

Michigan One-Person Grand Juries

Question Presented

Are there any legal or ethical issues raised by a single judge serving on two separate one-person grand juries?

Research Points

The “one-person grand jury” is specific to Michigan and is explicitly provided for by Michigan statute. It operates similarly to the inquests one might find in other countries. Wisconsin and South Dakota have similar mechanisms, but they are referred to as “John Doe proceedings.”

No case law, secondary sources, or ethics opinions could be located which directly address the research question. There does not appear to be any relevant constitutional limitations on the use of one-man grand juries. Additionally, no opinions issued by the State Bar of Michigan speak to this issue. However, there are some limitations on one-man grand juries and judicial disqualification in general which could be relevant.

- There is a statutory requirement that any judge participating in an inquiry which continues more than 30 days will be disqualified from appointment or election to any other office other than the one held at the time of the inquiry.
- A judge who serves as the one-man grand jury cannot also preside at a contempt hearing or at a hearing for any other charges arising out of the same one-man grand jury
- A judge could be disqualified from hearing a case where bias is probable, the judge is involved in other matters concerning the defendant, or where he or she may have prejudged the case.
- The Michigan Code of Judicial Conduct is fairly vague and open-ended. The relevant portions include the requirement that a judge must perform independently and impartially as well as avoid impropriety.

Statutes

MICH. COMP. LAWS ANN. § 767.3 (West 2019). PROCEEDINGS BEFORE TRIAL; INQUIRY, ORDER CONDUCTING; SUMMONING WITNESSES, PROCEEDINGS, FEES SUBPOENA, APPEARANCE; NOTIFICATION TO JUDGE; TAKING TESTIMONY; LEGAL COUNSEL; REVELATION BY ATTORNEY, PENALTY; TESTIMONY IN PRESENCE OF JUDGE; DISQUALIFICATION OF JUDGE, ETC.

[...]

Sec. 3.... Any judge, prosecuting attorney or special prosecuting attorney, or the attorney general participating in any inquiry under this section which continues more than 30 calendar days shall thereafter be disqualified from appointment or election to any office other than one held at the time of the inquiry. The disqualification

shall not extend more than 1 year from date of termination of the inquiry, as determined by final order of the judge entered prior to such date.

MCR 2.003(C)(a)-(c) (West 2019). DISQUALIFICATION OF A JUDGE

[...]

(C) Grounds.

(1) Disqualification of a judge is warranted for reasons that include, but are not limited to, the following:

(a) The judge is biased or prejudiced for or against a party or attorney.

(b) The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, 556 U.S. 868; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.

(c) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

MICHIGAN CODE OF JUDICIAL CONDUCT, CANON 1 (West 2019). A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. A judge should always be aware that the judicial system is for the benefit of the litigant and the public, not the judiciary. The provisions of this code should be construed and applied to further those objectives.

MICHIGAN CODE OF JUDICIAL CONDUCT, CANON 2(A), (B) (West 2019). A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

A. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

B. A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect.

MICHIGAN CODE OF JUDICIAL CONDUCT, CANON 3(A)(1), (C) (West 2019). A JUDGE SHOULD PERFORM THE DUTIES OF OFFICE IMPARTIALLY AND DILIGENTLY

A. Adjudicative Responsibilities. (1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

[...]

C. Disqualification. A judge should raise the issue of disqualification whenever the judge has cause to believe that grounds for disqualification may exist under MCR 2.003(C).

Case Law

***In re Murchison*, 349 U.S. 133 (1955).**

A judge who serves as the "one-man grand jury" cannot also preside at a contempt hearing (or any other charges) arising out of the same grand jury

***Johnson v. Mississippi*, 403 U.S. 212, 213 (1971).**

A risk for bias exists when the judge is enmeshed in other matters involving the petitioner.

***Withrow v. Larkin*, 421 U.S. 35, 47 (1975).**

There need not be a showing of actual bias to disqualify a judge if experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.

***In re Colascasides*, 150 N.W.2d 1 (Mich. 1967).**

One-man grand jury statute does not violate the State Constitution's separation of powers or the 14th amendment right to due process

***Crampton v. Michigan Department of State*, 235 N.W.2d 352 (Mich. 1975)**

Disqualification of a judge is necessary when the adjudicators had personally conducted the initial investigation, amassed evidence, and filed and prosecuted charges

***People v. Potter*, 320 N.W.2d 313 (Mich. Ct. App. 1982).**

When a judge has participated as a prosecutor in an action against the defendant within the previous two years, disqualification is automatic. A showing of bias is not required.

***People v. Lowenstein*, 325 N.W.2d 462 (Mich. Ct. App. 1982).**

The test for determining whether a trial judge should disqualify him or herself because of bias or prejudice is whether there is a likelihood of bias or an appearance of bias so that the judge is unable to hold the balance



between vindicating the interests of the court and the interests of the accused.

People v. Upshaw, 431 N.W.2d 520 (Mich. Ct. App. 1988).

Disqualification of a trial judge as the finder of fact in a subsequent trial is not required solely because the judge sat as the trier of fact in a former trial, without some special circumstances that increase the risk of unfairness.

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