**STATE OF MICHIGAN**

**IN THE 20TH CIRCUIT COURT FOR THE COUNTY OF OTTAWA**

**PEOPLE OF THE STATE OF MICHIGAN,**
**Plaintiff,** **Case No. 15-39262-FH**

**v.** **Hon. Edward Post**

**Maxwell Lorincz,**
**Defendant.**

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**NOTICE OF HEARING**
PLEASE TAKE NOTICE that the following motion will be brought on for hearing on November 5, 2015 at 2:30 PM before the Honorable Edward Post of the 20th Circuit Court, 414 Washington Ave., Grand Haven, MI 49417, or as soon thereafter as counsel may be heard.

## DEFENDANT'S MOTION TO SHOW CAUSE

NOW COMES Defendant, by and through his attorney, Michael Komorn, and herein pursuant to MCR 3.606 moves that this Honorable Court issue an order to show cause why the aforementioned parties should not be held in criminal or civil contempt of court, and in support states as follows:

In the above captioned matter, and as reflected in the Supplemental Memorandum of Law regarding *Daubert* and Motion to Quash the bindover, and the exhibits attached thereto, the accused has made its offer of proof as to the issues related to *Daubert*. The remedy or relief for *Daubert* rulings is the suppression of the test result or testimony of the proffered expert. This motions seeks an additional remedy of Contempt of Court based upon MCR 3.606 for the reasons stated in the Supplemental Memorandum of Law and further outlined herein.

A Motion for an Order To Show Cause is authorized by MCR 3.606 and provides as follows:

**Rule 3.606 Contempts Outside Immediate Presence of Court**

> (A) Initiation of Proceeding. For a contempt committed outside the immediate view and presence of the court, on a proper showing on ex parte motion supported by affidavits, the court shall either (1) order the accused person to show cause, at a reasonable time specified in the order, why that person should not be punished for the alleged misconduct; or
> (2) issue a bench warrant for the arrest of the person.

Contempt of court is defined as a "willful act, omission, or statement that tends to ... impede the functioning of a court." *In re Contempt of Auto Club Ins Ass'n*, 243 Mich. App. 697, 708; 624 N.W.2d 443 (2000), quoting *In re Contempt of Robertson*, 209 Mich. App. 433, 436, 531 N.W.2d 763 (1995). Courts in Michigan have an inherent and statutory power to punish contempt of court by fine or imprisonment. MCL 600.1701 et seq.; *In re Contempt of Auto Club Ins Ass'n*, supra at 708-709, 624 N.W.2d 443 (2000). "[T]he primary purpose of the contempt power is to preserve the effectiveness and sustain the power of the courts." *Id*. at 708.

1. In this case the prosecutor violated defendant's fundamental rights by threatening to charge (and charging) defendant with a crime not justified by the evidence in retaliation for him refusing to plead guilty;
2. The State of Michigan is taking away Defendant's parental rights based on false testimony;
3. That it is likely that this lab report is one of hundreds or thousands of perjured lab reports issued by the Forensic Science Division in support of criminal investigations, searches, seizures, arrests, charges, forfeitures, convictions, revocations and pleas. Each of these actions was procured by false evidence in a massive violation of Due Process.
4. That it would follow that each of these matters must be reviewed, and all cases where marihuana solids and oils are reported as Schedule 1 THC must be reopened and the reporting practice enjoined. The same would be true for all cases relying on the testimony of expert Ruhf. All cases where defendants plead guilty to a Marihuana offense based on a lab report stating "THC schedule 1" must be overturned; to the extent that this Honorable Court desires to maintain jurisdiction of these issues or leave those remedies to a different Court do not effect the suppression of the lab report or the dismissal of the charges in this matter.

5. Overwhelming evidence exists that shows an intentional miscarriage of justice that was implemented by the Crime Lab in concert with the Prosecuting Attorneys Association of Michigan and the law enforcement community.
6. The Crime Lab was transformed into a Crime Factory which had the direct effect of stripping, in this case Mr. Lorincz, and other patients or caregivers statewide the State authorization to the entitlement to immunity, from arrest, prosecution or any penalty associated with the medical use of marihuana or to strip the accused in this matter as well as all medical marijuana patients, of their immunity and their assets.
7. This Crime Lab also had the direct effect of enhancing, or escalating misdemeanor charges to felony charges, for those possession for medical or recreational purposes.
8. Only synthetic THC is Schedule 1. There is no evidence to support the bindover.
9. Only synthetic THC is categorized as a schedule 1 substance under the MCSA. See MCL 333.7212(1)(d) and (e). Plant-based THC is not. It is categorized as marihuana with greatly reduced penalties. *People v. Campbell*, 72 Mich. App. 411, 412 (1976)("natural THC to be punished only under the provisions dealing with marijuana"); *People v. Carruthers*, 301 Mich. App. 590, 597; 837. NW2d 16 (2013) ("Possession of THC extracted from marihuana is possession of marihuana" under the MCSA and MMMA, (Citing *People v. Campbell*, 72 Mich.App. 411, 412, 249 N.W.2d 870 (1976); see also MCL 333.7106(3).
10. The evidence shows that the THC found was plant-based.
11. Defendant was charged and bound-over on falsely sworn material facts.
12. The Michigan State Police Forensic Science Division knew that only synthetic THC is a Schedule 1 felony and that the oils and edibles they were analyzing were plant-based.
13. The Michigan State Police Forensic Science Division knew that "it is highly doubtful that any of these Med. Mar. products we are seeing have THC that was synthesized. This would be completely impractical. We are most likely seeing naturally occurring THC extracted from the plant!"
14. Mr. Stecker, PAAM, and the Attorney General's Office instructed the Michigan State Laboratory to bear false witness, report their findings in a way that was known at the time

would create evidence for felony prosecutions, from evidence that either lacked probable cause of a crime or at best evidence of a misdemeanor possession. (To which said behavior would be protected from "arrest, prosecution or penalty of any kind" pursuant to Section 4 of the MMMA, and or defendable pursuant to Section 8 of the MMMA)

15. The Michigan State Police Forensic Science Division then set out to change the "procedure manual for guidelines of marihuana" to report THC schedule 1 for all "oils, food products and other substances" where plant material could not be visualized. Email, Hoskins, February 11, 2014.
16. Bradley Choate, the Controlled Substance Unit Supervisor at the Lansing laboratory of the Forensic Science Division strongly objected to the change. Noting that "the Controlled Substances Procedure Manual specifically states that Marihuana is a special case" and that oils and solids extracted from the Marihuana plant are controlled as Marihuana by statute, he correctly laid out the science and the law: "When THC is identified in a case, the analysts has two choices: 1) identify it as Marihuana which for possession is a Schedule 1 misdemeanor, 2) Identify it as a synthetic equivalent which for possession is a Schedule 1 felony. There is not a third choice. The question then becomes is the THC from a natural source i.e., Marihuana or a synthetic source. The presence of other cannabinoids indicates that the substance is from a natural source." Email, Choate to Hoskins, February 14, 2014.

Bradley Choate, the Controlled Substance Unit Supervisor at the Lansing laboratory of the Forensic Science Division went on:

"Prosecutors rely on our reports to determine what to charge a person with. A report that states delta 1 THC without any other statement would lead a prosecutor to the synthetic portion of the law…. This could lead to the wrong charge of possession of synthetic THC and the ultimate wrongful conviction of an individual. For the laboratory to contribute to this possible miscarriage of justice would be a huge black eye for the division and the department…. We don't leave it up to the prosecutor to figure this out." *Id*.

He also identified another serious defect in the procedure manual's prohibiting the scientists from stating the conclusion of Marihuana in their reports.

"It would follow that we could not state on the stand that it is marihuana which would make it hard if not impossible for the prosecutor to prove possession of Marihuana." *Id*.

17. The crime lab perverted science and broke the law. It reported bogus crimes.
18. The Ottawa County Sheriff's drug task force is complicit in targeting patients with this perversion of justice.
19. The actions described herein are unethical and criminal.
20. The crime lab's conduct violates the guiding principles of forensic evidence.
21. The crime lab engaged in systematic evidence tampering.
22. The crime lab, in concert with the AG's office, the prosecutors' union and WEMET obstructed justice under both State and Federal law.
23. The crime lab committed and suborned perjury.
24. The guarantees associated with the Michigan State Laboratory's accreditation, of the highest code of professional forensic ethics and values, has been vitiated.
25. The accused's fundamental Due Process Rights have been violated.
26. The crime lab's actions in concert with the prosecutors was a gross violation of defendant's fundamental constitutional rights and the rights of hundreds or thousands of other Michigan citizens. The Michigan State Police Laboratory expert's testimony and lab report is not "relevant to the task at hand" and that it does not rest "on a reliable foundation". *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 584-587, and therefore can't be admitted into evidence.
27. The forensic evidence presented does not qualify as scientific knowledge because it is not the product of sound scientific methodology derived from the scientific method.
28. The burden of proof is upon the proponent of the evidence, in this case the Government, and the trial court is the gatekeeper for *Daubert* issues.
29. The People cannot meet the foundational requirement pursuant to MRE 702, because it can't establish that the testimony of the lab expert or the lab report is based upon sound and recognized principals for "the method, process, or basis for the expert's conclusion."

30. The People must prove beyond a reasonable doubt that the substance at issue was synthetic THC, to which by their expert witnesses under oath testimony and the Michigan State Laboratory report ("origin unknown"), make this impossible to accomplish.
31. There is no credible evidence to charge or convict the defendant for the crime charged, THC Schedule 1; if the Government can't prove that the origin is synthetic.
32. There is no credible evidence to convict defendant of any crime not charged, i.e., a Marihuana offense;
33. The lab report and expert testimony in this case is willfully and materially false;

WHEREFORE, for the reasons stated, Defendant moves that this Honorable Court issue an order to show cause why the aforementioned parties should not be held in criminal or civil contempt of court.

Dated: October 23, 2015

Respectfully submitted,

/s/ Michael A. Komorn
Michael A. Komorn (P47970)
Attorney for the Defendant

**PROOF OF SERVICE**

I, Chad T. Carr, hereby certify that on the date below I sent the foregoing document by fax and US mail to the above-captioned parties.

Dated: October 24, 2015

/s/ Chad T. Carr
Chad T. Carr

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**BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO SHOW CAUSE**

It is clear that the testimony of the witness representative from the Michigan State Laboratory and the person the People intend to rely upon as an expert at the trial, is not disinterested and impartial. *People v. Youn*g, 418 Mich. 1, 18 (1983); *People v. Barbara*, 400 Mich. 36525 (1977). In fact the Defendant anticipates that additional evidence will be presented at said evidentiary hearing that will establish similar bias in reporting by the entire State Police Laboratory. That in fact the procedure utilized in this matter, and perpetuated by the Administration of the Michigan State Police and the Attorney General's Office involved a flawed protocol, method and analysis and ultimately a fraudulently conclusion in the reporting of the testing of the substance at issue in this matter. Moreover, the testimony from any witness, police officer or otherwise, must be something other than the substances "origin unknown." The conclusions that the material tested was "Schedule 1 THC and that substances "origin unknown" is a conclusion that is irreconcilable and not readily accepted within the scientific community. Equally important to this Honorable Court's analysis in this matter

is how the "new" reporting and conclusions of the analysis of the substance in this matter were created by the government, through deception and fraud. The government must establish sound and recognized principals for ***"the method, process, or basis for the expert's conclusion."*** *Anton*, 238 Mich. App. at 679 This type of testimony is insufficient to allow for a finding of reliability under *Daubert*. *General Electric v. Joiner*, 522 U.S. 136, 146, 118 S.Ct. 512, 139 L.ED 2d 508 (1997). An evidentiary hearing is necessary so that this Honorable Court can hear the testimony of the Expert Witness and the conclusions he offers, and determine if in fact it meets the criteria set for the in " *Gilbert v. Daimler Chrysler Corp*., 470 Mich. 749, 781, 685 NW2d 391 (2004) (analysis under *Daubert*).

Mr. Lorincz was originally charged with the crime of possession of marihuana, he was arrested, arraigned and appeared at a pretrial. The misdemeanor charge of possession of marihuana was later dismissed when the accused refused to plead guilty to possession of marihuana because of his status as a medical marihuana patient, was in possession of a valid medical marihuana registry identification card at all times, and the amount of marihuana at issue was not more than amount that the accused was allowed to possess. (MCL 333.2642(4)(a)(d) MCL 333.264 (3)(f) "Medical use" means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.)

Whether retaliatory or not, in the current matter before the Court, Mr. Lorincz is not charged with possession of marihuana, but with the possession of synthetic THC. The burden of proof beyond a reasonable doubt remains with the people at trial. In particular the People must prove beyond a reasonable doubt that the substance at issue was synthetic THC. Only synthetic THC is categorized as a schedule 1 substance under the MCSA. See MCL 333.7212(1)(d) and (e). Plant-based THC is not. It is categorized as marihuana with greatly reduced penalties. People v. Campbell, 72 Mich. App. 411, 412 (1976)("natural THC to be punished only under the provisions dealing with marijuana"); *People v. Carruthers*, 301 Mich. App. 590, 597; 837. NW2d 16 (2013) ("Possession of THC extracted from marihuana is possession of marihuana" under the MCSA and MMMA, (Citing *People v. Campbell*,

72 Mich.App. 411, 412, 249 N.W.2d 870 (1976); see also MCL 333.7106(3).

The Michigan State Laboratory Expert William Ruhf, concludes in his report that the origin of the evidence or substance at issue in this cases, origin is unknown. In other words, the Governments witness has testified it is impossible for proof of any kind, let alone beyond a reasonable doubt to be established, that the substance at issue is synthetic THC, and not marihuana.

**The Crime Lab committed and suborned perjury.**

Perjury is an ugly word. There is no nice way to say it. In ancient times, the punishment was death. Then it evolved to merely cutting out the offender's tongue and forfeiting his goods. By Blackstone's time the relatively light punishment was "perpetual infamy", prison and a fine followed by standing "with both ears nailed to the pillory" for non-payment. In Michigan the crime is defined as follows:

> (1) Any person authorized by a statute of this state to take an oath, or any person of whom an oath is required by law, who willfully swears falsely in regard to any matter or thing respecting which the oath is authorized or required is guilty of perjury, a felony punishable by imprisonment for not more than 15 years.
>
> (2) Subsection (1) applies to a person who willfully makes a false declaration in a record that is signed by the person and given under penalty of perjury. MCL 750.423.
>
> "Any person who shall be guilty of subornation of perjury, by procuring another person to commit the crime of perjury, shall be punished as provided in the next preceding section." MCL 750.424. To "procure" is to initiate a proceeding; to cause a thing to be done; to instigate; to contrive, bring about, effect, or cause. *See U. S. v. Wilson*, 28 Fed. Cas. 710 "Subornation of perjury" can generally be defined as procuring or inducing an improper or unlawful act. *People v. Sesi*, 300 N.W.2d 535, 101 Mich.App. 256 (1980).

In stating in the lab report that the sample contained schedule 1 THC, Expert Ruhf made a false and material declaration in a judicial proceeding in a record signed under oath. When he stated in his lab report that the origin was unknown and in his testimony that the origin was unknowable, he again swore falsely to a material fact. Whether he did so willingly is a question for this or another court to determine. His excuse on the stand was that it was an "administrative decision," he was just following orders.

This defense was rejected at Nuremburg and the excuses offered by those soldiers, were used as evidence in the Prosecution against those who were in charge and who gave the illegal (immoral) orders.

**The crime lab, in concert with the AG's office and the prosecutors union and WEMET obstructed justice under both State and federal law.**

Under Michigan law, obstruction of justice is a common-law charge that can be prosecuted under MCL 750.505 and "is generally understood as an interference with the orderly administration of justice." *People v. Thomas*, 438 Mich. 448, 455, 475 N.W.2d 288 (1991).

> Like breach of the peace, at common law obstruction of justice was not a single offense but a category of offenses that interfered with public justice. Blackstone discusses twenty-two separate offenses under the heading "Offences against Public Justice."…To warrant the charge of common-law obstruction of justice, defendant's conduct must have been recognized as one of the offenses falling within the category "obstruction of justice." *Id* at 458.

Of Blackstone's 22 offenses, this crime lab has 1) falsified proceedings, 2) obstructed lawful process, 3) compounded information's upon penal statutes, and 4) conspired (with the AG, WEMET and prosecutors' union) to indict an innocent man. This constitutes the common law crime of obstruction of justice.

The lab violated federal law as well: to sustain its burden of proof for conviction for crime of corruptly endeavoring to influence, obstruct or impede due administration of justice, government must prove that there was a pending judicial proceeding, that defendant knew this proceeding was pending, and that defendant then corruptly endeavored to influence, obstruct, or impede due administration of justice. 18 U.S.C.A. § 1503. This is an instance where a federal court may assess the quantum of evidence (fraudulently non-existent) underlying a threatened state prosecution. *See* *Brady v. United States*, 397 U.S. 742, 751 n. 8, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970) (a prosecutor's broad authority is properly questioned where "the prosecutor threatened prosecution on a charge not justified by the evidence"). Federal courts have the authority to affect state prosecutorial actions when those actions are taken, as here, in violation of the Constitution, *United States v. Santtini*, 963 F.2d 585, 596 (3d Cir.1992).

**The Crime Lab engaged in systematic evidence tampering.**

Tampering with evidence is a four year felony. Michigan Penal Code Sec. 483(a)(5) provides that: "A person shall not do any of the following: (a) Knowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in a present or future official proceeding. (b) Offer evidence at an official proceeding that he or she recklessly disregards as false." "Tamper" means "to exert a secret or corrupt influence upon." Synonyms are: influence, get at, rig, manipulate, bribe, corrupt, bias; informal: fix. "The defendant tampered with the jury." *See* Google Online Dictionary. By any definition, the crime lab's conduct amounts to tampering. It rigged and fixed the evidence around the scientifically corrupt department policy. It, and expert Ruhf, recklessly disregarded the falsity of the evidence it presented in an official proceeding.

**The Crime Lab perverted science and broke the law. It reported bogus crimes.**

In the understatement of the year, one scientist dryly noted that "apparently Stecker's interpretation doesn't encompass all our concerns." (Exhibit G, email Hoskins to supervisors, Michigan State Police Lab, February 21, 2014). For a moment it seemed that rational heads would prevail. One scientist proposed that "the identification of at least three cannabinoids one of which shall be THC" was a sufficient profile to determine a sample to be plant-based." Email Gormley, February 24, 2014. Then the lab threw all science out the window. One "concern" of the scientists was that by reporting THC schedule 1, they would be falsely swearing the substance to be synthetic. Another was that "by reporting THC we are possibly influencing the sentencing severity, as THC has a significantly higher penalty than marihuana." (Exhibit H, email thread Gooden to supervisors, Michigan State Police Lab, February 26, 2014.) The directive to report THC schedule 1 put the scientists in an ethical quandary. And in an epic twist of logic, the crime lab sought to cover up this scientific fraud by perpetuating another one. It changed its Laboratory Guidelines section 2.1 to *require* analysts in their lab reports to "clarify that the source of the identified cannabinoid(s) cannot be established."

The Michigan State Police Forensic Science Division realized that a crime lab report stating that oils and edibles contained Schedule 1 THC was scientifically, forensically, and legally false and would result in citizens being charged with felonies they did not commit. It knew that it would result in the State being unable to prosecute for Marihuana because the analyst would not be able to get on

the stand and testify that the sample was Marihuana. It knew that it was highly doubtful that *any* of the medical marijuana oils and edibles it was seeing were synthetic. It knew that a sample containing THC plus two or three other cannabinoids was plant-based with high scientific certainty (as reflected in the laboratory report in this case and Defendant's experts). Yet it caved to political pressure from the Attorney General's office and the Prosecuting Attorneys Association of Michigan and WEMET and reported "THC Schedule 1" anyway! In a contortionistic attempt, for reasons that are contrary to the intent of the MMMA ("Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana" MCL 333.26422(b)), it added the additional language "origin unknown," compounding scientific fraud with legal fraud.

The "science" behind this disclaimer is summed up by John Bowen, Assistant Director of the Forensic Science Division: "Other cannabinoids *can* be manufactured synthetically, just as THC can be. Is it likely that someone went to the trouble to manufacture THC and two other cannabinoids, mix them up, and bake them into a pan of brownies? Of course not. That doesn't mean that we should change the results to show we found marijuana. We didn't, because Marijuana is a plant, and we didn't find plant parts. We need to make sure our reports are accurate. To me that means reporting *exactly* what we found." (emphasis in original) (Exhibit I, email thread Bowen to Hoskins, Michigan State Police Lab, March 15, 2014.) Nudge, nudge. Wink, wink. Then, Mr. Bowen declared that he would talk to "Ken Stecker myself and make sure he's ok with this direction." *Id*. The "direction" was rampant illegality.

This is the opposite of science. This is ignorance. Willful, deliberate ignorance. This is turning a blind eye to the truth *as a matter of crime lab policy*. "No one can avoid responsibility for a crime by deliberately ignoring the obvious." US 6th Circuit pattern jury instruction 2.09. A person cannot deliberately ignore a high probability of fact at issue. One cannot be "aware of a high probability that something is true" and "deliberately close (one's) eyes to what was obvious." *Id*.

In mandating this policy, the crime lab is stating that in all cases where plant material is not visible, the origin of the THC is unknown and unknowable scientifically. This is false. The emails show otherwise. The lab results in defendant's case show otherwise. The GC/MS test in this case as

referenced by Mr. Choate and Defendant's experts reflect the presence of multiple natural cannabinoid compounds and thus provides clear evidence that the origin is in fact of natural "plant" origin. "*The presence of other cannabinoids indicates that the substance is from a natural source.*" (Choate, Exhibit F) (See also exhibit B, Defendant's experts' reports)

In fact, the crime lab can test for known synthetic cannabinoids. It purchases "reference standards" of synthetic marijuana, small purified samples of synthetic cannabinoids that it uses to determine if a substance is illegal, from Cayman Chemicals in Ann Arbor. "If we couldn't purchase standards, we wouldn't be able to make the (synthetic) identification," said State Police Crime Lab forensic scientist Kyle Ann Hoskins. "That is a necessity." Detroit Free Press, December 20, 2012. The disclaimer that the lab cannot identify the source of the cannabinoids is a lie.

Above and beyond engaging in contempt of court, the aforementioned parties have committed crimes, to wit their conduct involved Conspiracy, Misconduct in Office and Obstruction of Justice.

**A. Conspiracy**

MCL 750.157a prohibits the crime of conspiracy. According to CJI 10.1, the crime of Conspiracy involves the following elements:

> First, that the defendant and someone else knowingly agreed to commit _____.
>
> Second, that the defendant specifically intended to commit or help commit that crime.1
>
> Third, that this agreement took place or continued during the period from _____ to _____.

According to CJI 10.2, an agreement is defined as follows:

> An agreement is the coming together or meeting of the minds of two or more people, each person intending and expressing the same purpose.
>
> It is not necessary for the people involved to have made a formal agreement to commit the crime or to have written down how they were going to do it.

> In deciding whether there was an agreement to commit a crime, you should think about how the members of the alleged conspiracy acted and what they said as well as all the other evidence.
>
> However, you may infer that there was an agreement from the circumstances, such as how the members of the alleged conspiracy acted.

**B. Obstruction of Justice**

The Supreme Court set forth the common-law offense of obstruction of justice in *People v Thomas*, 438 Mich 448, 455-456; 475 NW2d 288 (1991):

> Obstruction of justice is generally understood as an interference with the orderly administration of justice. This Court, in *People v Ormsby*, 310 Mich 291, 300; 17 NW2d 187 (1945), defined obstruction of justice as "'impeding or obstructing those who seek justice in a court, or those who have duties or powers of administering justice therein.'" In *People v Coleman*, 350 Mich 268, 274; 86 NW2d 281 (1957), this Court stated that obstruction of justice is "committed when the effort is made to thwart or impede the administration of justice." While these definitions adequately summarize the essential concept of obstruction of justice, we believe they lack the specificity necessary to sustain a criminal conviction.
>
> * * * *
>
> Like breach of the peace, at common law obstruction of justice was not a single offense but a category of offenses that interfered with public justice. Blackstone discusses twenty-two separate offenses under the heading "Offences against Public Justice." If we now simply define obstruction of justice as an interference with the orderly administration of justice, we would fail to recognize or distinguish it as a category of separate offenses. We find no basis for this at common law.
>
> To warrant the charge of common-law obstruction of justice, defendant's conduct must have been recognized as one of the offenses falling within the category "obstruction of justice." [*Thomas*, supra at 457-458, citing 4 Blackstone, Commentaries (1890), pp 161-177.]

Michigan courts have even found obstruction of justice where the conduct falls outside Blackstone's listed examples. *People v Jenkins*, 244 Mich. App. 1; 624 N.W.2d 457 (2000). Nevertheless, the crime of obstruction of justice is complete upon the attempt to thwart the administration of justice:

> "When an effort is made to thwart or impede that administration of justice." *Thomas*, supra at 455. For example, in obstructing justice through coercion, "[t]he crime is complete with the attempt . . ." and "[w]hether the attempt succeeds in dissuading the witness is immaterial." *People v Tower*, 215 Mich App 318, 320; 544 NW2d 752 (1996).

**C. Misconduct In Office**

Misconduct in office by a public officer is a common law offense subject to the provisions of MCLA 750.505, MSA 28.773:

> Any person who shall commit any indictable offense at the common law, for the punishment of which no provision is expressly made by any statute of this state, shall be guilty of a felony, punishable by imprisonment in the state prison not more than five years or by a fine of not more than $10,000.00, or both in the discretion of the court.

While a prosecutor is clearly a public official, so too is a deputy sheriff. *People v Coutu*, 459 Mich 348, 589 N.W.2d 458 (1999). The crime of misconduct in office occurs in one of three ways:

> - malfeasance, which is the doing of a wrongful act;
> - misfeasance, which is the doing of a lawful act in a wrongful manner; and
> - nonfeasance, which is the failure to perform an act required by the duties of the office. *See People v. Waterstone*, 296 Mich. App. 121, 133; 818 N.W.2d 432 (2012).

**Motion and Order to Show Cause**

The accused prays for relief from this Honorable Court, specifically to enter a Show Cause Order regarding the herein named parties, and Order them to Show Cause and or explain why they should not be found in contempt of Court. That Further if said finding is made, that this Honorable Court, fashion the appropriate remedy, for its findings associated with contempt of court.

**Contempt of Court**

"Michigan courts have, as an inherent power, the power at common law to punish all contempts of court." *In re Contempt of Dougherty*, 429 Mich 81, 91 n 14 (1987). "This contempt power inheres in the judicial power vested in th[e Michigan Supreme Court], the Court of Appeals, and the circuit and probate courts by Const 1963, art 6, § 1." *Dougherty*, supra at 91 n 14. MCL 600.1701 defines a court's power to punish contempt by fine or imprisonment or both. Contempt may

be either civil or criminal and either direct or indirect. Direct contempt occurs in the immediate view and presence of the court; indirect contempt is outside of the immediate view and presence of the court. The purpose of criminal contempt is to punish for past conduct. *Jaikins v Jaikins*, 12 Mich App 115, 120 (1968).

"A court that is adjudicating contempt proceedings without a jury must make findings of fact." *DeGeorge v Warheit*, 276 Mich App 587, 596 (2007). For a finding of criminal contempt, the contempt must be proven beyond a reasonable doubt. *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 714 (2000). Courts have the authority to use their contempt powers to encourage payment of court-ordered payments. MCL 600.1701(e).

**Direct Contempt—In the Presence of the Court**

Defendant argues that this Honorable Court should make a finding that the Contempt in this matter occurred within the presence of the Court, but it need not in order to remedy the contempt.

> MCL 600.1711(1) provides the court with authority to summarily punish, by fine or imprisonment, or both, contempt that occurs in its immediate view and presence.

**Indirect Contempt—Outside the Presence of the Court**

This Honorable Court can remedy the contempt, if finding the contempt occurred outside the presence of the Court, or a combination of both.

If the contempt is committed outside the immediate view and presence of the court, it is not subject to summary punishment, and the appropriate process is a show cause hearing. *In re Contempt of McRipley*, 204 Mich App 298, 301 (1994). The court may punish contempt committed outside its presence "after proof of the facts charged has been made by affidavit or other method and opportunity has been given to defend." MCL 600.1711(2).

The standard of proof for civil contempt "is more stringent than in other civil actions: proof of contempt must be clear and unequivocal." *In re Contempt of Calcutt*, 184 Mich App 749, 757 (1990). The circuit court may "punish by fine or imprisonment, or both," "parties to actions, attorneys, counselors, and all other persons for disobeying any lawful order, decree, or process of the court." MCL 600.1701(g).

**Civil or Criminal Contempt**

The first step in any contempt proceeding is to determine whether the alleged conduct is subject to criminal or civil contempt sanctions, because due process requires that the person charged be advised, at the outset, whether the proceedings involve civil or criminal contempt. *In re Contempt of Rochlin*, 186 Mich App 639, 648- 649 (1990). Distinguishing between civil and criminal contempt can be difficult, because both types may result in the contemnor's imprisonment for willfully failing to comply with a court order. *Porter v Porter*, 285 Mich App 450, 456 (2009). All contempt proceedings are considered "quasi-criminal" or "criminal in nature." *Porter*, supra at 456 (quotations and citations omitted).

**Civil contempt**

Civil contempt is coercive and intended to compel the offending person to take some action of which he or she is capable to purge the contempt. It is prospective. Willful disobedience is not necessary for civil contempt. *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 499-501 (2000). Proof of contempt must be clear and unequivocal. *People v Matish*, 384 Mich 568, 572 (1971). "[I]n a civil contempt proceeding, the accused must be accorded rudimentary due process, i.e., notice and an opportunity to present a defense, and the party seeking enforcement of the court's order bears the burden of proving by a preponderance of the evidence that the order was violated." *Porter*, 285 Mich App at 456-457. Because civil contempt actions are tried by the court without a jury, the court must make findings of fact, state its conclusions of law, and direct entry of the appropriate judgment. *In re Contempt of Calcutt*, 184 Mich App at 758. "[T]here 'are two types of civil contempt sanctions, coercive and compensatory.'" *Porter*, 285 Mich App at 455-456, quoting *In re Contempt of Dougherty*, 429 Mich at 97. However, "civil sanctions primarily intended to compel the contemnor to comply with the court's order may also have a punitive effect." *Porter*, supra at 456. The process is civil if the contempt consists of a party's refusal to do something that he or she is ordered to do for the opposite party's benefit or advantage. *Id*. In that instance, the order is coercive (as opposed to punitive), and is intended to compel the party to follow the court's order. *Id*.

**Criminal contempt**

Criminal contempt sanctions past conduct and is punitive. With criminal contempt, the accused has the due process rights that apply to a criminal defendant, except there is no right to a jury trial. In a criminal proceeding, the standard of proof is beyond a reasonable doubt. *In re Contempt of Rapanos*, 143 Mich App 483, 488-489 (1985). A party charged with criminal contempt has a presumption of innocence and the right against self-incrimination. *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App at 713. The willful disregard or disobedience of a court order must be clearly and unequivocally shown. *Matish*, 384 Mich at 572, and must be proven beyond a reasonable doubt. *In re Contempt of Auto Club Ass'n*, supra at 714. The accused is entitled to time to prepare his or her defense, secure the assistance of counsel, and produce witnesses. *In re Collins*, 329 Mich 192, 196 (1950). The rules of evidence (other than those with respect to privileges) do not apply when contempt is summarily punished. MRE 1101(b)(4). The rules of evidence apply to proceedings involving indirect contempt. MRE 1101(a).

**Punishment**

Three kinds of sanctions are available to redress a contemnor's behavior: (1) civil coercion to force compliance with an order; (2) criminal punishment to vindicate the court's authority; and (3) civil compensatory relief for the complainant. *In re Contempt of Dougherty*, 429 Mich at 98; *In re Contempt of United Stationers Supply Co*, 239 Mich App at 499. When the contempt is civil and consists of the failure to do what is still in the power of the contemnor to do, imprisonment may be imposed until the contemnor performs, or no longer has the power to perform, the act or duty, and pays any fine and costs. MCL 600.1715(2); *In re Contempt of Dougherty*, supra at 96; *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App at 711-712. Except in cases involving the omission of an act still in the contemnor's power to perform, contempt may be punished by a fine of not more than $7,500, or imprisonment for not more than 93 days, or both. MCL 600.1715(1). An individual convicted of criminal contempt may be sentenced to probation according to the provisions of MCL 771.1 to MCL 771.14a. MCL 600.1715(1). MCL 600.1715(2) addresses contempt in cases involving the omission of an act still in the contemnor's power to perform: "the imprisonment shall be

terminated when the person performs the act or duty or no longer has the power to perform the act or duty, which shall be specified in the order of commitment, and pays the fine, costs, and expenses of the proceedings, which shall be specified in the order of commitment."

There are Michigan statutes that provide more specific penalties for particular types of contempt. See, e.g., the personal protection order statutes, MCL 600.2950 and MCL 600.2950a, and the statutes covering violation of a visitation order, MCL 552.641 et seq.

A court may also punish contempt by denying court processes to one who is in contempt of a court order. *Homestead Dev Co v Holly Twp*, 178 Mich App 239, 247 (1989) (court found the defendant in default when it failed to pay court-ordered sanctions by the date listed on the order). A court may also order compensation for loss or injury resulting from the violation of a court order. *In re Contempt of Dougherty*, 429 Mich at 98.

**Sanctions Other Than Contempt**

A court has the authority "to sanction litigant misconduct, even when there is no statute or court rule addressing the particular form of misconduct, based on [its] fundamental interest in protecting its integrity and that of the judicial system." *Brenner v Kolk*, 226 Mich App 149, 160 (1997). The Michigan Supreme Court has affirmed "the authority of trial courts to impose sanctions appropriate to contain and prevent abuses so as to ensure the orderly operation of justice." *Maldonado v Ford Motor Co*, 476 Mich 372, 375 (2006). "[T]rial courts possess the inherent authority to sanction litigants and their counsel, including the power to dismiss an action." *Maldonado*, supra at 376 (court dismissed the case against the plaintiff with prejudice because she and her attorneys "repeatedly and intentionally publicized inadmissible evidence so as to taint the potential jury pool, deny [the] defendants a fair trial, and frustrate the due administration of justice")

WHEREFORE, the accused prays for relief from this Honorable Court, specifically to enter a Show Cause Order regarding the herein named parties, and Order them to Show Cause and or explain why they should not be found in contempt of Court. That further if said finding is made, that this Honorable Court, fashion the appropriate remedy, for its findings associated with contempt of court.

Dated: October 23, 2015 Respectfully submitted,

/s/ Michael A. Komorn
Michael A. Komorn (P47970)
Attorney for the Defendant

**PROOF OF SERVICE**

I, Chad T. Carr, hereby certify that on the date below I sent the foregoing document by fax and US mail to the above-captioned parties.

Dated: October 24, 2015 /s/ Chad T. Carr
Chad T. Carr