

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

STATE OF FLORIDA,

Plaintiff,

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

vs.

DANA LYNN LOYD,

Defendant.

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

The Defendant, DANA LYNN LOYD, 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 March 19, 2018, the Defendant appeared with court appointed counsel at VOP Arraignment before the Hon. Judge Lemonidis.

2. On March 29, 2018, Judge Lemonidis *sua sponte* signed an Order to recuse herself from the proceedings against Ms. Loyd, and the case was ultimately reassigned to the Hon. Judge Reinman.

3. On July 9, 2018, the above-styled cause was set for VOP Arraignment before Judge Reinman at which the Defendant, Ms. Loyd, was represented by the undersigned attorney.

4. Judge Reinman had previously presided over a Hearing in Case No. [REDACTED] v. [REDACTED] a/k/a [REDACTED] which took place on December 21, 2015, during which Judge Reinman imputed guilt or wrong-doing to Ms. Loyd (then Ms. Delaney) well prior to any finding of guilt or wrong-doing by Ms. Loyd in the above-styled criminal cause.

5. Ms. Loyd (Ms. Delaney) was neither a party to Case No. [REDACTED] nor a testifying witness at the Hearing on December 21, 2015, yet Judge Reinman ascribed the "[REDACTED] continued campaign of allegations of abuse" to [REDACTED] admitted contact with Ms. Loyd (and Isabella Foster): "The unfounded allegations have resurfaced through Dana Delaney and Isabella Foster..."

6. At VOP Arraignment on July 9, 2018, Judge Reinman admittedly recalled the December 21, 2015, Hearing and her familiarity with the Defendant's alleged role in the family dispute, but refused to recuse herself at Defense Counsel's *ore tenus* request.

7. After the VOP Arraignment on July 9, 2018, Ms. Loyd and her undersigned attorney obtained and reviewed the transcript of the Hearing from December 2015 in the DR case.

8. Ms. Loyd fears that she cannot receive a fair VOP Hearing before Judge Reinman due to Judge Reinman's prior representation in open court of Ms. Loyd (Ms. Delaney) as guilty of, at the very least, complicity in a "continued campaign" of allegations of abuse without Ms. Loyd's testimony (or even appearance) at the Hearing in which her allegedly complicit actions were discussed.

9. Ms. Loyd was further overwhelmed by Judge Reinman's refusal to recuse herself at VOP Arraignment, by which Ms. Loyd felt belittled and demeaned, and is now fully convinced that she will not receive a fair hearing before this Judge.

10. Ms. Loyd, through her original attorney Jessica Burgess, Esq., filed a prior Motion to Disqualify the Trial Judge (Judge Lemonidis) on July 26, 2016, which was DENIED by Order of August 1, 2016, as legally insufficient. Therefore no judge has previously been disqualified on motion under subdivision (d)(1) of Rule 2.330.

11. 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. Phipus, 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) (2018) (emphasis added).

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

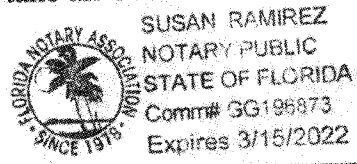
WHEREFORE the Defendant, Dana Lynn Loyd, respectfully requests this Honorable Court to enter its Order disqualifying the trial judge in this matter for the reasons stated above.



Dana Lynn Loyd, Defendant

STATE OF FLORIDA
COUNTY OF BREVARD

Sworn to and subscribed before me this 19th day of July, 2018, by **Dana Lynn Loyd**, who is personally known to me or has produced as identification Florida Drivers ID. and who did or () did not take an Oath.



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 by e-mail on Billie Shadron, J.A. to Judge Reinman, and by eportal on the Office of the State Attorney by eportal this 19th day of July, 2018.

Respectfully submitted,

//Michael Bross//
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