

## **PROPOSED AMENDMENT TO MCR 2.003(D)(3)(a) [Disqualification of Judge]**

### **Issue**

Should the Representative Assembly recommend the adoption of the following amendment to Michigan Court Rule 2.003(D)(3)(a):

Rule 2.003 Disqualification of Judge

(D) Procedure...

(3) Ruling.

(a) For courts other than the Supreme Court, the challenged judge shall decide the motion. If the challenged judge denies the motion, on the request of a party,

(i) in a court having two or more judges and if the chief judge is not disqualified on the case, the challenged judge shall refer the motion to the chief judge, who shall decide the motion de novo;

(ii) in a single-judge court, or if the challenged judge is the chief judge, or if the chief judge is disqualified on the case, the challenged judge shall refer the motion to the state court administrator for assignment to another judge, who shall decide the motion de novo.

### **Synopsis**

A proposal to modify MCR 2.003 to clarify procedures for hearings related to disqualification motions where the chief judge is also disqualified.

### **Background**

MCR 2.003 (Disqualification of a Judge) covers, in part, a court's decision on a party's motion for a judge's disqualification. One scenario that does not appear to be covered by the current language of MCR 2.003(D)(3)(a) is a request for the trial court judge of record to be disqualified when (1) the subject of the motion is not the chief judge and (2) the chief judge has already been disqualified in the case. The suggestion here is to amend the court rule to deal with this possibility.

Currently, when a party moves for the trial court judge of record to be disqualified, the challenged judge decides the motion. If the challenged judge denies the motion, and the party requests the challenge to be referred to a different judge, the procedure for the challenge to be heard is laid out both for multi-judge courts where the challenged judge is not the chief judge and for single-judge courts or cases where the challenged judge is the chief judge.

The concern has to do with the procedure for referring a disqualification motion after a judge other than the chief judge has denied the motion. MCR 2.003(D)(3)(a)(i) indicates that this motion should be referred to the chief judge. In most cases this direction will be appropriate. However, should the chief judge already be disqualified from the case, the motion may not be referred to the chief judge. The State Court Administrative Office (SCAO) has confirmed that the motion in this instance is not referred to the (disqualified)

chief judge, but to an SCAO-assigned judge. MCR 2.003(D)(3)(a)(ii) lays out circumstances requiring the appointment of an assigned judge. Ideally the situation where the chief judge is already disqualified should be an added circumstance.

**Opposition**

None known.

**Prior Action by Representative Assembly**

None known.

**Fiscal and Staffing Impact on State Bar of Michigan**

None known.

**STATE BAR OF MICHIGAN POSITION  
By vote of the Representative Assembly on April 26, 2014**

Should the Representative Assembly recommend the adoption of the above amendment to Michigan Court Rule 2.003(D)(3)(a)?

(a) Yes

or

(b) No