

Order

Michigan Supreme Court
Lansing, Michigan

October 5, 2022

Bridget M. McCormack,
Chief Justice

164133

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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 164133
COA: 352056
Allegan CC: 18-021709-FC

DANIEL ALBERT LOEW,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the January 13, 2022 judgment of the Court of Appeals is considered, and it is GRANTED, limited to the issues of judicial misconduct alleged in Issue II of the defendant's application for leave to appeal. The parties shall include among the issues to be briefed: (1) whether the Court of Appeals correctly concluded that the *ex parte* communications in this case did not violate Canon 3(A)(4)(a)(i) of the Code of Judicial Conduct because they were merely administrative in nature; (2) whether a trial court may properly grant a new trial in a criminal case based on an appearance of impropriety where Canon 3(A)(4) governs the conduct at issue, see *In re Haley*, 476 Mich 180, 194-195 (2006); (3) if the *ex parte* communications here give rise to legal error for either a violation of Canon 3(A)(4)(a) or an appearance of impropriety, whether the standard for ascertaining reversible prejudice requires a showing of actual harm to the defense, or is instead determined by weighing other factors as well, see, e.g., *Liljeberg v Health Servs Acquisition Corp*, 486 US 847 (1988); and (4) whether the defendant is entitled to a new trial under MCR 2.003 or constitutional guarantees of due process of law. The time allowed for oral argument shall be 20 minutes for each side. MCR 7.314(B)(1).

Amici who appeared at the application stage are invited to file supplemental briefs amicus curiae. The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



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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.

October 5, 2022


Clerk