

Order

Michigan Supreme Court
Lansing, Michigan

January 28, 2022

Bridget M. McCormack,
Chief Justice

159088

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

In re BYRON J. KONSCHUH, JUDGE
40th CIRCUIT COURT

SC: 159088
JTC Formal Complaint 100

BEFORE THE JUDICIAL TENURE COMMISSION

On order of the Court, the Judicial Tenure Commission's Bill of Costs is considered, and the respondent, Byron J. Korschuh, is ordered to pay costs of \$7,091.04 to the Commission.

CLEMENT, J. (*concurring*).

I concur in the imposition of costs, and I write only to reiterate the concerns that Justice CAVANAGH raised in her dissenting statement in *In re Brennan*, 505 Mich 851 (2019) (CAVANAGH, J., dissenting), which I joined. I continue to have doubts regarding this Court's constitutional authority to impose costs. Additionally, I believe that if this Court continues to impose costs—a topic that is currently under consideration in ADM 2019-28—we should provide guidance as to how to apportion them. Nevertheless, just as in *Brennan*, respondent does not raise these issues, so I would not reach them here.¹

CAVANAGH, J., joins the statement of CLEMENT, J.

¹ While in *Brennan*, I joined Justice CAVANAGH's dissenting statement because I believed that the Court should have awarded the full amount of costs requested by the Judicial Tenure Commission (JTC), I concur in the costs assessed by the Court in this case, which are a fraction of those requested. In *Brennan*, the JTC persuasively argued that the respondent's deceitful conduct "permeated all aspects of the proceedings," so costs could not be apportioned. *Id.* at 852 (CAVANAGH, J., dissenting). The JTC has made no such argument in this case.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 28, 2022

Clerk