

# **EXHIBIT D**

STATE OF MICHIGAN

IN THE 44th CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

PEOPLE OF STATE OF MICHIGAN,

v

Case Number: 08-17643-FC

JEROME KOWALSKI,

Defendant.

FINAL SETTLEMENT CONFERENCE

BEFORE THE HONORABLE THERESA M. BRENNAN, ASSIGNED CIRCUIT JUDGE

Brighton, Michigan - Friday, January 4, 2013

RECEIVED  
JAN 14 11:09 AM  
COURT

APPEARANCES:

For the People:

MS. PAMELA MAAS, P40452  
Assistant Prosecuting Attorney  
210 South Highlander Way  
Howell, MI 48843  
(517) 546-1850

For the Defendant:

MR. WALTER PISZCZATOWSKI,  
P27158  
Attorney at Law  
1760 West Telegraph Road  
Suite 300  
Bloomfield Hills, MI 48302  
(248) 335-5000

RECORDED BY:

COURT OF APPEALS  
FOURTH DISTRICT  
CHIEF CLERK

RECEIVED  
JUN 26 2014

KRISTI COX, CER5451  
Certified Electronic Recorder  
(810) 229-6615

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PAGE

WITNESSES: FOR THE PEOPLE

NONE

WITNESSES: FOR THE DEFENDANT

NONE

EXHIBITS

IDENTIFIED

RECEIVED

NONE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Brighton, Michigan

Friday, January 4, 2013 - 2:42 p.m.

MS. MAAS: May it please the Court, Pamela Maas on behalf of the People.

MR. PISZCZATOWSKI: Good afternoon, your Honor. Wally Piszczatowski appearing on behalf of Mr. Kowalski who is here or about to be here.

THE COURT: I understand, Mr. Piszczatowski, you have to make a motion?

MR. PISZCZATOWSKI: Yes, your Honor. Your Honor, I received a call earlier today and some information from the Livingston County Prosecutor's office that provided some information giving rise to a motion that I'm going to make at this point. I've had an opportunity to talk to both Ms. Maas and Mr. Vaillencourt, as well as the Court. And I've also had, obviously, the Court provided me a significant opportunity to discuss the matter with my client. So we're going to make a motion at this time, your Honor, to disqualify the Court based on the information that was provided to me in the form of a letter. I don't know exactly what the Court's position is going to be on that. However, the matter is one of concern to my client and it may raise the concerns with respect to an appearance of impropriety. And, uh, therefore, we would make a request

(Brennan - Fri., 1/4/13 - 2:43 p.m.)

1 that this Court disqualify itself.

2 THE COURT: All right.

3 MS. MAAS: And just, the only thing I want to  
4 supplement, just indicating to the Court that the letter  
5 that Mr. Piszczatowski referenced was received by our office  
6 via fax at 8:56 a.m. this morning. So the information did  
7 not come to our attention until then.

8 THE COURT: All right, thank you. And as I  
9 understand it, there are no particular or specific facts of  
10 impropriety. Correct?

11 MR. PISZCZATOWSKI: I'm sorry, your Honor?

12 THE COURT: There are no particular or no specific  
13 facts of impropriety?

14 MR. PISZCZATOWSKI: No, the only, not to my  
15 knowledge, your Honor. The only facts I'm aware of, there  
16 was an allegation with respect to the Court being socially  
17 friends, social friends with two prospective witnesses of  
18 significance to this case.

19 THE COURT: All right. I've had an opportunity to  
20 review the letter. I have had an opportunity to review MCR  
21 2.003 and to revert, review the canons that I hold near and  
22 dear. And, uh, let's start with MCR 2.003. The grounds for  
23 disqualification are set forth at subparagraph (C)(1)(a) or  
24 (b) or potentially (f) you may be referring to. You didn't  
25 cite them, but I, based on a reading of the letter, I'm

1 assuming that's where you might be going. I am not biased  
2 or prejudiced for or against a party or an attorney. That's  
3 subparagraph (a). Subparagraph (b), the Judge, based on  
4 objective and reasonable perceptions has either a serious  
5 risk of actual bias impacting the due process rights of a  
6 party or has failed to adhere to the appearance of  
7 impropriety standard set forth in canon two. Canon two, and  
8 if I take the letter, I'm assuming that (a), (b), and (c)  
9 are what's being raised. And (a) is: public confidence in  
10 the judiciary is eroded by irresponsible or improper conduct  
11 by judges. A judge must avoid all impropriety and  
12 appearance of impropriety. A judge must expect to be  
13 subject, to be the subject of constant public scrutiny. A  
14 judge must therefore accept restrictions on conduct that  
15 might be viewed as burdensome by the ordinary citizen and  
16 should do so freely and willingly. A judge should, and (b),  
17 a judge should respect and observe the law. At all times,  
18 the conduct and manner of a judge should promote public  
19 confidence and the integrity and impartiality of the  
20 judiciary without regard to a person's race, gender, or  
21 other protected personal characteristic. A judge should  
22 treat every person fairly, with courtesy and respect. And  
23 (c), a judge should not allow family, social, or other  
24 relationships to influence judicial conduct or judgment. A  
25 judge should not use the prestige of office to advance

1 personal business interests or those of others. A judge  
2 should not appear as a witness in a court proceeding unless  
3 subpoenaed. I don't believe that I have violated MCR  
4 2.003(C)(b) or canon two. I don't believe that objective or  
5 reasonable perceptions could ... it says the judge, based on  
6 objective or reasonable perceptions has either a serious  
7 risk of actual bias impacting the due process. The heart of  
8 what is being complained of is I am accused of being friends  
9 with two witnesses. And I've explained to Mr. Piszczatowski  
10 that I am friends with the two witnesses. I don't believe  
11 that friendship has affected or would affect or should  
12 appear as if it's going to affect how I am as a judge or how  
13 I would handle this case. I never believed that I had a  
14 duty to disclose a friendship. I'm friends with the  
15 prosecutor. I'm friends with the prosecutor's wife, the  
16 former prosecutor. I, when you look at canon two and it  
17 says that I must expect to be the subject of constant public  
18 scrutiny and I, I understand that. I didn't when I took the  
19 bench, but I do now. Constant as in daily. I don't think  
20 that means that, and it says I must accept restrictions on  
21 conduct that might be viewed as burdensome by the ordinary  
22 citizen and I should do so freely and willingly. I  
23 understand that, too. I handle myself in a lot of different  
24 ways now since I've been a Judge than I did before I was a  
25 Judge. I don't think that means I can't be friends with

1 people. What I believe is that I have to look into my heart  
2 and soul and, and decide whether that affects me in any way.  
3 And if it does, then I can't handle the case. And this is  
4 your life, Mr. Kowalski. I understand that. And if I  
5 thought for one second that my friendship - and it's a  
6 friendship; it's nothing more than a friendship. I  
7 shouldn't even have to say that on the record, but that's  
8 all it is. If I thought for one minute that would affect  
9 how I treated you; how I ruled, I would recuse myself in a  
10 heartbeat. My friendship will not and has not, for a split  
11 second, impacted the decisions I've made. And I understand  
12 and appreciate that you may think well, she ruled against me  
13 in, call it the Daubert. I worked really hard on that. I  
14 spent, you have no idea how much time I spent by myself  
15 reading every last thing, and that you're, that he had  
16 written and the law and the sleepless nights I had trying,  
17 coming up with that decision. It wasn't easy. And I knew  
18 when I ruled that was going to affect you negatively. But  
19 if I, if my friendship with the witnesses was swaying me, I  
20 wouldn't have spent the hours upon hours and the weekends  
21 and the nights that I did doing that. I would have already  
22 known my decision up front if it really was a friendship  
23 that impacted my ability to be fair and impartial. And I  
24 don't think that this letter was sent as a means to protect  
25 you. There's a long history there between this person and



1 myself. It really isn't about you. This person has grieved  
2 me. That means he's gone to the Judicial Tenure Commission  
3 and tried to have me taken off the bench; he has sued me,  
4 all to no avail. The Judicial Tenure Commission said he was  
5 wrong. The Circuit Court, he sued me there, they've said  
6 he's wrong. He's appealed to the Michigan Court of Appeals  
7 and they've said he's wrong. So unfortunately, you kind of  
8 got caught in the middle. He's not trying to protect you.  
9 But I do want to protect your rights. That doesn't mean I'm  
10 always going to rule with you. And I would wonder why, you  
11 know, he kind of waited until the last minute. And there is  
12 one, only one really fact in the letter and I'll address  
13 that. There are no other facts. And it was with one of the  
14 witnesses came into Court on November 14<sup>th</sup> and I stopped the  
15 proceedings and we went back into chambers. He came for a  
16 search warrant. That's what I do. Once in a while, I take  
17 them up here but more often than not, we go back there. And  
18 so I'll just address that one fact. I look at the other  
19 canons that are cited in the letter. One, an independent and  
20 honorable judiciary is indispensable to justice in our  
21 society. A judge should participate in establishing,  
22 maintaining, and enforcing, and should personally observe  
23 high standards of conduct so that the integrity and  
24 independence of the judiciary may be preserved. I hold that  
25 dear. Mr. Kowalski, I don't really want to try this case.

1 I'm anxious. I'm nervous. I never feel smart enough. I  
2 want to make sure I do it right. But I would hope you would  
3 want me to be a bit anxious and nervous because you want me  
4 to care enough that everything is protected. I don't take  
5 this cavalierly. I don't take this lightly. It's your  
6 life. And I understand that. Having said all of that, I'm  
7 not going to recuse myself. Do you want to talk with your  
8 client, or?

9 MR. PISZCZATOWSKI: No, I don't have to, your  
10 Honor, at this point. I'm, he, kind of pretty much laid out  
11 what we needed to do. So, thank you though for the  
12 opportunity.

13 THE COURT: Do we need to go back there and go over  
14 a few things?

15 MR. PISZCZATOWSKI: I think so, your Honor.

16 COURT RECORDER: All rise.

17 MS. MAAS: Okay.

18 (At 2:58 p.m., proceedings concluded)

19 \*\*\*\*\*

20

21

22

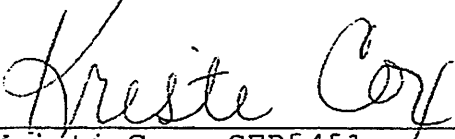
23

24

25

1 STATE OF MICHIGAN )  
 ) ss  
2 COUNTY OF LIVINGSTON)

3 I certify that this transcript, consisting of 10 pages, is a  
4 complete, true, and correct transcript of the proceedings and  
5 testimony taken in this case on Friday, January 4, 2013.

6  
7 

Kristi Cox, CER5451  
224 North First Street  
Brighton, MI 48116  
(810) 229-6615

8  
9  
10 Dated: May 10, 2013.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

# **EXHIBIT E**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF MICHIGAN

IN THE 44th CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

PEOPLE OF STATE OF MICHIGAN,

v

Case Number: 08-17643-FC

JEROME KOWALSKI,

Defendant.

FILED  
LIVINGSTON COUNTY CLERK  
2013 MAY 16 PM 3:11

HEARING

BEFORE THE HONORABLE DAVID J. READER, CIRCUIT JUDGE

Howell, Michigan - Friday, January 4, 2013

APPEARANCES:

For the People:

MS. PAMELA MAAS, P40452  
Assistant Prosecuting Attorney  
210 South Highlander Way  
Howell, MI 48843  
(517) 546-1850

For the Defendant:

MR. WALTER PISZCZATOWSKI,  
P27158  
Attorney at Law  
1760 West Telegraph Road  
Suite 300  
Bloomfield Hills, MI 48302  
(248) 335-5000

RECORDED BY:

KRISTI COX, CER5451  
Certified Electronic Recorder  
(810) 229-6615

RECEIVED  
JUN 26 2014  
COURT OF APPEALS  
FOURTH DISTRICT  
CHIEF CLERK

|    | TABLE OF CONTENTS                   | PAGE |
|----|-------------------------------------|------|
| 1  |                                     |      |
| 2  |                                     |      |
| 3  | <u>WITNESSES: FOR THE PEOPLE</u>    |      |
| 4  | NONE                                |      |
| 5  |                                     |      |
| 6  |                                     |      |
| 7  |                                     |      |
| 8  |                                     |      |
| 9  |                                     |      |
| 10 |                                     |      |
| 11 |                                     |      |
| 12 | <u>WITNESSES: FOR THE DEFENDANT</u> |      |
| 13 | NONE                                |      |
| 14 |                                     |      |
| 15 |                                     |      |
| 16 |                                     |      |
| 17 |                                     |      |
| 18 |                                     |      |
| 19 |                                     |      |
| 20 | <u>EXHIBITS</u>                     |      |
| 21 | NONE                                |      |
| 22 |                                     |      |
| 23 |                                     |      |
| 24 |                                     |      |
| 25 |                                     |      |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Howell, Michigan

Friday, January 4, 2013 - 4:16 p.m.

COURT CLERK: People versus Jerome Kowalski, file number 08-17643-FC.

MS. MAAS: May it please the Court, Pamela Maas appearing on behalf of the People.

MR. PISZCZATOWSKI: Good afternoon, your Honor. Wally Piszczatowski appearing on behalf of Mr. Kowalski. Your Honor, thank you very much for entertaining this motion at this late hour. I think the Court is aware that Mr. Kowalski is scheduled for trial in this courthouse Monday, the 7<sup>th</sup> of January at 8:30 in the morning. Your Honor, this morning I received a copy of a letter that was forwarded to me by the prosecutor's office, by Ms. Maas and Mr. Vaillencourt. And that letter was a letter that was written by Mr. Kizer, who made some allegations in the context of the, uh, relationship that Ms., that Judge Brennan, I'm sorry your Honor, had with prospective witnesses in this case. We were unaware of those allegations until this morning and therefore, the late hour of bringing this to the Court's attention. As the Court knows, we've presented the motion before Judge Brennan. Judge Brennan denied the motion to recuse at this point. She did indicate during the course, however, of that recusal denial that she was, in fact, socially acquainted, in fact

1 was social friends with two witnesses who are going to  
2 appear in this case. One of those witnesses, your Honor, is  
3 an officer who took, well both of those witnesses, first of  
4 all, are very important witnesses to the case. One of the  
5 witnesses is involved in obtaining a, probably, if I could  
6 use that, the most crucial piece of evidence that the  
7 prosecution has in this case in terms of physical evidence  
8 and that is a, something that's going to be alleged as  
9 having been written by my client, Mr. Kowalski and used  
10 directly against him. The other witness, your Honor, is a  
11 witness who is going to have a large standing role in the  
12 case. He is one of the investigating officers, the chief  
13 investigation officer, who was involved in taking a  
14 statement from my client, which is hours long. He was  
15 involved in the investigation from the start to the finish  
16 of this case in terms of the integral portions of the case.  
17 He was involved in virtually every aspect of the case with  
18 his partner as the investigating, the chief investigating  
19 officer, officer in charge, whatever you want to call him.  
20 There's a concern by my client, your Honor, that as a result  
21 of that fact, he's not going to get a fair trial. He's not  
22 going to get treated as if this Court were sitting in  
23 judgment of him because, for example, you don't know these  
24 two witnesses who are both crucial to this case. And that's  
25 been the concern and that's the concern that we've raised.



1       There's a concern, your Honor, with respect to the  
2       appearance of propriety. We don't have any actual showing  
3       in this situation that Judge Brennan is, in fact, prejudice  
4       with respect to Mr. Kowalski. We don't have that actual  
5       showing. But what we do have is an appearance of  
6       impropriety at this stage given the fact that Mr. Kizer  
7       submitted this letter, provided that information, and that  
8       the Judge made certain allegations, I'm sorry, made certain  
9       statements on the record with respect to the fact that she  
10      is, in fact, familiar and friends with those two  
11      individuals. Your Honor, I know we all know judges. And  
12      judges, of course, know lawyers. It's, but it's different  
13      when there is a witness on the stand who, that, that the  
14      Court is aware of, is a friend of because there's a concern  
15      that that witness could be treated differently on cross-  
16      exam. There could be certain rulings that are going to be  
17      made with respect to that witness that would not otherwise  
18      be made had that person not had that relationship. That's,  
19      that's the appearance. It may not be in fact, but that's  
20      the appearance. And so with those concerns that I wanted to  
21      raise those and bring those to the Court's attention, we ask  
22      the Court to recuse the judge in this case, Judge Brennan.  
23      Thank you.

24                   THE COURT: Do you know of any specific case that  
25      in and of itself, that would suggest that a judge being

1 social friends either with the attorney or one of the  
2 witnesses, that that would be enough for recusal?

3 MR. PISZCZATOWSKI: Your Honor, I don't have  
4 anything. I will look at, over the weekend, due to the late  
5 hour that I received it, we've been dealing with this  
6 literally since I received it. I haven't had a chance to  
7 even research it. So I do not, your Honor. I apologize to  
8 the Court for that fact because I know it's just kind of out  
9 there and I don't have any specific case law to support the  
10 position. I'm just concerned and I wanted to raise it, your  
11 Honor, so it wasn't waived. That's all.

12 THE COURT: And I know I originally assigned this  
13 case to Judge Brennan when Judge Latreille retired and there  
14 was a vacancy that we had that had gone on for five weeks or  
15 so and I wasn't sure when we were going to receive a  
16 replacement. And I assigned the case with the consent of  
17 Judge Brennan to Judge Brennan. So it's at least since May  
18 or June of 2009 she has been actively involved in this case  
19 and I believe that your involvement in the case has been  
20 just about as long?

21 MR. PISZCZATOWSKI: Yes, your Honor.

22 THE COURT: Okay. Up until you received this  
23 letter today that was provided to you by the prosecutor's  
24 office, have you had any thought that the Judge might, in  
25 any way, be biased or prejudiced against either you or your

1 client in this matter?

2 MR. PISZCZATOWSKI: Other than I didn't like some  
3 rulings.

4 THE COURT: She ruled against you and you went up  
5 to the Supreme Court. I know that but -

6 MR. PISZCZATOWSKI: You know Judge, looking back, I  
7 don't, now I'd have to look at it. I mean, there was a  
8 Walking hearing we held, but I don't get that sense. No. I  
9 mean, I don't get that sense. I mean, we did have a Walker  
10 hearing and I thought we had an excellent issue in the  
11 Walker hearing and it just kind of got brushed aside on an  
12 advice of rights where the, without belaboring the issue,  
13 where the officer who was Furlong, who is the guy that's  
14 involved in this case, gave the rights and said oh, you  
15 know, you got the rights from, you know, that you got  
16 yesterday and they, that gets kind of convoluted. And I'd  
17 have to go off to side bar so I don't cause any prejudice  
18 that I don't need to do, but anyway so I thought that was an  
19 excellent issue. We lost it. But no, I mean, prejudice, I  
20 can't say but, you know, that was a witness that was  
21 involved. You know what I mean? Now looking back, of  
22 course, everything, you know, you can look back with  
23 hindsight and ascribe a lot of different reasons, but no.

24 THE COURT: I mean, as judges we all get appealed.  
25 I have a, threw out a confession on another criminal case

1 that the prosecutor's office is handling with me and  
2 they've, I guess they've appealed me. I've got the case  
3 stayed, stayed right now so they can take it up. And as  
4 judges, we're in that business. We make decisions, but, and  
5 I understand some go one way and some go the other way even  
6 though you believe that, you know, zealously in your heart  
7 that it's based fairly inappropriate in the law. But what  
8 I'm suggesting or asking you is if there's something that  
9 was beyond that. And what you've indicated to me is no. I  
10 mean, it's, uh -

11 MR. PISZCZATOWSKI: It's a client concern, your  
12 Honor, other than a personal concern, I'd have to say.

13 THE COURT: Okay.

14 MR. PISZCZATOWSKI: Yes, your Honor.

15 THE COURT: And in your argument, you, what you  
16 stated is we have no actual showing of impropriety.

17 MR. PISZCZATOWSKI: We do, your Honor. I mean, I  
18 don't know, I haven't researched it. I don't know that a  
19 judge has to disclose relationships. I don't know, I don't  
20 even know the law on that, to be honest with you. I don't  
21 know. Maybe, maybe our learned appellate counsel will be  
22 able to assist us, your Honor.

23 THE COURT: I've had people that I've known that  
24 are on the witness stand. I have, uh, a Friend of the Court  
25 officer, I have probation agents I see all the time that

1 I've been in social settings with. They'll, they'll testify  
2 regarding probation violations by defendants. That's,  
3 judges cannot live in a crystal enclosed glass and be  
4 totally cloistered. We're not monks. We're not, we're  
5 judges. And we, you know, we are involved in the community.  
6 Mr. Vaillencourt? Or Ms. Maas? I'm not sure. Boss or  
7 second in command?

8 MS. MAAS: I'd love to defer to the boss, but I  
9 guess I'm the attorney of record in this matter, so I'll  
10 stand up. Judge, uh, obviously we appreciate the Court  
11 taking the time to hear this because we have dozens of  
12 witnesses that are scheduled to begin appearing before the  
13 Court on Monday for this trial. I think that, uh, the  
14 record in the lower Court was that there is no actual bias.  
15 There's no, uh, there are no actual facts that have been  
16 placed on the record. There has been nothing to indicate  
17 concern that there may have been facts known prior to the  
18 letter that was received this morning and weren't acted on  
19 before. And so in light of all of that, we just really want  
20 to get this trial rolling on Monday. I don't see a basis, I  
21 too haven't been able to research. I have people that are  
22 researching it now and every two seconds there's a new case  
23 coming in which I haven't been able to read. But, uh, I  
24 guess at this point in time, without there being any  
25 specific facts, any specific incidents of bias, I see no

1 reason why Judge Brennan should be disqualified and we're  
2 hoping to be down the hall for jury selection on Monday  
3 morning.

4 THE COURT: Can I have counsel approach, please?  
5 What I have and what was supplied to me is this three page  
6 letter from Mr. Kizer. Is that what we're talking about?

7 MS. MAAS: That's the letter.

8 MR. PISZCZATOWSKI: Yes, your Honor. That's all we  
9 have.

10 THE COURT: I'm going to mark this as exhibit one  
11 for purposes of this hearing. And with your acknowledgment  
12 that is the letter that was received, I'm going to admit it  
13 for purposes of this hearing only.

14 MS. MAAS: Thank you, your Honor.

15 THE COURT: Mr. Piszczatowski, is that it?

16 MR. PISZCZATOWSKI: Yes, your Honor.

17 THE COURT: Did I pronounce it correctly?

18 MR. PISZCZATOWSKI: Yes, your Honor.

19 THE COURT: Do you have anything else, sir?

20 MR. PISZCZATOWSKI: No, your Honor, I do not at  
21 this time. Thank you.

22 THE COURT: I have reviewed the letter from Mr.  
23 Kizer. I have reviewed in its entirety the hearing that was  
24 held before Judge Brennan. The video of the proceeding was  
25 emailed to me and I did, uh, not emailed, but it was placed

1 in my recording box so I did have an opportunity to review  
2 that. I will comment that, uh, Judge Brennan is right.  
3 There is a history between herself and this attorney. I  
4 believe that she did correctly recite some of that history  
5 on the record as far as, uh, litigation. The judicial  
6 tenure matter which she referred to in her record that was  
7 made in making her ruling, I have no, no knowledge of  
8 whatsoever. Those are private proceedings. And they would  
9 not be made available to the public, nor this Court. The,  
10 uh, a party seeking to disqualify a judge on the basis of  
11 bias or prejudice or even here, a showing of impropriety,  
12 carries the burden of overcoming a presumption of judicial  
13 impartiality. Russ versus Russ, 143 Mich App 704. I am  
14 aware that Russ was decided before this whole, uh,  
15 appearance of impropriety standard was changed within our  
16 disqualification. I think the same general applies that  
17 there is a duty, in fact when I go up to, all of us as  
18 judges, when we go up to our courses and conferences that we  
19 have, we're quite frankly told that there is an obligation  
20 and a duty to serve and a duty to sit. Of course, that can  
21 be overcome by bias or prejudice or an appearance of  
22 impropriety that rises to the point where the judge would  
23 otherwise be disqualified. The only allegations with  
24 respect to Judge Brennan, and it was boiled down by her, in  
25 essence condensing this three-page letter from Mr. Kizer to

1 Mr. Vaillencourt, is that she has a social friendship with  
2 two officers, two State Police officers who will be  
3 witnesses in the case involving Mr. Kowalski. She  
4 acknowledged that on the record. She freely admitted that.  
5 And then she went into a long recitation to indicate, you  
6 know, if I had this bias or prejudice or if I could not be  
7 fair and impartial, one of the things she talked about is  
8 why would I spend so much time on this Daubert hearing and  
9 investigating, reviewing, and going over all of the material  
10 for the Daubert hearing. And they were interesting issues,  
11 Mr. Piszczatowski, the issues that went all the way up to  
12 the Supreme Court, and which is why this case is going on to  
13 four years old. They did take some time and it was obvious  
14 by the opinion that was given by the Judge that there had  
15 been substantial work product that had gone into  
16 considering, preparing for, and then giving that decision.  
17 Judge Brennan ruled that she had reviewed the letter. She  
18 had reviewed the court rules and the canons and ethics. She  
19 did indicate that she holds the canons of ethics dear. She  
20 stated she was not bias or prejudice for or against one  
21 party or an attorney. She reviewed the disqualification  
22 provisions under MCR 2.03 [sic] and canon two. She found  
23 that, she reviewed them in some detail, going through the  
24 subsections and that she had not violated those canons nor a  
25 court rule. She addressed that the heart of the complaint



1 was of her being friends with two of the witnesses. She  
2 acknowledged that. She did not believe that she had a duty  
3 to disclose those friendships. But I've got to say those  
4 friendships are really, really not hidden to the community.  
5 I think it's well known by the legal community here in this,  
6 in this area. I would indicate that, uh, perhaps myself, I  
7 was personally aware of that and quite frankly, didn't think  
8 anything of it. She said she considered canon two,  
9 restriction on conduct, and described her understanding.  
10 Quote, I don't think that means that I can't be friends with  
11 people. What I believe is that I have to look into my heart  
12 and soul and decide whether that affects me in any way, and  
13 if it does, then I can't handle the case. And this is your  
14 life, Mr. Kowalski. I understand that. And if I thought  
15 for one second that my friendship would affect how I treated  
16 you, how I rule, I would recuse myself in a heartbeat. My  
17 friendship will not and has not for a split second impacted  
18 the decisions that I've made. End of quote. There was one,  
19 uh, matter that was addressed in the letter that the Judge  
20 did address on the record. And that was of the one officer,  
21 Corriveau, on November 14<sup>th</sup> going back into chambers with  
22 the Judge. The Judge did address that on the record and  
23 indicated that the matter that was addressed was a search  
24 warrant. And, which is fairly typical for District Court  
25 Judges. I've sat down, uh, and served as a District Court

1 Judge for over a month. It's quite common to get  
2 interrupted during proceedings. Sometimes if you're the  
3 only Judge available, the officers can be fairly insistent  
4 on getting some sort of, uh, warrant issued, especially if  
5 it's a, there's a timeliness issue. And quite often with  
6 those there is a timeliness issue. So that was addressed by  
7 the Judge on the record. And to this Court, it's entirely  
8 appropriate. While, uh, this Court is unable to find a case  
9 directly on point as to a judge's potential bias due to  
10 friendship, I would note that in Schied versus State, an  
11 unpublished per curiam opinion of the Court of Appeals  
12 decided May 19, 2009 in docket 282804, the Court held that  
13 statements of the Circuit Court Judge regarding a friendship  
14 with one of the named defendants did not alone demonstrate a  
15 probability of bias that would have required  
16 disqualification under MCR 2.003. On a decision to  
17 disqualify the Judge, factual findings are reviewed for an  
18 abuse of discretion. The application of the relevant law to  
19 those facts is reviewed de novo. People versus Wells, 238  
20 Mich App 383, page 391 (1999). This is a serious case. It  
21 is a, it is probably one of the most serious cases that this  
22 Court could and would consider. I do not take lightly and I  
23 do not fault you, Mr. Piszczatowski, for bringing this  
24 motion. It's entirely appropriate and reasonable and  
25 proper. But I do note that it has come very late, very late

1 in these proceedings, on the eve of trial. And, uh, the,  
2 uh, Judge suggested on the record that Mr. Kizer's letter,  
3 which has been marked as exhibit one, had nothing to do with  
4 Mr. Kowalski but indeed had something more to do with the  
5 Judge. She, in essence, recited the, the history. Given  
6 the fact that it, it is and has been no secret in the legal  
7 community here of a friendship that the Judge freely  
8 acknowledged on the record with several of the officers -  
9 and there are other officers; there are attorneys that, uh,  
10 she has socialized with. And again, that is well known  
11 within this community. I have to, uh, agree with the Judge,  
12 agree with Judge Brennan. There's something, other than Mr.  
13 Kowalski involved in the timing of this letter coming on the  
14 eve of trial. And for the, any grief or dis-, consternation  
15 or upset that it has caused Mr. Kowalski or to you, Mr.  
16 Piszczatowski, this Court apologizes. I have reviewed the  
17 proceeding. I've listened to your arguments. I've reviewed  
18 the letter. I believe that Judge Brennan gave a thoughtful,  
19 well-reasoned analysis for her decision to deny the motion.  
20 And I do not find that was a disqual-, was an abuse of  
21 discretion on her part. Based upon that, I will affirm her  
22 decision and return this matter to Judge Brennan for further  
23 proceedings.

24 MS. MAAS: Thank you, your Honor.

25 THE COURT: Thank you.

