

<b>State of Michigan</b> 53 <sup>rd</sup> Judicial District	<b>AFFIDAVIT  IN SUPPORT OF  COMPLAINT</b>	53 <sup>rd</sup> District Case No:
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**THE COMPLAINING WITNESS, ON PERSONAL KNOWLEDGE, OR INFORMATION AND BELIEF, OR BOTH, STATES:**

1. The Affiant, D/Sgt. Brian Reece, is a sworn 23-year veteran law enforcement officer of the Michigan State Police currently assigned as a detective to the Michigan State Police Third District Headquarters.
2. The Affiant has conducted major case investigations including homicides, misconduct of public officials, use of force by law enforcement and racketeering.
3. The Affiant became the lead investigator of a complaint of Misconduct in Office and Perjury in January 2018 involving 53<sup>rd</sup> District Court Judge Theresa Brennan. The initial investigator was F/Lt. Twana Powell, Professional Standards Unit, of the Michigan State Police who began the investigation in 2017. Affiant met with F/Lt. Twana Powell and was briefed by her in January 2018.
4. MCL 750. 423 is a Michigan statute which provides that it is a 15-year felony to providing false or misleading testimony during a deposition.
5. MCL 750.483a(5) is a Michigan statute which provides that it is a 5-year felony to knowingly and intentionally remove, alter, conceal, and destroy, or otherwise tamper with evidence to be offered in a present or future proceeding of a court.
6. MCL 750.505 codifies the common law Misconduct in Office which is 5-year felony for an office holder to use her office to commit an act which is itself wrongful, malfeasance, or to commit a lawful act in a wrongful manner, misfeasance, with corrupt intent.
7. Theresa Brennan is a current judge of the 53<sup>rd</sup> District Court in Livingston County, Michigan. Judge Brennan was appointed to the court in 2005; and most recently re-elected on November 4, 2014.
8. Judge Brennan was assigned all divorce cases without children (“DO”) cases through a cross jurisdiction plan between the district and circuit court for Livingston County.
9. On December 2, 2016, Judge Brennan’s then husband, Don Root, filed a complaint for divorce in Livingston County through his attorney Tom Kizer. The couple did not have minor children.

10. Affiant interviewed Chief Judge Dave Reader of Livingston County Circuit Court. Chief Judge Reader called Judge Brennan on Friday, December 2, 2016 to tell her that a divorce complaint had been filed by her husband and it was assigned to her. Chief Judge Reader expected to receive a disqualification from Judge Brennan immediately.
11. At the time of the divorce, Judge Brennan was using an I-phone 6 provided by her husband's company.
12. On the morning of Tuesday, December 6, 2016, Chief Judge Reader learned that Attorney Kizer filed an *Ex Parte* Motion to preserve evidence in the divorce which included Brennan's I-Phone.
13. Chief Judge Reader had not received a disqualification order from Judge Brennan on December 6, 2018. Chief Judge Reader contacted his secretary Jeannine Pratt to contact Brennan immediately about both issues, the disqualification and the *Ex Parte* Motion.
14. Affiant interviewed Jeanine Pratt. Ms. Pratt reported she immediately called Judge Brennan that morning and told her about the *Ex Parte* Motion to Preserve Evidence that was filed by Attorney Kizer and the disqualification. Ms. Pratt recalled that she read the title and first paragraph of the Motion to Preserve Evidence to Judge Brennan over the phone. At 11:58am, Ms. Pratt emailed a copy of the motion to Judge Brennan.
15. Judge Brennan reportedly said, "I need to talk with my attorney before signing any recusal."
16. Chief Judge Reader received Judge Brennan recusal order on December 8, 2018.
17. During her divorce depositions in January and February 2017, which were prior to the phone being turned over, Brennan stated that she didn't delete any content from the I-Phone 6 after Mr. Kizer filed the motion to preserve evidence. Brennan also stated that she purchased a new cell phone because Root and Kizer wanted the I-Phone 6.
18. MSP seized the I-phone 6 on April 14, 2017 as part of the investigation of misconduct and perjury. F/Lt. Powell took the phone to the Computer Crimes Unit in Livonia, where Attorney General S/A Brian Laity performed an examination. S/A Laity advised the phone had been "Reset to Factory Settings" sometime prior to when he received it. This meant relevant data had been erased from the phone.
19. Affiant re- took possession of the I-Phone 6 from the Computer Crimes Unit in Livonia and had it examined by D/Trooper David Vergison at MSP Computer Crimes Unit in Bridgeport, Michigan. Affiant requested D/Tpr. Vergison check the phone for any evidence as to when the phone had been "Reset to Factory Settings", to include a ".obliterate" file, which is consistent with when a phone was reset. D/Tpr. Vergison conducted the examination and located a ".obliterate" file with a timestamp of

December 8, 2016 at 1:19pm which was after the filing of the motion to preserve evidence.

20. The Michigan Judicial Tenure Commission filed a complaint against Judge Brennan, charging criminal and judicial violations and held hearings in October 2018. Affiant attended those hearings and noted several points.
21. At the hearings, Ms. Felicia Milhouse, Judge Brennan's court recorder, testified she left her courtroom work station at the request of Judge Brennan to look up how to delete/remove Hotmail and/or Gmail accounts from an i-Phone. She went to her office desk computer in the back offices of the courthouse to search for those instructions on the internet. Milhouse stated this occurred on a day in December 2016.
22. In support of this investigation, Affiant had Ms. Milhouse's work computer examined by the Michigan State Police Computer Crime Unit. CCU confirmed Ms. Milhouse's computer was used to make searches on how to deactivate and terminate a Hotmail account. That searches were made on the morning of December 8<sup>th</sup>, 2016.
23. During her divorce depositions in February 2017, Brennan stated she bought a new I-Phone shortly after the divorce was filed. Brennan stated the store representative transferred data from her I-Phone 6 to the new I-Phone 7. Brennan testified that she had not performed a "Reset to Factory Settings", the command to erase all data on the phone.
24. During her JTC hearing in October 2018, Judge Brennan changed her testimony from her divorce deposition and stated the store representative did perform a "Reset to Factory Settings" on her I-Phone 6 thus erasing all data on the iPhone.
25. Affiant located and obtained a search warrant for records from AT&T of Judge Brennan purchase of a new I-Phone. The records showed Judge Brennan purchased an I-Phone 7 at the AT&T store in Troy, Michigan on the evening of December 6, 2016.
26. Forensic examination of her I-Phone 6 showed it was "Reset" on December 8<sup>th</sup> during her work hours at 1:19pm.
27. Affiant interviewed the AT&T employee that sold the I-phone 7 to Judge Brennan. He stated he has never reset a phone for a patron who was going to keep the phone. At most, he would provide the patron with the information for her to do it herself.
28. Affiant reviewed the JTC hearing transcripts in which Judge Brennan testified. She admitted to lying in the divorce deposition. She was asked, "[Q:] ...He asked, 'Do you have the phone—did you have information on the phone deleted? You told him, 'No.' Here you're saying, 'Yes.'" Judge Brennan responded, "[A:] That's different; you're right. I never intended on making Mr. Kizer's job easy." (Pg. 1709)

29. For the reasons stated herein there is probable cause to believe that Theresa Brennan committed perjury during her divorce deposition, destroyed or tampered with evidence in a pending of future case before the Livingston County Circuit Court, and used her judicial office to enable her to destroy evidence without the court signing the *Ex Parte* Protection Order or reassigning the case to another judge.

Reviewed on: \_\_\_\_\_

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MSP D/Sgt. Brian Reece (Affiant)

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Subscribed and Sworn before me on: \_\_\_\_\_  
Date

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**Honorable** \_\_\_\_\_  
Judge,/Magistrate – \_\_\_ District Court