

STATE OF MICHIGAN

Attorney Discipline Board

FILED  
ATTORNEY DISCIPLINE BOARD

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GRIEVANCE ADMINISTRATOR,  
Attorney Grievance Commission,

Petitioner,

v

Case No. 16-143-GA

SUSAN E. PALETZ, P 34445,

Respondent.

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**ORDER DENYING PETITIONER'S  
MOTION TO DISQUALIFY HEARING PANEL**

Petitioner moves for disqualification of the hearing panel pursuant to MCR 2.003(C)(1)(b) "due to the risk for bias during proceedings because of respondent's disclosure of settlement offers and negotiations in violation of MRE 408." Petitioner argues that respondent impermissibly attached emails containing settlement offers and negotiations between respondent and counsel for the Attorney Grievance Commission to certain prehearing motions. Petitioner further asserts that the hearing panel's questions and comments at a prehearing conference demonstrated bias, or at least "more than a mere suspicion . . . or possibility of bias." Respondent has filed a response to the motion to disqualify the panel, arguing that a basis for disqualification has not been shown under MCR 2.003 or other applicable law.

The formal complaint in this matter alleges that respondent committed misconduct in connection with a divorce proceeding which she first mediated and then arbitrated. Respondent attached a letter and an email indicating that an admonition would be offered if respondent agreed to cease engaging in mediation and arbitration. Respondent sought additional discovery in order to pursue potential claims of bias or other improper motives on the part of the petitioner.

At the pretrial hearing, panel Chairperson Hohausser and panel member Gage entertained oral argument on various motions, including a motion in limine pertaining to the letters and emails, and issued rulings on the record. Among these rulings were the decisions regarding the admissibility of the letters and emails. Thereafter, petitioner filed the instant motion seeking to disqualify the hearing panel.

As the undersigned has recently stated:

The Due Process Clause, and applicable court rules, require disqualification when, "based on objective and reasonable perceptions" the adjudicator has "a serious risk of actual bias impacting the due process rights of the party as enunciated in *Caperton v Massey*, 556 US 868; 129 S Ct 2252; 173 L Ed 2d 1208 (2009)." MCR 2.003(C)(1)(b). However, "matters of kinship, personal bias, state policy, remoteness of interest, would seem

generally to be matters merely of legislative discretion." *Cain v Dep't of Corr*, 451 Mich 470, 498 n 33; 548 NW2d 210 (1996) (citations and internal quotation marks omitted). Most matters do not rise to the level of presenting constitutional questions, and "the burden is heavy for a disqualification motion grounded on the constitutional right to an unbiased and impartial tribunal." *Id.*

Where no actual prejudice or bias on the part of a panelist has been demonstrated, therefore, the question becomes solely whether there exists "a constitutionally intolerable probability of actual bias." *Caperton v Massey, supra*, 556 US at 882. To be intolerable, the risk must be a "serious" one, "based on objective and reasonable perceptions." *Id.*, at 884; MCR 2.003(C)(1)(b). [*Grievance Administrator v Lyle Dickson*, 15-23-GA (ADB Chair, 2017), p 2.]

I find no basis to disqualify the hearing panel on the grounds of "taint" or possible bias. As the Board has repeatedly held, panel exposure to inadmissible proffered evidence is not a ground for disqualification. See, e.g., *Grievance Administrator v Gregory J. Reed*, 10-140-GA (ADB 2014), pp 10-11. Indeed, under the rules governing these proceedings, panels must consider the admissibility of evidence and thereafter can and must disregard that which is found inadmissible. *Id.* Further, the record of the prehearing conference does not demonstrate actual bias or prejudice on the part of the panel members, nor does it show a serious risk of bias. A previous Board Chairperson discussed the extrajudicial source rule in Michigan and elsewhere, holding that judicial rulings alone almost never constitute a valid basis for disqualification on the grounds of bias. *Grievance Administrator v Michael H. Jacobson*, 97-70-GA (ADB Mem Opinion, 1997). Although the panel chairperson generally remarked that he would find it "troubling" to have a practice-limiting condition attached to an admonition, none of the panel's questions, comments, or rulings suggest that the panel is unable to impartially decide the questions before it.

**NOW THEREFORE,**

**IT IS ORDERED** that respondent's motion for the disqualification of Tri-County Hearing Panel #59 is **DENIED**.

**ATTORNEY DISCIPLINE BOARD**

By:

  
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Louann Van Der Wiele, Chairperson

DATED: July 12, 2017