

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**GREGORY T. POPOVICH, DISTRICT COURT JUDGE
17TH JUDICIAL DISTRICT**

FORMAL PROCEEDINGS DOCKET ENTRIES

Date of Document

1. April 1, 2016 - [Notice of Formal Proceedings and Charges](#)
2. April 6, 2016 - [Request for Extension of Time to Answer Notice of Formal Proceedings and Charges](#)
3. April 8, 2016 - [Order for Extension](#)
4. June 16, 2016 - [Answer](#)
5. June 16, 2016 - [Notice of Time and Place for Hearing](#)
6. June 16, 2016 - [First Set of Interrogatories of Defendant](#)
7. June 16, 2016 - [Request for Admissions](#)
8. June 16, 2016 - [Request for Production of Documents](#)
9. June 20, 2016 - [Response to Discovery Motions](#)
10. June 21, 2016 - [Order on Discovery Motions](#)
11. June 23, 2016 - [Motion to Reconsider](#)
12. June 29, 2016 - [Response to Motion to Reconsider](#)
13. July 5, 2016 - [Order on Motion to Reconsider](#)

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**GREGORY T. POPOVICH, DISTRICT COURT JUDGE
17TH JUDICIAL CIRCUIT**

NOTICE OF FORMAL PROCEEDINGS AND CHARGES

Notice is hereby given of the initiation of formal proceedings under Rule 4.180 of Rules of the Supreme Court. At the times set out in this Notice, you were District Court Judge for Kentucky's 17th Judicial Circuit located in Campbell County. The charges are as follows:

COUNT I

During your tenure as District Judge, you have made numerous inappropriate statements to parties appearing before you in court including:

- a. You routinely accuse criminal defendants of attempting to "blackmail" and "con" you when they ask questions about their case. Examples of such conduct occurred on June 7, 2013, at 10:14 a.m.; June 13, 2013, at 9:39 a.m.; June 14, 2013, at 9:33 a.m.; and July 8, 2013, at 10:05 a.m.
- b. On June 17, 2013 at 12:23 p.m., you mocked a criminal defendant for inquiring as to the difference between a bench trial and jury trial.
- c. On June 21, 2013, at 9:33 a.m., you told a criminal defendant, "If you get busted for this again, I'll tell you how amusing you won't find it. Unless you like those young boys at the jail. I understand they can be very friendly to young boys like you." At the conclusion of the hearing you then mocked his intelligence saying, "Brilliant, isn't he? What he's got doesn't ever go away."
- d. On July 15, 2013, at 10:32 a.m., you asked if a criminal defendant had heard a pre-recorded message explaining his due process rights. When the defendant did not respond, you asked if he had a "mental problem." When the defendant asked to plead not guilty, you responded that he had "0% chance of winning."
- e. On July 15, 2013, at 10:41 a.m., you told a pregnant criminal defendant that receives methadone treatment, "You obviously don't care about the child as much as we do. I want to protect this child. You obviously don't."

- f. On July 18, 2013, at 10:05 a.m., you mocked a criminal defendant and his mother when they said that they did not understand the proceedings. You proceeded to mock the defendant by asking if he had a problem "keeping up mentally" and accused him and the mother of "playing a silly game" because he would not accept a plea offer. When the defendant ultimately accepted the plea, you ordered the defendant's mother to leave the courtroom or face a week in jail. You then said, "Does anyone in here believe they weren't running a con on me? She thought she was really funny, didn't she?"
- g. On April 20, 2015, at 9:48 a.m., you mocked a defendant who failed to understand a plea offer. You then threatened to withdraw the plea offer if he could not understand it. Rather than ensure that the defendant was making a knowing and intelligent plea, you addressed a family member in the courtroom and asked them if the defendant could understand the plea.
- h. On April 20, 2015, at 10:06 a.m., you openly mocked a criminal defendant being arraigned for charges of reckless driving and driving under the influence when he rejected a plea offer.
- i. On May 18, 2015, at 9:45 a.m., you mocked a defendant's criminal history, stating, "It's obvious you've got experience. You could probably pass the bar."
- j. On August 11, 2015, at 9:58 a.m., you chastised a defendant's mother in open court for attempting to inform the Court of her son's mental health issues.
- k. On August 17, 2015, at 9:41 a.m., a defendant charged with numerous drug felonies requested a public defender. You asked how he supported himself and then said, "Well, that's silly, isn't it?" which caused the courtroom to laugh. You then set the defendant's bail at \$25,000.00 cash or property and threatened to raise it if the defendant wanted to discuss it.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office.

Furthermore, your actions violate SCR 4.300 and the relevant portions of the following

Canons of the Code of Judicial Conduct:

Canon 1 which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.

Canon 2A which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3B(4) which requires judges to be dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.

Canon 3B(8) which requires a judge to dispose of a matter promptly, efficiently, and fairly.

COUNT II

During your tenure as District Judge, you have made numerous inappropriate statements to attorneys appearing before you in court, including:

- a. On June 18, 2013, at 11:11 a.m., you refused to set bond for a criminal defendant because his public advocate was not present. You then criticized and blamed the public advocate for causing the defendant to remain in jail.
- b. On June 18, 2013, at 12:57 p.m., while conducting a suppression hearing you repeatedly interrupted the defense attorney and accused him of "playing games." You then prohibited the attorney from asking certain questions and told him to "knock off" the "ping pong talk."
- c. On June 21, 2013, at 9:30 a.m., you criticized the Department of Public Advocacy in open court claiming that "hogwash" comes out of that office.
- d. On June 18, 2014, at 3:01 p.m., you accused a public advocate of being "ridiculous" and "nonsensical" for requesting a hearing.
- e. On September 24, 2014, during a hearing on a writ of prohibition filed in Campbell Circuit Court case number 14-CI-08967, you accused the attorney for the petitioner of acting in bad faith and said everything the attorney said was "absurd." You then accused the attorney of being dishonest, unethical, and abusing the legal system.
- f. On May 14, 2015 at 2:10 p.m., you mocked an attorney for requesting a monitoring program other than Kentucky Alternative Programs (KAP).
- g. On August 17, 2015 at 2:27 p.m. you conducted a hearing on a motion to suppress. During the hearing you interrupted the public advocate with comments critical of her line of questioning. You later said the public advocate's argument was "nonsense."

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office.

Furthermore, your actions violate SCR 4.300 and the relevant portions of the following

Canons of the Code of Judicial Conduct:

Canon 1 which requires judges to maintain high standards of conduct and uphold the integrity and independence of the Judiciary.

Canon 2A which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3B(4) which requires judges to be dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.

Canon 3B(7) which requires judges to give every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

Canon 3B(8) which requires a judge to dispose of a matter promptly, efficiently, and fairly.

COUNT III

During your tenure as District Judge, you have made numerous inappropriate statements regarding fellow judges and court personnel while on the bench, including:

- a. On June 3, 2013, at 9:54 a.m., you criticized the Campbell District Court Judge in Division II, stating "The other division doesn't give reminder slips? Are they nuts?" You then commented, "This is laziness beyond belief."
- b. On July 16, 2013, at 10:55 a.m., you criticized the Campbell Circuit Court Clerk's policy on not applying a defendant's bond to restitution, stating, "What dumb rule does the Clerk's office have now."
- c. On August 2, 2013, at 9:30 a.m., you criticized the Campbell District Court Judge in Division II. When asked by a defendant if the Judge was available, you responded, "If I talk percentages, the answer would be no. We all know that. She's very rarely there."
- d. On June 18, 2014, at 1:56 p.m., you criticized the Campbell District Court Judge in Division II. When told that the Judge in Division II denied the defendant a public advocate, you responded, "So, in other words, [the Division II Judge] was just kind of dumping on this court? Yes. Okay, I got it." You again referred to the Division II Judge stating, "If that's the way we're going to play it, we will do that."
- e. On June 18, 2014, at 2:11 p.m., you criticized the Campbell District Court Judge in Division II. When the defendant requested a continuance to obtain a public advocate, you responded, "Is the other division trying to cause the PD trouble or what? Obviously they are." You then said, "Obviously we know what the judge was doing last week. The judge is supposed to make a reasonable inquiry about whether you need a PD or not. That wasn't done. I can tell by looking at the situation. That's why I got behind the 8-ball today. I have to do it all. I think we were kind of set up for this."
- f. On April 20, 2015, at 9:19 a.m., you criticized pretrial services for classifying a defendant as low risk and said, "He could live in China and they will consider him low risk."

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions furthermore violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

Canon 1 which requires judges to maintain high standards of conduct and uphold the integrity and independence of the Judiciary.

Canon 2A which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3B(4) which requires judges to be dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.

COUNT IV

During your tenure as District Judge, you engaged in inappropriate behavior that impaired the substantive and procedural due process rights of the parties appearing before you, including:

- a. Rather than explain a person's fundamental due process rights to them in court, you play a pre-recorded message at the beginning of your docket. If a criminal defendant appearing before you fails to hear the pre-recorded message, you refuse to apprise them of their rights and continue the matter for a later date. Examples of this conduct occurred on June 4, 2103, at 9:23 a.m.; June 6, 2013 at 10:07 a.m.; June 7, 2013, at 10:11 a.m.; June 10, 2013, at 11:36 a.m.; June 17, 2013, at 10:02 a.m.; July 15, 2013, at 9:55 and 10:32 a.m.; July 18, 2013, at 10:32 a.m.; July 17, 2015, at 10:32 a.m.; and July 23, 2013, at 9:15 and 10:02 a.m..
- b. You have accepted pleas from criminal defendants without properly ascertaining whether or not the defendant is making a knowing and voluntary decision. Examples of such conduct occurred on June 14, 2013, at 10:29 a.m.; June 17, 2013, at 9:26 a.m.; April 20, 2015, at 9:48 a.m. and 10:29 a.m.; May 18, 2015, at 11:19 a.m.; July 17, 2015, at 9:51 a.m.; and August 11, 2015, at 9:58 a.m. and 11:13 a.m..
- c. In certain cases you have offered mediation to the defendant only on the condition that they plead guilty if mediation is unsuccessful. Examples of such conduct occurred on June 3, 2013, at 10:08 a.m.; April 6, 2015, 9:36 a.m.; April 17, 2015, at 9:47 a.m.; July 17, 2015, at 10:35 and 10:54 a.m.; and August 11, 2015, at 10:32 and 10:57 a.m..
- d. On July 18, 2013, at 9:42 a.m., a criminal defendant stated that he did not fully understand a pre-recorded message informing him of his due process rights because of hearing loss. Rather than take steps to ensure the defendant was apprised of his

rights you commented, "You've been hearing me pretty well and appropriately responding." You then threatened to make him return the next day to hear the recording.

- e. You routinely require criminal defendants to perform community service in order to receive a public advocate appointment. Examples of such conduct occurred on June 3, 2013, at 11:00 a.m.; June 6, 2013, at 9:32 a.m.; June 7, 2013, at 10:01, 10:12, 10:23, 10:42 and 10:50 a.m.; June 14, 2013, at 10:27 a.m.; June 17, 2013, at 10:01, 10:28, 10:51 a.m.; June 20, 2013, at 10:14 and 10:37 a.m.; July 15, 2013, at 9:55 a.m.; and July 29, 2013, at 9:21 a.m..
- f. On June 18, 2013, beginning at 12:57 p.m., during a hearing on a motion to suppress, you repeatedly impeded the defense attorney's ability to represent his client by continuously interrupting him and preventing him from asking certain questions.
- g. You routinely threaten to raise a criminal defendant's bond if the defendant or their attorneys ask to be heard on the matter. Example of such conduct occurred on June 7, 2013 at 9:54 a.m. and 10:13 a.m.; August 2, 2013 at 9:55 a.m.; and August 17, 2015 at 9:41 a.m.
- h. On July 23, 2015 at 12:40 p.m., you conducted a hearing on a petition for involuntary hospitalization. During the hearing you admitted a personal bias about involuntary hospitalization and dementia. You mocked a family member who attempted to explain something she read on the internet. You also repeatedly interrupted a social worker and mocked her testimony when she recommended hospitalization.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions also violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

Canon 1 which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.

Canon 2A which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3B(7) which requires judges to give every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

Canon 3B(8) which requires a judge to dispose of a matter promptly, efficiently, and fairly.

COUNT V

During your tenure as District Judge, you made numerous inappropriate statements to criminal defendants in an attempt to influence their decisions, including:

- a. On June 7, 2013, at 9:49 a.m., you told a criminal defendant that he would be “foolish” not to accept an offer of mediation.
- b. On June 7, 2013, at 10:07 a.m., you told a criminal defendant you were offering “my minimums” in reference to a plea offer and further stated, “Any offers made for you today, as soon as you say you don’t want it, it’s off the table.”
- c. On June 14, 2013, at 9:31 a.m., you referred a criminal defendant to the Kentucky Alternative Programs (KAP), when the defendant seemed confused you responded, “Take my word for it, you want me to do this. Take my word for it; you don’t even need to understand.”
- d. On June 21, 2013, at 9:50 a.m., you told a criminal defendant that he would be a “fool” not to accept the plea deal you offered.
- e. On July 15, 2013, at 9:35 a.m., you made an announcement that any defendant would be “foolish” not to take diversion when offered.
- f. On April 17, 2015, at 10:05 a.m., you gave legal advice to a criminal defendant stating, “If you want my opinion, you are theoretically eligible for diversion. My suggestion is you enter a not guilty plea and set it for trial...take my word for it, that’s what you want if you can get it.”
- g. On May 18, 2015, at 10:28 a.m., you advised a criminal defendant to accept the Commonwealth’s plea offer and said they would be foolish not to take it.
- h. You routinely attempt to coerce criminal defendants to plead guilty by threatening to withdraw a settlement offer if a plea is not made immediately. Examples of such conduct occurred on June 13, 2013 at 9:25 a.m.; July 19, 2013 at 9:21 a.m.; April 20, 2015 at 9:48 a.m., 9:26 a.m., and 10:06 a.m.
- i. On August 11, 2015, at 9:29 a.m., you told a criminal defendant that they must accept a plea offer right then or the offer would be withdrawn.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions also violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

Canon 1 which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.

Canon 2A which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3B(8) which requires a judge to dispose of a matter promptly, efficiently, and fairly.

COUNT VI

During your tenure as District Judge, you routinely make statements from the bench to criminal defendants inconsistent with the presumption of innocence and further indicating your belief that they are guilty, including:

- a. On July 18, 2013 at 10:05 a.m. at an arraignment hearing you told a defendant, "you should be guilty as charged but he's (Commonwealth) willing to amend it. You can take it or leave it if you want to have a trial. I don't see how you can win it."
- b. On April 20, 2015 at 10:23 a.m. during an arraignment, a criminal defendant began crying when presented with the charges, which included Assault in the 4th degree. You responded by saying "I'm not very sympathetic with families fighting with each other so crying won't do you any good."
- c. On April 20, 2015 at 10:25 a.m. you arraigned a defendant on charges of Assault in the 4th degree. The County Attorney advised you that the citation alleges the defendant was involved in an altercation with his sister. You stated, "I'm sorry. I've just got two sisters. I can't imagine raising my hand to my sister." You then tell the defendant that if he pleads guilty he will receive one year in jail.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Your actions also violate SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

Canon 1 which requires judges to maintain high standards of conduct and uphold the integrity and independence of the judiciary.

Canon 2A which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3B(8) which requires a judge to dispose of a matter promptly, efficiently, and fairly.

JURISDICTION

The jurisdiction of the Judicial Conduct Commission in this matter is under SCR 4.020(1)(b)(i) and (v), and (1)(c) 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 hearing to remove a judge whom it finds to lack the constitutional statutory qualifications for the judgeship in question.


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. He may file an answer within 15 days after service of the notice. Upon the filing of his 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.

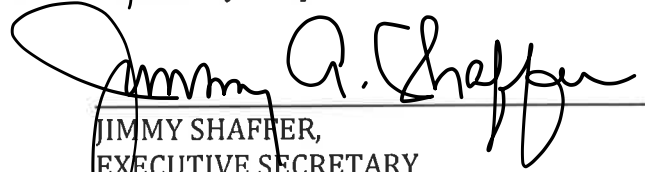
April 19th, 2016



KENT WESTBERRY, CHAIRMAN
KENTUCKY JUDICIAL CONDUCT COMMISSION

Chairman Stephen D. Wolnitzek and Judge Karen Thomas recused from any consideration of this matter.

I hereby certify that copy hereof was served on Gregory T. Popovich, Campbell District Court Judge, by mailing same to his attorney, Hon. Jack S. Gatlin, 2400 Chamber Center Drive, Suite 200, Ft. Mitchell, KY 41017 this ^{15th} day of April, 2016.


JIMMY SHAFFER,
EXECUTIVE SECRETARY

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

GREGORY T. POPOVICH, DISTRICT COURT JUDGE
17TH JUDICIAL DISTRICT

REQUEST FOR EXTENSION OF TIME TO ANSWER
NOTICE OF FORMAL PROCEEDINGS AND CHARGES

Pursuant to SCR 4.200, District Judge Gregory T. Popovich requests an additional 60 days in which to file his Answer to the Notice of Formal Proceedings and Charges served upon him by the Judicial Conduct Commission on April 1, 2016.

Judge Popovich needs more than the 15 days allowed by SCR 4.180 in which to review and investigate the charges and prepare his Answer. The charges against him are detailed and numerous, consisting of six counts alleging violations of the Code of Judicial Conduct dating back to 2013.

SCR 4.200 provides that "the chairman of the commission may extend the time for filing an answer and for the commencement of a hearing before the commission." Accordingly, Judge Popovich requests an additional 60 days in which to file his Answer, making it due to the Commission by June 16, 2016.

Respectfully submitted,

/s/ Jack S. Gatlin

Jack S. Gatlin (88899)
FREUND, FREEZE & ARNOLD
2400 Chamber Center Drive, Suite 200
Ft. Mitchell, KY 41017
(859) 292-2088
jgatlin@ffalaw.com

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing upon Ms. Jimmy Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, Kentucky 40604-4266, by electronic and U.S. Mail, this 6th day of April, 2016.

/s/ Jack S. Gatlin

Jack S. Gatlin (88899)

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

GREGORY T. POPOVICH, DISTRICT COURT JUDGE
17TH JUDICIAL CIRCUIT

ORDER FOR EXTENSION

Upon consideration of request of counsel for Judge Popovich for extension of time to file an Answer to the Notice of Formal Proceedings and Charges, pursuant to SCR 4.200, it is by the Commission,

ORDERED that the time for filing an Answer be and it is hereby extended. The Answer shall be filed on or before June 16, 2016.

4.8.16

Date

R. Kent Westberry

R. Kent Westberry, Chair

Chairman Stephen D. Wolnitzek and Judge Karen Thomas recused from any consideration of this matter.

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on Gregory T. Popovich, Campbell District Court Judge, by emailing and mailing same to his attorney, Hon. Jack S. Gatlin, 2400 Chamber Center Drive, Suite 200, Ft. Mitchell, KY 41017; and Luke Morgan, McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street, Suite 900, Lexington, Kentucky, 40507, this 8th day of April, 2016.

Jimmy A. Shaffer

JIMMY SHAFFER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**GREGORY T. POPOVICH, DISTRICT
COURT JUDGE
17TH JUDICIAL DISTRICT**

**ANSWER OF RESPONDANT
GREGORY POPOVICH TO THE
JUDICIAL CONDUCT COMMITTEE'S
COMPLAINT**

Comes now the Respondent, by and through Counsel, and for his Answer to the Judicial Conduct Committee's Complaint states as follows:

FIRST DEFENSE

1. The Respondent hereby enters a general denial of any wrongdoing as alleged in Counts I through VI of the JCC complaint dated April 1, 2016. A more detailed answer cannot be given until the Respondent receives responses to requests for information and discovery submitted herewith.

SECOND DEFENSE

2. The JCC has substantially failed to comply with SCR 4.160 and 4.170 et seq. which precludes the filing of the within complaint since such compliance is a condition precedent to the filing of same.

THIRD DEFENSE

On point, the JCC conducted an informal hearing on March 18, 2016 where they failed to conduct an investigation as required by the rules. Several of the allegations would have been proven false through simple telephone calls. Apparently none were made. For the other allegations merely reviewing the entire record of that day's proceedings, case histories, and the Defendant's criminal history would have shown them to be false when placed in context.

FOURTH DEFENSE

When the Respondent or Counsel made requests for further information/discovery, the JCC either directly or through Counsel, refused.

FIFTH DEFENSE

An even more glaring violation of the Kentucky Supreme Court Rules by the JCC was their unequivocal indication at the mandatory hearing on March 18, 2016 that they did not have time to discuss the vast majority of the allegations. Many of said allegations are contained in their final complaint.

SIXTH DEFENSE

The JCC's duty to fully comply with not only the words in the relevant Supreme Court Rules but the intent of same is crucial and ethically required.

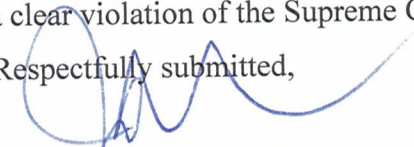
SEVENTH DEFENSE

While any Judge has a personal duty to comply with the rules, the JCC members have even a higher ethical duty. They do not just represent themselves individually but rather the independence and integrity of the entire judicial system.

EIGHTH DEFENSE

Any failure of the JCC to fully, fairly and completely investigate and respond to requests for information and discovery in a timely manner is a clear violation of the Supreme Court's

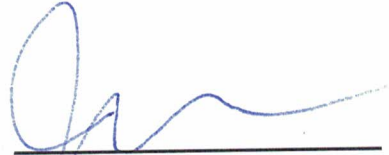
Respectfully submitted,



Jack S. Gatlin (88899)
GATLIN VOELKER, PLLC
2500 Chamber Center Drive, Suite 203
Ft. Mitchell, KY 41017
(859) 781-9100
jgatlin@gatlinvoelker.com

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing upon Ms. Jimmy Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, Kentucky 40604-4266, jimmyshaffer@kycourts.net by regular U.S. Mail and electronic mail and Luke Morgan, McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 E. Main St. #1000, Lexington, KY lmorgan@mmlk.com, Attorney for the Judicial Conduct Commission by electronic, this 16th day of June, 2016.



Jack S. Gatlin (88899)

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**GREGORY T. POPOVICH, DISTRICT COURT JUDGE
17TH JUDICIAL CIRCUIT**

NOTICE OF TIME AND PLACE FOR HEARING

NOTICE is hereby given that the hearing in these formal proceedings will be held commencing July 11, 2016, at 9:00 a.m. in Courtroom 5A, in the Kenton County Courthouse, 230 Madison Avenue, Covington, Kentucky, 41011.

CERTIFICATE OF SERVICE

Copy hereof was mailed this 16th day of June, 2016, to Hon. Gregory T. Popovich, District Judge, 17th Judicial Circuit, by mailing same to his attorney, Jack S. Gatlin, Gatlin Voelker PLLC, 2500 Chamber Center Dr., Suite 203, Fort Mitchell, Kentucky, 41017; and Luke Morgan, McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street, Suite 900, Lexington, Kentucky, 40507.


JIMMY A. SHAFFER
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF: GREGORY T. POPOVICH, DISTRICT COURT JUDGE 17TH JUDICIAL DISTRICT	<u>FIRST SET OF INTERROGATORIES OF DEFENDANT, GREGORY POPOVICH DIRETED TO THE JUDICIAL CONDUCT COMMITTEE</u>
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The Defendant, Gregory Popovich, by counsel, requests that the Plaintiff, the Judicial Conduct Committee, answer the following Interrogatories under oath within thirty (30) days after service hereof and in accordance with Rule 33 of the Kentucky Rules of Civil Procedure.

INSTRUCTIONS FOR ANSWERING

These Interrogatories are continuing, and to the extent that the answers may be enlarged, diminished, or otherwise modified by information acquired by the Plaintiff(s) subsequent to the service of the answers, Plaintiff is requested to promptly serve all supplemental answers reflecting such changes as required by the Kentucky Rules of Civil Procedure. All answers must be made separately and fully. An incomplete or evasive answer is a failure to answer.

The words "you," "your," or "yours" refer to the Plaintiff, the Judicial Conduct Committee.

"Plaintiff" refers to the plaintiff(s) listed in the Complaint and all agents, representatives and/or related companies thereof. "Defendant" refers to the defendant(s) listed in the Complaint and all agents, representatives and/or related companies thereof.

The words "incident" and "accident" refer to the matter set forth in the Complaint filed by the plaintiff(s) in this action.

The word "document" means written or graphic matter, however produced or reproduced, of any kind or description including originals, copies, drafts and both sides of such documents. The word "document" also includes, but is not limited to, papers, books, letters, correspondence, telegrams, cables, computer discs, computer tapes, memoranda, notes, notations, reports, and

records of any manner or nature whatsoever, including conversations, telephone conversations, interviews, conferences, meetings, affidavits, statements, summaries, opinions, reports, analysis, evaluations and things similar to any of the foregoing, however denominated, or any other compilations from which intelligence can be perceived with or without the aid of detection devices.

The word "or" means and/or. The word "and" means and/or.

The word "identify" means with respect to any document, the date thereof, the name or names of the person offering such documents, the name or names of the person to whom such document was given or transmitted, the title, if any, and the relevant page, or pages and line or lines thereof (or annex a copy of the answer to these Interrogatories with appropriate designations of such page or pages and line or lines). With respect to any person, "identify" means to state the full name of the person, last known address of such person, and the last known telephone number of such person.

The terms "communications" and "statements" mean all transmittals or information from any person to any other persons, whether such transmittals be written, oral, or in any other form, including without limitations letters, correspondence, telephone conversations, etc., whether documented or not.

When an Interrogatory is objectionable only in part, the Interrogatory is to be answered completely with respect to any part which is not objectionable and, in addition, the basis and reason for the objection to the remaining part should be stated with specificity.

INTERROGATORIES

1. Who was employed by the J.C.C. as an investigator, what are that person's qualifications and on what date was he/she employed in this matter?

RESPONSE:

2. Who directed said investigator's activities and inquiries and exactly what was he/she instructed to do?

RESPONSE:

3. Was the investigator instructed to attempt to determine the source of the original complaint and state specifically the results of said inquiry?

RESPONSE:

4. Were tapes of the proceedings referenced in the original complaint attached to said complaint?

RESPONSE:

5. If the answer the Number 4 above is yes, were there separate tapes for each day's events or were the events of different days all spliced together?

RESPONSE:

6. If the answer to Number 4 above was yes, did the tapes include prior and subsequent proceedings for that case (and defendant) for the purpose of context?

RESPONSE:

7. If the answer to number 4 above was no, did the investigator, order tapes from the Clerk, Taunya Nolan Jack, and if so, please list the date(s) the tapes were ordered and the dates for which they were ordered?

RESPONSE:

8. Were the tapes given the Judge Popovich identical to the tapes attached to the original complaint in both format and content?

RESPONSE:

9. Did the investigator learn that Taunya Nolan Jack reportedly in conjunction with Mr. Vince Thomas (and attorney and the spouse of Judge Karen Thomas) and others were making and dissecting tapes for virtually all of Judge Popovich's dockets for well over two years amounting to 1500 to 2000 hours of court proceedings?

RESPONSE:

10. Did the J.C.C. investigation show that the true complainants, Ms. Jack and other failed to pay for such tapes in violation of clear administrative rules and criminal statutes. If yes, did the J.C.C. fulfill their ethical obligation to notify the appropriate authorities?

RESPONSE:

11. Did the J.C.C. directly or through their investigator order Ms. Jack in 2013 to make the original copies of the tapes referenced in interrogatory number 9 above?

RESPONSE:

12. Did the J.C.C.'s investigation reveal that neither Ms. Nolan Jack nor anyone else was present in Judge Popovich's courtroom for even a small percentage of the incidents alleged in the original complaint?

RESPONSE:

13. Did the investigation notify the J.C.C. that the occurrences in the J.C.C. formal complaint would have occurred only in approximately 6 hours out of the approximate 2000 hours of courtroom hours examined?

RESPONSE:

14. Did the J.C.C. acquire the records for the use of substitute Judges by Judge Thomas for herself from January 1, 2011 through December 31, 2015?

RESPONSE:

15. Did the investigator interview any other allegedly mistreated persons in the complaints to determine if those persons felt wronged and if so, please list their names, case numbers, the occurrence date(s) and contact information?

RESPONSE:

16. Has the investigation discovered that reminder slips for future court appearances have been given to all defendants in all divisions of the Campbell District Court since at least 1994 to insure notice to the defendant and proof of said notice to the Court?

RESPONSE:

17. Has the investigator determined whether Ms. Nolan Jack has any authority to refuse restitution payments upon order of the Court to accept same? If so, does the clerk have such authority?

RESPONSE:

18. Has the investigator discovered that continuances are not given to obtain a public defender in felony cases and the issue is addressed immediately to prevent delay, inconvenience to the public defenders and possible dismissal relative to the time requirements for preliminary hearings?

RESPONSE:

19. Has the investigator inquired of the regular pretrial officer regarding whether Judge Popovich ever criticized her?

RESPONSE:

20. Has the investigator confirmed mediation offers where pleas are required if the mediation is unsuccessful are clearly explained by Judge Popovich and are confined to no operator's license and suspended license charges, said practice has been in effect with agreement of at least the last three county attorneys, that, in fact, such agreements are for the benefit of the defendant and his/her family and is never enforced where the mediation is unsuccessful and the defendant refuses to comply with the agreement?

RESPONSE:

21. Has the investigator discovered that the public defenders never objected to the use of community service in lieu of a public defender fee and have reached many plea agreements where community service in lieu of a public defender fee was a condition of probation or conditional discharge for the incidences referenced in the Formal Complaint?

RESPONSE:

22. Please explain why the J.C.C. failed to comply with the Supreme Court Rules by either not doing any investigation and/or had not consulted with their investigator regarding the most simple allegations presents, many of which would have required nothing mote than one telephone call, before the March 18, 2016 preliminary meeting in this matter?

RESPONSE:

23. Please explain why the J.C.C. would not allow Judge Popovich or counsel to present information regarding approximately ninety percent of the allegations at the March 18, 2016 meeting as required by the Supreme Court Rules? The J.C.C. indicated they didn't have time. Only forty-five minutes was scheduled for a discussion of well over fifty allegations.

RESPONSE:

Respectfully submitted,

/s/ Jack S. Gatlin

Jack S. Gatlin (88899)

GATLIN VOELKER, PLLC

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CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing upon Ms. Jimmy Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, Kentucky 40604-4266, jimmyshaffer@kycourts.net by regular U.S. Mail and electronic mail and Luke Morgan, McBrayer , McGinnis, Leslie & Kirkland, PLLC, 201 E. Main St. #1000, Lexington, KY lmorgan@mmlk.com, Attorney for the Judicial Conduct Commission by electronic, this 16th day of June, 2016.

/s/ Jack S. Gatlin
Jack S. Gatlin (88899)

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF: GREGORY T. POPOVICH, DISTRICT COURT JUDGE 17TH JUDICIAL DISTRICT	<u>REQUESTS FOR ADMISSIONS OF DEFENDANT, GREGORY T. POPOVICH DIRECTION TO THE JUDICIAL CONDUCT COMMITTEE</u>
---	---

Comes now the Defendant, Gregory T. Popovich, by and through counsel, and pursuant to Rule 36 of the Kentucky Rules of Civil Procedure, submits the following Requests for Admissions to the Plaintiff, the Judicial Conduct Committee. These Requests are to be answered fully, in writing, and under oath, prior to the hearing date on July 11, 2016. The matter is admitted unless prior to the hearing date on July 11, 2016, you serve a written answer or objection addressed to this matter signed by you or your attorney. If an objection is made, the reasons shall be specifically stated.

Each of the following Requests are continuing. If subsequent to serving an answer you obtain, or become aware of, any further information pertaining to such Requests, you are requested to serve upon Defendant amended answers setting forth such information

REQUEST FOR ADMISSIONS

1. Admit or deny that a trial court Judge has wide discretion in their conduct and decisions so long as such conduct and decision do not violate clearly established law.

RESPONSE:

2. Admit or deny that the conduct of trial court Judges, operating within the reasonable parameters of the law must be judged in any J.C.C. proceeding taking into consideration the community standards of that Court's jurisdiction.

RESPONSE:

3. Admit or deny that the law presumes all defendants to be of sound mind and that any mental disease or defect can only be used as an affirmative defense.

RESPONSE:

4. Admit or deny that a trial Court should protect an unrepresented defendant's rights by telling the defendant what penalty would be imposed when the defendant is considering the entry of a guilty plea to any charge(s).

RESPONSE:

5. Admit or deny that it is in the discretion of a trial Court to advise a defendant that their alleged conduct places another person(s), including the unborn, in danger of serious injury or death where said defendant's alleged action(s), in fact do so, and the Defendant appears oblivious to such dangers.

RESPONSE:

6. The M that pursuant to the Kentucky Supreme Court Rules the J.C.C. is ethically and constitutionally required, as in any investigator utilized, to conduct a reasonable good faith investigation designed to uncover both negative and exculpatory evidence in any matter before the J.C.C.

RESPONSE:

7. Admit or deny that the J.C.C. is ethically obligated to inform the accused of all evidence, including exculpatory evidence, in a timely manner and consider same in any decision rendered by them.

RESPONSE:

8. Admit or deny that when the J.C.C. employs counsel for the formal proceedings said Counsel must be informed that their role is analogous to that of a guardian ad litem to promote the integrity of the judiciary and the autonomy of the trial court and not to gain a win for the charging body, especially where the J.C.C. maintains the conflicting roles of prosecutor and judge.

RESPONSE:

9. Admit or deny that over 120 attorneys who practice in Northern Kentucky and a multitude of other public official have indicated that Judge Popovich did an exemplary job as their District Judge.

RESPONSE:

10. Admit or deny 63% of the Campbell County electorate endorsed Judge Popovich as a judge of integrity and who reflects their community standards in the performance of his judicial duties.

RESPONSE:

11. Admit or deny that Judge Popovich's video recitation of the Defendant's rights and explanation of the criminal process is more thorough than the vast majority of District Courts in the Commonwealth, was used as an example by the District Judge's Association, is not shown until approximately ten minutes after Court is scheduled to begin and welcomes anyone who does not understand something to inquire.

RESPONSE:

12. Admit or deny that the JCC is ethically bound to notify the appropriate authorities if during their required investigation, either directly or through their investigator, if probable cause arises that AOC employees, Judges or attorneys have violated administrative rules or criminal statutes.

RESPONSE:

Respectfully submitted,

/s/ Jack S. Gatlin

Jack S. Gatlin (88899)

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Ft. Mitchell, KY 41017

(859) 781-9100

jgatlin@gatlinvoelker.com

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing upon Ms. Jimmy Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, Kentucky 40604-4266, jimmyshaffer@kycourts.net by regular U.S. Mail and electronic mail and Luke Morgan, McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 E. Main St. #1000, Lexington, KY lmorgan@mmlk.com, Attorney for the Judicial Conduct Commission by electronic, this 16th day of June, 2016.

/s/ Jack S. Gatlin

Jack S. Gatlin (88899)

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF: GREGORY T. POPOVICH, DISTRICT COURT JUDGE 17TH JUDICIAL DISTRICT	<u>FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS OF DEFENDANT, GREGORY POPOVICH DIRECTED TO THE JUDICIAL CONDUCT COMMITTEE</u>
---	--

The Defendant, Gregory Popovich, by counsel, pursuant to Rule 34 of the Kentucky Rules of Civil Procedure demands that the Plaintiff, the Judicial Conduct Committee, produce for inspection and copying the following documents. Unless a contrary agreement is reached in writing between counsel, the documents shall be produced, within thirty (30) days after service at the offices of GATLIN VOELKER, PLLC, 2500 Chamber Center Drive, Ft. Mitchell, KY 41017.

INSTRUCTIONS FOR ANSWERING

The word "**document**" means written or graphic matter, however produced or reproduced, of any kind or description including originals, copies, drafts and both sides of such documents. The word "**document**" also includes, but is not limited to, papers, books, letters, correspondence, telegrams, cables, computer discs, computer tapes, memoranda, notes, notations, reports, and records of any manner or nature whatsoever, including conversations, telephone conversations, interviews, conferences, meetings, affidavits, statements, summaries, opinions, reports, analysis, evaluations and things similar to any of the foregoing, however denominated, or any other compilations from which intelligence can be perceived with or without the aid of detection devices.

The words "**you**," "**your**," or "**yours**" refer to the Plaintiff, the Judicial Conduct Committee.

The terms "**communications**" and "**statements**" mean all transmittals or information from any person to any other persons, whether such transmittals be written, oral, or in any other form, including without limitations letters, correspondence, telephone conversations, etc., whether documented or not.

"**Plaintiff**" refers to the plaintiff(s) listed in the Complaint and all agents or representatives or related companies thereof. "**Defendant**" refers to the defendant(s) listed in the Complaint and all agents or representatives or related companies thereof.

The words "**incident**" and "**accident**" refer to the matter set forth in the Complaint filed by the plaintiff(s) in this action.

The word "**or**" means and/or. The word "**and**" means and/or.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Produce all of the results of the mandated reasonable investigation including but not limited to:
 - a. All reports, both oral and written received or obtained by the J.C.C. or their investigator or complainants; and
 - b. All case packets, in their entirety, for all cases cited in the J.C.C.'s formal complaint herein including the prior history of those Defendant's so that context can be revealed; and
 - c. The number of cases handles in each of the Court sessions during which there is any allegation against Judge Popovich in the formal complaint so that context can be revealed.

RESPONSE:

This Request for Production of Documents is continuing in nature and updated information is requested thereunder as and when future information becomes available to further respond to this Request for Production of Documents.

Respectfully submitted,

/s/ Jack S. Gatlin

Jack S. Gatlin (88899)

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(859) 781-9100

jgatlin@gatlinvoelker.com

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing upon Ms. Jimmy Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, Kentucky 40604-4266, jimmyshaffer@kycourts.net by regular U.S. Mail and electronic mail and Luke Morgan, McBrayer , McGinnis, Leslie & Kirkland, PLLC, 201 E. Main St. #1000, Lexington, KY lmorgan@mmlk.com, Attorney for the Judicial Conduct Commission by electronic, this 16th day of June, 2016.

/s/ Jack S. Gatlin
Jack S. Gatlin (88899)

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**GREGORY T. POPOVICH, DISTRICT COURT JUDGE
17TH JUDICIAL DISTRICT**

RESPONSE TO JUDGE POPOVICH'S DISCOVERY MOTIONS

In response to Judge Popovich's Motion to Produce Documents; Interrogatories; and Request for Admissions (collectively referred to as "Discovery Motions"), counsel for the Judicial Conduct Commission states as follows:

I. ARGUMENT

Supreme Court Rule 4.210 governs the procedural rights of a judge subject to a disciplinary hearing. Neither this rule nor any other rule that is applicable to the procedural rights afforded a judge in their disciplinary hearing provide for discovery. Additionally, the information relied upon by the Commission in determining to bring the present charges has been provided Judge Popovich; this evidence includes the entire proceedings of multiple motion hours as referenced in the charging document.

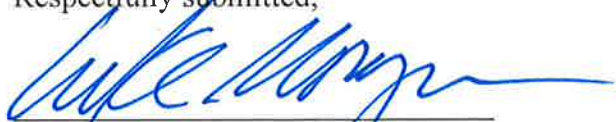
While not required by SCR 4.210, counsel for the Commission will agree to a mutual exchange of witness and exhibits lists prior to the July 11, 2016 hearing and will contact counsel for Judge Popovich to facilitate this exchange.

II. CONCLUSION

For these reasons, counsel for the Commission respectfully requests that Judge Popovich's Discovery Motions be denied.

Respectfully submitted,

BY:



LUKE MORGAN

**McBrayer, McGinnis, Leslie &
Kirkland, PLLC**

201 East Main Street, Suite 900

Lexington, Kentucky 40507

Telephone: (859) 231-8780

Facsimile: (859) 231-6518

Email: lmorgan@mmlk.com

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served via U.S. mail and electronic mail on this the 20 day of June, 2016, upon the following:

Ms. Jimmy Shaffer
Executive Secretary
Kentucky Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604
jimmyshaffer@kycourts.net

Jack S. Gatlin, Esq.
Gatlin Voelker, PLLC
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Ft. Mitchell, KY 41017
jgatlin@gatlinvoelker.com



LUKE MORGAN

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

GREGORY T. POPOVICH, DISTRICT COURT JUDGE
17TH JUDICIAL DISTRICT

ORDER ON DISCOVERY MOTIONS

Upon consideration Judge Popovich's motions to produce documents, interrogatories and request for admissions (collectively referred to as Discovery Motions), it is by the Commission

ORDERED that the motions be and they are hereby DENIED. Regardless of the time limits imposed under CR 36.01(1), the requested matters shall not be deemed admitted because the Commission specifically finds that the rules of discovery, including CR 36, are inapplicable in the present matter.

6-21-16
DATE

R. Kent Westberry
R. KENT WESTBERRY, CHAIR

Mr. Steven Wolnitzek and Judge Karen Thomas recused from any consideration of this matter.

CERTIFICATE OF SERVICE

Copy hereof was mailed this 22nd day of June, 2016, to Hon. Gregory T. Popovich, District Judge, 17th Judicial Circuit, by mailing same to his attorney, Jack S. Gatlin, Gatlin Voelker PLLC, 2500 Chamber Center Dr., Suite 203, Fort Mitchell, Kentucky, 41017; and Luke Morgan, McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street, Suite 900, Lexington, Kentucky, 40507.

Jimmy A. Shaffer
JIMMY A. SHAFFER
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**GREGORY T. POPOVICH, DISTRICT
COURT JUDGE
17TH JUDICIAL DISTRICT**

**MOTION TO RECONSIDER
RESPONDENT'S REQUEST FOR
DISCOVERY**

Comes now the Respondent, by and through Counsel, and for Motion to Reconsider the Judicial Conduct's June 22, 2016 ruling on Discovery states as follows:

The Kentucky Supreme Court has set out rules in these matters designed, in part, to preserve the due process rights of the accused. In no other form of legal action, civil or criminal, does the law allow the prosecution to also be the judge and therefore compliance with the Supreme Court Rules and mandatory.

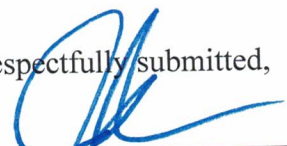
The relevant Supreme Court Rules (hereafter referred to as SCR) dictate that whenever the word "shall" is read therein it is "mandatory". The JCC under SCR 4.030 specifically gives the JCC power "to compel the production of records and often evidence" SCR 4.160 dictates that the rules of civil procedure applies unless specifically precluded by another rule. The civil rules specifically provide for discovery. SCR 4.170(3) mandates that the JCC "shall afford the judge under investigation an opportunity to examine all factual information" before formal proceedings are initiated. The JCC directly and through counsel, has already informally refused to even discuss discovery.

Further, SCR 4.170(3) also mandates the charged judge may provide "any information... bearing on an investigation". How is this possible if the JCC refuses to allow the judge access to obviously relevant factual information in the possession or control of the JCC.

The JCC's position that discovery is not permitted, is irrational much less unreasonable. Any suggestion that under SCR 4.120(1) unquestionably relevant and possibly exculpatory evidence, in the possession and/or control of the JCC, may be withheld is an obvious violation of the due process rights the SCR's were designed to protect.

Wherefore, the Respondent, requests the JCC to order response to the discovery as soon as possible.

Respectfully submitted,



Jack S. Gatlin (88899)
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jgatlin@gatlinvoelker.com

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing upon Ms. Jimmy Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, Kentucky 40604-4266, jimmyshaffer@kycourts.net by regular U.S. Mail and electronic mail and Luke Morgan, McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 E. Main St. #1000, Lexington, KY lmorgan@mmlk.com, Attorney for the Judicial Conduct Commission by electronic, this 23rd day of June, 2016.



Jack S. Gatlin (88899)

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**GREGORY T. POPOVICH, DISTRICT COURT JUDGE
17TH JUDICIAL DISTRICT**

**RESPONSE TO JUDGE POPOVICH'S MOTION
TO RECONSIDER**

Judge Popovich moved the Judicial Conduct Commission (“Commission”) to Produce Documents; Interrogatories; and Requests for Admissions (collectively referred to as “Discovery Motions”). The Commission denied the Discovery Motions in an Order dated June 21, 2016.

Judge Popovich has subsequently filed a Motion to Reconsider with the Commission to reconsider this denial, and in Response, counsel for the Commission hereby states as follows.

ARGUMENT

A review of the rules applicable to these proceedings may be helpful to clarify and respond to Judge Popovich’s argument.

SCR 4.160 is a general rule permitting the Rules of Civil Procedure to apply to the Commission’s proceedings to “the extent applicable and not inconsistent with” the rules governing the Commission, to wit SCR 4.00 – 4.290. The Rules of Civil Procedure support the rules governing the Commission’s proceedings when applicable, but they do not supplant or expand the rules constructed for the Commission’s supervision of these proceedings. This premise is a manifestation of the fact that the present proceedings are fundamentally different from civil proceedings and this difference stems from the scope and jurisdiction of the Commission’s proceedings.

The initial process to be utilized by the Commission and Judge Popovich in this disciplinary matter is expressed in SCR 4.170 which mandates that when the Commission receives facts in writing indicating that there is probable cause for action concerning a judge, or upon its own motion, the Commission is to conduct a preliminary investigation. SCR 4.170(1). When this occurs, notice of the investigation must be given to the judge along with an opportunity to appear informally before the Commission. SCR 4.170(2). If, after the conclusion of the preliminary investigation and an opportunity for the judge to appear before the Commission, the Commission decides the charges should not be initiated, the Commission is to so inform the judge. SCR 4.170(3). Once the preliminary investigation is completed but before the formal proceedings are initiated under SCR 4.180, the judge shall have the right to examine all the factual information that has been developed and the judge shall also have the right to present any information he desires to bear upon the investigation. SCR 4.170(4). The Commission must decide, and tell the judge, whether it is initiating formal proceedings within six months of starting the preliminary investigation. SCR 4.170(5). There is no suggestion in this rule that the judge is allowed to conduct discovery in the time leading up to when the Commission must decide whether to initiate formal proceedings.

Each of the steps contained in SCR 4.170 are to take place before initiating the formal proceedings. The Commission has fully complied each of these provisions by conducting a preliminary investigation, giving Judge Popovich the opportunity to review the factual information developed in the investigation, and an opportunity to address the findings with the Commission prior to it making a decision on whether to initiate formal proceedings. Thus, the language and spirit of these rules has been met.

With all due respect to Judge Popovich's comments, it appears he is mistakenly seeking to apply the language of SCR 4.170 – which pertains to preliminary investigations – to the conduct of the formal proceedings. The procedures for conducting a formal proceeding are found in SCR 4.180 through 4.250. Here again, the basic difference between the present proceedings and a civil trial are manifest as well as the inapplicability of the civil rules of procedure to a proceeding determining whether to impose censure on a judge. Pertinent to the present pleading, is the language of SCR 4.210 which details the procedural rights of a judge in a formal proceeding. This rule fails to mention or suggest that civil discovery is an option, in part because once this point is reached in the hearing process, the judge has already been apprised of the evidence against him, and in Judge Popovich's case, he has already received a copy of the video evidence that will be presented in his formal hearing.

Any suggestion that “unquestionably relevant and possibly exculpatory evidence”¹ is being withheld by the Commission is false. Judge Popovich has received the video recordings of the events which are the basis of the present formal proceedings against him. SCR 4.210(1) expresses Judge Popovich's right to examine these recordings and defend against the charges related to the recordings by introduction of evidence on his behalf; to have his own counsel; and the right to call and cross-examine witnesses. The Commission has done nothing to curtail or infringe upon any of those rights, and the comment that the denial of the opportunity to pose discovery requests is “an obvious violation of the due process rights the SCR's were designed to protect[.]”² has no factual or legal support.

Additionally, Judge Popovich's claim that he may conduct discovery in this matter because SCR 4.160 generally permits discovery fails under the canon that specific laws govern general

¹ Page 3 of the Motion to Reconsider.

² *Id.*

ones – *lex specialis derogat legi generali*. The rules pertaining to the process of conducting a preliminary investigation (SCR 4.170) and the procedural rights of a judge (SCR 4.210) are specific in nature and do not suggest that the judge may conduct discovery. Thus, these specific rules govern the more general rule of SCR 4.160. *See generally, POM Wonderful LLC v. Coca-Cola Co.*, 134 S.Ct. 2228 (2014).

CONCLUSION

Judge Popovich filed Discovery Motions on a variety of topics. For example, his requests for admissions seek:

6. The M [sic] that pursuant to the Kentucky Supreme Court Rules the J.C.C. is ethically and constitutionally required, as in any investigator [sic] utilized, to conduct a reasonable good faith investigation designed to uncover both negative and exculpatory evidence in any matter before the J.C.C.³

Judge Popovich has also filed numerous interrogatories seeking statements from the Commission to questions such as:

22. Please explain why the J.C.C. failed to comply with the Supreme Court Rules by either not doing any investigation and/or had not consulted with their investigator regarding the most simple [sic] allegations presents [sic], many of which would have required nothing mote [sic] than one telephone call, before the March 18, 2016 preliminary meeting in this matter?⁴

Judge Popovich has also filed document requests seeking among other items:

- b. All case packets, in their entirety, for all cases cited in the J.C.C.'s formal complaint herein including the prior history of those Defendant's so that context can be revealed; and
- c. The number of cases handles [sic] in each of the Court sessions during which there is any allegation against Judge Popovich in the formal complaint so that context can be revealed.

³ Request for Admission, Number 6, page 2.

⁴ Interrogatories, Number 22, page 8.

These are discovery requests which are beyond the pale of the rules of civil procedure, and are certainly beyond the scope of SCR 4.170 through 210. Wherefore, the motion to reconsider should be denied.

Respectfully submitted,

BY:



LUKE MORGAN

**McBrayer, McGinnis, Leslie &
Kirkland, PLLC**

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served via U.S. mail and electronic mail on this the 29 day of June, 2016, upon the following:

Ms. Jimmy Shaffer
Executive Secretary
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P.O. Box 4266
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Jack S. Gatlin, Esq.
Gatlin Voelker, PLLC
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Ft. Mitchell, KY 41017
jgatlin@gatlinvoelker.com



LUKE MORGAN

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**GREGORY T. POPOVICH, DISTRICT COURT JUDGE
17TH JUDICIAL DISTRICT**

ORDER ON MOTION TO RECONSIDER

Upon consideration Judge Popovich's Motion to Reconsider the June 21, 2016, Order on Discovery Motions and the Response thereto, it is by the Commission

ORDERED that the motion be and it is hereby DENIED.

7-1-16

DATE


R. KENT WESTBERRY, CHAIR

Mr. Steven Wolnitzek and Judge Karen Thomas recused from any consideration of this matter.

CERTIFICATE OF SERVICE

Copy hereof was mailed this 5th day of July, 2016, to Hon. Gregory T. Popovich, District Judge, 17th Judicial District, by mailing same to his attorney, Jack S. Gatlin, Gatlin Voelker PLLC, 2500 Chamber Center Dr., Suite 203, Fort Mitchell, Kentucky, 41017; and Luke Morgan, McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street, Suite 900, Lexington, Kentucky, 40507.


JIMMY A. SHAFFER
EXECUTIVE SECRETARY