STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

ADREA HILL and
LUKE SANNER,

Plaintiffs,

-vs-

Case No: 2024-8010-CZ
Honorable Margaret Z. Bakker
By Assignment

OTTAWA COUNTY and
OTTAWA COUNTY BOARD OF
COMMISSIONERS,

Defendants.

Sarah Riley Howard (P58531)
Elizabeth L. Geary (P76090)
PINSKY SMITH
Attorneys for Plaintiffs
146 Monroe Center, NW Suite 418
Grand Rapids MI 49503
(616) 451-8496
showard@pinskysmith.com
egeary@pinskysmith.com

Michael S. Bogren (P34835)
Charles L. Bogren (P82824)
PLUNKETT COONEY
Attorneys for Defendants
333 Bridge St., NW Suite 530
Grand Rapids, MI 49503
(616) 752-4600
mbogren@plunkettcooney.com
cbogren@plunkettcooney.com

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR DISQUALIFICATION

Plaintiffs Hill and Sanner filed a motion for the disqualification of Judge Bakker pursuant to MCF 2.003(C)(1)(b), while motions for summary disposition are pending before Judge Bakker. In support of this argument Plaintiffs offer two self-serving affidavits, a news article, and a few pages of sophistry. Their motion should be denied.

Background

Plaintiffs filed suit following the denial of two Freedom of Information Act ("FOIA") requests and their subsequent appeals relating to communications on the personal devices of an Ottawa County Officers' Compensation Commission member. Plaintiffs filed a motion

for summary disposition after Defendants filed their Answer, and Defendants filed a counter motion for summary disposition in response. The motions were argued before the Court on February 3, 2025. No rulings have been issued to this point, but Plaintiffs state that the "Court made clear its view that it was not inclined to accept Plaintiffs' argument. (2/17/24 [sic] Hrg. Tr. At 5-7; 10-11)." (Pl's Brief, pg. 3).

After the hearing, Plaintiffs assert they became aware that Judge Bakker had previously been subjected to FOIA requests herself relating to a criminal sexual conduct trial in which she exchanged emails with the Allegan County Prosecutor regarding investigatory capabilities of the Michigan State Police. The criminal case in which that occurred was appealed, and the Michigan Supreme Court ultimately found that while the ex parte email communications could be considered to have "fallen short of the high ethical standards that Michigan jurists are expected to uphold," the criminal defendant's case and defense were not harmed. *People v. Loew*, No. 164133, 2024 WL 3433870, at *13 (Mich. July 16, 2024), reh'g denied, 10 N.W.3d 664 (Mich. 2024).

A complaint was made to the Michigan Judicial Tenure Commission, but as pointed out in Plaintiff's Exhibit A, no sanctions or other negative findings have been attributed to Judge Bakker as a result of this case.

Legal Argument

Plaintiff relies upon the implication that because Judge Bakker's emails were subjected to disclosure through a FOIA request, and the subsequent reaction brought her negative attention, she must be unable to be unbiased in this case. There is nothing offered to support these statements other than the Plaintiffs' self-serving affidavits calling into question the Judge's impartiality and generalized references to ""various members of the bar

contact[ing] Plaintiff's Counsel to question whether the Court could be impartial in determining the scope of FOIA in light of the Court's personal history." (Pl's Brief, pg. 4). The Court and Defendants are apparently expected to merely take the Plaintiffs at their word about such an assertion, as no names are offered or affidavits given to support these accusations.

Of itself, these allegations and their lack of support fail on their face. The Michigan Courts have made clear, "a generalized hostility toward a class of claimants does not present disqualifying bias." *In re MKK*, 286 Mich. App. 546, 566, 781 N.W.2d 132, 144–45 (2009). To be sure, Plaintiff has offered no support for the idea that Judge Bakker is, in fact, hostile to claimants bringing FOIA claims beyond mere conjecture and hyperbole. But even if it were actually supported, a trial judge's remarks, "which are critical of or hostile to counsel, the parties, or their cases, ordinarily do not establish disqualifying bias." *Id.* citing S*chellenberg v. Rochester Elks*, 228 Mich. App. 20, 39, 577 N.W.2d 163 (1998). Considering the argument made by Plaintiffs is little more than a claim that Judge Bakker is personally disposed against FOIA claimants and indicated on the record she was likely to rule against them (even assuming that assertion is accurate) does not rise to the level of disqualifying bias.

A party is deprived of their right to a trial before an impartial judge only when the judge is actually biased, or if there is no evidence that the judge is actually biased, when "'experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable,'" *Bracy v Gramley*, 520 U.S. 899, 904, 117 S Ct 1793, 138 L Ed 2d 97 (1997); *Crampton v Dep't of State*, 395 Mich. 347, 351, 235 N.W.2d 352 (1975). Situations identified by this Court as presenting that risk include when the judge or decision-maker:

> (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, fact finder or initial decisionmaker.

Cain v Dep't of Corrections, 451 Mich. 470, 498, 548 N.W.2d 210 (1996). (Emphasis added). There is a strong presumption of judicial impartiality, and a party arguing otherwise bears a heavy burden to rebut this presumption. *Mitchell v Mitchell*, 296 Mich App 513, 523, 823 N.W.2d 153 (2012); see also *Cain*, 451 Mich. at 498, 548 N.W.2d 210 (noting that "disqualification for bias or prejudice is only constitutionally required in the most extreme cases").

Plaintiff has failed to offer anything that satisifes the situations identified in *Cain*, failing to meet the "heavy burden" described in *Mitchell* by a wide margin. The Michigan Supreme Court noted that a judge's violation of the Michigan Code of Judicial Conduct is not a legally recognized basis for relief. The Supreme Court implemented the Michigan Code of Judicial Conduct in 1974 to provide ethical guidance to jurists in the discharge of their duties. See *Attorney General v Pub. Serv. Comm*., 243 Mich App 487, 492, 625 N.W.2d 16 (2000). A judge's violation of a canon may be grounds for us to exercise our power to discipline that judge, see MCR 9.202(B)(2); Const. 1963, art. 6, § 30, but the canons do not grant litigants any substantive or procedural rights. When grounds warranting disqualification have not been established, "disqualification is not optional; rather, it is prohibited." *Adair v State Dept of Education*, 474 Mich 1027, 1040-41; 709 NW2d 567 (2006). No grounds warranting disqualification have been established, and therefore disqualification is prohibited.

Instead, this motion appears to be little more than an impermissible anticipatory attack on the Court's ruling on the pending motions for summary disposition. Plaintiffs are

of the opinion that the ruling on the pending motions will not be favorable to them, and therefore they are seeking out a new judge in an attempt to avoid an unwanted outcome. Justice Mary Beth Kelly was concerned that "judicial disqualification motions could become judge—shopping mechanisms," and this motion is representative of that fear. *Grievance Adm'r v. MacDonald*, 796 N.W.2d 928, 929 (Mich. 2011). Plaintiffs' actions should not be countenanced. This motion should be denied.

Conclusion

Defendants Ottawa County and the Ottawa County Board of Commissioners respectfully request that this Honorable Court deny Plaintiffs' motion.

Respectfully submitted,

DATED: February 18, 2025

PLUNKETT COONEY

BY: */s/ Michael S. Bogren*

Michael S. Bogren (P34835)
Attorney for Defendants
333 Bridge Street, N.W., Suite 530
Grand Rapids, Michigan 49503
(616) 752-4600
mbogren@plunkettcooney.com