

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN AND
FOR BREVARD COUNTY, FLORIDA.

CASE NO. 05-2015-CF-039871-AXXX-XX

STATE OF FLORIDA

Plaintiff,

vs.

DANA LYNN LOYD,

Defendant.

**DEFENDANT'S VERIFIED MOTION
TO DISQUALIFY ASSIGNED JUDGE**

COMES NOW, the Defendant, DANA LYNN LOYD, pro se, and files this Defendant's Verified Motion to Disqualify Assigned Judge. As grounds, the Defendant alleges the following:

1. The Defendant is represented by Attorney Michael Bross regarding the open Violation of Probation (VOP) cause. However, Attorney Bross during a September 17, 2018 hearing, put the Court on notice, that he ONLY represents the Defendant in the VOP cause. Mr. Bross can not represent the Defendant in any post conviction appeal matter, due to a conflict of interest.

The Court (Reinman) **has in the past recognized the Defendant's pro se status** regarding post conviction matters.

2. This cause was initially assigned to Trial Judge Robin Lemonidis. Shortly after a March 2018 post conviction violation of probation hearing, Judge Lemonidis *sua sponte* recused herself from this cause.

Within her recusal Order, Judge Lemonidis carbon copied Judge Reinman. Three weeks later, then Chief Judge John Harris reassigned Judge Reinman to the Defendant's case.

Both Judge Lemonidis and Judge Reinman have made on the record, **pre-conviction** statements implying wrong doing, or guilt, by and of the Defendant. These prejudicial statements are known to the Court, having been documented in earlier recusal motions.

These prejudicial and judicial statements have references to the Defendant's alleged connections with local media outlets, or the Defendant's own media publication's coverage of a local child custody case (Case No. [REDACTED] M...v [REDACTED])

Judge Reinman's, on the record, and pre-conviction statements against the Defendant were made while she was the assigned judge in the above referenced child custody case .

Per the Court's order, any reference to the child custody case within any documents filed in the Defendant's cause, must be redacted by the Clerk of The Court.

3. As supported by the trial transcript, the Defendant's criminal prosecution was heavily attached to the before mentioned child custody case (M..... v. [REDACTED] Case No. [REDACTED])

Within M. v [REDACTED] the Court records supports that both the Petitioner (the Defendant's alleged victim), and the Court itself, have alleged that both the Respondent [REDACTED], and the Defendant (Loyd) have direct associations to certain local media organizations.

The Court (Reinman) has ordered the Respondent [REDACTED] to approached these media organizations in an attempt to have published articles regarding the child custody case retracted.

Similarly, the Court (Lemonidis) has ordered the Defendant (Loyd), as a condition of her probation, to remove certain articles from her publication.

[REDACTED] statements, and Loyd's media articles, all reference Mr. M., the Petitioner in the child custody case. As per the conditions of her probation, the Defendant is forbidden from mentioning the Petitioner's name.

During one of Loyd's 2017 sentencing hearings, Judge Lemonidis advised Loyd, that her probation could be violated by proxy, should these identified media organizations publish articles regarding her prosecution.

During a 2017 sentencing hearing, the Court (Lemonidis) referred to a media representative in attendance as the Defendant's (Loyd) "cameraman".

The Defendant has recently become aware that the Respondent [REDACTED] in the child case case was successful, upon a motion to the Court, in having Judge Naberhaus to recuse herself, due to the fact, that one of these identified media organizations have published an article critical of Judge Naberhaus.

Similarly, at least one of these media organizations, with alleged connections to BOTH the Defendant, and the Respondent, has published articles critical of Judge Reinman. These media articles being directly connected to the Judge Reinman's involvement in BOTH the Defendant's and Respondent's causes. Several of these articles having publication dates PRIOR to Judge Reinman's assignment to the Defendant's cause.

The Defendant argues that if Judge Naberhaus assignment to the Respondent's case presents a perceivable judicial bias, then Judge Reinman's assignment to the Defendant's cause presents a similar judicial bias, which calls for her recusal.

Additionally, Judge Reinman's pre-conviction statements implying wrong doing, or the guilt of the Defendant only goes to intensify the Defendant's fear that the current Court can not provide her with a fair and impartial Court.

4. In December 2018, Chief Judge Tonya Rainwater reassigned the Defendant's cause, effective January 1, 2019, to Judge Lisa Davidson's docket.

On January 1, 2019, the Clerk reassigned the Defendant's cause to Judge Davidson's docket, as was ordered within Judge Rainwater's Judicial Administrative Order 18-33b AMENDED.

On January 8, 2019, Judge Reinman sent an off the record email request to the Clerk, requesting that the Defendant's cause be reassigned back to her docket. The Clerk complied.

Judge Reinman's email request was made part of the Court record within the Defendant's earlier motion of February 11, 2019, document # 309.

This off the record request by Judge Reinman has provided the Defendant with an additional concern, that Judge Reinman has a unprofessional interest in the Defendant's case.

ARGUMENT AND MEMORANDUM OF LAW

Rule 2.330, of the Florida Rules of Judicial Administration, states in relevant part as follows:

RULE 2.330 DISQUALIFICATION OF TRIAL JUDGES

(b) Parties. Any party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the **Code of Judicial Conduct**....

(d) Grounds. A motion to disqualify shall show:

(1) That the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge...

(f) **Determination – Initial Motion.** The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for the denial shall be stated, and an order of denial shall not take issue with the motion.

(j) **Time for Determination.** The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subdivision (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.

A party may present a *Motion to Disqualify* at any point in the proceeding as long as there remains some action for the judge to take. If the motion is legally sufficient, "the judge shall proceed no further." *Lake v. Edwards*. 501 So.2d 759,760 (Fla. 5th DCA 1987). To establish a basis for relief a movant need only show "a well-grounded fear that

he will not receive a fair trial at the hands of the judge. **It is not a question of how the judge feels;** it is a question of what feeling resides in the affiant's mind and the basis for such feeling." *State ex rel. Brown v. Dewell*, 131 Fla. 566,573,179 So. 695,697-98 (1938). *See also Hayslip v. Douglas*, 400 So.2d 553 (Fla. 4th DCA 1981). The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially. *Livingston v. State*, 441 So.2d 1083, 1086 (Fla. 1983) ("What is

important is the party's reasonable belief concerning his or her ability to obtain a fair trial. A determination must be made as to whether the facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial trial.")

The prejudice of a judge is a delicate question for a litigant to raise, but if predicated on grounds with a modicum of reason, **the judge in question should be prompt to recuse herself.** No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned. *Dickenson v. Parks*, 104 Fla. 577, 140 So. 459 (1932); *State v. Steele*, 348 So. 2d 398 (Fla. 3D DCA 1977).

The United States Supreme Court has also recognized the basic constitutional precept of a neutral, detached judiciary:

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the **promotion of participation and dialogue by affected individuals in the decision-making process.**

Carey v. Piphus, 435 U.S. 247, 259-262, 266-267,98 S.Ct. 1042, 1043, 1050-1052, 1053, 1054, 55 L.Ed.2d 252. (1978).

The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. *See Mathews v. Eldridge*, 424 U.S. 319, 344, 96 S.Ct. 893, 907, 47 L.Ed.2d 18 (1976). At the same time, it preserves both the appearance and reality of fairness, "generating the feeling, so important to a popular government, that justice has been done," *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123,172, 71 S.Ct. 624, 649, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which **he may present his case with assurance that the arbiter is not predisposed to find against him.** *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

Due Process guarantees the right to a neutral detached judiciary in order to convey to the individual a feeling that the government has dealt with him fairly, as well as to minimize the risk of mistaken deprivations of protected interests. *Carey v. Piphus*, U.S. 247, 262 (1978). The United States Supreme Court has explained that in deciding whether a particular judge cannot preside over a litigant's trial, the inquiry must be not only whether there was actual bias on respondent's part, but also whether there was "such a likelihood of bias or an appearance of bias that the judge was unable to hold the balance between vindicating the interest of the court and the interest of the accused."

Ungar v. Sarafite, 376 U.S. 575, 588, 84 S.Ct. 841, 849, 11 L.Ed.2d 921 (1964). "Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties," but Due Process requires no less. *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955).

This Motion is legally sufficient pursuant to Fla. R. Jud. Admin, 2.330(d)(1), which applies where "...a party fears that he or she will not receive a fair trial of hearing because of specifically described prejudice or bias of the judge." Fla. R. Jud. Admin. 2.330(f) mandates that "the judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the Motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter a Order granting disqualification and proceed no further in the action. Fla. R. Jud. Admin. 2.330(f) (2018) (emphasis added).

Here, the Defendant, Mrs. Loyd, has alleged legally to obtain the requested relief. Based upon Mrs. Loyd's true fear that Judge Reinman will once again pre-judge her and that she will not receive a fair and impartial Hearing.

The Defendant's fear is multiplied by the fact that the Respondent [REDACTED] in the child custody case was able to secure Judge Naberhaus' recusal. Given the Defendant's cause being connected to the Respondent's case, together with the Court's assertions that the Defendant has similar associations with the same media organizations that have been judicially associated with the Respondent, the Defendant argues that Judge Reinman, like Judge Naberhaus, has a preceivable bias within the Defendant's cause.

Judge Reinman's off the record email request to the Clerk, in order to resecure the Defendant's cause back to her docket, only goes to re-enforce the Defendant's fear that Judge Reinman's interest in this matter, is less than professional.

The April 2012 Florida Bar Journal Article "*Don't Let the Blindfold Slip: A Guide to Judicial Disqualification*", provided the Defendant with an understanding of the Court's responsibilities in acknowledging it's own actual and / or perceived conflicts of interest / judicial biases

<https://www.floridabar.org/the-florida-bar-journal/dont-let-the-blindfold-slip-a-guide-to-judicial-disqualification/>

How inconvenience would it be for the Court to recuse itself? The trial judge in April 2018 *sua sponte* recused herself from this cause, not providing the Defendant with any rationale for her recusal. Conversely, the Defendant has provided this Court with several legitimate rationales and concerns within her several judicial recusal motions.

The cumulative effect of events occurring within a period of time "can cause a party to have a well-founded fear" that she will not receive a fair and impartial handling of her case. *Chillingworth v. State*, 846 So.2d at 676 (Fla. 4th DCA 2003). Even when an earlier event cannot be used as a timely basis for disqualification, that event may still be relevant. *See R.V. v. State*, 44 So. 3d. 180 , 183 (Fla. 4th DCA 2010). The Court in *Chillingworth* found that it was not as isolated incident that warranted disqualification in the case. *Chilingworth at 676*. Rather, it was a combination of two events that lead the Court to conclude that the trial court erred in denying the motion for disqualification.

For justice to prevail, justice should be blind, and judges should not be able to "cherry pick" the cases assigned to them by simply sending an off the record email to the Clerk of the Court.

For justice to prevail, citizens must have faith that U.S. Constitutional principles not only live, but thrive within the courtrooms of the 18th Judicial Circuit. "With liberty and justice for all" should not be merely relegated to a few mumbled words in the U.S. Pledge of Allegiance.

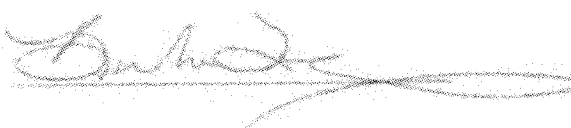
Based on the aforementioned argument and case law, Defendant seeks the recusal of Judge Reinman.

WHEREFORE, the Defendant respectfully requests that this Honorable Court file an Order disqualifying herself, ordering the Clerk to reassign this cause as per JAO 18-33b AMENDED.


Dana Lynn Loyd, Defendant

STATE OF FLORIDA
COUNTY OF BREVARD

Sworn to and subscribed before me this 19 day of March 2019,
by Dana Loyd, who is personally known to me or has produced as identification
and who () did or () did not take an Oath.





Notary Public
My Commission Expires: 06/10/2022

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing was furnished by email to Billie Shadron, J.A. to Judge Reinman, and the State Attorney's Office via on-line filing on this 19 day of March 2019.


DANA LYNN LOYD
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