

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

HACKNEY v. MICHIGAN

NOTICE OF APPENDIXES

To: Michigan Attorney General the Respondent for the State.

The Solicitor General the Respondent for The United States.

Notice is hereby given by the Petitioner that the following **List of Appendixes** have been filed in the Supreme Court of the United States and the Petitioner has provided both Respondents with a copy of these documents:

- | | | |
|----|--|--------------------|
| A. | Branch County Judge Court Order Served on: | September 30, 2021 |
| B. | Branch County Letter: | November 21, 2021 |
| C. | Branch County Judge Court Order Served on: | November 21, 2021 |
| D. | Branch County ROA: | November 24, 2021 |
| E. | Michigan Court of Appeals Orders | 2022 |
| F. | Michigan Supreme Court Orders | 2022 |

DECLARATION OF SERVICE

The petitioner certify under 28 USC 1746 that a copy of this document was served to all parties by U.S. Mail.

SUBMITTED BY:

Robert Earl Hackney

ROBERT EARL HACKNEY #319385

DATED: 1-3 2022

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

HACKNEY v. MICHIGAN

LIST OF APPENDIXES

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**ALL DOCUMENTS LISTED HEREIN WERE ISSUE ON
BRANCH COUNTY STATIONARY**

DECLARATION OF SERVICE

The Petitioner Certify under 28 USC 1746 that a copy of these documents was served to all parties by U.S. Mail.

SUBMITTED BY:

Robert Earl Hackney

ROBERT EARL HACKNEY #319385

DATED: 1-3 2023

APPENDIX A

**BRANCH COUNTY JUDGE COURT ORDER
SERVED ON SEPTEMBER 30, 2021**

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF BRANCH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

FILE NO. 02-01-1244 FC

vs

ROBERT HACKNEY,

Defendant.

HON. P WILLIAM O'GRADY
Circuit Judge P59550

ORDER ON MOTION FOR RELIEF FROM JUDGMENT AND MOTION FOR
INORDINATE DELAY

At a session of said Court held in the Courthouse on
the 30th day of September, 2021.

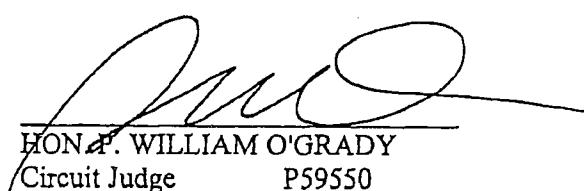
PRESENT: HONORABLE P. WILLIAM O'GRADY, Circuit Judge

The Motion to Amend or Supplement the Defendant's Motion for Relief from Judgment, filed
after the June 2, 2021 order of this court is hereby **DENIED**.

Further the County Clerk is directed to return all future filings of the Defendant pursuant to
MCR 6.502(G). All successive motions from Defendant Hackney shall be returned to him and not filed
in this Court. He may continue to pursue any remedy that he has by law in the appellate court.

Motion for Inordinate Delay is hereby **DENIED**.

DATE: September 30, 2021


HON. P. WILLIAM O'GRADY
Circuit Judge P59550

APPENDIX B

BRANCH COUNTY LETTER
November 21, 2021

STATE OF MICHIGAN



FIFTEENTH JUDICIAL CIRCUIT
Courthouse
Coldwater, Michigan 49036

P. William O'Grady
CIRCUIT JUDGE

Phone: (517) 279-4304
Fax: (517) 279-5110

November 21, 2021

Mr. Robert Hackney #319385
Ionia Correctional Facility
1576 W Bluewater Hwy
Ionia, MI 48846

Re: People v. Hackney
File No. 02-01-1244 FC

Dear Mr. Hackney:

The Court has received your recent letter. I have included both of the recent orders you have requested; however, both would've been sent to you the day that they were issued as is typical practice. I have further attached our Register of Actions (Branch County), and will also make sure that St. Joseph County has our June 2, 2021 order as a part of their Register of Actions as that is the ROA that you received and it looks to be missing. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Madison Black".

Madison Black
15th Circuit Court Administrator

/mnb

APPENDIX C

BRANCH COUNTY JUDGE COURT ORDER
November 21, 2021

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF BRANCH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs

ROBERT HACKNEY,

Defendant.

FILE NO. 02-01-1244 FC

FILED
BRANCH COUNTY
JUN 02 2021

TERESA KUBASIAK
COUNTY CLERK

HON. P WILLIAM O'GRADY
Circuit Judge P59550

ORDER ON MOTION FOR RELIEF FROM JUDGMENT

At a session of said Court held in the Courthouse on
the 2nd day of June, 2021.

PRESENT: HONORABLE P. WILLIAM O'GRADY, Circuit Judge

In the matter before the Court, the Defendant filed a successive Motion for Relief from Judgment. Defendant acknowledges that Judge Stutesman of St. Joseph County on an earlier occasion also has returned motions pursuant to MCR 6.502(G) in earlier filings and or correspondence with SCAO over the years. In the motion before this Court, the Defendant now asserts that he must receive relief from the judgment based on different allegations although never preserved on the record.

The allegations are that Jeff Middleton, the Prosecutor of St. Joseph County, should have recused himself pursuant to Judicial Canon 3 and MCR 2.003 once he won the November 2002 election to become the next District Court Judge in January of 2003. Albeit he remained in that capacity and fulfilled the term for which he was elected until the end of 2002 as Prosecuting Attorney. The felony trial of Defendant Hackney was before the presiding Circuit Judge and Prosecutor Middleton was not a judge at the time. Jeff Middleton was sworn in to be the next District Court Judge in January 2003, after the

Hackney trial was completed. Doug Fischer was the Prosecuting Attorney that represented the People at the time of sentencing.

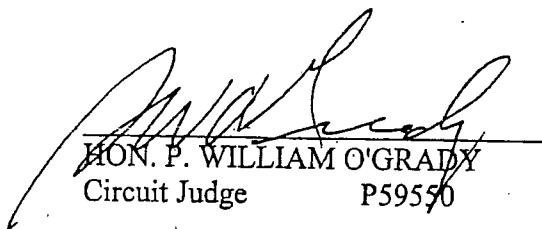
Jeff Middleton had no duty to disqualify himself from continually being a Prosecutor on the Hackney file for there was no violation of either MCR 2.003 or Judicial Canons that apply to judges and not Prosecuting Attorneys elected to be judges in the future of lower courts. Defendant instead conflates this case with cases that address former defense attorneys that become prosecuting attorneys that have worked on the defendant's case and have failed to have the case reassigned.

In the matter before the Court this is not a case of first impression; however, it is a successive Motion for Relief from Judgment. Jeffrey Middleton was not unethical, impermissible or offensive, as the defendant suggests, nor was it a violation of any law, rule and or canon for him to complete his term and perform his duties as the sworn Prosecuting Attorney.

ORDER

THEREFORE IT IS HEREBY ORDERED the Motion for Relief from Judgment is hereby **DENIED**.

DATE: June 2, 2021



HON. P. WILLIAM O'GRADY
Circuit Judge P59550

APPENDIX D

BRANCH COUNTY ROA
November 24, 2021

Caseload Dsp: JV

CLOSE Pub

Crt: C 15 12 Jur: O'GRADY
 Case: 2002 0000011244 FC
 Atty: PRO PER
 File: 8/02/2002 Dispose: 12/19/2002 Reopen:

Ref:
 STATE OF MI V ROBERT EARL HACKNEY
 Worker:
 CHR DNA CVA SOR HIV
 Close: 6/02/2003

D 001 ROBERT EARL HACKNEY
 CTN: 750200156601 PIN: 0
 OFFENSE DATE: 07/03/2002

Charge History

NUM	TYPE	Offense	ASC Description	DISP DFR
01	CUR:750.520B1A		CSC 1ST DEGREE (PERSON UN	GTY
02	CUR:750.520B1A		CSC 1ST DEGREE (PERSON UN	NGTY
03	CUR:750.520B1A HAB:769.12		CSC 1ST DEGREE (PERSON UN HABITUAL OFFENDER 4TH	NGTY

Events, Actions, and Judgments

NUM	Date	Jurist	Chg/Party	Clerk
1	12/19/2002	01 D 001		CR
	JURY TRIAL WHOLE DAY			
	DISP: GUILTY			
2	12/19/2002	02 D 001		CR
	JURY TRIAL WHOLE DAY			
	DISP: NOT GUILTY			
3	12/19/2002	03 D 001		CR
	JURY TRIAL WHOLE DAY			
	DISP: NOT GUILTY			
4	06/02/2003	D 001		CR
	FINAL ORDER/JUDGMENT			
5	10/24/2017	D 001		CR
	CASE REASSIGNMENT FROM ST JOE			
	CNTY TO JUDGE OGRADY-BRANCH			
6	03/31/2021	D 001		CR
	MOTION FOR RELIEF FROM JGMT &			
	FOR AN EVID HRG.			
7	03/31/2021	D 001		CR
	MEMO OF LAW IN SUPPORT OF A			
	MOTION RELIEF FROM JGMT & FOR			
	AN EVID HRG.			
8	03/31/2021	D 001		CR
	PROOF OF SERVICE			
9	06/02/2021	D 001		CR
	ORDER ON MOTION FOR RELIEF			
	FROM JGMT.			
10	08/19/2021	D 001		CR
	MOTION TO AMEND OR SUPPLEMENT			
	THE DEF'S MOTION FOR RELIEF			
	FROM JGMT.			
11	09/29/2021	D 001		CR
	MOTION FILED			
	FOR INORDINATE DELAY			

BLACKM01 UCCVPFK

Branch County
REGISTER OF ACTIONS

Rel2106
11/24/21 16:21:50
Pg: 2

Caseload Dsp: JV

Crt: C 15 12 Jur: O'GRADY
Case: 2002 0000011244 FC

Ref:
STATE OF MI V ROBERT EARL HACKNEY

CLOSE Pub

12 09/30/2021

D 001

CR

ORDER

ON MOTION FOR RELIEF FROM JGMT & MOTION FOR INORDINATE DELAY

***** END OF SUMMARY *****

*** END OF REPORT ***

APPENDIX E

MICHIGAN COURT OF APPEALS ORDERS 2022

Court of Appeals, State of Michigan

ORDER

People of MI v Robert Earl Hackney

Docket No. 359638

LC No. 2002-011244-FC

David H. Sawyer
Presiding Judge

Douglas B. Shapiro

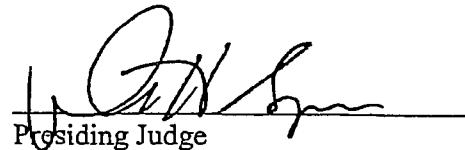
Mark T. Boonstra
Judges

The motion to waive fees is GRANTED for this case only.

The motion for immediate consideration is GRANTED.

The motions for peremptory reversal, to remand, and to allow amendments or additions to the grounds on appeal by leave are DENIED.

The delayed application for leave to appeal is DENIED because defendant has failed to establish that the trial court erred in denying the successive motion for relief from judgment. MCR 6.502(G).



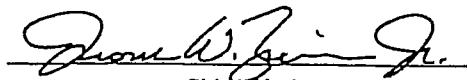
Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

January 28, 2022

Date



Chief Clerk

Court of Appeals, State of Michigan

ORDER

People of MI v Robert Earl Hackney

David H. Sawyer
Presiding Judge

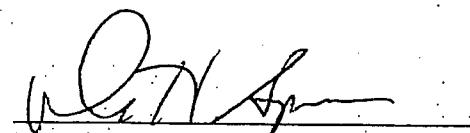
Docket No. 359638

Douglas B. Shapiro

LC No. 2002-011244-FC

Mark T. Boonstra
Judges

The motion for reconsideration is DENIED.



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

April 22, 2022

Date



Chief Clerk

APPENDIX F

MICHIGAN SUPREME COURT ORDERS 2022

Order

Michigan Supreme Court
Lansing, Michigan

June 28, 2022

Bridget M. McCormack,
Chief Justice

164297 & (22)

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,

SC: 164297
COA: 359638
St Joseph CC: 2002-011244-FC

ROBERT EARL HACKNEY,
Defendant-Appellant.

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the January 28, 2022 order of the Court of Appeals is considered, and it is DENIED, because the defendant's motion for relief from judgment is prohibited by MCR 6.502(G).



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.

June 28, 2022

A handwritten signature of Larry S. Royster.

Order

Michigan Supreme Court
Lansing, Michigan

October 4, 2022

Bridget M. McCormack,
Chief Justice

164297 (28)

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: 164297
COA: 359638
St Joseph CC: 2002-011244-FC

ROBERT EARL HACKNEY,
Defendant-Appellant.

On order of the Court, the motion for reconsideration of this Court's June 28, 2022 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G).



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 4, 2022

A handwritten signature of Larry S. Royster.

Clerk

a0926

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

HACKNEY v. MICHIGAN

SUPPLEMENTAL AUTHORITIES

MCR 7.212(F) States without leave of court, a party may file a supplemental authority to call the court's attention on how these authorities apply to his case in support of whether his case presents a unique question that is not well settle under Michigan Law to test the appropriateness of a prosecuting attorney who became judicial judge following the November 5, 2002 election and then represented himself on December 17-19 of 2002 in a jury trial where the doctrine of the separation of powers prohibits the judiciary branch from encroaching of the executive branch by providing that no person belonging to one department shall exercise powers properly belonging to another. As such, a judge is not an attorney by virtue of his former employment as a prosecutor according to:

1. MCR 2.003(C)(1) Disqualification of a Judge is warranted for reasons that include (ii) is acting as a lawyer in the proceeding.
2. MCL 600.207, 600.307, 600.562, 600.8203 shall not practice as attorneys or practice of law other than a judge.
3. Michigan Constitution Art-3 §2 Separation of Powers of Government states: The powers of government are divided into three branches, legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch.
4. Our Supreme Court stated a trial judge may not act in any other capacity than as judge and that no judge can practice or act as a counsellor, solicitor, or attorney and attempts by a trial judge to act as prosecuting attorney are thoroughly condemned. See *People v Evans* 72 Mich. 367 (1888); *Morton v. Detroit, B. C. & A. R. Co.* 1890 Mich. Lexis 768; *Genesee Prosecutor v. Genesee Circuit Judge* 386 Mich. 672 (1972); *People v. Curtis* 389 Mich. 698 (1973); *In re Ryman* 394 Mich. 637 (1975); *People v Delongchamps* 103 Mich. App. 151 (1981); and *People v. Potter* 115 Mich. App. 125 (1982); see also *Holt v. State*, 1994 Miss. Lexis 625 citing *People v. Curtis* and *Genesee Prosecutor v. Genesee Circuit Judge* Citing Michigan case law that it has long been the public policy of this State that a trial judge may not act in any other capacity than as judge in those cases present in his court. Such a usurpation by the judge of the prosecutorial role also constitutes an unconstitutional violation of the separation of powers

5. Michigan's Rule 2.003(C)(1) is identical to Texas Rule of Civil Proceeding 18b(1)(a) which states: A judge must recuse in any proceeding in which the judge is a party to the proceeding.

6. Nothing in this Supplemental Authority nor the Code of Judicial Conduct preclude a prosecuting attorney who has become a judge from discharging in a reasonable manner his or her responsibilities discharging in a reasonable manner his or her responsibilities to complete the responsibilities entrusted to him or her after the date he or she assumes the judicial office. For District Judges it would be the November regular election date, which is the first Tuesday after the first Monday in November.

RELIEF SOUGHT

The Petitioner pray that this court will except these authorities as proof that District Court Judge Middleton following the November 5, 2002 election was elected as a judge and did in fact represent himself as a prosecuting attorney at the Defendant's jury trial beginning on December 17-19 of 2002 was a violation mandated by the plain language in this document under Michigan's Statutes, Court Rules, and Constitution that substantially transformed his jury trial into a jury trial that was unconstitutionally convened. This Court should grant the Motions for (1) A Remand or (2) for Immediate Consideration and Peremptory Reversal for his conviction and sentence.

DECLARATION OF SERVICE

The Petitioner Certify under 28 USC 1746 that a copy of these documents was served to all parties by U.S. Mail.

SUBMITTED BY:

Robert Earl Hackney

ROBERT EARL HACKNEY #319385

DATED: 1-3 2003

Subchapter 9.200 Judicial Tenure Commission

Rule 9.201 Definitions

As used in this chapter, unless the context or subject matter otherwise requires (A) "commission" means the Judicial Tenure Commission and (B) "judge" means:

- (1) **A person** who is serving as a judge of an appellate or trial court by virtue of election, appointment, or assignment;
 - (2) A magistrate or a referee; or
 - (3) A person who formerly held such office and is named in a request for investigation that was filed during the person's tenure, except that with respect to conduct that is related to the office, it is not necessary that the request for investigation be filed during the person's tenure; nothing in this paragraph deprives the attorney grievance commission of its authority to proceed against a former judge;
- (C) "Respondent" is a judge against whom a complaint has been filed;
- (D) "Chairperson" is the commission chairperson and includes the acting chairperson;
- (E) "Master" means one or more judges or former judges appointed by the Supreme Court at the commission's request to hold hearings on a complaint against a judge filed by the commission;
- (F) "Examiner" means the executive director or equivalent staff member or other attorney appointed by the commission to present evidence at a hearing before a master or the commission, or in proceedings in the Supreme Court;
- (G) "Request for Investigation" is an allegation of judicial misconduct, physical or mental disability, or other circumstance that the commission may undertake to investigate under Const. 1963, art 6, § 30, and MCR 9.207;
- (H) "Complaint" is a written document filed at the direction of the commission, recommending action against a judge and alleging specific charges of misconduct in office, mental or physical disability, or some other ground that warrants commission action under Const. 1963, art 6, § 30.

MCLS § 168.467i

[Copy Citation](#)

This document is current through Act 66 of the 2021 Regular Legislative Session and E.R.O. 2021-1

- [Michigan Compiled Laws Service](#)
- [Chapter 168 Michigan Election Law \(§§ 168.1 — 168.992\)](#)
- [Act 116 of 1954 \(Chs. I — XXXVII\)](#)
- [Chapter XXIA Judges of the District Court \(§§ 168.467 — 168.467p\)](#)

§ 168.467i. Judge of district court; term of office.

Sec. 467i.

Except as otherwise provided by law, the term of office for judge of the district court shall be 6 years, commencing at 12 noon on January 1 next following the judge's election and shall continue until a successor is elected and qualified.

History

Pub Acts 1954, No. 116, Ch. XXIA, § 467i, as added by Pub Acts 1968, No. 155, imd eff June 17, 1968; amended by Pub Acts 1981, No. 4, imd eff March 30, 1981; 1990, No. 32, imd eff March 21, 1990.

▼ **Annotations**

Notes

Prior codification:

MCLS § 600.8203

[Copy Citation](#)

This document is current through Act 91 of the 2021 Regular Legislative Session and E.R.O. 2021-1

- [Michigan Compiled Laws Service](#)
- [Chapter 600 Revised Judicature Act of 1961 \(§§ 600.101 — 600.11105\)](#)
- [Act 236 of 1961 \(Chs. 1 — 99\)](#)
- [Chapter 82 District Judges \(§§ 600.8201 — 600.8288\)](#)

§ 600.8203. District judges; practice of law prohibited.

Sec. 8203.

Upon taking office, a district judge shall not engage in the practice of law other than as a judge.

History

Pub Acts 1961, No. 236, Ch. 82, § 8203, as added by Pub Acts 1968, No. 154, imd eff June 17, 1968.

▼ Annotations

Notes

Prior codification:

MSA § 27A.8203