

STATE OF MICHIGAN
SAGINAW COUNTY CIRCUIT COURT
BUSINESS COURT

RUSSELL L. BUSH, MD, MPH,

Plaintiff,

v.

MICHIGAN INSTITUTE OF FORENSIC
SCIENCE & MEDICINE, PC, and
DAVID STOCKMAN, MD,

Defendants.

Case No. 21-046093-CB

Judge: M. Randall Jurrens (P27637)

**OPINION AND ORDER DENYING
DEFENDANT STOCKMAN'S
MOTION TO DISQUALIFY**

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¹ On April 7, 2025, attorney Kelly's motion to withdraw as counsel for both defendants was orally granted on the record, but awaits a formal written order to be entered upon presentment pursuant to MCR 2.602(B).

² With attorney Kelly withdrawing and the court having granted defendants 28 days to retain substitute counsel (at least for corporate defendant), individual defendant Stockman is presently effectively self-represented.

Ninety three minutes before an April 7, 2025 hearing on a motion to allow his attorney to withdraw, defendant Stockman emailed my judicial assistant several documents, including a motion for my disqualification and a notice of hearing to coincide with his attorney's motion.³

At the hearing, I dispensed with oral arguments, MCR 2.119(E)(3), and, after stating my thoughts on the record (assembled quickly given the short notice and the press of other business), orally denied the motion. What follows is a more formal opinion and order.

Disqualification of judges is governed by MCR 2.003.

MCR 2.003(D)(1)(a) states motions to disqualify “must be filed within 14 days of the discovery of the grounds for disqualification.” Here, nearly all of defendant's reasons for disqualification are grounded in events occurring months ago, one more recent, and one that has not even occurred.

MCR 2.003(D)(2) requires that disqualification motions be accompanied by an affidavit. Here, defendant failed to do so.

Additionally, every motion that presents an issue of law must be “accompanied by a brief citing the authority on which it is based”, MCR 2.119(A)(2). Here, defendant did not submit a supporting brief, nor did defendant's motion itself cite any legal authority (other than general reference to MCR 2.003) or analysis.

Accordingly, defendant's motion fails to conform to various procedural requirements. This alone justifies the motion's denial

³ At the time of filing his motion, defendant Stockman was represented by counsel. Whatever the error in filing documents independently, I've elected to overlook the irregularity, particularly since defendant's attorney was, in short order, allowed to withdraw, leaving defendant to represent himself anyway.

But even if the motion's procedural defects are overlooked, defendant has not demonstrated substantive grounds for my disqualification.

As a starting point, it is important to recognize that courts are subject to a "duty to sit" doctrine that obligates judges "to remain on a case absent good grounds for recusal." *Adair v Michigan*, 474 Mich 1027, 1040-1041; 709 NW2d 567 (2006). "Judges have a duty to sit when not disqualified that is equally as strong as the duty not to sit when disqualified." *Id.* at 1041. Indeed, "[w]here the standards governing disqualification have not been met, disqualification is not optional; rather, it is prohibited." *Id.*

Moreover, a trial judge is presumed "impartial and the party asserting otherwise bears a heavy burden to overcome that presumption." *Huntington Nat'l Bank v Daniel J Aronoff Living Trust*, 305 Mich App 496, 517; 853 NW2d 481 (2014). Importantly, judicial rulings, in and of themselves, almost never constitute a valid basis for disqualification. *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 597; 640 NW2d 321 (2001).

Here, defendant's motion asserts several grounds for disqualification: unequal enforcement of court orders, refusal to protect defendant from media harassment, mishandling of summary disposition and arbitration proceedings, disregarding bankruptcy's automatic stay, denial of pro se status, allowing improper use of garnishment, and public comments of bias.

While defendant's motion fails to identify which specific ground(s) for disqualification recognized by MCR 2.003(C)(1) applies, two appear most relevant:

- (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 as enunciated in *Caperton v Massey*, [556 US 868]; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.

MCR 2.003(C)(1)(a) requires a showing of actual bias or prejudice. *Cain v Mich Dep't of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996). Indeed, a movant must demonstrate “a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Id.* at 496. Here, defendant fails to identify any evidence that I have, much less have shown, actual bias or prejudice against him or in favor of plaintiff or his attorney; only the assertion that, without providing context, I said “Whoever this guy Stockman thinks he is [] I feel like I’ve been played”. Without more, evidence of frustration with a litigant does not demonstrate the necessary actual bias or prejudice necessary for disqualification under MCR 2.003(C)(1)(a).

However, actual bias or prejudice is not a prerequisite to the other perceived possible ground for disqualification, MCR 2.003(C)(1)(b). This sub-rule offers two possibilities for disqualification: violation of a litigant’s due process rights and appearance of impropriety.

The first prong of this ground for disqualification is founded on the Due Process Clause, US Const, Am XIV. “It is axiomatic that [a] fair trial in a fair tribunal is a basic requirement of due process.” *Caperton v Massey*, 556 US 868, 876 (2009) (cleaned up)⁴. “[T]he Due Process Clause incorporated the common-law rule that a judge must recuse himself when he has a direct, personal, substantial, pecuniary interest in a case”. *Id.* .

In lieu of exclusive reliance on [a judge’s] personal inquiry [into his or her own actual bias], the Due Process Clause has been implemented by objective standards that do not require proof of actual bias. [These objective standards] ask whether

⁴ In *Caperton*, the Supreme Court of Appeals of West Virginia, in a 3 to 2 vote, reversed a \$50 million jury verdict that had been entered against a defendant coal company and its affiliates. One of the West Virginia justices in the majority had denied a recusal motion. The motion for recusal was based on the fact “that the justice had received campaign contributions in an extraordinary amount from, and through the efforts of, the board chairman and principal officer of the corporation found liable for the damages.” *Caperton*, 556 US at 872. The United States Supreme Court reversed, stating that “there is serious risk of actual bias . . . when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge’s election campaign when the case was pending or imminent.” *Id.*

under a realistic appraisal of psychological tendencies and human weakness, the interest poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented. [*Id.* at 883-884 (cleaned up)]

Here, I have no stake in the litigation or its outcome. The *Caperton* Court specifically noted it was “an exceptional case”, *Id.* at 884, rather than merely a case of nominal, incidental or indirect benefit. Here, objectively, my acknowledged human imperfections notwithstanding, defendant has not demonstrated that I have an interest that “poses such a risk of actual bias or prejudgment that [] must be [avoided to assure] the guarantee of due process”. *Id.*

As to the second prong, Canon 2 of the Michigan Code of Judicial Conduct provides:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so feely and willingly.

“[T]he test for determining whether there is an appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge’s ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.” *Kern v Kern-Koskela*, 320 Mich App 212, 232; 905 NW2d 453 (2017).

Conversely, the appearance of impropriety standard,

cannot be equated with *any* person's perception of impropriety, lest a judge find himself or herself subject to a barrage of recusal motions on the part of *any* person who apprehends an impropriety, however unreasonable this apprehension. Rather, this standard must be assessed in light of what can be gleaned from existing court rules and canons, historical practices and expectations, and common sense. [*Adair v Michigan*, 474 Mich 1027, 1039; 709 NW2d 567 (2006)]

The “appearance of impropriety” inquiry is an objective one, made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances.” *Adair*, at 1039.

Here, defendant complains, without elaboration, that plaintiff's attorneys violated a prior court order⁵ on June 27, 2023, January 16, 2024, January 24, 2024, July 19, 2024, August 19, 2024, and October 29, 2024. Whatever the attorneys' violation(s) and/or my failure to act (which is understandable in the absence of being apprised of a violation), the time for seeking my disqualification expired long ago. MCR 2.003(D)(1)(a).

Next, defendant complains I failed to protect him from media harassment by refusing to issue a protective order. However, defendant's motion fails to identify (and I'm not independently aware of) any request for a protective order or other form of judicial intervention for me to even entertain.

Next defendant complains I mishandled a motion for summary disposition and more recent arbitration proceedings. Defendant ignores that, although a motion for summary dismissal had been filed, it was denied (without prejudice) on October 7, 2024⁶ and the parties subsequently stipulated to private binding arbitration on November 18, 2024⁷. Once there, my involvement in the case was suspended.

Defendant next complains that I refused to honor the automatic stay imposed by 11 USC 362(a) while administering the case of *TIAA, FSB v Specialized Pathology Partners PC and David L. Stockman* (Saginaw County Circuit Court Case No. 23-000261-CB). There, judgment was

⁵ Defendant's motion states "On January 18, 2023, the Court issued a clear order prohibiting multiple attorneys from examining the same witness at deposition". Review of the Register of Actions discloses no Order of any kind was entered in this case on January 18, 2023. However, there is a January 25, 2023 order documenting the court's denial of plaintiff's motion to allow cross examination or for severance "for the reasons stated on the record".

⁶ Review of the Register of Actions does not disclose entry of a written order formalizing my bench opinion.

⁷ See Stipulated Order Removing Case From Trial Docket and Staying Case Pending Binding Arbitration entered November 18, 2024.

entered August 8, 2023 against both defendant, individually, and his professional corporation. When defendant was ordered to appear for a debtor's exam on March 28, 2025, the court ordered issuance of a bench warrant for his arrest.⁸ True, defendant's corporation filed the same day, March 28, 2025, for protection under Chapter 7 of the bankruptcy code (Bankruptcy Court for the District of South Carolina Case No. 25-01558-jd), but the resulting automatic stay, *11 USC 362(a)*, applies only to enforcement action against the debtor (i.e. not co-debtors⁹). Accordingly, there was no reason for defendant to not appear as ordered and no known restriction on my enforcement of that order.

Defendant also complains I deprived him of pro se rights in the case of *Neogenomic Laboratories Inc v. Michigan Health Clinics PC* (Saginaw County Circuit Court Case No. 23-002346-CB). True, on January 29, 2025 I granted the plaintiff's motion in that case to strike various pleadings defendant filed on his own while represented by legal counsel. But defendant offers no legal analysis how that ruling was in error much less provides grounds for disqualification. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) ("It is not sufficient for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position").

Finally, defendant asserts I'm disqualified because "[f]unds garnished in an unrelated matter are being considered for redirection toward this case [and I have] failed to intervene". True,

⁸ Plaintiff's counsel in the TIAA case has not yet submitted a bench warrant for my signature. However, I note that a bench warrant for defendant's arrest issued March 15, 2024 remains outstanding for a similar non-appearance.

⁹ I am not unaware of the co-debtor stay created by 11 USC 1301(a). However, that is limited to Chapter 13 proceedings and even then extends only to consumer debts

plaintiff's counsel in this case filed a "Motion to Allow Payment of Funds Against Sanctions and Judgment or in the Alternative For Interpleader of Funds", hoping to take the surplus of garnished funds held in their IOLTA account received in the case of *Higgs v Stockman et al.* (Saginaw County Circuit Court Case No. 24-001344-CB) and apply to sanctions previously ordered in this case and/or a judgment to be prospectively entered upon confirmation of arbitration. But the offending motion has not been heard much less granted, so it's premature to suggest I've acted improperly.

In conclusion, I find defendant's motion both procedurally defective and substantively deficient.

Accordingly, defendant's motion for disqualification is denied.

IT IS SO ORDERED.

At his request I am referring defendant's motion to the court's chief judge for de novo consideration. MCR 2.003(D)(3)(a)(i).

Date: April 9, 2025

M. Randall Jurrens (P27637)
M. Randall Jurrens, Business Court Judge