

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

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RESPONDENT’S OBJECTIONS TO MASTER’S REPORT

The Honorable Theresa M. Brennan, respondent, objects by and through her attorneys, the Law Firm of Dickinson Wright, PLLC., for the following reasons to the report issued by the Hon. William J. Giovan, the Master, on December 20, 2018, and amended thereafter:

1. At least two of the Master’s findings are blatantly sexist and at least one of his findings is unconsciously sexist, perhaps, worse, irreparably tainting his entire report. Rejecting the entire report is, therefore, the only credible response by the Commission. Michigan courts and their subsidiaries must be “committed to eradicating sexual stereotypes” and biases. *In re Hocking*, 451 Mich 512; 546 NW2d 234 (1996).

2. In addition to being sexist, even if unconsciously so, the Master’s conclusion that Judge Brennan should have sua sponte recused herself from *People v. Kowalski*, 44th Circuit Case No. 08-17643-FC, because of a long-time sexual romance during the pendency of that case

with Det. Sgt. Sean Furlong, is premised on a finding of fact which reneges on a stipulation of fact by the examiners with the Judge's counsel, and which is independently contrary to key evidence submitted by the examiners.

3. The aforesaid conclusion by the Master is also premised on a substantial exaggeration of the evidence, and what inferences reasonably follow from that evidence, presented by the examiners at the public hearing. An accurate rendition of that evidence does not establish any misconduct by Judge Brennan during her involvement with *Kowalski*.

4. The aforesaid conclusion also ignores, and is directly contrary to, recent rulings by the Michigan Supreme Court in *Adair v Michigan*, 474 Mich 1027; 709 NW2d 567 (2006), and *In re Haley*, 476 Mich 180; 720 NW2d 246 (2006).

5. The evidence at the formal hearing did not remotely support the Master's conclusion that Judge Brennan tampered with any evidence. The evidence presented by the examiners actually proves the contrary. Following the examiners' lead, the Master mischaracterized that evidence. Also, the Master's conclusion is contrary to another stipulation between counsel for the parties.

6. Shari Pollesch, Esq., did not have a relationship with Judge Brennan which required, as found erroneously by the Master, a sua sponte recusal from all cases in which appeared Ms. Pollesch or either of the other lawyers in her small firm. The Master's contrary conclusion exaggerated the evidence, ignored the rule of objectivity stated by *In re Hocking*, 451 Mich at 192 fn 17, and again ignored the construction of MCR 2.003(C) by *Adair*, 705 Mich at 198 fn 30, and *Haley*, 476 Mich at 194.

7. The Master's conclusion that Judge Brennan was "consistently abusive to attorneys [and] litigants" is also not only not supported by the evidence presented at the public

hearing, that conclusion is contrary to that evidence. The Master also relied on evidence barred by *Monat v State Farm Ins Co*, 469 Mich 679; 677 NW2d 843 (20054); found to exhibit misconduct behavior not remotely akin to what the Supreme Court has found can be disciplinable; and ignored that the Livingston County community objectively rejected the assessment of her conduct and demeanor as bullying.

8. The Master's conclusion that Judge Brennan was "consistently abusive . . . to her own staff" is based in large part on inadmissible hearsay; is in large part contrary to what multiple witnesses testified; is clearly inconsistent, sometimes internally so, and also with what multiple supporting witnesses testified; and is an exaggeration of what several witnesses called by the examiners said. Also, the Commission failed to give Judge Brennan and her counsel the pre-formal hearing notice of its allegations of abuse to even attempting to prove those allegations. See MCR 9.207(D)(1); *In re Simpson*, 500 Mich 533; 902 NW2d 383 (2017); and *Burton v Reed City Hosp Corp*, 471 Mich 745, 752, 754; 691 NW2d 424 (2005).

9. Plainly incorrect is the Master's conclusion that Judge Brennan lied under oath with "breath taking" scope. That is what the examiners alleged in the Appendix to their closing argument, which the Master "adopted as accurate," which it plainly is not. Assuming that Judge Brennan's counsel has correctly deduced the statements by her that the Appendix claims were shown at the formal hearing to be false -- the Appendix contains no references to the record, -- her actual statements show no more than occasional mistakes and lapses of memory, not lies. In addition, the Master ignored this Commission's and the Supreme Court's recent holdings in the case of *In re Gorcyca*, 500 Mich 588, 637; 902 NW2d 828 (2017), about what are not lies and perjury.

10. The Master is incorrect that two of Judge Brennan's staff were required by her to "involuntarily" perform personal tasks for her which "went far beyond" what might have been appropriate if done voluntarily. Personal tasks were undertaken by staff, but never, did they claim, involuntarily and those tasks never interfered with staff doing their work for the court. Benefiting from those tasks was not, therefore, misconduct. See *Matter of Neely*, 364 SE2d 250 (W Va 1987). To the extent one staff member claimed to the County to have been working for it when she was working for Judge Brennan, the claim was not only false, but unknown to the Judge, and not knowable by her.

11. Because, when interpreted in accordance with its plain meaning, as all statutes must be interpreted, MCL 169.257 did not apply to any campaign assistance at the courthouse during regular work hours. The Master erroneously concluded that Judge Brennan violated that statute if and when she allowed or accepted such acceptance. Furthermore, any assistance was voluntary, none was done on personal time available to the staff and, while sometimes done at the courthouse, did not "use" County office space.

12. Judge Brennan did minimally interrupt two depositions in her divorce, but there was no evidence that she did so "in order to influence that testimony or a witness," as the Master found. The transcripts of the subject depositions actually prove the contrary. The examiners never claimed otherwise, but only that MCR 2.306(C) forbids non-participants from speaking during depositions. That subrule says nothing of the sort other than in two situations not remotely presented by this case.

WHEREFORE, Judge Brennan prays the Commission for the reason stated in Paragraph 1, above, reject the Master's report, direct that new formal hearing be held, and ask the Supreme

Court to appoint a new master to preside, or, in the alternative, prays the Commission find that the record does not support any finding of any misconduct by Judge Brennan.

Respectfully submitted,

By: /s/ Dennis C. Kolenda

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