

Court of Appeals, State of Michigan

ORDER

People of MI v Howard Anthony Moniz

Docket No. 334134

LC Nos. 00-030408-FH, 00-030410-FC

Michael J. Riordan
Presiding Judge

Christopher M. Murray

Karen M. Fort Hood
Judges

The Court orders that the motion to waive fees is GRANTED and fees are WAIVED for this case only.

Pursuant to MCR 7.205(E)(2), the Court orders that the February 4, 2016 circuit court order is VACATED and the matter REMANDED for further proceedings. A motion to disqualify is decided in the first instance by the challenged judge. If it is denied and a party requests referral of the motion, the challenged judge must refer the motion as provided in MCR 2.003(D)(3). Defendant filed a motion to disqualify on September 4, 2015, which was accompanied by an affidavit, and subsequently filed a request for referral of the motion. The February 4, 2016 order dismisses the request for referral of a motion to disqualify on the basis that it lacked an affidavit. However, MCR 2.003(D)(3) does not require a separate affidavit for a request for referral of the motion. Moreover, there is no indication that the court first ruled on the motion to disqualify. Because it is unclear that the court resolved the motion to disqualify and because the requirement for the referral upon request "is not discretionary," *In re Contempt of Steingold*, 244 Mich App 153, 160; 624 NW2d 504 (2000), on remand, the court shall rule on the motion for disqualification and if the court denies the motion, the court shall refer the motion as provided in MCR 2.003(D)(3). The application for leave to appeal is otherwise DENIED.

This order is to have immediate effect.

This Court retains no further jurisdiction.

[Faint signature of Michael J. Riordan]



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

JAN 06 2017

Date

[Signature of Jerome W. Zimmer Jr.]
Chief Clerk