Judge Anderson generally will NOT make a decision based on application of the law to the facts, and advise the litigants that if they do not like the results, to just take it to the court of appeals (COA). She abused her office by not applying the law she is expected to be familiar with and rather picking a side and framing only certain evidence, if any, that fits the result she prefers. This pattern of ill temperament is an injustice to litigants, individuals and small businesses that cannot afford or combat big public multi-billion dollar corporations with unlimited financial resources and connections, wastes the court's time, resources, and in our case risked jurors' safety during the COVID pandemic. In a case that Judge Anderson was involved in referred to as the *Marji* case, the COA reversed Judge Anderson stating "[a] court "considers" a question "by devoting some element of thoughtful deliberation to it." The implication being Judge Anderson didn't devote any thoughtful deliberation to the facts and rather just discounted unsupportive evidence. In *Marji*, the COA further found Judge Anderson's record was actually **DEVOID OF ANY EVIDENCE** that would permit the trial court to make a necessary and proper determination. Like *Marji*, International is being unnecessarily forced to go through the time and expense of a second trial and appeal for a decision by Judge Anderson that again is devoid of any evidence (or finding of fraud).

In my case, Judge Anderson, who didn't preside over the first trial or seemingly didn't review the first trial record, completely discounted all the testimony from multiple witnesses and chose to believe the admittedly exaggerated, knowingly staged and written false affidavit presented to mislead the court and abuse the judicial system. Judge Anderson stated Depa's testimony contained an "*indicia of truthfulness*" (as opposed to required standard of review for clear and convincing evidence of fraud) and completely disregarded the fact in my favor The case was eventually remained and the defendants had our playbook and had a cooperating witness who was willing to mislead and lie and they knew that Judge Anderson did not have the judicial business acumen and was either easily or intentionally manipulated to make discretionary decisions that in total literlaly railroaded me and my company throughout the whole process. Not surprisingly, Depa had been disclosed prior to the first trial as International's real estate director and as someone who assisted International in answering discovery requests, but was never called or deposed by Defendants because they didn't feel they needed to call upon him with their previous litigation strategy.

In addition, on a truly elementary judicial issue (like jurisdiction), **Judge Anderson refused to dismiss defendants' motion for relief from judgment when the defendants had a pending appeal in the COA.** Instead, she used her typical maneuver and required IO to file an application for leave to appeal which the COA. The first lesson in law is jurisdiction, the lawyers and Judge Anderson CLEARLY understood and knew the jurisdiction rules and processes. They even researched the issue and also my attorneys pointed it out in a motion that the JUDGE did not have jurisdiction. The plan was to allow the court process to proceed and create a false record so that if the matter is finally heard at the COA, the train had already left the station and the process had already started playing itself out. If the judge DID NOT have jurisdiction in the first place, then regardless of what the COA decides, Judge Anderson was WRONG in her actions from the start and the process should have never been started in the first place. There is a process but the attorneys staged it so that Judge Anderson could rule in their favor based on a false affidavit that was never vetted for any accuracy and to start the process over. Judge Anderson improperly allowed the process and false accusations to continue into the record, the COA then subsequently allowed the Defendants to remand the case and retroactively applied the order to avoid a Statue of limitations bar. You see, the Lamar and SSMITX lawyers knew that they were outside of the statue of limitations even though they had been talking to Depa for months prior and they did not disclose the evidence to the courts and they knowingly withheld information that they knew was before the court and was not true, but they also knew and understood that Judge Anderson did not have the business acumen or was going to rule in their favor if it ever came to that point. This is evident with the many discretionary decisions which ultimately railroaded me deeper and deeper to a point where no matter what I did, I could not put my details and facts forward. Judge Anderson wanted to create a full record that would confuse and compile more issues on appeal where the case should have never gone on appeal in the first place.

Even after the remand order, the COA retained jurisdiction and only allowed for the trial court to conduct an evidentiary hearing after which the parties were to file supplemental briefing in the COA. **Judge Anderson, completely aware of the jurisdictional issue**, advised the parties, after she split the evidentiary hearing because the defendants' forensic expert intentionally was not ready. It was all staged. Judge Anderson stated that the COA would just have to "find her in contempt" and that she would hold the second part of the evidentiary hearing whenever she could. Having a court hearing (bi-furcated) split where we put our proofs on and then the other side has their expert and we are not allowed an expert to refute their testimony was very prejudicial to me. The hearing was highly prejudicial in that discovery was ongoing during the first part of the hearing. Defendants' expert and attorneys were aware of witness testimony before the expert completed his report. The report itself went completely beyond the scope of the protective order (likely because no original version of the renewal was found) and was intended to distract and shift the focus away from the "clear and convincing" evidence

Additionally, the court had the parties prepare findings of fact for the court to assist it in formulating its opinion after the evidentiary hearing. Judge Anderson didn't use any findings of fact from the parties' briefing. In fact, she didn't even issue a written opinion. The judge issued an oral opinion without any recitation of the standard of review or legal precedent. The court set aside a jury verdict based on an "*indicia of truthfulness*" from 1 witness's statements. **No objective evidence of fraud was ever discovered**.

IO repeatedly asked for discovery before, during, and after the evidentiary hearing to prepare for the new trial. Judge Anderson ruled (more than once) discovery was closed, further prejudicing International from defending itself from false claims. Judge Anderson also denied a request to add the new owner's of the property (the original SSMITX sold to a new company, National Storage). However, 1 week before trial, the defendants issued a subpoena to IO's bank for copies of a certain check (that defendants had for almost 1-year prior). IO moved to quash the subpoena, but Anderson denied the motion and allowed it to come into the trial, contrary to her previous "no more discovery" orders.

Judge Anderson advised the jury, and held, that a contract for real property could be modified orally, contrary to the statute of frauds, and long after a condition precedent in the contract had already terminated the contract. She also found that Defendant Lamar was entitled to 5 additional years of lost profits on a lease that had not even begun, effectively giving Lamar a 25-year contract as opposed to a 20 year as SSMITX and Lamar originally agreed.

Generally speaking, Judge Anderson will make a decision (not based in law) and advise the litigants that if they do not like the results, to just take it to the COA. She is abusing her office by not applying the law and rather picking a side and picking and choosing only certain evidence that fits the result she prefers. This is evident in our case and the *Marji* case highlighted above where the COA reversed her and stated "A court "considers" a question "by devoting some element of thoughtful deliberation to it." The implication being Judge Anderson didn't devote any thoughtful deliberation to the facts and rather just discounted unsupportive evidence. The COA further found Judge Anderson's *Marji* record was actually **"DEVOID OF ANY EVIDENCE"** that would permit the trial court to make a necessary and proper determination. (*emphasis added*)

In our case, Judge Anderson completely discounted all the testimony from multiple witnesses and chose to believe the testimony of Depa, which was (even in the court's eyes) not the most creditable. Judge Anderson believed Depa's testimony contained an "indicia of truthfulness" (as opposed to Defendants introducing clear and convincing evidence a fraud on the court was committed) and completely disregarded the fact the renewal letter was never found in IO's IT infrastructure to prove the creation date. The case, after Depa's testimony, remained a he/said she/said argument which is all the first trial was, except this time the defendants had our

playbook and had a cooperating witness (who was disclosed well before the first trial and defendants determined not to call him) who didn't think sworn statements needed to be accurate or precise.

In addition, on a truly black and white issue (jurisdiction), Judge Anderson refused to dismiss defendants' motion for relief from judgment when the Defendants had a pending appeal in the COA. Instead, she used her typical maneuver and required IO to file an application for leave to appeal which the COA then summarily reversed the judge and dismissed defendants' motion. For whatever reason, the COA subsequently then allowed the defendants to remand the case and retroactively applied the order to avoid a SOL bar.

Even after the remand order, the COA retained jurisdiction and only allowed for the trial court to conduct an evidentiary hearing after which the parties were to file supplemental briefing in the COA. Judge Anderson, completely aware of the jurisdictional issue, advised the parties (after she bifurcated the evidentiary hearing because the defendants' forensic expert was not ready) that the COA would just have to find her in contempt and that she would hold the 2nd part of the evidentiary hearing whenever she could. Bifurcating the hearing is highly prejudicial in that discovery was ongoing during the first part of the hearing. Defendants' expert was aware of witness testimony before he completed his report. The report itself went completely beyond the scope of the protective order (likely because no original version of the renewal was found) and was intended to shift the focus away from the "clear and convincing" evidence of the original Word version renewal letter (since the litigation began, IO has maintained it was not in possession of the computer used to create the letter and Judge Anderson didn't believe IO based solely on a statement in the affidavit that Depa, post-affidavit, admitted was false).

Additionally, the court (properly) had the parties prepare findings of fact for the court to assist it in formulating its opinion after the evidentiary hearing. Judge Anderson didn't use any findings of fact from the parties' briefing. In fact, she didn't even issue a written opinion. The judge issued an oral opinion without any recitation of the standard of review or legal precedent. The court set aside a jury verdict based on an "indicia of truthfulness" from 1 witness and completely disregarded the other FOUR witnesses that testified contrary to Depa. No objective evidence of fraud was ever discovered.

IO repeatedly asked for additional discovery after the evidentiary hearing to prepare for the new trial. Judge Anderson ruled (more than once) discovery was closed. Judge Anderson also denied a request to add the new owner's of the property (the original SSMITX sold to a new company, National Storage). However, 1 week before trial, the defendants issued a subpoena to IO's bank for copies of a certain check (that defendants had for almost 1-year prior). IO moved to quash the subpoena, but Anderson allowed it to come into the trial, contrary to her previous "no more discovery" orders.

Judge Anderson also found that a contract for real property could be modified orally long after a condition precedent in the contract terminated the contract. She also found that Defendant Lamar was entitled to 5 years of lost profits on a lease that had not even begun, effectively giving Lamar a 25-year contract as opposed to a 20 year as SSMITX and Lamar originally agreed.

List of errors made by Judge Martha Anderson

1. Entertaining the motion for relief when the matter was on appeal (6/19/19), when the court did not have jurisdiction; continuing the proceedings when advised by counsel that there was no jurisdiction; then denying our motion to dismiss the motion despite the court rule and case law.

2. Not following the COA deadlines.

3. Going beyond the scope of the remand order (8/15/19) and ordering a new trial despite not having jurisdiction. The judge only had authority to grant or deny the motion, not order a new trial. **8.14.19 COA reversed order and told Lamar to file a motion.**
Court of Appeals has already decided this issue. One panelist was Elizabeth Gleicher, Mark Granzotto's wife who should of recused herself since her husband was retained by me and after giving him a deposit to wok on my appeal, would not return my calls and I was forced to find another firm. Her husband Mark Granzotto told me that he talked to his wife about the case and that if he handled my matter, she would have to recuse herself of which she did not.

4. Allowing Stott Matthews to exceed the scope of the protective order and produce a report and testify when we could not as a practical matter rebut, particularly given the limits placed on discovery. **The court did this after the fact. Matthews exceeded the order and then we had the hearing, where we argued Matthews went too far. The trial court expanded its order after the fact.**

5. Bifurcating the evidentiary hearing. Discovery was on-going at the time of the first part of the evidentiary hearing (8/23/19) which prejudiced IO because there was no evidence from Spectrum to use on cross examination of Pat. Both sides should have all of the evidence before the start of an evidentiary hearing. Lamar had access to and could communicate with Spectrum prior to the first hearing about information/ documents it found or did not find**. Information from Matthews helped support Depa false testimony and we were not allowed our own expert. Which acknowledged that he found no support for Depa's claims**.

6. Denying post-new trial order discovery. The judge ordered no new discovery post-order setting aside judgment. The evidentiary hearing had limited discovery and created many new problematic evidentiary issues that warrant additional discovery. IO is not allowed to do any discovery into Pat when he was added to the witness list. (1/23/2020)
7. Not allowing for full discovery concerning Pat when he was added as a witness. **See #6.**

8. Not ruling on the motion for reconsideration for months.

9. Denying the addition of a necessary new party, National Storage, who is the current owner of the real estate in question. (2/26/2020).

10. Denied all MIL's for both Plaintiff and Defendants. This benefitted Lamar more than IO.

11. Denied P's motion to amend complaint (2/26/20)

12. Order denying + granting in part IO's motion to allow discovery and amend witness list. Denied discovery and amendment to witness lists except witnesses who testified at the post-trial evidentiary hearing and those giving opinion testimony on information technology (1/23/20)

13. Order granting in part Lamar's motion to release Spectrum report and documents. IO was required to prove a copy of versions 1 and 2 of Pat Depa notes by October 21, 2019. (10/18/19). IO objected to the production under attorney/client privilege.

14. Order denying our emergency motion to strike defense experts (8/23/19)

15. Order setting evidentiary hearing for August 23 - if I recall correctly, you told the judge that date did not work for you/out of town?

16. Order denying P's motion for stay of proceedings pending final resolution of its application for leave to appeal (3/12/20) **This was fast tracked and the judge while not having jurisdiction was allowing false evidence to be granted and the process to move forward to create a false record to the COA**

17. Order denying P's motion to dismiss (8/7/19)

18. Order granting D's motion re: computer and server inspection and imaging (7/31/19)

19. Order rendering P's motion for reconsideration (3/12/20)

20. Order denying P's motion for stay of proceedings (8/8/19)

21. Order granting D's motion for relief from judgment (12/19/19)

22. Order denying P's motion for contempt (10/18/19)

23. Judge entertains the motion for relief from judgment when the matter was on appeal (i.e. when the court did not have jurisdiction) and continuing the proceedings when advised by IO counsel that there was no jurisdiction and denying IO's motion to dismiss in spite of the court rule and case law. (6/19/19) Moot. COA orders address this.

24. The judge failed to rule on IO's motion for reconsideration for months depriving it of the ability to file for leave to appeal. Additionally, the judge has never entered an order on IO's motion for attorney fees and costs (which judge Potts previously ordered 12/19/18). We participated in an evidentiary hearing before Judge Anderson on the fee issue in March 2019 and she never entered an order.

25. The Court denied Plaintiff's motion to quash Defendants' subpoena to Flagstar Bank (8/10/21)

26. The Court granted in part Lamar's motion for entry of judgment following the jury trial. (8/31/21)

27. The Court denied Plaintiff's motion for reconsideration. (7/27/21)

28. The protective order did not protect IO's attorney/client communications other than communications with Potter's firm. The defendant's forensic inspector had access numerous attorney/client communications of other outside firms retained by IO. IO filed a motion for reconsideration of the PO that was denied, and no additional retained firms were added to the protective order.

29. The protective order also allowed Defendant's forensic inspector to "identify any documents or information found during inspection" and provide a "brief description of relevant documents or information". The protective order did not contemplate the investigator preparing an expert report or to testify beyond what documents were found. IO filed a motion for contempt to prohibit Spectrum's testimony that the judge denied. Furthermore, the judge allowed Spectrum to be qualified as an expert and opine about topics well beyond the scope of his authority (either outside the dates or beyond the

topics). The judge, having granted Spectrum to testify as such, greatly prejudiced IO because there was no opportunity to rebut Spectrum's testimony given the limited discovery.

30. The protective order also allowed Defendant's forensic inspector to "identify any documents or information found during inspection" and provide a "brief description of relevant documents or information". The protective order did not contemplate the investigator preparing an expert report or to testify beyond what documents were found. IO filed a motion for contempt to prohibit Spectrum's testimony that the judge denied. Furthermore, the judge allowed Spectrum to be qualified as an expert and opine about topics well beyond the scope of his authority (either outside the dates or beyond the topics). The judge, having granted Spectrum to testify as such, greatly prejudiced IO because there was no opportunity to rebut Spectrum's testimony given the limited discovery. **Covered p.16.**

31. In remanding the case back to the judge for 56 days, the COA retained jurisdiction thereafter. The judge knowingly disregarded the 56-day requirement and entered an order when it didn't have jurisdiction (again);

32. The remand order retained jurisdiction and provided for supplemental briefing in the COA post-decision. The judge exceeded her authority by granting the motion and immediately ordering a new trial on an expedited basis while there was still a pending action in the COA. The judge only had authority to grant or deny the motion, not order a new trial;

33. The judge bi-furcated the evidentiary hearing over the objection of Plaintiff. Discovery was on-going at the time of the first part of the evidentiary hearing (8/23/19) which prejudiced Plaintiff because there was no evidence from the expert to use on cross examination of Depa. Both sides should have all of the evidence before the start of an evidentiary hearing. Lamar had access to and could communicate with the expert prior to the first hearing about information/ documents it found or didn't find;

34. SSMITX from the 2018 trial was sold to National Storage. National Storage is the owner of the property. The judge denied adding National Storage as a necessary party.

35.

Motion and Evidentiary Hearing Objections (8/23/19)

- Judge allowed Defendants to introduce testimony re Randy altering dates on documents, in order to introduce prior bad acts. ADDRESSED MRE 404(b)(1).

Evidentiary Hearing Objection (10/24/19)

- Plaintiff's objection was overruled as to Stott Matthews opining whether there is another hard drive or another source that could have the relevant information from July 1016 to July 2018. **Matthews purported to offer facts, not opinions**.

- The Court sustained Defendants' objection to playing a voicemail that shows Mr. Depa admitting he is an independent contractor and calling Randy an SOB. Court said it was hearsay. But hearsay is an out of court statement offered for the truth. This statement obviously wasn't offered for the truth. We weren't trying to prove that Randy is an "SOB." Faycurry could verify Depa's voicemail.

Judicial Disqualification

QUESTIONS PRESENTED

Question Presented: Under Michigan law, what legal mechanism or standards govern judicial disqualification?

Brief Answer: MCR 2.003(C)(1)(a) provides that judicial disqualification is warranted when "[t]he judge is biased or prejudiced for or against a party or attorney," and MCR 2.003(C)(1)(b) provides that disqualification is warranted when "[t]he 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 U.S. 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."

MICHIGAN CASELAW AND THE COURT RULE

A. MCR 2.003(C)(1) – The Michigan Court Rule Concerning Judicial Disqualification

Under MCR 2.003(C)(1), "[d]isqualification of a judge is warranted for reasons that include, but are not limited to the following:

(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 (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.

(c) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

(d) The judge has been consulted or employed as an attorney in the matter in controversy.

(e) The judge was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding two years.

(f) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has more than a de minimus economic interest in the subject matter in controversy that could be substantially impacted by the proceeding.

(g) The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have more than a de minimus interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding."

B. MCR 2.003(C)(1)(a) - Bias or Prejudice

Judicial disqualification is warranted under MCR 2.003(C)(1)(a) where "[t]he judge is biased or prejudiced for or against a party or attorney."

"[MCR 2.003(C)(1)(a)] requires a showing of actual bias. Absent actual bias or prejudice, a judge will not be disqualified pursuant to [MCR 2.003(C)(1)(a)]." *Cain v Dep't of Corrections*, 451 Mich 470, 495 (1996).

"[T]he party who challenges a judge on the basis of bias or prejudice must overcome a heavy presumption of judicial impartiality." *Id.* at 497. "[T]he party moving for disqualification bears the burden of proving actual bias or prejudice." *People v Bero*, 168 Mich App 545, 549 (1988). "Disqualification on the basis of bias or prejudice cannot be established merely by repeated rulings against a litigant, even if the rulings are erroneous. Further, while personal animus toward a party requires disqualification, . . . [a] generalized hostility toward a class of claimants does not present disqualifying bias. Further, a trial judge's remarks made during trial, which are critical of or hostile to counsel, the parties, or their cases, ordinarily do not establish disqualifying bias." *In re MKK*, 286 Mich App 546, 566-567 (2009) (internal citations omitted).

There is no "rule of automatic disqualification solely because a judge has sat as a factfinder in a prior trial. . . . [U]nless there are special circumstances which increase the risk of unfairness, disqualification of a trial judge as factfinder in the second trial is not required solely because the trial judge sat as factfinder in the first trial." *People v Upshaw*, 172 Mich App 386, 389 (1988). Additionally, "the mere filing of a party's or attorney's complaint is [not] sufficient to require automatic disqualification." *Bero*, 168 Mich App at 552. Rather, "disqualification is not required until the judge is privately censured or a complaint is filed by the Judicial Tenure Commission itself." *Id.*

C. MCR 2.003(C)(1)(b) - Serious Risk of Actual Bias or Appearance of Impropriety

Judicial disqualification is warranted under MCR 2.003(C)(1)(b) where "[t]he 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 (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."

i. Serious Risk of Actual Bias

"The Due Process Clause requires an unbiased and impartial decisionmaker. Thus, where the requirement of showing actual bias or prejudice under [MCR 2.003(C)(1)(a)5] has not been met, or where the court rule is otherwise inapplicable, parties have pursued disqualification on the basis of the due process impartiality requirement." *Cain v Dep't of Corrections*, 451 Mich 470, 498 (1996). However, "[d]isqualification pursuant to the Due Process Clause is only required 'in the most extreme cases.'" *In re MKK*, 286 Mich App 546, 567 (2009), quoting Cain, 451 Mich at 498.

"Due process principles require disqualification, absent a showing of actual bias or prejudice, 'in situations where experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'" *MKK*, 286 Mich App at 567, quoting *Cain*, 451 Mich at 498. The inquiry is an objective one that focuses on whether, "under a realistic appraisal of psychological tendencies and human weakness, the [judicial] 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." *Caperton v Massey*, 556 US 868, 883-884 (2009) (quotation marks and citation omitted). *Caperton*, 556 US at 872, involved a situation where "the Supreme Court of Appeals of West Virginia reversed a trial court judgment, which had entered a jury verdict of $50 million"; "[f]ive justices heard the case, and the vote to reverse was 3 to 2." The United States Supreme Court held that "the Due Process Clause of the Fourteenth Amendment was violated when one of the justices in the majority denied a recusal motion," where "[t]he basis for the recusal motion was 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." *Id.* The Court reiterated that "[u]nder our precedents there are objective standards that require recusal when 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable,'" and held that "[a]pplying those precedents . . . in all the circumstances of the case, due process requires recusal." *Id.*, quoting *Withrow v Larkin*, 421 US 35, 47 (1975).

The Court noted that "[t]he Due Process Clause demarks only the outer boundaries of judicial disqualifications. . . . Because the codes of judicial conduct provide more protection than due process requires, most disputes over disqualification will be resolved without resort to the Constitution[, and a]pplication of the constitutional standard implicated in [*Caperton*] will thus be confined to rare instances." Id. at 889-890 (quotation marks and citation omitted).

"Among the situations identified by the [United States Supreme] Court as presenting . . . [a] risk [of actual bias that is too high to be constitutionally tolerable] are where the judge or decisionmaker:

(1) has a pecuniary interest in the outcome;

(2) 'has been the target of personal abuse or criticism from the party before him';

(3) is 'enmeshed in [other] matters involving petitioner . . . '; or

(4) might have prejudged the case because of prior participation as an accuser, investigator, factfinder or initial decisionmaker." Crampton v Dep't of State, 395 Mich 347, 351 (1975).

ii. Appearance of Impropriety

"Under MCR 2.003(C)(1)(b), the 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 (2017) (quotation marks and citations omitted).

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 (2006). The standard requires an objective inquiry "made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances." *Id.* (quotation marks and citation omitted).

a. Relevant Judicial Canons

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities.

A. 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 freely and willingly.

B. A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary.

. . . .

F. A judge should not allow activity as a member of an organization to cast doubt on the judge's ability to perform the function of the office in a manner consistent with the Michigan Code of Judicial Conduct, the laws of this state, and the Michigan and United States Constitutions.

Canon 3: A Judge Should Perform the Duties of Office Impartially and Diligently

(4) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding, except as follows:

(a) A judge may allow ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits, provided:

i. the judge reasonably believes that no party or counsel for a party will gain a procedural or tactical advantage as a result of the ex parte communication, and (ii)

ii. the judge makes provision promptly to notify all other parties and counsel for parties of the substance of the ex parte communication and allows an opportunity to respond.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(6) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court.

Canon 8 Collective Activity by Judges

The canons of this Code concerning the conduct of individual judges and judicial candidates also apply to judges' associations or any other organization consisting exclusively of judges.

THE RECUSAL MOTION

A. Procedure for Disqualification

i. Time for Filing: In the Trial Courts "To avoid delaying trial and inconveniencing the witnesses, all motions for disqualification must be filed within 14 days of the discovery of the grounds for disqualification. If discovery is made within 14 days of the trial date, the motion must be made forthwith." MCR 2.003(D)(1)(a).

ii. All Grounds to Be Included and Affidavit: "In any motion under [MCR 2.003], the moving party must include all grounds for disqualification that are known at the time the motion is filed. An affidavit must accompany the motion." MCR 2.003(D)(2).

B. Deciding the Recusal Motion

i. Ruling on the Motion: The challenged judge shall decide the motion. If the challenged judge denies the motion, in a court having two or more judges, on the request of a party, the challenged judge shall refer the motion to the chief judge, who shall decide the motion de novo.

ii. Standard of Review on Appeal: "When [the] Court [of Appeals] reviews a decision on a motion to disqualify a [trial court] judge, the trial court's findings of fact are reviewed for an abuse of discretion, while the application of the facts to the relevant law is reviewed de novo." *People v Roscoe*, 303 Mich App 633, 647 (2014) (quotation marks and citation omitted).

iii. If the Motion is Granted: When a judge is disqualified, the action must be assigned to another judge of the same court, or, if one is not available, the state court administrator shall assign another judge." MCR 2.003(D)(4)(a).