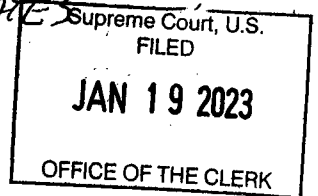


22-7164

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



PAUL A. BERNARD - PETITIONER

VS.

PEOPLE OF THE STATE OF MICHIGAN - RESPONDENT *

ON PETITION FOR A WRIT OF CERTIORARI TO
THE MICHIGAN SUPREME COURT 164301

011223 PETITION FOR WRIT OF CERTIORARI

Paul A. Bernard 536729
Chippewa Correctional Facility
4269 West M-80
Kincheloe, MI 49484

* See Motion #5

PRIMARY QUESTIONS ON CERTIORARI

- I. whether Mr. Bayard properly shifted burden to the State regarding bench disqualification, pursuant to perception of partiality of an "entity" versus a "person"? Lack of procedure issue.
- II. whether a Court abuses discretion when it fails to consider structural, jurisdictional, and/or retroactive caselaw threshold matters, even though bench disqualification is also structural in nature? Record issue.
- III. whether the State's complete inability to ensure judicial impartiality, as related to bench disqualification, creates a State bar to due process protecting substantive rights, which requires grant of the primary matter (here a moratorium)?

Rule 14(c)(a). See Appendix M for details.

List of Parties, Rule 14 (1)(b)(i)*

The People of the State of Michigan, Kent County Prosecutors Office (KCPO) is the "opposing party," Mr. Christopher Becker.

HOWEVER, the KCPO is subject to disqualification for their direct intrusion leadership related to the 011305 Cell Jail. Twelve (12) pages are still missing and unaccounted for even the Defense copy, 478. The Court sealed the copy made for Prosecutor Brinkman, 490. This constitutes permanent prejudice, 07-9069.

ALSO, the State itself is a more logical party. Lack of a State procedure for bench disqualification is a state, not a county, issue.

BUT, the Michigan Attorney General has a conflict. The Michigan Conviction Integrity Unit is having the innocence reviewed by a Michigan Innocence Project.

CONSEQUENTLY, the Michigan courts are the only actual "parties" opposing bench disqualification, standards, application of MCR 7.517(A)(i) to themselves, and procedural due process protecting substantive rights. But as the judiciary, they cannot oppose legal process.

This creates what may be a matter of first impression = there is no "opposing" party.

This writ should be granted. The lack of an opposing party reinforces Mr. Bernard's right to procedural due process, and denial to date.

* See Motion #5

Proceedings Directly Related To The Case In This Court, Rule 140(c)(1)(b)(iii)

- (1) 17th Circuit Court, 04-04787-FC, Premeditated Murder, July 2005.
- (2) 3rd District Court of Appeals, No. 264825, Direct Appeal, February 8, 2007, 2007 Mich. App. LEXIS 3216.
- (3) MI S.Ct., 480 Mich. 920, SC 133529, Denied Appeal, October 29, 2007.
- (4) U.S. S.Ct., 533 U.S. 1055, Writ of Certiorari to Court of Appeals denied, May 19, 2008.
- (5) MI S.Ct., 488 Mich. 980 (Dec. 3, 2010), Denial of first Mer 6500
- (6) U.S. S.Ct., 07-9069, Cell Raid Writ denied¹
- (7) Bench Disqualification (see Appendices A-C):
 - 17th Circuit, 04-04787-FC (2020-2022)
 - Court of Appeals, No. 358499 (012822)
 - MI Supreme Court, No. 164301 (042722), (010423)

1 07-9069, 533 U.S. 1055 (May 19, 2008), Petition for writ of certiorari to Michigan Court of Appeals denied. Cell Raid.

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- X. 011223 Rule 216(b) Motion To
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- (1) 010423 Denial of Motion for Reconsideration: (unpersuaded that reconsideration is warranted) Appx. A
- (2) 072822 Denial of Application for Leave to Appeal, No. 164301 Michigan Supreme Court, Appx B
- (3) 012822 Denial of Bench Disqualification Appeal from 17th Circuit, No. 358499, by 3rd District Court of Appeals.
- (4) 120121 Denial of Motion to Supreme Court to Require Reasoned Response Pursuant to mic 3.517(4)(c) From Court of Appeals.
- (5) 101921 State Court Administrative Office (SCAO) Ending Their Involvement
- (6) 072721 Denial of Bench Disqualification by Court of Appeals, No. 354066.
- (7) 120920 Denial by Chief Judge Trusock, 17th Circuit, of Re-characterized Grounds from Redford Misconduct to "Mere Presence" on 3rd District Court of Appeals.
- (8) 093020 Denial by 17th Circuit of Motion to Disqualify Both the 17th Circuit and 3rd District Court of Appeals.
- (9) 070820 Order Denying mic 6.502.

Jurisdiction, Rule 14(c)(e)

The date on which the Michigan Supreme Court decided my case was July 28, 2022.

A copy of that decision, No. 164301, appears at Appendix B

A timely petition for reconsideration was thereafter denied on the following date: January 4, 2023.

A copy of the order denying rehearing appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

Constitutional and statutory provisions, Rule 14(c)(f)

See Appendix D for copies.

- (1) Constitutional Amendment 1 (equal protection)
- (2) Constitutional Amendment 6 (impartial judge)
- (3) Constitutional Amendment 17 (due process)
- (4) 28 USC § 455 (federal disqualification)
- (5) MCL 3.003 (state disqualification) ("person")
- (6) MCL 3.517 (findings by court)
- (7) MCL 6.502 (right from judgment)
- (8) MCL 4.316 (a)(4) (supreme court can draw inferences of fact)
- (9) MCL 5.470, 1 (neutral, adequate record)

1.0 Granting Certiorari In Judicial Disqualification Cases

This Court has established boundaries within which it grants certiorari in judicial disqualification cases. To date, this has not included bench disqualification. This is the ideal case as Michigan and Ohio are in complete disagreement as to even the need to provide due process.

- (1) Michigan has no bench disqualification process, though has reached such decisions in the past;
- (2) Ohio employs a very simple process, and one which comports with due process; and
- (3) The primary matter involves obstruction of an MCR 6.502 Retroactive Caselaw and Actual Innocence motion (miscarriage of justice).

The bench issue itself involves society's perception of partiality where all judges on a bench are presented with a choice to ignore or remedy a peer's misconduct which is a proximate cause of a wrongful murder conviction.

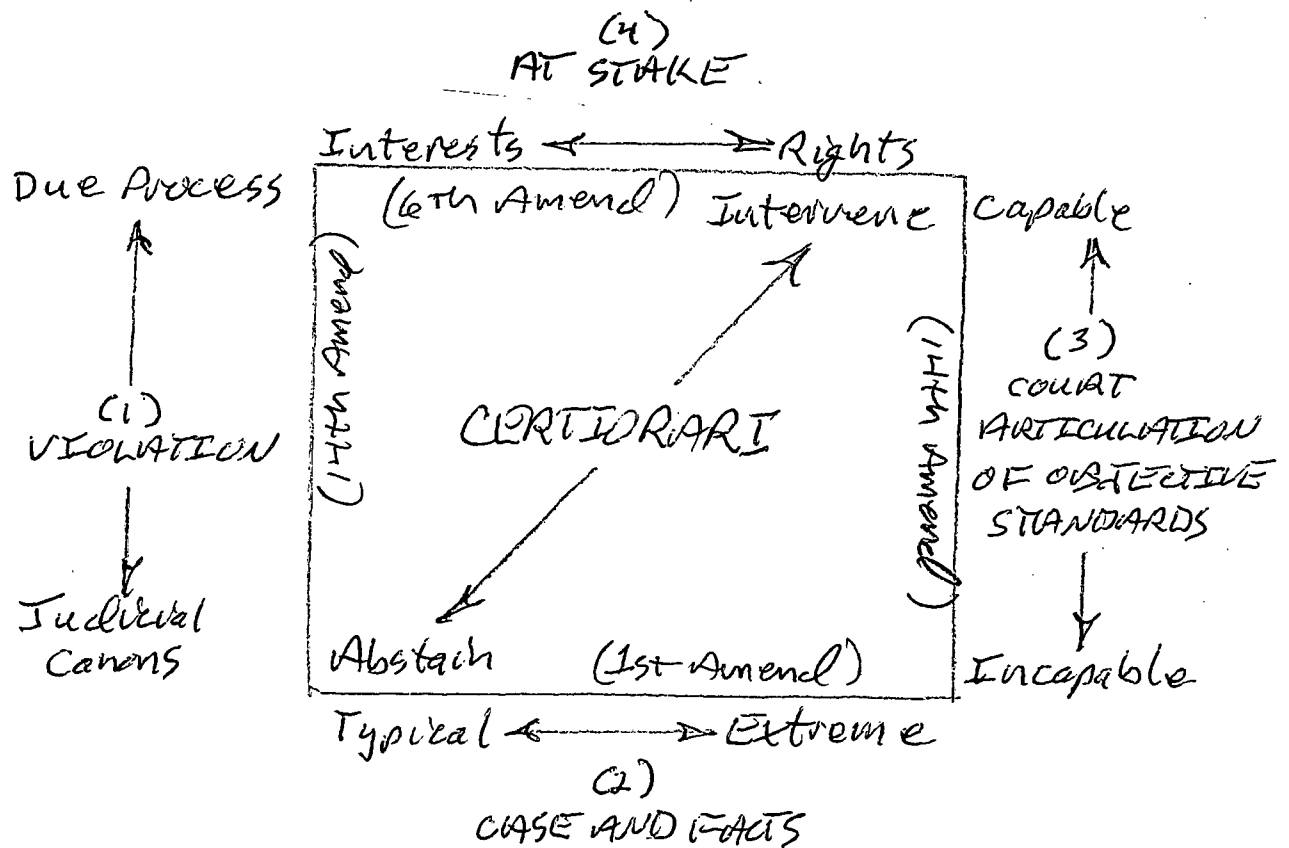
Arguments developed from other judicial bias cases include: see Figure 1:

- (1) Whether lack of a State bench disqualification process rises to the level of a [predeprivation] due process violation? See, e.g., C. Line, Inc. v. City of Davenport, 957 F. Supp. 2d 1012 (August 2, 2013).

Mr. Bernard argues that the complete absence of process, or misapplication of MCR 2.003 to bench disqualification, constitutes a State bar denial of due process right to a presumptively impartial judge.

- (2) Whether this is an extreme case involving extreme facts, as lack of process is preventing correction of an unsettled record and consideration of a MCR 6.502 Retroactive Caselaw and Actual Innocence Motion? Caperton v. Massey, 556 U.S. 868 (2009); Aetna Life Ins. Co. v. Lavoie, 425 U.S. 813, 822 (1986); Murchison, 349 U.S. 133, 136 (1955).

Figure 1. This Case Meets Established Precedents For Intervention



This Court should intervene in circumstances where (1) the case involves a clear due process violation, where (2) the case and facts are extreme enough for the Court to (3) articulate an objective standard protecting (4) constitutional rights as compared to interests protected by state process.

Former 17th Circuit trial judge Redford is now on the 3rd District Court of Appeals having jurisdiction over 17th Circuit cases. This situation creates a "peer" group of both benches. He biased himself with two different extrajudicial investigations and committed over 100 categories and instances of pretrial, trial, and posttrial misconduct. His own explanations in the record prove incompetence in Constitutional law, caselaw, and the MRE. For example, in misapplying "discovery process" to the "direct intrusion" Cell Rail, Judge Redford denied a record of prejudice. Absence of a prejudice record prevented this Court from granting certiorari, 07-9069.* Had certiorari been granted, the conviction would have been reversed and Judge Redford and the perpetrators disqualified.

* See motion #13, Appendix V

Mr. Bernard argues that Society would view all peers faced with a choice to find Judge Redford to have been biased and incompetent (in order to settle the court record prior to even considering the merits of the case 6:502) as being subject to partiality beyond what is constitutionally tolerable. Withrow v. Larkins, 421 U.S. 35, 47; 95 S.Ct. 1456 (1975) (beyond what is constitutionally tolerable).

- (3) Whether the Court should intervene and articulate an objective standard to protect Mr. Bernard's and others' fundamental right to a fair trial [and appeal] in a fair tribunal, while being careful to distinguish the extreme facts of the case before it from those interests that would not rise to a constitutional level? See, e.g., Lavoie, 475 U.S. at 825-826; Mayberry v. Pennsylvania, 400 U.S. 455, 465-466; 91 S.Ct. 499 (1971); Murphy's on, 349 U.S. at 137.

Mr. Bernard argues that this case provides the ideal opportunity to distinguish between individual (person) and bench (entity) disqualification. The Court can distinguish between SITUATIONS that create a societal perception of partiality of an entire group of judges, and CONDITIONS that create a probability of actual bias of an individual judge.

- (4) This Court's recent cases have dealt with extreme facts that created an unconstitutional probability of bias that "cannot be defined with precision." It is this extreme nature that enables the Court to distinguish between the right to a fair trial in a fact tribunal, and interests that do not rise to a constitutional level. Capeiron, 552 U.S. at 887 (quoting Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 822, 106 S.Ct. 1580 (1986), quoting Murchison, 349 U.S. 133, 136 (1955); Mayberry v. Pennsylvania, 400 U.S. 455, 465-466 (1971).

Mr. Bernard argues that once a judge or bench is challenged, Michigan requires three levels of impartial *** appeal in order to re-establish a presumption of impartiality. mer 2,003 (b). The State cannot provide this where two benches are challenged.

Mr. Bernard not only has a right to an impartial judge and a fair appeal, but he also has a right to due process that protects these rights. These rights cannot be recharacterized or mischaracterized as "interests."

None of Mr. Bernard's rights have been scrupulously protected by any judge or court since he was de facto arrested inside his home on 040303, without warrant or cause, for a "crime" that was dispatched at that time as a suicide. See the 012521 14-Attachments to the mer 6-502 and disqualification motion set. These Also identify the grounds underlying bench disqualification.

The 14-Attachments are 14 full briefs and standalone appendices. Of special interest to this Court are the Actual & Innocence Attachment and the Cell Raid Attachment (07-9069). **

* See Motion # 12, Appendix U

** See Motion # 13, Appendix V

*** See Motion # 14, Appendix W.

It is axiomatic that "[a] fair trial in a fair tribunal is a basic requirement of due process," Caperton quoting Wuchison, 349 U.S. 133, 136 (1955).

Michigan Court Rule (MCR) 2.003 incorporates Caperton by specific reference. Caperton did not limit the reasons for disqualification, but did identify constitutional differences as compared to state judicial canons.

The Due Process Clause provides that certain substantive rights -- life, liberty and property -- cannot be deprived except pursuant to constitutionally adequate procedures. The right to due process is conferred by constitutional guarantee. Once it is determined that the Due Process Clause applies, "the question remains what process is due." Morrisey v. Brewer, 408 U.S. 471, 481 (1972).

Here, Michigan applied the only disqualification procedure it had, MCL 2003 judicial disqualification, to bench disqualification. Consequently, denials were guaranteed as persons and entities are distinguished. *

Mr. Bernard argues that the process that is due is Ohio's process. See In re Disqualification of Crawford, 81 Ohio St. 3d 1204 (1996); State ex rel. Dunn v. Franklin Cnty. Court of Common Pleas, 150 Ohio St. 3d 1203 (March 10, 2017).

Absolute rights, such as impartiality, are logically best protected by the simplest process:

(1) Submit bench disqualification motion to State Supreme Court.

(2) Chief Justice rules on the motion per established standards and process, and in an expeditious manner.

NOTE = A peer's misconduct disqualifies the bench.

* See Motion # 11,
Appendix T

2.0 Concise Statement of the Bench Disqualification Issue, Rule 14(c)(g)

Mr. Bernard submitted an MDL 6.502 Retroactive Caselaw and Actual Innocence Motion to the 17th Circuit Court, Grand Rapids, Kent County, in June 2020. It was post-dated July 4, 2020, to permit delivery of 14-Attachments already in Grand Rapids. These 14 Briefs identified corrections to the unsettled record caused by judicial and prosecutorial misconduct.

Covid restrictions prevented delivery of the Redford Misconduct by 07/04/20. Rather than wait for the Attachments, or return the insufficient motion, Judge Quist denied the 6.502. Judge Quist replaced trial judge Redford who was no longer on the 17th Circuit. Appendix E: Attach.

The 14-Attachments are important. They also establish Society's grounds for a perception of partiality regarding bench disqualification.

It should be noted that the prosecution knew that Mr. Bernard had no opportunity to murder his ex-wife on April 7, 2003, by April 22. This is when the autopsy and computer reports were submitted. See mcr 6.502 Arrog #1 and the 012521 Actual Innocence Attachment of the 14. Per belief then, the March 5, 2004, arrest was abuse of process. It prevented child custody from moving forward. See Appendix G for a more detailed Statement of the Case.

The mcr 6.502 miscarriage of justice actually caused by Judge Redford's and Prosecutor Brinkman's misconduct requires a 20th stack of 14-Attachments to document. These are with the 012521 6.502 and bench disqualification motion set. Choosing the Arrog #1 path addresses actual innocence. Choosing the Arrog #2 path actually provides a number of ways to correct the record and reverse the conviction.

Either of the Arny #1 or #2 paths is within the boundaries of mer 6.502 "choices." Instead, Judge Quist "chose" to ignore any path that would expose and address Judge Redford's clear misconduct. This is the type of choice, completely unconnected to the merits of the 6.502, that Society perceives as partiality.

Mr. Bernard remained unaware for many months that Judge Quist had not incorporated the 14-Attachments into his consideration. In fact, Judge Quist had actually instructed his staff to prevent their submission after 07/08/20.¹ During that time Mr. Bernard discovered a reasonable explanation for Judge Quist's conduct - Judge Redford was on the 3rd District Court of Appeals. This discovery was August 20, 2020. The 3rd District hears appeals from the 17th Circuit. Consequently, there is at least a professional relationship.

1. Appendix H Grower Law Correspondence

Mr. Bernard contacted the State Court Administrative Office (SCAO) to determine the procedure to disqualify the bench. There was none, but they assigned Region V. The inference was that an impartial judge would be assigned to determine whether the 17th Circuit and 3rd District benches should be disqualified, and the 6-502 transferred to a non-3rd District Circuit Court.²

To this end, Mr. Bernard submitted a joint 092820 motion to disqualify the two benches. Judge dust denied the 17th Circuit motion. This raises an issue for this Court as to whether he had authority or jurisdiction, as opposed to only the Michigan Supreme Court Chief Justice.

The 3rd District returned the motion, as there was no "pending" matter. However, this uses a procedural rule to deny predeprivation due process, as applies to judicial impartiality. Appendix I.

² Appendix I SCAO correspondence

when Judgequist failed to disqualify himself in June 2020, he placed himself in a position to obstruct correction of the Redford misconduct, when the 3rd District failed to disqualify the COA, it left itself in position to deny any appeals from the 17th Circuit. But as both benches were subject to the same grounds for disqualification, denying the Redford grounds as to the 17th Circuit collaterally denies the same grounds as to itself. This actually creates In re Murchison error (no judge can be a judge in his own case).

Meer 2003 requires two-levels of impartial review before review by the Supreme Court. This assumes two levels of reasoned reviews, pursuant to Meer 2.517(14X1). There was actually a disincentive for the 17th Circuit and 3rd District to explain their denials, and there were none: explanations can be effectively appealed.

To complete due diligence, Mr. Bernard filed motions under both MCR 2.003(D)(3)(a)(i) and (ii). Judge Trusock (chief) never acknowledged the subrule (ii) path. This kept any appeal from going to the SCAD, after 012521.

Mr. Bernard requests this Court to consider the Ohio bench disqualification process. It is simple and expedient, as impartiality requires. The motion is submitted to the Supreme Court. The Chief Justice then rules on the motion.

The two-year process here is a sham process. Mr. Bernard satisfied his burden of showing that a Redford peer was presented with a choice not to hold the balance fair and true, and that he actually chose to obstruct correction of any of the over 100 instances and categories of Redford misconduct. This shifted burden to the State. See Appendix F (over 100 instances),

Judge Quist never considered his burden pursuant to perception of partiality. Instead, he self-confirmed his own "actual" impartiality. This is actually consistent with the 17th Circuit policy of recharacterizing defendant's arguments, and then denying the recharacterization. Chief Judge Trusock did the same thing on December 9, 2020, when he changed the "Redford Misconduct Grounds" to "Judge Redford's 'mere presence' on the Court bench."

Recharacterization confirms partiality. Appendix C.

As the 6.522 contains proof of actual innocence, Mr. Bernard asks this Court to confirm that a State bar to due process, in the form of a complete lack of bench disqualification process, has as a remedy the granting of the 6.522. Or Prong #2 requires transfer to a presumptively impartial non-3rd District court.

After 2½ years, Mr. Bernard's impressions guide the development of this writ of Certiorari:

- (1) Michigan has no bench disqualification procedure, a state bar to due process.
- (2) Bench (entity) and Judge (person) disqualification are distinguished, requiring separate procedures.
- (3) Michigan acknowledges the "perception of partiality," but does not acknowledge that it is the perception of a "fully-informed objectively reasonable citizen." I.e., Judge Quist presumes that self-declaration of his own impartiality moots ^(his own) perception of partiality.
- (4) Michigan does not recognize that a Judge's misconduct related to a trial (versus some external situation) can establish a perception of partiality as to his peers. It is not the misconduct, per se, but choices that can actually prevent consideration of the primary matter, that create the perception of partiality.

(5) where Chief Judge Trusock changed the Redford misconduct to his "mere presence" as justification for denying disqualification on 120920, it is actually unknown what the courts even considered as the grounds. However, it appears certain that the courts ignored the 14-Attachments. Otherwise, miscarriage of justice, structural and constitutional error, and retroactive caselaw would have been resolved as threshold matters.

(6) Michigan does not recognize that it is actually society that determines the peer group in a given "situation," and the grounds supporting a perception of partiality. As such, no bare denial comports with due process, because the "situation" remains. Bare denials in a disqualification action confirm a perception of partiality.

(07) Michigan recognizes via MCL 2.003 that a challenged judge as to bias or partiality can ONLY regain a presumption of impartiality after two-levels of impartial review PLUS Supreme Court confirmation (i.e., three denials of the disqualification motion). However, this same principle was ignored in order to allow the challenged benches to deny their own perception of partiality. This creates a clearly anomalous situation: disqualification of a single judge requires 3-levels of impartial review, but disqualification of a bench of judges requires only the Supreme Court's unreasoned denial, pursuant to no process,

Here, neither bench re-established a presumption of impartiality. There were no reasoned denials. The Supreme Court applied no procedure restoring the presumption, which a bare denial does not accomplish. 19

2.1 Threshold Matters (Category II Questions)

The MCR 6-502 presented three separate crime timelines. These relate to pre-Cell Rack, trial prejudice, and actual evidence. The details are more fully explained in Appendix G. Also see the 012521 Actual Innocence Brief/ Attachment of the 14. Denial of the 6-502 created the bench disqualification matter.

Mr. Bernard remained unaware that he had a medical-based alibi for years. Minnie had two similar-sized and overlapping brown (older) and blue (death) contusions on her forehead. They occurred "at least several [3] hours apart," TOUILL Dr. Start (ME) p. 42.

The only way to convict Mr. Bernard was to argue the blue contusion (crime) during his unalibied time, 11:06-11:48 (42-minutes). But this is cell rack prejudice, not evidence-based.

consequently, Prosecutor Brinkman argued to the jury that the crime occurred between 11:00 pm and midnight, April 3. This argument was based on no trial evidence, which explains why she waited until her rebuttal closing argument, TXIV p. 96.

What Prosecutor Brinkman never did, however, is identify when the brown confusion occurred.

In fact, she essentially impeached Dr. Stant by arguing a "quick attack," TXII p. 96. This brown confusion timing is the Brady violation.

With no one seeing the brown confusion before about 6:00 pm, the timing can be calculated:

Midnight minus 3 hours equals 6:00-9:00 pm for the brown confusion timing, max 3:31 (a.k.a.)

Mr. Brinkman was alerted before 11:00 pm.

Had the jury heard the 6:00-9:00 pm timing, Mr. Brinkman would have been acquitted.

The brown confusion timing is based directly on the trial record. It proves the miscarriage of justice and also the reasonableness of the Redford grounds for bench disqualification.

This Sup. Court is asked to consider the MRE 7-4 ultimate issue "principle." Finding the reasonableness of the Redford misconduct grounds ALSO confirms actual innocence. Actual innocence moots bench disqualification.

Q: whether an appellate court must consider an actual innocence threshold issue where it must do no more than a simple mathematical calculation based on the court record, where the threshold issue is intertwined with the matter on appeal? MCR 7-316(A)(6). See Motion #12, Appendix 4.

2.2 Issue of Mootness With Actual Innocence
As A Threshold Issue, Rule 21(2)(b)

An issue is deemed moot when an event occurs [here, confirmation of actual innocence] that renders it impossible for a reviewing court to grant relief [as to bench disqualification]. B P 7 v. Bureau of State Lottery, 231 Mich. App. 356, 359 (1998). As a general rule, an appellate court will not review a moot issue. City of Jackson v. Thompson-McCully Co., LLC, 239 Mich. App. 482, 493 (2000).

In Daubert v. Merrell Dow Pharms, Inc., 509 U.S. 579, 598 (1993), this Court mooted the second question by its holding. Chief Judge Rehnquist. Here, a finding of Judicial misconduct as grounds for bench disqualification also confirms actual innocence as part of those grounds. Issues are intertwined.

"Judicial misconduct may come in myriad forms"
People v. Stevens, 498 Mich. 162, 172-173 (2015). Once
a reviewing court has concluded that judicial
misconduct has denied defendant a fair trial,
a structural error has occurred and automatic
reversal is required. Arizona v. Fulminante, 499
U.S. 279, 111 S.Ct. 1246 (1991).

Here, however, the MRC-502 consisted of two
prongs. One was actual innocence. The second
was misconduct that, when remedied, leaves
prong #1 to resolve. Resolving actual innocence
involves the ultimate remedy of dismissal on
grounds of actual innocence. United States v.
Morrison, 449 U.S. 361 (1981) (match remedy to
the rights violated).

The extreme facts of the case, thus, include Judge Redford himself being a cause of a wrongful conviction. I.e., he caused the misconduct in Prong #2 that caused the wrongful conviction in Prong #1. Consequently, the "grounds" for bench disqualification include denial of two actual innocence alibies. See Appendix F.

But in confirming the "grounds" and "peer" group, any appellate court must also consider threshold issues. "Actual Innocence" is arguably both a threshold issue, and an issue within the grounds for bench disqualification (see the 012521 Actual Innocence Attachment of the 14).

Mr. Bernard argues that this Court is faced with a circular logic decision. Resolving the collateral bench matter ALSO resolves the primary actual innocence matter, as confirming the grounds "generally," confirms innocence "specifically."

3.0 Argument Amplifying Reasons Relied on For Allowance of Writ, Rule 14(1)(H)

There are compelling legal and factual reasons to grant this writ. Factual reasons deal with a miscarriage of justice. Michigan lack of process related to protection of right to an impartial judge under all circumstances is preventing the merits from being reached.

Legal reasons deal with Trial Judge Redford's "misconduct" being a proximate cause of a wrongful conviction. For example, he actually denied an absolute alibi when he admitted 011305 Cell had prejudice, 07-9069. Now that he is on the 3rd District Court of Appeals, all 17th Circuit and potentially all COA peers are subject to a perception of partiality. They must rule on his bias, misconduct, and incompetence prior to ruling on the 6.502 motion, in order to correct the court record.

Judicial misconduct cannot be the or a proximate cause of a wrongful conviction where it is, structural error has occurred.

By holding that the Redford Misconduct grounds lack merit, the Michigan Courts collaterally held that the derivative issues also lack merit. Chief among these are (1) right to a perceptibly impartial judge, and (2) right to have a miscarriage of justice remedied. All other States disagree with Michigan's position.

without a reasoned response^{*} devoid of recharacterization, judicial impartiality becomes a "choice" of the judiciary, rather than a "right" of citizens bestowed by the Constitution. When the State itself denies rights, the State must be disqualified.^{**} I.e., the remedy is to grant the MCR 6.502,

* See motion # 7, Appendix P
** See motion # 11, Appendix T

3.1 Reasons For Granting The Petition

- (1) Conflict = Michigan has no bench disqualification procedure, and yet was willing to misapply a distinguished procedure to provide the appearance of due process. This is in conflict with every state and federal court. Mr. Bernard can find no comparative examples where a State court had no process, but somehow "knew" that the grounds (here, Retard Misconduct) "lacked merit," as a basis for denial.
- (2) Confusion: Michigan courts conflated actual bias with perception of partiality. This confuses Society's perception based on the selection with the judge's opinion of his own impartiality. Procedural due process removes confusion. Here, only the United States Supreme Court can bring Michigan into compliance with the lower bar associated with perception of partiality.

(3) clarification: The existence of the Michigan
Conviction Integrity Unit confirms that there
is a state recognition that (1) wrongful
convictions have occurred, and (2) that the
State feels a duty to rectify them. Therefore,
it seems anomalous when Michigan courts
are willing to ignore actual innocence and
a miscarriage of justice as a threshold
matter to bench disqualification. Procedural
administrative rules do not moot a person's
constitutional rights. A court system ceases
to be one in which society has confidence
when it can deny a collateral matter
(here, bench disqualification on grounds
of Redford misconduct) as a "legal" way
to avoid finding actual innocence, MCR 6.502.
See Motions #11 and 12, Appendices T and U.

3.2 Rule 10(b). Character of Reasons: Conflict

The Michigan Supreme Court has decided an important federal question in a way that conflicts with the Ohio Supreme Court. Ohio disqualifies a bench in an abundance of caution where a judge must rule on the misconduct, incompetence, or similar of a peer. Here, this involves findings that Judge Redford's bias, motive, pattern of abuses of discretion to advantage the prosecution and/or disadvantage the Defense, and incompetence as proven by his own reasons in the court record, was the source of court record corruption.* This then allows the appropriate legal path to be determined with regard to the 6.502 motion. Michigan conflates actual with a perception of partiality, allowing a judge to self-confirm his own impartiality as a way to arbitrarily deny a valid bench disqualification motion.

* See 012521 Structural Error Attachment of the 14, and Motion #10, Appendix 5.
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see, e.g., In re Disqualification of Crawford,
81 Ohio St.3d 1204 (1996), and cited decisions
of this case.

This question should be settled by this
court. Both courts are Sixth Circuit.
"Perception" is either the, or one of the,
lowest legal bars. This is consistent
with structural error when right to an
impartial judge is infringed. A judge's
personal assurance of his own impartiality
is irrelevant to a perception of partiality
based on the situation itself. Society's
perception of partiality is of the situation,
and is not a personal reflection on a judge's
own impartiality.

3.3 Rule 10(c). Character of Reasons = Unsettled Law

The Michigan Supreme Court has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The right to an impartial judge is fundamental. Once a challenged judge or bench has lost its presumption of impartiality, the burden shifts to the judge or bench. Supplanting "bench disqualification" does not identify any Supreme Court cases on point, but "persons" are distinguished from "entities."

This question should be settled by this Court. Michigan's lack of procedural due process has created a state bar to remedying a miscarriage of justice caused by one of its own judges.

3.4 Reason = Absence of Michigan Process

Michigan has had bench disqualification cases, but has established no court rule distinguishing judge (person) from bench (entity) disqualification. The result of having no process is that indigent and unrepresented defendants have no way to shift burden to the State to address a perception of partiality. This creates a situation where even the most biased judge, or the situation most subject to a perception of partiality, cannot be addressed in other than a sham process.

This issue should be settled by this Court.

Michigan has been on notice for at least 40-years of the need for a court rule. See Special Wayne County Prosecutor v. Records

Court Judges, 409 Mich. 119 (1980). Michigan

acquiesces to bench disqualification when it has no process or Court rule. See Motion #11, Appendix T.

3.5 Reason: Standard For Re-Establishment of
presumption of impartiality once challenged

Judges are presumptively impartial. Per MCR 2.003, a challenge to impartiality can only be rebutted and presumption re-established after two levels of impartial review. This is typically (1) circuit court chief judge and (2) court of appeals, before consideration by the Supreme Court, a 3rd review.

Here, however, both the 17th circuit and 3rd District court of appeals benches were directly challenged. See the 092820 Motion. In re Muchison ever occurred when both benches denied their own disqualification, and the court denied circuit disqualification on the grounds lacking merit. These are the same self misconduct grounds that applied to itself. Appendix I (092820 Motion).

The result is that Mr. Bernard's motion received no levels of presumptively impartial review. This is a complete denial of due process. See Motion #14, Appendix W.

This question should be settled by this Court. Michigan has determined that impartiality warrants two-levels of presumptively impartial appeal before final determination by the Michigan Supreme Court. This involves two-levels of "reasoned opinions." This is not a Rule of Necessity situation which permits review by the Circuit and COA benches. If anything, bench disqualification should be directly motioned to the Michigan Supreme Court Chief Justice. See United States v. Will, 449 U.S. 200, 101 S.Ct. 471 (December 15, 1980) (Rule of Necessity, where Judges could hear case on their own salaries because the Compensation Clause was not designed to benefit judges as individuals, but the public interest in an independent judiciary). Here, without the required two-levels of impartial review, the presumption of impartiality was never re-established.

3.6 Reason: Disqualification Is "unlimited" As To
Grounds, Subject To Reasonable Citizen
Perceptions

Michigan has no limit as to grounds for disqualification. "Reasonably be questioned" is the general standard, 28 USC § 455(a). This is consistent with a defendant's absolute right to a presumptively impartial judge. Appendix D.

Society, in the person of the defendant, has the burden of determining the grounds and peer group. Once a showing has been made, the burden shifts to the State to re-establish the presumption of impartiality. Here, the State wrongly shifted its burden to prove "actual partiality" where the standard only requires a showing of a "perception of partiality."

The State never met its burden to both correct the situation and affirm the nonexistence of the peer group. See Motion # 6, Appendix O.

This question should be settled by this Court. Even under *Mora* 2003, pre-deprivation due process presumes that grounds have merit. Otherwise, all disqualification motions would be summarily denied at "the grounds lacking merit." The state's burden is arguably to prove by some standard such as clear and convincing evidence that the challenged judge(s) will maintain his / their impartiality "in spite of the grounds having merit." I.e., the defendant, as society's representative must show an objectively reasonable perception of partiality based on the situation. The judge must show either that the situation does not actually exist, does not apply (as he is not in society's defined peer group), or that he is actually impartial based on proof (arguably impossible).

3.7 Reason: Michigan's Lack of Standards

The perception of partiality of a bench applies the "fully-informed objectively reasonable citizen" set of standards. This is Society's viewpoint, as presented by its defendant representative. The perception of partiality is of a reasonable citizen, not that of the challenged judge. "Fully-informed" here refers to the 017521 set of 14-Attachments of the Redford Misconduct. Objective is as opposed to subjective, facts and reasonable inferences as opposed to beliefs and speculation. It is unreasonable to shift the burden back to Mr. Bernard to prove partiality (which the Court re-characterizes as proof of impartiality*), while the State is held to no legal standards.

This question should be settled by this Court.

These standards are well-established and their application is not optional.

* If judge is not "proven" to be partial, he is impartial.

3.8 Reason: Standard For Determining Peer Group

Bench disqualification is, by necessity, a peer group disqualification. Michigan has no standard, procedure, or Court Rule for establishing the peer group. Here, Trial Judge Redford had left the 17th Circuit Bench. Per belief, some of the remaining judges were peers. Now he is on the Court of Appeals. Both benches and courts have professional relationships. This does not even account for personal, social or other relationships. It is reasonable for "Society" to establish Judge Redford's previous and current benches as his peer group, under the Redford Misconduct grounds here. See Motion #6, Appendix O.

This question should be settled by this Court. Judge Redford is firstly a court judge and only secondarily a 3rd District court judge. Grand Rapids is also a legitimate peer group.

3.9 Reason: Perception of Partiality

Perception of partiality on the grounds is a societal, not a judicial, perception. It is based on the situation, which is possibly even independent of any or all of the judges. Even just confirming the existence of the situation satisfies a defendant's burden, which then shifts to the State. Here, the court record is inadequate due to denied full and fair hearings. However, Judge Redford also biased himself with extrajudicial investigations in two different areas. The bias is structural, the hearings are constitutional and evidentiary. No judge can consider the lack of hearings without also considering the bias that led to the lack of hearings, hence issues are intertwined.

This question should be settled by this Court.

Fully-informed objectively reasonable citizen's perception cannot be dismissed as being subjective or speculative, if the situation is real.

3.10 Reason : Reasoned opinions

Michigan MCR 2.517 (4)(c) requires findings of fact, applications of fact to law, and conclusions of law. Disqualification also reasonably involves mental processes and impressions, and reasons. Mr. Bernard also argues that MCR 2.517 (4)(c) is inapplicable to standalone motions such as 6.500 and disqualification (bench and MCR 2.003). "The grounds lack merit" and "we are not persuaded that the questions presented should be reviewed by this Court" are abuses of discretion as no discretion exists. Structural error cannot be summarily dismissed. Courts have a duty to address jurisdiction, retroactivity, miscarriage of justice, structural error, etc.

This question should be settled by this Court.

An arbitrary or other unreasoned denial does not satisfy the State's burdens and denies

due process. See Motion # 7, Appendix P.

3.11 Reason: Inequivalency Between MCR 2.003
And Bench Disqualification

The Court can "borrow" procedurally and legally equivalent law from other court rules, state caselaw, the Circuit, the United States Supreme Court, and other states. What it cannot do is misapply MCR 2.003 to bench disqualification. The two are distinguished. It is abuse of discretion to misapply process as a way to avoid meeting the State's burden. See In re Murchison (no man can judge his own case... [and manipulate the process in his own favor]).

This question should be settled by this Court. Bench disqualification is not an add-on to, or special case of, MCR 2.003. Here, for example, the trial judge (dicta) has no authority whatsoever to disqualify both the 17th Circuit and 3rd District benches, pursuant to MCR 2.003(0)(3)(a) (challenged judge shall decide motion), or to deny or consider the issue.

3.12 Reason: Relationship of Threshold Matters to Bench Disqualification

Threshold matters are, by definition, integral to any matter in question. This includes the very adequacy of the court record itself where hearings have been requested and/or denied. This is especially relevant here as the Redford Misconduct is both Prong #2 of the MCR 6.522, as well as grounds for bench disqualification, where society would question the impartiality of the judiciary.

Threshold matters here include, inter alia, (1) corruption of the court record making it unsettled, (2) Denial of choice of Counsel, (3) Denial of Funds For a Defense, (4) bias, (5) incompetence in the caselaw and MRE, and (6) retroactivity.

This question should be settled by this Court. Resolution of threshold matters may moot bench disqualification entirely. When must a

reviewing Court consider threshold matters?

see motions #9, 10, 12, 13, 43 Appendices R, S, U, V.

3.13 Reason: Abuse of Discretion

A Court abuses discretion when the judge takes an action outside the boundaries of his discretion.

Michigan has no bench disqualification court rule, no standards, no burden and burden-shifting, and no bounds on judicial discretion. This

moots any appeal on abuse of discretion, and acts as a State bar to due process. Chief Judge Trusock actually changed the grounds from "Redford Misconduct" to his "mere presence on the court."

See 120920 and 082521 orders. Re-characterizing an Indigent in proper defendant's actual argument to one that can be denied cannot be argued on appeal as an abuse of discretion, because Michigan allows re-characterization via the simple expedient of not defining the abuse of discretion standard as it specifically applies to bench disqualification. I.e., where NOTHING is abuse of discretion, EVERYTHING is abuse of discretion.

This question should be settled by this Court. If bench disqualification motions should be made directly to the state Supreme Court Chief Justice under very specific standards, abuse of discretion becomes a virtual nullity. Here, two years later, Mr. Bernard argues that every use of discretion was an abuse of discretion. The Redford misconduct remains unaddressed and the Court record remains unsettled. Judges remain challenged and the miscarriage of justice continues day-for-day.

- (a) Mimi had blue and brown similar-sized and overlapping contusions on her forehead. These were caused "at least several [3] hours apart," TTXIII Dr. Start (ME) p. 42.
- (b) This places the brown contusion about 6:00 - 9:00 pm, for the blue between 11:00 pm and midnight, TTX p. 96 Prosecutor Brinkman Rebuttal Closing Argument. See Motion #12.
- (c) Mr. Bernard was fully alibied before 11:00 pm, even with the cell block prejudice. See motion #12, Appendix U.

4.0 Contentions In Support Of Writ, Rule 14(2)

this is an extreme case, based on extreme facts, and one which lends itself to a reasonable and objective holding. Mr. Bernard argues that, once challenged, a presumption of impartiality can only be re-established by the full application of due process. Benchers (entities) are distinguished from judges (persons). Where full and fair procedural due process is not, or can not, be provided, the bench must be disqualified. If the State Supreme Court cannot provide a fully reasoned opinion as required by due process, the bench must be disqualified. If any peer is faced with a choice regarding another peer (as part of a primary matter) that society would find to be intolerable, the bench must be disqualified.

4.1 In re Murchison Ever Confirms Denial of Due Process

The In re Murchison United States Supreme Court case, 349 U.S. 133, 75 S.Ct. 623 (1955), has its origins in a Michigan case, 340 Mich. 151 (1954), the judge who charged contempt sat as the judge hearing the case. Therefore, the Michigan courts are well aware of the maxim that "no man can be a judge in his own case." See also Williams v. Pennsylvania, 579 U.S. 1 (2016); Carpenter v. Massey, 556 U.S. 868 (2009); Active Life Ins. Co. v. Lavoie, 475 U.S. 813 (1986); Nicola v. United States, 352 U.S. 385 (1957); In re Murchison, 349 U.S. 133, 136 (1955).

Here, the 3rd District COA was subject to the same grounds for disqualification as the 17th Circuit. 092821 Motion. Ex-Trial Judge Redford now sits on the 3rd District. These courts are

neighbors in Grand Rapids. See Motion #6, App O.

By refusing to consider the 092820 predeprivation due process disqualification motion, the 3rd District positioned themselves to hear any appeal from the 17th Circuit on the same motion. In finding no merit on the 17th Circuit appeal, they collaterally found no merit as to themselves. This is clear In re Murchison error. All of these judges are within one or two degrees of professional relationship.

As long as hearings on the 14-Attachments continue to be denied, no Grand Rapids judge has to be the one who confirms that Judge Redford's misconduct was a proximate cause of a wrongful conviction. Prong #2 of the 6,502 offers a separate path to dismissal as compared to the Brady violation Prong #1 path, and both paths continue to be banned.

Society does not trust peers to rule on the misconduct of peers. See In re Disqualification of Crawford, 81 Ohio St.3d 1204 (1996) (the Chief Justice of the Supreme Court of Ohio disqualified an entire bench from cases that require the court to assess the professional competency^{*} of a judicial colleague). This principle was stated in Turney v. Ohio, 273 U.S. 510, 532; 47 S.Ct. 437 (1927):

"[E]very procedure which would offer a possible temptation to the average man as a judge, not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law."

While individual judges can disagree that they are "peers" of Judge Redford, this misapplies the perception of partiality standard. Their perception of themselves is not a replacement for Society's perception of the Grand Rapids Judge group, with its professional and other interrelationships, based on the situation.
^{*} See Motion #10, Appx. 5-49

4.2 Caperton v. Massey Confirms That Bench Disqualification Is A Constitutional Claim

"The Due Process Clause demands only the outer boundaries of judicial disqualifications. Congress and the States, of course, remain free to impose more rigorous standards for judicial disqualification than those we find mandated here today." Caperton v. Massey, 556 U.S. 868, 889-890, 129 S.Ct. 2252 (June 8, 2009), citing Aetna Life Ins. Co. v. Hawley, 475 U.S. 813, 828, 104 S.Ct. 1580 (1986).

"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. Application of the constitutional standard implicated in this case will thus be confined to rare instances." Caperton at 889-890.

Canon 2 of the Michigan Judicial Code relates to persons, not entities. Bench disqualification is the "rare instance" where one judge must find that a peer committed misconduct, not just an error of fact or law. Motion directly to the State Chief Justice is arguably the process that is due. Appendix L (Judicial Canons).

4.3 Societal View of the Situation Creating Grounds For Bench Disqualification

when it comes to a perception of partiality, "Society" is represented in the form of a "fully-informed objectively reasonable citizen." Society generally presumes the impartiality of judges, all things being equal, because actual bias may only be apparent or reasonably be suspected after the fact.

Even so, there are situations so fraught with risk of partiality that Society demands that judges or benches be summarily disqualified. Impartiality is an absolute constitutional right. The merest reasonable suspicion to the contrary is sufficient to disqualify. Society's and the Judiciary's goals are identical in this respect... ABSOLUTELY IDENTICAL. This is not, however, the bench disqualification process in Michigan.

Situations where there is no presumption of impartiality include those where the judge or peer may unconsciously allow personal bias, feelings, motives or other normal human tendencies to cause him or her to fail to hold the balance between judicial discretion and judicial interference clear. In those situations, the mere perception of partiality demands disqualification.

In other words, once society's presumption of impartiality is lost where (1) judicial misconduct is censured, and (2) that judge or a peer must decide to resolve or ignore the misconduct, the situation demands disqualification. The particular judge or bench has no say in the matter. Nothing they say can change the situation itself.

Here, Judge Redford in the first MCR 6-520 and Judge Quist in the successive MCR 6-522 both failed to resolve Judge Redford's trial misconduct.

This constitutes over 100 instances. See Appendix F.*

These failures are preventing hearings to correct the court record. An inadequate court record for appeal is preventing consideration of reversal and/or dismissal on grounds of permanent prejudice or actual innocence. See, e.g., MCL 5 § 770, Motion For New Trial, MCR 6.502, MCR 6.508. Appendix D.

Alternatively, the legal process can be simplified to confirming that the older brown confusion on ex-wife Mimi's forehead occurred before 9:00 pm. Mr. Bernard was fully alibied. Brady violation.

* This is why Mr. Bernard argues that appellate courts have authority and jurisdiction to consider actual proven innocence, merely regular confirmation, as a threshold matter even to disqualification of a lower court judge or bench, miscarriage of justice creates a State duty to remedy, MCR 7.36(a)(4), by the higher courts. See Motion #12, Appx. U.
* See Motion #8, App. Q 53

4.4 Bench Disqualification Principle

Judge Lust accepted a known insufficient motion in June 2020. The 14-Attachments were to be delivered by a Grand Rapids attorney. The Motion was sent from prison. This was due to Covid restrictions.

The 14-Attachments (Briefs) included those required for both Prong #1 and #2. When the Attachments were not delivered on the anticipated schedule, Judge Lust neither notified Mr. Bernard nor allowed time to correct the insufficiency. Then he subsequently denied submission of the Attachments which would have corrected the retroactive case law and Brief In Support insufficiencies. Appendix H (Gower Law),

These Attachments identify two sources of bias, motive, pattern of abuses of discretion, incompetence in the law, structural error, constitutional error, and evidentiary-cumulating-to-constitutional error.

It was an abuse of discretion not to allow time for the 14-Attachments to be submitted (6.502 was submitted in mid-June but postdated 070420), could restrictions provide sufficient cause. But the issue is not restricted to Judge Rust, as he is representative of all of the 17th Circuit Judges. All are peers, generally defined, of Judge Redford given (1) his past memberships on the 17th Circuit, and (2) professional relationships between the 17th Circuit and 3rd District Court of Appeals. See motion #6, Appx. D.

But this only defines the peer group. The grounds for disqualification are in the 14-Attachments, as clarified by the Ohio Supreme Court: all judges in a court are disqualified where any member would be required to assess the professional capabilities, credibility, competency, or professional conduct of a peer in order to reach the merits of a primary matter [6.502].

See In re Disqualification of Crawford, 81 Ohio St.3d 1204 (1996); State ex rel. Dunn v. Franklin Cnty. Court of Common Pleas (In re Tenth Dist. Court of Appeals, 150 Ohio St.3d 1203 (March 10, 2017).

* Note that in 2020 when the 6.502 was submitted, MCr 6.502(G)(1 and 2) required Judge Dist to RETURN the motion unfiled after he determined that the threshold conditions were unmet, O'70820 order, Appendix C. This rule changed in April-May, 2021 to eliminate the need to return. Had he followed well-established court rule, bench disqualification would not be in issue now. The motion would have been refiled per the O'70820 order, and resubmitted. See the 012521 version plus the 14-Attachments.

4.5 Whether A Bench Can Immunize Itself From Disqualification By The Simple Expedient Of Declaring That No Peer Relationship Exists

Mr. Bernard argues that Society, based on the situation, determines the peer group. As a consequence, no judge within the peer group can offer an opinion of his own belief that he is not a member of the group. See Motion #6.*

Peer group is unique to bench disqualification. All judges are disqualified on the same grounds. Here, Chief Judge Trusock declared his own impartiality by assuring that he was not a peer of Judge Redford.

Per belief, both judges were simultaneous members of the 17th circuit around trial.

But self-declarations which are allowed under MCR 2.003 do NOT apply to bench disqualification.

Judicial peer groups may be bench or geographic.

*Appendix O.

4.6 Essence of a Peer Relationship With Regard To Bench Disqualification on Grounds of Judicial Misconduct

There is no argument that a trial judge who would commit over 100 instances of judicial misconduct would also be resistant to admitting that his misconduct (1) existed, or (2) was a proximate cause of a wrongful conviction. Societal perception of partiality would be unquestioned.

What is less directly related is where the trial judge is no longer on the bench, and another is assigned to the primary action (here, the *mens* 61522). This may be especially argued where the new judge does not know the trial judge, as possibly true here (though this is unknown). But this is not a "perception" consideration.

Even so, society is unwilling to gamble with a defendant's absolute right to an impartial judge. A successor judge is clearly a peer, broadly defined.

4.7 Denial of Equal Treatment (In Pro Per)

As an in pro per defendant, Mr. Bernard did not receive equal treatment as other similarly situated defendants with disqualification issues. Shepardizing reveals that other disqualification challenges were reviewed by the Court and reasoned opinions provided. There were no motions denied without reason, even when the court initially held that the filing had no merit.

This supports an inference that Judge Redford's peers made a conscious decision not to remedy his misconduct or consider it as grounds for their own disqualification. It is unknown if the State would have done the same thing if Mr. Bernard was represented by an attorney. However, it is reasonable to infer that the 6.502 would have been considered in its entirety and that the bench disqualification issue would have never been raised.

see, e.g.:

- (1) DeFilippis v. Redford Police Dep't., 2022 Mich. App. LEXIS 1070 (February 24, 2022) (in pro per filing received a reasoned opinion).
- (2) Herrera v. Herrera - Pina, 2014 Mich. App. LEXIS 2260 (November 20, 2014) (Father's brief is unorganized, devoid of factual support, and without adequate authority for any of his positions as a pro se litigant. Nevertheless, the court reviewed the arguments which included judicial disqualification).
- (3) Drogasam v. Ciena Healthcare Mgmt., 2011 Mich. App. LEXIS 2263 (December 5, 2011) (In proper defendant did not properly preserve disqualification claim. Even so, the court provided a reasoned denial).
- (4) Bennett v. Davidson, 2005 Mich. App. LEXIS 1197 (May 12, 2005) (Defendant's motion to disqualify was later than 14 days. Even so, the Court of Appeals considered the issue).

The established pattern supports an inference that the courts review any disqualification motion when they know it will be denied. If it must be granted if reviewed, as here, then they deny it "on the grounds lacking merit" without a review. This is unequal treatment.

Reviewing the disqualification motions is consistent with holding a pro se defendant's pleadings to a less stringent standard. People v. Schwartz, 2021 Mich. App. LEXIS 1606. If it is equal treatment to review such motions, then it is unequal treatment to deny such a motion without review, pursuant to MCR 2.517 (AXI), as here. See motion #7, Appx. P.

* Mr. Bernard argues that a court abuses discretion when it chooses not to review a disqualification motion. That makes judicial impartiality a "choice," rather than a "right," as to due process.

Mr. Bernard had a right to have the 6.502 motion granted, the disqualification motion granted, and the court record remedied and settled, under the circumstances here. Absence of state process is denial of due process, and structural error.

See Motion #11, Appx. T.

4.8 Perception of Partiality Standard

"The threshold problem, of course, with the new 'appearance of impropriety' [perception of partiality] standard is its vagueness, what is an 'appearance of impropriety,' and from whose standpoint is the 'appearance of impropriety' to be gauged?" Markham, J. (dissenting), Chief [June 2003] Issued November 25, 2009.

Mr. Bernard argues that bench disqualification does not suffer from vagueness when it comes to perception of partiality. The "perception" is that of a fully-informed objectively reasonable citizen concerning the situation. Here, the situation involves Judge Redford's misconduct which created structural, trial, and constitutional error. Either the record or the absence of a record proves the misconduct. The standard has face validity because it is societal-based, rather than judge-subjective-opinion based. Discretion is clearly bounded.

"perception" of partiality terminology should not be used as an excuse for denying disqualification as being too "subjective." This is a matter for application of standards, where a fully-informed objectively reasonable citizen would rank a non-peer judge as being more impartial than an actual peer, the bench is disqualified. *

"Perception" is essentially a "comparison bar," where peer relationships are known and/or suspected, Society has no need to trust in the probable impartiality of a judge subject to peer-related motives. In Michigan, there are likely hundreds of other presumptively impartial and unchallenged judges to whom the case can be assigned.

It is Society that determines whether a situation creates a perception of partiality. A judge's assertion of his own impartiality is irrelevant to the situation.

4.9 Fully-Informed Objectively Reasonable Citizen Standard

The bench disqualification decision is mainly fact-based. This contrasts with *Meza* which allows a judge to self-corroborate his own impartiality. If the situation and peer group exist, then so does the fully-informed objectively reasonable citizen's perception of impartiality.

"Fully-informed" refers to the situation. Here, this means of the Redford misconduct as documented in the 14-Attachments/Briefs. These are the "choices" presented a peer, which a non-peer would simply view as requiring remedy in order to settle the record.

"Objective" means factual and having a basis. Here, the Redford misconduct occurred, he committed it, and it is of such a magnitude that a peer might hesitate to correct it.

A "reasonable citizen" is a person "like" the defendant. They trust procedures, not persons, whole they do not have a legal background, they understand human nature and tendencies of peers not to rule as objectively as non-peers in a situation involving choice. Defendants who are innocent eminently qualify as a model for a "reasonable citizen." Judges are not qualified to be members of the reasonable citizen group, however, making their view of their own impartiality irrelevant.

Here, Judge Dist made a choice to deny an 'insufficient' MRC 6.502 during Covid restrictions, rather than return it or simply wait for delivery of the 14-Attachments, already in Grand Reports. The 17th Circuit and 3rd District Court denied procedural due process. The Michigan Supreme Court approved these procedures.

what would a fully-informed objectively reasonable citizen perceive of a situation where a court will not hold a single hearing or correct a single record, where a defendant has proven not only his own innocence, but his 14-year old son's innocence? *

★ As Judge Dist can be seen as being representative of all circuit judges, and Judge Redford as being representative of all Court of Appeals judges, there are no more judges in Michigan to whom the case can be assigned. A fully-informed objectively reasonable person in Michigan would grant the MER 6,503. That is the process that is due, when the State has no procedure and Society has no confidence in the judiciary.

* Timeline #3 proves BOTH Jeffrey's and Mr. Bernard's actual innocence, and is evidence-based. See 012521 Actual Innocence Attachment of the 14,

5.0 07-9069 Cell Raid

The 011305 Cell Raid is highly representative of the type of institutional pattern of abuses of discretion which elevates judicial misconduct to structural error. Judicial misconduct encompassed bias, incompetence in the law, and arguably conspiracy.

This Court broked the issues but did not grant certiorari. Per belief, the denial was due to misinformation by the prosecution that as Judge Redford found no prejudice, no prejudice had occurred. This was misdirection.

- (1) 490 - pages were seized on 011305, read to some extent by two detectives, and discussed to some extent by phone with Prosecutor Brinkman.
- (2) On 011405, Prosecutor Brinkman and Det. Gates met with Colleen Jones, Michigan State Police. They discussed the contents of a "chart." This chart identified that the time/line analysis of McIn's computer (deceased ex-wife) was off by 1-hour.

(3) The Court sealed the 492-page copy on 011305 and gave the 478-page copy to the Defense. Neither knew at the time of the 12-page discrepancy. Even so, Judge Redford knew by 021525, but failed to identify the discrepancy at the 021505 hearing.

(4) Mr. Quey's re-analysis changed Mr. Bernard's undisciplined time from 3-minutes (11:57-11:57pm) to about 42-minutes (11:06-11:48pm). 3-minutes was an alibi; 42 was not.

(5) Judge Redford agreed with the Prosecution that they had a right to "discover" Mr. Bernard's pretrial detainee legal materials. As such, prejudice was moot. This explains why he continually refused to establish a record of prejudice.

* I.e., he did not find that prejudice did not occur. What he did was hold that, as Prosecutor Bohkman had not read the materials and neither had the detectives "to any substantial amount," then it was impossible for any prejudice to have occurred.

This was actually refuted by the 021525 record of reading and an admission on 011305 that reading had occurred.

(6) When Judge Redford read the entire file over strenuous defense objection, he committed the same violation as the prosecution.

Had the United States Supreme Court fully addressed the Cell Rack in 2008, First, Fourth, Fifth, Fourteenth and possibly Fifth Amendment violations would have been confirmed. Direct intrusions are per se or presumptively prejudicial. Judge Rebertus found no violations as even a single one would require his own disqualification.

The Cell Rack went unremedied due to bias, a pattern of abuses of discretion, and incompetence in the law. These aggregate to judicial misconduct, i.e., confirming the violations now confirms the underlying reasons of bias, incompetency and probable conspiracy. This warrants disqualification of the 17th Circuit and 3rd District Court.

This is just one of 13 such categories,

6.0 Prayer For Relief

The primary action is the mcr 6.502 Retroactivity and Actual Innocence Motion. The collateral action is bench disqualification of both the 17th Circuit trial court and 3rd District Court of Appeals. As Judge Redford is firstly a court judge and only secondarily a 3rd District judge, the issue also involves disqualification of the entire Court of Appeals, where professional relationships exist.

mcr 6.502 Prong #1 is proof of actual innocence. This was not a quick attack between 11:00 pm and midnight, April 2, 2003, as Prosecutor Brickman argued, TIX p. 96. She knew the entire time that the brown contusion occurred "at least several [3] hours," TIVIII Dr. Stast (ME), before the similar-sized and overlapping blue contusion at time of death. She withheld this timing from the Defense, Court, and Jury in a Brady violation.

Mr. Bernard prays that the Court:

(1) Confirm actual innocence, and reverse the conviction and dismiss on that ground.

Alternatively:

(2) Confirm that Michigan has no pre- or post-deprivation due process for bench disqualification.

(3) Confirm that Society establishes the grounds for bench disqualification, and that such grounds have merit by definition.

(4) Confirm that Society establishes the peer group (bench) subject to disqualification based on the situation.

(5) Confirm that Mr. Bernard established a *prima facie* case for judicial misconduct and bench disqualification (shifted burden).

(6) Confirm that a perception of partiality based on the situation is effectively *per se*, as there can be no rebuttal.

(7) Confirm that in Michigan, only the Supreme Court is without a perception of partiality in the instant case, which satisfies a denial of due process. See Motion #14, App. W.

(8) Confirm that disqualification requires complete findings of fact, applications of fact to law, conclusions of law, mental processes and impressions, and reasons, as well as any derivative motions.

- (9) Confirm that the fully-informed objectively reasonable person standards relate and refer to citizens, not judges,
- i.e. -
that the defendant is the closest actual match, especially an innocent defendant.
- (10) Confirm that, as judicial impartiality is an absolute right, a showing of partiality or a perception thereof is the lowest possible bar, for bench disqualification.
- (11) Confirm that judges subject to a perception of partiality are disqualified from offering an opinion on the matter, as relates to bench disqualification.
- (12) Confirm that lack of State process constitutes State denial of process warranting grant of the primary action and for grant of the bench disqualification collateral action.
- (13) Remand to a court still subject to a presumption of impartiality for any or all hearings denied by the judicial misconduct (see the 14-Attachments).
- (14) Remand to a court still subject to a presumption of impartiality to evaluate Judge Redford's other cases to identify whether judicial misconduct identified here applies to them (e.g., he liberally misapplied and misunderstood the rules of evidence and constitutional rights); see the 14-Attachments and Appendices E and F. This refers to 17th Circuit cases.

- (15) Confirm that the Michigan courts denied due process, committed a pattern of abuses of discretion, and denied Mr. Bernard's rights.
- (16) Confirm that Michigan's misapplication of MCR 2.003 was insufficient to re-establish the lost presumption of impartiality of the 17th Circuit and Court of Appeals benches (3 levels of reasoned denials required per principle established in MCR 2.003). See Motion #14, APPX. W.
- (17) Order a review of other of Judge Reelfin's COA cases. While bias may be case-specific, incompetence in the law and MRE affects every case.
- (18) Confirm that the State never satisfied its burden to refute either the Redford misconduct situation or the peer group.
- (19) Establish the standards and procedures for bench disqualification.
- (20) Consider adopting the Ohio procedure for bench disqualification as reasonably reflecting rights to an impartial judge pursuant to an established procedure and set of standards.
- (21) Other, as the Court deems applicable, and to include reconsideration of the Cell Rack, 07-9069. Prejudice occurred, to the point of now enveloping bench disqualification. Every Attachment involves case-reversing prejudice. See Motion #13, App. V.

7.0 Conclusion

The petition for a writ of certiorari should be granted.

Respectfully Submitted,
Paul A. Bernard 536729

Paul A. Bernard
Chippewa Correctional Facility
4269 West M-80
Kincheloe, MI 49784

Date: January 12, 2023

Two handwritten pages approximate one typewritten page.

KCPD = Kent County Prosecutors Office
KCSO = Kent County Sheriff's Department
SCAO = State Court Administrative Office