

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON**

**IN THE MATTER OF:
PETITION TO IMPANEL A CITIZENS GRAND JURY**

**File NO.
Honorable David J. Reader**

_____/ **DANIEL A. BURRESS P 11445**
8163 Grand River, Suite 100
Brighton, MI 48114
810 229 9494

A civil action arising out of the transactions occurrences or events alleged in this petition has been previously filed in this court and was assigned file number 18-29890 PZ and was assigned to Honorable David J. Reader, subsequently reassigned to Eaton county Judge John D. Mauer by the State Court Administrative Office. That re- assignment is under appeal to the Court of Appeals under file numbers 344468, and 344581.

PETITION TO IMPANEL A CITIZENS GRAND JURY

NOW COMES Daniel A. Burress filing the within Petition to Impanel a Grand Jury and Appoint a Special Prosecutor, and respectfully represents unto the court as follows:

1. Petitioner is a resident of Livingston County, Michigan and is a retired Circuit Court Judge of the 44th Circuit Court of Livingston County, Michigan.
2. That this court has jurisdiction to convene a Citizens Grand Jury by virtue of the powers granted to it by:

A The 1963 constitution of the State of Michigan which provides:

§13

Section 13:

“The circuit court shall have original jurisdiction in all matters not prohibited by law.....”

B. MCL 767.3

Whenever by reason of the filing of any complaint, which may be upon information and belief, or upon the application of the prosecuting attorney or attorney general, any judge of a court of law and of record shall have probable cause to suspect that any crime, offense or misdemeanor has been committed within his jurisdiction, and that any persons may be able to give any material evidence respecting such suspected crime, offense or misdemeanor, such judge in his discretion may make an order directing that an inquiry be made into the matters relating to such complaint.....

C MCL 767.7

Grand juries shall not hereafter be drawn, summoned or required to attend at the sittings of any court within this state, as provided by law, unless the judge thereof shall so direct by writing under his hand, and filed with the clerk of said court.

3. Hon. Theresa M. Brennan, elected to the 53rd District Court, and sitting by assignment in the Livingston County Circuit Court, was assigned and presided over a double murder trial entitled *People v Walter Jerome Kowalski*, No. 08-17643 FC.
4. Michigan State Police Detective Sean Furlong was a witness and a “co-officer in charge” of said case.
5. That prior to impaneling the jury in said case Mr. Thomas Kizer, Jr., a former prosecuting attorney for Livingston County, sent a letter (Exhibit A) to the current prosecuting attorney, Mr. William Vaillencourt advising of a social relationship between Judge Brennan and Detective Furlong.¹
6. In spite of widespread rumors in the legal community that Judge Brennan had more than a “social relationship” with Detective Furlong, she declared from the bench at her recusal hearing that “it’s a friendship, nothing more than a friendship and denied the motion to recuse herself. Her decision to deny recusal was appealed to Chief Judge David J. Reader

¹ This letter is shown to have been copied to Regional SACO Administrator James P. Hughes, Chief Justice Robert P. Young, Jr., Michigan Supreme Court, First Lieutenant Joel Allen, Michigan State Police, Brighton Post, and Hon. David Reader, Chief Judge, 44th Circuit Court.

who affirmed her decision based on the information she divulged. (Exhibit B)² Her decision to remain on the case was affirmed by the Michigan Supreme Court.³

7. Judge Brennan thereafter presided over the jury trial, which commenced January 7, 2013; a guilty verdict was rendered January 28, 2013, and defendant, who is in his 70's was sentenced to life without parole March 5, 2013. Judge Brennan was the sole arbiter of the credibility of Detective Sean Furlong and others concerning facts which critically impacted the guilt or innocence of the Defendant.
8. On December 2, 2016 Judge Brennan's husband, represented by Mr. Kizer, filed an action for divorce⁴ in the Livingston County Circuit Court
9. Deposition testimony, taken in Livingston County, Michigan, during the course of the divorce proceedings put a new face on the extent of the social relationship between the judge and Mr. Furlong, and demonstrates that the Judge failed to disclose the full extent and nature of her relationship with Detective Sergeant Furlong, by omitting and concealing significant social activities she engaged in with him before or while *Kowalski* was pending. It revealed that Judge Brennan, Sean Furlong, and Shawn Ryan, an assistant prosecuting attorney (APA) in Mr. Vaillancourt's office and others, shared a social relationship that extended back as far as 2008 or 2009. By way of example, divorce trial depositions reveal:
 - a. Both Judge Brennan and Detective Furlong admitted to having an intimate sexual relationship, but claim it first occurred after the *Kowalski* trial was over.⁵ Sean Ryan claims body language from Judge Brennan in 2012 said much more.⁶
 - b. Although disputed, it appears that the first kiss between Detective Furlong and Judge Brennan may have occurred in 2008, some 5 years before the *Kowalski*

² Exhibit B, Transcript Page 13, Lines 2-18. Judge Reader "She did not believe that she had a duty to disclose those friendships. But I've got to say those friendships are really, really not hidden to the community. I think it's well known by the legal community here in this, in this area." The problem is that Defense counsel is not from the Livingston County area and was unaware of the relationship. Quoting Judge Brennan starting on line 10, Judge Reader continued: "I don't think that means that I can't be friends with people. What I believe is that I have to look into my heart and soul and decide whether that affects me in any way, and if it does, then I can't handle the case. And this is your life, Mr. Kowalski. I understand that. And if I thought for one second that my friendship would affect how I treated you, how I rule, I would recuse myself in a heartbeat. My friendship will not and has not for a split second impacted the decisions that I've made."

³ *People v Kowalski*, 492 Mich 106, 821 NW2d 14 (2012)

⁴ Livingston County No. 16-7127 DO

⁵ Exhibit C, Deposition of Judge Brennan, Page 244, Line 9-17. She claimed the intimate sexual relationship commenced in late October or November, 2013. Sean Furlong testified it was early spring 2014, Exhibit D, Page 36, Line 12-13.

⁶ Exhibit E, Deposition of Shawn Ryan, Page 14, lines 4-15

trial, in her 53rd District Court chambers around the time of her 50th birthday.⁷ Shawn Ryan, then a good friend of the judge and a Livingston County APA, testified that the judge admitted the same to her.⁸ Ms. Ryan also testified that at or near the time Sean Furlong also admitted to her that he and the judge kissed.⁹

- c. Theresa Brennan and Sean Furlong's relationship went back many years before the *Kowalski* trial and included, trips to the Tiger's games¹⁰, hockey games,¹¹ football games,¹² parties at the judge's home, many trips to her cottage in Holland, Michigan, starting shortly after she was appointed to the bench,¹³ socializing at bars and restaurants, and Furlong's visits to the judge's chambers, often with the door closed.
- d. Prior to the *Kowalski* trial the Livingston County legal community was awash with rumors¹⁴ that Judge Brennan and Detective Furlong were caught together in a compromising circumstance in a public place in an automobile.
- e. Judge Brennan denied knowing about these rumors.¹⁵ Her denial of having heard rumors of this incident is contradicted by the testimony of retired

⁷ Exhibit C, part 2, Page 218, Lines 2-9, Exhibit D, Page 31 Line 16 through Page 32, Line 19.

⁸ Exhibit E, Deposition of Shawn Ryan, Page 7, line 5-25

⁹ Exhibit E, Deposition of Shawn Ryan, Page 8, page 1-9.

¹⁰ Exhibit D, Page 39, Lines 1-7

¹¹ Exhibit D, Page 39, Line 8

¹² Exhibit D, Page 39 Lines 10-11

¹³ Exhibit D, Page 50, Lines 1-10.

¹⁴ Exhibit E, Page 13-14, Line 9-25, 1-3.

Q "And did Shari indicate to you anything else about being caught with Furlong other than just being caught in the vehicle?"

A. "Just in general."

Q. "Had you heard the rumor that this had happened?"

A. "Oh, everyone did."

Q. "Theresa didn't think it did when she testified. She never heard it before. All she heard was about you, but would you explain – was it common knowledge in the law enforcement and legal community in this county that that rumor was going around?"

A. "Absolutely. It was going around the weekend after it happened."

Q. And that was in 2012?"

A. That's my understanding. I don't have any personal recollection of it, of when it was. I could not sit here under oath and say I remember hearing about this. What I can tell you is it was when Tom Ash, my ex-boyfriend, and I were still living together was in 2012.

¹⁵ Exhibit C. Page 227, Lines 4-12.

Q. And who did you get caught with in a car having an intimate relationship in 2012 around the week before Halloween?

A. No one.

Q. So, have you ever heard that before?

A. At the deposition that you –

Q. Never heard it before that?

Michigan State Police Trooper Jennifer Louise Eve who said she talked to Judge Brennan about it in about 2012 while she was still a trooper at the Brighton Post, before she and Judge Brennan became friends.¹⁶ Also, Sean Ryan testified that she had lunch with a close friend/lawyer of Judge Brennan and was told that Judge Brennan admitted to her “that it was in fact her and Furlong that had been caught in the car”.¹⁷

- f. Both Sean Furlong and Judge Brennan were questioned about telephone and text contact with each other both before, during, and after the Kowalski trial. Mr. Furlong denied having any contact with Judge Brennan during the trial.

Excerpts from Exhibit D (Furlong deposition), Page 56, Lines 2-19:

Q. Okay. You would of, I’m assuming, had no contact with the presiding judge, Theresa Brennan, during that trial, would you?

A. I did not.

Q. Okay. Did the two of you ever exchange any texts or phone calls during that time?

A. No.

Q. You would be certain that you didn’t do that?

A. I am.

Q. Okay. Thank you.

Judge Brennan not being under oath, then interjected herself into the Furlong deposition:

Judge Brennan: We did once.

Mr. Kizer: I don’t need to hear from you.

Judge Brennan: He’s forgetting.

Mr. Kizer: I’m very concerned, she can’t coach the witness. I want the record to reflect that she turned and tried to coach the witness.

Judge Brennan; I didn’t coach him. He’s forgetting.

Q. You’re a bright guy. You recall your answer?

A. I don’t recall having any conversation.

Judge Brennan was deposed for a second time a few weeks after Furlong’s deposition and the subject of contact between the judge and Furlong during the *Kowalski* trial was again asked.

Exhibit C (Theresa Brennan Deposition), Page 202, Line 23 – Page 203, Line 21:

A. I’ve heard it about Shawn Ryan, but I’ve never heard it about me.

Q. Never ever?

A. Never ever.

¹⁶ Exhibit H, Page 18, Lines 1-25 Page 19, Lines 1-4. (L 24. “Q. She acknowledged that she knew about it? A. The rumor? Q. Yeah. A. Yes.)

¹⁷ Exhibit E, Page 9, Lines 1-25.

Q. And would you—did you have a phone call with him once or a text with him?

A. A phone call.

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Q. A phone call. What were the circumstances?

A. I called him. We were at the airport, all of us, and we were all drinking and our plane wasn't – it was way delayed, and so I was sitting at the bar and just called to say hi. I don't remember anything else and I can't remember a conversation.

Q. How long were you on the phone?

A. I don't remember.

Q. Would it have been an hour, would it have been –

A. I seriously doubt that. We were hoping our plane was going to go. And, no, it wouldn't have been an hour.

Q. Did you reveal that to the attorneys in this case, the prosecutor and the defense attorneys?

A. No.

Q. Were there any other calls during that trial that you had with him?

A. I did not, nope.

Q. None?

A. No.

Q. You're certain of that?

A. Yes

- g. Phone records¹⁸ show that the Judge and Furlong had substantial phone contact for at least one year prior to the start of the *Kowalski* trial (upwards of 200 or more calls).
- h. Records reveal that there were numerous calls between the Judge and Detective Furlong during important preliminary pre-trial proceedings involving the admissibility of confession evidence.
- i. Contrary to the denials by each of them, it appears that there were three (3) calls during the trial itself from Theresa Brennan's phone to Sean Furlongs of over 30 minutes which were not revealed to trial counsel.¹⁹ After the verdict and before sentencing there appear to be 26 more calls of about 265 minutes. None of these were disclosed to counsel. The record indicates a 29-minute call the day before Mr. Kowalski was sentenced.
- j. Both the Judge and Furlong claim they had no sexual relationship after 2015. Yet Detective Furlong and Judge Brennan were in Florida together in 2016. She denied having sex with him during that time.²⁰ She did admit to kissing

¹⁸ Summaries were prepared by/for Mr. Root for his attorney in the divorce trial.

¹⁹ January 17, 2013, 9 minutes (8:53 p.m.), January 17, 2014, 17 minutes (10:14 p.m.), January 19, 2013, 9 minutes, (3:07 p.m.).

²⁰ Exhibit C, page 188, Lines 3-51

Q. You had no sex with Sean Furlong in your trip to the Keys in 2006, am I correct?

A. No, we didn't have sex.

him romantically but denied that it led to anything else.²¹ Jennifer Louise Eve, a retired Michigan State Police Trooper, and now a Livingston County Court Officer²² contradicted this testimony. She testified at her deposition that Judge Brennan told her that she (Judge Brennan) and Furlong had sex on that trip.²³

10. If Mr. Vaillencourt was unaware of the rumors about the relationship between Detective Furlong and Judge Brennan, he was likely one of only a few in the legal community, and perhaps his office, who was.
11. His staff of assistant prosecuting attorneys included Shawn Ryan, Angela Del Vero, and then Senior Trial Attorney Miriam Cavanaugh²⁴ who were counted among the social circle/political supporters of Judge Brennan.
12. Brighton Post Trooper Eve was aware back in 2012 of the rumor about the judge and Furlong in a car together and testified she discussed it with the judge in 2012.
13. Judge Brennan hired Jessica Yakel²⁵ as her law clerk January 2, 2014.²⁶ Ms. Yakel soon began performing the services of a personal assistant to the Judge, on county time, some of which included:
 - A. Paying her bills, some by check and some on line.
 - B. Taking the judges vehicle to a local dealer to have it serviced and waiting to have it completed.²⁷
 - C. Securing a water sample from Judge Brennan's home and taking it for testing in Brighton.²⁸
 - D. Fixing the judges television set at her home.
 - E. On more than one occasion Ms. Yakel provided "out of gas" road service for the judge. In one such service call three court employees were needed to deal with the situation. One employee rode along with Ms. Yakel to the location of the thirsty car, and then stood watch over it while Ms. Yakel carried the judge on to her now overdue medical appointment.²⁹ The third employee, the court bailiff, was dispatched to secure fuel for the car.

²¹ Exhibit C, Page 188, Lines 18-21.

²² Currently on medical leave. Exhibit H Line Page 7, Lines 8-14.

²³ Exhibit H, Page 16, Line 9-25, Page 17, Lines 1-20.

²⁴ Exhibit N, Now Chief Judge Miriam Cavanaugh, pictured with Judge Brennan.

²⁵ Exhibit J Deposition Transcript, Page 7, Line 23 – Page 8, Line 1.

²⁶ Exhibit J a licensed Michigan attorney.

²⁷ Exhibit J, Page 15, Line 15-

²⁸ Exhibit J, Page 16, Lines 1-29

²⁹ Exhibit J, Pages 20, Line 20 – page 21, Line 3

Ms. Yakel was of course surprised when she returned to the scene to learn that another driver experiencing a medical emergency rear ended the judge's car. She also learned that the frightened sentinel called 911 to report that another vehicle had struck her and was pushing her toward the intersection. The City of Brighton Police Department responded promptly and was able to turn off the aggressive rear vehicle before anyone was hurt. EMS of course responded to attend to the medical emergency. (Exhibit L and M, Scene Photo's)

- F. While still sitting on the bench with Ms. Yakel using the computer next to her, Judge Brennan enlisted her services to assist in securing a compatible airline flight ticket and seating for Sean Furlong while the Judge was coordinating the purchase of her own ticket and seat for the same flight at a different computer. She was apparently going to her niece's wedding and Mr. Root was paying for the judge's ticket, and the judge was using her own credit card to pay for Sean Furlong's ticket. Ms. Yakel believed that the judge was using the county computer at the time.³⁰

Ms. Yakel:

Exhibit J, Page 16, Lines 1-3:

"Some of these she asked, others she told me. Towards the end of my employment there she had a tendency to just tell me."

Exhibit J, Lines 9-21:

A. "Yes. I also stained her deck, too.

Q. At her house.

A. Yes.

Q. How did that happen?

A. She needed someone to stain it. She had someone initially, but they were taking too long. I said I've stained decks before. She asked if I would do it. I said sure. I figured it would be during the weekend because the weekend was better than during the week, and she said go do it now during the work hours. And so I went and stained the deck.

Q. She directed you to go do it then?

A. Yes"

G. Working on the Judge's campaign for judicial office while at work in the courthouse and on county time in violation of MCL 169.257.

11 That since the time of the filing of the petition in file No 18-29890 PZ the Judicial Tenure Commission filed a substantial formal complaint against Judge Brennan, alleging some of the

³⁰ Exhibit J, Page 13, through Page 15, Line 14.

same acts and conduct as are contained in this petition. In this rare instance, before the filing of the formal complaint, the Judicial Tenure Commission publicly acknowledged that it was conducting an investigation relating to Judge Brennan.³¹

- 12 Although the Michigan State Police have been made aware of most of the facts contained in this petition many months ago, and executed search warrants and seized county owned computers from Judge Brennan's courtroom and apparently other property from the home of the judge³²(Exhibit K, Detroit Free Press Article May 4, 2017), it appears that they may not yet have completed their investigation since they recently continued their questioning of lawyers and others locally.
- 13 After the filing of No. 18-29890 PZ the Judicial Tenure Commission filed and made public its' complaint but no other public action has been taken by the Livingston County Prosecutor, or Attorney General of Michigan.
- 14 The allegations brought out in the divorce proceedings, those alleged in the search warrant affidavit,³³ and those included in the Amended Judicial Tenure Complaint reveal the possibility of violations of criminal laws of the State of Michigan involving

Perjury, contrary to MCL 750.422³⁴; and MCL 750.423.

Common Law Misconduct in office³⁵, contrary to MCL 750.505.³⁶

Attempted obstruction of justice³⁷, contrary to MCL 750.122 (3)(b).

Willful neglect of duty, by Judge Brennan (ex parte communications concealed from and not communicated to counsel as described in paragraph 8 above), contrary to MCL 750.478, which provides

³¹ Exhibit I, Livingston County Daily article December 19, 2017.

³² Exhibit K, Detroit Free Press Article May 4, 2017.

³³ Although Petitioner has not seen the search warrant affidavit, MCL 780.652 provides that a search warrant may be issued to search for and seize property that is one of the items enumerated in the statute. In addition, the magistrate must be convinced that probable cause exists. "Probable cause sufficient to support issuing a search warrant exists when all the facts and circumstances would lead a reasonable person to believe that the evidence of a crime or the contraband sought is in the place requested to be searched." *People v Brannon*, 104 Mich App 121, 132 (1992).

³⁴ As to Sean Furlong denying he had contact with Judge Brennan during the trial. Exhibit D, Page 56, Lines 2-19 As to Theresa Brennan denying calls to Sean Furlong during the trial. Exhibit C, Page 202, Lines 23 through Page 203, Line 21: for denials contained in the incident contained in paragraph 8b supra, denial of hearing rumors described in paragraph 8c supra.

³⁵ Common law misconduct in office for acts described in paragraph 10A-F supra contrary to MCL 750.505.

³⁶ *People v Waterstone* 296 Mich App 121, 818 NW2d 432 (2012)

³⁷ For acts referenced in paragraph 8F, supra, interrupting testimony and suggesting an answer, supra, contrary to MCL 750.122(3)(b).

“When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty, where no special provision shall have been made for the punishment of such delinquency, constitutes a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00.”\

16. Public protesting took place on July 25, 2018 in front of the office of the Prosecuting Attorney demanding prosecution of the Judge and a new trial for Kowalski, and at least one candidate for a newly created circuit court seat commented in campaign literature:³⁸

“Our courts have been rocked by the scandalous behavior of someone who had no business being a judge”

17. That in the interest of justice and to protect the integrity and respect for our legal system, a grand jury must immediately be authorized now in order to complete a proper investigation.

18. Contemporaneously with a demonstration in front of the Livingston County Prosecutors office demanding action, Mr. Vaillencourt issued a press release which in part proclaimed:³⁹

“...If anyone has any facts or information that Mr. Kowalski might be innocent, I encourage them to present that information immediately to the State Police for follow up and investigation. At this point, no one has provided them any such information...I am conducting a careful and through review of the facts and the applicable law to determine whether a new trial is required” (statement to radio station WHMI released July 25, 2018)

In addition, in an email to the Livingston Daily on July 25, 2018 the Prosecutor made the following statement in part:⁴⁰

“I had no knowledge of any evidence of an inappropriate relationship involving the judge or impacting her ability to sit in this case. If I had known of any such evidence, I would have immediately disclosed it, and would have taken immediate action.”

³⁸ Judge Suzanne Geddis literature.

³⁹ Exhibit P, Vaillencourt statement to Radio Station WHMI.

⁴⁰ Exhibit Q, Vaillencourt statement to Livingston Daily.

- 19 On June 20, 2018 Judge David J. Reader conducted a hearing and ordered the empaneling of a Citizens Grand Jury. Then, in a secret ex-parte session of court on June 25, 2018 Chief Judge Miriam Cavanaugh pulled an emergency switch and brought the investigation to a screeching halt by overruling Judge Readers orders.
- 20 There are forces determined to prevent the empaneling of a Citizens Grand Jury in Livingston County, and unfortunately the picture of a very “cozy” relationship between employees of the prosecutor’s office, members of the Michigan State Police, Judge Brennan, and former APA, and now Chief Judge Cavanaugh, seems to be developing which can only be sorted out by a Citizens Grand Jury.
- 21 Petitioner continues to vigorously contest the June 25, 2018 Order of Chief Judge Miriam Cavanaugh in case No. 18-29890 PZ but has elected to file this new Petition in view of new information brought out by the Amended Judicial Tenure complaint, press releases of the prosecutor’s office this last week, and photographs of Judge Brennan and Judge Cavanaugh,⁴¹ and another of Detective Furlong⁴² with Judge Brennan together at the home of Judge Brennan.⁴³ Every day of delay caused by the appeal of the contested Order entered in the previous case gives those walking the halls of power in our community the opportunity to shield from daylight the facts and responsibility for both their acts and failure to act in this case.
22. That in order to assist the grand jury in obtaining all relevant facts surrounding the allegations herein, either the Attorney General should become involved, or a special prosecutor is necessary for such investigation, including any investigative personnel required to promptly and effectively present to the grand jury the evidence necessary to determine whether or not a criminal complaint should be filed against any individual(s).
23. That in the interest of justice and to protect the integrity and respect for our legal system, a grand jury must be authorized in order to complete a proper investigation.
24. That the Livingston County community was at a loss to understand why the Judicial Tenure Commission was taking so long and felt that the Michigan State Police and prosecuting officials are proceeding at glacial speed, while at the same time the statute of limitations on some criminal matters may soon leave them in the dust.

⁴¹ Exhibit N, Photo Judge Brennan and Chief Judge Miriam Cavanaugh.

⁴² Exhibit O, Photo Sean Furlong and Judge Brennan

⁴³ Judge Brennan and Judge Cavanaugh supported each other in their respective judicial campaigns.

25. That this Petition is made on information and belief, transcripts of the divorce proceedings between Judge Brennan and her former husband, and the Complaint filed by the Judicial Tenure Commission.

Wherefore, Petitioner prays that pursuant to MCL 767.3, MCL 767.7 and such other statutes, laws, and rules as may be appropriate, this court will do the following:

- A. Initiate a Citizen's Grand Jury proceeding, for the purpose of investigation of the above allegations and any related acts.
- B. Alternatively, in the event the court elects not to impanel a Citizens Grand Jury under MCL 767.7, to initiate Grand Jury proceedings pursuant to MCL 767.3 for the purpose of investigating the above allegations and any related acts.
- C. Appoint a special prosecutor and investigator as necessary in order to properly, fairly, and completely investigate the allegations herein, and such others as may arise.
- D. Upon conclusion of the proceedings that the grand jury shall initiate such criminal complaints as are warranted by the facts, if any there may be.

Dated: July 30, 2018

Daniel A. Burrell
Daniel A. Burrell