 2, Rule 2.12(A), which provides a judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under the Code of Judicial Conduct.
- Canon 2, Rule 2.13(A), which provides that in making administrative appointments a judge shall exercise the power of appointment impartially and on the basis of merit and avoid nepotism, favoritism, and unnecessary appointments.

- Canon 3, Rule 3.1(A), which provides, when engaging in extrajudicial activities, a judge shall not participate in activities that will interfere with the proper performance of the judge’s judicial duties.
- Canon 3, Rule 3.1(C), which provides that when engaging in extrajudicial activities, a judge shall not participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.

Count VIII – Hiring and Appointing Court Staff Not Based on Merit

1. You appointed GAL panel members not based on merit and assigned cases to them before they had any GAL training.
2. You have appointed personal friends who supported you in your campaign to the “Permanent Custody Roster” to represent individuals seeking de facto custodian status without requiring those individuals to come to court to receive appointments. On some occasions, you have passed out these individuals’ business cards.

Your conduct described above constitutes misconduct in office and violated the relevant portions of the following Canons of the Code of Judicial Conduct:

- Canon 1, Rule 1.1, which requires a judge to comply with the law, including the Code of Judicial Conduct.
- Canon 1, Rule 1.2, which requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- Canon 2, Rule 2.13(A), which provides that in making administrative appointments a judge shall exercise the power of appointment impartially and on the basis of merit and avoid nepotism, favoritism, and unnecessary appointments.

Count IX – Failure to be Candid and Honest with the Commission

You failed to be candid and honest with the Commission in a previous inquiry regarding the appointment of Ms. Sanders and the firing of Ms. Smith and Mr. Hummel, as well as about the quality of Mr. Hummel’s work on the GAL panel.

Your conduct described above constitutes misconduct in office and violated the relevant portions of the following Canons of the Code of Judicial Conduct:

- Canon 1, Rule 1.1, which requires a judge to comply with the law, including the Code of Judicial Conduct.
- Canon 1, Rule 1.2, which requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- Rule 2.16(A), which provides a judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

Jurisdiction

The Judicial Conduct Commission has jurisdiction over this matter pursuant to SCR 4.020(1)(b)(i) and (v); and (1)(c)-(d), which read, in pertinent part, as follows:

(1) Commission shall have authority:

(b) To impose the sanctions separately or collectively of (1) admonition, private reprimand, public reprimand, or censure; (2) suspension without pay or removal or retirement from judicial office, upon any judge of the Court of Justice or lawyer while a candidate for judicial office, who after notice and hearing the Commission finds guilty of any one or more of the following:

(i) Misconduct in office.

(v) Violation of the Code of Judicial Conduct, Rule 4.300

(c) After notice and a hearing to remove a judge whom it finds to lack the constitutional statutory qualifications for the judgeship in question.

(d) To refer any judge of the Court of Justice or lawyer while a candidate for judicial office, after notice and hearing found by the Commission to be guilty of misconduct, to the Kentucky Bar Association for possible suspension or disbarment from the practice of law.

For your information, the Commission calls your attention to the following Supreme Court Rule:

Rule 4.180 Formal Proceedings

If the Commission concludes that formal proceedings should be initiated, it shall notify the Judge. The Judge may file an answer within 15 days after service of the notice. Upon filing of her answer, or the expiration of time for so filing, the

Commission shall set a time and place for the hearing and shall give reasonable notice thereof to the judge.

Please mail your answer to: Ms. Jimmy Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, KY 40604-4266.

November 18th, 2019



R. Michael Sullivan, Chairman
Kentucky Judicial Conduct Commission

Mr. Wolnitzek recused from any consideration of this matter.

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her attorney Stephen Ryan, 7104 Hillcircle Court, Louisville, KY 40214, this 18th day of November, 2019.



JIMMY SHAFFER, EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

**IN RE THE MATTER OF: JUDGE DAWN GENTRY, KENTON COUNTY
FAMILY CIRCUIT COURT DIVISION 5, 16TH JUDICIAL DISTRICT**

ANSWER

Comes the Honorable Dawn Gentry by counsel, Stephen P. Ryan and for her answer to the charges in this case states as follows:

COUNT I

- 1) She never asked anyone for money for her campaign. She did ask many people including members of her GAL panel to help with the campaign.
- 2) She did not require members of her GAL panel to serve on her finance committee. Some did, along with other attorneys and individuals.
- 3) She does not recall asking an attorney in court to put up a yard sign.
- 4) She did not intentionally use staff to work on her campaign during work hours. Delivery of yard signs and/or writing of thank you notes was supposed to be done on their personal time. Staff did hold signs on election days from 7 to 9 a.m. and from 4 to 6 p.m., which was during their four hours off for voting time allowed by AOC.

- 5) She did not appoint Delana Sanders to her GAL panel in exchange for her husband's support. There is no set number of people on the panel. Ms. Sanders was well qualified. Her staff attorney did research the issue as to limits on panel.

COUNT II

- 1) She did not retaliate against Meredith Smith for not helping with the campaign. Ms. Smith informed her earlier she intended to resign. Ms. Smith informed Judge Gentry that she needed to practice law to get reciprocity in Ohio and needed to make more money. After the election she did ask her when she planned to resign so there could be a smooth transition.
- 2) She did not retaliate against Mike Hummel. As she previously informed the commission, Mr. Hummel's performance was subpar (missing court dates, which caused unnecessary delays).
- 3) She did not retaliate against attorneys who did not support her by delaying hearing dates. Her secretary handles setting all dates.
- 4) She did not retaliate against Kelly Blevins for not supporting her.

COUNT III

- 1) She does not fill out time sheets. She treated her staff like professionals and they keep track of their own time. She signed the time sheet, if they certify that they worked the time reported. She has changed this procedure.
- 2) Yes, she, her secretary, her case specialist, and her staff attorney used to go out to lunch together leaving the office unattended. She has changed this procedure now and the office is always staffed during working hours.
- 3) She admits that she allowed staff to work somewhat of a flexible schedule as long as they worked their 37.5 hours per week. This was to avoid compensatory time or overtime. Now 7.5 hours per day, if they leave early or come in late, they take comp time or vacation time.
- 4) As previously admitted to the commission she brought her children and let staff bring children to the office in emergencies. A staff member's child did see a confidential proceeding, while she was on the bench. This is no longer allowed. She and her staff all must make other arrangements for their children.
- 5) Mr. Penrose did play guitar on occasion and she did not realize it was a distraction. There is no longer guitar playing in her office.

- 6) She did not know staff was storing or consuming alcohol at work. Now she has a policy against storing or consuming alcohol at work.

COUNT IV

- 1) She did not retaliate against Ms. Blevins. She admits, she asked her to file a certain petition at a certain time. She thought that would be more efficient for the court and the school system. She met with school officials several times to try to work it out to see if changes could be made so she could follow the law.
- 2) She had not been asked to disqualify or recuse herself in Ms. Blevins cases. She has no personal animosity toward Ms. Blevins.

COUNT V

She denies having held pre-trial conferences without all parties being present in person or by counsel.

COUNT VI

- 1) She denies she engaged in inappropriate or unwanted sexual advances toward Ms. Schulz.

- 2) No sexual advances. She denies sending anyone to talk to Ms. Schulz about gossiping about her regarding something that did not happen. She did tell Ms. Schulz she would rather she not take GAL assignments in Boone County.
- 3) She did not recuse herself from Ms. Schulz's case because the motion to recuse was filed in the wrong case (see Exhibit 1).
- 4) She can only think of one inappropriate joke that was sent on Snapchat by Mr. Penrose, she cannot control what someone puts on snapchat. She did not respond. As was previously reported to the commission, she has not been on Snapchat since shortly after the election.

COUNT VII

- 1) She DENIES HAVING A SEXUAL RELATIONSHIP WITH MR. PENROSE. Mr. Penrose was qualified for the job having come from the same job in another county. As to Ms. Smith, please see count II #1.
- 2) SHE DENIES HAVING A SEXUAL RELATIONSHIP WITH MR. PENROSE OR MS. AUBREY inside or outside of the courthouse.

- 3) She denies delegating judicial functions to Mr. Penrose. In his capacity as mediator and case specialist, he helps parties with paperwork in D.N.A. and domestic violence cases.

COUNT VIII

- 1) She denies appointing members to the GAL panel who were not qualified. All members of the panel have GAL training.
- 2) She admits that she appointed acquaintances to the permanent custody roster. Almost all attorneys who practice in this county are her acquaintances. She denies that campaign support was any consideration. They do not need to come to court for appointments. They had already been approved and parties had already met the qualifications for state paid representing. So she gives litigants their cards and instructed them to contact the attorney. It was not a referral to a private attorney.

COUNT IX

She denies she has been less than candid with the commission. (As to Ms. Smith see Exhibit #2 her resignation and text.)



Stephen W. Ryan

Counsel for Judge Dawn Gentry

Have read and adopt this as my answer.

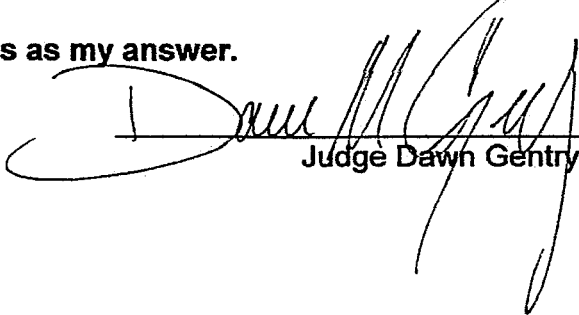

Judge Dawn Gentry

Exhibit 1

EX 1 10 PAGES

COMMONWEALTH OF KENTUCKY
SIXTEENTH JUDICIAL CIRCUIT
KENTON FAMILY COURT
FIFTH DIVISION

CASE NO. _____

Electronically Filed

IN RE:

MOTION FOR RECUSAL

Comes now, Katherine M. Schulz, Counsel for the Mother in the above matter and hereby moves Judge Dawn M. Gentry, Kenton County Division 5 Family Court Judge currently presiding over the aforesyled action, to recuse herself. Should Judge Dawn M. Gentry decline to voluntarily recuse herself from said case, undersigned counsel does hereby move that Judge Dawn M. Gentry be recused by Order of the Chief Justice of the Kentucky Supreme Court in accordance with KRS 26A.015(a), KRS 26A.015(e), and in compliance with SCR 4.300 of the Kentucky Code of Judicial Conduct.

"...K.R.S. 26A.015(2)(a), K.R.S. 26A.015(2)(e) and SCR 4.300, Canon 3 C, provide that a judge is to disqualify [her]self in any proceeding where [s]he has a personal bias or prejudice concerning a party and that a judge should disqualify [her]self in any proceeding in which [her] impartiality might reasonably be questioned." *Nichols v. Com.*, 839 S.W.2d 263 (Ky. 1992).

Counsel states and duly swears that Judge Dawn M. Gentry is aware of multiple incidents of conduct for which her personal bias or prejudice concerning Counsel, Katherine M. Schulz, would exist or would reasonably be questioned to exist, and such conduct for which her impartiality might reasonably be questioned in this proceeding. Katherine M. Schulz does

000001 of 000001

hereby swear to the existence of conduct by Judge Dawn M. Gentry that justifies recusal in this matter. Katherine M. Schulz will submit an affidavit detailing the conduct of Judge Dawn M. Gentry requiring recusal should the Court so request.

WHEREFORE, Katherine M. Schulz, moves Judge Dawn M. Gentry to voluntarily recuse herself, or, in the alternative, respectfully petitions the Chief Justice of the Kentucky Supreme Court to issue an order of recusal to Kenton Family Court, Division 5, Judge Dawn M. Gentry in this matter.



Hon. Katherine M. Schulz, KBA #96850,
Affiant

Attorney for Mother
Deters, Fichner, & Williams
6111B Burgundy Hill Dr.
Burlington, Kentucky 41005
Phone: (859) 586-1900
Fax: (859) 586-1925

NOTICE

All parties please take notice that the foregoing Motion is to be heard at the convenience of the Chief Justice of the Kentucky Supreme Court.

CERTIFICATE OF SERVICE

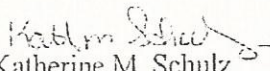
I hereby certify that a true copy of the foregoing Motion for Recusal, was sent via ordinary U.S. Mail, postage prepaid, or electronic mail to the following parties on the 9th of August 2019.

Chief Justice John D. Minton, Jr.
Supreme Court of Kentucky
State Capitol, Room 235
700 Capitol Ave.
Frankfort, KY 40601

Hon. Rick Scott
Served via email: rick@foxscottlaw.com
Attorney for the Father

Hon. Justin Durstock
Served via email: jldurstock@yahoo.com
Guardian Ad Litem

Hon. Amy Burke
Served via email: aburke@kentoncoatty.com
County Attorney


/s/Katherine M. Schulz
KATHERINE SCHULZ

VERIFICATION

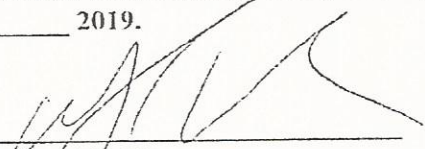
Comes now Attorney Katherine M. Schulz and hereby states that she has read the foregoing Motion for Recusal and the statements made therein are true and correct to the best of his knowledge and belief.


KATHERINE M. SCHULZ

COMMONWEALTH OF KENTUCKY
COUNTY OF Boone

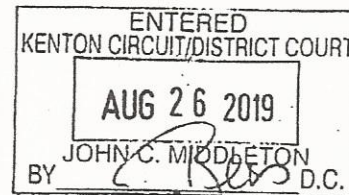
SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me, a Notary Public,
by Katherine M. Schulz, this 9th day of August 2019.




NOTARY PUBLIC
STATE AT LARGE
My commission expires: 9/28/2022

000001 of 000001

COMMONWEALTH OF KENTUCKY
SIXTEENTH JUDICIAL CIRCUIT
KENTON FAMILY COURT
FIFTH DIVISION



CASE NO. _____

IN RE:

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a hearing on August 19, 2019, reviewing the files, relevant law, and being in all ways sufficiently advised, the Court orders that the April 23, 2019 be **VACATED** and **SUPERSECEDED** by these Supplemental Findings of Fact, Conclusion of Law, and Order entered.

FINDINGS OF FACT

1. This Order involves Case Number _____, hereinafter referred to as trailer 001; Case Number _____ hereinafter referred to as trailer 002. Cases _____ and _____ have identical orders to the orders in cases _____ 001 and _____.
2. The initial Petitions for Neglect or Abuse of the above referenced children was filed on February 14, 2019, naming Father, _____ as the party responsible for the alleged neglect or abuse in trailer 001.
3. On February 18, 2019, trailer 001 was arraigned by Family Court Judge Christopher Mehling. Hon. Amanda Johnson was present, representing the Commonwealth of Kentucky; parents, _____ were present; Dave Cremeans was present on behalf of the Cabinet for Health and Family Services; Hon. Justin Durstock was appointed as Guardian ad Litem; Hon.

J. Richard Scott was appointed to represent father, (

4. On February 18, 2019, Judge Christopher Mehling entered a Denial on behalf of Father and Ordered he have supervised visitation with the children with Mother as an approved supervisor. The case was set for Adjudication on March 25, 2019. Mother, _____ was not placed under any Orders of the Court.
5. On March 20, 2019, a Petition alleging Neglect or Abuse was filed in trailer 002, naming both _____ and _____ ; as responsible parties.
6. On March 25, 2019, in trailer 002, this Court entered denials for both parents. Hon. Amanda Johnson was present on behalf of the Commonwealth of Kentucky; Thomas Deaver was present on behalf of the Cabinet for Health & Family service; Mother was appointed Hon. Katherine Schulz to represent her in trailer 002; Mother was present; Father was not present but represented by Hon. J. Richard Scott; Hon. Justin Durstock was present as Guardian ad Litem for the children. Father was ordered to have supervised contact with the children, but Mother was not permitted to act as the supervisor. Father was ordered to drug test on the color blue at Drugs Don't Work. Trailer 002 was set for an adjudication hearing on April 22, 2019.
7. On March 25, 2019, trailer 001 was scheduled for an adjudication hearing, but was continued by agreement to April 22, 2019. This was done to allow the Court to have an adjudication hearing on the petitions in trailer 001 and petitions in trailer 002 simultaneously.
8. On April 22, 2019, both trailer 001 and 002 were presented at the same time. The following were present: Hon. Amanda Johnson was present representing the

Commonwealth of Kentucky; Thomas Deaver with the Cabinet for Health & Family Services; _____, mother; Hon. Katherine Schulz representing mother; Hon. J. Richard Scott, representing father, _____; Hon. Justin Durstock, Guardian ad Litem. This Court made a finding that the children were abused.

9. On May 13, 2019 this Court held a dispositional hearing on both trailer 001 and 002 and adopted the recommendations of the Cabinet as Orders of the Court. The cases were set for a review hearing on July 15, 2019.
10. In trailer 001, on July 12, 2019, _____, mother, through counsel, filed a motion pursuant to 60.02 asking the court to set aside its findings.
11. On July 15, 2019, the Court began the review hearing in both trailers 001 and 002. The following were present: Hon. Amy Burke, representing the Commonwealth of Kentucky; Dave Cremeans with the Cabinet for Health & Family Services; _____ y _____ mother; Hon. Katherine Schulz representing mother; Hon. J. Richard Scott, representing father, _____; Hon. Rachael O’Hearen, standing in for Hon. Justin Durstock, Guardian ad Litem. This Court continued the review hearing to allow the Court and all counsel time to review the 60.02 Motion. The hearing was continued to August 5, 2019.
12. On August 5, 2019, the review in trailer 002 was continued to August 19, 2019. The following were present: Hon. Amy Burke, representing the Commonwealth of Kentucky; Dave Cremeans with the Cabinet for Health & Family Services; _____, mother; Hon. Delana Sanders, standing in for Hon. Katherine Schulz representing mother; Hon. J. Richard Scott, representing father,

Hon. Jonathan Brown, standing in for Hon. Justin Durstock, Guardian ad Litem.

13. On August 9, 2019, Hon. Katherine Schulz filed a Motion asking this Court to recuse in trailer 001.
14. On August 12, 2019, this Court entered an Order denying the request for a recusal in trailer 001.
15. On August 19, 2019, the following were present: Hon. Miranda Holbrook, representing the Commonwealth of Kentucky; Dave Cremeans with the Cabinet for Health & Family Services; _____ mother; Hon. John Osterhage, standing in for Hon. Katherine Schulz representing mother; Hon. J. Richard Scott, representing father, _____; Hon. Justin Durstock, Guardian ad Litem.
16. On August 19, 2019, the Court heard arguments from all counsel. Counsel for Father and the Guardian ad Litem did not object to Mother's 60.02 Motion being granted. Hon. Miranda Holbrook did object to the Mother's 60.02 Motion being granted.
17. After careful consideration, the Court amends its Findings.
18. Mother was not under any Orders of the Court when trailer 001 was initially heard. Only the Father was under Orders of the Court, placed by Judge Christopher Mehling.
19. Mother was aware Father was struggling with substance abuse issues. Mother was the sole income provider for the family during this time.
20. Mother had to leave for work or risk losing her job. The loss of Mother's employment would devastate the family.
21. Father promised Mother his parents would be over to the house to watch the

children within 15 minutes of her leaving. Mother was not required to supervised Father's visitation.

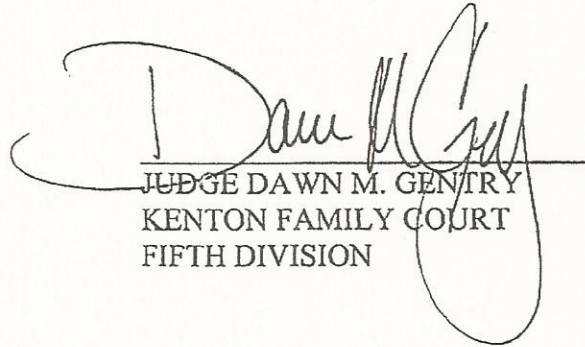
22. Father was sober at the time Mother left for work. Mother had no knowledge of any illegal substances being in the house.
23. Mother did not intentionally put the children in a dangerous situation.
24. Father called his parents and told them not to come over to the residence, intentionally deceiving Mother.
25. Father overdosed while Mother was at work, with the children present in the home. Mother did not have care or control at this time.
26. There was not a finding of abuse toward Mother in trailer 001. However, it is in the best interest of both children for the Court to amend its finding towards Mother in trailer 002 to a finding of Dependency.

CONCLUSIONS OF LAW/ORDER

1. The finding of abuse towards Mother, _____, is hereby amended to a finding of dependency in trailer 002.
2. There has never been a finding towards Mother in trailer 001.
3. The findings toward Father, _____ remains unchanged in both trailer 001 and trailer 002.
4. Both trailer 001 and 002 are concluded.

5. This is a final and appealable order, with no just cause for delay.

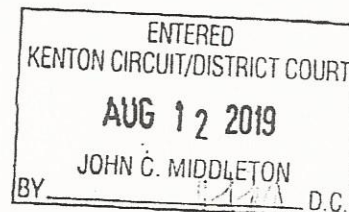
So ORDERED this 20th day of August, 2019.



JUDGE DAWN M. GENTRY
KENTON FAMILY COURT
FIFTH DIVISION

Copies:
All parties and attorneys of record

COMMONWEALTH OF KENTUCKY
SIXTEENTH JUDICIAL DISTRICT
KENTON FAMILY COURT
FIFTH DIVISION
CASE NO: 19-00000000

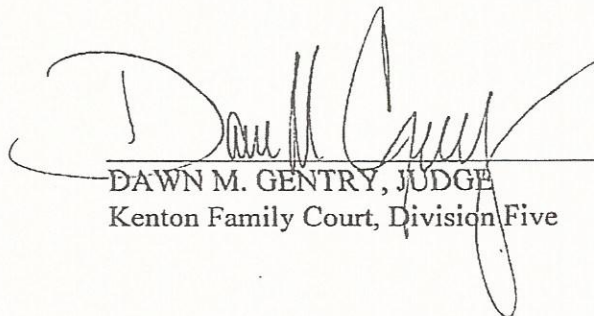


IN RE: _____

ORDER

- 1) This matter became before the Court by motion of Hon. Katherine M. Schulz, attorney for Respondent, mother of the children, filed August 9, 2019.
- 2) Hon. Schulz's Motion for Recusal is overruled.
- 3) This is a final and appealable order, no just cause for delay.

SO ORDERED.



DAWN M. GENTRY, JUDGE
Kenton Family Court, Division Five

Copies:
Hon. Katherine Schulz
Hon. J. Richard Scott
Hon. Justin Durstock
Hon. Amy Burke

Exhibit 2

E 2

Email from M. Katherine Schulz asking to be removed from
GAL panel

Gentry, Dawn

From: Katherine Schulz <katherine@dfwfirm.com>
Sent: Wednesday, May 15, 2019 11:00 AM
To: Gentry, Dawn
Subject: Removal from the Div. 5 DNA Panel

Judge Gentry,

I am requesting to be removed from the DNA panel effective immediately. I will prepare a motion to withdraw and Order on each case, unless you prefer a blanket Order reassigning my cases to another attorney.

Thank you for the opportunity.

Sincerely,
Katherine Schulz

Katherine M. Schulz
Attorney/GAL
Deters, Fichner & Williams
6111B Burgundy Hill Drive
Burlington, KY 41005
Phone: (859) 586-1900
Fax: (859) 586-1925

CONFIDENTIALITY NOTICE:


This electronic mail message and any attached files contain information intended solely for the use of named recipient and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information may be subject to legal restriction or sanction. If you have received this email in error please contact us by reply electronic mail or telephone 859-586-1900 for disposition instructions.

IRS CIRCULAR 230 DISCLOSURE

To ensure compliance with the requirements imposed by IRS Circular 230 any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding tax-related penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.

T-Mobile LTE

6:30 PM

92% 

New iMessage

Cancel

To: Kat Schultz, Holly

Sat, May 10, 7:02 AM

Kat Schultz

Morning ladies! I thought I might be able to bypass some awkwardness by sending this message to the both of you, so it can be known among the group: I fully expect that the Hag group would never put myself before Dawn's comfortability with my involvement. That is absolutely the way it should be!!! I don't expect to be include in group stuff going forward, and that is 100% ok. Dawn is a really amazing person and she deserves amazing friends to have her back and make it known to her she is supported

T-Mobile LTE

6:31 PM

92% 

New iMessage

Cancel

To: Kat Schultz, Holly

Having said that, I truly respect and admire you both beyond what can be said in a text, and that can be said for all the women I have met in the Hag group, and I am hopeful that we can all still be friends, even if I'm not a Hag, per se. regardless, I will always be there if either of you need anything, and I will never see you around without being excited and wanting a hug! :)

Lastly, I have nothing but immense respect for Dawn as a Judge, despite the potential speculation about my leaving the panel. I advocated hard for

her during the campaign and I
wouldn't take back a second of



iMessage



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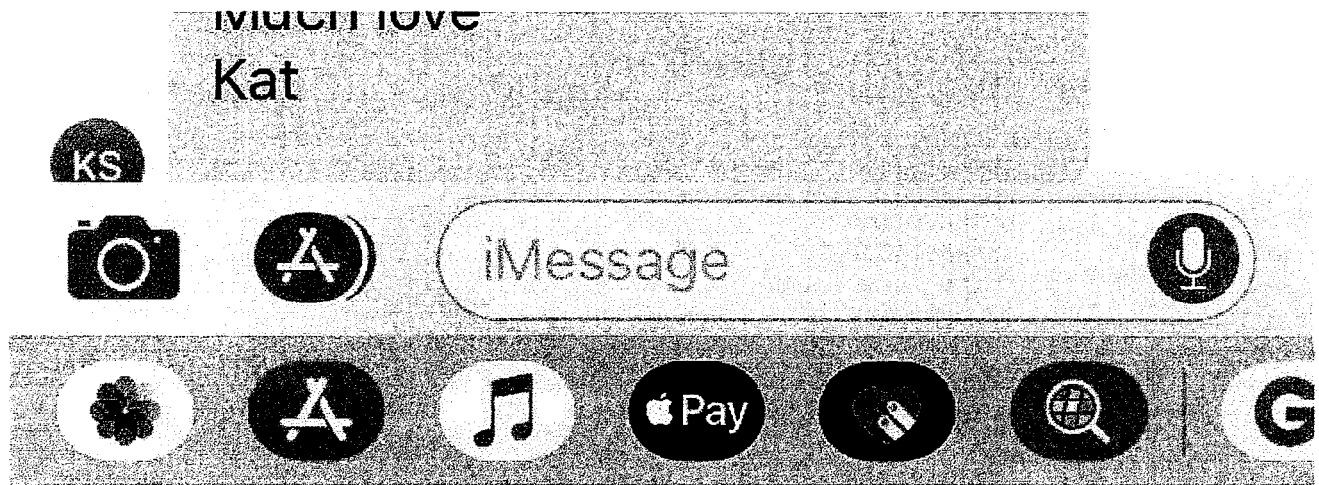
New iMessage

Cancel

To: Kat Schultz, Holly

Lastly, I have nothing but immense respect for Dawn as a Judge, despite the potential speculation about my leaving the panel. I advocated hard for her during the campaign and I wouldn't take back a second of time I spent, because she is one of the best Judges I have ever seen on the bench. My departure was not associated with a particular issue or any bad blood between myself or Judge. And if you hear anyone questioning this, or suggesting otherwise, please make this clarification on my behalf!!!!

Much love



T-Mobile LTE

6:31 PM

92% 

New iMessage

Cancel

To: Kat Schultz, Holly

So as much as we joke about it hag is not a club and we are all grown ass women. Hag is simply a group that you can depend on and trust in. All we ask is the same in return. No one personal dispute gets to decide who stays and who doesn't. We don't keep score that way. That is a good thing because I have been pissed at all these bitches at one time or another 🤔 🤔 . Seriously I have no plans to change any of my behavior because of what may or may not be going on with you and Dawn. As far as I'm concerned both of you will continue to be invited to

whatever I'm planning and you
will behave like civilized adults



iMessage



📶 T-Mobile LTE

6:32 PM

92% 🔋

New iMessage

Cancel

To: Kat Schultz, Holly

Continue to be invited to whatever I'm planning and you will behave like civilized adults 😏😏😏. Ok so maybe just don't throw things 😏😏😏. That being said whatever is going on I'm here and willing to listen anytime ❤️

Holly



Dang laura! You nailed it!!!!!!

Thanks! I was actually working on it during the day walk this morning. It's when I do my best work 🤔

Holly



Very well done. We are keeping you Kat

H you Nat



iMessage



📶 T-Mobile LTE

6:32 PM

92% 🔋

New iMessage

Cancel

To: Kat Schultz, Holly

KS Ha! Ok.

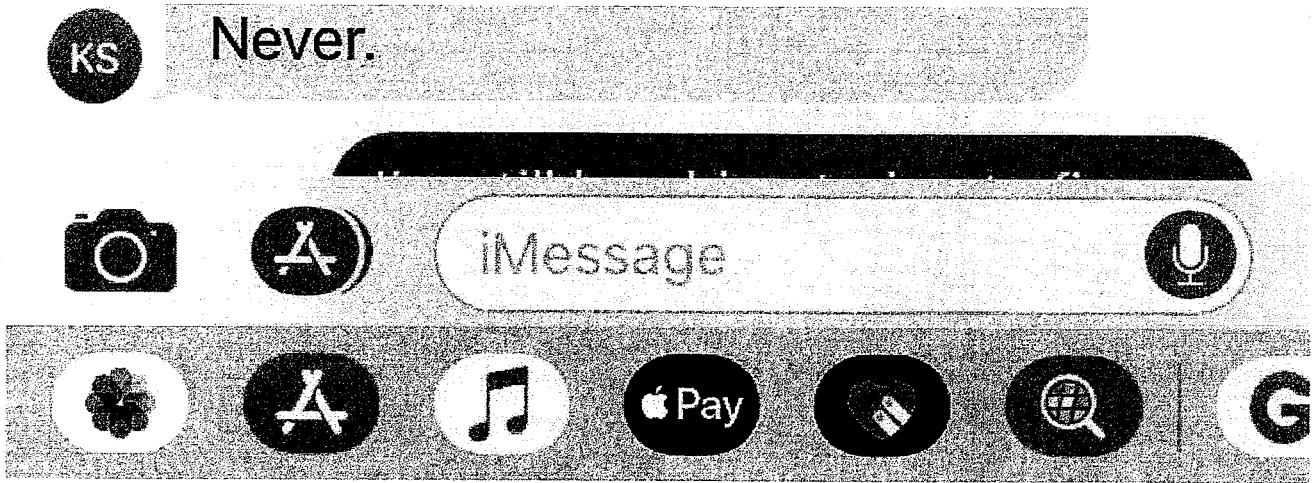
Holly

Don't throw out the baby with the bathwater.

H Okay Laura wasn't that good??
😄

Kat Schultz

I just want everyone to be comfortable. I don't have a clue what's going on, but I can assure you. If anyone ever pisses me off, I have about a 20 second rebound rate until I'm willing to meet for a drink. And I never refuse to talk things out.



Sent from Yahoo Mail for iPhone

T-Mobile LTE

6:32 PM

92%

New iMessage

Cancel

To: Kat Schultz, Holly



Kat Schultz

I just want everyone to be comfortable. I don't have a clue what's going on, but I can assure you. If anyone ever pisses me off, I have about a 20 second rebound rate until I'm willing to meet for a drink. And I never refuse to talk things out. Never.

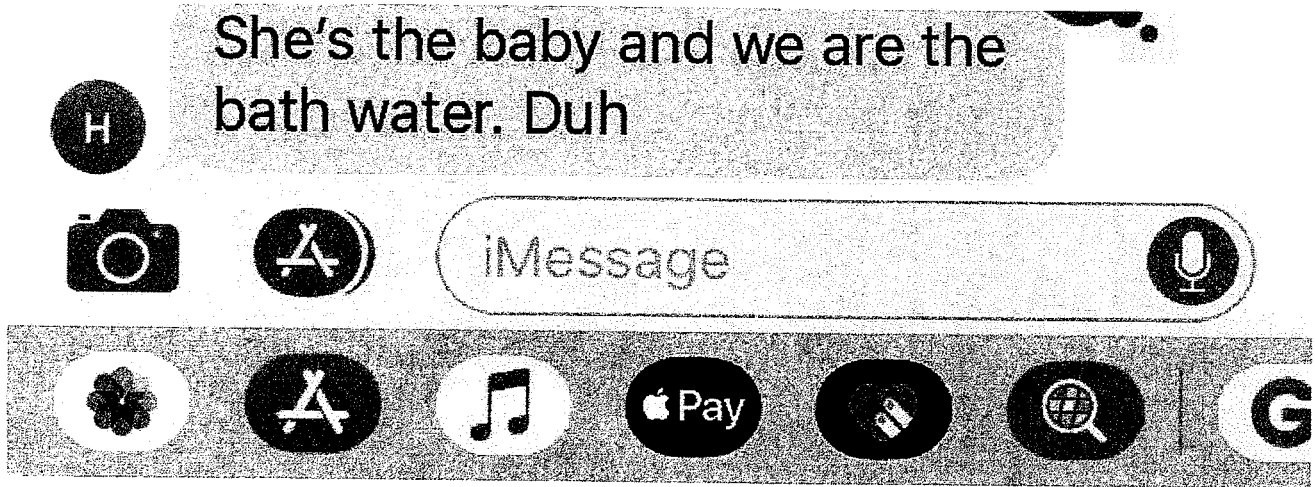


I'm still laughing trying to figure out who is the baby and who is the bath water 😂😂. But yes it does make a point

Holly



She's the baby and we are the



**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**


IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**ORDER AND NOTICE OF HEARING
ON SUSPENSION FROM DUTIES PENDING FINAL ADJUDICATION**

Pursuant to SCR 4.020(1)(a)(ii) it is hereby ORDERED that a hearing will be held on the 20th day of December, 2019, at the time of 10:00 a.m., at the Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky, as to whether it will be in the best interest of justice that Judge Dawn M. Gentry be suspended temporarily from acting in her official capacity as a judge and from the performance of her duties, without affecting her pay status, until final adjudication of the pending formal proceedings.

Date: December 16th, 2019



R. Michael Sullivan, Chairman
Kentucky Judicial Conduct Commission

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her attorney, Stephen Ryan, 7104 Hillcircle Court, Louisville, KY 40214, and on counsel for the Judicial Conduct Commission, Bryan Beauman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, this 16th day of December, 2019.



JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

**IN RE THE MATTER OF: JUDGE DAWN GENTRY, KENTON COUNTY
FAMILY CIRCUIT COURT DIVISION 5, 16TH JUDICIAL DISTRICT**

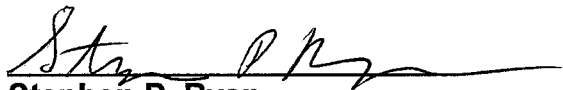
MOTION TO CONTINUE

Comes Judge Dawn Gentry, by counsel, Stephen P. Ryan, and moves this honorable commission for a short continuance in the temporary suspension hearing. In support of said motion, counsel states as follows:

- 1) That due to their schedules Judge Gentry has had trouble getting witnesses to appear on her behalf;
- 2) That some of witnesses are starting their Christmas vacation and will be unavailable;
- 3) That most importantly, counsel's daughter is due to give birth anytime, but if the baby is not born by Friday, labor will be induced that morning.

Wherefore counsel respectfully requests a short continuance.

Respectfully Submitted,



**Stephen P. Ryan
7104 Hillcircle Court
Louisville, KY 40214
(502) 551-1083
Stephen_ryan@rocketmail.com**

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

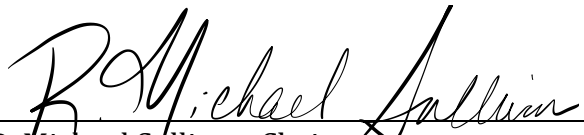
**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

ORDER GRANTING MOTION TO CONTINUE

Upon consideration of Judge Gentry's Motion to Continue the hearing on Temporary Suspension, it is hereby by the Commission ORDERED that the motion be GRANTED.

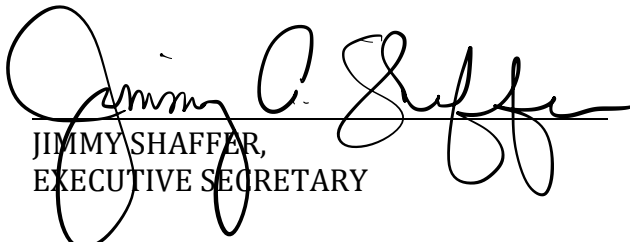
The hearing will be held on the 3rd day of January, 2020, at the time of 9:00 a.m., in the Court of Appeals courtroom on the 10th Floor of the Jefferson County Judicial Center, 700 W. Jefferson Street, Louisville, Kentucky.

Date: December 18th, 2019


R. Michael Sullivan, Chairman
Kentucky Judicial Conduct Commission

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her attorney, Stephen Ryan, 7104 Hillcircle Court, Louisville, KY 40214, and on counsel for the Judicial Conduct Commission, Bryan Beaman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, this 18th day of December, 2019.


JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

JUDICIAL CONDUCT COMMISSION'S WITNESS AND EXHIBIT LIST

Counsel for the Judicial Conduct Commission submits the following witness and exhibit lists for the temporary removal hearing for this matter set for January 3, 2020.

I. Witness List

Counsel for the Judicial Conduct Commission anticipates calling the following witnesses to testify live at the hearing. All of the testimony of the witnesses identified in this witness list will be offered primarily for the purposes of establishing that it is in the best interest of justice that Judge Gentry be temporarily suspended, with pay, pending the final disposition of the formal proceedings and charges against her. Counsel for the Commission reserves the right to call additional witnesses as necessary for impeachment.¹

1. Judge Dawn Gentry
2. Michael Hummel
3. Katherine Schulz
4. Kelly Blevins

At this time, Counsel for the Judicial Conduct Commission does not anticipate calling any witnesses by affidavit, but reserves the right to do so upon stipulation of the parties.

¹ Witnesses are not necessarily listed in the order in which they will be called.

II. Exhibit List

Counsel for the Judicial Conduct Commission identifies the following exhibits intended to be used at the temporary removal hearing in this matter set for January 3, 2020.² Counsel for the Commission reserves the right to utilize additional documents or exhibits for purposes of impeachment or to refresh recollection of witnesses providing testimony.

1. Memorandum of Understanding for Participation in the KRS 620 Guardian Ad Litem and Appointed Counsel Roster, Kenton Family Court, Selection of Roster Member.
2. February 22, 2018 email from Dawn Gentry to various individuals re Walking for Team Gentry
3. June 20, 2018 email chain from Laura Oldfield to multiple individuals re Keep Gentry – Fundraising, including message forwarding email to Michael Hummel from Katherine Schulz.
4. July 10, 2018 through July 23, 2018 email chain between members of finance committee re KEEP GENTRY FINANCE COMMITTEE.
5. August 10, 2018 email from Dawn Gentry to various individuals re Walking Commitment.
6. September 12, 2018 email from K. Krall to K. Blevins re cases from today.
7. November 9, 2018 General Order by Judge Dawn Gentry setting guardian ad litem panel members.
8. November 9, 2018 email from Dawn Gentry to Michael Hummel and Delana Sanders re Transfer of Cases.

² These exhibits are included in the JCC factual file, a copy of which has previously been provided to Judge Gentry.

9. August 9, 2019 Motion for Recusal filed by Katherine Schulz.³
10. August 12, 2019 Order by Judge Dawn Gentry overruling Katherine Schulz's Motion for Recusal.
11. August 26, 2019 Supplemental Findings of Fact and Conclusions of Law in case Nos. 19-J-172/19-J-173.
12. Text messages from Deb Pleatman to K. Schulz.
13. Records from the Kentucky Registry of Election Finance concerning Judge Gentry's candidacy for office.
14. November 20, 2018 SnapChat from Stephen Penrose.

Respectfully submitted,

/s/ Bryan H. Beauman
Bryan H. Beauman
Donald C. Morgan
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507
bbeauman@sturgillturner.com
dmorgan@sturgillturner.com
Telephone: (859) 255-8581
COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

³ Court documents that reference minor children by name will be redacted to remove the children's names.

CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2020, I served a true and correct copy of the foregoing by electronic mail on the following individuals:

Stephen P. Ryan
7104 Hillcircle Court
Louisville, KY 40214
(502) 551-1083
Stephen_Ryan@rocketmail.com
COUNSEL FOR JUDGE DAWN GENTRY

Jimmy Shaffer
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
(502) 564-1231
JimmyShaffer@kycourts.net
EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION

/s/ Bryan H. Beauman
COUNSEL FOR JUDICIAL CONDUCT COMMISSION

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

ORDER OF TEMPORARY SUSPENSION FROM DUTIES
PENDING FINAL ADJUDICATION

This matter, having come before the Commission on January 3, 2020, on hearing pursuant to SCR 4.020(1)(a)(ii), upon consideration thereof, and of the entire record in this matter, the Commission finds that it will be in the best interest of justice that Judge Gentry be suspended temporarily from acting in her official capacity as a judge and from the performance of her duties, without affecting her pay status, until final adjudication of the pending formal proceedings, it is by the Commission:

ORDERED that Dawn M. Gentry, Family Court Judge, be and hereby is suspended from acting in her official capacity as a judge and from the performance of her duties, without affecting her pay status, until final adjudication of the pending formal proceedings.

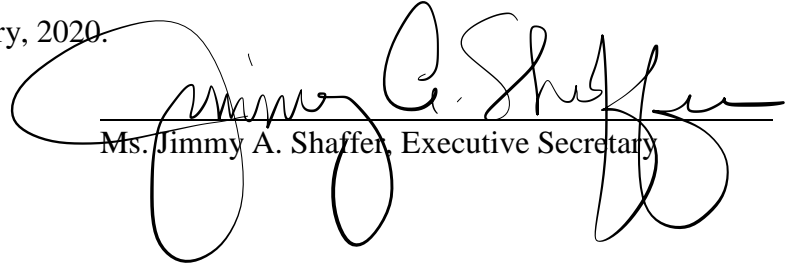
During her suspension, Judge Gentry shall refrain from performing the duties of her office, shall not access or utilize court resources, and shall not appear at the Kenton County Courthouse. This Order shall not be confidential.

Date: 1/6, 2020


R. MICHAEL SULLIVAN, CHAIR

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her attorney, Stephen Ryan, 7104 Hillcircle Court, Louisville, KY 40214, and on counsel for the Judicial Conduct Commission, Bryan H. Beauman and Donald C.

Morgan, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington,
KY 40507, this 6th day of January, 2020.



Ms. Jimmy A. Shaffer, Executive Secretary

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

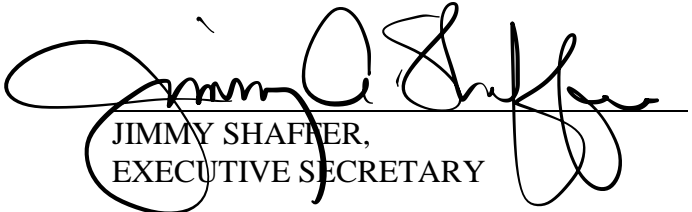
**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

NOTICE OF TIME AND PLACE FOR HEARING

NOTICE is hereby given that the hearing in these formal proceedings will be held commencing April 20, 2020, at 8:30 a.m. in the Campbell County Courthouse, District Court, Division 1, 330 York Street, Newport, KY.

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Judge Dawn M. Gentry, by mailing and emailing the same to her attorneys, Stephen Ryan, 7104 Hillcircle Court, Louisville, KY 40214, stephen_ryan@rocketmail.com; and Leonard E. Weakley, Jr., One Centennial Plaza, 705 Central Ave., Cincinnati, OH 45202, Leonard.Weakley@gmail.com; and on counsel for the Judicial Conduct Commission, Bryan Beaman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeaman@sturgillturner.com, this 27th day of January, 2020.


JIMMY SHAFNER,
EXECUTIVE SECRETARY

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION


IN RE: THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

ENTRY OF APPEARANCE AS CO-COUNSEL

Please take notice the Leonard A. Weakley Jr. enters his appearance as co-counsel for Judge Dawn Gentry. Please include copies of all pleadings, notices, Orders, and correspondence to the attention of the undersigned.

Respectfully submitted,


LEONARD A. WEAKLEY JR.

Ky. Bar No. 75003

One Centennial Plaza

705 Central Avenue

Cincinnati, OH 45202

(513) 702-0725

Leonard.Weakley@gmail.com

CERTIFICATE OF SERVICE

It is hereby certified a true and correct copy of the foregoing Entry of Appearance of Co-Counsel, this 23rd day of January, 2020, was e-mailed and mailed via U.S. Postal Service, first class mail, to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604

Hon. Stephen P. Ryan
7104 Hillcircle Court
Louisville, KY 40214
Stephen_Ryan@rocketmail.com


LEONARD A. WEAKLEY, JR.

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE: THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

MOTION TO CONTINUE HEARING CURRENTLY SCHEDULED FOR APRIL 13, 2020

Hon. Dawn M. Gentry, through counsel, moves the Commission to continue and reschedule formal proceedings currently scheduled for the week of April 13, 2020, and in support of this Motion, states as follows:

1. The date of the formal proceedings was informally set prior to Judge Gentry's co-counsel entering his appearance. The informal scheduling was handled through Judge Gentry's counsel over a long weekend, prior to co-counsel being involved in these proceedings.
2. Judge Gentry did not have the opportunity to discuss the scheduling with her co-counsel.
3. Judge Gentry's co-counsel is out of town on a pre-planned and pre-paid family vacation and is unable to be present the week of April 13, 2020 or April 30, 2020.

Wherefore, Judge Gentry moves the Commission to continue the formal hearing currently scheduled for April 13, 2020.

Respectfully submitted,



LEONARD A. WEAKLEY JR.

Ky. Bar No. 75003
One Centennial Plaza
705 Central Avenue
Cincinnati, OH 45202

(513) 702-0725
Leonard.Weakley@gmail.com

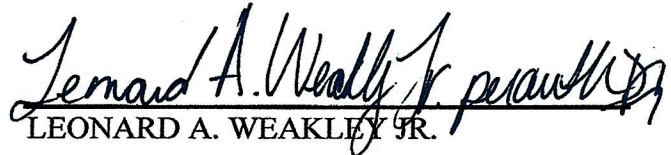
CERTIFICATE OF SERVICE

It is hereby certified a true and correct copy of the foregoing Entry of Appearance and Substitution of Counsel, this 23rd day of January, 2020, was e-mailed and mailed via U.S. Postal Service, first class mail, to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Hon. Stephen P. Ryan
7104 Hillcircle Court
Louisville, KY 40214
Stephen_Ryan@rocketmail.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604


LEONARD A. WEAKLEY JR.

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**


IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

ORDER DENYING MOTION TO CONTINUE

Upon consideration of Judge Gentry's Motion to Continue the hearing in the formal proceedings, it is hereby by the Commission ORDERED that the motion be DENIED.

Date: January 27th, 2020



R. Michael Sullivan, Chairman
Kentucky Judicial Conduct Commission

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Judge Dawn M. Gentry, by mailing and emailing the same to her attorneys, Stephen Ryan, 7104 Hillcircle Court, Louisville, KY 40214, stephen_ryan@rocketmail.com; and Leonard E. Weakley, Jr., One Centennial Plaza, 705 Central Ave., Cincinnati, OH 45202, Leonard.Weakley@gmail.com; and on counsel for the Judicial Conduct Commission, Bryan Beaman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeaman@sturgillturner.com, this 27th day of January, 2020.



JIMMY SHAFFER,
EXECUTIVE SECRETARY

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE: THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

MOTION TO DISMISS COUNTS I AND II OF FORMAL
CHARGES PURSUANT TO SCR 4.025(2)

Hon. Dawn M. Gentry, through counsel and pursuant to SCR 4.025(2), moves the Commission dismiss Counts I and II of the Commission's formal charges and in support states as follows:

1. SCR4.025(2) states as follows:

“For any violation related to campaign conduct in a primary or general election, the authority of the Commission to take action shall be barred unless notice of preliminary investigation pursuant to SCR 4.170 has been issued by the Commission within 180 days of the date of the general election following the campaign as to which the conduct relates.”

2. In Judge Dawn M. Gentry's case before the Judicial Conduct Commission, the Commission's Initial Letter to Judge Gentry was dated June 24, 2019. Judge Gentry's General Election date was November 6, 2018. The Commission's Notice of preliminary investigation was 230 days after the general election.
3. The Commission charged Judge Dawn M. Gentry in Count I – Coercion to Participate in Judicial Campaign. This count is barred by investigation of the Judicial Conduct Commission pursuant to SCR 4.025(2).
4. The Commission charged Judge Dawn M. Gentry in Count II – Retaliation for Failure to Support Judicial Campaign. This count is barred by investigation of the Judicial Conduct Commission pursuant to SCR 4.025(2).
5. The attached affidavit is incorporated by reference.

Wherefore, Judge Dawn M. Gentry moves the Commission to dismiss Counts I and II of the formal charges filed against her pursuant to SCR 4.025(2).

Respectfully submitted,

/s/ Leonard A. Weakley, Jr.
LEONARD A. WEAKLEY JR.
Ky. Bar No. 75003
One Centennial Plaza
705 Central Avenue
Cincinnati, OH 45202
(513) 702-0725
Leonard.Weakley@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, 5th of February, 2020, a copy of the foregoing was served via email and U.S. mail, first class mail, to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Hon. Stephen P. Ryan
7104 Hillcircle Court
Louisville, KY 40214
Stephen_Ryan@rocketmail.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

/s/ Leonard A. Weakley, Jr.
LEONARD A. WEAKLEY JR.

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE: THE MATTER OF:

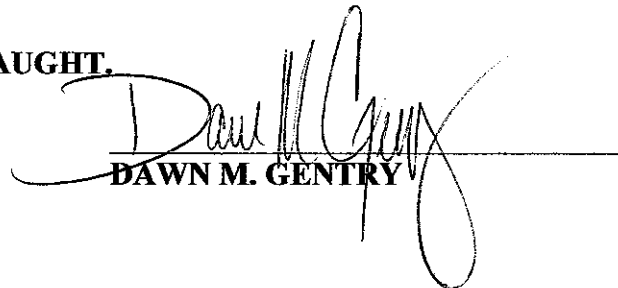
DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

AFFIDAVIT

Comes now the Affiant, Dawn M. Gentry, after first being duly cautioned and sworn,
states as follows:

- 1) I campaigned for Kenton County Family Court Judge, Division 5 in 2018.
- 2) The date of the general election was November 6, 2018.
- 3) I received a letter from the Judicial Conduct Commission in January, 2019 in relation to JCC Case Number 2019-17 regarding allegations relative to my 2018 campaign for family court judge. I mailed my response on January 30, 2019. After review by the Commission, the case was concluded with no further action being necessary.
- 4) The current case, JCC Case Number 2019-017, before this Commission was initiated more than 180 days after the general election. The initial letter sent to me by the Commission was dated June 24, 2019. This is 230 days after the general election.
- 5) The initial letter from the Commission, dated June 24, 2019, did not address allegations of campaign violations. The follow up letter, dated July 29, 2019, addressed, alleged campaign violations. This letter was initiated 265 days after the 2018 general election.

FURTHER, AFFIANT SAITH NAUGHT.

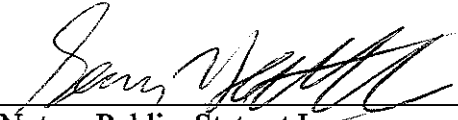


DAWN M. GENTRY

COMMONWEALTH OF KENTUCKY

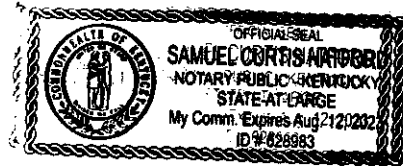
COUNTY OF _____

The above Affidavit was subscribed and sworn to before me this 20th day of February, 2020 by Dawn M. Gentry.



Notary Public, State at Large
Certificate # _____

My Commission expires: _____



MEMBERS:

STEPHEN D. WOLNITZEK, CHAIR
COVINGTON

JUDGE JEFF S. TAYLOR
OWENSBORO

JUDGE EDDY COLEMAN
PIKEVILLE

JUDGE DAVID BOWLES
LOUISVILLE

MICHAEL A. NOFTSGER
SOMERSET

DR. DON I. THARPE
NICHOLASVILLE

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION
P.O. Box 4266
FRANKFORT, KENTUCKY 40604-4266
PHONE 502-564-1231 FAX 502-564-1233

ALTERNATES:

R. MICHAEL SULLIVAN
OWENSBORO

JUDGE GLENN E. ACREE
LEXINGTON

JUDGE MITCH PERRY
LOUISVILLE

JUDGE KAREN THOMAS
COVINGTON

EXECUTIVE SECRETARY
MS. JIMMY SHAFFER

January 22, 2019

PERSONAL AND CONFIDENTIAL

Hon. Dawn M. Gentry
3348 Bluejay Dr.
Edgewood, KY 41018-2602

RE: JCC Case Number 2019-017

Dear Judge Gentry:

This is to advise that a complaint has been filed against you with the Judicial Conduct Commission relative to your campaign for Family Court Judge.

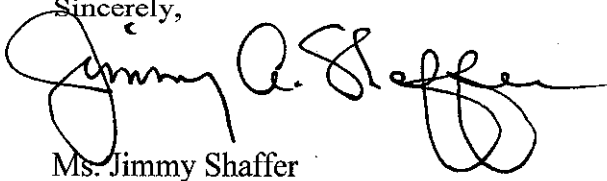
The complaint alleges you:

- Made appointments to your GAL panel on the basis of financial and other contributions to your campaign in violation of Rule 2.13, including replacing a member of the panel with Delana Sanders, the wife of Kenton County Commonwealth Attorney Rob Sanders.
- Made the appointment of Ms. Sanders in exchange for Mr. Sanders' endorsement, work on your campaign and financial contributions to your campaign.
- Expected panel members to work on and make financial contributions to your campaign.
- Told your panel they would not be signing a customary agreement not to contribute to any sitting judge or candidate for any judge of the Kenton Family Court so that they could contribute to your campaign.
- Expected the panel and staff members to canvass door-to-door for your campaign. The complaint states that Meredith Smith, a state employee who served as a mediator on your staff was expected to canvass even though she suffered from a back condition making it physically difficult for her. The complaint alleges you expressed your displeasure with Ms. Smith's lack of participation and have since replaced her.
- Directed state employees to participate in campaign activities during office hours.

Following consideration and discussion of the complaint, the Commission has requested you file a written response to the allegations. Please submit your response on or before February 13, 2019, by mailing it to the address listed above.

Please note that Mr. Stephen D. Wolnitzek recused from any consideration of this complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Jimmy A. Shaffer". The signature is written in a cursive style with a large initial "J" and a distinct "A" and "S".

Ms. Jimmy Shaffer
Executive Secretary



COMMONWEALTH OF KENTUCKY
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

KENTON COUNTY JUSTICE CENTER
230 MADISON AVENUE, 5TH FLOOR
COVINGTON, KENTUCKY 41011

PHONE 859-292-6364 FAX 859-292-6617

DAWN M. GENTRY
CIRCUIT JUDGE, FAMILY DIVISION

KENTON FAMILY COURT

January 30, 2019

Commonwealth of Kentucky
Judicial Conduct Commission
PO Box 4266
Frankfort, Kentucky 40604-4266

RE: JCC Case Number 2019-017

Dear Commission Members:

Please allow this letter to serve as a formal response to the complaint filed against me with the Judicial Conduct Commission relative to my campaign for Family Court Judge.

The "customary agreement" (contract) mentioned in the complaint violated the voting and election rights of all who applied and were appointed to any panel. The "customary agreement" (contract) was developed by the prior judges. The "customary agreement" (contract) was not my original work nor did I agree with its execution. The decision to remove the "customary agreement" (contract) was made three (3) months before the first filing date for the primary election. Furthermore, there were panel members serving on Kenton County Family Court Division Five (5) Dependency, Neglect, and Abuse Panel who never signed "customary agreement" (contract). No panel member now or member of the Bar wishing to serve on Kenton County Family Court Division Five (5) Dependency, Neglect, and Abuse Panel is required to sign the "customary agreement" (contract). Moreover, this Judge brought the "customary agreement" (contract) to the attention to of the Judicial Conduct Commission (JCC) in April of 2018 and the JCC ruled it was not of importance in the election process and that the two candidates running against me who signed the "customary agreement" (contract) for Kenton County Family Court, Division Two (2) were not in violation nor did it have any bearing on contributions or volunteering.

I have worked diligently since January 18, 2018 to comply with the Administrative Office of the Court's form requirements, pursuant to the email sent by the Chief Justice (Exhibit 1). In order to comply, I have eliminated local forms and orders that do not comply with FCRPP 15. This "customary agreement" falls within this category. Further, I do not feel that I, as a

Judge, have the authority to contract with attorneys on behalf of the Commonwealth of Kentucky. Based on the above reasons, I ceased using the "customary agreement."

Rob Sanders, as well as several other elected officials supported me throughout the primary and general election. Neither Mr. Sanders, nor any other elected official was ever promised anything in exchange for his or her support.

KRS 620.100(c) went into effect on July 14, 2018 (Exhibit 2). With the change in law, more individuals were eligible for Court appointed attorneys. Delana Sanders was selected to serve on the Kenton County Family Court Division Five (5) Dependency, Neglect, and Abuse Panel in September of 2018 (Exhibit 3). This selection was established eight (8) months into the 2018 election year. Pursuant to Kenton County Family Court Local Rule 903.03(b), the number and designated members of the GAL panel is subject to revision or removal by the court (Exhibit 4). These local rules were approved by Order of the Kentucky Supreme Court on April 11, 2012. Rule 903.03(b) grants me the authority to revise or remove panel members. Delana Sanders was chosen to improve the panel as well as add an additional attorney to help with the increased number of cases. Delana Sanders was chosen based on her highly qualified abilities to improve representation for the citizens and children. Delana Sanders had been on the panel previously, before I was appointed, now elected to office. No panel member was removed from the panel at that time.

After the election, I created an alternate panel of three attorneys to handle the potential appointments, pursuant to KRS 620.100(c). The three (3) additional attorneys were chosen due to increasing conflicts from panel attorneys "covering" for each other. The alternate panel attorneys only represent potential de facto custodians.

The attorney who was removed from the panel was failing to appear timely in court and provide the appropriate representation for his clients while receiving payment from the Commonwealth of Kentucky before the cases were concluded. The attorney to date is still the attorney of record and has not withdrawn from hundreds of cases. Furthermore, the attorney provided an inappropriate hand-written letter that appeared to be a "form" of a resignation (Exhibit 5).

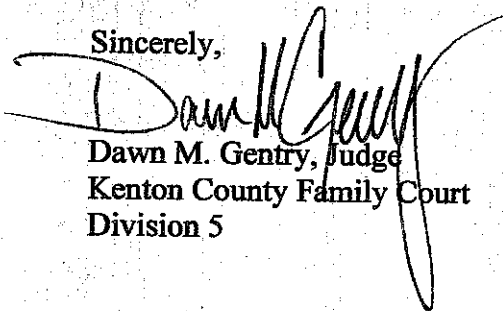
No person was required to make contributions to my campaign or volunteer. Panel members and my staff chose to support me as well as hundreds of other volunteers and financial contributors who have no affiliation with Kenton County Family Court Division Five (5). All campaign work was voluntary without any agreements or promises and outside of my established office hours.

All contributions and endorsements to my campaign were made freely and without any agreements or promises. I never asked for any contributions or requested an endorsement. All contributions and endorsements were provided by my supporters through the dedicated campaign account, made payable to the Committee to Keep Judge Gentry, as required by the campaign rules. This account was managed and handled by an independent, third party treasurer. All citizens, rather the General Public or Elected Official, endorsed or contributed to my campaign based on their "Right" as a voter.

Ms. Meredith Smith was never required to participate in any part of the campaign nor was she instructed to volunteer. Ms. Smith informed me roughly eight (8) weeks before the campaign's conclusion that she would be resigning to maintain her Kentucky Law License before the end of 2018. Furthermore, Ms. Smith was moonlighting as an attorney but was not forthcoming with me about the nature of her work outside and inside the realms of my office. I instructed her, as employee of a Judge and as an employee of Kentucky Administrative Office of the Courts, she was not permitted to do legal work. It was not approved by the Administrative Office of the Courts. Ms. Smith was angry about this issue. Furthermore, she constantly complained about her lack of compensation as an employee the Commonwealth of Kentucky. Ms. Smith failed daily to be available to perform her required duties of Kenton County Family Court Division Five (5) Case Specialist. However, when Ms. Smith complained about illness, there were no impediments to her seeking health care nor punishments for missing work. I assume she used appropriate sick leave and vacation time for her time not present in the office. I presumed her resignation was for higher paying employment and hours that met her needs. After the election, I accepted Ms. Smith resignation (Exhibit 6). Ms. Smith filed for unemployment. The unemployment matter was handled by the Administrative Office of the Courts. The position of Case Specialist, which encompasses the Mediator requirement, was occupied after Ms. Smith had concluded her employment. Furthermore, all appropriate requirements of by the Administrative Office of the Courts were met to fill the open position of Case Specialist. Further documentation of this is available from the Administrative of Office of the Courts.

I believe this addresses all issues mentioned in the letter from the Judicial Conduct Commission (JCC) dated January 22, 2019. Please contact me if I have not fully addressed all areas of concern.

Sincerely,



Dawn M. Gentry, Judge
Kenton County Family Court
Division 5

Encl.

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE: THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

MOTION TO DISCLOSE ALL INFORMATION AND NAME OF THE COMPLAINANT

Hon. Dawn M. Gentry, through counsel and pursuant to SCR 4.170(4), moves the Commission to disclose all factual information received by the Commission to date, including the name of the Complainant and in support states as follows:

1. SCR4.170(4) states as follows:

“After the preliminary investigation is completed and before formal proceedings are initiated under Rule 4.180, the Commission shall afford the judge under investigation an opportunity to examine all factual information, including the name of the complainant if relevant...”

2. To date, Judge Gentry has not been provided the name of the Complainant, as it was redacted from the information provided to her and her counsel.
3. Further, Judge Gentry, through counsel, is requesting a full and complete copy of all factual information in the possession of the Commission.

Wherefore, Judge Dawn M. Gentry moves the Commission to produce a full and complete copy of all factual information in possession of the Commission, including the name of the complainant pursuant to SCR 4.170(4).

Respectfully submitted,

/s/ Leonard A. Weakley, Jr.
LEONARD A. WEAKLEY JR.
Ky. Bar No. 75003
One Centennial Plaza
705 Central Avenue
Cincinnati, OH 45202
(513) 702-0725
Leonard.Weakley@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, the 5th of February, 2020, a copy of the foregoing was served via email and U.S. mail, first class, postage prepaid to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Hon. Stephen P. Ryan
7104 Hillcircle Court
Louisville, KY 40214
Stephen_Ryan@rocketmail.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

/s/ Leonard A. Weakley, Jr.
LEONARD A. WEAKLEY JR.

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE: THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

**JUDGE DAWN M. GENTRY'S FIRST SET OF INTERROGATOIRES, REQUESTS FOR
PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSIONS TO
JUDICIAL CONDUCT COMMISSION**

Definition of Words and Phrases

Judge Dawn M. Gentry, through counsel, sets forth the following definitions of various words and phrases that are contained in the attached interrogatories, document requests and requests for admissions. Judge Dawn M. Gentry provides the following definitions for the purpose of clarifying the intent of her questions and requests, in order to help Judicial Conduct Commission understand the objective of Judge Dawn M. Gentry's discovery efforts; to locate and furnish the relevant information and materials; and to avoid the unnecessary repetition of long descriptive phrases. **It is understood and agreed by Judge Dawn M. Gentry that Judicial Conduct Commission's use of these definitions and/or responses on the part of Judicial Conduct Commission to these discovery requests will not be construed as a concession that any definition contained herein is either factually correct or legally binding on the parties.** The definitions are set forth solely to aid in communication and to avoid any unnecessary semantic difficulties in discovery.

For purposes of the following interrogatories, request for admission and request for production of documents, the following definitions apply:

1. The terms "**Judicial Conduct Commission**, and/or "**You**" and/or "**Yours**" as used in these Interrogatories, refer to the Judicial Conduct Commission in this action, and to any person(s) acting or purporting to act on behalf of the Judicial Conduct Commission in any capacity, including but not limited to the capacities of insurer, lessor, employer, agent or representative.

2. The term "**document**" as used herein shall refer to any written, printed, typed, photo static, photographed, recorded, or otherwise reproduced communication or representation, whether comprised of letters, words, numbers, pictures, sounds or symbols, or any combination thereof. This definition includes copies or duplicates of documents contemporaneously or subsequently created which have any nonconforming notes or other markings thereon. Without limiting the generality of the foregoing, "**document**" includes, but is not limited to: correspondence, emails, memoranda, notes, records, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, projections, estimates, proposals, working papers, summaries, statistical statements, financial statements, accounts, checks, check stubs, receipts, invoices, orders, analytical records, reports and/or summaries of investigations, opinions or reports, trade letters, press releases, comparisons, books, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, forecasts, drawings, diagrams, instructions, minutes of meetings or of other communications of any type, including inter/intra office communications, memos, questionnaires and surveys, charts, graphs, photographs, phonograph recordings, films, tapes, discs, data cells, drums, printouts, all other data compilations from which information can be obtained (translated if necessary, by Judicial Conduct Commission through detection devices to usable form), any preliminary versions, drafts, or revisions of any kind of the foregoing, and other writings or documents whether produced or written by any person associated with Judicial Conduct Commission, or anyone else, including non-identical copies of

any of the foregoing.

3. For the purposes of the production of “**documents**” the term shall include copies of all documents being produced, to the extent the copies are not identical to the original, thus requiring the production of copies that contain any markings, additions, or deletions that make them different in any way from the original.

4. The term, “**document(s)**,” also includes all copies, drafts, proofs, both originals and copies either (1) in the possession, custody or control of Judicial Conduct Commission regardless of where located, or (2) produced or generated by, known to or seen by Judicial Conduct Commission, but not now on its possession, custody or control, regardless of where located or whether or not still in existence.

5. “**Relating to**” means in whole or in part constituting, concerning, embodying, reflecting, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to the subject matter specified in the Interrogatory or document request.

6. “**And**” and “**or**” are to be construed whether conjunctively or disjunctively as necessary to bring within the scope or the specification all materials that might otherwise be construed to be outside its scope; and “**any**” and “**all**” as used herein mean “each and every”. The use of the term “**including**” shall be construed to mean “without limitation”.

7. The term “**address**” refers to the current address or last known address, if the current address is unknown.

8. The term “**telephone number**” refers to the current phone number, including area code, or the last known area code and phone number, if the current phone number is unknown.

9. The terms “**person**” or “**persons**” as used in these Interrogatories and requests mean and refer to natural persons, proprietorships, corporations, professional service corporations,

partnerships, trusts, joint ventures, groups, associations, organizations, or other businesses or enterprises of any kind or nature and any division, department, or other sub-organization unit including predecessors and successors.

10. The term “**communications**” as used in these Interrogatories and requests means and refers to every transmittal or reception of information, however transmitted or received.

Instructions

1. When an Interrogatory or request asks for the description or identification of a document, it is intended that the answer shall state the following information with respect to each document:

- a. Title;
- b. Date;
- c. Author(s);
- d. Addressee(s);
- e. Recipient(s) of original or copy;
- f. File Number or other identifying mark or code;
- g. Nature and subject matter of the document;
- h. Location by room, building, and address, or if lost or no longer in existence, the last known location and custodian as well as the circumstances of the loss or destruction.

In lieu of identifying any document, a copy of such document may be attached to Judicial Conduct Commission’s responses.

2. When an Interrogatory requires the description or identification of an individual, it is intended that the answer shall state the following information with respect to each individual:

- a. Name;
- b. Present or last known home address;
- c. Present or last known business address, including name of current employer and employment classification or job title;
- d. Present or last known home and business telephone number;

3. Unless an individual interrogatory or request clearly states a different time period, these interrogatories and requests require disclosure of all information, documents, and responsive

materials or things from the time period encompassed within January 1, 2017 to the date of your answers and responses, inclusive.

4. Any use of the singular or plural, masculine or feminine, or upper or lower case form of words or letters shall be interpreted to include all other such forms as are consistent with the content of the interrogatory or request.

5. If the space provided for inserting your answers and responses is inadequate, please attach as many continuation pages as necessary, marking and numbering each continuation page so that it clearly indicates what interrogatory or request the information on the continuation page is intended to be responsive to. In the alternative, Judge Dawn M. Gentry' counsel has furnished all other parties with an electronic copy of these interrogatories and requests, in Microsoft Word format. By using the electronic copy, Counsel for the Judicial Conduct Commission can insert as much information as necessary to fully respond to any interrogatory or request.

6. If you claim any form of privilege, whether based on statute or otherwise founded, as a ground for not answering an Interrogatory or any part of an Interrogatory or Request for Production of Document or Request for Admission, set forth in complete detail each and every fact upon which the privilege is based.

Privilege Claims

7. If you claim any form of privilege, whether based on statute or otherwise founded, as a ground for not answering an Interrogatory or any part of an Interrogatory, Request for Production of Document or request for admission, set forth in complete detail each and every fact upon which the privilege is based.

8. If you claim any form of privilege, whether based on statute or otherwise, as a ground for not describing requested oral communications or documents, state the following: (a)

the date; (b) name and present or last known home and business addresses and telephone numbers, title (or position), and occupation of each of the participants in communication(s), or of those individuals who prepared, produced, or reproduced, or who were recipients of said communication or document; (c) the name, present or last known home and business and telephone numbers, title (or position), and occupation of each individual who was present during all or any part of said communication(s); (d) a description of the oral communication or of the document sufficient to identify it without revealing the information for which the privilege is claimed; and (e) each and every fact or basis upon which you claim any such privilege

INTERROGATORIES

Judge Dawn M. Gentry, by counsel, pursuant to SCR 4.160 and Rule 33 of the Kentucky Rules of Civil Procedure, propound the following interrogatories to the Judicial Conduct Commission. Judge Dawn M. Gentry request that answers to these interrogatories be served upon her attorney within thirty (30) days after service hereof:

1. State the full name, position, and authority of each person assisting in answering these discovery requests.

ANSWER:

2. With respect to any witnesses you expect to call at the hearing, please, identify each witness, contact information, and provide a brief summary of the testimony each witness is expected to provide;

ANSWER:

3. Please state whether or not you have a copy of any statement or other document, as that word is defined in the definitions section above, which the Judge Dawn M. Gentry had previously made concerning this action or its subject matter and which is in your possession, custody or control. (For the purpose of this question, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.) If your answer is "yes," please state the name, address, telephone number, and employer of the person(s) who took such statement, the date on which such statement was taken, and the persons present at the time the statement was taken.

ANSWER:

4. Identify any and all photographs in your possession, your attorney's possession, or the possession of anyone acting on your behalf, of relevant information alleged in the Complaint. Include in your response the number of photographs, date taken, and who took the photos, including that person's name, address, and phone number.

ANSWER:

5. State the name, address, telephone number, and employer of each person and/or witness having any knowledge of relevant facts related to the allegations contained in the Complaint and provide a complete description of each person's knowledge related to the

allegations contained in the Complaint.

ANSWER:

6. Will the Judicial Conduct Commission modify or supplement these answers given herein, in a timely manner whenever the Judicial Conduct Commission knows that the answer given herein is no longer correct or complete?

ANSWER:

7. For each count and sub portion contained in the Complaint, state the source of information received to support the allegation, including but not limited to, the name of the individual(s) who provided the information and any documents which support said allegations.

ANSWER:

8. Pursuant to SCR 4.170(4), state the name of the Complainant.

ANSWER:

9. State the name of any and all individuals who have the authority to direct the investigator as to which individuals to interview.

ANSWER:

10. State with specificity, what steps Judge Dawn M. Gentry took to conceal the alleged conduct contained in Count I, paragraph one.

ANSWER:

11. State the name and contact information of any and all individuals who will testify as to witnessing Judge Dawn M. Gentry's child witnessing a confidential proceeding, as alleged in Count III, paragraphs four.

ANSWER:

12. State the specific days and times Judge Dawn M. Gentry permitted Mr. Penrose to spend work hours playing his guitar and singing in his office.

ANSWER:

13. State the name and contact information of any and all individuals who will testify he or she witnessed Judge Dawn M. Gentry or any member of her staff consuming alcohol in the Kenton County Courthouse, during court hours or otherwise.

ANSWER:

14. Identify the dates, attorneys present, and private attorneys excluded in the allegation that Judge Gentry held pretrial conferences in dependency, abuse, and neglect cases contained in Count V of the Complaint.

ANSWER:

15. Identify which cases Judge Dawn M. Gentry refused to recuse from in which Ms. Schulz represented one of the parties, as alleged in Count VI, paragraph four.

ANSWER:

16. Identify, specifically which judicial functions were improperly delegated to Mr. Penrose and on what dates these acts occurred, as alleged in Count VII, paragraph three.

ANSWER:

17. Identify each and every GAL panel member who has not completed GAL training, as alleged in Count VII, paragraph one.

ANSWER:

18. State with specificity the specific dates and actions which would qualify as retaliatory actions against Ms. Blevins, as alleged in Count IV, paragraph one.

ANSWER:

19. State with specificity, the date and the name and contact information for the attorney Judge Dawn M. Gentry allegedly solicited to put up a sign, as contained in Count I, paragraph three.

ANSWER:

20. State with specificity the dates, attorneys involved, and actions which support the allegation Judge Dawn M. Gentry coerced members of her GAL panel to donate the maximum amount to her campaign and use personal time to engage in campaigning on her behalf, as alleged in Count I, paragraph one.

ANSWER:

21. State with specificity the dates, attorneys involved, and actions which support the allegation Judge Dawn M. Gentry required her GAL panel members to serve on the finance committee in Count I, paragraph two.

ANSWER:

22. Identify the name and contact information for the individual who will testify Judge Dawn M. Gentry appointed Hon. Delana Sanders to her GAL panel in exchange for her husband's agreement to support her campaign.

ANSWER:

23. State with specificity how Judge Dawn M. Gentry failed to be candid and honest with the Judicial Conduct Commission, as alleged in Count IX.

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to SCR 4.160 and Kentucky Rule of Civil Procedure 34, Judicial Conduct Commission is requested to produce the following documents and other things for inspection and copying at the office of Judge Dawn M. Gentry' counsel, Leonard A. Weakley, Jr., One Centennial Plaza, 705 Central Avenue, Cincinnati, Ohio 45202, within thirty (30) days after service hereof.

1. Please produce a copy of any statement(s), written, tape-recorded or otherwise, made by Judge Dawn M. Gentry.

Response:

2. Please produce a copy of all documents, statements, video recordings, and/or audio recordings supporting each Count and sub portion contained in the Complaint.

Response:

3. Please produce a copy of the false time sheets Judge Dawn M. Gentry filled out and approved for Meredith Smith as alleged in Count III, paragraph one.

Response:

4. Please produce a copy of all cases involving Ms. Kelly Blevins in which Judge Dawn M. Gentry refused to recuse herself as alleged in Count IV, paragraph two.

Response:

5. Please produce a copy of all photographs or videos which support any allegation contained in the Complaint. If photographs exist, but are not in your possession, please list the

name and contact information of the person(s) who currently has/have possession of those items.

Response:

6. Please produce a copy of all photographs or videos taken of Judge Dawn M. Gentry. If photographs or videos exist, but are not in your possession, please list the name and contact information of the person(s) who currently has/have possession of those items.

Response:

7. Please produce a copy of any and all documents and/or objects evidencing any allegation or sub portion contained in the Complaint.

Response:

8. Please produce a copy of each and every object or document, including models, exhibits, visual aids, charts, graphs, and/or other demonstrative evidence which will be used by or on behalf of the Judicial Conduct Commission as an exhibit or to which reference will be made by or on behalf of the Judicial Conduct Commission in the course of the trial of this matter.

Response:

9. With respect to any witnesses you expect to call at trial, please produce any and all exhibits to be used as a summary of or support for the opinions and/or testimony.

Response:

10. Please produce copies of all video and/or audio recordings of all witness statements

conducted during the Judicial Conduct Commission's investigation.

Response:

11. Please produce a copy of the confidential proceedings (redacted as necessary to name, age of the minor) allegedly witnessed by Judge Dawn M. Gentry's child, as alleged in Count III, paragraph four.

Response:

12. Please produce a copy of the statute or rules which regulate GAL appointments from January 1, 2017 to present.

Response:

13. Produce a copy of JCC Case Number 2019-17, including, but not limited to the initial complaint lodged against Judge Dawn M. Gentry, any investigative notes, Judge Dawn Gentry's response with attachments, and the letter the Commission provide Judge Dawn M. Gentry, dismissing the complaint.

Response:

REQUESTS FOR ADMISSIONS

Judge Dawn M. Gentry, through counsel, requests that Judicial Conduct Commission either admit or deny the truthfulness of each of the numbered Requests in this First Set of Requests for Admissions in the manner, and subject to the limitations and requirements set out in Rule 36 of the Kentucky Rules of Civil Procedure by either admitting or specifically denying the truthfulness of each request under oath. Please note that failure to answer or inadequate answers will result in the statement being admitted, in accordance with the provisions of C.R. 36. Judge Dawn M. Gentry request that responses to these requests be served upon her counsel within thirty (30) days of service hereof.

1. Admit that you have communicated with other Northern Kentucky Judges, not on the Commission regarding this case.

RESPONSE:

2. Admit that the initial Complaint was filed anonymously and not based upon first hand knowledge of the complainant.

RESPONSE:

3. Admit that the Judicial Conduct Commission did not make any attempt to have their investigator interview Hon. Rob Sanders.

RESPONSE:

4. Admit that the Judicial Conduct Commission did not make any attempt to have their investigator interview Hon. Delana Sanders.

RESPONSE:

5. Admit that the Judicial Conduct Commission did not make any attempt to have their investigator interview Mr. Stephen Penrose.

RESPONSE:

6. Admit that the Judicial Conduct Commission did not make any attempt to have their investigator interview Ms. Laura Aubrey.

RESPONSE:

7. Admit that the Judicial Conduct Commission did not make any attempt to have their investigator interview attorneys who would have been able to discredit the witnesses who were interviewed.

RESPONSE:

8. Admit that the Judicial Conduct Commission did not initiate notice of preliminary investigation pursuant to SCR 4.170 to Judge Dawn M. Gentry within 180 days of the general election following the campaign to which Counts I and II of the Complaint relate.

RESPONSE:

9. Admit that the Judicial Conduct Commission did not identify any statutory regulations which control the appointments of GAL panel members in its investigation or Complaint.

RESPONSE:

10. Admit members of the Judicial Conduct Commission have reviewed information relating to this case which would be ruled inadmissible in a hearing, pursuant to Kentucky Rules of Evidence, prior to filing the Complaint.

RESPONSE:

11. Admit Judge Karen Thomas, member of the Judicial Conduct Commission, serves on the Salmon P. Chase College of Law Alumni Board with Judge Dawn M. Gentry and has attended a dinner meeting with the Dean of Salmon P. Chase College of Law and other Northern

Kentucky Judges, including Judge Dawn M. Gentry.

RESPONSE:

12. Admit Judge Karen Thomas, member of the Judicial Conduct Commission, discussed this case outside of the Commission and its proceedings, breaching the confidentiality of the proceedings.

RESPONSE:

13. Admit the Judicial Conduct Commission failed to identify any statute or local rule which Judge Dawn M. Gentry violated regarding her GAL panel.

RESPONSE:

14. Admit the Judicial Conduct Commission failed to take the least severe action necessary to remedy the situation as it relates to Judge Dawn M. Gentry.

RESPONSE:

15. Admit it is the general policy and procedure of the Judicial Conduct Commission to engage in settlement negotiations with judges who have been accused of misconduct in lieu of and/or prior to a final hearing.

RESPONSE:

16. Admit that the Judicial Conduct Commission has refused to engage in any settlement negotiations with Judge Dawn M. Gentry and/or her counsel.

RESPONSE:

CERTIFICATE ACKNOWLEDGING ANSWERS UNDER OATH

STATE OF _____)
COUNTY OF _____)

_____, being first duly cautioned and sworn, states that she/he is a voting member of the Judicial Conduct Commission herein, and has reviewed the foregoing requests for admissions, and that the responses are true to the best of his/her knowledge.

X

Sworn to and subscribed before me this ____ day of _____, 2020.

NOTARY PUBLIC: KY STATE AT LARGE
My Commission Expires: _____

Respectfully submitted,

/s/ Leonard A. Weakley, Jr.
LEONARD A. WEAKLEY JR.
KY Bar No. 75003
One Centennial Plaza
705 Central Avenue
Cincinnati, OH 45202
(513) 702-0725
Leonard.Weakley@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, the 5th day of February, 2020, a copy of the foregoing was served via email and U.S. mail, first class, postage pre-paid, to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Hon. Stephen P. Ryan
7104 Hillcircle Court
Louisville, KY 40214
Stephen_Ryan@rocketmail.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

/s/ Leonard A. Weakley, Jr.
Counsel for Judge Dawn M. Gentry

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**JUDICIAL CONDUCT COMMISSION'S RESPONSE TO JUDGE GENTRY'S MOTION
TO DISMISS**

Counsel for the Judicial Conduct Commission files this response to Judge Dawn Gentry's motion to dismiss Charges I and II of the nine formal Charges against her.

Judge Gentry moves the Commission to dismiss Counts I and II of the Charges against her on the sole ground they are barred by the 180 day limitations period for campaign violations provided by SCR 4.025(2). However, the conduct and violations of the judicial canons alleged in Charges I and II go beyond "campaign conduct in a primary or general election." These Charges concern abuse of judicial power for a sitting judge's personal and political benefit. As a result, Judge Gentry's motion to dismiss should be overruled.

1. The conduct and violations in Count I expand beyond "conduct related to a judicial campaign" as that language is used in the SCR.

The limitations period in SCR 4.025(2) is not applicable to the conduct and violations alleged in Count I because those violations extend beyond a "violation related to campaign conduct in a primary or general election." SCR 4.025 provides "For any violation related to campaign conduct in a primary or general election, the authority of the Commission to take action shall be barred unless notice of preliminary investigation pursuant to SCR 4.170 has been issued by the Commission within 180 days of the date of the general election following the campaign as to which the conduct relates." SCR 4.025(2).

Violations related to campaign conduct are explicitly provided for in Canon 4 of the Canons of Judicial Conduct. *See* Canon 4 (“A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary. . . .”). While Charge I includes alleged violations of Canon 4, Charge I also includes alleged violations of Rules 1.1, 1.2, 2.1, 2.2, 2.3(A), 2.13(A), and 3.1(D). In other words, the conduct alleged in Charge I extends far beyond simple campaign violations—it involves Judge Gentry’s abuse of judicial power to coerce others into aiding Judge Gentry, politically and financially. These allegations are not merely about putting up campaign signs in the wrong place or at the wrong time. Rather, Charge I involves Judge Gentry’s use of judicial power to coerce attorneys who depended on Judge Gentry’s good favor for a significant portion of their income to support Judge Gentry. Charge I also asserts that Judge Gentry utilized her employees’ work hours, hours paid for by Kentucky’s taxpayers, to perform duties not for her judicial office, but for her personal and political interests. This type of misconduct extends well beyond a “violation related to campaign conduct” Because the conduct alleged in Count I is not limited to campaign violations, but includes abuse of judicial power while a sitting judge, Judge Gentry’s motion to dismiss Count I of the Charges must be overruled.

2. The conduct and violations in Count II are outside the scope of the limitations period because they involve retaliation *after* the judicial campaign.

The limitations period in SCR 4.025(2) is not applicable to Count II because it alleges retaliation that occurred after the general election.¹ Judge Gentry asserts (without explanation) that Count II – Retaliation for Failure to Support Judicial Campaign, is “barred by investigation of the Judicial Conduct Commission pursuant to SCR 4.025(2).” This argument is without merit. Count II alleges that after winning her general election, Judge Gentry retaliated against

¹ In addition, the argument presented in Section 2 regarding Count I apply with equal force to Count II.

individuals who she did not feel adequately supported her judicial campaign, either through monetary donations or in-person campaign efforts. Count II alleges, and the evidence shows, Judge Gentry removed Mike Hummel from the GAL panel days *after* the election, via a November 9, 2018 Order. *See* Exhibit A, November 9, 2018 Order. Charge II also alleges Judge Gentry retaliated against Meredith Smith, who was employed through November 29, 2018, after the election. Likewise, Judge Gentry's retaliation from the bench, including against Kelly Blevins, occurred after the election. This after-the-fact retaliation falls outside the plain language of the limitations period, which applies only to "campaign conduct" that occurs "*in*" an election. KRS 4.025(2) (emphasis added). It is self-evident that conduct occurring *after* the general election was over is not "campaign conduct," as the campaign ends when the election ends. Likewise, retaliation that occurs after the election does not occur *in* a primary or general election because the election has already concluded. Under Judge Gentry's argument, a judge would simply need to wait until 180 days after the election to retaliate against those who did not support her, and she would be immune from discipline for that misconduct. The plain language of SCR 4.025(2) contradicts Judge Gentry's assertion and her motion to dismiss should be overruled.

CONCLUSION

For these reasons, the Commission should overrule Judge Gentry's motion to dismiss.

Respectfully submitted,



Bryan H. Beauman

Donald C. Morgan

Sturgill, Turner, Barker & Moloney, PLLC

333 West Vine Street, Suite 1500

Lexington, Kentucky 40507

bbeauman@sturgillturner.com

dmorgan@sturgillturner.com

Telephone: (859) 255-8581

COUNSEL FOR JUDICIAL CONDUCT COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2020, I served a true and correct copy of the foregoing by electronic mail on the following individuals:

Stephen P. Ryan
7104 Hillcircle Court
Louisville, KY 40214
(502) 551-1083
Stephen.Ryan@rocketmail.com
CO-COUNSEL FOR JUDGE DAWN GENTRY

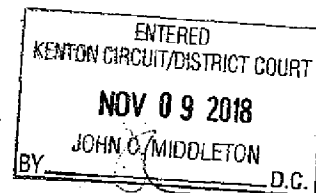
Leonard A. Weakley Jr.
Ky. Bar No. 75003
One Centennial Plaza
705 Central Avenue
Cincinnati, OH 45202
(513) 702-0725
Leonard.Weakley@gmail.com
CO-COUNSEL FOR JUDGE DAWN GENTRY

Jimmy Shaffer
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
(502) 564-1231
JimmyShaffer@kycourts.net
EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION


COUNSEL FOR JUDICIAL CONDUCT COMMISSION

EXHIBIT A

COMMONWEALTH OF KENTUCKY
SIXTEENTH JUDICIAL DISTRICT
KENTON FAMILY COURT
FIFTH DIVISION



GENERAL ORDER

IT IS HEREBY ORDERED; that the following attorneys are hereby appointed pursuant to the Rules of Kenton Family Court Rule 23(C) and (G) to the KRS 620 Guardian Ad Litem and Appointed Counsel Roster for the Kenton County Family Court Fifth Division:

Hon. Justin Durstock

Hon. Delana Sanders

Hon. Rachel O'Hearen

Hon. John J. Osterhage

Hon. Kathrine Schulz

Hon. J. Richard Scott

Hon. George Thompson

These appointments shall be effective until further orders of this Court.

SO ORDERED this the 9th day of November, 2018.

A handwritten signature in black ink, appearing to read "Dawn M. Gentry", written over a horizontal line.

JUDGE DAWN M. GENTRY

EXHIBIT

JCC 5

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

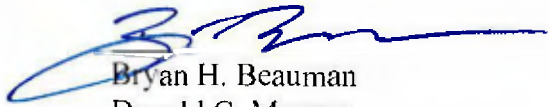
**JUDICIAL CONDUCT COMMISSION'S RESPONSE TO JUDGE GENTRY'S MOTION
TO DISCLOSE ALL INFORMATION AND NAME OF THE COMPLAINANT**

Counsel for the Judicial Conduct Commission files this response to Judge Dawn Gentry's motion to disclose all information and the name of the complainant. Judge Gentry's motion should be overruled because the Commission has already provided the full factual file to Judge Gentry and her counsel and Judge Gentry and her counsel have been provided with the same complaint information the Commission received.

In response to Judge Gentry's motion to disclose all factual information received by the Commission to date, Judge Gentry and her counsel have been provided with copies of the entire factual file. Further, the Commission has supplemented the factual file and provided such supplements to Judge Gentry and her counsel within a reasonable time of obtaining new information, and will continue to do so if new information is received by the Commission.

Judge Gentry also moves the Commission to disclose the name of the complainant. The Commission received the complaint in redacted form, and has not altered or further redacted that information. As a result, Judge Gentry and her counsel have the same information regarding the complainant that the Commission does.

Respectfully submitted,



Bryan H. Beauman
Donald C. Morgan
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500

Lexington, Kentucky 40507
bbeauman@sturgillturner.com
dmorgan@sturgillturner.com
Telephone: (859) 255-8581
COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2020, I served a true and correct copy of the foregoing by electronic mail on the following individuals:

Stephen P. Ryan
7104 Hillcircle Court
Louisville, KY 40214
(502) 551-1083
Stephen_Ryan@rocketmail.com
CO-COUNSEL FOR JUDGE DAWN GENTRY

Leonard A. Weakley Jr.
Ky. Bar No. 75003
One Centennial Plaza
705 Central Avenue
Cincinnati, OH 45202
(513) 702-0725
Leonard.Weakley@gmail.com
CO-COUNSEL FOR JUDGE DAWN GENTRY

Jimmy Shaffer
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
(502) 564-1231
JimmyShaffer@kycourts.net
EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION



COUNSEL FOR JUDICIAL CONDUCT COMMISSION

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

OBJECTION TO JUDGE GENTRY'S DISCOVERY REQUESTS

On February 5, 2020, undersigned counsel received Interrogatories, Request for Production of Documents and Request for Admissions directed to the Judicial Conduct Commission. These items were received these via email from Judge Gentry which were purported to be electronically signed by her counsel. In response to these discovery requests, counsel objects for the following grounds.

First, written discovery requests of this type are not appropriate in matters pending before the Judicial Conduct Commission. The Kentucky Judicial Conduct Commission is governed by the Supreme Court Rules 4.000-4.310. Specifically, Rule 4.210 governs the procedural rights for a judge subject to a disciplinary hearing. The Supreme Court Rules for these judicial conduct procedures nowhere authorize any civil discovery prior to a disciplinary hearing.

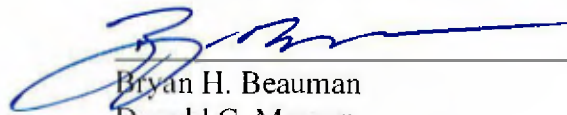
Second, a substantial amount of the discovery requests sought by Judge Gentry include material from the investigative factual file. All of these materials have been provided to Judge Gentry through her counsel – for some items, the materials have been provided on at least two occasions. The factual file at this time consists of 94 distinct documents which have been provided to Judge Gentry and her counsel. Items 1 through 70 were copied on a disc accompanied by a factual file letter and provided on October 8, 2019. Items 71-73 were copied onto a second disc with an updated factual file letter on November 4, 2019. Item 74 was provided by mail on November 14, 2019. All of these items were provided to both Judge Gentry

and her counsel Mr. Ryan. These documents, excluding certain explicit images, were then provided again through counsel via email to Mr. Ryan on December 31, 2019.¹ See Exhibit A. Later identified items, inclusive of Nos. 75-94 were provided on a disc with an accompanying factual file letter on February 17, 2020 provided to Judge Gentry and her counsel Mr. Ryan and Mr. Weakley.

Third, most of the remainder of Judge Gentry's discovery requests relate to identification of certain pretrial materials. Counsel agrees a mutual exchange of witness and exhibit lists prior to April 20, 2020 hearing should be done and will either contact opposing counsel or work with the Chair of the Judicial Conduct Commission in order to arrange for an appropriate date.

For these reasons, counsel respectfully requests this objection to the Interrogatories, Request for Production of Documents, and Request for Admissions made by Judge Gentry be sustained.

Respectfully submitted,



Bryan H. Beauman
Donald C. Morgan
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507
bbeauman@sturgillturner.com
dmorgan@sturgillturner.com
Telephone: (859) 255-8581
COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

¹ These images were not included in the electronic transmission to Mr. Ryan, but had previously been provided via disc to both Mr. Ryan and Judge Gentry.

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2020, I served a true and correct copy of the foregoing by electronic mail on the following individuals:

Stephen P. Ryan
7104 Hillcircle Court
Louisville, KY 40214
(502) 551-1083
Stephen.Ryan@rocketmail.com
COUNSEL FOR JUDGE DAWN GENTRY

Leonard A. Weakley, Jr.
One Centennial Plaza
705 Central Avenue
Cincinnati, OH 452020
Leonard.Weakley@gmail.com
COUNSEL FOR JUDGE DAWN GENTRY

Jimmy Shaffer
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
(502) 564-1231
JimmyShaffer@kycourts.net
EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION


COUNSEL FOR JUDICIAL CONDUCT COMMISSION

01241395.docx

EXHIBIT A

From: Rachel Floyd <mail@sf-notifications.com>
Sent: Tuesday, December 31, 2019 12:14 PM
To: Rachel Sisk
Subject: JCC Factual File- Bates-Stamped



Rachel,

Rachel Floyd has sent you files.

Expires 6/28/20

A note from Rachel :

Good Afternoon Mr. Ryan.

Enclosed within the link below is another copy of the JCC's factual file for Judge Gentry which we sent you a Sharefile link to on December 27, 2019. We have Bates-stamped this copy of the Factual File for ease of use at the upcoming hearing as JCC Factual File_000001 through JCC Factual File_001547. Please note this version of the factual file (as well as the version we sent on December 27, 2019) omit some photographs that contain graphic content. Those photographs were previously provided to you by the Commission. If you are unable to locate those, please let us know and we can arrange for new copies to be provided.

Should you have any difficulties accessing this factual file or have any other questions, feel free to contact our office.

Thank you,
Rachel Sisk, CP
Paralegal to Bryan Beauman

cc: Bryan Beauman
Don Morgan
Jimmy Shaffer

[Download](#)

Trouble with the above link? You can copy and paste the following URL into your web browser:

[Redacted URL]

ShareFile is a tool for sending, receiving, and organizing your business files online. It can be used as a password-protected area for sharing information with clients and partners, and it's an easy way to send files that are too large to e-mail.

[EXTERNAL]

Sent Message Details

This report was generated at 2/20/20 2:00 PM.

Recipients

User	Downloaded	Message Options
dmorgan@sturgillturner.com	Yes	Resend View
JimmyShaffer@kycourts.net	Yes	Resend View
stephen_ryan@rocketmail.com	Yes	Resend View
rsisk@sturgillturner.com	No	Resend View
bbeauman@sturgillturner.com	No	Resend View

Contents

Item Name	Size
 Judge Gentry Factual File- Bates- Stamped (01218690xA9D25).PDF Personal Folders/JCCadv. Judge Gentry/Bates- Stamped Factual File Sent to Opposing Counsel 12-31-19/Judge Gentry Factual File- Bates- Stamped (01218690xA9D25).PDF	111 MB

History (Last 90 days)

Item Name	Recipients	Activity Type	Date
Judge Gentry Factual File- Bates- Stamped (01218690xA9D25)....	Jimmy Shaffer	Download	1/2/20 9:05 AM
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Judge Gentry Factual File- Bates- Stamped (01218690xA9D25)....	Donald Morgan	Download	12/31/19 12:51 PM

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE: THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

MOTION FOR RULINGS ON PENDING MOTIONS

Hon. Dawn M. Gentry, moves the Commission for rulings on her pending motions and in support of this motion states as follows:

1. On February 5, 2020, Judge Dawn M. Gentry, through counsel, filed a Motion to Dismiss Counts I and II of the formal charges. To date, no responsive answer has been filed regarding this Motion.
2. On February 5, 2020, Judge Dawn M. Gentry, through counsel, filed a Motion to Disclose All Evidence and the Name of the Complainant. To date, no responsive answer has been filed regarding this Motion.
3. In order to allow Judge Dawn M. Gentry and her counsel to adequately prepare for the final hearing, a ruling on both motions is needed.

Wherefore, Judge Dawn M. Gentry moves the Commission to issue rulings on her pending motions.

Respectfully submitted,

/s/ Dawn M. Gentry
DAWN M. GENTRY
Ky. Bar No. 91622

CERTIFICATE OF SERVICE

I hereby certify that on this, 20th of February, 2020, a copy of the foregoing was served via email and U.S. mail, first class mail, to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Hon. Stephen P. Ryan
7104 Hillcircle Court
Louisville, KY 40214
Stephen_Ryan@rocketmail.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

/s/ Dawn M. Gentry

DAWN M. GENTRY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

ORDER ON PENDING MOTIONS

Upon consideration of Judge Gentry's to Motion Dismiss Counts I and II of Formal Charges Pursuant to SCR 4.025(2) and the Response thereto, it is hereby ORDERED that the motion be DENIED for the reasons stated in the Response.

Upon consideration of Judge Gentry's Motion to Disclose All Information and Name of the Complainant and the Response thereto, it is hereby ORDERED that the motion be DENIED for the reasons stated in the Response.

Upon consideration of Judge Gentry's Second Motion to Continue Hearing Scheduled for April 20, 2020, it is hereby ORDERED that the motion be DENIED.

Upon consideration of Judge Gentry's Motion for Ruling on Pending Motions, it is hereby ORDERED that the motion be DENIED AS MOOT.

Date: February 24th, 2020



R. Michael Sullivan, Chairman
Kentucky Judicial Conduct Commission

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Judge Dawn M. Gentry, by mailing and emailing the same to her attorneys, Stephen Ryan, 7104 Hillcircle Court, Louisville, KY 40214, stephen_ryan@rocketmail.com; and Leonard E. Weakley, Jr., One Centennial Plaza, 705 Central Ave., Cincinnati, OH 45202, Leonard.Weakley@gmail.com; and on counsel for the Judicial Conduct Commission, Bryan Beaman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeaman@sturgillturner.com, this 24th day of February, 2020.



JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

PRE-HEARING ORDER

The Judicial Conduct Commission (“Commission”) enters this pre-hearing order in this case.

IT IS ORDERED AS FOLLOWS:

1. That this case is assigned for a hearing on April 20, 2020 at 8:30 A.M. Five (5) days have been allotted.
2. A telephonic pre-hearing conference shall take place on April 13, 2020, at 3:00 p.m. Eastern Time. The Commission shall initiate the call.
3. Thirty (30) days before the hearing, the attorneys for each party shall exchange, and file with the Commission, a list of the names and addresses of all persons who will testify at the hearing. If a party intends to offer any witness as an expert witness, then the party shall also disclose the substance of the facts and opinions to which the witness is expected to testify and a summary of the grounds for each opinion.
4. The taking of all trial/hearing depositions shall be completed on or before thirty (30) days before the hearing. Depositions must be taken pursuant to CR 32.01(c), or by agreement by both parties. The parties shall confer on whether to stipulate that any deposition identified to be used at the hearing may be either read or viewed by Commission members before the hearing and will be admitted into evidence as part of the hearing record without the necessity of playing the video of the deposition or reading the deposition into evidence at the hearing.
5. Counsel for each party shall make available to opposing counsel all documentary evidence and exhibits of any kind to be presented at the hearing for inspection and copying at least thirty (30) days before the hearing.
6. Objections to any exhibits or portions of any depositions shall be in writing and filed with the Commission on or before twenty (20) days before the hearing. Such objections shall state with specificity the bases for the objections and shall refer to specific authority with copies of such authorities attached. In addition to the objectionable question and answer being tendered in writing, counsel shall indicate the page and line of a written transcript if available, and/or date and time if the deposition was taken by video. Responses to any

objections shall be in writing and filed on or before fifteen (15) days before the hearing. The Commission will require a "clean-edit" for any video deposition to be shown at the hearing. Any exhibit or deposition identified by a party pursuant to this order shall be admitted into evidence if probative, unless written objections are filed as set forth in this order.

7. All motions in limine shall be filed not later than twenty (20) days before the hearing and any responses shall be filed on or before fifteen (15) days before the hearing.
8. Exhibits to be used at the hearing shall be marked with the case number and appropriate adhesive labels prior to the hearing. These labels are available to the attorneys if requested at least one (1) week in advance of the hearing. The number of the exhibit will be entered on the label at the time of introduction into evidence. Pursuant to Rule 98(2)(c), a photograph must be taken of any exhibit, other than documents, to be introduced at the hearing. Said photograph will be included in the Commission file and the exhibit will be returned to the party.
9. Failure on the part of any attorney/party to comply with any requirements outlined hereinabove may result in exclusion of the evidence sought to be introduced at the hearing, waiver of objection, or any other sanctions against the offending party as deemed appropriate by the Commission.

KENTUCKY JUDICIAL CONDUCT COMMISSION


R. MICHAEL SULLIVAN, CHAIR

Date: 2/24/2020

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Judge Dawn M. Gentry, by mailing and emailing the same to her attorneys, Stephen Ryan, 7104 Hillcircle Court, Louisville, KY 40214, stephen_ryan@rocketmail.com; and Leonard E. Weakley, Jr., One Centennial Plaza, 705 Central Ave., Cincinnati, OH 45202, Leonard.Weakley@gmail.com; and on counsel for the Judicial Conduct Commission, Bryan Beaman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeaman@sturgillturner.com, this 24th day of February, 2020.


JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

NOTICE OF ENTRY OF APPEARANCE

COMES NOW the Honorable Jeffrey A. Lawson and hereby enters his appearance as counsel of record, along with the Honorable F. Todd Lewis, on behalf of Judge Dawn M. Gentry and in substitution of counsel Hon. Steve Ryan.

All filings by counsel and Orders of the commission may be served upon this counsel by email at the address below or secondarily via post at the following contact:

Respectfully submitted,

/s/ Jeffrey A. Lawson

Hon. Jeffrey A. Lawson (94744)

524 Greenup Street

Covington, Kentucky 41011

Tel: (859) 414-6678

lawsonjeff@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of March, 2020, a true and accurate copy of the foregoing was served via email upon to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

/s/ Jeffrey A. Lawson

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

.....

ENTRY OF APPEARANCE OF
COUNSEL FOR RESPONDENT JUDGE DAWN GENTRY

Comes the undersigned, F. Todd Lewis, who hereby enters his appearance as counsel on behalf of Respondent Judge Dawn Gentry, in this action, together with Hon. Jeff Lawson, and in substitution of previous counsel Hon. Steve Ryan.

All filings and Orders in this matter may be served upon the undersigned at the address below (please note this address has recently changed), or to todd.lewis@toddlewislaw.com or tlewis204@gmail.com.

F. Todd Lewis
Attorney at Law
LEWIS LAW, PLLC
111 W. Washington Street, Suite 4
Louisville, KY 40202

Respectfully Submitted,

/s/ F. Todd Lewis
F. Todd Lewis
Lewis Law, PLLC

111 W. Washington Street,
Suite 400
Louisville, KY 40202
(502) 855-7599
(502) 550-4139 (mobile)
todd.lewis@toddlewislaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this, 19TH day of March, 2020, a copy of the foregoing was served via email and U.S. mail, first class mail, to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

/s/ F. Todd Lewis

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

NOTICE

TO: Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

PLEASE TAKE NOTICE that, given the emergency circumstances, the Movant herein seeks to be heard immediately on this matter by the Commission and/or the Commission chair via telephone conference.

MOTION TO CONTINUE FINAL HEARING

COMES NOW the Honorable Dawn M. Gentry, by and through undersigned counsel, and for her Motion to Continue the final hearing in this matter, says as follows:

1. At present, the hearing in this case is scheduled for five (5) consecutive days beginning April 20, 2020, per prior Order of this Commission.
2. The Prehearing Order of February 24, 2020, sets forth the dates of the hearing and pretrial discovery and motion deadlines, including the exchange of all exhibits and the completion of all depositions thirty (30) days prior to the commencement of the Final Hearing.

3. In the intervening time since the issuance of that Order, much has transpired both in this case and in the Commonwealth, generally. Given prior counsel's unavailability, as set out in a previously filed Motion to Continue, Judge Gentry sought new counsel to defend the matter before this Commission. She has done so, even in an environment of much disarray and confusion in our Bar.

4. In normal circumstances, the timeline over the last several days in counsel becoming acquainted with the matter and henceforth to the hearing would be rather tight for preparation of the matter for Hearing. But these are not normal times. With or without the opportunity to conduct depositions, even conducting informal interviews of witnesses given the national and state health crisis before us and the imperative of social distancing presents an insurmountable impediment to the preparation of a defense.

5. The same is true for every other formal or informal discovery device. While the hearing date may fall outside of the Supreme Court's initial order on the status of the courts during the COVID-19 pandemic, this is not the time for conducting in-person interviews, asking witnesses to handle subpoena requests, or even meeting with each other to prepare for trial.

6. The President of the United States, Centers for Disease Control, and Governor Beshear have issued recommendations, warnings, and Orders regarding social distancing to attempt to prevent further spread of the pandemic that is COVID-19. It is virtually impossible to comply with these orders and recommendations and adequately prepare for the hearing scheduled for April 20, 2020.

7. Furthermore, the undersigned lawyers regularly appear before courts across the Commonwealth, and were scheduled to so appear over the next several weeks. Those matters are continued for scheduling and status conferences in the weeks after the courts return to normal. The suspension of regular order due to the coronavirus has created a scheduling accordion across the entire bench and bar that will take several weeks to resolve once normal order resumes.

8. As a few examples of the above: Attorney Lewis was scheduled for trials and final pretrial conferences on April 7, 2020; April 10, 2020; and April 29, 2020, and has appellate briefing deadlines on March 30th and April 17th. Two of the trial dates are only a few days outside the court

mandatory COVID-19 court closure calendar, but may necessitate similar continuances if the in-person portion of trial preparation can not be completed during the self-quarantine period (thereby placing their prep periods within that of this trial). One appellate deadline is within a period mandated to be continued one month, but the other one is not, altering the work period for both of them. All of these matters presented considerable hurdles to preparation of an April 20 trial deadline, but it has essentially become impossible in the wake of these emergency schedule changes.

9. The Commission determined by prior Order that a temporary suspension of Judge Gentry was warranted based on its preliminary findings. She currently does not sit on the bench, and thus any prejudice in extending the matter for Hearing would be minimal.

10. In short, in accord with Chief Justice Minton's order, advisories from Governor Beshear and the Centers for Disease Control, this is a time to limit the number of individuals with whom we interact, to remain home where possible, and to telework unless the matter involves an incarcerated client on a matter of imminent importance. It is not the time to interview witnesses (attended by counsel, the witness, and likely an investigator), receive written documents handled by others (or ask others to compile them) , or to meet as a group in preparation for a hearing of such significance. All of these steps are necessary to the preparation of this case.

11. As any delay in resolving the matter will put at risk the health of the undersigned counsel and the Respondent, Judge Gentry requests that the Commission hear the matter as expeditiously as possible.

12. The respondent herein is given an express right to counsel, to present a defense, and right to present witnesses, and to cross-examine witnesses against her, via the Rules of the Commission. SCR 4.210. The right to counsel necessarily implies the right to *effective* assistance of counsel, not the mere presence of counsel, under both Kentucky law and interpretations of the federal constitution. *Powell v. Alabama*, 287 U.S. 45, 58 (1932), *McDaniel v. Commonwealth*, 181 Ky. 766, 205 S.W. 915

(1918) (failure of trial court to grant continuance held error where trial counsel needed additional time to prepare); *see also Ivey v. Commonwealth*, 655 S.W.2d 506, 509 (Ky. Ct. App. 1983).

13. A denial of continuance in this case would force undersigned counsel to “...abandon their investigation at an unreasonable juncture.” *Wiggins v. Smith*, 539 U.S. 510, 527-28 (2003).

14. Additionally, a continuance is appropriate in the face of prejudicial pretrial publicity, as a separate matter, when the passage of additional time will help dispel the taint of that publicity. *Bush v. Commonwealth*, 839 S.W.2d 550 (Ky. 1992). A quick perusal reveals coverage of this case in multiple media outlets local to the Northern Kentucky area, which continues to as recently as three weeks ago, but also several national and international outlets. The accused has never given a public statement on the matter, so the entirety of this salacious coverage is universally and unfairly condemnatory of the accused, often in outrageous tones divorced from the actual evidence¹. The mere fact that the jury here is constituted of “judges” is not enough, in itself, to dispel this taint. It is unfair *even for the members of the commission*, to be asked to sit in judgment under the pressure of such a white-hot public spotlight

15. This case, for better or worse, has received an unusual and extraordinary amount of public attention. Many of the public accounts are wildly inaccurate, and have fueled a certain frenzy, even nationally, largely against the accused. It is important not only that proceedings actually be fair, but that they be *seen to be fair*. As the High Court observed 100 years ago, applicable to this proceeding:

[t]here is a just and widespread sentiment throughout the state against unreasonable delay in the trial of criminal cases, and this feeling has sometimes caused trials,

¹ Stories in media have made such wildly salacious and inaccurate accusations as “judge is accused of turning her chambers into a glorified frathouse,” have mis-titled the Commonwealth’s Attorney for Kenton County in a zeal to implicate him; claims she “fired” a DNA panel member who actually admits to resigning; have accused the Judge of drinking alcohol at work when not even the Commission has made that allegation against her.

especially in cases attracting more than ordinary interest, to be pressed with more dispatch than is becoming in the orderly administration of justice or than is consistent with the right to a fair trial in form as well as substance that every accused person should have.

McDaniel v. Commonwealth, 181 Ky. 766, 779, 205 S.W. 915, 920 (1918). Denying a continuance at this juncture will only serve to undermine confidence in the outcome of this case, no matter what that outcome is.

WHEREFORE, Judge Dawn Gentry, by and through the undersigned counsel, request the Commission conduct a teleconference as soon as possible for the hearing of the Motion and to abate the matter pending the return of regular order in the courts of justice across the Commonwealth.

Respectfully submitted,

/s/ F. Todd Lewis
F. Todd Lewis
Lewis Law, PLLC
111 W. Washington Street,
Suite 400
Louisville, KY 40202
(502) 855-7599
(502) 550-4139 (mobile)
todd.lewis@toddlewislaw.com

/s/ Jeffrey A. Lawson
Hon. Jeffrey A. Lawson (94744)
524 Greenup Street
Covington, Kentucky 41011
Tel: (859) 414-6678
lawsonjeff@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of March, 2020, a true and accurate copy of the foregoing was served via email upon to the following:

Hon. Bryan H. Beauman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeauman@sturgillturner.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

/s/ Jeffrey A. Lawson

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**COUNSEL FOR THE JUDICIAL CONDUCT COMMISSION'S RESPONSE TO
MOTION TO CONTINUE**

Counsel for the Judicial Conduct Commission files this response to Judge Gentry's March 19, 2020 motion to continue the final hearing.

Counsel for the Commission agrees that due to the COVID-19 outbreak that a continuance of this matter is likely, imminent, and advisable. Therefore, to address the public health crisis facing the Commonwealth, and in the best interest of parties, witnesses, staff, and counsel, this matter should be continued. Counsel is available at any time to work with the Commission and counsel for Judge Gentry to reschedule the hearing for a date certain. To be clear, a continuance should not be granted simply because a third and fourth attorney entered the matter two days prior to the pre-hearing deadlines.

Counsel for the Commission also requests the JCC address one additional matter in its Order on continuance: who will be operating as counsel of record for Judge Gentry from this point forward? There are now four attorneys who have entered an appearance as counsel for Judge Gentry. Previous filings made by Judge Gentry herself have omitted any reference to Mr. Weakley. Additionally, at times Judge Gentry has emailed counsel personally with pleadings signed by her, and it is unclear whether counsel should continue to serve pleadings and motions on Judge Gentry in addition to her counsel. Out of an abundance of caution, this pleading will be served on Judge Gentry and all four of her attorneys. The latest entries of appearance by counsel indicate that Mr. Ryan will no longer be counsel of record. However, neither Mr. Weakley nor

Mr. Ryan have filed any pleading signed by them seeking to withdraw. Counsel for the Commission requests that the Commission's Order set forth the mechanism for Judge Gentry to officially clarify who is and who is not counsel of record moving forward.

Respectfully submitted,

/s/ Bryan H. Beauman
Bryan H. Beauman
Donald C. Morgan
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507
bbeauman@sturgillturner.com
dmorgan@sturgillturner.com
Telephone: (859) 255-8581
COUNSEL FOR JUDICIAL
CONDUCT COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2020, I served a true and correct copy of the foregoing by electronic mail on the following individuals:

Stephen P. Ryan
7104 Hillcircle Court
Louisville, KY 40214
(502) 551-1083
Stephen.Ryan@rocketmail.com
COUNSEL FOR JUDGE DAWN GENTRY

Leonard A. Weakley Jr.
Ky. Bar No. 75003
One Centennial Plaza
705 Central Avenue
Cincinnati, OH 45202
(513) 702-0725
Leonard.Weakley@gmail.com
CO-COUNSEL FOR JUDGE DAWN GENTRY

F. Todd Lewis
Lewis Law, PLLC
111 W. Washington Street,
Suite 400
Louisville, KY 40202
(502) 855-7599

Todd.lewis@toddlewislaw.com

CO-COUNSEL FOR JUDGE DAWN GENTRY

Jeffery A. Lawson
524 Greenup Street
Covington, KY 41011
(859) 414-6678

lawsonjeff@gmail.com

CO-COUNSEL FOR JUDGE DAWN GENTRY

Judge Dawn M. Gentry

Via Email

Jimmy Shaffer
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
(502) 564-1231

JimmyShaffer@kycourts.net

EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION

/s/ Bryan H. Beauman

COUNSEL FOR JUDICIAL CONDUCT COMMISSION

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

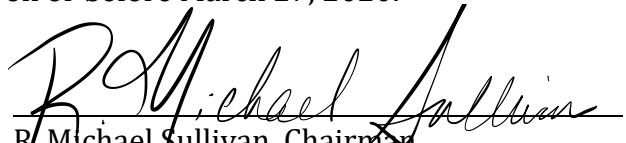
ORDER GRANTING MOTION TO CONTINUE HEARING

Upon consideration of Judge Gentry's Motion to Continue the hearing on formal charges and the response thereto, it is hereby ORDERED that in light of the extraordinary circumstances created by COVID-19, the motion be GRANTED.

The Commission further ORDERS that the time to comply with the requirements set forth in the prehearing order shall be extended. The time and place for the hearing and for compliance with the requirements set forth in the prehearing order shall be set by future order of the Commission.

The Commission further ORDERS that Judge Gentry clarify the status of her counsel on or before March 27, 2020. If any of her counsel intends to withdraw, proper motions to withdraw shall be filed with the Commission on or before March 27, 2020.

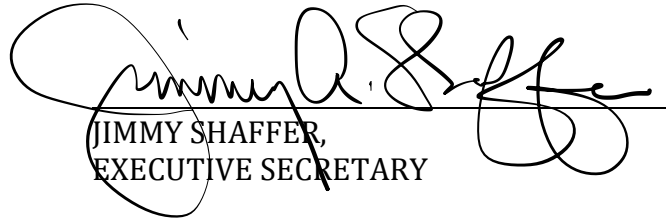
Date: March 28th, 2020


R. Michael Sullivan, Chairman
Kentucky Judicial Conduct Commission

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her at her email address and to her attorneys, Stephen Ryan, 7104 Hillcircle Court, Louisville, KY 40214, stephen_ryan@rocketmail.com; Leonard A. Weakley, Jr., One Centennial Plaza, 705 Central Avenue, Cincinnati, OH 45202, Leonard.Weakley@gmail.com; Jeffrey A. Lawson, 524 Greenup Street, Covington, KY 41011,

lawsonjeff@gmail.com; and F. Todd Lewis, Lewis Law, PLLC, 111 W. Washington Street, Suite 400, Louisville, KY 40202, todd.lewis@toddlewislaw.com; and on counsel for the Judicial Conduct Commission, Bryan Beaman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeaman@sturgillturner.com this 20th day of March, 2020.


JIMMY SHAFFER,
EXECUTIVE SECRETARY

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE: THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

MOTION TO WITHDRAW AS COUNSEL FOR JUDGE DAWN M. GENTRY

Hon. Leonard A. Weakley, Jr., moves the Commission to allow him to withdraw as counsel for Judge Dawn M. Gentry, and in support of this Motion, states as follows:

1. The undersigned is unable to fully defend the action against Judge Gentry given the time constraints and denials of continuances.
2. Undersigned underwent back surgery and is unable to prepare a defense to the charges.

Wherefore, Hon. Leonard A. Weakley, Jr., requests this Commission relieve him of his duty to represent Judge Dawn M. Gentry.

Respectfully submitted,

/s/ Leonard A. Weakley, Jr.
LEONARD A. WEAKLEY JR.
Ky. Bar No. 75003
One Centennial Plaza
705 Central Avenue
Cincinnati, OH 45202
(513) 702-0725
Leonard.Weakley@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, 20th of February, 2020, a copy of the foregoing was served via email to the following:

Hon. Bryan H. Beauman
Sturgill, Turner, Barker & Moloney, PLLC

Ms. Jimmy Shaffer
Executive Secretary

333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeauman@sturgillturner.com

Hon. Stephen P. Ryan
7104 Hillcircle Court
Louisville, KY 40214
Stephen_Ryan@rocketmail.com

Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

Hon. Jeffrey A. Lawson
524 Greenup Street
Covington, KY 41011
lawsonjeff@gmail.com

F. Todd Lewis
Lewis Law, PLLC
111 W. Washington Street
Suite 400
Louisville, KY 40202
Todd.lewis@toddlewis.com

/s/ Leonard A. Weakley, Jr.

LEONARD A. WEAKLEY JR.

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

**IN RE THE MATTER OF: JUDGE DAWN GENTRY, KENTON COUNTY
FAMILY CIRCUIT COURT DIVISION 5, 16TH JUDICIAL DISTRICT**

NOTICE

Notice to: Hon. Jeff Lawson and Hon. Bryan Beauman

Please take notice that the attached motion and order will be presented to the Judicial Conduct Commission.

MOTION

Comes Stephen P. Ryan, attorney at law, moves the Judicial Conduct Commission to allow him to withdraw as counsel for Judge Dawn Gentry. In support of said motion, I have informed the Honorable Jeff Lawson that I will not be participating at the hearing on April 20, 2020, nor would I be participating further in this case. Mr. Lawson agreed.

Wherefore, I move the Chairman to sign the attached order.

Respectfully Submitted,


Stephen P. Ryan

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

**IN RE THE MATTER OF: JUDGE DAWN GENTRY, KENTON COUNTY
FAMILY CIRCUIT COURT DIVISION 5, 16TH JUDICIAL DISTRICT**

ORDER

**On motion of attorney, Stephen Ryan, It is hereby ordered that his
name shall be removed as counsel for Judge Dawn Gentry.**

And IT IS SO ORDERED.

Michael Sullivan, CHAIR

DISTRIBUTION:

**STEPHEN P. RYAN
JEFF LAWSON
BRYAN BEAUMAN**

CERTIFICATION

This is to verify that the attached was e-mailed to Hon. Jeff Lawson and Hon. Bryan Beauman to the aforementioned address this 23rd day of March, 2020.



Stephen P. Ryan

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

ORDER GRANTING MOTIONS TO WITHDRAW AS COUNSEL


Upon consideration of the motions by Leonard A. Weakley, Jr., and Stephen P. Ryan to withdraw as counsel for Judge Dawn M. Gentry, and the Judicial Conduct Commission being otherwise sufficiently advised, it is by the Commission ORDERED that the motions be, and they are hereby GRANTED.

3/25/2020
Date


R. Michael Sullivan, Chair

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her at her email address and to counsel, Stephen Ryan, 7104 Hillcircle Court, Louisville, KY 40214, stephen_ryan@rocketmail.com; Leonard A. Weakley, Jr., One Centennial Plaza, 705 Central Avenue, Cincinnati, OH 45202, Leonard.Weakley@gmail.com; Jeffrey A. Lawson, 524 Greenup Street, Covington, KY 41011, lawsonjeff@gmail.com; F. Todd Lewis, Lewis Law, PLLC, 111 W. Washington Street, Suite 400, Louisville, KY 40202, todd.lewis@toddlewislaw.com; and Bryan Beauman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeauman@sturgillturner.com this ^{25th} day of March, 2020.


JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**


IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

ORDER OF EXTENSION FOR FINAL DISPOSITION

Determining that additional time is needed for final disposition in this matter, the Commission finds good cause for an extension of time, and it is therefore by the Commission, ORDERED that the time within which the Commission shall make final disposition be and hereby is extended pursuant to SCR 4.260(3) to and including September 15, 2020.

Date: April 30th, 2020


R. Michael Sullivan, Chair
Kentucky Judicial Conduct Commission

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her at her email address and to counsel Jeffrey A. Lawson, 524 Greenup Street, Covington, KY 41011, lawsonjeff@gmail.com; F. Todd Lewis, Lewis Law, PLLC, 111 W. Washington Street, Suite 400, Louisville, KY 40202, todd.lewis@toddlewislaw.com; and Bryan Beaman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeaman@sturgillturner.com this 30th day of April, 2020.


JIMMY SHAFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

AMENDED NOTICE OF TIME AND PLACE FOR HEARING

NOTICE is hereby given that the hearing in these formal proceedings will be held commencing August 10, 2020, at 8:30 a.m. in the Campbell County Courthouse, District Court, Division 1, 330 York Street, Newport, KY.

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her at her email address and to counsel Jeffrey A. Lawson, 524 Greenup Street, Covington, KY 41011, lawsonjeff@gmail.com; F. Todd Lewis, Lewis Law, PLLC, 111 W. Washington Street, Suite 400, Louisville, KY 40202, todd.lewis@toddlewislaw.com; and Bryan Beauman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeauman@sturgillturner.com this 3rd day of April, 2020.


JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

AMENDED PRE-HEARING ORDER

The Judicial Conduct Commission (“Commission”) enters this pre-hearing order in this case.

IT IS ORDERED AS FOLLOWS:

1. That this case is assigned for a hearing on August 10, 2020 at 8:30 A.M. Five (5) days have been allotted.
2. A telephonic pre-hearing conference shall take place on July 27, 2020, at 3:00 p.m. Eastern Time. The Commission shall initiate the call.
3. Thirty (30) days before the hearing, the attorneys for each party shall exchange, and file with the Commission, a list of the names and addresses of all persons who will testify at the hearing. If a party intends to offer any witness as an expert witness, then the party shall also disclose the substance of the facts and opinions to which the witness is expected to testify and a summary of the grounds for each opinion.
4. The taking of all trial/hearing depositions shall be completed on or before thirty (30) days before the hearing. Depositions must be taken pursuant to CR 32.01(c), or by agreement by both parties. The parties shall confer on whether to stipulate that any deposition identified to be used at the hearing may be either read or viewed by Commission members before the hearing and will be admitted into evidence as part of the hearing record without the necessity of playing the video of the deposition or reading the deposition into evidence at the hearing.
5. Counsel for each party shall make available to opposing counsel all documentary evidence and exhibits of any kind to be presented at the hearing for inspection and copying at least thirty (30) days before the hearing.
6. Objections to any exhibits or portions of any depositions shall be in writing and filed with the Commission on or before twenty (20) days before the hearing. Such objections shall state with specificity the bases for the objections and shall refer to specific authority with copies of such authorities attached. In addition to the objectionable question and answer being tendered in writing, counsel shall indicate the page and line of a written transcript if

available, and/or date and time if the deposition was taken by video. Responses to any objections shall be in writing and filed on or before ten (10) days before the hearing. The Commission will require a "clean-edit" for any video deposition to be shown at the hearing. Any exhibit or deposition identified by a party pursuant to this order shall be admitted into evidence if probative, unless written objections are filed as set forth in this order.

7. All motions in limine shall be filed not later than twenty (20) days before the hearing and any responses shall be filed on or before ten (10) days before the hearing.
8. Exhibits to be used at the hearing shall be marked with the case number and appropriate adhesive labels prior to the hearing. These labels are available to the attorneys if requested at least two (2) weeks in advance of the hearing. The number of the exhibit will be entered on the label at the time of introduction into evidence. Pursuant to Rule 98(2)(c), a photograph must be taken of any exhibit, other than documents, to be introduced at the hearing. Said photograph will be included in the Commission file and the exhibit will be returned to the party.
9. Failure on the part of any attorney/party to comply with any requirements outlined hereinabove may result in exclusion of the evidence sought to be introduced at the hearing, waiver of objection, or any other sanctions against the offending party as deemed appropriate by the Commission.

KENTUCKY JUDICIAL CONDUCT COMMISSION

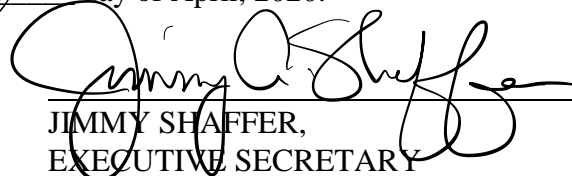


R. MICHAEL SULLIVAN, CHAIR

Date: 4/3/2020

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her at her email address and to counsel Jeffrey A. Lawson, 524 Greenup Street, Covington, KY 41011, lawsonjeff@gmail.com; F. Todd Lewis, Lewis Law, PLLC, 111 W. Washington Street, Suite 400, Louisville, KY 40202, todd.lewis@toddlewislaw.com; and Bryan Beaman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeaman@sturgillturner.com this 3rd day of April, 2020.



JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

AGREED ORDER

On March 25, 2020 counsel for the Judicial Conduct Commission served a subpoena on Verizon Communications, Inc. seeking certain phone records. This matter being before the Commission on the agreement of the parties as to the review of and opportunity to object to any records produced in response to such subpoena, it is hereby ordered as follows:

1. Upon receipt by the Commission's Executive Secretary of a response from Verizon Communications, Inc., to the subpoena (the "Response"), the Executive Secretary will forward the Response to Judge Gentry's counsel of record: F. Todd Lewis, without reviewing such documents.
2. Upon receipt of the Response, Judge Gentry's counsel shall certify to the Executive Secretary and Commission's counsel how many pages of records were produced by Verizon and a general description of the types of records produced (*e.g.*, call logs, text messages, etc.) and provide the Executive Secretary and counsel any verification page or certification page included in the Response.
3. Upon receipt of such certification, the Commission's counsel will provide Judge Gentry's counsel a list of names, phone numbers, topics, or other identifiers for information sought from the records.
4. Judge Gentry's counsel shall, within 10 days of receipt of such list, review the records and produce all responsive records to counsel for the Commission, except those records subject

to a claim of privilege. At the time such documents are provided to counsel for the Commission, Judge Gentry shall provide a log of all documents withheld based on privilege or other objections that provides a description of the document or thing withheld, the date of the document withheld, and the ground for asserting privilege over the document.

5. In the event counsel for Judge Gentry believe the names, phone numbers, topics, and other identifiers provided by the Commission is overly broad, counsel shall confer and attempt to resolve the dispute. If counsel are unable to agree, Judge Gentry may make a motion for protective order to the Commission regarding those specific items.
6. In the event counsel for the Commission objects to any assertion of privilege or other ground for withholding a document, counsel shall confer and attempt to resolve the dispute. If counsel are unable to agree, counsel for the Commission may make a motion to the Commission requesting production of those aspects of the Response not provided by Judge Gentry.

Date: _____

4/7/20



R. Michael Sullivan, Chairman
Kentucky Judicial Conduct Commission

Have seen and agreed:



Bryan H. Beaman

Donald C. Morgan

Sturgill, Turner, Barker & Moloney, PLLC

333 West Vine Street, Suite 1500

Lexington, Kentucky 40507

bbeaman@sturgillturner.com

dmorgan@sturgillturner.com

Telephone: (859) 255-8581

COUNSEL FOR JUDICIAL CONDUCT COMMISSION

/s/ F. Todd Lewis

F. Todd Lewis

Lewis Law, PLLC

111 W. Washington Street,

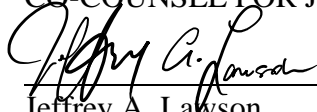
Suite 400

Louisville, KY 40202

(502) 855-7599

Todd.lewis@toddlewislaw.com

CO-COUNSEL FOR JUDGE DAWN GENTRY



Jeffrey A. Lawson

524 Greenup Street

Covington, KY 41011

(859) 414-6678

lawsonjeff@gmail.com

CO-COUNSEL FOR JUDGE DAWN GENTRY

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE: THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

**JUDGE DAWN M. GENTRY'S SECOND SET OF INTERROGATORIES, REQUESTS
FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSIONS TO
JUDICIAL CONDUCT COMMISSION**

Definition of Words and Phrases

Judge Dawn M. Gentry, through counsel, sets forth the following definitions of various words and phrases that are contained in the attached interrogatories, document requests and requests for admissions. Judge Dawn M. Gentry provides the following definitions for the purpose of clarifying the intent of her questions and requests, in order to help Judicial Conduct Commission understand the objective of Judge Dawn M. Gentry's discovery efforts; to locate and furnish the relevant information and materials; and to avoid the unnecessary repetition of long descriptive phrases. **It is understood and agreed by Judge Dawn M. Gentry that Judicial Conduct Commission's use of these definitions and/or responses on the part of Judicial Conduct Commission to these discovery requests will not be construed as a concession that any definition contained herein is either factually correct or legally binding on the parties.** The definitions are set forth solely to aid in communication and to avoid any unnecessary semantic difficulties in discovery.

For purposes of the following interrogatories, request for admission and request for production of documents, the following definitions apply:

1. The terms “**Judicial Conduct Commission**, and/or “**You**” and/or “**Yours**” as used in these Interrogatories, refer to the Judicial Conduct Commission in this action, and to any person(s) acting or purporting to act on behalf of the Judicial Conduct Commission in any capacity, including but not limited to the capacities of insurer, lessor, employer, agent or representative.

2. The term "**document**" as used herein shall refer to any written, printed, typed, photo static, photographed, recorded, or otherwise reproduced communication or representation, whether comprised of letters, words, numbers, pictures, sounds or symbols, or any combination thereof. This definition includes copies or duplicates of documents contemporaneously or subsequently created which have any nonconforming notes or other markings thereon. Without limiting the generality of the foregoing, “**document**” includes, but is not limited to: correspondence, emails, memoranda, notes, records, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, projections, estimates, proposals, working papers, summaries, statistical statements, financial statements, accounts, checks, check stubs, receipts, invoices, orders, analytical records, reports and/or summaries of investigations, opinions or reports, trade letters, press releases, comparisons, books, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, forecasts, drawings, diagrams, instructions, minutes of meetings or of other communications of any type, including inter/intra office communications, memos, questionnaires and surveys, charts, graphs, photographs, phonograph recordings, films, tapes, discs, data cells, drums, printouts, all other data compilations from which information can be obtained (translated if necessary, by Judicial Conduct Commission through detection devices to usable form), any preliminary versions, drafts, or revisions of any kind of the foregoing, and other writings or documents whether produced or written by any person associated with Judicial Conduct Commission, or anyone else, including non-identical copies of

any of the foregoing.

3. For the purposes of the production of “**documents**” the term shall include copies of all documents being produced, to the extent the copies are not identical to the original, thus requiring the production of copies that contain any markings, additions, or deletions that make them different in any way from the original.

4. The term, “**document(s)**,” also includes all copies, drafts, proofs, both originals and copies either (1) in the possession, custody or control of Judicial Conduct Commission regardless of where located, or (2) produced or generated by, known to or seen by Judicial Conduct Commission, but not now on its possession, custody or control, regardless of where located or whether or not still in existence.

5. “**Relating to**” means in whole or in part constituting, concerning, embodying, reflecting, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to the subject matter specified in the Interrogatory or document request.

6. “**And**” and “**or**” are to be construed whether conjunctively or disjunctively as necessary to bring within the scope or the specification all materials that might otherwise be construed to be outside its scope; and “**any**” and “**all**” as used herein mean “each and every”. The use of the term “**including**” shall be construed to mean “without limitation”.

7. The term “**address**” refers to the current address or last known address, if the current address is unknown.

8. The term “**telephone number**” refers to the current phone number, including area code, or the last known area code and phone number, if the current phone number is unknown.

9. The terms “**person**” or “**persons**” as used in these Interrogatories and requests mean and refer to natural persons, proprietorships, corporations, professional service corporations,

partnerships, trusts, joint ventures, groups, associations, organizations, or other businesses or enterprises of any kind or nature and any division, department, or other sub-organization unit including predecessors and successors.

10. The term “**communications**” as used in these Interrogatories and requests means and refers to every transmittal or reception of information, however transmitted or received.

Instructions

1. When an Interrogatory or request asks for the description or identification of a document, it is intended that the answer shall state the following information with respect to each document:

- a. Title;
- b. Date;
- c. Author(s);
- d. Addressee(s);
- e. Recipient(s) of original or copy;
- f. File Number or other identifying mark or code;
- g. Nature and subject matter of the document;
- h. Location by room, building, and address, or if lost or no longer in existence, the last known location and custodian as well as the circumstances of the loss or destruction.

In lieu of identifying any document, a copy of such document may be attached to Judicial Conduct Commission’s responses.

2. When an Interrogatory requires the description or identification of an individual, it is intended that the answer shall state the following information with respect to each individual:

- a. Name;
- b. Present or last known home address;
- c. Present or last known business address, including name of current employer and employment classification or job title;
- d. Present or last known home and business telephone number;

3. Unless an individual interrogatory or request clearly states a different time period, these interrogatories and requests require disclosure of all information, documents, and responsive

materials or things from the time period encompassed within January 1, 2017 to the date of your answers and responses, inclusive.

4. Any use of the singular or plural, masculine or feminine, or upper or lower case form of words or letters shall be interpreted to include all other such forms as are consistent with the content of the interrogatory or request.

5. If the space provided for inserting your answers and responses is inadequate, please attach as many continuation pages as necessary, marking and numbering each continuation page so that it clearly indicates what interrogatory or request the information on the continuation page is intended to be responsive to. In the alternative, Judge Dawn M. Gentry' counsel has furnished all other parties with an electronic copy of these interrogatories and requests, in Microsoft Word format. By using the electronic copy, Counsel for the Judicial Conduct Commission can insert as much information as necessary to fully respond to any interrogatory or request.

6. If you claim any form of privilege, whether based on statute or otherwise founded, as a ground for not answering an Interrogatory or any part of an Interrogatory or Request for Production of Document or Request for Admission, set forth in complete detail each and every fact upon which the privilege is based.

Privilege Claims

7. If you claim any form of privilege, whether based on statute or otherwise founded, as a ground for not answering an Interrogatory or any part of an Interrogatory, Request for Production of Document or request for admission, set forth in complete detail each and every fact upon which the privilege is based.

8. If you claim any form of privilege, whether based on statute or otherwise, as a ground for not describing requested oral communications or documents, state the following: (a)

the date; (b) name and present or last known home and business addresses and telephone numbers, title (or position), and occupation of each of the participants in communication(s), or of those individuals who prepared, produced, or reproduced, or who were recipients of said communication or document; (c) the name, present or last known home and business and telephone numbers, title (or position), and occupation of each individual who was present during all or any part of said communication(s); (d) a description of the oral communication or of the document sufficient to identify it without revealing the information for which the privilege is claimed; and (e) each and every fact or basis upon which you claim any such privilege

INTERROGATORIES

Judge Dawn M. Gentry, by counsel, pursuant to Rule 33 of the Kentucky Rules of Civil Procedure, propound the following interrogatories to the Judicial Conduct Commission. Judge Dawn M. Gentry request that answers to these interrogatories be served upon her attorney within thirty (30) days after service hereof:

1. For each count and sub portion contained in the Complaint, state the source of information received to support the allegation, including but not limited to, the name of the individual(s) who provided the information and any documents which support said allegations.

ANSWER:

2. Explain in detail why the Commission neglected to find the source of the original anonymous Complainant and why a Complaint is permitted to proceed under an anonymous allegation.

ANSWER:

3. State the name of any and all individuals who have the authority to direct the investigator as to which individuals to interview and/or which investigative steps to take.

ANSWER:

4. State with specificity what steps Judge Dawn M. Gentry took to conceal the alleged conduct contained in Count I, paragraph one.

ANSWER:

5. State the specific days and times Judge Dawn M. Gentry permitted Mr. Penrose to spend work hours playing his guitar and singing in his office.

ANSWER:

6. Identify, specifically, which judicial functions were improperly delegated to Mr. Penrose and on what dates these acts occurred, as alleged in Count VII, paragraph three.

ANSWER:

7. Identify which specific Administrative Office of the Courts policy or procedure Judge Gentry is accused of not following.

ANSWER:

8. Identify when the Commission, or anyone acting on the Commission's behalf, first received information or contact from Brian Gentry or on Brian Gentry's behalf.

ANSWER:

9. Explain in detail the manner in which the investigation into Judge Dawn Gentry is steered, including but not limited to identifying the individuals who decide which witnesses to interview, which witnesses not to interview, and which investigative steps should be taken.

ANSWER:

10. List all potential witnesses who did not agree to speak with investigator Gene Weaver despite his request for an interview.

ANSWER:

11. Explain in detail the date the investigation into Judge Dawn Gentry began and the date the investigation concluded.

ANSWER:

12. List all persons who the investigator was told had information related to this case, but whom the investigator or his agent supervisor chose not to contact.

ANSWER:

13. List all persons with any connection to this investigation who were contacted or spoken to in any manner by the investigator, but who were not recorded. State the substance of what was said by each of these persons.

ANSWER:

14. State the substance of any advice provided to the investigator in this matter with regard to ensuring his activities complied with relevant law, including but not limited to Supreme Court Rule 3.130, the Rules of Professional Responsibility.

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Kentucky Rule of Civil Procedure 34, Judicial Conduct Commission is requested to produce the following documents and other things for inspection and copying at the office of Judge Dawn M. Gentry' counsel, F. Todd Lewis, within thirty (30) days after service hereof.

1. Please produce a copy of all cases involving Ms. Kelly Blevins in which Judge Dawn M. Gentry refused to recuse herself as alleged in Count IV, paragraph two.

Response:

2. Please produce a copy of all photographs or videos taken of Judge Dawn M. Gentry. If photographs or videos exist, but are not in your possession, please list the name and contact information of the person(s) who currently has/have possession of those items.

Response:

3. Please produce a copy of any and all documents and/or objects evidencing any allegation or sub portion contained in the Complaint.

Response:

4. Please produce a copy of each and every object or document, including models, exhibits, visual aids, charts, graphs, and/or other demonstrative evidence which will be used by or on behalf of the Judicial Conduct Commission as an exhibit or to which reference will be made by or on behalf of the Judicial Conduct Commission in the course of the trial of this matter.

Response:

5. With respect to any witnesses you expect to call at trial, please produce any and all exhibits to be used as a summary of or support for the opinions and/or testimony.

Response:

6. Please produce copies of all video and/or audio recordings of all witness statements conducted during the Judicial Conduct Commission's investigation.

Response:

7. Please produce a copy of the confidential proceedings allegedly witnessed by Judge Dawn M. Gentry's child, as alleged in Count III, paragraph four.

Response:

8. Please produce a copy of the statute or rules which regulate GAL appointments from January 1, 2017 to present.

Response:

9. Produce a copy of JCC Case Number 2019-17, including, but not limited to the initial complaint lodged against Judge Dawn M. Gentry, any investigative notes, Judge Dawn Gentry's response with attachments, and the letter the Commission provide Judge Dawn M. Gentry, dismissing the complaint.

Response:

REQUESTS FOR ADMISSIONS

Judge Dawn M. Gentry, through counsel, requests that Judicial Conduct Commission either admit or deny the truthfulness of each of the numbered Requests in this First Set of Requests for Admissions in the manner, and subject to the limitations and requirements set out in Rule 36 of the Kentucky Rules of Civil Procedure by either admitting or specifically denying the truthfulness of each request under oath. Please note that failure to answer or inadequate answers will result in the statement being admitted, in accordance with the provisions of C.R. 36. Judge Dawn M. Gentry request that responses to these requests be served upon her counsel within thirty (30) days of service hereof.

1. Admit that the investigator retained by the Commission to obtain information regarding the inquiry into Judge Dawn Gentry is an agent of counsel and therefore subject to the Kentucky Rules of Professional Conduct.

RESPONSE:

2. Admit that you do not have, and never did have, a lawful basis for making any inquiry of witness Bryan Gentry for material covered by the marital communications privilege, KRE 504(b).

RESPONSE:

2. Admit that you have communicated with other Northern Kentucky Judges, not on the Commission, regarding this case.

RESPONSE:

3. Admit that the initial Complaint was filed anonymously and not based upon first-hand knowledge.

RESPONSE:

4. Admit that the Judicial Conduct Commission did not make any attempt to have their investigator interview Hon. Rob Sanders.

RESPONSE:

5. Admit that the Judicial Conduct Commission did not make any attempt to have its investigator interview Hon. Delana Sanders.

RESPONSE:

6. Admit that the Judicial Conduct Commission did not make any attempt to have their investigator interview Mr. Stephen Penrose.

RESPONSE:

7. Admit that the Judicial Conduct Commission did not make any attempt to have their investigator interview Ms. Laura Aubrey.

RESPONSE:

8. Admit that the Judicial Conduct Commission did not make any attempt to have their investigator interview attorneys who would have been able to discredit the witnesses who were interviewed.

RESPONSE:

9. Admit that the Judicial Conduct Commission did not initiate notice of preliminary investigation pursuant to SCR 4.170 to Judge Dawn M. Gentry within 180 days of the general election following the campaign to which Counts I and II of the Complaint relate.

RESPONSE:

10. Admit that the Judicial Conduct Commission did not identify any statutory regulations which control the appointments of GAL panel members in its investigation or Complaint.

RESPONSE:

11. Admit members of the Judicial Conduct Commission have reviewed information relating to this case which would be ruled inadmissible in a hearing, pursuant to Kentucky Rules of Evidence, prior to filing the Complaint.

RESPONSE:

12. Admit Judge Karen Thomas, member of the Judicial Conduct Commission, serves on the Salmon P. Chase College of Law Alumni Board with Judge Dawn M. Gentry and has attended a dinner meeting with the Dean of Salmon P. Chase College of Law and other Northern Kentucky Judges, including Judge Dawn M. Gentry.

RESPONSE:

13. Admit Judge Karen Thomas, member of the Judicial Conduct Commission, discussed this case outside of the Commission and its proceedings, breaching the confidentiality of the proceedings.

RESPONSE:

14. Admit the Judicial Conduct Commission failed to identify any statute or local rule which Judge Dawn M. Gentry violated regarding her GAL panel.

RESPONSE:

15. Admit the Judicial Conduct Commission failed to take the least severe action necessary to remedy the situation as it relates to Judge Dawn M. Gentry.

RESPONSE:

16. Admit it is the general policy and procedure of the Judicial Conduct Commission to engage in settlement negotiations with judges who have been accused of misconduct in lieu of and/or prior to a final hearing.

RESPONSE:

17. Admit that the Judicial Conduct Commission has refused to engage in any settlement negotiations with Judge Dawn M. Gentry and/or her counsel.

RESPONSE:

CERTIFICATE ACKNOWLEDGING ANSWERS UNDER OATH

STATE OF _____)
)
COUNTY OF _____)

_____, being first duly cautioned and sworn, states that she/he is a voting member of the Judicial Conduct Commission herein, and has reviewed the foregoing requests for admissions, and that the responses are true to the best of his/her knowledge.

_____)
X

Sworn to and subscribed before me this ____ day of _____, 2020.

NOTARY PUBLIC: KY STATE AT LARGE
My Commission Expires: _____

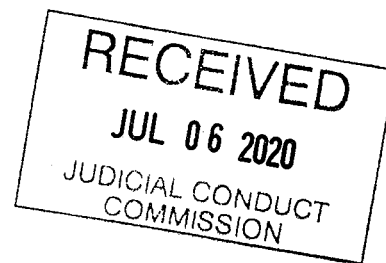
CERTIFICATE OF SERVICE

I hereby certify that on this, the 16th day of June, 2020, a copy of the foregoing was served via email and U.S. mail, first class, postage pre-paid, to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

/s/ Jeffrey A. Lawson
Counsel for Judge Dawn M. Gentry

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION



IN RE THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

**OBJECTION TO JUDGE GENTRY'S SECOND DISCOVERY REQUESTS AND
REQUESTS FOR DISCOVERY DEPOSITIONS**

On June 16, 2020, undersigned counsel received Interrogatories, Request for Production of Documents and Request for Admissions directed to the Judicial Conduct Commission via service by Judge Gentry's counsel. In addition, on June 23, 2020, undersigned counsel received a request via email from Judge Gentry's counsel to take discovery depositions of Brian Gentry and Gene Weaver. In response to these discovery requests and requests for discovery depositions, counsel objects for the following grounds.

First, written discovery requests and discovery depositions of this type are not appropriate in matters pending before the Judicial Conduct Commission. The Kentucky Judicial Conduct Commission is governed by the Supreme Court Rules 4.000-4.310. Specifically, Rule 4.210 governs the procedural rights for a judge subject to a disciplinary hearing. The Supreme Court Rules for these judicial conduct procedures nowhere authorize any civil discovery or discovery depositions prior to a disciplinary hearing.¹

Second, the factual file from the Commission's investigation has already been provided to Judge Gentry and her counsel. All of these materials have been provided to Judge Gentry through her counsel – for some items, the materials have been provided on at least two occasions. The factual file at this time consists of 94 distinct documents which have been provided to Judge Gentry and her counsel. Items 1 through 70 were copied on a disc

¹ In the event the Commission rules the discovery requests should be answered, counsel reserves the right to make any further objections that would be available under applicable law or rules.

accompanied by a factual file letter and provided on October 8, 2019. Items 71-73 were copied onto a second disc with an updated factual file letter on November 4, 2019. Item 74 was provided by mail on November 14, 2019. All of these items were provided to both Judge Gentry and her prior counsel Mr. Ryan. These documents, excluding certain explicit images, were then provided again through counsel via email to Mr. Ryan on December 31, 2019.² Later identified items, inclusive of Nos. 75-94 were provided on a disc with an accompanying factual file letter on February 17, 2020 provided to Judge Gentry and her then attorneys, Mr. Ryan and Mr. Weakley. Undersigned counsel has informed Judge Gentry's current counsel that if any of the items in the factual file were not provided to current counsel by Judge Gentry's prior attorneys, they could be provided upon request.

Third, most of the remainder of Judge Gentry's discovery requests relate to identification of certain pretrial materials. The Commission has entered a pre-hearing order in this matter addressing the disclosure of pretrial materials, including witness and exhibit lists. Counsel for the Commission will comply with the pre-hearing order regarding disclosure of pretrial materials.

For these reasons, counsel respectfully requests this objection to the Interrogatories, Request for Production of Documents, and Request for Admissions and requests for discovery depositions made by Judge Gentry be sustained.

² These images were not included in the electronic transmission to Mr. Ryan, but had previously been provided via disc to both Mr. Ryan and Judge Gentry.

Respectfully submitted,

/s/ Bryan H. Beauman

Bryan H. Beauman

Donald C. Morgan

Sturgill, Turner, Barker & Moloney, PLLC

333 West Vine Street, Suite 1500

Lexington, Kentucky 40507

bbeauman@sturgillturner.com

dmorgan@sturgillturner.com

Telephone: (859) 255-8581

COUNSEL FOR JUDICIAL CONDUCT

COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2020, I served a true and correct copy of the foregoing by electronic mail and U.S. Mail on the following individuals:

Jeffrey A. Lawson

524 Greenup Street

Covington, KY 41011

lawsonjeff@gmail.com

COUNSEL FOR JUDGE DAWN GENTRY

F. Todd Lewis

111 W. Washington Street, Suite 400

Louisville, KY 40202

Todd.lewis@toddlewislaw.com

COUNSEL FOR JUDGE DAWN GENTRY

Jimmy Shaffer

Judicial Conduct Commission

P.O. Box 4266

Frankfort, KY 40604-4266

(502) 564-1231

JimmyShaffer@kycourts.net

EXECUTIVE SECRETARY FOR

JUDICIAL CONDUCT COMMISSION

/s/ Bryan H. Beauman

COUNSEL FOR JUDICIAL CONDUCT

COMMISSION

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

JUDICIAL CONDUCT COMMISSION’S WITNESS LIST

Counsel for the Judicial Conduct Commission submits the following witness list for the hearing of this matter scheduled for August 10, 2020.

I. Witness List

Counsel for the Judicial Conduct Commission anticipates calling these witnesses at the August 10, 2020 hearing. All of the testimony of the witnesses identified in this witness list will be offered primarily for the purposes of establishing the charges. Counsel for the Commission also reserves the right to seek to amend this Witness List, to call any witness identified by Judge Gentry, and any additional witnesses as necessary for rebuttal, impeachment, or authentication.¹

1. Judge Dawn Gentry.
2. Michael Hummel. [REDACTED]
3. Katherine Schulz. [REDACTED]
4. Kelly Blevins. [REDACTED]
[REDACTED]
5. Dr. Henry Webb. [REDACTED]
[REDACTED]
6. Judge Christopher Mehling. Kenton Family Court – Division [REDACTED]
[REDACTED]

¹ Witnesses are not necessarily listed in the order in which they will be called.

7. Kathleen Summe. [REDACTED]
[REDACTED]
8. Meredith Smith. [REDACTED]
[REDACTED]
9. Brian Gentry. [REDACTED]
10. Samantha Dishman. [REDACTED]
[REDACTED]
11. Shana Haegle, [REDACTED]
[REDACTED]
12. Mindi Doolin. [REDACTED]
[REDACTED]
13. Stephanie Dietz. [REDACTED]
14. Greta Walker. [REDACTED]
15. Robert Hacker. [REDACTED]
[REDACTED]
16. Randal Scrivner. [REDACTED]
[REDACTED]
17. Stephen Beierlein. [REDACTED]
[REDACTED]
18. Beth Uhl. [REDACTED]
19. Jaime Linkugel. [REDACTED]
[REDACTED]

20. Felicita Quinones. [REDACTED] [REDACTED] [REDACTED]
[REDACTED]

21. Meredith Russo. [REDACTED] [REDACTED] [REDACTED]
[REDACTED]

22. Laura Aubrey. [REDACTED]

23. Stephen Penrose. [REDACTED]

24. Debra Pleatman. [REDACTED]

25. Amanda Johnson. [REDACTED]

26. Kimberly Krall. [REDACTED]
[REDACTED]

27. Saria Lattimore. [REDACTED]

28. Rachel O’Hearen. [REDACTED]

29. Jack Osterhage. [REDACTED]

30. Richard Scott, [REDACTED]

31. Timothy Aubrey. [REDACTED]

32. Any witness who testified at the January 3, 2020 temporary removal hearing.

33. Any witnesses listed on the witness list of Judge Gentry.

34. Any witnesses necessary to rebut the testimony or evidence offered at trial.

As statements made by a party, Judge Gentry’s prior testimony from the January 3, 2020 temporary removal hearing may be offered into evidence without a motion in limine or the stipulation of the parties. At this time, Counsel for the Judicial Conduct Commission does not anticipate calling any witnesses by affidavit, but reserves the right to do so upon stipulation of the parties.

Respectfully submitted,

/s/ Bryan H. Beauman
Bryan H. Beauman
Donald C. Morgan
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507
bbeauman@sturgillturner.com
dmorgan@sturgillturner.com
Telephone: (859) 255-8581
COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2020, I served a true and correct copy of the foregoing by electronic mail and U.S. Mail on the following individuals:

Jeffrey A. Lawson
524 Greenup Street
Covington, KY 41011
lawsonjeff@gmail.com
COUNSEL FOR JUDGE DAWN GENTRY

F. Todd Lewis
111 W. Washington Street, Suite 400
Louisville, KY 40202
Todd.lewis@toddlewislaw.com
COUNSEL FOR JUDGE DAWN GENTRY

Jimmy Shaffer
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
(502) 564-1231
JimmyShaffer@kycourts.net
EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION

/s/ Bryan H. Beauman
COUNSEL FOR JUDICIAL CONDUCT COMMISSION

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

WITNESS LIST

COMES NOW the Honorable Dawn M. Gentry, by and through undersigned counsel, and pursuant to the Pretrial Order issued by the Commission hereby provides a list of witnesses to be called at the Hearing in this matter:

1. Deanna Dennison. [REDACTED]
2. Richard "Rick" Scott. [REDACTED]
[REDACTED]
3. D. Brian Richmond. [REDACTED]
4. E. Rob Sanders. [REDACTED]
[REDACTED]
5. Delana Sanders. [REDACTED]
[REDACTED]
6. Dawn Gentry. Contact through undersigned counsel.
7. Christopher Mehling. [REDACTED]
[REDACTED]
8. Linda Bramlage. [REDACTED]
[REDACTED]
9. Jennifer Dusing. [REDACTED]
[REDACTED]

10. Patricia Summe. [REDACTED]
[REDACTED]
11. Richard Woeste. [REDACTED]
[REDACTED]
12. Jason McGuiness. [REDACTED]
[REDACTED]
13. Rachel Bingham. [REDACTED]
[REDACTED]
14. Karen Thomas. [REDACTED]
[REDACTED]
15. John Middleton. [REDACTED]
[REDACTED]
16. Amy Burke. [REDACTED]
[REDACTED]
17. Kim Krall. [REDACTED]
[REDACTED]
18. Bob Sanders. [REDACTED]
19. Katherine Schulz. [REDACTED]
[REDACTED]
20. Kathy Summe. [REDACTED]
[REDACTED]
21. John Osterhage. [REDACTED]

22. Rachael O’Hearen. [REDACTED]
[REDACTED]

23. Justin Durstock. [REDACTED]
[REDACTED]

24. George Thompson. [REDACTED]
[REDACTED]

25. Pam Klein. [REDACTED].

26. Alex Edmondson. [REDACTED]
[REDACTED]

27. Yolonda Reis. [REDACTED]
[REDACTED]

28. Marcus Gale. [REDACTED]
[REDACTED]
[REDACTED]

30. Kathleen Shields. [REDACTED]
[REDACTED]

31. Wesley Williams. [REDACTED]
[REDACTED]

32. Jeremy Deters. [REDACTED]
[REDACTED]

33. Rodney Bolton. [REDACTED]
[REDACTED]

34. Jeff Otis. [REDACTED]

35. Charlie Lunsford. [REDACTED]
[REDACTED]

36. Pastor Edward Palmer. [REDACTED]

37. Gene Weaver. Investigator for the Judicial Conduct Commission.

38. Senator Chris McDaniel. [REDACTED]
[REDACTED].

39. John Berger. [REDACTED]
[REDACTED]

40. Michael Bouldin. [REDACTED]

41. Laura Ward. [REDACTED]

42. L. Craig Kendrick. [REDACTED]
[REDACTED]

43. Shannon Sommers. [REDACTED]

44. Gerald Hoppmann. [REDACTED]
[REDACTED]

Respectfully submitted,

/s/ F. Todd Lewis
F. Todd Lewis
Lewis Law, PLLC
111 W. Washington Street, Ste 400
Louisville, KY 40202
(502) 855-7599
(502) 550-4139 (mobile)
todd.lewis@toddlewislaw.com

/s/ Jeffrey A. Lawson

Hon. Jeffrey A. Lawson (94744)

524 Greenup Street

Covington, Kentucky 41011

Tel: (859) 414-6678

lawsonjeff@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, 13th day of July, 2020, a copy of the foregoing was served via email to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

/s/ Jeffrey A. Lawson

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

MOTION TO COMPEL

COMES NOW the Honorable Dawn M. Gentry, by and through undersigned counsel, and hereby moves the Commission as follows:

1. To compel compliance with certain necessary and appropriate pretrial discovery demands of the Respondent;

As grounds therefore, the Movant states:

1. On or about May 29, 2020, the Respondent Judge propounded a set of written discovery requests upon the Commission's prosecutor.

2. The discovery requests included fifteen (15) carefully-tailored interrogatories, and Requests for Admission (attached).

3. The request for discovery was met by silence for the next 33 days.

4. On June 23, 2020, Respondent requested to take the depositions of two witnesses in this matter, investigator Gene Weaver and Brian Gentry during the week of July 7.

5. On July 1, 2020, the Commission prosecutor filed an "Objection" to all of the discovery requests, claiming they are "not appropriate," because the Rules governing these proceedings "nowhere authorize any civil discovery." This is incorrect as a matter of law, both under the Rules, and as a plain matter of Due Process.

6. SCR 4.160 expressly states that “to the extent applicable and not inconsistent with these Rules, **the Rules of Civil Procedure shall apply to proceedings before the Commission.**”

7. Civil Rules 26, 30, 33 and 36 expressly authorize the conduct of depositions and the propounding and response to written interrogatories and requests for admission. There is nothing inconsistent between these provisions and the procedures of SCR 4.160, especially inasmuch as SCR 4.160 is read to provide for the due process rights of the Respondent Judge under the Kentucky and U.S. Constitutions; and especially given the highly troubling course of conduct witnessed in this investigation.

6. While the Respondent is not compelled to state her reasons for conducting these depositions other than that they are authorized by law, and seek material appropriately within the scope of Civil Rule 26, she states as follows:

a. See the Respondent’s Motion for Protective Order

7. Respondent hereby tenders her Memorandum in Support of this Motion for the bulk of her argument to compel this discovery.

Respectfully submitted,

/s/ F. Todd Lewis

F. Todd Lewis
Lewis Law, PLLC
111 W. Washington Street,
Suite 400
Louisville, KY 40202
(502) 855-7599
(502) 550-4139 (mobile)
todd.lewis@toddlewislaw.com

/s/ Jeffrey A. Lawson

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**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL**

COMES NOW the Honorable Dawn M. Gentry, by and through undersigned counsel, hereby states as follows for her Memorandum in Support of her Motion to Compel Discovery in this matter:

BACKGROUND

The Respondent Judge was charged by the Commission with several counts of misconduct (some of which are intelligible, some of which are not; some of which are time-barred), on or about November 18, 2019. A hearing for temporary removal was set for and conducted in January, 2020. Shortly following that, a hearing upon the allegations was set for April, 2020.

On February 17, 2020, Judge Gentry was notified for the first time that the Commission prosecutor had been, through its investigator, maintaining an entire course of contact with Gentry's husband, Brian Gentry, as a witness. The full extent and history of this contact is unknown, because no one has divulged that fact, nor its full history and extent. As will be apparent, this course of contact involved unlawful and inappropriate accessing and turning over of information to the Commission investigator. The Judge is entitled to know and explore the full extent to which her defense in this proceeding has been unlawfully compromised by this activity,

so that this information can be provided to the Commission, who can in turn decide how it is going to remedy this. The Judge has lodged a request for such a remedy by separate motion, based on what is known so far.

There are a couple important things that can be barely discerned from the record: (1) the contact and exchange of information between Brian Gentry and the prosecutor and investigator (whether conducted directly, or through a third-party middleman) clearly dates back to the period the Judge and Brian **were married**; (2) the contact and exchange of information between these two involve *a voluminous record of patently privileged information, with no apparent lawful authority for having gained and used it*; (3) the exchange of information went well beyond Brian's simple verbal divulgence of privileged material, but rather went on to include Brian's actual accessing of the Judge's private and privileged communications records contained in electronic devices¹, and then turned over by Brian; (4) Brian's access of the Judge's private and privileged information continued at least through February, 2020—a period of time during which the Judge had been represented by legal counsel in these proceedings already, for several months.

Here is some of the material which was “hacked” out of the Judge's electronic device by Brian Gentry, in order to be provided to the Commission investigator:

Following a review of the limited material made available regarding Brian Gentry and the invasion of the Respondent Judge's right to privileged information, the Respondent has now sought further information via the mechanisms of pretrial discovery set out in the Rules of Civil Procedure, for written discovery and for pretrial depositions. The written material sought is

¹ Brian Gentry has a professional expertise in the accessing and manipulation of electronics devices—an expertise which was known to the Commission investigator, and which he at least employed against the Judge out of malice in this instance; and/or was directed to do so by the Commission's investigator.

appropriate and limited in scope; and the proposed deposition witnesses are appropriately sought to be deposed.

ARGUMENT

I. CIVIL RULES GOVERNING DISCOVERY APPLY TO THIS PROCEEDING.

The Rules of Civil Procedure governing the taking of oral depositions and of written discovery, especially as applied to this case, straightforwardly apply to require a response to the Respondent's discovery requests. The starting point for this matter is Supreme Court Rule 4.160, which provides as follows in its entirety: "To the extent applicable and not inconsistent with these Rules, the Rules of Civil Procedure shall apply to proceedings before the Commission, except that the proof shall be by clear and convincing evidence." In a similar vein is the Rules of Civil Procedure's own statement of applicability contained in CR 1: "These Rules govern [procedure and practice in all actions of a civil nature in the Court of Justice except for special statutory proceedings, in which the requirements of the statute shall prevail over an *inconsistent procedures* set forth in the Rules" (emphasis added).

The Supreme Court has not addressed the precise issue of whether civil discovery rules apply in JCC proceedings, but it hardly has to, because it is not a difficult conclusion. The Court has addressed such a question in perfectly analogous situations. In C.C. v. Cabinet for Health and Family Services, 300 S.W.3d 83 (Ky. 2011), the Court rejected almost precisely the same argument made by the Commission prosecutor here. In CC, the Court held that the discovery provisions of the Civil Rules were not inapplicable to Dependency/Abuse/Neglect proceedings,² despite the fact that these actions were otherwise proceedings "complete in itself" with detailed procedures. The rules governing DNA proceedings, like Supreme Court Rule 4, state that the

² Such proceedings are governed by a statutory scheme set out in

Civil Rule otherwise apply. The Court rejected the argument, like that being made here, that such a provision is limited to the adjudication portion and not the entire action.

The Court held also that differing time frames set in the proceedings do not change this result. The Court held that there is no blanket conclusion on whether “The Civil Rules” apply as a whole in special proceedings—rather, the analysis of “inconsistency” looks to whether a *particular* civil rule conflicts with such procedures, and whether there is an alternative procedure on the same issue contained in the special proceedings. The Court also rejects the notion that, for a Civil Rule to apply in a special proceedings, the rules governing the proceeding must expressly state that the Civil Rule applies. McCann v. Sullivan University, 528 S.W.3d 331 (Ky. 2017).

The analysis in CC was not a new one on this issue, and the Court shows no sign of changing its mind on the topic. See: Hensely v. Haynes Trucking, 549 S.W.3d 430 (Ky. 2018) (*held*: no inconsistency between class action rules in the Civil Rules and statutory proceedings under KRS Chapter 337); McCann v. Sullivan University, 528 S.W.3d 331 (Ky. 2017) (same). Instances in which the Civil Rules were not applied to special proceedings involved very different issues, but largely the same analysis (was there a direct inconsistency with some specific procedure and some specific Civil Rule): W. Ky. Coca Cola Bottling v. Runyon, 410 S.W.3d 113 (Ky. 2013) (*held*: unemployment hearing did not involve default judgment under CR 55.01 because special proceeding did not require a written answer);

In CC, the issue involved the same Civil Rules at issue here—discovery mechanisms. Every one of the objections made by counsel for the Commission here were soundly rejected in that case: there is no “general inconsistency” between the special proceeding and the discovery rules; there is nothing in the timeframes of the special proceedings which make discovery

inapplicable; protective orders can be issued in appropriate circumstances tailored to the individual case.

Thus, the first and controlling question is whether there is anything “inconsistent with” SCR part 4, and the governing Rules of Civil Procedure, generally. There is not, especially in this case, and especially upon the issues Respondent seeks discovery.

This matter was continued to an August, 2020 trial date for the final hearing, by Order entered on March 20, 2020. This was nearly a 6-month window. So, the lead time before trial afforded more than enough time for the propounding and answering of discovery requests. The written requests were made with more than enough time before trial to answer them within the 30-day window provided in the Rules of Civil Procedure, CR 33 and 36, and even some additional time as the Commission prosecutor may have reasonably requested. Instead, however, the Commission prosecutor has taken the pat and unwarranted position that he is required to answer no discovery requests whatsoever, on any topic, no matter their tailored extent or length of time afforded to answer. Given the procedural history of this case, and the nature of the discover requests made, there is no inconsistency as to timing, between Supreme Court Rule Part 4, and the relevant civil discovery rules.

II. THE MATERIAL SOUGHT BY THE DISCOVERY REQUESTS IS DISCOVERABLE.

The “alternative” objection by the Commission prosecutor to the outstanding discovery requests is that they have turned over lots of things, anyway, in pretrial disclosures. This is not basis for objection to the pending requests, which are appropriately within the scope of discoverable material.

Civil Rule 26 allows that within the scope of pretrial discovery is anything relevant or admissible at trial; and even anything inadmissible at trial, if reasonably calculated to lead to the

discovery of admissible evidence. CR 26.02. Generalized objections by administrative agencies to discovery which goes to the agency's methods and compliance with law are inappropriate. Pendleton Bros. Vending v. Commonwealth Finance & Admin. Cabinet, 758 S.W.2d 24 (Ky. 1988)(“the deposition discovery rules are to be accorded broad and liberal treatment. No longer can the time-honored cry of “fishing expedition” serve to preclude a party from inquiring into facts underlying his opponent's case”).

The pending discovery requests ask pointed, intelligible questions for relevant material, as relevance is defined in CR 26. Several questions go to the method of utilizing the investigator, and the contact with the Respondent's spouse, questions which are intertwined with a major issue over the serious misconduct of the investigation. Two questions go to the source and identity of the original complainant, a question with more urgency now that it is clear that numerous persons have acted with bad faith motives in this action, including the violation of privileged material. Several more questions simply ask for specificity in the underlying facts or law upon which general charges are premised.

These are classically discoverable issues in any litigation, and there is no valid reason not to comply with them in this case. There is not a timing problem; they meet the definition of relevance in CR 26; and there is an added urgency to the response to numerous of these questions, given the cloud which has descended over these proceedings.

III. DUE PROCESS UNDER KENTUCKY AND STATE CONSTITUTIONS

Finally, there are circumstances in which the actions of a governmental agency (or a section thereof) are subject to legitimate question, and the target of that agency can justly seek discovery in order to ensure her rights are vindicated. In short, civil discovery may be one legitimate mechanism to engage in such oversight and inquiry. In Pendleton Bros. Vending v.

Commonwealth Finance & Admin. Cabinet, 758 S.W.2d 24 (Ky. 1988), an administrative agency sought to preclude the use of civil discovery which was sought for precisely this reason. The Court made short work of attempts to resist discovery aimed at precisely that inquiry.

Section 2 of the Kentucky Constitution provides recourse against “arbitrary governmental action,” a concept which has mirrored rights developed under the Due Process Clause of the 14th Amendment, and at times has been given a wider scope.

In one instance, perhaps confined to its facts, the Supreme Court addressed whether the requirements of Due Process in the investigative activity of the JCC, ruling that the combination of judicial and prosecutorial functions represented by JCC did not constitute a denial of Due Process in that case. Alred v. Commonwealth, 395 S.W.3d 417 (Ky. 2012). A couple of telling things stand out in the Alred decision: (1) the Court certainly acknowledged that Due Process placed limits on the investigative activities of the JCC, particularly as it was combined with the adjudicate function; (2) the Court ruled that “*without more*,” the combined functions did not for that reason alone violate Due Process as “inherently flawed”; (3) the Court stated that the “more” which would change this conclusion was a showing that “under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudice that the practice must be forbidden if the guarantee of due process is to be adequately implemented.” Id.

Here, we have an entire course of conduct in the investigation of this matter, which indicates that the Alred “limit” has been surpassed. This is true with no particular ill-will by the Commission members themselves. This is an investigation in which privileged evidence was not only accepted and used, but actively solicited in the form of an entire course of 60+ questions to a witness who had virtually no other information *than* privileged material; a previous

background in which a previous witness with an obvious axe to grind was allowed also to provide such material without check; a series of divulgements of prejudicial pretrial publicity to media entities which have made a field day and mockery of this Respondent, often with little grounding in fact or reality; and continuing questions, propounded by formal discovery requests, about one Commission member's extrajudicial contacts and activities which the Commission prosecutor steadfastly refuses to answer (leading to the natural question of: "why?"). Now, the harmed individual whose privileged information was invaded and used is asked to protect that privilege solely by recourse to the very "jury" which the privilege rules are designed to insulate. The Commission can reign in this course of conduct now by issuing the requested orders.

CONCLUSION

The Civil Rules governing written discovery (interrogatories and requests for admission) apply to this proceeding, particularly as it is being carried out in this case. The Commission should order the prosecutor to respond forthwith. In the specific facts of this case, the Constitution seems to require it.

Respectfully submitted,

/s/ F. Todd Lewis

F. Todd Lewis
Lewis Law, PLLC
111 W. Washington Street,
Suite 400
Louisville, KY 40202
(502) 855-7599
(502) 550-4139 (mobile)
todd.lewis@toddlewislaw.com

/s/ Jeffrey A. Lawson

Hon. Jeffrey A. Lawson (94744)
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/s/ F. Todd Lewis

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

MOTION IN LIMINE RE: DIGITAL SEXUAL MATERIAL

COMES NOW the Honorable Dawn M. Gentry, by and through undersigned counsel, and hereby moves the Commission In Limine, as follows:

1. To exclude the use, introduction and consideration. of all material currently held by Commission prosecutor or produced or to be produced by any witness, involving pictures or videos of a sexual nature. taken from an I-phone account accessed by the Respondent's husband.

2. To exclude the use of other evidence derived from the above;

As grounds therefor, the Movant states:

1. The Commission prosecutor and investigator obtained from witnesses a series of what are openly described by the witness as pictures "involving nudity." These pictures were obtained from a private smartphone location by a third party witness.

2. The intrusion into the Movant's private digital containers, and the transfer of such material to the Commission prosecutor and investigator is a subject of unlawful conduct in its own right. KRS 531.120 provides as follows, in relevant part:

Distribution of sexually explicit images without consent. (1) A person is guilty of distribution of sexually explicit images without consent when: (a) He or she intentionally distributes to any third party private erotic matter without the written consent of the person depicted, and does so with the intent to profit, or to harm, harass, intimidate, threaten, or coerce the person depicted; and (b) The disclosure would cause a reasonable person to suffer harm.

3. Additional grounds to exclude such evidence, and any further evidence derived from it, is: marital communication privilege, KRE 504(b); KRS 434.845 and 434.855 (unlawful access to a computer); KRE 401 (lack of relevance) and KRE 403 (probative value outweighed by prejudicial content).

WHEREFORE, Judge Dawn Gentry, by and through the undersigned counsel, requests:

1. Entry of an Order excluding from the prosecution evidence any digital images of a sexual nature; and any evidence derived therefrom.

/s/ Jeffrey A. Lawson
Hon. Jeffrey A. Lawson (94744)
524 Greenup Street
Covington, Kentucky 41011
Tel: (859) 414-6678
lawsonjeff@gmail.com

/s/ F. Todd Lewis
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/s/ F. Todd Lewis

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

MOTION FOR PROTECTIVE ORDER

COMES NOW the Honorable Dawn M. Gentry, by and through undersigned counsel, and hereby moves the Commission as follows:

To enter a protective Order designed to address (1) the inappropriate behavior of the prosecution and investigator in this matter, including the invasion and misuse of privileged information; (2) a method to separate the judicial from the prosecutorial functions, at least as to the matter of addressing the pending issues presented by the Respondent Judge. Please see the attached Proposed Order for the nature of relief requested. For reasons which will become clear in the body of this Motion, the Respondent does not here set out the entire litany and volume of inappropriate violations of her lawfully privileged material, but rather makes this Motion as a showing to support her request for relief in the nature of the appointment of an independent third party to examine this matter and make recommendations to the Commission.

As grounds therefor, the Respondent Judge states as follows:

FACTUAL BACKGROUND

1. The Respondent Judge was married to one Brian Gentry, until approximately September , 2019.
2. As a result of their marriage, each of the two parties to this marriage enjoy a privilege with respect to any communications which occurred between the two of them during the

marriage. KRE 504(b). This privilege continues in force indefinitely, despite the divorce or separation of the two parties to the marriage¹.

3. The investigation of this case dates to at least May, 2019.

4. In at least September, 2019, witness Mike Hummel began funneling to the prosecution of this case, via investigator Gene Weaver, information received from Brian Gentry, which included considerable information clearly cloaked by the spousal communication privilege. Hummel not only did this, he had already promised the investigator he would do it, at least several months before. The Respondent, Judge Gentry, not only did not consent to this release of private and privileged information,

5. In February, 2020, it was further revealed that the prosecution's investigator had been in direct contact with the Respondent Judge's spouse, Brian Gentry, since at least February 6, 2020, when Brian was formally interviewed by the investigator. The resulting interview is a transcript of sixty pages in length, and is thoroughly replete with information patently covered by the spousal communication privilege, as well as including reams of material from a private computer or smartphone archive² shared between Judge Gentry and her husband. Indeed, the vast majority of every question by the investigator and response by Brian Gentry to this interview is material covered by the privilege; and the questions are designed to elicit exactly that material: private communications between these two spouses, during their marriage.

6. Following Brian's first interview wherein he exchanged the above-described information, he turned over the prosecution nearly sixty pages of material he had obtained access to solely as a result of his marriage to Judge Gentry. Several of this are *recorded conversations*,

¹ As distinguished from the spousal testimony exemption of KRE 504(a), which ends upon the end of the marriage.

² The lawfulness of Brian Gentry's activities are also subject to some serious question, but we are concerned here with the conduct of the prosecution.

like text messages and emails, between the two spouses. This resulted in yet another interview of Brian, in which even more privileged conversations were turned over to the prosecution.

7. Because it is unclear what of this privileged material has been shared already with members of the Commission, it is not attached here verbatim. Counsel has gone over the initial 60-page transcript and located approximately sixty-five (65) separate instances of inquiries into, and answers containing, privileged material.

8. Several of these responses also indicate the existence of electronic or paper records retained solely between these spouses, on several items which have been made an issue in this case (the conduct of Judge Gentry's election; the appointment and non-retention of GAL and similar staff or judicial contractors; communication between the spouses about the nature of their relationship with certain other third parties).

9. Several of the items turned over to the prosecution also are simply private sexually explicit images, being shared with the prosecution for the purpose of harming or harassing the Respondent, or coercing the Respondent into not fully defending herself in this case. These items were obtained by Brian Gentry, and either disclosed directly to the prosecution, or funneled to the prosecution via Mr. Hummel (Mr. Gentry's divorce attorney). Curiously, this is the very first set of items turned over to the prosecution by Mr. Hummel, and were done so literally within minutes of the parties' divorce finality.

10. As the Commission is well aware, the prosecution herein conducted a temporary removal hearing against Judge Gentry in January, 2020. Several of the questions posed during this hearing indicate a prior course of revelation of privileged material between the prosecution and either Brian Gentry, or his attorney, Mr. Hummel, not all of which is accounted for by formal interviews of the latter two persons. There are obviously many more questions this poses.

11. What is known only on its face, then, is that a whole series of communications between the Respondent's spouse and the prosecution is patently invasive and violative of the Respondent's privileges and this requires a remedy in its own right. It also, however, raises the natural question of what occurred in the time frame between the inception of this investigation, and the final interview of Brian Gentry, on February 6, 2020? The spouse of the Respondent Judge, and that spouse's attorney, have obviously been acting for some time as agents for the prosecution. The attorney in question stated his intent to do this, at least as early as August, 2019. How long has this activity persisted? What is its scope and extent? Has Judge Gentry's attorney-client communication also been provided to the prosecution or "hacked" by the computer expertise of Brian Gentry? After all, the Respondent Judge had been represented by counsel before this Commission for several months prior to Brian and his attorney becoming conduits of privileged information to the prosecution.

12. This is not a minor issue in this case. As a result of this conduct and the further questions it raises, Judge Gentry has sought the deposition of Brian and the investigator both, in part to fully determine the extent and scope of this misconduct and seek appropriate redress. Both depositions have been refused by the Commission prosecutor.

LEGAL ISSUES

13. Several important relevant rules govern the investigation and presentation of evidence by attorneys and prosecutors, and the handling of privileged information wrongfully in the hands of one party. These rules are set out here in brief summary to support the requested relief. It is the intent of the Movant to set out completely before an independent third party the entirety of her position on each an every instance of the problematic conduct at issue:

a. KRE 504(b) codifies long-standing Kentucky law establishing the marital communications privilege.

b. A corollary of any rule of privilege is that the fact that the privilege was invoked or exercised can not itself properly be the subject of commentary or invited inference before the decision-making body. KRE 511. Proceedings shall be conducted to the extent practicable “so as to facilitate the assertion of claims of privilege without the knowledge of the jury.” Id.

c. The marital communication privilege includes more than verbal or written discourse between spouses, and is “construed to embrace all knowledge upon the part of the one or the other obtained by reason of the marriage relation, and which, but for the confidence growing out of it, would not have been known to the party.” Slaven v. Commonwealth, 962 S.W.2d 845 (Ky. 1997); .

d. Supreme Court Rule 3.130, Rule 4.4 provides in relevant part that “In representing a client, a lawyer shall not . . . use methods of obtaining evidence that violate the legal rights of such persons.”

e. Supreme Court Rule 3.130, Rule 8.4 makes the attorney responsible for the acts of others who violate other provisions of the Rules.

f. Invasions of privileged information by one party have always been the proper subject of remedial actions of the adjudicator, outside the hearing of the jury. See, e.g., Commonwealth v. Barrosso, 122 S.W.3d 554 (Ky. 2003).

g. The Supreme Court has discussed that there are limits to bodies such as the JCC which combine investigative, prosecutorial and adjudicative functions in Alred v. Commonwealth, 395 S.W.3d 417 (2012) . Alred is somewhat instructive in this regard,

in that it indicates³ why it is important that, when the problem presented is that the prosecution function has improperly obtained privileged material, the right in question is not going to be validated without a remedy being imposed; and the adjudicate or fact-finding body itself should not be privy to the very information wrongfully obtained, for any purpose.

14. Accordingly, the Respondent requests the entry of an Order here which allows this ongoing problem to be fully addressed, and her rights to confidentiality be validated, and remedied where they were transgressed (a fact which is patently obvious from the record).

15. The purpose of the Respondent Judge in this Motion is not to comment upon the “ethics” of opposing counsel, but to demonstrate that things have run afoul of the law in this case, and as a result a remedy must be interposed here to protect the integrity of the proceedings and the rights of the Judge⁴.

WHEREAS, the Respondent Judge respectfully requests:

1. Entry of her Proposed Order;
2. Any and all similar or alternative relief which allows the problem at issue to be addressed without the decision-making body itself becoming privy to all of the privileged information wrongfully obtained by the prosecution.

Respectfully submitted,

/s/ F. Todd Lewis

F. Todd Lewis

Lewis Law, PLLC

111 W. Washington Street,

³ “indicates,” because the Court did not have before it an actual case in which this combination ran afoul of Due Process rights, but certainly held that such a scenario was possible under certain conditions.

⁴ It is not clear where things went awry, but one of the highly motivated witnesses against Judge Gentry—himself an attorney-- appears to have labored under a misunderstanding of privilege law when he thought that the lifting of a family court “gag order” was the equivalent of dispensing with all requirements of evidentiary privileges.

Suite 400
Louisville, KY 40202
(502) 855-7599

/s/ Jeffrey A. Lawson
Hon. Jeffrey A. Lawson (94744)
524 Greenup Street
Covington, Kentucky 41011
Tel: (859) 414-6678
lawsonjeff@gmail.com

(502) 550-4139 (mobile)
todd.lewis@toddlewislaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this, 13th of July, 2020, a copy of the foregoing was served via email and U.S. mail, first class mail, to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

/s/ F. Todd Lewis

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

PROPOSED PROTECTIVE ORDER

Whereas, this matter comes before the Commission on motion Judge Gentry for relief and prospective relief addressing what has been alleged as inappropriate activity of the prosecution and investigator in this matter. The Commission having reviewed the matter and heard arguments of counsel, hereby Orders as follows:

1. The deposition of investigator Gene Weaver and witness Brian Gentry shall proceed forthwith. The scope of such depositions shall be any matter appropriate under Civil Rule 26, and in particular may include an inquiry into the extent of the transfer of privileged material from Brian Gentry to the investigator, whether done directly or through third parties.

2. The Commission hereby appoints _____ as a special master, to review the matters raised in Judge Gentry's pending motion, and make appropriate recommendations as to relief. This relief is necessary to ensure the integrity of these proceedings. The Respondent Judge has made a substantial showing that investigative activity in this matter has run afoul of the limitations imposed by law. The problem this presents is that the alleged conduct relates to privileged material. The appointment is made for the purpose of determining the extent of the effect of this activity on the evidence proposed to be presented against Judge Gentry; to preserve all privileges held by any party; and to recommend any relief appropriate. The specific terms of the special master's appointment are described below.

3. The special master appointed herein is authorized and directed as follows:

a. The purpose of the appointment is to determine the extent of any inappropriate behavior engaged in by the prosecution and/or its investigator in this matter, and any related conduct of any witness who has been in contact with the investigator (whether formally or informally), the effect of this activity on the evidence proposed to be presented against Judge Gentry; and to recommend any relief appropriate.

b. By these procedures, the special master will determine the nature of any conduct engaged in by the investigator which ran afoul of, or potentially ran afoul of, Kentucky law governing privileges (Part 5 of the Kentucky Rules of Evidence and related interpretations thereof); and the Rules of Professional Conduct, Supreme Court Rule 3.130 (including but not limited to Rule 4.4; and Rule 8.4).

c. The parties and special master will meet as soon as possible to determine a date and time for informal hearing before the special master on the matters presented, and appropriate deadlines for discovery requests on this issue.

d. Respondent Judge Gentry may request, and the Commission prosecutor will produce, discovery under any of the Rules of Civil Procedure, related to the issues of this inquiry. Time deadlines for the production of discovery may be altered or shortened as necessary to accommodate the inquiry of the special master.

e. Following an informal hearing conducted by the special master, including a review of any material produced through discovery or through the course of the investigation, the special master will prepare a report to the Commission. The report will address the following:

i. The extent to which material covered by a privilege, or potentially covered by a privilege, has been provided to the Commission prosecutor without the prior consent of the privilege holder;

- ii. A summary of the material in question, stated in general terms, so far as practicable to maintain the privilege or confidentiality of the material;
- iii. An analysis of the effect or possible effect of the disclosure of privileged material upon these proceedings;
- iv. A proposal for remedy or remedies for any violations.

R. MICHAEL SULLIVAN, CHAIRMAN
KENTUCKY JUDICIAL CONDUCT COMMISSION

Tendered By:

F. Todd Lewis
Attorney at Law
111 W. Washington Street, Suite 400
Louisville, KY 40202
Counsel for Respondent Judge Dawn Gentry

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**RESPONSE TO MOTION TO COMPEL DISCOVERY
RESPONSES AND FOR DEPOSITIONS**

Judge Gentry seeks to compel discovery responses from the Commission, which includes interrogatories, requests for production of documents, and requests for admissions, served on June 16, 2020. These discovery requests were the second set issued by Judge Gentry and were in follow up to original requests of February 5, 2020. Judge Gentry has also sought to take discovery depositions. Counsel objected to both sets as discovery and the requests for depositions as unauthorized under the procedural rules of the Commission.

As the Commission is well aware, written discovery requests and discovery depositions are not appropriate in matters pending before the Judicial Conduct Commission. This understanding by the undersigned has traditionally been the outcome of requests in other matters before the Judicial Conduct Commission (of which the Commission has a better working knowledge than counsel). The Rules of the Supreme Court of Kentucky, specifically SCr 3.130 (Rule 4.210), sets forth the procedural rights of a judge in formal proceedings before the Commission. This Rule provides that judges are entitled to introduce evidence, be represented by counsel, present witnesses, and cross-examine witnesses. Judges before the Commission are further afforded the right to subpoena witnesses to testify or to produce evidence. These rights under Rule 4.210 mirror the due process requirements of administrative hearings under Kentucky law. *See Hilltop Basic Resources, Inc. v. the County of Boone*, 180 S.W. 3d 464, 469 (Ky. 2005). Rule 4.210 does not provide a judge, or the attorney presenting the charges to the Commission

for that matter, the right to issue written discovery requests or to take a discovery deposition. For this reason, and the fact that Judge Gentry has been provided all due process required under the Supreme Court Rules or any applicable constitutional provision, Judge Gentry's motion should be denied.

However, unfortunate misstatements of fact stated in Judge Gentry's motion to compel require further attention. Attached as Exhibit A are the second set of discovery requests issued by counsel for Judge Gentry.¹ The certificate of service plainly states the discovery was served on *June 16, 2020*. Immediately in advance of the service of that discovery, counsel for Judge Gentry had placed a telephone call to the undersigned counsel as a courtesy to alert the discovery would be forthcoming and that counsel had an understanding that the second round of discovery would be met with the same responses as the original set in February. While counsel certainly may in good faith disagree about what the application of law is to these proceedings, such professional courtesy is welcomed, if not expected, among counsel. During that initial phone call which preceded the service of the discovery of June 16, 2020 (occurring in the week before) and for several days after, counsel had lengthy discussions about the discovery requests, the objection, pretrial items which could be addressed among counsel, discovery depositions that would be sought by Judge Gentry, and other potential topics as counsel typically engage in when handling litigation and representing the interest of clients.

It is unfortunate, to say the least, the motion to compel filed by Judge Gentry represents to the Commission that discovery was propounded on May 29, 2020 and discovery was "met by silence" for 33 days. In fact, discovery was served on June 16, and multiple conversations were ongoing telephonically among counsel. In formal response to the discovery served on June 16,

¹ Judge Gentry's motion to compel notes the discovery requests were attached as an exhibit. No such exhibit was provided in the service copy to counsel. Ms. Shaffer at the Commission has confirmed no exhibit was attached to the motion to compel filed with the Commission.

2020 and to the request by Judge Gentry to take depositions of Gene Weaver and Brian Gentry (which was received in writing on June 23, 2020 via email, see attached Exhibit B), counsel provided a written objection to Judge Gentry's requests on July 1, 2020, fifteen days after service of the written discovery requests and eight days after the email requesting discovery depositions. See Exhibit C.

Although the discovery sought by Judge Gentry is not permitted, the discovery also is not relevant as to whether Judge Gentry violated the Kentucky Code of Judicial Conduct. Judge Gentry claims she needs to depose Gene Weaver and her ex-husband, Brian Gentry, in order to determine what communications occurred between the two. She seeks to identify the source and identity of the original complainant in order to explore their motives in this action. She seeks to question the methods of the investigator and his contact with her ex-spouse. She seeks admissions from the Commission about what information was before it when the decision was made to bring charges and what negotiations the Commission engaged in. None of this "discovery" has any bearing on whether Judge Gentry violated the Code of Judicial Conduct.

Supreme Court Rule 4.170 gives the Commission the authority and discretion to conduct a preliminary investigation to determine if sufficient facts exist to bring charges. The Rule does not provide the judge under investigation to dictate how that investigation is to be conducted. *See e.g., Eurotech, Inc., v. Commonwealth*, 2014 WL 2644856 (holding the Kentucky Real Estate Commission had discretion to determine manner and scope of investigation and to determine to whether to bring charges).

The method in which the Commission conducts a preliminary investigation is irrelevant in determining whether Judge Gentry violated the Code of Judicial Conduct. In *Alred v.*

Commonwealth, 395 SW 3d 417 (Ky. 2012), the judge there made a similar argument against Mr. Weaver in attacking his investigation. The Supreme Court held:

An investigator's role in judicial conduct proceedings is to take witness statements and perform information – gathering services for the Commission. The Commission determined that Judge Allred violated the code of judicial conduct based on the witnesses' testimony and evidence presented at the formal hearing, not based on the investigator's conduct.

Id., at 431. Much like *Alred*, it is irrelevant who was interviewed by Gene Weaver or what questions he asked (or did not ask) in interviewing Brian Gentry because the Commission will ultimately base its decision *on the witness testimony admitted and evidence presented at the formal hearing*. And the interviews of her ex-husband Judge Gentry complains about occurred not only *after* her hearing concerning her temporary removal, but *after* these disciplinary charges were filed.

Moreover, as discussed at length in the response to the motion for protective order and the consequential motion in limine, both of which are incorporated here as fully set forth, Judge Gentry waived any spousal privilege concerning communications with her ex-husband when she interjected communications with him into the record before the Commission with her production response to the factual file sent on October 25, 2019. In fact, she specifically introduced text messages between her and her ex-husband with that filing. For Mr. Weaver to follow up with an interview with Brian Gentry after Judge Gentry introduced text communications into this record is not only prudent but done at Judge Gentry's own bidding.

Notwithstanding the fact that what persons Weaver interviewed or which questions he asked is irrelevant as to how much of the judicial code of conduct that Judge Gentry violated or whether she committed the misconduct as set forth in the charges, Judge Gentry is free to call Gene Weaver to testify at her hearing and to ask *relevant* and admissible questions.

Finally, Judge Gentry has had numerous opportunities to present evidence that she believes is relevant to her defense to the Commission. In accordance with Supreme Court Rule 4.170(2), she was given the opportunity to speak to the Commission during an informal conference. She was also given an opportunity to furnish evidence to the Commission pursuant to Rule 4.170(4). In fact, she did so including the disclosure of various marital communications between her and her ex-husband which constitute a waiver of the spousal communication privilege. She further testified at the hearing concerning her temporary removal. She is also free to call witnesses and present evidence at her hearing on August 10, 2020.

Because the Commission's investigation techniques are irrelevant, and because Judge Gentry has the opportunity to present all relevant evidence in her defense at the August 10, 2020 hearing, there is no need, nor grounds, for the written discovery she seeks or the discovery depositions of Gene Weaver or any other witness.

Conclusion

Based upon the foregoing reasons, Judge Gentry's motion to compel should be denied.

Respectfully submitted,

/s/ Bryan H. Beauman

Bryan H. Beauman

Donald C. Morgan

Sturgill, Turner, Barker & Moloney, PLLC

333 West Vine Street, Suite 1500

Lexington, Kentucky 40507

bbeauman@sturgillturner.com

dmorgan@sturgillturner.com

Telephone: (859) 255-8581

COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2020, I served a true and correct copy of the foregoing by electronic mail and U.S. Mail on the following individuals:

Jeffrey A. Lawson
524 Greenup Street
Covington, KY 41011
lawsonjeff@gmail.com
COUNSEL FOR JUDGE DAWN GENTRY

F. Todd Lewis
111 W. Washington Street, Suite 400
Louisville, KY 40202
Todd.lewis@toddlewislaw.com
COUNSEL FOR JUDGE DAWN GENTRY

Jimmy Shaffer
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
(502) 564-1231
JimmyShaffer@kycourts.net
EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION

/s/ Bryan H. Beauman

COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE: THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

**JUDGE DAWN M. GENTRY'S SECOND SET OF INTERROGATOIRES, REQUESTS
FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSIONS TO
JUDICIAL CONDUCT COMMISSION**

Definition of Words and Phrases

Judge Dawn M. Gentry, through counsel, sets forth the following definitions of various words and phrases that are contained in the attached interrogatories, document requests and requests for admissions. Judge Dawn M. Gentry provides the following definitions for the purpose of clarifying the intent of her questions and requests, in order to help Judicial Conduct Commission understand the objective of Judge Dawn M. Gentry's discovery efforts; to locate and furnish the relevant information and materials; and to avoid the unnecessary repetition of long descriptive phrases. **It is understood and agreed by Judge Dawn M. Gentry that Judicial Conduct Commission's use of these definitions and/or responses on the part of Judicial Conduct Commission to these discovery requests will not be construed as a concession that any definition contained herein is either factually correct or legally binding on the parties.** The definitions are set forth solely to aid in communication and to avoid any unnecessary semantic difficulties in discovery.

For purposes of the following interrogatories, request for admission and request for production of documents, the following definitions apply:

EXHIBIT A

1. The terms “**Judicial Conduct Commission**, and/or “**You**” and/or “**Yours**” as used in these Interrogatories, refer to the Judicial Conduct Commission in this action, and to any person(s) acting or purporting to act on behalf of the Judicial Conduct Commission in any capacity, including but not limited to the capacities of insurer, lessor, employer, agent or representative.

2. The term "**document**" as used herein shall refer to any written, printed, typed, photo static, photographed, recorded, or otherwise reproduced communication or representation, whether comprised of letters, words, numbers, pictures, sounds or symbols, or any combination thereof. This definition includes copies or duplicates of documents contemporaneously or subsequently created which have any nonconforming notes or other markings thereon. Without limiting the generality of the foregoing, “**document**” includes, but is not limited to: correspondence, emails, memoranda, notes, records, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, projections, estimates, proposals, working papers, summaries, statistical statements, financial statements, accounts, checks, check stubs, receipts, invoices, orders, analytical records, reports and/or summaries of investigations, opinions or reports, trade letters, press releases, comparisons, books, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, forecasts, drawings, diagrams, instructions, minutes of meetings or of other communications of any type, including inter/intra office communications, memos, questionnaires and surveys, charts, graphs, photographs, phonograph recordings, films, tapes, discs, data cells, drums, printouts, all other data compilations from which information can be obtained (translated if necessary, by Judicial Conduct Commission through detection devices to usable form), any preliminary versions, drafts, or revisions of any kind of the foregoing, and other writings or documents whether produced or written by any person associated with Judicial Conduct Commission, or anyone else, including non-identical copies of

any of the foregoing.

3. For the purposes of the production of “**documents**” the term shall include copies of all documents being produced, to the extent the copies are not identical to the original, thus requiring the production of copies that contain any markings, additions, or deletions that make them different in any way from the original.

4. The term, “**document(s)**,” also includes all copies, drafts, proofs, both originals and copies either (1) in the possession, custody or control of Judicial Conduct Commission regardless of where located, or (2) produced or generated by, known to or seen by Judicial Conduct Commission, but not now on its possession, custody or control, regardless of where located or whether or not still in existence.

5. “**Relating to**” means in whole or in part constituting, concerning, embodying, reflecting, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to the subject matter specified in the Interrogatory or document request.

6. “**And**” and “**or**” are to be construed whether conjunctively or disjunctively as necessary to bring within the scope or the specification all materials that might otherwise be construed to be outside its scope; and “**any**” and “**all**” as used herein mean “each and every”. The use of the term “**including**” shall be construed to mean “without limitation”.

7. The term “**address**” refers to the current address or last known address, if the current address is unknown.

8. The term “**telephone number**” refers to the current phone number, including area code, or the last known area code and phone number, if the current phone number is unknown.

9. The terms “**person**” or “**persons**” as used in these Interrogatories and requests mean and refer to natural persons, proprietorships, corporations, professional service corporations,

partnerships, trusts, joint ventures, groups, associations, organizations, or other businesses or enterprises of any kind or nature and any division, department, or other sub-organization unit including predecessors and successors.

10. The term “**communications**” as used in these Interrogatories and requests means and refers to every transmittal or reception of information, however transmitted or received.

Instructions

1. When an Interrogatory or request asks for the description or identification of a document, it is intended that the answer shall state the following information with respect to each document:

- a. Title;
- b. Date;
- c. Author(s);
- d. Addressee(s);
- e. Recipient(s) of original or copy;
- f. File Number or other identifying mark or code;
- g. Nature and subject matter of the document;
- h. Location by room, building, and address, or if lost or no longer in existence, the last known location and custodian as well as the circumstances of the loss or destruction.

In lieu of identifying any document, a copy of such document may be attached to Judicial Conduct Commission’s responses.

2. When an Interrogatory requires the description or identification of an individual, it is intended that the answer shall state the following information with respect to each individual:

- a. Name;
- b. Present or last known home address;
- c. Present or last known business address, including name of current employer and employment classification or job title;
- d. Present or last known home and business telephone number;

3. Unless an individual interrogatory or request clearly states a different time period, these interrogatories and requests require disclosure of all information, documents, and responsive

materials or things from the time period encompassed within January 1, 2017 to the date of your answers and responses, inclusive.

4. Any use of the singular or plural, masculine or feminine, or upper or lower case form of words or letters shall be interpreted to include all other such forms as are consistent with the content of the interrogatory or request.

5. If the space provided for inserting your answers and responses is inadequate, please attach as many continuation pages as necessary, marking and numbering each continuation page so that it clearly indicates what interrogatory or request the information on the continuation page is intended to be responsive to. In the alternative, Judge Dawn M. Gentry' counsel has furnished all other parties with an electronic copy of these interrogatories and requests, in Microsoft Word format. By using the electronic copy, Counsel for the Judicial Conduct Commission can insert as much information as necessary to fully respond to any interrogatory or request.

6. If you claim any form of privilege, whether based on statute or otherwise founded, as a ground for not answering an Interrogatory or any part of an Interrogatory or Request for Production of Document or Request for Admission, set forth in complete detail each and every fact upon which the privilege is based.

Privilege Claims

7. If you claim any form of privilege, whether based on statute or otherwise founded, as a ground for not answering an Interrogatory or any part of an Interrogatory, Request for Production of Document or request for admission, set forth in complete detail each and every fact upon which the privilege is based.

8. If you claim any form of privilege, whether based on statute or otherwise, as a ground for not describing requested oral communications or documents, state the following: (a)

the date; (b) name and present or last known home and business addresses and telephone numbers, title (or position), and occupation of each of the participants in communication(s), or of those individuals who prepared, produced, or reproduced, or who were recipients of said communication or document; (c) the name, present or last known home and business and telephone numbers, title (or position), and occupation of each individual who was present during all or any part of said communication(s); (d) a description of the oral communication or of the document sufficient to identify it without revealing the information for which the privilege is claimed; and (e) each and every fact or basis upon which you claim any such privilege

INTERROGATORIES

Judge Dawn M. Gentry, by counsel, pursuant to Rule 33 of the Kentucky Rules of Civil Procedure, propound the following interrogatories to the Judicial Conduct Commission. Judge Dawn M. Gentry request that answers to these interrogatories be served upon her attorney within thirty (30) days after service hereof:

1. For each count and sub portion contained in the Complaint, state the source of information received to support the allegation, including but not limited to, the name of the individual(s) who provided the information and any documents which support said allegations.

ANSWER:

2. Explain in detail why the Commission neglected to find the source of the original anonymous Complainant and why a Complaint is permitted to proceed under an anonymous allegation.

ANSWER:

3. State the name of any and all individuals who have the authority to direct the investigator as to which individuals to interview and/or which investigative steps to take.

ANSWER:

4. State with specificity what steps Judge Dawn M. Gentry took to conceal the alleged conduct contained in Count I, paragraph one.

ANSWER:

5. State the specific days and times Judge Dawn M. Gentry permitted Mr. Penrose to spend work hours playing his guitar and singing in his office.

ANSWER:

6. Identify, specifically, which judicial functions were improperly delegated to Mr. Penrose and on what dates these acts occurred, as alleged in Count VII, paragraph three.

ANSWER:

7. Identify which specific Administrative Office of the Courts policy or procedure Judge Gentry is accused of not following.

ANSWER:

8. Identify when the Commission, or anyone acting on the Commission's behalf, first received information or contact from Brian Gentry or on Brian Gentry's behalf.

ANSWER:

9. Explain in detail the manner in which the investigation into Judge Dawn Gentry is steered, including but not limited to identifying the individuals who decide which witnesses to interview, which witnesses not to interview, and which investigative steps should be taken.

ANSWER:

10. List all potential witnesses who did not agree to speak with investigator Gene Weaver despite his request for an interview.

ANSWER:

11. Explain in detail the date the investigation into Judge Dawn Gentry began and the date the investigation concluded.

ANSWER:

12. List all persons who the investigator was told had information related to this case, but whom the investigator or his agent supervisor chose not to contact.

ANSWER:

13. List all persons with any connection to this investigation who were contacted or spoken to in any manner by the investigator, but who were not recorded. State the substance of what was said by each of these persons.

ANSWER:

14. State the substance of any advice provided to the investigator in this matter with regard to ensuring his activities complied with relevant law, including but not limited to Supreme Court Rule 3.130, the Rules of Professional Responsibility.

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Kentucky Rule of Civil Procedure 34, Judicial Conduct Commission is requested to produce the following documents and other things for inspection and copying at the office of Judge Dawn M. Gentry' counsel, F. Todd Lewis, within thirty (30) days after service hereof.

1. Please produce a copy of all cases involving Ms. Kelly Blevins in which Judge Dawn M. Gentry refused to recuse herself as alleged in Count IV, paragraph two.

Response:

2. Please produce a copy of all photographs or videos taken of Judge Dawn M. Gentry. If photographs or videos exist, but are not in your possession, please list the name and contact information of the person(s) who currently has/have possession of those items.

Response:

3. Please produce a copy of any and all documents and/or objects evidencing any allegation or sub portion contained in the Complaint.

Response:

4. Please produce a copy of each and every object or document, including models, exhibits, visual aids, charts, graphs, and/or other demonstrative evidence which will be used by or on behalf of the Judicial Conduct Commission as an exhibit or to which reference will be made by or on behalf of the Judicial Conduct Commission in the course of the trial of this matter.

Response:

5. With respect to any witnesses you expect to call at trial, please produce any and all exhibits to be used as a summary of or support for the opinions and/or testimony.

Response:

6. Please produce copies of all video and/or audio recordings of all witness statements conducted during the Judicial Conduct Commission's investigation.

Response:

7. Please produce a copy of the confidential proceedings allegedly witnessed by Judge Dawn M. Gentry's child, as alleged in Count III, paragraph four.

Response:

8. Please produce a copy of the statute or rules which regulate GAL appointments from January 1, 2017 to present.

Response:

9. Produce a copy of JCC Case Number 2019-17, including, but not limited to the initial complaint lodged against Judge Dawn M. Gentry, any investigative notes, Judge Dawn Gentry's response with attachments, and the letter the Commission provide Judge Dawn M. Gentry, dismissing the complaint.

Response:

REQUESTS FOR ADMISSIONS

Judge Dawn M. Gentry, through counsel, requests that Judicial Conduct Commission either admit or deny the truthfulness of each of the numbered Requests in this First Set of Requests for Admissions in the manner, and subject to the limitations and requirements set out in Rule 36 of the Kentucky Rules of Civil Procedure by either admitting or specifically denying the truthfulness of each request under oath. Please note that failure to answer or inadequate answers will result in the statement being admitted, in accordance with the provisions of C.R. 36. Judge Dawn M. Gentry request that responses to these requests be served upon her counsel within thirty (30) days of service hereof.

1. Admit that the investigator retained by the Commission to obtain information regarding the inquiry into Judge Dawn Gentry is an agent of counsel and therefore subject to the Kentucky Rules of Professional Conduct.

RESPONSE:

2. Admit that you do not have, and never did have, a lawful basis for making any inquiry of witness Bryan Gentry for material covered by the marital communications privilege, KRE 504(b).

RESPONSE:

2. Admit that you have communicated with other Northern Kentucky Judges, not on the Commission, regarding this case.

RESPONSE:

3. Admit that the initial Complaint was filed anonymously and not based upon first-hand knowledge.

RESPONSE:

4. Admit that the Judicial Conduct Commission did not make any attempt to have their investigator interview Hon. Rob Sanders.

RESPONSE:

5. Admit that the Judicial Conduct Commission did not make any attempt to have its investigator interview Hon. Delana Sanders.

RESPONSE:

6. Admit that the Judicial Conduct Commission did not make any attempt to have their investigator interview Mr. Stephen Penrose.

RESPONSE:

7. Admit that the Judicial Conduct Commission did not make any attempt to have their investigator interview Ms. Laura Aubrey.

RESPONSE:

8. Admit that the Judicial Conduct Commission did not make any attempt to have their investigator interview attorneys who would have been able to discredit the witnesses who were interviewed.

RESPONSE:

9. Admit that the Judicial Conduct Commission did not initiate notice of preliminary investigation pursuant to SCR 4.170 to Judge Dawn M. Gentry within 180 days of the general election following the campaign to which Counts I and II of the Complaint relate.

RESPONSE:

10. Admit that the Judicial Conduct Commission did not identify any statutory regulations which control the appointments of GAL panel members in its investigation or Complaint.

RESPONSE:

11. Admit members of the Judicial Conduct Commission have reviewed information relating to this case which would be ruled inadmissible in a hearing, pursuant to Kentucky Rules of Evidence, prior to filing the Complaint.

RESPONSE:

12. Admit Judge Karen Thomas, member of the Judicial Conduct Commission, serves on the Salmon P. Chase College of Law Alumni Board with Judge Dawn M. Gentry and has attended a dinner meeting with the Dean of Salmon P. Chase College of Law and other Northern Kentucky Judges, including Judge Dawn M. Gentry.

RESPONSE:

13. Admit Judge Karen Thomas, member of the Judicial Conduct Commission, discussed this case outside of the Commission and its proceedings, breaching the confidentiality of the proceedings.

RESPONSE:

14. Admit the Judicial Conduct Commission failed to identify any statute or local rule which Judge Dawn M. Gentry violated regarding her GAL panel.

RESPONSE:

15. Admit the Judicial Conduct Commission failed to take the least severe action necessary to remedy the situation as it relates to Judge Dawn M. Gentry.

RESPONSE:

16. Admit it is the general policy and procedure of the Judicial Conduct Commission to engage in settlement negotiations with judges who have been accused of misconduct in lieu of and/or prior to a final hearing.

RESPONSE:

17. Admit that the Judicial Conduct Commission has refused to engage in any settlement negotiations with Judge Dawn M. Gentry and/or her counsel.

RESPONSE:

CERTIFICATE ACKNOWLEDGING ANSWERS UNDER OATH

STATE OF _____)

COUNTY OF _____)

_____, being first duly cautioned and sworn, states that she/he is a voting member of the Judicial Conduct Commission herein, and has reviewed the foregoing requests for admissions, and that the responses are true to the best of his/her knowledge.

X

Sworn to and subscribed before me this ____ day of _____, 2020.

NOTARY PUBLIC: KY STATE AT LARGE

My Commission Expires: _____

CERTIFICATE OF SERVICE

I hereby certify that on this, the 16th day of June, 2020, a copy of the foregoing was served via email and U.S. mail, first class, postage pre-paid, to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

/s/ Jeffrey A. Lawson
Counsel for Judge Dawn M. Gentry

Bryan Beaman

From: Todd Lewis <tlewis204@gmail.com>
Sent: Tuesday, June 23, 2020 2:58 PM
To: Bryan Beaman
Subject: COMMISSION V. GENTRY DEPOSITION DATES

Bryan,

We'd like to start with depositions of Brian Gentry and Gene Weaver in the above matter. Here are some date we would propose: July 7, 8, or 10th. We could do both back to back on the same day. I assume they will request to be in Covington, so we are working on a location.

Thanks

Todd Lewis

T. Todd Lewis

LEWIS LAW/PLLC

111 West Washington Street, Suite 400 · Louisville, KY 40202

600 W. Main Street, Suite 500 · Louisville, KY 40202

T 502.855.7599 · F 502.237.6177 ·

* The enclosed message is attorney-client privileged and confidential work product

[EXTERNAL]

EXHIBIT B

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**OBJECTION TO JUDGE GENTRY’S SECOND DISCOVERY REQUESTS AND
REQUESTS FOR DISCOVERY DEPOSITIONS**

On June 16, 2020, undersigned counsel received Interrogatories, Request for Production of Documents and Request for Admissions directed to the Judicial Conduct Commission via service by Judge Gentry’s counsel. In addition, on June 23, 2020, undersigned counsel received a request via email from Judge Gentry’s counsel to take discovery depositions of Brian Gentry and Gene Weaver. In response to these discovery requests and requests for discovery depositions, counsel objects for the following grounds.

First, written discovery requests and discovery depositions of this type are not appropriate in matters pending before the Judicial Conduct Commission. The Kentucky Judicial Conduct Commission is governed by the Supreme Court Rules 4.000-4.310. Specifically, Rule 4.210 governs the procedural rights for a judge subject to a disciplinary hearing. The Supreme Court Rules for these judicial conduct procedures nowhere authorize any civil discovery or discovery depositions prior to a disciplinary hearing.¹

Second, the factual file from the Commission’s investigation has already been provided to Judge Gentry and her counsel. All of these materials have been provided to Judge Gentry through her counsel – for some items, the materials have been provided on at least two occasions. The factual file at this time consists of 94 distinct documents which have been provided to Judge Gentry and her counsel. Items 1 through 70 were copied on a disc

¹ In the event the Commission rules the discovery requests should be answered, counsel reserves the right to make any further objections that would be available under applicable law or rules.

accompanied by a factual file letter and provided on October 8, 2019. Items 71-73 were copied onto a second disc with an updated factual file letter on November 4, 2019. Item 74 was provided by mail on November 14, 2019. All of these items were provided to both Judge Gentry and her prior counsel Mr. Ryan. These documents, excluding certain explicit images, were then provided again through counsel via email to Mr. Ryan on December 31, 2019.² Later identified items, inclusive of Nos. 75-94 were provided on a disc with an accompanying factual file letter on February 17, 2020 provided to Judge Gentry and her then attorneys, Mr. Ryan and Mr. Weakley. Undersigned counsel has informed Judge Gentry's current counsel that if any of the items in the factual file were not provided to current counsel by Judge Gentry's prior attorneys, they could be provided upon request.

Third, most of the remainder of Judge Gentry's discovery requests relate to identification of certain pretrial materials. The Commission has entered a pre-hearing order in this matter addressing the disclosure of pretrial materials, including witness and exhibit lists. Counsel for the Commission will comply with the pre-hearing order regarding disclosure of pretrial materials.

For these reasons, counsel respectfully requests this objection to the Interrogatories, Request for Production of Documents, and Request for Admissions and requests for discovery depositions made by Judge Gentry be sustained.

² These images were not included in the electronic transmission to Mr. Ryan, but had previously been provided via disc to both Mr. Ryan and Judge Gentry.

Respectfully submitted,

/s/ Bryan H. Beauman

Bryan H. Beauman

Donald C. Morgan

Sturgill, Turner, Barker & Moloney, PLLC

333 West Vine Street, Suite 1500

Lexington, Kentucky 40507

bbeauman@sturgillturner.com

dmorgan@sturgillturner.com

Telephone: (859) 255-8581

COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2020, I served a true and correct copy of the foregoing by electronic mail and U.S. Mail on the following individuals:

Jeffrey A. Lawson

524 Greenup Street

Covington, KY 41011

lawsonjeff@gmail.com

COUNSEL FOR JUDGE DAWN GENTRY

F. Todd Lewis

111 W. Washington Street, Suite 400

Louisville, KY 40202

Todd.lewis@toddlewislaw.com

COUNSEL FOR JUDGE DAWN GENTRY

Jimmy Shaffer

Judicial Conduct Commission

P.O. Box 4266

Frankfort, KY 40604-4266

(502) 564-1231

JimmyShaffer@kycourts.net

EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION

/s/ Bryan H. Beauman

COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**RESPONSE TO JUDGE GENTRY'S MOTION
TO EXCLUDE DIGITAL SEXUAL MATERIAL**

Judge Gentry moves the Commission in limine to exclude evidence involving photographs or videos of a sexual nature. The photographs in question contain nudity of male and female sexual organs. These photographs are relevant to Count VII of the Charges and are otherwise probative as to Counts VI, VIII, and IX.

These charges against Judge Gentry are not about a relationship between two (or more) consenting adults nor are they about the dissolution of a marriage. These photographs are not intended to embarrass or impugn. Judge Gentry's relationships with persons unrelated to her judicial position are not before the Commission. But when those relationships crossover with persons in her courtroom, hired to work in her chambers, or contradict her statements to this Commission, there are grounds to believe she violated the Code of Judicial Conduct. For those reasons, these photographs are probative to establish the charges before the Commission.

Movant's motion to exclude relies first upon the grounds that the photographs were impermissibly obtained. Her motion in limine claims the pictures were obtained from a "private smartphone location by a third-party witness." (Motion in limine, at p. 1). Her memorandum in support of her motion to compel discovery goes one step further claiming the material "was 'hacked' out of the Judge's electronic device by Brian Gentry." (Memorandum in support of Motion to Compel, at p. 2). Judge Gentry is not telling the Commission the entire story.

Brian Gentry will testify at the hearing how he found the nude photographs at issue on his elementary-aged daughter's cell phone. It is believed the materials were presumably accessible because Judge Gentry saved the nude photographs to her cloud which was linked to her daughter's cell phone. In 2020, it is prudent for parents to have access to their young children's phones. But it is likewise prudent for parents to be cautious about what access the children correspondingly have. Certainly, Judge Gentry likely had no idea her photographs were available on her daughter's phone. But by linking her Apple account to her daughter's phone, Judge Gentry herself allowed accessibility to the photographs in question onto her daughter's phone.

Secondly, Judge Gentry claims the provision of these photographs to the Commission's investigator and counsel is a violation of KRS 531.120(1)—Distribution of sexually explicit images without consent. Unfortunately, she overlooks an important part of the statute, which provides that the statute does not apply to disclosures made in the course of legal proceedings, to disclosures made in the public interest, including the reporting of unlawful conduct or that constitute a matter of public concern. In a disciplinary proceeding regarding Judge Gentry's misconduct, the photographs in question were provided by Brian Gentry to the Commission's investigator as Judge Gentry's own memorialization of the relationship with her employee Steve Penrose. Because the photographs are used in these legal proceedings, and constitute a matter of public concern, namely her judicial misconduct, KRS 531.120's prohibition on the distribution of sexually explicit images without consent is inapplicable.

Additionally, Judge Gentry provides a string of citations without any argument for alternative grounds to exclude the nude photographs. Her claim of marital communication privilege is irrelevant because the photographs were not sent between her and Brian Gentry. Admission of the images does not run afoul of KRS 434.845 and 434.855's prohibition on

unlawful access to a computer, because Brian Gentry's access to his young daughter's cell phone and delivery of the photographs to the Commission was not done in furtherance of a scheme to defraud, nor for obtaining money or other services by means of false representation.

Judge Gentry finally suggests the photographs should be excluded from evidence for lack of relevance or because of their weighty prejudicial effect. Her misconduct relates to an inappropriate relationship with Steve Penrose whom she hired, participated in approving his false timesheets, allowed him to distract others in the courthouse, had him speak for her and assume the role or at least the authority of a judge in addressing parties before her and in speaking engagements. Why would Judge Gentry do such things for Steve Penrose? According to her prior statements to the Commission – in essence it was because she was too close to him and did not set proper boundaries. At the January 3, 2020 hearing concerning temporary removal, upon examination *by her own counsel* the following testimony, under oath, was given by Judge Gentry:

- Q. She said that it was obvious you were having an affair with Steve Penrose. Were you having an affair with Steve Penrose?
- A. I wasn't having a sexual affair with him. It was -- it was -- I was friendlier than I should have been -- no question about it -- but I was not having a sexual affair with him.
- Q. And if you are left on the bench, what's Steve -- Steve is going to retire right away; is that correct?
- A. Yes, sir.
- Q. Okay. So we won't have him to worry about. I shouldn't say Steve; Mr. Penrose. And do you think -- you did say that you were too friendly with an employee, I guess?
- A. Too friendly with an employee. Too friendly with a friend.
- Q. But it wasn't anything sexual?
- A. No.

(Exhibit A, Transcript of 1/3/20 Hearing at page 386). Maybe Judge Gentry was having a “sexual” affair with her employee and maybe she was not. But in light of her prior statements to the Commission and her testimony on January 3, there must an explanation for why there are

nude photographs of a male and female mixed in with other pictures of Steve Penrose. Her duty of candor to this Commission requires that answer and is further probative of Count VII.

To exclude relevant evidence, the evidentiary rule requires evidence be *unfairly* prejudicial to the moving party. *See* KRE 403. Considering the scope of the charges against Judge Gentry concerning her relationship with her employee Steve Penrose and the reasons stated set forth in this Response, the Commission must hear Judge Gentry's explanation for the presence of these photos. The photographs submitted into evidence are directly relevant to both the Commission charges against Judge Gentry and her defenses in this case. Any danger of prejudice does not outweigh the evidentiary value of the photographs and their direct relevance to the charges.

These photographs can be admitted under seal. Appropriate care will be taken as all counsel and the Commission are accustomed to with such sensitive items to ensure privacy interests are protected as much as possible and to limit embarrassment and protect modesty. However, Judge Gentry's motion to exclude the photographs as admission into evidence should be overruled.

Respectfully submitted,

/s/ Bryan H. Beauman

Bryan H. Beauman

Donald C. Morgan

Sturgill, Turner, Barker & Moloney, PLLC

333 West Vine Street, Suite 1500

Lexington, Kentucky 40507

bbeauman@sturgillturner.com

dmorgan@sturgillturner.com

Telephone: (859) 255-8581

COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2020, I served a true and correct copy of the foregoing by electronic mail and U.S. Mail on the following individuals:

Jeffrey A. Lawson
524 Greenup Street
Covington, KY 41011
lawsonjeff@gmail.com
COUNSEL FOR JUDGE DAWN GENTRY

F. Todd Lewis
111 W. Washington Street, Suite 400
Louisville, KY 40202
Todd.lewis@toddlewislaw.com
COUNSEL FOR JUDGE DAWN GENTRY

Jimmy Shaffer
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
(502) 564-1231
JimmyShaffer@kycourts.net
EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION

/s/ Bryan H. Beauman
COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

1 COMMONWEALTH OF KENTUCKY
2 JUDICIAL CONDUCT COMMISSION

3
4 HEARING BEFORE ALTERNATE CHAIRMAN MICHAEL SULLIVAN
5

6
7 IN RE: THE MATTER OF:

8 DAWN M. GENTRY, FAMILY COURT JUDGE
9 16th JUDICIAL CIRCUIT, FAMILY DIVISION 5

10 The hearing was held on January 3, 2020,
11 beginning at the hour of 9:07 a.m., before the Alternate
12 Chairman Michael Sullivan.
13

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22 THE KLEINGARTNER GROUP, INC.
23 P.O. Box 23978
24 Lexington, Kentucky 40523-3978
25

1 APPEARANCES

2 COUNSEL FOR THE COMMISSION:

3 Bryan H. Beauman
4 Donald Morgan
5 Sturgill, Turner, Barker & Moloney, PLLC
6 333 West Vine Street, Suite 1500
7 Lexington, Kentucky 40507

8 COUNSEL FOR JUDGE DAWN GENTRY:

9 The Honorable Stephen P. Ryan
10 7104 Hillcircle Court
11 Louisville, Kentucky 40214

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1 Q. Or a three-way or whatever?

2 A. No threesomes --

3 Q. And it's been --

4 A. -- no three-ways, no.

5 Q. She said that it was obvious you were
6 having an affair with Steve Penrose.

7 Were you having an affair with Steve
8 Penrose?

9 A. I wasn't having a sexual affair with him.
10 It was -- it was -- I was friendlier than I should have
11 been -- no question about it -- but I was not having a
12 sexual affair with him.

13 Q. And if you are left on the bench, what's
14 Steve -- Steve is going to retire right away; is that
15 correct?

16 A. Yes, sir.

17 Q. Okay. So we won't have him to worry about.
18 I shouldn't say Steve; Mr. Penrose.

19 And do you think -- you did say that you
20 were too friendly with an employee, I guess?

21 A. Too friendly with an employee. Too
22 friendly with a friend.

23 Q. But it wasn't anything sexual?

24 A. No.

25 Q. Oh, there was some mention of Snapchat.

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

RESPONSE TO JUDGE GENTRY'S MOTION FOR PROTECTIVE ORDER

Judge Gentry's Motion for a Protective Order misunderstands the law regarding the operation of the Judicial Conduct Commission, misapplies the law concerning the spousal communication evidentiary privilege, misstates the facts concerning the purported testimony of her ex-husband, and forgets the fact she injected the presence of her ex-husband into this case by way of her own filings with the Commission and consequently waived any privilege. For those reasons the motion should be denied.

Despite those mistaken conclusions, one can reasonably assume Judge Gentry knowingly continues her pattern of impugning anyone who seeks to hold her accountable for her misconduct. Part of the charges against Judge Gentry revolve around her retaliation against members of the Guardian Ad Litem panel, specifically Mike Hummel, who she did not believe worked hard enough or contributed enough money to her re-election efforts so she removed him from the panel. Shortly after answering the charges by this Commission, Judge Gentry filed a bar complaint against GAL panel member attorney Katherine Schulz.¹ One can only guess what other retaliatory measures Judge Gentry has taken or will take against other witnesses. Now, she attacks the Commission's investigator and presumably the undersigned. Judge Gentry's conduct should not be rewarded.

¹ Curiously, at her temporary removal hearing before the Commission on January 3, 2020, in response to a question from a Commission member, Judge Gentry testified she had *not* reported Schulz to the Kentucky Bar Association. At best, Judge Gentry's testimony demonstrated a lack of candor to the Commission and a failure to cooperate. At worst, it is false. See Exhibit A (transcript of 1/3/20 hearing at p. 399-400).

On August 30, 2019, Judge Gentry appeared before the Commission for an informal conference. After that conference she was presented a copy of the Commission factual file to that date, and, as is her right under the rules, Judge Gentry submitted a supplement to the factual information. The purpose is to allow a judge the opportunity to respond with documents or other evidence of her own to be considered by the Commission. Judge Gentry filed her supplement to the factual information by way of a cover letter of October 25, 2019 with a 544 page production. Included within that production was a 58-page production of text messages between her and then husband, now her ex-husband Brian Gentry (See Exhibit B, inclusive of cover letters, which are pages 121-178 of the pdf in the factual information that was available to the Commission before charges were brought).

What tactical strategy Judge Gentry was implementing by interjecting text communications between her and her husband into this record is not readily discernable. But the consequences of Judge Gentry voluntarily placing communications with her spouse into this proceeding are – it is a waiver of the spousal communications privilege. And if not a waiver, it certainly enhances the relevancy of Brian Gentry’s involvement, and their communications, into the Commission’s investigation charged to Mr. Weaver. For Judge Gentry to now complain about the investigation and discussions with her ex-husband, when she voluntarily provided communications to the Commission, is puzzling.

Brian Gentry’s testimony is about much more than communication with Judge Gentry made during their marriage. Judge Gentry has a litany of charges before this body. Brian Gentry has testimony probative of a few of those charges. One example is the charge against Judge Gentry relating to the falsification of time sheets. Brian Gentry has knowledge of Steve Penrose and Laura Aubrey, Judge Gentry’s court liaison and secretary, being at the Gentry house during

working hours, and, according to their time records, during a time they were paid by the Commonwealth of Kentucky. At the hearing, Mr. Gentry will testify to what he witnessed and authenticate photographs he took of their vehicles. That observational testimony has no relation to any marital communication. As with other areas of knowledge for what he witnessed, Brian Gentry has testimony relevant well beyond any communications between he and Judge Gentry that may or may not be privileged and which may or may not have been waived.

ARGUMENT

Judge Gentry's Motion for Protective Order identifies two broad points of focus. First, she references alleged invasion and misuse of privileged marital communications as the targeted issue. Second, she seeks appointment of a special master to review the privilege dispute and prepare a report with proposed remedies as the requested relief. As supporting authority for each point, however, Judge Gentry merely lists a small collection of rules of law. Further analysis to establish whether those rules actually apply here is lacking. It appears Judge Gentry simply presumes their application, which is in error. Closer examination confirms the procedural and substantive dimensions of this case do not come under or violate any of the rules of law that Judge Gentry cites.

The motion for protective order should be overruled for four reasons. First, any privilege for spousal marital communications is an evidentiary privilege and does not apply to the Commission's investigator. Second, Judge Gentry waived this privilege when she filed text messages between her and her husband into the Commission factual file in this matter. Third, she seeks to exclude evidence which is largely wholly irrelevant. Fourth, the procedural mechanism she seeks to implement has no basis in a non-jury setting.

I. Gene Weaver did nothing wrong. KRE 504 is an evidentiary privilege and does not apply to his investigation.

Judge Gentry references SCr 3.130, Rule 4.4 to suggest evidence has been obtained in violation of her legal rights in this case. The evidence at issue generally relates to information from Judge Gentry's marital communications. Judge Gentry's only basis to establish violation of her legal rights appears to be the privileged nature of marital communications under KRE 504. Authority to equate the marital communications evidentiary privilege to the status of legal right is lacking, however.

Guidance on the issue, although limited, directly cuts against Judge Gentry's position. Analogous federal precedent describes "marital privileges" as "merely evidentiary principles" and confirms they "do not have constitutional underpinnings." *See United States v. Carlson*, 946 F. Supp. 2d 1115, 1128-29 (D. Or. 2013)(quoting *U.S. v. Lefkowitz*, 618 F.2d 1313, 1319 (9th Cir. 1980)). There is accordingly no legal right to keep marital communications confidential from any and all sources. We all know from common experience that marital communications can be and frequently are disclosed to third parties from time to time. The disclosure may be a breach of confidence between the spouses but it does not violate any right of either spouse. *See id.* at 1128 (explaining how evidence from a suspect's spouse "was not illegally obtained" by noting the "difference between the breach of confidentiality, at issue here, and the violation of constitutional rights"). Judge Gentry's attempt to elevate the marital communications evidentiary privilege to a legal right goes too far and should be rejected.

Misconstruing the marital communications evidentiary privilege as a legal right also leads Judge Gentry to overextend the privilege out of the limited evidentiary context at trial that it applies to. In particular, Judge Gentry erroneously suggests marital communications were off-limits even within the investigatory setting. Invoking the marital communications privilege to

block investigatory activity, however, lacks foundational authority and once again goes too far. Analogous federal decisions, including from the U.S. Supreme Court, consistently hold marital privileges do not restrict investigating authorities from receiving information from spouses and using the information to aid their investigation, even if the spouse may be unable to testify to the information at an eventual trial. *See Trammel v. United States*, 445 U.S. 40, 52 n. 12 (1980)(ruling no marital privilege “prevents the Government from enlisting one spouse to give information concerning the other or to aid in the other’s apprehension”); *United States v. Harper*, 450 F.2d 1032, 1046 (5th Cir.1971)(“[W]e conclude that the Government did not violate the privilege for confidential marital communications when it used [defendant’s wife’s] statements as a basis for its investigation of [defendant’s] illegal activities ...”); *United States v. Giavasis*, 805 F.2d 1037, 1986 WL 18086 at *3 (6th Cir. 1986) (*per curium*) (unpublished) (“Privileges, of course, only protect against the disclosure of marital confidences in testimony, not cooperation with law enforcement officials.”) (attached as Exhibit C); *Carlson*, 946 F. Supp. 2d at 1128 (“Courts have consistently held that police may use confidential marital communications to investigate crimes, particularly when one spouse volunteers the information.”)²

Each of the federal cases involved criminal police investigations. The nature of the investigation was not determinative, however. The operative principle derives from the nature of the privilege: Marital privileges are an *evidentiary* rule that apply to testimony in judicial (and when applicable administrative) proceedings, but do not encompass evidence collected during underlying investigatory activity. From that standpoint it was perfectly appropriate for the investigator in this case to speak with Judge Gentry’s ex-husband to collect information that may

² Kentucky precedent also features many cases where prosecutors introduced or attempted to introduce evidence from marital communications that police gained from the accused’s spouse during the criminal investigation. *See, e.g., Winstead v. Commonwealth*, 327 S.W.3d 386 (Ky. 2010); *White v. Commonwealth*, 132 S.W.3d 877, 880 (Ky. App. 2003); *Mullins v. Commonwealth*, 956 S.W.2d 210, 211 (Ky. 1997).

aid the investigation of Judge Gentry regardless whether the marital communication privilege may later bar the ex-husband from testifying about any of the information. Whether that underlying information would be admissible would of course depend on the context in which the communications were made and if there were any waiver. For example, should Brian Gentry indicate he has a text from Judge Gentry that supported one of the charges against her, the next question would be “Who did she send that text to?” Judge Gentry’s argument here seems to be that Brian Gentry could not be interviewed. There simply is no basis in the law for that position and certainly not under KRE 504. It was not inappropriate for criminal prosecutors to consider such evidence in similar cases and it likewise was not inappropriate in this case for the investigator to speak with Brian Gentry or receive and evaluate evidence, including any evidence from marital communications.

Judge Gentry seems to elevate the spousal communication privilege to a level on par with a constitutional right. But beyond the fact the privilege applies in court proceedings, a simple reading of the rule of evidence demonstrates the privilege’s scope is narrower than what Judge Gentry suggests. Indeed, there are six broad exceptions to the privilege. The communications privilege does not apply in criminal contexts where the spouses conspired or acted jointly. It does not apply in any proceeding where the spouses are adverse to one another. It does not apply in any proceeding where the interests of any minor child of either of the spouses may be adversely affected. And the privilege is inapplicable where one spouse is charged with wrong doing against the person or property of the other, a minor child, a member of the household or a bystander. While none of those situations may be present here, the point is the spousal communications privilege – by the very language of the rule – is not nearly as absolute as Judge Gentry intimates it is.

II. Judge Gentry waived the spousal communications privilege when she filed texts with Mr. Gentry into the Commission’s factual file in October 2019.

Waiver of any potential marital communications privilege is a separate but relevant principle of law that Judge Gentry overlooks. Privilege is waived if the party “voluntarily discloses or consents to disclosure of any significant part of the privilege matter.” KRE 509. On October 25, 2019, Judge Gentry voluntarily tendered supplemental exhibits to the Commission, which included 58 pages of marital communications. See Exhibit B. Judge Gentry’s disclosure did not indicate that any potential marital communications privilege had been preserved. Making an unqualified, voluntarily disclosure of such a significant amount of marital communications should be sufficient to effect waiver under KRE 509 and preclude Judge Gentry from making after-the-fact blanket privilege claims.

Although Kentucky lacks precedent applying the KRE 509 standard to the marital communication privilege, analogous federal guidance supports finding waiver in this case based on fundamental waiver principles. The “confidential marital communications privilege may be waived” if “fairness places the person in a position not to object to further disclosure.” *See United States v. Premises Known as 281 Syosset Woodbury Road, Woodbury, N.Y.*, 71 F.3d 1067, 1072 (2d Cir. 1995)(quoting *United States v. Brown*, 634 F.2d 819, 829 (5th Cir. 1981)). “Waiver of the privilege has been found primarily where a party voluntarily refers to the contents of some communications with his spouse yet later invokes the privilege to protect other spousal communications...” *Whitney v. City of Milan, Tennessee*, 2014 WL 11411675 (E.D.TN. 2014) (attached as Exhibit D). Based on this principle, federal courts have refused to uphold privilege claims, including within the marital privileges context, when it permits the party “to select any stopping place” from the evidence. *See id.* (quoting *Klein v. Harris*, 667 F.2d 274, 288 (2d Cir. 1981)). The opposing party would be “unfairly burdened” if the adversary can “pick and choose

which confidences to reveal.” *See id.* at 1073. By disclosing sufficient details the party also should know the privilege may be waived. *See id.*

Judge Gentry’s disclosure of 58 pages of marital communications was substantial in volume and detail. She risked waiving the privilege under those circumstances, and it would be unfair to let Judge Gentry “pick and choose” what information from her marital communications is up for consideration. Nor did Judge Gentry’s unqualified disclosure even attempt to limit the waiver or preserve the privilege to the extent she could have done so. Judge Gentry’s Motion for Protective Order also does not take a partial waiver approach and wholly disregards the disclosure issue. Federal guidance and fundamental waiver principles establish waiver under KRE 509 in this case.

III. Much of the spousal communications Judge Gentry complains about are not relevant.

Judge Gentry reports privileged marital communications are the source of much of the information collected from the investigation. Her self-assessment overestimates the amount of privileged information by formulating and applying the privilege too broadly. Judge Gentry contends the privilege embraces “all knowledge ... by reason of the marriage relation.” *See* Motion for Protective Order, p. 5 (quoting *Slaven v. Commonwealth*, 962 S.W.2d 845 (Ky. 1997)). More recent Kentucky Supreme Court precedent has called *Slaven*’s privilege scope into question. *See Winstead*, 327 S.W.3d at 392–93 (“As the Commonwealth notes, the broad definition of *communication* in *Slaven* seems to be contrary to the principle that spousal privileges are to be narrowly construed... The question of whether we should limit what may properly be deemed a communication under KRE 504 is interesting and potentially important.”).

Identifying which items of information are privileged is unnecessary, however. Most of the marital communications—those relating to she and her husband’s marital discord and

disagreement about their children—do not contain information relevant to the charges against Judge Gentry and there is no intention it will be introduced as evidence at her hearing (barring some need to do so for rebuttal or impeachment). However, since Judge Gentry has inserted this issue into the proceedings, there is ample authority to allow the introduction of a particular communication. To that end, a separate motion in limine seeking the introduction of this evidence will be filed which incorporates arguments above.

IV. The appointment of a special master is not authorized in a non-jury situation.

Judge Gentry requests appointment of a special master by contending this Commission “as the fact-finding body” should not review any of the privileged information at issue. The authority for Judge Gentry’s request appears to stem from procedural principles derived from KRE 511(b) and *Alred v. Commonwealth*, 395 S.W.3d 417 (Ky. 2012). Neither source of authority supports appointing a special master as Judge Gentry requests. KRE 511(b) specifically applies “[i]n jury cases” and instructs privilege issues should be facilitated “without the knowledge of the jury” to the extent practicable. Judge Gentry disregards the rule’s plain language as particularly directed to “jury cases” and treats the rule as generally applying to any “fact-finding body.” Foundational authority to extend KRE 511(b) outside of “jury cases” is lacking in two respects.

First, equating KRS 511(b)’s reference to “jury cases” as including any fact-finder impermissibly violates the “plain language” construction that must be given to formally promulgated rules. *See Lanham v. Commonwealth*, 171 S.W.3d 14, 21 (Ky. 2005) (applying “plain language” construction to rules of evidence); *Sturgeon v. Commonwealth*, 521 S.W.3d 189, 193 (Ky. 2017)(similarly recognizing “plain language” construction applies to civil rules). The Kentucky Rules of Evidence govern all types of judicial proceedings within civil and

criminal actions. KRE 101 (defining scope); KRE 1101 (describing applicability). Specific reference to “jury cases” in KRE 511(b) clearly signals KRE 511(b) has limited jury-trial application only. Judge Gentry’s attempt to invoke KRS 511(b) in this non-jury proceeding is textually misguided.

Second, no precedent requires presiding judges, hearing officers, or other tribunals to recuse from making evidentiary rulings, including on privilege issues, in non-jury cases.³ The process before the Commission assumes that much like a judge presiding over a bench trial, the Commission will exclude from its minds inferences premised on inadmissible evidence while reaching a decision.⁴ Judge Gentry cites *Commonwealth v. Barrosso*, 122 S.W.3d 554 (Ky. 2003) as an example; however, *Barrosso* furnishes no guidance here because it was a criminal jury trial and is distinguishable from the non-jury setting of this proceeding. Not a single decision is cited involving the appointment of a special master to review a privilege issue in a non-jury case. Requesting a special master to resolve a privilege issue appears to be an unprecedented (and unnecessary) procedural step. Judge Gentry’s reliance on *Alred* is equally misplaced. *Alred* reaffirms the combined investigatory and adjudicative functions of the Commission are presumptively valid for due process purposes. *See* 395 S.W.3d at 427-29. To overcome the presumption, *Alred* identified two potential circumstances when the adjudicator has a pecuniary interest in the case or was the target of personal abuse or criticism from one of the parties, but Judge Gentry does not contend either of those concerns apply here and *Alred*

³ Proceedings are supposed to be conducted to minimize exposing juries to any inadmissible evidence, not just privileged information. KRE 103(c). As a matter of practice that directive does not disqualify presiding judges, hearing officers, or other tribunals from making evidentiary rulings in non-jury cases in general. The same logic extends to procedures for resolving privilege disputes under KRE 511(b) in particular.

⁴ *Gulf States Utilities Co. v. Ecodyne Corp.*, 635 F.2d 517, 519 (2nd Cir. 1981).

does not otherwise relate to the need to appoint a special master for evidentiary issues in general or privilege disputes in particular.

The Commission accordingly can resolve the privilege dispute in this case without appointing a special master. As a precaution, however, this response only generally describes the privileged information at issue and does not attach it as an exhibit pending the Commission's ruling on this point.

Conclusion

For the reasons stated above, Judge Gentry's Motion for a Protective Order should be denied.

Respectfully submitted,

/s/ Bryan H. Beaman

Bryan H. Beaman
Donald C. Morgan
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507
bbeaman@sturgillturner.com
dmorgan@sturgillturner.com
Telephone: (859) 255-8581
COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2020, I served a true and correct copy of the foregoing by electronic mail and U.S. Mail on the following individuals:

Jeffrey A. Lawson
524 Greenup Street
Covington, KY 41011
lawsonjeff@gmail.com
COUNSEL FOR JUDGE DAWN GENTRY

F. Todd Lewis
111 W. Washington Street, Suite 400
Louisville, KY 40202

Todd.lewis@toddlewislaw.com
COUNSEL FOR JUDGE DAWN GENTRY

Jimmy Shaffer
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
(502) 564-1231
JimmyShaffer@kycourts.net
EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION

/s/ Bryan H. Beauman

COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

1 COMMONWEALTH OF KENTUCKY
2 JUDICIAL CONDUCT COMMISSION

3
4 HEARING BEFORE ALTERNATE CHAIRMAN MICHAEL SULLIVAN
5

6
7 IN RE: THE MATTER OF:

8 DAWN M. GENTRY, FAMILY COURT JUDGE
9 16th JUDICIAL CIRCUIT, FAMILY DIVISION 5

10 The hearing was held on January 3, 2020,
11 beginning at the hour of 9:07 a.m., before the Alternate
12 Chairman Michael Sullivan.
13

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18
19
20
21
22 THE KLEINGARTNER GROUP, INC.
23 P.O. Box 23978
24 Lexington, Kentucky 40523-3978

25 EXHIBIT A

1 APPEARANCES

2 COUNSEL FOR THE COMMISSION:

3 Bryan H. Beauman
4 Donald Morgan
5 Sturgill, Turner, Barker & Moloney, PLLC
6 333 West Vine Street, Suite 1500
7 Lexington, Kentucky 40507

8 COUNSEL FOR JUDGE DAWN GENTRY:

9 The Honorable Stephen P. Ryan
10 7104 Hillcircle Court
11 Louisville, Kentucky 40214

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1 that you remember?

2 A. Right, from -- yes, sir.

3 Q. Okay. And then your -- your testimony is
4 that she approached you in the bathroom and kissed you?

5 A. Yes, sir.

6 Q. Okay. And you may or may not have kissed
7 her back?

8 A. (Nods head.)

9 Q. Okay. Now, just from a professional
10 standpoint, as an attorney -- you're a
11 constitutionally-elected judge -- her conduct, if your
12 testimony is true, is -- it was -- was wrong?

13 A. (Nods head.)

14 Q. Did you report her to the Kentucky Bar
15 Association?

16 A. I did not.

17 Q. I mean, at minimum, it -- it could arguably
18 be an assault, at minimum -- if not more -- so you took
19 no action on that?

20 A. I took no action.

21 Q. And then she came back into your court?

22 A. She did.

23 Q. Okay. Do you think that's proper conduct
24 under the canons when you did not report an attorney who
25 acted improperly with you as a sitting judge?

1 A. No, I think that that was a mistake on my
2 part and -- and that I should have reported it and
3 should have --

4 Q. Okay.

5 A. -- let the Bar know.

6 Q. Now, let's move forward to May -- I think
7 it was -- I believe it was 13th or 14th -- I think it's
8 13th perhaps.

9 Ms. Schulz had a panic attack and medical
10 issue in the courtroom, and you were in the courtroom at
11 that time; is that correct?

12 A. That's correct.

13 Q. Okay. And then she left for the hospital?

14 A. Correct. I mean, I didn't witness a panic
15 attack. She was in the courtroom, she did a couple of
16 cases, and then she left. That's what --

17 Q. And you were aware -- you were aware she
18 was having medical problems when she left?

19 A. Not at that time I was not.

20 Q. Okay. How did you find out about it?

21 A. I know someone told me, whether it was
22 Ms. Pleatman or Ms. Oldfield or somebody else on the
23 panel. I probably heard it from multiple people.

24 Q. Okay.

25 A. I don't -- I can't --



COMMONWEALTH OF KENTUCKY
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5
KENTON COUNTY JUSTICE CENTER
230 MADISON AVENUE, 5TH FLOOR
COVINGTON, KENTUCKY 41011
PHONE 859-292-6364 FAX 859-292-6617

DAWN M. GENTRY
CIRCUIT JUDGE, FAMILY DIVISION

KENTON FAMILY COURT

October 25, 2019

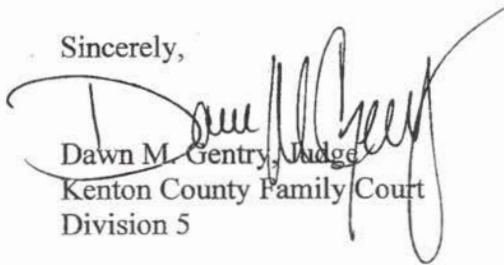
Commonwealth of Kentucky
Judicial Conduct Commission
PO Box 4266
Frankfort, Kentucky 40604-4266

RE: JCC Case Number 2019-100

Dear Commission Members:

Please allow this letter to serve as supplemental exhibits to your file. Thank you for your time and consideration. Please contact me if you need further information.

Sincerely,



Dawn M. Gentry, Judge
Kenton County Family Court
Division 5

Encl.

EXHIBIT B

Subject: Pics
From: Dawn Gentry (dawnmgentry@yahoo.com)
To: dawnmgentry@yahoo.com;
Date: Wednesday, April 17, 2019 12:53 PM

Verizon LTE

12:06 PM

67%



Brian >

Yesterday 8:47 PM

They in bed?

We prob need to finalize Easter baskets for them

Ok. I will buy candy Thursday

I guess I'll get that captain marvel Barbie for Mia and you got slime stuff for zoe?

Everything I got is in the closet in the amazon boxes. I had to use the LOL for the tooth fairy

Yeah I remember- ok I'll check it out and go up and get that other thing - we good then you

think?

Yes. I will buy candy on



iMessage



Verizon LTE

12:07 PM

67%



Brian >

Yesterday 8:47 PM

They in bed?

We prob need to finalize Easter baskets for them

Ok. I will buy candy Thursday

I guess I'll get that captain marvel Barbie for Mia and you got slime stuff for zoe?

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Yeah I remember- ok I'll check it out and go up and get that other thing - we good then you think?

UI III IK :

Yes. I will buy candy on



iMessage 



Verizon LTE

12:07 PM

67%



Brian >

Yes. I will buy candy on Thursday

Are we doing that church thing with Zoe's friend Friday night

Will you get them back from your mom? I can ask zoe she wants to. I don't want to do it with all four of us. I figured we would do the Bromley hunt on Saturday together.

I wasn't sure what the plan was with my mom...

Do you want to take them up Thursday morning?

I have to work - I was thinking suggesting I take them wed evening but I heard them say



Verizon LTE

12:07 PM

67%



Brian >

I have to work - I was thinking suggesting I take them wed evening but I heard them say see you Thursday and you may have said earlier that was what you wanted to do but i must've missed it

I did say that earlier.

Ok, I'm sure you did - umm I'm not sure then - do you not have practice this wed night

No. No practice till next week

Ok I ll figure it out then

I will take them both friday evening by myself too - I think

Mia will want to do another Easter egg hunt



Verizon LTE

12:12 PM

65%



Brian >

I wasn't sure what the plan was with my mom...

Do you want to take them up Thursday morning?

I have to work - I was thinking suggesting I take them wed evening but I heard them say see you Thursday and you may have said earlier that was what you wanted to do but i must've missed it

I did say that earlier.

Ok, I'm sure you did - umm I'm not sure then - do you not have practice this wed night

No. No practice till next week



iMessage



Verizon LTE

12:12 PM

65%



Brian >

No. No practice till next week

Ok I ll figure it out then

I will take them both friday evening by myself too - I think Mia will want to do another Easter egg hunt

Are you ok with that?

We need to tell them what is going on

I understand how you feel but I cannot do that until you and I have done some counseling with me and we get to a better place and prior to any divorce business - I don't know how we

can have a good plan for them
and do this together and be
and be in sync to be sure we



iMessage



Verizon LTE

12:12 PM

65%



Brian >

I understand how you feel but I cannot do that until you and I have done some counseling with me and we get to a better place and prior to any divorce business - I don't know how we can have a good plan for them and do this together and be and be in sync to be sure we have their best interests in mind when there are so many misconceptions, miscommunications and what I feel is animosity towards me too often

I will tell them myself if you are unwilling to participate.

I understand that you are

I understand that you are
hurting and I understand that
you have a right to be and I
respect those feelings and



Verizon LTE

12:12 PM

65%



Brian >

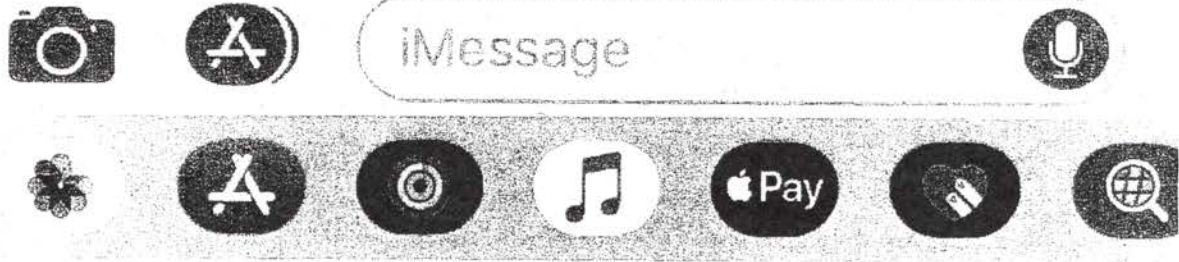
I understand that you are hurting and i understand that you have a right to be and i respect those feelings and emotions - I really do

I would hope you would not seriously do that

That comment alone is why I keep insisting you and I get in a better place before taking actions that can cause serious damage to all four of us

I have asked you multiple times to speak with them with me and you are refusing. This is not my choice. You are leaving me with no options. They are

confused and in limbo. It cannot continue.



Verizon LTE

12:12 PM

65%



Brian >

There are options that I think are better

You too are not considering those at all

I know that they are confused

Please calm down

I have considered all options. We need to tell them. If you will not participate, I will have to do it without you.

I don't want this to be an argument

I am trying to work with you, I do want what is best for you

too even if it's not what i want
for myself - I care for you and
would not want you feeling



Verizon LTE

12:12 PM

65%



Brian >

I am trying to work with you, I do want what is best for you too even if it's not what i want for myself - I care for you and would not want you feeling unhappy

But I just cannot do this to the girls

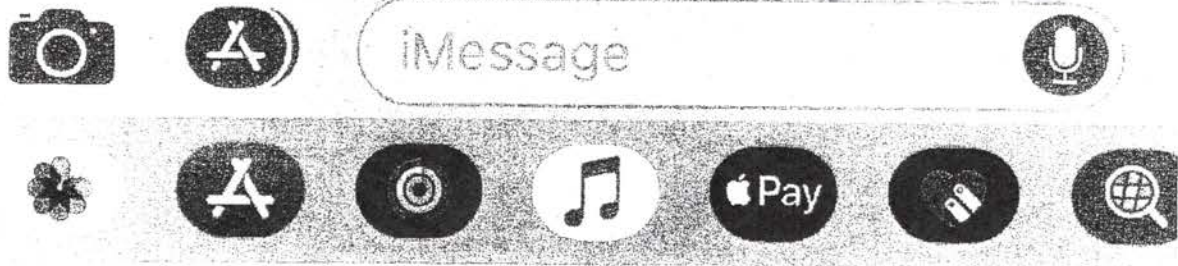
We are getting a divorce. We have to tell them.

How can we coparent when you can't even be at a church with me and then

How are Christmas mornings going to work

We do not have to spend time

together to coparent. We can parent separately but on the same page. I offered to do



Verizon LTE

12:12 PM

65%



Brian >

We do not have to spend time together to coparent. We can parent separately but on the same page. I offered to do something's together, but I will not give you false hope or further confuse them by having fake family time all the time. I offered sat morning and time on Easter.

All these things when you have such strong hurt in your heart and are lashing out at me so much - I really and truly tried so hard to be such a good husband to you and I'm really struggling with some of these things - my heart is broken for sure but I'm struggling to

sure but I'm struggling to understand why it feels you are trying to just completely and utterly break me and



Verizon LTE

12:12 PM

65%



Brian >

All these things when you have such strong hurt in your heart and are lashing out at me so much - I really and truly tried so hard to be such a good husband to you and I'm really struggling with some of these things - my heart is broken for sure but I'm struggling to understand why it feels you are trying to just completely and utterly break me and everything I am

I am not asking for false hope right now - I am asking for compassion and a path where we don't resent each other

I really am struggling why you have so much hate for me

have so much hate for them...
and contempt that you can't do
things with me and the girls -
that part is really really



Verizon LTE

12:12 PM

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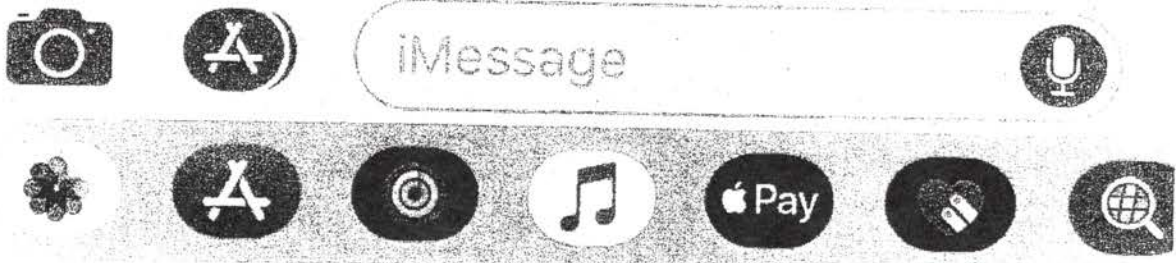


Brian >

I really am struggling why you have so much hate for me... and contempt that you can't do things with me and the girls - that part is really really confusing- I mean just a few weeks ago yiu would have dinner with me once a week and you'd tell me about your upcoming gigs like I would be there

What changed? What did I do or say to make it so much worse? And I don't think we can coparent successfully no if we can't spend time together- that will extra extra destroy the girls

And you telling them alone will
break them too because I will
not lie to them



Sent from Yahoo Mail for iPhone

Attachments

- IMG_7543.PNG (346.82KB)
- IMG_7544.PNG (342.59KB)
- IMG_7545.PNG (336.08KB)
- IMG_7546.PNG (359.05KB)
- IMG_7547.PNG (331.61KB)
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- IMG_7554.PNG (367.97KB)
- IMG_7555.PNG (336.21KB)

Subject: Pics 2
From: Dawn Gentry (dawnmgentry@yahoo.com)
To: dawnmgentry@yahoo.com;
Date: Wednesday, April 17, 2019 12:53 PM

Verizon LTE

12:12 PM

65%



Brian >

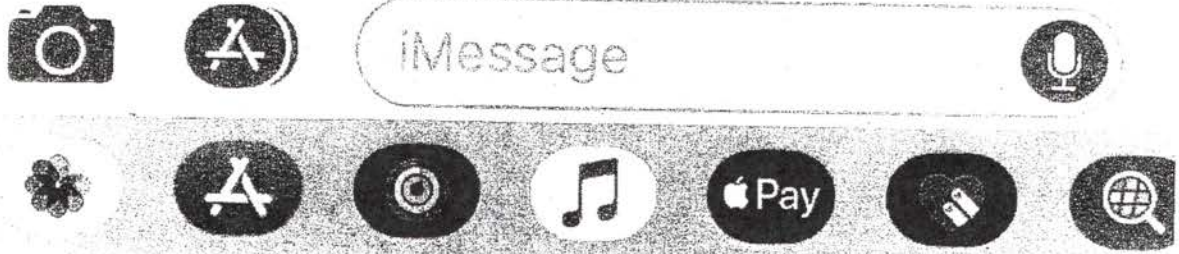
I don't know how else to say it... i truly don't want it to end but if it really has to don't let it be like this

You have made your position very clear. I will take the appropriate steps to protect our daughters.

Do you see how that is the very reason they should not be told right now

Dawn, I care for you and will always love you - I am trying to understand what is in your heart and where you are coming from but i am also very confused as to why you are

...because of why you are
being so attacking and
unwilling to work with me at all
I know you feel that I am



Verizon LTE

12:12 PM

65%



Brian >

Dawn, I care for you and will always love you - I am trying to understand what is in your heart and where you are coming from but i am also very confused as to why you are being so attacking and unwilling to work with me at all - I know you feel that I am unwilling but I believe I've offered other solutions to meet your needs and you've shot them all down

I am asking you don't do that to them. I am asking you look deep in your heart for who I used to be and not do this to me too. Don't misunderstand, I am not asking you to love me -

I am asking you to try and resolve some of our differences first so that things can be as



Verizon LTE

12:13 PM

65%



Brian >

Ok - it is also Easter weekend

And I thought we were doing Easter together - why did you even ask that? Because I offered to take them to that church Friday night

Hi mommy 

Call me back

Is this Zoe?

I will get the girls from you Friday at six. If you want to attend the Easter egg hunt and Sunday at service, I will not try

to stop you.

No



iMessage



Verizon LTE

12:12 PM

65%



Brian >

I am asking you don't do that to them. I am asking you look deep in your heart for who I used to be and not do this to me too. Don't misunderstand, I am not asking you to love me - I am asking you to try and resolve some of our differences first so that things can be as clean as possible for all four of us

And I just cannot see how that can't happen just based on this conversation

I will protect them how I think they need protected too - my hope is/was that we would be on the same page as to how to best protect them

I thought we made a little progress earlier this evening- I



Verizon LTE

12:13 PM

65%



Brian >

Are you planning on keeping the girls from me this weekend on my time?

Why are you asking that like that

I have no idea what the schedule is even

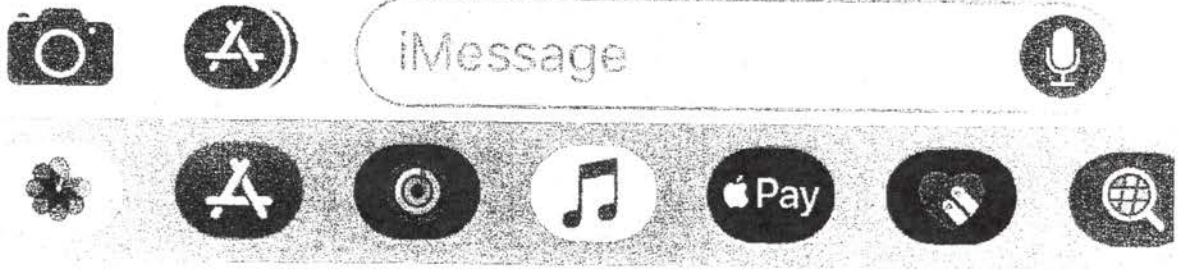
Stop attacking me please

And we can work through this

We don't have a schedule to my knowledge- the one you suggested you said the other day you realized wasn't going to work

It is my weekend this weekend

It is my weekend this weekend.
You had last weekend. I had
them the weekend prior to that.



Verizon LTE

12:12 PM

65%



Brian >

I thought we made a little progress earlier this evening- I had some new thoughts in my head while running

I will send them along tonight - Sleep on it - don't do anything rash tomorrow please, this is delicate situation for all of us, especially them, nothing should move fast here, no reason for that

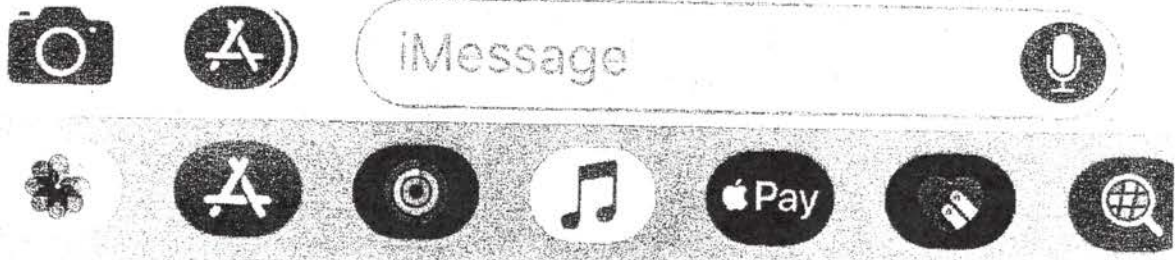
Today 10:28 AM

Are you planning on keeping the girls from me this weekend on my time?

Why are you asking that like

that

I have no idea what the



Verizon LTE

12:13 PM

65%



Brian >

No

There has been no schedule - you gave one you drew up for two weeks that we didn't even follow because I offered for you to have a week to think, then you left when I got home - I did not ask you to

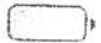
I'm going to the church thing Friday night with the girls and they'll come home - you may be here or not up to you. We'll go to the Bromley thing and then we'll do whatever sat and they will be home sat night and Sunday morning for the Easter bunny and church and then we will come home and celebrate

Easter at home - I hope you are here with them but I can force that - we can start an agreed



Verizon LTE

12:13 PM

65% 

Brian >

~~They might with the girls and~~
they'll come home - you may
be here or not up to you. We'll
go to the Bromley thing and
then we'll do whatever sat and
they will be home sat night and
Sunday morning for the Easter
bunny and church and then we
will come home and celebrate
Easter at home - I hope you are
here with them but I can force
that - we can start an agreed
schedule then on Monday

They aren't going through this
crap on Easter weekend

*Can't force that

I'm not sure where this
coldness is coming from again
- so many times you have said

- so many times you have said
of course we ll do Easter
together



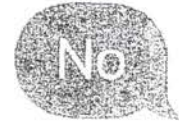
Verizon LTE

12:13 PM

65%



Brian >



And you want to just go ahead and tell them what's going on right now and not do counseling- I don't see this as effective coparenting

You're not going to not allow me to celebrate Easter with my girls - I would never do that to you and just the other day you said you would never do that to me or to them either

Why are we doing this? How is this peaceful? How is this good for the girls

I don't want to do this with you

I don't want to do this with you
- I want to work together



Verizon LTE

12:13 PM

65%



Brian >

- I want to work together

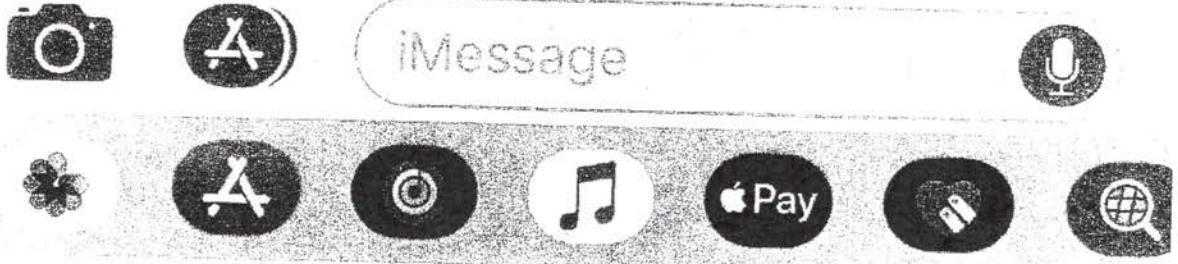
What does being mean about this and to me accomplish - I've been completely pleasant and nice to you even after you bash me but I won't just say ok here and not be able to celebrate Easter with my girls - how do you think they are going to react to that

I am not saying that. I said we could do Saturday morning and church on Easter together.

Delivered

If you want to work on a compromise we can do that - you can take them Friday night and eat evening but I want

and Sat evening but I want
them to be here at home Sat
night and Sunday morning and



Verizon LTE

12:13 PM

65%



Brian >

I understand the hurt you have inside you and the wall you've built up and I respect that and hope someday the pain in your heart will heal but you know you can't keep them from me on Sunday or really anytime right or nor can I - so we can work things out together to help each other but dictating how things are going to be is not doing that - and holidays would always be considered differently- so yeah there's no way they won't sleep here sat night and be here Sunday morning and with both of us if we both want to (and I do) throughout the day on Sunday - I know that you know that -

them being at home on sat
night and all day Sunday is not
keeping them from you either -



Verizon LTE

12:13 PM

65%



Brian >

church on Easter together.

Delivered

If you want to work on a compromise we can do that - you can take them Friday night and sat evening but I want them to be here at home sat night and Sunday morning and I want to be with them all day Sunday

Hey if you think treating me badly is a necessary step to not give me false hope, please stop

I get it ok... I get it


Just treat me like the man that was one time your best friend and who you wanted to and

who is the father of your children



Verizon LTE

12:13 PM

65% 

Brian >

And I will do the same with you
- I thought that I had been -
That will get us through this
and make that counseling
productive so that we can
make sure the girls are as
happy and healthy as possible

Did you give any thought to
those other nesting plans -
specifically that third one

What happened since you left
here yesterday with us on good
terms and you said these were
good things to think about



I'll get stuff for Easter brunch
and dinner from grocery store
today - if you want me to pick

all, I can or we can figure it out together- I assume your mom would be coming over too



 Verizon LTE

12:13 PM

 65% 

Brian >

I'll get stuff for Easter brunch and dinner from grocery store today - if you want me to pick all, I can or we can figure it out together- I assume your mom would be coming over too

And I'll invite my mom down and see

I will be happy to talk about a consistent schedule behind that third option I gave (or any others if you want) whenever you want

I understand the hurt you have inside you and the wall you've built up and I respect that and

hope someday the pain in your
heart will heal but you know
you can't keep them from me



Verizon LTE

12:14 PM

65%



Brian >

night and be here Sunday
morning and with both of us if
we both want to (and I do)
throughout the day on Sunday
- I know that you know that -
them being at home on sat
night and all day Sunday is not
keeping them from you either -
I would love for you to be here
too

And I'm not trying to give off
combative or argumentative
tone here - please try and take
some deep breathes, not do
anything rash that could make
things worse, and we can work
this out together - I understand
your feelings and want to be
supportive of the valid
emotions you have right now -

but I can't not have Easter with
them sorry



Sent from Yahoo Mail for iPhone

Attachments

- IMG_7556.PNG (334.94KB)
- IMG_7557.PNG (358.99KB)
- IMG_7561.PNG (328.88KB)
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- IMG_7559.PNG (319.39KB)
- IMG_7562.PNG (348.13KB)
- IMG_7563.PNG (339.61KB)
- IMG_7564.PNG (321.54KB)
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- IMG_7567.PNG (342.12KB)
- IMG_7568.PNG (333.17KB)
- IMG_7570.PNG (334.09KB)

805 F.2d 1037

Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA6 Rule 28 and FI CTA6 IOP 206 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Sixth Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Louis George GLAVASIS, Defendant-Appellant.

Nos. 85-3557, 85-3558.

Oct. 15, 1986.

Synopsis
N.D. Ohio

AFFIRMED.

On Appeal from the United States District Court for the Northern District of Ohio.

Before MILBURN and BOGGS, Circuit Judges, and DeMASCIO, District Judge*.

Opinion

PER CURIAM.

*1 Following the denial of his motion to suppress and motion in limine, defendant entered a Rule 11(a)(2) conditional plea of guilty to several counts of a multiple-count indictment. Defendant lists the convictions before the court as follows¹: conspiracy to possess and distribute cocaine in violation of 21 U.S.C. § 846; conspiracy to transport money in violation of 31 U.S.C. § 5316(a); possession of cocaine with intent to distribute in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2; and delivery of a firearm to a common or contract carrier in violation of 18 U.S.C. §§ 922(e) and 924(b). On appeal from the judgment entered on his plea, defendant raises the issue of whether the privilege for confidential marital communications bars the government's use of evidence obtained from his non-criminal wife and evidence

obtained as a result of information provided by the non-criminal wife. Defendant also appeals the district court's denial of his motion to exclude testimony which he argues would violate the privilege for confidential marital communications. Because we agree with the district court that admission of the evidence and testimony in question is not prohibited by the marital privilege, we affirm.

I.

In 1984, defendant Louis Giavasis and his wife, Judy Giavasis, resided in Canton, Ohio. On April 19, 1984, while defendant was away from home, but while Mrs. Giavasis and others were home, two armed men broke in their home. While in the home, the robbers asked for defendant and another man and indicated they were looking for cocaine and money. After unsuccessfully searching the house, the robbers left, and the police were summoned. Shortly thereafter, while the police were still at defendant's residence, defendant returned, and, with Mrs. Giavasis watching, he gave two plastic bags containing a white substance to their adult son to take out of the house.

Mrs. Giavasis, after unsuccessfully attempting to speak with her husband about the cocaine, consulted a Catholic priest who, in turn, referred her to Detective Wilson of the Massillon Police Department. Pursuant to Detective Wilson's request, Mrs. Giavasis obtained a sample of the white substance. After it was confirmed that the substance was cocaine, Detective Wilson referred the case to Federal Special Agent Berarducci. At the request of Agent Berarducci, Mrs. Giavasis subsequently provided samples of other cocaine stored in the home shared with her husband. Additionally, Mrs. Giavasis, who was in touch with federal agents daily, provided discarded airline tickets, her husband's passport, and miscellaneous other items. Mrs. Giavasis also kept Detective Wilson and Agent Berarducci informed on defendant's travel plans. Specifically, on one occasion, Mrs. Giavasis notified the police that defendant would be importing cocaine by concealing it in his boot.

On October 21, 1984, defendant was arrested upon his re-entry to the United States at the Jacksonville International Airport. A search of the inside of his boots revealed 413 grams of cocaine. A federal grand jury sitting in the Middle District of Florida returned a

two-count indictment based on this arrest. On November 15, 1984, a federal grand jury sitting in the Northern District of Ohio returned a twenty-five count indictment against defendant. Defendant subsequently filed a motion to suppress and a motion in limine. In these motions, defendant asked that the court suppress all evidence acquired from or through his wife. Defendant's motions were premised on his argument that the evidence in question had been obtained "unconstitutionally" since it was, in his view, obtained in violation of the privilege for confidential marital communications.

*2 Following a voir dire examination of Mrs. Giavasis and oral and written argument, the district court denied defendant's motions. The district court concluded that confidential communications made by a spouse concerning his or her patently illegal activities are not a privileged communication. As an alternate holding, the district court held that the physical evidence seized fell without the privilege for confidential marital communications because "the information and the evidence that the wife ... obtained and gave to the government was not the result of any confidential communication."

Following the district court's denial of his motion to suppress and motion in limine, defendant entered a Rule 11(a)(2) conditional guilty plea on four counts of the indictment, preserving the right to appeal the denial of his motion to suppress and motion in limine.²

II.

In addressing defendant's argument on appeal, we think it is important to begin by noting that there are three types of evidence at issue. First, there is the physical evidence turned over to the government by Mrs. Giavasis. Second, there is evidence seized as the result of information related to the government by Mrs. Giavasis. (Some of the information relied on by the government in obtaining this evidence was acquired by Mrs. Giavasis in conversations with her husband.) Third, there is the testimony of Mrs. Giavasis. This third type of evidence includes two subtypes: testimony which relates (a) to what she saw, and (b) to what her husband told her. As to the latter subcategory, the government took the position in its Response in Opposition to Defendant's Motion to Suppress and In Limine that it would not question Mrs. Giavasis at the defendant's trial about communications between defendant and his wife. Supplement to App. at

13.

A. The Marital Privilege

There are two categories of marital privilege. First, there is the "privilege against adverse spousal testimony" directly addressed by the Supreme Court in *Trammel v. United States*, 445 U.S. 40, 100 S.Ct. 906 (1980). In *Trammel*, the Court modified the adverse spousal testimony privilege "so that the witness spouse alone has a privilege to refuse to testify adversely...." 445 U.S. at 53, 100 S.Ct. at 914. Here, since Mrs. Giavasis has not refused to testify, this category of marital privilege has no application.

The second category of marital privilege covers confidential communications. It is this category which defendant urges is applicable here. Since the issue was not presented in *Trammel*, the Supreme Court did not address the privilege for marital confidences. 445 U.S. at 45 n. 5, 100 S.Ct. 909 n. 5. The confidential communications privilege was, however, recently addressed by this court in *United States v. Sims*, 755 F.2d 1239, 1241 (6th Cir.), cert. denied, 105 S.Ct. 3533 (1985). In *Sims*, we concluded that "although the privilege against adverse spousal testimony vests in the witness, the defendant retains the privilege to foreclose testimony regarding confidential marital communications...." 755 F.2d at 1241. In *Sims* we then went on to adopt the "joint participants" exception (sometimes called the crime-fraud exception) to the confidential marital communications privilege. In so doing, we stated, "Only where spouses engage in conversations regarding joint ongoing or future patently illegal activity does the public's interest in discovering the truth about criminal activity outweigh the public's interest in protecting the privacy of marriage." 755 F.2d at 1243 (emphasis added).

*3 Judge Weinstein, in his treatise on evidence, has set out the

three basic prerequisites to the assertion of the communications privilege. First, at the time of the communication, there must have been a marriage recognized as valid by state law....

... [S]econd[,] ... there must have been a communication with respect to which the privilege is asserted. Although some federal courts have acknowledged, in dictum, that "inter-spousal communications are not limited to speaking and writing," the federal courts have generally stated that the privilege "applies only to utterances or expressions intended by one spouse to convey a message to the other" and have not recognized, under the facts of the case

before them, observations made of a spouse's activities or appearance as communications covered by the privilege. This approach is consistent with the view that privileges should be narrowly construed....

[The third] prerequisite to the assertion of the privilege is that the communication be made in confidence.

2 J. Weinstein & M. Burger, *Weinstein's Evidence* ¶ 505[23], at 326–27 (Supp.1986).

B. Application

With this background, we turn to the three types of evidence at issue in this case. First, there is the physical evidence (e.g., cocaine, airline ticket stubs, and the passport) which Mrs. Giavasis turned over to law enforcement officials. Privileges, of course, only protect against the disclosure of marital confidences in testimony, not cooperation with law enforcement officials. That is, privileges only give the holder the right not to testify or to prevent someone else from testifying. See, e.g., [Trammel](#), 445 U.S. at 52 n. 12, 100 S.Ct. at 913 n. 12 (“It is only the spouse's testimony in the courtroom that is prohibited.”); cf. [Fed.R.Evid. 1101\(c\)](#) (privileges apply to all stages of proceedings). Thus, physical evidence could not be excluded based on the communications privilege.

The second type of evidence—evidence seized as a result of information given to the government by Mrs. Giavasis—would be admissible for the same reason. Since Mrs. Giavasis was not testifying “in the courtroom,” the privilege rules do not prevent her disclosure of information to the police. Thus, evidence obtained as a result of those disclosures is not inadmissible. Cf. 2 J. Weinstein & M. Burger, *Weinstein's Evidence* ¶ 505[04] at 505–19 (1985) (“Cooperation with the authorities did not necessarily lead to a provable case where there was no witness available to testify.”).

Within the third category of evidence, we previously addressed subcategory (a)—i.e., testimony as to acts—in [United States v. Robinson](#), 763 F.2d 778 (6th Cir.1985). In *Robinson* we recognized the fundamental principle that the confidential communication privilege “applies only to conduct and expressions intended to be a communication”—not to testimony as to “acts.” *Id.* at 783.

The second subtype of evidence at issue here is Mrs. Giavasis' testimony as to confidential communications with her husband. As noted above, the district court concluded that confidential communications made by a

spouse concerning his or her patently illegal activities are not a privileged communication. In so holding, the district court extended the crime-fraud exception beyond the parameters announced by this court in *Sims*. Although we think the district court's opinion expanding the crime-fraud exception is both well reasoned and persuasive, we think it unnecessary to reach that issue in the instant case.

*4 As is reflected in the record on appeal, and as counsel for defendant agreed at oral argument, the government's position from the outset has been that it would not use Mrs. Giavasis' testimony as to confidential communications that she had with defendant. The government only “maintain[ed] that it [could] question Mrs. Giavasis as to what she saw, what she alone said or did, and what she heard in the presence of third persons.” Supplement to App. at 13. Since the government did not seek to use Mrs. Giavasis' testimony as to confidential communications, it is unnecessary for this court to decide whether that testimony would have been admissible under the crime-fraud exception.

III.

Accordingly, the judgment of the district court is AFFIRMED.

DeMASCIO, District Judge, dissenting.

*4 This appeal considers two pretrial motions filed in the district court: a motion in limine seeking to exclude from evidence confidential marital communications and a motion to suppress evidence that defendant contends was obtained “unconstitutionally” in violation of the marital privilege. The district court denied both motions. The defendant then entered a guilty plea, pursuant to [Rule 11 Fed.R.Crim.P.](#) As part of his plea agreement, the government agreed that defendant could preserve for appeal the denial of his two motions. That agreement presumed that a motion in limine asserting a marital privilege is appealable. In my view it is not. I would dismiss this appeal out of hand. It does not raise any appealable issue that I can discern.

An analysis of the marital privilege must take into

account the rights of each spouse to the marriage. Some writers discuss the subject as though two distinct privileges arise from the marital relationship. 8 J. Wigmore, *Evidence* § 2334 (McNaughton rev. 1961). The oldest is the privilege against adverse spousal testimony, which vests in the witness-spouse alone; the witness spouse may neither be compelled to testify against the defendant-spouse nor foreclosed from adversely testifying. [Trammel v. United States](#), 445 U.S. 40, 52 (1980). Obviously, this aspect of the privilege is inapplicable here since Mrs. Giavasis acted voluntarily in supplying the government with incriminating information leading to her husband's arrest.

The more recent rule is the privilege for confidential marital communications that protects confidential information privately disclosed between a husband and wife. [Blau v. United States](#), 340 U.S. 332 (1951). Under this latter rule, if Mrs. Giavasis elected to disclose at trial confidential marital communications, the defendant husband could then assert his marital privilege to exclude testimony disclosing confidential marital communications. The privilege is implicated at trial and then only if the government seeks to elicit testimony concerning a confidential marital communication. At oral argument, the government acknowledged that it would not have sought to violate the privilege by inquiring into confidential communications because it did not need that evidence to successfully prosecute the defendant. In any event, when the defendant entered his guilty plea, he waived his right to assert the marital privilege just as assuredly as he waived critical constitutional rights.

*5 The motion to suppress filed by the defendant was thus entirely superfluous. If the defendant's marital privilege were sustained at trial, the evidence would have been excluded and the need to suppress it would never arise. In any event, the marital privilege does not have constitutional underpinnings. Hence, the motion to suppress based upon that ground is frivolous. In my view, this analysis requires us to dismiss this appeal whether the "defendant's motions in the instant case are inextricably intertwined" or not.

The panel seems to indicate that the language in [Fed.R.Crim.P. 11\(a\)\(2\)](#) permits a defendant to appeal "any pretrial motion" by simply entering a conditional plea of guilty. It is clear, however, that a district court's denial of a motion in limine is not appealable at all under the circumstances presented here. The parties cannot create an appealable issue by simply agreeing to a conditional plea. In [Luce v. United States](#), 105 S.Ct. 460 (1984), the Supreme Court held that the denial of a defendant's motion in limine to exclude evidence of his

prior convictions is not appealable even after trial, unless the defendant takes the witness stand. The Court there pointed to several difficulties that would arise if courts of appeal were forced to rule on subtle evidentiary questions outside a concrete factual context. In particular, the Court noted that:

[t]he ruling is subject to change when the case unfolds, particularly if the actual testimony is different from what was contained in the defendant's proffer. Indeed, even if nothing unexpected happens at trial, the district judge is free, in the exercise of sound judicial discretion, to alter a previous motion in limine ruling. 105 S.Ct. at 463.

Hence, in *Luce* a motion in limine that clearly had an effect on the defendant's constitutional right to testify in his own defense was not appealable. Nevertheless, this panel is willing to treat an anticipated violation of a marital privilege as appealable. When *Luce* was before this court, Judge Kennedy pointed out that a motion in limine is nothing more than a "request for guidance by the court regarding an evidentiary question. * * * [Moreover], we see no reason why the trial court could not change its ruling, for whatever reason, when the evidence is actually offered and objected to at trial." Because the issues considered in this appeal are not based upon a full trial record, I believe it is a mistake for this court to review the matter on appeal. [United States v. Luce](#), 713 F.2d 1236, 1239 (6th Cir.1983).

Another difficulty I have with the majority opinion is that it sanctions an unwarranted interpretation of [Fed.R.Crim.P. 11\(a\)\(2\)](#). It seems to me that a ruling on a motion cannot be made a part of a conditional plea unless the motion is dispositive of the litigation. Hence, it is clear that a motion to suppress evidence on fourth amendment grounds can be the subject of a conditional plea. In such a situation, an appeals court may suppress the evidence which would resolve the entire litigation. To the contrary, defendant's motions here involve no more than the parameters of a witness's testimony at trial. If [Rule 11\(a\)\(2\)](#) is given the interpretation sanctioned by the panel, any imaginative criminal defense lawyer can reserve for appeal any issue upon which the district judge rules unfavorably. The merits of adopting [Rule 11](#) aside, surely [Rule 11\(a\)\(2\)](#) was never intended to give every defendant two bites of the apple.

All Citations

805 F.2d 1037 (Table), 1986 WL 18086

Footnotes

* Honorable Robert E. DeMascio, Judge, United States District Court for the Eastern District of Michigan, sitting by designation.

1 The joint appendix is somewhat unclear on this point. Since precisely what defendant stands convicted of is not relevant to the issues before the court, we accept defendant's assertion of these facts.

2 Although the denial of a motion in limine is not appealable in some contexts, see, e.g., [Luce v. United States](#), 469 U.S. 38, 105 S.Ct. 460 (1984) (in a case which was tried, the Court held that the district court's denial of defendant's motion in limine on question of admissibility of prior convictions for impeachment purposes was not appealable as defendant did not testify), denial may be reviewed in an appeal from a Rule 11(a)(2) conditional guilty plea. [Fed.R.Crim.P. 11\(a\)\(2\)](#) specifically provides:

Conditional Pleas. With the approval of the court and the consent of the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, he shall be allowed to withdraw his plea.

(Emphasis supplied). We think the language of the rule is clear. Further, we find support for our conclusion in the fact that at least one other circuit has reviewed in limine rulings following the acceptance of a conditional plea of guilty. See [United States v. Goodacre](#), 793 F.2d 1124 (9th Cir.1986) (where defendant appealed, and the court addressed, the district court's in limine ruling that defendant's "offer of proof did not show the requisite degree of government responsibility for an alleged entrapment to submit the entrapment question to a jury."); [United States v. Williams](#), 791 F.2d 1383 (9th Cir.1986) (where a defendant entered a conditional guilty plea following the district court's grant of the government's motion in limine to preclude defendant from presenting evidence of duress). We know of no authority for the proposition that a defendant cannot (with the approval of the court and the consent of the government) reserve the right to appeal from an adverse ruling on a motion in limine through a conditional guilty plea. The defendant's motions in the instant case are inextricably intertwined, and there is no way to separate the defendant's motion to suppress from his motion in limine.

2014 WL 11411675

Only the Westlaw citation is currently available.
United States District Court,
W.D. Tennessee, Eastern Division.

Lindsey Whitney, Plaintiff,
v.

The City of Milan, Tennessee, and Mayor Chris
Crider, in his Individual Capacity, Defendants.

No. 1:09-cv-01127-JDB-egb

Signed 02/27/2014

ORDER DENYING DEFENDANTS' JOINT MOTION
FOR AN ADVERSE INFERENCE INSTRUCTION OR,
IN THE ALTERNATIVE, TO COMPEL PLAINTIFF
TO WITHDRAW HER ASSERTION OF THE
MARITAL-COMMUNICATIONS PRIVILEGE AND
PERMIT DEFENDANTS TO RE-DEPOSE KELVIN
WHITNEY

J. DANIEL BREEN, CHIEF UNITED STATES
DISTRICT JUDGE

*1 Before the Court is the December 17, 2013 motion of Defendants, City of Milan (the "City"), and Mayor Chris Crider ("Crider"), in his individual capacity, for an adverse-inference instruction with respect to Plaintiff, Lindsey Whitney's, assertion of the marital-communications privilege, or, in the alternative, to compel Whitney to withdraw her assertion of the privilege, on the basis of waiver, and permit the Defendants to re-depose her ex-husband, Kelvin Whitney, prior to trial, which is set to begin Monday, March 17, 2014. (D.E. 213.) Whitney responded in opposition, and the Defendants filed a reply. For the reasons that follow, the motion is DENIED.

On October 26, 2009, Plaintiff served counsel for Defendants with her [Fed. R. Civ. P. 26\(a\)\(1\)](#) initial disclosures, in which she identified her now-ex-husband, Kelvin Whitney ("Mr. Whitney"), as an individual with "knowledge of facts of [the] case and Plaintiff's

damages." (See D.E. 213-2 at 2 & D.E. 16.) On November 7, 2013, Defendants deposed Mr. Whitney, and, during the deposition, Whitney's attorneys invoked the marital-communications privilege to prevent Mr. Whitney from disclosing anything he learned through talking with Whitney during their marriage. (See D.E. 213-3.) The Defendants do not dispute that the marital-communications privilege applies to these communications nor that Plaintiff is entitled to rely on the privilege to keep Mr. Whitney from testifying regarding them.¹ Nonetheless, Defendants now contend they are entitled to an adverse-inference instruction with respect to Whitney's invocation of the privilege.

The Defendants have not cited to any case that holds that an adverse inference is warranted where a party has invoked the marital-communications privilege, nor has the Court found such authority. There is, on the other hand, an abundance of authority holding that an adverse inference cannot be drawn from invocation of the *attorney-client privilege*, as doing so would, to quote some of the cases, "have seriously harmful consequences," [Nabisco, Inc. v. PF Brands, Inc.](#), 191 F.3d 208, 226 (2d Cir. 1999) *overruled on other grounds by Moseley v. V Secret Catalogue, Inc., 537 U.S. 418, 123 S. Ct. 1115, 155 L.Ed. 2d 1 (2003), "intrude upon the protected realm" of the privilege, [Parker v. Prudential Ins. Co. of Am.](#), 900 F.2d 772, 775 (4th Cir. 1990) *reh'g denied* (May 16, 1990), and even ultimately "oblige the client to produce the privileged materials," [THK Am., Inc. v. NSK, Ltd.](#), 917 F. Supp. 563, 566-67 (N.D. Ill. 1996).² Although these cases involved the attorney-client privilege, the same or similar consequences are at risk of resulting if the Court were to permit an adverse inference where the marital-communications privilege has been invoked. And, like the attorney-client privilege, which is "regarded as of sufficient social importance to justify some sacrifice of availability of evidence relevant to the administration of justice," [Knorr-Bremse Systeme Fuer Nutzfahrzeuge GmbH v. Dana Corp.](#), 383 F.3d 1337, 1344 (Fed. Cir. 2004)(en banc)(citation and internal quotation marks omitted), the marital-communications privilege, which protects the marital bond, is considered to have a value "higher than truth," [United States v. Brown](#), 605 F.2d 389, 396 (8th Cir. 1979) *cert. denied*, 444 U.S. 972, 100 S. Ct. 466, 62 L.Ed. 2d 387 (1979).³ With these concerns in mind, the Court finds that the Defendants are not entitled to an adverse inference here. *Cf. 1 McCormick on Evidence* § 74.1 (7th ed.)("It is submitted that the best [practice] is to recognize only privileges that are soundly based in policy and to accord those privileges the fullest protection. Thus comment, whether by judge or by counsel, or its equivalent of*

requiring the claim [of privilege] to be made in the presence of the jury, and the drawing of inferences from the claim, all would be foreclosed.”).

*2 In the alternative, Defendants maintain that Whitney waived the privilege by identifying her ex-husband in initial disclosures as an “individual likely to have discoverable information ... that [Plaintiff] might use to support [her] claims,” Fed. R. Civ. P. 26(a)(1)(A)(i). The marital-communications privilege can be waived by “some act ... which in fairness places the person in a position not to object to further disclosure.” [United States v. Brown](#), 634 F.2d 819, 829 (5th Cir. 1981)(quoting 8 Wigmore on Evidence § 2340 at 671 (1961))(internal quotation marks omitted), *reh’g denied* (Mar. 5, 1981). Waiver of the privilege has been found primarily where a party voluntarily refers to the contents of some communications with his spouse yet later invokes the privilege to protect other spousal communications, or where a party affirmatively puts at issue matters that can be fully elucidated only by inquiry into marital communications. See, e.g., [United States v. Premises Known as 281 Syosset Woodbury Rd.](#), 71 F.3d 1067, 1072 (2d Cir. 1995). Neither has occurred in this case.

Although no federal court of record has had occasion to decide whether mere disclosure of a witness-with-knowledge acts as a waiver of the marital-communications privilege, courts have found the same or similar conduct did *not* amount to a waiver of *other* confidential-communications privileges. See, e.g., [Brewer v. Maynard](#), No. 2:02-CV-00048, 2006 WL 7131975, at *7 (S.D.W. Va. Dec. 6, 2006)(attorney-client privilege); [B.H. ex rel. Holder v. Gold Fields Mining Corp.](#), 239 F.R.D. 652, 656 (N.D. Okla. 2005)(attorney-client privilege), *aff’d sub nom. B.H. v. Gold Fields Mining Corp.*, No. 04-CV-0564-CVE-PJC, 2006 WL 3757809 (N.D. Okla. Dec. 19, 2006); [In re Diet](#)

[Drugs Products Liab. Litig.](#), No. CIV. A. 00-20059, 2000 WL 1781959, at *2 (E.D. Pa. Nov. 7, 2000) (physician/patient privilege). The reasoning behind these decisions was that identification of an individual as a potential witness serves merely to give notice to the other party and is “not a promise that the witness will testify,” [Brewer](#), 2006 WL 7131975 at *7.

*3 In this case, Whitney listed her husband as a person likely to have discoverable information on the “facts of [the] case” and “damages.” (D.E. 213-2 at 2.) Importantly, she did not specify that he acquired the information exclusively (or at all) through communications with her. Indeed, the excerpts from his deposition, which Defendants attached as an exhibit to their motion, reveal that he was able to testify on at least some matters that he either personally observed or had knowledge of without reference to any confidential communications with Plaintiff. Considering these facts, Whitney’s act in listing Mr. Whitney as a potential person-with-knowledge, without indicating the particular substance of the information he was likely to possess nor how he came to know this information, was not so as to “place [her] in a position not to object to further disclosure.” [Brown](#), 634 F.2d at 829. Accordingly, the Court finds that Plaintiff has not waived the marital-communications privilege and is thus not required to present her ex-husband to be re-deposed prior to trial.⁴ The Defendants’ motion is DENIED.

IT IS SO ORDERED this 27th day of February, 2014.

All Citations

Not Reported in F.Supp.3d, 2014 WL 11411675

Footnotes

¹ The marital-communications privilege, an evidentiary privilege that shields confidential communications between spouses, is “assertable by either spouse.” [United States v. Porter](#), 986 F.2d 1014, 1018 (6th Cir. 1993) *cert. denied*, 510 U.S. 933, 114 S. Ct. 347, 126 L.Ed. 2d 312 (1993). The privilege survives even divorce. [United States v. Short](#), 4 F.3d 475, 479 (7th Cir. 1993).

² Adverse inferences have been similarly disallowed in cases involving invocation of the “adverse spousal testimony” privilege, work-product protection, and the psychotherapist/patient privilege. See [United States v. Sanchez](#), 176 F.3d 1214, 1223 (9th Cir. 1999)(stating that to allow adverse inference as to adverse-spousal-testimony privilege might “turn[] the privilege into an empty promise” (citation and internal quotation marks omitted)); [United States v. One Tract of Real Prop.](#), 95 F.3d 422, 428-29 (6th Cir. 1996)(“a court should not draw adverse inferences from the failure to respond to an admissions request if the work product privilege protects the information sought”)(citation omitted); [Jaffee v. Redmond](#), 51 F.3d 1346, 1354, 1358 (7th Cir. 1995)(vacating “the jury’s verdict on the ground that the district court’s instructions improperly stated to the jurors that they were permitted to draw an adverse inference from the defendants’ failure to disclose information protected by the psychotherapist/patient privilege”), *aff’d*, 518 U.S. 1, 116 S. Ct. 1923, 135 L.Ed. 2d 337 (1996); [United States v. Morris](#), 988 F.2d 1335, 1341 (4th Cir. 1993)(“To permit such an

inference would destroy the [adverse spousal testimony] privilege.”).

- 3 Defendants argue that since the Fifth Amendment privilege against self-incrimination does not forbid the drawing of adverse inferences from a civil party’s assertion of that privilege, the same logic should apply regarding the marital-communications privilege, which is not even constitutionally based. That same essential argument was proposed in [THK America, Inc. v. NSK, Ltd.](#), 917 F. Supp. 563, 567 (N.D. Ill. 1996), by a party seeking an adverse inference where its opponent had raised the attorney-client privilege. The court there rejected it, reasoning that the policy behind the Fifth Amendment privilege relates to criminal law and has no application to civil law, whereas the attorney-client privilege applies both to criminal and civil law. The Court finds this reasoning persuasive and, as the marital-communications privilege also applies both to criminal and civil law, adopts it here.
- 4 Relatedly, the advisory committee’s notes to [Rule 26](#) provide that “[t]he disclosing party does not, by describing *documents* under [[Rule 26\(a\)\(1\)\(A\)\(ii\)](#)], waive its right to object to production of those documents on the basis of privilege.” [Fed. R. Civ. P. 26](#) advisory committee’s note (1993 Amendments). A waiver in such circumstances has been found only where the party disclosed the substance of the privileged documents. See, e.g., [United States v. White](#), 887 F.2d 267, 271 (D.C. Cir. 1989). Refusing here to find that a [Rule 26\(a\)\(1\)\(A\)\(i\)](#) disclosure of Plaintiff’s ex-husband constituted a waiver of privilege would be but a logical extension of these principles.

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**MOTION TO COMPEL
DEPOSITION OF CHRISTOPHER MEHLING**

COMES NOW the Honorable Dawn M. Gentry, by and through undersigned counsel, and hereby moves the Commission as follows:

1. To compel compliance with certain necessary and appropriate pretrial discovery demands of the Respondent, in particular to include the deposition of newly-divulged witness Judge Christopher Mehling.

2. Movant requests that this matter be ruled upon by the Commission at the earliest possible opportunity, given the approaching trial date.

As grounds therefore, the Movant states:

1. The Movant has moved to compel other depositions by separately-filed Motion and Memorandum, and hereby incorporates the entirety of her arguments therein. She further states as follows with regard to Mehling.

2. An interview of Mehling has never been divulged to the defense in this matter, so presumably has never occurred. Instead, for the first time in the year-long history of this case, the Commission prosecutor announced for the first time by a July 13, 2020 filing, an intent to call Mehling as a witness in this matter. No substance or summary of Mehling's proposed testimony was offered.

3. A deposition was demanded, and the prosecution continues its general objection to this deposition like it has the previous two requests: a dubious claim that it is simply not required to do so.

4. The Commission stated its general objection to this requested deposition, citing SCR 4.210, and ignoring the remainder of subsections of Supreme Court Rule 4 (and, for that matter, the meaning of “reasonable opportunity to defend” set out in SCR 4.210 itself).

5. SCR 4.160 expressly states that “to the extent applicable and not inconsistent with these Rules, **the Rules of Civil Procedure shall apply to proceedings before the Commission.**”

6. Civil Rules 26, 30, 33 and 36 expressly authorize the conduct of depositions. There is nothing inconsistent between these provisions and the procedures of SCR 4.160, especially inasmuch as SCR 4.160 is read to provide for the due process rights of the Respondent Judge under the Kentucky and U.S. Constitutions; and especially given the highly troubling course of conduct witnessed in this investigation.

7. While the Respondent is not compelled to state her reasons for conducting this deposition other than that they are authorized by law, and seek material appropriately within the scope of Civil Rule 26, she states as follows:

8. Mehling’s staff constitute the bulk of purported ear or eyewitnesses to various allegations made against the Respondent Judge or her staff, allegedly occurring at the Kenton County courthouse. There is no express mention of Mehling’s observations or involvement one way or the other in these matters.

9. Mehling also appears to be a primary interested proponent of making and pushing the charges against the Respondent Judge, and has power and authority over other witnesses’

employment status. One defense witness has already reported Mehling to the AOC as having created a hostile work environment, immediately following the removal of Respondent by this Commission¹.

10. It strains credulity to believe that Judge Mehling has never interacted with, or given a statement to, the prosecution in this case, given his second-hand appearance throughout the record. The defense should be permitted to explore what he has to say that is admissible under the Rules of Evidence.

11. Refusing a deposition of Mehling after having only divulged him as a witness in the eleventh hour is a classic “trial by ambush” strategy which has been repeatedly condemned as violative of ordinary due process. “ Our criminal and civil procedural rules are designed to prevent litigants from engaging in ‘**trial by ambush.**’ The judiciary must also play by these same rules if the integrity of our judicial system is to withstand the test of time and the public’s scrutiny.” Delahanty v. Commonwealth, 558 S.W.3d 489, 507 (Ky. Ct. App. 2018), Cf. Barnett v. Commonwealth, 763 S.W.2d 119 (Ky. 1988) (*held*: failure to abide by discovery rules, pretrial order, and **previous course of conduct in discovery** constituted “trial by ambush” resulting in reversal, even if done without malice).

WHEREFORE, the Movant respectfully requests:

1. The Commission order the pretrial deposition of witness Christopher Mehling.
2. Any and all further appropriate relief.

¹ This event was just divulged to defense by the prosecution on 7/13/20 despite it dating back several months. While the AOC determination was to take no action because any hostile work environment was not premised upon a protected category like sex, this is obviously not a determination that the hostility did not occur. AOC did not address hostility based upon this person’s status as a witness in these proceedings.

Respectfully submitted,

/s/ F. Todd Lewis

F. Todd Lewis
Lewis Law, PLLC
111 W. Washington Street,
Suite 400
Louisville, KY 40202
(502) 855-7599
(502) 550-4139 (mobile)
todd.lewis@toddlewislaw.com

/s/ Jeffrey A. Lawson

Hon. Jeffrey A. Lawson (94744)
524 Greenup Street
Covington, Kentucky 41011
Tel: (859) 414-6678
lawsonjeff@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, 16th of July, 2020, a copy of the foregoing was served via email and U.S. mail, first class mail, to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

/s/ F. Todd Lewis

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**MOTION IN LIMINE OF COUNSEL FOR THE COMMISSION TO ADMIT
CERTAIN EVIDENCE AT THE HEARING**

Undersigned counsel, required to present the charges against Judge Gentry at the hearing, moves in limine to admit a certain text message between Judge Gentry and her now ex-husband. The text at issue was sent during the period of their marriage. As a precaution, this motion only generally describes the information at issue and does not attach it as an exhibit pending the Commission's ruling on this point.

Counsel is well aware of KRE 504 and the evidentiary prohibition against spousal communications. However, after contemplating Judge Gentry's motion for protective order and reviewing her prior filings with the Commission, Judge Gentry has waived this privileged and an exception to the marital communications privilege applies.

At this time, counsel believes only one specific communication is probative. This text message can be identified to Judge Gentry and her counsel as Page #2034 of the factual file. The Commission has not seen this item from the factual file as it was added after the charges were filed. This text message can be generically described to the Commission as regarding the GAL panel and undersigned believes it is probative to Count I and II of the charges against Judge Gentry and consequently Count IX.

In support of this motion in limine, counsel relies upon the arguments concerning waiver of the spousal communications privilege set forth in the response to the motion for protective

order and incorporates those here. Coupled with Judge Gentry's waiver of the spousal communications privilege, evidence indicates this particular text message communication sought to be admitted was not confidential to qualify for privilege because Judge Gentry had communicated the same information to other third-parties. Guidance from *Winstead v. Commonwealth*, 327 S.W.3d 386 (Ky. 2010) establishes this point.

Winstead observed the marital communications privilege is "inapplicable if the evidence shows" the communication "was not made privately between the spouses." *See* 327 S.W.3d at 394. There are two situations *Winstead* identified when a communication would not be private. The first scenario is when "at least one other person was present" for the communication. *Id.* That presumably does not seem to apply to the single text message at issue here. A second scenario develops, however, if the spouse separately disclosed the same information to a person other than the spouse. *See id.* In *Winstead*, the accused privately told his spouse to give a false alibi to police. The Court questioned whether the communication to the spouse was privileged, however, based on evidence to indicate the accused also shared his alibi plan with his father. *See id.*

In this case, the marital communication sought to be admitted is consistent with the same message that other witnesses reportedly received from Judge Gentry (again generically described as regarding the GAL panel and relevant to Counts I and II). For these other witnesses, however, Judge Gentry's communication with them either was in person or by a SnapChat application that automatically deletes the message. Judge Gentry denies how these witnesses have characterized the pressure she placed on her GAL panel members to support her re-election efforts or the retaliation they faced for failing to do enough. The nature of the communications between Judge Gentry and these witnesses is already coming into evidence and accordingly presents a

credibility dispute. The specific marital communication from Judge Gentry to Brian Gentry sought to be introduced is relevant because it repeats what Judge Gentry allegedly told other witnesses and corroborates their testimony.

Counsel requests an Order from the Commission granting this motion for the reasons set forth above and in those in the response to the motion for protective order and permitting the introduction into evidence of this text message, or at a minimum the authentication of the message and exploration at the hearing as to the admissibility into evidence.

Respectfully submitted,

/s/ Bryan H. Beauman

Bryan H. Beauman

Donald C. Morgan

Sturgill, Turner, Barker & Moloney, PLLC

333 West Vine Street, Suite 1500

Lexington, Kentucky 40507

bbeauman@sturgillturner.com

dmorgan@sturgillturner.com

Telephone: (859) 255-8581

COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2020, I served a true and correct copy of the foregoing by electronic mail and U.S. Mail on the following individuals:

Jeffrey A. Lawson

524 Greenup Street

Covington, KY 41011

lawsonjeff@gmail.com

COUNSEL FOR JUDGE DAWN GENTRY

F. Todd Lewis

111 W. Washington Street, Suite 400

Louisville, KY 40202

Todd.lewis@toddlewislaw.com

COUNSEL FOR JUDGE DAWN GENTRY

Jimmy Shaffer

Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
(502) 564-1231
JimmyShaffer@kycourts.net
EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION

/s/ Bryan H. Beauman

COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

AMENDED NOTICE OF FORMAL PROCEEDINGS AND CHARGES

Notice is hereby given of the initiation of formal proceedings under Rule 4.180 of the Rules of the Supreme Court. At the times set out in this Notice, you were Family Court Judge for Kentucky's 16th Judicial Circuit located in Kenton County.

Counts I through IX in the November 18th, 2019 Notice of Formal Proceedings and Charges are incorporated by reference and reaffirmed as if fully set forth herein.¹

Count X – Failure to be Candid and Honest with the Commission

1. You failed to cooperate and be candid and honest with the Commission during your testimony at the January 3, 2020 temporary removal hearing and after, including but not limited to:
 - a. Regarding your relationship with your subordinate employee, Stephen Penrose,
 - b. Your staff destroying/shredding documents from your chambers.

Your conduct described above constitutes misconduct in office and violated the relevant portions of the following Canons of the Code of Judicial Conduct:

- Rule 2.16(A), which provides a judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

Count XI – Retaliation Against Individual Who Cooperated with the Judicial Conduct

Commission's Investigation into Your Conduct

¹ Pursuant to SCR 4.190, this Notice may be amended as necessary to include additional facts and charges.

You retaliated against a person who you knew or suspected to have assisted or cooperated with the Judicial Conduct Commission's investigation into your conduct, including the following:

1. On December 5, 2019, you filed a bar complaint with the Kentucky Bar Association against Katherine Schulz, who you knew or had reason to know had cooperated with the Judicial Conduct Commission's investigation into your conduct. In the complaint, you complained of conduct dating back to over a year prior to the date of your complaint, which you submitted to the Kentucky Bar Association three days after you filed your December 2, 2019 Answer to the Judicial Conduct Commission's Notice of Formal Proceedings and Charges.

Your conduct described above constitutes misconduct in office and violated the relevant portions of the following Canons of the Code of Judicial Conduct:

- Rule 2.16(B), which provides a judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or lawyer.

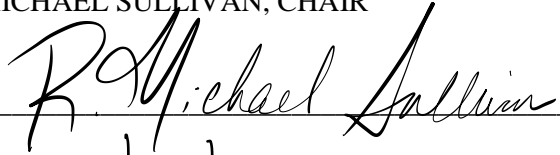
Count XII – Failure to Disclose Personal Relationship on the Record

1. Your personal friend Debra Pleatman appeared as counsel on cases before your Court on numerous occasions. You failed to disclose your personal friendship with Ms. Pleatman on the record to the parties in cases where Ms. Pleatman appeared as counsel. These cases include, but are not limited to, 13-J-1419, 13-J-1529, and 17-J-1388 (inclusive also of 18-J-29).

Your conduct described above constitutes misconduct in office and violated the relevant portions of the following Canons of the Code of Judicial Conduct:

- Canon 1, Rule 1.2, which requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- Canon 2, Rule 2.2, which requires a judge to uphold and apply the law, and to perform all duties of judicial office fairly and impartially.
- Canon 2, Rule 2.3(A), which requires a judge to perform the duties of judicial office, including administrative duties, without bias or prejudice.
- Canon 2, Rule 2.4(B), which provides a judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

KENTUCKY JUDICIAL CONDUCT COMMISSION
R. MICHAEL SULLIVAN, CHAIR

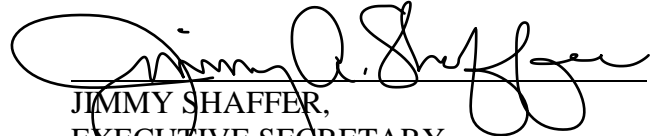


Date: 7/17/2020

Please mail your Answer, on or before 15 days from this date to Ms. Jimmy Shaffer,
Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, KY
40604-4266.

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by
serving the same to her at her email address and to counsel Jeffrey A. Lawson, 524 Greenup
Street, Covington, KY 41011, lawsonjeff@gmail.com; F. Todd Lewis, Lewis Law, PLLC, 111
W. Washington Street, Suite 400, Louisville, KY 40202, todd.lewis@toddlewislaw.com; and
Bryan Beaman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500,
Lexington, KY 40507, bbeaman@sturgillturner.com this 17th day of July, 2020.



JIMMY SHAFFER,
EXECUTIVE SECRETARY

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

ORDER ON PENDING MOTIONS

Upon consideration of Judge Gentry's Motion to Compel and the Response thereto, it is hereby ORDERED that the motion be DENIED for the reasons stated in the Response.

Upon consideration of Judge Gentry's Motion for Protective Order and the Response thereto, it is hereby ORDERED that the motion be DENIED for the reasons stated in the Response.

Upon consideration of Judge Gentry's Motion In Limine Re: Digital Sexual Material and the Response thereto, it is hereby ORDERED that the motion be and it is hereby DEFERRED to the hearing on the merits.

Date: July 20th, 2020


R. Michael Sullivan, Chairman
Kentucky Judicial Conduct Commission

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her at her email address and to counsel Jeffrey A. Lawson, 524 Greenup Street, Covington, KY 41011, lawsonjeff@gmail.com; F. Todd Lewis, Lewis Law, PLLC, 111 W. Washington Street, Suite 400, Louisville, KY 40202, todd.lewis@toddlewislaw.com; and Bryan Beauman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeauman@sturgillturner.com this 20th day of July, 2020.


JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**MOTION TO DISMISS
COUNTS X THROUGH XII**

COMES NOW the Honorable Dawn M. Gentry, by and through undersigned counsel, and hereby moves the Commission pursuant to CR 12, made applicable to these proceedings by Supreme Court Rule 4.160, and all other relevant authority, as follows:

1. To dismiss new charges added by the Commission on July 17, 2020;
2. Any and all further relief appropriate in the circumstances.

As grounds therefore, the Movant states:

I. CHARGES UNFAIRLY LATE

1. This action has been pending as a formal matter of charges for eight (8) months, and many months prior to that as an investigative inquiry.
2. Trial of this matter was set over three months ago, and is now only three weeks away.
3. The Commission has so far stated an intent to seek the professional “death penalty” in this matter: removal of the elected Respondent Judge.
4. After months of pendency, and on the literal eve of trial, the Commission, without forewarning, filed an “Amended Notice” adding three new charges. They allege (1) a failure to be “candid and honest” during a January 3, 2020 hearing; (2) an alleged act of retaliation which from the face of the charge stems from events eight (8) months ago; and (3) an alleged “failure to

disclose a personal relationship” which bears no date or time frame, but obviously involves events more than 8 months in the past.

5. There is no reason stated for, nor any apparent reason discernable from anything in the record, to engage in this kind of eleventh-hour charging, to the detriment and prejudice of the Respondent Judge.

6. There is no reason any such charges could not have been added months ago, rather than at this time, so as to now deprive the Respondent Judge of a fair opportunity to defend against them.

7. The Respondent seeks to move forward in this matter and defend herself against the pending charges (other than the late-hour added charges), and enjoys some right to a speedy resolution of this matter. As a result, she is requesting dismissal of the charges rather than a continuance.

II. DUE PROCESS

Separately and additionally, the Respondent objects to the method of charging in this matter, which appears to involve the chair of the adjudicatory body also making prosecutorial charging decisions. Alred v. Commonwealth, 395 S.W.3d 417 (Ky. 2012) enunciates that there is a limit to the stretch of Due Process created by the combination of prosecutorial and adjudicative functions of this body. While this combination of functions is not in and of itself a denial of due process under Alred, it will be a violation of due process in an individual case depending on the circumstances. *Id.* The combination threatens Due Process when “under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.” *Id.*

Respectfully, the risk spoken to by the Supreme Court may have come to fruition here, unless further relief is ordered. If the body vested with making a decision on guilt and punishment is the same body choosing to add these 11th-hour charges in a manner and timing that would not be tolerated by an independent prosecutor, how can this Respondent receive a minimally fair hearing on this pretrial request, and on the trial of the charges in question? Indeed, the timing of these added charges indicates retaliation against the Respondent Judge for seeking to vindicate her procedural rights in this case. The charges stem from conduct known to the Commission for months upon months, but a mere *four days after* Judge Gentry filed a series of motions challenging the consistent denial of her ability to defend this matter, both by blocking her from utilizing the ordinary and accepted discovery process (interrogatories and depositions of witnesses) and by attempting to try her based on lawfully privileged information.

III. VINDICTIVE PROSECUTION

There are two types of prosecutorial vindictiveness meriting relief: actual, and presumptive. Yates v. Commonwealth, 539 S.W.3d 654, 659-60 (Ky, 2018). There is a presumption of vindictiveness upon showing “the prosecutor has some stake in deterring the defendant’s exercise of his rights and . . . the prosecutor’s conduct was somehow unreasonable” *Id.* The lack of any bona fide reason for the undue delay in issuing the Amended Notice leaves but one necessary deduction—that the Commission engages now in the same retaliatory and vindictive conduct it proclaims to prohibit.

The law supports this inescapable conclusion. In cases such as this one, where a Respondent is subject to new charges after exercising legally protected rights, the charging authority has “ma[d]e reflationary use of [its] power to ‘up the ante.’” Thigpen v. Roberts, 468

U.S. 27, 30 (1984). For the reasons stated in this Motion, this Commission must presume an improper vindictive motive.

The rebuttable presumption of vindictiveness is valid where there is a “realistic likelihood” of prosecutorial retaliation. In ascertaining the existence of a realistic likelihood, the “courts should focus on ‘the nature of the right asserted’ and ‘the timing of the prosecutor’s action.’”

Osborne v. Commonwealth, 992 S.W.2d 860, 866 (Ky. Ct. App. 1998), *reh’g denied* (1999) (quoting *United States v. Goodwin*, 457 U.S. 368, 381-82 (1982)).

The unnecessary delay by the Commission in this case clearly points to an improper and vindictive motive. As the trial nears and Judge Gentry asserts her right to a fair one, the Commission moves the goal posts—or, in the words of the *Thigpen* Court, it “ups the ante.” Not a single move was made toward adding these charges until *immediately after* the Respondent sought to vindicate other procedural rights, despite the charges involving alleged conduct as long ago as last year. It is an unreasonable move, for two reasons: (1) again, the combination of prosecutorial and adjudicative functions makes it impossible to determine against whom this Respondent is defending, and what the state of “information” passed to her jury already is. If that body is the one issuing the charges, then the Respondent faces an unreasonable battle against her own adjudicative decision-maker which, if it has not made up its mind already, is poised to expect the Respondent to carry the burden of disproving these allegations; and (2) it is unreasonable based on all of the timing, because there is nothing explaining this charge, at this time, other than in the context of the obvious effect as a deterrent in the exercise of important procedural rights.

As a result, similarly to her request to appoint a Special Master regarding the prosecutorial misconduct in this case leading to the invasion of her lawfully privileged material, the handling of these charges should also be so referred, if they are not dismissed outright.

WHEREFORE, the Movant respectfully requests:

1. The Commission dismiss the recently-issued charges, Counts 10 through 12;
2. Any and all further appropriate relief.

Respectfully submitted,

/s/ F. Todd Lewis

F. Todd Lewis
Lewis Law, PLLC
111 W. Washington Street,
Suite 400
Louisville, KY 40202
(502) 855-7599
(502) 550-4139 (mobile)
todd.lewis@toddlewislaw.com

/s/ Jeffrey A. Lawson

Hon. Jeffrey A. Lawson (94744)
524 Greenup Street
Covington, Kentucky 41011
Tel: (859) 414-6678
lawsonjeff@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 2020, a copy of the foregoing was served via email attachment, to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

/s/ F. Todd Lewis

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

OBJECTIONS TO JUDGE GENTRY'S EXHIBITS

Counsel provides the following objections to the proposed exhibits provided by Judge Gentry. The proposed exhibits are identified by page number of the pdf provided by counsel.

1. Pages 25-47, and 77-78 - as these proffered exhibits are not relevant (KRE 402) to any charge against Judge Gentry. If these pages contain any probative and relevant evidence, their value is substantially outweighed by unfair prejudice, confusion of issues, misleading the Commission, undue delay and wasting of time (KRE 403).

2. Pages 83-265 - to the extent these proffered exhibits are not identified or described and counsel is uncertain as to what exactly they may purport to be. To that end, counsel objects provisionally on the same grounds as above (KRE 402 and 403).

Respectfully submitted,

/s/ Bryan H. Beauman

Bryan H. Beauman

Donald C. Morgan

Sturgill, Turner, Barker & Moloney, PLLC

333 West Vine Street, Suite 1500

Lexington, Kentucky 40507

bbeauman@sturgillturner.com

dmorgan@sturgillturner.com

Telephone: (859) 255-8581

COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2020, I served a true and correct copy of the foregoing by electronic mail and U.S. Mail on the following individuals:

Jeffrey A. Lawson
524 Greenup Street
Covington, KY 41011
lawsonjeff@gmail.com
COUNSEL FOR JUDGE DAWN GENTRY

F. Todd Lewis
111 W. Washington Street, Suite 400
Louisville, KY 40202
Todd.lewis@toddlewislaw.com
COUNSEL FOR JUDGE DAWN GENTRY

Jimmy Shaffer
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
(502) 564-1231
JimmyShaffer@kycourts.net
EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION

/s/ Bryan H. Beauman
COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**RESPONSE TO MOTION TO COMPEL DISCOVERY
DEPOSITION OF JUDGE MEHLING**

Judge Gentry seeks to compel the discovery deposition of Kenton Family Court Judge Mehling. As the Commission has previously ruled in this matter, discovery depositions are not appropriate or authorized in matters pending before the Judicial Conduct Commission.

As previously noted, the Rules of the Supreme Court of Kentucky, specifically SCr 3.130 (Rule 4.210), sets forth the procedural rights of a judge in formal proceedings before the Commission. This Rule provides that judges are entitled to introduce evidence, be represented by counsel, present witnesses, and cross-examine witnesses. Judges before the Commission are further afforded the right to subpoena witnesses to testify or to produce evidence. These rights under Rule 4.210 mirror the due process requirements of administrative hearings under Kentucky law. *See Hilltop Basic Resources, Inc. v. the County of Boone*, 180 S.W. 3d 464, 469 (Ky. 2005). Rule 4.210 does not provide a judge, or the attorney presenting the charges to the Commission for that matter, the right to issue written discovery requests or to take a discovery deposition. For this reason, and the fact that Judge Gentry has been provided all due process required under the Supreme Court Rules or any applicable constitutional provision, Judge Gentry's motion should be denied.

To the extent Judge Gentry complains of surprise by Judge Mehling's inclusion onto the witness list, the undersigned has complied with all requirements of the Rules of the Supreme Court and requirements of the Commission regarding identification of witnesses in this matter.

While a discovery deposition is not authorized, nothing prohibits Judge Gentry's counsel from preparing for the hearing as they would a typical trial which includes contacting and interviewing witnesses in an appropriate manner. But since Judge Gentry complains she is unaware of what areas of testimony Judge Mehling may be asked at the hearing, the undersigned can make the following proffer.

At the hearing of this matter, counsel believes Judge Mehling can testify about the follows areas of inquiry (reserving of course the right to explore in greater detail these and other potential topics as the interests of justice require and are relevant to the charges against Judge Gentry):

- Communications between Judge Gentry and Judge Mehling concerning the GAL appointments, the written agreements with the panel members, Judge Gentry's frustration with her opponents ability to serve as a GAL panelist and to contribute to their own campaign, and her solicitation of Judge Mehling to retaliate against her judicial opponent (all of which is relevant for a variety of charges and factors including but not limited to how Judge Gentry and others implemented a scheme to retaliate against those who did not support her);
- His observations of the working atmosphere in the Family Court judicial suite and his fielding of and responses to complaints from court personnel concerning the atmosphere in the offices including but not limited to complaints about the presence of Steve Penrose, the distractions caused by Penrose playing guitar and singing in the judicial suite, the discovery of empty alcohol containers in chambers, the complaints about the suspicion of persons having sexual intercourse in judicial suite which distracted court personnel (all of which are

relevant to multiple charges against Judge Gentry concerning her conduct with Steve Penrose and her failure to be candid and honest with the Commission);

- His discovery of the shredding of documents from Judge Gentry's chambers the next business day after the Commission's temporary removal hearing, his securing the shredded documents, and the measures he took to assure the interests of justice were protected (all of which are relevant to multiple charges against Judge Gentry including her failure to be candid and honest with the Commission and potential other retaliatory actions taken by her); and
- His discovery of and reaction to cases he assumed in Kenton Family Court where he set aside prior rulings of Judge Gentry which were clearly erroneous (which are relevant to the charges against Judge Gentry concerning her retaliatory behavior from the bench or her failure to disclose personal relationships with attorneys).

All these areas of inquiry are relevant to multiple charges against Judge Gentry by the Commission and further admissible under KRE 404 to demonstrate Judge Gentry's retaliatory action and Judge Gentry's motive, intent, preparation, plan, absence of mistake and lack of accident that violate the Code of Judicial Conduct.

Conclusion

Based upon the foregoing reasons, Judge Gentry's motion to compel should be denied.

Respectfully submitted,

/s/ Bryan H. Beauman

Bryan H. Beauman

Donald C. Morgan

Sturgill, Turner, Barker & Moloney, PLLC

333 West Vine Street, Suite 1500

Lexington, Kentucky 40507

bbeauman@sturgillturner.com
dmorgan@sturgillturner.com
Telephone: (859) 255-8581
COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2020, I served a true and correct copy of the foregoing by electronic mail and U.S. Mail on the following individuals:

Jeffrey A. Lawson
524 Greenup Street
Covington, KY 41011
lawsonjeff@gmail.com
COUNSEL FOR JUDGE DAWN GENTRY

F. Todd Lewis
111 W. Washington Street, Suite 400
Louisville, KY 40202
Todd.lewis@toddlewislaw.com
COUNSEL FOR JUDGE DAWN GENTRY

Jimmy Shaffer
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
(502) 564-1231
JimmyShaffer@kycourts.net
EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION

/s/ Bryan H. Beauman
COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

RESPONDENT'S PRETRIAL COMPLIANCE
PER AGREED PROTECTIVE ORDER

COMES NOW the Honorable Dawn M. Gentry, by and through undersigned counsel,
and hereby produces to counsel for the Commission the following:

A rendering of the Verizon phone records sought by subpoena, showing phone exchanges involving numbers requested by counsel for the Commission. **Phone exchanges involving Brian Gentry are withheld pursuant to the Respondent's ongoing claim of privilege for marital communications pursuant to KRE 504.**

Respectfully submitted,

/s/ F. Todd Lewis _____

F. Todd Lewis
Lewis Law, PLLC
111 W. Washington Street,
Suite 400
Louisville, KY 40202
(502) 855-7599
(502) 550-4139 (mobile)
todd.lewis@toddlewislaw.com

/s/ Jeffrey A. Lawson _____

Hon. Jeffrey A. Lawson (94744)
524 Greenup Street

Covington, Kentucky 41011
Tel: (859) 414-6678
lawsonjeff@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, 27TH day of July, 2020, a copy of the foregoing was served via email to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net
(without attachment)

/s/ F. Todd Lewis

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**RESPONSE TO JUDGE GENTRY'S
MOTION TO DISMISS COUNTS X THROUGH XII**

On July 17, 2020, the Commission filed an amended notice of formal proceedings and charges against Judge Gentry, which incorporated all prior charges and added three new charges: Count X for failure to be honest and candid with the Commission; Count XI for retaliation against an individual who cooperated with the Commission's investigation into Judge Gentry's conduct; and Count XII for Judge Gentry's failure to disclose her personal relationship with Debra Pleatman on the record when Ms. Pleatman appeared in front of Judge Gentry. Judge Gentry moves to dismiss the new charges and argues (1) the new charges were filed too close in time to the hearing scheduled for August 10, 2020; (2) the amended charges violate due process because the Commission has a dual role in determining to bring the charges and sitting as the adjudicator of the charges; and (3) the new charges are the result of "vindictive prosecution" by the Commission. None of these arguments merit dismissal.

I. The timing of the amended charges does not warrant dismissal.

Judge Gentry asserts the new charges should be dismissed because the charges were filed "unfairly late." This argument is without merit for two reasons. First, the timing of the amendment complies with the standard set forth in the Supreme Court Rules ("SCR"). Second, even if Judge Gentry were entitled to more notice than the Rules of the Supreme Court require, the *most* she would be entitled to is a later hearing to address the additional charges, not dismissal.

Amended charges like those in Counts X through XII are expressly contemplated by the Rules. SCR 4.190 provides the notice of proceedings and charges “may be amended to conform to the proof or to set forth addition facts, *whether occurring before or after the commencement of the hearing.*” SCR 4.190 (emphasis added). The rule further provides, “In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby.” SCR 4.190. The plain language of the rule provides that amended charges may be introduced at *any* time in the proceedings, even after the commencement of a hearing, so long as the judge is given reasonable time to answer the amendment and to prepare and present her defense to the amended charges. To be sure, the rule would permit the Commission to hold a hearing on original charges then file supplemental charges based on evidence presented during the hearing.

While “reasonable time” is not defined in SCR 4.190, SCR 4.250 speaks to the time period that may be considered reasonable. SCR 4.250 provides:

The commission may order a hearing for the taking of additional evidence *at any time while the matter is pending before it.* The order shall set the time and place of hearing and shall indicate the matter on which the evidence is to be taken. A copy of such order shall be sent by mail to the judge at least 10 days prior to the date of hearing.

SCR 4.250 (emphasis added).

In this case, the amended charges were filed on July 17, 2020, over three weeks prior to the hearing scheduled on August 10, 2020. Counsel for the Commission is mindful that what constitutes a reasonable time may differ based on the content of the charges. However, in this case, *no additional evidence or witnesses beyond those that had already been identified* in the parties’ witness and exhibit lists are necessary for counsel to present the amended charges.

The amended charges either arise out of the same facts, issues, and circumstances underlying the original counts or arise out of Judge Gentry's own conduct since these proceedings began. For example, Count X, for failure to be honest and candid with the Commission, is based on Judge Gentry's *own* testimony at the January 3, 2020 temporary removal hearing. Not only is that Count based on her testimony, but it arises out of Judge Gentry's dishonesty or lack of candor with the Commission during her testimony regarding Count VII of the original charges, which alleged in relevant part that Judge Gentry engaged in a personal sexual relationship with her subordinate employee, Mr. Penrose.

Likewise, Count XII for failure to disclose a personal relationship arises out of one of the same personal relationships at issue in Count VIII, which alleges Judge Gentry appointed her personal friends to her Court's Permanent Custody Roster, including Debra Pleatman. Indeed, during the temporary removal hearing on January 3, 2020, Judge Gentry was questioned by one of the Commission members regarding her relationship with Ms. Pleatman and whether there were boundary issues associated with that relationship. During her testimony, Judge Gentry agreed that Ms. Pleatman was one of her better friends, and that Judge Gentry called Ms. Pleatman to talk about serious personal issues. Based on both this testimony and the original charges in Count VIII, Judge Gentry's relationship with Ms. Pleatman is not a new issue, nor one about which Judge Gentry can credibly claim unfair surprise.

Additionally, Count XI for retaliation against an individual who cooperated with the Judicial Conduct Commission arises out of Judge Gentry's conduct *since these proceedings began*. Like the other charges, no additional evidence or witnesses that were not disclosed to Judge Gentry in accordance with the Commission's prehearing order on July 13, 2020, are

necessary to present this charge. As a result, over three weeks' notice of the charge is sufficient for Judge Gentry to answer the charge and prepare a defense.

Second, even if the charges were amended too close in time to the scheduled hearing on August 10, 2020, the *most* Judge Gentry would be entitled to would be a separate, later hearing for Counts 10 through 12 to be heard after the August 10, 2020 hearing. During the pre-hearing conference on July 27, 2020, Judge Gentry's counsel indicated their intent to file a motion for a continuance if the new charges were not dismissed. Any arguments Judge Gentry may advance about timeliness of the new charges go to her expected arguments for a continuance, which counsel for the JCC will respond to in the event such a motion is made. However, those arguments do not warrant *dismissal*.¹ Judge Gentry has identified no persuasive reason why the new charges should be dismissed.

II. The amended charges comply with due process.

Judge Gentry argues the amended charges should be dismissed because she “objects to the method of charging in this matter, which appears to involve the chair of the adjudicatory body also making prosecutorial charging decisions.”² Judge Gentry's Motion to Dismiss Counts X through XII (Jul. 20, 2020) at pg. 2. However, the Kentucky Supreme Court in *Alred v. Commonwealth*, 395 S.W.3d 417, 427-28 (Ky. 2012) explicitly rejected this argument and held

¹ SCR 4.270 explicitly provides the time period for the Commission to reach a final disposition of this action. The rule requires that final disposition must occur within 180 days from the notice of formal proceedings and charges. Further, the Commission may extend that period by an additional 180 days for good cause and with notice to the Judge. In this case, the original notice of formal proceedings and charges was filed on November 18, 2019. As a result, the Commission has until November 12, 2020 to reach a final disposition of the original charges against Judge Gentry.

² It is important to note that Judge Gentry's assertion also misunderstands the role of the Chair in the Commission's decision to bring additional charges. While the Chair signs the charging document, amendments to the notice of proceedings and charges are decided by the Commission, not just the Chair.

the Commission's twofold investigative and adjudicatory roles did not violate due process.³ Under *Alred*, it is clear the Commission's dual role does not implicate a violation of due process.⁴ Unless and until the Supreme Court rules otherwise, the Commission's dual role does not violate due process.

III. Judge Gentry's arguments regarding vindictive prosecution are without merit.

Judge Gentry argues charges X through XII should be dismissed because they are the result of "vindictive prosecution." This argument fails because the vindictive prosecution doctrine applies only in criminal proceedings and regardless, there is no indication of vindictiveness in this case.

Of course, the vindictive prosecution doctrine applies only in *criminal* proceedings, not proceedings before the JCC. Again, the Kentucky Supreme Court in *Alred* has already answered this question, stating "A proceeding before the Commission is not a criminal matter." *Alred*, 395 S.W.3d at 427 (quoting *Nicholson v. Judicial Retirement and Removal Comm'n*, 562 S.W.2d 306, 308 (Ky. 1978)) (holding the Sixth Amendment does not apply in proceedings before the Judicial Conduct Commission). Judge Gentry cites no law that would expand the doctrine to administrative disciplinary proceedings. *See Yates v. Commonwealth*, 539 S.W.3d 654, 659 (Ky. 2018) (examining prosecutorial vindictiveness based on new criminal charges indicted after remand from the Kentucky Supreme Court); *Thigpen v. Roberts*, 468 U.S. 27, 30 (1984) (examining prosecutorial vindictiveness based on manslaughter indictment during pending criminal misdemeanor appeal); *Osborne v. Commonwealth*, 992 S.W.2d 860, 866 (Ky. App.

³ To be sure, Judge Gentry's counsel made an oral motion to dismiss during the January 3, 2020 hearing based on the Commission's dual role as an investigative and adjudicatory body. *See* Transcript of Jan. 3, 2020 Hearing at 11-12. The Commission overruled Judge Gentry's motion then, and it should do so now.

⁴ This conclusion reinforced by the level of judicial review available to Judge Gentry should she disagree with the Commission's decision, has the ability to appeal the Commission's order directly to the Kentucky Supreme Court.

1998) (examining whether withdrawal of plea proposal in criminal case established vindictive prosecution.). Simply put, the standard cited by Judge Gentry is not applicable in these proceedings and the Commission should not extend the legal doctrine.

Regardless, Judge Gentry's accusation of vindictive prosecution is without merit. There is no indication the supplemental charges were in some way retaliatory toward Judge Gentry for engaging in standard motion practice. Judge Gentry argues the amended charges were retaliatory because they came shortly in time after she filed motions to compel discovery, for a protective order, and a motion in limine seeking to exclude certain evidence. Of course, Judge Gentry has sought similar discovery and filed a motion to disclose additional information and motion to dismiss some of the charges against her in the past, as early as February 5, 2020. Judge Gentry provides no explanation why the Commission should suddenly seek to retaliate against her for engaging in standard motion practice. Simply put Judge Gentry has not "overcome the presumption of honesty and integrity of the members of the Commission, most of whom are members of the bench or bar and cognizant of the proper standards applicable at each stage of the proceedings." *Alred*, 395 S.W.3d at 428 (quoting *Nicholson*, 562 S.W.3d at 309).

CONCLUSION

For these reasons, Judge Gentry's Motion to Dismiss should be denied in its entirety.

Respectfully submitted,

/s/ Bryan H. Beauman

Bryan H. Beauman
Donald C. Morgan
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507
bbeauman@sturgillturner.com
dmorgan@sturgillturner.com
Telephone: (859) 255-8581
COUNSEL FOR JUDICIAL CONDUCT

COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2020, I served a true and correct copy of the foregoing by electronic mail on the following individuals:

Jeffrey A. Lawson
524 Greenup Street
Covington, KY 41011
lawsonjeff@gmail.com
COUNSEL FOR JUDGE DAWN GENTRY

F. Todd Lewis
111 W. Washington Street, Suite 400
Louisville, KY 40202
Todd.lewis@toddlewislaw.com
COUNSEL FOR JUDGE DAWN GENTRY

Jimmy Shaffer
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
(502) 564-1231
JimmyShaffer@kycourts.net
EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION

/s/ Bryan H. Beauman
COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**RESPONDENT'S RESPONSE TO
COMMISSION COUNSEL MOTION IN LIMINE
AND
REQUEST TO FILE UNDER SEAL**

COMES NOW the Honorable Dawn M. Gentry, by and through undersigned counsel, and hereby states as follows in response to the motion in limine of Commission counsel, to introduce certain material, privileged under KRE 504, through proposed witness Brian Gentry:

The history of this case does not support the claim of waiver of privilege; and privilege is never determined by a blanket claim of waiver for all issues, for all of time. The Commission's Response demonstrates why this motion should be denied, this issue should further be taken up by some independent decision-maker, so that the parameters of the use of this material can be determined without the undue prejudice of revealing privileged information.

The Commission investigator has engaged in an extensive interview with the Respondent's former spouse, Brian Gentry, nearly every line of which was a question asking for patently privileged information. Over and over, questions were posed seeking to elicit the private marital communications between these two spouses, protected by KRE 504(b), at least some sixty-five (65) questions. These were almost all designed to ask whether the Respondent said something to her spouse which could be used to incriminate the Respondent in these proceedings. Now, Brian Gentry is proposed as a witness against the Respondent.

Now, in order to avoid the consequences of that, the Commission prosecutor points to a limited set of text exchanges provided in an informal inquiry in October, 2019, prior to the initiation of these proceedings. The claim is that by providing these texts, the Respondent has waived all of her marital privilege claims.

The Respondent addressed most of these issues in her previous Motion for Protective Order, and simply incorporates her argument here in full, by reference. The case authority cited by the Commission simply does not support the claim of waiver being argued by the Commission prosecutor, at all. Winstead v. Commonwealth 327 S.W.3d 386 (Ky. 2010) firmly ***disallowed*** the introduction in evidence, in a murder prosecution, of the single statement by one spouse to another, requesting that the spouse give the killer a false alibi to law enforcement. The statement was privileged by KRE 504(b) and inadmissible. That is the holding of the case. In dicta, the court discussed waiver as theoretically occurring when a third party is present to hear the exchange, or it is intended to be shared with others—but even then, the requesting spouse expects the other to give the *information* to the third party, “no to disclose the request” itself. Id Winstead also affirms the position cited by the Respondent in her previous Motion for Protective Order, that more than just mere “communication” is covered by this privilege—it operates to exclude from use “all knowledge upon the part of the one or the other obtained by reason of the marriage relation, and which, but for the confidence growing out of it, would not have been known to the party.” Id., citing Slaven v. Commonwealth, 962 S.W.2d 845 (Ky. 1997). That includes the proffered text messages here. That includes almost everything asked of Brian Gentry in his interview. And that includes all the secondary information derived from that offending interview.

These few exchanges claimed as “waiver” also have almost nothing to do with the later, extremely wide-ranging questioning posed by the investigator to the Respondent Judge’s spouse in February, 2020, which are at issue; and nothing to do with the text messages sought to be introduced by the Commission prosecutor. The texts provided by the Respondent (which are claimed as waiver) to the Commission include: a lengthy discussion about arranging childcare and separate parenting time; a discussion of the need for marital counseling; and lengthy discussions about the initiation of divorce and the effect on the children. That is it, period. No discussion or statements at all the issues presented in the 65 separate lines of inquiry made by the investigator attempting to incriminate the judge. Most importantly, no discussion about the topics counsel now seeks to admit via a set of text messages between these spouses. These inquiries ranged from asking for privileged exchanges between the spouses about an alleged affair which has been made the subject of these proceedings; asking about communication between the spouses regarding the conduct of the Respondent’s electoral campaign; asking to (and receiving) embarrassing photographs which were shared between spouses; asking about the nature of abuse the Respondent has alleged against her former spouse.

A cursory review of this transcript will make that patently obvious, but only if a protected proceeding is conducted can the Respondent file and make available this outrageous transcript of privilege invasion. Accordingly, so as to protect her continued right of privilege and confidentiality, ***the Respondent requests at minimum an opportunity to file the offending transcript under seal, so that the individual privilege violations can be reviewed and determined; and an appropriate resolution fashioned.***

Alternatively, the Respondent further continues her request that a third party be appointed to see this material in camera, for this purpose, much like the Court determined was appropriate

in Barroso v. Commonwealth, 122 S.W3d 544 (Ky. 2003), which has been followed in the civil context. See Williams v. Williams, 526 S.W.3d 108 (Ky. App. 2017).

WHEREFORE, the Movant respectfully requests:

1. The Commission deny the prosecution Motion in Limine;
2. Alternatively, that the Commission enter an Order appointing a third party neutral to review this matter and make recommendation, so that the privileged material may be kept privileged;
3. Alternatively, if the Chair must review the actual content of the material in question, that it be allowed to be filed under seal for review solely by the Chair;
4. Any and all further appropriate relief.

Respectfully submitted,

/s/ F. Todd Lewis

F. Todd Lewis
Lewis Law, PLLC
111 W. Washington Street,
Suite 400
Louisville, KY 40202
(502) 855-7599
(502) 550-4139 (mobile)
todd.lewis@toddlewislaw.com

/s/ Jeffrey A. Lawson

Hon. Jeffrey A. Lawson (94744)
524 Greenup Street
Covington, Kentucky 41011
Tel: (859) 414-6678
lawsonjeff@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, 29th of July, 2020, a copy of the foregoing was served via email with PDF attachment to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

/s/ F. Todd Lewis

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

RESPONDENT'S OBJECTION TO
PROSECUTION EXHIBITS
AND
REQUEST TO ALTER EXHIBIT PUBLICATION PROCEDURE

COMES NOW the Honorable Dawn M. Gentry, by and through undersigned counsel, and hereby states as follows in objection to the prosecution's proposed exhibits herein:

General Objections

The Respondent hereby objects to being required to anticipate whether counsel for the Commission can adequately authenticate, produce the proper original, and lay a foundation in a hearsay exception, for exhibits which have not been formally offered in evidence yet. It is the burden of a *proponent* of an item of evidence to lay a proper foundation for the admission of evidence, not the burden of the opposing party to anticipate in advance whether they will do so. Further, relevance is a relative term impossible to predict before the formal offering of an exhibit: some items contain conditional or limited relevance, if they are offered for the proper purpose in the first place, and this can only be determined in the context of moving the admission of the item during trial¹. For example, several exhibits contain rank hearsay, and the declarants of said hearsay are not being offered as witnesses. By further example, some exhibits contain material inadmissible under KRE 401 and 403, but could be offered solely to prove that an event occurred (e.g., that a motion to recuse was made on day X; but not to prove the content of the allegations

¹ See KRE 105, Limited Admissibility

contained in said motion). Accordingly, the content of such exhibits is not admissible. By further example, some exhibits may be admissible solely as a basis to rebut impeachment of a witness—but not until the impeachment occurs, which is by definition a trial event.

Accordingly, the Respondent hereby incorporates the entirety of the Kentucky Rules of Evidence, and related rules of procedure, together with SCR 4.240, and does hereby demand that all such rules be complied with during the conduct of all proceedings herein, including witness examination and the proposed introduction of exhibits, including but not limited to: KRE Chapter 8, hearsay²; KRE 401 and 403, regarding relevance and undue prejudice; KRE 404 and 405 regarding character evidence; KRE 406 regarding habit evidence; KRE 408 and 410 regarding compromise and plea discussions; KRE 412; KRE 501, 503, 504, 510 and 511 regarding privileges; the entirety of KRE Chapter 6 regarding witnesses; KRE 701 and 702 regarding opinion evidence; KRE 901 regarding authentication; KRE Chapter 10 incorporating the “best evidence rule;” and including but not limited to the following ordinary rules of evidentiary and trial procedure: burden of proof and burden-shifting, (Cf. SCR 4.160); rule of completeness with regard to documents; leading questions; argumentative questions; asked and answered; failure to authenticate/lay a foundation; cumulative evidence; assuming a fact not in evidence; asking multiple questions in a single question; calling for speculation; lack of witness qualification or firsthand knowledge.

Any and all items provided by Brian Gentry are hereby objected to for the reasons set out in Respondent’s previous Motion in Limine / Motion for Protective Order; and Respondent’s Response to Commission’s Motion in Limine, which is hereby incorporated by reference.

² The Respondent also here points out what is not always obvious to all practitioners: the mere fact that a witness is called live at a trial does not transform all of their prior statements into admissible hearsay.

Method of Publication to Jury / Commission Members

The Respondent notes that the Chair expressed a desire to minimize handling of the exhibits, due to concerns over the transmission of COVID-19. The idea expressed at the prehearing conference herein was to create a set of pre-marked exhibit notebooks, with all exhibits contained therein, to be published to all members of the jury in advance of trial. The Respondent agrees with the general principle regarding virus transmission, but wishes to propose a slightly different method more consistent with the Rules of Evidence and trial procedure: such notebooks could be created, but only populated with exhibits as they are ruled to be introduced. Exhibits excluded from evidence would not be placed in the notebooks. Exhibits with only limited admissibility would either be redacted or not published (for example, a document filled with inadmissible information, being offered only to show that such document was filed on Date X). The exhibits would be then available as they are received in evidence, and advance publication to the jury would not occur. Members of the deciding panel could choose to receive copies as soon as they are ruled admitted, or later, as they choose. The Respondent notes that the Chair indicated there is also a method to publish admitted exhibits via an Elmo-type document projector in the designated courtroom, which would allow deciding members to see published exhibits without immediately handling the paper, if they choose not to. This would protect the rights of all parties to ensure that inadmissible evidence is not seen by the jury/commission.

Specific Objections

The following specific objections are identified, *without waiver of any of the above objections* (references are to number items on list filed by Commission counsel on 7/13/20):

Item 7

Hearsay, failure to authenticate.

Item 10

Hearsay, failure to authenticate

Item 13

Hearsay, failure to authenticate, KRE 401 and 403

Item 15

Hearsay, failure to authenticate, KRE 401 and 403

Item 16

Hearsay, KRE 401 and 403.

Item 18

Hearsay, KRE 401 and 403. An accusatory document is not carte blanche admissible in evidence, as it is not relevant evidence in itself, and constitutes little or no probative value. This principle is so well-founded it is beyond controversy, and is an admonition read at the beginning of every criminal trial³. As no conditional purpose has been set out in offering this exhibit, it is inadmissible.

Item 19

KRE 401, 403. The response merely incorporates again what is inadmissible in the previous item.

Item 20

Hearsay, KRE 401 and 403.

Item 21

³ The admonition is required by RCr 9.56 ("In every case the jury shall be instructed . . . that the indictment shall not be considered as evidence or as having any weight against him or her . . ." . The underlying principle is ancient.

Hearsay, KRE 401 and 403. This is further an example of an exhibit which should not be offered for its content, but could be offered to support the claim that the event in question happened (i.e., that the speaker in fact made a motion to recuse).

Item 23

KRE 401, 403. The response merely incorporates again what is inadmissible in the previous item.

Item 25

The proposed partial records of KREF⁴ does not comply with the rule of completeness, KRE 106; nor with KRE 401 and 403 in their present form; and for largely the same reason (incompleteness) additionally does not meet the foundational requirement for admission as a public document or business record, KRE 902 and KRE 803(8) and 803(6) , and are therefore objected to.

The rule of completeness, found in KRE 106, requires that documents or out of court statements are incomplete when the introduction of only a portion thereof gives a misleading impression to the fact-finder. Sykes v. Commonwealth, 453 S.W.3d 722 (Ky. 2015). The Completeness doctrine is based in fairness. Id. Documents also do not constitute authenticated business records or public documents when only a strategically-selected portion thereof are offered, rather than the complete record; and are therefore not authenticated, and are inadmissible hearsay. KRE 902 and KRE 803(8) and 803(6). Here, what is offered is records of KREF which center only on select contributors to the Respondent's campaign (said selections being done by the prosecutor in the case in anticipation of trial), to create a certain impression on

⁴ Kentucky Registry of Election Finance

campaign contributions, but which omits the entirety of contributions to the Respondent's campaign. This is unfair, and creates an inadmissible document.

The simple solution to this problem is the stipulation of a joint exhibit based on KREF records, which is entirely complete: one which includes the contributions of every contributor, the other data about the contributor (such as profession), the dollar amount, the date given, and the election (primary or general) for which it was given. This would also solve the problem of failing to have a custodian of records⁵ testify to the records in question. Counsel for Respondent will cooperate in the creation of such exhibit and stipulate to a proper one.

Item 28 through 30

Counsel for the Commission has not pointed to individual items from this compilation of some 40 pages of separate items. Several contain hearsay, several contain material inadmissible under KRE 401 and/or 403; and appear to be offered without proper authentication. The Respondent stipulates she was in a band with Laura Aubrey and Stephen Penrose; that she once invited Katherine Schulz and her husband to a dinner with Respondent and her family on 12/22/18; and that Respondent or Stephen Penrose invited many professional associates to watch the band play at a public venue.

Item 35

Hearsay, authentication; relevance; best evidence rule.

Item 36

The listed item has not been provided to the undersigned, so they are generally objected to on grounds of relevance and under KRE 403. To the extent these are photos without identifying characteristics, they are not authenticated. To the extent they contain material set out

⁵ Alleged business records cannot otherwise be authenticated and admitted without the testimony of a qualified custodian of records. KRE 803(6), Commonwealth v. Roberts, 122 S.W.3d 524 (Ky. 2003).

in Respondent's previous Motion in Limine Re: Sexual Images, they are inadmissible for the reasons set out therein. To the extent these items were provided by Brian Gentry, they are inadmissible under KRE 504 for the reasons set out in Respondent's previous Motion for Protective Order.

Item 37 & 38

Hearsay, failure to authenticate; best evidence rule; rule of completeness; to the extent they contain material set out in Respondent's previous Motion in Limine Re: Sexual Images, they are inadmissible for the reasons set out therein. To the extent these items were provided by Brian Gentry, they are inadmissible under KRE 504 for the reasons set out in Respondent's previous Motion for Protective Order.

Item 39

KRE 401, 403. The response merely incorporates again what is inadmissible in the previous item (that is, the accusatory letter of JCC). An accusatory document is not to be considered evidence against the accused.

Items 42 through 44

These items are likely only conditionally admissible depending on the purpose for which they are offered, and are therefor objected to as irrelevant, and violative of KRE 403, until such time as they are offered through a witness.

Item 45

Aside from hearsay, these items have no relevance, and are inadmissible under KRE 403. The Respondent stipulates that, despite Meredith Smith's voluntary resignation from employment, AOC decided to allow her to have unemployment benefits, and Respondent had no say in that decision. This is a typical action for many employers, especially state government

agencies, and proves only that the agency made that decision. The item is not admissible for any alleged “proof” that Meredith Smith did not voluntarily resign. See Berrier v. Bizer, 57 S.W.3d 271 (Ky. 2001).

Item 47

This item is entirely inadmissible hearsay.

Item 48

To the extent these items were provided by Brian Gentry, they are inadmissible under KRE 504 for the reasons set out in Respondent’s previous Motion for Protective Order and Respondent’s Response to Commission Motion in Limine. Since the purpose of this exhibit is not stated, it is also objected to under KRE 401 and 403.

Item 55 & 58

To the extent these items were provided by Brian Gentry, they are inadmissible under KRE 504 for the reasons set out in Respondent’s previous Motion for Protective Order and Respondent’s Response to Commission Motion in Limine. Since the purpose of this exhibit is not stated, it is also objected to under KRE 401 and 403.

Item 59 & 60

These are re-hashes of complaints by Greta Walker about rulings in a case in which she was the attorney. There is no charge involving Greta Walker. These items are inadmissible under KRE 401 and 403.

Item 61

These items have not been produced to the undersigned until today (July 29, 2020). The admission of all such items is objected to for untimely (that is, no) disclosure to the defense.

Item 63

This entire item is inadmissible hearsay as it stands before trial, with the exception of the testimony of the Respondent. Prior testimony is only admissible when a witness is unavailable, and even then, other conditions must be met for its use. KRE 804.

Item 64

The ruling or outcome portion from this complaint is inadmissible for the same reasons stated as to item 45, and is inadmissible as hearsay, and under KRE 401 and 403. The Respondent stipulates she filed the complaint in question.

Item 65

The item is inadmissible under KRE 401 and 403. It purports to show a paper shredding event for which it was impossible for the Respondent to have been involved. The only purpose for offering such an item is to create undue prejudice with no relevance.

Item 67

It is impossible to respond to this item, as counsel for the Commission has not identified what phone records he wishes to use, nor for what purpose. It is therefore objected to as irrelevant, unduly prejudicial, and without a proper foundation.

Items 69 through 78

Until these items are moved for introduction with the testimony of a valid witness, and a rationale established for their relevance, they remain inadmissible and should not be published to the jury/commission until ruled admitted.

Item 79

The Respondent objects to the use of any material produced pursuant to any subpoena duces tecum not issued in compliance with Civil Rule 45.03(3), including prior notice to the

Respondent with an opportunity to object. This subpoena (just like the Verizon subpoena) was not so issued, and therefore the resulting items must be excluded from evidence. The problem with the improper issuance of the Verizon subpoena was resolved by Agreed Order in lieu of Respondent's well-founded Motion to Quash, but this subpoena was not so resolved.

Item 81

No exhibit is admissible in this proceeding merely because it was admitted at the prior hearing.

Respectfully submitted,

/s/ F. Todd Lewis

F. Todd Lewis
Lewis Law, PLLC
111 W. Washington Street,
Suite 400
Louisville, KY 40202
(502) 855-7599
(502) 550-4139 (mobile)
todd.lewis@toddlewislaw.com

/s/ Jeffrey A. Lawson

Hon. Jeffrey A. Lawson (94744)
524 Greenup Street
Covington, Kentucky 41011
Tel: (859) 414-6678
lawsonjeff@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, 29th day of July, 2020, a copy of the foregoing was served via email PDF attachment, to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

/s/ F. Todd Lewis

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WESTLAW Kentucky Court Rules[Home Table of Contents](#)**KRE 106 Remainder of or related writings or recorded statements**
Baldwin's Kentucky Revised Statutes Annotated
Kentucky Rules of Evidence

Baldwin's Kentucky Revised Statutes Annotated
Kentucky Rules of Evidence (Refs & Annos)
Article I. General Provisions

KRE Rule 106

KRE 106 Remainder of or related writings or recorded statements

[Currentness](#)

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Credits

HISTORY: 1992 c 324, § 34, eff. 7-1-92; 1990 c 88, § 6
<Research Note>

Legislative Research Commission Note (7-1-92): Although denominated “rules,” the elements of the Kentucky Rules of Evidence were enacted as statutes by the Kentucky General Assembly. See 1990 Ky. Acts ch. 88; 1992 Ky. Acts ch. 324. Originally codified as KRS Chapter 422A in 1990, the Kentucky Rules of Evidence were renumbered by the Reviser of Statutes, effective July 1, 1992, pursuant to 1992 Ky. Acts ch. 324, sec. 34. By an order dated May 12, 1992, the Kentucky Supreme Court “adopt[ed] so much of the Kentucky Rules of Evidence as enacted by HB 241 [1992 Ky. Acts ch. 324] as comes within the rule making power of the Court, pursuant to Ky. Const. sec. 116.”.

Publisher's Note: KRE 502 and 704 are being reserved for future use.

Rules of Evid., Rule 106, KY ST REV Rule 106
Current with amendments received through May 1, 2020.

**END OF
DOCUMENT**

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Sykes v. Commonwealth

Supreme Court of Kentucky

February 19, 2015, Rendered

2014-SC-000036-MR

Reporter

453 S.W.3d 722 *; 2015 Ky. LEXIS 5 **

STEPHEN SYKES, APPELLANT v. COMMONWEALTH
OF KENTUCKY, APPELLEE

**[*724] OPINION OF THE COURT BY JUSTICE
CUNNINGHAM**

Subsequent History: Released for Publication March 12,
2015.

Prior History: **[**1]** ON APPEAL FROM JEFFERSON
CIRCUIT COURT. HONORABLE CHARLES LOUIS
CUNNINGHAM, JR., JUDGE. NO. 10-CR-001553.

Counsel: COUNSEL FOR APPELLANT: Daniel T. Goyette,
Joshua Michael Reho, Office of the Louisville Metro Public
Defender.

COUNSEL FOR APPELLEE: Jack Conway, Attorney
General of Kentucky; Leilani K.M. Martin, Assistant
Attorney General.

Judges: OPINION OF THE COURT BY JUSTICE
CUNNINGHAM. Minton, C.J.; Abramson, Cunningham,
Keller, Noble and Venters, JJ., sitting. All concur.

Opinion by: CUNNINGHAM

Opinion

AFFIRMING IN PART, REVERSING AND VACATING IN PART, AND REMANDING

Around 10:30 p.m. on May 10, 2010, Appellant, Stephen Ricardo Sykes robbed the China Wok—a take-out restaurant located in the Hazelwood strip mall in Louisville. The China Wok was operated by Xiang Lin and his wife Nana Xiao. Both were present at the restaurant when Sykes robbed them of approximately 80 dollars. During the robbery, Sykes shot Lin multiple times in the chest and abdomen with a .22 caliber pistol, causing severe wounds. Eric Underwood served as Sykes' lookout but did not enter the restaurant. After the shooting, Sykes and Underwood fled the scene and split the money. The two were eventually apprehended **[**2]** and arrested several days later.

Sykes was indicted by a Jefferson County grand jury for criminal attempt to commit murder, first-degree assault, two counts of first-degree robbery, one count of first-degree burglary, possession of a hand gun by a convicted felon, wanton endangerment, and tampering with physical evidence. A Jefferson Circuit Court jury convicted Sykes on all counts with the exception of first-degree assault and burglary. The jury recommended a sentence of 20 years' imprisonment for attempted murder, ten years for each robbery conviction, five years for the possession conviction, one year for wanton endangerment, and one year for the tampering conviction.

The court ordered that the attempted murder sentence run consecutively with all the other sentences, which were to run concurrently with each other for a total sentence of 30 years' imprisonment. Sykes now appeals his judgment and sentence as a matter of right pursuant to § 110(2)(b) of the Kentucky Constitution. Three issues are raised and addressed as follows.

Suppression

Sykes contends that the trial court erred by denying his motion to suppress his confession, which he argues was coerced and involuntary. This issue is briefed as Sykes' second argument. His **[**3]** primary argument is that the portion of his confession that was presented to the jury was improperly redacted. However, we address the suppression issue first because a determination that the trial court erred in suppressing the confession would render Sykes' redaction argument moot. "When reviewing a trial court's denial of a motion to suppress, we utilize a clear error standard of review for factual findings and a de novo standard of review for conclusions of law." [Jackson v. Commonwealth, 187 S.W.3d 300, 305 \(Ky. 2006\)](#).

When determining if a confession is the result of coercion, we look at the totality of the circumstances to determine the voluntariness of a statement. [Henson v. Commonwealth, 20 S.W.3d 466, 469, 46 11 Ky. L. Summary 28 \(Ky.1999\)](#) (citing [Arizona v. Fulminante, 499 U.S. 279, 286-88, 111 S. Ct. 1246, 113 L. Ed. 2d 302, \(1991\)](#)). Specifically, we consider the following factors:

[*725] (1) whether the police activity was "objectively coercive;" (2) whether the coercion overbore the will of the defendant; and (3) whether the defendant showed that the coercive police activity was the "crucial motivating factor" behind the defendant's confession.

Id. (citing [Morgan v. Commonwealth, 809 S.W.2d 704, 707 \(Ky.1991\)](#)). Therefore, "the threshold question to a voluntariness analysis is the presence or absence of coercive police activity" [Bailey v. Commonwealth, 194 S.W.3d 296, 300 \(Ky. 2006\)](#); see also [Colorado v. Connelly, 479 U.S. 157, 167, 107 S. Ct. 515, 93 L. Ed. 2d 473 \(1986\)](#). After reviewing Sykes' confession in its entirety and specifically considering his age and psychological **[**4]** history, we determine that there was no coercive police activity here that would render Sykes' confession involuntary.

First, Sykes expressly acknowledged that he wanted to speak with Detective Mike Perry. Perry read Sykes his rights and then had him sign a waiver form after first confirming that Sykes had read the form. Thus, the *Miranda* requirements were satisfied.

The interrogation lasted several hours. During that time period, Detective Perry and Detective Chris Middleton employed diverse interrogation techniques, none of which were improper. As the trial court noted, "Det. Perry asked mostly open ended questions and allows Sykes to explain his answers." Sykes was eighteen years old at the time of the interrogation. Although young, he was clearly an adult. Furthermore, Sykes has had several previous encounters with the criminal justice system.

The trial court also considered Sykes' psychological records that were offered in support of the suppression motion. The court determined that Sykes had endured a host of psychological disorders, including Bipolar Schizophrenia. In its opinion and order denying the motion, the trial court noted that Sykes participated in an affirmative and rational **[**5]** manner. Specifically, the court determined that "[t]hrough the conversation, Mr. Sykes shows a coherent grasp of his legal situation." The court concluded that "[w]hatever concerns were created by a thorough reading of Mr. Sykes' psychiatric history are allayed by a viewing of the interrogation tape." After reviewing the interrogation, we agree. See also [Keeling v. Commonwealth, 381 S.W.3d 248, 267-69 \(Ky. 2012\)](#) (where defendant's post-arrest statements to police were not rendered involuntary due to defendant's mental illness).

However, Sykes contends that the trial court's findings are incomplete because the court did not discuss an unrecorded part of the interrogation. Our review of the interrogation reveals a time gap in the recording, the duration and purpose of which are unclear. It is clear, however, that immediately after the break, Detectives Perry and Middleton re-entered the interrogation room and asked Sykes if he would consent to a polygraph test. Sykes agreed, then suddenly confessed to the robbery and shooting.

At the suppression hearing, Detective Perry acknowledged that Detective Middleton continued to speak with Sykes in the detectives' office during the break, although Perry was not present for that exchange. While this gap in the recorded interrogation **[**6]** is not ideal for purposes of appellate review, it does not invalidate the confession. Specifically, Sykes fails to articulate any improper or "coercive police activity" that occurred during that time. Considering the totality of the confession in light of Sykes' age and psychological history in particular, we affirm the trial court's denial of Sykes' motion to suppress his confession.

[*726] Rule of Completeness

Sykes further contends that the trial court erred by admitting his improperly redacted confession to the jury. Specifically, the Commonwealth introduced a redacted recording of Sykes' police interrogation that lasted approximately 50 minutes and was played for the jury without interruption. We review the trial court's determination under an abuse of discretion standard. [Commonwealth v. Stone, 291 S.W.3d 696, 703 \(Ky. 2009\)](#). Known as the rule of completeness, *KRE 106* provides as follows:

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the

introduction at that time of any other part or any other writing or recorded statement which ought in *fairness* to be considered contemporaneously with it. (Emphasis added).

In determining fairness, "the issue is whether the meaning of the included portion [**7] is altered by the excluded portion." *Young v. Commonwealth*, 50 S.W.3d 148, 169 (Ky. 2001) (citing *Commonwealth v. Collins*, 933 S.W.2d 811, 814, 43 9 Ky. L. Summary 14 (Ky. 1996)). Accordingly, *KRE 106* "allows a party to introduce the remainder of a statement offered by an adverse party for the purpose of putting the statement in its proper context and avoiding a misleading impression" *Soto v. Commonwealth*, 139 S.W.3d 827, 865-866 (Ky. 2004).

Prior to trial, the court held a hearing where it determined the necessary redactions. One previously authorized part of the recording introduced at trial included Sykes tearfully confessing to the robbery and the shooting. The confession was preceded by an extensive line of questioning by detectives. Sykes does not take issue with that part of the recording. However, less than an hour before the recording was to be played for the jury, the Commonwealth announced that it intended to redact the recording further. Over Sykes' objection, the court authorized additional redactions and admitted the following:

Det. Perry: Well, the fortunate thing about this is that, as of now, that the Chinese guy, he's still alive.

Sykes: Yes sir. So I'm being charged with attempted murder.

Although the redacted recording immediately stopped after this exchange, the interrogation did not end there. These are the statements that immediately followed but [**8] were not heard by the jury:

Det. Perry: No. No, a shooting is a shooting. I don't think that it's an attempted murder. Were you trying to kill him?

Sykes: No sir. I didn't even mean to shoot the guns. It was like my reaction, how he was coming.

Sykes argues that omitting this exchange violates the rule of completeness and constitutes reversible error. We agree.

KRE 106 "is needed to guarantee that admitted statements are fully understandable and clear" *James v. Commonwealth*, 360 S.W.3d 189, 205 (Ky. 2012). Omitting the contested sentences here rendered Sykes' final words unclear and ambiguous. As presented to the jury, Sykes' comment regarding the attempted murder charge was misleading because without the response that followed, it could have been interpreted as either an affirmative statement or as a question. Moreover, the detective immediately responded by

asking Sykes if he was trying to kill the victim. Sykes replied in the negative and then articulated exculpatory statements demonstrating that he did not possess the requisite intent to murder the victim.

We recognize that *KRE 106* does not "'open the door' for introduction of the entire statement or make other portions [**727] thereof admissible for any reason once an opposing party has introduced [**9] a portion of it." *Schrimsher v. Commonwealth*, 190 S.W.3d 318, 331 (Ky. 2006). Many of our *KRE 106* cases have been decided in that context. See, e.g., *Young*, 50 S.W.3d at 169 (affirming trial court's decision to exclude the defendant's entire six hour interrogation recording); *McAtee v. Commonwealth*, 413 S.W.3d 608, 629 (Ky. 2013). Clearly, the present case is distinguishable.

At trial, Sykes did not request that the trial court admit the entirety of his recorded interrogation or attenuated portions thereof; rather, he merely sought the introduction of several exculpatory sentences that immediately followed and clarified a statement that the Commonwealth introduced to demonstrate his guilt. Omitting the contested portions of the confession in this instance not only presented an incomplete narrative; it presented an incomplete exchange. Certainly, this violates the rule of "completeness."

Rodgers v. Commonwealth provides an example of the proper application of *KRE 106* that is most germane to the present case. 285 S.W.3d 740 (Ky. 2009). In *Rodgers*, the Commonwealth introduced testimony of interrogating Detective Leigh Whelan, who quoted or paraphrased from the redacted versions of the defendant's interrogation transcripts. *Id.* at 744. Over the defendant's objection, the trial court limited cross-examination to the several sentences that preceded the statement the Commonwealth [**10] introduced to demonstrate the defendant's guilt. *Id.* at 748. We reasoned that by permitting the defendant to introduce that portion of his statement immediately preceding the "I shot at him" statement introduced by the Commonwealth, "the court allowed [the defendant] to complete what was arguably an incomplete and potentially misleading reproduction of that statement." *Id.* at 749. Accordingly, we held that the trial court did not abuse its discretion under *KRE 106*. *Rodgers*, 285 S.W.3d at 748-49.

In contrast, the trial court in the present case abused its discretion by *not* admitting the portions of Sykes' interrogation that would have completed a statement that was arguably "incomplete and potentially misleading" *Id.* at 749. Also contrary to *Rodgers*, the interrogating detective here was not cross-examined regarding the omitted portions of the recording. *Id.* at 748. As previously noted, the interrogating detective in *Rodgers* quoted or paraphrased from

the redacted versions of the defendant's interrogation transcripts. *Id.* at 744. In the present case, Detective Middleton did not provide a recitation of the interrogation transcripts; rather, his testimony primarily provided a foundation for the recording introduced by the Commonwealth.

Furthermore, we cannot [**11] conclude that the trial court's error was harmless. *RCr 9.24*. Because this constitutes reversible error under our evidentiary rules, we need not address Sykes' argument that this error violated his constitutional rights. See *U.S. v. Pacquette*, 557 Fed.Appx. 933, 938 n. 2 (11th Cir. 2014) (holding that district court's error in excluding defendant's exculpatory statement disclaiming knowledge of cocaine found in his bag was not harmless under *FRE 106*); see also *Rodgers*, 285 S.W.3d at 749.

During the Commonwealth's closing argument, the prosecutor replayed the final portions of the redacted recording for the jury and specifically argued that this exchange demonstrated Sykes' intent to kill. Again, the tape ended after the word murder. The prosecutor immediately asked the jury "what was his reaction there? Was it, [sigh], thank goodness he's alive? [**728] No. He automatically goes to 'so I'm being charged with attempted murder.'"

The 'omitted portions of the confession with which Sykes takes issue speak directly to intent to kill, or rather, lack thereof. As previously noted, the interrogating detective expressly asked Sykes if he was trying to kill the victim, to which Sykes responded, "No sir. I didn't even mean to shoot the guns. It was like my reaction, how he was coming." Admitting these statements [**12] may have aided the jury in its determination concerning the attempted murder charge. The jury was also instructed on first-degree assault. Admitting the contested portions of the recording could not have reasonably exculpated Sykes of a first-degree assault conviction. However, Sykes was acquitted of first-degree assault and convicted of attempted murder—a charge where proving intent to kill is paramount. Therefore, we hold that the improper redaction here constitute reversible error.

Unanimity

Lastly, Sykes argues that the jury did not unanimously convict him of possession of a handgun by a convicted felon. This issue is unpreserved and we will review for palpable error. *Kingrey v. Commonwealth*, 396 S.W.3d 824, 831 (Ky. 2013); *Martin v. Commonwealth*, 409 S.W.3d 340, 346-47 (Ky. 2013) (applying palpable error review to jury instructions where the jury instruction was not correctly given).

Prior to trial, the court severed the handgun possession charge from the remainder of the offenses. After convicting Sykes on the other charges, the jury considered the evidence concerning the possession offense. The Commonwealth presented evidence that Sykes, a convicted felon, possessed a .22 caliber handgun on May 10, 2010—the date of the robbery—and May 12, 2010—the date he was arrested. During closing argument, [**13] the prosecutor informed the jurors that they could consider both dates when determining guilt. *Kingrey v. Commonwealth* is instructive.

In *Kingrey*, the jury instruction provided for conviction if the jury determined that the defendant "committed the crime between January 1, 2007, and May 31, 2008." *Id.* at 830. Evidence was presented at trial that, during this time period, the defendant committed multiple acts that constituted the offense for which he was convicted. *Id.* at 831. We reversed because it was unclear "which instance of the crime is the basis of his conviction" *Kingrey*, 396 S.W.3d at 832. Accordingly, the defendant's "right to a unanimous jury verdict was violated by the jury instruction." *Id.* at 831. (Emphasis added). In contrast, the jury instruction at issue in the present case stated that on or about May 10, 2010, Sykes knowingly possessed and/or transported a handgun. Thus, this case is readily distinguishable from *Kingrey*. There was no error here.

Conclusion

For the foregoing reasons, we reverse and vacate Sykes' conviction of criminal attempt to commit murder and affirm the remainder of his convictions. Accordingly, we remand this case to the trial court for further proceedings consistent with this opinion.

Minton, [**14] C.J.; Abramson, Cunningham, Keller, Noble and Venters, JJ., sitting. All concur.

Berrier v. Bizer

Supreme Court of Kentucky
September 27, 2001, Rendered
1999-SC-0485-DG

Reporter

57 S.W.3d 271 *; 2001 Ky. LEXIS 163 **

SHERI BERRIER (FORMERLY SHERI WAKEFIELD),
APPELLANT v. LEWIS S. BIZER; AND BIZER & BIZER
OPTOMETRISTS, D/B/A BIZER ENTERPRISES, LTD,
A/K/A DR. BIZER'S VISIONWORLD, APPELLEES

COOPER. Lambert, C.J.; Graves, Johnstone, Keller and
Stumbo, JJ., concur. Wintersheimer, J., concurs in result only
without a separate opinion.

Opinion by: COOPER

Subsequent History: [**1] Released for Publication
October 18, 2001.

Prior History: ON REVIEW FROM COURT OF APPEALS.
97-CA-3030. JEFFERSON CIRCUIT COURT NO. 94-CI-
2628.

Disposition: REVERSED AND REMANDED.

Counsel: COUNSEL FOR APPELLANT: Jonathan C.
Hardy, Louisville, KY. Virginia M. O'Leary, Oakland City,
IN.

COUNSEL FOR APPELLEES: Mark A. Smedal, Napier,
Perkins & Smedal, Louisville, KY.

COUNSEL FOR AMICUS CURIAE KENTUCKY
EMPLOYMENT LAWYERS ASSOCIATION: Barbara D.
Bonar, Wolnitzek, Rowekamp, Bender & Bonar, PSC,
Covington, Ky.

Judges: OPINION OF THE COURT BY JUSTICE

Opinion

[*274] OPINION OF THE COURT BY JUSTICE COOPER

Appellant Sheri Berrier (formerly Wakefield) brought this action against Appellees Lewis S. Bizer and Bizer & Bizer Optometrists, d/b/a Bizer Enterprises, Ltd., a/k/a Dr. Bizer's VisionWorld (hereinafter "Bizer")¹ claiming that she was wrongfully discharged from her employment in violation of [KRS 337.990\(14\)](#), see [KRS 446.070](#), and that she was [**2] discriminated against because of her pregnancy in violation of [KRS 344.040\(1\)](#). A Jefferson Circuit Court jury returned a verdict in favor of Bizer and judgment was entered accordingly. The Court of Appeals affirmed. We now reverse for a new trial because of the admission of hearsay evidence in the form of written summaries of interviews that were marked as exhibits and taken to the jury room for consideration during deliberations. Because this case is being remanded for a new trial, we will also address Berrier's claims of error with respect to (1) requests for admissions served on Bizer pursuant to CR 36.01; (2) evidence of alleged post-discharge retaliation; and (3) punitive damages.

[**3] Bizer employs approximately 500 persons at a number

¹Bizer & Bizer Optometrists, d/b/a Bizer Enterprises, Ltd., is a limited partnership that can be sued in its common name. [KRS 362.605](#). Dr. Jerry L. Bizer testified that the original partners were his father and his uncle, both now deceased, and that the business is now owned by him and his cousin, Lynn Bizer. The record does not identify who is/was Lewis S. Bizer.

of optometry stores in the Louisville area. Berrier was employed as a dispenser² at the Preston Highway store from September 21, 1991 until she was discharged without notice on November 22, 1993. Berrier claims she was discharged because (1) her pregnancy required more work absences and rest breaks than her store manager, Barry Gallas, considered appropriate; and (2) she had complained to the Kentucky Labor Cabinet, Division of Employment Standards, that the store's "open" rest break policy violated [KRS 337.365](#) ("no employer shall require any employee to work without a rest period of at least ten (10) minutes during each four (4) hours worked"). A subsequent investigation by the Division of Employment Standards found that Bizer's rest break policy did not violate the statute. Bizer claims Berrier was discharged because of "gross misconduct," specifically, a November 10, 1993 verbal confrontation with Barry Gallas in the presence of employees and customers, characterized by Bizer as "blatant insubordination."

[4] I. HEARSAY: "WITNESS INTERVIEW" SUMMARIES.**

Between June 13 and June 21, 1994, Bizer's attorney interviewed nine employees of Bizer's Preston Highway store with respect to the incidents leading up to Berrier's termination. He made handwritten notes during the interviews and reduced the notes to separate typewritten "witness interview" summaries. He then furnished **[*275]** each witness with a copy of her "witness interview" summary for suggestions or corrections. Most of the summaries were returned with handwritten notes or corrections added. Prior to the November 1997 trial, each witness was again given a copy of her "witness interview" summary to refresh her recollection. So far, so good. However, at the conclusion of the direct examination of each witness at trial, Bizer's attorney produced that witness's "witness interview" summary, had the witness authenticate it, and, over the continuing objection of Berrier's attorneys, introduced it into evidence as a marked exhibit. The jury was permitted to take these exhibits to the jury room for consideration during deliberations. We will not burden this opinion with the content of each "witness interview" summary or the manner in which it was **[**5]** authenticated and introduced into evidence. Typical, however, was the summary of the interview of Michele Logsdon, which provided as follows:

I met this date (June 13, 1994) with Ms. Michele Logsdon. Ms. Logsdon is employed at the Preston Highway street location of Dr. Bizer's Vision. She has

worked for the Company for approximately five years; two and half years at Preston, one and a half years at Clarksville, and one and a half years at the Dixie Highway location. Wakefield [now Berrier] was at the Preston Highway location nearly the entire time that Ms. Logsdon was employed at that store.

Ms. Logsdon recalls that Wakefield was a trouble maker in her dealings around the store. She often made comments to co-workers about Barry Gallas. She didn't seem to like changes in procedures that Gallas had instituted. She advised her co-workers that they would be wasting their time to go to Barry Gallas to discuss business-related problems. In general, Wakefield was a drag on the morale of her co-workers.

Ms. Logsdon was not present during the "blow up" which occurred approximately two weeks prior to Wakefield's termination. However, she heard about the blow up from another frame stylist, **[**6]** Ms. Karchner. The blow up was a common topic of discussion among co-workers of Wakefield. The most common observation was the question of how Wakefield could get away with such behavior.

Concerning the wage and hour investigation, Ms. Logsdon recalled that it occurred at some point during the Fall. It seemed to be common knowledge on the part of everyone around the store that Wakefield had called the Wage and Hour Board. In fact, Ms. Logsdon overheard a comment Wakefield made to Ms. Connie Bruner wherein Wakefield asked if Bruner was going to "burn Barry's a--."

Ms. Logsdon recalled that generally very few people liked Wakefield. It was Ms. Logsdon's opinion that she should have been fired long ago and that she got away with too much insubordinate or other improper activity. For example, the "blow up" occurred in front of both coworkers and patients.

For some reason, Ms. Logsdon observed that Barry Gallas seemed to bend over backwards to accommodate Sheri. Even though Wakefield had animosity for Gallas, no personal animosity to Wakefield was shown by Gallas.

In particular, Ms. Logsdon did not notice any change of attitude by Barry Gallas or anyone else with respect to Wakefield **[**7]** after it was learned that she was pregnant. Ms. Logsdon recalled that Wakefield was granted lots of flexibility regarding prenatal needs. The **[*276]** Company also attempted to accommodate Wakefield's doctor's appointments.

Wakefield's patient care was the subject of occasional patient complaints. One in particular was documented by Ms. Logsdon.

² A dispenser fits patients with eyeglasses and makes minor, comfort adjustments during follow-up visits.

In essence, it appeared to Ms. Logsdon that Wakefield used her pregnancy to avoid the responsibilities of her job at the store. At one point, Wakefield went so far as to say that after she was pregnant she would likely go on AFDC and not return to work.

There are multiple reasons why the admission of this statement and its treatment as a trial exhibit requires reversal for a new trial. First, the statement contains numerous prejudicial assertions and opinions that were not repeated in Logsdon's sworn testimony at trial. Specifically, Logsdon did not testify that Berrier was a "trouble maker," or a "drag on the morale of her co-workers," or that Berrier "should have been fired long ago and that she got away with too much insubordinate or other improper activity." Nor did she testify that Berrier told her that "after she was pregnant she would likely [**8] go on AFDC and not return to work." Those statements were not the testimony of the witness, but statements attributed to the witness by Bizer's attorney. Logsdon was not asked if the contents of the summary were accurate, but only if she wished to change anything in the summary. The proscription in *KRE 611(c)* against asking leading questions on direct examination would have precluded Bizer's attorney from specifically asking Logsdon if Berrier was a "trouble maker," "a drag on morale," or "insubordinate," or otherwise putting words in her mouth. By introducing the "witness interview" summary, he accomplished much more. Not only was he able to introduce Logsdon's derogatory opinions of Berrier's workplace conduct without eliciting them directly from the witness, he was able to frame the evidence in his own words, not the witness's.

Even if the "witness interview" summary had been prepared by Logsdon, herself, it would have been hearsay, since it was an out-of-court statement offered to prove the truth of the matter asserted. *KRE 801(c)*; *Fields v. Commonwealth, Ky., 12 S.W.3d 275, 279 (2000)*. A hearsay statement of a non-party witness is admissible only if the statement [**9] is:

- (1) Inconsistent with the declarant's testimony;
- (2) Consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; or
- (3) One of identification of a person made after perceiving the person.

KRE 801A(a). Logsdon did not testify inconsistently with the contents of the "witness interview" summary and her testimony did not pertain to identification. Nor was there any express or implied charge that her trial testimony was recently fabricated or the product of improper influence or motive. In fact, the summary was introduced during the direct

examination of Logsdon, not in rebuttal.

Bizer claims the summary was a "recorded recollection," *KRE 803(5)*, offered to refresh Logsdon's memory. *KRE 612*. This argument confuses the concepts of "past recollection recorded" and "present memory refreshed." *KRE 612* applies to the latter and permits the writing to be introduced only by the adverse party.

A writing used to refresh memory does not, through that process, acquire any status as evidence. It may not be introduced as such by the party using it to refresh memory [**10] and, as stated in one opinion, it "cannot be read under the [**277] pretext of refreshing the recollection of the witness."

R. Lawson, *The Kentucky Evidence Law Handbook* § 3.20, at 162 (3d ed. Michie 1993) (quoting *Payne v. Zapp, Ky., 431 S.W.2d 890, 892 (1968)*). The resulting evidence is the product of the refreshed memory, not the writing used to refresh it; thus, the writing is not introduced into evidence and there is no involvement of the hearsay rule. Lawson, *supra*, § 8.85, at 500.

KRE 803(5) applies when the witness is unable to testify from present memory even after being exposed to the recorded recollection. In that instance, the recorded recollection is admissible, but only after verification of its accuracy. Lawson, *supra*, § 8.85, at 500. Even if admitted, "the memorandum or record may be read into evidence but may not be received as an exhibit unless offered by an adverse party." *KRE 803(5)*. Regardless, all of the witnesses testified from present memory, thus, there was no need for the admission of any recorded recollections.

The error in this case was compounded when the jury was permitted to take the "witness interview" summaries to [**11] the jury room for consideration during deliberations. Generally, a jury is not permitted to take even a witness's sworn deposition to the jury room. *Young v. State Farm Mut. Auto. Ins. Co., Ky., 975 S.W.2d 98, 99 (1998)*; *Louisville, H. & St. L. Ry. Co. v. Morgan, 110 Ky. 740, 62 S.W. 736, 737 (1901)*; *Thompson v. Walker, Ky. App., 565 S.W.2d 172, 174 (1978)*. The primary reason for the rule is that jurors may give undue weight to testimony contained in such a deposition and not accord adequate consideration to controverting testimony received from live witnesses. 75B Am.Jur.2d, *Trial* § 1671, at 454 (1992).

Because jurors may give undue weight to the testimony contained within a deposition which they take with them and may not accord adequate consideration to controverting testimony received from live witnesses, it

is the universal rule that depositions may not be reviewed by a jury on an unsupervised basis.

People v. Montoya, 773 P.2d 623, 625 (Cob. Ct. App. 1989); see also *Young v. State*, 645 So. 2d 965, 966-67 (Fla. 1994); cf. *Tibbs v. Tibbs*, 257 Ga. 370, 359 S.E.2d 674, 675 (Ga. 1987). [**12] It is even worse to permit the jury to take with them to the jury room an unsworn statement of a witness, e.g., *State v. Poe*, 119 N.C. App. 266, 458 S.E.2d 242, 248 (N.C. Ct. App. 1995), much less a summary of such prepared by the adverse party's attorney, that not only bolsters the witness's trial testimony but also contains facts and opinions to which the witness did not testify. For a similar case involving audiotapes of witness interviews, see *Mills v. Commonwealth, Ky.*, 44 S.W.3d 366, 371-72 (2001). Bizer's claim of "harmless error" is belied by the prejudicial content of Logsdon's "witness interview" summary and the fact that similar summaries were introduced during Bizer's direct examinations of eight other witnesses.

II. REQUESTS FOR ADMISSIONS.

It would be an understatement to describe this litigation as "discovery rich." The clerk's record consists of 1,310 pages, much of it devoted to answers to interrogatories, requests for production of documents and for entry upon land, requests for admissions, and motions to compel responses to same. Early on, the trial judge granted Berrier's motion to exceed the discovery limits established in CR [**13] 33.01(3) (30 interrogatories and 30 requests for admission), but cautioned that the limits should not be exceeded by "too much." Berrier's first discovery request consisted of 63 interrogatories. The trial was scheduled [**278] for March 19, 1996. On or about January 23 - 24, 1996, Berrier served Bizer with 24 additional interrogatories, 49 requests for production of documents, 73 requests for admission, a demand to inspect Berrier's former workplace, and a demand to inspect the personnel files of eighteen former employees. The first issue regarding the requests for admission pertains to Bizer's failure to timely respond to the 73 requests. Civil Rule 36.01 (2) provides, *inter alia*:

The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.... (Emphasis added.)

On February 19, 1996, Bizer moved for a ten-day extension of time to serve its responses. Berrier agreed to an extension until March 4, 1996 provided the trial was continued to a later date. Bizer [**14] agreed to the continuance. When the responses were not served by March 6, 1996, Berrier filed a

motion that the requests be deemed admitted. On March 7, 1996, Bizer served the responses, admitting some of the requests and denying others. Some of the responses included explanations of the reasons for the admissions or denials. The trial judge overruled Berrier's motion that all 73 requests be deemed admitted.

Civil Rule 36.01(2) clearly vests the trial judge with discretion to shorten or lengthen the time limit for responding to requests for admission. *Rose v. Rawlins, Ky.*, 358 S.W.2d 538, 540 (1962); *Naive v. Jones, Ky.*, 353 S.W.2d 365, 367 (1961). The trial judge did not abuse his discretion by retrospectively approving the additional three-day extension of time for Bizer to respond to Berrier's requests.

The second related issue pertains to Berrier's motion to read to the jury Bizer's responses to the requests that were, in fact, admitted. The trial judge ruled that the responses could only be used to impeach Bizer's witnesses in the event they testified contrary to the matters admitted. Civil Rule 36.02 provides, *inter alia*, that "any matter [**15] admitted under Rule 36 is conclusively established. . . ." (Emphasis added.) "Conclusively established" means that the adverse party is not required to prove the matter admitted and the admitting party cannot introduce evidence to the contrary. *Lewis v. Kenady, Ky.*, 894 S.W.2d 619, 621 (1994); *Lyons v. Sponcil, Ky.*, 343 S.W.2d 836, 837 (1961); *Sims Motor Transp. Lines, Inc. v. Foster, Ky.*, 293 S.W.2d 226, 229 (1956); see also *American Auto. Ass'n v. AAA Legal Clinic*, 930 F.2d 1117, 1120 (5th Cir. 1991); 999 v. *CIT Corp.*, 776 F.2d 866, 869-70 (9th Cir. 1985). Since the admitting party is precluded from introducing evidence to the contrary, there can be no instance in which the matter admitted would be used for impeachment purposes. The issue is whether the admissions themselves are admissible as substantive evidence.

Civil Rules 32.01 and 33.02(1) provide that depositions and interrogatories can be used as evidence at trial, subject to the rules of evidence. Civil Rule 36 has no comparable provision, though at least one respected authority asserts that "admissions may be introduced as evidence. [**16] " K. Philipps, 6 *Kentucky Practice: Rules of Civil Procedure Annotated* Rule 36.01, Comment 10, at 665 (5th ed. West 1995) (citing *Mid-Southern Toyota, Ltd. v. Bug's Imports, Inc., Ky.*, 453 S.W.2d 544 (1970)). *Mid-Southern Toyota*, however, only says that "[in the case of a jury trial, admissions and answers to interrogatories would not be evidence unless introduced as such" *Id. at 550* (emphasis in original). [**279] The issue there was whether the trial judge in a bench trial could consider responses to requests for admission that were in the clerk's record but had not been formally introduced as evidence at trial. The statement with respect to the introduction of admissions at a jury trial was

dicta and provides no guidance with respect to whether or how the admissions are used as evidence.

Professor Lawson instructs that matters admitted under CR 36.01 are "judicial admissions," as opposed to "evidentiary admissions," and that the latter authorizes the introduction of evidence while the former eliminates the need for evidence. Lawson, *supra*, § 8.15, at 385.

A judicial admission, on the other hand, is a *formal act* of **[**17]** a party (committed during the course of a judicial proceeding) that has the effect of removing a fact or issue from the field of dispute; it is conclusive against the party and may be the underlying basis for a summary judgment, directed verdict, or judgment notwithstanding the verdict.

Id. at 386 (emphasis in original). Finally, it is stated in *Sutherland v. Davis*, 286 Ky. 743, 151 S.W.2d 1021, 1024 (1941) that a natural consequence of a judicial admission is that it "allows the judge to direct the jury to accept the admission as conclusive of the disputed fact." However, neither Professor Lawson nor *Sutherland* addresses whether an admission can be read to the jury as substantive evidence. Thus, we turn our attention to other jurisdictions.

In the absence of a Fifth Amendment issue,³ it appears that other jurisdictions have routinely permitted a party to read as evidence the other party's responses to requests for admissions. E.g., *Tapia v. City of Greenwood*, 965 F.2d 336, 339 (7th Cir. 1992); *Schafer v. Barrier Island Station, Inc.*, 946 F.2d 1075, 1080 (4th Cir. 1991); *Hahn v. Atlantic Richfield Co.*, 625 F.2d 1095, 1097-98 (3d Cir. 1980), **[**18]** *cert. denied*, 450 U.S. 981, 67 L. Ed. 2d 816, 101 S. Ct. 1516 (1981); *Rufo v. Simpson*, 86 Cal. App. 4th 573, 103 Cal. Rptr. 2d 492, 518 (Cal. Ct. App. 2001); *Fischer v. Johns-Manville Corp.*, 103 N.J. 643, 512 A.2d 466, 469 (N.J. 1986); *Parkway Hospital, Inc. v. Lee*, 946 S.W.2d 580, 587 (Tex. Ct.App. 1997); *Lockheed Info. Mgt. Sys. Co. v. Maximus, Inc.*, 259 Va. 92, 524 S.E.2d 420, 432 (Va. 2000). In *Hahn v. Atlantic Richfield Co.*, *supra*, a products liability case, the plaintiff was unable to procure the testimony of witnesses to prove the crucial fact that a sale had occurred, and his entire evidence

on that issue consisted of reading to the jury the defendant's answers to interrogatories and responses to requests for admission. 625 F.2d at 1097-98. And it was held in *Morgan v. Broderick and Bascom Rope Co.*, 351 F.2d 24, 27-28 (7th Cir. 1965), *cert. denied*, 383 U.S. 926, 15 L. Ed. 2d 846, 86 S. Ct. 930 (1966), that the trial judge committed reversible error by refusing to permit the defendant's responses to requests for admission to be read **[**19]** to the jury as substantive evidence.

The theory and purpose of Rule 36(a) [CR 36.01] is to provide an effective method whereby the parties to an action may interrogate each other to ascertain before trial what facts are in dispute between them. The intentment of that rule is that parties to litigation should not consume time at trial, or be put to **[*280]** expense in making proof of evidentiary, or ultimate facts appearing in a case that are not substantially contested.

Jones v. Boyd Truck Lines, 11 F.R.D. 67, 69 (W.D. Mo. 1951).

[20]** We find these authorities persuasive and conclude that Berrier should have been allowed to introduce Bizer's responses to her requests for admission as substantive evidence at trial, subject to appropriate objections pursuant to the Kentucky Rules of Evidence. Because we are reversing this case for a new trial on other grounds, we need not decide whether this error, standing alone, would have been so prejudicial as to require reversal. *KRE 103(a)*. Berrier does not claim that she was unable to otherwise prove the facts admitted in Bizer's responses, or that Bizer introduced evidence contrary to the admissions. On the other hand, proof of an admitted fact by witness testimony, which is always subject to disbelief and, thus, not conclusive of an issue, is an inadequate substitute for informing the jury that the issue has been removed from consideration by the adverse party's judicial admission. This is a matter of trial strategy best left to the good judgment of the party in whose favor the admission operates.

The third and final related issue is Berrier's assertion that Bizer's explanations of the admissions should be extracted and the admissions read to the jury without the "extraneous **[**21]** language."

³ Compare *Kramer v. Levitt*, 79 Md. App. 575, 558 A.2d 760, 766-67 (Md. Ct. Sp. App. 1989) and *Wilson v. Misko*, 244 Neb. 526, 508 N.W.2d 238, 253 (Neb. 1993) (judge to advise jury that responding party exercised his Fifth Amendment privilege in declining to respond) with *Gabriel v. Columbia Nat'l Bank*, 228 Ill. App. 3d 240, 592 N.E.2d 556, 562, 170 Ill. Dec. 120 (Ill. App. Ct. 1992) (the jury cannot be so advised).

A party making response to requests for admissions of fact under Rule 36(a) [CR 36.01] is not deprived of the right to explain, clarify, or elucidate concerning the subject matter thereof. He may do so either in response made to the requests or by the examination or cross-examination of witnesses produced at trial.

Knowlton v. Atchison, T. & S.F. Ry. Co., 11 F.R.D. 62, 66 (W.D. Mo. 1951). Any other interpretation would permit the requesting party to require the responding party to admit or deny "half-truths." *Id.* Like a witness on cross-examination, a party responding to a request for admission is entitled to explain his/her answer.

III. EVIDENCE OF POST-DISCHARGE RETALIATION.

The trial judge excluded Berrier's proffered evidence that Bizer unsuccessfully contested her claim for unemployment compensation, delayed payment of her accumulated vacation pay, and ordered her off the premises of the Preston Highway store on May 19, 1994, some six months after her discharge and one day prior to the filing of this action. The trial judge ruled, however, that either party could use the transcript of the evidence adduced at the unemployment [**22] compensation hearing for impeachment purposes.

1. Unemployment compensation claim.

In Board of Education of Covington v. Gray, Ky. App., 806 S.W.2d 400 (1991), the Court of Appeals held that the findings and conclusions reached in unemployment compensation proceedings are not res judicata and do not give rise to a claim of offensive collateral estoppel with respect to subsequent judicial proceedings arising out of the same incident. *Id.* at 403. We agree. The Restatement (Second) of Judgments § 83(3) (A.L.I. 1982) provides that "an adjudicative determination by an administrative tribunal does not preclude relitigation in another tribunal of the same or a related claim based on the same transaction if the scheme of remedies permits assertion of the second claim notwithstanding the adjudication of the first claim." The Commentary to Section 83(3) explains that the principle applies whether the issue is claim preclusion (res judicata) [*281] or issue preclusion (collateral estoppel). *Id.*, Comment a.

Furthermore, the issue before the unemployment commission was not whether Berrier was wrongfully discharged in violation of KRS 337.999(14)(a), [**23] but only whether she was involuntarily terminated without good cause. KRS 341.370. Thus, there could be no claim of res judicata because there was no identity of issues. Newman v. Newman, Ky., 451 S.W.2d 417, 419 (1970); Williams v. Central Concrete, Inc., Ky. App., 599 S.W.2d 460, 461 (1979). Berrier asserts, however, that the unemployment referee's decision collaterally estopped Bizer from asserting that she was terminated for cause. Even if we were inclined (and we are not) to reject the principle enunciated in the Commentary to the Restatement (Second) of Judgments § 83(3), *supra*, collateral estoppel applies only if the party against whom it is sought to be applied had a realistically full and fair

opportunity to litigate the issue, Sedley v. City of West Buechel, Ky., 461 S.W.2d 556, 559 (1971), and if principles of justice and fairness would be served by its application. City of Covington v. Board of Trustees of the Policemen's and Firefighters' Ret. Fund, Ky., 903 S.W.2d 517, 522 (1995). As pointed out in Board of Education of Covington v. Gray, supra, the informal [**24] procedures utilized in unemployment compensation proceedings do not afford "any party a full, true opportunity to litigate issues, or even encourage any meaningful participation in the process." 806 S.W.2d at 403. Bizer was not even represented by counsel at the referee's hearing on Berrier's claim for unemployment compensation.

An unemployment compensation hearing is designed to adjudicate promptly a narrow issue of law, and to grant a limited remedy to an unemployed worker. The use of an unemployment compensation decision to bind the parties in a subsequent ... action ... would be wholly inappropriate, and would frustrate the underlying purpose of ... collateral estoppel. If findings entered at an unemployment compensation hearing may be used to establish the employer's liability ... in a subsequent lawsuit, the employer would have a strong incentive to use its superior resources consistently to oppose a discharged employee's claim for unemployment benefits. Issues presented. . . will be contested strongly, and the hearings will become lengthy and more detailed, and will no longer be suited to the prompt resolution of unemployment compensation claims. Judicial economy [**25] would be frustrated, rather than improved, as many unemployment compensation hearings become forums in which claims for unlawful or unconstitutional discharge are tried.

Id. (quoting Salida School District R-32-J v. Morrison, 732 P.2d 1160, 1165 (Colo. 1987)).

2. Vacation pay.

KRS 337.010(1)(c) includes "vested vacation pay" within the definition of "wages" and KRS 337.055 requires a terminated employee to be paid in full all wages earned by him/her not later than fourteen days following the date of dismissal. Bizer did not pay Berrier for her accumulated vacation pay until shortly after the expiration of the time for appeal from the decision of the unemployment referee.

No Kentucky statute requires an employer to compensate an employee for accumulated vacation time. OAG 91-73. Nor is there an inherent right either to a vacation or to payment for unused vacation time. Sweet v. Stormont Reg. Med. Ctr., 231 Kan. 604, 647 P.2d 1274, 1280 (Kan. 1982). Vacation pay is

purely a matter of contract between employer and employee *Id.*; [Jackson v. Minidoka Irrigation](#) [[**282](#)] *Dist.*, [98 Idaho 330, 563 P.2d 54, 59 \(Idaho 1977\)](#); [[**26](#)] [Wheeler v. Mission Elec. & Plumb. Supply, Inc.](#), [267 Ore. 209, 515 P.2d 1323, 1324 \(Ore. 1973\)](#); see also [Shannon v. Huntley's Jiffy Stores, Inc.](#), [174 Ga. App. 125, 329 S.E.2d 208, 210 \(Ga. Ct. App. 1985\)](#); [Rose Acre Farms, Inc. v. Cone](#), [492 N.E.2d 61, 67 \(Ind. Ct. App. 1986\)](#). Bizer's personnel policy manual, introduced as Defendant's Exhibit 47, contains the following provisions with respect to accumulated vacation pay:

If a staffmember is terminated by Dr. Bizer's VisionWorld for cause under circumstances which would disqualify the staffmember from unemployment benefits, the staffmember shall not be eligible for any payment of vacation benefits.

Any person terminated for gross misconduct will not be eligible for any accrued benefits including vacation benefits.

Whether these provisions mean that vacation pay does not vest until the moment of termination, or that vacation pay is subject to divestiture in the event the employee is terminated under either of the above circumstances, OAG 91-73, *supra*, the result is the same. Bizer was not required to pay Berrier her accumulated vacation pay at least until the conclusion of [[**27](#)] her claim for unemployment benefits.

3. Exclusion from business premises.

Berrier's only stated purpose for visiting the Preston Highway store on May 14, 1994, was to visit with her former co-workers. Bizer was within its rights to terminate what it regarded as an unauthorized disruption during business hours.

The trial judge correctly concluded that none of the three described post-discharge incidents tended to prove either of the two causes of action asserted in Berrier's complaint and amended complaint, i.e., pregnancy discrimination and/or wrongful discharge for reporting an alleged wage and hour violation. Bizer had a legal right to contest Berrier's unemployment compensation claim and a contractual right to withhold payment of her vacation pay pending the outcome of that contest. Bizer also had the right to preclude Berrier from loitering on its premises during business hours. Even if the proffered evidence tended to prove animus by Bizer against Berrier, we are unable to conclude that the trial judge abused his discretion in determining that the probative value of this evidence was substantially outweighed by its prejudicial effect. *KRE 403*; [Commonwealth v. English, Ky.](#), [993 S.W.2d 941, 945 \(1999\)](#). [[**28](#)]

Berrier's reliance on [Robinson v. Shell Oil Co.](#), [519 U.S. 337, 117 S. Ct. 843, 136 L. Ed. 2d 808 \(1997\)](#), is misplaced. There, the plaintiff had filed a claim before the Equal Employment

Opportunity Commission (EEOC) alleging that his discharge from his employment was racially motivated. During the pendency of the EEOC proceedings, the employer gave a negative reference to a prospective employer with respect to the employee. The employee then filed a separate action alleging retaliatory discrimination. *Id.* at [339-40, 117 S. Ct. at 845](#). The Supreme Court held that [42 U.S.C. § 2000e-3\(a\)](#) specifically authorizes a cause of action for post-discharge retaliation because of filing or participating in an EEOC claim. The statute provides:

It shall be an unlawful employment practice for an employer to discriminate against any of his employees ... because he has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding or hearing under this [Equal Employment Opportunities subchapter].

The Supreme Court interpreted "employees" to include "former employees" and Berrier asks us to give [[**29](#)] the same interpretation [[**283](#)] to the term "employee" as used in [KRS 337.990\(14\)](#). "Employee" is defined in [KRS 337.010\(2\)\(a\)](#) as "any person employed by or suffered or permitted to work for an employer." Even if we were inclined to judicially expand that definition to include former employees, such would not benefit Berrier, because she has not alleged a separate cause of action for post-discharge retaliation. Compare [Kroger Co. v. Willgruber, Ky.](#), [920 S.W.2d 61 \(1996\)](#), wherein the plaintiff brought separate causes of action for breach of his employment contract and intentional infliction of emotional distress, the latter premised upon events occurring after the termination of his employment. *Id.* at [62-63](#). Berrier has only alleged causes of action for wrongful discharge and pregnancy discrimination occurring prior to and at the time of her termination.

IV. PUNITIVE DAMAGES.

The trial judge refused to instruct the jury on punitive damages. Generally, punitive damages are available in an action involving the termination of an at-will employee in violation of public policy. [Simpson County Steeplechase Ass'n v. Roberts, Ky. App.](#), [898 S.W.2d 523, 526 \(1995\)](#); [[**30](#)] [82 Am.Jur.2d Wrongful Discharge](#), § 261 (1992); F. Dougherty, Annotation, [Damages Recoverable for Wrongful Discharge of At-Will Employee](#), [44 A.L.R.4th 1131, 1155-59 \(1986\)](#). Most of the cases collected in the A.L.R.4th annotation are discussed in [Simpson County Steeplechase Ass'n v. Roberts, supra](#), at [526](#). Especially pertinent is [McClung v. Marion County Commission](#), [178 W. Va. 444, 360 S.E.2d 221, 229 \(W.Va. 1987\)](#), in which punitive damages were authorized where the employee was discharged in retaliation for filing an action for overtime wages. Nevertheless, there is no party remaining in this case against

whom punitive damages can be assessed. [KRS 411.184\(3\)](#) provides:

In no case shall punitive damages be assessed against a principal or employer for the act of an agent or employee unless such principal or employer authorized or ratified or should have anticipated the conduct in question.

Kentucky is the only state with a statute that so broadly limits vicarious liability for punitive damages. Other states with similar statutes generally follow the Restatement approach *i.e.*:

Punitive **[**31]** damages can properly be awarded against a master or other principal because of an act by an agent if, but only if:

(a) the principal authorized the doing and the manner of the act, or

(b) the agent was unfit and the principal was reckless in employing him, or

(c) *the agent was employed in a managerial capacity and was acting in the scope of employment,* or

(d) the principal or a managerial agent of the principal ratified or approved the act.

[Restatement \(Second\) of Agency § 217C](#) (A.L.I. 1957) (emphasis added). Minnesota's statute follows the Restatement model almost verbatim. [Minn. Stat. § 549.20](#). Florida's statute imposes vicarious liability for punitive damages for acts condoned, ratified, or consented to by persons acting in a managerial capacity. [Fla. Stat. Ann. § 768.72\(3\)\(b\)](#). Alabama's statute does not specify that an employer is vicariously liable for punitive damages because of the acts of one employed in a managerial capacity, but does provide for vicarious liability if "the acts of the agent, servant or employee were calculated to or did benefit the principal, employer or other master." [Ala. Code § 6-11-27 \(a\)](#).

Although [KRS 411.184\(1\)\(c\)](#) **[**32]** was declared unconstitutional in [Williams v. Wilson, Ky., 972 S.W.2d 260 \(1998\)](#), the opinion **[*284]** specifically did not purport to affect other provisions of the statute. [Id. at 269](#). Berrier has not challenged the constitutionality of [KRS 411.184\(3\)](#).

The identity and status of Appellee Lewis S. Bizer is unknown. See note 1, *supra*. Bizer & Bizer Optometrists d/b/a Bizer Enterprises, Ltd., is a limited partnership in which Dr. Jerry L. Bizer and his cousin, Lynn Bizer, are the partners. Dr. Bizer testified that the day-to-day operations of the business are managed by David Carrig, Bizer's vice-president for operations, that he (Dr. Bizer) is not involved in personnel decisions, and that he did not even know of Berrier's termination until this action was filed. He professed to be unaware of any other instance in which a former employee

claimed to have been discharged because of having made a wage and hour complaint or because of pregnancy. (David Carrig introduced a list of ninety-nine employees who were pregnant during the approximate time period of Berrier's employment; only Berrier was involuntarily terminated.) Carrig testified **[**33]** that he terminated Berrier upon the recommendations of Barry Gallas, the Preston Highway store manager, and Michael Super, Bizer's director of human relations; and that he did not consult with Dr. Bizer about that decision. Berrier did not contest any of this testimony. Carrig testified twice during the trial and, with respect to this issue, Berrier only asked him whether he was acting as Bizer's agent when he made the decision to terminate Berrier.

Berrier initially sued not only Bizer, but also Gallas, Super and Carrig. At the conclusion of her case-in-chief, Berrier dismissed with prejudice her claims against the three employees. Thus, at the conclusion of all the evidence, there was only a claim against the employer premised upon allegations of misconduct on the part of employees, and no evidence that the employer authorized or ratified the alleged misconduct or should have anticipated the conduct in question. Under that state of the facts, the trial judge correctly declined to instruct the jury on punitive damages.

Since [KRS 411.184\(3\)](#) precludes the imposition of punitive damages in this case, we do not address whether the language in [KRS 344.450](#) **[**34]** that authorizes a civil cause of action in circuit court "to recover actual damages sustained" for sexual discrimination limits recovery under that statutory cause of action only to compensatory damages.

Accordingly, the decision of the Court of Appeals is reversed and this action is remanded to the Jefferson Circuit Court for a new trial.

Lambert, C.J.; Graves, Johnstone, Keller and Stumbo, JJ., concur. Wintersheimer, J., concurs in result only without a separate opinion.

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CR 45.03 Service; notice

[Currentness](#)

(1) A subpoena may be served in any manner that a summons might be served. It may also be served by any person over eighteen years of age, and the affidavit endorsed thereon by such person shall be proof of service or the witnesses may acknowledge service in writing on the subpoena. Service of the subpoena shall be made by delivering or offering to deliver a copy thereof to the person to whom it is directed. A subpoena may be served at any place within this state. Proof of service shall be made by filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(2) Copies of all documents received in response to the subpoena shall be forthwith furnished to all other parties to the action, except on motion and for good cause shown. Any other tangible evidence received in response to the subpoena shall be forthwith made available for inspection by all other parties to the action.

(3) Before any subpoena is served, notice of that subpoena, except those issued for trial, shall be served on each party and any person or entity whose information is being requested.

Credits

HISTORY: Amended by Order 2012-10, eff. 1-1-13; prior amendments eff. 4-1-09 (Order 2009-01), eff. 11-15-91 (Order 91-2); adopted eff. 7-1-53

Rules Civ. Proc., Rule 45.03, KY ST RCP Rule 45.03
Current with amendments received through May 1, 2020.

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

FINAL PREHEARING ORDER

Following completion of the July 27, 2020, Prehearing Conference with counsel, the Judicial Conduct Commission (“Commission”) enters this final pre-hearing order in this case.

IT IS ORDERED AS FOLLOWS:

1. That this case is assigned for a hearing on August 10, 2020 at 8:30 A.M. which is set for five (5) days, maximum. Both sides understand the matters will be tried to completion within that time frame. All current COVID-19 restrictions as required by the Kentucky Supreme Court will be followed. Supreme Court of Kentucky Amended Order 2020-55 is attached for reference. Counsel shall be responsible to inform their witnesses and their legal team of all pertinent requirements and to ensure compliance.
2. As requested by counsel, a final prehearing conference shall take place on August 5, 2020, at 3:00 p.m. Eastern Time via Zoom. The Commission has provided the Zoom meeting link to counsel.
3. Judge Gentry shall have until close of business on Friday, July 31, 2020, to file any objections to the Commission exhibits. Such objections shall state with specificity the bases for the objections and shall refer to specific authority with copies of such authorities attached. The Commission shall have until close of business on August 4, 2020, to file a response to the objections. The Commission intends to resolve any issues with exhibits before the hearing.
4. Prior to the start of the hearing on August 10, 2020, counsel shall provide to the Commission ten (10) binders with copies of all exhibits to be presented during the case in chief for each side – one (1) for each Commission member and one (1) original for the record. Exhibits shall be marked with the case number and appropriate adhesive labels prior to the hearing. Numbered tabs shall be used to separate the individual exhibits. The actual number of the exhibit will be entered on the label at the time of introduction into evidence and assignment of number for the official record copy shall be controlled by the clerk. All information required to be kept confidential by law and Civil Rule 7.3 shall be redacted from all exhibits, however, counsel may use unredacted copies to present to witnesses during their testimony to assist them in identifying specific cases, and any such unredacted copy shall be filed under seal. Pursuant to Rule 98(2)(c), a photograph must be taken of any exhibit, other than documents, to be introduced at the hearing. Said photograph will be

included in the Commission file and the exhibit will be returned to the party. Rebuttal exhibits shall be provided in a similar manner as soon as practicable.

5. Counsel shall provide the Commission, on or before close of business on August 4, 2020, with the names of any other attorney, paralegal or staff expected to attend and assist them during the hearing. Otherwise, based upon the COVID-19 restrictions, access to the courthouse is only being permitted to persons based upon a prepared list of names provided in advance.
6. Failure on the part of any attorney/party to comply with any requirements outlined hereinabove may result in exclusion of the evidence sought to be introduced at the hearing, waiver of objection, or any other sanctions against the offending party as deemed appropriate by the Commission.


KENTUCKY JUDICIAL CONDUCT COMMISSION


R. MICHAEL SULLIVAN, CHAIR

Date: 7/29/2020

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her at her email address and to counsel Jeffrey A. Lawson, 524 Greenup Street, Covington, KY 41011, lawsonjeff@gmail.com; F. Todd Lewis, Lewis Law, PLLC, 111 W. Washington Street, Suite 400, Louisville, KY 40202, todd.lewis@toddlewislaw.com; and Bryan Beaman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeaman@sturgillturner.com this 29th day of July, 2020.


JIMMY SHAFFER,
EXECUTIVE SECRETARY

Supreme Court of Kentucky

2020-55

AMENDED ORDER

IN RE: KENTUCKY COURT OF JUSTICE RESPONSE TO COVID-19 EMERGENCY – HEALTH AND SAFETY REQUIREMENTS

In addition to those rights provided by the U.S. Constitution, Section 14 of the Kentucky Constitution guarantees the citizens of this Commonwealth that “[a]ll courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.”

In light of the declared federal and state emergencies and considering the need to balance access to the courts and the constitutional rights guaranteed to the people of this Commonwealth with the health and safety of court employees, elected officials, and the public during the COVID-19 emergency, the Supreme Court, under Section 116 of the Constitution and Supreme Court Rule 1.010, hereby orders that Administrative Order 2020-43 and Administrative Order 2020-47 are replaced in their entirety and the following measures shall be implemented effective August 1, 2020:

A. COURT FACILITIES

1. Entrance to court facilities is limited to:
 - a. Attorneys, parties, witnesses, jurors, domestic violence advocates and other persons scheduled or approved to appear at in-person hearings;
 - b. Individuals seeking emergency protective orders, interpersonal protective orders, emergency custody orders, orders under KRS 222.430 et seq. (Casey’s law), and involuntary commitments under KRS Chapter 202A and KRS Chapter 645;
 - c. Individuals attending judicial sales;
 - d. Individuals who need access to a physical case file or a public access terminal and have scheduled an appointment with the local Office of Circuit Court Clerk;

- e. Individuals who have scheduled an appointment for driver's license services with the local Office of Circuit Court Clerk; and
 - f. Individuals who are reporting for a scheduled drug test.
2. Signage shall be posted outside of all entry points of all KCOJ court facilities, offices, or other locations where court proceedings are being held, advising the public, attorneys, and KCOJ officials and employees that they shall not enter or remain on the premises unless they are wearing a protective facial covering such as a mask, scarf, bandana, or other cloth which covers the nose and mouth. If a member of the public seeks entry but does not have an appropriate facial covering and their business cannot be accomplished remotely, then a facial covering will be provided. Further, individuals shall not enter the building if they have:
- a. Have any symptoms of COVID-19, including cough; shortness of breath or difficulty breathing; fever; chills; fatigue; muscle pain; headache; congestion or runny nose; nausea or vomiting; diarrhea; sore throat; or new loss of taste or smell;
 - b. Been instructed to self-quarantine by any doctor, hospital, or health agency; or
 - c. Been diagnosed with COVID-19 within the past 14 days or had contact with anyone who has been diagnosed with COVID-19 within the past 14 days.
3. A member of the public who is not granted access to a court facility, courtroom, or court office is not relieved of his or her obligation to make payment or report to or appear before the court. He or she will be provided a phone number or email address and must make arrangements to reschedule, appear remotely, or otherwise complete his or her business to avoid possible adverse action being taken by the court.
4. Members of the public are prohibited from bringing non-transparent purses or other similarly enclosed bags into any court facility that does not have an X-ray machine, unless items in the bag are medically necessary. Any items that are necessary for the individual's business before the court should be carried by hand or brought in an open container capable of visual inspection.

B. COURTS

1. Courts shall hear civil and criminal matters using available telephonic and video technology to conduct all proceedings remotely. Remote proceedings shall be scheduled through the judge's office.
2. If a judge determines in his or her discretion that a matter requires in-person attendance, the following health and safety precautions must be followed:
 - a. Courtroom attendance for the matter being heard must be limited to attorneys, parties, witnesses, and other necessary persons as determined by the judge.
 - b. **Judges are responsible for ensuring that appropriate social distancing is observed in their courtroom.** Courtroom attendees must be separated by a minimum of six feet at all times.
 - c. Except as provided in Section E(1) of this Order, all persons in the courtroom, including parties, litigants, members of the public, jurors, attorneys, court employees, and bailiffs, must wear a protective facial covering over their mouth and nose while in the courtroom. **Judges are responsible for enforcing the use of facial coverings in their courtroom.**
 - d. Individuals who have symptoms of COVID-19 as identified by the Centers for Disease Control and Prevention ("CDC") (cough, shortness of breath or difficulty breathing, fever, chills, muscle pain, sore throat, congestion or runny nose, headache, nausea or vomiting, diarrhea, or new loss of taste or smell); are currently self-quarantined as directed by any doctor, hospital, or health agency; or have been diagnosed with or have had contact with anyone who has been diagnosed with COVID-19 within the past 14 days, or who fall into a high-risk category¹ must be allowed to participate remotely.
 - e. Access to view any courtroom proceeding that is not otherwise confidential must be provided to members of the

¹ According to the CDC, high-risk individuals include: people 65 years and older; people who live in a nursing home or long-term care facility; people of all ages with underlying medical conditions, particularly if not well controlled, including people with chronic lung disease or moderate to severe asthma; people who have serious heart conditions; people who are immunocompromised; people with severe obesity; people with diabetes; people with chronic kidney disease undergoing dialysis; and people with liver disease.

public and media. Access may be provided by live audio or video or by digital recording.

- f. The proceeding must be scheduled so that it reduces the number of individuals entering, exiting, or gathering at a certain time.
 - g. At the end of the proceeding or after each use, the judge shall ensure the microphones, tables, and other exposed surfaces are thoroughly cleaned and disinfected as provided by the KCOJ COVID-19 Health and Safety Requirements.
3. Any court order, summons, or subpoena requiring the remote attendance of a party or his or her counsel shall have the same effect as if requiring attendance in person, and failure to appear remotely as ordered by a court may be grounds for sanctions.
 4. Consistent with social distancing and other health and safety guidelines, attorneys are expected to continue to prepare and litigate cases during the effective dates of this Order, including providing discovery, negotiating possible resolutions, filing motions, and conducting investigations, to minimize delay in bringing cases to trial or resolution.
 5. Nothing in this Order should be used to delay or effectively stay a proceeding in contravention of the rights guaranteed to the people of the Commonwealth in Section 14 of the Kentucky Constitution. All parties are expected to use available technology to further the resolution of all cases.

C. OFFICE OF CIRCUIT COURT CLERK

1. The local Office of Circuit Court Clerk will only be open to the public from 9:00 a.m. to one hour before normal closing time, local prevailing time, except for those individuals seeking emergency petitions under Section 5(a)(ii) of this Order.
2. All filings are encouraged to be eFiled but may also be mailed or conventionally filed using a drop-box provided outside the judicial facility.
3. Payments for court costs, fines, fees, and restitution can be made by money order mailed to the Office of Circuit Court Clerk or by cash or credit card by calling the local Office of Circuit Court Clerk. Pre-payable citations can be paid online through ePay at kycourts.gov.

4. Individuals posting bond should contact the local Office of Circuit Court Clerk for further instruction.
5. As provided in Kentucky Transportation Cabinet Order 2020-215, limited driver's license services have resumed subject to the following restrictions:
 - a. Appointments are required for any in-person driver's license services.
 - b. Under Transportation Cabinet Official Orders 11228 and to limit in-person traffic in court facilities, driver's licenses that expire between March 1, 2020 and September 30, 2020, must be renewed remotely.
 - c. Permit testing and road testing will resume at the discretion of the Kentucky State Police.

D. STAFFING

1. To enable full productivity, reduce the spread of COVID-19, and ensure continuity of court operations, all KCOJ employees who can telework should be directed to do so.
2. Elected officials should determine appropriate in-person staffing for their offices based on the following factors:
 - a. The ability to maintain appropriate social distancing among employees at all times and, where applicable, among employees and other individuals with whom employees must interact such as attorneys or members of the public;
 - b. The ability to divide staff into work teams with clearly identified and separate workspaces, allowing for physical separation of the teams throughout the work day, including any breaks, in order to limit the number of individual exposures in the event an employee tests positive for COVID-19;
 - c. The ability to properly clean and sanitize frequently touched surfaces, such as door knobs; light switches; phones; computers/keyboards; copiers; countertops; tables; and cabinets and knobs; and
 - d. The ability to continue essential court functions in the event an employee reports a positive COVID-19 infection. Key to continuation of essential court functions in that

event will be designing, implementing, and enforcing the work team approach referenced in paragraph 2(b) of this Section.

3. Special Leave is authorized for employees who are not scheduled to work during normal business hours based on a reduced-staff work schedule, not to exceed 7.5 hours of Special Leave in any work day or 37.5 hours of Special Leave in a two-week period.
 - a. Any employee who is not scheduled to work and is receiving Special Leave must be available to report to work within 24 hours of being contacted unless he or she has tested positive or has had prolonged close contact with someone who has tested positive for COVID-19 or needs to care for a dependent.
 - b. Failure to report when scheduled may disqualify an employee from receiving Special Leave.
4. Elected officials must submit staffing plans to the Human Resources Department at the Administrative Office of the Courts to ensure appropriate tracking of employees' work hours.
5. Judges and circuit court clerks must collaborate to ensure there is adequate staff to prepare for and cover court dockets or other proceedings.
6. All KCOJ officials and employees who are not scheduled to telework are required to self-administer a temperature and health check before reporting to work. Any official or employee who is exhibiting symptoms of COVID-19 as identified by the CDC (cough, shortness of breath or difficulty breathing, fever, chills, muscle pain, sore throat, headache, congestion or runny nose, nausea or vomiting, diarrhea, or new loss of taste or smell); has been instructed to self-quarantine by any doctor, hospital, or health agency; or has been diagnosed with or has had contact with anyone who has been diagnosed with COVID-19 within the past 14 days must stay home and self-report this information as provided in the KCOJ COVID-19 Health and Safety Requirements.
7. Additional staffing guidance may be found in the Court of Justice Flexible Staffing Guidance During a Pandemic or Public Health Emergency.

E. GENERAL HEALTH AND SAFETY PROTOCOLS FOR KCOJ EMPLOYEES AND OFFICIALS

1. All KCOJ officials and employees are required to wear facial coverings while interacting with co-workers or in common areas of the building (e.g. hallways, elevators, conference rooms, bathrooms, entries, and exits). Facial coverings are not required to be worn when KCOJ officials or employees are alone in their personal office or if doing so would pose a serious threat to their health or safety. Additionally, judges are not required to wear a facial covering while conducting court proceedings if doing so will impede their ability to make a clear record and if no parties or KCOJ employees are located within a ten-foot radius of the judge and do not approach the bench during the proceeding.
2. All KCOJ officials and employees will be provided a facial covering to use as required by this Order and are encouraged to keep an extra facial covering to use if the one provided is misplaced. All KCOJ employees are required to report to work with a facial covering that is consistent with the Dress Code Policy contained in Section 3.09 of the KCOJ Personnel Policies.
3. The AOC Director or designee must ensure the KCOJ COVID-19 Health and Safety Requirements are made available on the KCOJ's intranet, distributed to all KCOJ officials and employees, and acknowledged by all employees.
4. If an employee exhibits coughing, shortness of breath, difficulty breathing, or other COVID-19 symptom(s) while in the workplace, an appointing authority, after consultation with the AOC's Director of Human Resources or designee, will direct the employee to leave the office if doing so is consistent with the recommendations of the CDC and provide the employee guidance regarding use of appropriate leave and follow-up.
5. Each chief circuit judge must take steps to ensure that KCOJ employees and members of the public exercise appropriate social distancing in any court facility occupied by the KCOJ within their circuit.
 - a. In mixed-use facilities, the chief circuit judge is responsible for ensuring appropriate social distancing practices in the space occupied by the KCOJ, including the common areas.
 - b. Any common area that cannot be configured to maintain appropriate social distancing must be closed.

- c. To the extent possible, waiting lines or waiting rooms should be eliminated through the use of appointments or other remote services. If a waiting line is unavoidable, the area should be demarked with six-foot spacing to maintain appropriate social distancing between individuals who are not members of the same household unit.
6. The AOC Director or designee must take steps to ensure that AOC employees and members of the public exercise appropriate social distancing in all AOC offices.
 - a. Any common area that cannot be configured to maintain appropriate social distancing must be closed.
 - b. To the extent possible, waiting lines or waiting rooms should be eliminated through the use of appointments or other remote services. If a waiting line is unavoidable, the area should be demarked with six-foot spacing to maintain appropriate social distancing.
7. Each chief circuit judge must ensure that proper arrangements are made for cleaning and disinfecting of the court facilities in their circuit, consistent with the KCOJ COVID-19 Health and Safety Requirements. This includes arrangements for cleaning and sanitation of frequently touched surfaces, such as door knobs; light switches; phones; computers/keyboards; copiers; elevator buttons; toilets; faucets; sinks; countertops; paper towel dispensers; desktops; handrails; counters; tables; and cabinets and knobs.
8. The AOC Director or designee must ensure that cleaning and disinfecting of all AOC offices complies with the KCOJ COVID-19 Health and Safety Requirements. This includes arrangements for cleaning and sanitation of frequently touched surfaces, such as door knobs; light switches; phones; computers/keyboards; copiers; elevator buttons; toilets; faucets; sinks; countertops; paper towel dispensers; desktops; handrails; counters; tables; and cabinets and knobs.
9. The AOC Director or designee must ensure all KCOJ officials and employees are trained on when and how to properly use facial coverings, how to clean or dispose of facial coverings, and when and how to properly use gloves, if provided.
10. KCOJ officials and employees should email COJHR2@kycourts.net if they have concerns about working conditions or about health risks in the workplace.

11. Court security personnel shall assist the chief circuit judge in implementing and enforcing all social distancing requirements inside the courtrooms and throughout the court facility.

F. APPLICATION TO KCOJ COMMITTEES

To the extent possible, meetings of committees, commissions, task forces, boards, and other administrative bodies of the Supreme Court, KCOJ, or AOC should be conducted remotely. Meetings that cannot be conducted remotely must follow the health and safety requirements included in this Order, including six-foot spacing between individuals and mandatory use of protective facial coverings.

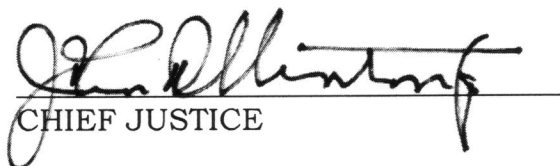
G. LOCAL PROTOCOLS

1. Each chief district and chief circuit judge must develop a local protocol regarding any additional restrictions or changes in local procedure, consistent with this Order. Proposed local protocols shall be submitted electronically by the chief district or chief circuit judge to localrules@kycourts.net for posting to the Kentucky Court of Justice website. To the extent any local protocols are inconsistent or otherwise conflict with this Order, this Order prevails. Any local protocol that substantially deviates from this Order or other Administrative Orders of this Court may be subject to review and final approval by the Chief Justice under SCR 1.040(3).
2. Concerns regarding local application or implementation of this Order may be submitted to COVIDcourtconcerns@kycourts.net.

This Order is effective August 1, 2020, and until further Order of this Court.

Enter this 27th day of July 2020.

All sitting; all concur.


CHIEF JUSTICE

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:


**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

ORDER ON PENDING MOTIONS

Upon consideration of Judge Gentry's Motion to Compel Deposition of Christopher Mehling and the Response thereto, it is hereby ORDERED that the motion be DENIED. The motion is denied based on the reasons set forth in the Commission's prior orders denying Judge Gentry's motions to compel responses to discovery requests and to take discovery depositions. This restriction also applies to counsel for the Commission, as he is not permitted to take discovery depositions of witnesses identified by Judge Gentry. The Commission further notes that counsel for the Commission timely identified Judge Mehling as a witness and, although not required, also described in his response to the motion the areas of testimony to be sought from Judge Mehling.

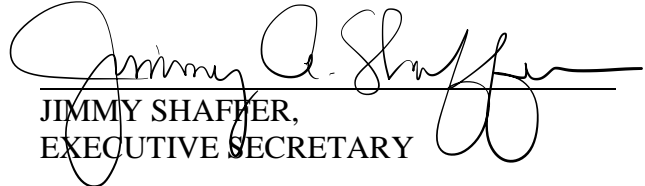
Upon consideration of Judge Gentry's Motion to Dismiss Counts X through XII and the Response thereto, it is hereby ORDERED that the motion be DENIED for the reasons stated in the Response. The additional charges are not unfairly late, are within the time permitted by the Supreme Court Rules, and arise from allegations and circumstances already known to Judge Gentry from the factual file, evidence presented at the temporary removal hearing, or her own personal knowledge, and Judge Gentry will sustain no undue prejudice if these additional charges are heard at the scheduled hearing.

Date: July 29th, 2020


R. Michael Sullivan, Chairman
Kentucky Judicial Conduct Commission

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her at her email address and to counsel Jeffrey A. Lawson, 524 Greenup Street, Covington, KY 41011, lawsonjeff@gmail.com; F. Todd Lewis, Lewis Law, PLLC, 111 W. Washington Street, Suite 400, Louisville, KY 40202, todd.lewis@toddlewislaw.com; and Bryan Beaman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeaman@sturgillturner.com this 29th day of July, 2020.


JIMMY SHAFER,
EXECUTIVE SECRETARY

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE: THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

AMENDED ANSWER AND STIPULATIONS OF JUDGE DAWN M. GENTRY

Comes now the Respondent Judge, Dawn M. Gentry, by and through counsel and hereby provides her Amended Answer to the Notice of Formal Proceedings, as follows:

COUNT I—COERCION TO PARTICIPATE IN JUDICIAL CAMPAIGN

Judge Gentry admits in part and denies in part as stated more specifically in reference to each subpart. She admits that she requested individuals use personal time and energy to help with her campaign, but she denies exerting any overt pressure on anyone to donate their time or money. She admits that by virtue of her position as a judge that her requests for assistance may have been reasonably understood by some individuals as asserting pressure on them. It was not at any time, however, her intent to coerce anyone to do anything they were not otherwise motivated to do by their own desire to see her elected.

As to the specific allegations contained within Count I, Judge Gentry responds:

- 1-2. I wanted everyone I knew to make financial and time contributions to my campaign, including the lawyers on the DNA panel. I did not coerce them, nor did I dissuade them. I asked certain individuals on my DNA panel, who also were campaign volunteers, to serve on the finance committee. I did not intend to coerce them, but I also understand in hindsight based on my position as judge that it may have been difficult for them to refuse and thus received as tacit pressure.
3. I never, ever solicited an attorney in open court to place a yard sign for my campaign.
4. I improperly blurred the lines between those who volunteered for my campaign and worked for me in my office. I was around the same people both during the day and often after hours and on weekends doing campaign work. I did ask my staff to assist with campaign tasks, and I was not vigilant in making sure that work was not done while we were in the office.

I did ask my staff to hold signs before and after work. I did ask them to use their paid voting time off to do this. My conduct in this regard constitutes a violation of Judicial Canon 1.2; 1.3; and 3.1(D).

5. I asked my staff attorney to research if, in accordance with local rules, I could add an additional attorney to the DNA panel. A change in the law regarding the appointment of attorneys to indigent people in permanent custody cases meant that more appointments would be necessary, and so I added Delana Sanders to the DNA panel. Her appointment was not for or because of any campaign contribution or assistance from either her or her husband, Rob Sanders, who also is an elected Commonwealth's Attorney and certainly is familiar with campaign finance rules and the impropriety of any such quid pro quo.

I do understand the optics of appointing Delana to the panel cause concern with the Commission and to an outside observer. I want to stress, however, that no such agreement or tacit agreement or anything untoward or improper occurred here. Delana Sanders is an imminently qualified litigator and I was lucky she agreed to do this work for such little compensation, as were her clients whom she more than effectively represented.

COUNT II—RETALIATION FOR FAILURE TO SUPPORT JUDICIAL CAMPAIGN

1. I did not retaliate against Meredith Smith. She informed me that she was resigning as of a certain time, and I hired a replacement employee.
2. I disagree that I declined to reappoint Mike Hummel to the DNA panel based on his level of support for my campaign. Mike did not make a maximum monetary donation to my campaign, but neither did anyone else. It is true that Mike did not support my campaign in a manner similar to others on the DNA panel, and it is also true that his performance in my courtroom was substandard in the months leading up to issuing the new annual order regarding DNA panel members. I declined to reappoint him because I felt the cases would be better handled by someone else, though I understand it would be reasonable, albeit inaccurate, to draw the conclusion that not reappointing him was retaliatory. It became apparent to me that Mike had lost confidence in me as a jurist and we were in discord, and so I declined to reappoint him.
3. I disagree with the facts in this allegation. I never delayed hearings for any attorney. I rarely scheduled hearings. It was always done through my administrative assistant.
4. I dispute the factual allegation. I do admit that I was frustrated with Kelly Blevins and we had a poor working relationship. I admit that I did not treat her as kindly as I did other witnesses. I wish I had been able to ignore my frustrations and treated her the same as other witnesses. This was inappropriate and violates Judicial Canon 2.11(A) regardless of my motivation.

COUNT III—FACILITIES AND TIME SHEET INFORMATION

1. I approved an incorrect time sheet for Meredith Smith. I did not fill it out. My expectation was that employees perform their 7.5 hours of work per day, and I was far too flexible about the need to record leave time when performing campaign work. I relied on my employees' professional judgment in that regard, but I was far too neglectful as an administrator of my office and should have been more rigorous in oversight, even in the midst of a highly contested and stressful, and my first ever, political campaign. My acts and failures to supervise constitute a violation of Judicial Canons 1.2; 1.3; 3.1(D), regardless of intent.
2. I admit that I left my office on a number of occasions during the workday, including at times with the named individuals. I dispute that this action constituted a violation of the judicial canons.
3. I admit to this allegation, with the following caveat: I did not knowingly approve a time sheet I believed was false as to the aggregate number of hours worked in any particular period. Our work was cyclical in that some days were far busier than others and I knew based on my employees' work and the time we spent on it that they were working full time. I did not examine the accuracy of the time allotted to any individual day, which was improper but ultimately of no effect as it relates to the treasury.
4. I deny this allegation. I brought my children to work with me occasionally when I was forced by circumstances to either do so or to cancel or continue a docket, delaying important rulings. My children never witnessed a confidential proceeding.
5. I admit that I knew and tolerated an employee playing guitar and singing in his office during work hours. I understand that it apparently created an environment of distraction for those in the adjoining chambers. I wish that Judge Mehling had approached me about the apparent level of discontent with that employee and I had the opportunity to correct it. Not once was I approached by anyone who asked me to put a stop to it, though I understand I should not have allowed it to begin with.
6. I never consumed alcohol in the courthouse. I did not condone drinking in chambers, nor was I aware it was occurring. I also did not exercise proper vigilance and oversight in my capacity as supervisor to ensure that alcohol was neither stored nor consumed in my office. I will leave it to the Commission to determine whether my deficiency in this regard constitutes a violation of the Judicial Canons.

COUNT IV—RETALIATION AGAINST SCHOOL EMPLOYEES

1. I admit to the factual allegations as stated by the Commission. I admit that I was frustrated with Kelly Blevins and we had a poor working relationship. The angst between us stemmed

from a difference of philosophy as it relates to the handling of truancy cases and my desire to keep children out of the DNA process and use the opening of educational neglect cases as a last, rather than a first, resort. I admit that my frustrations with her led to me exercising a deficient level of temperance from the bench that I now regret. I admit that I called her cases later than I could have.

2. I admit that I did not disqualify myself from cases in which Ms. Blevins was a complaining witness. I dispute that I refused to recuse or disqualify myself, nor has that matter ever been reviewed by a higher court or the Chief Justice, nor do I believe I was required to recuse or disqualify myself at the time. I admit that my actions gave an outside observer reason to question my impartiality. However, recusing or disqualifying myself from the cases to which Ms. Blevins was a party would have meant a near-complete abdication of my judicial philosophy as it relates to truancy and the handling of truancy cases by the courts, as those cases would have almost certainly gone to Judge Mehling who employed an entirely different, and in my belief incorrect, approach.

COUNT V—EX PARTE COMMUNICATION WITH GAL PANEL MEMBERS

1. I deny this allegation in full.

COUNT VI—HARASSMENT AND RETALIATION AGAINST KATHERINE SCHULZ

1. I dispute that I engaged in unwanted sexual advances. I admit that I engaged in an and interacted with Ms. Schulz in an inappropriate manner when she initiated personal contact with me while she was under the influence. I also admit that I did not handle the situation appropriately afterwards. I should have taken steps to recuse or disqualify myself from her cases or contacted the Judicial ethics board and/or the Kentucky Bar Association to determine the proper procedures to follow. I admit that this a violation of Judicial Canons 1.2; 1.3; and 2.11.
2. I deny this allegation.
3. I admit that I did not disqualify myself from one confidential case which had a companion case. Despite the unwanted advance from Ms. Schulz, I did not have a personal bias or prejudice against her, nor did I have a personal bias or prejudice against any of the parties in this particular case, or any other case. As I have stated above, I did not handle the situation appropriately. When I ignored the fact that the incident had occurred, I continued to rule on all of Ms. Schulz' cases for two months. I also continued to appoint her to many cases during that time. If I had disqualified myself from all of the cases in which she was appointed counsel, and then declined to appoint her to new cases due to the existence of a conflict, it would have resulted in, effectively, her removal from the DNA panel. I knew that I could continue to function impartially as a judge despite the incident without any personal bias against Ms. Schulz, and thus I continued to both appoint her to cases and rule on those then existing. I did not wish to turn an incident that occurred due to her inebriation

into what certainly would have been her removal from the DNA panel as a result of my inability to appoint her to new cases.

4. I admit that I engaged in Snapchat conversations with some members of the DNA panel, and in a manner that was too informal and colloquial. I dispute, however, that I sent any sexual matter to anyone who was either on the DNA panel or was an employee working in my office.

COUNT VII—INAPPROPRIATE HIRING AND RELATIONSHIP WITH MR. PENROSE

1. I admit that I had a close personal relationship with Stephen Penrose, but he was also qualified for the job as he had many years of experience working in family court in another jurisdiction. I knew Stephen Penrose for ten years prior to employing him. I met him during his time working for Judge Linda Bramlage and while litigating family law cases in Boone County. We had an entirely professional relationship for years. I did not have his phone number, nor were we Facebook friends. He asked me to attend his church, which ultimately I did. I began attending his church with my family. He sent us a Facebook message thanking us for our attendance, and we exchanged numbers. We became closer friends thereafter.

I attended his church for the first time approximately six years ago, likely in 2014. We remained friends, and only friends, until after I became a judge. I deny that I was having sex with him, but I do acknowledge that our relationship became personal. I hired him because of his years of experience working in family court, but I understand that my motives could be subject to question. I did not think, given the numerous judges who hire their spouses as secretaries, that my relationship to Mr. Penrose would preclude me from hiring him in light of his clear qualifications for the job.

I did not terminate Meredith Smith to open up a job for Mr. Penrose. Meredith Smith was the second person I had hired as the case specialist, the job was open previously and had a relatively high-turnover rate due, most likely, to the pay scale. Meredith informed me in the summer of 2018 that she would be leaving, that she needed to begin working as a lawyer by the end of the year, that the job did not pay enough, and she needed to look for alternative employment. Following the election in November, and given she actively was seeking to leave, I asked her for a firm date she would be departing so that I could establish continuity in my office. She may have taken that as a termination, but I was simply asking for a concrete timeline as her stated desire to leave the office and active job searching made it clear to me that I would need to replace her.

I deny that these acts constitute a violation of the Canons of Judicial Conduct.

2. I deny this allegation.
3. I deny this allegation.

COUNT VIII—HIRING AND APPOINTING STAFF NOT BASED ON MERIT

1. I appointed all of the attorneys on my DNA panel based on merit. I appointed them for very specific reasons based on their qualifications, the employers who hired them, and their experience. I deny that I violated any judicial canon when I selected them.
2. I do admit that the very qualified family law attorneys that I appointed to the “Permanent Custody Roster” were also friends. I did issue appointments by written order to these attorneys instead of giving in-person appointments but for an entirely legitimate reason. Weeks could go by without any prospective permanent custody appointments. Often times even when individuals were noticed to appear to determine whether they wished to assert de facto status, they did not. It would have been a waste of time and resources, and would have discouraged good lawyers from doing this work had I required them to appear in court for what often would have been no reason.

COUNT IX—FAILURE TO BE CANDID AND HONEST WITH THE COMMISSION

1. I deny this allegation.

COUNTS X-XII

Judge Gentry denies these new allegations at this time, subject to later amendment and requests leave pursuant to SCR 4.190 and 4.200 for an enlargement of time to answer Counts X, XI, and XII more fully once the Commission decides her Motion to Continue.

Respectfully submitted,

/s/ F. Todd Lewis

F. Todd Lewis
Lewis Law, PLLC
111 W. Washington Street,
Suite 400
Louisville, KY 40202
(502) 855-7599
(502) 550-4139 (mobile)
todd.lewis@toddlewislaw.com

/s/ Jeffrey A. Lawson

Hon. Jeffrey A. Lawson (94744)
524 Greenup Street
Covington, Kentucky 41011
Tel: (859) 414-6678
lawsonjeff@gmail.com

I, Judge Dawn M. Gentry, have seen and adopt the foregoing as my amended answer and stipulations.

/s/ Dawn M. Gentry
JUDGE DAWN M. GENTRY

CERTIFICATE OF SERVICE

I hereby certify that on this, 31st day of July, 2020, a copy of the foregoing was served via email and U.S. mail, first class mail, to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
PO Box 4266
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

/s/ F. Todd Lewis

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**MOTION TO CONTINUE THE FINAL HEARING AND MOTION IN LIMINE REGARDING
ANTICIPATED TESTIMONY**

COMES NOW the Honorable Dawn M. Gentry, by and through undersigned counsel, and for her Motion to Continue the final hearing in this matter, says as follows:

I. INTRODUCTION

The Judge moves the Commission for an order continuing the evidentiary hearing in this matter, set to begin August 3, 2020. The basis for this request, in summary, is:

1. The addition of new charges, so late in the proceedings that they do not allow for a reasonable time to respond and prepare a defense;
2. The addition of new witnesses, with no supporting discovery (coupled with a refusal to produce related discovery), including—incredibly—proposed apparent *expert testimony from a sitting judge* against the Respondent, all of which was added less than 30 days before a proceeding which has been pending eight months;
3. The entirety of the facts and circumstances surrounding the dismissal of this Respondent's recent reasonable requests for procedural regularity in the conduct of these proceedings, which leave her without a choice but to seek this relief.

The Commission has now denied the Respondent Judge's Motion to Dismiss the late-filed additional allegations of misconduct included in the Commission's most recent Amended Notice; and has denied a request to depose or exclude a newly-added witness. SCR 4.200 provides the Chairman authority to grant the requested extension of time should the circumstances merit, and we believe we are operating in such a circumstance.

Formal proceedings against Judge Gentry commenced on November 18, 2019, some eight months ago. The Commission held a temporary removal hearing on January 3, 2020 and issued an order of temporary removal on January 6, 2020. The allegations which form the basis of the amendments to the Notice against the Judge occurred either prior to or shortly after her removal from the bench.

The Commission issued the Amended Notice on July 17, 2020, nearly seven months following the temporary removal hearing, and fewer than thirty days prior to the Final Hearing in this matter. The Commission's Prehearing Order currently in effect, and in effect at the time of the amendment, directed the parties to file a list of witnesses with the Commission and complete any depositions thirty days prior to the hearing, the time for which passed prior to the addition of the late-filed new allegations.

SCR 4.190 allows for amendments to the Commission's Notice to bring the instrument in line with the evidence and proof or to "set forth additional facts," with the caveat that new allegations require the judge "be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby." For purposes of this Motion, the amendments in this case concern entirely new allegations of misconduct involving the destruction of documents by staff following the temporary removal hearing and the filing of a bar complaint against an anticipated witness. This Judge is not privy to any information concerning the shredded documents that remain in the possession of witnesses to be called by the Commission at the hearing—Kathy Summe and now, Christopher Mehling—nor have the documents been described in any way in the investigative file tendered to the Judge. While we assume that the Commission amended the notice to allege the shredding was nefarious or amounted to a destruction of evidence, nothing detailed in the investigative materials indicates whether this is the case. Further, nothing in the case indicates how the Commission counsel intends to implicate the Respondent Judge in this activity, which occurred after she was entirely barred from the location in question.

The same holds true for the filing of the bar complaint. While the Judge retained a copy of the complaint, she is not privy to what occurred during bar counsel's investigation. In short, by the Commission's late action in adding these new allegations, the Judge enters the hearing blindly as to her

defense of these charges and has neither the time nor the information necessary to “present a defense” as required by SCR 4.190.

Given the Commission’s denial of the motion to dismiss, the unnecessary dither in adding new charges at the eleventh hour and failure of the Commission to produce a developed evidentiary record as it relates to several of the charges and witnesses forces her into an unenviable Morton’s fork of requesting a continuance or proceeding on an undeveloped record.

II. THE CUMULATIVE EFFECT OF A NEW MATERIAL WITNESS, AN UNDERDEVELOPED EVIDENTIARY RECORD, LATE-FILED CHARGES, AND FORECLOSED DISCOVERY PROCESS

The late-filed charges and resulting prejudice are but one facet of a lengthier and problematic thread running through this case—a trial without a sufficient record. One of the principle allegations in this case is that Judge Gentry engaged in sexual conduct with members of her staff in the Kenton County Courthouse. Inexplicably, the Commission’s investigator declined to interview *any member of her staff*, including those involved in the alleged sexual conduct. The remaining “ear witnesses” were interviewed by the Commission’s investigator, but not the individuals who allegedly engaged in the conduct.

The same is true for other witnesses appearing on the Commission’s prehearing witness list, including Judge Christopher Mehling. Commission counsel provided a “proffer” of testimony indicating the general areas on which Mehling will offer proof, including a significant amount of inadmissible hearsay,¹ but not an interview. Counsel’s proffer also notes that Judge Mehling will offer expert testimony on the legal propriety of Judge Gentry’s rulings on cases he rolled into his docket after her temporary removal, which the Commission asserts is relevant to the claim that she retaliated against attorneys who failed to support her campaign. Of course, the lack of an interview from Judge Mehling means he will arrive

¹ Commission counsel anticipates Judge Mehling will testify to “complaints from court personnel concerning the atmosphere in the offices, . . . complaints about the presence of Steve Penrose, the distractions caused by Penrose playing guitar singing in the judicial suite, the discovery of empty alcohol containers [which he did not discover, himself] in chambers, [and] the complaints about the suspicion of persons having sexual intercourse in judicial suite [which he did not himself observe or hear] which distracted court personnel.”

prepared to testify about *specific cases* in which Judge Gentry entered improper orders while operating under a retaliatory motive without naming the cases or the attorneys involved.

To date, the Commission has disclosed *one* attorney to Judge Gentry who ostensibly will allege the Judge engaged in retaliation against her by improperly disadvantaging a client/litigant. That attorney was interviewed, and Judge Gentry has prepared a defense to those matters. The Commission apparently looks to turn the amorphous Count II(3) of the Notice alleging “reliat[ion] against attorneys]” into a parade of discontentment with Judge Gentry without disclosing who’s marching in it (and thus precluding her from preparing a defense). Of course, if it named the individual attorneys involved in those cases to the witness list (or, better yet, interviewed them beforehand on the substance of the allegations), Judge Gentry would have notice to prepare for the charges; instead, it names Judge Mehling to compile and summarize all of the alleged malfeasance, without interviewing him.

The Commission’s witness list includes other individuals whom the Commission declined to interview. Judge Mehling certainly is the most consequential of these, as he is a sitting judge and apparently intends to offer a vast amount of testimony on matters that relate to the charged misconduct, both new and old. That is why we requested his deposition², as the case file provided by the Commission is entirely bereft of information concerning what, based on the Commission’s proffer, looks to be highly significant testimony.

If nothing else, it underscores precisely why the Respondent requested discovery both in written form as interrogatories and depositions. The response from Commission counsel has been, unwaveringly, that these proceedings are administrative in nature, and thus require only “due process” as with any other administrative hearing before a state agency. This oversimplifies the case and fails to recognize the unique nature of the Judicial Conduct Commission. No other administrative hearing process in the Commonwealth,

² Unlike non-judicial witnesses, Judge Mehling’s testimony is also restricted by the Judicial Canons, including Rule3.3. The scope of his proposed testimony indicates that the Commission intends to range beyond the spirit of this restriction, if not its letter, by seeking what amounts to character evidence (including opinions on the character of the Respondent’s rulings). This is yet another reason Mehling, of all people, is not the witness who can be suddenly dropped in at the eleventh hour without a statement or deposition, without serious unfair prejudice to the Respondent.

as far as this counsel can locate, authorizes the applicability of the Civil Rules where they are “not inconsistent” with any specific Commission rule. SCR 4.160. The enumerated rights afforded to the Judge require the Commission to issue subpoenas on her behalf and to afford her the opportunity to call witnesses, cross examine them, and submit evidence. SCR 4.210. Nothing in the rule providing affirmative procedural rights indicates that it is both the low and high-water mark of due process before the JCC. *See Kentucky Cent. Life Ins. Co. v. Stephens*, 897 S.W.3d 583, 590 (Ky. 1995) (“[p]rocedural due process is not a static concept, but calls for such procedural protections as the particular situation may demand.”)

The “criminal and civil procedural rules are designed to prevent litigants from engaging in ‘trial by ambush.’” *Delahanty v. Commonwealth*, 558 S.W.3d 489, 507 (Ky. App. 2018). The Commission’s recent “proffer” indicates it will engage in just that, if left unchecked. For example, it states Mehling will testify to “[h]is discovery of and reaction to cases he assumed in Kenton Family Court where he set aside prior rulings of Judge Gentry which were clearly erroneous³ (which are relevant to the charges against Judge Gentry concerning her retaliatory behavior from the bench or her failure to disclose personal relationships with attorneys).” Judge Gentry does not have those case files, she does not know the litigants involved, the attorneys appearing, or anything else. Nor does she know exactly how Judge Mehling intends to Monday-morning quarterback her rulings. So, The defense operates in a complete vacuum as it relates to Christopher Mehling, due to the Commission’s failure to interview him, provide discovery, or allow a deposition.⁴

The extremely late insertion into a case, civil or criminal, of evidence which naturally calls for admission by expert opinion; and the resulting necessity for the opposing party to consult its own expert, is a classic scenario for which the refusal of a continuance is an abuse of discretion. This is particularly so

³ “Clear error” is an appellate doctrine, now being put to novel use in a trial setting, as one family court judge will now apparently substitute himself for the Appellate Courts of the Commonwealth and opine about the many “errors” of another family court judge.

⁴ As a general observation, with witnesses as significant as a sitting Judge, who will offer testimony regarding what he “witnessed,” the dysfunction of the chambers (which he shared with the Respondent Judge), the alleged mishandling of case files and erroneous rulings, and the nefarious shredding of documents, why not provide an interview detailing what he alleges? It seems antithetical to the function of this tribunal to shroud a witness of such consequence, materiality, and unique standing.

when the party proposing the opinion witness refuses to detail the precise nature of what this witness will testify to in that regard, and instead offers a pat ‘see the attached cases,’ together with a claim that this witness will enlighten us all on how the Respondent allegedly ruled incorrectly, and was “clearly erroneous” in her rulings.

Next, Judge Mehling will testify about the new charge that Judge Gentry ordered staff to shred documents. Commission counsel notes that he will testify as to the discovery of shredded documents (after the Respondent had been ordered off the bench and had no access to the office area), *but nothing concerning the shredded documents, themselves*. Of course, a family court dealing with confidential case files may very well shred documents for a non-nefarious purpose, but if this were the case, why would the Commission pursue the case? Do the documents look like they were once the part of a court file? Do they look like plain white document paper? Handwritten legal sheets? Docket sheets from confidential files? All that Judge Gentry knows at this point is that Judge Mehling intends to say he preserved them to “assure the interest of justice were protected.” One contemplates whether a vaguer allegation of misconduct exists.

Though maybe, traditionally, this Commission has been wary of expanding the applicability of the discovery rules in these proceedings, strict adherence to procedural customs stands in direct conflict to the situational approach advanced by *Stephens*, supra. Depositions likely will be unnecessary in every case, and the Commission may be correct in denying a motion to compel. Here, there exists a perfect storm of deficient procedural due process which the Commission could have cured by providing a more detailed Notice and conducting a more fulsome investigation or allowing depositions. Doing neither is error.

III. CONTINUANCE

For the reasons stated, Judge Gentry cannot adequately prepare a defense to charges that are both deficiently specified in the Commission’s Notice and deficiently detailed in an investigation record. Furthermore, she cannot prepare for charges asserted *after* the expiration of the Commission’s own pretrial deadlines for the exchange of witness lists and documents. SCR 4.190 specifies that the Judge be given a

reasonable time to prepare a defense to new allegations. On both accounts, a continuance is necessary to afford Judge Gentry due process.

Factors under *Snodgrass*

In determining the propriety of a continuance, the Commission must apply the factors set forth in *Snodgrass v. Commonwealth*, 814 S.W.2d 579, 581 (Ky.1991); *Guffey v. Guffey*, 323 S.W.3d 369, 372 (Ky. App. 2010) (“it is wholly appropriate to apply the Snodgrass factors to analyze a civil motion for a continuance while taking into account all the relevant facts and circumstances.”). Those factors “address the parties' responsibilities for creating the situation, whether bad faith conduct was a factor, past behavior, the possibility of prejudice, and alternative solutions.” *Id.* We address each applicable factor in turn.

First, the Commission must consider the length of delay. This case has been set twice for final hearing and continued once due to a health pandemic. Continuing the case, even with the difficulties concomitant with scheduling for all Members and parties, should not be overly lengthy. Judge Gentry needs only the time to either secure additional factual information from the Commission or request a writ from the Supreme Court ordering additional discovery, and then to prepare a defense. This factor weighs in favor of granting a continuance.

Second, the Commission must consider whether the matter has been continued in the past. Judge Gentry has asked for one continuance, with agreement from the Commission, due to COVID-19. That continuance likely would have come from a Commission order *sua sponte* as the entire Court system was shut for in-person appearances. This factor weighs in favor of granting a continuance.

Third, the Commission must consider the degree of inconvenience to the parties, witnesses, and the Commission. The witnesses all are local or relatively close by, the Commission operates throughout the Commonwealth, and Judge Gentry is local. The hearing is set at a geographical location convenient to all witnesses. The hearing date has been on record for some time and likely would result in some slight inconvenience to the Members. This factor is neutral, at worst.

Fourth, the Commission must consider if the movant is the reason for the delay and whether the continuance is dilatory. Judge Gentry does not seek to continue the case and would not, but for the unique

circumstances created by the Commission. The Commission has filed new charges against Judge Gentry within one month of the Final Hearing, has produced a proffer of testimony from Judge Mehling that introduces new allegations not contained in any of the factual record, and frankly, not included in either the Notice or Amended Notice. It has noticed witnesses for testimony in its case-in-chief that it has not interviewed or provided any factual record of what they will offer. It has alleged Judge Gentry improperly ordered the shredding of documents without describing them, photographing them, or in any way alleging that the shredding of documents was done with ill intent. It has alleged that Judge Gentry filed an improper bar complaint against a witness in this process without providing any detail as to the legitimacy of the complaint or how it was investigated. Undoubtedly, this *Snodgrass* factor weighs in Judge Gentry's favor and for the granting of a continuance.

The fifth relevant factor is the complexity of the case. This is not a capital case, but it is very complex. It concerns the potential removal of a sitting, elected judge. The Commission has ruled that Judge Gentry must answer twelve separate counts, each with several subparts alleging various acts of misconduct in office. The Commission has set aside a week for trial, which is far longer than the average trial for a violent felony matter. Furthermore, the due process issues remain unresolved and will require additional investigation or litigation to resolve. This factor weighs in favor of granting a continuance.

Last, the Commission must consider the prejudicial effect of denying the Motion. We will not restate here the arguments above on denial of due process but reincorporate them by reference. Significant prejudice will result if the Commission insists keeping the scheduled hearing date. Without a continuance, the Respondent judge faces a trial by ambush, laid against her by 11th-hour charges unsupported by discovery or factual material, apparently to be proven by a surprise witness, also hidden until the final hour before trial. Moreover, this witness is proposed to offer (1) what appears to be a diatribe of hearsay apparently intended to bolster a series of other actual witnesses; and (2) incredibly, testimony in the form of expert or other opinion evidence against Respondent, the extent of which is completely unknown, and can not now be rebutted by the review of an expert on behalf of Respondent.

The *Snodgrass* factors weigh in favor of the Commission continuing the Final Hearing in this matter to cure procedural defects and allow Judge Gentry adequate time to prepare a defense to the new allegations of misconduct. The Commission should find her Motion well taken.

CONCLUSION

WHEREFORE, Judge Gentry prays that the Commission issue an Order granting the following relief:

1. An Order in Limine excluding in part the testimony of the Hon. Judge Christopher Mehling which is inadmissible hearsay.
2. An Order in Limine excluding the testimony of the Hon. Judge Christopher Mehling which alleges retaliation against a litigant or an attorney, as the Commission has not named such litigants or attorneys heretofore, and is unduly late in disclosure.
3. An Order continuing the Final Hearing.
4. An Order ameliorating deficient procedural due process by either allowing the Respondent to conduct discovery or requiring the Commission to provide additional factual matter necessary for the preparation of a defense.

Respectfully submitted,

/s/ F. Todd Lewis
F. Todd Lewis
Lewis Law, PLLC
111 W. Washington Street
Suite 400
Louisville, KY 40202
(502) 855-7599
(502) 550-4139 (mobile)
todd.lewis@toddlewislaw.com

/s/ Jeffrey A. Lawson
Hon. Jeffrey A. Lawson (94744)
524 Greenup Street
Covington, Kentucky 41011
Tel: (859) 414-6678
lawsonjeff@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, 31st of July, 2020, a copy of the foregoing was served via email with PDF attachment to the following:

Hon. Bryan H. Beaman
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
bbeaman@sturgillturner.com

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
Frankfort, KY 40604
JimmyShaffer@KyCourts.net

/s/ F. Todd Lewis

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**RESPONSE TO JUDGE GENTRY'S
MOTION TO CONTINUE HEARING AND MOTION IN LIMINE**

On July 31, 2020, Judge Gentry filed a combined motion to continue the final hearing and motion in limine regarding anticipated testimony, seeking to continue the hearing set for August 10, 2020 and to exclude certain testimony by Judge Christopher Mehling. For the reasons below, both of Judge Gentry's motions should be denied.¹

1. Judge Gentry's motion to continue the hearing set for August 10, 2020 should be denied.

Judge Gentry argues the hearing scheduled for August 10, 2020 should be continued for three reasons: (1) the addition of new charges, Counts X through XII; (2) the addition of new witnesses without "supporting discovery"; and (3) "[t]he entirety of the facts and circumstances surrounding the dismissal of this Respondent's recent reasonable requests for procedural regularity in the conduct of these proceedings, which leave her without a choice but to seek this relief."² However, none of these arguments establish that continuing the scheduled hearing is necessary.³

¹ While not included in the title of her motion, the prayer for relief in her motion also asks the Commission to enter an order allowing Judge Gentry to conduct discovery or requiring the Commission to provide additional factual matter necessary for the preparation of a defense. The Commission has already rejected Judge Gentry's demands to conduct full-blown civil discovery in this administrative action.

² Judge Gentry's Motion to Continue (Jul. 31, 2020), at 1.

³ Judge Gentry's motion for a continuance erroneously asserts the hearing is scheduled to commence on August 3, 2020. The hearing is scheduled to begin on August 10, 2020. See Amended Notice of Time and Place of Hearing (Apr. 3, 2020).

- a. **The additional charges, witnesses timely identified by the Commission, and the unavailability of discovery in these administrative proceedings do not warrant continuance.**

Judge Gentry argues the addition of Counts X through XII warrants continuing the hearing but the Commission has already rejected this argument. In its Order on Judge Gentry's motion to dismiss these counts, the Commission stated: "The additional charges are not unfairly late, are within the time permitted by the Supreme Court Rules, and arise from allegations and circumstances already known to Judge Gentry from the factual file, evidence presented at the temporary removal hearing, or her own personal knowledge, and Judge Gentry will sustain no undue prejudice if these additional charges are heard at the scheduled hearing."⁴ These conclusions apply with equal force to Judge Gentry's motion to continue.

Judge Gentry also asserts a continuance is needed because she believes the Commission's investigator should have interviewed additional potential witnesses. However, the Commission is not required to interview any witness Judge Gentry believes is relevant. Of course, the staff members Judge Gentry believes should have been interviewed are identified as witnesses for the hearing and, in the event they are called to testify, Judge Gentry will have the opportunity to examine them regarding these incidents. Additionally, nothing precludes Judge Gentry's counsel from contacting identified witnesses regarding their knowledge of the allegations against Judge Gentry. Indeed, for the interviews that are a part of the factual file, the Commission's investigator did not subpoena individuals to provide statements. Rather, he simply sought voluntary statements from individuals who chose to cooperate. Nothing precludes Judge Gentry from seeking similar information, also on a voluntary basis, particularly where those witnesses were identified almost a month in advance of the hearing.

⁴ Judicial Conduct Commission Order on Pending Motions (Jul. 29, 2020).

Judge Gentry argues the hearing should be continued because the Commission’s witness list includes individuals who the Commission has not previously interviewed. Judge Gentry fails to point to any authority requiring that the Commission have conducted an investigative interview with a witness for that individual to be identified as a witness at the hearing. To be sure, the counsel for the Commission will be in much the same position regarding a number of Judge Gentry’s identified witnesses, who the Commission’s investigator has not interviewed and for whom summaries of testimony have not been (and are not required to be) provided. The proposition that only witnesses who provided an interview to the Commission’s investigator may be called at the hearing when those witnesses were timely identified in the Commission’s pre-hearing filings is unsupported by any authority and does not warrant a continuance.

In particular, Judge Gentry points to the Commission identifying Judge Christopher Mehling as a witness.⁵ Judge Mehling was timely identified as a witness on July 13, 2020, in compliance with the Commission’s Pre-Hearing Order, on the same day Judge Gentry’s own witness list was due. Indeed, as the Commission noted in its Order on Pending Motions denying Judge Gentry’s motion to take Judge Mehling’s deposition, “The Commission further notes that counsel for the Commission timely identified Judge Mehling as a witness and, although not required, also described in his response to the motion the areas of testimony to be sought from Judge Mehling.”⁶

Further, arguing a continuance is needed because Judge Mehling is included on the Commission’s witness list is perplexing given that Judge Gentry also included Judge Mehling on

⁵ In a footnote, Judge Gentry implies that any testimony Judge Mehling might offer regarding Judge Gentry’s rulings in cases would amount to character evidence and potentially violate Rule 3.3 of the Canons of Judicial Conduct. This suggestion ignores that evidence regarding Judge Gentry’s rulings is not “character evidence.” Even if it were, this assertion ignores the final clause of Rule 3.3. The rule provides: “A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, *except when duly summoned.*” SCR 4.300, Rule 3.3 (emphasis added). Judge Mehling has been subpoenaed to testify at the hearing and has therefore been “duly summoned.”

⁶ Judicial Conduct Commission Order on Pending Motions (Jul. 29, 2020).

her witness list. Judge Gentry cannot claim unfair surprise at Judge Mehling being identified as a witness for the Commission when Judge Gentry identified Judge Mehling as one of her witnesses.

b. The factors from *Snodgrass v. Commonwealth* do not support a continuance.

The factors articulated in *Snodgrass v. Commonwealth*, 814 S.W.2d 579, 581 (Ky. 1999) weigh in against continuing the hearing. In determining whether to grant a continuance, courts consider “length of delay; previous continuances; inconvenience to litigants, witnesses, counsel, and the court; whether delay is purposeful or is caused by the accused; availability of other competent counsel; complexity of the case; and whether denying the continuance will lead to identifiable prejudice.” *Id.* Application of these factors and whether to grant a continuance is a matter of the Commission’s discretion. *See id.* Because these factors weigh against a continuance, Judge Gentry’s motion to continue should be denied.

First, the length of the delay weighs against granting a continuance. As Judge Gentry’s counsel repeatedly points out, this matter has been pending for several months since the January 3, 2020 temporary removal hearing.

Second, the scheduled hearing was already continued from April 20, 2020 until August at Judge Gentry’s request.⁷ Further continuance is unnecessary.

Third, the inconvenience to the parties, witnesses, and the Commission weighs against continuing the hearing. Many of the witnesses in this matter are attorneys or court staff. The attorney witnesses in this matter have already had to work around their own court appearances and obligations to be present to testify at the hearing. Likewise, the other witnesses have already

⁷ While the motion was granted due to the COVID-19 emergency, Judge Gentry asserted a number of grounds in her March 19, 2020 motion to continue. *See* Judge Gentry’s Motion to Continue Hearing (Mar. 19, 2020); Judicial Conduct Commission Order Granting Motion to Continue (Mar. 20, 2020).

needed to make arrangements with their employers to be present. Further, a continuance would result in inconvenience to the Commission members, who are judges, attorneys, and citizens from around the state, who have blocked off a full work week from court or other employment obligations to be present at the hearing. Continuing the hearing would require repeating all of those arrangements.

Fourth, Judge Gentry asserts continuance is appropriate because she is not the reason for the delay. In support of this argument Judge Gentry asserts the Commission is the reason for the delay based on the Commission's addition of Counts X through XII of the charges, identifying Judge Mehling as a witness, identifying witnesses who were not interviewed by the Commission's investigator, and the allegations regarding shredding documents and filing a retaliatory bar complaint. The Commission has already addressed the timeliness of the new charges as well as identification of Judge Mehling as a witness. Further, as discussed above, the Commission is not required to conduct a formal interview with every witness identified for the hearing.

As a preliminary matter, Judge Gentry's discussion of this factor also includes unfortunate misstatements regarding the evidence produced to Judge Gentry and the allegations against her. For example, Judge Gentry erroneously asserts the Commission "has alleged Judge Gentry improperly ordered the shredding of documents without describing them, photographing them, or in any way alleging the shredding of documents was done with ill intent."⁸ However, photographs of the shredded documents were identified as a Commission exhibit and those photographs were provided to Judge Gentry's counsel on July 13, 2020.

Similarly, Judge Gentry asserts the Commission "has alleged that Judge Gentry filed an improper bar complaint against a witness in this process without providing any details as to the

⁸ Judge Gentry's Motion to Continue (Jul. 31, 2020) at 8.

legitimacy of the complaint or how it was investigated.”⁹ To be clear, Judge Gentry filed the Bar Complaint against Katherine Schulz—a witness in the JCC proceedings who is identified by name in the charges against Judge Gentry—mere days after Judge Gentry filed her answer to the Commission. The Bar Complaint was provided to Judge Gentry’s counsel on July 13, 2020, along with a copy of the Notice of Return under Supreme Court Rule 3.160(3) and the Supreme Court of Kentucky Inquiry Commission’s Order of Dismissal. Indeed, Judge Gentry has *stipulated* that she filed the bar complaint in question. Judge Gentry has been provided documentary evidence regarding these allegations and can fairly respond to them at the hearing.

Fifth, the complexity of the case does not warrant continuance. While this case involves a variety of factual allegations, it does not involve complex expert testimony, scientific evidence, multiple defendants, or other complexities that would warrant a continuance. Judge Gentry asserts a continuance is warranted because she must answer twelve separate counts. However, as Judge Gentry repeatedly points out, nine of the twelve counts have been pending since November of 2019. As a result, the vast majority of the issues in this case have been pending for over eight months, providing Judge Gentry with more than sufficient time to prepare a defense and deal with any factual complexities in the case.

Sixth, Judge Gentry will not be unduly prejudiced if the continuance is denied. As discussed above, in addressing Judge Gentry’s motion to dismiss Counts X through XII, the Commission already held: “The additional charges are not unfairly late, are within the time permitted by the Supreme Court Rules, and arise from allegations and circumstances already known to Judge Gentry from the factual file, evidence presented at the temporary removal hearing, or her own personal knowledge, and Judge Gentry will sustain no undue prejudice if

⁹ Judge Gentry’s Motion to Continue (Jul. 31, 2020) at 8.

these additional charges are heard at the scheduled hearing.”¹⁰ Further, the Commission has already rejected Judge Gentry’s arguments that the unavailability of full-blown civil discovery in an administrative action constitutes a violation of due process. Judge Gentry presents no persuasive reason to revisit that conclusion here.

2. Judge Gentry’s motion in limine regarding Judge Mehling’s anticipated testimony should be denied.

Judge Gentry also moves to exclude certain testimony by Judge Mehling, specifically (1) the parts of Judge Mehling’s testimony which Judge Gentry asserts is inadmissible hearsay; and (2) the testimony of Judge Mehling which alleges retaliation against a litigant or an attorney. This motion in limine should be denied for two reasons. First, Judge Gentry’s motion in limine is untimely. Second, even if it were timely, Judge Gentry’s motion should be overruled.

First, Judge Gentry’s motion in limine should be denied as untimely. The Commission’s pre-hearing order provides that witness lists must be filed with the Commission thirty days prior to the hearing and motions in limine must be filed not later than twenty days before the hearing. Under this Order, motions in limine were due no later than July 21, 2020. On July 16, 2020, Judge Gentry moved to compel the discovery deposition of Judge Mehling. However, Judge Gentry did not move in limine to exclude him as a witness or to exclude his testimony until July 31, 2020, ten days before the hearing. As a result, Judge Gentry’s motion in limine is untimely and should be denied.

Judge Gentry’s motion in limine should also be denied on the merits. Judge Gentry does not provide separate arguments regarding her motion in limine to exclude certain testimony by Judge Mehling. However, in her arguments for a continuance, Judge Gentry makes assertions

¹⁰ Judicial Conduct Commission Order on Pending Motions (Jul. 29, 2020).

regarding Judge Mehling's testimony, which presumably form the basis of Judge Gentry's motion in limine.

First, Judge Gentry seeks to exclude the parts of Judge Mehling's testimony that is inadmissible hearsay. Of course, whether certain testimony is inadmissible hearsay will depend on the context in which that testimony is offered, what it is offered to prove, and, if the testimony is hearsay, whether an exception applies. Judge Gentry is free to object to certain questions or testimony during the hearing. However, a blanket ruling in limine is inappropriate on this issue. It is the equivalent of a motion in limine seeking to exclude any inadmissible testimony.

Second, Judge Gentry seeks to exclude Judge Mehling's testimony regarding retaliation against a litigant or attorney. In particular, Judge Gentry takes issue with Judge Mehling's testimony regarding "[h]is discovery of and reaction to cases he assumed in Kenton Family Court where he set aside prior rulings of Judge Gentry which were clearly erroneous (which are relevant to the charges against Judge Gentry concerning her retaliatory behavior from the bench or her failure to disclose personal relationships with attorneys)."¹¹ Judge Gentry asserts she "does not have those case files, she does not know the litigants involved, the attorneys appearing, or anything else."¹² But the case files at issue were identified by case number in the Commission's exhibit list and copies were provided to Judge Gentry's counsel via electronic mail on July 13, 2020.¹³ In other words, Judge Gentry has been provided with the case files regarding which Judge Mehling may testify, can examine those files, and will be able to cross-examine Judge

¹¹ Judge Gentry's Motion to Continue (Jul. 31, 2020) at 5 (quoting Commission's Response to Judge Gentry's Motion to Compel Deposition of Judge Mehling (Jul. 24, 2020)).

¹² Judge Gentry's Motion to Continue (Jul. 31, 2020) at 5.

¹³ There can be no doubt Judge Gentry's counsel is aware of which cases are at issue, as Judge Gentry has filed objections to the case files being entered as exhibits at the hearing. *See* Judge Gentry's Objections to Commission Exhibits (Jul. 29, 2020).

Mehling regarding his testimony about those cases. Therefore, Judge Gentry's motion in limine regarding Judge Mehling's anticipated testimony should be denied.

CONCLUSION

For these reasons, Judge Gentry's motion to continue the hearing set for August 10, 2020 and motion in limine regarding Judge Mehling's anticipated testimony should be denied in its entirety.

Respectfully submitted,

/s/ Bryan H. Beaman
Bryan H. Beaman
Donald C. Morgan
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507
bbeaman@sturgillturner.com
dmorgan@sturgillturner.com
Telephone: (859) 255-8581
COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2020, I served a true and correct copy of the foregoing by electronic mail on the following individuals:

Jeffrey A. Lawson
524 Greenup Street
Covington, KY 41011
lawsonjeff@gmail.com
COUNSEL FOR JUDGE DAWN GENTRY

F. Todd Lewis
111 W. Washington Street, Suite 400
Louisville, KY 40202
Todd.lewis@toddlewislaw.com
COUNSEL FOR JUDGE DAWN GENTRY

Jimmy Shaffer
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
(502) 564-1231
JimmyShaffer@kycourts.net
EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION

/s/ Bryan H. Beauman

COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**REPLY IN SUPPORT OF COMMISSION'S MOTION IN LIMINE
TO ADMIT CERTAIN EVIDENCE AT THE HEARING**

On July 17, 2020, counsel for the Commission filed a motion in limine seeking to admit a single text message between Judge Gentry and her ex-husband, Brian Gentry, which occurred when the two were married. In response, Judge Gentry opposes the admission of the identified text, but also makes several broader assertions regarding Brian Gentry's potential testimony and his prior interview with the Commission's investigator; an interview that occurred after the Judge and Brian Gentry's divorce was final. Judge Gentry has not moved in limine to exclude Brian Gentry as a witness so these other assertions are irrelevant to the motion in limine for the admission of a single text message that is currently before the Commission. However, Judge Gentry's arguments in this regard overstate the scope of the spousal privilege and warrant discussion.

1. The text message at issue should be admitted into evidence.

In response to the argument that Judge Gentry waived the spousal privilege by submitting fifty-eight pages of messages between her and Brian Gentry to the Commission as supplemental evidence, Judge Gentry argues any waiver was limited to the subject matter of the specific texts she provided and asserts that *Winstead v. Commonwealth*, 327 S.W.3d 386 (Ky. 2010) disallows the introduction of the text at issue in this case.

Judge Gentry frames *Winstead's* discussion of waiver as mere dicta, and asserts the only part of the case that matters is that the Court held the verbal communication at issue in that case

was subject to spousal privilege. In reality, the Court’s discussion of waiver was not dicta, because the Commonwealth specifically argued waiver and the Court therefore needed to address the waiver argument to decide the case.¹ Just as importantly, *Winstead*’s analysis is instructive regarding whether a particular communication is intended to be kept private, and is therefore a “spousal communication” within the meaning of KRE 504 at all. Further, while *Winstead* ultimately held the verbal communication at issue in that case was privileged, the text message at issue here is distinguishable from the communication in *Winstead*.

In *Winstead*, the husband asked his wife to provide the police with a fake alibi concerning when the husband arrived home that evening.² In discussing whether the privilege applied, the Court noted that waiver occurs when a third party is present to hear the communication or the communication is meant to be shared with others. In holding the communication at issue was privileged, the Court observed that the communication—the *request* for the false alibi—was not intended to be shared; only the *information* (i.e. the false alibi itself) was intended to be disclosed.³ Here, the communication at issue is different. Unlike *Winstead*, the waiver in this case is not Judge Gentry asking Brian Gentry to share certain information with a third party. Rather, the argument here is twofold: (1) Judge Gentry’s statement to Brian Gentry in the text message was not privileged or any privilege was waived because Judge Gentry made similar statements or expressed the same sentiment to other individuals; and (2) Judge Gentry waived the privilege as to marital communications by injecting a plethora of spousal communications

¹ *Winstead*, 327 S.W.3d at 392 (“The Commonwealth responds that because Rainwater testified to *Winstead*’s telling her that he discussed this concocted alibi with others, his communications with her were meant for disclosure, rendering the privileges nonexistent or waived.”). The Court also held that a separate, non-verbal communication was *not* a spousal communication and was therefore not subject to the spousal communication privilege and that the trial court admitting the verbal spousal communication was harmless error.

² *Winstead*, 327 S.W.3d at 393-94. The Court also held that the wife’s observation of when her husband arrived home was not a marital communication and was therefore not privileged. *Id.*

³ *Id.*

into the record in this matter. In addition to the text messages, she also submitted to the Commission a letter from Brian Gentry also made during their marriage. Judging from the highly personal nature of the content of that letter, one must assume Judge Gentry had a specific reason for providing the Commission with that particular correspondence as well. But what? Whether her strategy was simply to discredit Brian Gentry as a witness or some other unknown tactic, the result is the same: dumping pages of communications between Brian Gentry and herself into this record is a waiver of the spousal communications privilege.

Judge Gentry cannot pick and choose which spousal communications will be part of the record, unfairly allowing her to selectively decide what spousal communications are considered by the Commission.⁴ As a result, the motion in limine seeking admission of the text message at issue should be granted.

2. Judge Gentry's other arguments are irrelevant to the single text message at issue in the Commission's motion in limine and improperly overstate the scope of the spousal privilege.

Judge Gentry also broadly asserts that the spousal privilege includes not just the single proffered text here but “. . . almost everything asked of Brian Gentry in his interview . . . [and] all the secondary information derived from that offending interview.”⁵ To be clear, Judge Gentry has not moved in limine to exclude Brian Gentry's testimony and the time to do so under the Commission's prehearing order has already expired. Further, Judge Gentry's motion for a protective order regarding Brian Gentry has already been denied. Additionally, the

⁴ As cited in the Response to Judge Gentry's motion for protective order, federal courts have refused to uphold privilege claims, including within the marital privileges context, when it permits the party “to select any stopping place” from the evidence. *Whitney v. City of Milan, Tennessee*, 2014 WL 11411675 (E.D.TN. 2014)(quoting *Klein v. Harris*, 667 F.2d 274, 288 (2d Cir. 1981).

⁵ In response to the Commission's motion in limine, Judge Gentry incorporates her arguments from her motion for a protective order, which the Commission has already denied. To the extent Judge Gentry is reasserting the same arguments previously rejected in her motion for a protective order, counsel for the Commission incorporates by reference the arguments from the Commission's response to Judge Gentry's motion for a protective order and the Commission's Order denying the motion.

Commission's motion in limine addresses only a single text message. As a result, these additional arguments are irrelevant to the motion in limine that is presently before the Commission.

Further, while these issues were discussed in the Commission's response to Judge Gentry's motion for a protective order, in light of these assertions, it bears repeating that the spousal privilege *is an evidentiary privilege*. While KRE 504 prohibits a spouse or former spouse from *testifying* as to spousal communications, no part of KRE 504 prevents an investigative body from interviewing a spouse, or from seeking additional, non-privileged information based on information obtained from a spouse.⁶

CONCLUSION

For these reasons, the Commission's motion in limine should be granted.

Respectfully submitted,

/s/ Bryan H. Beauman

Bryan H. Beauman

Donald C. Morgan

Sturgill, Turner, Barker & Moloney, PLLC

333 West Vine Street, Suite 1500

Lexington, Kentucky 40507

bbeauman@sturgillturner.com

dmorgan@sturgillturner.com

Telephone: (859) 255-8581

COUNSEL FOR JUDICIAL CONDUCT

COMMISSION

⁶ See Response to Judge Gentry's Motion for Protective Order (Jul. 16, 2020) at 4-5 (discussing case law distinguishing between evidentiary nature of spousal privilege and investigative activities).

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2020, I served a true and correct copy of the foregoing by electronic mail on the following individuals:

Jeffrey A. Lawson
524 Greenup Street
Covington, KY 41011
lawsonjeff@gmail.com
COUNSEL FOR JUDGE DAWN GENTRY

F. Todd Lewis
111 W. Washington Street, Suite 400
Louisville, KY 40202
Todd.lewis@toddlewislaw.com
COUNSEL FOR JUDGE DAWN GENTRY

Jimmy Shaffer
Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266
(502) 564-1231
JimmyShaffer@kycourts.net
EXECUTIVE SECRETARY FOR
JUDICIAL CONDUCT COMMISSION

/s/ Bryan H. Beauman
COUNSEL FOR JUDICIAL CONDUCT
COMMISSION

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5

ORDER DENYING MOTION TO CONTINUE HEARING

Upon consideration of Judge Gentry's Motion to Continue the hearing and the Response thereto, it is hereby ORDERED that the motion be DENIED for the reasons stated in the Response. As previously stated, the additional charges were asserted within the time permitted by the Supreme Court Rules, arise from allegations and circumstances already known to Judge Gentry, and Judge Gentry will sustain no undue prejudice if these additional charges are heard at the scheduled hearing.

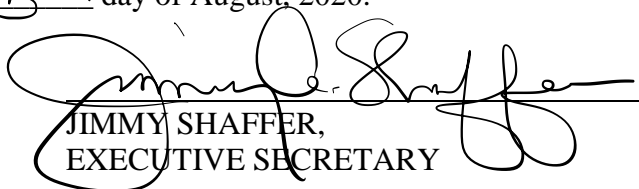
Date: August 5th, 2020



R. Michael Sullivan, Chairman
Kentucky Judicial Conduct Commission

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her at her email address and to counsel Jeffrey A. Lawson, 524 Greenup Street, Covington, KY 41011, lawsonjeff@gmail.com; F. Todd Lewis, Lewis Law, PLLC, 111 W. Washington Street, Suite 400, Louisville, KY 40202, todd.lewis@toddlewislaw.com; and Bryan Beaman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeaman@sturgillturner.com this 5th day of August, 2020.



JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**ORDER RULING ON COUNSEL FOR THE COMMISSION'S OBJECTIONS TO
JUDGE GENTRY'S EXHIBITS**

The Judicial Conduct Commission ("Commission") enters this Order on counsel for the Commission's Objections to Judge Gentry's Exhibits. IT IS ORDERED that the ruling on the admissibility of these exhibits is RESERVED until the hearing. Several of these exhibits appear to pertain to confidential juvenile proceedings. As noted in the Commission's Final Prehearing Order, all information required to be kept confidential by Civil Rule 7.3 or other law shall be redacted from all exhibits; however, counsel may use unredacted copies to present to witnesses during their testimony to assist them in identifying specific cases, and any such unredacted copy shall be filed under seal.

Date: August 5th, 2020



R. Michael Sullivan, Chairman
Kentucky Judicial Conduct Commission

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her at her email address and to counsel Jeffrey A. Lawson, 524 Greenup Street, Covington, KY 41011, lawsonjeff@gmail.com; F. Todd Lewis, Lewis Law, PLLC, 111 W. Washington Street, Suite 400, Louisville, KY 40202, todd.lewis@toddlewislaw.com; and Bryan Beauman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeauman@sturgillturner.com this 5th day of August, 2020.



JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**ORDER ON RESPONDENT’S OBJECTION TO PROSECUTION EXHIBITS AND
REQUEST TO ALTER PUBLICATION PROCEDURE**

The Judicial Conduct Commission (“Commission”) enters this order on consideration of Judge Gentry’s “Objection to Prosecution Exhibits and Request to Alter Exhibit Publication Procedure” and counsel for the Commission’s Response thereto.

Objections to exhibits were specifically directed to be filed on or before twenty (20) days before the hearing. Judge Gentry filed on July 20, 2020, within the *objection deadline*, motions, within which motion there were presented some document objections or challenges. At the pretrial conference on July 27, 2020, discussions about the documents revealed that Gentry had additional objections to the Commission’s document list, though her objections were not yet presented in writing. The Commission, *sua sponte* as noted in the July 29, 2020 Final Prehearing Order, permitted any other objections to documents be presented by Judge Gentry in writing filed by July 31, 2020, which she has now done. This order addresses the latter filing.

After having thoroughly reviewed the motion, the relief requested, objections and the referenced documents in issue, Judge Gentry’s request to change the method of providing copies of exhibits to members of the Commission is DENIED. Under the current circumstances and COVID-related issues and restrictions in place, the Commission believes that the submission of documents potentially to be presented by either party during the hearing is best accomplished by submission of binders prepared and delivered in advance of the proceedings. The Commission

members will be instructed prior to presentation of the binders to not view any exhibit in the binders until or as presented during the hearing by counsel and subject to the Chair of the Commission ruling on any timely objection to the use of and subject to admissibility of the exhibit and any other instruction or admonition of the Chair. During the hearing, the binders will remain in the courtroom where the hearing is conducted, so there is no risk that a Commission member would review any document or exhibit outside of the hearing room or prior to presentation, or if its admission is prohibited by the Chair for any reason. Any exhibit ruled inadmissible will be removed by Commission staff from the binders during breaks in the hearing.

Regarding Judge Gentry's General Objections on pages 1-2 of her motion, the Commission notes her objection requiring counsel for the Commission to authenticate and lay a proper evidentiary foundation for its exhibits. The Chair does not believe it appropriate to issue evidentiary rulings to admit or deny *potential* exhibits in advance of this hearing or in advance of seeing the context within which a document may be presented or used at the hearing by either party. However, the Commission does believe that as the instant matter has shown, the purpose of requiring objections and motions in limine to be presented by the parties before the hearing is to raise any objections that can be raised at the earliest possible time based on a review of the documents so as to avoid unnecessary delay *at the hearing* considering such matters and objections made during presentation of proof. Pursuant to KRE 103(d), a ruling on a motion *in limine* resolved by order of record is sufficient to preserve error for review, and the timely presentation of objections by the parties likewise is intended to preserve any error for review. As noted by that rule, the Commission may also defer a decision on admissibility of the evidence until the hearing, and may reconsider any ruling herein at the hearing. The Commission intends from the rulings set forth herein to guide the parties on its views of the issues pertaining to the

admissibility of certain evidence at the hearing, subject to the actual presentation of proof.

Rulings on Specific Objections

Judge Gentry's blanket objection to any and all items provided by Brian Gentry is DENIED, and the Chair reserves the right to rule on the admissibility of any evidence (including documents) offered through Brian Gentry's testimony at the hearing.

At this time counsel for the Commission's Motion in Limine related to the single text message between Judge Gentry and Brian Gentry is DENIED subject to introduction of evidence at the hearing that would either prove (1) a waiver of the KRE 504(b) privilege because of Judge Gentry's previous production of confidential spousal communications, or (2) Judge Gentry made the same or very similar statement to a third party, or subject to other grounds established for introduction under the Rules of Evidence. The Chair has entered a separate order explaining this ruling in more detail.

Exhibit 7 is an email string under the subject "KEEP GENTRY FINANCE COMMITTEE." Judge Gentry objects based on hearsay and failure to authenticate. Counsel for the Commission claims it is non-hearsay because it will be used to prove the state of mind of at least one person who read the statement, not the truth of the matters asserted therein. IT IS ORDERED that the admissibility of this exhibit is RESERVED until the hearing.

Exhibit 10 is an email communication from Kim Krall to Kelly Blevins. IT IS ORDERED that the admissibility of this exhibit is RESERVED until the hearing but it is noted that relevance for non-hearsay purposes other than to refresh recollection pursuant to KRE 803(6) is limited.

Exhibit 13 is represented as a Snapchat communication from Stephen Penrose ("Penrose") to others including Katherine Schulz ("Shulz"), and is purportedly to be offered not

for the truth of the matter asserted therein, but that the statement was made, which is a proper non-hearsay use. The exhibit may also be admissible as a declaration against Penrose's interest under KRE 801A if he is first asked about the communication and shown the document, and the document is inconsistent with his testimony (KRE 613). IT IS ORDERED that the admissibility of this exhibit is RESERVED until the hearing.

Exhibit 15 consists of texts between Schulz and Debra Pleatman ("Pleatman") dated May 14 (year not specified). The communications appear to be nothing more than scheduling a meeting between them. IT IS ORDERED that the admissibility of this exhibit is RESERVED until the hearing.

Exhibit 16 is a May 24, 2019, letter to the Judicial Conduct Commission from the Administrative Office of the Courts concerning allegations against Judge Gentry. The Commission will take judicial notice of the fact that it received a complaint letter dated May 24, 2019 from the Administrative Office of the Courts concerning conduct of Judge Gentry, but the document will not be admitted into evidence because it contains hearsay and its contents are not relevant.

Exhibit 18 is the June 24, 2019 letter to Judge Gentry from the Commission asking her to respond to the complaint marked Exhibit 16. Because one of the issues in this matter is whether Judge Gentry was honest and candid with the Commission, the fact that this letter was provided to her and the Commission asked her to respond to allegations set forth in it are relevant, and it is not admitted for the truth of the matters asserted therein. IT IS ORDERED that the admissibility of this exhibit is RESERVED until the hearing.

Exhibit 19 is Judge Gentry's July 15, 2019 response letter to the Commission's June 24, 2019 letter, and is relevant to the charge of whether Judge Gentry was honest and candid with the

Commission, and is admissible because the statements therein related to a material element of the charges, similar to the admission of an alleged defamatory statement in a defamation suit, and also to the extent it contains admissions of Judge Gentry under KRE 801A(b)(1).

Exhibit 20, being the July 29, 2019 letter to Judge Gentry from the Judicial Conduct Commission asking her to respond to additional allegations made against her, and Exhibit 23, being Judge Gentry's response to that letter, are admissible for the same reasons Exhibits 18 and 19 are admissible.

Exhibit 21 is a motion for recusal filed by Schulz in a case before Judge Gentry. The Commission may take judicial notice of the fact that the motion was filed and the allegations were made, but it is not admissible for the truth of any of the statements asserted in the document. IT IS ORDERED that the admissibility of this exhibit is RESERVED until the hearing.

Exhibit 25 consists of Kentucky Registry of Election Finance records related to Judge Gentry and is a public record admissible under KRE 803(6) and business record related to Judge Gentry's campaign under KRE 803(8). Judge Gentry objects based on the rule of completeness, KRE 106. Judge Gentry may specify to counsel for the Commission what other parts of the document ought to in fairness be considered with it, and those parts should be added to the document tendered as an exhibit at the hearing.

Exhibits 28-30 appear to be texts between several persons, which would need to be authenticated. To the extent those texts contain communications by Judge Gentry that are material to the charges against her, they admissible because the statements therein on a material element of the charges, similar to the admission of an alleged defamatory statement in a defamation suit, and also to the extent it contains admissions of Judge Gentry under KRE

801A(b)(1). It is noted that Exhibit 30 contains hearsay of Jack Osterhage repeating a statement allegedly made by Judge Gentry, which is inadmissible hearsay absent an applicable exception.

IT IS ORDERED that the admissibility of this exhibit is RESERVED until the hearing.

Exhibit 35 appears to be a text communication from Stephanie Ann Dietz and another person who counsel for the Commission identifies as Greta Walker. The text appears to be inadmissible hearsay and lacking relevance to the charges. IT IS ORDERED that the admissibility of this exhibit is RESERVED until the hearing.

Exhibit 36. IT IS ORDERED that the admissibility of this exhibit is RESERVED until the hearing.

Exhibit 37 is a screen shot of a communication that may be between Judge Gentry and Penrose which may be admissible if properly authenticated and Penrose is first asked about the communication and shown the document, and the document is inconsistent with his testimony (KRE 801A(a)(1) and KRE 613). The same may be true of Judge Gentry if she was involved in this communication. Also, if this communication is between Penrose and Judge Gentry, it is evidence of a material element of the charges, similar to the admission of an alleged defamatory statement in a defamation suit, and admissible. IT IS ORDERED that the admissibility of this exhibit is RESERVED until the hearing.

Exhibit 38 is a screen shot of a cell phone, the relevance of which cannot be determined by looking at it. It is not hearsay because it is a photograph, not a statement. IT IS ORDERED that the admissibility of this exhibit is RESERVED until the hearing.

Exhibit 39 is Judge Gentry's January 31, 2019 response to the Judicial Conduct Commission, and is admissible for the same reasons that Exhibits 29 and 20 are admissible.

Exhibits 42 through 44 appear to be a list of contributors to Judge Gentry's campaign and

a record of her campaign bank account which, if properly authenticated, are admissible as business records under KRE 803(6). IT IS ORDERED that the admissibility of this exhibit is RESERVED until the hearing.

Exhibit 45 consists of documents related to the unemployment claim of Meredith Smith. Any document therein completed by Judge Gentry may be admissible as an admission against interest. The Notice of Determination by the referee is admissible as a public record under KRE 803(8) but the finding therein regarding the reason for termination of Ms. Smith's employment is not binding on the Commission.

Exhibit 47 is a motion for recusal filed by Wesley K. Williams. The Commission will take judicial notice that the motion was filed in *Clark v. Clark*, Kenton Family Court, Fifth Division, Case No. 19-CI-01644 on September 16, 2019. The affidavit filed with the motion contains hearsay that is not admissible. Any further evidence regarding the circumstances surrounding this motion must come from witness testimony, not the documents.

Exhibit 48 appears to be Verizon phone records of Brian Gentry. IT IS ORDERED that the admissibility of this exhibit is RESERVED until the hearing.

Exhibit 55 appears to be an email string that includes an email that Meredith Smith sent to Judge Gentry that included a list of people who were putting signs in their yards related to her campaign, which Judge Gentry forwarded to Brian Gentry. It may be relevant to show Judge Gentry received an email from one of her employees during office time on a matter related to her campaign. Concerning the objection that the document is subject to the marital privilege as confidential marital communication, Judge Gentry is forwarding an email sent to her from a third party about a campaign matter and there appears to be no expectation of confidentiality in the communication. The part of the email where Brian Gentry communicates to Gene Weaver is

hearsay and should be redacted before tendering the exhibit at the hearing.

Exhibit 58 is an email from Brian Gentry to Gene Weaver that is inadmissible hearsay.

Exhibits 59 and 60 are voluminous pleadings and other papers in a case involving attorney Greta Walker. The Commission may take judicial notice they were filed. Judge Gentry objects under KRE 401 and 403, but counsel for the Commission has stated that these records may be relevant to the charges. IT IS ORDERED that the admissibility of this exhibit is RESERVED until the hearing.

Exhibit 61 is an email from Debra Pleatman to other persons that is inadmissible hearsay.

Exhibit 63 is the transcript of the January 3, 2020 Temporary Suspension Hearing. This prior testimony is only admissible as provided in the Kentucky Rules of Evidence. IT IS ORDERED that the admissibility of this exhibit is RESERVED until the hearing.

Exhibit 64 consists of documents related to the bar complaint that Judge Gentry filed against Schulz. The Commission may take judicial notice of the fact that the Complaint was filed, and the findings of the KBA are admissible as a public record under 803(8), but the KBA's determination that the complaint does not state an ethical violation is not binding in this case.

Exhibit 65 consists of photographs of shredded documents, and they are admissible if authenticated.

Exhibits 67 consists of phone records from Verizon. IT IS ORDERED that the admissibility of this exhibit is RESERVED until the hearing.

Exhibit 69 through 78 appear to be numerous pleadings and court decisions, and the Commission may take judicial notice of these pleadings and decisions. It is unclear based upon a review of the documents why they are relevant, and IT IS ORDERED that the admissibility of these exhibits is RESERVED until the hearing.

Exhibit 79 is a subpoena to Snapchat, and the Commission denies Judge Gentry's objection to the extent it is based on a violation of CR 45.03(3).

Item 81 is purported to be the exhibits admitted at the temporary suspension hearing. IT IS ORDERED that these exhibits are not automatically admissible at the final hearing merely because they were admitted at the temporary suspension hearing, and Judge Gentry's failure to object at that temporary suspension hearing does not constitute a waiver of her right to object at this final hearing.

Any issue not specifically addressed herein is RESERVED for the final hearing.

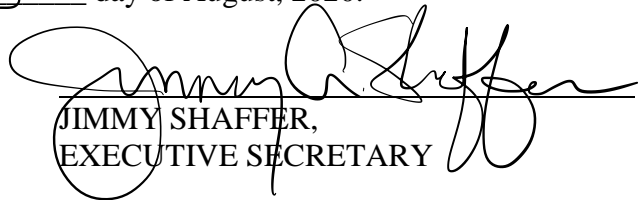
Date: August 5th, 2020



R. Michael Sullivan, Chairman
Kentucky Judicial Conduct Commission

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her at her email address and to counsel Jeffrey A. Lawson, 524 Greenup Street, Covington, KY 41011, lawsonjeff@gmail.com; F. Todd Lewis, Lewis Law, PLLC, 111 W. Washington Street, Suite 400, Louisville, KY 40202, todd.lewis@toddlewislaw.com; and Bryan Beaman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeaman@sturgillturner.com this 5th day of August, 2020.



JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

ORDER ON FINAL PREHEARING CONFERENCE

Following completion of the August 5, 2020 Final Prehearing Conference with counsel, the Judicial Conduct Commission (“Commission”) enters this Order concerning matters discussed during said conference:

1. Pursuant to KRE 615, it is hereby ORDERED that all witnesses shall be excluded from the courtroom so that they cannot hear the testimony of other witnesses, except Judge Gentry and Gene Weaver, the Commission’s investigator. Counsel is directed to instruct their witnesses that they shall refrain from reading or viewing any media, internet or other social media to the extent any information concerning this proceeding is broadcast or posted thereon.

2. The parties are hereby advised that testimony via Zoom conference may be permitted if necessary due to COVID-19 issues and orders of the Kentucky Supreme Court.


3. Counsel is permitted during the hearing to text with clients and also text with witnesses concerning scheduling of their testimony.

4. Pursuant to the request of counsel for Judge Gentry, it is hereby noted that Judge Gentry made a proposal for resolution that was not accepted.

5. The Chair of the Commission has previously advised counsel that they shall have fifteen (15) minutes each for opening statement, but this requirement shall not apply to closing arguments.

6. Counsel for Judge Gentry has requested that examination of any witness used to authenticate the photographs identified as counsel for the Commission's Exhibit 36 be conducted outside of the hearing of the Commission members, except for the Chair and the Alternate Chair. The Chair reserves ruling on that request until the hearing.

Date: August 5th, 2020


R. Michael Sullivan, Chairman
Kentucky Judicial Conduct Commission

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her at her email address and to counsel Jeffrey A. Lawson, 524 Greenup Street, Covington, KY 41011, lawsonjeff@gmail.com; F. Todd Lewis, Lewis Law, PLLC, 111 W. Washington Street, Suite 400, Louisville, KY 40202, todd.lewis@toddlewislaw.com; and Bryan Beaman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeaman@sturgillturner.com this 5th day of August, 2020.


JIMMY SHAFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**


IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

ORDER EXCLUDING JUDGE KAREN THOMAS AS A WITNESS

On August 7, 2020, the Chairperson conducted a Zoom videoconference with counsel for Judge Gentry and counsel for the Commission for the purpose of determining whether Judge Karen Thomas, the alternate District Court member for the Commission, would be called as a witness. After considering the proffered testimony, it is hereby ORDERED that Judge Thomas shall not be called as a witness, as she has no testimony relevant to the charges against Judge Gentry.

Date: August 7th, 2020



R. Michael Sullivan, Chairman
Kentucky Judicial Conduct Commission

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her at her email address and to counsel Jeffrey A. Lawson, 524 Greenup Street, Covington, KY 41011, lawsonjeff@gmail.com; F. Todd Lewis, Lewis Law, PLLC, 111 W. Washington Street, Suite 400, Louisville, KY 40202, todd.lewis@toddlewislaw.com; and Bryan Beaman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeaman@sturgillturner.com this 7th day of August, 2020.



JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**DAWN M. GENTRY, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT, FAMILY DIVISION 5**

**ORDER ON COUNSEL FOR THE COMMISSION'S
MOTION IN LIMINE AND JUDGE GENTRY'S
MOTION IN LIMINE REGARDING ANTICIPATED TESTIMONY**

This matter is before the Commission on the Motion in Limine of counsel for the Commission to admit certain evidence at the hearing, and counsel for Judge Gentry's Motion in Limine Regarding Anticipated Testimony of Judge Mehling, and each party having filed a response to the motion of the other party, the Commission enters this Order ruling on these motions.

Counsel for the Commission's Motion in Limine

Counsel for the Commission seeks a ruling on the admissibility of a text message between Judge Gentry and her ex-husband, Brian Gentry, sent between them during their marriage. Judge Gentry objects based on the privilege set forth in KRE 504(b) concerning confidential communications made between spouses during their marriage.

Counsel for the Commission argues that Judge Gentry has waived this privilege pursuant to KRE 509 because in response to receipt of the factual file from the Commission, Judge Gentry submitted documents to the Commission that included confidential communications between her and her now ex-husband, including text communications, copies of which are attached to counsel for the Commission's Response to Judge Gentry's Motion for a Protective Order. These text communications between Judge Gentry and Mr. Gentry appear to have occurred around Easter 2019. The Commission takes judicial notice of the fact that Judge Gentry filed her divorce

petition on April 15, 2019 and Easter occurred April 21, 2019. If Judge Gentry disclosed to the Commission confidential communications between her and Mr. Gentry that occurred before she and Mr. Gentry permanently separated,¹ then Judge Gentry may have waived the privilege, even if the subject of the text communications discussed by Judge Gentry is different than the subject of the text at issue.² However, counsel for the Commission would need to offer into evidence a confidential spousal communication disclosed by Judge Gentry that took place before they permanently separated.

The KRE 504(b) privilege also does not apply if the communication at issue was not made privately between the spouses, i.e., at least one other person was present or the evidence shows that the party “intended to disclose” the same confidential communication to others. *Winstead v. Com.*, 321 S.W.3d 386, 394 (2010). However, for this principle to apply, counsel for the Commission would need to prove that Judge Gentry disclosed to others the same facts that she had told her husband. *Id.*³ While counsel for the Commission claims in his motion that Judge Gentry did make this same statement to third parties, the Commission currently is not aware of any such communication or evidence, and that would have to be satisfactorily proven at the hearing before the text may be admissible.

For the foregoing reasons, ruling on the admissibility of the text message in question is RESERVED until the hearing, and its ruling will be grounded in the evidentiary principles set

¹ Lawson, *The Kentucky Evidence Law Handbook* (5th Ed.), §5.10[4], pp. 380-81 (noting federal court decisions requiring a “valid marriage” for application of the privilege, and that communications made after a couple is “permanently separated” are not privileged. *See also, Gonzalez de Alba v. Com.*, 202 S.W.3d 592, 595-596 fn. 2 (Ky. 2006) (cited in footnote 60 on p. 381 of Lawson) stating that “Professor Lawson goes so far to suggest that separation of spouses and filing for divorce may be sufficient to bar the privilege”).

² Lawson, §5.10[3][e] at pp. 379-80 (discussing implied waiver).

³ *See also Com. v. G.Y.*, 63 A.3d 259, 267-68 (Pa. Superior Ct. 2013)(where the statement that was the challenged spousal communication was also made by the declarant to third parties, the statement does not qualify as a confidential communication).

forth in this order and the Kentucky Rules of Evidence.

Judge Gentry's Motion in Limine

Judge Gentry seeks an order excluding the testimony of Judge Mehling. Judge Mehling was disclosed by not only counsel for the Commission on its timely filed witness list, but also by Judge Gentry on her timely filed witness list. So, Judge Mehling will be permitted to testify as a witness. He will not be permitted to testify as an expert witness because he was not identified as such as required by the Amended Prehearing Order. The Commission can take judicial notice of any order, judgment or other ruling of Judge Gentry or Judge Mehling that is relevant to a charge and admit the document into evidence, but Judge Mehling will not be permitted to testify about his reasons for his ruling or his opinions as to the reasons for Judge Gentry's ruling. Ruling on any other subject of Judge Mehling's potential testimony or objection thereto is RESERVED, which testimony shall be governed by the Kentucky Rules of Evidence.

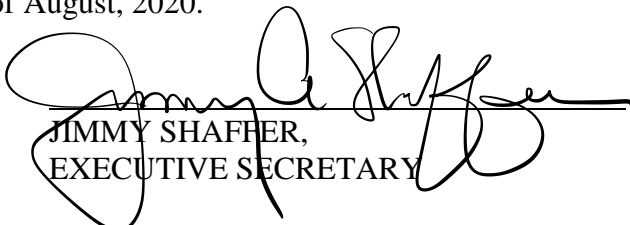
Date: August 12th, 2020



R. Michael Sullivan, Chairman
Kentucky Judicial Conduct Commission

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Dawn M. Gentry, Family Court Judge, by serving the same to her counsel Jeffrey A. Lawson, 524 Greenup Street, Covington, KY 41011, lawsonjeff@gmail.com; F. Todd Lewis, Lewis Law, PLLC, 111 W. Washington Street, Suite 400, Louisville, KY 40202, todd.lewis@toddlewislaw.com; and Bryan Beaman, Sturgill, Turner, Barker and Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, bbeaman@sturgillturner.com this 12th day of August, 2020.



JIMMY SHAFFER,
EXECUTIVE SECRETARY