

**STATE OF MICHIGAN**  
**BEFORE THE JUDICIAL TENURE COMMISSION**

**In the Matter of:**

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

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Lynn H. Helland  
Casimir J. Swastek  
Examiners

Dennis J. Kolenda  
Attorney for Respondent

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**COMMISSION'S ORDER DENYING RESPONDENT'S MOTION TO DISQUALIFY  
THE TENURE COMMISSION AND TO ADMINISTRATIVELY CLOSE THE CASE**

This matter is before the Commission on Respondent's Motion to Disqualify Tenure Commission and to Administratively Close the Case.

Respondent argues that the Commissioners must recuse themselves from this matter because the Commission's Petition for Interim Suspension suggests a premature finding by the Commission that Respondent committed the misconduct found by the Master.<sup>1</sup> In response, the Examiner argues that Respondent's argument is "inconsistent with the court rules governing judicial discipline, and is also inconsistent with the widespread and accepted judicial practice of granting preliminary relief in other situations."

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<sup>1</sup> Respondent's recusal request does not include Commissioner Cortes, who recused himself from this matter before the Commission filed its petition for interim suspension. Since the filing of the motion for interim suspension, Commissioner James Burdick has also recused himself from this matter for reasons unrelated to this motion.

Respondent's argument that the Commission's petition shows a disqualifying prejudgment of the case focuses almost entirely on the language in the petition indicating that misconduct was "established" at the formal hearing. To the extent any clarification is needed, the Commission's use of the word "established" was meant to indicate that the facts were established *in the view of the Master*. While the fact that the Master found misconduct was a basis for the Commission's decision to request interim suspension, it does not follow from that fact that the Commission also found, or will find, misconduct by Respondent. Indeed, the Commission has not yet considered whether it will accept all, a portion, or none of the Master's findings of fact, as it has not yet heard oral arguments on Respondent's objections to the Master's findings.

In addition to the Master's findings, other circumstances surrounding Judge Brennan were evolving. While the Commission has no control over the pace and/or completion of law enforcement investigations, it notes that a significant amount of investigative materials was turned over by law enforcement to the Examiner shortly before the issuance of the Master's findings. It is also noteworthy that, in December 2018, the Michigan Attorney General charged Respondent with three criminal counts – perjury, tampering with evidence, and violation of MCL 750.505. Like the procurement of investigative materials, the Commission had no control over when or if criminal charges were initiated. The Commission considered both the fact that the Master found misconduct and the fact that felony charges were filed against Respondent in deciding to seek interim suspension. Indeed, had felony charges been pending when the formal complaint was first authorized, the Commission may have sought interim suspension earlier.

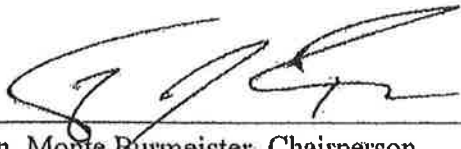
MCR 9.219(A)(1) provides that a petition for interim suspension may be filed "[a]fter a complaint is filed." The Court Rule therefore contemplates that a petition for interim suspension may be filed after a master has reported his or her findings after a formal hearing. Further, MCR

9.219(B) requires that the petition “state facts in support of the allegations and the assertion that immediate suspension is necessary for the proper administration of justice.” It is clear that the Court Rules, and the Supreme Court, contemplate that the Commission will take some position on the matters pled in support of a petition for interim suspension, even if at a preliminary level. The Commission’s determination that the facts of this case warranted an interim suspension was no different than the determinations courts are regularly charged with making when, for example, considering a request for a temporary restraining order. Further, the facts of *People Gibson (On Remand)*, 90 Mich App 792; 282 NW2d 483 (1979), are distinguishable from the instant circumstances. The *Gibson* decision concerned an unusual situation, in which, before a trial judge presided over a defendant’s bench trial, the judge expressed an opinion regarding the defendant’s guilt based on facts found in a separate case. Here, the Commission merely concluded that the developments in this case, to date, warranted a suspension pending the Commission’s recommendation to the Supreme Court and the Court’s ultimate decision.

It must also be noted that Respondent is not merely seeking recusal, but instead insists that the entire Commission resign and be replaced by new Commissioners before proceeding in this matter. This extraordinary and unprecedented remedy would leave Michigan without a Judicial Tenure Commission for whatever length of time it took to have new Commissioners elected and appointed. Because the Commission has not prejudged the facts of the ultimate case, we decline Respondent’s invitation to recuse and resign.

Each Commissioner has reviewed this order and declines to recuse himself or herself from this matter for the reasons stated above.

WHEREFORE, IT IS HEREBY ORDERED that Respondent's Motion to Disqualify Tenure Commission and to Administratively Close the Case is DENIED.



Hon. Monte Burmeister, Chairperson

Thomas J. Ryan, Esq., Vice-Chairperson

Hon. Karen Fort Hood, Secretary

Ari Adler

Hon. Jon H. Hulsing



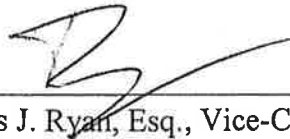
Melissa B. Spickler by Monte Burmeister  
Pursuant to Ms. Spickler's authorization on  
2/27/19.

Hon. Brian R. Sullivan

WHEREFORE, IT IS HEREBY ORDERED that Respondent's Motion to Disqualify Tenure Commission and to Administratively Close the Case is DENIED.

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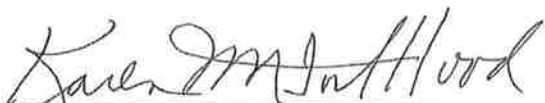
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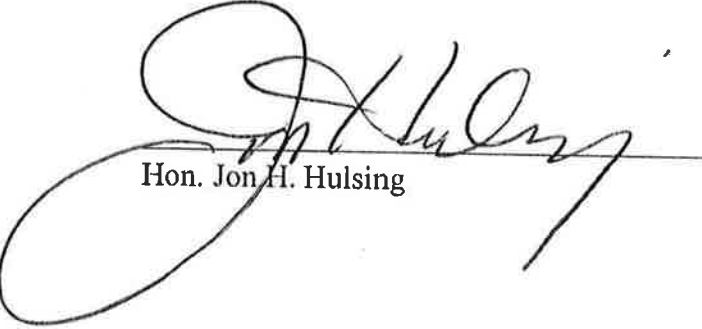
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Hon. Brian R. Sullivan signed by the Honorable Monte J. Burmeister  
Pursuant to authorization given by commissioner Sullivan  
on 2/28/2019