UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHGIAN
SOUTHERN DIVISION

REVEREND JARED CRAMER,

Plaintiff,

Case No. 1:23-CV-1045

Hon. Jane M. Beckering

v.

OTTAWA COUNTY,
a Michigan County;
OTTAWA COUNTY BOARD OF COMMISSIONERS; and
JOE MOSS,
Chairman of the Ottawa County Commission, in his individual and official capacities,

Defendants.

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISQUALIFY PLAINTIFF'S COUNSEL

Plaintiff, Reverend Jared Cramer, through his counsel, opposes Defendants' unwarranted attempt to remove his attorneys Sarah Riley Howard and Elizabeth L. Geary, and the Pinsky Smith law firm, from the ability to represent him in this case. Defendants' position that there are grounds under these circumstances to disqualify Plaintiff's counsel is wrong. Plaintiff's interests are not adverse to another client of his counsel. Even if they were, both clients have consented to continue representation. Under the circumstances, there is no basis to deprive Plaintiff of his right to proceed with his chosen counsel. Accordingly, this Court should deny Defendants' motion to disqualify Plaintiff's counsel and award all other necessary relief.

BACKGROUND

Plaintiff Rev. Jared Cramer hired Attorney Sarah Howard and the law firm of Pinsky Smith PC to represent him in this matter. Attorney Howard filed a complaint on his behalf in this Court on October 3, 2023. Defendants – represented by County Corporation Counsel Kallman Legal Group PLLC ("Kallman") – filed a motion to dismiss in lieu of filing an answer, and filed a renewed motion to dismiss after Plaintiff filed a First Amended Complaint.

This Court denied Defendants' motion to dismiss on July 2, 2024. Defendants filed their required Answer to the First Amended Complaint on July 22, 2024. As is standard procedure, the Court also ordered counsel for the parties to work together to file a Joint Status Report and propose case management deadlines and other suggested items for a Case Management Order. As required, the parties did so and filed their Joint Status Report on August 13, 2024. Counsel for the parties held a scheduling conference with the Court on August 28, 2024, and issued a Case Management Order the same day, which included – per the request of all parties – an order for an early settlement conference. The Court scheduled an early settlement conference for October 28, 2024.

Kleinjans v. Korpak et al, Case No. 1:24-CV-643

In the meantime, Christian Kleinjans defeated Ottawa Impact-affiliated, recalled Commissioner Lucy Ebel in a May 2024 recall election, taking his new seat on the Ottawa County Commission shortly thereafter. On Friday, June 21, 2024, Kleinjans filed suit in this Court, in Case No. 1:24-CV-643, against three Michigan State University Extension officials, alleging that they terminated Kleinjans' full-

time job for MSU Extension because of political pressure to do so by OI leader and Commission Chair Joe Moss, in violation of Kleinjans' First Amendment rights. Kleinjans' claims were made in his individual capacity as a terminated employee of MSU Extension, and did not concern his role or duties as a Commissioner. In fact, events at issue in the case occurred before Kleinjans was a member of the Board.

Kleinjans hired Attorney Sarah Howard and her law firm to represent him in that case. On Monday, June 24, 2024, Attorney Howard sent a litigation hold notice to Kallman to officially advise them of the Kleinjans lawsuit and notify Ottawa County through its Corporation Counsel of the duty to implement a litigation hold related to the Kleinjans complaint allegations.[1]

The Court held a hearing on Plaintiff Kleinjans' motion for preliminary injunction on August 9, 2024. At that hearing, testimony and documentary evidence confirmed Commissioner Moss's repeated violations of Kleinjans' First Amendment rights by urging MSU Extension to take various adverse employment actions against Kleinjans in retaliation for his campaign for office against Moss's ally and for Kleinjans' political speech. On August 20, 2024, Kleinjans filed a First Amended Complaint in his suit, adding Commissioner Moss as a defendant.

Both clients of Sarah Howard – Rev. Cramer in this case and Kleinjans in Case No. 1:24-CV-643 – knew and approved of the representation of the other client by Ms. Howard. There are not overlapping fact allegations in the two cases relevant

[1] The filing of Kleinjans' lawsuit drew media coverage in a variety of outlets over the weekend after it was filed, and it is very likely that Kallman learned of the lawsuit prior to Monday, June 24, 2024.

to Defendants' motion in this matter to disqualify Attorney Howard as Plaintiff Cramer's attorney. Indeed, Kleinjans was not on the Commission during the relevant time period in Rev. Cramer's case. Moreover, Attorney Howard's representation of Kleinjans is solely in his capacity as a private citizen who was terminated from his employment, which occurred before he was sworn in as a Commissioner.

Despite everything which occurred in this case, including multiple opportunities to address such matters with the Court over three months and the voluntary agreement to go to an early settlement conference, Kallman never raised any allegation of a conflict on the part of Attorney Howard, nor any reason for her disqualification in this case, from the time it first learned of her representation of Kleinjans no later than June 24, 2024, until September 25, 2024. Earlier that week at the end of September, Attorney Howard raised the concern that the negotiating committee of three commissioners that Defendants intend to bring to the early settlement conference in the instant case, Commissioners Moss, Cosby, and Rhodea, are inadequate to comply with the Court's order to negotiate on behalf of the entire Commission. In response, Kallman first alleged on September 25 that Attorney Howard has a conflict in this case because of her representation of Kleinjans.

Once Kallman raised this suggestion of a conflict, Attorney Howard advised both Rev. Cramer and Kleinjans of Kallman's argument that there was a conflict, the alleged reasons for that argument by Kallman, and the options that both clients had if either or both wished to be transitioned to other attorneys for representation. Both Rev. Cramer and Kleinjans declined to be transitioned to other attorneys and

stated their desire to continue an attorney-client relationship with Attorney Howard, regardless of whether she continued to represent the other client.

LEGAL STANDARD

"Motions to disqualify are viewed with disfavor, and a party seeking to disqualify opposing counsel carries a heavy burden and must satisfy a high standard of proof." *Courser v. Allard*, No. 1:16-CV-1108, 2016 U.S. Dist. LEXIS 195794, at *4-5 (W.D. Mich. Nov. 28, 2016). "A party's right to have counsel of choice is a fundamental tenet of American jurisprudence, and therefore a court may not lightly deprive a party of its chosen counsel." *Am. Special Risk Ins. Co. v. City of Centerline*, 69 F. Supp. 2d 944, 953 (E.D. Mich. 1999) (quoting *Capacchione v. Charlotte-Mecklenburg Bd. of Educ.*, 9 F. Supp. 2d 572, 579 (W.D.N.C. 1998)). Courts "carefully scrutinize[]" motions to disqualify counsel. *Id.* That scrutiny is warranted because "the ability to deny one's opponent the services of a capable counsel is a potent weapon." *Manning v. Waring, Cox, James, Sklar & Allen*, 849 F.2d 222, 224 (6th Cir. 1988). See also *Am. Special Risk Ins. Co.*, 69 F. Supp. 2d at 953 (noting that motions to disqualify can be used as tools of harassment).

Disqualification is a drastic measure that should only be imposed when absolutely necessary, since it deprives a party of counsel of their choosing. *Am. Special Risk Ins. Co.*, 69 F. Supp. 2d at 953. "An attorney should be disqualified only when there is a reasonable possibility that some specifically identifiable impropriety actually occurred and, in light of the interest underlying the standards of ethics, the social need for ethical practice outweighs the party's right to counsel of his own choice." *Kitchen v. Aristech Chem.*, 769 F. Supp. 254, 257 (S.D. Ohio 1991).

Thus, courts have recognized that even in the case of a violation of ethical rules, they may choose a remedy other than disqualification. *See Haworth, Inc. v Wikes Mfg. Co.*, No 1:93-CV-851, 1994 U.S. Dist. LEXIS 11580, at *6 (W.D. Mich. July 19, 1994).

LEGAL ARGUMENT

I. There is no conflict in Attorney Sarah Howard representing both Rev. Cramer and Kleinjans in two separate matters because their interests are not directly adverse.

Although the rules of ethics for an attorney practicing in federal court is ultimately a question of federal law, federal courts look to state rules of professional conduct for guidance. *Shaw v. London Carrier*, Inc., No 1:08-CV-401, 2009 U.S. Dist. LEXIS, 109862, at *9 (W.D. Mich. Nov. 24, 2009). The Sixth Circuit relies on applicable state rules of professional conduct to resolve issues of disqualification. See *National Union Fire Ins. Co. of Pittsburgh, Pa. v. Alticor, Inc.,* 466 F.3d 456, 457-58 (6th Cir. 2006), *vacated in part on other grounds,* 472 F.3d 436 (6th Cir. 2007) (applying Michigan Rules of Professional Conduct). See also Sixth Cir. R. 46(b) ("An attorney admitted to practice in this court is subject to the rules of professional conduct or other equivalent rules of the state where the attorney's principal office is located."). Judges in this Court have similarly relied on Michigan's Rules of Professional Conduct. See *City of Kalamazoo v. Michigan Disposal Serv. Corp.,* 125 F. Supp. 2d 219, 231 (W.D. Mich. 2000).

Michigan Rule of Professional Conduct 1.7 provides

> (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

> (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
>
> (2) each client consents after consultation.
>
> (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
>
> (1) the lawyer reasonably believes the representation will not be adversely affected; and
>
> (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

The comment to the Rule makes clear that the underlying purpose is to ensure an attorney's loyalty to their client. Mich. R. of Prof. Conduct 1.7, comment "Loyalty to a Client" ("Loyalty is an essential element in the lawyer's relationship to a client."). As such, the Rule is only implicated when the interests of two clients are directly adverse. As the comment states:

> [S]imultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require consent of the respective clients. Paragraph (a) applies only when the representation of one client would be directly adverse to the other.

Id. That same Comment makes clear that it is necessary to consider the context when determining whether a conflict exists. It states:

> [T]here are circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients consent upon consultation. By the same token, government lawyers in some circumstances may represent government

> employees in proceedings in which a government agency is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

Id.

In this case, Rev. Cramer's interests are not directly adverse to Kleinjans' interests. Rev. Cramer has sued Ottawa County – and the Board of Commissioners as the County's governing body – for events that occurred before Kleinjans was a member of the Board. Kleinjans was not involved in the events at issue and does not have knowledge that would be relevant to Rev. Cramer's claims. Kleinjans was not individually named in Rev. Cramer's suit, and he is only involved to the extent that he is now a member of the Board of Commissioners. Moreover, Sarah Howard has never represented Kleinjans in his role as a member of the Board of Commissioners. Rather, Attorney Howard represents Kleinjans as a private citizen who was terminated by his employer before Kleinjans was even sworn in as a member of the Board of Commissioners. Representation of Kleinjans as a private citizen is in no way adverse to representation of Rev. Cramer in a suit against the Board of Commissioners.

In considering whether the interests of Rev. Cramer and Kleinjans are directly adverse, the Court should consider the underlying purpose that Rule 1.7 is intended to protect – an attorney's duty of loyalty to their client. It is hard to conceive of any way in which Attorney Howard's loyalty to Rev. Cramer could be compromised because she is representing Kleinjans as a private citizen in pursuing claims that are unrelated to his role as a Commissioner. It is telling that while

Defendants lists a number of potential harms that may result from Attorney Howard's representation of Rev. Cramer, not a single one of those potential harms implicates Attorney Howard's duty of loyalty to Rev. Cramer. Rather, Kallman's sole concern appears to be centered on its own attorney-client relationship with Kleinjans. As County Corporation Counsel, it is Kallman's duty to advise Kleinjans on how to proceed in considering matters that are before him as a Commissioner. Rev. Cramer may not be deprived of his right to counsel of his choice simply because Kallman is concerned about how to handle its client.

Rule 1.7(a) applies only when representation of one client would be directly adverse to the other. Rev. Cramer's interest in a suit against Ottawa County and the Board of Commissioners is not adverse to Kleinjan's interest as a private citizen in pursuing claims for wrongful termination. There is no reason to believe that Attorney Howard will not maintain the highest level of loyalty to Rev. Cramer. Under the circumstances, there is no reason to deprive Rev. Cramer of his right to the counsel of his choosing.

II. Even if the clients were directly adverse, they both want Attorney Sarah Howard to continue the representation.

Michigan Rule of Professional Responsibility 1.7 allows an attorney to represent clients who are directly adverse if "each client consents after consultation." Mich. R. Prof. Conduct 1.7(a)(2). In this case, both Rev. Cramer and Kleinjans have consented after such consultation, and have told Attorney Howard that they want her to continue representing them. Accordingly, Attorney Howard's representation of Plaintiff is not prohibited by Rule 1.7.

The Sixth Circuit has long recognized a party may use a motion for disqualification to gain a tactical advantage over an opponent. *See Manning*, 849 F.2d at 224. District courts have viewed motions to disqualify with extreme caution because they can be misused to harass an opposing party. *See Am. Special Risk Ins. Co.*, 69 F. Supp. 2d at 953. That risk is also recognized by the same Michigan Rules of Professional Conduct comment quoted by Defendants. Although Defendants correctly quote the first sentence of the comment stating that an opposing counsel may raise the issue of a conflict of interest, they fail to cite the sentence that follows: "Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment." Mich. R. Prof. Conduct comment "Conflict Charged by an Opposing Party."

The timing of Defendants' motion also suggests that it is based on gaining a tactical advantage. Kallman and Defendants knew of Attorney Sarah Howard's representation for three months before they even raised the issue. They could have raised the issue at any point during that time and obtained a determination before Attorney Howard committed to a case schedule in this case on behalf of Rev. Cramer in this case. They could have done so before the parties agreed to, and then waited to, obtain the October 28 early settlement conference date. Nonetheless, Defendants waited until shortly before their discovery responses were due and the early settlement conference was approaching to bring a motion before the Court. As one district court explained:

> The disqualification of an attorney in the middle of a litigation can work a severe hardship and give the moving party a significant instrumental advantage. This tactical advantage is often the motivating force in filing

> such motions, and not any realistic concerns over breached loyalty or access to confidential information.

Quicken Loans v. Jolly, No. 2:07-CV-13143, 2008 U.S. Dist. LEXIS 48266, at *5-6 (E.D. Mich. June 24, 2008).

The doctrine of laches also supports the conclusion that Rev. Cramer's and Kleinjans' decision to continue with their chosen counsel should be respected. The inquiry when a court determines whether to apply the equitable doctrine of laches is whether a party's failure to earlier assert his or her claim prejudiced the other party. *Knight v. Northpointe Bank*, 832 N.W.2d 439, 442 (Mich. Ct. App. 2013). Rev. Cramer will be prejudiced by months of lack of progress and a schedule set by Attorney Howard, with her strategy in mind, if he is forced to find and hire another attorney – not to mention the additional delay in finding and hiring another lawyer – because the Court disqualifies Attorney Howard in this case.

III. The issue identified by Kallman is a matter to be addressed by them, not a conflict on the part of Attorney Howard.

Defendants' brief makes clear that there is no real concern that Attorney Howard can maintain loyal to Rev. Cramer—rather, Defendants appear concerned that Kleinjans cannot remain loyal to the Board. There is no factual basis for Defendants' concerns that Kleinjans will disclose to Attorney Howard the Board of Commissioners' privileged communications or litigation strategy. If Commissioner Kleinjans cannot or should not participate in the decision and vote on any potential settlement negotiations with Rev. Cramer, or if a conflict-of-interest procedure under Michigan law should be implemented, it is Kallman's duty to advise Commissioner Kleinjans appropriately in their role as County Corporation Counsel.

Mich. Comp. Laws § 46.30 governs what constitutes a conflict of interest for county commissioners, and what to do in the event of one. It provides:

> A member of the county board of commissioners shall not be interested directly or indirectly in any contract or other business transaction with the county, or a board, office, or commission thereof, during the time for which he is elected or appointed, nor for one year thereafter unless the contract or transaction has been approved by 3/4 of the members of the county board of commissioners and so shown on the minutes of the board together with a showing that the board is cognizant of the member's interest. This prohibition is not intended to apply to appointments or employment by the county, or its officers, boards, committees, or other authority, which appointments and employment shall be governed by the provisions of section 30a of this act.

It's not clear what qualifies as a "direct" or "indirect" interest, and there is no applicable case law or Attorney General Opinion applying this statute under similar facts. Any "interest" by Kleinjans in a settlement agreement with Rev. Cramer is highly attenuated here, if it exists at all.[2] Nonetheless, it is up to Kallman to determine whether the conflict-of-interest statute applies and advise Kleinjans accordingly.

The defense argument seems to be that if Commissioner Kleinjans has access to Kallman's legal advice to the Commission, in approving a settlement and/or in negotiations themselves between the County and Rev. Cramer, that Kleinjans will either pass along that information to his attorney or otherwise benefit from that information in his own litigation with Commissioner Moss. This is a bit of a stretch. Different issues are at stake in the two cases, and consideration of settlement offers

[2] The statute does not require Kleinjans to abstain from involvement—it requires his disclosure and then a greater vote share (three-quarters instead of a simple majority) of the Commission.

will not (or at least, presumably would not) involve the same strategy. More importantly, Kleinjans should be presumed to keep privileged information confidential as Kallman has presumably instructed, and Attorney Howard would not accept such information from him. Moreover, the concerns that Defendants highlight could be addressed without the extreme remedy of disqualification; for example, the Court could enter an order prohibiting members of the Commission from discussing any aspect of this case with Attorney Howard.

Finally, it is important to note that this Commission recently implicitly approved a settlement in yet another case against it **without a public vote of the entire Commission at all**. This directly conflicts with Kallman's argument that Mich. Comp. Laws 46.3(2) requires a public meeting majority vote of the Commission to approve a settlement for it to become legally binding. In *Kimball v. Ottawa County Commission*, in Ottawa County Circuit Court, a settlement was reached on September 10, 2024, where the main term was payment of $225,000 to the plaintiff.[3] Apparently, only a partial committee of the Board and Kallman negotiated in mediation with the plaintiff and his counsel. The Ottawa County Insurance Authority (the County's self-insurance entity) voted on August 19, 2024, to approve the payment. **Commission Chair Joe Moss subsequently signed the agreement on September 10, 2024 on behalf of the County without a public vote of a majority of the commissioners**. There is no record of a public vote in meeting

[3] The plaintiff in that matter was not represented by Sarah Howard. Plaintiff Kimball was represented by Rob Howard (no relation to Sarah Howard), Brad Glazier, and the Cunningham Dalman law firm.

minutes of the Commission, but the agreement was signed anyway by Moss and the money paid to plaintiff after the Insurance Authority approved the payment. If that arrangement is permissible to finalize a settlement agreement on behalf of the County and to legally bind the County and the plaintiff there, that method should be available here, too, and thus avoid any concern about Commissioner Kleinjans' receipt of privileged legal advice.

In any event, it is Kallman's duty to determine what advice to give the entire Commission and Kleinjans regarding Kleinjans' participation in litigation settlement negotiations in this action. It is not a question of conflict for Attorney Howard. Kallman is not permitted to achieve Attorney Howard's removal by Court decree when that would rob both her clients of their attorney of choice.

CONCLUSION

Accordingly, Plaintiff respectfully requests that the Court deny Defendants' motion to disqualify Plaintiff's counsel.

PINSKY SMITH, PC
Attorneys for Plaintiff

Dated: October 18, 2024

By: /s/ Sarah R. Howard

Sarah Riley Howard
Elizabeth L. Geary
146 Monroe Center St. NW, Suite 418
Grand Rapids, MI 49503
(616) 451-8496
showard@pinskysmith.com

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

REVEREND JARED CRAMER,

Plaintiff,

-vs-

OTTAWA COUNTY, a Michigan County; OTTAWA COUNTY BOARD OF COMMISSIONERS; and JOE MOSS, Chairman of the Ottawa County Board of Commissioners, in his individual and official capacities,

Defendants.
/

DEFENDANTS' MOTION TO ADJOURN AND FOR CLARIFICATION, BRIEF IN SUPPORT, AND PROOF OF SERVICE

FILE NO: 1:23-cv-01045

HON. JANE M. BECKERING
MAG. SALLY J. BERENS

Sarah Riley Howard (P58531)
PINSKY SMITH, PC
Attorney for Plaintiff
146 Monroe Center St., Suite 418
Grand Rapids, MI 49503
(616) 451-8496
showard@psfklaw.com

David A. Kallman (P34200)
Stephen P. Kallman (P75622)
Jack C. Jordan (P46551)
Lanae L. Monera (P55604)
KALLMAN LEGAL GROUP, PLLC
Attorneys for Defendants
5600 W. Mount Hope Hwy.
Lansing, MI 48917
(517) 322-3207
dave@kallmanlegal.com
steve@kallmanlegal.com
jack@kallmanlegal.com
lanae@kallmanlegal.com

DEFENDANTS' MOTION TO ADJOURN AND FOR CLARIFICATION

NOW COME the above-named Defendants, by and through their undersigned counsel, and together bring this Motion to Adjourn and for Clarification of the Court's Settlement Conference Order, and in support thereof state the following:

1. The Parties are currently scheduled to hold a Settlement Conference on October 28, 2024.

2. Defendants sought concurrence from opposing counsel pursuant to Local Rule 7.1(d) and such concurrence was denied. Further, the parties have discussed the issues in good faith.

3. For all the reasons stated in the attached Brief in Support, which is fully incorporated herein, Defendants respectfully request that their Motion to Adjourn and for Clarification be granted.

WHEREFORE, Plaintiffs request this Honorable Court grant Defendants' Motion to Adjourn and for Clarification, grant all relief requested in the attached Brief in Support, and grant any other relief that is just and appropriate.

Respectfully submitted,

KALLMAN LEGAL GROUP, PLLC:

DATED: October 11, 2024

/s/ David A. Kallman
By: David A. Kallman (P34200)
Kallman Legal Group, PLLC
Attorney for Defendants
5600 W. Mount Hope Hwy.
Lansing, MI 48917
517-322-3207
dave@kallmanlegal.com

/s/ Stephen P. Kallman
By: Stephen P. Kallman (P75622)
Kallman Legal Group, PLLC
Attorney for Defendants
5600 W. Mount Hope Hwy.
Lansing, MI 48917
517-322-3207
steve@kallmanlegal.com

BRIEF IN SUPPORT

The Parties are scheduled to participate in a Settlement Conference on October 28, 2024. Defendants filed a Motion to Disqualify Plaintiff's counsel and that issue must be decided prior to the parties participating in a Settlement Conference. For all the reasons stated in the Brief in Support of Defendants' Motion to Disqualify, which is fully incorporated herein, Defendants believe an adjournment of the Settlement Conference and a clarification of the Settlement Conference Order (ECF No. 29) is necessary.

In addition to the issues raised in Defendants' Motion to Disqualify, the Parties have had discussions regarding who is required to attend the Settlement Conference. W.D. Mich. LCivR 16.6 states "For parties that are not natural persons, a natural person representing that party who possesses ultimate settlement authority **may** be required to attend the settlement conference" (emphasis added). However, the Order issued by Magistrate Berens states that "[w]here the party is not a natural person, a representative of the party with full settlement authority **must** attend" (emphasis added). ECF No. 29, PageID.291.

The Ottawa County Board of Commissioners voted to create a subcommittee of three Commissioners to participate in all legal proceedings in this case. The subcommittee could then make a recommendation to the full Board if a settlement agreement was reached at any point in the case. The full Board could then vote to approve the settlement as is statutorily required by MCL 46.3(2). This process has been used in the past and was just recently used to successfully resolve other legal proceedings.

Since MCL 46.3(2) requires that "allowance of a claim against the county shall be determined by a majority of the members elected and serving," this means that a minimum of six of the eleven Commissioners must approve the allowance of a claim against the County. However,

once a quorum of the Commissioners are present at a meeting, the Michigan Open Meetings Act (OMA) applies. MCL 15.261 et. seq. Further, Defendants do not have the option of delegating any authority to settle this matter to the subcommittee, because MCL 46.3(2) requires that a majority of the Commissioners "elected and serving" approve any settlement. This would require six Commissioners to approve the settlement; therefore, the current three subcommittee members are not sufficient.

Since the OMA would apply, it would also necessitate all of the other formalities required with a public meeting, such as public notice, an agenda, two opportunities for public comment, minutes, etc. Defendants are requesting clarification if this is what the Court intended to occur at a settlement conference. For example, does the Court intend to require Defendants to conduct two public comments at the Settlement Conference hearing as statutorily required by the OMA?

All of those OMA requirements will inevitably occur when the full Board discusses and decides whether to accept a final settlement in this case, but Defendants believe that there can be good faith initial discussions commenced with the already-created subcommittee at the Settlement Conference.

This was one of the issues the Parties were discussing on September 25, 2024, and it is why the Parties were requesting a Status Conference. Needless to say, Defendants will comply with whatever the Court orders.

Because of the pending Motion to Disqualify and the issues raised above, Defendants request that the October 28, 2024 Settlement Conference be adjourned and the Order Regarding Settlement Conference (ECF No. 29) be clarified and/or amended based upon the Court's direction.

CONCLUSION

Defendants request that the October 28, 2024 Settlement Conference hearing be adjourned and the Settlement Conference Order be amended to permit the subcommittee to attend and participate in all future settlement discussions and/or Court hearings.

Respectfully submitted,

KALLMAN LEGAL GROUP, PLLC:

DATED: October 11, 2024

/s/ David A. Kallman
By: David A. Kallman (P34200)
Kallman Legal Group, PLLC
Attorney for Defendants
5600 W. Mount Hope Hwy.
Lansing, MI 48917
517-322-3207
dave@kallmanlegal.com

/s/ Stephen P. Kallman
By: Stephen P. Kallman (P75622)
Kallman Legal Group, PLLC
Attorney for Defendants
5600 W. Mount Hope Hwy.
Lansing, MI 48917
517-322-3207
steve@kallmanlegal.com

CERTIFICATE OF COMPLIANCE WITH LOCAL RULES

I hereby certify that this brief contains 605 words, exclusive of the case caption, cover sheets, any table of contents, any table of authorities, the signature block, attachments, exhibits, and affidavits, and is thus within the word limit allowed under Local Civil Rule 7.3(b)(i). The word count was generated by the word processing software used to create this brief: Word for Microsoft Office 365.

DATED: October 11, 2024

/s/ David A. Kallman
By: David A. Kallman (P34200)
Kallman Legal Group, PLLC
Attorney for Defendants
5600 W. Mount Hope Hwy.
Lansing, MI 48917
517-322-3207
dave@kallmanlegal.com

PROOF OF SERVICE

David A. Kallman hereby states that he did serve a copy of Defendants' Motion to Adjourn and for Clarification with Brief in Support, and Defendants' Certificate of Compliance Regarding Defendants' Motion to Adjourn and for Clarification, on October 11, 2024 via the United States District Court for the Western District of Michigan electronic filing system.

/s/ David A. Kallman
By: David A. Kallman (P34200)
Kallman Legal Group, PLLC
Attorney for Defendants
5600 W. Mount Hope Hwy.
Lansing, MI 48917
517-322-3207
dave@kallmanlegal.com

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

REVEREND JARED CRAMER,

Plaintiff,

-vs-

OTTAWA COUNTY, a Michigan County; OTTAWA COUNTY BOARD OF COMMISSIONERS; and JOE MOSS, Chairman of the Ottawa County Board of Commissioners, in his individual and official capacities,

Defendants.
/

DEFENDANTS' CERTIFICATE OF COMPLIANCE REGARDING DEFENDANTS' MOTION TO ADJOURN AND FOR CLARIFICATION

FILE NO: 1:23-cv-01045

HON. JANE M. BECKERING
MAG. SALLY J. BERENS

Sarah Riley Howard (P58531)
PINSKY SMITH, PC
Attorney for Plaintiff
146 Monroe Center St., Suite 418
Grand Rapids, MI 49503
(616) 451-8496
showard@psfklaw.com

David A. Kallman (P34200)
Stephen P. Kallman (P75622)
Jack C. Jordan (P46551)
Lanae L. Monera (P55604)
KALLMAN LEGAL GROUP, PLLC
Attorneys for Defendants
5600 W. Mount Hope Hwy.
Lansing, MI 48917
(517) 322-3207
dave@kallmanlegal.com
steve@kallmanlegal.com
jack@kallmanlegal.com
lanae@kallmanlegal.com

DEFENDANTS' CERTIFICATE OF COMPLIANCE REGARDING DEFENDANTS' MOTION TO ADJOURN AND FOR CLARIFICATION

Pursuant to W.D. LCivR 7.1(d)(ii)(B), Defendant states the following:

The parties began discussing these issues via email on September 25, 2024 at 5:21 PM. The attorneys listed above were all included in the email discussions. The discussions continued and the Parties agreed that holding a Status Conference with this Honorable Court would be helpful to obtain direction on this issue. Plaintiff's counsel reached out to the Court (with Defendants'

consent) to request a Status Conference regarding who is required to attend the upcoming Settlement Conference on October 28, 2024. Ultimately, the request for a Status Conference was denied by the Court, thus, necessitating the filing of Defendants' Motion to Disqualify. Defendants also requested Plaintiff's concurrence on the request to Adjourn on October 11, 2024 and that request was denied.

Respectfully submitted,

KALLMAN LEGAL GROUP, PLLC:

DATED: October 11, 2024

/s/ David A. Kallman

By: David A. Kallman (P34200)
Kallman Legal Group, PLLC
Attorney for Defendants
5600 W. Mount Hope Hwy.
Lansing, MI 48917
517-322-3207
dave@kallmanlegal.com

/s/ Stephen P. Kallman

By: Stephen P. Kallman (P75622)
Kallman Legal Group, PLLC
Attorney for Defendants
5600 W. Mount Hope Hwy.
Lansing, MI 48917
517-322-3207
steve@kallmanlegal.com

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHGIAN
SOUTHERN DIVISION

REVEREND JARED CRAMER,

Plaintiff,

Case No. 1:23-CV-1045

Hon. Jane M. Beckering

v.

OTTAWA COUNTY,
a Michigan County;
OTTAWA COUNTY BOARD OF COMMISSIONERS; and
JOE MOSS,
Chairman of the Ottawa County Commission, in his individual and official capacities,

Defendants.

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO ADJOURN AND FOR CLARIFICATION

Plaintiff, Reverend Jared Cramer, through his counsel, opposes Defendants' motion to delay the October 28, 2024, early settlement conference in this case – to which Defendants agreed almost two months ago. In addition, this Court has already denied a request for a status conference to discuss the issue of the individuals that Defendants send to negotiate at the settlement conference. While Plaintiff and counsel do not mind having a status conference with the Court on this topic, there is no new reason to reconsider the decision by this Court to decline a status conference and instead require this topic to be addressed in writing as part of the standard confidential-letter process. Accordingly, this Court should deny Defendants' motion.

LEGAL ARGUMENT

I. The October 28, 2024 settlement conference should move forward.

Defendants' motion to delay the settlement conference is based upon its recent filing of a motion to disqualify Sarah Howard as Rev. Cramer's legal counsel in this case. That motion is without merit, for reasons further briefed in response to that motion. Moreover, the timing of Defendants' motion suggests that it is based on gaining a tactical advantage. Kallman Legal Group PLLC, Defendants' Corporation Counsel, and Defendants knew of Attorney Howard's representation for three months before they even raised the issue. They could have raised the issue at any point during that time and obtained a determination before Attorney Howard committed to a case schedule in this case on behalf of Rev. Cramer in this case. They could have done so before the parties agreed to, and then waited to, obtain the October 28 early settlement conference date. Nonetheless, Defendants waited until shortly before their discovery responses were due and the early settlement conference was approaching to bring a motion before the Court.

II. This Court has already spoken on how it wishes to address the issue of Defendants' negotiating committee, i.e., in the confidential-letter process. There are no grounds to reconsider that decision.

The parties already requested a status conference with the Court to address the topic of Plaintiff's concern that the three Commissioner members that Defendants intend to send cannot adequately represent how the entire Commission is likely to vote if it reviews a settlement reached in principle at the conference. On October 9, 2024, the Court has already declined to have such a conference, instead requesting that the parties address it in writing in the confidential settlement

letters to be submitted in advance of the conference. (ECF No. 37.) Nothing has changed since that decision to warrant reconsideration. See Local Civ. R. 7.4 (motions which essentially ask for reconsideration must note a palpable defect by which the court has been misled).

III. Defendants have approved a recent settlement without a public, majority vote in another case, and there is no reason why they cannot employ that tactic here if they believe they are able to do so legally. That would eliminate any concern over the make-up of the negotiating committee sent to represent Defendants at the settlement conference.

Finally, it is important to note that the same Defendants recently implicitly approved a settlement in yet another case against it **without a public vote of the entire Commission at all**. This seems to directly conflict with Kallman's argument that Mich. Comp. Laws 46.3(2) requires a public meeting majority vote of the Commission to approve a settlement for it to become legally binding. In *Kimball v. Ottawa County Commission*, in Ottawa County Circuit Court, a settlement was reached on September 10, 2024, where the main term was payment of $225,000 to the plaintiff.[1] Apparently, only a partial committee of the Board and Kallman negotiated in mediation with the plaintiff and his counsel. The Ottawa County Insurance Authority (the County's self-insurance entity) voted on August 19, 2024, to approve the payment. **Commission Chair Joe Moss subsequently signed the agreement on September 10, 2024 on behalf of the County without a public vote of a majority of the commissioners**. There is no record of a public vote in meeting

[1] The plaintiff in that matter was not represented by Sarah Howard. Plaintiff Kimball was represented by Rob Howard (no relation to Sarah Howard), Brad Glazier, and the Cunningham Dalman law firm.

minutes of the Commission, but the agreement was signed anyway by Moss and the money paid to plaintiff after the Insurance Authority approved the payment. If that arrangement is permissible to finalize a settlement agreement on behalf of the County and to legally bind the County and the plaintiff there, that method should be available here, too. Assuming that method is legal, it would permit the negotiating committee who attends the settlement conference – whoever that ends up being – to bind the Commission and commit to a settlement on the record in Court on October 28, 2024, if a settlement is reached.

In any event, this Court can always weigh in on Defendants' choice of negotiating committee members when it reviews the parties' confidential settlement letters on this topic – if it feels it necessary. Nothing has changed since the Court already declined to have a status conference on this point.

CONCLUSION

Accordingly, Plaintiff respectfully requests that the Court deny Defendants' motion and move forward with the early settlement conference on October 28, 2024.

PINSKY SMITH, PC
Attorneys for Plaintiff

Dated: October 18, 2024

By: /s/ Sarah R. Howard
Sarah Riley Howard
Elizabeth L. Geary
146 Monroe Center St. NW, Suite 418
Grand Rapids, MI 49503
(616) 451-8496
showard@pinskysmith.com