

DANIEL A. BURRESS
Attorney at Law

August 4, 2018

Mr. Milton L. Mack, Jr.
State Court Administrator
P.O. Box 30048
Lansing, MI 48909

Re: In Re Citizens Grand Jury
No. 18-29968 PZ

Sent via e-mail

Dear Judge Mack:

Please consider this letter as a plea, request for reconsideration, or appeal and objection to your re-assignment of the above case to Judge John D. Maurer of Eaton County. This is not in any way personal to him, as will be explained below. A copy of the Assignment Order in question is attached.

You indicate in the Assignment that the case was assigned to Judge Maurer pursuant to MCR 8.111(D)(1). Under normal circumstances you would probably be correct. I contend that you were not correct in doing so in this case.

On June 4, 2018 I filed a Petition to Impanel a Grand Jury in Livingston County (My Petition Number 1, No. 18-29890 PZ), which was blind draw assigned to Circuit Judge David J. Reader. On June 20, 2018 he granted my petition. After the filing my petition three significant things occurred:

- 1) The Judicial Tenure Commission filed and made public it's complaint against 53rd District Judge Theresa Brennan,¹
- 2) Judge Reader disqualified himself from the Grand Jury Case after, among other things, granting my petition, giving as a reason that he might be a witness in the JTC case.
- 3) Thereafter, on June 25, 2018, Chief Judge Miriam Cavanaugh issued an ex-parte, nunc pro tunc order vacating Judge Readers Orders which granted my petition, sealed the file, and appointed a special prosecuting attorney (appointed because the Prosecuting attorney and Attorney General declined to become involved).

The Judge Cavanaugh ex-parte Order also contained the following provision:

¹ Judicial Tenure Commission No. 99.

Finally, under the authority of MCR 8.110(C) (3) (g), this Court is referring the matter to the Michigan Supreme Court State Court Administrative Office for a determination as to whether this matter should be assigned to a judge from another county to handle any further proceedings.

I was given no prior notice of any proposed court action on this sealed file and learned from a concerned source of her order the afternoon of June 25, 2018 and immediately undertook the preparation of objections which were filed the very next morning. I immediately called Judge Cavanaugh's court and left a message that I wanted a hearing date on my motion. No return call was ever received.

Then, on the afternoon of the 26th, after the filing of my motion, I received a telephone call from the county clerk's office telling me that Judge Maurer had been appointed to the case. I then contacted his office and sent a courtesy copy of my motion to his secretary.

On June 27, 2018 I directed a letter, with a copy to Judge Maurer, again requesting a hearing date.

When it became clear to me that I was not going to receive a timely hearing date I filed an application in the Court of Appeals for Leave to Appeal Judge Cavanaugh's order as well as your Order appointing Judge Maurer to the case.

When I finally received your 1st Order in Petition No 1 the defect in it was clear and unmistakable. It states in the body of the Order:

Commencing 06/25/2018

Reason for Assignment: DISQUALIFICATION

To handle the matter of In Re; Citizens Grand Jury, file No. 18-29890 PZ

Three judges available for assignment under the Local Administrative Order (One of whom is a circuit judge) were by-passed by Judge Cavanaugh and did not disqualify themselves. So, clearly you had no authority to make the appointment under MCR 2.003 (D) (4) (a), which provides

*For courts other than the Supreme Court, when a judge is disqualified, the action **must be assigned** to another judge of the same court, or if one is not available, the state court administer shall assign another judge.*

The application of that court rule to the facts of this case should be the end of the discussion, since Chief Judge Cavanaugh by-passed three eligible judges when she sent the matter to SCAO. But, unfortunately it is not.

You attempted to again by-pass qualified Livingston County judges with your so called Amendment to the June 25, 2018 Assignment under the mantle of MCR 8.110 (C)(3)(g). I am assuming that by June 27, 2018, the date you issued a second Assignment on this case, you had been made aware of my motion contesting Judge Cavanaugh's June 25, 2018 Order by-passing Livingston

County judges, and also personally determined that your June 25, 2018 order was defective.

On June 27, 2018 the Livingston County Clerk received your apparently back dated Assignment Order claiming there was a clerical error in the first Assignment and that the assignment code should have been grand jury. PZ, the only assignment code I know of, is the appropriate assignment code for a grand jury petition. The first Assignment Order clearly shows the PZ code in the case number. So, in the second order you stated;

THIS ASSIGNMENT DOES NOT COVER DISQUALIFICATIONS

Commencing: 06/25/2018

Reason for assignment: Grand Jury

To handle the matter of in Re; Citizens Grand Jury, file No. 18-29890 PZ

This assignment is amended to correct a clerical error. The assignment code should have been grand jury

Under your signature you suggest that the Amended Assignment was authorized June 25, 2018, when in fact it clearly was not signed that date. The issuance of the June 25, 2018 Assignment was structurally defective since it was issued for an invalid reason under an inapplicable court rule. In short it was structurally defective, not just burdened by a clerical mistake.

And the Amended Assignment is also structurally defective for several reasons.

You cannot use the authority of MCR 8.110 (C)(3)(g) to trump the requirements of MCR 2.003 (D) (4) (a), to appoint a visiting judge in a disqualification case unless there is no other judge available in that court. The very language in the Amended Assignment warns: THIS ASSIGNMENT DOES NOT COVER DISQUALIFICATIONS. Yet, that is exactly what you have done here.

In addition, when your office received Judge Cavanaugh's paperwork they did not consider it as a request for a visiting judge assignment since you processed it as a disqualification case, even though Judge Cavanaugh did not certify that all other judges had disqualified themselves—a requirement is disqualification referrals for visiting judges.

And her Order was not a request for action or the appointment of a visiting judge. In layman's language, it was a polite way of asking whether prohibited out-of-county judge shopping could be accomplished.

"Finally, under the authority of MCR 8.110(C) (3) (g), this Court is referring the matter to the Michigan Supreme Court State Court Administrative Office for a determination as to whether this matter should be assigned to a judge from another county to handle any further proceedings."

For several reasons your determination should have been that we should not be involved in

prohibited judge shopping.

First because it is prejudicial to the proper administration of justice, exposes the legal profession or courts to obloquy, and contempt, censure, or reproach, and is contrary to justice, ethics, honesty or good morals. *Grievance Administrator v Fried* 456 Mich 234, 570 NW2d 262 (1997)

Second, there is *MCR 2.003 (D) (4) (a)* which requires that the matter **must** be assigned to a judge of the same court in disqualification cases,

Third, you have a Local Administrative Order, which you signed June 5, 2018 which provides that you **shall** appoint the next available judge specified in the rule, in this case a Circuit Judge, and if he disqualifies then Judge Geddis or Judge Carol Sue Reader.

Fourth, that *MCR 8.110(C) (3) (g)*, does not trump the mandatory requirements of *MCR 2.003 (D) (4) (a)*.

Instead of doing that you shopped for and then hastily, and in my opinion improperly, appointed a judge from out of the county.

Therefore, I contend that your appointment of Judge Mauer to my second case is improper since he was not properly or legally assigned to the first case.

I do not know Judge Maurer or anything about him, or for that matter you, and this has nothing to do with either of you personally.

There are several problems with what has happened here.

The progress of a Citizens Grand Jury in Livingston County has been sidetracked by the combined action of Judge Cavanaugh and SCAO, and the necessity of appeals which could take years to conclude. During this delay the previously sealed circuit court file was opened to the public by Judge Cavanaugh and examined by numerous people, including but not limited to Judge Brennan, news media, state legislators, and others, some of whom have purchased copies of this voluminous file. The unsealing of the file has given potential targets of the investigation unwarranted opportunity to derail the investigation, something that has already occurred because of the intervention of the court through the use of a questionable and contested ex-parte nunc pro tunc order.

Another problem is that in the event an indictment results from a grand jury presided over by a Judge not assigned pursuant to the lawful procedure established by the court rules and by the administrative order in place at the time, will, without question, be subject to legal attack. This could result in reversal of any conviction and/or the quashing of any indictment. Moreover, the guilty could escape accountability at the hands of an improperly convened grand jury presided over by a Judge not properly assigned and thereby without authority.

I urge you to promptly examine the road travelled on this matter in assigning Judge Mauer and correct it administratively by reversing course and “determining” that Judge Cavanaugh

should reverse her Order entered June 25, 2018 and reassign this matter forthwith pursuant to MCR 2.003 (D) (4) (a) and/or the Livingston County Local Administrative Order of June 20, 2018. Then and only then will the matter proceed on a course without the potholes of the road travelled to date.

Cordially,



Daniel A. Burress

cc: Chief Justice Stephen J. Markman. Chief Judge Miriam A. Cavanaugh, Honorable John D. Maurer, Thomas J. Kizer, Jr Esq.

Enclosures; SCAO Assignment file No 18-29968 PZ
Judge Miriam A. Cavanaugh Order June 25, 2018
Judge David J. Reader Disqualification Order
Motion to Vacate Order Dated June 25, 2018, with Brief in Support
Livingston County Administrative Order, June 20, 2018
Daniel A. Burress letter dated June 27, 2018
SCAO Disqualification Assignment of Judge Maurer file No. 18-29890 PZ
SCAO Amended Assignment of Judge Maurer file No. 18-29890 PZ
E-:Mail correspondence, 2 pages

Rec 7/31/18

STATE COURT ADMINISTRATIVE OFFICE
Lansing, Michigan
ASSIGNMENT

Assignment No:
1820758

TO: Honorable John Douglas Maurer P41845
56th Circuit Court
Eaton County Courthouse
1045 Independence Blvd.
Charlotte, MI 48813

Under the provisions of the Michigan Constitution, 1963,
Art. 6, Sec. 4, as amended, you are assigned to serve as
Judge of the:

44th Circuit Court

Region: 2

Region: 2
Livingston County

THIS ASSIGNMENT DOES NOT COVER DISQUALIFICATIONS.

Assignments terminate by an assignment end date, or if none, by an SCAO termination of assignment, or when the assigned judge leaves office.

When in a courthouse located within their judicial circuit or district, assigned judges may preside by videoconference in any court proceedings that may be conducted by videoconference without the consent of the parties under the Michigan Court Rules and statutes.

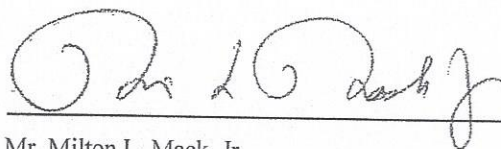
Commencing 07/31/2018.

Reason for Assignment: GRAND JURY

to handle the matter of In Re Citizens Grand Jury, File No. 18-29968-PZ, pursuant to MCR 8.111(D)(1).

CC: Ms. Peggy Toms, C44
Ms. Beryl J. Frenger, C56

APPROVED: _____



Mr. Milton L. Mack, Jr.

State Court Administrator

Authorized: 07/31/2018

STATE OF MICHIGAN

44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

IN THE MATTER OF:

PETITION TO IMPANEL A CITIZENS GRAND JURY

File No. 18-29890-PZ
Honorable Miriam A. Cavanaugh

ORDER

At a session of Court, held in the City of Howell,
County Livingston, State of Michigan, on
this 25th day of June, 2018

On June 4, 2018, a Petition to Impanel a Citizens Grand Jury was filed with the Court and assigned to Judge David Reader, File No. 18-29890-PZ.

On June 7, 2018, Judge David Reader entered an Order on his own motion sealing the case and suppressing its contents. Judge Reader further ordered that "the file shall be maintained in the chambers of Judge Reader; and that all filings in this case shall be made in the chambers of Judge Reader."

On June 11, Judge David Reader entered an order requiring that "Petitioner shall file an amended petition in this case setting forth the alleged violations of law, both statutory and common of Judge Theresa Brennan for which investigation is sought and clarifying the type of Grand Jury sought in this matter . . ." Judge Reader further ordered that Petitioner shall also provide a legal brief to the Court at the time of the filing of the amended petition in support of the amended petition.

An Amended Petition to Impanel a Citizens Grand Jury and Brief in Support were thereafter filed with the Court on June 18, 2018, and June 19, 2018, respectively.

On June 20, 2018, Judge David Reader entered an order granting the amended petition to convene a citizens grand jury finding:

After carefully considering the petition, the amended petition, and supporting exhibits in this case and with an appreciation of the gravity of the allegations, the Court GRANTS the petition to impanel a citizens grand jury under MCL 767.7 to investigate 53rd Judicial District Court Judge Theresa M. Brennan's alleged violation of Michigan criminal laws, including but not limited to perjury; common law misconduct in office; attempted obstruction of justice; and willful neglect of duty.

On June 20, 2018, Judge David Reader entered an order appointing attorney Thomas Kizer, Jr. as Special Prosecuting Attorney in this matter and authorizing Mr. Kizer to have the authority to hire an Assistant Special Prosecuting Attorney. Judge Reader further ordered that Mr. Kizer, as Special Prosecuting Attorney, "may hire such investigators as may be needed to assist the Citizens Grand Jury with their investigation." An Oath of Public Officers was signed by both Judge David Reader and Mr. Kizer on June 20, 2018. This Court takes judicial notice that Mr. Kizer served as the attorney for Judge Theresa Brennan's ex-husband, Donald C. Root, in a contested divorce proceeding, File No. 16-007127-DO, which forms the basis of many of the allegations in the petition to convene a citizens grand jury.

On June 21, 2018, Judge David Reader entered an Order of Disqualification, disqualifying himself from the matter, indicating that he is "a probable witness to alleged criminal conduct of Judge Theres[a] Brennan as set forth in the Judicial Tenure Commission formal complaint #99 of June 12, 2018."

MCR 2.003(C) (1) (c) requires disqualification for reasons that include, but are not limited to, the following:

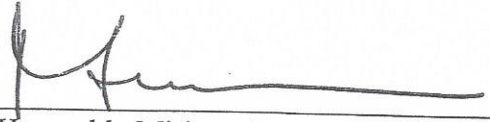
- (a) The judge is biased or prejudiced for or against a party or attorney.
- (b) The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party . . . , or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Judicial Code of Conduct.
- (c) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

The basis for recusal in this matter was known to Judge David Reader at the time of entry of the above described orders.

Pursuant to MCR 8.111(C)(1), as Chief Judge, this case is designated to me to act temporarily pending review by the Michigan Supreme Court State Court Administrative Office as described below. Further, pursuant to MCR 2.613(B), this Court hereby vacates all orders nunc pro tunc entered by Judge David Reader in this matter for the reason that mandatory disqualification was required from case initiation.

Finally, under the authority of MCR 8.110(C)(3)(g), this Court is referring the matter to the Michigan Supreme Court State Court Administrative Office for a determination as to whether this matter should be assigned to a judge from another county to handle any further proceedings.

IT IS SO ORDERED.

 6/25/2018

Honorable Miriam A. Cavanaugh
Chief Judge Livingston County Trial Courts

STATE OF MICHIGAN

44th

JUDICIAL DISTRICT
JUDICIAL CIRCUIT
COUNTY PROBATE

ORDER OF
DISQUALIFICATION/REASSIGNMENT

CASE NO.

18-29890 PZ

Court address

204 S. Highlander Way - Howell, MI 48843

Court telephone no.

(517) 546-9816

Plaintiff name(s) and address(es)

IN RE: CITIZENS GRAND JURY

Defendant name(s) and address(es)

v

Plaintiff's attorney, bar no., address, and telephone no.

DANIEL A. BURRESS P-11445

Defendant's attorney, bar no., address, and telephone no.

In the matter of _____

IT IS ORDERED:

I, Hon. David J. Reader

Bar no. _____

on motion of _____

on my own motion,

am disqualified under MCR 2.003 from hearing this case and I am requesting assignment of another judge for the following reason:

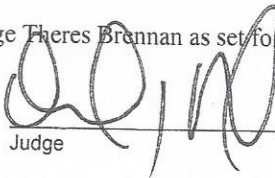
- 1. I am biased or prejudiced for or against a party or attorney.
- 2. I have, based on objective and reasonable perceptions, a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, 556 US 868; 129 S Ct 2252; 173 L Ed 2d 1208 (2009).
- 3. I believe, based on objective and reasonable perceptions, my continued assignment would create an appearance of impropriety.
- 4. I have personal knowledge of disputed evidentiary facts concerning the proceeding.
- 5. I have been consulted or employed as an attorney in the matter in controversy.
- 6. I was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding two years.
- 7. I know that I, individually or as a fiduciary, or my spouse, parent, or child wherever residing, or any other member of my family residing in my household, have more than a de minimis economic interest in the subject matter in controversy that could be substantially impacted by the proceeding.
- 8. I or my spouse, or a person within the third degree of relationship to either of us, or the spouse of such a person: (i) is a party to the proceeding, or an officer, director, or trustee of a party; (ii) is acting as a lawyer in the proceeding; (iii) is known by me to have a more than de minimis interest that could be substantially affected by the proceeding; or (iv) is to my knowledge likely to be a material witness in the proceeding.

9. Other: (specify)

I am a probable witness to the alleged criminal conduct of Judge Theres Brennan as set forth in the Judicial Tenure Commission formal complaint #99 of June 12, 2018.

06-21-2018

Date



Judge

Bar no.

ADDITIONAL DISQUALIFICATIONS

NOTE: If there are not enough signature slots, attach additional sheets.

The undersigned judge(s) is/are also disqualified and refer by number to the reason printed on the front of this form.

NOTE: IF REASON 9 IS ENTERED, THE COMMENT SECTION MUST BE COMPLETED.

REASON 1-9	DATE	SIGNATURE	COMMENT

REQUEST FOR REFERRAL TO SCAO

*see attached
Order, dated June 25,
2018*
(Signature)

All of the judges of this court have disqualified themselves and have signed this order, indicating their reason for disqualification pursuant to MCR 2.003.

The designated Visiting Judge Clerk shall submit a copy of this order, **ALONG WITH THE REQUEST FOR ASSIGNMENT**, to the appropriate State Court Administrative Office to have another judge assigned to hear this case pursuant to MCR 2.003(D)(4).

Date

Chief Judge Bar no.

INTERNAL REASSIGNMENT REQUEST

Judge _____ has been chosen by lot or local administrative order from the judges not disqualified in this case. I request that this case be reassigned to this judge.
Bar no.

Date

Court Administrator or Clerk of the Court

Reassignment approved as requested.

Date

Chief Judge Bar no.

File

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

TRUE COPY
44th Circuit Court
County Clerk's Office

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

File NO. 18-29890 PZ
Honorable

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

MOTION TO VACATE ORDER DATED JUNE 25, 2018

Now Comes Petitioner in the above entitled matter filing the within Motion to Vacate the Order of Judge Miriam A. Cavanaugh dated June 25, 2018, a copy of which is attached hereto, and in support thereof respectfully represents unto the court as follows;

1. Petitioner, a citizen of the State of Michigan, and County of Livingston filed with this court a Petition to Impanel a Citizens Grand Jury on June 4, 2018,
2. Said action was duly assigned to the Honorable David J. Reader in accord with the blind draw system in place in Livingston county.
3. On June 25, 2018 this court entered an Order setting forth the basic procedural history of this matter, and then: a) proceeded to effectively disqualify all of the Livingston county bench¹ from presiding over said case, b) referred it to the State court Administrative Office for a determination as to whether this matter should be assigned to a judge from

¹ Except Judge Reader who disqualified himself, and presumably herself..

another county, and c) vacated all previous Orders entered by Judge Reader, nunc pro tunc.

4. That it is the duty of the Court to determine what Judge should be assigned the case, in accord with established administrative rules, not the Michigan Supreme Court State Court Administrative office.
5. On information and belief, three other presumptively qualified Livingston county judges have, by virtue of this Order, been summarily deprived of their opportunity to take the case or disqualify themselves. On information and belief these other judges have not had a yea or nay say in the matter.
6. As Chief Judge this court has administrative duties as prescribed by court rules, but those duties do not include appellate jurisdiction over Judge Reader, and the court is without jurisdiction/authority to simply vacate the previous orders of a judge of equal or higher standing in the absence of court rule compliance.
7. That Petitioner was not given previous notice of any intended action by the court affecting this file. The ex parte determinations made by the Court in this Order deprived Petitioner, and thus the citizens of this county and state, of the right to have any input on the Court's intended action. Said action deprived Petitioner of substantial procedural rights and serves to delay and hinder the prompt and efficient determination of the issues involved in this case by a Citizens Grand Jury.
8. That the Order which has been entered violates the Court's own Local Administrative Order, a copy of which is attached hereto, which was signed by the Court only 6 days ago.
9. This Motion is supported by the Brief In support of Motion to Vacate Order Dated June 25, 2018.

Wherefore, Petitioner respectfully prays that this court will set aside and vacate its June 25, 2018 Order and restore in full force and effect the previously entered Orders of Judge Reader, and immediately appoint a reassigned judge so that the citizens of this county can commence their efforts to see that justice is done in this matter.

Respectfully submitted,

Daniel A. Burrell 6/26/18
Daniel A. Burrell

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

TRUE COPY
44th Circuit Court
County Clerk's Office

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

File NO. 18-29890 PZ
Honorable

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

**BRIEF IN SUPPORT OF MOTION TO VACATE ORDER
DATED JUNE 25, 2018**

NOW COMES Petitioner in the above entitled matter submitting this Brief in Support of Motion to Vacate Order Dated June 25, 2018, and in support respectfully represents unto the Court as follows:

FACTS

Petitioner, a citizen of the State of Michigan, and County of Livingston filed with this court a Petition to Impanel a Citizens Grand Jury on June 4, 2018 to investigate a very serious matter affecting the reputation of the courts of this county.

Said action was duly assigned to the Honorable David J. Reader in accord with the blind draw system in place in Livingston county. Judge Reader disqualified himself following the entry of several orders, including the sealing of the file and granting a Petition for Impanelment of a Citizens Grand Jury.

On June 25, 2018 this court entered an Order setting forth the basic procedural history of this matter, and then: a) proceeded to effectively disenfranchise all of the presumptively eligible

Livingston county bench¹ from presiding over said case, b) referred it to the State court Administrative Office for a determination as to whether this matter should be assigned to a judge from another county, and c) vacated all previous Orders entered by Judge Reader, nunc pro tunc.

It is the duty of this Court to determine which Judge should be assigned this case, in accord with established administrative rules, not the Michigan Supreme Court State Court Administrative office.

On information and belief, three other presumptively qualified duly elected Livingston county judges have, by virtue of this Order, been summarily deprived of their opportunity to take the case or disqualify themselves. On information and belief these other judges have not had a yea or nay say in the matter.

As Chief Judge this court has administrative duties as prescribed by court rules, but those duties do not include appellate jurisdiction over Judge Reader, and the court is without jurisdiction/authority to simply vacate the previous orders of a judge of equal or higher standing in the absence of court rule compliance.

Petitioner has not been notified of the reassignment of this case to another judge, including the Chief Judge.

Petitioner was not given previous notice of any intended action by the court affecting this file. The ex parte determinations made by the Court in this Order deprived Petitioner, and thus the citizens of this county and state, of the right to have any input on the Court's intended action. Said action deprived Petitioner of substantial procedural rights and serves to delay and hinder the Grand Jury's prompt and efficient determination of the serious issues involved in the claims made in this case.

Petitioner is not in a position to opine whether or not this judge is or would be disqualified from hearing the case by virtue of her past employment as an Assistant Prosecuting Attorney in the office of the Livingston County Prosecuting Attorney, or any social relationship with any of the people named in the Grand Jury Petition. Only she knows whether or not she herself has information which might cause her to be called as a witness in either the Judicial Tenure Commission Hearing or before the Grand Jury.

However, for whatever reason, known only to the court herself, the court has abrogated its duties as Chief Judge by failing to timely reassign this case to an eligible successor judge and instead forwarding this case to the SCAO office for a determination as to whether this matter should be assigned to an out-county judge to handle further proceedings.

¹ Except Judge Reader who disqualified himself.

It is the duty of the Chief Judge to reassign disqualification cases by following established and well-defined rules. Any deviation from these rules leads to justified suspicion and calls of corrupt “judge shopping”, and in this case “to help our own”.

Many people are distrustful of government and have been asking what has taken the Livingston County Prosecutor, the State Police, the Attorney General, and the Judicial Tenure Commission so long. And it is now clear that a Grand Jury is the only real hope for the people of this county, and the court has chilled that by sending it off to another bureaucratic arm of the government which has no authority at this time to determine who should be the successor judge.

The Order which has been entered violates the Court’s own Local Administrative Order, a copy of which is attached hereto, which was signed by the Court only 6 days ago. It also violates the court rules.

ARGUMENT

On June 20, 2018 your Honor signed a Local Administrative Order which dictated the method by which cases would be assigned in the Livingston County Circuit Court.

Rule C, dealing with disqualifications provides;

“...When the CJNF² is disqualified from a circuit civil case, that case shall be reassigned to the CJF. ³ Similarly, when the CJF is disqualified from a circuit civil case, that case shall be reassigned to the CJNF. If both the CJF and the CJNF are disqualified from a circuit civil case, the case shall be reassigned by blind draw to one of the two DJNF judges.”

Rule D 2 provides:

“Any circuit court or district court matter may be reassigned by order of the chief judge upon his/her own motion or upon request of others pursuant to MCR 8.110 and MCR 8.111.”

Nothing in MCR 8.110 gives to the chief judge the authority to ignore the court rules or Local Administrative Order dealing with assignment of cases. It does specifically require the chief judge to:

² Circuit Judge, Non Family

³ Circuit Judge, Family

MCR 8.110 (C) (1)

“A chief judge shall act in conformity with the Michigan Court rules, administrative orders of the Supreme court, **and local court rules**, and should freely solicit the advice and suggestions of the other judges...”

MCR 8.111 provides:

“If a judge is disqualified ... the chief judge may reassign it to another judge by a **written order** stating the reason. To the extent feasible, the alternate judge should be selected by lot. The chief judge shall file the order with the trial court clerk **and have the clerk notify the attorneys of record**. The chief judge may also designate a judge to act temporarily until a case is reassigned...”

As the court well knows there is a procedure regularly followed when a judge is disqualified. In this case, as shown by the disqualification Order (attached hereto), Judge Reader disqualified himself on June 21, 2018. Thereafter, in accord with the procedure the form is to be circulated to other eligible judges to indicate their disqualification status. If all are disqualified the request for referral is sent to SCAO. On information and belief, the other eligible judges in this case were not poled about their decision, and the request was sent to SCAO in spite of their (SCAO’s) ineligibility to act.

MCR 2.003(D)(4)(a) provides:

(a) “ ...when a judge is disqualified, **the action must be assigned to another judge of the same court**, or, if one is not available, the state court administrator shall assign another judge.”

While the court may have the power to reassign cases, the rule is clear, and this action must be assigned to another judge of the same court. Why it is that the court has not poled the other eligible judges has not been explained by this court’s Order. Everyone, including the judges of this court, has a stake in this matter and need to know that the rules dealing with assignment of cases applies to everyone, irrespective of status or who you know. The one body that does not have a stake in the matter is the State Court Administrative Office in whose hands this court has parked this case. They are not authorized to render advisory opinions about such matters and should not be involved in determining and advising the court whether an out-county judge should be handling the case. It is the duty of the Chief Judge to follow the law and make the call by following the rules.

By refusing to immediately and specifically follow the Local Administrative Order and court rule directing how reassignments are to be handled the court is sending a signal to the people of Livingston County that “judge shopping” is permissible when it comes to “one of our own”.

The court gave no reason why it was necessary to immediately vacate the various Orders entered by Judge Reader, including the Order granting the Citizens Grand Jury Petition, and the Order sealing the file, other than the disqualification reason which surely the reassigned judge was capable of addressing. There was no immediate matter pending before the court, (other than reassignment by the court), the Petitioner was not notified until after the June 25th Order was entered, and nothing was going to happen until the reassignment was made that required such action.

The failure to follow the Local Administrative Order dealing with reassignments, as required by MCR 8.110 (C)) (1), and parking the file in Lansing, supplied the court with a convenient way to act as an appellate judge over Judge Reader, for no apparent valid purpose other than to vacate all of the orders entered by him. Surely the reassigned judge would be capable of making his or her own decisions about the validity of these orders.

People v Watkins 178 Mich App 439 (1989), 444 NW2d 201 refers us to MCR 2.613(B)

“Correction or Error by Other Judges. A judgment or order may be set aside or vacated, and a proceeding under a judgment or order may be stayed only by the judge who entered the judgment or order, unless that judge is absent or unable to act. If the judge who entered the judgment or order is absent or unable to act, an order vacating or setting aside the judgment or order or staying proceedings under the judgment or order may be entered by a judge otherwise empowered to rule in the matter.”

In *Watkins*, the court commented that there was no record of “judge shopping” in the record. Sadly, that is not the case here. Clearly there is verified judge shopping effort demonstrated by failing to immediately select a successor judge and requesting unauthorized assistance from SCAO.

The State Court Administrative Office has no say in how a particular judge is chosen until each of the qualified judges in the county has had their opportunity to say yea or no, and the court is by-passing the rights and obligations the judges and of the people of this county to have their elected judges follow the dictates of their respective consciences. Additionally, this Petitioner has the right to a judge properly selected hear this case.

CONCLUSION

The court has violated the Michigan court rules as well as its own recently signed Local Administrative Order dealing with reassignment in disqualification cases thus abrogating its clear duty to reassign this case to an eligible judge elected by the citizens of Livingston County.

The use of the courts authority to sit as an appellate judge over Judge Reader’s orders smacks of an abuse of discretion where judge shopping is involved.

RELIEF REQUESTED

Petitioner respectfully prays that this court will set aside and vacate its June 25, 2018 Order and restore in full force and effect the previously entered Orders of Judge Reader, and immediately appoint a reassigned judge so that the citizens of this county can commence their efforts to see that justice is done in this matter.

Respectfully submitted,

Daniel A. Burrell 6/26/18
Daniel A. Burrell

ASSIGNMENT OF CASES PURSUANT TO
THE 2016 FAMILY COURT PLAN
LOCAL ADMINISTRATIVE ORDER-
C44 2018-03J FOR THE 44th CIRCUIT COURT,
D53 2018-07J FOR THE 53rd DISTRICT COURT,
P47 2018-03J FOR THE LIVINGSTON COUNTY PROBATE COURT

Pursuant to Livingston County's Family Court Plan originally approved by the Michigan Supreme Court on August 22, 1997, the updates of the plan previously approved and the update of the plan being filed with this order, the Chief Judge hereby approves the following administrative order for the purpose of the continuing implementation of the assignment of cases within the Circuit and Probate courts, as well as those Family Division matters to be assigned to the District Judge.

A. BLIND DRAW ASSIGNMENT SYSTEM FOR CIRCUIT AND
PROBATE COURTS:

For purposes of reference, the following abbreviations will be used:

CJF: circuit judge family

CJNF: circuit judge not family

VJF: visiting judge family

DJNF: district judge not family

PJF: probate judge family

FOC: friend of the court

1. Assignment of Cases filed after March 1, 2018, shall be by lot as follows:

- a) To the CJF: 50% of all domestic relations cases involving children; 50% of the ancillary family court cases; 100% of the juvenile delinquency cases and related juvenile personal protection orders involving the same parties; 100% of the FOC contempt proceedings; 100% of the

emancipation cases; 50% of the circuit civil cases; 30% of the criminal and civil appeals.

- b) To the PJF: 100% of the neglect and abuse cases; 100% of the adoption cases; 30% of the circuit criminal cases; and 100% of all probate court matters. If a neglect and abuse case has a domestic relations case involving the same parties and the same children, the PJF will also handle the domestic relations case.
- c) To the VJF: 50% of all domestic relations cases involving children; 50% of the ancillary family court cases; 100% of the divorce cases without children; 100% of other family cases; 100% of the domestic and non-domestic adult personal protection orders.
- d) To the CJNF: 50% of the circuit civil cases; 70% of the circuit criminal cases; and 70% of the criminal and civil appeals.
- e) To the two DJNF: each are assigned 50% of the district court civil, criminal, and traffic cases. In addition, the two DJNF will continue to assist with circuit court arraignments and felony pleas.

2. Assignment of Cases filed before October 31, 2016 shall be as follows:

- a) All of the circuit civil cases assigned to the Brighton district judge, now DJF, shall be reassigned to the CJF.
- b) All returning domestic and non-domestic adult personal protection orders shall be reassigned to the VJF.
- c) All of the domestic relations cases involving children, including other family cases, non-divorce domestic cases, and ancillary family court cases assigned to both DJNF judges shall be reassigned to the DJF.

3. Assignment of Circuit Civil Cases filed before March 1, 2018 shall be as follows:

a) 20% of the pending circuit civil cases assigned to the CJNF shall be reassigned to the CJF.

4. The County Clerk will handle the filing and blind draw assignment system for each of the following groups of cases:

a) All domestic relations cases involving children, excluding domestic and non-domestic adult personal protection orders, 50% to the CJF; and 50% to the VJF.

b) 100% of the divorce without children (DO) and 100% of the domestic and non-domestic adult personal protection orders will be assigned to the VJF.

c) All other circuit court civil matters: 50% to the CJF and 50% to the CJNF; all other circuit criminal matters: 70% to the CJNF and 30% of the circuit criminal matters to the PJF; 70% of the of the criminal and civil appellate matters, and with the special re-assignment of "drug court" cases pursuant to Local Administrative Order 2004-08, to the CJNF; 30% of the criminal and civil appellate matters to the CJF.

5. The juvenile register will handle the filing and blind draw assignment system for all juvenile division cases: 100% of the neglect and abuse cases and 100% of the adoption cases to the PJF. 100% of the juvenile delinquency cases; 100% of the emancipations; and 100% of the juvenile personal protection orders involving the same parties to the CJF.

If a neglect and abuse case is filed, when there is a pending domestic relations case with children involving the same parties, the juvenile register shall automatically assign the domestic relations case with children to the PJF.

B. OVERLAPPING CASES

After December 31, 1997, an exception to the above assignment procedure shall apply when, upon the filing of a family division matter, it is determined through comparing the circuit court computer system and the juvenile/probate court demographic index that another matter within the jurisdiction of the family division of circuit court, involving members of the same family, is pending or had been pending in the same judicial circuit, excluding domestic and non-domestic adult personal protection orders. The subsequently filed matter(s) shall be assigned whenever practicable to the successor judge to whom the first such case was assigned. (1996 PA 388, Sec 1023) This will be done by the assignment clerk after initiating the blind draw. 100% of the domestic and non-domestic adult personal protection matters shall be assigned to the VJF. For purposes of implementing this order, "family" encompasses legal parents and their children (including siblings) and when practicable, at the discretion of the court, may also include others involved in the care taking of the children. It will not include DO cases or their related PPO-A cases.

For purposes of implementing this order, "pending" means any case over which the family division of the circuit court has current jurisdiction.

An ancillary proceeding filed in the domestic relations division of the circuit court or probate court after December 31, 1997 pursuant to §1021 (a) or (b) of 1996 PA 388 shall be assigned to the judge who has been assigned to the related family division matter, excluding DO cases and their related PPO-A cases. For

purposes of implementing this order, "ancillary" means a matter enumerated in §1021 that involves the same family as defined above, which has another matter already pending or had been pending, as defined above, in the family division of the circuit court, excluding adult domestic personal protection cases. This provision further effectuates the requirements of § 1023 to assign related matters involving the same family to the same judge.

C. DISQUALIFICATIONS

When the CJF is disqualified from hearing a domestic relations case with children, that case shall be reassigned to the PJF. If the VJF is disqualified from hearing a domestic relations case involving children or without children, that case shall be reassigned to the CJF. If the VJF is disqualified from hearing a domestic or non-domestic adult personal protection matter, that case shall be reassigned to the CJF. If both the CJF and the VJF are disqualified, the case shall be reassigned to the PJF. If the PJF is disqualified, the case shall be reassigned to the CJNF.

When the CJNF is disqualified from a circuit criminal case that case shall go to the PJF. Similarly, when the PJF is disqualified from a circuit criminal case that case shall go to the CJNF. When the both the CJNF and the PJF are disqualified on a circuit criminal case, that case shall be reassigned to the CJF. When the CJNF is disqualified from a circuit civil case, that case shall be reassigned to the CJF. Similarly, when the CJF is disqualified from a circuit civil case, that case shall be reassigned to the CJNF. If both the CJF and the CJNF are disqualified from a circuit civil case, the case shall be reassigned by blind draw to one of the two DJNF judges. When the PJF is disqualified from a neglect and abuse case or an adoption case, that case shall be reassigned to the CJF. If both the PJF and the CJF are disqualified, the case shall be reassigned to the CJNF. When

the CJF is disqualified from a juvenile delinquency case, or a juvenile personal protection matter involving the same parties, or an emancipation case, that case shall be reassigned to the PJF. If both the CJF and the PJF are disqualified, the case shall be reassigned to the CJNF.

When both DJNF judges are disqualified on a district court civil, criminal or traffic case, the case shall be reassigned to the CJNF. If the CJNF is disqualified on a district court civil, criminal, or traffic case, the case shall be reassigned to the PJF.

D. ASSIGNMENTS OF CASES

The following narrative is an explanation for clarifications and exceptions found to be needed by the chief judge for practical reasons after consultation with all affected parties as to name checks and assignments of cases to judges.

For purposes of assignments, the following definitions and rules apply:

1. CIRCUIT COURT DOMESTIC UNIT AND JUVENILE UNIT

NAME CHECKS:

When searching the circuit court computer database or the juvenile unit's computer database for a name check regarding the same family, the oldest case found determines the assignment of Family Division judge except for domestic cases without children and all adult domestic and non-domestic personal protection cases which are assigned 100% to the VJF.

2. REASSIGNMENTS:

Any circuit court or district court matter may be reassigned by order of the chief judge upon his/her own motion or upon request of others pursuant to

MCR 8.110 and MCR 8.111.

3. SPECIAL RULES AND EXCEPTIONS REGARDING CERTAIN CASE

TYPES:

a. GUARDIANSHIPS AND CONSERVATORSHIPS

These ancillary matters require the probate register to do a name check in both juvenile unit and domestic unit databases (except DO cases) to determine if there is or was a pending matter in the domestic relations division involving the same family. If there is such a matter found, the new guardianship or conservatorship will be assigned by the probate register to the domestic relations court judge. If there is no such matter found, it will be assigned to the judge assigned to the probate judge. The oldest family court matter found, excluding adult domestic personal protection matters which are assigned 100% to the VJF shall determine which domestic relations court judge is assigned. Probate staff will continue to be responsible for all duties regarding these matters regardless of the judge assigned.

b. DIVORCE WITHOUT CHILDREN

A name check in the circuit court domestic unit database is necessary to determine if a DO case has previously been filed. A name check in the circuit court domestic unit database is also necessary to determine if a PPO-A case has previously been filed and is active. If so, the previously filed PPO-A case shall be automatically re-assigned to the VJF by the assignment clerk.

c. ALL NON-FAMILY CIRCUIT COURT MATTERS


All non-family circuit court criminal matters are subject to the usual circuit court name checks for open prior actions and/or co-defendants pursuant to MCR 8.111, and if found, shall be assigned to the same judge. If no matches are found, these

matters are to be assigned pursuant to the blind draw system for non-family circuit court criminal matters, which currently assigns 30% to the PJF and 70% to the CJNF. Re-assignment of "drug court" cases shall be handled pursuant to Local Administrative Order 2004-08 to the CJNF. All non-family circuit court civil matters are not subject to judge re-assignment unless a prior action is disclosed on the summons and complaint.

Local Administrative Orders: C44 2018-01J; D53 2018-01J; P47 2018-01J are rescinded.

Effective date: June 21, 2018

6/20/2018
Date:



Honorable Miriam A. Cavanaugh
Chief Judge, Livingston County Courts

DANIEL A. BURRESS
ATTORNEY AT LAW

June 27, 2018

Honorable Miriam A. Cavanaugh
Chief Judge, Livingston County Courts
204 S. Highlander Way, Suite 2
Howell, MI 48843

Re: In Re Petition for Grand Jury
No. 18-29890 PZ

Dear Judge Cavanaugh:

On June 25, 2018 you entered an Order vacating orders entered by Judge Reader and referring the matter to SCAO.

To this moment I still have not received official notice from the court of this action. If someone else had not sent me a copy I would still be in the dark about it.

I immediately prepared, and before noon the very next day, June 26, 2018, filed a Motion to vacate the same, leaving a copy for you. Another copy accompanies this letter. I also left a message with your secretary requesting a hearing date, and am still waiting for a return call.

Then, yesterday afternoon I received a telephone call from the county clerk's office advising that SCAO had already appointed Judge Maurer in this matter. It is of course interesting that SCAO would already have appointed a successor judge before I even received official notice of the court's action. I guess mail travels faster from Howell to Lansing than from Howell to Brighton.

I immediately made contact with Judge Maurer's secretary and e-mailed a copy of my motion and other documents to them.

Please let me know when my motion can be heard.

Cordially,



Daniel A. Burress

cc: Honorable John D. Maurer

STATE COURT ADMINISTRATIVE OFFICE
Lansing, Michigan
ASSIGNMENT

Assignment No:
1820667

TO: Honorable John Douglas Maurer P41845
56th Circuit Court
Eaton County Courthouse
1045 Independence Blvd.
Charlotte, MI 48813

Under the provisions of the Michigan Constitution, 1963,
Art. 6, Sec. 4, as amended, you are assigned to serve as
Judge of the:

44th Circuit Court

Region: 2

Region: 2
Livingston County

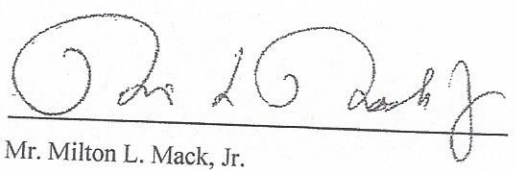
Assigned matters cannot be transferred to another judge without SCAO assignment. Assignments terminate by an assignment end date, or if none, by an SCAO termination of assignment, or when the assigned judge leaves office.
When in a courthouse located within their judicial circuit or district, assigned judges may preside by videoconference in any court proceedings that may be conducted by videoconference without the consent of the parties under the Michigan Court Rules and statutes.

Commencing 06/25/2018.

Reason for Assignment: DISQUALIFICATION

handle the matter of In Re: Citizens Grand Jury, File No. 18-29890-PZ.

CC: Ms. Peggy Toms, C44
Ms. Beryl J. Frenger, C56

APPROVED: 

Mr. Milton L. Mack, Jr.
State Court Administrator

Authorized: 06/25/2018

STATE COURT ADMINISTRATIVE OFFICE
Lansing, Michigan
ASSIGNMENT

Assignment No:
1820667A

TO: Honorable John Douglas Maurer P41845
56th Circuit Court
Eaton County Courthouse
1045 Independence Blvd.
Charlotte, MI 48813

Under the provisions of the Michigan Constitution, 1963,
Art. 6, Sec. 4, as amended, you are assigned to serve as
Judge of the:

44th Circuit Court

Region: 2

Region: 2
Livingston County

THIS ASSIGNMENT DOES NOT COVER DISQUALIFICATIONS.

Assignments terminate by an assignment end date, or if none, by an SCAO termination of assignment, or when the assigned judge leaves office.

When in a courthouse located within their judicial circuit or district, assigned judges may preside by videoconference in any court proceedings that may be conducted by videoconference without the consent of the parties under the Michigan Court Rules and statutes.

Commencing 06/25/2018.

Reason for Assignment: GRAND JURY

To handle the matter of In Re: Citizens Grand Jury, File No. 18-29890-PZ.

This assignment is amended to correct a clerical error. The assignment code should have been grand jury.

CC: Ms. Peggy Toms, C44
Ms. Beryl J. Frenger, C56

APPROVED: 

Mr. Milton L. Mack, Jr.

State Court Administrator

Authorized: 06/25/2018

Daniel Burress

From: Daniel Burress <danielaburress@att.net>
Sent: Tuesday, June 26, 2018 3:43 PM
To: 'Angie Curtiss'
Subject: RE: Citizens Grand Jury Petition

Good. I am easy to get with e-mail if you need anything

From: Angie Curtiss <acurtiss@eatoncounty.org>
Sent: Tuesday, June 26, 2018 3:30 PM
To: Daniel Burress <danielaburress@att.net>
Subject: RE: Citizens Grand Jury Petition

I think we're good for the moment. We are taking a verdict in our jury trial and then I'll chat with Judge Maurer.

From: Daniel Burress [<mailto:danielaburress@att.net>]
Sent: Tuesday, June 26, 2018 3:29 PM
To: Angie Curtiss
Subject: RE: Citizens Grand Jury Petition

Thank you. Do you need anything else?

DANIEL A. BURRESS

Mediation Services

8163 Grand River, Suite 100

Brighton, MI 48114

Telephone; 810 229-9494

Fax; 517 540-0476

e-mail: danielaburress@att.net

From: Angie Curtiss <acurtiss@eatoncounty.org>
Sent: Tuesday, June 26, 2018 3:03 PM
To: Daniel Burress <danielaburress@att.net>
Subject: RE: Citizens Grand Jury Petition

Got it 😊

From: Daniel Burress [<mailto:danielaburress@attnet>]
Sent: Tuesday, June 26, 2018 2:49 PM
To: Angie Curtiss
Subject: Citizens Grand Jury Petition

Angie:
It was nice talking with you. I will be sending you several emails since the files are too big to go all at once.

DANIEL A. BURRESS

Mediation Services

8163 Grand River, Suite 100

Brighton, MI 48114

Daniel Burress

From: Daniel Burress <danielaburress@att.net>
Sent: Wednesday, June 27, 2018 8:24 AM
To: Miriam A. Cavanaugh (mcavanaugh@co.livingston.mi.us)
Cc: Angie Curtiss
Subject: Grand Jury Petition
Attachments: Grand Jury, Judge Cavanaugh June 27 2018 letter.pdf; Grand Jury, Motion and Brief to Vacate Order.pdf

Dear Judge Cavanaugh:

Attached please find my letter dated today together with an additional copy of my Motion to Vacate Order.

Daniel A. Burress