

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

STATE OF FLORIDA,

Plaintiff,

vs.

CATHERINE BROWN,

Defendant.

CASE NO. 05-2017-CF-033105-AXXX-XX

DEFENDANT'S VERIFIED MOTION TO DISQUALIFY
TRIAL JUDGE

The Defendant, CATHERINE BROWN, by and through her undersigned attorney, and pursuant to Rule 2.330, Florida Rules of Judicial Administration, moves this Honorable Court to disqualify the trial judge, and as grounds therefore would state as follows:

1. On June 6, 2018, the above-styled cause was set for Calendar Call at which the Defendant, Ms. Brown, was represented by Melissa Peat standing in for court-appointed counsel, Rebecca Morgan.
2. Ms. Brown, failed to appear for Calendar Call and a Bench Warrant was issued for her arrest, on Ms. Peat's second or third-hand message that Ms. Brown had elected to surrender to Highlands County on an existing warrant.
3. In actuality, Ms. Brown was being treated at the Emergency Room at Wuesthoff Medical Center in Melbourne at the time of the missed Calendar Call.
4. Between June 6 and June 12, 2018, Ms. Brown and her family attempted to enlist the assistance of court appointed counsel to correct the Court's records and have the Bench Warrant withdrawn to no avail.
5. On June 12, 2018, Ms. Brown hired the undersigned attorney and provided documentation of hospitalization on the date of the Calendar Call.

6. On June 14, 2018, the undersigned attorney filed Defendant's Motion to Surrender and Set ROR Bond, or in the alternative, Motion to Recall Bench Warrant.

7. On June 13, 2018, Ms. Brown had turned herself in to authorities in Highlands County where she was given a bond on her Highlands County matter, but held under no bond status due to the Bench Warrant in Brevard County.

8. On June 15, 2018, Michael R. Cook, Esq. appeared on behalf of Ms. Brown to argue Defendant's Alternative Motion to Recall Bench Warrant (based on Ms. Brown's unavailability to surrender due to her incarceration at Highlands County Jail).

9. Mr. Cook presented Joshua Brown to testify that he had been with Ms. Brown at the hospital between about 9 am and 2 pm on June 6, 2018, and that he had faxed a note to that effect from the Melbourne Library that morning.

10. Judge Lemonidis discounted the Joshua Brown fax even though she had personally read it to the Court at the outset of the Hearing, and, without request or prompt by Assistant State Attorney Sean Sendra, called a recess to check the call and email logs for June 6, 2018, in an effort to repudiate the defense claim that efforts had been made to advise the court prior to (or at least at the time of) the Calendar Call.

11. Judge Lemonidis mischaracterized the testimony of the witness Joshua Brown who had stated that she had tried to contact the Court on three occasions, relying only on call logs kept by staff persons (with the inference that her staff never misses a call or fails to take down a message) that did not reflect any *telephone calls or emails*. Again, Judge Lemonidis was in physical possession of a fax from Mr. Brown proving at least one effort to get word to Court of Ms. Brown's hospitalization. Mr. Brown never alleged to have **called** the Court.

12. Judge Lemonidis further argued against the Defense Motion from the Bench that she had "googled" the medications prescribed to the Defendant at the hospital and gave testimony regarding the efficacy and pharmacology of the those medications based on Google and her own independent

experiences with backpain and/or sciatica, her own pain thresholds, and even referred to an unrelated defendant who made it to Court with a disability that day.

13. Judge Lemonidis concluded, based on her own investigation and testimony, that the Defendant should have made in to court after her discharge from the hospital, and that her J.A. and court clerk would have been present to receive Ms. Brown.

14. On June 25, 2018, Ms. Brown viewed the digital recording of the June 15, 2018, Hearing, as a result of which, Ms. Brown fears that she cannot receive a fair trial before Judge Lemonidis due to her obvious bias in taking on the role of litigant against her.

15. The undersigned counsel certifies that the assertions contained in this Motion, and any statements made herein by the Defendant, are made in good faith.

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 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 proceedings 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*, 425 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 interests of the court and the interests 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 or 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 an Order granting disqualification and proceed no further in the action. Fla. R. Jud. Admin. 2.330(f) (2012) (emphasis added).

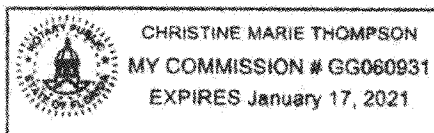
Here, Defendant has alleged legally to obtain the requested relief. Based upon Judge Lemonidis' taking on the role of prosecutor and promoting herself as an expert witness on the subject of pain and medications for the treatment of pain, Judge Lemonidis should recuse herself from these proceedings "to avoid the appearance of impropriety." *Stevens v. State*, No. 68,581, slip op. at 12 (Fla. Sup. Ct. October 5, 1989). Under no circumstances is a trial judge permitted to argue one side of a case as though he were a litigant in the proceedings. The survival of our system of justice depends on the maintenance of the judge as an independent and impartial decisionmaker. A judge who becomes an advocate cannot claim even the pretence of impartiality. *In re TW*, 551 So.2d 1186 (Fla. Sup. Ct. 1989).

WHEREFORE the Defendant, Catherine Brown, respectfully requests this Honorable Court to enter its Order disqualifying the trial judge in this matter for the reasons stated above.

Catherine Brown
Catherine Brown, Defendant

STATE OF FLORIDA
COUNTY OF BREVARD

Sworn to and subscribed before me this 25th day of June, 2018, by **Catherine Brown**, who is personally known to me or has produced as identification _____ and who did or did not take an Oath.



Christine Thompson

Notary Public
My Commission Expires:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendant's Verified Motion to Disqualify Trial Judge has been served on the Office of the State Attorney by eportal this 25th day of June, 2018.

Respectfully submitted,

//Michael Bross//

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