STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

Hon. Theresa M. Brennan
53rd District Court
Brighton, MI 48116

Formal Complaint No. 99
Master: Hon. William J. Giovan

/

ANSWER TO AMENDED COMPLAINT

NOW COMES the Honorable Theresa M. Brennan, a judge of the 53rd District Court, in her proper person and by and through her attorneys, the law firm of Dickinson Wright PLLC, and in answer to the Amended Formal Complaint filed by the Judicial Tenure Commission (hereinafter "the JTC") on or about July 23, 2018, says as follows:

1. Paragraph 1 is admitted.

2. Paragraph 2 is not an allegation of fact to which complaints are limited, MCR 2.111(B)(1), and only to which responses are required. MCR 2.111(C). Paragraph 2 is an assertion of law. Although not required to respond to it, Judge Brennan acknowledges that Paragraph 2 correctly states the law.

Count I

3. Judge Brennan admits that the case of *People v Kowalski*, 44th Circuit Court (Livingston County) Case No. 08-17643-FC (hereinafter "*Kowalski*"), was assigned to her on or about March 9, 2009, and was handled by her to its conclusion in March 2013. The term "presiding judge" is unknown to MCR 8.110(C)(3)(b) and MCR 8.111, which govern the assignment of cases to judges. That term is used exclusively to identify judges placed in charge of a court's divisions. MCR 8.110(B)(2).

4. When *Kowalski* was assigned to Judge Brennan, Michigan State Police (hereinafter "MSP") Detective Sergeant (hereinafter "Det. Sgt.") Sean Furlong was merely listed on the complaint with several others as potential witnesses. Nothing was then stated about the supposed significance of his potential testimony. Only later, when Mr. Kowalski's counsel filed a motion to suppress it, did Judge Brennan learn that Det. Sgt. Furlong had obtained from Mr. Kowalski a statement the prosecution intended to present at trial.

5. Judge Brennan admits that, while *Kowalski* was assigned to her, which was from March 2009 until March 2013, she did have the kinds of contacts with Det. Sgt. Furlong described in Paragraph 5, but as to their specifics that paragraph is misleading. Specifically:

a. Those contacts were not nearly as frequent as intimated by compressing four years of periodic contacts into one paragraph which does not specify when and how often the contacts occurred. A modest number of contacts over four years when collected in one paragraph appear far more frequent than they were.

b. Paragraph 5 does not mention that the activities itemized therein included other persons, often numerous other persons, i.e., were group activities such as Friday-after-work get-togethers at a local bar, dinner parties with 20+ guests, receptions such as election-night celebrations with 100± guests, etc., where Judge Brennan and Det. Sgt. Furlong were present at the same time. Even when not large events, others were present. Most of the time, Det. Sgt. Furlong came on his own or with an Assistant Livingston County Prosecuting Attorney, a Ms. Shawn Ryan. Only occasionally, Judge Brennan gave him a ride.

c. Some of the itemized activities which included Det. Sgt. Furlong were very infrequent. Over four years, he and Ms. Ryan joined Judge Brennan, her husband, and others at one Detroit Tigers game, one Detroit Red Wings game, and, maybe, a University of Michigan

football game. Det. Sgt. Furlong visited Judge Brennan's cottage only twice, once with Ms. Ryan when Judge Brennan's husband was also present and once himself when Judge Brennan was not there.

d. Judge Brennan and Det. Sgt. Furlong did not attend a concert together, alone or with others, until after *Kowalski* had been concluded.

e. Because their post is located in Brighton, MSP officers, including Det. Sgt. Furlong, but others as well, regularly came to Judge Brennan, who was the only judge located in Brighton, to present applications for warrants. When she saw an MSP officer in her courtroom or was informed that one was present in the courthouse, Judge Brennan would, if engaged in a non-jury proceeding, meet with them in her chambers and would typically close the door. The latter was done to enable her to concentrate on the warrant application and to avoid the prying ears of her secretary, who was always interested in what was occurring. If involved in a jury trial, Judge Brennan would confer with the officer at the bench.

6. Judge Brennan admits that, when she along with Det. Sgt. Furlong and others were at a bar or a restaurant, she picked up the tab. She did so to avoid running afoul of Canon 4.E of the Michigan Code of Judicial Conduct (hereinafter "MCJC"), especially in light of the statement in *In re Haley*, 476 Mich 180, 193; 720 NW2d 246 (2006), that enforcement of that canon requires a "delicate balancing" of four factors, which introduced uncertainty into that canon. When she hosted dinners or parties at her house, Judge Brennan provided the food and drinks, as would any host.

7. Judge Brennan admits that, while *Kowalski* was pending before her, she had telephone conversations with Det. Sgt. Furlong, but she does not know their number. Until very recently, her phone records were exclusively in the possession of her ex-husband and the JTC. On

August 8, 2018, the Executive Director of the JTC emailed those records to her counsel, but because, as noted by its Executive Director, "[t]hey take a ton of memory," neither Judge Brennan nor her counsel has not yet been able to download and print them, let alone peruse them. Judge Brennan also notes that recorded phone calls are likely to include missed and so-called "dropped" calls, thereby inflating the number of actual conversations.

8. Judge Brennan admits having exchanged texts with Det. Sgt. Furlong, but does not believe that that was done routinely. Again, she has not yet been able to review her phone records. See Answer 7, above. Presumably, the JTC will soon disclose those texts to Judge Brennan's counsel, but it has not yet done so.

9. Paragraph 9 is denied. While Judge Brennan did not disclose prior to January 4, 2013, the existence or the nature of her contacts with Det. Sgt. Furlong, disclosure was not required because the JTC does not allege that she was biased or prejudicial by them for against either party in *Kowalski*, nor does the JTC allege any of the other situations itemized in subrules (c)(1)(b)-(g). Hence, there was no basis for disqualification which Judge Brennan was obligated to disclose.

10. Paragraph 10 is denied. Because not required, not disclosing the particulars of her contacts with Det. Sgt. Furlong was not a failure, but just a fact. Furthermore, Judge Brennan's friendship with Det. Sgt. Furlong was open and obvious throughout the Livingston County legal and law enforcement communities.

11. Paragraph 11 is admitted.

12. It is admitted that counsel in *Kowalski* informed Judge Brennan that they had received a letter from local attorney Thomas Kizer making allegations against her. That letter speaks for itself.

13. Paragraph 13 is admitted.

14. The letter speaks for itself.

15. Paragraph 15 is admitted.

16. Paragraph 16 is neither admitted nor denied because Judge Brennan is without knowledge or information sufficient to form a belief as to the truth thereof. She cannot discern counsels' state of mind. She did, however, fully and fairly disclose to them of her relationship with Det. Sgt. Furlong. She described it as "just friends," which is what the relationship was. In context, the particulars alleged in Paragraph 5 do not say otherwise.

17. Paragraph 17 is admitted.

18. Judge Brennan restates and reasserts as if fully set forth herein Answers 5-8.

19. Paragraph 19 is denied. See Answer 16, above. Furthermore, both the prosection in *Kowalski* and defense counsel knew by January 4, 2013, the particulars of Judge Brennan's and Det. Sgt. Furlong's relationship. See Answer 25, below.

20. Paragraph 20 is denied. See Answer 14, above.

21. Paragraph 21 is admitted.

22. Paragraph 22 is admitted.

23. Paragraph 23 is admitted.

24. Paragraph 24 is admitted.

25. Paragraph 25 is denied. The two prosecuting attorneys attending the conference and then the proceedings on January 4, 2013, were aware of Judge Brennan's social contacts and relationship with Det. Sgt. Furlong. So was defense counsel. Ms. Ryan's dating of Det. Sgt. Furlong and their attendance at functions with Judge Brennan was common knowledge in the prosecutor's office and had been seen by many outside that office. Defense counsel had been told earlier on January 4, 2013 by Det. Sgt. Furlong of his contacts with Judge Brennan.

26. Paragraph 26 is admitted.

27. The record of the proceeding on January 4, 2013, speaks for itself.

28. Paragraph 28 is too vague to answer. It asserts only unspecified "treatment" and unspecified "react[ions]" by Judge Brennan. What is she supposed to admit or deny? Formal complaints must contain "specific allegations." MCR 9.209(A) and MCR 2.111(B)(2).

29. Paragraph 29 is denied. It was Judge Brennan's practice to meet in chambers with police officers requesting warrants -- officers from multiple departments came to her for that purpose -- and to close the door when she did so. The only exceptions were when she was involved in a jury trial. Then, to avoid inconveniencing the jury, she would confer with the officers at the bench. .

30. Paragraph 30 is too vague to answer. It does not identify what statements by Judge Brennan are at issue and it does not specify how those statements falsely described or minimized her contact with Detective Corriveau on November 14. Furthermore, Paragraph 30 does not specify which November 14 between March, 2009, and March, 2013, during which *Kowalski* was pending before Judge Brennan.

31. Paragraph 31 is too vague to answer. It does not specify what statements by Judge Brennan are alleged to have concealed her treatment of Det. Corriveau, nor to specify what was the treatment she supposedly accorded him.

32. Paragraph 32 is denied. Judge Brennan's friendship with Det. Sgt. Furlong was a routine social relationship, so that stating they were "just friends" was accurate.

33. See Answer 32, above.

34. Paragraph 34 is denied. A chronicle of multiple years of encounters with Det. Sgt. Furlong was unrealistic to expect in the no-notice situation presented on January 4, 2013, and,

placed in context, more particulars would not have materially altered the accuracy of the description of the relationship with Det. Sgt. Furlong as just a friendship.

35. See Answer 34, above.

36. See Answer 34, above.

37. Paragraph 37 is denied. It is unrealistic to expect Judge Brennan to have recalled with no advance notice the frequency, duration and nature of telephone and text communications over a prolonged span of time, and specifics would not have materially altered the accuracy of her acknowledgment that Det. Sgt. Furlong was a friend.

38. Paragraph 38 is denied. See Answer 5, above.

39. The transcript of the hearing on January 4, 2013, speaks for itself.

40. Paragraph 40 is denied. See Answer 25, above.

41. See Answers 25 and 40, above.

42. Paragraph 42 is admitted.

43. Paragraph 43 is admitted.

44. Paragraph 44 is admitted.

45. Paragraph 45 is denied. Judge Reader must have been aware of what was common knowledge in the Livingston County law enforcement and legal communities.

46. Det. Sgt. Furlong was "a co-officer in charge" of only the *Kowalski* trial. The Assistant Prosecuting Attorney who tried *Kowalski* had belatedly asked for his assistance. Det. Sgt. Furlong was not a co-officer in charge of the investigation in the *Kowalski* case.

47. Judge Brennan recalls just one telephone conversation with Det. Sgt. Furlong during trial in *Kowalski*. She has, however, since learned from the JTC of a second conversation.

She believes that any third conversation was a so-called "dropped," call so that one conversation was divided into two parts.

48. Paragraph 48 is admitted.

49. Paragraph 49 is admitted.

50. Paragraph 50 is neither admitted nor denied for the reason that Judge Brennan is without information sufficient to form a belief as to the truth thereof. She does recall speaking with Det. Sgt. Furlong from an airport while waiting for a delayed flight, but, as noted in Answer 7, above, neither Judge Brennan nor her counsel has yet been able to review her voluminous phone records.

51. Paragraph 51 is neither admitted nor denied for the reason that Judge Brennan lacks information sufficient to form a belief as to the truth thereof. See Answer 7, above.

52. See Answer 7, above.

53. See Answer 7, above.

54. Upon her return from Washington, D.C., Judge Brennan did not disclose to counsel in *Kowalski* however many conversations she had during that trip with Det. Sgt. Furlong. Nothing about those conversations altered the nature of the "friendship" Judge Brennan had with Det. Sgt. Furlong which had already been disclosed.

55. The deposition of Judge Brennan speaks for itself.

56. Judge Brennan admits that, between January 28, 2013, and March 5, 2013, she had additional phone conversations with Det. Sgt. Furlong. But, as to their number and duration, she neither admits nor denies specifics because she lacks information sufficient to form a belief as to the truth thereof. See Answer 7, above.

57. Paragraph 57 is admitted.

58. Paragraph 58 is neither admitted nor denied for the reason that Judge Brennan lacks information sufficient to form a belief as to the truth thereof. See Answer 7, above.

59. Paragraph 59 is neither admitted nor denied for the reason that Judge Brennan lacks information sufficient to form a belief as to the truth thereof. See Answer 7, above.

60. Judge Brennan admits she did not disclose to counsel in *Kowalski* any of her telephone communications with Det. Sgt. Furlong while that case was pending. She denies, however, that she "failed" to disclose those conversations. That word intimates an obligation to have disclosed them, which she did not have. Nothing about those conversations triggered. MCJC Canon 3.C.

61. Paragraph 61 is denied. Not disclosing to counsel in K*owalski* her communications with Det. Sgt. Furlong did not deprive either counsel in that case of relevant information. See Answer 60, above.

62. Paragraph 62 is admitted.

63. Judge Brennan admits that she did not disqualify herself from *Kowalski*, but denies that she "failed" to do so. As stated earlier, use of that word intimates an obligation to have done so. Judge Brennan was not so obligated. See Answer 60, above.

64. Judge Brennan is not obligated, because it asserts a conclusion of law, not an allegation of fact, to respond to Paragraph 64. Nonetheless, Judge Brennan asserts that that paragraph does not accurately reflect Michigan law. When a court rule or canon of judicial conduct deals specifically with alleged misbehavior, no appearance of impropriety or other generic standard applies. *In re Haley*, 476 Mich at 194-195. Obviously, MCR 2.003 and MCJC Canons 3.C and 3.D deal with disqualification. Hence, only violations of them, which the JTC does not allege, may constitute misconduct.

Count II

65. Judge Brennan admits that Ms. Shari Pollesch is an attorney who maintains an office in Brighton, Michigan. Judge Brennan denies that Ms. Pollesch is a member of Burchfield Park & Pollesch, P.C. She is currently affiliated with the law firm of Burchfield & Pollesch, P.C. Because she assumes, as required by *Alar v Mercy Memorial Hospital*, 208 Mich App 518, 530; 529 NW2d 318 (1995), that Ms. Pollesch is not violating MRPC 7.1 and 7.5, Judge Brennan assumes that Ms. Pollesch is a member of Burchfield & Pollesch, P.C.

66. Paragraph 66 is admitted.

67. Paragraph 67 is admitted.

68. Paragraph 68 is admitted except to the extent it asserts that any of its alleged specifics occurred in June 2014 through November 2016. During that timeframe, Ms. Brennan and Ms. Pollesch were estranged and did nothing together.

69. Paragraph 69 is admitted.

70. Paragraph 70 is admitted.

71. Judge Brennan admits that she did suggest to her husband that he consult with Ms. Pollesch regarding legal issues pertinent to his businesses, but Judge Brennan does not recall when she made that suggestion.

72. Judge Brennan admits that Ms. Pollesch and/or her law firm provided legal services to her husband, but she does not know when that representation began or when it ended.

73. Judge Brennan admits that Ms. Pollesch and/or her law firm provided legal services to Uniplas, Inc., and Upcycle Polymers, LLC, but she does not know, and lacks information sufficient to form a belief as to the truth of, when those representations began.

74. Judge Brennan admits that Ms. Pollesch or her firm provided some estate-related services for Mr. Root, but she does not know if Ms. Pollesch prepared what would qualify as an estate plan for Mr. Root.

75. Paragraph 75 is admitted.

76. Paragraph 76 is admitted.

77. Paragraph 77 is admitted.

78. Paragraph 78 is admitted.

79. Paragraph 79 is admitted, except to the extent said paragraph intimates that any of the cases mentioned in it were cases in which Ms. Pollesch was appearing before Judge Brennan. No such cases were ever discussed.

80. Paragraph 80 is admitted.

81. Paragraph 81 is admitted.

82. Judge Brennan admits that she did not disclose to litigants before her, when Ms. Pollesch appeared before her, the information identified in Paragraph 82. That was not, however, a failure to disclose in that Judge Brennan had no obligation to so disclose that information.

83. Paragraph 83 is admitted. No waiver of any disqualification was required.

84. Paragraph 84 is admitted.

85. Paragraph 85 is admitted.

86. Paragraph 86 is admitted. Judge Brennan responds further that, during the pendency of the cases identified in subparagraphs (b), (c) and (d), she and Ms. Pollesch were no longer friends or even on speaking terms.

87. Judge Brennan admits that she did not disclose to parties or counsel that Ms. Pollesch and/or her firm had provided legal services to her husband and his businesses or that

Ms. Pollesch had represented her sister beginning in October 2014. Judge Brennan did not, however, fail to disclose that information because she had no obligation to disclose it.

88. Paragraph 88 is admitted. No waiver was required.

89. Paragraph 89 is admitted. No waiver was needed.

90. Judge Brennan is not obligated, because it asserts a conclusion of law, not an allegation of fact, to respond to Paragraph 90. Judge Brennan responds, nonetheless, that Paragraph 90 does not accurately reflect Michigan law as applied to the facts of this case. She had no obligation to disqualify herself in any of the cases at issue in Count II.

Count III

91. Paragraph 91 is admitted.

92. Paragraph 92 is admitted.

93. Paragraph 93 is admitted.

94. Paragraph 94 is admitted.

95. The specifics of Paragraph 95 are admitted. Judge Brennan cannot, however, be expected to admit or deny any specifics not identified in that paragraph, but only intimated obliquely by use of the words "included, but was not limited to." See Affirmative Defense 2(a), below.

96. Paragraph 96 is admitted.

97. Paragraph 97 is admitted.

98. Paragraph 98 is admitted with the clarification that the "proofs" heard by Judge Brennan were the minimalist, perfunctory proofs commonly presented in a so-called "pro confesso" divorces. As a result, Judge Brennan was not called upon to exercise any discretion or judgment.

99. Judge Brennan admits that she did not inform Mr. Sumner of her work relationship with Ms. Zysk, but denies the intimation that she had an obligation to so inform him. Unless he never spoke to his then-wife about her work and was otherwise oblivious to it, Mr. Sumner must have been aware of that relationship, and, given the perfunctory nature of the proceedings in which Judge Brennan was involved, informing him of the relationship would not have been necessary had he been ignorant of it.

100. Judge Brennan also admits that she did not inform Mr. Sumner of her social relationship with Ms. Zysk, but denies the intimation that she had any obligation to so inform him. Unless he was oblivious to his then-wife's social life, Mr. Sumner must have been aware of that relationship, and, given the perfunctory nature of the proceedings in which Judge Brennan was involved, informing him of the relationship would not have been necessary had he been ignorant of it.

101. Paragraph 101 is admitted. No waiver of disqualification was needed.

102. Paragraph 102 is admitted insofar as it asserts that Judge Brennan did not disqualify herself from *Sumner v Sumner* (hereinafter "*Sumner*") and that she did disqualify herself from a small claims case filed by Ms. Zysk nearly two years later. The pertinent circumstances of the two cases were markedly different.

103. Paragraph 103 is admitted.

104. Judge Brennan does not recall having been informed by Ms. Zysk of any post-judgment dispute in *Sumner*. Judge Brennan recalls having learned of a dispute only when Ms. Zysk filed a post-judgment motion.

105. Without knowing the specifics of what she was supposedly told, Judge Brennan cannot determine whether any communication with her was allowed or disallowed by

MCJC 3.A(4)(a). Judge Brennan also notes that the issue of disqualification was waived by opposing counsel.

106. Judge Brennan admits that Ms. Zysk did file on or about July 6, 2015, a motion in *Sumner*. Judge Brennan does not recall, however, having been advised by Ms. Zysk herself of a post-judgment dispute in the case.

107. Paragraph 107 is admitted.

108. Paragraph 108 is admitted.

109. The motion for disqualification filed on or about July 17, 2015, speaks for itself. Judge Brennan believes that the substance of Paragraph 109 is accurate, but cannot say so without reviewing the motion itself.

110. Paragraph 110 is admitted.

111. Paragraph 111 is admitted.

112. Paragraph 112 is admitted. Based on her and her staff's practices, it is doubtful that Judge Brennan read the motion on July 16, 2015.

113. Judge Brennan does not recall the proceeding on July 20, 2015.

114. See Answer 114, above. Judge Brennan would not have been the only person at that hearing who knew of her social and working relationships with Ms. Zysk. Mr. Sumner was clearly in a position to know of those relationships and to have communicated them to his counsel, which, if Paragraph 109 is true, he did. MCR 2.114(D)(2). Furthermore, any lack of disclosure by Judge Brennan was immaterial.

115. With one caveat, Judge Brennan reasserts as if fully stated here her Answer 114, above. Nowhere does the JTC identify the "increased social contact" which is the subject of subparagraph (a), making that assertion too vague to be answered.

116. Paragraph 116 is admitted.

117. Paragraph 117 is admitted.

118. If Mr. Mayernik "acted without full knowledge" of Judge Brennan's social and work relationships with Ms. Zysk, it was because he had not communicated with his client, was oblivious to what he had been told by his client, or his client was not forthcoming.

119. Judge Brennan admits that she did not disqualify herself. She denies that she failed to disqualify herself. She had no obligation to do so. Mr. Sumner's counsel had withdrawn his client's motion to disqualify. Furthermore, had the motion not been withdrawn, disqualification would not have been necessary given the perfunctory tasks left for Judge Brennan by the parties' settlement without her involvement.

120. Paragraph 120 is admitted.

121. Paragraph 121 is admitted.

122. Paragraph 122 is admitted.

123. Paragraph 123 is admitted.

124. Paragraph 124 is admitted.

125. Paragraph 125 is admitted.

126. Paragraph 126 is admitted.

127. Judge Brennan admits that she did not inform Mr. Tyler of the nature of her working relationship with Ms. Zysk. That was not a failure, however, because Mr. Tyler never appeared at the only hearing in the case, and, unless he had never spoken with his wife before or during their marriage, he had to have known of that relationship. Furthermore, there never was any contested proceeding from which Judge Brennan needed to disqualify herself.

128. With regard to her social relationship with Mrs. Zysk, Judge Brennan reasserts as if fully set forth here her Answer 127, above. (Judge Brennan presumes that the reference in Paragraph 128 to Mr. Sumner is a mistake, that the JTC meant to refer to Mr. Tyler.)

129. Given that the proceedings on April 6, 2016, in *Tyler v Tyler*, 44th Circuit Court Case No. 16-006808-DO (hereinafter *"Tyler"*), were not contested but involved merely the presentation of perfunctory proofs and the entry of a default judgment, Judge Brennan was not a likely witness in the case, such that not disqualifying herself did not constitute a failure to do what was required. Paragraph 129 incorrectly says that being "a potential witness" requires disqualification. Only being a "likely" witness does. MCR 2.003(C)(1)(g)(iv).

130. Judge Brennan reasserts as if fully set forth here her Answer 102, above.

131. Paragraph 131 is admitted.

132. Paragraph 132 is admitted.

133. Paragraph 133 is admitted.

134. Paragraph 134 is admitted.

135. Paragraph 135 is admitted.

136. Paragraph 136 is admitted.

137. Paragraph 137 is admitted.

138. Paragraph 138 is admitted. Judge Brennan was instructed by her then-Chief Judge to sign the order removing *Zysk v Tyler*, 53rd District Court Case No. 16-3079-GC (hereinafter *"Zysk"*), from the Small Claims Division to the General Civil Division and, then, to sign the order of disqualification. Given the nature of the case, its removal was required and signing an order to that effect involved no discretion or judgment. The alternative was the pointlessly cumbersome of having a visiting judge from another county sign the order of removal, as had to be done.

Finally, if Judge Brennan acted improperly, so did Judge Reader when he signed a consent order dismissing *Zysk*. He should have a visiting judge do so.

139. The order of removal was based on Judge Brennan's and her Chief Judge's common conclusion that MCL 600.8424(1) bars instituting in the Small Claims Division of any district court any action other than three, none of which were presented by *Zysk*, for intentional an tort, including, specifically, fraud, which is what *Zysk* alleged.

140. Paragraph 140 is admitted.

141. Paragraph 141 is admitted.

142. Judge Brennan does not recall if she knew of any disputed evidence pertinent to the small claims proceeding. It turns out that there were no disputed facts in that proceeding, since it was resolved by stipulation without any contest. Furthermore, "could have" does not satisfy MCR 2.003(c)(1)(r). Actually "has" is standard.

143. Paragraph 143 is denied. Neither *Tyler* nor *Zysk* progressed even close to the point where Judge Brennan became a "likely" material witness. "Likely," not merely potential, is the standard for recusal. MCR 2.003(C)(1)(g)(iv).

144. Paragraph 144 is admitted.

145. Paragraph 145 is admitted.

146. Paragraph 146 is too vague to be answered. It does not specify or identify the "additional reason" it alleges.

147. Paragraph 147 is admitted.

148. Paragraph 148 is admitted.

149. Judge Brennan admits that she did not "immediately [upon its assignment to her] disqualify herself" from *Zysk*. That was not, however, a failure to fulfill any obligation. See Answers to 138 and 143, above.

150. Judge Brennan restates as if fully set forth herein her Answer 149.

151. Judge Brennan is not obligated, because it asserts a conclusion of law, not an allegation of fact, to respond to Paragraph 151. See Paragraph 2, above. Nonetheless, she responds that Paragraph 151 does not accurately state Michigan law. Because of the holding in *In re Haley*, 476 Mich at 194-195 (see Answer 64, above), only violations of MCR 2.003(C)(1) are pertinent. The JTC's claim of "a pattern of improper conduct is immaterial."

Count IV

152. Paragraph 152 is admitted.

153. Paragraph 153 is admitted.

154. Paragraph 154 is admitted.

155. Paragraph 155 is admitted.

156. Paragraph 156 is admitted.

157. Paragraph 157 is admitted, but Judge Brennan does not recall whether she knew the nature of the motion until after she had signed an order of disqualification.

158. Judge Brennan does not recall any conversation with Ms. Pratt.

159. Paragraph 158, above.

160. See Answer 158, above, nor does Judge Brennan recall having received from Ms. Pratt an e-mail sending her the motion.

161. Judge Brennan believes that a proposed order of disqualification was brought to the Brighton courthouse.

162. Paragraph 162 is admitted.

163. Paragraph 163 is admitted.

164. Paragraph 164 is admitted.

165. Judge Brennan admits that she did not immediately sign the order of disqualification presented to her. She denies that she failed to sign the order if "failed" is meant by the JTC to assert that not doing so immediately was improper. She knows of no requirement that it have been signed then rather than the next day when it was signed.

166. Paragraph 166 is admitted, except for the intimation that the order of disqualification was backdated, which it was not.

167. Paragraph 167 is denied. Personnel in the Howell courthouse may not have received the order of disqualification until December 8, 2016, but Judge Brennan put that order in the "pipeline" for delivery on December 7, 2016. Documents that need to go from the Brighton courthouse to the Howell courthouse are placed in a designated place in Brighton for the Howell clerk to pick up. The order of disqualification needed to be sent to Howell because it was an order in a Circuit Court file, which was in Howell. Judge Brennan followed standard procedure. She also informed Judge Reader the morning of December 7, 2018, that she had signed the order of disqualification and had sent it to the courthouse in Howell.

168. Paragraph 168 is denied. Judge Brennan signed an order of disqualification five days, not six days, after informed that her husband had filed for divorce and only one day, not two days, after she had learned that an emergency ex parte motion had been filed in the case. The motion was later denied by a visiting judge.

Count V

169. See Answer 3, above.

170. Answers 4-63, above, are incorporated by reference as if fully restated herein.

171. Subject to Answers 4, 5, 7, 8, 47 and 56, above, Paragraph 171 is admitted.

172. Judge Brennan restates by reference as if fully set forth here the information in Answers 9, 10, 19, 25, 32, 37, 47, 50, 54, 56, 60 and 61, above.

173. Judge Brennan admits that she did not disqualify herself from *Kowalski* because of her telephone conversation with Det. Sgt. Furlong while that matter was pending. She denies, however, that she failed to do so. Use of the word "failed" suggests an obligation to disqualify herself. She did not have any such obligation.

174. The legal conclusion stated in Paragraph 174 is inaccurate. The appearance of impropriety standard is inapplicable. See Answer 64, above.

Count VI

175. Paragraph 175 is admitted in part and denied in part. Judge Brennan had a working relationship with Ms. Zysk only until November 2016. At that time, Judge Brennan was assigned the Family Division docket of the Circuit Court, so that thereafter she worked exclusively with the administrator of the 44th Circuit Court.

176. Judge Brennan admits that the cases itemized in subparagraph (a)-(c) were assigned to her. See Answer 3, above.

177. Answers 91-150 are incorporated by reference as if fully restated here.

178. While the JTC complains about Judge Brennan's conduct in two *Tyler* cases, Judge Brennan reads Paragraph 178 to deal with the divorce case. Judge Brennan restates by reference as if fully set forth here her Answers 127, 128, and 129 above.

179. Judge Brennan states by reference as if fully set forth here her Answers 91-150.

180. Judge Brennan asserts that the legal conclusion stated in Paragraph 180 is incorrect. See Answers 64, 90, 151 and 174, above.

Count VII

181. Paragraph 181 is admitted.

182. Paragraph 182 is admitted.

183. Paragraph 183 is admitted.

184. The deposition transcript speaks for itself.

185. The deposition transcript speaks for itself.

186. The deposition transcript speaks for itself.

187. The deposition transcript speaks for itself.

188. Judge Brennan incorporates by reference as if stated here her Answer 7, above.

189. Paragraph 189 is admitted.

190. The deposition transcript speaks for itself.

191. The deposition transcript speaks for itself.

192. The deposition transcript speaks for itself.

Count VIII

193. Judge Brennan admits that *Brisson v Terlecky*, 44th Circuit Court Case No. 17-051753-AP (hereinafter "*Brisson*"), was assigned to her.

194. Originally, *Brisson* was a paternity dispute, but, because of admissions by Ms. Terlecky on the record in open court, the dispute was narrowed to one exclusively of parenting time. See MCR 2.507(G).

195. Paragraph 195 is admitted. The order was entered by a visiting judge.

196. Paragraph 196 is admitted.

197. Paragraph 197 is admitted.

198. Paragraph 198 is admitted.

199. Paragraph 199 is admitted.

200. Paragraph 200 is admitted. It is further noted that Ms. Terlecky had, by the time of the adjournment, twice acknowledged Mr. Brisson's paternity.

201. Paragraph 201 is admitted, specifically, that Ms. Terlecky's counsel again argued for an adjournment, despite her client's aforesaid admissions. See Answer 194, above.

202. Paragraph 202 is admitted. Sometimes, for the integrity of a proceeding and future proceedings, an attorney must be dealt with firmly.

203. Judge Brennan admits that Ms. Terlecky's counsel was told that she would be arrested if she continued to argue. Judge Brennan believed that counsel was being obstructionist, not attempting to make a record. She had made her argument, and Judge Brennan fully understood her argument.

204. Judge Brennan directed that Ms. Roberts be arrested because she was being an obstructionist and was disrespectful, not because she was attempting to make a record. See Answers 202 and 203, above.

205. Paragraph 205 is admitted in part and denied in part. Ms. Terlecky's counsel did threaten Judge Brennan. Her very public instruction to her client to call Mr. Kizer was, given Mr. Kizer's history of animosity toward Judge Brennan, understood by Judge Brennan to be an effort to intimidate her.

206. Paragraph 206 accurately quotes MCL 722.716(4).

207. Judge Brennan admits that, prior to finding Ms. Terlecky's counsel in contempt, she had not read the aforesaid statute. She was, however, familiar with it. She thought the statute was inapplicable in light of Ms. Terlecky's admissions of paternity.

208. Paragraph 208 is denied. Ms. Terlecky's counsel had completed her argument and Judge Brennan understood it. See Answers 203 and 204, above.

209. Paragraph 209 is admitted.

210. Paragraph 210 is admitted.

211. Paragraph 211 is admitted in part. Judge Brennan did, upon counsel's return to the courtroom, accuse her of forum-shopping. Judge Brennan had reason to do so. It is well known in the Livingston County legal community that, in light of his animosity toward her, Judge Brennan routinely disqualifies herself when Mr. Kizer appears in any case assigned to her. Mr. Kizer has substituted in as counsel in cases for that very reason. Judge Brennan understands that the Attorney Grievance Commission informally informed Mr. Kizer that entering cases for that purpose is improper.

212. Judge Brennan admits that she granted an adjournment to Ms. Terlecky, but not because required by MCL 722.716(4). She believed that Ms. Terlecky had waived any right to an adjournment. One was granted solely to provide time for all to cool off.

213. Judge Brennan did remark that gamesmanship was afoot, which it was. See Answer 211, above, and Answer 214, below. Judge Brennan does not believe that her tone was dismissive and condescending, but it was disapproving and reflected exasperation with counsel. See Answer 202, above.

214. Judge Brennan believed that Ms. Terlecky's counsel was engaged in gamesmanship. Judge Brennan believed that the adjournment on which counsel was insisting was intended solely to delay as long as possible Mr. Brisson meeting his infant daughter. She was then 3-4 months old, and he had yet to see her.

Count IX

215. Judge Brennan admits that *Brisson* was assigned to her.

216. Answers 194-214, above, are incorporated by reference as if fully restated here.

217. Paragraph 217 does not state any allegation of fact to which Judge Brennan is obligated to respond. She responds, nonetheless, that Paragraph's conclusions are incorrect. Only "persistent" failure to treat persons fairly and courteously, MCR 9.205(B)(1)(c), or treating a

person discourteously "because of the person's race, gender or other protected personal characteristic," MCR 9.205(B)(1)(d), can be misconduct. Neither are alleged.

Count X

218. Judge Brennan admits that *Sullivan v Sullivan*, 44th Circuit Court Case No. 14-006162-DO (hereinafter "*Sullivan*"), was assigned to her.

219. Paragraph 219 is admitted.

220. Paragraph 220 is admitted.

221. The transcript from which Paragraph 221 quotes speaks for itself.

222. Paragraph 222 is admitted.

223. The transcript from which Paragraph 223 quotes speaks for itself.

224. Paragraph 224 is admitted.

225. Judge Brennan believes that some words are missing from the transcript excerpt being quoted. She does not allege that the JTC deleted words but that the transcription is in error.

226. Paragraph 226 is admitted.

227. The transcript from which Paragraph 227 quotes speaks for itself.

228. The transcript from which Paragraph 228 quotes speaks for itself.

229. The transcript from which Paragraph 229 quotes speaks for itself.

230. The transcript from which Paragraph 230 quotes speaks for itself.

231. The transcript from which Paragraph 231 quotes speaks for itself.

232. The transcript from which Paragraph 232 quotes speaks for itself.

233. Paragraph 233 is admitted.

234. The transcript from which Paragraph 234 quotes speaks for itself.

235. The transcript from which Paragraph 235 quotes speaks for itself.

236. The transcript from which Paragraph 236 quotes speaks for itself.

237. The transcript from which Paragraph 237 quotes speaks for itself.

238. Judge Brennan does not recall whether she ordered Mr. Sullivan to reimburse Ms. Sullivan her flight and hotel expenses. If she did not, nothing precluded Ms. Sullivan's counsel from later requesting such reimbursement, which he did not do, thereby waiving any complaint.

239. Judge Brennan does not recall whether she considered assessing Ms. Sullivan's travel expenses to Mr. Sullivan. If the fees were incurred because of the representation that the Court lacked appropriate telephonic equipment, that representation was not false. Judge Brennan's statement about not having "a system that would allow that" was true. Back then, the judge's secretary's phone had to be moved onto a shelf and, to be heard, speakers had to yell, and, to hear, listeners had to strain. That was not a viable system. Subsequently, a system specifically designed for telephonic participation was installed.

240. If Ms. Sullivan and her counsel relied on Judge Brennan's statement about the Court's phone system, they did not rely on a misrepresentation because Judge Brennan's statement was true. See Answer 239, above. Furthermore, the marital estate being divided was very large, so that the cost of travel from Florida was no burden on Ms. Sullivan.

241. Paragraph 241 is admitted.

242. It is admitted that the Michigan Court of Appeals issued an opinion May 17, 2018. That opinion speaks for itself. It said much more than the holding quoted in Paragraph 242. Among other things, that Court held Judge Brennan made one mistake in several rulings. The Court of Appeals made no ruling with regard to Judge Brennan's insistence that Ms. Sullivan appear in person to give testimony. That strongly suggests either that the Judge's ruling was not considered worthy of mention to the Court of Appeals or that that Court did not find it significant. The Court also refused to find any deliberate hostility.

243. Paragraph 243 is an incorrect conclusion of law.

Count XI

244. Paragraph 244 is admitted.

245. Paragraph 245 is denied. Judge Brennan did not direct or require Ms. Cox to perform personal tasks for her during work hours in or out of the courthouse. Because Ms. Cox was strapped for cash, Judge Brennan offered to pay her, which offer Ms. Cox accepted, to assist with personal tasks. With possible rare exceptions due to exigent circumstances, Ms. Cox performed tasks, for Judge Brennan only before or after work hours or on her own time during the work day, such as during her lunch break. Like all judges' staffs, she did get coffee, etc. See Paragraph 246(b), below.

246. Paragraph 246 is denied. Specifically:

a. Ms. Cox did make occasional bank deposits, not, as best Judge Brennan recalls, withdrawals, for Judge Brennan, but only during her lunch break.

b. It was common practice for staff and judges to periodically go to a bakery near the courthouse for coffee and donuts for the judges and staff. Whoever was available, judges included, went. Judge Brennan does not consider that a personal task for her, but friendliness common to many workplaces.

c. Ms. Cox did drop off Judge Brennan's personal mail at the Brighton Post Office, but only after work on her way home for the day.

d. Ms. Cox did take packages to overnight outlets, such as FedEx, but only on her lunch break, which was her time.

e. Judge Brennan does not recall having Ms. Cox to take her car to be washed or fueled, or even asking her to do so.

f. Judge Brennan may have asked Ms. Cox once, but has no specific recollection of doing so, to go to her home to admit service personnel when they arrived at an unexpected time and Judge Brennan was on the bench and unable to leave. Ms. Cox would have been paid by Judge Brennan for her time.

247. Paragraph 247 is denied.

248. Judge Brennan denies Paragraph 248. Specifically:

a. Judge Brennan was notorious among her staff for being absentminded about paying bills. She would bring them to the office, put them on her desk, and forget about them. Ms. Cox, and other staff, would take those bills on their own and make payments or deal with creditors to avoid late charges, etc.

b. Judge Brennan's staff, Ms. Cox included, did not schedule her appointments for manicures, etc. She did that herself. If, because tied up in a courtroom proceeding, Judge Brennan could not keep an appointment, a staff person would call to cancel it. The alternative was having Judge Brennan interrupt the proceeding to do it herself.

c. Judge Brennan and her staff shopped online together when there was a lull in courtroom proceedings. They looked together, but each made their own purchases.

d. Ms. Cox made only Judge Brennan's work-related travel arrangements. Judge Brennan made her own personal travel arrangements.

e. Because she was adept at it, Ms. Cox occasionally assisted Judge Brennan purchasing concert and sporting event tickets online. Ms Cox did not purchase them for Judge Brennan, except when Judge Brennan got tickets to give away at the annual staff Tiger opening day picnic.

f. Judge Brennan did not ask Ms. Cox to "run child support and spousal support figures" for Judge Brennan. Ms. Cox may have run those figures on her own out of curiosity because she thought highly of Judge Brennan's brother-in-law. Judge Brennan does not remember her doing so.

249. Paragraph 249 is denied. Ms. Cox did, as a volunteer, not as directed by Judge Brennan, work on the Judge's 2008 and 2014 re-election campaigns, but she was explicitly instructed to not perform campaign tasks during work hours, on County premises, or using County equipment and materials. If Ms. Cox violated those directives, she did so without Judge Brennan's knowledge or approval.

250. Paragraph 250 is denied. Ms. Cox did perform various campaign-related tasks, but those tasks were not performed during work hours. Some might have been performed during lunch breaks, etc., but Judge Brennan is unaware if that happened and, if it did happen, how often and to what extent.

251. Judge Brennan admits that performance of personal tasks for her is not within any court employee's job responsibilities.

252. The personal tasks performed by Ms. Cox for Judge Brennan were performed when Ms. Cox was not being compensated for her work by Livingston County. There might have been *de minimis* exceptions.

253. Paragraph 253 is admitted.

254. Paragraph 254 is denied. Ms. Yakel did perform personal tasks for Judge Brennan, but she volunteered to perform them, was paid by Judge Brennan for doing them, and, to the best of Judge Brennan's knowledge, performed then on her own time. Because she worked only part time for most of her tenure, Ms. Yakel was more strapped than was Ms. Cox for money, had time

to work for Judge Brennan, and wanted in her off-time to work for Judge Brennan for the extra income.

255. Paragraph 255 is admitted in part and denied in part. Specifically:

a. Ms. Yakel did stain the deck at Judge Brennan's home, but in her off-hours, and she was paid $20 per hour for the effort.

b. Ms. Yakel did not help install Netflix service at Judge Brennan's home. Judge Brennan had purchased an Apple device and Ms. Yakel helped her after hours figure out how to operate the device.

c. Once, only because no one else was available, Judge Brennan asked either Ms. Cox or Ms. Yakel to take water samples at her home. The work needed to be done to correct a major problem, Judge Brennan was not available because in court. As a part-time employee, Ms. Yakel was paid hourly and submitted time records, so her availability was flexible. If she did take water samples, Judge Brennan expected her to "punch out."

d. Judge Brennan would on her way to work in the morning drop off her car at a dealer in Brighton for repairs and maintenance, and one of her staff would on their way to work pick her up and take her back after work on their way home to retrieve the vehicle. Employees did that for each other. Judge Brennan did so for them, too.

e. Ms. Cox dropped off mail for Judge Brennan, but only after work. Judge Brennan does not recall Ms. Yakel ever doing that. As stated earlier, Ms. Cox took packages to overnight mail outlets for the Judge during the lunch hour. See Answer 246(d), above. Judge Brennan does not recall Ms. Yakel doing that.

f. Judge Brennan does not recall Ms. Yakel ever taking her car to be washed. If she did, she clocked out when she did it.

g. See Answer 246(b), above.

256. Paragraph 256 is denied.

257. Paragraph 257 is admitted in part and denied in part. Specifically:

a. Ms. Yakel did not perform legal research for Judge Brennan on the personal issues. Ms. Yakel was, to be blunt, an incompetent researcher, which is why she did not last long as Judge Brennan's law clerk.

b. As for subparagraph (b)-(e), see Answer 248, above.

c. Ms. Yakel and Judge Brennan did once look on-line together at travel packages because each was planning a trip, but, Judge Brennan made all her own personal travel arrangements.

d. To the best of Judge Brennan's knowledge, Ms. Yakel did not make any changes for her in the cable service to Judge Brennan's cottage. Judge Brennan's husband dealt with the cable service; it was in his name.

e. Ms. Cox, Ms. Yakel and Judge Brennan once ordered tickets to a concert simultaneously, but each bought their own tickets.

f. Ms. Cox, Ms. Yakel and Judge Brennan simultaneously shopped online, but did not shop for one another.

258. Paragraph 258 is denied. Ms. Yakel did volunteer for Judge Brennan's 2014 campaign for reelection, but she, like other employees, was directed not to perform any campaign tasks in the courthouse, on County equipment, or during work hours. If she did perform campaign work under any of those circumstances, it was contrary to those instructions and was done unknown to Judge Brennan.

259. Judge Brennan does not recall if Ms. Yakel did any research on items to be distributed out at campaign events. If she did, she was under instructions to do so off the clock. Judge Brennan did run past Ms. Yakel her answers to a press questionnaire submitted to candidates. Because Judge Brennan was adamant that campaign workers not use County equipment, Ms. Yakel either used her personal laptop or the Judge's personal laptop to perform campaign tasks, but, as with all other campaign tasks, Judge Brennan's instructions were firm that such utilization was not to occur during work time or on County premises.

260. Paragraph 260 is admitted.

261. If Ms. Yakel was drawing wages from the County at any time she was performing personal tasks for Judge Brennan, she did so contrary to Judge Brennan's instructions.

Count XII

262. Judge Brennan admits that she served as a judge of the 53rd District in 2014. She denies that the term of office she was serving in 2014 ended on December 31 of that year. That term ended at noon on January 1, 2015.

263. Paragraph 263 is admitted.

264. Paragraph 264 is admitted.

265. In 2014, Ms. Yakel served as a law clerk/magistrate for the 53rd District Court.

266. Judge Brennan admits that from May 2014 through October 2014, both Ms. Cox and Ms. Yakel worked on her campaign for reelection. Their services were not performed at Judge Brennan's request or direction, but voluntarily.

267. Paragraph 267 is denied. Judge Brennan did not state what is attributed to her in Paragraph 267, or anything remotely like it. It was Ms. Cox who joked that she would be out of a job if Judge Brennan lost. That was not true. Because she was a union employee, had

Judge Brennan not been reelected, the applicable collective bargaining agreement would have required that Ms. Cox be retained by the County.

268. Paragraph 268 is denied, except that occasionally brief phone calls may have been taken while in the courthouse regarding the campaign, or personnel may have commented briefly on the campaign if asked about it by someone in the courthouse, such as an attorney. See Answer 273, below.

269. If either Ms. Cox or Mr. Yakel worked on Judge Brennan's campaign in the Brighton courthouse during work hours, they did so contrary to Judge Brennan's instructions and without her knowledge.

270. Paragraph 270 is denied. While Ms. Cox and Ms. Yakel may have performed the tasks itemized in Paragraph 270(c)-(i), those tasks were performed on their own time and off County premises. Neither of them completed Judge Brennan's response to a local media candidate survey. At most, one or both of them proofread Judge Brennan's response.

271. Judge Brennan, Ms. Cox and Ms. Yakel likely performed some campaign tasks in their offices or work space in the Brighton courthouse, but not during work hours and not using any County equipment or material.

272. Paragraph 272 is denied.

273. See Answer 268, above. Judge Brennan presumes that the reference in Question 273 to "utiliz[ing] office space" refers to office space in the Brighton courthouse. Judge Brennan does not believe just sitting at a desk performing some task not utilizing County equipment such as a phone, etc., constitutes "the use" of office space in violation of law. The office must have been an instrument of campaign activity, not merely be an uninvolved site.

274. Paragraph 274 is denied. Judge Brennan's directives to Ms. Cox and Ms. Yakel were intended to make clear that they were not to use County equipment and information services, not to conceal performing campaign work during work hours.

275. Paragraph 275 is denied. Judge Brennan's directives to Ms. Cox and Ms. Yakel were intended to make clear to them how they were to perform campaign work, not to conceal that they were doing it.

276. Paragraph 276 is denied. MCL 169.257(1) is accurately quoted in part, but did not apply to Judge Brennan's reelection campaigns and, if it did apply, was not violated to the best of Judge Brennan's knowledge.

277. Paragraph 277 does not state an allegation of fact to which Judge Brennan is obligated to respond. It states a conclusion of law and does so incorrectly. MCL 750.505 does not apply to alleged campaign law violations alleged by the JTC, and, if it does, none occurred. See, among others, Answers 266-276, above.

Count XIII

278. See Answer 3, above.

279. Answers 11-45 are incorporated herein by reference as if fully stated.

280. Paragraph 280 is denied for the reasons stated in, among others, Answers 5-9, 16, 25, 32, 47, 50, 54, 56 and 60.

281. Paragraph 281 is denied for the reasons stated above in Answers 32-34.

282. Paragraph 282 is denied for the reasons stated in Answer 281, above.

283. Paragraph 283 is denied. Judge Brennan adequately disclosed on the record available to Judge Reader as "just friends" her relationship with Det. Sgt. Furlong. In addition, Judge Reader knew that Det. Sgt. Furlong and Judge Brennan were friends.

284. Paragraph 284 is admitted.

285. Paragraph 285 is admitted.

286. Judge Brennan admits that she recommended to her then-husband that he consult with Ms. Pollesch. She does not recall when she so recommended..

287. Judge Brennan admits that Ms. Pollesch provided legal services to Mr. Root and to his businesses, but she does not know when Ms. Pollesch began providing those services or when they ended.

288. See Answer 287, above.

289. Judge Brennan admits that Ms. Pollesch provided personal legal services to Mr. Root, but Judge Brennan does not know the nature of those services or when they occurred.

290. Judge Brennan admits that *McFarlane v McFarlane,* 44th Circuit Court Case No. 15-6492-DO, was assigned to her.

291. Paragraph 291 is admitted.

292. Paragraph 292 is admitted.

293. The transcript from which Paragraph 293 quotes speaks for itself.

294. Paragraph 294 is admitted.

295. Paragraph 295 is admitted.

296. Judge Brennan does not know when Mr. Root retained Ms. Pollesch, and she does not recall attending a lunch with Mr. Root and Ms. Pollesch at the time of his retention of Ms. Pollesch, whenever that was.

297. Paragraph 297 is admitted.

298. Paragraph 298 is admitted.

299. The transcript from which Paragraph 299 quotes speaks for itself.

300. Paragraph 300 is admitted, although from June 2014 until November 2016, Judge Brennan and Ms. Pollesch were estranged.

301. The transcript from which Paragraph 301 quotes speaks for itself.

302. The transcript from which Paragraph 302 quotes speaks for itself.

303. Judge Brennan admits that she became aware that Ms. Pollesch had prepared a health care power of attorney for her then-husband and an acceptance of designation as a patient advocate for her signature. Judge Brennan does not know if those constitute "estate planning documents," nor does she know when they were prepared, just when the latter was presented to her for signature, nor does she know if they were "in accordance," whatever that means, with any estate planning documents prepared for her then-husband by Ms. Pollesch. Judge Brennan has never seen any such documents.

304. Judge Brennan admits that she signed an acceptance of designation as patient advocate. She does not recall when she did so. She does not know if that acceptance was "in accordance" with any estate planning documents. See Answer 303, above.

305. The documents to which reference is made in Paragraph 305 speak for themselves. See also Answers 303 and 304, above.

306. Paragraph 306 is neither admitted nor denied for the reason that Judge Brennan lacks sufficient information to form a belief as to the truth thereof. She does not recall ever having seen the document, let alone knowing when it was signed by Mr. Root if it was and that it was witnessed and notarized by Ms. Pollesch if it was.

307. Judge Brennan admits that she knew by mid-December 2014 of Ms. Pollesch's representation of Mr. Root. She does not now recall, however, when she learned of that representation and of it particulars.

308. Paragraph 308 is admitted.

309. Paragraph 309 is denied.

310. Paragraph 310 is admitted.

311. Judge Brennan incorporates by reference as if fully set forth herein her Answers 235 through 240, above.

312. Paragraph 312 is denied. See Answer 239, above.

313. Paragraph 313 is denied. See Answer 239, above.

314. Paragraph 314 is admitted to the extent it asserts what a reasonable attorney would believe. As to what Mr. Sage did believe, Judge Brennan lacks knowledge or information sufficient to form a belief as to the truth thereof. Only he can establish what he believed.

315. Paragraph 315 is neither admitted nor denied for the reason that Judge Brennan is without knowledge or information sufficient to form a belief as to the truth thereof. Only Mr. Sage knows why he made the decisions he made in *Sullivan.*

316. See Answer 315, above. Judge Brennan further notes that MCR 3.210(A)(4) prohibits taking testimony in domestic relations cases by telephone unless there are "extraordinary circumstances." Perhaps, Mr. Sage had his client travel to Michigan because he appreciated that he could not make that showing. In her interlocutory appeal to the Court of Appeals, either, because not mentioned in its opinion, Ms. Sullivan did not complain there about Judge Brennan's statement regarding telephone appearances or that Court did not consider any complaint which was made worthy of mention, likely establishing that Ms. Sullivan waived any error or that Judge Brennan had not erred.

317. Paragraph 317 does not assert facts, but makes statements of law. As a result, Judge Brennan is not obligated to respond to Paragraph 317. See Answer 2, above. She does

respond, however, noting that Paragraph 317 incorrectly states Michigan law at least in part. See Answers 64 and 151, above; Affirmative Defense 10 below; and MCR 9.203(B).

Count XIV

318. Judge Brennan admits that the JTC sent her a letter dated August 31, 2017. That letter read more like a demand for information than like a request for information. Whichever it was, the letter exceeded the authority conferred on the JTC by MCR 9.207(D)(2). That subrule only requires affording a judge an "opportunity to respond." That is much different than authorizing the posing of questions to be answered.

319. The JTC's unauthorized request for information included the questions stated in Paragraph 319.

320. Paragraph 320 is admitted.

321. Judge Brennan's response to the JTC's unauthorized request included the statement quoted in Paragraph 321. The intimation in Paragraph 321 that Judge Brennan acted improperly in answering the JTC's letter "in narrative form (without reference to [its] numbered questions" is incorrect. No rule sets a format or authorizes the JTC to dictate the format for any response if one is provided.

322. Paragraph 322 is denied. The JTC did send a follow-up letter to Judge Brennan on December 13, 2017, but that letter did not "ask[]" her to reformulate her previous response. The JTC's letter improperly demanded a reformulation. See Answer 321, above.

323. Paragraph 323 is admitted. Judge Brennan notes, however, that the JTC did not have authority to require notarization. Only a request for investigation must be notarized. MCR 9.207(A). No comparable requirement is contained in MCR 9.207(D). That difference in language is significant as a matter of statutory or rule construction.

324. Paragraph 324 correctly quotes the JTC's improper Inquiry 73; it was not a request for comment.

325. Paragraph 325 correctly quotes Judge Brennan's supplemental response to the Commission's improper Inquiry 73.

326. Paragraph 326 correctly quotes the JTC's improper Inquiry 76; it was not a request for comment.

327. Paragraph 327 correctly quotes Judge Brennan's supplemental response to the JTC's improper Inquiry 76.

328. Paragraph 328 correctly quotes the JTC's improper Inquiry 79; it was not a request for comment.

329. Paragraph 329 correctly quotes Judge Brennan's supplemental response to the JTC's improper Inquiry 79.

330. Paragraph 330 correctly quotes the JTC's improper Inquiry 80; it was not a request for comment.

331. Paragraph 331 correctly quotes Judge Brennan's supplemental response to the JTC's improper Inquiry 80.

332. Paragraph 332 is admitted. Judge Brennan notes, however, that the JTC's 28-day letter of March 22, 2018, exceeded the authority violated MCR 9.207(D)(1). The letter directed the submission of a response and directed that the response be under oath. The just-cited subrule does not authorize requiring a response, but only authorizes "afford[ing] ... an opportunity to apprise [the JTC] ... of such matters as the judge may choose," nor does the subrule authorize the JTC to specify the format of any response or require that it be notorized.

333. Paragraph 333 is admitted.

334. Paragraph 334 is admitted.

335. Paragraph 335 is admitted.

336. Paragraph 336 is admitted.

337. Paragraph 337 is admitted.

338. Paragraph 338 is admitted.

339. Paragraph 339 is admitted.

340. Paragraph 340 is admitted.

341. Paragraph 341 is admitted.

342. Paragraph 342 is admitted.

343. Paragraph 343 is admitted.

344. Paragraph 344 is admitted.

345. Paragraph 345 is admitted.

346. Paragraph 346 is admitted.

347. Paragraph 347 is admitted.

348. Paragraph 348 is admitted.

349. Paragraph 349 is admitted.

350. Paragraph 350 is admitted.

351. Paragraph 351 is admitted.

352. Paragraph 352 is admitted.

353. Paragraph 353 is admitted.

354. See Answer 296, above.

355. See Answer 297, above.

356. See Answer 298, above.

357. See Answer 299, above.

358. See Answer 300, above.

359. See Answer 301, above.

360. See Answer 302, above.

361. See Answer 303, above.

362. See Answer 304, above.

363. See Answer 305, above.

364. See Answer 306, above.

365. Judge Brennan admits that she knew prior to January 3, 2017, that Ms. Pollesch had represented her ex-husband and his businesses. Judge Brennan does not recall, however, when she learned of that representation, nor does she recall knowing any specifics of Ms. Pollesch's representation.

366. Paragraph 366 is denied because not true. Some of Judge Brennan's representations may have been incorrect, but that is because of faulty memory caused by the lapse of years between events and the JTC's inquiries.

367. Paragraph 367 is denied because it is not true.

368. Answers 262-277, above, are incorporated by reference as if fully restated here.

369. Paragraph 369 is admitted. See Answer 318, above.

370. Paragraph 370 is admitted.

371. Paragraph 371 is admitted.

372. Paragraph 372 is admitted.

373. Paragraph 373 is admitted.

374. Paragraph 374 is denied because it is not true. See Answers 262-277, above

375. Judge Brennan admits that the JTC sent her a letter on December 13, 2017. She denies, however, that that letter "ask[ed]" her to reformulate her response of October 27, 2017. The JTC directed her to reformulate her response, which it lacked authority to do. See Answer 321, above.

376. Paragraph 376 is admitted. Judge Brennan took the JTC at its word and believed that she had no choice but to reformulate her response as directed.

377. Paragraph 377 is admitted.

378. Paragraph 378 is admitted.

379. Paragraph 379 is denied. If campaign work was done by staff volunteers during work hours, it was done contrary to Judge Brennan's instructions and without her knowledge or permission.

380. Paragraph 380 is admitted.

381. Paragraph 381 is admitted.

382. Paragraph 382 is admitted.

383. Paragraph 383 is admitted.

384. Paragraph 384 is denied. See Answers 269-275, 379, above.

385. Paragraph 385 is admitted.

386. Paragraph 386 is admitted.

387. Paragraph 387 is denied because it is not true.

388. Judge Brennan denies any knowing misrepresentations about her staff's work on her campaign in 2014 for reelection.

389. Paragraph 389 states an incorrect conclusion of law. Judge Brennan did not knowingly make misrepresentations to the JTC, so she engaged in no misconduct.

390. Paragraph 390 does not make any allegation of fact to which any response is required. Paragraph 390 states exclusively summary conclusions of law. See Answer 2, above. Judge Brennan does respond, however. Paragraph 390's conclusions of law misstate the law, are immaterial, are not supported by any allegations of fact, or are based on incorrect allegations of fact. Specifically:

a. There is not a single allegation of fact in the Amended Complaint in purported support of subparagraphs (c), (d), (e), (i), (j), (k), (n), (o), (q), (r), (w), (z), (bb) and (dd) of Paragraph 390.

b. Subparagraphs (e), (f), (h), (cc) and (dd) state immaterial and inapplicable rules of law.

c. Subparagraphs (s), (t), (u) and (y) merely state, erroneous rulings at most, by Judge Brennan. Error is not misconduct. MCR 9.203(B).

d. All of Paragraph 390's claims are factually incorrect.

NOW, WHEREFORE, Judge Brennan respectfully prays that Amended Formal Complaint No. 99 be dismissed with prejudice and that she be awarded such other and further relief as is deemed appropriate by the master and the JTC.

AFFIRMATIVE DEFENSES

By way of affirmative defense to the JTC's various claims of misconduct, the Honorable Theresa M. Brennan says as follows:

1. The filing by the JTC of a formal complaint is conditioned by MCR 9.207(D)(1) on the JTC giving a judge "specif[ic]" prior notice of the underlying allegations and an opportunity to respond. The JTC's 28-day letters to Judge Brennan of March 22, 2018, May 4, 2018, and June 13, 2018, all contain, among specific allegations, nonspecific allegations, such as allegations prefaced with "including but not limited to…", which, as noted immediately below, not only lack

specificity, but are intended to lack any limiting specificity. Therefore, including them in the Formal Complaint violates MCR 9.207(D)(1). Failing to meet that subrule's conditions precedent means that the aforesaid assertions are null and void and cannot be considered.

2. MCR 2.111(A)(1) and (B)(1), made applicable by MCR 9.209(A) to formal complaints filed by the JTC, require "that such complaints contain clear, . . . and direct" allegations of fact sufficiently "specific . . . reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend . . ." Amended Formal Complaint 99 does not comply with those requirements in multiple respects, precluding its consideration in those respects for lack of notice. Specifically:

a. In Paragraphs 5, 18, 68 and 95, the JTC accuses Judge Brennan of failing to disclose social relationships with Det. Sgt. Furlong, Ms. Shari Pollesch and Ms. Francine Zysk which "include[ed] but [were] not limited to" various activities thereafter specified. Because the phrase "including but not limited to" is "purposefully capable of enlargement," *In re Forfeiture of $5,264*, 432 Mich 242, 255; 439 NW2d 246 (1989), beginning an itemization with that phrase is "clear[] evidence [of] an intention not to limit" the itemization "to the types of things listed." *People v Jacques*, 456 Mich 352, 356-357; 572 NW2d 195 (1998). Therefore, said paragraphs of the Amended Formal Complaint are not limited to the specifics stated therein, but include more of which Judge Brennan is not informed in the least, let alone clearly, directly and specifically. Hence, the latter may not be considered.

b. Paragraph 243 accuses Judge Brennan of misconduct in *Sullivan v Sullivan* for her treatment of that case's defendant and defendant's counsel in ways "including but not limited to" what is stated in Paragraphs 218-242. Hence, only the allegations therein may be considered. See subparagraph (a), immediately above.

c. Paragraphs 246, 248, 250, 255, 257, 259 and 270, accuse Judge Brennan of improperly assigning to Ms. Kristi Cox and Ms. Jessica Yakel, and improperly allowing those individuals to perform, tasks "include[ing] but . . . not limited to" tasks thereafter itemized. Such unspecified additional conduct is too general for lack of notice to be considered. See subparagraph (a) immediately above.

d. Paragraphs 29, 30 and 39, allege that, when they requested search warrants, Judge Brennan met "in [her] chambers behind closed doors" with Det. Sgt. Furlong and Det. Corriveau and that she "falsely described and minimized the nature of her contact with Det. Corriveau." Nothing in the Amended Complaint describes what was supposedly improper about closing the door to her chambers, nor does the complaint state a single specific about Judge Brennan's contact and/or relationship with Det. Corriveau. Hence, alleged misconduct by Judge Brennan relating her issuance of search warrants and relating to Det. Corriveau has not been adequately pled and cannot be pursued.

e. The Amended Complaint does not specify any conduct by Judge Brennan which supports the claims of misconduct made in Paragraph 39(c), (d), (e), (i), (j), (k), (n), (o), (q), (r), (w), (z), (bb) and (dd). Therefore, none of those claims can be pursued.

f. The JTC does not explain in any way how MCR 2.306(c) applies.

3. If failures like those described immediately above to comply with MCR 2.111(A)(i) and (B)(i) and with MCR 9.209(A) do not preclude pursuing the claims of misconduct identified above, due process does preclude the JTC from pursuing said claims. Due process requires at a bare minimum notice to a judge of sufficient particulars of alleged misconduct to be able to defend it. Judge Brennan has not been given such notice of any of the claims of misconduct stated in Affirmative Defense 1, above.

4. MCR 9.205(B)(3) requires the JTC to consider the age of allegations against a judge and the possibility of unfair prejudice because of staleness or unreasonable delay in pursing them. Many of the allegations in the Amended Formal Complaint relate to alleged conduct, including phone calls and social encounters, back in 2009-2014. Recalling, recreating and convincingly proving, one way or the other, such dated conduct will necessarily be difficult, if not impossible, because of the passage of time. It follows, therefore, that most of the allegations against Judge Brennan can no longer be pursued.

5. MCR 9.203(B) prohibits the JTC from taking action against a judge for decisions made by that judge, even if incorrect, in the course of handling and resolving matters before that judge, unless the judge did not act in good faith and with due diligence, or a decision reflects persistent incompetence or some disability that prevents the performance of judicial duties. MCR 9.205(B)(1). The JTC, in violation of MCR 9.203(B), claims in Counts I, VIII and X to be misconduct decisions by Judge Brennan in the cases at issue in those counts.

6. In the case of *In re Haley*, 476 Mich at 194-195, the Supreme Court gave precedential value to what individual justices had earlier stated, specifically, that, when a court rule or canon of judicial conduct addresses a subject, the more generalized standard of appearance of impropriety cannot be the basis for a finding of misconduct. It follows that other generalized standards, such as pattern of misconduct, prejudicial to the administration of justice, and failure to observe a high standard of conduct, cannot support a finding of misconduct when a rule or canon addresses that conduct.

7. In Counts IX and X, Judge Brennan is accused of, in two cases, exhibiting an improper demeanor, failing to be patient, dignified and courteous, and failing to treat all persons fairly, with courtesy and respect. Only "persistent" such behavior or such behavior motivated by

a "protected personal characteristic," such as race or gender, can be misconduct. MCR 9.205(B)(1)(c) and (d). Persistent such behavior is not alleged by the JTC, behavior in only two cases cannot be deemed persistent, and the JTC does not allege the requisite invidious animus.

8. Because the JTC's demands to Judge Brennan that she answer its 28-day letters to her and do so under oath were not authorized, but forbidden, by rules adopted by the Michigan Supreme Court, those demands were not only improper, but were also deceptive. As a result, the JTC cannot rely on Judge Brennan's responses to those demands to support any claims of misconduct.

9. Several of the canons in the Michigan Code of Judicial Conduct which the JTC claims in, among others, subparagraphs 390(b), (c), (d), (e), (f), (g), (h), (i), (l), (m) and (p), Judge Brennan violated are too vague to be the basis for discipline, except, perhaps, an admonition, unless the conduct is repeated after an admonition.

10. The legal maxim *de minimis curat lex* reflects the principle, long applicable in Michigan, that minor matters, even if contrary to law, do not merit action. There is no reason that that principle should not apply to allegations, such as those answered above, by the JTC as it applies in numerous other instances.

11. The combination by MCR 9.200 *et seq.,* in the JTC of investigative, prosecutorial and adjudicative functions creates an unconstitutional risk of bias which precludes continuing with the Amended Complaint unless and until its allegations are pursued by a constitutionally reconstituted process. While the Supreme Court of the United States and the Michigan Supreme Court have refused to so hold, *Withrow v Larkin*, 421 US 35, 47; 95 S Ct 1456; 43 L Ed 2d 712 (1975); and *In re Hon Steven R. Servaas*, 484 Mich 634; 771 NW2d 750 (2009), Judge Brennan believes that those cases were wrongly decided, should be overruled, and will be. Therefore, she

is now noting the aforesaid to preserve the contention for later. Judge Brennan also contends that, even if said combination of functions in the JTC is not unconstitutional, it is sufficiently questionable to warrant exercise by the Michigan Supreme Court of its rulemaking and supervisory authority to restructure the judicial disciplinary process in this state.

NOW, WHEREFORE, Judge Brennan respectfully prays that Amended Formal Complaint No. 99 be dismissed with prejudice and that she be awarded such other and further relief as is appropriate.

Respectfully submitted,

DICKINSON WRIGHT PLLC

By: */s/ Dennis C. Kolenda*

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I, Theresa H. Brennan, declare that the statements above are true to the best of my information, knowledge, and belief.

/s/ *Theresa M. Brennan*

Theresa M. Brennan
53rd District Court
224 N. First Street
Brighton, MI 48116

Dated: August 15, 2018