

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-2017-CA-1263
DIVISION: CV-E

JOHN PARSONS,

Plaintiff,

v.

CITY OF JACKSONVILLE, FLORIDA,
a municipal corporation and political
subdivision of the State of Florida,

Defendant.

ORDER OF VOLUNTARY RECUSAL

This matter is before the Court *sua sponte* subsequent to the filing of Defendant's Motion for Disqualification of Trial Judge on April 3, 2017 (hereinafter referred to as "the Motion"). Contemporaneously herewith, the Court has entered its Order Denying Defendant's Motion for Disqualification of Trial Judge. The arguments raised in the Motion, which are erected on the loosest of legal and factual soil, fall flat. The Motion has been denied by this Court for two reasons: (1) the Motion was untimely filed; and (2) even *assuming arguendo* the Motion was timely filed, it is legally insufficient.

Nonetheless, for the reasons set forth *infra*, it appears to this Court that this cause now pending in Division CV-E of the Fourth Judicial Circuit Court of the State of Florida may be more appropriately determined by another division of this Court.

I. The Motion is Untimely Filed

A motion to disqualify must be filed within a reasonable time not to exceed ten (10) days after discovery of the facts giving rise to the motion. See Fla. R. Jud. Adm.

2.330(e). This time requirement for the filing of the motion is strictly construed. See generally State v. Oliu, 183 So. 3d 1161 (Fla. 1st DCA 2016) (denying motion to disqualify was proper when legally sufficient motion was filed after the ten-day time limit).

As to the timeliness of the Motion, counsel for Defendant acknowledges Defendant was “generally aware” of both grounds upon which the Motion is based at the time the suit was filed. See Def. Mot., Paragraphs 4 and 9. The underlying suit in this cause was filed March 1, 2017. The Motion was filed April 3, 2017, more than thirty (30) days after this case was filed. Clearly, such general knowledge raised in the Motion is untimely asserted pursuant to Florida Rule of Judicial Administration 2.330(e), as the Motion was filed long after ten (10) days following the March 1, 2017 filing of the lawsuit.

Importantly, however, counsel for Defendant claims to have learned for the first time on or after **March 24, 2017**, of certain matters regarding the local church at which the undersigned Judge is a member [and where he serve(d) as a volunteer]. Specifically, Defendant asserts, “Of note, undersigned counsel learned for the first time after March 24, 2017[,], that First Baptist Church specifically called upon its members to petition the City Council to oppose the HRO Ordinance in an attempt to lobby the City Council against the legislation.” Def. Mot., Paragraph 10. Defendant then attaches Exhibit G¹, a copy of the asserted petition. Importantly, the Motion makes no assertion that the undersigned Judge signed the petition or was even aware of it.

¹ Paragraph 10 of the Motion references Exhibit H. However, this is a typographical error. Exhibit G is the referenced petition. Composite Exhibit H is corporate filings referenced in Paragraph 11 of the Motion.

If those matters were learned on March 24, 2017, the deadline to file the Motion was April 3, 2017. The Motion was, in fact, filed on April 3, 2017, the very last day for such filing under this calculation of time.

Yet, the very exhibits counsel for Defendant attaches in support of this argument, make plain Defendant printed them on **March 20, 2017, no less than four days before counsel asserts Defendant learned of such information.** Accordingly, with Defendant having learned the asserted information on March 20, 2017, the deadline to file the Motion was March 30, 2017. Therefore, had the Motion accurately asserted such information was learned on March 20, 2017, the Motion (filed on April 3, 2017) would be – on its face – untimely. See Fla. R. Jud. Admin. 2.330(e).

This material discrepancy between the date(s) of knowledge claimed by Defendant and the date(s) of knowledge evidenced by the attachments – together with the clear and obvious impact upon the legal timeliness of the Motion – is both striking and troubling.

II. The Motion is Legally Insufficient

A motion to disqualify is governed by Section 38.10, Florida Statutes, and Florida Rule of Judicial Administration 2.330. See Parker v. State, 3 So. 3d 974, 981 (Fla. 2009) (citation omitted). When ruling on the Motion, this Court is limited to determining the legal sufficiency of the motion.

The term “legal sufficiency” encompasses more than mere technical compliance with the rule and the statute. The standard for viewing the legal sufficiency of a motion to disqualify is whether the facts alleged, which must be assumed to be true, would cause the movant to have a well-founded fear that he or she will not receive a fair trial at the hands of that judge. See Fla. R. Jud. Admin. 2.330(d)(1).

Further, this fear of judicial bias must be *objectively reasonable*. (citation omitted). *The subjective fear of a party seeking the disqualification of a judge is not sufficient*. (citation omitted). Rather, the facts and reasons given for the disqualification of a judge must tend to show “the judge’s undue bias, prejudice, or sympathy.” Jackson v. State, 599 So. 2d 103, 107 (Fla. 1992); see also Rivera v. State, 717 So. 2d 477, 480-81 (Fla. 1998). *Where the claim of judicial bias is based on very general and speculative assertions about the trial judge’s attitudes, no relief is warranted*. (citation omitted).

Krawczuk v. State, 92 So. 3d 195, 200-01 (Fla. 2009) (emphasis added) (quoting Parker).

The arguments as set forth in the Motion are legally insufficient. The Motion is speculative and raises no legally sufficient basis – in law or fact – that under Florida law “would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial.” See generally State v. Oliu, 183 So. 3d at 1162 (Fla. 1st DCA 2016) (citation omitted).

III. The Independent, Foundational, and Enduring Responsibility of This Court

Notwithstanding the above, it is the responsibility (and privilege) of this Court – in every case – to conduct its work in a manner that protects the parties’, and thereby the public’s, confidence in the integrity of the judicial process and, relatedly, the integrity of judicial decisions. This is a responsibility to which Florida courts zealously cling – daily.

In State ex rel. Davis v. Parks, 194 So. 613 (Fla. 1939), the Florida Supreme Court made clear it is the trial court’s abiding responsibility to ensure not only the actual and complete impartiality of the trial court but the appearance of utter impartiality as well.

Though the facts therein are much different than the case before this Court, the Florida Supreme Court articulated for the ages an enduring truth that is universally applied to our Courts of Justice.

[E]very litigant is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of Courts to *scrupulously* guard this right and to refrain from attempting to exercise jurisdiction *in any matter* where his qualification to do so is seriously *brought in question*. The exercise of any other policy tends to discredit the judiciary and shadow the administration of justice.

State ex rel. Davis v. Parks, 194 So. 613, 615 (Fla. 1939) (emphasis added); see also Hayslip v. Douglas, 400 So. 2d 553, 557 (4th DCA 1981) (quoting Parks).

Thus, this Court must “scrupulously guard”: (i) all parties’ right to an utterly impartial court; as well as (ii) the appearance and confidence of the parties that this foundational right is being afforded to all parties.

Therefore, it is appropriate for the undersigned Judge to voluntarily take steps to employ all reasonable efforts to allow the parties to possess a strong and well-founded confidence that a court has rendered a decision founded only upon the law and the evidence. In this unique case, such a step is for this Court to voluntarily recuse itself, even though such a decision is not legally required.

To be clear, the undersigned Judge is utterly free from any burden or motive that would hinder this Court’s ability to be utterly fair to all parties and follow the law to whatever conclusion required thereby. The undersigned Judge in no way possesses any pre-judged determination of this matter.

It must be acknowledged that certain of the facts raised in the Motion surrounding the undersigned Judge presiding over this cause are truly unique. While

these facts are legally insufficient to compel disqualification by law (and the Motion was not timely filed by Defendant), it is the enduring responsibility of this Court to act – in every manner at every occasion – in such a way that protects the parties’ (and thus the public’s) trust in the fairness and integrity of the judicial process.

The People of the City of Jacksonville and the State of Florida have entrusted to their Courts the fair and impartial administration of justice, which is to be determined only upon the law and the evidence. The People may insist – and rightly should insist – upon their confidence in the integrity of judicial decisions. For such confidence to exist and endure, Florida courts must act in a manner to protect the integrity of the judicial process – both actual and *perceived* – and rid the Courtroom of anything that may cast the faintest shadow upon the work of the judiciary.

The administration of justice is the most sacred rite known to the social order of [our Republic]. The duty of performing that rite is laid on the bench *and* bar. No greater commission was ever handed a profession[,] but the same power that gave it can and will withdraw it if we prostitute it.

Parks, 194 So. at 615 (emphasis added).

It is, thereupon,

ORDERED:

I, Adrian G. Soud, Judge of Division CV-E of the Fourth Judicial Circuit Court of the State of Florida, do hereby voluntarily recuse myself in this case and request the Chief Judge to reassign the same to another division of the Court.

DONE AND ORDERED, in Chambers, at Jacksonville, Duval County, Florida, this 24th day of April, 2017.


ADRIAN G. SOUD
CIRCUIT JUDGE

Copies furnished to:

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