IN THE SUPREME COURT

COMPLAINT AGAINST:

HON. JAMES P. NOECKER
Judge, 45th Circuit Court
Centreville, Michigan 49032
_____/

DOCKET NO. 124477

FORMAL COMPLAINT NO. 73

RESPONDENT JAMES P. NOECKER'S PETITION TO REJECT AND/OR MODIFY THE MICHIGAN JUDICIAL TENURE COMMISSION'S DECISION AND RECOMMENDATION, THE CONCURRING DECISION AND RECOMMENDATION, AND ADOPT, ON THE ISSUE OF COSTS, THE CONCURRING/DISSENTING DECISION AND RECOMMENDATION OF THE COMMISSION

ORAL ARGUMENT REQUESTED

Submitted by:

Peter D. Houk (P-15155)
Brian P. Morley (P-58346)
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RECEIVED
AUG 27 2004
CORBIN R. DAVIS
CLERK SUPREME COURT

NOW COMES Respondent James P. Noecker, by and through his attorneys, Fraser Trebilcock Davis & Dunlap, P.C., and in support of the present Petition to Reject and/or Modify the Michigan Judicial Tenure Commission's Decision and Recommendation, the Concurring Decision and Recommendation, and Adopt, on the Issue of Costs, the Concurring/Dissenting Decision and Recommendation of the Commission, in addition to the factors more fully articulated in the attached Brief in Support, states as follows:

1. On August 4, 2004, the Michigan Judicial Tenure Commission (hereinafter the "Commission") issued and filed a Decision and Recommendation concerning Respondent James P. Noecker, a Concurring Opinion concerning James P. Noecker, and a Concurring/Dissenting Opinion concerning James P. Noecker.

2. In relevant part, the Commission adopted the findings within the Master's Report, recommended that the Michigan Supreme Court remove Respondent from the office of Judge of the 45th Circuit Court in St. Joseph County, Michigan, and reimburse the Commission for the actual costs incurred in the amount of $22,572.76. (*See* Michigan Judicial Tenure Commission Decision and Recommendation, Commission Appendix Tab 55).

3. In a separate Concurring Opinion, three members of the Michigan Judicial Tenure Commission concurred with the majority's recommendation of removal from office and reimbursement of actual costs incurred, but further recommended reimbursement for costs incurred by the taxpayers, if any, for visiting judges necessary in Judge Noecker's absence from the bench pursuant to this Court's Interim Suspension Order dated May 28, 2004. (*See* Michigan Supreme Court Interim Suspension Order, Commission Appendix Tab 51).

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4. In a separate Concurring and Dissenting Opinion, three members of the Michigan Judicial Tenure Commission concurred with the majority's recommendation of removal from office but challenged the authority of the Michigan Judicial Tenure Commission or the Michigan Supreme Court to order reimbursement of costs as a form of sanction and recommended that no such award of costs be imposed. (*See* Michigan Judicial Tenure Commission Concurring/Dissenting Opinion, Commission Appendix Tab 55).

5. Respondent James P. Noecker objects to the recommendation of removal from office and for reimbursement of any costs and asks this Court to reject the Decision and Recommendation of the Commission and modify any proposed sanction.

6. Respondent James P. Noecker respectfully asserts that there was insufficient evidence presented that established by a preponderance of the evidence that his alcoholism affected, in any way, his duties as Judge of the St. Joseph County Circuit Court. Accordingly, Respondent requests that this Court reject the finding of the Commission and modify the proposed sanction, if any, to be proportionate to any actual wrongdoing proved.

7. Respondent James P. Noecker respectfully asserts that there was insufficient and improperly admitted evidence admitted that established by a preponderance of the evidence that he consumed any alcohol prior to the automobile accident on March 12, 2003 or that such alleged alcohol consumption was a cause of the accident. Accordingly, Respondent requests that this Court reject the finding of the Commission and modify the proposed sanction, if any, to be proportionate to the actual harm proved.

8. Respondent James P. Noecker respectfully asserts that, at all times, he has been honest and candid with all parties/entities concerning all matters relevant to the present case. Respondent further asserts that no direct evidence exists to contradict any statements made by

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Respondent in this matter. Respondent requests that the Court reject the finding of the Commission and modify the proposed sanction, if any, to be proportionate to any actual wrongdoing proved.

9. Respondent James P. Noecker respectfully asserts that the testimony of Dr. Harvey Ager was improperly admitted and prejudicially infected the proceedings against Respondent as it related to his alcoholism and his abilities to function as a judge. Respondent requests that the testimony of Dr. Ager, and any reliance thereon, be stricken and rejected and that the Court modify the proposed sanction, if any, to be proportionate to any actual wrongdoing proved.

10. Respondent James P. Noecker maintains the integrity and accuracy of his actions and statements related to and throughout these proceedings. Against that background, Respondent respectfully asserts that the sanction of removal from office is disproportionately severe to the allegations proved and requests that this Court modify the proposed sanction and impose a penalty, if any, proportionate to any actual wrongdoing proved.

11. Respondent James P. Noecker respectfully asserts that there is no legal basis for the imposition of costs in Michigan Judicial Tenure Commission matters and, as such, requests that this Court adopt the recommendation of the Concurring/Dissenting Opinion on the issue of costs.

WHEREFORE Respondent James P. Noecker, for the reasons stated above and more fully explored in the attached Brief in Support, respectfully requests that this Honorable Court review this matter *de novo*, reject the findings of the Commission, adopt the finding of the Concurring/Dissenting Opinion of the Commission on the issue of costs, and amend the proposed sanction, if any, to be proportionate to any actual harm proved.

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Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.
Attorneys for Hon. James P. Noecker

Dated: 8-27-04

By: _____
Peter D. Houk (P-15155)
Brian P. Morley (P-58346)

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LAWYERS
LANSING, MICHIGAN 48933

VERIFICATION

I, James P. Noecker, swear that the above stated information is true to the best of my information, knowledge, and belief.

James P. Noecker

Subscribed and sworn to before me this 27th day of August, 2004.

Susan Lubitz
Notary Public

SUSAN LUBITZ
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF IONIA
My Commission Expires May 25, 2010
Acting in the County of Ingham