IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **Scarlett Y Lockridge v Oakwood Hospital**
Docket No. **283522 & 284664**
L.C. No. **05-514090-NH**

Elizabeth L. Gleicher, Judge, acting under MCR 2.003(C)(3), orders:

The motion to recuse is DENIED. Defendants first contend that recusal is required pursuant to MCR 2.403(D)(3). MCR 2.403(D)(3) provides that "[a] judge may be selected as a member of a case evaluation panel, but may not preside at the trial of any action in which he or she served as a case evaluator." This court rule does not supply a basis for disqualification under the circumstances presented here. By its plain terms, MCR 2.403(D)(3) applies to trial proceedings, and not appellate review. The express mention of one specific exception in a statute or court rule implies the exclusion of other exceptions. *Miller v Chapman Contracting,* 477 Mich 102, 107 n 1; 730 NW2d 462 (2007).

Knowledge of a case evaluation award could influence a trial judge's decision regarding case evaluation sanctions, or whether an action qualifies as frivolous. Appropriately, MCR 2.403(D)(3) eliminates any possibility that awareness of the parties' settlement postures could influence rulings directly related to the case evaluation process. The issues presented in the instant appeal involve legal questions that bear no relationship to the amount of the case evaluation award, the sanctions rendered, or the frivolousness of the action. Any knowledge of this case that I could have gained during the 2006 case evaluation process simply lacks relevance to the arguments advanced in this appeal. Even if I could remember anything about the case evaluation, which I cannot, "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky v United States,* 510 US 540, 555; 114 S Ct 1147; 127 L Ed 2d 474 (1994).

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JUN 23 2009
Date

Sandra Schultz Mengel
Chief Clerk

Defendants next seek disqualification pursuant to MCR 2.003(B). None of the grounds for disqualification contained in MCR 2.003(B) apply here. Defendants assert that MCR 2.003(B) prevents me from sitting as a member of the appellate panel because my service as a case evaluator precludes impartiality. But MCR 2.003 requires a showing of *actual* bias or prejudice. *Cain v Dep't of Corrections,* 451 Mich 470, 503; 512 NW2d 210 (1996). Defendants have presented no evidence supporting a conclusion that I harbor any bias or prejudice regarding them or their counsel. For these reasons, defendants' motion for disqualification is denied. If the moving party requests it in writing addressed to the Clerk's Office, the motion shall be referred to the chief judge for decision de novo. MCR 2.003(C)(3)(a).

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Chief Clerk