

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ANITA YU, JOHN BOYER, and  
MARY JEAN RAAB,

Plaintiff,

vs.

Hon: Donald E. Shelton  
Case No. 14-181 CC

THE CITY OF ANN ARBOR,

Defendant.

---

IRVIN A. MERMELSTEIN (P52053)  
Attorney for Plaintiffs  
2099 Ascot St.  
Ann Arbor, MI 48103  
734-717-0383

M. MICHAEL KOROI (P44470)  
Co-Counsel for Plaintiffs  
150 N. Main St.  
Plymouth, MI 48170  
734-459-4040

WOODS OVIATT GILMAN, LLP.  
By: Donald O'Brien, Jr. Esq.  
Pro Hac Vice  
Co-Counsel for Plaintiff  
2 State St.  
700 Crossroads Bldg.  
Rochester, NY 14614  
528-982-7802

OFFICE OF THE CITY ATTORNEY  
STEPHEN K. POSTEMA (P38871)  
ABIGAIL ELIAS (P34941)  
Attorneys for Defendant  
301 E. Huron St.  
P.O. Box 8647  
Ann Arbor, MI 48107  
734-794-6170

FILED  
AUG 20 2014

---

**PLAINTIFF'S BRIEF IN SUPPORT  
OF MOTION FOR RE-ASSIGNMENT  
TO ALTERNATE JUDGE**

Now comes the Plaintiff, Amy Yu, John Boyer, and Mary Raab, by their attorney, M. Michael Koroï and submit the instant brief in support of their Motion For Re-Assignment to Alternate Judge.

**STATEMENT OF FACTS**

M. Michael Koroï currently serves as co-counsel in the above captioned action.

Plaintiff's counsel learned on August 12, 2014 that the instant case is expected to be re-

assigned to Judge Timothy Connors.

As set forth in the accompanying Affidavit of Mark Michael Koroï, there have been numerous conflicts between this judge and the undersigned counsel, including four Judicial Tenure Commission grievances (two of which have been upheld), and the undersigned's vigorous public advocacy against political candidacies of both Timothy Connors and his wife as well as highly questionable conduct by Connors that suggest conflicts of interest and misuse of judicial resources. Further, Judge Connors once had tried to enlist security personnel to seize the undersigned.

Plaintiffs believe that this Court should follow the strict dictates of MCR 8.111 and re-assign the action by lot, excluding Judge Connors from future consideration as a successor jurist.

### **LAW AND ARGUMENT**

MCR 8.111(C) establishes case re-assignments and sets forth:

If a judge is disqualified or for other good cause can not undertake an assigned case, the chief judge may re-assign it to another judge by a written order stating the reason. To the extent feasible, the alternate judge should be selected by lot....

It also must be stressed that only the "challenged judge" may decide initially a motion for disqualification; MCR 2.003 (D)(3). Plaintiff will proceed to file a timely motion for disqualification herein, but can avoid this scenario if the action is not re-assigned to Connors in the first place.

Even absent actual bias, disqualification is warranted where there is an appearance of impropriety contrary to Canon 2 of the Michigan Code of Judicial Conduct or a due process concern as set forth in Caperton vs. AT Massey Coal Co Inc., 556 US 868; 129 SCt 2252; 173 LE2d 1208 (2009) MCR 2.003 (C)(1)(b). There exists an objective test with the inquiry

focusing upon “whether the conduct would errata in reasonable minds a perception that the judge’s ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.” Caperton, 556 US at 888. Also, under due process theory, a judge must be recuse in those instances where objectively viewed, “the probability of actual bias on part of the judge or discussion maker is too high to be constitutionally tolerable. “Caperton, 556 US at 877. Similar holdings may be found at Cain vs. Mich Dept of Corrections, 451 Mich 470, 498; 548 NW2d 210(1996); People vs. Aceval, 486 Mich 887, 889, 781 NW2d 779 (2010).

Applying the above authority, order both tests of Caperton, Connors should be disqualified as there been long record of conflicts between the undersigned and even an instance where Connors contacted court security during oral argument on a motion. The Court must strictly enforce MCR 8.111(C).

### CONCLUSION

For the foregoing reasons, this Court should re-assign the instant care by lot and exclude Judge Connors from consideration as a successor jurist.

Respectfully submitted,



---

M. MICHAEL KOROÏ (P44470)  
Attorney for Plaintiffs

August 20, 2014  
yu.brief