STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

Complaint Against:

Hon. Theresa M. Brennan **Formal Complaint No.99**

53rd District Court **William J. Giovan, Master**

Lynn H. Helland
Casimir J. Swastek
Examiners

Dennis J. Kolenda
Attorney for Respondent

Master's Report

Procedural History

On June 12, 2018 the Judicial Tenure Commission filed Formal Complaint No. 99 against respondent Teresa M. Brennan, a judge of the 53rd District Court located in Brighton, Michigan. The Michigan Supreme Court appointed William J. Giovan, retired circuit judge, as Master on June 14. A First Amended Complaint was filed on July 23, 2018.

Respondent filed several pretrial motions which were heard on September 19, 2018 at the 16th District Court in Livonia, Michigan, the principal result of which was that the Examiner conceded that the complaint does not allege that the respondent and Detective Sean Furlong had sexual relations prior to the verdict in the trial of People v. Kowalski.

The first phase of the public hearing commenced in Livonia on Monday, October 1, 2018 and extended for 8 days through Wednesday, October 10, at which time the examiner announced that a Second Amended Complaint would be filed, which was done on or about October 29, 2018. Owing to the additional charges, an additional day of

testimony was held on Monday, November 19, 2018 at the Coleman A. Young Municipal Center in Detroit, Michigan.

A total of 16 witnesses testified, along with the admission of voluminous exhibits. Stipulations of the parties are an additional part of the record. Counsel requested and received permission to give final arguments in writing, and the same were submitted on December 5, 2018.

The Second Amended Complaint consists of 91 pages with 397 numbered paragraphs with subsections, addressing 17 counts with intermixed charges of misconduct. In the attempt to produce a comprehensible report, the charges have been combined and discussed in 8 sections.

Findings of fact and conclusions of law

1. Misconduct for respondent's failure to disqualify herself in People v. Kowalski.

Perhaps the most serious charge proven against respondent Theresa Brennan is her failure to disqualify herself from the case of People v. Kowalski, Livingston County Case No. 08–17643-FC, because it was not only serious misconduct, but also one that infected the integrity of a serious criminal proceeding, a charge of double homicide first-degree murder that resulted in a sentence of life imprisonment without parole.

The Kowalski case was assigned in March, 2009 to Judge Brennan, who was cross-assigned to the circuit court. Michigan State Troop Detective Sean Furlong investigated the case, was the co-officer in charge, took the confession of the defendant, and was the principal witness before and during the trial.

In pretrial hearings Judge Brennan ruled the defendant's confession admissible and also precluded a defense expert witness from testifying about false confessions. According to defense counsel Walter Piszczatowski, the latter ruling, sustained on appeal as not being an abuse of discretion, "gutted" the defense. Because of the time consumed by appeals in both the Court of Appeals and the Michigan Supreme Court, the matter didn't come to trial until 2013.

On the morning of January 4, 2013, the Friday before the start of the trial on Monday, attorney Thomas Kizer faxed a letter to the Livingston County Prosecutor that contained allegations about inappropriate contacts between Judge Brennan and detectives Furlong and Christopher Corriveau, Mr. Furlong's close companion and colleague. The trial prosecutor, Pamela Maas, gave the letter to defense counsel and the two of them attended a pretrial conference that had been scheduled for that day. They had a discussion in chambers with the judge during which Mr. Piszczatowski asked her about the allegations in the letter. In a long response the judge said she was friends with the detectives, but her relationship with them was strictly professional. She would see them along with others, she said, at parties, charity events, retirement parties, and the like. There was nothing to require her disqualification, she claimed.

At the hearing of the motion for disqualification that followed, Judge Brennan recited the applicable provisions of MCR 2.003 and the Michigan Canons of Judicial Conduct (the very ones that required her disqualification, as we shall see) and contended that she had been fair, that she would continue to be impartial, and denied the motion.

Based on that record Chief Circuit Judge David Reader later supported the denial of disqualification.

There are a number of things that Judge Brennan did *not* disclose to counsel:

> -That she consistently met with Furlong and Corriveau behind closed doors in her chambers, unlike her practice of signing warrants in the courtroom when other police personnel sought warrants.
>
> -That she had met with detective Furlong in small social groups, as well as having been to lunch and sporting events with him alone.
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> -That she sometimes gave her husband's season tickets to Furlong to use at football games.
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> -That she regularly made her cottage available to Furlong for a week's exclusive use, in addition to having Furlong as a guest at the cottage among a small group of people.
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> -That she had gone Christmas shopping with Furlong.
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> `That Furlong had been a dinner guest at her home.
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> -That the judge had purchased an airplane ticket for Furlong so that he could accompany her on a trip to perform her niece's wedding.
>
> -That, prior to the Kowalski case being assigned to her, she had told a staff that Furlong had persuaded her of Mr. Kowalski's guilt.[1]
>
> -That she had had more than 1500 telephone calls of a social nature with Furlong between July, 2008 and the start of the Kowalski trial.
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> -That she was on the phone with Furlong at least one hour, and as much as two hours, every month between November, 2011 and the start of the Kowalski trial, 80% of the calls having been initiated by the judge.

[1] There is no suggestion here that it is improper for a judge to have an opinion about the guilt of a person whose case is not before the judge, nor even that a judge might converse with acquaintances about such matters. The opinion, after all, might be accurate. Perhaps obviously, the matter is cited here for the bothersome effect of presiding over a case where the judge has earlier expressed an opinion of guilt to her court personnel and the officer in charge.

-That in addition to the phone calls, respondent and Furlong texted each other about 400 times from 2010 until the start of the Kowalski trial.

-Nor did she afterward disclose that *during* the trial she talked with Furlong on the phone for more than a half hour, in addition to texting back and forth with him; nor that she had another 20 phone conversations with Furlong totaling more than four hours, plus more texts, between the verdict and sentencing.

The foregoing was more than sufficient to have required Judge Brennan's disqualification. The denial of disqualification was all the more egregious, however, because, by the time of the disqualification motion and for a significant period before, Judge Brennan had a romance with detective Furlong. Yes, a romance.

The relationships noted above by themselves tend to reflect as much, but there is still more compelling evidence. In 2007 Judge Brennan had a milestone birthday. Later she told two persons, Kristi Cox, the Judge's secretary/court recorder, and Francine Zysk, Chief Probation Officer/ Court Administrator of the District Court, that she had shared a kiss with detective Furlong in her chambers around the time of that birthday.

For the judge to speak to 2 persons about the incident with pleasant excitement, as was the case, it had to be a romantic kiss, not a peck on the cheek. In professional work a police officer does not ordinarily walk up and kiss a judge in chambers. For that to happen without a calamity in the courthouse, there had to be prior romantic sentiments between them in order to permit the event to have occurred at all.

There is more, as disclosed by an event described in testimony by two persons, though differing in some detail. On April 22, 2013, seven weeks after the Kowalski sentencing, Kristi Cox went to the judge's chambers in preparation for the afternoon court proceedings and found her curled up in a ball in severe distress. Ms. Cox

had no recollection of Detective Furlong being present at the time. A few weeks afterward the judge told her that the cause of her upset was that her husband had forbidden her from associating with Furlong any longer..

Shari Pollesch, an attorney and the judge's good friend, testified that she went to the judge's chambers that day and found the judge and Detective Furlong there, both in tears. Judge Brennan told her that their distress arose from Furlong's announcement that the two of them could no longer associate with each other. According to both versions of the event, Ms. Pollesch decided that the judge should not handle the afternoon docket, and instructed the staff to cancel it with an explanation to the public that the judge had food poisoning.

What is common to both versions of the incident is that the judge and the detective were both considerably distressed because they could no longer be together. The distress didn't come because they couldn't discuss sports scores any longer. It came, obviously, from the breakup of a romance. That relationship, moreover, did not arise overnight. To have such sorrowful effect at its anticipated ending, the relationship had to have originated some considerable time earlier.

What appears, then, is the trajectory of a romance between Judge Brennan and Detective Furlong that started sometime before her birthday in 2007 and continued at least until sometime in late 2013 when, Judge Brennan says, they first had sexual relations. January 4, 2013, the date of the disqualification motion, fell at the hottest part of that trajectory.

Should Judge Brennan have agreed to disqualify herself at the time of the motion? The answer seems to be obviously "yes," but as a practical matter it was a near impossibility for her to do it at the time, because a recusal in response to the motion would have acknowledged the travesty of having presided for 4 years over a criminal prosecution when she'd had a close relationship with the investigator, officer in charge, and principal witness.

So, what could or should Judge Brennan have done? When the Kowalski case was first assigned to her, she could have quietly recused herself *sua sponte,* with a vague reference to preserving the appearance of propriety. That would have saved us, and herself, that much of this travail.

The respondent's concealment of her relationship with Detective Furlong and failure to recuse herself was gross misconduct that violated Canons 1, 2, and 3 C of the Michigan Code of Judicial Conduct.

2. Delay in disqualification in order to destroy evidence.

Judge Brennan was married to Donald Root on September 1, 1990. He moved out of the marital home in September, 2013, one or two days before Mr. Root filed an action for divorce. On Friday, December 2, 2016, he and the judge discussed the status of her cell phone, owned by Mr. Root, and it was acknowledged that she would get a new one. Early that morning in a text to Mr. Root she told him that the case would be assigned to her automatically, and she assured him that she would disqualify herself.

When Mr. Root did file for divorce later that day, the case was indeed assigned to Judge Brennan by local rule, and Chief Circuit Judge David Reader gave her a courtesy call

to inform her of the filing. He didn't mention disqualification because he assumed it would immediately occur. But no disqualification was submitted that day.

Nor did Judge Brennan disqualify herself on Monday, December 5. That afternoon she spoke with her attorney, Michael Quinn, for 17 minutes on the telephone.

At 11 a.m. on Tuesday, December 6, Mr. Root's attorney, Tom Kaiser, filed a "Motion for Entry of Ex Parte Mutual Restraining Order Regarding the Duty to Preserve Evidence," which sought, among other things, preservation of the following:

> 4. That potential evidence would include bank records, email messaging, text messages, phone records, Skype records, credit card records, and other relevant data in the possession of Defendant and her agents.
>
> 5. That the Defendant has pressured the Plaintiff to release to her the phone number and records as relates to that phone number which phone is in the name of plaintiff's business and paid for by that business.
>
> 6. That Plaintiff's review of those records reflects significantly lengthy and late-night calls and substantial texting to persons with whom plaintiff may have diverted marital assets or engaged in other suspect activities.

Upon learning of the filing of the motion, Judge Reader instructed his secretary, Jeannine Pratt, to call Judge Brennan to emphasize the immediate need for a disqualification order. Ms. Pratt did call, and also emailed the judge a copy of both the *ex parte* motion and a disqualification order at 11:57 a.m., telling the judge that she would travel to the Brighton court in the afternoon to pick up the executed order. Ms. Pratt did go to Brighton that afternoon to retrieve the order, but Judge Brennan told her that she would not be signing the order until she spoke with her attorney.

About 3:00 p.m. the next day, December 7, Judge Reader was informed by Judge Brennan's office that the disqualification order had been signed and was in the court mail.

It wasn't in the mail, however, when the courier returned to Howell that afternoon. The disqualification order was received in Howell on the morning of December 8.

What could possibly explain a 6-day delay for a judge to sign a disqualification order in her own divorce case, especially when an emergency motion was pending? Why would a judge have to speak with a lawyer before signing such an order? And why did Judge Brennan lie in her insinuation to Ms. Pratt on December 6 that she had not yet spoken to her lawyer when she had in fact spoken to him the previous day? The evidence commands the conclusion that her intent was to stall for time in order obliterate the data on the phone so that it would not be available as evidence against her. Between the time respondent was apprised of the *ex parte* motion and December 8, she asked her courtroom staff and a police officer for assistance in deleting information and an email account from the cell phone. On December 8 she asked her court recorder, Felicia Milhouse, to try to delete the Hotmail account from the phone. After Ms. Milhouse was unable to do so, the judge instructed her to leave her duty as court recorder to continue the effort, which she did by means of an extensive Google search. On or shortly before December 8 Judge Brennan bought a new cell phone and, one way or another, caused the original phone to be reset to its factory settings, a procedure that erased all data from the old phone.

More likely than not, Judge Brennan's attempts and eventual success in obliterating the data from the cell phone rendered her guilty of the felony described in MCL 750.483a(5)(a):

750.483a. Prohibited acts; ….

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(5) 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.

In any event, a judge needn't have committed a criminal act in order to be guilty of misconduct. Judge Brennan delayed disqualifying herself from her own court case when she should have done do immediately, in order to facilitate her attempt and ultimate success in deleting data from a cell phone that she knew was the subject of a pending order to preserve it and its contents. Her conduct violated Canons 1, 2, and 3 of the Michigan Code of Judicial Conduct, as well as the statute.

3. Failure to disclose relationships and/or to grant disqualification in cases where attorney Shari Pollesch or her firm served as counsel.

Shari Pollesch was a principal of the Brighton law firm of Burchfield Park & Pollesch PC and personally appeared as counsel in five Livingston County Circuit Court cases before Judge Brennan in the years 2014 through 2016. In that same period other counsel from her firm appeared before the judge in another five circuit court cases. In none of the cases did Judge Brennan disclose to opposing counsel the extent of her personal relationship with Ms. Pollesch.

Circumstances not disclosed included the following:

-The judge and Ms. Pollesch were friends for 25 years, and the judge considered her one of her best friends.

-The judge had provided her home and decorations for of Ms. Pollesch's wedding.

-The judge and Ms. Pollesch took ski trips together with women in northern Michigan and out west.

•They had been part of the same book club for years and were 2 of a group of 5 of the members that also socialized outside the club.

'They were guests at each other's cottages.

•They often took walks with each other during lunch. They talked about law, interesting court cases, their marriages, their cottages, books, ski trips and Ms. Pollesch's children.

•Ms. Pollesch was one of three trusted friends who assisted the judge in submitting a statement to the Judicial Tenure Commission in 2009.

•Ms. Pollesch had provided legal services for two business of the judge's husband and prepared personal legal documents for him; and, in a letter of January 3, 2017 (Exhibit 2-9) had intimated an attorney-client relationship with the judge as well, saying "I have consulted with both of the parties [the judge's divorce] for years on a number of legal matters, both personal and business."

•Ms. Pollesch represented the judge's sister in her divorce case.

The combination of all of the foregoing elements alone should have been enough to require Judge Brennan to provide a recusal - or at least a disclosure - in cases assigned to the judge where Ms. Pollesch or her firm were counsel. In addition to all that, however, the depth of Ms. Pollesch's influence with the judge is even more patently shown by the incident of April 22, 2013, described above, when Ms. Pollesch appeared at the judge's chambers, finding her in distress. It was *she* who had the authority and influence 1) to decide that the judge shouldn't handle the afternoon's proceedings, 2) to instruct the court staff to cancel the docket, and, 3) to decide what excuse should be given the public.

All of the foregoing is aggravated by the fact that Judge Brennan did deny two disqualification motions brought on the basis of relationship with Ms. Pollesch, without a word from the judge about the circumstances listed above.

In Scheibner v. Scheibner, Case No.13- 47392-DM, several months after a contentious hearing before Judge Brennan, attorney Margaret Kurtzweil filed a motion to disqualify the judge after learning of the letter of January 3, 2017, cited above, in which Pollesch asserted that she had represented both the judge and her husband. Judge Brennan dismissed the motion without a hearing on the basis that that there was nothing pending before her at the time of the motion.

In McFarlane v. McFarlane, Case No. 15-6492 DO, wherein Ms. Pollesch represented the plaintiff, defense counsel Dennis Brewer brought a motion to disqualify after having come across the January 3 letter. Besides the failure to disclose the extent of the Pollesch relationship, Judge Brennan misapplied the ground of objection that Mr. Brewer did make.

Putting aside Ms. Pollesch's suggestion in the letter that she had provided legal services to the judge herself, it was conceded that she had represented the husband's businesses. Besides telling the lie that she hadn't known about the business representation from the beginning, the Judge Brennan denied the motion on the fatuous basis that her husband's interests were separate from her own. They lived in a house. They had a cottage. They took vacations. Did her husband's income contribute to any of these? Or did Judge Brennan pay for all of them out of her judicial salary?

If common sense hadn't been enough for the judge to acknowledge that Ms. Pollesch's representation of her husband was a factor supporting disqualification, the knowledge was supplied by Mr. Brewer's cite of a State Bar ethics opinion that was an informal construction of the Michigan Canons of Judicial Conduct:

> JI-102 - June 6, 1995
>
> SYLLABUS
>
> If a lawyer appearing before an administrative hearing officer has previously represented the adjudicator or a member of the judge's household on legal matters, the adjudicator and the lawyer must disclose the prior representation to all other parties and their counsel.
>
> Whether a judge should recuse in such matters is a question determined on the merits of any motion for disqualification which may be filed.
>
> References: MCJC 3C; MRPC 8.4(a)-(c); J-5; JI-39, JI-43; MCR 2.003(B) and (C); *Grievance Administrator v. Bird*, ADB 92-95-GA (10/16/92); *Grievance Administrator v. Kruse*, ADB 93-211-GA (12/7/93). [Discussion following]

Judge Brennan found the opinion to be inapplicable on the basis that it affected only the obligation of counsel, when on its face it imposed the obligation on the hearing officer as well as the attorney.

One of the respondent's excuses for not disqualifying herself in cases involving Ms. Pollesch was that there was a period of time when they were not on speaking terms after an incident in which the judge accused attorney Amy Krieg and the Pollesch firm of criminal behavior. The implication is that, during that time, the judge had a disposition that would not favor Ms. Pollesch.

First, not all of the cited cases occurred during the limited period when the judge and Ms. Pollesch were not on speaking terms. Second, while it would have been laudable

for the judge to have had no predilection in favor of Ms. Pollesch, if that were the case, opposing attorneys are not mind readers. Judges are obliged to disclose not only the fact of bias, if it exists, but also circumstances reasonably give the appearance of impropriety.

The reason should be obvious. Without prior disclosure, no matter how subjectively impartial a judge may have been, if a litigant who has not prevailed should later learn of an ostensibly disqualifying relationship, the integrity of the judge's earlier decisions is called into question, possibly causing needless litigation as well.

The respondent's failure to recuse herself in cases where Ms. Pollesch or her firm were counsel violated Canons 1, 2, and 3 C of the Michigan Code of Judicial Conduct.

4. Persistent abuse of attorneys, litigants, witnesses, and employees.

The evidence establishes that Judge Brennan has been consistently abusive to attorneys, litigants and witnesses, and to her own court staff as well, as was the universal opinion of any witness who testified about the judge's demeanor.

Robin Pott, who herself had been a litigator, was the respondent's research attorney from November, 2016 until May, 1917. She testified that Judge Brennan didn't treat people with respect, that she didn't hear cases openly and fairly, and that she berated litigants and attorneys to the extent that the courtroom was tense, angry, and chaotic. According to Ms. Pott, the judge made rulings before all parties had an opportunity to be fairly heard, not allowing litigants and attorneys to answer questions fully nor allowing them to ask questions. It was almost a daily occurrence, she said, that Judge Brennan would shout, yell, or cut off attorneys during their arguments

David Kaplan, an attorney with 44 years experience in the courts, characterized Judge Brennan as "unique," for having the worst demeanor of any judge before whom he had appeared in his lengthy career. Her behavior included degrading attorneys in front of their clients, he said, when there was no necessity to do so.

Amy Krieg, the attorney in the Pollesch firm, might have expected courteous treatment from the judge. Not so. In the case of Halliday v. Halliday, after doing nothing more than acknowledging that her client had money owing to the opposite party in the attempt to narrow the issues, the judge accused both Ms. Krieg and her client of criminal activity. At a subsequent motion to disqualify, the, respondent threatened to report Ms. Krieg to the Attorney Grievance Commission. Ms. Krieg was treated so badly by the respondent, she said, that she feared being put in a cell for nothing more than representing a client and chose to leave the litigation practice altogether.

In Scheibner v. Scheiber, mentioned above, Ms. Kurtzweil was excoriated by Judge Brennan for allegedly having an improper relationship with a receiver, on the basis of nothing more than the judge's view of a video of proceedings before a predecessor judge, one which, indeed, reveals nothing out of the ordinary. Ms. Kurtzweil thought that the respondent was an "outlier" whose abusive conduct far surpassed that of any judge that she had appeared before in her long career.

Carol Lathrop Roberts is an attorney who practiced in Livingston County for 30 years and appeared before Judge Brennan 4 or 5 dozen times, she estimated. She found respondent's courtroom behavior appalling, abusive and routinely unpleasant;

disrespectful and intimidating to litigants and attorneys. Roberts deemed the judge "a black smear on the judiciary."

Ms. Roberts recounted an incident when she was quoting the text of a statute to the respondent in order to make a point of law, and continued to do so in the face of Judge Brennan's repeated instructions to stop, at which point the judge had her taken into custody, though later released. Mistaken about the law or not, the judge had the right stop the attorney to take control of the proceedings. Surely, however, there should be a more appropriate first remedy for unnecessary persistence than arresting the lawyer.

Bruce Sage is an attorney with 44 years of litigation experience who testified that he has been respected by all but one of the judges before whom he appeared, the exception being Judge Brennan. In the case of Sullivan v. Sullivan he felt that he had been mocked, demeaned, and threatened. The Court of Appeals evidently agreed, as disclosed by the court's opinion in *Sullivan v. Sullivan,* CA No. 330543 & 334273 (May 17, 2018), in which the court reversed and remanded the matter for hearing before a different judge. An excerpt from the opinion discloses the court's assessment of Judge Brennan's behavior in that case:

> The record is replete with instances in which the judge treated defendant or her attorney, Bruce Sage, with apparent hostility. We will list some (but not all) of the instances. At one time, Sage thought that the judge was finished speaking and attempted to respond, stating, "I thought you were finished," and the judge said, "Oh for heavens [sic] sake. If I take a breath that doesn't mean I stopped." The judge was discussing payment amounts to equalize accounts and after stating "It's not rocket science" to Sage and "No frickin' way" in response to the court clerk, she stated to Sage, "every time you start saying you didn't know [in response to questions about what defendant had in her accounts] I'm gonna sanction you a $100[sic]." When Sage presented an email purportedly from plaintiff and attempted to admit it, the judge discussed the requirement of laying a foundation and said, "I mean really." When Sage asked if the judge was ordering defendant,

> who lives in Florida, to appear in person for an evidentiary hearing, the judge said, "You bet I am." When the judge issued a decision at the conclusion of the October 22, 2015 hearing without first allowing or even mentioning closing arguments, Sage attempted to request a closing argument but the judge reprimanded him, stating, "Are you makin' a joke?"and suggesting that it was imperious of Sage to mention closing arguments *after* the judge's decision. Sage attempted to explain that he did not interject earlier because he "didn't want to interrupt you, Your Honor," but the judge said, "No, Mr. Sage, I'm not [allowing closing arguments]. We're done. Get the other people in here."
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> ***
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> It is true that some of these remarks, viewed in isolation, are of relatively little impact or import, but it is important to view them as a pattern. Sage did not demonstrate hostility or aggressiveness throughout the proceedings but the judge displayed a pattern towards him and defendant of at least apparent hostility. It seems especially egregious for the judge to have recommended that defendant "get rid of" her pets. While there might be certain situations in which rehoming pets might indeed be a necessity (for example, if someone is destitute and living in a homeless shelter), defendant was not in that type of situation. The appearance of justice would be better served if the case is remanded to a different judge. See *Sparks*, 440 Mich at 163; see also MCR 2.003 (C)) (b) and Code of Judicial Conduct, Canon 2(A) and (B).

Judge Brennan was continually abusive to her own court staff as well. Francine Zysk, employed elsewhere at the time of the hearing, had been both the Chief Probation Officer and the Court Administrator at the 53rd District Court, serving daily under the direction of Judge Brennan. According to Ms. Zysk, every employee who worked for Judge Brennan complained about the treatment they received. Indeed, by the years 2016 or 2017 somewhere between 17 and 21 employees actually left the court because of their treatment by Judge Brennan.

According to several witnesses, the judge was conspicuously and continually abusive to her secretary/court recorder, Kristi Cox, who herself testified to the same. She was diagnosed with posttraumatic stress disorder as a result of working for Judge Brennan.

Judge Brennan's persistent abuse and discourtesy is a violation of MCJC Canons 2(B), 3(A)(3) and 3(A)(10), and MCR 9.205(B)(1)(c).

5. Lying under oath.

The scope of Judge Brennan's willingness to give false testimony under oath is breathtaking. She testified falsely in depositions, in sworn answers to Commission questions, and during the hearing as well. If this opinion should attempt to address each instance or even most of them, it would be verbose in what has already been a lengthy process. Accordingly, we'll note instead that the Examiner has painstakingly enumerated the instances of the respondent's false testimony in a document entitled "Appendix 2 – False Statements." Attached to this report, it is adopted as accurate.

. Nevertheless, one additional example demonstrates the facile way in which the respondent has been willing to contradict even her own testimony within the span of a few minutes when she thought it was helpful for her to do so. Beginning at page 1891 of the record transcript, in response to the charge of having attended to personal matters with employees at court, Judge Brennan claimed that she had spoken to both Chief Judge Reader and the local court administrator and that both specifically approved of her and staff attending to personal matters when she wasn't busy with court work. Evidently surprised at this assertion, the Examiner sought to verify with her that she said the same. Realizing that the testimony sounded incredible to the Examiner, respondent eventually denied that Judge Reader and the administrator had given her that explicit permission, and also denied that she had so testified.

Besides demonstrating the likelihood of the respondent's guilt of perjury, the foregoing conduct violates Canons 1 and 2 of the Michigan Code of Judicial Conduct.

6. Directing employees to perform the judge's personal business.

The complaint charges Judge Brennan with requiring court employees to perform an array of personal services for her during court hours. For the most part, the defense has been that the tasks were performed voluntarily and not interfering with court business. Among the tasks cited are, making personal appointments for the judge, getting coffee next door, making travel arrangements, purchasing event tickets online, and dropping off mail on the employee's way home.

First, the respondent has been charged with a number of other acts of grievous misconduct, and it seems superfluous to discuss as well whether it is judicial misconduct for a judge to ask an employee to get coffee. Moreover, an attempt to define what minor courtesies by an employee are or are not acceptable, if not required by the inquiry at hand, is liable to cause unnecessary consternation to the entire Michigan judiciary, most of whom have been afforded them by staff employees.

If it's appropriate at all here to explore the limit of what employees can do for a judge, at least one decision, cited by the respondent, has addressed the matter. In *In Matter of Neely*, 364 SE2d 250, 252, 253, 254 (W Va 1987), the Supreme Court of West Virginia sanctioned one of its own justices, understandably, for requiring a judicial secretary to baby sit for the justice as a condition of employment. In *dicta,* while attempting to separate what is permissible from what is not, the majority opinion said:

> A judge or justice may, without creating the appearance of impropriety, occasionally ask members of his personal staff to voluntarily perform personal tasks that interfere only minimally with performance of their other duties…. *Neely, supra*, pp. 252-253.

The dissent thought that the language was too broad and sought to narrow the description of permissible tasks this way:

> Probably every judge and justice has on occasion asked one of the public employees under his direction to pick up his lunch or a cup of coffee, or to do some other simple task that hopefully all we human beings might on occasion do for one another as an everyday human courtesy. Likewise, most judges and justices hopefully have extended to public employees under their direction similar human courtesies. Dissenting opinion, *Neely, supra*, p. 256.

Whatever may be the correct standard of what a judge can properly ask of an employee, Judge Brennan went far beyond it.

Jessica Yakel Sharpe was a law clerk and magistrate who worked for Judge Brennan for 2 ½ years. Among the things that Ms. Sharpe did for the judge was to stain the deck at her home over three days, two of which passed while she was being paid by the county. It's no justification, of course, that the judge also paid Ms. Sharpe for that work.

Beyond that, Ms. Sharpe was sometimes required to leave the court to pay the judge's bills, and on another occasion when the judge was on vacation, she was required to go to the judge's home to get water samples and bring them to a testing site. She also went to the judge's home to facilitate getting television programming, and was even directed by the judge to take her motor vehicle to a dealership and wait for the performance of a list of repairs.

Judge Brennan required Kristi Cox to go to the judge's home to have fuel gas replenished, and on another occasion, to have cable service installed. Ms. Cox sometimes left the court during working hours to mail packages for the judge.

The incidents above are in addition to a number of other personal tasks performed by employees for the judge, involuntarily and while at work.

The foregoing behavior of the respondent violated Michigan Code of Judicial Conduct Canons 1, 2, and 3B (1) and (2).

7. Employee campaign activity during court hours.

It's natural that a judge's employees would sometimes be willing or even eager to assist a judge in a campaign for re-election. The prohibition against campaign activity during court hours, however, is absolute because it is regulated by statute that forbids any public resource, given voluntarily are not, from being used for campaign activity. MCL 169.257, part of the Michigan Campaign Finance Act, provides:

> (1) A public body or a person acting for a public body shall not use or authorize the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a).

As Kristi Cox and Jessica Sharpe both testified, they worked on multiple campaign-related documents during court hours, an assertion further corroborated by Exhibit 11-1, a thumb drive that electronically reproduces the various campaign documents themselves and the time they were accessed. Indeed, the work was done with deceptive intent when they and the judge went to a corner of the courthouse to use the wi-fi of an adjoining

business so that it wouldn't show up on the county system. When the respondent eventually had to concede in testimony that campaign work was done during court hours, she made the false and insupportable claim that all of it was done "during breaks."

The respondent's direction to employees to do campaign work during court hours violated MCJC Canons 2(B), 3B(2) and 7(B)(1)(b) as well as the Michigan Campaign Finance Act.

8. Misconduct during depositions.

Respondent is charged regarding two incidents that occurred in depositions that she attended during her divorce case. On January 18, 2017, when Detective Furlong denied that he and respondent had exchanged any texts or phone calls during the Kowalski trial, the judge interjected, saying "We did once."

On March 9, 2017, Francine Zysk was deposed, and when she started to answer a question about rumors of respondent being caught intoxicated in her office, Judge Brennan interrupted, stating: "Okay, you need to stop for a minute," and added, "You are lying. You're such a liar."

These incidents seem like peccadillos in comparison to other grievous conduct charged against the judge. They did not occur in the performance of a judicial function and it is unlikely, if viewed in isolation, as they should be, that the conduct would be the subject of a formal complaint. Nevertheless, it is certainly improper for anyone, particularly a judge, to interrupt a deposition in order to influence the testimony of a witness.

Finally, let me add my commendation to counsel for the parties for their professionalism and cooperation during this complicated and arduous proceeding.

Respectfully submitted,

December 20, 2018

s/William J, Giovan
William J Giovan
Master